

Act no. 526 of 7 June 2006 amending the Merchant Shipping Act and certain other Acts

(Digital ship registration, mortgages, execution etc. against fishing rights, apportionment of reward for salvage, and the home port of ships)

We Margrethe the second, by the grace of God Queen of Denmark hereby witness: Folketinget (the Danish Parliament) has adopted and We with Our consent hereby enact the following Act:

Section 1

In the Merchant Shipping Act (*søloven*), cf. Consolidated Act no. 538 of 15 June 2004, as amended most recently by Act no. 599 of 24 June 2005, the following amendments shall be made:

1. *Section 5(1)* shall be worded as follows:

»Danish ships shall have their home port in the Realm. For fishing vessels, the home port shall be a port; for other ships, the home port may be either a port or a city.«

2. The heading for *part 2* and the heading before section 10 shall be deleted and the following inserted instead:

»*Registration*«.

3. The heading for *sections 28-38* shall be repealed and the following inserted instead:

»Part 2a

Registration of rights

27a-(1) Ownership rights, mortgages and other limited rights in ships registered in the Danish Shipping Register as well as mortgaging of digital **owner mortgage deeds secured in such ships shall be registered in the Danish Shipping Register. Other registrations of the Danish Maritime Authority concerning ships shall not be covered by the provisions of parts 2a-2c and part 2e.

(2) Notification of the rights listed in subsection (1) shall be via the printed forms prepared by the Danish Maritime Authority or, digitally using a digital signature, cf. however section 46a(1) and section 46b(1). Negotiable mortgage deeds secured in ships on ships cannot be notified digitally until the Danish Maritime Authority has laid down more detailed regulations in this regard, cf. section 46a(1).«

4. After *section 28*, the following shall be inserted:

»**28a-(1)** Mortgage in digital **owner mortgage deeds shall be registered in order to obtain protection against agreements regarding the mortgage deed entered into in good faith, and against agreements regarding the ship or against legal proceedings pursuant to 28(1).

(2) Mortgages pursuant to subsection (1) and agreements or legal proceedings pursuant to section 28(1) which are to defeat a non-registered right in an **owner mortgage deed or within the amount of an **owner mortgage deed shall be registered themselves and the transferee under the agreement shall be in good faith.

** Throughout the translation the term "owner mortgage deed" is used to denote the Danish term "ejerpantebrev" for which there is no directly equivalent English term. An "ejerpantebrev" is a mortgage deed with the owner of the mortgaged item registered as both mortgagor and mortgagee. An "ejerpantebrev" in paper form may be used as security by pledge of the original "ejerpantebrev" whereas an "ejerpantebrev" in digital form may itself be mortgaged.

(3) A mortgagee with registered mortgage in a digital **owner mortgage deed may, in good faith, with security in the **owner mortgage deed and with priority ranking above mortgages registered subsequently in or within the amount of the **owner mortgage deed and attachments, extend the secured debt until such time when notification about the subsequent mortgages has reached the mortgagee.

(4) Transfer or other conveyance of rights as mentioned in subsection (1) shall be registered in order to achieve validity against agreements entered into regarding the mortgage deed, and against legal proceedings.«

5. Section 29(2) shall be worded as follows:

»(2) When a mortgage deed has been registered, transfer of the mortgage deed need not be registered unless the mortgage deed was issued in digital form, cf. section 46a and section 46b.«

6. In section 31(1) the following shall be inserted after »a ship«: »or an **owner mortgage deed secured in a ship« and after »the ship«: », cf. however subsections (2) and (3).«

7. In section 31, the following shall be inserted as subsections (2) and (3):

»(2) In connection with execution, except for execution on the basis of a mortgage deed secured in that which is taken in execution, and arrest of ships and in cases of sale or transfer of a ship in a final forced sale, the bailiff shall, as soon as possible, ensure that notification of this is registered in the Danish Shipping Register. In cases of bankruptcy and administration of the estate of a deceased person by an executor, the bankruptcy court shall ensure that notification of this is registered in the Danish Shipping Register when the probate court receives notification from the trustee or the executor that the estate includes a registered ship.

