

Covered Bond (list zastawny) legislation - The Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks.

Definitions

Capitalised words and expressions used later in the document have the following meanings:

“**Act**” means the act of 29 August 1997 on mortgage bonds and mortgage banks - with amendments:

- of 2003, no. 60 item 535
- of 2002, no. 153 item 1271
- of 2001, no. 15 item 148
- of 2005, no. 184 item 1539
- of 2005, no. 249 item 2104
- of 2006, no. 157 item 1119
- of 2009, no. 157 item 1241.

“**Hipoteczny/ publiczny list zastawny**” – mortgage/ public sector covered bond according to Art. 124 Capital Requirements Regulation/ art. 52(4) UCITS Directive.

“**Mortgage covered bond**” means the covered bonds backed with mortgage loans (*hipoteczny list zastawny*).

“**Public sector covered bond**” means the public-sector covered bonds backed with loans to public sector (*publiczny list zastawny*).

“**Mortgage**” means mortgage collateral (*hipoteka*).

“**Cover register**”, “**Mortgage cover register**”, “**Public sector cover register**” or “**Register**” means a cover register of mortgage/ public sector backed loans (*rejestr zabezpieczenia hipotecznych listów zastawnych, rejestr zabezpieczenia publicznych listów zastawnych*).

„**Mortgage cover calculation**” – *rachunek zabezpieczenia listów zastawnych*.

“**Cover Pool Monitor**” means a person appointed by the Regulator to supervise activities of a mortgage bank (*powiernik*).

“**Curator**” (Probation Officer) means a probation officer (*kurator*) appointed by the relevant Polish bankruptcy court in order to represent interests of mortgage bonds’ holders, pursuant to art. 443 of the Bankruptcy Act.

“**Insolvency administrator**” (administrative receiver - *syndyk*) – is appointed by the relevant Polish bankruptcy court to conduct liquidation bankruptcy (of a mortgage bank).

“**Administrator**” (zarządca) – see Art. 445(1) Bankruptcy Act.

“**Judge-commissioner**” (sędzia komisarz) - see Art. 447(2) Bankruptcy Act.

“**Court supervisor**” (*nadzorca sądowy*) – is appointed by the relevant Polish bankruptcy court in case of arrangement bankruptcy of a mortgage bank.

“**Banking Law**” means the act dated 29 August 1997 – the banking law (as amended).

“**Bankruptcy Act**” means the act of 28 February 2003 – the bankruptcy and rehabilitation law (as amended).

“**Holder**” means any person or entity that is an owner of mortgage bond.

“**Polish Financial Supervision Authority**” - *Komisja Nadzoru Finansowego*

“**Substitute Cover**” means assets (other than bank loans) which can be used as supplementary elements of the cover pool.

The Act
of 29 August 1997
on Covered bonds and Mortgage Banks.

Part One
General Provisions

[scope]

Art. 1. The Act lays down:

- 1) principles regulating the issue, sale, purchase, redemption of and creation of cover for mortgage covered bonds; and
- 2) specific supervision over mortgage banks.

[definitions]

Art. 2. For purposes of this Act:

- 1) mortgage lending value of a property - shall mean the value established in compliance with the provisions of this Act which in the opinion of a mortgage bank reflects the level of risk connected with this property as the subject of collateral for credits granted by this mortgage bank;
- 2) mortgage(s) - shall mean mortgage collateral(s) established in the name of a mortgage bank against the right of perpetual usufruct or the right of ownership to a property situated within the country.

Part Two
Covered bonds

[mortgage covered bond]

Art. 3. 1. A mortgage covered bond is a registered or bearer security issued on the basis of receivables of a mortgage bank secured by mortgages where the mortgage bank undertakes specific financial commitments towards the authorised bearer of the mortgage covered bond.

[public sector covered bond]

2. A public sector covered bond is a registered or bearer security issued on the basis of receivables of a mortgage bank arising from:

- 1) credits within the secured part with due interest, a guarantee or surety of the National Bank of Poland, the European Central Bank, governments or central banks of the EU Member States, the Organisation for Economic Cooperation and Development, except for states which are currently in the process of restructuring of restructured their foreign debts during the last 5 years, as well as a guarantee or surety of the State Treasury in accordance with provisions of separate laws; or
- 2) credits granted to entities listed in point 1); or
- 3) credits in the secured part with due interest, a guarantee or surety of local government units and credits granted to such local government units.

