

## **Legal Annex**

**Regulatory and  
supervisory  
frameworks for non-  
credit institutions in  
EU residential  
mortgage markets**

**European  
Commission**

**Internal Market and  
Services  
Directorate General**

**Prepared by**

**London Economics**

**19<sup>th</sup> September 2008**

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In this Annex, we reproduce the regulations and supervisions that provide a framework for non-credit mortgage provision in the twenty seven EU Member States, and the relevant parts from EC Directive 2006/48.

The regulations and supervisions are reproduced in English, and we indicate the organisations that have undertaken the translation.

## 1 European Commission Directives

In this section we reproduce the articles from EC Directive 2006/48 that are important for this study.

### **EC Directive 2006/48 Article 4:**

For the purposes of this Directive, the following definitions shall apply:

(1) 'credit institution' means:

(a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or

(b) an electronic money institution within the meaning of Directive 2000/46/EC (1);

(5) 'financial institution' means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex I;

### **EC Directive 2006/48 Article 24:**

Financial Institutions

1. The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 25, 26(1) to (3), 28(1) and (2) and 29 to 37, either by the establishment of a branch or by way of the provision of services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly-owned subsidiary of two or more credit institutions, the memorandum and Articles of association of which permit the carrying on of those activities and which fulfils each of the following conditions:

(a) the parent undertaking or undertakings shall be authorised as credit institutions in the Member State by the law of which the financial institution is governed;

(b) the activities in question shall actually be carried on within the territory of the same Member State;

(c) the parent undertaking or undertakings shall hold 90 % or more of the voting rights attaching to shares in the capital of the financial institution;

(d) the parent undertaking or undertakings shall satisfy the competent authorities regarding the prudent management of the financial institution and shall have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the financial institution; and

(e) the financial institution shall be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Title V, Chapter 4, Section 1, in particular for the purposes of the minimum own funds requirements set out in Article 75 for the control of large exposures and for purposes of the limitation of holdings provided for in Articles 120 to 122. Compliance with these conditions shall be verified by the competent authorities of the home Member State and the latter shall supply the financial institution with a certificate of compliance which shall form Part of the notification referred to in Articles 25 and 28. The competent authorities of the home Member State shall ensure the supervision of the financial institution in accordance with Articles 10(1), 19 to 22, 40, 42 to 52 and 54.

2. If a financial institution as referred to in the first subparagraph of paragraph 1 ceases to fulfil any of the conditions imposed, the home Member State shall notify the competent authorities of the host Member State and the activities carried on by that financial institution in the host Member State shall become subject to the legislation of the host Member State.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to subsidiaries of a financial institution as referred to in the first subparagraph of paragraph 1.

## **ANNEX I**

### **LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION**

1. Acceptance of deposits and other repayable funds
2. Lending including, *inter alia*: consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting)
3. Financial leasing
4. Money transmission services

5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)
6. Guarantees and commitments
7. Trading for own account or for account of customers in:
  - (a) money market instruments (cheques, bills, certificates of deposit, etc.);
  - (b) foreign exchange;
  - (c) financial futures and options;
  - (d) exchange and interest- rate instruments; or
  - (e) transferable securities.
8. Participation in securities issues and the provision of services related to such issues
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings
10. Money broking
11. Portfolio management and advice
12. Safekeeping and administration of securities
13. Credit reference services
14. Safe custody services

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## 2 Austria

### The Austrian Banking Act

dated July 30, 1993, Federal Law Gazette (BGBl) No 532/1993, in force as of January 1, 1994, as amended by promulgations BGBl Nos 639/1993, 917/1993, 50/1995 and BGBl I No 58/1997, and federal statutes BGBl Nos 505/1994, 22/1995, 383/1995, 304/1996, 445/1996, 446/1996, 742/1996, 753/1996, 757/1996, and BGBl I Nos 63/1997, 114/1997, 11/1998, 126/1998, 153/1998, 49/1999, 63/1999, 123/1999, 25/2000, 33/2000, 135/2000, 2/2001, 97/2001 and 45/2002

Translation by Christian Hausmaninger, Rechtsanwalt Univ.-Doz. Dr., LL. M. (Harvard), Attorney at law (New York) available at [http://www.oenb.at/en/img/austrianbankingact\\_tcm16-11181.pdf](http://www.oenb.at/en/img/austrianbankingact_tcm16-11181.pdf), the Central Bank of Austria,

### Chapter I

#### General Provisions

#### Credit Institutions and Financial Institutions

§ 1. (1) A credit institution is an institution authorized to transact banking activities pursuant to § 4 or § 103 No 5 of this federal statute or pursuant to special federal statutory provisions. The following activities, if conducted on a commercial basis, are banking activities:

1. the acceptance of moneys of others for administration or as deposit (deposit business);
2. the carrying out of non-cash payment transactions and clearing of checking accounts for others (checking account business);
3. the entering into money loan contracts and extension of money loans (credit business);
4. the purchase of checks and bills of exchange, in particular the discounting of bills of exchange (discount business);
5. the custody and administration of securities for the account of others (custody business);
6. the issuance and administration of means of payment such as credit cards and travelers checks;
7. the dealing for own or other than own account in

- 
- a) foreign means of payment (foreign exchange and foreign currency business);
  - b) money market instruments;
  - c) financial futures contracts, including equivalent cash-settled instruments and options to acquire or dispose of any instruments falling within lit a and d through f, including equivalent cash-settled instruments (futures and options business);
  - d) forward interest rate agreements and interest rate adjustment agreements (FRAs), interest rate and currency swaps as well as equity swaps;
  - e) transferable securities (securities business);
  - f) instruments derived from lit b through e, unless such dealing is done in favor of private assets.
8. the assumption of sureties, guarantees and other liabilities for others, insofar as the performance assumed is to be rendered in money (guarantee business);
  9. the issuing of mortgage bonds, municipal bonds and funded bank bonds and the investment of their proceeds in accordance with the applicable legal provisions (issuing of securities business);
  10. the issuing of other fixed income securities in order to invest the proceeds in other banking activities (other issuing of securities business);
  11. participation in the underwriting of third party issues of any of the instruments listed in No 7 lit b through f and the provision of services related thereto (third party issuing of securities business);
  12. the acceptance of housing construction savings deposits and the granting of housing construction loans pursuant to the Housing Construction Savings and Loan Associations Act (housing construction savings and loan business);
  13. the administration of capital investment funds pursuant to the Investment Funds Act - InvFG 1993, BGBl No 532/1993 Art II (investment business);
  14. the establishment or administration of participation funds pursuant to the Participation Funds Act, BGBl No 111/1982 (participation fund business);
  15. the financing business through acquisition and resale of shares (capital financing business);

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16. the purchase of accounts receivable arising from delivery of goods or rendering of services, assumption of the risk of collection on such claims – excepting credit insurance – and, in connection therewith, the collection of such claims (factoring business);

17. money brokering in the interbank market; and

18. the brokerage of transactions set forth in

a) No 1, unless conducted by contractual insurance companies;

b) No 3 with the exception of the brokerage of mortgage loans and personnel loans by licensed real estate agents, personnel loan and mortgage loan brokers, and investment advisers;

c) No 7 lit a, insofar as it concerns the foreign exchange business; and

d) No 8;

19. the providing of the following services relating to financial instruments, to the extent these services do not encompass the holding of money, securities or other instruments so that the provider of these services at no time places himself in debit with his clients (financial services business):

a) investment advice concerning client funds;

b) managing client portfolios in accordance with mandates given by investors;

and

c) brokerage of business opportunities for the acquisition or sale of one or more of the instruments referred to in No 7 lit b through f;

20. the issuing of electronic money (e-money business).

§ 1

(2) A financial institution is an institution that is not a credit institution within the meaning of para 1 and which is authorized to perform on a commercial basis one or more of the following activities, insofar as they are conducted as main activities:

1. the entering into leasing contracts (leasing business);

2. the over-the-counter purchase of foreign means of payment (e.g., currency, checks, travelers' letters of credit and payment orders) and over-the-counter sale of foreign currencies and of traveler checks (exchange bureau business);

3. advice to companies on capital structure, industrial strategy and related questions as well as advice and services relating to mergers and acquisitions of companies;

4. (Repealed by federal statute BGBl No 753/1996);

5. credit reference services; and

6. safe custody services.

(3) Credit institutions are also allowed to perform the activities mentioned in para 1 No 19 and in para 2 and all other activities which directly relate to the banking activity pursuant to the respective extent of the license or are ancillary to the banking activity, such as in particular the brokerage of housing construction savings and loan contracts, of insurance contracts, of companies and businesses, of shares held in investment funds, of equity shares, the performance of services in the area of automated data processing and the sale of credit cards. They are furthermore entitled to trade within the limits of the legal provisions concerning foreign exchange in coins and medals and in gold bars, as well as to rent out safe deposit boxes with joint custody of the owner.

(4) The Federal Minister of Finance may, by regulation, amend or supplement the list of activities set forth in paras 1 and 2 if this should be necessary because of sufficiently precise obligations of the Republic of Austria arising from its accession to the European Union. If the list of activities set forth in para 2 is to be amended or supplemented, the Federal Minister of Finance shall issue the regulation with the consent of the Federal Minister for Economic Affairs.

(5) In legal disputes arising from banking activities, the defense that the claim is based on a speculation for differences qualified as game or bet may not be relied upon if at least one party to the contract is authorized to carry on such activities on a commercial basis.

## 3 Belgium

### The Law in Relation to Mortgage Credit 1992

Unofficial translation by London Economics

#### Chapter III

#### Mortgage firm

##### Art. 43

§ 1st. No mortgage firm can undertake or continue its activity without a preliminary inscription to the Office de Controle (Office of Control)

Inscription is allowed to firms that abide by the conditions of the law and of its rulings of application.

The decision to grant the inscription is published in the Moniteur Belge (government's Official Journal)

All rejection of inscription must be explained and the firm is informed by registered letter.

§ 2. A mortgage firm can renounce the inscription

§ 3. The inscription can be suppressed by the Office de Controle if a firm does not abide by its obligations under the present law or its rulings of application (execution?).

The inscription is suppressed automatically in case of bankrupt or termination of the firm.

The decision of the Office de Controle to suppress the inscription must be explained and the firm must be notified by registered letter; the decision is published in the Moniteur Belge.

An appeal against this decision is not suspensive.

§ 4. The suppression of the inscription or the renunciation of the inscription forbids a mortgage firm to continue its mortgage activity.

The Office de Controle can take any necessary measure to protect borrowers' rights.

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§ 5. The rules regarding the inscription, regarding the application materials (documents, information) and their future changes and the rules regarding the renunciation of the inscription and the suppression of the inscription are decided by the King.

§ 6. Every modification to the documents and information under §5 must be sent preliminarily to the Office de Controle that notices a delivery receipt.

The Office de Controle can refuse the modifications if the latter do not respect the features of the law and of its rulings of application.

The mortgage firm can make the modifications if no opposition has been made against the projected modifications within a month after the delivery receipt.

§7. The King decides the rules regarding the conservation (storage) and communication of the documents and information the Office de Controle believes necessary to the achievement of its mission.

§ 8. Within a month of the communication of the decision of the Office de Controle to reject the inscription under §1, to suspend the inscription under §3 and to oppose modification under §6, the firm can appeal to the Conseil d'Etat (administrative high court) under a simplified procedure to be decided by the King.

In this case, the Office de Controle must transmit the administrative files and produce a letter to explain its choice (memoire de reponse).

#### **Art. 43 bis**

§ 1st. Credit institutions, under the law of another member State of the European Community and that have the rights under their national law to grant mortgage credits in their home state, can conclude mortgage credit deals under §1 without preliminary inscription to the Office de Controle des Assurances (Insurers Control Office) through the opening of branches or under the free offer of services framework.

As soon as, under the articles 65 and 66 of the law of March, 22nd 1993 regarding the charters and controls of credit institutions, the Commission Bancaire (Banking Commission) is informed by the control authority of the home State of the credit institution that the latter is planning to grant mortgage credits under §1, the Commission Bancaire informs the Office de Controle des Assurances and transmits all the significant information that have been given by the authority of control of the home state.

The Office de Controle des Assurances informs the interested institutions of the features of the present law which are, for it, of public interest and inform them of the obligation to preliminarily submit to the Office de Controle all the documents listed by the King under the article 43, §5 of the present law.

The Office de Controle sends a delivery receipt of these documents without delay.

If it believes that the transmitted documents are in conformity with the dispositions of public interest of the present law, the Office de Controle registers the institution as a mortgage credit institution and notifies its decision to the institution with copy to the Commission bancaire et financiere (Banking and Finance Commission). The registration is published in the *Moniteur Belge*.

If there has been no notification within a month after the delivery receipt, the institution can undertake the planned activities if it notifies the Office de Controle.

If the Office de Controle believes that the transmitted documents are not in conformity with the disposition of public interest of the present law, it notifies its opinion to the institution.

If the latter decides not to follow the opinion of the Office de Controle, the Office de Controle can forbid the institution grant mortgage credits under article 1 after informing the Commission bancaire et financiere. It notifies its decision to the institution by registered letter, a copy of the letter is sent to the Commission bancaire et financiere. An appeal to the decision is possible under article 43§8.

§2. The dispositions of §1st apply also to the financial institutions under article 78 of the law of March, 22nd 1993 regarding the charters and controls of credit institutions that grant effectively mortgage credits in their home country.

§3. When the Office de Controle des Assurances sees that a credit institution or a financial institution, under the law of another member State of the European Community and that grants mortgage credits under §1st, does not conform to the dispositions of public interest of the present law, it gives notice to the institution to correct the situation within a period it fixes on.

If at the end of the period, the situation is not corrected, the Office de Controle des Assurances, after informing the Commission bancaire et financiere of its plan, and without prejudice to article 75§4 of the law of March, 22nd 1993 regarding the charters and controls of credit institutions, can forbid the institution grant new mortgage credits under §1. The institution is notified this decision by registered letter, a copy of the letter is sent to the Commission bancaire et financiere. An appeal to the decision is possible under article 43§8.

The Office de Controle can take any necessary measure to protect borrowers' rights.

§ 4. The article 53 of the law of July, 9th 1975 regarding the control of insurers applies to the administrators, chief executives, managers and agents of institutions that grant credits under §1st without being empowered under §1st subparagraph 4 and 5 or in violation of the interdiction that has been imposed by the Office de Controle under §§ 1st and 3.

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## 4 Bulgaria

### Law on Credit Institutions

(In force on the date of entry into force of the Treaty between the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to the European Union)

(Published in Darjaven Vestnik, issue 59 of 21 July 2006; amended, issue 105 of 2006; issues 52 and 59 of 2007)

### Chapter One

#### General Provisions

##### Article 1.

(1) This Law shall govern the terms and procedures for granting licenses, conducting activities, supervising and termination of credit institutions for the purpose of ensuring a stable, reliable and sound banking system and for protecting depositor interests.

(2) Credit institutions shall be banks and electronic money institutions.

(3) The provisions of this Law shall also apply to banks established under a separate law to the extent the other law does not provide for otherwise.

##### Article 2.

(1) A bank shall be a legal person which is engaged in the business of publicly accepting deposits or other repayable funds and extending credits and other financing for its own account and at its own risk.

(2) A bank may also conduct the following activities if they are covered by its license:

1. non-cash funds transfers and other forms of non-cash payments such as letters of credit or bills for collection;

- 
2. issuance and administration of means of payment such as electronic payment instruments, traveller's cheques;
  3. acceptance of valuables on deposit;
  4. depository and custodian activities;
  5. funds transfers in cases other than those under item 1;
  6. financial leasing;
  7. guarantee transactions;
  8. trading for its own account or for customers' account with:
    - a) money market instruments - cheques, promissory notes, deposit certificates, etc.;
    - b) foreign currency and precious metals;
    - c) financial futures, options, exchange and interest-rate instruments, and other derivative instruments;
  9. (amended; Darjaven Vestnik, issue 52 of 2007, in force as of 1 November 2007) trading for its own account and for customers' account in transferable securities, underwriting issues in securities, and other services and activities under Article 5, paras. 2 and 3 of the Law on Markets in Financial Instruments;
  10. financial brokerage;
  11. advice on portfolio investments;
  12. purchase of accounts receivable for the delivery of goods or services provided and assumption of the risk related to the collection of these claims (factoring);
  13. equity acquisition and management;
  14. provision of bank safes;
  15. collection and distribution of information and references on customers' creditworthiness;
  16. other such activities defined in an Ordinance of the Bulgarian National Bank (BNB).

(3) (amended; Darjaven Vestnik, issue 52 of 2007, in force as of 3 July 2007) The acquisition, registration, settlement, payment and trade in government securities shall be effected pursuant to the procedure and terms of the Law on the Government Debt. Trade in government securities on regulated markets in financial instruments and multilateral trading facilities shall be effected pursuant to the procedure of the Law on Markets in Financial Instruments.

(4) A bank may not conduct in the line of business transactions other than those provided for under paras. 1 and 2, except where necessary for conducting its activities or in the process of collecting its claims on credits made. A bank may set up or acquire institutions for providing ancillary services.

(5) Accepting public deposits or other repayable funds, as well as the services as provided for in para. 2, items 1–4 shall only be carried out by:

1. a person who has been granted a bank license by the BNB;
2. a bank with a seat in a third country, which has been granted a license by the BNB to conduct bank activities in the Republic of Bulgaria through a branch;
3. a bank authorised by the competent authorities of a Member State to carry out bank activities, which provides services on the territory of the Republic of Bulgaria either directly or via a branch.

### **Article 3.**

(1) A financial institution is a person other than a credit institution whose principal activity is conducting one or more activities specified under Article 2, para. 2, items 5–14, as well as extending loans with funds other than publicly accepted deposits or other repayable funds.

(2) Unless otherwise provided for by law, a permission shall not be required to carry out the activities under para. 1. Within 14 days from taking up operations, the financial institutions, which are not subject to licensing and supervision under another law, shall notify the BNB of the scope of transactions they are engaged in.

(3) The BNB may require from any of the financial institutions to provide information on its legal status and activities.

### **Article 24.**

(1) A financial institution with a seat in a Member State may carry out via a branch or directly one or more activities under Article 3, para. 1 on the territory of the Republic of Bulgaria only if it is a subsidiary to a bank or if it is co-owned by two or more banks licensed in a Member State, if the Articles

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of Association or the Statutes of the financial institution explicitly provides for the conducting of the activities under Article 3, para. 1, as well as if the following conditions are concurrently in place:

1. the parent bank or the banks that jointly own the financial institution have been granted a license to carry out bank activities on the territory of the Member State whose jurisdiction governs the financial institution;
2. the financial institution de facto carries out one or more of the activities under Article 3, para. 1 on the territory of the home Member State whose jurisdiction governs the financial institution;
3. the parent bank or banks that jointly own the financial institution hold not less than 90 per cent of the votes in the financial institution's general meeting;
4. the parent bank or banks that jointly own the financial institution meet the requirements of the competent supervisory authority for prudential management of the financial institution and have declared before the BNB, after approval by the relevant supervisory authority, that they jointly and severally guarantee the commitments undertaken by the financial institution;
5. the financial institution and the activities it will carry out in the Republic of Bulgaria are effectively covered by the consolidated supervision over the parent bank or over any of the banks that own jointly the financial institution, which is carried out in keeping with the requirements hereof, including the minimum own funds requirements, large exposures control and limitations of holdings.

