

*Consolidated Act No. 1066 of 10 December 2003*

**This is an unofficial translation - please note that only the Danish version has legal validity**

This is an Act to consolidate the Danish Guarantee Fund for Depositors and Investors Act, cf. Consolidated Act No. 656 of 7 August 2002 with the amendments consequential upon section 422 of Act No. 453 of 10 June 2003.

WE MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby make known: Folketinget has passed and We have provided the following Act with Our Royal Assent:

## **PART 1**

### *Application and Status of the Guarantee Fund for Depositors and Investors*

**1.-(1)** The Guarantee Fund for depositors and investors (hereinafter called the Fund) is a private, independent institution.

**(2)** The Fund shall cover depositors and investors from the institutions mentioned in sections 3(1) and 4 below who have suffered losses pursuant to sections 9-11 below in cases of receivership or compulsory winding up.

**(3)** In addition to this, the Fund may participate in measures mentioned in section 2 below.

**(4)** When choosing between coverage of depositors and investors pursuant to subsection 2 hereof and participation in measures mentioned in section 2 below the Fund shall choose the solution which is deemed to give the Fund the least costs.

**2.-(1)** In the event that an institution no longer fulfils the requirements to carry on business, the Fund may in connection with the collection of take-over bids, cf. subsection 4 hereof, participate in the winding up of an institution by providing funds or a guarantee covering the institution's non-subordinated debts. However, the Fund shall not be allowed to take over an institution.

**(2)** The Fund's measures pursuant to subsection 1 hereof may be taken in cooperation with others.

**(3)** The Fund may provide funds and a guarantee, notwithstanding that a prior liquidity guarantee has been provided by others.

**(4)** The Danish Minister for Economic and Business Affairs shall lay down the rules concerning the cooperation between the Danish Financial Supervisory Authority and the Fund and also rules concerning collection of take-over bids.

## PART 2

### *Obligation to Contribute*

**3.-(1)** The following institutions shall be affiliated with and contribute to the Fund:

1. Danish banks,
2. mortgage banks,
3. investment companies and investment management companies for that part of the activities of the companies covered by authorisation under section 10(2) of the Danish Financial Business Act, and
4. branches of credit institutions in Denmark and investment firms which have their head office in a country outside the European Union, apart from countries with which the Union has concluded a cooperation agreement.

**(2)** The Danish Financial Supervisory Authority may lay down provisions to the effect that branches of credit institutions and investment firms which have their head office in Denmark but are located in countries outside the European Union, apart from countries with which the Union has concluded a cooperation agreement, may be exempt from being covered by the Fund.

**4.** Branches located in Denmark of credit institutions investment firms, and investment management companies which have their head office within the European Union or countries with which the Union has concluded a cooperation agreement shall be entitled to affiliate with the Fund as a supplement to the deposit-guarantee scheme of their home country if the Danish scheme mentioned in sections 9-11 below is more favourable than that of the home country. The Danish Financial Supervisory Authority shall lay down more detailed rules hereon.

## PART 3

### *Affiliated Branches*

**5.-(1)** The Fund is divided into three departments: the credit institution department, the mortgage bank department, and the investment companies department.

**(2)** The credit institution department comprises the institutions and affiliated branches as mentioned in section 3 (1), item 1 above, cf. subsection (5).

**(3)** The mortgage bank department comprises the institutions and affiliated branches as mentioned in section 3 (1), item 2 above, cf. subsection (5).

**(4)** The investment companies department comprises the institutions and affiliated branches as mentioned in section 3 (1), item 3 above, cf. subsection (5).

**(5)** The Board of Directors of the Fund shall determine with which department the affiliated branches, as mentioned in section 3 (1), item 4 and section 4 above, are to be affiliated.

**6.-(1)** If an institution which is liable to contribute to the Fund reports suspension of payments or bankruptcy, or the Fund has participated in the winding up of an institution

pursuant to section 2, the contributions, including guarantees from the institutions in that department of which the institution in question is under the auspices, shall be used to cover the department's commitments pursuant to legislation.