(3) The Danish Maritime Authority may, after negotiations with the Ministry of Justice, decide that notification about other decisions made by a court of law shall be notified by said court of law for registration.«

8. In section 34(1), the following shall be inserted as the 2nd clause:

»A document shall moreover be rejected if it does not comply with the requirements set out pursuant to sections 46a-46d.

9. In section 34, the following new subsection shall be inserted after subsection (1):

»(2) The Danish Maritime Authority may stay a registration if it is suspected that a document is a forgery or does not emanate from a person entitled according to the Register, or if it is otherwise assessed that further documentation is needed.«

Subsections (2) and (3) shall hereafter become subsections (3) and (4).

10. Section 35(2), 2nd clause, shall be worded as follows:

»Mortgage deeds issued digitally and mortgage deeds to the Treasury and the lending institutions established by the state may, however, be deleted against receipt by the person so entitled according to the Danish Shipping Register.«

11. In section 36, the following new subsection shall be inserted after subsection (1):

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»(2) The Danish Maritime Authority may lay down regulations concerning the determination of the time of notification to the exact time of day. For documents received in printed form, the Danish Maritime Authority may, however, lay down regulations concerning the time of notification which deviate from this.«

Subsections (2) and (3) shall hereafter become subsections (3) and (4).

12. *Section 36(2)*, which shall become subsection (3), shall be worded as follows:

»(3) Documents notified at the same time of day shall be considered to rank equally at registration. Irrespective of whether this leads to uncertainties regarding the title, the documents shall be registered and then deleted again in the event that the notifiers do not clarify the title conditions within a time limit laid down by the Danish Shipping Register.«

13. After *section 36*, the following shall be inserted:

»**36a.-(1)** Interest and instalment payments on registered negotiable mortgage deeds in digital form, or rent, other services, notices of termination and similar actions that are in accordance with a registered digital document may, when performed in good faith, be duly made to the person authorised according to the Danish Shipping Register to receive such payments, services, cancellations and similar.

(2) When a registered, negotiable mortgage deed in digital form is transferred to ownership or as security, a debtor may, in good faith, pay any interest due to the transferor in full discharge. The same shall apply to instalments due at certain specified intervals according to the registered mortgage deed.

36b. The debtor according to a registered, negotiable mortgage deed in digital form or a registered mortgage in a digital **owner mortgage deed shall only be obligated to pay the debt against deletion of the mortgage deed or the mortgage in the digital **owner mortgage deed.

36c.-(1) If the debtor according to a registered, negotiable mortgage deed in digital form pays instalments before the due date, including extraordinary instalments, the debtor may demand the mortgage deed to be registered for the lower amount. If the debtor pays instalments after the due date which according to the digital mortgage deed must be paid at certain specified intervals, the debtor may only require a separate receipt.

(2) If the indebtedness has ceased, the debtor may demand that the mortgage deed be deleted. If the indebtedness has been changed pursuant to agreement, declaration of set-off, judgement or cancellation, the debtor may require that this be registered.«

14. In *section 37*, the following new subsection shall be inserted after subsection (2):

(3) When a registered, negotiable mortgage deed in digital form is transferred to ownership or as security, the regulations in sections 37a and 37b shall also apply.«

Subsection (3) shall hereafter become subsection (4).

15. In *section 37(3)*, which becomes subsection (4), »subsections (1) and (2)« shall be changed to: »subsections (1)-(3)«.

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16. After section 37, the following shall be inserted:

»37 a.-(1). If a registered, negotiable mortgage deed in digital form has been transferred to ownership or as security by the person entitled according to the Danish Shipping Register and the transferee has had the transfer registered in good faith, the transferee shall not be met by any of the objections mentioned in section 15(1) of the Instrument of Debt Act (*gældsbrevsloven*) from the side of the debtor.

(2) The debtor shall retain his rights of objection under section 16 of the Instrument of Debt Act (*gældsbrevsloven*), even against a transferee who has acted in good faith. The same shall apply to the debtor's rights of objection under section 17 of the Instrument of Debt Act (*gældsbrevsloven*).