(2) The competent authorities of the home Member State shall certify the existence of all conditions under Article 1 by means of a certificate, which is part of the notification to the BNB.

(3) If the BNB receives information from the competent authorities of the home Member State that the relevant financial institution no longer meets any of the conditions under items 1–5 of para. 1, this financial institution shall lose its rights under para. 1, and its activities shall be regulated in full by the requirements of the Bulgarian law.

#### **Article 25.**

(1) A financial institution with a seat in the Republic of Bulgaria may carry out one or more activities under Article 3, para. 1 on the territory of a Member State either through a branch or directly if it is a subsidiary to a bank or is jointly owned by two or more banks licensed in the Republic of Bulgaria, and in the simultaneous existence of the following conditions:

1. the Articles of Association or the Statutes of the financial institution include provision of the services;

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2. all the requirements under Article 24, para. 1 are in place and the parent bank or the banks which jointly own that financial institution have confirmed in writing the existence of these requirements.

(2) Where it establishes that the conditions under para. 1 are in place, the BNB shall issue a certificate, which shall be sent to the competent authorities of the host Member State.

(3) The procedure for issuing a certificate shall be laid down in an ordinance issued by the BNB.

(4) The Bulgarian National Bank shall exercise a consolidated supervision over the financial institution under para. 1 and shall monitor its shareholders' structure following a procedure set forth in an ordinance issued by the BNB.

(5) In the course of supervision of the financial institution under para. 1, the BNB shall co-operate with the competent authorities of the Member States while being bound by an obligation to keep professional secrecy requirements.

(6) The provisions of this Article shall not apply to financial institutions, which by virtue of a separate law are entitled to carry out, directly or through a branch, activities in another Member State.

#### **Article 26.**

(1) The parent bank or the banks that jointly own the financial institution shall notify the BNB of any changes in the circumstances under Article 25, para. 1 within 7 days from their occurrence.

(2) The Bulgarian National Bank shall notify the competent authorities of the respective host Member State, if a financial institution under Article 25 no longer meets any of the conditions under Article 25, para. 1.

#### **Article 27.**

The provisions of Articles 24–26 shall apply *mutatis mutandis* also to financial institutions, which are subsidiaries to other financial institutions.

#### **Article 58.**

(1) When granting a credit, the bank offers its customers in writing, free of charge, its lending conditions which shall at least contain:

1. information on the total costs of the credit (fees, commissions, and other costs directly related to the credit agreement), and on the objective criteria on the basis of which these costs may be altered;

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2. the interest rate, as an annual interest rate, the method of calculating the interest, and the conditions for changing the interest rate until full repayment of the credit;

3. the additional obligations related to payments;

4. the conditions for and costs of the early repayment of the credit.

(2) The costs of the credit shall be explicitly and exhaustively determined by a credit agreement, including the cases of early repayment.

## Chapter Seven

### Relations between Banks and between Banks and Their Customers

#### Article 59.

(1) The bank shall announce the terms and conditions for deposits and credits on premises accessible to customers.

(2) The terms and conditions for deposits and credits shall be formulated in a clear and understandable manner.

#### Article 60.

(1) When granting credits, the bank may not accept as collateral shares issued by the said bank or by persons connected to it.

(2) (amended; Darjaven Vestnik, issue 59 of 2007, in force as of 1 March 2008) Where a credit or individual installments thereon are not repaid on the agreed payment dates, and in the cases where the credit is called ahead of schedule because one or more installments thereon have not been repaid on time, the bank shall have the right to obtain an order for immediate execution under the provisions of Article 418 of the Code of Civil Procedure on the basis of a statement of account.

(3) The credit agreement may provide for the bank the right to sell the collateralized item at an auction, under a procedure established jointly by an ordinance of the Minister of Justice and the Governor of the BNB. This procedure shall not apply to special collaterals provided for by the Law on Registered Pledges.

(4) The bank shall be entitled to a legal mortgage on real estate and property rights thereto to be acquired entirely or partially through the use of a bank credit.

(5) Upon full repayment of a credit, the bank shall delete, respectively release, the provided collateral, within 14 days from the customer's request and the payment of the relevant fees.

**Article 61.**

Banks may require from borrowers to submit reporting and other documents connected with the credit and their activities, as well as to conduct examinations regarding the collateral and the use of the credit for the agreed purpose.

**Additional Provisions**

(3) 'Publicly accepted deposits or other repayable funds' shall be the acceptance of deposits or other repayable funds of more than 30 persons other than banks or other institutional investors. Bonds or other debt securities issued in a manner other than the procedure under the Law on Public Offering of Securities are considered as publicly accepted deposits or other repayable funds, where:

- a) the issues of bonds or other debt securities that are acquired at their primary offering by more than 30 persons in total other than banks or other institutional investors;
- b) this is one of the principal activities of the issuer and;
- c) the issuer provides loans or other financial services as a line of business.

**Law on Consumer Credit**

**(Issued by the 40th National Assembly on 15 June 2006, published in Darjaven Vestnik, issue 53 of 30 June 2006, effective as of 1 October 2006; amended, issue 105 of 2006, effective as of 1 January 2007)**

**Chapter One****General Provisions****Article 1.**

This Law shall regulate the requirements for granting consumer credit, for consumer credit agreements and intermediation agreements for granting consumer credit.

**Article 2.**

The purpose of this Law shall be to protect consumers in the provision of consumer credit by:

1. establishing requirements which will be applicable to all forms of consumer credit, except for those which are explicitly excluded from the subject of this Law;

2. creating equal conditions for obtaining consumer credit;
3. ensuring protection of consumers against unfair terms in consumer credit agreements;
4. providing information to consumers on their rights and obligations under the consumer credit agreement and on the conditions and cost of credit;
5. enabling consumers to exercise their rights ensuing from this Law and from the consumer credit agreement pursuing legal and administrative procedures;
6. ensuring access of consumers to out-of-court procedures for settlement of disputes related to consumer credits.

## **Chapter Four**

### **Advertising Consumer Credit Agreements**

#### **Article 3.**

(5) Provisions of this Law, except for Article 15, shall not apply to credit agreements or agreements for intermediation in credit granting:

1. secured with mortgage on immovable property;
2. intended for the purpose of acquiring or retaining property rights in land or in an existing or projected building, as well as for renovating or improving an immovable property.

#### **Article 15.**

(1) Any advertisement, including any notice displayed at business premises, whereby the advertiser undertakes to grant credit or to intermediate in the conclusion of a consumer credit agreement, and in which an interest rate or any data relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge. For this purpose, the advertiser shall indicate in the advertisement notice a representative example of the cost of the credit, if no other means is practicable.

(2) Articles 32 - 42 of the Consumer Protection Law shall also be applied to the advertisement under paragraph 1.

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## Chapter Ten

### Administrative Penalty Provisions

#### Article 32.

A fine from BGN 500 to BGN 1500 shall be imposed on defaulters for violating Article 19, paragraphs 2 and 3 and Article 20, paragraphs 1, 2 and 3, while the penalty for sole proprietors and legal entities shall be a property sanction from BGN 1000 to BGN 3000.

#### Article 33.

A fine from BGN 1000 to BGN 3000 shall be imposed on defaulters for violating Article 22, while the penalty for sole proprietors and legal entities shall be a property sanction from BGN 2000 to BGN 6000.

#### Article 34.

A fine from BGN 500 to BGN 2000 shall be imposed on defaulters for violating Article 24, paragraph 1, while the penalty for sole proprietors and legal entities shall be a property sanction from BGN 1000 to BGN 4000.

#### Article 34a.

(new; Darjaven Vestnik, issue 105 of 2006, effective as of 1 January 2007) A fine from BGN 250 to BGN 1000 shall be imposed on defaulters for non-compliance with the provisions under Article 27b, paragraph 1, item 2 and paragraph 3, while the penalty for sole proprietors and legal entities shall be a property sanction from BGN 500 to BGN 2000.

(2) Upon a repeated infringement under paragraph 1, a double fine shall be imposed on defaulters, while the penalty for sole proprietors and legal entities shall be a double property sanction.

#### Article 35.

(1) Statements for established violation shall be drawn up by persons authorized by the Chairperson of the Commission on Consumer Protection.

(2) Penalty orders shall be issued by the Chairperson of the Commission on Consumer Protection or by persons authorized by him.

(3) The drawing up of statements, issuance, appeal and execution of the penalty orders shall be performed under the procedure provided for in the Administrative Violations and Sanctions Law.

### Additional Provisions

§ 1. (1) Within the meaning of this law:

3. 'Publicly accepted deposits or other repayable funds' shall be the acceptance of deposits or other repayable funds of more than 30 persons other than banks or other institutional investors. Bonds or other debt securities issued in a manner other than the procedure under the Law on Public Offering of Securities are considered as publicly accepted deposits or other repayable funds, where:

- a) the issues of bonds or other debt securities that are acquired at their primary offering by more than 30 persons in total other than banks or other institutional investors;
- b) this is one of the principal activities of the issuer and;
- c) the issuer provides loans or other financial services as a line of business.

## **LAW ON PUBLIC OFFERING OF SECURITIES**

Promulgated State Gazette issue 114 of 30 Dec., 1999 in effect as of 31 Jan., 2000; amended issue 63 of 1 August, 2000; issue 92 of 10 November 2000, in effect as of 1 Jan., 2001; issue 28 of 19 March 2002; amended and supplemented issue 61 of 21 June, 2002, amended issue 93 of 1 October, 2002, in effect as of 1 Jan., 2003; issue 101 of 29 October, 2002 in effect as of 1 Jan., 2003; issue 8 of 28 Jan., 2003 in effect as of 1 March 2003; amended issue 31 of 4 April, 2003 in effect as of 4 April, 2003; amended issue 67 of 29 July, 2003; supplemented issue 71 of 12 August, 2003; amended issue 37 of 4 May, 2004 in effect as of 4 August, 2004; supplemented issue 19 of 1 March, 2005; issue 31 of 8 April, 2005 in effect as of 8 October, 2005; amended and supplemented issue 39 of 10 May, 2005.

### **Title One**

#### **GENERAL PROVISIONS**

##### **Chapter One**

#### **SECURITIES**

**Article. 1.** (Am. – SG, iss. 61 in 2002) (1) This law shall govern:

1. the public offering and trading in securities, the issue and disposal of dematerialized securities including cases where there is no public offering, as well as restrictions on the disposal of securities issued outside of a public offering;
2. the activities of the regulated securities markets, the Central Depository, investment intermediaries, investment and management companies, natural persons who directly give investment advice and effect securities transactions and the conditions for carrying out such activities;

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3. requirements for public companies and other issuers of securities;
  4. (Am. – SG, iss. 39 in 2005) requirements for persons that manage and control persons under item 2 and 3, as well as towards persons holding 10 or more than 10 per cent of the votes in the general assembly of persons under item 2 and 3; and
  5. the State control for ensuring compliance with this law.

(2) The goal of this law is to:

1. provide protection of investors in securities including ensuring that they have greater knowledge about the securities market;
2. create prerequisites for development of a fair, transparent and efficient securities market;
3. keep strong public confidence in the securities market.

**Article. 2.** (1) The securities subject to this law are transferable rights registered on accounts with the Central Depository (dematerialized securities) or documents evidencing transferable rights (materialized securities) which may be offered publicly such as:

1. (Am. – SG, iss. 39 in 2005) equity shares and units of collective investment schemes;
2. bonds and other debt securities;
3. (Am. – SG, iss. 61 in 2002) other rights relating to shares, debentures or other debt securities, as well as to exchange rates and interest rates.

(2) For the purposes of this law debt securities express transferable claims against the issuer of the securities stemming from funds or other property rights lent to that issuer for an income fixed in advance or to be determined in the future. Debt securities may also express other rights where this is not contrary to the law.

(3) Securities shall also be the investment contracts under which investors transfer funds or other property rights to another person without directly participating in the management thereof with the purpose of generating income.

**Article. 3.** Public offering shall be forbidden:

1. of materialised securities except for cases specially stipulated by law;
2. of dematerialised securities whose transfer is subject to restrictions or special conditions

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**Article. 4** (1) (Am. – SG, iss. 61 in 2002) Public offering of securities is one or more offers for the transfer in return for consideration and/or one or more invitations to make an offer for the acquisition in return for consideration of securities of the same class, addressed to:

1. 50 persons or more in a period of one calendar year; or
2. an indefinite number of persons, including through the mass media.

(2) Public offering also exists where the offering of securities involves a person who is neither an investment intermediary, nor holder of the securities.

(3) Public offering is not in place where

1. securities are offered in cases of liquidation, execution court procedures or bankruptcy procedures in accordance with proceedings stipulated by another law;
2. (Am. – SG, iss. 61 in 2002) shares are offered only to company's shareholders and/or employees who have labor relations with the company or with a related party, if the total number of persons to which the offer relates is less than 300.

**Article. 5.** (1) Initial public offering is an offering under Art. 4 of:

1. securities offered by their issuer or by an authorized investment intermediary for the purpose of subscription, or
2. securities for an initial sale by an investment intermediary under an underwriting contract concluded with their issuer
3. (Am. – SG, iss. 39 in 2005) open end investment companies' shares or contractual funds' units for initial sale through its management company or by an authorised investment intermediary.

(2) (New – SG, iss. 61 in 2002) Initial public offering is also an offering for the subscription of shares at the constituent meeting of a company in process of formation, if the persons attending that meeting are 50 or more.

**Article. 6.** Securities trading is:

1. public offering of issued securities, excluding the case under Art. 5, item 2 (secondary public offering);
2. entering into securities transactions as a result of secondary public offering;

3. entering into or offering to enter into transactions for buying and/or selling of securities under conditions different from the requirements for public offering, when:

a) securities are issued by public companies or other issuers under this Law; and

b) offering party or party in the transaction is a legal person or sole trader.

4. (Am. – SG, iss. 61 in 2002) Public offering in return for consideration or an invitation to make an offer for the transfer in return for consideration of securities under the terms of Art. 4, outside of:

a) cases of tender offering;

b) cases where securities have not been issued by public companies or other issuers of securities.

**Article. 7.** Regulated securities markets are the official stock exchange market and the unofficial securities market on or through which:

1. either by trading on the floor or by a unified remote system, transactions for the purchase and sale of securities are regularly entered into and offers and invitations to enter into such transactions are regularly made;

2. information is regularly announced about the transactions in securities entered into and about the offers to enter into such transactions.

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## 5 Cyprus

### **BANKING LAW**

(No 66(I) of 1997)

**Unofficial English translation by the Bank of Cyprus**

### **A LAW REGULATING THE BUSINESS OF BANKING**

#### **PART I**

##### **Preliminary**

"bank" means a body corporate licensed to carry on banking business under the provisions of this Law;

"banking business" means business carried on in the Republic or abroad from within the Republic consisting of lending of funds acquired from the assumption of obligations to the public, whether in the form of deposits, securities or other evidence of debt;

"business of accepting deposits" means the business of accepting deposits from the public in the Republic or the business of accepting deposits in the Republic from abroad;

"deposit" means a sum of money paid or received on terms -

(a) under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, but

(b) which are not referable to the sale or the supply of property or the provision of services or to the issue of debentures or shares;

#### **PART II**

##### **Licensing of Banks**

3.(1) No person, other than a bank, shall engage in banking business or in the business of accepting deposits.

(2) Whenever the Central Bank has reasonable grounds to believe that any person, other than a bank, is carrying on or holds himself out as carrying on banking business or is engaged in the business of accepting deposits of money from the public, may, by a written notice to such person call upon him, to produce to an authorised officer of the Central Bank, within the

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period specified in the notice, any books or records specified in the notice to enable such officer to ascertain whether any business has been carried on which is prohibited in accordance with subsection (1).

## **ORDERS FOR APPROVED INVESTMENTS OF INSURANCE COMPANIES**

The Minister of Finance of the Republic, in exercise of the powers conferred on him under section 79 of the Law on Insurance Services and other Related Issues of 2002 ("the Law"), hereby determines that the categories of approved investments in which an insurance company may place its assets for the purpose of section 76 of the Law, and the percentage limits regarding the amounts which may be invested in each category of approved investment, are as follows.

### **PART I. CATEGORIES OF APPROVED INVESTMENTS**

Technical reserves in respect of benefits described in section 81(1) of the Law

1) Subject to paragraphs 2 and 3 below, the categories of asset which are approved investments for the purpose of covering, under section 76 of the Law, technical reserves established in respect of benefits of the type described in section 81(1) of the Law shall be those listed in Annex A.

2) The assets to which benefits of the type described in section 81(1) of the Law payable under any contract are linked shall not include any categories of asset other than those specified in paragraph 1 above, and shall not include:

a) shares in parent undertakings of the insurance company which in aggregate have a value exceeding the lower of:

i) 5% of such benefits under the contract, or 10% of such benefits under the contract if all such shares in such parent undertakings have been granted, and not withdrawn at the relevant date, a listing in respect of them on the Cyprus stock exchange and the market capitalisation of those parent undertakings taken in aggregate exceeds, at the relevant date, 10% of the market capitalisation of all companies that have been granted, and not withdrawn at the relevant date, a listing in respect of them on the Cyprus stock exchange taken in aggregate, where market capitalisation for this purpose shall be determined by reference to the market value of issued and fully paid up shares only; and

ii) 5% of the issued share capital of such parent undertakings in aggregate when taken together with such shares matching such benefits under all other such contracts; or

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- b) unlisted securities which in aggregate have a value exceeding 10% of such benefits under the contract;
  - c) loans as described in paragraph A4) in Annex A, to the extent that these comprise loans made to individuals used wholly or mainly for domestic purposes, which in aggregate have a value exceeding 5% of such benefits under the contract;
  - d) units or beneficial interests in collective investment funds as described in paragraph A5)b) in Annex A which in aggregate have a value exceeding 10% of such benefits under the contract.

#### ANNEX A

Subject to these not being assets having the effect of a derivative contract, as defined in paragraph B42 in Annex B, other than a permitted derivative contract:

A3) Land situated in the Republic or a member state of the EEA, Australia, Canada, Hong Kong, Japan, Malaysia, New Zealand, Singapore, Thailand or the USA.

A4) Loans which are:

- a) fully secured by mortgage or charge on land which is situated in the Republic or a member state of the EEA, Australia, Canada, Hong Kong, Japan, Malaysia, New Zealand, Singapore, Thailand or the USA; and
- b) such that the rate of interest and the due dates for the payment of interest and the repayment of principal can be fully ascertained from the terms of any agreement relating to the loan.

## 6 Czech Republic

Below we reproduce the relevant sections of the Czech Act on Bonds (section 28), and the Insurance Act (section 21 a), both of which have been translated by the Czech National Bank. The relevant points from Decrees 303/2004 and the Decree 96/2006, in relation to insurance firm activities, are unofficial translations undertaken by London Economics.

Official versions of these documents in the Czech language are published in the Collection of Laws or in the Bulletin of the Czech National Bank; these can be found at <http://www.mvcr.cz/sbirka/> and <http://www.cnb.cz/cs/legislativa/vestnik/index.html> respectively.

