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### **Danish Act on Restructuring and Resolution of certain Financial Businesses**

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THIS IS AN UNOFFICIAL TRANSLATION OF THE ACT ON RESTRUCTURING AND RESOLUTION OF CERTAIN FINANCIAL ENTERPRISES PREPARED BY FINANSIEL STABILITET. ONLY THE OFFICIAL VERSION IN DANISH PUBLISHED IN THE DANISH LAW GAZETTE ("LOVTIDENDE") IS VALID.

## Act on Restructuring and Resolution of Certain Financial Enterprises<sup>1</sup>

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 and definitions*

- 1.-(1)** This Act applies to banks, mortgage credit institutions and investment services companies I.
- (2) The Act applies to financial holding companies in Denmark, see section 2(xi).
- (3) The Act applies to finance institutions in Denmark, see section 2(xiii).
- (4) The Act applies to branches in Denmark of foreign credit institutions or of foreign investment firms subject to the variations necessitated by the branch relationship or provided by this Act or by rules issued in pursuance of this Act or pursuant to international agreement.
- 2.** For the purpose of this Act, the following definitions apply:
- (i) Resolution: The use of one or more resolution measures on an enterprise or entity meeting the conditions for resolution set out in section 4 in order to achieve one or more of the resolution objectives referred to in section 5.
  - (ii) Resolution measure: Finansielt Stabilitet's use of resolution tools and other measures and powers, see parts 4-8.
  - (iii) Resolution tools: The sale of the business, see sections 19 and 20; a bridge institution, see sections 21 and 22; the separation of assets, see section 23 and bail-in, see sections 24-28.
  - (iv) Bail-in: Write-down of liabilities or conversion of liabilities to equity, see sections 24-28.
  - (v) Eligible deposits: Deposits comprised by section 7(8) of the Act on a Depositor and Investor Guarantee Scheme.
  - (vi) Bridge institution: A company created for the purpose of receiving either instruments of ownership issued by one or more enterprises or entities under resolution, or assets, rights or liabilities from one or more enterprises or entities under resolution, and which is wholly or partially owned and controlled by the Resolution Fund or Finansielt Stabilitet, see section 21.
  - (vii) Covered deposits: Deposits comprised by the provisions of sections 9 and 10 of the Act on a Depositor and Investor Guarantee Scheme.
  - (viii) Common Equity Tier 1 instruments: Instruments specified in article 28(1)-(4), article 29(1)-(5) and article 31(1) of Regulation (EU) No. 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.
  - (ix) Instruments of ownership: shares, guarantee certificates, share certificates and other instruments that confer ownership, instruments that are convertible into or give the right to acquire instruments of ownership and instruments representing interests in shares or other instruments of ownership.

<sup>1</sup> This Act implements parts of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU of the European Parliament and of the Council and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012, Official Journal of the European Union 2014 L 173/190.

- (x) Entity: A company or an enterprise comprised by section 1(2) or (3).
- (xi) Financial holding company: A parent enterprise meeting the requirements of section 5(1)(x) of the Financial Business Act in which at least one subsidiary is comprised by section 1(1) or is a foreign credit institution or investment firm having obtained permission in a country in the European Union or in a country with which the Union has concluded an agreement in the financial area or a mixed-activity holding company, see section 5(1)(li) of the Financial Business Act.
- (xii) Financial contracts:
  - (a) securities contracts;
  - (b) commodity contracts;
  - (c) futures and forward contracts, including contracts (other than contracts for goods for the purchase, sale or transfer of commodities or other goods, services, rights or interests at a fixed price on a future date;
  - (d) swaps; and
  - (e) loan agreements between enterprises with a term to maturity of three months or less.
- (xiii) Finance institution: A company which meets the definition in section 5(1)(vi) of the Financial Business Act and which is a subsidiary of an enterprise comprised by section 1(1) or (2) or of a credit institution or investment firm having obtained permission in a country in the European Union or in a country with which the Union has concluded an agreement in the financial area, and participates in the supervision of the parent enterprise on a consolidated basis in accordance with articles 6-17 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.
- (xiv) Investment services company I: Enterprises comprised by the definition in section 5(1)(xxxii) of the Financial Business Act.
- (xv) Business day: Any day except Saturdays, Sundays and public holidays.
- (xvi) Group entity: A legal entity that is part of a group.
- (xvii) Micro, small and medium-sized enterprises: Enterprises meeting the criteria referred to in the Commission Recommendation of 6 May 2003 on the definition of micro, small and medium-sized enterprises.
- (xviii) Netting agreement: An arrangement under which a number of claims or obligations can be converted into a net claim, including close-out netting agreements under which, on the occurrence of an enforcement event, the obligations of the parties are accelerated so as to become immediately due or are terminated.
- (xix) Asset management vehicle: A company created for the purpose of receiving assets, rights and liabilities from one or more enterprises or entities under resolution or a bridge institution and which is wholly or partially owned and controlled by the Resolution Fund or Finansiell Stabilitet, see section 23.
- (xx) Relevant capital instruments: Additional Tier 1 instruments, meaning instruments meeting the requirements of article 52(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, and Tier 2 instruments, meaning instruments meeting the requirements of article 63 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.
- (xxi) Enterprise: Banks, mortgage credit institutions and investment services companies I, see section 1(1) above.

**3.-(1)** Where reference is made in the Act to the Guarantee Fund, the relevant provision also applies to any voluntary schemes, see part 7 a of the Act on a Depositor and Investor Guarantee Scheme, and to other countries' guarantee schemes comprised by Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

(2) Where reference is made in the Act to provisions in the Act on a Depositor and Investor Guarantee Scheme, this also comprises corresponding provisions of other countries' regulations implementing Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes.

## Part 2

### *Resolution conditions and principles*

**4.-(1)** Finansielt Stabilitet will implement resolution measures against an enterprise if Finansielt Stabilitet assesses the following conditions for resolution to be met:

- (i) upon consultation with Finansielt Stabilitet, the Danish FSA has informed Finansielt Stabilitet that the enterprise is failing or is likely to fail, see section 224 of the Financial Business Act;
- (ii) upon consultation with Finansielt Stabilitet, the Danish FSA has informed Finansielt Stabilitet that all other means of dealing with the enterprise have been exhausted; and
- (iii) it is necessary in the interest of the general public to take one or more resolution measures, see the resolution objectives in section 5.

(2) Subsection (1) hereof applies *mutatis mutandis* to a financial holding company, provided the conditions for resolution are met for the holding company and at least one subsidiary. Notwithstanding the first sentence, Finansielt Stabilitet may implement resolution measures against a financial holding company, regardless that it does not meet the conditions for resolution, provided one or more subsidiaries meet the conditions for resolution and the scope of the assets and liabilities of the subsidiary is such that the Danish FSA assesses that the failure of the subsidiary would constitute a threat to an enterprise in the group or to the group as a whole.

(3) Subsection (1) hereof applies *mutatis mutandis* to a finance institution, provided the conditions for resolution are met for the finance institution and the parent enterprise of the finance institution.

### *Resolution objectives*

**5.** In its choice and application of resolution tools and other resolution measures, Finansielt Stabilitet takes into account the following resolution objectives:

- (i) to ensure the continuity of critical functions, the discontinuance of which is likely to lead to the disruption of services that are essential to the real economy or likely to disrupt financial stability;
- (ii) to avoid a significant adverse effect on the financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;
- (iii) to protect public funds by minimising reliance on extraordinary public financial support;
- (iv) to protect depositors and investors covered by the Act on a Depositor and Investor Guarantee Scheme; and
- (v) to protect customer funds and customer assets.

## Part 3

### *Valuation*

**6.-(1)** Before taking resolution measures or exercising its power to write down or convert relevant capital instruments, see section 17, Finansielt Stabilitet must ensure that a fair, prudent and realistic valuation of the assets and liabilities of the enterprise or entity is carried out. Such valuation must be independent, see section 10.

(2) The valuation pursuant to section 1 must indicate the subdivision of the creditors of the enterprise or entity in classes in accordance with their ranking in the order of priority of creditors under section 13 of this Act and part 10 of the Bankruptcy Act. The valuation must also indicate an estimate of the treatment

that each class of shareholders and creditors would have been expected to receive if the enterprise or entity were wound up under bankruptcy proceedings.

(3) The valuation should not assume any potential future provision of extraordinary public financial support.

(4) Furthermore, the valuation must take account of the fact that:

- (i) Finansiell Stabilitet and the Resolution Fund, see part 11, may recover expenses incurred from the enterprise or entity under resolution in accordance with section 29; and
- (ii) the Resolution Fund may charge interest or fees in respect of any loans or guarantees provided to the enterprise or entity under resolution.

(5) The valuation must be supplemented by the following information based on the financial statements and records of the enterprise or entity:

- (i) an updated balance sheet and a report on the financial position of the enterprise or entity;
- (ii) an analysis and an estimate of the book value of the assets;
- (iii) a list of outstanding on-balance sheet and off-balance sheet liabilities shown in the books and records of the enterprise or entity, with an indication of the respective ranking in the order of priority of creditors; and
- (iv) an analysis and an estimate of the fair value of the assets of the enterprise or entity, where relevant in relation to a bridge institution or the sale of the business.

(6) Where the requirements laid down in subsections (1)-(5) hereof are met, the valuation is considered to be definitive.

#### *Provisional valuation*

**7.-(1)** Where it is not possible to carry out a valuation that complies with the requirements of section 6, Finansiell Stabilitet may carry out a provisional valuation of the assets and liabilities of the enterprise or entity, see subsections (2) to (5) hereof.

(2) A provisional valuation must to the greatest extent possible comply with the requirements of section 6. The provisional valuation must also include a buffer for additional losses.

(3) Where Finansiell Stabilitet has carried out a provisional valuation in pursuance of subsection (1) hereof, a definitive, independent valuation in accordance with section 6 must be made as soon as possible. This valuation may be carried out prior to or simultaneously with the valuation referred to in section 8. The two valuations must be distinct from each other, however.