**(2)** If the contributions mentioned in subsection (1) above do not suffice to cover the commitments of the department pursuant to legislation, the department shall take out a loan, which shall be granted by the other departments in proportion to the total contributions of the department.

**(3)** A department may borrow an amount equivalent to 50 % of the required size of liquid cash funds of the other departments, however not exceeding DKK 100 million per department, to cover commitments which have arisen in a single financial year.

**(4)** The Minister of Economic Affairs may, with the approval of the Finance Committee, provide a guarantee for a loan made to the Fund to meet its commitments.

**(5)** If a distribution of dividend from the undertaking which to be is wound up takes place, the distribution of dividend shall first be allotted to those departments which have provided loans in accordance with subsection (2) above. The remaining amount shall be allotted to that department under the auspices of which the insolvent institution belongs.

#### **PART 4**

##### *Fixing Contributions*

**7.-(1)** The capital of the Fund shall not total less than DKK 3.2 billion.

**(2)** After consultation with the Danish Central Bank, the Danish Financial Supervisory Authority shall lay down rules concerning the contributions to be made by the institutions to the Fund, concerning minimum requirements made to the size of each department's capital, and concerning more specific conditions for borrowing, cf. section 6 (2) above. Such contributions shall be effected by payment and provision of indemnity.

**(3)** The total contributions of all credit institutions regarding covered net contributions shall not, on an annual basis, exceed an amount equivalent to 0.2 per cent of the total deposits of the institutions. The total contribution of all credit institutions to the departments for coverage of non-returnable funds and securities, as well as payments on loans which the department has taken out, cf. section 6 (2), may not exceed 50 % of the size of the required department capital in a financial year.

**(4)** The individual contributions of the institutions shall be computed on the basis of net deposits, funds and securities covered by the institution. The Danish Financial Supervisory Authority may determine more specific regulations concerning computation of contributions upon the recommendation of the Board of Directors of the Fund.

**(5)** The Minister of Economic Affairs may alter the requirements made to the size of the Fund's capital in accordance with section 1 above.

**8.-(1)** The Fund shall notify the Danish Financial Supervisory Authority if an institution fails to fulfil its obligations as a member of the Fund. If a branch has joined the Fund, cf. section 4

above, the Danish Financial Supervisory Authority shall notify the competent authorities of the home country of such a branch.

**(2)** The Danish Financial Supervisory Authority may revoke the authorisation of an institution to carry on business if the institution fails to comply with the provisions laid down by the Act, rules in pursuance of the Act or provisions laid down by the regulations of the Fund.

## PART 5

### *Coverage of the Fund*

**9.-(1)** The Fund shall cover registered deposits with the institutions mentioned in section 3 (1), item 1 and the branches of the credit institutions mentioned in section 3 (1), item 4 and section 4 above, which are affiliated with the credit institution department, not exceeding DKK 300,000 per depositor.

**(2)** The Fund shall fully cover deposits

1. into index-linked accounts according to law,
2. into lump-sum pension accounts according to law,
3. into personal pension accounts according to law,
4. into instalment pension accounts according to law,
5. into children's savings accounts according to law,
6. into home savings contracts according to law,
7. into educational savings accounts according to law,
8. into establishment accounts according to law,
9. in lawyers' client accounts,
10. administered by authorised trust departments in accordance with Part 5 of the Guardianship Act or sections 61 and 65 of the Danish Inheritance Act,
11. in probate accounts pertaining to estates administered by the court and
12. placed in accordance with the Act on the Right of Debtors to Discharge Obligations by Way of Deposits.

