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Act no. 454 of 22 May 2006

The Danish Act on the European Cooperative Society (the Danish SCE Act)

BE IT KNOWN that the Folketing has enacted and We Margrethe the Second, by the Grace of God Queen of Denmark, have given Our Royal Assent to the following Act:

Part 1

Introductory provisions

1-(1) The provisions laid down in this Act shall apply to all European Cooperative Societies (SCEs) having their registered office in Denmark and to natural persons and legal persons involved in the formation of an SCE.

(2) The provisions governing branches in the Danish Public Companies Act shall apply to foreign SCEs operating through a branch in Denmark.

2-The head office of an SCE shall be situated in the Danish municipality of the SCE's registered office.

Part 2

Formation of SCEs

3-A legal person the head office of which is not in a member state of the European Union or the European Economic Area may participate in the formation of an SCE having its registered office in Denmark, provided such legal person

- 1) is formed under the law of a member state;
- 2) has its registered office in that member state; and
- 3) has a real and continuous link with a member state's economy.

4-(1) If the decision to form an SCE by merger is to be made by a general meeting at which the members of the cooperative have direct voting rights pursuant to its statutes, members who opposed the merger at the general meeting may resign from the cooperative provided the member has tendered his/her written resignation within four weeks of the general meeting. The merger shall not take effect with respect to the resigning members.

(2) If the decision to form an SCE by merger is to be made by a general meeting or another competent meeting of members at which the members of the cooperative do not have direct voting rights pursuant to its statutes, members may resign from the cooperative provided the member has tendered his/her written resignation within four weeks of the general meeting's decision. The merger shall not take effect with respect to the resigning members.

(3) If, prior to the voting at the general meeting or other competent meeting of members, the members were requested to indicate whether they intended to avail themselves of the right to resign pursuant to subsections (1) or (2) above, such right shall be subject to the relevant members having made such a declaration prior to the voting at the meeting.

(4) Retiring members are entitled to repayment of their personal accounts with the cooperative pursuant to the provisions of the statutes of the cooperative.

(5) The certificate to be issued pursuant to article 29(2) of the SCE Regulation attesting that all pre-merger acts and formalities have been completed may be issued when acceptable security has been provided with respect to retiring members' claims against the cooperative under subsection (4) above. Experts appointed by the court in the jurisdiction of the cooperative's registered office shall determine whether the security provided is acceptable. Where the experts' decision is brought before the court, this shall not delay issue of the certificate pursuant to article 29(2) of the SCE Regulation by the Danish Commerce and Companies Agency, unless otherwise determined by the court.

Part 3

Transfer of registered office of an SCE

5-(1) When an SCE's registered office is transferred to another member state pursuant to the provisions of the SCE Regulation, the cooperative's creditors and holders of other rights shall be invited to file their claims within not less than two months after publication of the transfer proposal on the computer information system of the Danish Commerce and Companies Agency. The transfer shall not be effected so long as filed claims that have fallen due have not been satisfied, and acceptable security has not been provided upon request for claims that have not yet fallen due or for disputed claims.

(2) In the event of disagreement between the cooperative and creditors who have filed claims or holders of other rights as to whether security must be provided or whether the security offered is sufficient, either party may, within two weeks of the claim being filed, bring the matter before the bankruptcy court in the jurisdiction of the cooperative's registered office to obtain a ruling on the issue.

(3) The provisions of subsections (1) and (2) above shall apply correspondingly to liabilities that have arisen during the period until two weeks after publication of the transfer proposal, but see subsection (4) below.

(4) The customs and tax administration may require acceptable security for claims for taxes and duties that have arisen or that may arise after publication of the transfer proposal until such time as the SCE transfers its registered office. The transfer proposal shall include information enabling the customs and tax administration to calculate claims for taxes and duties to be filed according to subsection (1) above.

(5) An SCE shall retain its name after publication of the transfer proposal with »under flytning« (under transfer) added to the name.

Part 4

Management of an SCE

SCEs with a two-tier management system

6-(1) In SCEs with a management organ and a supervisory organ (two-tier management system), cooperative practice and legislation in general applicable in cooperatives to the board of directors' overall management and the executive board's day-to-day management shall apply *mutatis mutandis* to the management organ, unless otherwise provided in subsection (3) below, rules laid down under subsection (5) below or other legislation.

(2) Where the cooperative practice and legislation identified in subsection (1) above contain a conflict between the requirements applicable to the board of directors' overall management and the executive board's day-to-day management, the requirements applicable to the board of directors' overall management shall be applied *mutatis mutandis* to the management organ, unless otherwise provided in rules laid down under subsection (5) below or other legislation.

(3) The management organ may appoint one or more managing director(s) to be responsible for the day-to-day management. Cooperative practice and legislation in general applicable in cooperatives to the executive board shall apply *mutatis mutandis* to managing directors, unless otherwise provided in rules laid down under subsection (5) below or other legislation.

