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Consolidation Act No. 1780 of 12 December 2018 (in force)

Consolidation Act on a Ship Finance Institute

Ministry:
Ministry of Industry, Business
and Financial Affairs

File no.:
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and Financial Affairs, Danish
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file no. 1911-0025

Amendments to the provision

Section 3 of Act No. 1166 of 8 June 2021



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Consolidation Act on a Ship Finance Institute⁽¹⁾

This is to consolidate the Act on a Ship Finance Institute, see Consolidation Act No. 851 of 25 June 2014, as amended by section 8 of Act No. 665 of 8 June 2017 and section 13 of Act No. 706 of 8 June 2018.

1.-(1) The Minister for Industry, Business and Financial Affairs is authorised to approve the establishment of a ship finance institute after negotiations with the Minister of Finance.

(2) The name of the institute shall be approved by the Minister for Industry, Business and Financial Affairs.

1 a.-(1) The objects for which the institute is established shall be to provide ship financing, defined as financing and related financial services in connection with (i) newbuilding and conversion of vessels, and (ii) acquisition, divestment and refinancing of vessels.

(2) The institute may wholly or partly carry out its ship finance activities through subsidiaries.

(3) The institute may only provide loans against security.

(4) The institute may provide guarantees in accordance with the objects of the institute's operations.

1 b. For the purposes of this Act, net cash outflows shall mean all cash outflows on a date, including principal and interest payments as well as payments under derivative contracts linked to the issuance of ship mortgage bonds and covered bonds, less all cash inflows falling due on the same date as the due date of the claims related to the cover assets.

2. (Repealed).

2 a.-(1) The institute may issue ship mortgage bonds. Ship mortgage bonds may be designated as European Covered Bonds.

(2) All payment obligations regarding ship mortgage bonds shall be covered by claims for payment attached to the cover assets in the individual capital centres. The calculation of payment obligations regarding the ship mortgage bonds issued shall include payment obligations in the form of principal and interest, payment obligations under financial instruments used to hedge risk between the cover assets and the ship mortgage bonds issued, and the expected costs associated with maintenance and management in connection with the resolution of the individual capital centres. The calculation of claims for payment regarding the cover assets shall include claims for payment in the form of principal and interest on loans, claims for payment under financial instruments used to hedge risk between the cover assets and the ship mortgage bonds issued, and claims for payment under other assets provided as collateral for ship mortgage bonds.

(3) The nominal value of the total principal amount of the cover assets shall equal or exceed the total principal amount of the issued ship mortgage bonds issued in the individual capital centres.

(4) Financial instruments used to hedge risk between the cover assets and the ship mortgage bonds issued shall be measured according to the same method as that applied in connection with the cover assets and the issued ship mortgage bonds the risks of which they hedge.

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

2 c.-(1) The Minister for Industry, Business and Financial Affairs may authorise the institute to issue covered bonds.

(2) If the institute is authorised to issue covered bonds, such authorisation may be withdrawn if

(i) the institute commits serious or repeated violations of sections 2 d, 2 i and 2 j or any rules governing covered bonds established pursuant to section 5, or

(ii) the issue of covered bonds has not begun within 12 months of the institute obtaining authorisation pursuant to subsection (1) hereof.

2 d.-(1) The institute may fund loans against collateral in the asset types specified in Article 129(1)(a)-(c) and (g) and Article 129(2) 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 through the issue of covered bonds. In the event of issuance of covered bonds against loans secured by ship mortgages, the registration shall be made in the Danish Ship Register, the Danish International Ship Register or another internationally recognised ship register offering the same degree of protection. The institute may also provide building loans for use in financing newbuilding or conversion of vessels, which loans are not secured by a ship mortgage but provided against provision of collateral in the asset types specified in the first sentence hereof.

