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Legal Opinion regarding the legal consequences of the transformation of EKF to an Independent Public Company

In connection with the transformation of EKF Danmarks Eksportkredit ("EKF") to an Independent Public Company (in Danish: Selvstændig Offentlig Virksomhed") ("SOV"), I have been asked to submit a legal opinion under Danish law with regard, in particular, to:

(i) the legal consequences of said transformation, and

(ii) the legal nature of EKF with regard to Regulation no 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms ("CRR").

The general purpose of this legal opinion is to establish the legal consequences of the transformation vis-á-vis third parties and, in particular, recipients of export credit measures issued by EKF prior and subsequent to the transformation.

1. THE TRANSFORMATION OF EKF

The transformation of EKF to a SOV will be implemented by way of an Act of the Danish Parliament repealing the original Act no. 1070 of 20 December 1995 regarding the Danish Export Credit Foundation (in Danish: "Dansk Eksportkreditfond") as amended, cf. Consolidated Act no. 913 of 9 December 1999.

Accordingly, on 22 January 2016, the Danish Parliament passed the Act on EKF Danmarks Eksportkredit ("the Act").

A copy of the translated Act is enclosed as an *Annex (A)* to this legal opinion.

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As regards the CRR, Article 116(4) contains the following provisions:

> *"In exceptional circumstances, exposures to public-sector entities may be treated as exposures to the central government, regional government or local authority in whose jurisdiction they are established where in the opinion of the competent authorities of this jurisdiction there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government, regional government or local authority."*

2. LEGAL OPINION

2.1 The legal consequences of the transformation

In accordance with the provisions cited above, the Act transforms the existing Administrative Unit to an Independent Public Company wholly owned by the Ministry of Economic and Growth.

As such, the Ministry will exercise its rights as owner of the Independent Public Company as a sole shareholder under Danish company law.

However, EKF will maintain its regulatory objective with regard to export credit insurance and its status as the Danish Export Credit Agency, and will continue its operations with regard to the implementation of Danish export credit schemes without material changes.

The activities of EKF will largely remain the same although the Act introduces a general modernisation of the language related to export credit activities, which will expand the scope with regard to the measures available to EKF. The transformation moreover entails that the Independent Public Company will enter into all existing rights and commitments of EKF.

Accordingly, the Act entails that although the formality and the legal characteristics of EKF as a legal entity under State ownership may change as a result of the transformation to an Independent Public Company, EKF will continue its existing activities and all regulatory and contractual obligations will be carried forward unchanged by the new Independent State Undertaking.

As was the case under the current legislation on EKF, the Act reiterates that the Danish State has agreed to indemnify all creditors in case EKF's equity capital and reserves would not suffice.

On this background I am of the opinion that, under the laws and regulations of Denmark currently in force and pursuant to the provisions set forth in the Act;

- EKF will, notwithstanding the transformation to an Independent Public Company, maintain the same legal personality under the auspices of the Danish State and with the same, address and registered office, the same VAT number, contact information, webpage etc.,
- the regulatory purpose of EKF remain the same after the transformation,
- EKF maintains its regulatory status as an official Danish Export Credit Agency,
- EKF holds, following the transformation, the same rights and is subject to the same commitments under both public and private law as before the transformation,
- the transformation does not in any way affect the commitments already imposed on EKF or any guarantee holders rights under guarantees provided or agreements concluded prior to the transformation,
- the transformation does not entail a change of control,
- the State's access to exercise ownership rights in relation til EKF are not diminished after the transformation,
- after the transformation the Danish State remains obliged to indemnify all existing and future commitments of EKF without limitations should the own capital or reserves of EKF not suffice, and that
- neither EKF nor any of its respective Danish assets enjoys any rights of sovereign or other immunity from legal proceedings or the execution of judgment or other attachment in Denmark.

Consequently, it is my opinion that the transformation of EKF does not factually or legally change, diminish, or in any other way affect the rights and obligations contained in export credit measures issued by EKF prior to the transformation.

2.2 The legal nature of EKF under CRR

Considering the characteristics of EKF after the transformation and, in particular, the State indemnification clause in section 10 of the Act, which entails that the State enters into the rights and obligations of EKF in so far as the company's own capital and reserves do not suffice, it is my opinion that the Danish State will provide full indemnification should the own capital or reserves of EKF not suffice.

It follows from Article 116(4) of the CRR that, in exceptional circumstances, exposures to public-sector entities may be treated as exposures to the central government in the Member State of establishment where - in the opinion of the competent authorities of this jurisdiction - there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government.

A public-sector entity is defined in CRR Article 4(1)(8).

The Danish Financial Supervisory Authority (the Danish FSA – in Danish: "Finanstilsynet") has in this regard decided that EKF can be regarded as a public-sector entity within the meaning of CRR Article 116(4), cf. Article 4(1)(8).[1] Consequently, exposures to EKF can be treated as exposures to the Danish central government.

A copy of this FSA decision is enclosed as an *Annex (B)* to this legal opinion.