3. Regulations concerning **mortgage** covered bonds shall apply respectively to public sector covered bonds, except for the provisions of this Act on mortgages.

4. When granting a credit to a local government unit as well as when purchasing securities issued by a local government unit, a mortgage bank shall be obliged to get a positive, on the day of granting the credit or purchasing the securities, opinion of the regional clearing house concerning the repayment capacity of the credit or the redemption capacity of the securities referred to in Article 91,

paragraph 2 of the Public Finance Law of 27 August 2009 (Journal of Acts of 2013 item 885, with further amendments ¹).

[financial commitments]

Art. 4. The financial commitments referred to in Article 3 shall consist in the payment of interest and the redemption of mortgage covered bonds in the manner and at dates laid down in the terms and conditions of the issue, taking into account the provisions of this Act.

[currency of the mortgage covered bond]

Art. 5. A mortgage covered bond may be denominated in zlotys or in a foreign currency within the understanding of the Foreign Exchange Law.

[contents of the mortgage covered bond]

Art. 6. A mortgage covered bond shall include in particular:

- 1) the name "mortgage covered bond";
- 2) the indication of a legal basis for the issue;
- 3) the name (logo) of the issuing mortgage bank and its registered office;
- 4) series and number of the mortgage covered bond ;
- 5) the indication of its nominal value and the date from which interest is accrued, interest rate as well as dates of interest payments, the date of redemption of the mortgage covered bond, the place of payment and terms of redemption;
- 6) *(deleted)* 7) information that a mortgagee named on the mortgage covered bond has no right to call for redemption prior to the redemption date specified therein;
- 8) the indication of the place and date of the issue of the mortgage covered bond;
- 9) signatures of persons authorised to assume commitments in the name of the mortgage bank and the signature of the cover pool monitor; these signatures may be reproduced mechanically.

[form of the mortgage covered bond]

Art. 7. *deleted*

Art. 7a. Terms of issuance of the Covered Bonds include in particular information on:

- 1) the interest payment dates
 - 2) covered bond purchase dates and terms and conditions
- applied in the case of announcing bankruptcy of a mortgage bank.

[references]

Art. 8. 1. The following provisions shall apply to matters not addressed in this Act with respect to principles regulating the issue, trade, and redemption of mortgage covered bonds:

- 1) The Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies (Journal of Acts of 2016 item 1639);
- 2) The Act of 29 July 2005 on Trading in Financial Instruments (Journal of Acts of 2016 item 1639);
- 3) The Bonds Act of 15 January 2015 (Journal of Acts item 238), excluding the provisions of Article 14, Article 31 Section 1–3 and 6, Article 32, Article 74 Section 2 and 3, Article 78–87 and Article 90.

[public trading ²]

¹ Amendments to a consolidated text of the cited Act have been announced in Journal of Laws of 2013 item 938 and 1646, of 2014 item 379, 911, 1146, 1626 i 1877, of 2015 r. item 238, 532, 1045, 1117, 1130, 1189, 1190, 1269, 1358, 1513, 1830, 1854, 1890 i 2150 and of 2016 item 195, 1257 and 1454.

² The Regulation of the Council of Ministers of 16 October 2001 on setting the validity period for a prospectus, the period during which after the publication of the prospectus and its summary the sale of and subscription for securities may start, the required number of prospectuses as well as the place, dates and manners of public presentation of the prospectus and its summary (Journal of Acts of 2001 No 139, item 1570; of 2002 No 31, item. 279); The Regulation of the Council of Ministers of 16 October

2. The Council of Ministers may, by way of regulation, lay down a specific manner and terms with respect to the introduction of mortgage covered bonds into public trading. The regulation should particularly specify the scope of information obligations allowing investors for a reliable assessment of financial and economic situation of the issuer.

Part Three Mortgage Bank Chapter 1 General Provisions

[legal form]

Art. 9. 1. A mortgage bank may only operate in the legal form of a joint stock company.