### **Act No. 21/1992 Coll. of 20 December 1991, on Banks**

Note: This text is a working document for information only, and is not an official translation of the Czech legislation

The Federal Assembly of the Czech and Slovak Federal Republic has passed this Act:

#### **PART ONE**

##### **Basic provisions**

##### Article 1

(1) This Act incorporates the applicable regulations of the European Communities and governs certain relations associated with the establishment, business activities and dissolution of banks having their registered offices within the territory of the Czech Republic, including their activities outside the territory of the Czech Republic, as well as certain relations associated with the activities of foreign banks within the territory of the Czech Republic. For the purposes of this Act, "banks" shall mean legal entities having their registered offices in the Czech Republic, founded as joint-stock companies, which:

a) accept deposits from the public, and

b) provide loans and which have been granted a banking licence (hereinafter referred to as the "licence") (Article 4) to carry on the activities referred to in subparagraphs a) and b). Where this Act provides otherwise, the provisions of the Commercial Code on joint-stock companies shall not apply to banks.

(2) For the purposes of this Act:

a) “deposit” shall mean any funds entrusted to the bank that constitute an obligation of the bank to the depositor to repayment thereof;

b) “loan” shall mean funds in any form provided temporarily.

(3) In addition to the activities referred to in Article 1(1)(a) and (b), a bank may carry on the following other activities, provided that it is authorised to do so in its licence:

a) investing in securities for own account,

b) financial leasing,

c) money transmission services,

d) issuing and administering means of payment, e.g. credit cards and travellers cheques,

e) providing guarantees,

f) opening letters of credit,

g) collecting payments,

h) providing investment services pursuant to a special legal rule,<sup>1b)</sup> where the licence specifies

the principal and ancillary investment activities the bank is authorised to carry on and the investment instruments in relation to which they may be carried on pursuant to a special legal rule,<sup>1b)</sup>

i) money broking,

j) acting as a depository,

k) bureau-de-change activities (purchase of foreign currency),

l) providing banking information,

m) trading for own account or for account of clients in foreign exchange and gold,

n) renting safe deposit boxes,

o) activities directly associated with the activities listed in subparagraphs a) to n) and in paragraph 1.

## Article 2

(1) No person may accept deposits from the public without a licence, unless provided otherwise by a special legislative act.

(2) The continuing issuance of bonds and other comparable securities shall also be deemed acceptance of deposits where:

- a) it constitutes the sole, or one of the main, activities of the issuer,
- b) the issuer's line of business is providing loans, or
- c) the issuer's line of business is one or more of the activities listed in Article 1(3).

## **ACT No. 190/2004 Coll., on Bonds**

### *Unofficial Translation undertaken by the Czech National Bank*

The Parliament has passed the following Act of the Czech Republic:

## **PART ONE**

### **FUNDAMENTAL PROVISIONS**

#### **Section 1**

##### **Scope of Regulation**

This Act regulates the issuing of bonds in the Czech Republic regardless of who the issuer of bonds (hereinafter "issuer") is, if it is not stated otherwise hereinafter (Section 3(3), Section 26(4)).

##### **Mortgage Bonds**

#### **Section 28**

(1) Mortgage bonds are bonds whose nominal value and proportionate yield (hereinafter "obligations arising from mortgage bonds") are fully covered (backed) by the receivables arising from mortgage loans or by a part of such receivables (proper coverage) and, in some cases, by an alternative method pursuant to this Act (alternative coverage). The designation "hypoteční zástavní list" is a part of the title of this bond. Other securities may not bear such designation.

(2) Mortgage bonds may be issued only by a bank pursuant to a special legal regulation governing the activity of banks with the registered office in the Czech Republic (hereinafter "issuer of mortgage bonds").

(3) A mortgage loan is a loan whose redemption, including appurtenances (i.e. interest etc.), is secured by lien (right of pledge) over real estate (property), including property under construction. A loan is considered to be a mortgage loan from the day when the right of pledge takes legal effects. For the purposes of coverage of mortgage bonds, the receivable arising from a mortgage loan or its part may be first used on the day when the issuer of mortgage bonds learns of the legal effects of establishment of lien over the property.

(4) The property referred to in paragraph 3 must be located within the territory of the Czech Republic, a Member State of the European Union or another state included in the European Economic Area.

(5) An issuer of mortgage bonds shall ensure sufficient coverage of obligations arising from the mortgage bonds in circulation so that the sum of receivables arising from mortgage loans or parts thereof, serving as proper coverage, and the total alternative coverage does not fall below the total amount of obligations arising from all the mortgage bonds in circulation issued by the issuer

**ACT No. 363/1999 Coll. - Insurance Act on insurance and on amendment to some related acts (the Insurance Act) dated 21 December 1999 as amended by Act No. 159/2000 Coll., Act No. 316/2001 Coll., Act No. 12/2002 Coll., Act No. 126/2002 Coll. and by Act**

**No.39/2004 Coll. dated 17th December 2003**

**The Parliament has adopted this Act of the Czech Republic**

*Unofficial translation undertaken by the Czech National Bank*

§ 21a

Structure of Financial Placements

(1) Financial placements within Member States include:

- a. bonds issued by Member State or his central bank and bonds for which a guarantee has been assumed by a Member state,
- b. bonds issued by banks and similar credit institutions of the Member States,
- c. publicly negotiable corporate bonds,
- d. treasury bills,
- e. publicly negotiable municipal bonds,
- f. loans, credits and other receivables secured by a bank guarantee,

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- g. bills of exchange backed by bank guaranty or aval
  - h. real estate in the territory of the Member States,
  - i. registered mortgage bonds,
  - j. publicly negotiable shares,
  - k. deposits and deposits certified by deposit certificate, deposit form or other similar document with banks authorised to  
operate as a bank in the territory of the Member States,
  - l. objects and works of an artistic cultural value appraised by at least 2 valuers provided that they are insured against  
damage, destruction, loss or theft with another insurance undertaking,
  - m. bonds issued by the European Investment Bank, the European Bank for Reconstruction and Development, or the  
International Bank for Reconstruction and Development,
  - n. securities issued by a unit of group investment,
- (2) Financial placements include furthermore
- a. foreign securities traded on the regulated market of the member states of the Organization for Economic Co-operation and Development ,
  - b. loans to insureds who have concluded a life assurance contract with the insurance undertaking,
  - c. hedging derivatives
  - d. reinsurance receivables.
- (3) For the purpose of this Act hedging derivatives mean derivative instruments which fulfil simultaneously all the following conditions:
- a. they make management of the investment risk of an insurance or reinsurance undertaking easier,
  - b. from the inception of the hedging contract relationship the backed and hedging instruments, the investment risk exposure, covered by investment guaranty and the way of determining and documenting the effectiveness of the coverage is established in written form.
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c. investment security is effective, insurance or reinsurance undertaking is obliged to determine continuously the efficiency

of the investment security, detailed conditions of the determination of the efficiency of investment security is stipulated by the Ministry by a decree.

(4) Part of the average volume of financial placements must be placed so that the fulfilment of the commitments from the insurance or reinsurance activity carried on within the periods stipulated by special legal provision or agreed in the insurance contract shall be safeguarded. Volume of this part and the manner of financial placement shall be determined depending on the character of the insurance and reinsurance activity and must be confirmed by the responsible actuary.

(5) The average volume according to paragraph 4 means a quantity calculated always as of the last day of each calendar month as aggregate of financial placements as of the first day of each calendar month for which the average is being ascertained, and volume of financial placements as of the last day of that month, divided by two.

(6) For the structure of financial placements in case of life assurance provision where the investment risk is borne by the policyholder, paragraph 1 shall apply appropriately and the insurance undertaking shall follow the provisions of insurance contract, unless otherwise provided by this Act.

(7) In its structure of financial placements, an insurance or reinsurance undertaking is obliged to adhere to the limits for respective items in the structure of the financial placements which the Ministry shall stipulate by decree. For the purpose of the placement of the movable and immovable property in the territory of a Member State it is not decisive, which conditions are stipulated by the legal provision of the Member State, where the property is placed, for the constitution of the owners' rights or other rights to this property. Receivables are considered to be placed in that Member State, in which they may be fulfilled or their fulfilment claimed.

(8) If an insurance or reinsurance undertaking committed itself to settlement of claims in a currency other than the Czech currency, it shall be obliged to create assets, the source of which are technical provisions, in this currency. This shall not apply if

a. these assets would not exceed 7% of these provisions,

b. currency of the non-member-country is not suitable for financial placements,

c. these assets would cover commitment in foreign currency, which does not exceed 20% of all commitments in that currency.

(9) If the commitment is to be covered by assets expressed in the currency of a Member State, its obligation to establish matching assets is fulfilled, if these assets are expressed in euro.

(10) Upon a written request, the Ministry may grant an insurance or reinsurance undertaking a time limited approval to have a different structure of financial placements provided that the principles laid down in § 13 (9) are not violated and if the structure of financial placement complies with paragraph (4) and (8). An insurance or reinsurance undertaking is obliged to prove the fulfilment of the condition in the request.

#### **Decree 303/2004**

#### **Unofficial translation undertaken by London Economics**

#### **Reproduction of points 1, 4 (1), 4 (2), and 4(4) which relate to mortgage provision by insurance companies in the Czech republic.**

§ 1 c) Limits for particular items of a finance placing structure of an assurance or reinsurance company

§4 (1) f) 10% of total provisions for loans, bank credits and other claims whose payment is secured with bank guarantee, on condition that one borrower may get a maximal loan up to the limit of 5 % of total provisions

§4 (2) b) Loans to insured persons, who have concluded a contract of life insurance, up to the limit of 5 % of total provisions

§4 (4) Financial placing according to the section 1 and 2 with the exception of bonds according to the section 1a), treasury bills according to the section 1d), listed municipal bonds according to the section 1e), and public bonds issued in a non-member state, which is relating to one person or one group of persons who are in position of the dominating and dominated person is limited to 15 % of total provisions.

**Decree 96/2006 which amends part of Decree 303/2004***Unofficial translation undertaken by London Economics***Reproduction of points 5 and 12., which both amend § 4 in Decree 303/2004.**

5. The words “on condition that one borrower may get a maximal loan up to the limit of 5 % of total provisions” are deleted in § 4 section 1f).

12. Section 5 has been inserted after the section 4 and is read as follows:

“(5) Financial placing according to the section 1 except for letters a), d), h), k), l), m), bank credits according to letter f) which were provided to the public or regional or local authorities or international organizations with one or more member-state as a member and financial placing according to the section 2 except for letter d) have a limit 5 % of total provisions for one person. The limit for one person based on the first sentence may be increased up to 10 % of total provisions on condition that an insurance company does not invest more than 40 % of total provisions in the financial placing based on the first sentence at persons at which the insurance company invests more than 5 % of total provisions.

## 7 Denmark

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Consolidated Act no. 286 of 4 April 2006. Only the Danish document has legal validity. October 2006, GlobalDenmark Translations

### **Financial Business Act**

#### **Consolidated Act no. 286 of 4 April 2006 - EXCLUDING MINOR AMENDMENTS**

#### **Consolidated Act no. 286 of 4 April 2006**

This is an Act to consolidate the Financial Business Act, cf. Consolidated Act no. 613 of 21 June 2005 with amendments consequential upon section 3 of Act no. 1428 of 21 December 2005 and section 1 of Act no. 116 of 27 February 2006.

### **Part 2**

#### **Definitions**

5.-(1) For the purposes of this Act:

1) "Financial undertakings" shall mean:

- a) Banks
- b) Mortgage-credit institutions
- c) Investment companies
- d) Investment management companies
- e) Insurance companies

2) "Credit institution" shall mean: An undertaking, the activity of which consists of receiving from the general public deposits or other funds to be repaid, and granting loans at its own expense.

6) "Finance institution" shall mean: An undertaking which is not a credit institution and the main activity of which consists of acquiring equity investments or in carrying out one or more of the activities specified in annex 2, nos. 2-12.

Licenses for banks, mortgage-credit institutions, investment companies, investment management companies, and insurance companies

## **II Licenses, exclusive right, area of activities, and foreign institutions**

### **Part 3**

#### **Licenses, exclusive right, etc.**

7.-(1) Undertakings that carry out activities comprising receiving from the public deposits or other funds to be repaid as well as activities comprising granting loans at their own expense but not on the basis of issuing mortgage-credit bonds, cf. section 8(3), shall be licensed as banks. Banks may only carry out the activities mentioned in annex 1 as well as activities according to sections 24-26.

(2) Banks may be licensed according to section 9(1) to carry out the activities mentioned in annex 4, schedule A, nos. 1 and 3.

(3) Banks, the State, Danmarks Nationalbank (Denmark's central bank), foreign credit institutions which fulfil the conditions in section 1(3) and section 30 or 31 of this Act, issuers of electronic money, and savings undertakings shall have exclusive right to receive from the public deposits or other funds to be repaid. Mortgage-credit institutions, DSF (Danmarks Skibskreditfond), and KommuneKredit may, however, receive other funds to be repaid. Undertakings which do not receive deposits from the public may receive other funds to be repaid provided this activity or lending activities are not a significant part of the normal activities of the undertaking.

(4) Banks, the State, and foreign credit institutions that fulfil the conditions in section 1(3), and section 30 or 31 of this Act shall have exclusive right to approach the public as recipients of deposits.

(5) Banks have exclusive right to use the words "bank", "sparekasse" or "andelskasse" in their name. Other undertakings established by law, except for banks, may not use names or expressions for their activities that create the impression that they are a bank. A bank may not describe its activities in a way that may create the impression that it is Denmark's central bank.

(6) Banks shall use the word "bank", "sparekasse" or "andelskasse" in their name, cf. however subsection 7. Section 153(2)-(6) of the Public Companies Act shall apply correspondingly to savings banks and cooperative savings banks.

(7) A limited company which, pursuant to the regulations in sections 207-213, takes over a cooperative savings bank, an affiliation of cooperative savings banks, or a savings bank shall have the right to describe itself as a cooperative savings bank or a savings bank respectively, and the word "aktieselskab", or an abbreviation derived herefrom, shall be added to the name.

(8) An undertaking which applies for a license under subsection (1) shall have a share capital of at least EUR 8 million.

8.-(1) Undertakings which grant loans against registered mortgages in real property on the basis of issuing mortgage-credit bonds shall be licensed as mortgage-credit institutions. Mortgage-credit institutions may only carry out activities as mentioned in annex 3 and activities under sections 24-26.

(2) Mortgage-credit institutions may be licensed under section 9(1) to carry out the activities mentioned in annex 4, schedule A, no. 1 regarding mortgage-credit bonds and instruments derived herefrom.

(3) Mortgage-credit institutions and foreign credit institutions which fulfil the conditions for this in the Mortgage-Credit Loans and Mortgage-Credit Bonds etc. Act shall have exclusive right to issue mortgage-credit bonds.

(4) Securities other than mortgage-credit bonds must not carry this name or a name that may create the impression that they are mortgage-credit bonds.

(5) Mortgage-credit institutions shall have exclusive right to use words such as "realkreditinstitut", "realkreditaktieselskab", "kreditforening", or "realkreditfond" in their name. KommuneKredit may, however, continue to use the description "Kreditforeningen af Kommuner i Danmark". Other undertakings may not use names or descriptions for their activities that may create the impression that they are mortgage-credit institutions.

(6) Mortgage-credit institutions, which have been converted into limited companies and which have hitherto used words such as "kreditforening", "realkreditfond", or "reallånefond" in their name shall add the word "aktieselskab" or an abbreviation derived herefrom after their name.

(7) An undertaking seeking a license under subsection (1) shall have a share capital of no less than EUR 8 million.

**Annex 1****Bank activities**

- 1) Acceptance of deposits and other repayable funds.
- 2) Lending, including
  - consumer credit,
  - mortgage credit,
  - factoring and discounting,
  - commercial credits (including forfaiting),
  - financial leasing.
- 3) Payment services (money transmission services).
- 4) Issue and administration of means of payment (e.g. credit cards, travellers' cheques, and bankers' drafts).
- 5) Guarantees and collateralisation.
- 6) Participation in issuing securities and provision of related services.
- 7) Advice to undertakings on capital structure, industrial strategy and related questions and advice, and services relating to mergers and the acquisition of undertakings.
- 8) Money broking.
- 9) Credit reference service.
- 10) Safe custody services
- 11) Business for own account relating to any of the instruments mentioned in annex 5.
- 12) Safekeeping and administration in relation to one or more of the instruments mentioned in annex 5, and mortgages.
- 13) Other activities in relation to trade in money and credit instruments.
- 14) Electronic money institutions.

**Part 11**

## Placement and liquidity of funds

Special regulations for insurance companies and pension funds regarding the placement of funds and liquidity

158. The funds under the charge of an insurance company or a pension fund shall be invested in an appropriate manner, and a manner advantageous for the insured parties, such that there is adequate security that the company can meet its obligations at all times.

159.-(1) Insurance companies and pension funds shall have a group of assets, the total value of which at all times corresponds to the value of the total insurance provisions.

(2) The assets covered by subsection (1) shall be selected so that, viewed in relation to the nature of the company's insurance contracts with regard to security, return, and liquidity, they are of a suitable type and composition to ensure that the insured parties are satisfied. There may not be disproportionate dependence on a specific category of assets, a specific investment market, or a specific investment.

160. In pursuance of the provisions in this part of this Act, assets shall be calculated in accordance with the following regulations:

- 1) Assets shall be calculated and adjusted regularly in accordance with the regulations laid down regarding annual reports in section 196.
- 2) Any assets subject to a charge shall be deducted, and loans may only be included at a value net of obligations that may be due to the borrower.
- 3) Financial contracts that reduce the risk that assets do not cover insurance obligations shall be included in the value of assets at the value of such contracts.
- 4) Accrued interest receivable on assets covered by section 162(1), nos. 1-4, 6, 7, 9, and 11-14 shall be included in the value of the assets.

161. In pursuance of the provisions in this part of this Act, insurance provisions shall be calculated in accordance with the following regulations:

- 1) Provisions shall be calculated and adjusted regularly in accordance with the regulations laid down regarding annual reports in section 196.
- 2) Provisions shall be calculated gross of directly written insurance contracts.

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3) The proportion of insurance provisions for indirect insurance contracts that is set off against reinsurance deposits with issuing insurance companies shall be deducted.

4) Up to half of the outstanding premiums receivable shall be deducted.

162.-(1) The following types of assets may be included in the assets covered by section 159(1):

1) Bonds or instruments of debt issued or guaranteed by central governments or regional authorities within Zone A,

2) Listed bonds issued by international organisations with a membership of no less than one Member State of the European Union.

3) Mortgage-credit bonds and other bonds issued in a country within the European Union or in a country with which the Community has entered into an agreement for the financial area, and which offers equivalent collateral.

4) Amounts receivable from credit institutions and insurance companies under public supervision in countries within Zone A, although not amounts receivable that are subordinated other creditors, as well as other amounts receivable that are guaranteed by credit institutions or insurance companies under public supervision in countries within Zone A

5) Land, residential property, offices and commercial property, as well as other property, the value of which is independent of any specific commercial use.

