



## **The Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks.**

(Journal of Acts of 1997, No 140 item 940); of 1998, No. 107 item 669; of 2000, No 6 item 70; No 60 item 702; of 2001 No 39 item 459; of 2002 No 126 item; of 2003 No 60 item 535; of 2002 No 153 item 1271)

### **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 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 Mortgage Bonds**

#### **[mortgage bond]**

**Art. 3.** 1. A mortgage 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 bond.

#### **[public mortgage bond]**

2. A public mortgage 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 bonds shall apply respectively to public mortgage 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 49, paragraph 2 of the Public Finance Law of 26 November 1998 (Journal of Acts No 155, item 1014; of 1999 No 38, item 360, No 49, item 485, No 70, item 778 and No 110, item 1255; of 2000 No 6, item 69, No 12, item 136, No 48, item 550, No 95, item 1041, No 119, item 1251 and No 122, item 1315; of 2001 No 45, item 497, No 46, item 499, No 88, item 961, No 98, item 1070, No 100, item 1082, No 102, item 1116, No 125, item



1368 and No 145, item 1623, and of 2002 No 41, items 363 and 365, No 74, item 676 and No 113, item 984).

**[financial commitments]**

**Art. 4.** The financial commitments referred to in Article 3 shall consist in the payment of interest and the redemption of mortgage 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 bond]**

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

**[contents of the mortgage bond]**

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

- 1) the name "mortgage 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 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 bond, the place of payment and terms of redemption;
- 6) in the event the redemption date falls after 5 years - the information that after 5 years from the issue date it may be retired by the mortgage bank prior to the redemption date, and information on the terms of this redemption;
- 7) information that a mortgagee named on the mortgage 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 bond;
- 9) signatures of persons authorised to assume commitments in the name of the mortgage bank and the signature of the trustee; these signatures may be reproduced mechanically.

**[form of the mortgage bond]**

**Art. 7. 1.** A mortgage bond may be issued in hard copy or in an intangible form (electronic record).

2. If a mortgage bond is in intangible form, all the information referred to Article 6 should be provided in the contents of the certificate of deposit or another document issued to an authorised person.

3. Mortgage bonds may be issued in tranches.

**[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 bonds:

- 1) The Public Trade in Securities Law and
- 2) The Act of 29 June 1995 on bonds (Journal of Acts of 2001, No 120, item 1300), except for Article 7, paragraphs 1 and 2, and Articles 28-39.

**[public trading<sup>1</sup>]**

2. The Council of Ministers may, by way of regulation, lay down a specific manner and terms with respect to the introduction of mortgage 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.

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<sup>1</sup> 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 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)



## **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 Banking Supervisory Commission 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 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 mortgage 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).

### **[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. A single credit secured with mortgage may not exceed the mortgage lending value of the property.

### **[refinancing limit]**

**Art. 14.** Funds raised from the issue of mortgage bonds may be used by a mortgage bank for refinancing mortgage-secured credits and purchased receivables of other banks arising from their mortgage-secured credits; the refinancing may not, however, exceed 60% of the mortgage lending value of the property.

### **[additional activities]**

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

- 1) accepting term deposits;



- 2) taking credits and loans;
- 3) issuing 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) keeping bank accounts for servicing investment projects financed through credits granted by a mortgage bank;
- 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 2.

#### **[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 bonds with purpose of depositing them under the care of the trustee 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 their retiring;
- 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 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 bonds outstanding]**

**Art. 17.** 1. The total nominal value outstanding of a mortgage bank's mortgage 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 2002 No 72, item 665).

3. *deleted*

#### **[principle of on-going covers for mortgage bonds]**

**Art. 18.** 1. The total nominal value of all outstanding mortgage bonds shall not exceed the sum of nominal amounts of the bank's receivables secured with mortgages, which form the basis for the mortgage bond issue, notwithstanding paragraph 3.



2. The bank's income from interest on its mortgage-secured receivables, referred to in paragraph 1, may not be lower than the amount of the bank's payable interest on outstanding mortgage bonds.

**[substitute cover]**

3. The mortgage bond issue may also, up to 10% of the mortgage-secured receivables referred to in paragraph 1, be based on the bank's funds:

- 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.

**[derivatives<sup>2</sup>]**

4. The amounts referred to in paragraphs 1-3 shall take into account the value of purchased financial instruments meeting the requirements listed in Article 35a, paragraph 3 of the Accounting Act of 29 September 1994 (Journal of Acts of 2002 No 76, item 694) as well as changes in same.