(4) In the event that the net asset value of the enterprise or entity in the definitive valuation, see subsection (3) hereof, is higher than in the provisional valuation, see subsection (1) hereof, Finansiell Stabilitet may:

- (i) increase the value of the claims of creditors or owners of relevant capital instruments which have been written down in pursuance of section 17 or by way of bail-in measures pursuant to section 24; or
- (ii) instruct a bridge institution or an asset management vehicle to make a further payment of consideration in respect of the acquired assets, rights or liabilities to the enterprise or entity under resolution, or in respect of instruments of ownership taken over to the owners of these.

(5) In the event that the net asset value of the enterprise or entity in the definitive valuation is lower than in the provisional valuation, Finansiell Stabilitet may take additional resolution measures with a view to ensuring the resolution of the enterprise or entity.

#### *Subsequent valuation for creditor protection purposes, etc.*

**8.-(1)** For the purpose of assessing whether shareholders and creditors would have been in a better position if the enterprise or entity under resolution had entered into normal bankruptcy proceedings, see section 49, Finansiell Stabilitet ensures that a subsequent independent valuation is carried out as soon as possible after the resolution measures have been taken.

(2) The valuation pursuant to section 1 determines:

- (i) the treatment that shareholders and creditors would have received if the enterprise or entity

- under resolution had entered into normal bankruptcy proceedings;
- (ii) the actual treatment that shareholders and creditors in the enterprise or entity under resolution have received in the resolution; and
  - (iii) whether there is any difference between the treatment referred to in (i) and (ii) above.
- (3) When compared to if the enterprise or entity under resolution had entered into normal bankruptcy proceedings, see subsection (2)(i) hereof, the valuation must
- (i) assume that the enterprise or entity under resolution would have entered into normal bankruptcy proceedings at the time when the resolution measures were taken;
  - (ii) assume that the resolution measures had not been effected; and
  - (iii) disregard any provision of extraordinary public financial support that the enterprise or entity under resolution may have received.

*Detailed rules on valuations*

**9.** The Minister for Business and Growth may lay down detailed rules on the valuations in pursuance of sections 6-8, including on the methods of valuation of the assets and liabilities of the enterprise or entity, the separation of the definitive valuation, see sections 6 and 7, and the subsequent valuation, see section 8, and on the calculation and inclusion of a buffer for additional losses in the provisional valuation, see section 7(2).

*Appointment of valuation expert*

**10.-(1)** The independent valuations, see section 6(1) and section 8(1), should generally each be made by one independent valuation expert. Where necessary to meet the requirement for independence in section 6(1) and section 8(1), Finansielt Stabilitet may appoint two valuation experts.

(2) With respect to the valuation of banks and mortgage credit institutions, the valuation experts in question must be certified by the Danish FSA to carry out audits of these types of enterprise, see section 199(13) of the Financial Business Act and rules issued in pursuance thereof.

(3) The Minister for Business and Growth may lay down detailed rules on the appointment of valuation experts and the requirement for independence.

*Judicial review of valuations*

**11.** The valuations carried out in pursuance of sections 6 and 7 cannot become subject to separate judicial review, but may be reviewed solely in conjunction with Finansielt Stabilitet's implementation of resolution measures.

Part 4

*Restructuring and resolution*

**12.-(1)** When the conditions for resolution are met, see section 4, Finansielt Stabilitet on a case-by-case basis chooses the resolution measures that best achieve the resolution objectives, see section 5, in the restructuring or resolution of the enterprise or entity.

(2) Finansielt Stabilitet may use resolution tools and other resolution measures either separately or in combination, unless otherwise provided by this Act.

(3) Finansielt Stabilitet must base its work on the resolution plan for the enterprise or entity prepared in accordance with part 17 of the Financial Business Act, but is not bound by it.

(4) When applying the resolution tools and other resolution measures, Finansielt Stabilitet must at any time ensure that

- (i) losses are borne in accordance with the order of priority of creditors, see section 13 of this Act and part 10 of the Bankruptcy Act;
- (ii) no creditors incur losses greater than those which they would have incurred if the enterprise or entity had become subject to bankruptcy proceedings, see section 49;
- (iii) creditors within the same class are treated in an equitable manner, unless otherwise provided in this Act;

- (iv) the board of directors and board of management of the enterprise or entity are replaced as a general rule; and that
- (v) covered deposits are protected in full, see the Act on a Depositor and Investor Guarantee Scheme.

(5) Where Finansielt Stabilitet decides to apply a resolution tool or other resolution measures and this will result in losses being incurred by creditors or their claims being converted, Finansielt Stabilitet will exercise the power set out in section 44 against holders of instruments of ownership to write down or convert relevant capital instruments in accordance with section 17 immediately before or together with the application of the resolution measure.

(6) For systemically important enterprises or entities, the Minister for Business and Growth determines which resolution tools to apply, see subsection (1) hereof.

*Special rules under bankruptcy law*

**13.-(1)** In bankruptcy proceedings against an enterprise, claims from the Guarantee Fund for coverage of depositors pursuant to the Act on a Depositor and Investor Guarantee Scheme are paid immediately after duties pursuant to section 96 of the Bankruptcy Act.

(2) After claims in pursuance of subsection (1) hereof and before claims pursuant to section 97 of the Bankruptcy Act in the order of priority come deposits of natural persons, micro, small and medium-sized enterprises that, as a result of the cap on coverage set out in sections 9 and 10 of the Act on a Depositor and Investor Guarantee Scheme, are not covered by the Guarantee Fund.

**14.-(1)** When a petition for bankruptcy or reconstruction proceedings is made against an enterprise or entity, the bankruptcy court will notify Finansielt Stabilitet and the Danish FSA. The bankruptcy court cannot make a decision to instigate bankruptcy or reconstruction proceedings if, within seven days of being notified, Finansielt Stabilitet states that Finansielt Stabilitet will take resolution measures against the enterprise or entity.

(2) If Finansielt Stabilitet has taken resolution measures or if Finansielt Stabilitet has assessed that the conditions for resolution, see section 4, are met in relation to an enterprise or entity, bankruptcy or reconstruction proceedings may not be instigated against the enterprise or entity without Finansielt Stabilitet's consent.

(3) The date at which Finansielt Stabilitet resolves, see section 12, to initiate resolution measures against an enterprise or entity meeting the conditions for resolution pursuant to section 4, may be established as reference date pursuant to section 1 of the Bankruptcy Act if, within three months of that date, the bankruptcy court receives a petition for reconstruction or bankruptcy proceedings or on its own initiative commences reconstruction proceedings or issues a bankruptcy order.

*Control in connection with resolution*

**15.-(1)** With a view to taking and implementing the resolution measures, Finansielt Stabilitet may exercise control over an enterprise or entity during its resolution by assuming the powers conferred upon the shareholders and the board of directors and take charge of the activities and services of the enterprise or entity and manage and divest the assets and property of the enterprise or entity.

(2) Finansielt Stabilitet may exercise control, see subsection (1) hereof, either directly or indirectly through one or more appointees, see section 16.

(3) The Minister for Business and Growth may lay down detailed rules on the exercising of control pursuant to subsections (1) and (2) hereof, including on registration of the assumption of control and relations with the former board of directors and the shareholders.

**16.-(1)** Finansielt Stabilitet may appoint a special manager to assume responsibility for the management of an enterprise or entity under resolution. The special manager will be granted all the powers of the shareholders and the board of directors of the enterprise or entity and must take such resolution measures as Finansielt Stabilitet has deemed necessary. Finansielt Stabilitet makes public the appointment of the special manager.

(2) The special manager must have the qualifications and knowledge required to carry out the task set



out in subsection (1) hereof. The special manager may employ assistance.

(3) The special manager exercises his or her powers under the instruction and control of Finansiell Stabilitet. The special manager reports to Finansiell Stabilitet on the economic and financial situation of the enterprise or entity and on the acts performed in the conduct of his or her duties. The reports must be drawn up at regular intervals as well as at the beginning and the end of the special manager's mandate and at Finansiell Stabilitet's request.

(4) The special manager is appointed for a period of one year. That period may be renewed, on an exceptional basis, if Finansiell Stabilitet determines that the enterprise or entity remains under resolution and if the special manager is considered to be best suited to fulfil the resolution objectives, see section 5.

(5) Finansiell Stabilitet may decide to indemnify the special manager.

(6) The Minister for Business and Growth may lay down detailed rules on the appointment of a special manager, on his or her responsibilities and on the registration and publication thereof.

#### *Write-down and conversion of relevant capital instruments*

**17.-(1)** If the conditions for resolution are met, see section 4, Finansiell Stabilitet will write down or convert relevant capital instruments in an enterprise or entity to Common Equity Tier 1 instruments.

(2) The power to write down or convert relevant capital instruments under subsection (1) hereof may be exercised independently or in combination with other resolution measures.

(3) Write-down or conversion of relevant capital instruments must be based on a valuation of the assets and liabilities of the enterprise or entity in accordance with part 3.

(4) The order of the write-down or conversion of capital instruments under subsection (1) hereof must be in accordance with the order of priority, had the enterprise or entity become subject to bankruptcy proceedings.

**18.-(1)** When the principal amount of a relevant capital instrument is written down pursuant to section 17, such reduction is permanent and no compensation will be paid to any holder of the relevant capital instruments by the enterprise or entity under resolution, other than any amount to which such holders may be entitled after a definitive valuation pursuant to section 7(3).

(2) Finansiell Stabilitet may require an enterprise or entity to issue Common Equity Tier 1 instruments to the holders of the relevant capital instruments. Relevant capital instruments may only be converted to Common Equity Tier 1 instruments where the following conditions are met:

- (i) the Common Equity Tier 1 instruments are issued by the enterprise or entity in question with the agreement of Finansiell Stabilitet or of the parent enterprise of the enterprise or entity;
- (ii) the Common Equity Tier 1 instruments are issued prior to any state-funded capital injections, see section 51;
- (iii) the Common Equity Tier 1 instruments are awarded and transferred without delay following the exercise of the conversion power;
- (iv) the conversion rate determining the number of Common Equity Tier 1 instruments that are provided in respect of each relevant capital instrument complies with the requirements set out in section 45.

#### *Sale of the business*

**19.-(1)** Finansiell Stabilitet may transfer to a purchaser that is not a bridge institution all or any:

- (i) instruments of ownership issued by an enterprise or entity under resolution; or
- (ii) assets, rights or liabilities of an enterprise or entity under resolution.