6) Loans secured by registered, mortgaged property covered by no. 5 for an amount of up to 80 per cent of the most recent property valuation for residential property and up to 60 per cent for other property.

7) Loans secured on own life-assurance policies within the repurchase value of these policies.

8) Units in investment undertakings subject to Community law and units in placement associations, money-market associations and funds of funds as well as restricted associations or divisions hereof, which in their articles of association have provisions on risk-spreading corresponding to those applicable for investment associations, placement associations, money-market associations or funds of funds, cf. the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.

9) Other bonds and loans listed on a stock exchange in countries within Zone A.

10) Equity investments listed on a stock exchange in countries within Zone A.

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11) Property not covered by no. 5, as well as loans secured by registered, mortgaged property not covered by no. 6.

12) Equity investments and other securities listed on a stock exchange in countries outside Zone A.

13) Unlisted equity investments, including equity investments traded on an authorized market place, cf. section 40(1) of the Securities Trading, etc. Act, or another regulated market that is publicly recognised, open regularly, and open to the public, as well as other loans and securities not covered by nos. 1-12.

14) Reinsurance contracts and amounts receivable from reinsurance companies under public supervision in countries within Zone A or reinsurance companies under public supervision, which have achieved a rating by a recognised rating undertaking corresponding to no less than investment grade.

(2) In a subsidiary undertaking, the activities of which are limited to making and managing investments in assets covered by subsection (1), the assets of the subsidiary undertaking within the value of the equity investments in and any loans to the subsidiary undertaking may be treated as assets under subsection (1). If the subsidiary undertaking is not fully owned, its assets shall be included at a proportionate value corresponding to the proportion of the own funds owned.

(3) If the insurance company has a subsidiary company which carries on direct life-assurance business with the authority of this Act, the assets of the subsidiary company may be treated as assets under subsection (1). The part of the assets of the subsidiary company which is not used to cover the subsidiary company's insurance provisions, and an amount corresponding to the capital requirements of the subsidiary company shall be of such a type and composition that they can be included in the assets of the parent company to cover the insurance provisions according to the provisions of this part. The total assets of the subsidiary company may be included as part of the assets to cover insurance provisions at a value no greater than that which corresponds to the value of the parent company's shares in and any loans to the subsidiary company, after deduction of the capital requirements of the subsidiary company. If the subsidiary is not fully owned, its assets shall be included at a proportionate value corresponding to the proportion of the own funds owned.

(4) Subsection (3) may apply correspondingly to other subsidiary companies, which are insurance companies, with a license under this Act. The assets of such a subsidiary company may, however, be included as part of the assets at a value corresponding to no more than 5 per cent of the insurance provisions of the parent company.

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163.-(1) The following limits concerning insurance provisions shall apply for including assets covered by section 159(1):

1) Assets covered by section 162(1), nos. 8-14 may total no more than 70 per cent.

2) Assets covered by section 162(1), no. 13, cf. however subsection (2), may be included at no more than 20 per cent.

3) Assets covered by section 162(1), no. 12 may comprise a total of no more than 10 per cent.

4) Loans covered by section 162(1), no. 13 may comprise a total of no more than 2 per cent.

5) Assets covered by section 162(1), nos. 4, 6, 8-10, 12 and 13, issued or guaranteed by banks, mortgage-credit institutions, insurance companies, branches of investment undertakings, as well as placement associations, money-market associations, funds of funds and restricted associations which for each undertaking and branch of an association comprise more than 5 per cent of the insurance provisions, may total no more than 40 per cent.

(2) Other loans and securities covered by section 162(1), no. 13, which are not traded on an authorised market place or on another regulated market that is publicly recognised, open regularly, and open to the public, may comprise no more than 10 per cent of the insurance provisions.

164.-(1) The following limits concerning insurance provisions shall apply for including assets covered by section 159(1), where the assets comprise a risk for an individual undertaking or a group of mutually connected undertakings.

1) Assets covered by section 162(1), no. 3 may comprise no more than 40 per cent.

2) Assets covered by section 162(1), no. 4 may comprise no more than 10 per cent.

3) Assets covered by section 162(1), no. 8, cf. however, subsection (2), may comprise no more than 10 per cent.

4) Assets covered by section 162(1), no. 14 may comprise no more than 10 per cent.

5) Assets covered by section 162(1), nos. 5-7 and nos. 9-13, cf. however subsection (3), may comprise no more than 5 per cent.

6) Assets covered by section 162(1), nos. 6, 7, 9, 10, 12 and 13, cf. however, subsection

(4) may comprise no more than 4 per cent.

7) Loans covered by section 162(1), no. 13 may comprise no more than 1 per cent.

(2) If a branch of an investment undertaking covered by regulations in Community law, cf. section 162(1), no. 8, under its articles of association may only invest in assets covered by section 162(1), nos. 1-3, the investment may also be classified under section 162(1), nos. 1-3.

(3) For equity investments in and loans to an undertaking whose activities exclusively comprise investments in assets covered by section 162(1), nos. 5 and 11, the limit mentioned in subsection (1), no. 5, shall apply to the exposure with the undertaking.

(4) The limit in subsection (1), no. 6 shall only apply to other insurance companies than companies that carry out direct life-assurance business, and pension funds. For companies that carry out direct life-assurance business and pension funds the limit shall be 3 per cent, cf. however, subsection (5).

(5) If the undertaking is not domiciled or listed in a country within Zone A, or if the own funds of the undertaking does not exceed DKK 250 million, the limit in subsection (4), 2nd clause shall be 2 per cent.

(6) Subsection (1), no. 6 and (3) shall not apply to investments in a subsidiary undertaking covered by section 162(2), or to a subsidiary company covered by section 162(3) or (4), or to investments in undertakings whose activity according to their articles of association is limited to investing in assets covered by section 162(1), nos. 1-3. In the latter case, with regard to the provisions in subsection (1), nos. 5-7 and (2), as well as section 163(1), nos. 1, 2 and 4, the investment may be classified under section 162(1), nos. 1-3.

165.-(1). The assets covered by section 159(1) shall include an amount of no less than 80 percent denominated in congruent currencies.

(2) Assets denominated in euro (EUR) may be used to fulfil half of the requirement under subsection (1) for insurance provisions in another EU currency than euro (EUR).

(3) The requirement in subsection (1) shall not apply if the insurance provisions in the relevant currency total less than 7 per cent of the insurance provisions in other currencies.

166.-(1) For insurance provisions in insurance class III, where the insurance company or pension fund has not taken on an investment risk, section 159(2) and sections 163-165 shall not apply.

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(2) For funds taken over as separate SP (Special Pension Savings Scheme) accounts where the individual account-holder has influence on the choice of investment scheme or investment risk, section 159(2) and sections 163-165 shall not apply.

(3) Funds taken over as separate SP (Special Pension Savings Scheme) accounts where the individual account-holder has no control over the choice of investment scheme or investment risk shall be placed in accordance with the regulations in part 11, cf. however subsections (4) and (5).

(4) Section 163(1), no. 5 and section 164(1), no. 3 shall not apply to funds placed in investment associations, special-purpose associations and approved restricted associations covered by section 162(1), no. 8.

(5) Section 163(1), no. 1 shall not apply to funds placed in investment associations, special purpose associations and approved restricted associations covered by section 162(1), no. 8 provided that the assets held by said associations are included in the calculation of placement of the funds covered by subsection (3) and that the provisions of part 11 of this Act, with the exceptions mentioned in subsection (4), are complied with in said calculation.

167.-(1) Insurance companies and pension funds shall keep a register of assets covered by section 159(1) and financial contracts under section 160(1), no. 3. Non-life assurance companies shall also keep a register of the assets that correspond to premiums received, where the insurance period commences after the end of the accounting year. The assets and contracts in such registers shall be exclusively to satisfy the insured parties.

(2) The requirement to keep a register shall not apply to the policy loans mentioned in section 162(1), no. 7.

(3) If real property is included in the assets, a mortgage deed shall be registered.

(4) For subsidiary undertakings covered by section 162(2) and subsidiary companies covered by section 162(3) and (4), equity investments shall be registered as well as any loans to the subsidiary undertaking or subsidiary company, respectively.

(5) The insurance company and the pension fund shall report to the Danish FSA which assets are included in the register. The Danish FSA or the party duly authorised by the Danish FSA shall verify the existence of said assets according to more detailed regulations laid down by the Danish FSA.

(6) The Danish FSA may require that the register be deposited if the Danish FSA decides to limit or prohibit the availability of the assets to the company. On depositing the register the Danish FSA shall be registered at a central

securities depository as authorised with regard to securities. Other assets and contracts that are to cover insurance provisions shall be pledged as collateral in favour of the Danish FSA.

(7) Any changes in the register deposited shall be approved by the Danish FSA and noted in the register.

168. The Danish FSA may grant exemptions from sections 162, 163(1), no. 5 and 164(1), nos. 2-6 and section 164(1), nos. 2-7 and (2)-(6) for a limited period.

## **Annex 2**

### **Credit institution activities**

- 1) Acceptance of deposits and other repayable funds.
  - 2) Lending, including
    - consumer credit,
    - mortgage credit,
    - factoring and discounting,
    - commercial credits (including forfaiting).
  - 3) Financial leasing.
  - 4) Payment services.
  - 5) Issue and administration of means of payment (e.g. credit cards, travellers' cheques, and bankers' drafts).
  - 6) Guarantees and collateralisation.
  - 7) Trading for own account or for account of customers in
    - a) money market instruments (cheques, bills, certificates of deposit, etc.),
    - b) the foreign exchange market,
    - c) financial futures and options,
    - d) currency and interest rate instruments,
    - e) securities.
  - 8) Participation in issuing securities and provision of related services.
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9) Advice to undertakings on capital structure, industrial strategy and related questions and advice, and services relating to mergers and the acquisition of undertakings.

10) Money broking.

11) Portfolio management and advice.

12) Safekeeping and administration of securities.

13) Credit reference service.

14) Safe custody services

### **Annex 3**

#### **Mortgage-credit activities**

1) Granting of loans against a registered mortgage on real property on the basis of the issue of mortgage-credit bonds or other securities.

2) Business for own account relating to any of the instruments mentioned in annex 5.

3) Safekeeping and administration of own mortgage-credit bonds and own other securities.

### **Annex 4**

#### **Securities dealers**

#### **Schedule A**

1) a. Receipt and arrangement for the account of investors of orders in relation to one or more of the instruments mentioned in annex 5,

b. execution of such orders for any third party's account,

c. arrangement of contracts between a financial undertaking with a license to carry out securities trading activities and a legal or natural person wishing to purchase or sell one or more of the instruments mentioned in annex 5, including having a portfolio strategy based on estimates arranged.

2) Business for own account relating to any of the instruments mentioned in annex 5.

3) Arranging portfolio strategies based on estimates with regard to individual customers' securities equity investments at the directions of investors, if such equity investments include one or more of the instruments mentioned in annex 5.

4) Underwriting in relation to issue of one or more of the instruments mentioned in annex 5, or placement of such issues.

5) Safekeeping and administration in relation to one or more of the instruments mentioned in annex 5.

### **Schedule B**

1) Safe custody services

2) Credit or granting of loans to an investor, so that said investor may carry out a transaction with one or more of the instruments mentioned in annex 5, if the undertaking providing such credit or loan participates in the transaction.

3) Advice to undertakings on capital structures, industrial strategy and related questions, and advice and services relating to mergers and acquisition of undertakings.

4) Services in relation to underwriting.

5) Investment consulting regarding one or more of the instruments mentioned in annex 5.

6) Currency transactions when such transactions are related to investment services.

### **Annex 5**

#### **Instruments**

1) Shares and other negotiable securities equivalent to these,

2) bonds and other negotiable securities equivalent to these,

3) any other securities normally dealt in giving the right to acquire such securities as listed in 1) or 2) by subscription or exchange or giving rise to a cash settlement,

- 4) equity investments in investment associations, special-purpose associations, approved restricted associations, hedge associations, foreign investment undertakings and other collective investment schemes covered by the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act,
- 5) money-market instruments listed on a stock exchange as well as certificates of deposit and commercial papers,
- 6) financial-futures contracts and similar instruments,
- 7) Forward Rate Agreements (FRAs),
- 8) interest-rate swaps, currency swaps, equity swaps, and equity-index swaps,
- 9) options to acquire or dispose of any instruments mentioned in 1) to 8) and equity index options, bond index options, currency options and interest-rate options,
- 10) commodity instruments, etc., including similar cash-settled instruments,
- 11) foreign-exchange spot transactions for investment purposes in order to secure a profit in connection with changes in the exchange rate.

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## 8 Estonia

### Credit Institutions Act

Passed 9 February 1999 (RT<sup>2</sup> I 1999, 23, 349; consolidated text RT I 2005, 8, 32), entered into force 1 July 1999,

amended by the following Acts:

14.12.2006 entered into force 01.01.2007 - RT I 2006, 63, 467

31.05.2006 entered into force 01.07.2006, in part 01.01.2007 - RT I 2006, 28, 208

19.10.2005 entered into force 01.01.2006 - RT I 2005, 61, 473

19.10.2005 entered into force 15.11. 2005, in the part of e-money institutions, upon entry into force of the E-money Institutions Act - RT I 2005, 59, 463

15.06.2005 entered into force 01.01.2006 - RT I 2005, 39, 308

09.02.2005 entered into force 18.03.2005 - RT I 2005, 13, 64;

25.11.2004 entered into force 01. 01.2005 - RT I 2004, 86, 582.

### Chapter 1

#### General Provisions

##### § 1. Scope of application of Act

(1) This Act regulates the foundation, activities, dissolution, liabilities and supervision of credit institutions.

(2) The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117; 78, 527) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act and the Financial Supervision Authority Act (RT I 2001, 48, 267; 2002, 12, correction notice; 23, 131; 105, 612; 2003, 81, 544, 2004, 36, 251).

(25.11.2004 entered into force 01. 01.2005 - RT I 2004, 86, 582)

##### § 2. Implementation of Act

(1) This Act applies to all credit institutions founded or operating in Estonia and to parent companies, subsidiaries, branches and representative offices thereof which are located in Estonia.

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(13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

(2) This Act also applies to subsidiaries, branches and representative offices of Estonian credit institutions in foreign states, unless otherwise prescribed by the legislation of the state where they are registered, and to subsidiaries, branches and representative offices of foreign credit institutions in Estonia, unless otherwise provided by international agreements entered into by Estonia.

(14.04.2004 entered into force 01.05.2004 - RT I 2004, 36, 251)

(3) The Bank of Estonia is not deemed to be a credit institution.

### § 3. Definition of credit institution

(1) A credit institution is a company the principal and permanent economic activity of which is to receive cash deposits and other repayable funds from the public and to grant loans for its own account and provide other financing.

(25.11.2004 entered into force 01. 01.2005 - RT I 2004, 86, 582)

(2) Credit institutions may operate as public limited companies or associations and the provisions of law regarding public limited companies or savings and loan associations apply thereto unless otherwise provided by this Act.

### § 4. Receipt of deposits from public

(1) Credit institutions have the exclusive right to receive money from the public for the purposes of depositing or to receive repayable funds in any other manner.

(11) The receipt of funds necessary for provision of the services specified in subsection 4 (1) of the E-money Institutions Act is not deemed to be deposit or receipt from the public of other repayable funds within the meaning of this section if e-money is immediately issued against such funds.

(19.10.2005 entered into force 01.01.2006 - RT I 2005, 61, 473)

(2) For the purposes of this Act, deposits or other repayable funds are deemed to be received from the public if the proposal to deposit money or receive repayable funds in any other manner is made to the public.

(3) For the purposes of this Act, the public are deemed to be a previously unspecified set of persons.

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(4) The provisions of subsection (1) of this section do not apply to the receipt of money from the public for depositing or to the receipt of other repayable funds in any other manner by:

- 1) states which are contracting parties to the EEA agreement (hereinafter contracting state);
- 2) local or regional governments of EEA states;
- 3) international organisations or other international institutions governed by public law of which a contracting state is a member;
- 4) legal persons to the extent to which they have the right, pursuant to the legislation of a contracting state or the European Union, to receive funds from the public provided that such activities are subject to supervision for the protection of depositors and investors.

(25.11.2004 entered into force 01. 01.2005 - RT I 2004, 86, 582)

#### § 5. Financial institution

For the purposes of this Act, a financial institution is a company other than a credit institution, the principal and permanent activity of which is to acquire holdings or conclude one or more of the transactions specified in clauses 6 (1) 2)-12) of this Act.

(11.05.2000 entered into force 01.09.2000 - RT I 2000, 40, 249; 13.12.2001 entered into force 01.01.2002 - RT I 2001, 102, 672)

#### § 6. Financial services

(1) For the purpose of this Act, financial services are services to third parties rendered by a person in the course of professional or economic activities which consist of the conclusion of the following transactions and acts:

- 1) deposit transactions for the receipt of deposits and other repayable funds from the public;
- 2) borrowing and lending operations, including consumer credit, mortgage credit, factoring and other transactions for financing business transactions;
- 3) leasing transactions;
- 4) settlement, cash transfer and other money transmission transactions;
- 5) issue and administration of non-cash means of payment (e-g. electronic payment instruments, traveller's cheques, bills of exchange);

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- 6) guarantees and commitments and other transactions creating binding obligations to persons;
  - 7) transactions for their own account or for the account of clients in traded securities provided in § 2 of the Securities Market Act (RT I 2001, 89, 532; 2002, 23, 131; 63, 387; 102, 600; 105, 612; 2003, 81, 544; 88, 591; 2004, 30, 208; 36, 251; 37, 255) and in foreign exchange and other money market instruments, including transactions in cheques, exchange instruments, certificates of deposit and other such instruments;
  - 8) transactions and acts related to the issue and sale of securities;
  - 9) provision of advice to clients on issues concerning economic activities, and transactions and acts related to the merger or division of companies or participation therein;
  - 10) money broking;
  - 11) portfolio management and consultation on investment issues;
  - 12) safekeeping and administration of securities;
  - 13) collection, processing and transmission of credit information;
  - 14) safe custody services;
  - 15) other transactions and acts which are essentially similar to the financial transactions specified in clauses 1)-14) of this section.

(2) A credit institution may conclude transactions and perform acts other than those specified in subsection (1) of this section if these are directly ancillary or supplementary to its principal activity. In order to conclude such transactions or perform such acts, a credit institution may found a company or gain control over another company (hereinafter ancillary undertaking).

(3) For the purposes of this Act, an ancillary undertaking of a credit institution (hereinafter ancillary undertaking) is a company the principal and permanent activity of which is the administration of immovable property, the provision of information technology services, or other activities which are ancillary or supplementary to the principal activities of one or several credit institutions.

(25.11.2004 entered into force 01. 01.2005 - RT I 2004, 86, 582)

### **Insurance Activities Act 2005**

Passed 8 December 2004 (RT2 I 2004, 90, 616), entered into force 1 January 2005.

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## Chapter 1

### General Provisions

#### § 1. Scope of application of Act

This Act regulates insurance activities, insurance mediation and supervision thereof.

#### § 2. Insurance activities and insurance mediation

(1) For the purposes of this Act, insurance activities shall mean the acceptance of the risks of a policyholder or insured person by the insurance undertaking on the basis of an insurance contract with the objective to pay indemnities upon occurrence of an insured event.