(4) Cooperative practice and legislation in general applicable in cooperatives to the board of directors' supervisory powers, obligations and liability shall apply *mutatis mutandis* to the supervisory organ, unless otherwise provided in rules laid down under subsection (5) below or other legislation. The provision in the first sentence hereof shall apply correspondingly to any alternates for the members of the supervisory organ.

(5) To the extent allowed by the SCE Regulation, the Danish Minister for Economic and Business Affairs, or the relevant minister after negotiations with the Danish Minister for Economic and Business Affairs, may lay down rules to the effect that all or part of the provisions of subsections (1)-(4) above shall not apply to legislation falling within the sphere of the Danish Minister for Economic and Business Affairs or the minister in question.

7-(1) The supervisory organ shall have at least three members.

(2) The management organ shall have at least one member.

(3) A majority of the members of the management organ cannot be managing directors of the SCE.

SCEs with a one-tier management system

8-(1) In SCEs with an administrative organ (one-tier management system), cooperative practice and legislation in general applicable in cooperatives to the board of directors shall apply *mutatis mutandis* to the administrative organ.

(2) Subsection (1) above shall apply correspondingly to any alternates for the members of the administrative organ.

9-(1) The administrative organ shall have at least three members.

(2) A majority of the members of the administrative organ cannot be managing directors of the SCE.

(3) The administrative organ shall appoint at least one managing director to be responsible for the day-to-day management. Cooperative practice and legislation in general applicable in cooperatives to the executive board shall apply *mutatis mutandis* to managing directors.

Liability of SCEs for acts performed

10-An SCE shall not be bound vis-à-vis third parties in the cases referred to in article 47(2), second sentence of the SCE Regulation.

Part 5

General meeting

11-The first general meeting of an SCE shall be held not later than 18 months after the date of formation of the SCE.

12-If new arrangements for employee involvement, laid down pursuant to the Danish Act on Employee Involvement in SCEs, conflict with the current statutes of the SCE, the management or administrative organ of the SCE may amend the statutes to the extent necessary without any further decision from the general meeting.

Part 6

Winding up of the SCE

13-The Danish Commerce and Companies Agency shall decide that an SCE shall be wound up, if necessary under section 21(2) of the Danish Act on Undertakings Carrying on Business for Profit, if the SCE does not meet the SCE Regulation requirement that it must have its registered office and its head office in the same member state and such situation is not remedied before expiry of a deadline to be fixed by the Danish Commerce and Companies Agency.

Part 7

Filing and registration, etc.

14-(1) The Danish Commerce and Companies Agency shall handle the registration of SCEs whose registered office is situated in Denmark and shall handle the tasks set forth in article 78(2) of the SCE Regulation.

(2) The provisions of the Danish Public Companies Act on filing, registration and publication of documents and information shall apply, with the necessary changes, to SCEs having their registered office in Denmark.

15-(1) The Danish Commerce and Companies Agency shall have the power to lay down such rules as may be necessary for applying the regulations of the European Communities on SCEs.

(2) The Danish Commerce and Companies Agency shall have the power to lay down rules on filing and registration of SCEs and branches of SCEs registered in Denmark, filing fees, publication in connection with the filing, changes to information filed, extracts from the register, etc. The Danish Commerce and Companies Agency may provide for derogations pursuant to article 12(2) of the SCE Regulation for branches of foreign SCEs registered in Denmark.

16-(1) The management or administrative organ of the SCE, the competent management of a merging cooperative, or the competent management of a converting cooperative shall file with the Danish Commerce and Companies Agency the documents and information set forth in article 7(2), article 22(1), article 24(2), article 35(4) and article 76(4) of the SCE Regulation. The information and the receipt of the documents shall be publicised immediately on the computer information system of the Danish Commerce and Companies Agency.

(2) For mergers subject to section 204(1) of the Danish Financial Business Act, the information required under article 22(1) and article 24(2) of the SCE Regulation shall be filed solely with the Danish Financial Supervisory Authority. The Danish Financial Supervisory Authority shall publicise the information in the Danish Official Gazette (*Statstidende*).

17-(1) In the case of undertakings subject to supervision by the Danish Financial Supervisory Authority, the Danish Minister for Economics and Business Affairs shall have the power to submit oppositions pursuant to article 7(14) and article 21 of the SCE Regulation.

(2) Any opposition submitted by the Danish Minister for Economic and Business Affairs under subsection (1) above shall be communicated to the undertaking not later than two months after publication of a transfer proposal or draft terms of merger. The opposition shall also be publicised on the computer information system of the Danish Commerce and Companies Agency. However, any opposition to a merger that is subject to section 204(1) of the Danish Financial Business Act shall be publicised in the Danish Official Gazette by the Danish Financial Supervisory Authority.

(3) Opposition submitted by the Danish Minister for Economic and Business Affairs may be brought before the court in the jurisdiction of the cooperative's registered office within six months of the opposition being communicated to the undertaking.