(2) On the transfer of instruments of ownership pursuant to subsection (1)(i) hereof, any consideration paid will benefit the holders of those instruments of ownership. On the transfer of all or any of the assets, rights or liabilities of the enterprise or entity under resolution, see subsection (1)(ii) hereof, any consideration paid will benefit the enterprise or entity under resolution.

(3) A transfer pursuant to subsection (1) hereof may be made without the consent of the shareholders of the enterprise or entity under resolution or of any third party, but see section 20. The purchaser is considered to be a continuation of the enterprise or entity under resolution, and may continue to exercise

any such right that was exercised by the enterprise or entity under resolution in respect of the assets, rights or liabilities transferred.

(4) A transfer made pursuant to subsection (1) hereof must be made on commercial terms, having regard to the specific circumstances. Finansielt Stabilitet may set this aside if a commercial process, including an open and transparent sales process, would significantly undermine one or more of the resolution objectives, see section 5.

(5) Finansielt Stabilitet may, with the consent of the purchaser, reverse all or parts of a transfer under subsection (1) hereof. Finansielt Stabilitet will transfer the instruments of ownership back to their original owners and the assets, rights or liabilities back to the enterprise or entity under resolution. The original owners and the enterprise or entity under resolution are obliged to take these back.

(6) Holders of instruments of ownership or creditors of the enterprise or entity under resolution and other third parties whose assets, rights or liabilities are not transferred will not have any rights over or in relation to the assets, rights or liabilities transferred.

**20.-(1)** A purchaser of instruments of ownership issued by the enterprise or entity under resolution or all or any of the assets, rights or liabilities of the enterprise or entity under resolution must have the appropriate authorisations from the Danish FSA to carry on the business it acquires.

(2) If the Danish FSA is unable to carry out the assessment mentioned in section 61 of the Financial Business Act before the transfer, see section 19, the transfer may be carried out, but the voting rights attached to such instruments can only be exercised by Finansielt Stabilitet until approval is obtained. Finansielt Stabilitet is not under any obligation to exercise this voting right.

(3) If the Danish FSA refuses the application pursuant to section 61 of the Financial Business Act, Finansielt Stabilitet will determine a deadline for the purchaser's divestment of the instruments of ownership. Until such divestment has been completed, the voting rights attached to the instruments may be exercised by Finansielt Stabilitet only.

#### *Bridge institution*

**21.-(1)** Finansielt Stabilitet may transfer to a bridge institution all or any:

- (i) instruments of ownership issued by an enterprise or entity under resolution; or
- (ii) assets, rights or liabilities of an enterprise or entity under resolution.

(2) A bridge institution is established for the purpose of receiving and holding the items transferred pursuant to subsection (1) hereof. To provide capital for the bridge institution, relevant capital instruments are written down or converted in the enterprise or entity under resolution, see section 17, by way of bail-in measures, see section 24, or by way of injections from the Resolution Fund, see section 59. The bridge institution must have the appropriate authorisations from the Danish FSA to carry on the acquired business activities in accordance with the Financial Business Act.

(3) A transfer under subsection (1) hereof may be effected without the consent of the shareholders of the enterprise or entity under resolution or of another third party, but see subsection (2), third sentence. The bridge institution will be considered to be a continuation of the enterprise or entity under resolution or any transferred parts thereof and may continue to exercise any such right as was exercised by the enterprise or entity in respect of the assets, rights or liabilities transferred.

(4) The total value of liabilities transferred pursuant to subsection (1) may not exceed the total value of rights and assets transferred. Any consideration paid by the bridge institution in connection with a transfer of instruments of ownership will benefit the owners thereof, and in connection with a transfer of assets, rights or liabilities, the enterprise or entity under resolution. The assessment according to the first sentence hereof and any consideration according to the second sentence hereof will be determined on the basis of the valuation provided for in part 3.

(5) Through the Resolution Fund, Finansielt Stabilitet may grant a liquidity facility to a bridge institution in order that the bridge institution can finance the takeover of assets and rights from the enterprise or entity under resolution and comply with a potential liquidity requirement under the Financial Business Act.

(6) Finansiell Stabilitet may reverse all or parts of a transfer under subsection (1) hereof if this is specified at the transfer or if the items transferred do not meet the conditions for transfer. The original owners and the enterprise or entity under resolution are obliged to take these back.

(7) Holders of instruments of ownership or creditors of the enterprise or entity under resolution and other third parties whose assets, rights or liabilities are not transferred will not have any rights over or in relation to the assets, rights or liabilities transferred.

**22.-(1)** The bridge institution must be operated with a view to maintaining access to any critical functions and selling the enterprises or entities, assets, rights or liabilities taken over to one or more purchasers when conditions are appropriate and within the period specified in subsections (3) and (4) hereof. A sale, see the first sentence hereof, will be completed by Finansiell Stabilitet in an open and transparent selling process. A sale must be made on commercial terms, having regard to the specific circumstances.

(2) A bridge institution will cease to be a bridge institution in the following cases

- (i) the bridge institution ceases to meet the requirements of section 2(vi);
- (ii) all or substantially all of the bridge institution's assets, rights and liabilities are sold to a third party;
- (iii) the period specified in subsections (3) or (4) hereof expires; or
- (iv) the bridge institution's assets are completely liquidated and its liabilities are completely discharged.

(3) Finansiell Stabilitet will cease the operation of the bridge institution as soon as possible and not later than two years after the date of the last transfer pursuant to section 21(1).

(4) Finansiell Stabilitet may extend the period specified in subsection (3) hereof by one or more periods of up to one year if this promotes the resolution, see subsection (2)(i), (ii) or (iv) hereof, or is necessary for the purpose of ensuring the continuity of essential financial services.

(5) If a bridge institution ceases in pursuance of subsection (2)(ii) or (iii) hereof, the bridge institution will be liquidated or become subject to bankruptcy proceedings, depending on the circumstances.

(6) Any proceeds generated as a result of the termination of the operation of the bridge institution pursuant to subsection (5) will benefit the shareholders of the bridge institution, but see section 29.

#### *Separation of assets*

**23.-(1)** Finansiell Stabilitet may transfer portfolios of assets, rights or liabilities from an enterprise or entity under resolution, see section 21, to an asset management vehicle if

- (i) the situation of the particular market for those assets, rights or liabilities is of such a nature that the liquidation of those assets, rights or liabilities under bankruptcy proceedings could have an adverse effect on one or more financial markets;
- (ii) such a transfer is necessary to ensure the proper functioning of the enterprise or entity under resolution or the bridge institution; or
- (iii) such a transfer is necessary to maximise liquidation proceeds.

(2) A transfer pursuant to subsection (1) hereof may be made without the consent of the shareholders of the enterprise or entity under resolution or of any third party.

(3) To provide capital for the asset management vehicle, relevant capital instruments are written down or converted in the enterprise or entity under resolution, see section 17, by way of bail-in measures, see section 24, or by way of injections from the Resolution Fund, see section 59.

(4) Through the Resolution Fund, Finansiell Stabilitet may grant a liquidity facility to an asset management vehicle in order that the asset management vehicle can finance the takeover of assets and rights from the enterprise or entity under resolution or from the bridge institution.

(5) Transfer from an enterprise or entity under resolution pursuant to subsection (1) hereof takes place against payment by the asset management vehicle of a consideration to the enterprise or entity. Consideration may be paid in the form of debt issued by the asset management vehicle. The consideration may be negative. Finansiell Stabilitet determines the consideration on the basis of the valuation provided for in part 3.

(6) Finansiell Stabilitet may effect transfer in pursuance of subsection (1) hereof more than once.

(7) Finansiell Stabilitet may reverse all or parts of a transfer under subsection (1) hereof if this is specified at the transfer or if the items transferred do not meet the conditions for transfer, see subsection (1) hereof. The enterprise or entity under resolution or the bridge institution is obliged to take back such assets, rights or liabilities.

(8) Holders of instruments of ownership or creditors of the enterprise or entity under resolution and other third parties whose assets, rights or liabilities are not transferred will not have any rights over or in relation to the assets, rights or liabilities transferred.

#### *Bail-in*

**24.-(1)** Finansiell Stabilitet may apply bail-in for loss absorption and recapitalisation of an enterprise or entity under resolution or for converting to equity or writing down liabilities transferred pursuant to sections 19, 21 or 23.

(2) Bail-in measures may only be applied for recapitalisation, see subsection (1) hereof, if there is a reasonable prospect that the application of the bail-in measures, in addition to achieving relevant resolution objectives, will lead to a restructuring of the relevant enterprise or entity with a view to long-term viability. The application of any other measures, including initiatives implemented in accordance with the restructuring plan, see section 28, may be included in this assessment.

(3) Finansiell Stabilitet will implement bail-in measures on the basis of the valuation in pursuance of part 3.

(4) Bail-in measures, see subsection (1)-(3) hereof and sections 25-28, cannot be applied in the restructuring and resolution of a mortgage credit institution.

**25.-(1)** Bail-in measures may be applied on all senior liabilities and subordinated debt of the relevant enterprise or entity which have not been written down or converted pursuant to sections 17 and 18 and must be effected in accordance with the order of priority of creditors, see section 13 of this Act and part 10 of the Bankruptcy Act, but see subsection (3) and (4) hereof.

(2) Before bail-in measures involving senior liabilities can be implemented, liabilities which have not already been converted must be converted or written down if they contain the following terms:

- (i) the principal of the instrument must be reduced in case of an event relating to the financial situation, solvency or total capital of the enterprise or entity; or
- (ii) the instrument is converted to instruments of ownership if an event as specified in (i) above occurs.