2. The statute of a mortgage bank shall specify its name supplemented with the words "mortgage bank".

[references]

Art. 10. Relevant provisions of the Banking Law and regulations on the National Bank of Poland shall apply respectively to matters regarding the establishment, organisation, and operation of mortgage banks which are not regulated in this Act.

[equity]

Art. 11. The Polish Financial Supervision Authority³ may, by way of resolution, lay down specific equity requirements for mortgage banks.

Chapter 2 Activities of mortgage banks

[activities of a mortgage bank]

Art. 11a. A mortgage bank may only engage in the activities specified in this Act.

[core operations]

Art. 12. Core operations of mortgage banks include:

- 1) granting credits secured with mortgages;
- 2) granting credits not secured with mortgages referred to in Article 3, paragraph 2;
- 3) purchasing receivables of other banks arising from their credits secured with mortgages and receivables from loans not secured with mortgages referred to in point 2);
- 4) issuing mortgage covered bonds on the basis of the mortgage bank's receivables arising from:
 - a) granted credits secured with mortgages; and
 - b) purchased receivables of other banks arising from their credits secured with mortgages;
- 5) issuing public sector covered bonds on the basis of:
 - a) the mortgage bank's receivables arising from its credits not secured by mortgages referred to in point 2);
 - b) purchased receivables of other banks arising from their credits not secured by mortgages referred in point 2).

2001 laying down specific conditions that should be met by a prospectus and its summary (Journal of Acts of 2001 No 139, item 1568; of 2002 No 36, item 328); The Regulation of the Council of Ministers of 16 October 2001 on current and periodical information provided by issuers of securities (Journal of Acts of 2001 No 139, item 1569 as amended)

³ Polish: Komisja Nadzoru Finansowego.

[lending limit - loan to value]

Art. 13. 1. The total amount of receivables from operations referred to in Article 12, points 1) and 3), in the part above 60% of the mortgage lending value of the property, may not exceed 30% of the total sum of the mortgage bank's receivables secured with mortgages.

[loan to value]

2. Amount of individual loans secured with a mortgage:
- 1) upon granting – in the case of granting loans secured with a mortgage,
 - 2) purchasing liabilities from claims of such a loan – in the case of purchasing claims of other banks due to the mortgage-secured loans granted
- shall not exceed the mortgage lending value

[refinancing limit]

Art. 14. From the funds raised through the issue of covered bonds the mortgage bank may refinance the loans secured by mortgages and other bank debts acquired from granted loans secured by a mortgage: refinancing with reference to individual loan or an individual claim cannot exceed the amount referring to 60% of the mortgage lending value, and in the case of residential property within the meaning of Article 4 Section 1 item 75 of the Ordinance of the European Parliament and the European Union Council no 575/2013 of 26 June 2013 on prudential requirements for loan institutions and investment companies, amending the ordinance (EU) no 648/2012 (Journal of Acts UE L 176 of 27.06.2013, page 1, with further amendments) – 80% of the mortgage lending value.

[additional activities]

Art. 15. 1. Apart from core operations referred to in Article 12, mortgage banks may engage in the following activities:

- 1) ~~deleted~~ 2) taking credits and loans;
- 3) issuing covered bonds;
- 4) safekeeping securities;
- 5) purchasing and taking up shares and stocks of other entities whose legal form limits the liability of a mortgage bank to the sum invested insofar as it helps the performance of activities of a mortgage bank, where the total value of purchased or taken up shares and stocks may not be higher than 10% of the mortgage bank's equity;
- 6) ~~deleted~~ 7) providing consulting and advice with respect to the property market, including help in establishing the mortgage lending value of the property;
- 8) managing receivables of a mortgage bank and other banks arising from credits referred to in Article 12 as well as granting these credits on behalf of other banks on the basis of relevant cooperation agreements.

2. The total level of commitments arising from activities referred to in paragraph 1, points 1) - 3) may not exceed:

- 1) within the first five years from the start of business operations by a mortgage bank - ten times of the bank's equity;
- 2) after the period of 5 years referred to in point 1) - six times of the bank's equity.