(2) Insurance mediation (hereinafter mediation) includes:

- 1) carrying out work preparatory to the conclusion of insurance and reinsurance contracts, including preparation of risk analyses;
- 2) concluding insurance and reinsurance contracts;
- 3) assisting in the administration and performance of insurance and reinsurance contracts.

(3) For the purposes of this Act, the following are not considered to be mediation:

- 1) engaging of insurance undertakings or reinsurance undertakings in mediation, except for mediation of insurance contracts of other insurance undertakings and reinsurance undertakings,
- 2) engaging of employees of insurance undertakings or reinsurance undertakings in mediation under an employment contract, except in the case of mediation of insurance contracts of other insurance undertakings or reinsurance undertakings,
- 3) the provision of insurance-related information in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance or reinsurance contract, loss adjusting, and the management or expert appraisal of claims of an insurance undertaking or reinsurance undertaking on a professional basis, and the provision of such information is ordinarily not part of the professional activity.

(4) Insurance mediation is divided into insurance brokerage and activities of insurance agents.

## Chapter 2

### Right to Operate as Insurance Undertaking

#### Division 1

#### Activity Licence

##### § 16. Activity licence

(1) In order to engage in insurance activities, a company shall hold a relevant activity licence (hereinafter activity licence).

(2) The Financial Supervision Authority shall issue activity licences to companies founded in Estonia. The registered office of an insurance undertaking who has obtained an activity licence from the Financial Supervision Authority shall be in Estonia.

(3) Activity licences are issued for an unspecified term.

(4) Activity licences are not transferable, and the use thereof by other persons is prohibited.

##### § 17. Scope of activity licences

(1) An activity licence is issued for engaging in one or several classes of insurance or, at the request of the applicant for the activity licence, for engaging in one or several subclasses of insurance.

(2) An insurance undertaking may engage in only such classes or subclasses of insurance for which an activity licence has been issued to the insurance undertaking.

(3) In addition to the provisions of subsection (2) of this section, an insurance undertaking engaging in non-life insurance may operate in classes or subclasses of insurance without an additional activity licence if the risk additionally insured by the insurance undertaking is related to the object insured on the basis of the class or subclass of insurance indicated in the activity licence, and the specified risk and object or person are insured on the basis of the same insurance contract.

(4) The provisions of subsection (3) of this section do not apply to credit insurance, suretyship insurance and legal expenses insurance, unless the legal expenses insurance is an additional class of assistance insurance, ships insurance or liability for ships insurance.

(5) An insurance undertaking shall not be simultaneously engaged in life assurance and non-life insurance, except in the case specified in subsection (6) of this section.

(6) An insurance undertaking engaged in life assurance may be simultaneously engaged in life assurance and the classes of non-life insurance specified in clauses 12 1) and 2) of this Act on condition that the latter are offered together with life assurance.

(7) An insurance undertaking may be simultaneously engaged either in life assurance and the reinsurance of life assurance or non-life insurance and the reinsurance of non-life insurance.

## **Chapter 4**

### **Prudential Requirements Set For Insurance Undertakings**

#### **§ 77. Assets covering technical provisions of insurance undertaking**

(1) The assets covering technical provisions of an insurance undertaking are assets the value of which corresponds to the amount of technical provisions of the insurance undertaking net of reinsurance. The amount of assets covering technical provisions of an insurance undertaking shall, at all times, be at least equal to the amount of technical provisions of the undertaking.

(2) Upon investment of an insurance undertaking's assets covering technical provisions, the nature of commitments arising from insurance contracts shall be taken into account, including the currency in which the commitments are assumed. Upon investment of an insurance undertaking's assets covering technical provisions, optimum safety and proceeds shall be secured and, at the same time, the constant liquidity of the insurance undertaking and the diversification and adequate spread of the investments of the insurance undertaking shall be maintained.

(3) If an insurance contract provides for the currency in which the insurance undertaking is required to pay the indemnity then such currency is deemed to be the currency in which the insurance undertaking has assumed the commitment.

(4) If an insurance contract related to the insurance activities specified in § 12 of this Act does not provide for the currency in which the commitment has been assumed then the currency of the state where the insured risk is situated is deemed to be the currency in which the insurance undertaking has assumed such commitment. An insurance undertaking has the right to select a currency in which the insurance payments are to be made in cases where such selection is justified. Such selection is justified, above all, in cases where after conclusion of the contract, it will be likely that the commitment must be paid in the same currency as the insurance payments were made and which is not the currency of the state where the insured risk is situated.

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(5) An insurance undertaking is required to invest assets covering technical provisions corresponding to the commitments arising from insurance contracts in the same currency that the commitment was assumed, unless:

- 1) the assets covering technical provisions corresponding to the commitments assumed in such currency is equal to up to 7 per cent of the assets covering technical provisions expressed in other currencies;
- 2) the assets covering technical provisions corresponding to the commitments assumed in such currency is equal to up to 20 per cent of all the commitments of the insurance undertaking expressed in the same currency;
- 3) the assets covering technical provisions corresponding to the commitments assumed in Estonian kroons is invested in euros;
- 4) the commitment arises from a unit linked life assurance contract.

(6) Insurance undertakings' assets covering technical provisions may be only the following:

- 1) securities specified in clause 2 (1) 2) or 5) of the Securities Market Act which are issued or fully guaranteed by Contracting States, full members of the Organisation for Economic Co-operation and Development (OECD), states which have entered into special loan agreements with the International Monetary Fund (IMF) on the basis of the General Agreements to Borrow (GAB) of the IMF (hereinafter Zone A states), or central banks of Zone A states;
- 2) the securities specified in subsection 2 (1) of the Securities Market Act which are traded on a regulated securities market;
- 3) loans secured by mortgages entered in the land register in the first ranking or by guarantees of credit institutions registered in a Zone A state;
- 4) debenture loans granted to credit institutions or other insurance undertakings on the presumption that the credit institution or insurance undertaking is registered in a Zone A state;
- 5) share in investment fund which is located in a zone A state;
- 6) immovables or structures except for those parts of immovables or structures used by the insurance undertaking;
- 7) deposits with ceding undertakings and claims against ceding undertakings;

8) claims against policyholders and insurance intermediaries which are not older than ninety days and which arise from insurance or reinsurance activities;

9) demand deposits and fixed-term deposits in a Zone A state.

(7) A state specified in clause (1) 6) of this section which has restructured its foreign debt is not deemed to be a Zone A state within the period of five years after the date on which the state declared its wish to enter into an agreement for restructuring its foreign debt.

(8) In order to cover technical provisions, assets covering technical provisions shall be valued in the fair value thereof as follows:

1) assets covering technical provisions shall be valued net of any arrears and commitments related to the assets, including off-balance sheet liabilities;

2) assets covering technical provisions specified in clauses (6) 4), 5) and 9) of this section and the claims against policyholders which arise from reinsurance activities specified in clause 8) of this section shall be valued taking account of their collectibility;

3) claims against persons may be accepted as cover for technical provisions after deduction of claims of such persons against the insurance undertaking.

§ 78. Restrictions on investments of assets covering technical provisions of insurance undertakings

(1) Assets covering technical provisions may be invested in one immovable or structure or several structures which can be considered to be one structure due to their immediate vicinity in an amount of up to 10 per cent of the total amount of technical provisions together with the reinsurance undertaking's share but not more than 15 per cent in immovables and structures in total.

(2) Assets covering technical provisions may be invested in securities of one issuer or in loans secured by one borrower in an amount of up to 5 per cent of the total amount of technical provisions together with the reinsurance undertaking's share and in an amount of up to 10 per cent provided that neither the proportion of securities nor the proportion of secured loans in assets covering technical provisions exceeds 40 per cent of the total amount of technical provisions together with the reinsurance undertaking's share.

(3) Assets covering technical provisions may be invested in one debenture loan in an amount of up to 1 per cent of the total amount of technical provisions together with the reinsurance undertaking's share and in an amount of up to 5 per cent of the total amount of technical provisions together with the reinsurance undertaking's share in debenture loans in total.

(4) Assets covering technical provisions may be invested in demand deposits in an amount of up to 3 per cent of the total amount of technical provisions together with the reinsurance undertaking's share.

(5) Assets covering technical provisions may be invested in securities not specified in clause 77 (6) 2) of this Act which can be sold within a short period of time, and in shares of investment funds not specified in § 4 of the Investment Funds Act (RT I 2004, 36, 251) in an amount of up to 10 per cent of the total amount of technical provisions together with the reinsurance undertaking's share.

(6) The Financial Supervision Authority has the right to prohibit, by a precept, an insurance undertaking from concluding a transaction which may result in the assets covering technical provisions of the insurance undertaking not complying with the requirements of this Act.

(7) The restrictions specified in subsection 77 (6) of this Act and subsections (1)-(5) of this section do not apply to the part of underlying assets connected to unit linked life assurance contracts, where the insurance undertaking has no obligation arising from the insurance contract to bear the investment risk.

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## 9 Finland

Unofficial translations provided by the Finnish Financial Services Authority.  
(Unofficial in November 2005 updated version)

### **Act on Credit Institutions**

**30.12.1993/1607**

### **Chapter 1**

### **General provisions**

### **Section 1**

(31.1.2003/69)

#### Scope of application

This Act shall apply to business activity (credit institution activity) where repayable funds are accepted from the public as well as

- 1) credit and other financing is offered for own account, or
- 2) general payment transmission is carried on or electronic money is issued.

This Act shall also govern the exclusive right of credit institutions to carry on the business of acquiring repayable funds from the public as well as exemptions relating thereto.

For the purposes of this Act, funds repayable on demand shall mean funds other than those borrowed for a fixed period, which the creditor may, in accordance with the loan terms, recall payable immediately or, at the latest, within a 30-day notice period as well as funds borrowed for a fixed period, the loan period of which is no more than 30 days or which the creditor may recall payable prior to maturity in situations also other than those exceptional situations separately mentioned in the loan terms.

Entry into force of Act of 31.1.2003/69:

This Act enters into force on 15 February 2003.

An undertaking which, upon the entry into force of this Act, carries on the activity referred to in section 1, subsection 1, paragraph 2 without an authorization of a credit institution, shall apply for the authorization referred to in subsection 1, submit the notification referred to in section 1 a, subsection 3 or terminate its activities subject to an authorization at the latest within one

year from the entry into force of the Act. Funds accepted and electronic money issued prior to the entry into force of this Act shall be governed by the provisions in force upon the entry into force of the Act.

The provisions of section 10, subsection 5 shall not apply to an authorization granted prior to the entry into force of the Act.

The information referred to in section 25, subsection 3 and section 68, subsection 2 on the outsourcing contracts in force upon the entry into force of the Act shall be submitted to the Financial Supervision Authority at the latest within six months from the entry into force of the Act

### **Credit institution**

A credit institution is an undertaking authorized to carry on credit institution activity. A credit institution may be a deposit bank, a financing institution or a payment institution.

### **Section 2 a**

#### **(31.1.2003/69)**

Exclusive right of credit institutions to accept repayable funds from the public and exemptions thereof.

An institution other than a credit institution may not carry on business operations where repayable funds are accepted from the public in another manner than by issuing securities referred to in the Securities Markets Act (495/1989) unless otherwise provided for in this section. The provisions of this section shall not, however, restrict the right of the Bank of Finland to accept repayable funds from the public, the right of a management company to carry on common fund activity referred to in the Act on Common Funds (48/1999), the right of an investment firm to accept repayable funds from the public in accordance with the Act on Investment Firms (579/1996) or the right of an insurance institution to carry on insurance business referred to in the Act on Insurance Companies (1062/1979). Nor shall the provisions of this section restrict the sale of means of payment which are not electronic money.

Notwithstanding the provisions of subsection 1, a limited company or a co-operative may accept from the public funds repayable on demand to a customer account the funds in which may be used only as payment for goods or services provided by the limited company or the co-operative, or withdrawn in cash, as well as issue electronic money accepted as payment only by the limited company or the co-operative itself. A limited company or a co-operative carrying on limited credit-institution activity may also accept from the public funds repayable on demand to a customer account referred to in section 1 a, subsection 2, paragraph 2 and issue electronic money referred to in paragraph 3 of the said subsection.

The limited company or co-operative referred to in subsection 2 or, if the limited company or co-operative belongs to a group of companies referred to in section 5 c, all the limited companies and co-operatives belonging to the same group of companies may together accept to a customer account from one customer a maximum amount corresponding to 3,000 euros. The limited company or co-operative referred to in subsection 2 may store on one electronic medium a maximum amount of money corresponding to 150 euros.

Notwithstanding the provisions of subsection 1, a limited company and a co-operative may offer to the public debt instruments other than those repayable on demand. If these debt instruments are offered to the public in another manner than by issuing to public circulation securities referred to in the Securities Markets Act, the limited company or co-operative shall prepare and publish a semi-annual report, an annual report, annual accounts and an annual account release in compliance with, where applicable, the provisions of chapter 2, sections 5, 5 a, 6 and 6 a of the Securities Markets Act. Derogations from the duty of disclosure provided for in this section shall be governed by the provisions of chapter 2, section 11 of the Securities Markets Act.

## **Section 2 b**

**(31.1.2003/69)**

### **Deposit bank**

A deposit bank is a credit institution which may accept deposits and other repayable funds from the public as well as carry on activity referred to in section 1, subsection 1, paragraphs 1 and 2. A deposit bank may carry on business activity referred to in subsection 2 of this section and related activity.

The business activity of a deposit bank shall comprise:

- 1) acquisition of deposits and other repayable funds from the public;
- 2) other acquisition of funds;
- 3) granting of credits and other forms of financing as well as other facilitating of financing;
- 4) financial leasing;
- 5) general payment transmission and other payment transactions;
- 6) issuance of electronic money, related data processing and storing of data on an electronic device on behalf of another undertaking;
- 7) collection of payments;

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- 8) currency exchange;
  - 9) trustee operations;
  - 10) securities trading in and other securities operations;
  - 11) guarantee operations;
  - 12) credit reference activity;
  - 13) brokerage of shares and participations in housing corporations as well as of family-housing real estate relating to home saving activity;
  - 14) other activity comparable to the activities referred to in paragraphs 1-13.

A deposit bank may also attend to postal services in accordance with a contract concluded with a holder of a license for postal operations as well as offer services relating to the management of an undertaking belonging to the same group or consolidation group with the deposit bank.

A deposit bank may be a limited company, a co-operative or a savings bank.

The deposit bank shall belong to a deposit-guarantee fund referred to in chapter 6 a.

### **Section 2 c**

**(31.1.2003/69)**

#### **Deposit**

A deposit shall in this Act mean repayable funds which have to be compensated in full or in part from the deposit-guarantee fund in accordance with section 65 j.

Only funds referred to in subsection 1 may in marketing be referred to as "deposits" either as such or as part of a compound. Marketing relating to other acquisition of repayable funds from the public may not be carried out in a manner that can hamper the distinguishing of deposits from other repayable funds.

Deposits may be accepted only to accounts the general terms of which have been approved by the Financial Supervision Authority.

**Section 2 d****(31.1.2003/69)****Financing institution**

A financing institution is a credit institution which may accept repayable funds other than deposits from the public as well as carry on the activity referred to in section 1, subsection 1, paragraphs 1 and 2.

A financing institution may carry on business activity referred to in section 2 b, subsection 2 and related activities other than acquisition of deposits from the public. A financing institution may not accept from the public other funds repayable on demand otherwise than in connection with general payment transmission and the issuance of electronic money. A financing institution may carry on mortgage credit banking activity as provided for in the Act on Mortgage Credit Banks (1240/1999).

A financing institution may be a limited company, a co-operative or a mortgage society referred to in the Act on Mortgage Societies (936/1978).

The provisions of sections 51-54 on a deposit shall be applied to funds repayable on demand accepted to an account by the financing institution for general payment transmission.

**Section 3****(31.1.2003/69)****Financial institution**

For the purposes of this Act, a financial institution shall mean an organization other than a credit institution whose main activity is to offer services referred to in section 2 b, subsection 2, paragraphs 3-11 or to acquire holdings. A financial institution shall not comprise an insurance holding company referred to in the Act on Insurance Companies or a holding company of a conglomerate referred to in the Act on the Supervision of Financial and Insurance Conglomerates (44/2002).

Unofficial translation sourced from the "Stencils of the Ministry of Social Affairs and Health 2001:11".

**Insurance Companies Act (28.12.1979/1062)****Chapter 1****General provisions****Section 1**

This Act shall apply to Finnish mutual insurance companies and limited insurance companies, referred to as insurance companies in this Act.

Insurance companies shall be governed by the Companies Act (734/1978) as provided in this Act. Subject to chapter 19 of this Act, insurance companies shall be governed, where applicable, by the Act on the Implementation of the Companies Act (735/1978). (19.6.1997/611)

**Section 2**

All liabilities arising from an insurance company's insurance contracts shall be booked under technical provisions. The item is made up of provision for unearned premiums and provision for claims outstanding.

(9.8.1993/752) Insurance companies shall cover the technical provisions referred to in section 2. When covering their technical provisions, insurance companies shall take account of the type of business carried on by them in such a way as to secure the safety, yield and marketability of the assets and to ensure that the assets are diversified and adequately spread. (17.3.1995/389)

Insurance companies carrying on direct business shall cover their technical provisions with assets falling under the categories set forth further below in this section. When valued according to rules issued by the Insurance Supervision Authority, the assets shall be sufficient to cover technical provisions after subtraction of the following items: (29.1.1999/79)

- (1) an amount equivalent to reinsurance ceded, up to an amount approved by the ministry;
- (2) an amount equivalent to reinsurance accepted, up to the amount of deposits placed with ceding undertakings;
- (3) claims arising out of subrogation;
- (4) the value of any damaged property covered by the insurance to which the insurance company will gain or has gained title;
- (5) counter collateral in the company's possession relating to claims incurred under credit insurance;
- (6) policy acquisition costs capitalised under assets in balance sheet; and

(7) other items to be deducted for specific reasons in cases determined by the ministry.

(29.1.1999/79) The ministry may for a specific reason order that certain assets covering technical provisions be valued at a value other than their current value.

Assets covering technical provisions shall, as provided in more detail by or under decree, consist of: (29.1.1999/79)

- (1) bonds and other money and capital market instruments;
- (2) loans and other claims based on debt obligations;
- (3) shares and other variable yield participations;
- (4) participations in unit trusts and other comparable undertakings for collective investment;
- (5) land, buildings and immovable property rights, such as usufructuary rights and tenancy rights; shares and participations in property companies; rights to hydroelectric power used by hydroelectric power stations, providing that the usufructuary right to such hydroelectric power has been secured by registered mortgage; construction-time claims on property undertakings which own any of the assets referred to in this item and of which the insurance company has control as the holder of the assets;
- (6) debts owed by policyholders, insurers and insurance intermediaries arising out of direct and reinsurance business;
- (7) tax recoveries and other claims on the state or other public corporations;
- (8) claims on guarantee funds;
- (9) tangible assets other than those listed in item 5;
- (10) cash at bank and in hand, deposits with credit institutions and other bodies authorised to accept deposits;
- (11) deferred claims such as accrued interest and rent, other accrued income and prepayments; or
- (12) in respect of statutory pension insurance, other items approved by the Ministry of Social Affairs and Health on account of the special nature of this insurance line.

