

KREDITTILSYNET

Norway

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Act on Financial Contracts and Financial Assignments (Financial Contracts Act)

Chapter 1 General rules

Section 1 Scope

(1) This Act applies to contracts and assignments concerning financial services with financial institutions or similar institutions unless otherwise provided by or pursuant to law.

(2) In this Act "similar institution" means a

- a) state bank
- b) finance broker
- c) financial agent or financial adviser
- d) co-operative undertaking
- e) pension scheme encompassed by the Insurance Activity Act (No. 39 of 10 June 1988)
- f) institution to which the Act applies under regulations pursuant to the fourth paragraph a)
- g) Postbanken BA

(3) The Act does not apply between two parties which are both financial institutions or similar institutions and are acting in this capacity.

(4) The King may lay down regulations concerning the scope of this Act, including provisions to the effect that

- a) the Act shall apply entirely or in part to institutions other than those mentioned in the first paragraph
- b) certain provisions of the Act shall not apply to certain institutions.

Section 2 Invariability

(1) The Act may not be dispensed with by a contract that is detrimental to a consumer. "Consumer" means a physical person for whom the main purpose of the contract is not related to business activity.

(2) Where the institution's customer is not a consumer, the Act yields to a contract, established practice between the parties or other custom or practice that is regarded as binding

between the parties. The provisions of sections 14, 16, 20 first sentence, 21 third paragraph, 27, 28, 41 and 61 and chapters 5 and 6 may, however, not be dispensed with to the detriment of the customer. The provisions of chapter 3 may not be dispensed with to the detriment of the borrower if the borrower is a physical person, and loans or similar credit are secured by mortgage on property belonging to the borrower unless the property is primarily linked to the borrower's business activity.

(3) A provision which cannot be dispensed with to the detriment of a consumer may not be set aside by agreement that a foreign law shall be applied.

Section 3 Application of Norwegian law

Where a consumer domiciled in Norway has entered into a contract with an institution domiciled in another country, Norwegian law shall apply to the contract if

- a) the institution has made an offer to the consumer or marketed the service in this country, and the consumer has done what is necessary to ensure that the contract can be entered into
- b) the institution or a commission agent, agent or other representative for the latter or a broker in this country has received the consumer's offer, acceptance or order placement, or
- c) the contract has been entered into by the consumer after a trip abroad in connection with the acquisition of real property or chattel or to finance the acquisition, and the trip was arranged by the institution, or by the seller in concert with the institution.

Section 4 Consideration by a mediation board

(1) One or more boards for dealing with disputes concerning financial contracts may be established by agreement between a financial institution or similar institution or an organisation for such institutions on the one hand, and the Consumer Council or other organisation representing the institution's customers on the other.

(2) The parties may submit the contract to the King for approval. If the King has approved the board's statutes, the provisions of the third to fifth paragraph shall apply.

(3) The customer may demand that any dispute which the board is competent to deal with shall be dealt with by the board provided the customer has an objective interest in obtaining the board's views in the case. A dispute concerning wrongful debiting of an account or wrongful use of a payment instrument, cf. section 37, may also be brought before the board by the institution.

(4) So long as a dispute is before the board, neither party may bring it before the ordinary courts of law. The provision of the first sentence shall not, however, be an obstacle to enforcement or temporary attachment under the provisions of the Enforcement Act.

(5) A case whose substance has been considered by the board may be brought directly before a district or town court.

Cf. EEA agreement annex IX and XIV (dir 97/5 article 10).

Section 5 *Agreement concerning dispute resolution*

(1) A financial contract with a consumer shall contain details of a dispute-resolution arrangement as mentioned in section 4. A consumer may not renounce the right to demand consideration of a dispute by the board.

(2) A consumer may not agree to arbitration in advance. Nor, unless provided for by law, may a consumer decide on a legal venue other than those prescribed by law.

Section 6 *Cancellation of mortgage charges etc.*

(1) When a claim has been redeemed or has otherwise lapsed, the creditor shall ensure that any mortgage or other security for the claim is cancelled or released, provided no other agreement has been made in connection with the redemption. Any surety bond shall be returned to the guarantor.

(2) Any promissory note or other document that has served as proof of the lender's claim shall be invalidated and returned to the borrower.

Section 7 *Breach of other contracts*

(1) The institution may not, in a financial contract with a consumer, reserve the right to rescind or terminate the contract or to consider a claim pursuant to the contract as having fallen due because the customer has defaulted on another contract or claim.

(2) If the customer has clearly acted contrary to honesty and good faith vis-à-vis the institution, the institution has such right as is mentioned in the first paragraph regardless of whether or not a reservation has been included in the financial contract. The same applies to other institutions within the same group provided such right is based on objective grounds.

Section 8 *Use of electronic communication and electronic media*

(1) Requirements in or pursuant to this Act to the effect that information or notices shall be in writing shall not prevent the use of electronic communication where this is desired by the customer.

(2) Requirements in or pursuant to this Act to the effect that a contract shall be in writing shall not prevent the contract being entered into by means of an electronic medium where this is desired by the customer, and

- a) the content of the contract is in its entirety available to the customer upon entering into the contract, and
- b) a satisfactory method has been used to authenticate the entering into a contract with the content specified.

Cf. EEA agreement annex IX and XIX (dir 97/5 article 3 and 5).

Chapter 2 Deposits and payment assignments

I. Introductory provisions

Section 9 Scope

(1) This chapter applies to contracts concerning deposits and to the use of deposit accounts in financial institutions or similar institutions as mentioned in section 1 second paragraph. Where a credit arrangement is linked to a deposit account, the rules of chapter 3 also apply.

(2) The provisions of part VI apply to the relationship between the payer and the recipient in connection with payment transfers.

(3) The King may issue regulations laying down special rules for payment assignments to and from other countries.

(4) The King may issue regulations laying down special rules on domestic foreign exchange transactions. Section 27 and section 41 second paragraph apply only in connection with domestic foreign exchange transactions where this is provided for in such regulations.

In force on 1 July 2000, except for subsection 3 which goes into force immediately according to Res. No. 702 of 25 June 1999.

Section 10 Special types of deposit

(1) The provisions concerning deposits in this chapter do not apply to

- a) insurance contracts
- b) pension savings contracts
- c) contracts concerning deposits with securities funds.

(2) The provisions concerning deposits in this chapter apply correspondingly to loans raised by financial institutions or similar institutions, except

- a) loans in the form of bearer bonds and certificates
- b) subordinated loans.

Section 11 Payment assignments not charged to a deposit account

(1) The provisions of sections 12, 13, 14, 28, 29 second paragraph and part V, VI and VII shall apply correspondingly to payment assignments which are not to be charged to a deposit account.

(2) The provisions of this chapter do not apply to prepaid electronic cards if the card cannot be used to operate a deposit account. The King may issue regulations laying down special rules for prepaid electronic cards.

Section 12 Definitions

In this chapter

- a) *payment assignment* means an assignment concerning withdrawal or transfer of means of payment

- b) *means of payment* means banknotes and coins (cash), and deposits and credit on an account with a financial institution or a similar institution which can be operated by means of payment instruments
- c) *payment instrument* means cheque, giro form, payment card or other specific means of withdrawing or transferring means of payment
- d) *payment card* means electronic or manually utilised withdrawal, debit and credit cards or similar cards for withdrawing or transferring means of payment
- e) *working day* means each of the weekdays from Monday to Friday inclusive except public holidays.

Section 13 *General conditions*

(1) The general conditions applied by an institution to deposits and payment assignments shall be kept available for customers at premises where customers are served.

(2) General conditions for payment assignments shall state the highest number of working days for carrying out payment assignments.

Section 14 *Refusing customers*

(1) The institution may not refuse to accept a deposit or perform a payment assignment on ordinary terms without giving an objective reason.