(3) Bail-in measures cannot be implemented for the following liabilities:

- (i) covered deposits;
- (ii) secured liabilities;
- (iii) any liability arising by virtue of the holding by the enterprise or entity of customer assets or customer money, including customer assets or customer money held on behalf of Danish UCITS comprised by the Act on Investment Associations etc. and Alternative Investment Funds as defined in section 3(1)(i) of the Act on Managers of Alternative Investment Funds etc. and rules issued in pursuance of section 3(8) of the Act on Managers of Alternative Investment Funds etc., provided that such a customer is protected in the event of reconstruction or bankruptcy proceedings;
- (iv) any liability arising by virtue of a fiduciary relationship between the enterprise or entity (as fiduciary) and another person (as beneficiary), provided that such beneficiary is protected under applicable insolvency or civil law;
- (v) liabilities to enterprises with an original maturity of less than seven days, unless the enterprises form part of the same group;
- (vi) liabilities with a remaining maturity of less than seven days owed to registered systems, see section 57 a of the Securities Trading, etc. Act, or operators of such systems or their participants and arising from the participation in such system;

- (vii) a liability to any one of the following:
  - (a) an employee, in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration for material risk takers, and except for the variable component of remuneration that is not regulated by a collective bargaining agreement;
  - (b) a commercial or trade creditor arising from the provision to the enterprise or entity of goods or services that are critical to the daily functioning of its operations, including IT services, utilities and the rental, servicing and upkeep of premises;
  - (c) tax and social security authorities, provided that those liabilities are preferred under the order of priority of creditors, see section 13 of this Act and part 10 of the Bankruptcy Act, or, where relevant, the general insolvency law of another country;
  - (d) the Guarantee Fund by virtue of contributions due in accordance with the Act on a Depositor and Investor Guarantee Scheme; and
  - (e) the Resolution Fund by virtue of contributions due in accordance with part 11.

(4) In special circumstances, Finansiell Stabilitet may exclude or partially exclude certain senior liabilities or a class thereof from bail-in measures. Finansiell Stabilitet will notify the European Commission before a liability is excluded in pursuance of the first sentence hereof.

(5) The Minister for Business and Growth may lay down detailed rules on the circumstances under which exclusion pursuant to subsection (4) hereof can be effected.

**26.-(1)** Where Finansiell Stabilitet has excluded or partially excluded a liability or a class of liabilities pursuant to section 25(4), contributions may be provided through the Resolution Fund by

- (i) covering any losses which have not been absorbed by eligible liabilities and restoring the net asset value of the enterprise or entity under resolution to zero; or
- (ii) purchasing instruments of ownership or capital instruments in the enterprise or entity under resolution in order to recapitalise the enterprise or entity.

(2) The Resolution Fund may make a contribution referred to in subsection (1) hereof only where

- (i) not less than 8% of the total liabilities measured at the time of the resolution measure in accordance with the valuation provided for in part 3 has been written down or converted; and
- (ii) the contribution from the Resolution Fund does not exceed 5% of the total liabilities measured at the time of the resolution measure in accordance with the valuation provided for in part 3.

(3) In extraordinary circumstances, Finansiell Stabilitet may seek further funding after the contribution limit specified in subsection (2)(ii) hereof has been reached and all unsecured, non-preferred liabilities, other than eligible deposits and liabilities comprised by section 25(3) and (4), have been written down or converted in full.

(4) Where all liabilities of the enterprise or entity which can be written down or converted by way of bail-in measures, see section 25, have been written down or converted, and the Guarantee Fund has provided contributions in accordance with section 2 a of the Act on a Depositor and Investor Guarantee Scheme, the Resolution Fund may contribute in accordance with subsection (2) hereof.

**27.-(1)** Write-down or conversion of liabilities arising from derivatives may only be effected upon or after closing-out the derivatives. Finansiell Stabilitet may terminate and close out any derivative contract for that purpose.

(2) Where a derivative liability has been excluded from bail-in measures under section 25(4), Finansiell Stabilitet is not obliged to terminate or close out the derivative contract.

(3) Where a derivative contract is subject to a netting agreement, the value of the contract will be determined on a net basis in accordance with the terms of the agreement.

**28.-(1)** Where bail-in measures are applied in order to recapitalise the enterprise or entity under resolution, the enterprise or entity must draw up and implement a restructuring plan.

(2) The restructuring plan must set out the measures to be taken to restructure the long-term viability of the enterprise or entity or relevant parts of its business within a reasonable timescale. The restructuring

plan must include at least the following elements:

- (i) an assessment of the factors and problems that caused the enterprise or entity to fail or to be likely to fail, and the circumstances that led to its difficulties;
- (ii) a description of the measures aiming to restructure the long-term viability of the enterprise or entity;
- (iii) a timetable for the implementation of those measures.

(3) Within one month of the date of application of bail-in measures, the board of directors or the person or persons who have assumed control of the enterprise or entity pursuant to sections 15 or 16, and Finansielt Stabilitet must submit a restructuring plan to the Danish FSA. The Danish FSA may extend this period by a maximum of two months.

(4) Within one month of the date of receipt of the restructuring plan, the Danish FSA must notify the enterprise or entity and Finansielt Stabilitet whether the plan can be approved. If the plan cannot be approved, the Danish FSA will notify the enterprise or entity and Finansielt Stabilitet thereof. A revised restructuring plan must be submitted for approval within two weeks thereafter.

(5) The board of directors or the person or persons having assumed control of the enterprise or entity pursuant to sections 15 or 16 must submit a report to Finansielt Stabilitet at least every six months on progress in the implementation of the plan. Finansielt Stabilitet will send the report to the Danish FSA.

(6) The board of directors or the person or persons having assumed control of the enterprise or entity pursuant to sections 15 or 16 will revise the restructuring plan in the process if, in the opinion of Finansielt Stabilitet and after consulting the Danish FSA, this is deemed necessary in order to achieve the objective of long-term viability. The Danish FSA must approve the revised restructuring plan.

(7) The Minister for Business and Growth may lay down detailed rules on the restructuring plan, including the elements to be included in the plan, the process of approval of plans and the minimum contents of the reports to be submitted under subsection (5) hereof.

#### *Financing of resolution measures*

**29.-(1)** Finansielt Stabilitet, the Resolution Fund and other financing arrangements can obtain coverage of reasonable expenses in connection with the application of resolution measures and governmental stabilisation tools in one or more of the following ways:

- (i) from any consideration paid by a purchaser to the enterprise or entity under resolution or, as the case may be, to the owners of instruments of ownership;
- (ii) from the enterprise or entity under resolution as a preferred creditor; or
- (iii) from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle as a preferred creditor.

#### Part 5

#### *Contracts*

**30.** Finansielt Stabilitet can cancel or amend terms of contracts entered into by an enterprise or entity under resolution if this is necessary in order to ensure the performance of resolution measures. This requires compliance with the resolution principles of section 12(4), including that the contracting parties or creditors affected will not incur greater losses than if bankruptcy proceedings had been instituted against the enterprise or entity, but see section 31.

**31.-(1)** A resolution measure taken under this Act will not, *per se*, be deemed to be an enforcement event or insolvency proceedings within the meaning of section 58 h(1), second sentence, of the Securities Trading, etc. Act, provided that the enterprise or entity continues to perform the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral.

(2) If an enterprise or entity under resolution continues to perform the substantive obligations under the contract, including payment and delivery obligations and the provision of collateral, a resolution measure or measures directly linked thereto will not, *per se*, entitle the contracting party of the enterprise or entity to

- (i) exercise any termination, suspension, modification, close-out netting, netting or set-off rights in relation to the contract;
- (ii) obtain possession of, exercise control or enforce any security over any asset of the enterprise or entity; or
- (iii) otherwise exercise any influence on the contractual rights of the enterprise or entity.

(3) Subsections (1) and (2) hereof apply *mutatis mutandis* to contracts entered into by a subsidiary of the enterprise or entity, provided the enterprise, entity or any other group entity guarantees or supports the subsidiary's obligations, and to contracts entered into by a group entity which include cross-default provisions.

(4) A suspension or limitation pursuant to sections 32-34 does not constitute breach of an obligation. See subsections (1)-(3) hereof.

(5) Subsections (1)-(4) hereof apply *mutatis mutandis* where a resolution measure has been initiated in a country outside the European Union with which the Union has not concluded an agreement in the financial area.

**32.-(1)** Finansiell Stabilitet may suspend any payment or delivery obligation due under a contract which an enterprise or entity under resolution has entered into, but see subsection (4) hereof. The suspension runs from the publication of a notice of suspension, see section 50, to the end of the business day following such publication.

(2) Where a payment or delivery obligation falls due during the suspension period, the payment or delivery obligation will fall due immediately upon expiry of the suspension period.

(3) Where the payment or delivery obligations under a contract are suspended pursuant to subsection (1) hereof, the contracting party's payment or delivery obligation under that contract will be suspended for the same period of time.

(4) Any suspension of payment or delivery obligations under subsection (1) hereof does not apply to

- (i) eligible deposits;
- (ii) payment and delivery obligations to payment systems and clearing centres which pursuant to article 10, first subparagraph, of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems as amended have been registered with the European Securities and Markets Authority, operators of such systems, central counterparties and central banks; and
- (iii) claims comprised by section 11 of the Act on a Depositor and Investor Guarantee Scheme.

**33.-(1)** Finansiell Stabilitet can suspend the right of secured creditors to enforce securities provided by an enterprise or an entity under resolution. The suspension runs from the date of publication of a notice of suspension, see section 50, to the end of the business day following such publication.

(2) The option of suspension pursuant to subsection (1) hereof does not apply to collateral provided to payment systems and clearing centres which, pursuant to article 10, first subparagraph, of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems as amended, have been registered with the European Securities and Markets Authority, operators of such systems, central counterparties and central banks.

(3) In connection with transactions comprised by section 40, Finansiell Stabilitet must ensure that the suspension pursuant to subsection (1) hereof is executed consistently in all enterprises and entities comprised by the resolution.

**34.-(1)** Finansiell Stabilitet can suspend contractual rights of termination, but see section 35, vis-à-vis contracting parties which have a contract with an enterprise or entity under resolution or subsidiaries of the enterprise or entity, but see subsection (2) hereof. The suspension runs from the publication of a notice of suspension, see section 50, to the end of the business day following such publication. The suspension for the subsidiaries applies until the end of the business day following the publication of a notice of suspension in the member state in which the subsidiaries are registered.