(2) All payment obligations regarding covered bonds shall be covered by claims for payment attached to the cover assets in the individual capital centres. The calculation of payment obligations regarding covered bonds issued shall include payment obligations in the form of principal and interest, payment obligations under financial instruments used to hedge risk between the cover assets and the covered bonds issued, and the expected costs associated with maintenance and management in connection with the resolution of the capital centre. The calculation of the claims for payment regarding the cover assets shall include claims for payment in the form of principal and interest on loans, claims for payment under financial instruments used to hedge risk between the cover assets and the covered bonds issued, and claims for payment under other assets provided as collateral for covered

(1) This Act contains provisions implementing parts of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), Official Journal of the European Union 2006 No. L 177, p. 1 and parts of Directive 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered public bond supervision and amending Directives 2009/65/EC and 2014/59/EU, Official Journal of the European Union 2019, No L. 328, p. 29.

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bonds.

(3) The nominal value of the total principal amount of the cover assets shall equal or exceed the total principal amount of the covered bonds issued. An excess cover of at least 2 per cent of the outstanding covered bonds shall be added to the nominal value of the total principal amount of the cover assets.

(4) Financial instruments used to hedge risk between the cover assets and the covered bonds issued shall be measured according to the same method as that applied in connection with the cover assets and the issued covered bonds the risks of which they hedge.

2 e.-(1) Ship mortgage bonds may be issued in separate capital centres. Covered bonds shall be issued in separate capital centres. Ship mortgage bonds and covered bonds may not be issued in the same capital centre.

(2) *The capital centre shall at all times have a liquidity buffer composed of liquid assets available for cover of net cash outflows in connection with the capital centre, covering the total maximum amount of net cash outflows over the next 180 days.*

(3) *Liquid assets pursuant to subsection (2) comprise assets which meet the conditions for assets at level 1, level 2A or level 2B in accordance with Commission Delegated Regulation (EU) No. 2015/61 of 10 October 2014 to supplement Regulation (EU) No. 575/2013 with regard to liquidity coverage requirement for Credit Institutions, and which are measured in accordance with the Delegated Regulation stated and not issued by the credit institution issuing the covered bonds or by its parent company, unless this is a public entity which is not a credit institution, its subsidiaries or by other subsidiaries of the parent company.*

(4) Holders of bonds may set up their claim only against the relevant capital centre, see, however, section 3 c(5).

2 f.-(1) The borrower is personally liable for the loan vis-à-vis the capital centre and the institute, as the case may be. Furthermore, the capital centre and the institute, as the case may be, may enforce the security in satisfaction of the loan.

(2) Capital centres and borrowers are not liable for obligations incurred by the institute.

2 g.-(1) A capital centre generates income in the form of interest and similar income from mortgages, fees, income relating to financial instruments and similar income, and returns on the capital centre's assets and off-balance sheet items.

(2) A capital centre's expenses comprise interest and similar expenses with respect to issued bonds, administrative expenses, etc., expenses relating to financial instruments, expenses involved in raising and servicing additional tier 1 capital and subordinated debt, losses and provisions with respect to probable losses on the capital centre's assets and off-balance sheet items, and the proportionate share of income tax payable by the institute.

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2 h.-(1) The funds of the capital centre shall be kept separate from other funds in the institute.

(2) Funds shall be transferred to a capital centre from the institute if required for the capital centre to meet the solvency requirement except where such transfer would result in the institute becoming unable to meet the solvency requirement.

(3) The institute may transfer funds from a capital centre to the institute if the capital centre is or becomes bigger than required.

(4) Financial instruments may only be recognised as assets or liabilities in a capital centre if used to hedge risk between assets relating to the capital centre on the one hand and the issued ship mortgage bonds or covered bonds on the other, and provided the financial instrument contract excludes the institute's reconstruction proceedings, bankruptcy or failure to provide supplementary collateral as required by section 2 i(1) as an event of breach.

2 i.-(1) If the value of the assets specified in section 2 d(2) no longer equals the value of the covered bonds issued or does not meet the relevant loan-to-value ratio, the institute shall provide supplementary collateral to meet the requirement and notify the Danish Financial Supervisory Authority accordingly. Supplementary collateral shall be provided in the form of the asset types specified in Article 129(1)(a)-(c) and (g) and Article 129(2) 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.