37b If a registered, negotiable mortgage deed in digital form has been transferred to ownership or as security by the person entitled according to the Danish Shipping Register and the transferee has had his right registered in good faith, it shall not be a hindrance against the transferee's right that the person entitled according to the Danish Shipping Register lacked legal capacity or the right to administer the mortgage deed.

37c-(1) Against the person who has had registered a transfer to ownership or as security of a negotiable mortgage deed in digital form, the debtor may only claim set-off with claims against the transferor, if the transferee knew that the debtor had a claim which could be used for set-off, and that the debtor would suffer a loss upon the transfer, if the transfer excluded set-off.

(2) Access to setting off claims that stem from the same legal matter as the mortgage-deed claim shall, however, be retained notwithstanding the transfer, unless otherwise provided by the regulations on objections from said matter.«

17. The heading after section 38 shall be deleted and the following inserted instead:

»Part 2b

Performance of registration, authorisation and powers of attorney«.

18. The following shall be inserted after section 39:

»39a.-(1) Notifiers who are authorised under section 39b may issue and notify documents furnished with the digital signature of the notifier regarding rights in ships to the Danish Shipping Register. The Danish Maritime Authority may, however, limit the scope of authorisation to individual types of document or transactions etc.

(2) The notifier shall check that the digital documents originate from the person who, according to the Danish Shipping Register is entitled to administer the right in question or that they are issued with the consent of the entitled person and that the entitled person has undertaken the obligations stated in the digital document. The notification shall state that the notifier has carried out such checks.

(3) If any person suffers loss as a consequence of activities by the notifier in his capacity as notifier, the person suffering loss shall be entitled to compensation from the notifier in accordance with the general provisions of Danish law.

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(4) Compensation for losses which has been paid by the state pursuant to section 46 may be claimed indemnified from the notifier, if the document causing the loss was notified by the notifier pursuant to subsection (1).

(5) The Danish Maritime Authority may lay down regulations that, in connection with registration pursuant to subsection (1), the Danish Shipping Register shall send notification to the person who, according to the Register, is entitled to administer the right in question.

39b.-(1) Authorisation as a notifier shall be assigned by the Danish Maritime Authority.

(2) Authorisation may be assigned to

- 1) undertakings which, in accordance with section 7 of the Financial Business Act (*lov om finansiel virksomhed*) are licenced as a financial institution, and
- 2) persons who, in accordance with section 119 of the Administration of Justice Act (*retsplejeloven*) have been appointed as lawyers.

(3) Authorisation as a notifier may also be assigned to persons and undertakings which carry out activities in Denmark of the nature mentioned in subsection (2) in accordance with the rules of the EU Treaty on the Freedom of Establishment and the Free Movement of Services.

(4) Any person who applies for authorisation as a notifier shall make it probable that he will be able to carry out the activities appropriately.

(5) The applicant shall also provide adequate security for monetary claims which may arise as a consequence of his activity as a notifier, cf. section 39a(3) and (4). The Danish Maritime Authority may decide that an applicant fulfils the requirement to provide security by fulfilling requirements imposed by other legislation.

(6) The Danish Maritime Authority shall lay down more detailed regulations on the form and content of applications for authorisation as a notifier and on the conditions for obtaining authorisation, on the amount, nature and term of the security to be provided and on the terms which may be linked to an authorisation.

(7) Authorisation as a notifier may be assigned to other persons than those mentioned in subsections (2) and (3) who fulfil the conditions of subsections (4) and (5) and who

- 1) are not without legal capacity, under guardianship pursuant to section 5 of the Legal Guardianship Act (*Værgemålsloven*) or under guardianship pursuant to section 7 of the same Act,
- 2) have not notified suspension of payments or are under bankruptcy proceedings,
- 3) do not have significant debts due to the public sector, which shall mean debts of about DKK 50,000 or more, and
- 4) have not been convicted of a criminal offence which gives reason to believe that there is an immediate danger that the position as an authorised notifier may be abused.