**[non-traded mortgage bonds]**

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

**[another currency of the mortgage bond]**

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

- 1) the currency of the mortgage bank's receivables securing these 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 bonds 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.

**[early retiring of mortgage bonds]**

**Art. 21.** 1. In the event redemption date of the mortgage bond exceeds 5 years from the date of its issue, in order to assure compliance of actions with the provisions of Article 18, a bank may retire mortgage bonds prior to their redemption date, not earlier, however, then after the expiration of a 5-year period from the date of issue.

**[early credit repayment]**

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<sup>2</sup> Compare Article 19, paragraph 2, point 2); Article 24, paragraph 1); Article 35



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 2000, No 46, item 543; of 2001 No 129, item 1447 and No 154, item 1800; and of 2002 No 25, item 253, No 74, item 676 and No 113, item 984).

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 Banking Supervisory Commission and the trustee 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 Banking Supervisory Commission.

**[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 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 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 bond issue

**[mortgage cover register]**

**Art. 24.** 1. A mortgage bank keeps and manages a mortgage cover register, into which receivables, rights and funds of the mortgage bank, referred to in Article 18 paragraphs 3 and 4 underlying the mortgage bond issue, are entered as separate items. The mortgage cover register is kept separately for mortgage bonds and public mortgage 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.

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

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 Banking Supervisory Commission shall define, by way of resolution, a template of the mortgage cover register.



**[mortgage cover account]**

**Art. 25.** A mortgage bank shall keep a mortgage cover account to ensure compliance, in the long term perspective, with the requirements referred to in Article 18.

**[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 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**

**[trustee]**

**Art. 27.** 1. A trustee and his deputy shall be appointed at each mortgage bank. The trustee and his deputy may not be employees of the mortgage bank.

2. The trustee 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 Banking Supervisory Commission.

3. The trustee and his deputy must be Polish citizens with tertiary education and ensuring reliable discharging of assumed duties.

**[calling off]**

**Art. 28.** 1. The trustee and the deputy may be called off by the Banking Supervisory Commission 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 Banking Supervisory Commission calling off the trustee or his deputy may be appealed to an administrative court.

**[independence of the trustee and solving disputes]**

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

2. Disputes between the trustee and the mortgage bank shall be resolved by the Banking Supervisory Commission.

**[duties of the trustee]**

**Art. 30.** Duties of the trustee include ensuring that:

- 1) commitments pertaining to the outstanding mortgage 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 trustee shall not be required to investigate whether the mortgage lending value of the property corresponds to its actual value;
- 3) the mortgage bank observes the limits laid down in Article 18; the trustee shall promptly inform the Banking Supervisory Commission of any cases of non-compliance by the mortgage bank with these limits.
- 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 bonds issues in accordance with the provisions of this Act, and proper control of appropriate entries in the mortgage cover register.

**Art. 31.** 1. The trustee 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 trustee shall provide the Banking Supervisory Commission with a trustee-certified, up-dated transcript of entries made in the mortgage cover register in the preceding month. This transcript shall be kept by the Banking Supervisory Commission for at least 10 years.

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

**[powers of the trustee]**

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

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

1b. The trustee 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 trustee made in connection of the performance of his duties in compliance with this Act, the trustee shall promptly notify the Banking Supervisory Commission.

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

**[work conditions and trustee's fee]**

**Art. 33.** 1. The trustee and his deputy shall receive remuneration, the amount of which shall be determined by the Banking Supervisory Commission in the appointment act; costs related to the performance of the trustee function, including remuneration, shall constitute part of the bank's operational costs.

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

3. The trustee 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 trustee or his deputy shall be included in employment periods and other periods relevant for acquiring staff benefits. The trustee 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 Banking Supervisory Commission to an independent expert at the expense of the inspected mortgage bank.

4. The Banking Supervisory Commission may define special liquidity norms and other norms of permissible risk in the operation of mortgage banks.

## Chapter V Insolvency of the Mortgage Bank

**[insolvency privilege]**

**Art. 35.** *deleted.*



**Art. 36.** Funds obtained from the receivables entered in the mortgage cover register may be used exclusively for satisfying claims from mortgage bonds.