In my opinion EKF shall be regarded as a public-sector entity within the meaning of CRR Article 116(4) and – considering the indemnification clause of § 10 of the Act combined with the decision of the Danish FSA – there is no difference in risk between exposures against EKF on the one hand and against the Danish State on the other.

Thus, I consider the indemnification clause to constitute an appropriate guarantee by the central government.

2.3 Reservations and disclosure

This opinion is confined to matters of Danish law and regulation and I express no opinion with regard to any system of law other than the laws and regulations of the Kingdom of Denmark.

My opinion is submitted in accordance with and subject to the Business Terms of Law Firm Poul Schmith in effect as of 1 January 2016 including, but not limited to, the Limitation of Liability in section 6.2 of said Business Terms, which limits my liability in relation to this opinion to DKK 75M.

With regard to disclosure, I hereby confirm that EKF may disclose this legal opinion directly to third parties at the sole discretion of EKF. Likewise, if deemed necessary, EKF may publish this legal opinion on EKF's website.

Disclosure of this legal opinion to third parties or the general public does not entail such third parties or the general public may rely directly or indirectly on this legal opinion. Individual reliance letters can be issued upon request.

Yours sincerely,
Kammeradvokaten

Peter Hedegaard Madsen
— Partner, Attorney

[1] https://www.finanstilsynet.dk/da/Temaer/Solvens/Kreditinstitut-og-fondsmaegleromradet/Godkendelser-mv/Offentlige%20enheder.aspx

Annexes:

A) Act of 22 January 2016 on EKF Danmarks Eksportkredit.
B) Decision of the Danish FSA af 14 April 2016.

Adopted by the Danish Parliament at the third reading
on 21 January 2016

Proposal

for

Act on EKF Denmark's Export Credit Agency

Part 1

Purpose, establishment and ownership

1. The purpose of EKF Denmark's Export Credit Agency shall be to facilitate Danish companies' export and internationalisation opportunities, participation in the global value chain and cultivation of new markets through internationally competitive financing and risk cover.

2. EKF Denmark's Export Credit Agency may represent the Danish government nationally and internationally in matters relating to export credit policy.

3. Within its business area, EKF Denmark's Export Credit Agency shall observe government decisions as regards export promotion, trade policy and politically imposed trade sanctions and export controls.

2. With a view to pursuing its purpose, EKF Denmark's Export Credit Agency may, against a fee, inter alia:

1) provide risk cover;
2) grant loans;
3) provide capital;
4) facilitate mixed credits;
5) provide services related to administration, collection and acquisition of outstanding claims abroad;
6) provide services in connection with the sale of ships built at Danish shipyards for Danish shipowners.

2. EKF Denmark's Export Credit Agency may establish companies and acquire shares in limited liability companies.

3. EKF Denmark's Export Credit Agency may undertake guarantee and loan commitments and other commitments with a view to providing financing, including in cooperation with other companies, foundations, institutions and organisations.

4. EKF Denmark's Export Credit Agency may only provide financing and risk cover where risks of the relevant nature or extent are not normally assumed by the private, commercial insurance and capital market.

5. The Minister for Business and Growth may stipulate rules enabling EKF Denmark's Export Credit Agency to undertake other tasks within its purpose, cf. section 1(1).

6. The Minister for Business and Growth may stipulate rules on access to EKF Denmark's Export Credit Agency's services for companies in the Faroe Islands and Greenland.

3. EKF Denmark's Export Credit Agency shall be established as an independent public company.

4. EKF Denmark's Export Credit Agency shall carry on the previous activities of Eksport Kredit Fonden (EKF), including the appurtenant assets and liabilities, and shall take over all rights and obligations in this respect.

5. In relation to EKF Denmark's Export Credit Agency, the Minister for Growth and Industry shall exercise the powers vested in the annual general meeting of a public limited company under the Danish Companies Act and the Danish Financial Statements Act, whereby the Minister for Growth and Industry is compared with a sole shareholder.

2. The annual general meeting of EKF Denmark's Export Credit Agency shall be held as a company meeting.

3. The Minister for Business and Growth shall lay down statutes for EKF Denmark's Export Credit

Agency.

6. The Danish Act on Access to Public Administration Files, the Act on the Danish Parliamentary Ombudsman and the Danish Public Administration Act shall apply to EKF Denmark's Export Credit Agency and any subsidiaries thereof, with the exception of activities carried out under section 2.

2. The Danish Companies Act, including the special provisions on state-owned public limited companies, shall apply to EKF Denmark's Export Credit Agency and any subsidiaries thereof, as amended pursuant to this Act.

3. The provisions of the Danish Financial Statements Act for public limited companies on the preparation and presentation of an annual report, etc., including the provisions applying to state-owned public limited companies, shall apply to EKF Denmark's Export Credit Agency and any subsidiaries thereof, as amended pursuant to this Act. EKF Denmark's Export Credit Agency may depart from the requirements under section 23 of the Danish Financial Statements Act concerning schematic presentation of balance sheet and income statement.

4. Decisions made by EKF Denmark's Export Credit Agency and any subsidiaries thereof in connection with activities performed under section 2 may not be brought before any other administrative authority.