(2) The customer shall be notified of a refusal without undue delay unless otherwise provided in or pursuant to law. Notification of refusal shall contain details of the dispute resolution arrangement that has been established under section 4.

II. The contract

Section 15 *Information requirement etc.*

(1) The institution shall guide the customer's choice between the various types of deposit accounts that it offers.

(2) Before an account contract is entered into with a consumer, the institution shall inform the customer of the following in writing

- a) nominal annual interest rate, and, for accounts other than current accounts mentioned in section 30 second paragraph second sentence, representative examples of the effective interest rate
- b) costs of opening, maintaining or closing the account, the payment instrument attached to it or to another part of the account relationship
- c) costs that accrue in operating the account and the payment instruments attached to it
- d) rules for how the account and the payment instruments attached to it may be operated, including identification requirements
- e) the rule concerning complaints in section 37 first paragraph
- f) restrictions on the account-holder's right to summarily terminate the contract and withdraw moneys from the account, cf. sections 21 first paragraph and 24 third paragraph
- g) liability and risk in connection with operation of the account and with others' wrongful operation of it

- h) the date for crediting of interest, provided interest is not credited at the end of the year
- i) rules governing deposit guarantee.

(3) Information in writing giving details as mentioned in the second paragraph shall be available to all customers. Brochures and similar marketing material concerning deposits and payment assignments shall in all cases contain details as mentioned in the second paragraph a), b), c), f) and h).

Section 16. The account contract

(1) The account contract shall be in writing. It shall contain the name and address and population register number or organisation number of the account-holder and any person who is to operate the account. If such a number does not exist, the date of birth or other unambiguous identification shall be employed.

(2) The account contract shall contain information as mentioned in section 15 second paragraph a) to i). An account contract with a consumer shall contain details of the dispute resolution arrangement that has been established pursuant to section 4. Information as mentioned in section 15 second paragraph that the institution has given before the contract was entered into shall in all cases be regarded as part of the account contract.

(3) A term or condition not included in the account contract is not binding on the account-holder unless the institution proves that the term or condition has been accepted by the account-holder.

(4) The institution shall give the account-holder a copy of the contract or make the contract available to the account-holder by other means.

(5) The King may lay down further rules concerning requirements as to the content of the account contract and on implementation and delimitation of the information requirement pursuant to section 15.

Cf. EEA agreement annex IX and XIX (dir 97/5 article 8.2) as regards subsection (2).

Section 17 Bearer clause

A deposit book may not contain a condition to the effect that the institution may with exempting effect pay out money to the person bearing the deposit book (bearer clause).

Section 18 Changes to the account contract

(1) Where the parties have agreed to change the account contract, sections 15 and 16 apply insofar as appropriate.

(2) The institution may not, in an account contract with a consumer, reserve the right to unilaterally change the terms of the contract to the detriment of the account holder, except

- a) to lower the interest rate
- b) to raise charges for maintaining or operating the account or payment instrument attached to the account.

(3) The institution may, irrespective of whether a reservation has been included in the account contract, raise the rates of interest payable on overdrafts and for reminders in the event of wrongful overdrafts.

Section 19 Notification of unilateral changes to the terms of the contract

(1) Changes in the terms of the account contract to the detriment of the account holder may be implemented no earlier than two weeks after the institution has sent notification of the change in writing to the account holder.

(2) Notification of changes in interest rates and charges shall contain information on

- a) the nature of the changes
- b) the account holder's right to terminate the contract and to be paid the credit balance on the account with the addition of accrued interest, and in that connection what rules apply as regards termination charges and prepaid period charges.

(3) Notification of the change may be included in a statement of account.

(4) In the case of types of deposit account other than current accounts as mentioned in section 30 second paragraph second sentence, notification may be omitted where the balance on the account is below NOK 1,000 unless the King issues regulations stipulating a different amount.

Section 20 Termination charge

The institution may only demand payment (charge) for terminating the account relationship or parts thereof where this is provided for in the account contract. Where the customer is a consumer, details of the charge must have been provided in advance, cf. section 15 second paragraph b). The size of the charge shall not exceed the estimated costs of termination.

Section 21 Termination and cancellation by the account holder

(1) Unless otherwise agreed, cf. section 24 third paragraph, the account holder may terminate the account without prior notification in order to wind up the account relationship.

(2) A provision of the account contract that restricts the account holder's right to terminate the contract cannot be enforced if the institution unilaterally changes the terms of the contract to the detriment of the account holder, cf. section 18 second paragraph, and the account holder terminates the account relationship within four weeks of the dispatch of notification pursuant to section 19 to the account holder.

(3) Irrespective of what has been agreed in the account contract, the account holder may cancel the contract if the institution is guilty of material breaches of the information requirement or of the account contract. A demand for cancellation must be presented within a reasonable period of the point at which the account holder became or should have become aware of the ground for cancellation.

(4) Where the account relationship is closed pursuant to the third paragraph, the account holder is entitled to be paid the amount in the account with accrued interest and without deduction of a charge as mentioned in section 20. The same applies where the institution makes a not insignificant change in rates of interest or charges and the account holder closes the account within the time-limit mentioned in the second paragraph. The account holder is in these cases also entitled to be reimbursed a pro rata amount of any prepaid period charge.

Section 22 *Termination and cancellation by the institution*

(1) The institution may terminate the contract in writing with at least four weeks' notice where there is an objective reason for doing so and where a longer lock-in period has not been agreed. The ground for termination shall be stated. Section 21 fourth paragraph applies correspondingly.

(2) The institution may cancel the contract in writing in the event of a material breach by the account holder. The ground for cancellation shall be stated.

Section 23 *Dormant account*

(1) Where no deposits have been made to, or withdrawals from, a deposit account for 10 years, the institution shall report the fact in a registered letter to the last known address of the account holder or the account holder's heirs. The letter shall state the date on which the period of limitation under the Limitation Act section 4 commences, when it expires, and what is required to break the period of limitation.

(2) Necessary costs of making contact with the account holder or the heirs may, under the provision of the Limitation Act section 4 first paragraph third sentence, be charged to the account.

III. Use of the account, payment assignments etc.

Section 24 *Operation of the account*

(1) The account holder may use the account for deposits, withdrawals and payment transfers in accordance with the account contract.

(2) A deposit on a current account as mentioned in section 30 second paragraph second sentence may be utilised when it has been credited to the account. A cash deposit on such an account may be withdrawn immediately at the institution's branches.

(3) For types of deposit account other than mentioned in the second paragraph the account contract may stipulate the length of notice and the lock-in period for deposits.

Section 25 *Under-age account holder*

(1) Moneys of minors which may only be utilised by a guardian or the public guardian's office shall not be deposited in an account which the minor in question is entitled to operate on his/her own.

(2) Information which the institution is required pursuant to this Act to communicate to the account holder shall be given to the guardian or the public guardian's office unless the information in question refers to moneys which the minor is entitled to dispose of on his/her own.

(3) Where a minor account holder has more than one guardian, the guardians shall dispose of the account jointly unless they given notification of another arrangement in writing.

Section 26 *Authorisation agreement for direct debit*

(1) This provision applies to

- a) an agreement between the account holder and the institution regarding a standing payment order on the basis of which debiting can take place at the request of the payee or be carried out by the institution on its own initiative
 - b) an agreement between the account holder and the payee to the effect that the account can be debited repeatedly at the request of the payee.
- (2) The account holder shall inform the institution in writing of an agreement as mentioned in the first paragraph b).
- (3) The institution shall see to it that the debits undertaken do not exceed the limits set out in the agreement.
- (4) The agreement shall identify the payee in an unambiguous manner. For each payee the agreement shall state a maximum debit limit and the period to which the limit applies.
- (5) Unless otherwise specifically agreed, the institution shall ensure that notification is given to the account holder no later than seven working days before the debit takes place. The notification shall state the date when the debit will take place, the identity of the payee and the size of the amount. The notification may be included in a statement of account as mentioned in section 30 second paragraph second sentence.
- (6) The account holder may alter or withdraw the authorisation in question in a communication to the institution. The institution shall implement the alteration or withdrawal no later than the first working day after the communication has reached the institution.