3. Funds raised from activities referred to in paragraph 1, points 1) - 3) may be earmarked exclusively for the refinancing of operations listed in Article 12.

[auxiliary activities]

Art. 15a. Mortgage banks may engage in actions assisting the performance of operations listed in Article 12 and Article 15, paragraph 1, points 1) - 3) and 5). They can in particular:

- 1) perform foreign exchange transactions;
- 2) undertake actions aimed at limiting currency and interest risks, subject to Article 19, paragraph

[use of free funds]

Art. 16. 1. A mortgage bank may use free funds to:

- 1) open deposits at banks with equity not lower than the zloty equivalent of 10 million euro calculated in accordance with average rate announced by the National Bank of Poland;
- 2) purchase its own mortgage covered bonds with purpose of depositing them under the care of the cover pool monitor insofar it is connected with the bank's fulfilment of the condition referred to in Article 18 of this Act or for the purpose of surrendering them for cancellation ;
- 3) purchase securities issued or guaranteed by entities listed in Article 3, paragraph 2, point 1);
- 4) purchase securities issued by local government units;
- 5) purchase mortgage covered bonds issued by other mortgage banks.

[purchasing the property]

2. A mortgage bank may only acquire properties to prevent losses on credits secured with mortgages and if it is necessary to satisfy operational needs of the mortgage bank.

[limit on mortgage covered bonds outstanding]

Art. 17. 1. The total nominal value outstanding of a mortgage bank's mortgage covered bonds may not exceed forty times its own capital, notwithstanding paragraph 2.

2. For the purpose of setting the limit referred to in paragraph 1, the bank's own capital is summed up with the general risk reserve fund referred to in Article 130, paragraph 1 of the Act of 29 August 1997 - The Banking Law (Journal of Acts of 2015 item 128, with further amendments⁴).

3. *deleted*

[principle of on-going covers for mortgage covered bonds]

Art. 18. 1. The sum of nominal amounts of the mortgage bank claims secured with a mortgage, rights and funds mentioned in Section 3 and 4, entered into the covered bonds register, constituting a basis for the issue of mortgage covered bonds, may not be lower than 110% of the total amount of nominal value of mortgage covered bonds in trading, while the total nominal amounts of the mortgage bank's claims secured with a mortgage, constituting a basis for the issue of mortgage covered bonds, may not be less than 85% of the total amount of nominal value of covered bonds in trading.

1a. Total nominal amounts of the mortgage bank's claims, mentioned in Article 3 Section 2, and the rights and funds mentioned in Section 3 and 4, entered into the covered bonds register, constituting a basis for the issue of public covered bonds, may not be less than 110% of the total amount of nominal values in trading , while the sum of nominal amounts of the mortgage bank's claims mentioned in Article 3 Section 2, constituting a basis for the issue of public covered bonds, may not be less than 85% of the total amount of nominal values in covered bonds public trading.

2. Interest income of a mortgage bank set separately for mortgage covered bonds and public covered bonds from:

- 1) claims secured with a mortgage or the claims mentioned in Article 3 Section 2, and
 - 2) rights and funds mentioned in Section 3 and 4
- constituting a basis for the issue of mortgage covered bonds or public covered bonds respectively may not be less than the costs of interests of mortgage covered bonds or public covered bonds in trading.

[substitute cover]

3. The basis for covered bonds issue may also be funds of the mortgage bank:

- 1) invested in the securities referred to in Article 16, paragraph 1, point 3;
- 2) deposited at the National Bank of Poland;
- 3) kept in cash.

3a. Mortgage Bank is obliged to keep, separate for mortgage covered bonds and public covered bonds, a surplus created from the funds mentioned in Section 3, in the amount not less than the total

⁴ Amendments to a consolidated text of the cited Act have been announced in Journal of Laws of 2015 item 559, 978, 1166, 1223, 1260, 1311, 1348, 1357, 1513, 1634, 1830, 1844, 1854, 1864 and 2281, and of 2016 item 615, 904, 996, 1177 and 1579

amount of nominal value of interest from the mortgage or public covered bonds in trading, payable within the subsequent 6 months.