(2) Suspension vis-à-vis subsidiaries, see subsection (1) hereof, can be effected if

- (i) the contract is guaranteed or otherwise supported by the enterprise or entity under resolution;
- (ii) the access to terminating the contract is conditional on the economic situation of the enterprise or entity under resolution or its insolvency; or
- (iii) Finansiell Stabilitet has exercised or contemplates exercising the power to transfer rights, assets or liabilities from the enterprise or entity under resolution to another legal entity and all rights and obligations of the subsidiary in relation to the contract in question are transferred or contemplated transferred to the acquirer, or Finansiell Stabilitet otherwise ensures performance of the obligation.

(3) The option of suspension pursuant to subsections (1) and (2) hereof does not apply to payment systems and clearing centres which pursuant to article 10, first subparagraph, of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems as amended have been registered with the European Securities and Markets Authority, operators of such systems, central counterparties and central banks.

**35.-(1)** Contracting parties which have a contract with an enterprise or entity under resolution may, irrespective of section 34, exercise the access to terminate the contract before the expiry of the suspension deadline if the contracting party has received notification from Finansiell Stabilitet that the rights and obligations under the contract will not be

- (i) transferred to another legal entity; or
- (ii) written down or converted by way of bail-in measures.

(2) The contracting party can use the access to terminating the contract pursuant to the provisions of the contract after the expiry of the suspension deadline, but see section 31(2), if

- (i) Finansiell Stabilitet has transferred the rights and liabilities under the contract to another legal entity and the contracting party can rely on a cause of termination vis-à-vis the acquirer; or
- (ii) the rights and liabilities under the contract are not transferred to another legal entity, and Finansiell Stabilitet has not applied bail-in measures.

**36.-(1)** Finansiell Stabilitet must ensure the continuity of agreements on title transfer financial collateral arrangements, see part 18 a of the Securities Trading, etc. Act, set-off arrangements, close-out netting and netting agreements with a view to avoiding transfer of some but not all rights and liabilities comprised by such an agreement between the enterprise or entity under resolution and its contracting party and to avoid modification or termination of rights and liabilities covered by such an agreement, but see section 39.

(2) Finansiell Stabilitet will be deemed to have ensured the continuity of an agreement pursuant to subsection (1) hereof if the parties remain entitled to receive or close out and net all rights and obligations under that agreement.

**37.** Finansiell Stabilitet must ensure the continuity of contracts on collateral arrangements regarding liabilities, but see section 39, with a view to preventing

- (i) the transfer of assets against which the liability is secured unless that liability and the related security interest are also transferred;
- (ii) the transfer of a secured liability unless the related security interest is also transferred;
- (iii) the transfer of a security interest unless the secured liability is also transferred;
- (iv) the modification or termination of a security arrangement through Finansiell Stabilitet's exercise of resolution powers, if the effect of that modification or termination is that the liability ceases to be secured under the contract.

**38.** Finansiell Stabilitet must ensure the continuity of structured finance arrangements, including covered bonds, to which the enterprise or entity under resolution is a party, but see section 39, with a view to preventing

- (i) the transfer of some but not all assets, rights and liabilities comprised by such structured finance arrangement; or
- (ii) the termination or modification of rights and liabilities comprised by such structured finance arrangement or the modification of the status of an asset.



**39.** If necessary in order to protect the access by depositors to covered deposits, Finansiell Stabilitet may, irrespective of sections 36-38, transfer the covered deposits forming part of the contracts mentioned in sections 36-38 without transferring other assets, rights or liabilities comprised by the same contract. Finansiell Stabilitet may also transfer assets or transfer, modify or terminate rights or liabilities without transferring the covered deposits.

**40.-(1)** Finansiell Stabilitet's application of resolution measures may not affect the operation of payment systems and clearing centres which pursuant to article 10, first subparagraph, of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems as amended have been registered with the European Securities and Markets Authority in the event that Finansiell Stabilitet

- (i) transfers some but not all assets, rights and liabilities of an enterprise or entity under resolution to another legal entity; or
- (ii) through the application of resolution measures cancels or modifies terms of a contract to which an enterprise or entity under resolution is a party or substitutes the enterprise or entity with the acquirer as contracting party.

(2) A transfer or a cancellation or modification of terms, see subsection (1) hereof, will not, *per se*, be deemed to revoke a transfer order in contravention of section 57 c of the Securities Trading, etc. Act and will not modify or negate the enforceability of completed transfer orders, see section 57 c of the Securities Trading, etc. Act, or the protection of collateral security, see section 57 b of the Securities Trading, etc. Act.

**41.** The Minister for Business and Growth may lay down detailed rules on the handling of contracts, including contract categories comprised by sections 30-40.

## Part 6

### *General resolution powers and supplementary provisions*

**42.-(1)** Finansiell Stabilitet may use the necessary powers to introduce and implement the resolution measures for enterprises and entities complying with the terms of resolution. In particular, Finansiell Stabilitet has the following resolution powers, which it may exercise individually or in any combination:

- (i) the power to take control of an enterprise or entity under resolution and to exercise all the rights and powers conferred upon the shareholders of the enterprise or entity and the board of directors of the enterprise or entity in question, see sections 15 and 16;
- (ii) the power to transfer instruments of ownership issued by an enterprise or entity under resolution;
- (iii) the power to transfer rights, assets or liabilities of an enterprise or entity under resolution to another enterprise or entity with the consent of the recipient enterprise or entity;
- (iv) the power to write down the principal amount of or outstanding amount due in respect of eligible liabilities, of an enterprise or entity under resolution, see sections 17, 18 and 24-28;
- (v) the power to convert eligible liabilities of an enterprise or entity under resolution into ordinary instruments of ownership of the enterprise or entity, a parent enterprise or a bridge institution to which the assets, rights or liabilities are transferred, see sections 17, 18 and 24-28;
- (vi) the power to cancel debt instruments issued by an enterprise or entity under resolution, see sections 17, 18, 24-28 and 44, but not liabilities exempted from bail-in measures, see section 25(3);
- (vii) the power to write down the nominal amount of instruments of ownership of an enterprise or entity under resolution and to cancel such instruments of ownership;
- (viii) the power to ensure that an enterprise or entity under resolution or a relevant parent enterprise issues new instruments of ownership or other capital instruments, including preference shares and contingent convertible instruments;
- (ix) the power to close out and terminate financial contracts or derivatives contracts for the purpose of applying section 27;

(x) the power to remove or replace the board of directors and the senior management of an enterprise or entity under resolution.

(2) In the application of resolution measures and the exercise of resolution powers, Finansiell Stabilitet is not subject to any of the following requirements:

- (i) requirements to obtain approval or consent from specific natural or legal persons, either public or private, including the shareholders or creditors of the enterprise or entity under resolution, unless otherwise provided by this Act;
- (ii) prior to the exercise of the power, procedural requirements to notify specific persons, including any requirement to publish any notice or prospectus or to file or register any document with any other authority, unless otherwise provided by this Act.

(3) Finansiell Stabilitet may exercise the powers under subsection (1) hereof irrespective of any restriction on, or requirement for consent to, transfer of the financial instruments, rights, assets or liabilities in question that might otherwise apply.

(4) The Minister for Business and Growth may lay down detailed rules on the application of powers under subsection (1) hereof and the exemption from requirements under subsection (2) hereof.

**43.-(1)** In the exercise of resolution powers, Finansiell Stabilitet may

- (i) provide for a transfer to take effect free from any liability or encumbrance affecting the financial instruments, rights, assets or liabilities transferred, but see section 37;
- (ii) remove rights to acquire further instruments of ownership;
- (iii) arrange for the admission to trading on a regulated market or admission to official listing of financial instruments pursuant to the Securities Trading, etc. Act to be discontinued or suspended; and
- (iv) ensure that the enterprise or entity under resolution and the recipient exchange information with and provide assistance to each other.

(2) Finansiell Stabilitet may only exercise the powers set out in subsection (1) hereof where considered appropriate for the purpose of ensuring efficient resolution measures or achieving one or more resolution objectives.

(3) Finansiell Stabilitet has access to any services or operational facilities in the enterprise or entity under resolution or any of its group entities that are necessary to enable a recipient to operate effectively the enterprise or entity transferred to it.

(4) In the exercise of a resolution power, Finansiell Stabilitet must provide for continuity arrangements necessary to ensure that a recipient can operate the enterprise or entity transferred to it. This specifically includes the following:

- (i) the continuity of contracts entered into by the enterprise or entity under resolution so that the recipient assumes the rights and liabilities of the enterprise or entity under resolution relating to any financial instrument, right, asset or liability that has been transferred and is substituted for the enterprise or entity under resolution, expressly or implicitly in all relevant contractual documents; and
- (ii) substitution of the recipient for the enterprise or entity under resolution in any legal proceedings relating to any financial instrument, right, asset or liability that has been transferred.

(5) The powers do not affect the right of an employee of the enterprise or entity under resolution to terminate a contract of employment. Moreover, the powers do not affect any right of a party to a contract to exercise rights under the contract, including the right to terminate the contract, where entitled to do so in accordance with the terms of the contract by virtue of an act or omission by the enterprise or entity under resolution prior to the relevant transfer, or by the recipient after the relevant transfer, but see sections 32-34.

(6) The Minister for Business and Growth may lay down detailed rules regarding the services and operational facilities that are necessary to enable a recipient to operate effectively the enterprise or entity transferred to it, see subsection (3) hereof.

**44.-(1)** Where Finansiell Stabilitet writes down or converts relevant capital instruments, see sections 17

and 18, or applies bail-in measures, see sections 24-28, one or both of the following measures must be taken in relation to the holders of instruments of ownership:

- (i) existing instruments of ownership will be cancelled without a court order or transferred to the creditors comprised by the conversion of relevant capital instruments, see sections 17 and 18, or bail-in measures, see sections 24-28;
- (ii) provided that, according to the valuation carried out in pursuance of part 3, the enterprise or entity under resolution has a positive net asset value, existing holders of instruments of ownership will be diluted as a result of the conversion into instruments of ownership.

(2) The conversion pursuant to subsection (1)(ii) hereof will be conducted at a rate of conversion that severely dilutes existing holdings of instruments of ownership, see section 45.