Section 27 Calculation of interest for crediting and debiting of an account

- (1) In the case of a cash deposit, interest on the amount shall be credited no later than the first calendar day after the deposit was made. In the case of other deposits, interest on the amount shall be credited as from the settlement day.
- (2) In the case of cash withdrawals, interest on the amount shall be credited up to and including the last calendar day before the withdrawal. In the case of cash withdrawn on a Saturday, Sunday or public holiday, interest on the amount shall be credited up to and including the calendar day preceding the last working day before the withdrawal. In the case of other types of debit of the account, interest on the amount shall be credited up to and including the calendar day preceding the settlement day.
- (3) "Settlement day" means the calendar day when crediting or debiting of accounts can be included in the settlement between the institutions and Norges Bank or be settled among the institutions by other means. Where transfers within the same institution are concerned, "settlement day" is understood to mean the day on which crediting and debiting of accounts takes place.
- (4) The King may issue regulations containing rules on interest calculation in particular areas and rules to supplement and delimit the provisions of this section.

Section 28 Cancellation and alteration

- (1) Where the payer cancels or alters a payment assignment, the institution undertaking the payment transfer shall facilitate such cancellation or alteration. However, it may, in the case

of a particular type of payment assignment, be agreed that the payer shall not be entitled to request cancellation or alteration.

(2) A payment assignment may not be cancelled or altered once payment has taken place, cf. section 39 first paragraph.

(3) The rules of the Cheques Act apply to the cancellation of cheques.

Section 29 Right of retention and set-off

(1) The institution may not exercise the right to retain possession of, or undertake a set-off against, the credit balance on an account, except in the case of fallen due claims deriving from the account contract. The institution may nonetheless exercise the right to retain possession of, or undertake a set-off against, claims that have arisen as the result of a criminal offence.

(2) The institution may not exercise the right to retain possession of, or undertake a set-off against, means of payment that the institution keeps available for carrying out payment assignments.

(3) Rectification of faulty crediting is regulated by section 31.

(4) The rules of this paragraph do not prevent the establishment of a security interest in the deposit in accordance with other applicable rules.

IV. Keeping of accounts

Section 30 Account information

(1) The institution shall regularly, and at least once a year, inform the account holder in writing of interest rates and charges for alternative types of deposit account offered by the institution.

(2) A statement of account shall be sent to the account holder after the end of the year. In the case of salary accounts, trading accounts and similar current accounts, a statement of account shall be sent at least once a month if there has been any movement on the account.

(3) Each statement of account shall contain the balance, all movements on the account since the previous statement, the timing of interest calculations for the individual movements on the account, charges accrued since the last statement and total charges since last year-end, accrued interest and the interest rates and charges applying to the account relationship. The names of payees shall if possible be stated.

(4) If the account holder has received wrongly informed of the amount available in the account and has in good faith debited the account in excess of the amount available, the institution may not charge the account holder interest on the overdraft until the account holder has had a reasonable period in which to rectify the circumstance.

Section 31 Erroneous crediting of an account

(1) If the institution by mistake has credited the wrong account or the wrong amount, the institution may rectify the error by debiting the account by the end of the third working day after the error was made. The same applies where an institution by mistake has credited an account with another institution insofar as it is entitled to rectify the error with the latter institution.

(2) The institution's right to rectify errors pursuant to the first paragraph does not apply where the account has been credited in accordance with an assignment from a third party.

(3) If crediting as mentioned in the first paragraph is related to a criminal offence committed by the payee, or by another party who is entitled to debit the payee's account, the institution may in all cases rectify the account.

(4) The fact that the institution is not entitled to rectify the account pursuant to this section does not prevent the institution from seeking restitution in accordance with ordinary rules.

Section 32 Erroneous debiting of an account

(1) If the institution has debited an account by mistake, it shall credit the account with an identical amount without undue delay.

(2) The institution is obliged, without regard to blame, to reimburse the interest lost and other direct loss arising from the erroneous debit.

(3) The institution is liable for indirect loss in accordance with general compensation rules.

Section 33 Reporting mistakes

If the institution discovers that an account has been credited or debited by mistake, the account holder shall be informed without undue delay. However, if the mistake has been rectified in such a way that there is no real possibility for the account holder to have received incorrect information about the amount available in the account, it is sufficient to inform the account holder by way of a statement of account.

V. Others' misuse of an account and payment instruments

Section 34 Others' misuse of an account etc.

(1) The account holder is not liable for others' wrongful withdrawal or other debit unless the person who effected the transaction identified him/herself in accordance with the rules of the account contract, and the debit was possible as a result of intent or gross negligence on the part of the account holder or someone entitled under the account contract to debit the account.

(2) Liability under the first paragraph is limited to the amount available in the account at the time of the debit. If the account was misused by means of electronic payment instruments within Norway, liability may not exceed the debit limits applying to the debit method(s) used. The limitations in this section do not apply if the account holder or someone entitled under the account contract to debit the account wilfully enabled the person concerned to identify him/herself.

(3) The account holder is not liable for others' wrongful use that takes place after the institution has been alerted of circumstances that entail a serious risk of misuse, e.g. that a payment instrument has been lost or that a code or other security procedure may have become available to unauthorised persons. The account holder is nonetheless liable if the account holder or someone entitled under the account contract to debit the account has wilfully facilitated the wrongful use.

(4) Notwithstanding the rules of this section, the account holder is in all cases liable for loss incurred as a result of the fact that the account holder or someone entitled under the account

contract to debit the account has acted fraudulently or has aided and abetted a fraudulent act against the institution.

(5) Liability in connection with misuse of payment cards is regulated in section 35.

Section 35 *Misuse of payment cards*

(1) The account holder is liable in an amount not exceeding NOK 800 for loss due to others' wrongful use of payment cards when the appurtenant personal code or other similar security procedure has been used.

(2) The account holder is liable in an amount not exceeding NOK 8,000 for loss due to others' wrongful use of payment cards if

- a) the account holder or someone to whom the payment card has been entrusted has enabled the misuse through gross negligence, or
- b) the misuse was enabled because the account holder or someone to whom the payment card has been entrusted has omitted to inform the institution as soon as possible after learning that the payment card has been lost or within a reasonable period after this should have been discovered.

(3) Where misuse of an electronic payment card has taken place within Norway, liability under the second paragraph cannot exceed the debit limits applying to the method(s) used.

(4) The limits in the second and third paragraph do not apply where the account holder or someone to whom the payment card has been entrusted has wilfully enabled the use of the card. Moreover, the limits do not apply to losses incurred because the account holder or someone to whom the card has been entrusted has omitted to inform the institution as soon as possible after becoming aware of irregular use of the card.

(5) Section 34 third and fourth paragraph apply correspondingly to the account holder's liability under this section.

(6) The King may issue regulations providing that the rules of this section shall apply wholly or in part to other types of payment instruments.

Section 36 *Modification of account holder's liability*

(1) Liability pursuant to sections 34 and 35 may be modified if the method by which the account can be operated is not satisfactory, or if the payment or account card system fails to meet sound standards as regards identification, control and warning routines, and the wrongful debit or the misuse is related to this. Account may also be taken of any lack of due care or other circumstances on the part of the institution that have been instrumental in enabling the wrongful debit or the misuse to take place.