3b. The funds allotted for the surplus mentioned in Section 3a may not constitute a basis for the issue of covered bonds.

[derivatives⁵]

4. Upon specifying the amount mentioned in Sections 1–3a, the value of the purchased hedging financial instruments fulfilling the terms and conditions mentioned in Article 35a Section 3 of the Accounting Act of 29 September 1994 (Journal of Acts of 2016 item 1047), and amendments of the value.

[non-traded mortgage covered bonds]

Art. 19. 1. Within the understanding of this Act, mortgage covered bonds issued by a mortgage bank and deposited with the cover pool monitor, are not deemed to entered for trading.

[another currency of the mortgage covered bond]

2. In the event mortgage covered bonds are issued in a currency different than:

- 1) the currency of the mortgage bank's receivables securing these covered bonds; or
- 2) the currency of the funds referred to in Article 18, paragraph 3

the mortgage bank is obliged to undertake to reduce the foreign exchange risk.

[mortgages]

Art. 20. 1. A mortgage bank's receivables to be entered into the mortgage cover register, may only be secured by a first charge mortgage entry.

2. Where the mortgage bank's receivables were expressed in a foreign currency, the entry to the mortgage register shall be expressed in the same currency.

[speed of mortgage entry]

3. An application for registration of a mortgage securing the bank's receivables which is to be entered into the mortgage register of mortgage covered bond covers, is handled by the registration court within one month from its submittal.

[early draw-down of funds]

4. A mortgage bank may, prior to securing credit receivables with a mortgage, provide the borrower with a certain amount of funds specified in the credit agreement, if an appropriate request has been submitted to the court for registration of the mortgage securing these receivables and, until the moment of its registration, an additional collateral for the granted credit has been created by way of, in particular:

- 1) guarantee or surety of entities referred to in Article 3 paragraph 2, point 1);
- 2) guarantee or surety of banks satisfying the condition referred to in Article 16, paragraph 1, point 1);
- 3) credit payment insurance.

5. A mortgage bank may, prior to securing credit receivables with a mortgage, provide the borrower with a certain amount of funds specified in the credit agreement, provided the collateral referred to in paragraph 4 has been created, also if the examination of the land register for a given property within which the construction project takes place, has detected a claim of a mortgage bank requesting that the mortgage is created in its name to secure the credit repayment, on the residential property along with the setting apart of same. Deletion of the claim from the land register requires the consent of the mortgage bank in whose name the mortgage is to be created.

6. The application to enter a claim mentioned in Section 5 may be filed by the owner of the property on which the construction is realized, the mortgage bank or purchaser of the premises mentioned in Section 5. Entry of the claim into the Land and Mortgage Register does not require the consent of the owner of the property the construction is realized upon.

⁵ Compare Article 19, paragraph 2, point 2); Article 24, paragraph 1); Article 35

[early retiring of mortgage covered bonds]

Art. 21. 1. When covered bond maturity is longer than five years from the date of issue, the mortgage bank to ensure compliance of the provisions of Art. 18 may make the redemption of bonds before maturity date, but not earlier than after 5 years from the date of issue, provided that the terms of the issue expressly provided that opportunity.

[early credit repayment]

2. In the event the bank's mortgage-secured receivables entered into the mortgage register have arisen in connection with a fixed-interest credit agreement, earlier unilateral calling in for credit repayment by the borrower may be contractually excluded, but for not longer than 5 years.

[mortgage lending value]

Art. 22. 1. Establishing the mortgage lending value of the property shall be performed with due care and diligence, and shall take into account only the permanent features and the yield which the property, rational management provided, can guarantee any owner.

2. The mortgage lending value of the property shall be established by a mortgage bank on the basis of an expert's opinion.

3. The expert's opinion on the mortgage lending value referred to in paragraph 2 shall be prepared in accordance with this Act and the regulations of the mortgage bank by:

- 1) the mortgage bank; or
- 2) other entities, upon request from the mortgage bank, following the agreement with the borrower, in particular entities referred to in Article 174 paragraphs 2 and 6 of the Act of 21 August 1997 on property management (Journal of Acts of 2015 item 1774 and 1777 and of 2016 item 65, 1250, 1271 and 1579).