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(8) Authorisation as a notifier may, in addition to the persons mentioned in subsections (2) and (3), be assigned to public limited companies and private limited companies which are registered with the Danish Commerce and Companies Agency and which fulfil the conditions of subsections (4) and (5). A further condition for assignment of authorisation shall be that the members of the board of management and a majority of the members of the board of directors shall fulfil the conditions of subsection (7), no. 1 and that the members of the board of management and members of the board of directors fulfil the conditions of subsection (7), nos. 2-4. On the same conditions, authorisation may be assigned to other companies, associations, funds and similar which are domiciled in Denmark.

(9) In the event that a new member joins the board of management or the board of directors, the company etc. shall notify this within 14 days to the Danish Shipping Register which shall hereafter decide whether the authorisation may be maintained.

(10) Authorisation may only be assigned if persons with a controlling influence over the company etc. fulfil the conditions of subsection (7), no. 4.

39c.-(1) An authorisation may be revoked if the notifier grossly or repeatedly violates the terms of authorisation or this Act or regulations issued pursuant to this Act. The same shall apply if there is specific reason to presume that the notifier will not carry out the activity in an appropriate manner.

(2) An authorisation shall be revoked if the holder of the authorisation fails to fulfil the terms mentioned in section 39b(2) on a licence or appointment, if the basis for authorisation mentioned in section 39b(3) no longer applies, or if the holder of the authorisation fails to fulfil the terms on security mentioned in section 39b(5).

(3) An authorisation shall no longer apply if the notifier dies, comes under guardianship pursuant to section 5 of the Legal Guardianship Act (*værgemålsloven*) or under guardianship pursuant to section 7 of the same Act, has notified suspension of payments or is under bankruptcy proceedings.

39d.-(1) Any person who is entitled to administer or make a statement on a right in a specific ship may, pursuant to the regulations of subsection (2) and the regulations laid down pursuant to subsection (3) give another person power of attorney to issue and notify documents regarding the right for registration, including to issue statements regarding the ship. The power of attorney shall be submitted to the Danish Shipping Register electronically or on paper. The power of attorney may be submitted before the person in question is entitled to administer this right.

(2) If the power of attorney is not registered before receipt of a document notified for registration on the basis of the power of attorney, the Danish Shipping Register shall give the principal and agent a time limit of seven days in which to submit the power of attorney.

(3) The Danish Maritime Authority may lay down regulations on the form and content of the power of attorney which is to be submitted to the Danish Shipping Register, including that the power of attorney is to contain information about the civil registration number or company registration number of the principal and the agent, and that powers of attorney on paper shall be prepared so that they can be read by machine, as well as a longest period of validity for powers of attorney. The Danish Maritime Authority may also lay down regulations on access of the Danish Shipping Register to, on request, extend the time limit of subsection (2), and regulations on that, in

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connection with registration according to subsection (1), the Danish Shipping Register shall send notification to any person who, according to the Register is entitled to administer the right in question.«

19. The heading for *sections 41 and 42* shall be repealed and instead the following shall be inserted:

»Part 2c

Preclusion, legal remedies etc.«

20. The heading after section 42 shall be deleted.

21. In *section 45(1)* »date of notification« shall be amended to: »time of notification«.

22. In *section 46* the following shall be inserted as *subsection (3)*:

»(3) If the Treasury has paid compensation pursuant to subsection (1) as a consequence of improper use of a digital signature, cf. section 46c, the state may claim recourse against the holder of the certificate if the holder has not observed the security requirements stipulated at the issue of the certificate. The ordinary regulations of Danish law shall apply to recourse in other circumstances.«

23. After section 46 the following shall be inserted as a new part:

»Part 2d

Digital registration of ships

46a.-(1) The Danish Maritime Authority may lay down regulations that negotiable mortgage deeds which secured in ships shall be issued in digital form in order to be registered in the Danish Shipping Register.

(2) The provisions of part II of the Instrument of Debt Act (*gældsbrevsloven*), except for section 11(2), shall not apply to registered negotiable instruments of debt in digital form with a mortgage on a ship, cf. however, section 37a.