## **Chapter VI Penal Sanctions**

### ***[provisions regarding penalties; protection of the name]***

**Art. 37.** 1. Whoever issues mortgage 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 mortgage bonds, calls the issued securities under the name "mortgage bond" or under any other name including these words, shall be subject to a payment of PLN 50000 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<sup>i</sup>**

### ***[unified texts of the acts referred to in this chapter, as at October 2002, taking into account amendments introduced by the Act on Mortgage Bonds and Mortgage Banks of 1997 as last amended in 2002<sup>ii</sup>]***

#### ***[the present wording of Article 227 of the Bankruptcy Law]***

**Art. 227.** § 1. In cases where pursuant to the Banking Law in the event of bankruptcy of the bank issuing mortgage bonds or bonds a separate estate is created to be used mainly for satisfying claims of mortgage bonds and bond holders, the court shall appoint an administrator responsible for the protection of rights of these holders. The appointment shall be consulted with the Banking Supervisory Commission. Should the Banking Supervisory Commission expressed no opinion on the proposed appointee, the court shall put the matter further.

§ 2. The administrator shall include the following to the insolvent estate:

- 1) the total nominal amount of mortgage bonds which have not been retired by the date of the declaration of bankruptcy and the total amount of unpaid interest on mortgage bonds, which becomes payable before this day;
- 2) the total nominal amount of mortgage bonds or bonds not drawn and interest which becomes payable after the declaration of bankruptcy and planned premiums.

§ 3. The administrator shall list the assets on which funds of the separate estate are secured and debtors of this estate.

§ 4. A receiver shall provide the administrator with any information he may require. The administrator has the right to inspect accounting books and other documents of the insolvent bank insofar it is needs to do so to protect rights of mortgage bonds and bonds holders.

§ 5. At the meting of creditors, the administrator has the right to vote only in matters relating to the rights of mortgage bonds and bonds holders.

§ 6. Liquidation of the separate estate shall be performed by the receiver with the participation of the administrator. If the separate estate is not sufficient for full satisfaction of mortgage bonds or bonds holders, the remaining amount shall be taken into account in the division of general funds of the insolvent; with this amount in mind the administrator shall take a vote on the signing of the arrangement. The administrator shall be entitled to one vote for each amount resulting from dividing the sum of all other receivables, giving the right to vote, by the number of creditors who represent these receivables. The amount arising from the general estate for satisfaction of mortgage bonds or bonds holders shall be transferred into the separate estate.



§ 7. The separate estate shall be used for covering costs of its liquidation, not excluding administrator's fee, and then also - for satisfying claims of mortgage bonds or bonds holders in the following order:

- 1) mortgage bonds or bonds at nominal price;
- 2) interest (coupons);
- 3) *deleted*.

**[The Act on Land Registers and Mortgages]**

**Art. 16.** 1. In cases provided for by the statutory regulations in the land register, apart from material rights the disclosure may also apply to personal rights and claims.

2. The disclosure may apply to the following in particular:

- 1) the right of lease or rent; the right to buy back; the right of first refusal; the life interest;
- 2) the claim to move property ownership or perpetual usufruct right, or to create a limited material right; it also applies to future and conditional claims;
- 3) claim arising in relation to the setting up of the management or the manner of property use by joint owners or perpetual users;
- 4) claim of joint owners to exclude the right to co-ownership waiver;
- 5) receivables of a mortgage bank secured by a mortgage and information that they have been entered into the mortgage cover register referred to in the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks (Journal of Acts No 140, item 940; of 1998 No 107, item 669; of 2000 No 6, item 70 and No 60, item 702; and of 200 No 15, item 148 and No 39, item 459),
- 6) the right to use a building or a flat in a given period of each year referred to in the Act of 13 July 2000 on the protection of those holding the right to use a building or a flat in designated periods of each year and amendments to the Civil Code, the Code of Offence and the Act on Land Registers and Mortgages (Journal of Acts No 74, item 855).

**[The Code of Civil Procedure]**

**Art. 1025.** §1. Funds acquired from the foreclosure shall be used to satisfy the following in the priority indicated below:

- 1) enforcement costs;
- 2) alimony claims;
- 3) amounts due for work for the period of 3 months up to the level of the lowest remuneration for work as indicated in separate regulations and pensions for causing a sickness, inability to work, disability or death and costs of a regular funeral of the debtor;
- 4) amounts due arising from receivables secured with ship mortgages;
- 5) receivables secured with a mortgage or registration pledge or secured by entry to another register;
- 6) amounts due for work unsatisfied under the third priority;
- 7) amounts due subject to the regulations included in the Part Three of the Act of 29 August 1997 - Tax Ordinance (Journal of Acts No 137, item 926 and No 160, item 1083; of 1998 No 106, item 668; of 1999 No 11, item 95 and No 92, item 1062; of 2000 No 94, item 1037, No 116, item 1216, No 120, item 1268 and No 122, item 1315; and of 2001 No 16, item 166, No 39, item 459, No 42, item 475 and No 110, item 1189), if they have not been satisfied under the fifth priority;
- 8) amounts due secured with pledge or which have been given a statutory priority not named in the earlier positions;
- 9) amounts due to creditors who have foreclosed;
- 10) other amounts due.

