

### 3.11 DENMARK

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#### I. FRAMEWORK

In Denmark the legal basis for covered bond issuance is the Danish Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act (the "Mortgage Act") (*Lov om realkreditlån og realkreditobligationer mv.*) and the Danish Financial Business Act (*Lov om finansiel virksomhed*). The Mortgage Act is applicable only to Danish mortgage banks. The mortgage banks are specialised banks. The Capital Requirements Regulation (CRR) is directly applicable to the commercial banks and the mortgage banks.

Specific bankruptcy regulations laid down in the Financial Business Act and the Mortgage Act prevail over general bankruptcy regulations (sections 247a-247i of the Financial Business Act and sections 22-33 of the Mortgage Act).

#### II. STRUCTURE OF THE ISSUER

The Danish Financial Supervisory Authority (FSA) may license mortgage banks, commercial banks and ship financing institutions<sup>1</sup> to issue covered bonds.

Until 1 July 2007, only mortgage banks were allowed to issue mortgage covered bonds. Since this date, also commercial banks can obtain a license to issue covered bonds.

The Danish legal basis for covered bonds was amended in 2021 to transpose the Covered Bonds Directive (CBD) and the changes are applied as of 8 July 2022.

There is three types of Danish covered bonds:

- > Særligt Dækkede Obligationer (SDOs) issued by either commercial or mortgage banks. SDOs are both CBD and CRR compliant (Article 129). This is a "European Covered Bond (premium)".
- > Særligt Dækkede Realkreditobligationer (SDROs) issued exclusively by mortgage banks. SDROs are both CBD and CRR compliant (Article 129). This is a "European Covered Bond (premium)".
- > Realkreditobligationer (ROs) issued exclusively by mortgage banks. ROs are CBD compliant). This is a "European Covered Bond".

All SDOs and SDROs issued before 8 July 2022 have also maintained their covered bonds status being both CBD and CRR (Article 129) compliant and ROs issued after 1 January 2008 and before 8 July 2022 are CBD compliant.

Danish mortgage banks operate subject to a specialist banking principle in accordance with Danish legislation, which confines the activities of issuers to the granting of mortgage loans funded by the issuance of covered bonds. The cover pool may include unsecured loans to public authorities and guarantees issued by public authorities, but this is rarely used. Mortgage banks may also carry on other business related to mortgage banking.

The specialist banking principle implies that mortgage banks are confined to granting loans that meet the requirements for cover assets imposed by legislation. Similarly, the funding sources are limited to ROs, SDOs and SDROs. This is due to the fact that Danish mortgage banks are not allowed to accept deposits, etc. as a source of funding, cf section 8 of the Financial Business Act.

The issuer (mortgage bank or commercial bank) holds the cover assets on its balance sheet as well as all rights under the cover assets. Bonds and cover assets are assigned to individual capital centers in mortgage banks and to registers in commercial banks. The individual bonds, however, are not linked to individual mortgage loans.

<sup>1</sup> Ship financing institutions are regulated by the Act on a Ship Financial Institute (Consolidating Act no 1780 – 12 December 2018 and amended rules in 2021)

### III. COVER ASSETS

Assets eligible as the basis for mortgage covered bond issuance:

SDO	SDRO	RO
<ul style="list-style-type: none"> <li>&gt; Loans secured by real property</li> <li>&gt; Exposures to public authorities</li> <li>&gt; Exposures to credit institutions (up to a maximum of 15% (CQS 1)/10% (CQS 2) and total exposures not exceed 15%)</li> <li>&gt; Collateral in ships (not an option for mortgage banks)</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Loans secured by real property</li> <li>&gt; Exposures to public authorities</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Loans secured by real property</li> <li>&gt; Exposures to public authorities</li> </ul>

To serve as cover assets, mortgages must be entered in the Danish land register, which is kept by the Danish district courts. Land and loan registration has been digital since 2009 with faster and more efficient handling of customers' loans as a result.