Prescribed in more detail by the Insurance Supervision Authority.

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## 10 France

### MONETARY AND FINANCIAL CODE

Unofficial English translation by attorneys at law at Gide Loyrette Nouel law firm available at <http://195.83.177.9/code/liste.phtml?lang=uk&c=25>

### BOOK III

Services Articles L311-1 to L353-6

### Part I Banking Transactions Articles L311-1 to L313-51

#### CHAPTER I

#### General Provisions Articles L311-1 to L311-3

#### SECTION I

Updated 03/20/2006 - Page 89/289

Definition of Banking Transactions Article L311-1

Article L311-1 (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

Banking transactions comprise the receiving of funds from the public, credit transactions and the provision to customers, or administration of, means of payment.

#### SECTION II

Definition of Transactions Connected to Banking Transactions Article L311-2

Article L311-2 (Order No. 2005-429 of 6 May 2005 Art. 43 Official Journal of 7 May 2005)

Credit institutions may also carry out transactions related to their business such as:

1. Foreign exchange transactions;
2. Transactions involving gold, precious metals and metallic coins;
3. Investing in, subscribing to, purchasing, managing, safekeeping and selling transferable securities and any other financial product;
4. Consultancy and assistance pertaining to asset management;

5. Consultancy and assistance pertaining to financial management, financial engineering and, more generally, all services intended to facilitate the creation and development of companies, without prejudice to the legislative provisions relating to the illegal practice of certain professions;

6. The ordinary leasing of movable or immovable property for institutions authorised to carry out leasing transactions.

When it consists of providing investment services within the meaning of Article L. 321-1, the carrying out of related transactions and custody is subject to the prior approval referred to in Article L. 532-1.

### **SECTION III**

Definition of Means of Payment Article L311-3

Article L311-3 (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

Any instrument which enables any person to transfer funds is considered to be a means of payment, regardless of the medium or the technical process used.

### **CHAPTER II**

**Accounts and Deposits Articles L312-1 to L312-18**

#### **SECTION II**

Funds Received from the Public Articles L312-2 to L312-3

Subsection 1

Definition Article L312-2

Article L312-2 (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

Funds which an entity accepts from a third party in the form of deposits with the right to use them for its own account subject to its returning them are considered to be funds received from the public. The following are not considered to be funds received from the public, however:

1. Funds received or left in an account by a partnership's named or limited partners, members or shareholders holding at least 5% of the share capital, directors, members of the Executive Board or Supervisory Board or executives, and likewise funds deriving from equity loans;

2. Funds which a company receives from its employees, subject to the amount thereof not exceeding 10% of its equity capital. Funds received from employees by virtue of special legislative provisions are not taken into account when this threshold is calculated.

## **Part I**

### **Banking Sector Institutions Articles L511-1 to L519-5**

#### **CHAPTER I**

General Regulations applicable to Credit institutions Articles L511-1 to L511-43

#### **SECTION I**

##### **Definitions and Activities Articles L511-1 to L511-4**

Article L511-1 (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

Credit institutions are legal entities whose customary business activity is the carrying out of banking transactions within the meaning of Article L. 311-1. They may also carry out transactions related to their activities within the meaning of Article L. 311-2.

#### **SECTION II**

##### **Prohibitions Articles L511-5 to L511-8**

Article L511-5 (inserted by Order No. 2000-1223 of 14 December 2000, Official Journal of 16 December 2000)

It is prohibited for any person other than a credit institution to carry out banking transactions on a regular basis.

It is, moreover, prohibited for any company other than a credit institution to receive on-demand deposits or term deposits of less than two years from the public.

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## 11 Germany

### Banking Act September 2002 (Gesetz über das Kreditwesen)

Translated by the Deutsche Bundesbank with assistance from the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*).

#### PART I

#### GENERAL PROVISIONS

#### Division 1. Credit institutions, financial services institutions, financial holding companies and financial enterprises

##### 1. Definitions

(1) Credit institutions are enterprises which conduct banking business commercially or on a scale which requires a commercially organised business undertaking. Banking business comprises

1. the acceptance of funds from others as deposits or of other repayable funds from the public unless the claim to repayment is securitised in the form of bearer or order debt certificates, irrespective of whether or not interest is paid (deposit business),
2. the granting of money loans and acceptance credits (lending business),
3. the purchase of bills of exchange and cheques (discount business),
4. the purchase and sale of financial instruments in the credit institution's own name for the account of others (principal broking services),
5. the safe custody and administration of securities for the account of others (safe custody business),
6. the business specified in section 1 of the Act on Investment Companies (Gesetz über Kapitalanlagegesellschaften) (investment fund business),
7. the incurrance of the obligation to acquire claims in respect of loans prior to their maturity,
8. the assumption of guarantees and other warranties on behalf of others (guarantee business),
9. the execution of cashless payment and clearing operations (giro business),

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10. the purchase of financial instruments at the credit institution's own risk for placing in the market or the assumption of equivalent guarantees (underwriting business),

11. the issuance and administration of electronic money (e-money business).

(1a) Financial services institutions are enterprises which provide financial services to others commercially or on a scale which requires a commercially organised business undertaking, and which are not credit institutions. Financial services are

1. the brokering of business involving the purchase and sale of financial instruments or their documentation (investment broking),

2. the purchase and sale of financial instruments in the name of and for the account of others (contract broking),

3. the administration of individual portfolios of financial instruments for others on a discretionary basis (portfolio management),

4. the purchase and sale of financial instruments on an own-account basis for others (own-account trading),

5. the brokering of deposit business with enterprises domiciled outside the European Economic Area (non-EEA deposit broking),

6. the execution of payment orders (money transmission services),

7. dealing in foreign notes and coins (foreign currency dealing), and

8. the issuance or administration of credit cards and travellers' cheques (credit card business) unless the card issuer also provides the service underlying the payment transaction.

(1b) Within the meaning of this Act, institutions are credit institutions and financial services institutions.

## 2. Exceptions

(1) Subject to the provisions of subsections (2) and (3), the following are deemed not to be credit institutions:

1. the Deutsche Bundesbank;

2. the Reconstruction Loan Corporation (Kreditanstalt für Wiederaufbau - KfW);

3. the social security funds and the Federal Labour Office (Bundesanstalt für Arbeit);

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3a. the public debt administration of the Federal Government, of one of its special funds, of a Land Government or of any other state of the European Economic Area and their central banks, provided that it does not accept funds from others as deposits or other repayable funds from the public or grant money loans or acceptance credits;

4. private and public insurance enterprises;

5. enterprises engaged in pawnbroking, insofar as they conduct this business by granting loans against pledges;

6. enterprises recognised under the Act Concerning Risk Capital Investment Companies (Gesetz über Unternehmensbeteiligungsgesellschaften) as risk capital investment companies;

7. enterprises which conduct banking business solely with their parent enterprise or with their subsidiaries or with affiliated enterprises;

8. enterprises which provide principal broking services solely on a stock exchange, on which exclusively derivatives are traded, for other members of that exchange and whose liabilities are covered by a system that guarantees the settlement of trades on that exchange.

(2) The Reconstruction Loan Corporation is subject to section 14 and to action taken by virtue of section 47 (1) number 2 and section 48; the social security funds, the Federal Labour Office, insurance enterprises and risk capital investment companies are subject to section 14.

(3) Enterprises of the types specified in subsection (1) numbers 4 to 6 are subject to the provisions of this Act insofar as they conduct banking business which is not part of their characteristic business.

(4) The Federal Financial Supervisory Authority may rule in particular cases that an institution is not subject to the provisions of sections 2b, 10 to 18, 24, 24a, 25 to 38, 45, 46 to 46c and 51 (1) of this Act, taken as a whole, as long as the enterprise does not require supervision, given the nature of the business it conducts. Such a ruling shall be published in the Federal Gazette (Bundesanzeiger).

(5) The Federal Financial Supervisory Authority may rule in particular cases, in consultation with the Deutsche Bundesbank, that an enterprise which solely conducts money business is not subject to the provisions of sections 2b, 10 to 18, 24, 32 to 38, 45 and 46a to 46c of this Act, taken as a whole, if the enterprise does not require supervision, given the nature or the volume of the business it conducts. Such a ruling shall be published in the Federal Gazette. The Federal Ministry of Finance may, by way of a regulation to be issued in consultation with the Deutsche Bundesbank, issue more detailed provisions concerning the conditions for qualifying for exemption pursuant to sentence

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1. The Federal Ministry of Finance may by way of a regulation delegate this authority to the Federal Financial Supervisory Authority, provided that the regulation is issued in agreement with the Deutsche Bundesbank.

(6) The following are deemed not to be financial services institutions:

1. the Deutsche Bundesbank;
2. the Reconstruction Loan Corporation;
3. the public debt administration of the Federal Government, of one of its special funds, of a Land Government or of another state of the European Economic Area and their central banks;
4. private and public insurance enterprises;
5. enterprises which provide financial services solely for their parent enterprise or for their subsidiaries or for affiliated enterprises;
6. enterprises whose financial service consists solely in the administration of a system of employee participations in themselves or their affiliated enterprises;
7. enterprises which solely provide financial services within the meaning of both number 5 and number 6;
8. enterprises which provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 that consist solely of investment broking and contract broking between customers and
  - (a) an institution,
  - (b) an enterprise operating pursuant to section 53b (1) sentence 1 or (7),
  - (c) an enterprise that is treated as an EEA enterprise or that is granted exemption from the provisions by way of a regulation pursuant to section 53c, or
  - (d) a foreign collective investment company, as long as these financial services are confined to fund units of investment companies or to foreign collective investment fund units whose distribution is permitted under the Foreign Investment Fund Act (Auslandinvestment-Gesetz) and the enterprises are not authorised to acquire ownership or possession of money, fund units or share units of customers in providing such financial services;

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**Division 1. Licence to conduct business****32. Granting the licence**

(1) Anyone wishing to conduct banking business or to provide financial services in Germany commercially or on a scale which requires a commercially organised business undertaking requires a written licence from the Federal Financial Supervisory Authority; section 37 (4) of the Act on Administrative Procedures (Verwaltungsverfahrensgesetz) applies. The application for the licence must contain the following particulars:

1. suitable evidence of the resources needed for business operations;
2. the names of the managers;
3. the information which is necessary for assessing the trustworthiness of the applicants and of the persons specified in section 1 (2) sentence 1;
4. the information which is necessary for assessing the professional qualifications, as required for managing the institution, of the proprietors and of the persons specified in section 1 (2) sentence 1;
5. a viable business plan showing the nature of the planned business, the organisational structure and the planned internal monitoring procedures of the institution;
6. if qualified participating interests are held in the institution:
  - (a) the names of the holders of the qualified participating interests,
  - (b) the amount of these participating interests,
  - (c) the data required for assessing the trustworthiness of these holders or of the legal representatives or of the general partners,
  - (d) if these holders are required to draw up annual accounts: their annual accounts for the last three financial years, along with the auditor's reports compiled by independent external auditor if such reports are to be prepared, and
  - (e) if these holders belong to a group: particulars of the structure of the group and, if such accounts are to be drawn up, the consolidated group accounts for the last three financial years, along with the auditor's reports compiled by independent external auditor if such reports are to be prepared;
7. the facts indicating a close relationship between the institution and other natural persons or other enterprises.

The reports and documents to be submitted pursuant to sentence 2 shall be specified in detail by way of a regulation pursuant to section 24 (4). The requirements under sentence 2 number 6 letters (d) and (e) shall not apply to financial services institutions.

(2) The Federal Financial Supervisory Authority may make the granting of the licence subject to conditions which must be consistent with the purpose pursued by this Act. It may limit the licence to certain types of banking business or financial services.

(3) Before granting the licence, the Federal Financial Supervisory Authority shall consult the guarantee scheme appropriate for the institution.

(3a) On being granted the licence, the institution, if it is liable to pay contributions under section 8 (1) of the Deposit Guarantee and Investor Compensation Act (Einlagensicherungs- und Anlegerentschädigungsgesetz), shall be informed of the compensation scheme to which the institution is assigned.

(4) The Federal Financial Supervisory Authority shall publicise the granting of the licence in the Federal Gazette.

### **Law on the Supervision of Insurance Undertakings (Versicherungsaufsichtsgesetz - VAG)**

Short Title: Insurance Supervision Law Fully amended version as at January 2000

Translation provided by the Bundesaufsichtsamt für das Versicherungswesen (Federal Insurance Supervisory Office).

## **II. Authorisation to do business**

### **Section 5**

(1) Insurance undertakings may not carry on business unless authorised to do so by the supervisory authority.

(2) The operating plan shall be submitted together with the application for authorisation; it shall disclose the purpose and organisation of the undertaking, the area of the intended business operations and in particular clearly state the conditions which shall secure that the future liabilities of the undertaking can permanently be met.

(3) As part of the operating plan shall be submitted

1. the articles of association in so far as they do not refer to general insurance policy conditions,

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2. information about the classes of insurance it intends to carry on and which risks of a class of insurance it intends to cover including designation and object of the insurance coverage; in the case of pension and death benefit funds the general insurance policy conditions and documents such as in particular the rates and principles for the calculation of the premiums and mathematical provisions including the calculation bases and mathematical formulas used,

3. affiliation agreements as specified under sections 291 and 292 of the Aktiengesetz (Public Limited Companies Law)

4. agreements for the purpose of permanently transferring distribution, management of the portfolio of insurance contracts, handling of claims, accounting, investments or asset management of an insurance undertaking wholly or an essential part of it to another undertaking (outsourcing).

(4) The operating plan shall give evidence of the existence of own funds in the amount of the minimum guarantee fund (section 53c (2) below). Their composition shall be disclosed. In addition, estimates shall be submitted for the first three financial years with respect to the expenses for commissions and other current operating expenses, the expected premiums, the expected expenses for claims incurred and the expected liquidity situation. In this connection it shall be stated the financial means expected to be available to meet the liabilities under the insurance contracts and the requirements with respect to the financial resources.

(5) In addition, the following shall be submitted

1. as regards health insurance within the meaning of section 12 (1) below and compulsory insurances the general insurance policy conditions,

1a. as regards health insurance within the meaning of section 12 (1) below the principles for the calculation of the premiums and mathematical provisions including the calculation bases and mathematical formulas used,

2. information about the intended reinsurance,

3. an estimate of the expenses for setting up the administrative services and the organisation for securing business; the undertaking shall prove that it disposes of the necessary funds for this purpose (organisation fund),

4. if an application is filed for authorisation to carry on insurance class 18 of part A of the annex information about the means of which the undertaking disposes to provide the promised assistance,

5. as regards the managers and directors the information necessary to judge their good repute and qualification (section 7a (1) below),

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6. if any qualifying participations are held in an insurance undertaking (section 7a (2) below, third sentence)

a) disclosure of the holders and amounts of such participations,

b) information about the facts necessary to judge the requirements under section 7a (2) below, first and second sentences,

c) if such holders have to establish annual accounts, the annual accounts of the last three financial years including the audit reports of independent auditors if such reports have to be established, and

d) if such holders belong to a group of undertakings, information about the structure of the group and if annual accounts have to be established the consolidated accounts of the last three financial years including the audit reports of independent auditors if such reports have to be established,

6a. information about close relations existing between the insurance undertaking and another natural or legal person (section 8 (1), fourth sentence),

7. as regards the responsible actuary information necessary to judge his good repute and qualification (section 11a (1) below, sections 11e and 12 (2) below, second sentence).

(6) The Federal Finance Ministry shall have the power to lay down, by way of ordinance, provisions with respect to the nature, extent, and date of submission of the information to be provided in accordance with subsection 5 (5) and (6) above, section 13d (1) (2) (4) and (5) below to the extent that this is required for the supervisory authority to fulfil its duties. The above power may be transferred by ordinance to the BAV which shall stipulate the regulations in consultation with the supervisory authorities of the Länder (states).

## Section 7

(1) An authorisation may only be granted to public limited companies, mutual societies and corporations and institutions under public law.

(1a) The head office must be located within the country.

(2) The insurance undertakings shall be permitted to carry on in addition to insurance business only such other business as is directly related to it. Such a relationship shall be deemed to exist if in the case of dealings in futures, options and other financial instruments these are to serve as security against the risk of changes in market prices and interest rates of existing assets or of future purchases of securities or if any additional return is to be realised on

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existing securities without this resulting in any insufficient representation of the restricted assets when delivery commitments are met.

#### **Section 54**

(1) The assets of the Deckungsstock (section 66 below) and the other restricted assets of an insurance undertaking shall, taking into account the type of insurance business carried on and the structure of the undertaking, be invested in a way which ensures maximum security and profitability, while maintaining its liquidity at all times, through adequate diversification and spread.

(2) The supervisory authority shall notwithstanding the provision under section 54d below be informed of :

a) the acquisition of real property and equivalent rights;

b) the acquisition of interests in other undertakings, however, if these interests consist of shares and other participations, only if the interest exceeds 10 per cent of the nominal capital of the other undertaking; for the purpose of this provision, the interests of several insurance undertakings belonging to a single group of undertakings within the meaning of section 18 of the Aktiengesetz and of the controlling undertaking in another undertaking are consolidated;

c) investments of an insurance undertaking in an affiliated undertaking within the meaning of section 15 of the Aktiengesetz and investments of a pension or death benefit fund in an undertaking whose staff are insured with the fund;

d) investments in units of special funds managed by an investment company and in units issued by an investment company unless they have been coordinated by Council directive 85/611/EEC of 20th December, 1985, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJ of the EC No. L 375, p.3)

The information shall be given by the end of the month following the acquisition or investment.

#### **Section 54a**

(1) The restricted assets (section 54 (1) above) may be invested only in accordance with the following subsections; member states of the EEA shall be treated on an equal footing with EC member states. The other restricted assets comprise assets not included in the Deckungsstock to an amount equal to the technical provisions and the liabilities and deferrals under insurance contracts; the shares of reinsurers shall be disregarded. For the calculation of

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the other restricted assets amounts of up to 50 per cent of the outstanding premiums, which have become due during the last three months from direct insurance business, reduced by value adjustments, may be disregarded. As regards life insurance, the provision for premium refunds shall be included in the restricted assets only in an amount equal to the profit participations expected to be payable by the end of the following financial year; for the calculation of the other restricted assets amounts up to the incurred and actuarially covered acquisition costs shown in the last annual balance sheet may be disregarded with the consent of the supervisory authority. Liabilities and provisions under reinsurance contracts shall be disregarded for the calculation of the restricted assets if they are matched by claims under the same reinsurance contracts.