(2) The account holder's liability may also be reduced if a supplier of goods or services who has received the payment realised or should have realised that that the use of the payment instrument was wrongful.

Section 37 *Complaint. Reimbursement*

(1) To the extent that the account holder with reference to the rules of section 34 or section 35 denies responsibility for a debit, the institution shall reimburse the amount and make good the

loss of interest as from the date of the debit, provided the account holder presents a demand for reimbursement without undue delay after he/she became or should have become aware of the circumstance. The obligation to reimburse pursuant to the first sentence does not apply to the amount for which the account holder is liable under section 35 first paragraph.

(2) The first paragraph does not apply if

- a) the account holder has acknowledged liability for the debit in writing, or
- b) the institution has brought legal action or brought the matter before a board as mentioned in section 4 first paragraph within four weeks of receiving the account holder's denial in writing of responsibility for the debit.

(3) If the case is rejected by a board or a court of law, a new time-limit of four weeks commences, starting on the day the institution learned of the rejection.

VI. The relationship between payer and payee in connection with payment transfers

Section 38 Method of settlement

(1) Payment may be effected by transfer of the amount to the payee's account unless otherwise agreed or the payee has requested payment in cash.

(2) The payee may give further instructions concerning the method of payment, provided this does not entail a substantial additional expense or other inconvenience for the payer.

(3) A consumer is in all cases entitled to effect settlement with the recipient of the payment in legal tender.

Section 39 Time and place of payment

(1) If the payer has the right to effect settlement by transfer to the recipient's account, the payment is regarded as having taken place when the amount is credited to the payee's institution. Where transfer within the same institution is concerned, payment is regarded as having taken place when the amount is credited to the payee's account. Where settlement is by disbursement in cash, payment is regarded as having taken place when the amount has become available to the payee through a bank in the payee's locality and notification thereof has reached the payee.

(2) Moreover, unless otherwise agreed, a stipulated period allowed for payment is considered to have been interrupted

- a) when, upon payment from a consumer, the payer's order is received by a financial institution
- b) when the payee receives and accepts a cheque or other means of payment.

(3) If a received payment assignment is not to be carried out immediately, interruption of the period allowed for payment is reckoned in relation to the agreed payment date.

(4) The period allowed for payment is not interrupted if the payment assignment is not carried out and this is due to the payer's own circumstances. In such case the institution shall notify the payer thereof without undue delay, unless otherwise provided by or pursuant to law.

VII. Delay of payment transfers

Section 40 Liability for means of payment

The institution that has accepted the payment assignment is liable to the payer for the amount to be transferred from the time when the means of payment are made available to the time that payment is considered to have taken place pursuant to section 39.

Section 41 Loss of interest

(1) The institutions responsible for a payment transfer are liable for loss of interest incurred by the payer or payee as a result of a delay in the payment transfer.

(2) Where the amount is to be credited to the payee's account, the rules of section 27 first paragraph second sentence concerning calculation of interest apply correspondingly. If the lost interest exceeds the interest paid under section 27 first paragraph second sentence, the payee may demand reimbursement of the additional loss.

(3) An institution that has reimbursed interest lost may demand coverage of the loss by the institution that caused the delay.

(4) If the payee demands penalty interest or other compensation from the payer owing to late payment, interest received by the payee from the institution shall be deducted from the amount demanded.

Section 42 Other losses

(1) The institutions responsible for the payment transfer are liable for other direct losses, including losses due to exchange rate changes, collection charges etc., incurred by the payer or payee as a result of a delayed payment transfer. However, this does not apply if the institution proves that the delay is due to an impediment beyond its control which it could not reasonably be expected to have had in mind at the time the agreement was entered into or to avoid or to overcome the consequences of. Exemption from liability pursuant to the previous sentence applies for the duration of the impediment.

(2) If the institution has given another party the task of facilitating the implementation of a payment assignment and the error or delay is attributable to such party, the institution is exempt from liability only if the party is also exempt under the rules of the first paragraph.

(3) The institution is liable for indirect loss incurred by the payer or the payee if such was caused by gross negligence or intent on the part of the institution.

(4) If the institution has assumed a specific, unconditional responsibility for ensuring that payment reaches the payee within a particular time-limit, the customer may without regard to the rules of this section demand reimbursement of the loss from the institution.

Section 43 Reduction of the institution's liability

If the payer or payee has been instrumental in the delay of the payment transfer, the institution's liability under sections 40 to 42 may be reduced.

Chapter 3 Loan contracts etc.

Section 44 Scope

- (1) This chapter applies to loan contracts where a financial institution or similar institution as mentioned in section 1 second paragraph is the lender.
- (2) The provisions apply correspondingly to similar credit, but not to credit encompassed by the Credit Purchases Act. The provisions do not apply to leasing or factoring contracts.
- (3) Where an institution has furnished a guarantee etc., for a loan to a consumer, sections 48 and 52 apply correspondingly in the relationship between the institution and the consumer insofar as appropriate.

Section 45 Transfer of lender's claim

- (1) Except with the borrower's special consent, the lender's claim may only be transferred to a financial institution or to a similar institution as mentioned in section 1 second paragraph a), d), e), f) or g).
- (2) Where the lender's claim is transferred, the provisions of this chapter apply correspondingly in the relationship between the borrower and the party to whom the claim is transferred, unless otherwise provided by law. The lender shall notify the borrower of the transfer.

Section 46 Information requirement on the lender

- (1) Before a contract concerning a repayment loan, including a self-amortising loan, is entered into with a consumer, the lender shall inform the borrower in writing of
- a) the effective annual interest rate
 - b) the nominal annual interest rate, and charges and other loan costs to be charged to the borrower
 - c) the size, number and due dates of payments throughout the period of the loan, the relationship between instalments, interest and other costs at each payment, and the total amount payable
 - d) reservations in the contract concerning changes in interest rates, charges and other expenses, cf. section 49
 - e) the borrower's right to early redemption, and charges etc., which may accrue if this right is exercised.
- (2) Before a contract concerning a general credit facility is entered into with a consumer, the lender shall give the borrower information as provided in the first paragraph b), d), and e) and on
- a) the maximum credit amount
 - b) the effective annual interest rate charged for various uses of the loan.
- (3) Information in writing with details as mentioned in the first or second paragraph shall be available to every borrower before the loan contract is entered into. The borrower may also request corresponding information during the period of the loan. In the latter case calculation of effective annual interest is based on the conditions at the time such a request is made.

Section 47 *Obligation to dissuade*

If the lender, before entering into a loan contract with a consumer or disbursing the loan to the consumer, has to assume that the financial capacity or other circumstances of the borrower indicate that he/she should seriously consider refraining from taking out the loan, the lender shall inform the borrower thereof in writing. If the lender fails to do this, the borrower's obligations may be reduced to the extent this is deemed reasonable.

Section 48 *The loan contract*

- (1) The loan contract shall be in writing. It shall state all costs payable by the borrower, including such costs as are not included in the calculation base for effective annual interest.
- (2) The loan contract shall contain information as mentioned in section 46 first paragraph a), b), d) and e). Where overdraft facilities or other general credit facility is concerned, the contract shall contain information as mentioned in section 46 second paragraph. Moreover, a loan contract with a consumer shall contain information as mentioned in section 46 first paragraph c) and details of the dispute resolution arrangement as mentioned in section 4. Information as mentioned in section 46 which the institution has provided before the agreement was entered into shall in all cases be regarded as part of the loan contract.
- (3) A term or condition not included in the loan contract is not binding on the customer unless the lender provides proof that such term or condition has been adopted by the customer.
- (4) The lender shall provide the borrower with a copy of the loan contract or make the contract available to the borrower by other means.
- (5) Where information as mentioned in section 46 first paragraph d), cf. second paragraph, has not been provided to a consumer in advance, reservations in the contract regarding changes in the interest rate, charges or other costs may not exercised to the detriment of the borrower until three years have passed, unless it is clear that the borrower was aware of the right to make changes before the contract was entered into. If the lender has stated the interest rate to a consumer in advance without specifying both nominal and effective interest rate in accordance with section 46 first or second paragraph, the stated interest rate shall be regarded as the effective interest rate for up to three years unless it is clear that the borrower has not been misled.
- (6) The King may issue regulations laying down further rules concerning the content of the loan contract, concerning implementation and delimitation of the information requirement under section 46, and concerning the use and approval of forms.