(2) If the institute fails to provide supplementary collateral in accordance with the first sentence of subsection (1) hereof, all bonds issued in the relevant capital centre will cease to qualify for the designation covered bonds. Bonds having lost the designation 'covered bonds' may be designated 'ship mortgage bonds', provided they comply with the statutory requirements for ship mortgage bonds at the time the loan offer is made.

(3) The Danish Financial Supervisory Authority may grant exemption from the second sentence of subsection (2) hereof, irrespective of whether the bonds do not comply with the statutory requirements of ship mortgage bonds. Capital centres transitioning to the designation ship mortgage bonds under the first sentence shall be kept separate from other funds of the institute. Supplementary collateral already provided, see the first sentence of subsection (1) hereof, belongs to the capital centre which has been reclassified in accordance with subsection (2) hereof.

(4) If the bonds subsequently re-qualify for the covered bond designation, the Danish Financial Supervisory Authority may permit the bonds to be designated as covered bonds again.

(5) Collateral provided under subsection (1) hereof is not voidable under section 70 or section 72 of the Bankruptcy Act. However, collateral may be voidable under those provisions if the collateral was not provided in the ordinary course of business.

2 j.-(1) The institute may raise loans to meet the supplementary collateral requirement, see section 2 i(1), or increase the excess cover of a capital centre.

(2) The loan agreement shall specify the capital centre to which funds borrowed under subsection (1) hereof are attributable.

(3) Funds borrowed under subsection (1) hereof shall be placed in the asset types specified in Article 129(1)(a)-(c) and (g) and Article 129(2) 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. From the date the loan is raised, the assets shall be placed in a separate account, a separate custody account or otherwise marked as deriving from the relevant loan. Assets used as supplementary collateral or as excess cover shall be recognised in the relevant capital centre.

3. The instruments of debt issued by borrowers to the institute shall serve as security for the institute's liabilities. The instruments of debt shall be issued on terms and conditions ensuring that average interest and capital repayments thereon provide sufficient cover for the current liabilities of the institute.

3 a.-(1) If the institute is declared bankrupt, the funds of the capital centres, less costs incurred in connection with bankruptcy proceedings, etc., including liquidator's fees, salaries, etc., shall be used to satisfy claims notified by holders of ship mortgage bonds and covered bonds in the relevant capital centre and claims for interest on such bonds accrued from the date of the liquidation order. After that, claims of creditors pursuant to section 2 j(1) are paid. Pursuant to section 32 of the Bankruptcy Act, any excess funds shall be included in the assets available for distribution.

(2) If the institute is declared bankrupt, the funds of the institute, less costs incurred in connection with bankruptcy proceedings, etc., including liquidator's fees, salaries, etc., shall be used to satisfy claims notified by holders of debenture bonds and ship mortgage bonds not issued through a capital centre and claims for interest on such bonds accrued from the date of the liquidation order. However, funds used pursuant to the first sentence hereof may not exceed the assets corresponding to the debenture bonds or the ship mortgage bonds, including mortgages, deposits and financial instruments held by the institute and an amount equal to 8 per cent of the risk-weighted value of the assets corresponding to the debenture bonds and ship mortgage bonds issued by the institute outside capital centres. Pursuant to section 32 of the Bankruptcy Act, any excess funds shall be included in the assets available for distribution.

(3) If the institute is declared bankrupt, counterparties in the financial instruments entered into to hedge risk in a capital centre, see section 2 h(4), are for bankruptcy law purposes treated on an equal footing with the holders of bonds in the relevant capital centre, see the first sentence of subsection (1) hereof and section 3 c(5)-(7). Counterparties in financial instruments entered into to hedge risk between lending and debenture bonds or ship mortgage bonds not issued through a capital centre are for bankruptcy law purposes treated on an equal footing with the holders of the debenture bonds or ship mortgage bonds if the financial instrument contract excludes the institute's reconstruction proceedings or bankruptcy as an

event of breach, see subsection (2) hereof and section 3 c(5)-(7).