**(3)** The Fund shall fully cover deposits of the purchase price for real property which have been made pursuant to a previous purchase agreement up to 9 months after the deposit of the amount has been made. The Fund shall also cover proceeds from mortgage loans in connection with the mortgaging of real property up to 9 months after the deposit of the amount has been made, however in connection with new buildings up to 2 years. The amount covered by the Fund shall be after deduction of liabilities pertaining to the mortgage loan or the property deal and any liabilities not set off with the institution concerned pursuant to subsection (1) hereof. A condition is that the real property has been used for mainly non-commercial purposes or is intended for mainly non-commercial use by the buyer or seller of the property or by the person contracting the mortgage loan, respectively.

**(4)** The Fund may decide that other types of deposits shall be fully covered.

**10.** The Fund shall cover cash funds in the institution not exceeding DKK 300,000 per investor for the institutions mentioned in section 3 (1), items 2 and 3 above, as well as the branches of credit institutions and investment undertakings which are affiliated with the mortgage department or the investment companies department as mentioned in section (1), item 4 and section 4 above.

**11.-(1)** The Fund shall cover losses an investor has suffered as a consequence of the institution's failure to return securities which belong to the investor, and which are held, or managed by the institution, not exceeding the equivalent of EUR 20,000 per investor, for the institutions mentioned in section 3 (1) above and branches which are affiliated with the Fund, cf. section 4 above. An investor may not however receive coverage which exceeds an amount equivalent to the value of those securities which could not be returned by the institution.

**(2)** In this Act, securities shall be understood as those instruments mentioned in section 2 of the Danish Securities Trading, etc. Act.

**12.** Requirements of coverage by depositors and investors, cf. section 9 (1) and sections 10 and 11 above, shall be calculated after deduction of their obligations to the institution in question.

**13.** The Fund shall not cover deposits, funds and securities belonging to the members of the board of directors and the board of management of the institution in question, nor companies which are part of the same group as the institution in question. Furthermore the Fund does not cover depositors or investors who own more than 10% or more of the equity, guarantee or share capital. Neither does the Fund cover deposits, funds, and securities made by or belonging to institutions other than those mentioned in section 3 (1) and institutions which are affiliated with the Fund pursuant to section 4 above, deferred deposits of capital or deposits, funds and securities which stem from transactions which are connected to cases where a ruling concerning the laundering of money has been made.

**14.** In cases where more than one person is listed as the owner of an account or deposit, each person shall be considered an independent depositor or investor for his share as computed by the limits laid down in sections 9-11.

**15.** Depositors and investors shall be informed of the size of coverage, etc, of the guarantee scheme with which an institution is affiliated. The Danish Financial Advisory Agency shall lay down the regulations concerning this.

## **PART 6**

### *Payments from Fund to Depositors and Investors*

**16.-(1)** Payments from the Fund or transfers from the Fund of deposits and funds to accounts with other institutions shall be effected as soon as possible and not later than 3 months after the commencement of the suspension of payments or compulsory winding up. A condition of payment is that any claims have been duly verified. In the case of suspension of payments, however, the liability of the Fund shall not commence until 7 business days after notice of the suspension of payments has been given.

**(2)** At the request of the Fund, the Danish Financial Supervisory Authority may extend the time limit mentioned in subsection (1), 1<sup>st</sup> clause, hereof, however not by more than nine months.

**(3)** The time limit referred to in subsections (1) and (2) hereof may not be invoked by the Fund in order to deny the benefit of cover to any depositor or investor who has been unable to assert his claim to payment of the amount in time.

**(4)** The Danish Financial Supervisory Authority shall lay down rules concerning the obligation of the Fund to give notice of the suspension of payments or compulsory winding up of an institution and concerning depositors' and investors' submission of proof of claims to the Fund.

**17.** The Fund shall, to the extent of the amount of compensation paid by it, be subrogated to the claim of the depositor against the institution which is subject to suspension of payments or gone into compulsory winding-up proceedings.

## **PART 7**

### *Management of the Fund*

**18.-(1)** The Fund shall be managed by a Board of Directors consisting of 8 members appointed by the Minister of Economic Affairs. The members and their deputies shall be appointed for a term of 3 years.