Section 49 *Changes to the terms of a loan*

- (1) Where the parties agree to change the loan contract, sections 46 and 48 apply correspondingly insofar as appropriate.
- (2) The lender may not, in a loan contract with a consumer, reserve the right to unilaterally change the loan terms to the detriment of the consumer, with the exception of raising the interest rate, charges and other costs. The reservation shall specify the conditions in which a change may be made. Changing the terms of the loan in accordance with this section may only be made where there are factual grounds for doing so. The King may set further rules concerning the conditions in which changes may be made to the detriment of the borrower.

(3) When setting interest rates, charges and other costs, there shall be no unwarranted discrimination among the institution's customers.

(4) Unless otherwise agreed, the agreed term of self-amortising loans shall be retained when the interest rate is changed. Where the borrower is a consumer, the borrower shall be notified in accordance with section 50 before an agreement to extend the period of the loan in the case of an increase in the interest rate can be entered into with the borrower.

Section 50 *Notification of changes etc.*

(1) The borrower shall be notified before the lender unilaterally changes the terms of the loan. The notification shall state the nature of the change, the grounds for it, and the customer's right to early redemption and the charges that accrue in such case, cf. section 53.

(2) If the interest rate, charges or other costs on a contract for a repayment loan, including a self-amortising loan, are changed, the notification shall contain information as mentioned in section 46 first paragraph a) and b) and information on the how the changes will affect the loan's instalment and interest payments (loan profile) up to the final instalment. In the case of overdraft facilities or similar general credit facility, notification of such changes shall contain information as mentioned in section 46 first paragraph b) and section 46 second paragraph b). Effective annual interest rate shall be calculated with reference to the conditions obtaining when the change is implemented.

(3) Where the borrower is a consumer, changes in the terms pursuant to section 49 second paragraph may be implemented no earlier than six weeks after the institution sent notification of the change in writing to the consumer. A shorter time-limit may be set where the interest rate is changed as a result of a material change in the money market rate, bond rate or general level of interest rates for deposits with and borrowing by institutions.

(4) The third paragraph does not apply to loans whose interest rate, charges or other costs can only be regulated at specific times set out in the loan contract. For such loans the lender shall

- a) no later than six weeks prior to the date of interest rate adjustment notify the consumer in writing of the interest rate, charges and other costs in accordance with section 46 first paragraph a) and b) that would have been charged for a similar loan adjusted at the time of notification.
- b) no later than 14 days prior to the date of interest rate adjustment send the consumer an offer giving details as mentioned in the second paragraph, and stating that interest in the period to the following interest rate adjustment will be in accordance with the offer, unless the consumer has, within a time-limit that is stipulated in the offer and which cannot be shorter than 14 days from the date was offer was sent, notified the lender of early redemption.

Section 51 *Interest in the event of late payment*

In the event of late payment the lender may demand penalty interest. To the extent penalty interest is not specifically regulated in the loan contract, the Act on Interest on Late Payments (No. 100 of 17 December 1976) applies. Where the borrower is a consumer, terms may not be agreed that leave the borrower in a worse position than terms resulting from the Act on Interest on Late Payments.

Section 52 *Lender's demand for early redemption*

(1) The lender may demand redemption of the loan before maturity where

- a) the borrower is in material breach of the loan contract
- b) bankruptcy or debt settlement proceedings are instituted against the borrower pursuant to the rules of the Bankruptcy Act
- c) the borrower dies and satisfactory security for performance has not come to hand within a reasonable period and has not been furnished after notification.
- d) the borrower has furnished a mortgage as security for the money demanded, and the conditions of the Mortgage Act section 1-9 or the Maritime Act section 44 are met.

(2) Where, based on the borrower's conduct or a serious reduction in the borrower's ability to pay, it is clear that the loan will be materially defaulted, the borrower may demand that satisfactory security be furnished for the loan or for timely payment without undue delay. If such security is not furnished, the lender may demand redemption of the loan by making a claim for payment. The provision of this paragraph does not apply to loans that are already satisfactorily secured.

(3) Claims and demands pursuant to this section shall be presented in writing and grounds shall be given.

(4) In the event of a demand for early redemption pursuant to this section, section 53 second paragraph and section 54 first paragraph apply correspondingly.

Section 53 *Early redemption by the borrower*

(1) The borrower is entitled to repay the loan entirely or in part before the agreed due date of redemption.

(2) Borrowing costs shall only be payable for the utilised credit period, calculated up to and including the payment date. To the extent provided for by the contract, the institution may in addition demand payment of a charge, limited to coverage of the costs of early redemption. The institution may not demand such a charge where the borrower is a consumer.

Section 54 *Early redemption of fixed interest loans etc.*

(1) In the case of loans where the interest rate, charges and other costs are locked in for the entire period of the loan or where such payment can only be adjusted at specific dates stipulated in the loan contract, the lender may also demand coverage of loss of interest or other amounts in the lock-in period provided the lender's rights are set out in the contract. Where the borrower is a consumer, the borrower must also have been apprised of the lender's rights before the contract was entered into, cf. section 46 first paragraph e), cf. second paragraph.

(2) The first paragraph does not apply where a borrower who is a consumer has notified the lender of early redemption within the time-limit stated in an offer pursuant to section 50 fourth paragraph b), or, if no time-limit is stated, within the adjustment date. The borrower must in such case effect redemption no later than the adjustment date or four weeks after that date. After the adjustment date interest is payable at the market rate.

(3) Where the contract entitles the lender to demand coverage of loss etc., as mentioned in the first paragraph, the borrower shall to the same extent be credited any interest gain accruing to the lender. The right to crediting of interest gains may be departed from in the contract even where the borrower is a consumer. The consumer must in this case have been apprised of such departure from the contract before the contract was entered into, cf. section 46 first paragraph e), cf. second paragraph.

(4) The King may issue regulations concerning the calculation of interest or other compensation pursuant to this section.

Section 55 Change of creditor and prohibition of the use of certain documents

(1) In connection with the transfer or mortgaging of the lender's claim, the borrower may apply the same objections and counter-claims at the acquirer or mortgagee on the basis of the loan contract as at the original creditor, unless otherwise provided by law.

(2) The lender must not issue or accept a bill of exchange for a claim against a borrower who is a consumer. The same applies to an admission of a debt which upon transfer or mortgaging may exclude or restrict the consumer's right to apply objections or counter-claims on the basis of the loan contract.

Section 56 Account information

A statement of account shall be sent to the borrower after the end of the year. Section 30 third paragraph first sentence applies correspondingly.

Chapter 4 Personal guarantee

I. Introductory provisions

Section 57 Scope

(1) This chapter applies where a financial institution or a similar institution as mentioned in section 1 second paragraph is a creditor in accordance with a personal guarantee furnished for a loan or other credit. This chapter also applies where a consumer furnishes a personal guarantee through a broker, cf. section 75 third paragraph second sentence.

(2) In this chapter "personal guarantee" also means a mortgage furnished by a third party (security in rem).

(3) In this chapter "consumer" means a physical person who provides a guarantee for another person's debt.

- a) provided the purpose of the guarantee, as perceived by the guarantor, is not mainly linked to the guarantor's business activity, or
- b) the guarantee consists of mortgage of property that is not mainly linked to the guarantor's business.