§2. The satisfaction of all amounts due is followed by satisfaction of fines, including court and administrative fines.

§ 3. The amount due shall rank equal to interest and enforcement costs. However, the priority equal to amounts due of fourth, fifth and eighth category is only applied to interest for the last two years before the court decision regarding ownership rights to the property, and enforcement costs in the amount not exceeding one tenth of the capital. Other interest and costs are satisfied under the tenth category. Same applies to amounts due to life interest holders.

§ 4. If the subject of foreclosure is the cooperative right to a flat, cooperative right to an office space or the right to a single-family house in the housing cooperative, claims of the housing cooperative due to



incomplete construction deposit connected with this right is satisfied before the claim which is secured on this right by a mortgage.

**[The Bank Guarantee Fund]**

**Art. 14.** 1. Bank Polska Kasa Opieki S.A., Powszechna Kasa Oszczędności - Bank Państwowy and Bank Gospodarki Żywnościowej S.A. shall pay in, by 31 December 1999, mandatory annual fees calculated on the basis of half of the rates referred to in Article 13, notwithstanding point 5.

1a. *deleted*

2. The mandatory annual fee is not charged on assets from contractual credits in banks keeping housing funds in accordance with terms and conditions laid down in separate regulations.

3. The mandatory annual fee is not charged on assets of the Krajowy Fundusz Mieszkaniowy (the National Housing Fund), Krajowy Fundusz Poręczeń Kredytowych (the National Credit Sureties Fund), Fundusz Termomodernizacji (the Thermal Modernisation Fund) and Krajowy Fundusz Autostradowy (the National Motorway Fund) established at Bank Gospodarstwa Krajowego, nor on funds accumulated on the sureties and guarantees account of the State Treasury held at that bank.

3a. The mandatory annual fee is not charged on assets of the Student Loans and Credits Fund established at Bank Gospodarstwa Krajowego.

4. The mandatory annual fee is not charged on assets from the issue of mortgage bonds and public mortgage bonds; the issue is also exempt from obligatory creation of the protection fund for guaranteed funds.

5. In the event of acquisition of other banks, banks referred to in paragraph 1 shall pay in mandatory annual fees for 1999 on the total sum of assets and off-balance commitments referred to in Article 13, paragraph 1, calculated on the basis of the rate specified in paragraph 1 only to the level of the sum of its own balance assets and off-balance commitments prior to the acquisition.

**[The Act on Property Management]**

**Art. 150.** 1. Valuation of the property leads to establishing its:

- 1) market value;
- 2) restitution value;
- 3) cadaster value;
- 4) *deleted*.

2. The market value is determined for properties which are or can be the subject of trade.

3. The restitution value is established for properties which due to their current use or purpose are not or cannot be the subject of market trading, and also if it is required by specific regulations.

4. The cadaster value is established for the properties listed in relevant property tax regulations. The value shall be established in accordance with the terms and in the manner laid down in Chapter Two of this Part.

5. The values referred to in paragraph 1, points 1 and 2, and in Article 161 are established by property valuers referred to in Chapter One of Part Five.

6. *deleted*

**[The Act on the National Bank of Poland]**

**Art. 38.** 1. In order to create a supply of money and credit operations, the National Bank of Poland keeps mandatory reserves of banks.

2. A mandatory reserve of banks is, denominated in Polish zlotys, part of funds in zlotys and in foreign currencies deposited on bank accounts, funds acquired from the sale of securities except for securities secured with mortgages redeemable after more than five years and mortgage bonds redeemable after more than five years, as well as other funds accepted by the bank to be given back except for funds accepted from another domestic bank, and funds accepted from a foreign bank on the basis of agreements concluded prior to entry into force of the Act or funds acquired from abroad for a period of at least 2 years.