**(2)** The chairman of the Board of Directors shall represent economic and accounting expertise. The deputy chairman shall represent legal expertise. Two members shall represent the institutions mentioned in section 3 (1), item 1, one member shall represent the institutions mentioned in section 3 (1), item 2, one member shall represent the institutions mentioned in section 3 (1), item 3 and two members shall represent the depositors and investors.

**(3)** Persons who participate in the management of or are otherwise associated with a company or an organisation in such a manner that conflicts of interest might arise between such persons and the Fund may not be elected chairman or deputy chairman.

**(4)** Decisions shall be taken based on simple majority of votes cf., however, subsection 5 hereof and section 19(2) clause 2 below. If the votes for and against are equal, the chairman of the board shall have the casting vote.

**(5)** Decisions on implementation of support measures pursuant to section 2 above may not be taken if one of the board members, who represents institutions of the category, cf. subsection 2 hereof, of which the decision concerns, votes against the support measure.

**19.-(1)** The regulations of the Fund and the rules of procedure of the Board of Directors shall be approved by the Danish Financial Supervisory Authority.

**(2)** The regulations shall contain provisions concerning investment of the capital of the Fund and concerning the categories of deposits to be fully covered, cf. section 9 (4) above. Any decision to extend the scope of cover shall be made unanimously.

**(3)** The articles of association of the Fund may lay down provisions that, when the Board of Directors address a case which only concerns a single department, members of the Board who represent the other departments shall not participate.

**20.** The Board of Directors shall employ the necessary assistance and shall, within 3 months after the end of a calendar year, submit accounts for the past year together with a report on the activities of the Fund to the Danish Financial Supervisory Authority.

**21.-(1)** The costs of managing the Fund shall be paid by the Fund.

**(2)** The Fund shall pay fees to the Danish Financial Supervisory Authority. The fee shall be set pursuant to part 22 of the Danish Financial Business Act.

## **PART 8**

### *Supervision*

**22.-(1)** The Danish Supervisory Authority shall supervise the Fund. The Danish Financial Supervisory Authority and the Fund may require institutions and depositors to provide any such information as is deemed necessary to ensure compliance with the rules laid down by this Act, rules issued in pursuance of this Act and provisions laid down by the articles of association of the Fund.

**(2)** Sections 354 and 355 of the Financial Business Act shall also apply to supervision by the Danish Supervisory Authority in pursuance of this Act. The Fund alone is regarded as a party in relation to the Danish Financial Supervisory Authority.

## **PART 8a**

**22a.** Members of the board of directors, auditors, managing directors and other employees of the Fund shall not without due cause disclose or use confidential information obtained during the performance of their duties.

## **PART 9**

### *Penalties*

**23.-(1)** Unless the offence carries a more severe penalty under any other legislation, anyone who

1. supplies incorrect or misleading information or fails to disclose information in connection with the proof, calculation or payment of compensation claims, or
2. fails to supply the information required by the Authority or the Fund pursuant to section 22 above or otherwise supplies incorrect or misleading information for the supervision of the Fund shall be fined.

**(2)** An institution covered by this Act which fails to fulfil its obligations to the Fund shall be subject to a similar penalty.

**(3)** Undertakings, etc. (legal persons) may be held criminally liable pursuant to the rules laid down in Part 5 of the Penal Code.

**23a.** Violation of the provisions in section 22a of this Act shall be punished by fines if higher punishment is not incurred under Danish criminal law.

## PART 10

### *Entry into Force, etc.*

**24.-(1)** The Minister of Economic Affairs shall determine when this Act shall enter into force, however cf. sections 2 and 4. Act no. 367 of 14 June 1995 concerning a Guarantee Fund for Depositors and Investors shall be revoked at the same time.

**(2)** After consultation with the Minister for Taxation, the Minister of Economic Affairs shall determine the day that section 25 shall enter into force.