3 b.-(1) Holders of debenture bonds, ship mortgage bonds and covered bonds or lenders pursuant to section 2 j(1) cannot rely on the issuance of a liquidation order on the institute to claim prepayment of obligations. The issuance of a liquidation order on the institute shall not deprive the institute's borrowers of their right to repay debts in full or in part in accordance with the repayment terms applicable to the relevant loan.

(2) Any failure by the institute to comply with its obligation in section 2 i(1) cannot be relied on by holders of covered bonds or by lenders under section 2 j(1) to claim prepayment of obligations.

3 c.-(1) The institute in bankruptcy cannot effect payment in satisfaction of claims notified by holders of debenture bonds, ship mortgage bonds or covered bonds earlier than the date on which the institute was entitled to be discharged by effecting the payment.

(2) The rights of the institute in bankruptcy to terminate loan agreements secured by ship mortgages shall not be any wider than those accorded to the institute.

(3) The institute in bankruptcy shall not change contributions, etc.

(4) Set-off from a creditor pursuant to section 42 of the Bankruptcy Act cannot be effected in satisfaction of a debt owed to the institute.

(5) Assets available for distribution shall be used to satisfy claims in accordance with the rules in Part 10 of the Bankruptcy Act. However, any remaining claims from holders of debenture bonds, ship mortgage bonds and covered bonds and claims for interest accrued on such bonds from the date of the liquidation order shall be paid in equal proportion after the claims listed in section 96 of the Bankruptcy Act, but in priority to the claims listed in section 97 of the Bankruptcy Act.

(6) In case of reconstruction proceedings, the institute shall to the greatest possible extent continue to meet its payment obligations pursuant to claims from holders of debenture bonds, ship mortgage bonds and covered bonds and claims from creditors under contracts for financial instruments entered into by the institute to hedge risk between assets and issued bonds at maturity, unless otherwise provided by the corporate reconstruction administrator. Subject to the consent of the corporate reconstruction administrator, the institute may enter into contracts for financial instruments, raise loans in respect of the payments referred to in the first sentence hereof and provide security for such loans in assets, except debt secured by ship mortgages.

(7) In case of bankruptcy, the liquidator shall to the greatest possible extent continue or resume the fulfilment of the institute's obligations in the form of interest payments and capital repayments vis-à-vis holders of debenture bonds, ship mortgage bonds and covered bonds and claims from creditors under contracts for financial instruments entered into by the institute to hedge risk between assets and issued bonds. In so far as there are not sufficient funds, interest shall be paid before effecting any prepayments or other repayments of

capital. The liquidator may enter into contracts for financial instruments, raise loans to pay holders of debenture bonds, ship mortgage bonds and covered bonds and claims from creditors under contracts for financial instruments entered into by the institute to hedge risk between assets and issued bonds and provide security for such loans in assets, except debt secured by ship mortgages.

(8) No funds may be transferred from one capital centre to another or to the institute after commencement of reconstruction proceedings or issuance of a liquidation order.

3 d.-(1) For purposes of bankruptcy law, holders of bonds that no longer qualify for the covered bond designation, see section 2 i(2), and counterparties in the financial instruments preserve the rights afforded to holders of covered bonds and financial counterparties, see section 3 a. The same applies to settlement of debt raised by the institute to provide supplementary collateral, see section 2 j(1).

(2) The provisions of sections 3 b, 3 c and 3 e shall apply *mutatis mutandis* to bonds that no longer qualify for the covered bond designation and financial instruments related thereto.

3 e. In case of the institute's bankruptcy, any proceeds from loans raised by the institute in pursuance of section 2 j(1), and not included in a capital centre, shall be used towards satisfaction of holders of ship mortgage bonds, covered bonds and counterparties in financial instruments in the capital centre for which the loan was raised. Any excess funds shall be paid to the lender.

4.-(1) The Danish Financial Supervisory Authority shall oversee compliance with this Act and with the rules issued in pursuance hereof.

(2) The rules of Parts 21 and 23 of the Financial Business Act shall apply *mutatis mutandis* to the institute.

(3) The institute shall pay fees to the Danish Financial Supervisory Authority. The fees shall be fixed in accordance with Part 22 of the Financial Business Act.