18-(1) Decisions made by the Danish Commerce and Companies Agency pursuant to the SCE Regulation, the Act or orders and regulations issued under the Act may be appealed to the Companies Appeal Board within four weeks of the decision being communicated, but see subsection (2) below.

(2) Decisions by the Danish Commerce and Companies Agency on deadlines and decisions made pursuant to section 13 hereof may, however, not be appealed to any other administrative authority.

Part 8

Penalty provisions, etc.

19-(1) Any violation of section 5(4) of this Act and article 4(3), fourth sentence, and subsection (12), article 10(1), second sentence, and subsection (2), article 14(4), first sentence, article 37(1), article 39(1), article 42(1), article 49 and article 62 of the SCE Regulation shall be punishable by a fine, unless a stricter penalty is prescribed by other legislation.

(2) Orders and regulations issued under the Act may stipulate a fine for violating such orders and regulations.

(3) Companies and other entities (legal persons) may be criminally liable pursuant to the provisions of part 5 of the Danish Criminal Code.

20-Any violation of legislation which, pursuant to the SCE Regulation or sections 6, 8 or 9 of this Act, applies to

1) an SCE

2) a branch of a foreign SCE, or

3) a person in relation to an SCE or a branch of a foreign SCE

shall be punishable in the same way as violations committed by companies, persons and other entities falling directly within the scope of the relevant legislation.

21-(1) Where the administrative organ, managing directors, supervisory organ, management organ, auditor or liquidator of an SCE or the manager of the branch of a foreign SCE fail(s) to timely fulfil obligations vis-à-vis the Danish Commerce and Companies Agency pursuant to the SCE Regulation, the Act or provisions laid down under the Act, the Agency may seek to enforce compliance by imposing daily or weekly default fines on the relevant person(s).

(2) Where the administrative organ, managing directors, supervisory organ, management organ, auditor or liquidator of an SCE or the manager of the branch of a foreign SCE fail(s) to timely fulfil obligations pursuant to legislation which according to the SCE Regulation or sections 6, 8 or 9 of this Act apply to such organs or persons, default fines may likewise be imposed on the relevant organs or persons in the same way as on companies, persons and other entities falling directly within the scope of the relevant legislation.

Part 9

Coming into force, etc.

22-This Act shall enter into force on 18 August 2006.

23-The Danish Act on Commercial Enterprises' Presentation of Financial Statements, etc. (the Danish Financial Statements Act), cf. Consolidation Act no. 196 of 23 March 2004, as amended by section 2 of Act no. 364 of 19 May 2004, section 4 of Act no. 491 of 9 June 2004,

section 66 of Act no. 430 of 6 June 2005, section 77 of Act no. 431 of 6 June 2005, section 3 of Act no. 604 of 24 June 2005 and section 1 of Act no. 245 of 27 March 2006, shall be amended as follows:

1. In *paragraph 3 of section 3(1)*, the word »and« shall be deleted.

2. In *paragraph 4 of section 3(1)*, »section 4 of this Act.« shall be amended to read: »section 4 of this Act, and«.

3. In *section 3(1)* the following shall be inserted as *paragraph 5*:
»5) European cooperative societies (SCEs).«

4. In *section 3*, the following shall be inserted as *subsection (4)*:

»(4) The provisions of sections 8-10, 98 b and 160 and paragraphs 2 and 3 of section 162(1) shall apply correspondingly to the supervisory organ of SCEs with a two-tier management system. The »senior management body« in Schedule 1, B. Groups, 4. Parent, paragraph 2, shall mean the supervisory organ in SCEs with a two-tier management system.«

5. In *section 159(1), first sentence*, the following shall be inserted after »the Danish Act on Undertakings Carrying on Business for Profit,«: »the Danish SCE Act, Council Regulation on the Statute for a European Cooperative Society (SCE),«.

24-Danish Act no. 363 of 19 May 2004 on the European Company (the Danish SE Act), as amended by section 12 of Act no. 1383 of 20 December 2004 and section 5 of Act no. 246 of 27 March 2006, shall be amended as follows:

1. In *section 7(3)*, »after publication of the transfer proposal.« shall be amended to read: »after publication of the transfer proposal, but see subsection (4) below.«

2. In *section 7*, the following new subsection shall be inserted after subsection (3):

»(4) The customs and tax administration may require acceptable security for claims for taxes and duties that have arisen or that may arise after publication of the transfer proposal until such time as the SE transfers its registered office. The transfer proposal shall include information enabling the customs and tax administration to calculate claims for taxes and duties to be filed according to subsection (1) above.«

Subsection (4) shall be renumbered as subsection (5).

3. In *section 7(4)*, which becomes subsection (5), the word »flytningsplanen« shall be changed to: »flytteplanen« in the Danish version of the Act.

4. In *section 21(1)*, »subsection (4)« shall be changed to: »subsection (5)«

25-This Act does not apply to the Faroe Islands and Greenland.

Given at Christiansborg Castle on 22 May 2006

Under Our Royal Hand and Seal

In the Name of the Queen
FREDERIK
Crown Prince

/Bendt Bendtsen