46b.-(1) The Danish Maritime Authority may lay down regulations that other documents than those mentioned in section 46a, which are notified for registration, and other documents, which are sent to or from the Danish Shipping Register, shall be digital.

(2) The provisions of part III of the Instrument of Debt Act (*gældsbrevsloven*) shall apply to registered, digital instruments of debt which provide a mortgage on a ship and in which the words »not to order« (*»ikke til ordre«*) or similar reservations have been inserted, and to registered, digital letters of indemnity, which provide a mortgage on a ship, cf. however, subsection (3).

(3) The regulations of section 31(1)-(4) of the Instrument of Debt Act (*gældsbrevsloven*) shall not apply to transfers of registered digital instruments of debt providing a mortgage on a ship.

46c. The Danish Maritime Authority may lay down regulations on digital documents which are used in connection with registration in the Danish Shipping Register, including that these shall be in a specifically structured form and that specific digital systems shall be used.

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46d. The Danish Maritime Authority may lay down regulations that documents which are notified for registration and other documents which are sent digitally to or from the Danish Shipping Register shall be furnished with a digital signature.

(2) The Danish Maritime Authority may, pursuant to negotiations with the Minister for Science, Technology and Innovation, lay down regulations on the technical requirements for documents and digital signatures, including requirements that the holder shall submit to special terms for protection of the signature etc.«

24. In the part heading before section 47, »Part 3« shall be amended to: »Part 2e«.

25. In *section 47*, the following shall be inserted as subsections (4)-(8):

»**(4)** A right in a ship which is registered in the Danish Shipping Register shall, without special agreement, include fishing rights which are granted to the owner in his capacity as owner of the ship or acquired by the owner for use for the ship. This shall not, however, apply if the acquisition was in contravention of subsection (6).

(5) Separate rights in a fishing right, which is covered by a right in a ship which is registered in the Danish Shipping Register may not be established or reserved, cf. however, subsections (6) and (7).

(6) The owner of a ship which is registered in the Danish Shipping Register may, with the consent of all the registered holders of rights, sell a fishing right.

(7) The owner of a ship which is registered in the Danish Shipping Register may, without the consent of the holders of the rights in the ship, transfer the right to exploit a fishing right from the time of transfer and until the end of the calendar year. Agreements to limit the authority of the owner under the 1st clause shall be void.

(8) Fishing rights according to subsections (4)-(7) shall include quotas of any type, rights to annual quantities, days at sea and capacity as well as other similar rights which belong to the current owner of a ship which is used for commercial fishing.«

26. The heading after section 50a shall be worded at follows:

»Part 3

Maritime liens and other rights in ships«.

27. *Section 56* shall be worded as follows:

»**56.** The provisions of section 47(1) on a ship's equipment shall apply correspondingly to maritime liens on a ship.«

28. *Section 451(4)* shall be worded as follows:

»**(4)** The provisions of subsections (1) and (2) on the apportionment of the reward for salvage may, by prior agreement, be derogated from to the detriment of the master or crew when the agreement is entered into in connection with their engagement and applies to the performance of a

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specific salvage operation. The provisions of subsections (1) and (2) may also, by prior agreement, be derogated from when the persons in question are engaged on a vessel which is specially equipped or will be equipped for salvage operations or in some other way is suitable for salvage operations and these are or could be part of the ship's ordinary operations.«

Section 2

In the Danish International Register of Shipping Act (*lov om Dansk Internationalt Skibsregister*), cf. Consolidated Act no. 273 of 11 April 1997, as amended by section 1 of Act no. 460 of 31 May 2000, the following amendment shall be made:

1. *Section 12, no. 1* shall be worded as follows:

»1) on the extent to which the provisions of the Merchant Shipping Act (*søloven*) on registration of ships and the provisions laid down pursuant to these shall apply to ships registered in the Danish International Register of Shipping,«.