The mortgage loans are originated in a mortgage bank or a credit institution in the same group (use of intra-group pooled covered bond structures in CBD), or transferred to a mortgage bank according to a structure in which the mortgage bank has knowledge of and is responsible for correct valuation of the mortgaged property and verification of the debtor's creditworthiness and ability to pay (joint funding in CBD).

The difference between funding and lending may be hedged through derivatives, which are included in the cover pool assets. Counterparties in derivative contracts in the cover pool shall fulfil credit quality step 1 or 2.

In a capital centre in a mortgage bank the cover pool is dynamic as a result of the current addition and disposal of loans in connection with the granting and repayment of loans. In most capital centers assets may exclusively be transferred to or from the cover pool upon new lending and (p)repayment. On (p)repayment, the corresponding amount of issued bonds will be redeemed from the capital center. Each mortgage loan (cover asset) refers to specific ISIN codes and both cover assets and ISIN codes are assigned to specific capital centers. It is therefore not possible for the issuer to (i) change the cover pool unless in connection with new lending and (p)repayment nor (ii) transfer cover assets between different cover pools. Cover assets must be identifiable, and the FSA supervises cover asset identification.

### IV. VALUATION AND LTV CRITERIA

The financial legislation contains provisions on property valuation. Valuations are based on the market value of a property.

#### LTV limits – an overview

Loan Type / Property category	SDO	SDRO	RO
Residential property	80% or 75% <sup>1)</sup>	80% or 75% <sup>1)</sup>	80%
Holiday property	75% <sup>2)</sup>	75% <sup>2)</sup>	75% <sup>2)</sup>
Agricultural property	60% <sup>3)</sup>	60% <sup>3)</sup>	70%
Commercial property	60% <sup>3)</sup>	60% <sup>3)</sup>	60%

Note: 1) 80% for loans issued with up to 30 years maturity and 10 years interest-only period and 75% for loans with an unlimited maturity and interest-only period.

2) 75% for holiday property for private use. The LTV limit is 60% for holiday property for commercial use.

3) The LTV can be raised to 70% if the bank adds additional collateral.

In connection to the issuance of SDOs and SDROs, mortgage banks and commercial banks must ensure continuous LTV compliance – i.e. not just at disbursement of the loan as is the case for ROs. Where an LTV ratio exceeds the statutory limits, the bank must add supplementary collateral to the capital center/register. Otherwise, the issues may lose their status as SDOs or SDROs.

Mortgaged property is valued (on-site inspection) as part of the processing of loan applications. When a loan is granted, the LTV thereof is assessed on a case-by-case basis. A basic principle of the valuation regulations is that valuations must be performed by a valuation officer of an issuer. Provided that a number of conditions are met, valuations may be outsourced. AVMs may also be used if approved by the Danish FSA and most Danish mortgage banks have got an approval to use own models. The detailed conditions for valuation are set out in the financial legislation.

#### **V. ASSET – LIABILITY MANAGEMENT**

The financial legislation and the Executive Order on bond issuance, balance principle and risk management require mortgage banks and commercial banks to observe a balance principle and a set of rules on risk management in connection with the issuance of RO, SDRO and SDO. The mortgage banks and commercial banks should also observe a nominal coverage requirement and that all payment obligations of covered bonds are covered by claims for payment attached to the cover assets.

The Executive Order provides limits to the scope of differences allowed on one hand the payments from borrowers and on the other hand the payments to the holders of the issued ROs, SDROs and SDOs. The limits are adjusted by loss limits to the interest rate, foreign exchange, option and liquidity risks that follow from cash flow differences in the balance sheet. The Executive Order also contains a number of other provisions limiting financial risk.

For commercial banks, the balance principle is applicable at register level. For mortgage banks, the balance principle is applicable at the level of the individual capital centers and the banks in general.