(4) Business operated through a limited company or other company with limited liability is not in itself regarded as the guarantor's business pursuant to the third paragraph. Where the borrower is a company in which the guarantor has a decisive influence, sections 62, 63, 65 third paragraph, 67 second and third paragraph, 73 and 74 may nonetheless be departed from in the guarantee contract.

Section 58 *Transfer of lender's claim on guarantor*

If the lender's claim on the guarantor is transferred, the provisions of this chapter apply correspondingly in the relationship between the guarantor and the party to whom the claim is transferred, unless otherwise provided by law. The party who transfers the claim shall notify the guarantor of the transfer.

Section 59 *Information requirement before entry in to a guarantee contract etc.*

(1) Before a guarantee contract is entered into with a consumer, the institution shall inform the guarantor in writing

- a) of the general risk attending guarantee liability
- b) of the loans and credits encompassed by the guarantee and the period for which the guarantee liability shall apply
- c) of the size of the bank's claim against the guarantor or the highest amount secured by the guarantee, and whether the guarantor shall in addition be liable for interest and costs in the event of the borrower's default, cf. sections 72 and 73
- d) of mortgages or other security for the lender's claim which the borrower or a third party has furnished or is required to furnish
- e) whether it is required that credit insurance be taken out and, if so, conditions to be met in order for such insurance to be taken out
- f) of the value of mortgaged items and other security forming the basis on which the lender granted the loan, and which in relation to the guarantor shall be attacked before the guarantee liability
- g) whether the guarantee shall encompass older debt and, if so, whether the consumer has defaulted on such debt
- h) of other circumstances which the guarantor in accordance with honesty and good faith is entitled to be informed of.

(2) The lender shall as soon as possible provide the guarantor with a copy of the loan contract or make it available to the guarantor by other means.

Section 60 *Obligation to dissuade*

(1) If the lender dissuades a consumer from taking out the loan, cf. section 47, the lender shall inform the guarantor thereof before the guarantee contract is entered into or the loan disbursed. If the lender neglects to do this, the guarantor's liability may be reduced to the extent deemed reasonable. The same applies where the lender ought to have dissuaded the consumer from taking out the loan.

(2) If the lender, before entering into a guarantee contract with a consumer, has to assume that the financial capacity or other circumstances of the guarantor indicate that he/she should seriously consider refraining from providing a guarantee, the lender shall inform the guarantor thereof in writing.

Section 61 *The guarantee contract*

(1) In order to be binding the guarantee contract must have been entered into in writing and contain details of the size of the guarantee amount or the highest amount that the guarantee is intended to secure. Section 8 second paragraph does not apply to a guarantee contract with a consumer.

(2) The guarantee contract shall contain information as mentioned in section 59 first paragraph c), d), g) and h. A guarantee contract with a consumer shall also contain information as mentioned in section 59 first paragraph b), e) and f) and on a dispute resolution arrangement as mentioned in section 4. Information as mentioned in section 59 first paragraph which the institution has provided before the guarantee contract was entered into shall in all cases be regarded as part of the guarantee contract.

(3) A term or condition that has not been included in the guarantee contract is not binding on the guarantor unless the institution proves that the term has been expressly adopted by the guarantor.

(4) The institution shall provide the guarantor with a copy of the guarantee contract or make it available to the guarantor by other means.

II. The guarantee relationship

Section 62 Notification requirement where security etc., is not furnished

(1) The institution is obliged to notify the guarantor in writing without undue delay

- a) if a mortgage or other security has not been furnished as premised when the guarantee contract was entered into, or has subsequently lapsed
- b) if credit insurance has not been furnished as premised when the guarantee contract was entered into.

(2) Where credit insurance has been furnished as required, but circumstances subsequently arise which may cause coverage under the insurance policy to lapse or materially change, the institution shall notify guarantor well before the coverage is changed.

Section 63 Notification requirement in the event of default, deferment of payment etc.

(1) The institution shall notify the guarantor in writing of a default on the part of the borrower no later three months after the default occurred. Notification of the guarantor may nonetheless be omitted in the case of a transient default. "Transient default" is a default not exceeding two months, and which in light of similar previous defaults does not give grounds for fearing a reduction in the borrower's ability to pay.

(2) After the institution has notified the guarantor of a default, the institution shall keep the guarantor informed of the further development of the loan relationship. If the guarantor has reason to believe that the loan relationship has been put in order after a notified default, a new notification requirement applies pursuant to the first paragraph in the event of default of a subsequent instalment.

(3) The institution is obliged to notify the guarantor in writing without undue delay each time payment of an instalment or interest is deferred for more than three months.

(4) If the institution learns that the borrower has died, that debt settlement or bankruptcy proceedings have been initiated against the borrower's estate, or that the borrower has filed a petition with the enforcement officer for debt settlement proceedings under the Debt Settlement Act, the guarantor shall be notified without undue delay.

Section 64 *Information requirement upon guarantor's enquiry*

The guarantor may at any time demand information from the institution about

- a) the amount for which the guarantor is legally liable at the time in question
- b) the interest rate and charges applied to the loan
- c) the result of any enquiries the lender has made concerning the borrower's ability to meet his/her obligations under the loan contract, or concerning the value of the security furnished for the lender's claim and which will be attacked before the guarantee liability.

Section 65 *Change to the claim against the guarantor and objections to the principal contract*

(1) The institution may not reserve the right to unilaterally change the terms of the guarantee contract to the detriment of the guarantor.

(2) In the event of a change to the guarantee contract to the detriment of the guarantor, sections 59 and 61 apply insofar as appropriate.

(3) A change in the guarantee contract to the detriment of the guarantor has no legal effect for the guarantor. If the guarantor consents to the change, the second paragraph applies correspondingly. The provision of this paragraph does not apply to an increase in the interest rate, charges and other costs where the institution is entitled vis-à-vis the borrower to unilaterally make the change, cf. section 49 second paragraph.

(4) A term or condition of a guarantee contract with a consumer to the effect that the guarantor shall be excluded from bringing to bear objections or counter-claims against the principal contract is invalid unless otherwise provided by law.

Section 66 *Release of security etc.*

(1) Unless the guarantor has expressly consented, the institution is not entitled to release mortgaged property or other security that was furnished or that was assumed would be furnished when the guarantee contract was entered into. This does not apply where other security is furnished which is at least as satisfactory for the guarantor as the security being released, or where such release is of no significance or very limited significance for the guarantor's position. Consent pursuant to the first paragraph may only be given in connection with the imminent release of a particular specified security.

(2) Where mortgaged property or other security is released contrary to the provisions of the first paragraph, the guarantor is no longer bound by the guarantee contract.

(3) The provision of the first and second paragraph applies correspondingly where mortgaged property or other security is not furnished in accordance with the premises underlying the contract. The institution may nonetheless make a separate and explicit reservation in the guarantee contract to the effect that a particular security will not be furnished as promised upon the entry into the guarantee contract.

Section 67 *Reduction and lapse of guarantee liability*

(1) Upon payment by the borrower of interest, instalments or other liabilities to the lender, the guarantee liability is reduced to the extent that the guarantee encompasses such liabilities.

(2) The guarantee liability is also reduced, irrespective of the borrower's payments, as if the loan had been repaid in accordance with the loan contract. Where the lender has granted deferment of payment, the guarantee liability is reduced when six months have lapsed since the original payment date, unless the guarantor has consented to the enlargement of the guarantee liability entailed by the deferment.

(3) The guarantee liability is not reduced if the lender proves that notification of default has been sent in accordance with the rules of section 63 first paragraph. If notification has been sent later than provided in section 63 first paragraph, the liability is reduced for instalments that fell due for payment earlier than three months before the notification was sent.