4 a. (Repealed).

5.-(1) The Minister for Industry, Business and Financial Affairs may lay down rules on

- (i) generally accepted business ethics and good practice and price information,
- (ii) ownership, management, control and structure of the business, including a reporting scheme for violation or potential violation of financial regulations, and remuneration,
- (iii) disclosure of confidential information,
- (iv) collateral, valuation, loan-to-value ratio, term and fleet mortgage,
- (v) capitalisation, solvency and group matters,
- (vi) investment of funds and liquidity,
- (vii) financial reporting and audit,
- (viii) capital centres,
- (ix) amalgamation, cessation and crisis management
- (x) reporting, and

(xi) the ship finance institute's disclosure of information for use in the investors' assessment of the merits and risks of the issued ship mortgage bonds and covered bonds.

(2) The Minister for Industry, Business and Financial Affairs may determine that provisions in the Financial Business Act, the Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act and 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 rules issued in pursuance of such acts and the regulation shall apply *mutatis mutandis* to the institute as regards the matters referred to in subsection (1)(i)-(x) hereof.

(3) The Danish Financial Supervisory Authority will lay down detailed rules with respect to

- (i) the conditions that are to be met for bonds to qualify for and maintain the covered bond designation,
- (ii) terms and loan-to-value ratios for loans financed through the issue of covered bonds,
- (iii) valuation of the assets used as security for issue of covered bonds,
- (iv) valuation of the covered bonds issued and the ongoing calculation of the value of the assets relative to the covered bonds,
- (v) the conditions that are to be met for providing building loans for newbuilding or conversion of vessels, see section 2 d(1)(ii) of the Financial Business Act,
- (vi) limitation of risk in connection with bond issue, including interest rate risk, currency risk and option risk, and compliance with the requirement for a liquidity buffer,
- (vii) reporting of supplementary collateral for covered bonds and compliance with the requirements for cover and minimum excess cover.

5 a.-(1) The Minister for Industry, Business and Financial Affairs may determine that written communications to and from the Danish Financial Supervisory Authority and to and from the Minister for Industry, Business and Financial Affairs regarding matters comprised by this Act or by rules issued in pursuance of this Act shall be in digital form.

(2) The Minister for Industry, Business and Financial Affairs 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) A digital communication will be deemed to have reached the recipient when it is accessible to the addressee of the communication.

5 b.-(1) The Minister for Industry, Business and Financial Affairs may determine that the Danish Financial Supervisory Authority and the Minister for Industry, Business and Financial Affairs can issue decisions and other 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 technique ensuring unambiguous identification of the person issuing the decision or document. Such decisions and documents have

the same status as decisions and documents with a personal signature.

(2) The Minister for Industry, Business and Financial Affairs may determine that decisions and other documents made or issued exclusively on the basis of electronic data processing may be issued solely stating the Danish Financial Supervisory Authority or the Minister for Industry, Business and Financial Affairs as sender.

5 c.-(1) If this Act or rules issued in pursuance of this Act require that a document issued by parties other than the Danish Financial Supervisory Authority or the Minister for Industry, Business and Financial Affairs shall be signed, such requirement may be satisfied by using a technique ensuring unambiguous identification of the document issuer, see, however, subsection (2) hereof. Such documents have the same status as documents with a personal signature.

(2) The Minister for Industry, Business and Financial Affairs may lay down detailed rules on derogation from the signature requirement. Such rules may include provisions that the personal signature requirement cannot be derogated from with respect to certain document types.

5 d. (Repealed).

6. (Repealed).

7. (Repealed).

8. (Repealed).

9. The tied-up reserve capital may only be used to cover losses which cannot be covered by amounts available for dividend distribution in the public limited company.