4. The experts' opinion referred to in paragraph 2 shall be prepared in writing and signed by its author(s). It should allow for a reasonable control by the Polish Financial Supervision Authority and the cover pool monitor of risk undertaken by the mortgage bank in relation to the property being used as a collateral for credits granted by this bank.

5. Detailed principles of determining the mortgage lending value of the property are laid down the regulation of the mortgage bank. The regulations, and any change of same, requires an approval by the Polish Financial Supervision Authority.

[limits for investments in construction]

Art. 23. 1. Receivables secured by mortgages established during the construction process may not in total exceed 10% of the overall value of mortgage-secured receivables, which are underlying the issue of mortgage covered bonds. Within this limit, the receivables secured by mortgages on construction lots in compliance with the land use plan, may not exceed 10%.

[properties excluded from the basis of the issue]

2. The basis of a mortgage covered bond issue may not include receivables secured on properties which are used in a not permanent manner, particularly on properties with fossil deposits.

Chapter 3

Receivables securing the mortgage covered bond issue

[cover register]

Art. 24. 1. Mortgage Bank keeps and stores a register of covered bonds collaterals, to which the mortgage bank's claims, rights and funds are entered as separate items, mentioned in Article 18 Section 3 and 4, constituting a basis for covered bonds issue, as well as the funds constituting a surplus mentioned in Article 18 Section 3a. The cover register is kept separately for mortgage covered bonds and public sector covered bonds.

2. In the case of establishing a mortgage to secure the bank's receivables entered in the mortgage cover register, an appropriate entry in the land title registry shall be made.



2a. Action consisting in establishing collateral of mortgage bank obligation the object of which are mortgage bank's receivables, rights or funds, mentioned in Article 18 Section 3, 3a and 4, entered into the Covered Bonds Register, is invalid unless it is done for securing obligations for the following purposes:

1) covering financial instruments, mentioned in Article 18 Section 4, entered into the Covered Bonds Register;

2) securities payment and settlement system, the participant of which is a mortgage bank, and settlement of financial covers established in accordance with the provisions of the Act of 2 April 2004 on certain financial collaterals (Journal of Acts of 2016 item 891).

3. Decisions of the mortgage bank pertaining to mortgage receivables entered in the mortgage cover register, requires prior approval of the cover pool monitor.

4. Entries referred to in paragraph 1 are made to the full value of the credit granted on the basis of the credit agreement with the mortgage bank or on the basis of the credit agreement which is the basis of mortgage receivable acquired by the mortgage bank.

5. *deleted*

6. The Polish Financial Supervision Authority shall define, by way of resolution, a template of the mortgage cover register.

[mortgage cover calculation]

Art. 25. 1. Mortgage Bank keeps covered bonds account for the purpose of monitoring long-term fulfillment of the requirements mentioned in Article 18 Section 1, 1a and 2. The account is performed on each working day.

2. Mortgage Bank finds whether, on the day of the finding, the mortgage bank's receivables, rights and funds mentioned in Article 18 Section 3, 3a and 4, entered into the covered bonds register, are sufficient for:

1) full satisfaction of the covered bonds holders [coverage balance test] and

2) full satisfaction of covered bonds owners in prolonged maturity dates, mentioned in Article 446 Section 1 of the Act of 28 February 2003 – Bankruptcy Law (Journal of Acts of 2015 item 233 and ...) [liquidity test].

3. Upon performing the coverage balance and liquidity tests, the mortgage bank considers liquidation costs of a separate bankruptcy estate and foreign currency and interest rate variances, if such variance between the items of a separate bankruptcy estate and covered bonds obligations are not covered by appropriate transactions securing against interest rate or foreign currency change risk.

4. Coverage balance test is performed not less often than every 6 months, and liquidity test – not less often than every 3 months.

5. Coverage balance and liquidity test results are found positive if the following findings indicate that – as at the date of making the findings – the mortgage bank's receivables, rights and funds mentioned in Article 18 Section 3, 3a and 4, entered into the covered bonds register, are sufficient for full satisfaction of the covered bonds holders.