3. Cooperative banks keep mandatory reserves at the bank they are affiliated to. The affiliating bank keeps mandatory reserves of affiliated cooperative banks at its account at the National Bank of Poland in the amount corresponding to the sum of mandatory reserves of these banks and its own mandatory reserve.



**[The Act on Banking Law]**

**Art. 105.** 1. A bank is obliged to provide bank's confidential information exclusively:

1) to other banks and - on the mutuality basis - other institutions authorised by law to grant credits - information about receivables, as well as turnovers and balances of bank accounts insofar this information is needed in relation to granting credits, cash loans, bank's guarantees and sureties, foreign exchange transactions, as well as in the connection with the consolidation of financial reports;

2) upon request of:

a) the Banking Supervisory Commission within the scope of the supervision exercised on the basis of this Act and the Act of 29 August 1997 on the National Bank of Poland (Journal of Acts No 140, item 938; of 1998 No 160, item 1063; of 2000 No 53, item 648, No 62, item 718 and No 119, item 1252 and of 2001 No 8, item 64 and No 110, item 1189), bank supervision inspectors in the scope referred to in Article 139, paragraph 1, point 2, and persons authorised by a resolution of the Banking Supervisory Commission in the scope defined therein;

b) the court or the prosecutor in connection with an on-going criminal or fiscal proceedings against the account holder being a physical person, or in the connection with the execution of a request for legal advice from a foreign state which pursuant to the ratified international agreement with the Republic of Poland have the right to ask for the disclosure of bank's confidential information;

c) the court or the prosecutor in connection with an on-going criminal or fiscal proceedings concerning an offence committed by a legal entity or entity without legal personality - in the scope of bank accounts and bank transactions conducted by this entity;

d) of the court in connection with inheritance proceedings or proceedings for the division of estate between spouses or proceedings against a physical person being a party to an alimony case or an alimony-type pension;

e) the President of the Customs Service of the Republic of Poland (GUC) in connection with:

- an on-going criminal or revenue proceedings against a physical person being a part to the agreement signed with the bank;

- an on-going criminal or revenue proceedings concerning an offence committed by a legal entity or entity without legal personality who is the holder of the bank account;

f) the President of the Supreme Chamber of Control (NIK) in the scope required to conduct the inspection specified in the Act of 23 December 1994 on the Supreme Chamber of Control (Journal of Acts of 1995 No 13, item 59; of 1996 No 64, item 315 and No 89, item 402; and of 1997 No 28, item 153, No 79, item 484, No 96, item 589, No 121, item 770 and No 133, item 883);

g) the President of the Securities and Exchange Commission in the scope of supervision based on the act referred to in Article 4 point 8;

h) the President of the Board of the Bank Guarantee Fund in the scope specified in the Act of 14 December 1994 on the Bank Guarantee Fund (Journal of Acts of 2000 No 9, item 131, No 86, item 958, No 119, item 1252 and No 122, item 1316),

i) a certified auditor authorised to inspect the bank's financial documents on the basis of the agreement signed with the bank;

j) the Supervision Office for Pension Funds in the scope of supervision over the bank's performance of the depository function on the basis of the Act of 28 August 1997 on organisation and operation of pension funds (Journal of Acts No 139, item 934);

k) the protection service of the state and their officers and soldiers holding written authorisations, in the scope required for the inspection based on the regulations on protection of secret information.

l) the Police, if it is required for an effective prevention of crime, establishing and finding offenders, acquiring evidence in accordance with the principles and the manner laid down in Article 20 of the act referred to in Article 104, paragraph 1, point 3.

ł) a court executor in connection with an on-going foreclosure proceedings;

3) the National Bank of Poland and other banks in the scope of inspection of foreign exchange transactions conducted on the basis of the Foreign Exchange legislation.

2. The scope and principles of providing information by banks to tax offices, the General Financial Information Inspectorate, revenue control bodies, as well as the trustee and his deputy within the understanding of the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks (Journal of Acts No 140, item 940; of 1998 No 107, item 669; of 2000 No 6 item 70, No 60, item 702; of 2001 No 15, item 148 and No 39, item 459, and of 2002 No 126, item 1070) are regulated by separate laws.



3. Banks, other institutions authorised by law to grant credits, state bodies and persons to whom bank's confidential information is disclosed, are obliged to use this information only in the scope of the authorisations referred to in paragraph 1.