(2) Ten per cent of the profit for the year not used to cover prior-year losses shall be transferred to the tied-up reserve capital, unless the dissolution objects of Danish Ship Finance are otherwise similarly accommodated. However, the percentage transferred may not exceed the rate of return on the undistributable reserve which is equivalent to the coupon determined by the Danish Financial Supervisory Authority pursuant to section 213(2) of the Financial Business Act less a proportionate share of the corporation tax for the year. Irrespective of this, the tied-up reserve capital shall as far as possible be restored by advance transfer of the profit for the year, if, in prior years, the tied-up reserve capital was wholly or partly used to cover losses. Hence, no dividends shall be paid and no distributions shall be made in connection with capital reductions until the tied-up reserve capital has been restored to at least the same nominal amount as the undistributable reserve had before being used wholly or partly to cover losses.

10. Any transfer of the assets and liabilities of the public limited company may upon submission to the Minister for Industry, Business and Financial Affairs be effected to one or more public limited companies having obtained a licence from the Danish Financial Supervisory Authority. The Minister for Industry, Business and Financial Affairs may resist a transfer of the assets and liabilities of the public limited company if the transfer results in the tied-up reserve capital no longer being available for use in connection with the dissolution objects of Danish Ship Finance. In connection

with such transfer, the continuing public limited company/companies shall take over the tied-up reserve capital on the terms and conditions applicable until the transfer. In such case, this Act shall be applicable to such public limited company/companies.

11.-(1) The institute or a public limited company, see section 10, may only cease to provide ship financing if it becomes financially unfeasible to carry on such business. The Danish Financial Supervisory Authority shall agree that it is no longer financially feasible to provide ship financing.

(2) When ceasing to provide ship financing, see subsection (1) hereof, the tied-up reserve capital shall be used in compliance with the dissolution objects of Danish Ship Finance

12.-(1) In case of dissolution or bankruptcy of the institute or a public limited company, see section 10, the tied-up reserve capital shall be used in compliance with the dissolution objects of Danish Ship Finance.

(2) Distribution to the shareholders may not be effected until the obligations under subsection (1) hereof have been met.

13.-(1) The objects of the Danish Maritime Fund (*Den Danske Maritime Fond*) shall correspond to the dissolution objects of Danish Ship Finance.

(2) In case The Danish Maritime Fund is dissolved, the liquidation proceeds shall be distributed in compliance with the dissolution objects of Danish Ship Finance.

(3) The Danish Maritime Fund shall be managed by a board consisting of not less than five members, one of whom shall be appointed by the Minister for Industry, Business and Financial Affairs. The remaining members shall be appointed by the maritime sector.

(4) The Danish Business Authority shall be the foundation authority in respect of The Danish Maritime Fund.

14.-(1) Violation of the provisions of section 1(2), section 2 d(1), section 2 e(1), second and third sentences, section 2 h(1), (2) and (4) and section 3, second sentence, is punishable

by fine unless a stricter penalty is prescribed by other legislation. Violation of the notification obligation in section 2 i(1), first sentence, is punishable in the same way.

(2) Rules and regulations laid down in pursuance of the Act may stipulate a fine or imprisonment for up to four months unless a stricter penalty is prescribed by other legislation, for violating such rules and regulations.

(3) A ship finance institute may be held liable in accordance with the provisions of Part 5 of the Criminal Code.

(4) The period of limitation for criminal liability is five years.

Act No. 665 of 8 June 2017 (Implementation of Directive on markets in financial instruments (MiFID II) and amendments resulting from the Regulation on markets in financial instruments (MiFIR), etc.)⁽¹⁾ contains the following commencement provision:

21.

(1) This Act takes effect on 3 January 2018, see, however, subsections (2)-(6) hereof.

(2)-(6) (Omitted).

Act No. 706 of 8 June 2018 (Strengthened efforts against money laundering, etc. in the financial sector, introduction of new forms of alternative investment funds, change to the threshold for prospectus requirements, etc.)⁽²⁾ contains the following commencement provision:

24.

(1) This Act takes effect on 1 July 2018, see, however, subsections (2) and (3) hereof.

(2)-(6) (Omitted).

The Ministry of Industry, Business and Financial Affairs, 12 December 2018

RASMUS JARLOV

/ Jesper Berg

(1) The amendment concerns section 3 a(2).

(2) The amendment concerns sections 5 a(3) and 5 b.