Part 2

Management and finances

7. The management of EKF Denmark's Export Credit Agency shall be undertaken by a Board of Directors and a Chief Executive Officer.

2. The Minister for Business and Growth shall appoint up to seven members of the Board of Directors, including the Chairman and Deputy Chairman, for a term of up to two years. The members may be reappointed. The Minister may discharge the appointed members at any time at a company meeting.

3. In addition to the members appointed by the Minister for Business and Growth, the employees shall elect two representatives on the Board of Directors for a term of up to two years with a possibility of re-election.

4. The members of the Board of Directors shall jointly have the competencies necessary to pursue the company's purpose, including the required professional credit, financial, business, management and economic insights.

5. The Minister for Business and Growth shall lay down fees for the Board of Directors.

8. The Board of Directors shall undertake the overall and strategic management of EKF Denmark's Export Credit Agency.

2. Subject to prior notification of the Minister for Business and Growth, the Board of Directors shall employ a Chief Executive Officer to undertake the day-to-day management.

3. The Board of Directors shall lay down its own rules of procedure and instructions to the Chief Executive Officer.

4. The Chief Executive Officer shall be subject to instructions from and shall report to the Minister for Business and Growth in matters concerning export credit policy, cf. section 1(2).

5. The Board of Directors shall keep the Minister for Business and Growth informed about all significant matters concerning EKF Denmark's Export Credit Agency, including material changes in the finances of EKF Denmark's Export Credit Agency.

9. The equity of EKF Denmark's Export Credit Agency must always be of sufficient size to provide, together with provisions, a responsible basis for the company's liabilities and activities.

2. EKF Denmark's Export Credit Agency's revenue and expenditure must balance in the long term, taking into account the international competitive situation and special trade policy considerations.

3. The free funds of EKF Denmark's Export Credit Agency may be invested in particularly secure securities.

4. Government on-lending may be granted to EKF Denmark's Export Credit Agency.

10. The government shall take over the rights and obligations of EKF Denmark's Export Credit Agency to the extent that the company's equity and provisions are insufficient.

11. The financial year of EKF Denmark's Export Credit Agency financial year shall be the calendar year.

2. The annual report of EKF Denmark's Export Credit Agency shall be audited by a state-authorised

public accountant and by the Auditor General. The audit shall be performed in accordance with good public auditing practice, cf. section 3 of the Danish Audit of Government Accounts, etc. Act. The state-authorised public accountant shall be elected by the Minister for Business and Growth, acting on the recommendation of the Board of Directors, at a company meeting for one year at a time and may be re-elected.

3. The audited Annual Report shall be submitted for approval at a company meeting.

12. The auditors may require EKF Denmark's Export Credit Agency to provide any information they deem necessary. The auditors shall at any time have access to familiarise themselves with the company's financial statements and business in general.

13. Subject to a decision from the Minister for Finance, EKF Denmark's Export Credit Agency may enter into collective agreements or otherwise lay down salary and other employment terms for employees of the company.

Part 3

Administrative provisions

14. The Minister for Business and Growth shall undertake supervision of EKF Denmark's Export Credit Agency.

2. EKF Denmark's Export Credit Agency shall disclose upon request any information about the company and its activities to the Minister for Business and Growth.

15. This Act shall enter into force on 1 July 2016.

2. The Act on Eksport Kredit Fonden, etc., promulgated by Legislative Order no. 913 of 9 December 1999, shall be repealed.

3. EKF Denmark's Export Credit Agency's continuation of the previous activities of Eksport Kredit Fonden (EKF) shall have accounting effect from 1 January 2016.

16. This Act shall not apply to the Faroe Islands and Greenland.

Danish Parliament, 21 January 2016

PIA KJÆRSGAARD

/ Karen J. Klint

FINANSTILSYNET

Annex	B
Kammeradvokaten	

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Denmark
Att.: Thorvald Spanggaard

14 April 2016

Ref. MIT

Risk weight of exposures to EKF

In accordance with Article 4(1)(8) of regulation (EU) No 575/2013 of 26 June 2013 (CRR) a public sector entity is defined as: "a non-commercial undertaking that is owned by or set up and sponsored by central governments, regional governments or local authorities, and that has explicit guarantee arrangements, and may include self-administered bodies governed by law that are under public supervision".

If a public sector entity is rated, the exposures should be treated in accordance with rated institutions under Article 120, cf. Article 116(2). If a public sector entity is unrated, the rating of the central government in which the public sector entity is incorporated is applied.

In accordance with Article 116(4) public sector entities can be assigned a 0% risk weight: "In exceptional circumstances, exposures to public sector entities may be treated as exposures to the central government, regional government or local authority in whose jurisdiction they are established where in the opinion of the competent authorities of this jurisdiction there is no difference in risk between such exposures because of the existence of an appropriate guarantee by the central government, regional government or local authority".

The Danish FSA has decided that EKF can be treated as a public sector entity in accordance with Article 4(1)(8) and furthermore be assigned a 0% risk weight in accordance with Article 116(4).

Kind regards,

Minh Tuong

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