4. Banks may, in cooperation with bank economic chambers, create institutions for gathering and providing banks and other institutions which are authorised by law to grant credits with information on receivables as well as turnovers and balances of bank accounts insofar this information is required in connection with granting credits, cash loans, bank's guarantees and sureties.

5. The bank shall be responsible for all damage resulting from the disclosure of bank's confidential information and its use not compliant with its purpose.

6. The bank shall not be held responsible for damage resulting from the disclosure of bank's confidential information by persons and institutions authorised by the act to request banks to provide information covered with bank's confidentiality.

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**<sup>i</sup> [amendments and final provisions introduced by the Act on Mortgage Bonds and Mortgage Banks of 1997]**

**Art. 38.** Article 227 of the regulation by the President of the Republic of Poland of 24 October 1934 - The Bankruptcy Law (Journal of Acts of 1991, No118, item 512, of 1994 No 1, item 1, of 1995 No 85, item 426, of 1996 No 6, item 43, No 43 item 189, No 106 item 496, No 149 item 703, and of 1997 No 28, item 153 and No 54, item 349, No 117, item 751, and No 121, item 770) shall hereby be amended as follows:

1) in §1 the words "the Minister of Finance" and "the Minister" shall be replaced with "the Banking Supervisory Commission" and "the Banking Supervisory Commission";

2) §2 point 1) shall now read as follows:

“1) the total nominal amount of mortgage bonds which have not been retired by the date of the declaration of bankruptcy and the total amount of unpaid interest on mortgage bonds, which becomes payable before that day.”;

3) in §7 point 3) shall be deleted.

**Art. 39** 1. In Article 16, paragraph 2 of the Act of 6 July 1982 on Land Registers and Mortgages (Journal of Acts of 1991 No19, item 147, No22, item 92, and No115, item 496; of 1994 No 85, item 388; of 1996 No 107, item 499; of 1997 No 117, item 752, No 137, item 926) point 5 shall be added to read:

"5) a mortgage bank's receivables secured with a mortgage and information on their entry into the mortgage cover register referred to in the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks (Journal of Acts of 1997 No 140, item 940)".

2. The Minister of Justice shall adapt to this Act the provisions of the regulation of 18 March 1992 on the execution of provisions of the Act on Land Registers and Mortgages (Journal of Acts of 1992 No 29, item 128; and of 1994 No 136, item 711).

**Art. 40** In Article 1025 §1 of the Act of 17 November 1964 - The Code of Civil Procedure (Journal of Acts No 43 item 296, of 1965 No 15 item 113, of 1974 No 27 item 157, No 39 item 231, of 1995 No 45 item 234, of 1982 No 11 item 82 and No 30 item 210, of 1983 No 5 item 33, of 1984 No 45 item 241 and 242, of 1985 No 20 item 86, of 1987 No 21 item 123, of 1988 No 41 item 324, of 1989 No 4 item 21, and No 33 item 127, of 1990 No 14 item 88, No 34 item 198, No 53 item 306, No 55 item 318, and No 79 item 464, of 1991 No 7 item 24, No 22 item 92, and No 115 item 496, of 1993 No 12 item 53, of 1994 No 105 item 509, of 1995 No 83 item 417, and of 1996 No 27 item 110, No 43 item 189, No 73 item 350 and No 149 item 703, of 1997 No 43 item 270 and No 54 item 348) item 2a shall be added to read:

“2a) mortgage-secured amounts due arising in relation to a mortgage bank's receivables entered in the mortgage cover register managed in compliance with the provisions of the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks (Journal of Acts of 1997 No 140, item 940)”.

**Art. 41** In Article 14 of the Act of 14 December 1994 on the Bank Guarantee Fund (Journal of Acts of 1995 No 4, item 18 and No 133, item 654; of 1997 No 24, item 119, No 79, item 484, No 85, item 538, No 88, item 554) paragraph 4 shall be added to read:



“4. No fund for the cover of guaranteed amounts is created and no annual mandatory fee is charged on assets arising from issues of mortgage bonds and public mortgage bonds.

**Art. 42** The Act shall come into force on 1 January 1998.

<sup>ii</sup> **[amendments to the Act of 5 July 2002]**

**Art. 6** With respect to persons appointed to the function of trustee or his deputy pursuant to the Act referred to in Article 1 (the act amending the Act on Mortgage Bonds and Mortgage Banks) a 6-year term of these persons performing the function of trustee or his deputy shall start upon entry into force of this Act.

**Art. 7** The Act enters into force after 30 days from its announcement.