6. Covered bonds account and coverage balance test and liquidity test are performed separately for mortgage covered bonds and public covered bonds.

7. The Minister competent for the issues related to financial institutions, following obtaining an opinion of the Financial Supervision Authority, shall specify, in the course of an ordinances, detailed terms and conditions and performance manner of:

1) covered bonds account mentioned in Section 1, including the dates for which it is performed,

2) coverage balance and liquidity tests

– considering the necessity to ensure security of the issued covered bonds.

[publication obligation]

Art. 26. A mortgage bank shall announce the following in the "Monitor Sądowy i Gospodarczy" (Court and Economic Journal), not later than within three months from the end of accounting year:

1) the total amount of the nominal value of mortgage covered bonds issued by the bank, which were outstanding at the end of the accounting year;

- 2) the total amount of receivables of the bank and funds entered in the mortgage cover register as at the end of the accounting year.

Chapter Four

Control and supervision over mortgage banks

[cover pool monitor]

Art. 27. 1. A cover pool monitor is appointed at each mortgage bank and at least one deputy, while the number of deputies shall be adapted to the scale of the mortgage bank's activity. The cover pool monitor and his deputy may not be employees of the mortgage bank.

2. The cover pool monitor and his deputy shall be appointed, for a period of 6 years upon the request of the supervisory board of the mortgage bank, by the Polish Financial Supervision Authority.

3. The cover pool monitor and his deputy must be the European Union citizens with tertiary education and ensuring reliable discharging of assumed duties.

[calling off]

Art. 28. 1. The cover pool monitor and the deputy may be called off by the Polish Financial Supervision Authority in case of:

- 1) resignation from the function,
- 2) loss of capacity for performing the assumed duties due to long-term illness, lasting for at least 3 months during one calendar year;
- 3) a legally valid court sentence for committing an offence;
- 4) bankruptcy of the mortgage bank;
- 5) failure to perform duties in compliance with this Act.

2. The decision of the Polish Financial Supervision Authority calling off the cover pool monitor or his deputy may be appealed to the administrative court⁶.

[independence of the cover pool monitor and solving disputes]

Art. 29. 1. The cover pool monitor and his deputy are independent and shall not be bound by instructions of the appointing body.

2. Disputes between the cover pool monitor and the mortgage bank shall be resolved by the Polish Financial Supervision Authority.

[duties of the cover pool monitor]

Art. 30. Duties of the cover pool monitor include ensuring that:

- 1) commitments pertaining to the outstanding mortgage covered bonds are at all times covered by the mortgage bank in compliance with the provisions of this Act;
- 2) the mortgage lending value of the property adopted by the mortgage bank has been established in accordance with the regulations referred to in Article 22, paragraph 2; the cover pool monitor shall not be required to investigate whether the mortgage lending value of the property corresponds to its actual value;
- 3) mortgage bank shall adhere to the requirements mentioned in Article 18; if the requirements are not adhered to by the bank, the cover pool monitor shall immediately inform the Financial Supervision Authority;
- 3a) coverage balance test and liquidity test results confirm that the mortgage bank's receivables, rights and funds mentioned in Article 18 Section 3, 3a and 4, entered into the covered bonds register, are sufficient for full satisfaction of the covered bonds holders
- 4) the manner the mortgage bank keeps the mortgage cover register is in compliance with this Act;
- 5) the mortgage bank ensures an appropriate cover for planned mortgage covered bonds' issues in accordance with the provisions of this Act, and proper control of appropriate entries in the mortgage cover register.

⁶ Polish: sąd administracyjny

Art. 30a.

Should:

- 1) the bank not comply with requirements mentioned in article 18, or:
- 2) the coverage balance or liquidity test be not positive – the cover pool monitor shall inform the Financial Supervision Authority immediately.

Art. 31. 1. The cover pool monitor performs an ongoing control of the appropriateness of the management of the mortgage cover register.

2. Not later than within first seven days of each month the cover pool monitor shall provide the Polish Financial Supervision Authority with a cover pool monitor-certified, up-dated transcript of entries made in the mortgage cover register in the preceding month. This transcript shall be kept by the Polish Financial Supervision Authority for at least 10 years.