Despite the risk limits of the balance principle, Danish mortgage banks have in practice structured their mortgage lending business in such a way that they do not assume significant financial risks with respect to mortgage lending and funding. Thus, the mortgage banks have nearly eliminated interest rate risk, foreign exchange risk and prepayment risk.

Since mortgage bond issuance is the only eligible funding source for Danish mortgage banks, issuance takes place on a daily basis. The mortgage bank commonly achieves this through *tap issuance*. Each loan is closely matched to the future cash flow of one or several specific ISIN codes currently open for issuance. On any given banking day, the mortgage bank calculates the bond amounts to be tapped in the relevant ISINs corresponding to the loans disbursed that day. These bond amounts are then issued and sold to investors. These simple principles ensure that the balance principle is maintained day by day and minimises the subsequent need for active asset-liability management.

A typical mortgage ISIN is open for tap issuance for several years after opening. Issuance trades are executed alongside with other trades in a unified, highly liquid and tightly priced market. Thus, there is no strict distinction between primary and secondary markets in the Danish system.

The Danish commercial banks too, are subject to the strict ALM rules. In practice the commercial banks operate under a general asset and liability management and do not offer pass-through products.

Both mortgage banks and commercial banks are required to maintain a liquidity buffer requirement for the next 180 days. It is with the exception that the requirement does not apply to covered bonds subject to match funding and the calculation of the principal for extendable maturity structures can be based on the final maturity date.

Refinancing risk in a situation where a mortgage bank is unable to complete the refinancing of matured bonds on market terms is addressed in the legislation. The regulation applies to covered bonds where the loan term is longer than the maturity of the bond used to fund it and contains a soft bullet mechanism controlled by two triggers: a refinancing failure trigger and an interest rate trigger. The refinancing trigger automatically extends the maturity of the covered bonds by 12 months at a time in case the issuer is unable to refinance maturing covered bonds by new issuance. The mechanism is not exercisable at discretion of the issuer, but it is conditional on the specific market event of “no refinancing”. The interest rate trigger, which applies solely to bond maturities of 2 years or less, comes into effect in case of a 5% point bond yield increase over the last year before ordinary maturity. This trigger may extend the bond maturity by 1 year. For the Danish commercial banks issuing covered bonds there are also rules governing extendable maturity structures.

According to the legislation, there is a requirement of minimum 2% overcollateralization (OC) for Danish mortgage banks and commercial banks issuing SDOs and SDRs.

Furthermore, according to the legislation, the capital base without any buffers must represent at least 8% of risk-exposure amount (REA). Mortgage banks must observe the capital adequacy requirement both at individual capital center level and at the level of the institution.

## **VI. TRANSPARENCY**

A high level of transparency is an important characteristic of the Danish covered bond market. The Danish covered bond issuers publish information via many different platforms, such as prospectuses, investor reports, trading venues, standardised transparency templates and issuers’ investor relations websites. Information is thus easily accessible.

As part of the ECBC Label Initiative, the Danish issuers report information in the standardised format in the Harmonised Transparency Template (HTT). In addition, the Danish market participants have gathered available information and consolidated it in an intuitive and user-friendly structure in a national transparency template (NTT).

## **VII. COVER POOL MONITOR AND BANKING SUPERVISION**

Specialised supervision of covered bond issuers is carried out by the Danish FSA (Denmark has not joined the single supervisory mechanism – SSM). The FSA supervises compliance with the legislative framework for carrying on mortgage banking activities and thereby the issuance of covered bonds.

The issuer monitors the cover pool continuously. Data from every single loan offer from the Danish mortgage banks and thus all property valuations for new lending purposes are reported to the FSA on a quarterly basis. The FSA performs random checks of mortgage banks’ valuations by way of on-site inspections and by checks of the internal valuation reports and which other property has been used as reference to the basis for the valuation. In the Danish mortgage model where loans are originated, serviced and redeemed directly in the cover pool, there is no need for monitoring other than as provided by the FSA.