(3) The measures referred to in subsection (1) hereof must also be taken in respect of holders of instruments of ownership where the instruments of ownership in question were issued or transferred in connection with the conversion of debt instruments to instruments of ownership in accordance with the contractual terms of the original debt instruments on the occurrence of an event that preceded or occurred at the same time as the assessment by Finansielt Stabilitet that the enterprise or entity met the conditions for resolution.

(4) Where the conversion of relevant capital instruments or the application of bail-in measures would result in the acquisition of or increase in a qualifying holding in an enterprise or entity, and where the Danish FSA has not completed the assessment required under section 61 of the Financial Business Act on the date of application of bail-in measures or the conversion of relevant capital instruments, the provisions of section 20(2) and (3) apply to any acquisition of or increase in the qualifying holding.

(5) The Minister for Business and Growth may lay down detailed rules on the initiation and implementation of the measures under subsections (1)-(3) hereof. The rules may contain derogations from the provisions of the Companies Act where such derogation is necessary for the purpose of ensuring appropriate implementation of the resolution measures.

**45.-(1)** Where Finansielt Stabilitet converts relevant capital instruments, see section 17, or applies bail-in measures pursuant to section 24, different conversion rates may be applied for different classes of capital instruments and liabilities, see subsections (2) and (3) hereof.

(2) The conversion rate must represent appropriate compensation to the affected creditor for any loss incurred by virtue of the exercise of the conversion powers.

(3) When different conversion rates are applied according to subsection (1) hereof, the conversion rate applicable to senior liabilities under the order of priority of creditors must be higher than the conversion rate applicable to subordinated liabilities.

(4) The Minister for Business and Growth may lay down detailed rules on the determination of the conversion rate.

**46.-(1)** Where Finansielt Stabilitet writes down or converts relevant capital instruments, see section 17, or applies bail-in measures, see section 24, the write-down or conversion takes immediate effect and is immediately binding on the enterprise or entity under resolution and affected holders of instruments of ownership and creditors. The write-down or conversion is permanent.

(2) Finansielt Stabilitet may complete or require the completion of all the administrative and procedural tasks necessary to give effect to the exercise of a power referred to in subsection (1) hereof.

**47.-(1)** Sections 36-38, 45, 74, 76-78, 80, 84, 87, 89, 90, 93-99, 101, 102, 104, 109, 119-121, 135, 154-157, 160-164, 167-170, 174, 185, 186, 188, 191-193, 236-318 and 338-344 of the Companies Act, parts 6 A and 6 B of the Act on Undertakings Carrying on Business for Profit, section 67 of the Financial Business Act and part 8 of the Securities Trading, etc. Act do not apply to Finansielt Stabilitet's initiation and implementation of resolution measures in respect of an enterprise or entity under resolution.

(2) The Minister for Business and Growth may lay down detailed rules and procedures to substitute the provisions of the Companies Act, the Securities Trading, etc. Act, the Financial Business Act and the Act on Undertakings Carrying on Business for Profit derogated from in pursuance of subsection (1) hereof.

**48.** Finansiell Stabilitet may petition the courts for postponement of any judicial hearing or proceedings to which an enterprise or entity under resolution is or will become a party.

#### Part 7

##### *Protective measures for shareholders and creditors*

**49.-(1)** Where one or more resolution measures have been applied, shareholders and those creditors whose claims have not been transferred in connection with Finansiell Stabilitet's partial transfer of assets, rights and liabilities belonging to the enterprise or entity under resolution must receive in satisfaction of their claims at least as much as what they would have received if bankruptcy proceedings had been instituted against the enterprise or entity under resolution.

(2) Shareholders and creditors whose claims have been written down or converted to Common Equity Tier 1 instruments may not incur greater losses than they would have incurred if bankruptcy proceedings had been instituted against the enterprise or entity under resolution.

(3) The assessment in respect of subsections (1) and (2) hereof is made on the basis of the valuation in section 8. Where it is established that a shareholder or a creditor, including the Guarantee Fund, has incurred greater losses than it would have incurred if bankruptcy proceedings had been instituted against the enterprise or entity, the difference will be paid by the Resolution Fund.

#### Part 8

##### *Publication*

**50.-(1)** Where resolution measures are initiated, Finansiell Stabilitet must ensure that this is duly published.

(2) The publication must contain information about the measures, including the consequences for customers, creditors, shareholders, contracting parties, etc.

#### Part 9

##### *Governmental stabilisation tools*

**51.-(1)** In extraordinary circumstances, the Danish state may participate in the resolution of an enterprise or entity through the application of governmental stabilisation tools, see subsection (2) hereof, for the purpose of achieving the resolution objectives, see section 5. The following conditions must be met:

- (i) the enterprise or entity meets the conditions for resolution, see section 4;
- (ii) all other resolution tools have, to the maximum extent practicable, been assessed and excluded or exploited;
- (iii) the aim of the participation is to avoid a significant adverse effect on financial stability or to protect the interest of the general public where extraordinary liquidity assistance from Danmarks Nationalbank or public equity support has previously been given to the enterprise or entity;
- (iv) a contribution has been made to loss absorption and recapitalisation equal to an amount of not less than 8% of total liabilities through write-down of instruments of ownership, write-down or conversion of relevant capital instruments and bail-in measures or otherwise;
- (v) the participation has been approved under the state aid framework of the European Union.

(2) The governmental stabilisation tools imply that the Danish state may provide capital contributions in the form of Common Equity Tier 1 capital, additional Tier 1 capital or Tier 2 capital or may temporarily take over ownership of the enterprise or entity through a company established by Finansiell Stabilitet.

(3) The Danish state may only apply governmental stabilisation tools in pursuance of subsection (1) hereof where the Minister for Business and Growth upon the recommendation of Finansiell Stabilitet and after consulting the Danish FSA and Danmarks Nationalbank assesses that the conditions of subsection (1)(i)-(v) have been met, and when the Finance Committee of the Danish parliament has approved an administrative decree to such effect.

(4) Finansielt Stabilitet will implement a decision to apply governmental stabilisation tools on behalf of the Danish state. In that connection, Finansielt Stabilitet may take the necessary measures in pursuance of this Act with a view to implementing the capital contribution or the temporary public ownership.

(5) Finansielt Stabilitet must ensure that the enterprise or entity that has received the capital contribution, or has been subjected to temporary public ownership, is operated on a commercial and professional basis and that the enterprise or entity and the contributed capital is transferred as soon as the commercial and financial circumstances of the enterprise or entity allow.

## Part 10

### *Relationship with other countries*

#### *Resolution colleges*

**52.-(1)** If Finansielt Stabilitet carries out resolution of enterprises or entities in pursuance of this Act which may have consequences in one or more countries in the European Union or countries with which the Union has concluded an agreement in the financial area, Finansielt Stabilitet will give due consideration to the interests of the countries affected.

(2) Finansielt Stabilitet will participate in resolution colleges and other international fora with relevant authorities etc. for the purpose of resolution planning and resolution.

(3) Finansielt Stabilitet will cooperate and coordinate resolution planning and resolution with relevant authorities in countries outside the European Union with which the Union has not concluded an agreement in the financial area.

(4) When the resolution authority of a country within the European Union or a country with which the Union has concluded an agreement in the financial area implements resolution measures against an enterprise, entity or branch, Finansielt Stabilitet will to the extent necessary assist by ensuring write-down, conversion or transfer of instruments of ownership or assets, rights or liabilities located in Denmark.

#### *Cross-border group resolution*

**53.-(1)** If a resolution authority in a country outside the European Union with which the Union has not concluded an agreement in the financial area implements a resolution measure against a parent enterprise or an enterprise which is a credit institution or an investment firm which has established a subsidiary comprised by section 1(1), or a branch in Denmark, or otherwise has assets, rights or liabilities in Denmark, Finansielt Stabilitet will assess in accordance with this Act and Danish law in general whether the resolution proceedings of the foreign resolution authority can be recognised and enforced, but see subsection (4) hereof.

(2) Recognition and enforcement of the resolution proceedings of the foreign resolution authority will be coordinated with any other relevant resolution authorities in countries within the European Union or in countries with which the Union has concluded an agreement in the financial area. Finansielt Stabilitet must consult the other relevant resolution authorities in countries within the European Union or in countries with which the Union has concluded an agreement in the financial area before Finansielt Stabilitet makes a decision pursuant to subsection (5) hereof.

(3) As part of the recognition and enforcement of the resolution proceedings of the foreign resolution authority, see subsections (1) and (2) hereof, Finansielt Stabilitet may

- (i) exercise resolution powers in relation to assets, rights and liabilities that are located in Denmark or governed by Danish law and that belong to an enterprise or a parent enterprise in a country outside the European Union with which the Union has not concluded an agreement in the financial area;
- (ii) perfect, including to require another person to take action to perfect, a transfer of instruments of ownership in a subsidiary in Denmark, see section 1(1);
- (iii) exercise the powers in sections 32-35 in relation to the rights of any party to a contract with an enterprise referred to in subsection (1) hereof, where such powers are necessary in order to enforce third-country resolution proceedings; and

- (iv) apply the rules of part 5 to contractual rights belonging to enterprises referred to in subsection (1) hereof and other group entities where such rights arise from resolution measures taken in respect of such enterprises or entities, whether by the resolution authority of the country in question or otherwise pursuant to legal or regulatory requirements as to resolution arrangements in that country.

(4) Finansiell Stabilitet may take, where necessary in the public interest, resolution measures with respect to a financial holding company in Denmark where the relevant authority in a country outside the European Union with which the Union has not concluded an agreement in the financial area determines that an enterprise that is incorporated in that country meets the conditions for resolution under the laws of that country.

(5) Finansiell Stabilitet may refuse recognition or enforcement of resolution measures under subsection (1) hereof if it considers

- (i) that the resolution proceedings of the foreign resolution authority would have an adverse effect on financial stability in Denmark or in a country within the European Union or in a country with which the Union has concluded an agreement in the financial area;
- (ii) that an independent resolution measure under section 54 in relation to a branch in Denmark is necessary to achieve one or more of the resolution objectives;
- (iii) that creditors in Denmark, including depositors, would not receive the same treatment as creditors and depositors of the relevant country with similar legal rights under the home resolution proceedings of that country;
- (iv) that the relevant resolution proceedings would have material financial implications for Denmark; or
- (v) that the effects of such recognition or enforcement would be contrary to Danish law.