(4) The period for which guarantee liability applies is limited to 10 years from the date on which the guarantee contract was entered into. In the case of overdraft facilities and similar general credit facilities and loans with no stipulated repayment date, the period of liability is limited five years. If the borrower has defaulted on his/her payment obligation before the expiry of the period of liability, the guarantee liability does not lapse provided notification of default has been sent in accordance with the rules of section 63 first paragraph. The limitations of this paragraph do not apply to a mortgage furnished by a third party (security in rem).

III. Guarantor's liability

Section 68 Credit insurance

(1) Where credit insurance has been taken out for the loan and the insured event takes place, the guarantee liability is reduced to the same extent as if the borrower him/herself had made the payment.

(2) Recourse cannot be had against the guarantor for disbursement of credit insurance.

Section 69 Release from guarantee liability

(1) If the borrower has defaulted on the loan contract in a not insignificant degree or such default must be expected to occur, the guarantor is entitled to redeem the guarantee liability in whole or in part. The guarantor shall in such case notify the lender and the borrower of the date when payment will take place.

(2) Notification pursuant to the first paragraph may be omitted where the lender has taken legal steps against the borrower pursuant to section 71 or has notified the guarantor that such steps will be taken. The same applies where the borrower has initiated debt settlement proceedings, has filed a petition with the enforcement officer for debt settlement proceedings under the Debt Settlement Act, or bankruptcy proceedings have been initiated against the borrower.

Section 70 Effect of redemption etc., by the guarantor

(1) Where the guarantee liability is redeemed pursuant to section 69, the guarantor is substituted into the contract in accordance with general rules and succeeds to the securities furnished for the lender's account.

(2) The institution may prevent the guarantor's substitution into the loan contract by exempting the guarantor from guarantee liability to the same extent as the redemption would have exempted the guarantor from further guarantee liability.

Section 71 Falling due of the guarantee

- (1) The institution may not make a claim against the guarantor until legal steps have been initiated to obtain a basis for enforcement against the borrower.
- (2) Where the institution has a basis for enforcing attachment, claims may be addressed to the guarantor when attachment has been petitioned for against the borrower.
- (3) Where the borrower has furnished a mortgage as security for the debt, claims may only be addressed to the guarantor after three months have elapsed since the institution petitioned for compulsory satisfaction of its claim through the security in accordance with the Enforcement Act.
- (4) Where debt settlement proceedings have been initiated against the borrower pursuant to the Debt Settlement Act, claims may be addressed to the guarantor upon the expiry of the three-month time-limit in the Debt Settlement Act section 3-4. However, where the borrower has furnished security for the debt which will afford the lender full satisfaction of his claim, the provision of the third paragraph applies.
- (5) If bankruptcy proceedings are initiated against the borrower, or debt settlement proceedings are initiated under the provisions of the Bankruptcy Act, the institution may immediately address claims to the guarantor. The provision of the fourth paragraph second sentence applies correspondingly.
- (6) When the conditions of the first to fifth paragraph have been met, the institution may send a demand for payment. The guarantee liability falls due for payment 14 days after the demand arrived.
- (7) The rules of the Mortgages and Pledges Act (No. 2 of 8 February 1980) section 1-9 and the Maritime Act (No. 39 of 24 June 1994) section 44 concerning falling due for payment do not apply in relation to security in rem encompassed by this chapter.

Section 72 Interest on late payment

- (1) Where the institution has notified the guarantor of the borrower's default in accordance with the rules of section 63 first paragraph, the institution may claim interest from the guarantor for the period after the notified default occurred, calculated on the basis of the interest rate that would have applied to the principal contract if the borrower had not defaulted. If the notification was sent later than required by section 63 first paragraph, the institution may demand interest as mentioned for instalments falling due later than three months before the notification was sent.
- (2) The guarantor is not liable for special penalty interest on late payment as a result of the borrower's default. Where the guarantee liability has become due and payable, the guarantor is liable for penalty interest in accordance with general rules.

Section 73 Recovery costs etc.

- (1) The guarantor is only liable for court fees and ordinary recovery costs that have accrued in connection with legal steps as mentioned in section 71 provided the guarantor has been notified of the recovery in advance.

(2) Costs in connection with the institution's recovery of its claim against the borrower other than those mentioned in the first paragraph are only payable by the guarantor provided the guarantor has consented to their accrual. Such consent may not be given until the guarantor has been notified by the institution of the borrower's default.

(3) The guarantor is liable for the costs of recovering the guarantee liability in accordance with general rules.

Section 74 The guarantor's claim against the borrower

(1) Where the conditions of section 52 first paragraph are met or, based on the borrower's conduct or a serious reduction in the borrower's ability to pay, it is clear that the loan will be materially defaulted, the guarantor may demand payment by the borrower to the extent the guarantor is liable vis-à-vis the borrower.

(2) Where the borrower pays interest, instalments or other liabilities to the lender after the guarantor has demanded payment from the borrower, the guarantor's claim is reduced by the same extent as the guarantee liability, cf. section 67 first paragraph, unless otherwise agreed between the guarantor and the borrower. However, the borrower's liability for costs incurred by the guarantor in connection with recovery of the claim does not lapse.

(3) Payment by the borrower to the lender after the guarantor has redeemed his/her guarantee liability towards the lender pursuant to section 69 and has demanded payment from the borrower has no bearing on the borrower's liability towards the guarantor.

Chapter 5 Finance broker assignments etc.

I. General rules

Section 75 Scope

(1) This chapter applies where a finance broker performs a broker's assignment that is wholly or partly linked to

- a) contracts concerning deposits, cf. sections 9 and 10
- b) contracts concerning loans, cf. section 44
- c) contracts concerning guarantees, cf. section 57.

(2) This chapter applies correspondingly where another institution mentioned in section 1 acts as a broker of financial services.

(3) In the case of deposit, loan or guarantee contracts with a financial institution or similar institution, the rules for, respectively, deposits in chapter 2 and loan contracts and guarantee contracts in chapter 3 also apply. Where a consumer furnishes a guarantee for a loan contract, the rules of chapter 4 apply irrespective of whether the lender is a financial institution or a similar institution provided the guarantee contract is entered into through a broker.

(4) The King may issue regulations laying down provisions to implement, supplement or delimit the rules of this chapter.

Section 76 Good broker practice. Duty of care

(1) The broker shall discharge his/her assignment in accordance with good broker practice.

(2) The broker shall protect the parties' interests in a satisfactory manner. If the broker is aware of circumstances of a party or of the contractual relationship to which the assignment refers which must be assumed to be of significance in assessing whether a contract should be entered into, the broker shall apprise the parties of the circumstances in question before the contract is entered into.

Section 77 *Impartiality*

If the broker's interests, the nature of the assignment or other grounds are likely to cast doubt on the broker's impartiality, the parties shall immediately be informed thereof in writing. The interests of the following parties rank on a par with the broker's interests

- a) another undertaking in the same group as the broker
- b) employed brokers and advisers, senior employees or officers of the undertaking
- c) close associates of the broker or of a person as mentioned in this paragraph.

Section 78 *Broker's claim for remuneration*

(1) The broker shall as soon as possible and before the contract concerning the broker assignment is entered into, state in writing the remuneration it will demand for the assignment, and who shall pay it.

(2) Where circumstances as mentioned in section 77 are present, the broker may only demand remuneration if the person of whom remuneration will be demanded is aware of the circumstances and has expressly consented to pay.

(3) The claim for remuneration may otherwise be reduced or lapse where the broker has failed to honour his/her other obligations vis-à-vis the party in question.

Section 79 *Client account*

Client funds shall immediately be placed in a client account in a bank, separate from the broker's own funds. The broker shall inform the bank that the funds in the account belong to clients.