Section 3

In the Administration of Justice Act (*lov om rettens pleje*), cf. Consolidated Act no. 910 of 27 September 2005, as most recently amended by Act no. 279 of 5 April 2006, the following amendments shall be made:

1. In *section 478(4)*, the following shall be inserted as the *2nd clause*:

»In the circumstances mentioned in subsection (1), no. 6, enforcement may also be on any person who, as debtor, guarantor with primary liability or mortgagor has made himself liable by a digital mortgage deed which is or has been registered in the Royal Danish Register of Shipping or in the Danish International Register of Shipping.«

2. In *section 488(2)*, the following shall be inserted as the *3rd clause*:

»For digital mortgage deeds which are or have been registered in the Royal Danish Register of Shipping or the Danish International Register of Shipping, the request shall instead contain a precise reference to the document in the Royal Danish Register of Shipping or in the Danish International Register of Shipping.«

3. In *section 510(1)*, »section 48 of the Registration of Vessels Act (*lov om skibsregistrering*)« shall be amended to: »section 47(1)-(3) of the Merchant Shipping Act (*søloven*)«,«.

4. In *section 510*, the following shall be inserted as *subsection (4)*:

»(4) Subsections (1) and (2) shall apply correspondingly to a fishing right which, according to section 47(4) of the Merchant Shipping Act (*søloven*), is included in a right in a registered ship.«

5. In *section 518(3)*, »section 48 of the Registration of Vessels Act (*lov om skibsregistrering*)« shall be amended to: »section 47 of the Merchant Shipping Act (*søloven*)«,«.

Section 4

In Act no. 382 of 2 June 1999 on Fees to be Paid on Registration of Owner's Rights and Mortgages etc. (*lov om afgift af tinglysning og registrering af ejer- og panterrettigheder m.v.*) as

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most recently amended by section 4 of Act no. 560 of 24 June 2005, the following amendment shall be made:

1. In section 12(1), 1st and 2nd clauses »and mortgage on digital **owner mortgage deeds« shall be inserted after »court ordered liens«.

Section 5

(1) The Minister for Economic and Business Affairs shall determine the time of entry into force of this Act, cf. however subsection (2). The Minister may determine that parts of this Act shall enter into force at a later stage.

(2) Section 1, nos. 25 and 27, and section 3, nos. 3-5 shall enter into force on the day following the publication of this Act in the Danish Legal Gazette (*Lovtidende*).

(3) Sections 47 and 56 of the Merchant Shipping Act (*søloven*) as amended and worded, respectively, by section 1, nos. 25 and 27 of this Act shall only apply to mortgages and other limited rights in registered ships if the right has been established after these provisions have entered into force.

(4) Section 47(5) of the Merchant Shipping Act (*søloven*), as inserted by section 1, no. 25 of this Act, shall not apply to mortgages and other limited rights in the fishing rights mentioned in section 47(8) provided that said mortgage or other limited right has been established before the entry into force of this provision. Section 47(7) of the Merchant Shipping Act (*søloven*) as inserted by section 1, no. 25 of this Act shall only apply to agreements entered into after this provision has entered into force.

(5) Section 451(4) of the Merchant Shipping Act (*søloven*), in the wording of section 1, no. 28 of this Act, shall only have effect for engagements entered into after this provision has entered into force.

(6) Section 510(1) of the Administration of Justice Act (*retsplejeloven*), as amended by section 3(3) of this Act, section 510(4) of the Administration of Justice Act (*retsplejeloven*) as inserted by section 3, no. 4 of this Act, and section 518(3) of the Administration of Justice Act (*retsplejeloven*) as amended by section 3, no. 5 of this Act, shall only apply to legal proceedings carried out after these provisions have entered into force.

Section 6

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

(2) Sections 1 and 2 of this Act may be brought into force by Royal Decree for Greenland subject to any variation in their operation necessitated by the specific conditions prevailing in Greenland. Section 1, no. 28 may be brought into force by Royal Decree for the Faeroe Islands subject to any variation in their operation necessitated by the specific conditions prevailing on the Faeroe Islands.

Christiansborg Slot, 7 June 2006

Under Our Royal Hand and Seal

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In the name of the Queen:
FREDERIK
Crown Prince

/Bendt Bendtsen

Editorial notes

The following order(s) contain provisions on entry into force:

Executive Order No. 658 of 14/06/2006

Executive Order No. 245 of 21/03/2007

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