*Resolution of Danish branches of foreign institutions*

**54.-(1)** Finansiell Stabilitet may implement the necessary measures in pursuance of this Act in relation to a branch in Denmark which is not comprised by resolution proceedings implemented by an authority of a country outside the European Union with which the Union has not concluded an agreement in the financial area or which is comprised by the proceedings of that country but where one of the situations referred to in section 53(5) apply.

(2) Finansiell Stabilitet may implement the necessary measures under subsection (1) hereof where one or more of the following conditions are met:

- (i) the branch in Denmark does not meet, or is not likely to meet, the conditions for being granted approval and carrying on business in Denmark, and there is no prospect that any measures taken by the private sector, the Danish FSA or the relevant third country would restore the branch to compliance with section 1(3) of the Financial Business Act or prevent failure within a reasonable timeframe;
- (ii) the enterprise or entity is, or is likely to be, unable or unwilling to pay its obligations to creditors in Denmark, or obligations that have been created or booked through the branch, as they fall due and no resolution proceedings or insolvency proceedings have been or will be initiated in relation to that enterprise or entity in its home country within a reasonable timeframe; and
- (iii) home country authorities have initiated resolution measures in relation to the enterprise or entity or have notified Finansiell Stabilitet of their intention to initiate such measures.

(3) Where Finansiell Stabilitet initiates a necessary measure in relation to a branch in Denmark, it must have regard to the principles set out in section 12(4). The measures will be initiated on the basis of a valuation in pursuance of part 3.

*Power in respect of assets, rights, liabilities or instruments of ownership located in countries other than Denmark*

**55.-(1)** Where a resolution measure concerns assets located in a country outside the European Union with which the Union has not concluded an agreement in the financial area or instruments of ownership,

rights or liabilities governed by the laws of such country, Finansielt Stabilitet may request that:

- (i) the special manager, receiver or other person exercising control of the enterprise or entity under resolution and the recipient take all necessary steps to ensure that the transfer, write-down, conversion or measure becomes effective;
- (ii) the special manager, receiver or other person exercising control of the enterprise or entity under resolution holds the instruments of ownership, assets or rights or discharges the liabilities on behalf of the recipient until the transfer, write-down, conversion or measure becomes effective; and
- (iii) the reasonable expenses of the recipient properly incurred in carrying out any measure required under subsections (1) and (2) hereof are paid in any of the ways referred to in section 29.

(2) Where Finansielt Stabilitet assesses that, in spite of all the necessary steps taken in accordance with subsection (1) hereof, it is unlikely that the transfer, conversion or measure will become effective in relation to certain properties located in a country outside the European Union with which the Union has not concluded an agreement in the financial area, or certain instruments of ownership, assets, rights or liabilities governed by the laws of a country outside the European Union with which the Union has not concluded an agreement in the financial area, Finansielt Stabilitet will not proceed with the transfer, write-down or measure.

## Part 11

### *Resolution Fund*

**56.-(1)** A resolution financing scheme (the Resolution Fund) to be managed by Finansielt Stabilitet will be established. The Resolution Fund can be used in connection with Finansielt Stabilitet's exercise of powers in pursuance of this Act and in accordance with the resolution objectives set out in section 5 and the principles set out in section 12(4).

(2) Finansielt Stabilitet is not liable for the obligations of the Resolution Fund, and the Resolution Fund is only liable for its own obligations.

(3) The assets and liabilities of the Resolution Fund are to be kept separate from Finansielt Stabilitet's other activities.

(4) The Resolution Fund is not an independent legal entity. Finansielt Stabilitet acts on behalf of the Resolution Fund in all legal respects.

(5) The Minister for Business and Growth may lay down detailed rules on Finansielt Stabilitet's management of the Resolution Fund.

**57.-(1)** The Resolution Fund must equal 1% of the amount of covered deposits comprised by section 9(1) and section 10 of the Act on a Depositor and Investor Guarantee Scheme of enterprises and branches in Denmark of enterprises domiciled in a country outside the European Union with which the Union has not concluded an agreement in the financial area. If the assets of the Resolution Fund exceed 1%, see the first sentence hereof, the obligation to contribute will cease. The obligation to contribute will be resumed if the assets of the Resolution Fund no longer exceed 1%, see the first sentence hereof. If the assets of the Resolution Fund fall below two thirds of the minimum level defined, see the first sentence hereof, the contributions will be adjusted so that the assets are restored within a period of six years.

(2) The Resolution Fund is divided into departments.

(3) The Minister for Business and Growth may lay down detailed rules on the Resolution Fund, see subsections (1) and (2) hereof.

### *Collection of contributions*

**58.-(1)** The Resolution Fund is financed by annual contributions from enterprises in Denmark and Danish branches of enterprises domiciled in a country outside the European Union with which the Union has not concluded an agreement in the financial area.

(2) The annual contribution, see subsection (1) hereof, is determined by Finansielt Stabilitet on the basis of

- (i) the liabilities of an enterprise or branch less its total capital and covered deposits comprised by section 9(1) and section 10 of the Act on a Depositor and Investor Guarantee Scheme; and
- (ii) an individually determined risk adjustment.

(3) Finansiell Stabilitet is responsible for ensuring that the available financial means of the Resolution Fund are from time to time proportionate with the Resolution Fund's potential liabilities. The Resolution Fund is required to invest in low-risk assets.

(4) If the available financial means of the Resolution Fund are not sufficient to cover losses, costs or other expenses in connection with the resolution of an enterprise or entity, Finansiell Stabilitet may request payment of extraordinary contributions. Such extraordinary contributions may not exceed three times the most recent annual contribution paid. Finansiell Stabilitet may defer, in whole or in part, the payment by an enterprise of an extraordinary contribution for up to six months if the payment would jeopardise the liquidity or solvency of the enterprise. Upon request, such payment deferral may be extended in accordance with the third sentence hereof.

(5) Finansiell Stabilitet may on behalf of the Resolution Fund raise loans or other forms of financial support in the market or from a third party, if the assets of the Resolution Fund are not sufficient to cover losses, costs or other expenses in connection with resolution under this Act, and the extraordinary contributions under subsection (4) hereof are not accessible or are not sufficient.

(6) Subject to approval by the Minister for Business and Growth, Finansiell Stabilitet may submit a request to borrow from resolution financing arrangements in other countries in the European Union or in countries with which the Union has concluded an agreement in the financial area, if the assets of the Resolution Fund are not sufficient to cover losses, costs or other expenses in connection with resolution under this Act, or if the extraordinary contributions paid, see subsection (4) hereof, are not accessible, or it has not been possible to raise loans or other forms of financial support under subsection (5) hereof.

(7) The Minister for Business and Growth may lay down rules specifying that up to 30% of the annual contributions, see subsection (1) hereof, may be in the form of payment commitments.

(8) The Minister for Business and Growth may lay down detailed rules on the management of the Resolution Fund, including the determination of contributions, see subsection (2) hereof, payment commitments, reporting of information for use in the determination of contributions and on the deadline for payment of annual and extraordinary contributions.

#### *Application of the Resolution Fund*

**59.-(1)** Finansiell Stabilitet may use the Resolution Fund to the extent necessary to ensure effective application of the resolution tools in accordance with this Act for the following purposes:

- (i) to guarantee the assets and liabilities of the enterprise or entity under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (ii) to provide loans to the enterprise or entity under resolution, its subsidiaries, a bridge institution or an asset management vehicle;
- (iii) to purchase assets of the enterprise or entity under resolution;
- (iv) to make capital injections to a bridge institution and an asset management vehicle;
- (v) to pay compensation to shareholders or creditors in accordance with section 49;
- (vi) to make a contribution to the enterprise or entity under resolution, except for mortgage credit institutions, in lieu of the write-down or conversion of liabilities of certain creditors when bail-in measures are applied and certain creditors have been excluded or partially excluded from the scope of bail-in in accordance with section 25(4);
- (vii) to make a contribution to the enterprise or entity under resolution, except for mortgage credit institutions, in pursuance of section 26(4); or
- (viii) to take any combination of the measures referred to in (i)-(vii) above.

(2) In the event of resolution of a cross-border group, Finansiell Stabilitet and the resolution authorities involved will establish a financing plan which determines the allocation of contributions from the resolution funds of each individual country.

(3) Payment by the Resolution Fund pursuant to section 26 in addition to the amount available in the



Resolution Fund may not exceed the amount that can be charged by way of extraordinary contributions, see section 58(4), first and second sentences, within a period of three years. Any additional financing must be provided pursuant to section 58(5).

(4) In addition to the events referred to in subsection (1) hereof, Finansiel Stabilitet may, through the Resolution Fund, upon request provide loans to the financing arrangements of other countries subject to approval of the Minister for Business and Growth.

## Part 12

### *Finansiel Stabilitet*

#### *Establishment, objectives, etc.*

**60.-(1)** The Minister for Business and Growth may decide to convert Finansiel Stabilitet A/S into an independent public enterprise. The conversion may be implemented without the consent of creditors.

(2) The conversion into an independent public enterprise is deemed to have been effected when the company's articles of association have been amended so that they meet the requirements under this Act and when the conversion has been registered in the IT system of the Danish Business Authority.

(3) The Minister for Business and Growth may change the name of Finansiel Stabilitet.

(4) Finansiel Stabilitet and its articles of association, see section 64(3), must be filed and registered with the Danish Business Authority in accordance with the rules of part 2 of the Companies Act.

**61.-(1)** Finansiel Stabilitet must contribute to ensuring financial stability in Denmark and discharges the responsibilities and powers assigned to Finansiel Stabilitet under this Act and other legislation, including the Financial Business Act and the Act on a Depositor and Investor Guarantee Scheme.

(2) Finansiel Stabilitet may establish subsidiaries, acquire ownership interests in other limited liability companies and enter into collaboration agreements etc. as part of the carrying on of its business and may carry on other business activities following naturally from the discharge of Finansiel Stabilitet's responsibilities and powers.