Section 80 *Broker's liability*

The customer may demand compensation from the broker for loss due to error or negligence on the part of the broker.

II. *Loan broking*

Section 81 *Information requirement concerning the loan relationship*

(1) Before a loan contract is entered into the broker shall, insofar as the provisions of this Act are appropriate, provide a lender who is a consumer information in writing as provided in section 15 and a borrower who is a consumer with information in writing as provided in section 46.

(2) The broker shall also state the effective interest rate, including guarantee costs that will accrue, to a borrower who will in the event be charged guarantee commission.

Section 82 *The contract*

(1) A loan contract shall be set up in writing by the broker. The contract shall contain the parties' names and addresses.

(2) The rules of section 48 first paragraph second sentence and second paragraph apply correspondingly.

(3) The contract shall be delivered to both parties or be made available to them by other means.

Section 83 *Special rules where the borrower or the lender is a financial institution or similar institution*

(1) The broker shall within the scope of its assignment ensure that the institution's obligations towards the other party are honoured. If such obligations are defaulted on, the other party may in the event bring to bear sanctions against the institution concerned regardless of whether or not responsibility for ensuring the performance of the obligations must be assumed to be part of the broker's assignment for the institution concerned.

(2) If the other party will in the event be charged guarantee costs, the institution shall also state the interest payable inclusive of such costs before a contract is entered into.

(3) Where the borrower or the lender is a financial institution or a similar institution, sections 81 and 82 do not apply.

Section 84 *Guarantee etc., attached to the loan relationship*

(1) Where a personal guarantee, other guarantee or the like is attached to the loan relationship, the broker shall inform the parties to the loan relationship thereof in writing before the contracts are entered into.

(2) The broker shall to the extent necessary enable the lender to assess the coverage provided by the guarantee before the contracts are entered into. In so doing, the broker shall specifically state whether there are material limits to the coverage in relation to the coverage that the lender can reasonably expect to be given by the guarantee.

(3) Where a consumer provides a guarantee in respect of the loan relationship and the lender is not a financial institution or a similar institution, the broker shall ensure that the obligations under section 59 are honoured.

(4) The broker shall ensure that a contract concerning a loan guarantee is set up in writing and that its content is as required by law. The guarantee contract shall be available to the parties to the loan relationship.

Chapter 6 Agency and advisory assignments

I. General rules

Section 85 *Scope*

(1) The provisions of sections 86 to 88 apply to finance agents' assignments where the assignment is in part linked to

- a) contracts concerning deposits, cf. sections 9 and 10
- b) contracts concerning loans, cf. section 44
- c) contracts concerning guarantees, cf. section 57.

- (2) The provisions of sections 89 and 90 apply to financial advisers' assignments when the assignment is entirely or in part linked to contracts as mentioned in the first paragraph.
- (3) The provisions apply correspondingly where another institution as mentioned in section 1 first paragraph acts as an agent for such institution or as an independent adviser.
- (4) The King may issue regulations laying down provisions to implement, supplement or delimit the rules of this chapter.

II. Finance agents

Section 86 Information requirement

Before the agent takes on an assignment, he/she shall assure him/herself that the customer is aware of which institutions he is representing.

Section 87 The institution's obligations

(1) The agent shall within the scope of the assignment given by the institution ensure that the institution honours its obligations to the customer.

(2) If the institution breaches its obligations towards the customer, the customer may bring to bear sanctions, if any, against the institution concerned, even if responsibility for ensuring the performance of the obligations must be assumed to be part of the broker's assignment.

Section 88 Agent's claim for remuneration

The agent may not, in the contract entered into, demand remuneration from parties other than the institution that the agent represents.

III. Financial advisers

Section 89 The adviser's assignment

(1) The adviser is required within the scope of the law and to the best of his/her ability to protect the client's interests without an eye to extraneous considerations.

(2) The adviser must not take on an assignment if his/her personal or financial interest may come into conflict with the client's interest or otherwise influence the adviser's position as adviser.

Section 90 The adviser's claim for remuneration

The adviser may not demand remuneration from parties other than the client who has given the assignment.

Chapter 7 Penalties

Section 91 Penalties

(1) Whoever wilfully contravenes section 14 or section 55 second paragraph shall be punished by fines or in especially aggravating circumstances by imprisonment not exceeding three months. Whoever wilfully omits to provide information as mentioned in sections 15, 46, 59, 81 and 86, or in provisions laid down in pursuance of these sections, shall be subject to the same penalties.

(2) Whoever contravenes through negligence provisions as mentioned in the first paragraph shall be punished by fines.

(3) Complicity is subject to the same penalties.

Chapter 8 Commencement (Transitional provisions. Amendments to other Acts)

Section 92 Commencement

This Act comes into force as and when the King decides. The King may decide that the individual provisions of the Act shall come into force at different times.

As from 1 July 2000 acc. to Res. No. 702 of 25 June 1999.

Section 93 Transitional provisions

(1) This Act applies to contracts entered into before the Act went into force, including the rules laid down in the second paragraph or in regulations pursuant to the third paragraph. For older contracts entered into with parties other than a consumer, the Act applies only insofar as the contract does not provide otherwise.

(2) The following special rules apply to older contracts:

- a) section 3 applies only insofar as no other specific provision is made in the contract.
- b) section 5 does not apply.
- c) section 16 and section 20 second sentence do not apply.
- d) as regards bearer clauses entered in the deposit book in a bank or co-operative upon the commencement of the Act, section 17 applies when a year has passed since the Act went into force. In regard to such clauses, the amendment to section 94 subsection 1 shall apply as from the same point in time.
- e) section 18, section 19. Section 21 second paragraph and section 21 fourth paragraph apply only to contracts with consumers.
- f) section 26 second and fourth paragraph are not applicable to older contracts concerning power of attorney to debit. Section 26 fifth paragraph applies only to contracts with consumers.
- g) section 29 first paragraph applies only insofar as the account contract or an older set-off contract does not provide otherwise.
- h) sections 34 to 37 apply to misuse having taken place since the Act went into force.
- i) section 38 and section 39 apply only insofar as the contract between the payer and the payee does not provide otherwise.
- j) sections 40 to 43 apply in case of payment transfers commenced after the Act went into force.
- k) section 45 first paragraph, section 45 second paragraph second sentence, section 49 first paragraph and section 50 apply only to contracts with consumers.
- l) section 48, section 53 second paragraph third sentence, section 54 first paragraph second sentence and section 54 third paragraph do not apply.
- m) section 53 first paragraph applies only insofar as the contract does not provide otherwise.
- n) section 58 second sentence applies only where the guarantor is a consumer.

- o) section 61, section 66 third paragraph and section 67 fourth paragraph do not apply.
- p) sections 62 to 66 apply only where the guarantor is a consumer.
- q) section 67 second paragraph, cf. third paragraph, applies only where the guarantor is a consumer and only in relation to repayment which under the loan contract shall take place after the Act has come into force.
- r) section 71 applies only where the guarantor is a consumer. This provision does not apply where a claim was addressed to the guarantor before the Act came into force.
- s) sections 72 and 73 apply only where the guarantor is a consumer. These provisions do not apply to interest and costs that accrued before the Act came into force.
- t) section 74 applies only where the guarantor is a consumer.
- u) chapters 5 and 6 apply to the extent that the assignment is performed or the financial contract is entered into after the Act came into force.
- v) section 94 subsection 2 applies to claims that were not time-barred before the Act comes into force.
- w) section 94 subsection 5, the amendment to the Enforcement Act section 9-2, does not apply to older contracts concerning seller's lien.

(3) The King may issue regulations laying down further transitional rules.

Section 94 Amendments to other Acts

Subject to the provisions of section 93, the following amendments to other Acts take effect when this Act comes into force ...