(2) The restricted assets may be invested in

1. debts secured by a mortgage on real property or similar rights located in an EC Member State, if the mortgage meets the requirements of sections 11 and 12 of the Hypothekbankgesetz (Law on Mortgage Banks), and if hereditary building rights meet, in addition, the requirements of section 21 of the Verordnung über das Erbbaurecht (Ordinance regarding hereditary building rights) or the relevant regulations of the other EC Member State;

2. debts secured by a ship mortgage on a ship or ship under construction registered in an EC Member State, if the mortgage meets the requirements of sections 10 to 12 of the Schiffsbankgesetz (Law on Ship Mortgage Banks) or the relevant requirements of the other EC Member State;

3.

a) bearer bonds issued in an EC Member State which are admitted for official trading at a stock exchange or dealt in on another recognised and properly operating regulated market open to the public (regulated market) in an EC Member State,

b) mortgage bonds, municipal bonds and other bearer and registered bonds issued in an EC Member State and meeting the requirements of section 8a (1), third sentence, of the Gesetz über Kapitalanlagegesellschaften (Law on Investment Companies) (special fund of assets existing by virtue of the law),

c) bonds issued in a non-EC Member State which are admitted for official trading at a stock exchange or dealt in on a regulated market in an EC Member State or admitted for official trading at a stock exchange of a non-EC Member State; the percentage of these bonds may not exceed 5 per cent of the restricted assets;

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4. debts entered in the debt register of the Federal Republic of Germany, one of its states (Länder) or any similar list of another EC Member State, and liquidity papers (section 42 (1) of the Gesetz über die Deutsche Bundesbank (Law on the German Federal Bank));

5. fully paid-up shares and subordinated loans admitted in an EC Member State for official trading at a stock exchange or dealt in on a regulated market, the other restricted assets may also be invested in fully paid-up shares and subordinated loans admitted for official trading at a stock exchange of a non-EC Member State. Shares and subordinated loans of the same undertaking shall be acquired only to the extent that the capital stock and subordinated loans capital attributable to them together with the shares and subordinated loans of the same undertaking already included in the restricted assets do not exceed 10 per cent of the capital stock of this undertaking. Shares and subordinated loans of undertakings whose head office is not in an EC Member State shall not exceed 20 per cent each of the amount permitted under subsection 4 above, first sentence, for the assets of the Deckungsstock and the other restricted assets.

5a. fully paid-up shares and subordinated loans other than those mentioned under paragraph 5 above and participations in a limited liability company, limited partnership, participations as silent partner within the meaning of the Handelsgesetzbuch and amounts due from subordinated liabilities. This shall be conditional on the undertaking having its head office in an EC Member State and its making available to the insurance undertaking its annual accounts which were established and audited in accordance with the provisions applicable to corporations and its engaging to submit such annual accounts at each balance sheet date also in future. Paragraph 5, second sentence shall apply accordingly on condition that investments pursuant to paragraphs 5 and 5a in the same undertaking shall be added up. If participations are held in an undertaking whose sole object is the holding of shares of another undertaking, the third sentence shall refer to a detailed estimate of the investments of the insurance undertaking in the other undertaking. The provisions of this paragraph shall not apply to investments in undertakings to which the insurance undertaking has transferred its business operations wholly or partly by way of outsourcing (section 5 (3) (4) above) or which carry out activities for the insurance undertaking directly related to insurance business;

6. units of special securities funds managed by an investment company, which has its head office in an EC Member State, if these funds are in accordance with the terms of the contract composed of mainly fully paid-up shares or subordinated loans admitted for official trading at a stock exchange or dealt in on a regulated market in an EC Member State, or bonds mainly issued in an EC Member State within the meaning of paragraph 3 (a) and (b). The other restricted assets may, in addition, be invested in units of special securities funds managed by an investment company, which has its head

office in an EC Member State, if these special funds have been invested, in accordance with the terms of the contract, mainly in fully paid-up shares or subordinated loans admitted for official trading at a stock exchange of a non-EC Member State. The portfolio of units under the first and second sentences shall, if the special funds have mainly been invested in shares or subordinated loans of undertakings, whose head office is not in an EC Member State, together with direct investments of this type not exceed 20 per cent each of the amount permitted for the assets of the Deckungsstock and the other restricted assets as per subsection 4 above, first sentence. The first and third sentences shall apply accordingly to units issued by an investment company subject to the laws of another EC Member State and to special public supervision to protect its holders, if the investments are made in accordance with the principles of proper diversification and spread of the risk in compliance with its articles of association and if the holder may require to be paid out the equivalent of any such unit;

7. debts for which have been given as a pledge or transferred by way of security

a) mortgages which meet the requirements of paragraph 1, ship mortgages within the meaning of paragraph 2,

b) securities referred to in another provision of this subsection and issued in an EC Member State which are eligible to serve as security for the Deutsche Bundesbank (German Federal Bank) or the central bank of another EC Member State if the limits of section 19 (1), paragraph 3 of the Gesetz über die Deutsche Bundesbank or any relevant law of the other EC Member State are observed,

c) registered bonds for which a special fund of assets exists by virtue of the law;

d) deposits or securities for a loan on collateral securities as per section 9b (1) and (2) of the Gesetz über Kapitalanlagegesellschaften (Law on Investment Companies) or any similar provisions of another EC Member State. Amounts due from loans on collateral securities shall not exceed 15 per cent each of the assets of the Deckungsstock and the other restricted assets;

8. loans

a) to

aa) the Federal Republic of Germany, its states (Länder), communities and associations of local governments,

bb) another EC Member State or its regional governments or local authorities for which the competent authorities prescribed a zero weighting as per article 7 of Council directive 89/647/EEC of 18th December, 1989, on a solvency

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coefficient for credit institutions (OJ of the EC No. L 386, p. 14), the EC Member State having informed the EC Commission and the Commission having publicised this weighting,

cc) an international organisation of which also the Federal Republic of Germany is a full member;

b) to other regional governments and local authorities of another EC Member State for which the competent authorities fixed a 20 per cent weighting as per article 6 (1) (b) (5) of the directive under a) above, and loans fully guaranteed by one of the above bodies; the percentage of loans, where it is not certain that the privilege under section 77 (4) below will apply, shall not exceed 10 per cent of the assets of the Deckungsstock;

c) whose interest payment and repayment have been fully guaranteed by one of the bodies mentioned under a) above or by a suitable credit institution within the meaning of paragraph 9 (c) whose head office is in an EC Member State;

d) to undertakings whose head office is in an EC Member State excluding credit institutions, if on the basis of the past and expected future development of the profits and assets of the undertaking the contractual interest payment and repayment appear to be guaranteed and if the loans are adequately secured

aa) by first mortgages,

bb) by pledged accounts receivable or claims transferred by way of security or securities admitted for official trading at a stock exchange or dealt in on a regulated market or

cc) in a similar manner. A formal commitment issued by the borrower to the insurance undertaking (negative commitment) shall serve as a security instead only if and to the extent that the mere status of borrower is a guarantee for interest payment and repayment of the loan;

9. with

a) the Deutsche Bundesbank,

b) the central bank of another EC Member State,

c) a credit institution whose head office is in an EC Member State which is subject to the requirements of the second Council directive 89/646/EEC of 15th December, 1989, on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the activity of credit institutions and the amendment of directive 77/780/EEC (OJ of the EC no. L 386, p. 14), if the credit institution confirms the insurance

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undertaking in writing that it observes the own funds and liquidity requirements applicable to credit institutions in its home country (suitable credit institution). Current credit balances shall also be deemed investments;

d) public credit institutions which in accordance with article 2 (2) of the first Council directive 77/780/EEC of 12th December, 1977, on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the activity of credit institutions (OJ of the EC, no. L 322, p. 30) do not come under this directive;

10. in developed real estate, real estate in the process of being built upon or to be built upon in the near future located in an EC Member State, in similar rights located in this EC Member State and in participations in an undertaking the sole object of which is the acquisition, development and management of real estate or similar rights located in such a State. The insurance undertaking shall verify on the basis of the opinion of a sworn expert or in a similar way whether the purchase price is adequate. From the investments in real estate shall be deducted without prejudice to the provision of section 66 (3a) below, fourth sentence, any mortgage charges;

11. in units in special funds made up of real estate managed by an investment company whose head office is in an EC Member State and which mainly comprise in accordance with the terms of the contract real estate or similar rights located in such a State, if the special funds meet at the time of investment the requirements of section 27 (1) (3) and section 28 of the Gesetz über Kapitalanlagegesellschaften or the applicable requirements of the relevant EC Member State. The first sentence shall apply accordingly to units issued by an investment company subject to the legislation or another EC Member State and to special public supervision to protect the holders of such units if the investments are made in accordance with the principles of proper diversification and spread of the risk in compliance with the articles of association and if the holder may require to be paid out the equivalent of any such unit;

12. in advance payments or loans granted by an insurance undertaking on its own insurance policies up to an amount equal to the surrender value;

13. in units of special funds made up of holdings which are managed by an investment company whose head office is in an EC Member State if these special funds comprise in accordance with the terms of the contract in addition to dormant equity holdings mainly fully paid-up shares or subordinated loans admitted for official trading at a stock exchange or dealt in on a regulated market in an EC Member State. The other restricted assets may also be invested in units of special funds made up of holdings which are managed by an investment company whose head office is not in an EC Member State if these special funds comprise in accordance with the terms of the contract in addition to dormant equity holdings mainly fully paid-up shares or subordinated loans admitted for official trading at a stock exchange

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of a non-EC Member State. The portfolio of units according to the first and second sentences shall, to the extent that the special funds have been invested in addition to dormant equity holdings in shares and subordinated loans of undertakings whose head office is not in a member state, together with direct investments of this kind not exceed 20 per cent each of the portfolio permitted for the assets of the Deckungsstock and the other restricted assets pursuant to subsection 4 above, first sentence. The first and third sentences shall apply accordingly to units issued by an investment company subject to the legislation of another EC Member State and to special public supervision to protect the holders of such units, if the investments are made in accordance with the principles of proper diversification and spread of the risk in compliance with the articles of association and if the holder may require to be paid out the equivalent of any such unit;

14. in investments which have not been mentioned in paragraphs 1 to 13 above, which do not meet the requirements thereunder or exceed the limits of subsections 2 to 4a above, up to an amount equal to 5 per cent each of the assets of the Deckungsstock and of the other restricted assets; the limitation to 10 per cent in paragraphs 5 and 5a shall not be affected. Investments in consumer credits, credits for operating funds, movables or titles to movables and intangible assets shall be excluded; the same shall apply to an investment which in accordance with article 21 or 22 of the third Council non-life directive or article 21 or 22 of Council directive 92/96/EEC of 10th November 1992, on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending directives 79/267/EEC and 90/619/EEC (third life assurance directive) (OJ of the EC No. L 360, p. 1) shall not be permitted.

(3) The restricted assets shall according to part C of the annex be invested in assets expressed in the same currency in which the liabilities under the insurance contracts have to be met (matching rules). Real property and similar rights shall be deemed to have been invested in the currency of the country where they are located. Shares and participations shall be deemed to have been invested in the currency in which they are admitted for official trading at a stock exchange or dealt in on a regulated market; shares and participations not admitted for official trading at a stock exchange or not dealt in on a regulated market shall be deemed to have been invested in the currency of the country where the issuer of the securities or participations has its head office.

(3a) (repealed)

(4) The percentage of investments under subsection 2 (5), (5a), (6) and (13) above taken together shall not exceed 30 per cent each of the assets of the Deckungsstock and the other restricted assets, the percentage of investments under subsection 2 (5a) and (13) above shall not exceed one third each of these percentages; not included are units in funds which are managed by an

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investment company whose head office is in an EC Member State and which in accordance with the terms of the contract or articles of association only comprise bonds within the meaning of subsection 2 (3) (a) and (b) above. For the purpose of subsection 2 (5a) above, fourth sentence, the indirect investments of the insurance undertaking through investments in the other undertaking shall be included in the percentage for investments in accordance with subsection 2 (5), (5a), (6) and (13) above. The supervisory authority may in the case of new insurance companies reduce this limit and the limit under subsection 2 (5), third sentence, and (6) above, third sentence, to 10 per cent for a maximum period of three years from authorisation to carry on business. The percentage of investments pursuant to subsection 2 (10) and (11) above taken together shall not exceed 25 per cent of the assets of the Deckungsstock and the other restricted assets.

(4a) Bearer bonds within the meaning of subsection 2 (3) (a) and (b) above which are neither admitted for official trading at a stock exchange nor dealt in on a regulated market may be included in the restricted assets in an amount equal to 2.5 per cent each of the assets of the Deckungsstock and the other restricted assets. They may taken together with investments pursuant to subsection 2 (5a) above, in so far as they are securities, not exceed 10 per cent each of the assets of the Deckungsstock and the other restricted assets.

(4b) All investments issued by one and the same issuer (debtor) shall not exceed the sum of 2 per cent of the restricted assets and 25 per cent of the own funds of the insurance undertaking in accordance with section 53c (3), first sentence, paragraphs 1 to 3b and 6 (a) above in conjunction with the second sentence, but in the aggregate not exceed 5 per cent of the restricted assets. Subordinated loans granted by an issuer to an insurance undertaking and claims of the insurance undertaking against the issuer from subordinated liabilities within the meaning of subsection 2 (5a) above shall also be taken into account for the purpose of these percentages. If an issuer has assumed full warranty for an insurance undertaking with respect to liabilities of any third party, also this warranty liability shall be taken into account for the purpose of these percentages. Investments in special funds or in units issued by an investment company shall not be deemed to be investments with one and the same issuer (debtor) if such investments of the special funds or of the investment company are sufficiently spread. Instead of the percentages mentioned in the first sentence, a percentage of 30 per cent of the restricted assets shall apply

a) to bonds placed on the market by one and the same credit institution if they have been secured by special cover funds by virtue of the law pursuant to subsection 2 (3) (b) above,

b) to investments with one and the same issuer according to subsection 2 (8) (a) above, and

c) to investments with one and the same suitable credit institution in accordance with subsection 2 (9) (c) above, whose head office is in an EC Member State if and to the extent that such investments have actually been secured by an extensive bank guarantee of the credit institution or a deposit guarantee scheme; the exclusion of any entitlements under the deposit guarantee scheme in the articles of association shall not exclude that such a guarantee actually exists.

For the calculation of the percentages in accordance with the first to fifth sentences investments with the issuer and the undertakings of the group to which the issuer belongs shall be combined within the meaning of section 18 of the Aktiengesetz.

(4c) Up to 10 per cent each of the assets of the Deckungsstock and the other restricted assets may be invested in a single real estate or similar right or in participations in an undertaking whose sole object is the acquisition, development and management of real estate or similar rights located in an EC Member State. The same limit shall apply to several legally independent real estates taken together if they form an economic unit.

(5) The supervisory authority shall also permit an insurance undertaking to invest in assets which have not been mentioned above or do not meet the requirements as mentioned above, and to exceed the limits stipulated in subsections 2 and 4 to 4c above if the interests of the insured are thereby not impaired and if the EC Member States may allow any such exemptions pursuant to article 21 or 22 of the third non-life insurance directive and article 21 or 22 of the third life insurance directive. If the latter is not the case, the investment may be permitted only in exceptional cases and for a limited period of time. The supervisory authority shall take these exceptional cases on record.

(6) To the extent that the restricted assets represent technical provisions with respect to risks located or life insurance contracts written in the European Community they may, subject to the second sentence, only be located in the European Community or held in safe custody in non-EC Member States in accordance with section 5 (4) of the Depotgesetz (Law on the Deposit and Acquisition of Securities). As regards the assets mentioned in the first sentence, 5 per cent of the assets of the Deckungsstock and 20 per cent of the other restricted assets may be located in non-EC Member States; the investments permitted in accordance with subsection 2 above and located in non-EC Member States shall be counted against these percentages. The supervisory authority may in individual cases grant an insurance undertaking further exemptions from the regulations of this law relating to the location of assets, on request, if this does not impair the interests of the insured. The matching rules under subsection 3 above shall not be affected.

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## 12 Greece

### Greek Banking Laws

Unofficial summary and English language translation undertaken by LEXMUNDI International Association of Independent Law Firms, bank Finance and Regulation Survey 2007, [www.lexmundi.com](http://www.lexmundi.com)

The establishment and operation of credit/financial institutions is mainly governed by Law 2076/92, which incorporated into the Greek banking legislation the Second Banking Directive (89/646/EEC, as codified by Directive 2000/12/EC), as well as by Law 1665/1951. The basic supervision rules have been laid down by Bank of Greece Governor's Acts, through which several European Union Directives (Directives 89/299 EEC/89, 91/633 EEC/91, 89/647 EEC/89, 91/31 EEC/90 and 92/121 EEC/92/EU No. L 29/1/93) were incorporated into Greek law, and regard, inter alia, the definition of own funds (Bank of Greece Governor's Act 2053/92, as applicable), the solvency ratio (Bank of Greece Governor's Act 2054/92, as applicable) and the supervision and control of credit institutions' large financial exposures (Bank of Greece Governor's Act 2246/93, as applicable).

"Credit institution" shall mean a) an undertaking whose business is to receive deposits or other repayable funds from the public and to extend credit for its own account (i.e. a bank) or b) an electronic money institution that means an institution which issues means of payment in the form of electronic money.

"Financial Institution", on the other hand, shall mean an undertaking other than a Credit Institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities prescribed by law including lending, money transmission services, issuing and administering means of payment (for e.g. credit cards and banker's drafts) and money market instruments (cheques, bills, certificates of deposit, etc.)

According to Law 2076/1992, persons or undertakings which are not credit institutions are prohibited from carrying out the business of receiving deposits of cash or other repayable funds from the public. Furthermore, in general only credit institutions or special purpose entities licensed by the BoG may provide credit.

BANK OF GREECE

THE GOVERNOR

**GOVERNOR'S ACT No.2485/31 January 2002**

Translation provided by the Bank of Greece

Re: Requirements for granting authorisation to Credit Companies in Greece and rules for the supervision of such companies by the Bank of Greece

HAS DECIDED the following:

I.

1. Credit Companies shall be established and operate in the form of sociétés anonymes only, the principal activity of which shall be the granting of loans or the provision of credit, by way of business.

2. The term "Credit Company" shall be included in the name of the legal entity receiving authorisation, in accordance with the provisions hereof.

3. Permitted activities.

a) Credit Companies may grant loans or provide credit in any form to natural persons, so that the latter cover their consumer and personal needs;

b) In parallel with their principal activity and following a permission by the Bank of Greece, Credit Companies may:

i) carry out activities auxiliary to their principal activity;

ii) participate in the share capital of similar companies as well as of enterprises which carry out operations in support of, or directly auxiliary to, the principal activity of the Credit Company.

c) The prohibition to natural or legal persons or enterprises not being credit institutions to accept deposits or other repayable funds from the public, in accordance with article 4 of Law 2076/111999119992, shall be also applicable to Credit Companies.

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## 13 Hungary

### Act CXII of 1996 on Credit Institutions and Financial Enterprises

#### Financial Services and Activities Auxiliary to Financial Services

##### Section 3.

(1) Financial services shall be construed the for-profit performance of the following activities in Hungarian Forints or in foreign currencies:

- a) collection of deposits and acceptance of other repayable monetary instruments from the general public in excess of the equity capital;
- b) credit and loan operations;
- c) financial leasing;
- d) financial transaction services;
- e) issuing electronic money and cash-substitute payment instruments and performing services related thereto;
- f) providing surety bonds and bank guarantees, as well as other banker's obligations;
- g) commercial activities in foreign currency, foreign exchange - not including currency exchange activities -, bills and checks on own account or as commission agents;
- h) intermediation of financial services (agency);
- i) custodian services for collective investment undertakings;
- j) account management services, safety deposit box services;
- k) credit reporting services;
- l) fund management services for voluntary mutual insurance funds;
- m) money transmission services;
- n) fund management services for private pension funds.