3. An entry in the mortgage cover register may only be deleted with a written agreement of the cover pool monitor; the affixing of his legible signature to the deleting entry in the mortgage cover register is equivalent to the written approval.

[powers of the cover pool monitor]

Art. 32. 1. In order to perform tasks referred to in Article 30 the cover pool monitor shall have the right to inspect accounting books, registers and other bank documents at any time.

1a. A mortgage bank shall provide the cover pool monitor and his deputy with confidential information, in the scope described in paragraph 1, necessary for the performance of their duties.

1b. The cover pool monitor and his deputy shall not disclose any information that they acquire during the performance of their duties.

2. In the case of non-performance by the mortgage bank of recommendations of the cover pool monitor made in connection of the performance of his duties in compliance with this Act, the cover pool monitor shall promptly notify the Polish Financial Supervision Authority.

3. In order to rectify the discovered irregularities, the Polish Financial Supervision Authority may use its supervisory rights stipulated in the Banking Law and in the regulations on the National Bank of Poland.

[work conditions and cover pool monitor's fee]

Art. 33. 1. The cover pool monitor and his deputy shall receive remuneration, the amount of which shall be determined by the Polish Financial Supervision Authority in the appointment act; costs related to the performance of the cover pool monitor function, including remuneration, shall constitute part of the bank's operational costs.

2. A mortgage bank shall secure the cover pool monitor and his deputy with work conditions appropriate for the performance of their duties.

3. The cover pool monitor and his deputy shall be entitled to vacation in accordance with relevant provisions of the Labour Code, at the time agreed with the mortgage bank.

4. The term of the performance of the function of cover pool monitor or his deputy shall be included in employment periods and other periods relevant for acquiring staff benefits. The cover pool monitor and his deputy shall be subject to the social security and health insurance regulations unless they are covered under separate arrangements.

[supervision over mortgage banks]

Art. 34. 1. In matters not regulated by this Act supervision over mortgage banks shall be exercised in compliance with the Banking Law and the regulations on the National Bank of Poland.

2. *deleted*

3. The inspection of the appropriateness of the mortgage bank's entries to the mortgage cover register, including the compliance of establishing the mortgage lending value of the property with the rules referred to in Article 22, paragraph 5 may be commissioned by the Polish Financial Supervision Authority to an independent expert at the expense of the inspected mortgage bank.

4. The Polish Financial Supervision Authority may define special liquidity norms and other norms of permissible risk in the operation of mortgage banks.

Chapter V

deleted

Art. 35. *deleted*

Art. 36. *deleted*

Chapter VI Penal Sanctions

[provisions regarding penalties; protection of the name]

Art. 37. 1. Whoever issues covered bonds without proper authorisation or upon issue does not comply with the provisions referred to in Article 17-19 and 22-24 of this Act, or without proper authorisation to issue covered bonds, calls the issued securities under the name "list zastawny" or under any other name including these words, shall be subject to a payment of PLN 50.000 fine and imprisonment for a term of 6 months to 5 years.

2. The same penalty shall apply to persons committing the offences referred to in paragraph 1 acting on behalf of a legal entity.

3. Persons who unintentionally commit the offences referred to in paragraphs 1 or 2, shall be subject to a fine, freedom restriction or imprisonment for a period of up to two years.

Chapter VII

Amendments to existing regulations and final provisions

[amendments and final provisions introduced by the Act on Mortgage Bonds and Mortgage Banks of 1997]

(...)

Art. unlabeled. Within 6 months from the date this Act comes into force, the mortgage bank announces in the Court and Commercial Monitor, with reference to the covered bonds issued before the entry into force, supplementary information to the covered bonds issue prospectus including information on

- 1) the interest payment dates and
 - 2) the dates and terms and conditions of covered bonds buy-out
- applied in the case of announcing bankruptcy of the mortgage bank.

Art. unlabeled. The currently operating provisions of Ia shall be applied to the bankruptcy proceedings towards mortgage banks initiated and not completed before the date of entering into force of this Act.

Art. unlabeled. The Act comes into force since 1st of January, 2016.

Polish Mortgage Credit Foundation

Warsaw, 15/03/2017