The commercial banks report on a quarterly basis to the FSA on the assets in the register. The statement of the registered assets must be verified by the external auditor of the bank.

Issuers are also required to prepare comprehensive reports on asset-liability management for the FSA on a quarterly basis. The FSA must be informed of any balance principle breaches or if the capital requirement is not observed without delay.

## **VIII. SEGREGATION OF COVER ASSETS AND BANKRUPTCY REMOTENESS OF COVERED BONDS**

### **Capital centres of mortgage banks (regardless of whether the issuer has issued ROs, SDRs or SDOs)**

The rules for resolving a mortgage bank are detailed and well considered. The main considerations are to ensure (i) that bond investors receive timely payments and (ii) that the rights of borrowers are not prejudiced materially.

Balance sheets of Danish mortgage banks are structured with a number of separate capital centres (cover pools) out of which covered bonds are issued. A capital centre consists of a group of series in which covered bonds backed by an equivalent amount of mortgage loans (match funding) are issued and a joint series reserve fund (equity). In addition, supplementary capital (senior secured debt/Section 15 bonds) may be issued out of the capital centre for overcollateralisation purposes.

If a mortgage bank is declared bankrupt, a trustee in bankruptcy is appointed. The Danish FSA may declare a mortgage bank bankrupt.

The trustee must seek the most efficient administration of the estate, having regard to the fact that the position of covered bond investors and borrowers must remain essentially as if the capital centre had still been a going concern. If a mortgage bank is declared bankrupt, no acceleration therefore takes place in respect of covered bond investors or borrowers. This is the key principle. It is only possible because the mortgage system is structured around capital centres that offer very high statutory collateral for bonds based on ring-fenced, bankruptcy-remote capital centres and match-funded lending.

Winding-up is not fast, but orderly, with a minimum of changes for both bond investors and borrowers. No public funds are used for such winding-up, as borrowers' ongoing payments are passed through to bondholders. Holders of hybrid core capital and subordinate loan capital cannot use the bankruptcy of a mortgage bank as grounds for a claim of default. Similar rules apply to counterparties to financial instruments used to hedge risk in a capital centre.

If a mortgage lender is declared bankrupt, the assets, after deduction of estate administration costs, will be segregated to satisfy bond holders, etc., in accordance with their legal position as secured creditors. Covered bond holders have a primary secured claim against all assets in the cover pool. Counterparties to financial instruments used to hedge risk in a capital centre rank *pari passu* with covered bond holders in the relevant capital centre.

Proceeds from loans raised for the purpose of overcollateralisation (senior secured bonds/Section 15 bonds) will serve to satisfy the claims of covered bond holders in case of bankruptcy.

The EU Bank Recovery and Resolution Directive (BRRD) has been implemented in Danish regulation and came into force on 1 June 2015. The bail-in tool does not apply to covered bonds (SDO, SDRO and RO) and senior secured debt/Section 15 bonds. While exempt from bail-in, the Danish mortgage banks is subject to a debt buffer of unweighted loans. The minimum level of the buffer is 2%. For systemic mortgage banks and mortgage banks being part of a systemic financial group, a higher buffer requirement may be set. The total amount of the capital requirement and debt buffer (and MREL requirement) should always be at least 8% of total liabilities (at consolidated level). The higher level of the buffer will be phased in by 2022.

In case of resolution the debt buffer can be used by the resolution authority (in Denmark the resolution authority is Finansiel Stabilitet) to capitalise the mortgage banks when using BRRD resolution tools other than the bail-in tool. These tools can only be used according to the principle of "no-investor-worse-off". Otherwise the winding-up will be handled according to the abovementioned principle.

### **Commercial bank registers**

A commercial bank sets up a register segregating assets, which exclusively serve as SDO cover assets.

As is the case with mortgage banks, derivative counterparties have a primary preferential right in line with the SDOs provided that the derivatives contract stipulates that the suspension of payments or bankruptcy of a commercial bank does not constitute an event of default. Bonds issued to secure assets as compensation for LTV excess or overcollateral in general (also referred to as Section 15 bonds or senior secured bonds) have a secondary preferential right to all assets of the register.

