

Submit a question

Reference

1. Legal act: CRR 575/2013
2. Topic: Other topics

Legal reference

3. Article: Art. 4
4. Paragraph: Paragraph 1
5. Subparagraph: Subparagraph (75)

Contact

6. Name of institution: Ministry of Business and Growth
7. Country: Denmark
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9. Disclose name of institution: yes

Question

10. Subject matter:
Preferential risk weight of covered bonds collateralised by loans secured by property used for recreational purposes.

11. Question:

Is a property, which is not and may not be used for all-year residential purposes but can be used for residential/recreational purposes for a longer period of time during a given year according to Danish regulations (a second home), to be regarded as residential property or commercial property under Article 4 (1)(75) of Regulation (EU) No 575/2013 (CRR)?

12. Background on the question:

According to CRR Article 129 (1)(d) and (f), to be eligible for the preferential treatment set out in paragraphs 4 and 5, bonds as referred to in Article 52(4) of Directive 2009/65/EC (covered bonds) shall meet the requirements set out in paragraph 7 and shall be collateralised by:

- loans secured by residential property up to the lesser of the principal amount of the liens that are combined with any prior liens and 80 % of the value of the pledged properties or
- loans secured by commercial immovable property up to the lesser of the principal amount of the liens that are combined with any prior liens and 60 % of the value of the pledged properties. The LTV on commercial property can exceed 60 % up to 70 % under certain conditions cfr. (f) second subparagraph.

In short, loans secured by residential property up to an LTV of 80 % and loans secured by commercial property up to an LTV of 60 % can be used as collateral for issuing covered bonds. It is therefore important to correctly categorize the property.

According to CRR Article 4 (1)(75), "residential property" means a residence which is occupied by the owner or the lessee of the residence. EBA has given opinions in regard to the definitions of residential and commercial property in the Single Rulebook Q&A 2014_1214. EBA states that *for the purposes of the CRR, "commercial immovable property" encompasses any immovable property that is not a "residential property" within the meaning of Article 4(1)(75) of the CRR. This means that exposures secured by mortgages on immovable property (Article 124) should be restricted to expo-*

*sure*s secured by residential or “offices or other commercial premises” properties. In determining whether an exposure meets the description of “offices or other commercial premises” for the purposes of Article 126(1) of the CRR, consideration should be given to the dominant purpose of the property in question, which should be linked to an economic activity”. EBA has also stated, that agricultural properties should be considered commercial properties (Q&A 2013_94). There is no further elaboration of the criteria for what can be seen as a residential property.

In Denmark, a specific category exists for properties for residential/recreational purposes. These properties may only be used as the legal permanent (all-year) residence by the owner or the lessee if there is a specific permission by the authorities. If such specific permission is not obtained, such property can still be used for residential and recreational purposes by the owner for a period as long as 179 days per year. The properties may not be used for commercial premises linked to an economic activity (they are not offices or production facilities etc.).

If there is a permission to use the property as residence and the property is in fact used as residence either by the owner or a lessee, it may according to Danish law be categorized as a residential property and can benefit from a LTV of 80 %. If there is no permission to use the property as residence all-year, it has in Denmark generally been categorized as commercial property and can only benefit from a LTV of 60 %. Given among other things the long period of time (179 days a year) the property can be used for residential/recreational purposes even without a permission and the fact, that the properties may not be linked to an economic activity (and generally is not regarded as offices or other commercial premises), it is being considered whether these properties can and ought to be categorized as residential property. This is also in light of the fact, that at least certain member states have accepted a LTV higher than 60 % in general for this type of property.

13. Answer proposed by the submitter:

A property which may be used for residential and recreational purposes by the owner or the lessee for a longer period of time pr. year (a second home), and which is not a commercial premise linked to an economic activity, is to be considered as a residential property under Article 1 of CRR cf. Article 4 (1)(75) irrespective that it is not and may not be used as residence all-year.