(3) The Act on Public Access to Documents in Administrative Files and the Public Administration Act do not apply to Finansiel Stabilitet or its subsidiaries.

(4) The Companies Act, including the provisions governing state-owned public companies, applies to Finansiel Stabilitet with the adjustments resulting from this Act.

(5) Part 9 of the Financial Business Act on disclosure of confidential information applies *mutatis mutandis* to members of the board of directors, management board members, auditors, valuation experts, special managers and other employees of Finansiel Stabilitet and its subsidiaries.

(6) The Minister for Business and Growth may confer other responsibilities on Finansiel Stabilitet.

**62.-(1)** If an enterprise or entity is declared bankrupt, Finansiel Stabilitet may enter into an agreement with the estate in bankruptcy regarding the management and resolution of the activities.

(2) The Minister for Business and Growth may lay down detailed rules on Finansiel Stabilitet's resolution of activities pursuant to subsection (1) hereof.

**63.** The independent public enterprise Finansiel Stabilitet will continue the business carried on to date with related assets and liabilities of Finansiel Stabilitet A/S and will continue all rights and obligations in that connection.

#### *Powers of the Minister for Business and Growth*

**64.-(1)** In relation to Finansiel Stabilitet, the Minister for Business and Growth exercises the powers conferred on the general meeting of shareholders of a public limited company in that the Minister for Business and Growth is given the same status as a sole shareholder.

(2) The general meeting of shareholders of Finansiel Stabilitet is held in the form of a general meeting.

(3) The Minister for Business and Growth adopts the articles of association of Finansiel Stabilitet.

**65.-(1)** Upon the recommendation of the board of directors of Finansiel Stabilitet, the Minister for Business and Growth will make decisions regarding

- (i) the choice of resolution tools, see section 12, for systemically important enterprises or entities;
- (ii) the application of governmental stabilisation tools, see part 9;
- (iii) requests to borrow from the resolution financing arrangements of other countries, see section 58(6); and
- (iv) the provision of loans to the resolution financing arrangements of other countries, see section 59(4).

(2) The Minister for Business and Growth exercises his powers under this provision in relation to Finansielt Stabilitet by way of written notices to the board of directors.

**66.-(1)** Finansielt Stabilitet will inform the Minister for Business and Growth about matters of material financial or political significance for the enterprise, but see section 61(5).

(2) The Minister for Business and Growth may at any time request any information from Finansielt Stabilitet which the Minister deems necessary, but see section 61(5).

(3) Employees of the Ministry of Business and Growth who receive information about enterprises, entities, etc. in pursuance of this Act are bound by a duty of confidentiality under sections 152-152 e of the Penal Code concerning any information that may come to their knowledge in that connection.

#### *Management*

**67.-(1)** Finansielt Stabilitet is managed by a board of directors and a management board.

(2) The Minister for Business and Growth appoints the board of directors, consisting of up to seven members, including the chairman and the deputy chairman, for a period of one year. The members of the board of directors are eligible for re-appointment. The Minister may at any time at a general meeting dismiss the members appointed.

(3) The board of directors lays down its own rules of procedure.

(4) The board of directors must be composed so as to ensure that it possesses the competencies required to perform the objects of the enterprise, including the requisite professional, commercial, management and financial insight.

(5) The employees of Finansielt Stabilitet are not entitled to elect members to the board of directors of Finansielt Stabilitet, and the employees of Finansielt Stabilitet's subsidiaries are not entitled to elect group representatives to the board of directors of Finansielt Stabilitet.

(6) The Minister for Business and Growth determines the remuneration of the board of directors at the annual general meeting.

**68.** The board of directors appoints a management board to be in charge of the day-to-day management of the enterprise.

**69.-(1)** The Minister for Business and Growth is authorised, with effect from the formation of Finansielt Stabilitet, to indemnify the members of the board of directors of Finansielt Stabilitet as regards

- (i) any claim for damages raised against members of the board of directors as a result of the discharge of their duties as board members, unless in the event of claims raised in pursuance of Danish law which are submitted to a Danish court of law; and
- (ii) any expenses related to legal costs etc. in connection with lawsuits comprised by (i) hereof.

(2) The Ministry of Business and Growth waives

- (i) its right of recourse with respect to damages and legal costs etc. paid by the Danish state to a third party as regards damages and legal costs etc. for which the board member would not have been liable in the event of a judgment delivered by a Danish court of law in pursuance of Danish law; and
- (ii) its right to claim damages, including a right of recourse, from the members of the board of directors for losses which exceed the cover provided by the directors' liability insurance, if the board member is only guilty of ordinary negligence.

(3) At a general meeting of Finansielt Stabilitet, the Minister for Business and Growth may vote in favour of a proposal to amend the articles of association which, from the formation of Finansielt Stabilitet,

will enable Finansielt Stabilitet's board of directors to place an obligation on Finansielt Stabilitet to indemnify members of the management board and of the boards of directors and management boards of Finansielt Stabilitet's subsidiaries to the same extent as the Danish state's indemnification of members of the board of directors, and enable Finansielt Stabilitet to waive its right to claim damages, including a right of recourse, from the management board and the boards of directors and management boards of Finansielt Stabilitet's subsidiaries to the same extent as applicable to the board of directors.

(4) The indemnification pursuant to subsections (1)-(3) hereof also covers matters comprised by subsections (1)-(3) hereof in Finansielt Stabilitet A/S prior to the conversion pursuant to section 60.

**70.** The board of directors and management board of Finansielt Stabilitet ensure that Finansielt Stabilitet has the necessary competencies and resources available and ensure that the enterprise is structured so as to be able to handle the responsibilities and powers conferred on it.

*Finances and accounting issues*

**71.-(1)** Finansielt Stabilitet's assets are kept separate from the assets of the Danish state. The Guarantee Fund, see section 1 of the Act on a Depositor and Investor Guarantee Scheme, and the Resolution Fund, see part 11 of this Act, must be kept separate from the other assets of Finansielt Stabilitet.

(2) Finansielt Stabilitet is not liable for the Guarantee Fund, see section 1 of the Act on a Depositor and Investor Guarantee Scheme, or the Resolution Fund, see part 11 of this Act, and these funds are only liable for their own obligations.

(3) Finansielt Stabilitet cannot distribute profit or equity by way of dividend distribution or otherwise to the Danish state. The first sentence hereof does not comprise activities taken over in connection with the conversion pursuant to section 60.

**72.-(1)** Finansielt Stabilitet does not form part of the public sector collective bargaining and agreement system but may independently negotiate salary and employment terms for its employees, including enter into collective agreements.

(2) The employment terms applicable to date will be continued according to the provisions of the Act on the Legal Rights of Employees in connection with Transfers of Undertakings.

**73.-(1)** Finansielt Stabilitet prepares its financial statements in accordance with the provisions of the Financial Business Act regarding financial holding companies.

(2) In accordance with the Financial Business Act and the Auditor General's Act, the financial statements of Finansielt Stabilitet are audited by one state-authorized public accountant and the Auditor General of Denmark. The state-authorized public accountant is appointed by the Minister for Business and Growth at the general meeting for a term of one year and must be certified by the Danish FSA in accordance with section 199 of the Financial Business Act. The auditor is eligible for re-appointment.

(3) The audited annual report is presented for adoption at the general meeting.

**74.-(1)** Any expenses incurred by Finansielt Stabilitet pursuant to this Act which are not covered under section 29 and pursuant to the Financial Business Act are financed through fees paid by the enterprises comprised by section 1. The fees are charged annually in accordance with section 360(4) of the Financial Business Act by the Danish FSA, which redistributes the fees to Finansielt Stabilitet.

(2) Any expenses incurred by Finansielt Stabilitet pursuant to the Act on a Depositor and Investor Guarantee Scheme will be covered by way of contributions charged in accordance with part 4 of the Act on a Depositor and Investor Guarantee Scheme.

(3) For any other responsibilities conferred on Finansielt Stabilitet, see section 61(6), the financing of their operations will be determined on a case-by-case basis.

(4) State re-lending may be granted to Finansielt Stabilitet.

*Publicness of meetings*

**75.** The board of directors of Finansielt Stabilitet may decide whether a general meeting should be closed or partially closed to the press if motivated by considerations for the discharge of Finansielt

Stabilitet's objects, powers and responsibilities.

### Part 13

#### *Communications*

**76.-(1)** The Minister for Business and Growth may determine that written communications to and from Finansiell Stabilitet regarding matters comprised by this Act or by rules issued in pursuance of this Act should be in digital form.

(2) The Minister for Business and Growth may lay down detailed rules on digital communication, including on the use of specific IT systems, special digital formats and digital signatures or the like.

(3) Under this Act, a digital communication will be deemed to have reached the recipient when it is accessible to the addressee of the communication.

**77.-(1)** The Minister for Business and Growth may determine that Finansiell Stabilitet can issue letters and documents under this Act or under rules issued in pursuance of this Act without a signature, with a computer-generated signature or a signature generated by similar means or using a technology ensuring unambiguous identification of the person issuing the letter or document. Such letters and documents have the same status as letters and documents with a personal signature.

(2) The Minister for Business and Growth may determine that letters and other documents issued exclusively on the basis of electronic data processing may be issued solely stating Finansiell Stabilitet as sender.

### Part 14

#### *Commencement provisions etc.*

**78.-(1)** This Act comes into force on 1 June 2015.

(2) For accounting purposes, the takeover by Finansiell Stabilitet of the activities carried on by Finansiell Stabilitet A/S to date will take effect from 1 January 2015. This also applies to the termination of joint taxation between Finansiell Stabilitet A/S and its subsidiaries.

**79.** The assets of the Resolution Fund, see part 11, will be built up gradually with a view to reaching the level determined pursuant to section 57(1) by 31 December 2024 at the latest, but see section 57(3).

**80.** This Act does not apply to the Faroe Islands and Greenland but may be put into force in whole or in part by Royal Decree for the Faroe Islands and Greenland subject to the variations necessitated by the specific conditions prevailing in the Faroe Islands and in Greenland.

*Given at Marselisborg Palace, 31 March 2015*

Under Our Royal Hand and Seal

MARGRETHE R.

/ Henrik Sass Larsen