The register is kept by the commercial bank and must at all times contain all assets, guarantees received and derivatives contracts, clearly individualised. The commercial bank must submit statements of the assets to the FSA. The external auditor must perform continuous regular control of the register and at least twice a year make unannounced register audits.

Where the FSA suspends the license of a commercial bank to carry on banking business, the FSA or the bank files a bankruptcy petition, or the bank is adjudicated bankrupt following the petition of a third party, the FSA will decide whether the register is to become subject to administration by an administrator as an estate in administration. The administrator (and not the ordinary trustee) will be in charge of the assets of the register.

Any unsatisfied residual claims by SDO holders and derivative counterparties against the register may be proved against the assets available for distribution of the commercial bank as ordinary claims. Residual claims from Section 15, bonds or senior secured bonds may also be proved as ordinary claims against the assets available for distribution.

## **IX. RISK-WEIGHTING AND COMPLIANCE WITH EUROPEAN LEGISLATION**

SDOs, SDROs and ROs fulfil the CBD. SDOs and SDROs also fulfil the requirements of Article 129 CRR. ROs issued before 1 January 2008 maintain the low risk weighting of 10% throughout the maturity of the bonds in accordance with the grandfathering option under the CRR. ROs issued after 1 January 2008 carry a risk weight of 20%. ROs, SDOs and SDROs are eligible for repo transactions and may be used as collateral for loans with the Danish central bank (Danmarks Nationalbank). Under the LCR the largest RO, SDO and SDR series qualify as assets of the highest quality (Level 1 covered bonds).

When investing in ROs, SDOs and SDROs, the Danish investment legislation allows UCITS, to exceed the usual limits on exposures to a single issuer (cf. the Act on Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc.).

**Issuers:** Covered bonds backed by real estate collateral are primarily issued by the specialised mortgage banks: Jyske Realkredit a/s, DLR Kredit A/S, Nordea Kredit Realkreditaktieselskab, Nykredit Realkredit A/S (incl. Totalkredit A/S), Realkredit Danmark A/S. At the end of 2021 the mortgage banks' outstanding volume of covered bonds was around EUR 426 bn. Danske Bank A/S is the only commercial bank issuing covered bonds. Danske Bank has issued non-pass-through (euro-style) covered bonds of a value of around EUR 22.5 bn. Danish Ship Finance is the only Danish issuer of covered bonds backed by ship loans. The outstanding volume of covered bonds backed by ships as collateral was around EUR 6.1 bn by year end 2021.



**COVERED BOND LABEL:** Jyske Realkredit A/S (1 pool), Danske Bank A/S (3 pools), DLR Kredit A/S (1 pool), Realkredit Danmark A/S (2 pools), Danish Ship Finance A/S (2 pools), Nordea Kredit Realkreditaktieselskab A/S (2 pools), Nykredit Realkredit A/S (2 pools).

**For the most up-to-date information, please consult the new ECBC Covered Bond Comparative Database webpage on the Covered Bond Label website [www.coveredbondlabel.com](http://www.coveredbondlabel.com).**

In the context of the transposition of the Covered Bond Directive (the final deadline for which was 8 July 2022), the ECBC has undertaken a full review and update of the Covered Bond Comparative Database to take account of the latest regulatory developments. This unique reference tool can be accessed via the link hosted on the Covered Bond Label website ([www.coveredbondlabel.com/legislation/comparative\\_database](http://www.coveredbondlabel.com/legislation/comparative_database)).

For further national information on the Danish market, please see [compare.coveredbondlabel.com/frameworks](http://compare.coveredbondlabel.com/frameworks). To access the "Country Comparison" feature of the database, please see [compare.coveredbondlabel.com/compare/select/frameworks](http://compare.coveredbondlabel.com/compare/select/frameworks).