**(3)** Section 7B of the Tax Amendment Act, as drafted in section 25 of this Act, shall apply to amounts which are paid out by the Fund from and up until the day determined in pursuance of subsection (2).

**(4)-(6)** (Omitted).

**25.** In the Act on the Assessment of Income and Property Tax to the State (the Tax Amendment Act), cf. Consolidated Act No. 819 of 3 November 1997, as subsequently amended by section 1 of Act No. 133 of 25 February 1998, section 7B shall state:

**"7 B.-(1)** Amounts paid out by the Guarantee Fund for Depositors and Investors to a credit institution as determined by section 3 of the Guarantee Fund for Depositors and Investors Act as whole or part compensation for an accounting deficit in connection with transfer of assets and liabilities from one credit institution to another credit institution shall not be included in taxable income. Accordingly, the part of the deficit which is covered by a contribution or a guarantee from the Guarantee Fund for Depositors and Investors cannot be regarded as part of the acquiring bank's purchase price for the assets taken over.

**(2)** Insofar as the Guarantee Fund for Depositors and Investors has paid out amounts covered by subsection (1) hereof or provided guarantees which may lead to the paying out of amounts covered by subsection (1) hereof, and an assigning institution covered by subsection (1) hereof commences new activities, a deficit from an earlier financial year may not be deducted from the taxable income for the financial year in question or earlier financial years, just as a deficit from the financial year in question may not be deducted from the taxable income for the financial years which follow."

**26.** This Act shall not extend to the Faeroe Islands and Greenland. With the exception of section 25 above, this Act may by Royal Decree be entered into force for these countries subject to such deviations as dictated by the special circumstances of the Faeroe Islands and Greenland.

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Act No. 347 of 17 May 2000 to amend the Danish Guarantee Fund for Depositors and Investors Act contains the following entry into force and transitional provisions:

**2.** This Act shall enter into force on 1 June 2000.

**3.** This Act shall not apply to the Faeroe Islands and Greenland, but may, by Royal Decree, be made effective for these regions subject to such deviations as are dictated by the special circumstances of the Faeroe Islands and Greenland.

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Act No. 428 of 6 June 2002 to amend the Danish Guarantee Fund for Depositors and Investors Act contains the following entry into force and transitional provisions:

**19.-(1)** This Act shall enter into force on 1 July 2002 cf., however, subsections 2 and 3 hereof.

**(2) to (4)** (Omitted).

**20.** Transitional provisions

(Omitted)

**21.-(1)** With the exception of section 1, item 13, this Act shall not apply to the Faeroe Islands and Greenland but may, by Royal Decree, be made effective for these regions subject to such deviations as are dictated by the special circumstances of the Faeroe Islands and Greenland cf., however, subsection 2.

**(2)** (Omitted)

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

**375.-(1)** This Act shall enter into force on 1 January 2004 cf., however, subsections (2) and (3).

**(2) to (5)** (Omitted).

**438.-(1)** This Act shall not apply to the Faeroe Islands and Greenland, but may, by Royal Decree, be made effective for these regions subject to such deviations as are dictated by the special circumstances of the Faeroe Islands and Greenland, cf. however, subsections (2)-(4).

**(2) to (4)** (Omitted).

*The Danish Ministry of Economic and Business Affairs, 10 December 2003*

**Bendt Bendtsen**

**/Henrik Bjerre Nielsen**

Notes

Act No. 1066 of 10 December 2003

Official notes:

1) This Act includes provisions implementing the Directive of the European Parliament and Council on deposit-guarantee schemes (Directive No. 94/19/EC of 30 May 1994, Official Journal of the European Communities, 1994, L 135/5) and the Directive of the European Parliament and Council on investor-guarantee schemes (Directive No. 97/9/EC of 3 March 1997, Official Journal of the European Communities, 1997, L 84/22).

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EXCLUDING MINOR AMENDMENTS