(2) Activities auxiliary to financial services shall be construed the for-profit performance of the following in Hungarian Forints or in foreign currencies:

- a) currency exchange activities;

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- b) clearing operations (clearing transactions);
  - c) money processing activities;
  - d) financial brokering on the interbank market.

### **Financial Institutions**

#### **Section 4.**

(1) Credit institutions (Section 5) and financial enterprises (Section 6) shall be construed financial institutions.

(2) Unless otherwise prescribed in this Act, the financial services defined in Subsection (1) of Section 3 may be performed only by financial institutions.

(3) Unless otherwise provided by law, financial institutions may only engage in the following in addition to financial services within their regular business operations:

- a) activities auxiliary to financial services,
- b) insurance mediation under the provisions prescribed in Act LX of 2003 on Insurance Institutions and the Insurance Business (hereinafter referred to as "Insurance Act"),
- c) investment services and activities auxiliary to investment services, commodity exchange services and securities lending and securities borrowing under the conditions laid down in the CMA,
- d) commercial gold transactions,
- e) keeping registers of shareholders,
- f) the services defined in Subsection (1) of Section 6 of Act XXXV of 2001 on Electronic Signatures;
- g) activities in support of the lending operations of the Student Loan Center established under the provisions of specific other legislation, and
- h) storage of data on electronic payment instruments on behalf of others.
- i) activities relating to the management of collateral held in custody with a view to reducing or avoiding losses from financial services,
- j) activities for the management and collection of receivables under contract.

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## The Credit Institution and Its Organizational Forms

### Section 5.

(1) "Credit institution" means any financial institution that is engaged in all or part of the financial activities specified in Section 3, which must include the acceptance of deposits and other repayable funds from the general public (not including public bond issues specified in specific other legislation), in credit and loan operations and in the issue of electronic money.

(2) Only credit institutions shall be entitled to

a) collect deposits and accept other repayable funds from the general public in excess of their own funds, without a bank guarantee or a surety guaranteeing repayment by a bank or the state,

b) provide financial transaction services, unless otherwise provided by law, and

c) issue cash-substitute payment instruments and provide services related thereto, with the exception stipulated in Subsection (3) of Section 6.

d) provide currency exchange services.

(3) Credit institutions may be banks, specialized credit institutions or cooperative credit institutions (savings or credit unions).

(4) Banks are credit institutions for performing the activities defined in Paragraphs a), b) and d) of Subsection (1) of Section 3 as regular business operations. Only banks shall be authorized to perform all of the activities listed under Subsection (1) of Section 3.

(5) The activities of specialized credit institutions are governed in specific other legislation with the exception that it shall not be licensed to perform all of the activities listed under Subsection (1) of Section 3.

(6) Cooperative credit institutions may engage in the activities defined in Paragraphs a)-h), j) and m) of Subsection (1) of Section 3 and Paragraphs a) and d) of Subsection (2) of Section 3.

(7) With the exception of currency exchange, credit unions may perform the activities defined in Subsection (6) solely for their own members.

(8)

(9) A third-country credit institution may engage in the activities described in Paragraphs a)-h) and j)-m) of Subsection (1) of Section 3 and Subsection (2) of

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Section 3 through its branch office, if it has a license for such activities from the competent supervisory authority in whose jurisdiction it is registered.

### **The Financial Enterprise**

#### **Section 6.**

(1) Financial enterprises are

a) financial institutions licensed to perform one or more financial services, with the exception of the activities specified in Subsection (2) of Section 5,

b) financial holding companies, and

c) clearing houses for credit institutions.

(2) Financial enterprises may only engage in the activities specified in Paragraph m) of Subsection (1) of Section 3 and Paragraph d) of Subsection (2) of Section 3 as exclusive activities.

(3) Financial enterprises engaged in the activities specified in Paragraph b) of Subsection (1) of Section 3 may also engage in the activities specified in Paragraph e) of Subsection (1) of Section 3 - apart from the issue of electronic money and electronic payment instruments - within the framework of this activity.

(4) A foreign financial enterprise may engage in the activities described in Paragraphs b)-c), f)-h) and j)-m) of Subsection (1) of Section 3 and in Subsection (2) of Section 3 by way of its branch office, if it has a license for such activities from the competent supervisory authority in whose jurisdiction it is registered.

(5) Within the framework of its business operations, a financial enterprise operating as a foundation may only engage in the following activities:

a) the financial services defined in Paragraph f) of Subsection (1) of Section 3, and

b) intermediation of financial services under Paragraph h) Subsection (1) of Section 3, as specified in Point 12 b) of Chapter I of Schedule No. 2.

### **Regulatory regime for mortgage providers in Hungary - I**

#### **Act XXX of 1997 on Mortgage Loan Companies and on Mortgage Bonds**

In order to improve facilities for the extension of long-term loans required for economic growth, Parliament hereby passes the following Act:

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**Part I.****SCOPE OF THE ACT****Section 1.**

The provisions of this Act shall apply to mortgage loan companies founded and operating in the territory of the Republic of Hungary, and to mortgage bonds.

**Part II.****MORTGAGE LOAN COMPANIES****Foundation of Mortgage Loan Companies****Section 2.**

- (1) Mortgage loan companies are specialized credit institutions.
- (2) Foundation, operation, and supervision of mortgage loan companies shall be subject to the provisions of Act CXII of 1996 on Credit Institutions and Financial Enterprises (hereinafter referred to as 'CIFE'), and investment services and auxiliary investment services of mortgage loan companies shall be subject to the provisions of Act CXX of 2001 on the Capital Market (hereinafter referred to as 'CMA') with the discrepancies set forth in this Act.
- (3) Mortgage loan companies may be founded with a subscribed capital of at least three billion forints, to be paid up in money.
- (4)
- (5) Mortgage loan companies are not required to join National Deposit Insurance Fund.

**Concept and Scope of Activities of Mortgage Loan Companies****Section 3.**

- (1) Mortgage loan companies are engaged in the business of lending money secured by mortgages, including if filed in the form of an independent lien (hereinafter referred to collectively as "mortgage") on real estate located in the territory of the Republic of Hungary, in any Member State of the European Union or any State that is a party to the Agreement on the European Economic Area (hereinafter referred to as "EEA Member State"), where the sources for which they obtain primarily by way of issuing mortgage bonds.

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(2) Mortgage loan companies shall perform exclusively the following financial service, investment service, and complementary investment service activities:

- a) accepting repayment funds from the public, not including the collection of deposits;
- b) lending money secured by mortgages on real estate located in the territory of Hungary or any EEA Member State (hereinafter referred to collectively as "mortgage loan");
- c) extending loans without stipulating a mortgage, if cash surety is assumed by the State;
- d) assuming suretyship and bank guarantee, and assuming other banker's obligations (hereinafter referred to collectively as "banker's obligations");
- e) safe custody services;
- f) performing securities custody connected with self-issued securities, and rendering services connected therewith;
- g) performing securities safekeeping in respect of self-issued securities;
- h) keeping securities accounts in respect of self-issued securities;
- i) keeping client accounts in respect of self-issued securities;
- j) organizing the offering of self-issued mortgage bonds, debentures, and certificates of deposit, and rendering services connected therewith.

(3) If, in connection with a mortgage loan, another loan is simultaneously provided under Government guarantees (this loan hereinafter referred to as "follow-up loan"), the provisions contained in Subsection (1) of Section 5, Section 6, Section 7 and Subsections (3)-(4) of Section 8 pertaining to mortgage loans shall apply to the entire loan amount, with the exception that the mortgage shall not cover the follow-up loan.

(4)

(5) Apart from the financial and investment activities and activities auxiliary to investment services defined in Subsection (2), mortgage loan companies may only engage in the business of appraisal services to determine the market and collateral value of real estate properties. For the appraisal of the market and collateral value of real estate properties, mortgage loan companies shall engage real estate appraisers under contract of employment or economic operators [Civil Code, Paragraph c) of Section 685] engaged in the business of appraisal of real estate properties. The real estate appraisers employed by mortgage loan companies or by real estate appraiser companies

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in the capacity of senior experts for the endorsement of appraisals shall be listed in the register of real estate appraisers for mortgage lenders (hereinafter referred to as “register of real estate appraisers”) of the Hungarian Financial Supervisory Authority (hereinafter referred to as “Authority”).

(6) The proceedings of the Authority concerning the operation of the register of real estate appraisers shall be governed by the procedural regulations laid down in the Act on Government Control of Financial Institutions.

(7) Natural persons applying for admission into the Authority’s register of real estate appraisers shall have no prior criminal record, must not be subject to a final court judgment barring them from practicing their profession, and shall have the education, professional qualifications and experience prescribed in specific other legislation.

(8) The register of real estate appraisers shall contain the following data of real estate appraisers:

a) name, birth name;

b) date and place of birth;

c) home address;

d) other means of access supplied by the real estate appraisers.

(9) The particulars referred to in Paragraphs a) and d) contained in the register shall be considered public information, and shall be posted by the Authority on its official website. The particulars of any real estate appraisers shall be deleted from the register in the event of termination of activities or upon his death. The Authority shall be entitled to retain such data for a period of five years from the time when deleted from the register for reasons of any subsequent inspection of the real estate appraisal.

(10) Mortgage loan companies are permitted to engage in derivative transactions for reasons of liquidity and risk management operations and only for hedging purposes.

### **Section 3/A.**

(1) Mortgage loan companies may engage in lending operations where the loan is secured by a real estate property that is located in an EEA Member State (hereinafter referred to as “EEA mortgage loan”), and may purchase, advance, and discount mortgage loans and follow-up loans (hereinafter referred to as “EEA mortgage loan purchase”) if a mortgage is registered on the property on behalf of the lending mortgage loan company that affords the same degree of protection as a mortgage loan under Hungarian law. A mortgage registered on a real estate property located in any EEA Member

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State shall be construed to afford the same degree of protection as a mortgage loan under Hungarian law if:

- a) the mortgage is registered in the appropriate authentic public register; and
- b) the mortgage registered on behalf of the mortgage company enjoys priority and supersedes all other claims when seeking satisfaction in any judicial enforcement, or liquidation or similar insolvency proceedings.

(2) In addition to the conditions specified above for providing or purchasing EEA mortgage loans, the mortgage loan company is required to:

- a) prepare a written analysis to provide reliable proof that the laws of the EEA Member State affected concerning mortgages, judicial enforcement, liquidation and similar insolvency proceedings are in conformity with the requirements set out in Subsection (1); and

- b) draw up methodological and descriptive regulations laying down the conditions for providing and purchasing EEA mortgage loans secured by mortgages registered on real estate properties located in EEA Member States; furthermore

- c) submit the documents referred to in Paragraphs a)-b) to the Authority, along with the written assessment of the property supervisor declaring that the EEA mortgage loan is provided or purchased in accordance with the methodological and descriptive regulations in compliance with the requirements set out in Subsection (1).

(3) The regulations referred to in Paragraph b) of Subsection (2) shall contain a detailed description of the contract terms and conditions the mortgage loan company intends to use in connection with providing or purchasing EEA mortgage loans, the procedure employed to determine the collateral value of the mortgaged real estate properties, a description of the lending process, and the procedure for monitoring the availability and enforcement of the mortgage.

(4) The mortgage loan company may commence the procedure for providing or purchasing a mortgage loan secured by a real estate property located in an EEA Member State after a period of one month following delivery of the documents referred to in Subsection (2) to the Authority, if the Authority did not raise any objection.

(5) The mortgage loan company shall monitor changes in the laws of the EEA Member States affected. The mortgage loan company shall notify the Authority and the property supervisor concerning any material changes in the laws pertaining to credit and loan operations.

(6) If the methodological and descriptive regulations have to be amended consistent with any changes in the laws of the EEA Member States affected, the provisions contained in Subsections (2)-(4) shall be duly applied for such amendments.

(7) The ratio of EEA mortgage loans may not exceed fifteen per cent of the total loan portfolio.

## **Act LX of 2003 on Insurance Institutions and the Insurance Business**

### **Definitions**

#### **Section 3**

29) "mortgage loan" means a legal agreement fixed in a public document under which the insurance company agrees to lend money to a life assurance policyholder, where the loan is secured - in addition to the sum to be paid under a life assurance contract concluded by the policyholder - by real property (other than arable land) that is located in Hungary;

#### **Section 5**

(6) The HFSA shall have powers to resolve any dispute over the issue of whether a given activity is to be interpreted under this Act as an insurance activity or as an activity involved in or closely related to insurance. The following in particular shall be treated as activities involved in or closely related to insurance:

f) mortgage lending;

### **Conditions for Mortgage Loan Operations**

#### **Section 68**

(1) The HFSA's authorization is required for an insurance company to commence mortgage loan operations. The application for authorization shall contain:

a) the charter,

b) the scheme of operations,

c) proof of having the personnel and material conditions for commencing the activities,

d) adequate proof of having the requisite minimum solvency margin following commencement of the activities.

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(2) The HFSA shall not grant authorization if it deems it possible that the insurance company will not be able honour those of its commitments arising from insurance contracts following the commencement of mortgage loan operations.

(3) The amount of principal in a mortgage loan must not exceed sixty per cent of the value of the real property being used as security, which provides the basis for determining the amount of the loan (hereinafter referred to as "credit insurance value"). In order to secure the loan, a clause shall be added to ban the alienation and encumbrance of the mortgaged property.

(4) The amount of the mortgage loan may not exceed the amount of coverage of the underlying life assurance policy.

(5) The methodological principles for establishing credit insurance value are laid down in specific other legislation. Based on these provisions, insurance companies shall prepare credit insurance value calculation regulations, which shall be submitted to the Commission for approval.

#### **Section 69**

(1) Insurance companies shall rate and evaluate the individual risks, outstanding receivables and securities in connection with mortgage loan operations in the manner specified in Subsection (3).

(2) The aggregate amount of all mortgage loans placed by an insurance company shall not exceed five per cent of its life assurance premium reserve.

(3) The minister shall decree the regulations on exposures, on the determination, analysis, evaluation and definition of exposures relating to mortgage loan operations, on the management and reduction of exposures and on the control of risks.

(4) The personnel and material requirements for the commencement and pursuit of mortgage loan operations shall be decreed by the Government. (Government Decree No. 261/2000, no English translation)

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## 14 Ireland

### Number 8 of 1997 / Central Bank Act 1997

#### Part V Supervision of Regulated Businesses / Chapter 1 Introductory provisions

##### 28. Definitions (Part V)

28. In this Part-

'Appeals Tribunal' means the Irish Financial Services Appeals Tribunal established under Part VIIA of the Central Bank Act 1942;

'authorisation' means an authorisation authorising a person to carry on-

- (a) a bureau de change business, or
- (b) a money transmission business,

and, if an authorisation is amended in accordance with section 34, means the authorisation as amended;

'bureau de change business' means a business that comprises or includes providing members of the public with a service that involves buying or selling foreign currency, other than a service that is provided-

- (a) by a person or body regulated by the Bank referred to in section 32(1) (a) to (k) of the Criminal Justice Act 1994, or
- (b) by a person or body prescribed as a designated body under section 32(10)(a) of that Act (but only if the person or body is regulated by the Bank under a designated enactment or designated statutory instrument), or
- (c) by a person or body on an ancillary basis in the ordinary course of providing services to customers of the person or body;

'credit' means a cash loan (whether or not provided on the security of a mortgage or charge over an estate or interest in land), but does not include credit of a class specified in section 3(2) of the Consumer Credit Act 1995;

##### Consumer Credit Act 1995

3(2) This Act shall not apply to the following, that is to say-

- (a) a credit agreement in relation to credit granted or intended to be granted by-

- 
- (i) a society which is registered as a credit union under the Industrial and Provident Societies Acts, 1893 to 1978, by virtue of the Credit Union Act, 1966,
  - (ii) any registered society within the meaning of the Friendly Societies Acts, 1896 to 1977,
  - (aa) any transaction or proposed transaction conducted in the course of relevant trading operations within the meaning of section 39A (inserted by section 17 of the Finance Act, 1981) of the Finance Act, 1980, or within the meaning of section 39B (inserted by section 30 of the Finance Act, 1987) of the Finance Act, 1980.
  - (b) a credit agreement in the form of an authentic act signed before a notary public or a judge,
  - (c) any transaction entered into by a pawnbroker in respect of a pledge on which a loan or advance is made or to be made, or anything done with a view to such a transaction being entered into;
  - (d) an agreement for the provision on a continuing basis of a service or a utility where the consumer has the right to pay for it, by means of instalments or deferred payments,
  - (e) credit granted or made available without payment of interest or any other charge other than by a seller of goods who has invited by advertisement consumers to avail of such credit,
  - (f) a credit agreement other than a credit agreement operated by means of a credit card under which no interest is charged provided the consumer agrees to repay the credit in a single payment, or
  - (g) a credit agreement between an employer and an employee made on terms which are more favourable to the employee than terms offered generally to the public in the normal course of business.

'home reversion agreement' means an agreement between a vendor and a home reversion firm that provides –

- (a) for the conveyance by the vendor to the home reversion firm of an estate or interest in land (which includes the principal residence of the vendor or of the vendor's dependants) for a discounted sum or an income (or both), and
- (b) for the vendor to retain the right to live in the residence until the occurrence of one or more events specified in the agreement;

'home reversion firm' means a person carrying on a business of entering into home reversion agreements;

'inspector' means a person holding office as an inspector under section 36G;

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'money' includes any representation of money (such as a cheque) and any means by which monetary value is stored;

'money transmission business' means a business that comprises or includes providing a money transmission service to members of the public;

'money transmission service' means a service that involves transmitting money by any means, other than such a service provided-

(a) by a person or body referred to in section 32(1)(a) to (k) of the Criminal Justice Act 1994, or

(b) by a person or body prescribed as a designated body under section 32(10)(a) of that Act (but only if the person or body is regulated by the Bank under a designated enactment or designated statutory instrument), or

(c) by a person or body on an ancillary basis in the ordinary course of providing services to customers of the person or body;

'officer', in relation to a person that is a body corporate, means any person concerned in the direction or management of the body;

'regulated business' means a bureau de change business, a money transmission business, a home reversion firm or a retail credit firm;

'regulated financial service provider' has the same meaning as in section 2 of the Central Bank Act 1942;

### **Central Bank Act 1942 Section 2**

'regulated financial service provider' means-

(a) a financial service provider whose business is subject to regulation by the Bank or the Regulatory Authority under this Act or under a designated enactment or a designated statutory instrument, or

(b) a financial service provider whose business is subject to regulation by an authority that performs functions in an EEA country that are comparable to the functions performed by the Bank or the Regulatory Authority under this Act or under a designated enactment or designated statutory instrument, or

(c) in relation to Part VIIB only, any other financial service provider of a class specified in the regulations for the purposes of this paragraph;

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**Central Bank Act 1942 (Financial Services Ombudsman) Regulations 2005**

Extension of definition of “regulated financial services provider” for the purposes of Part VIIB of the Central Bank Act 1942 (Financial Services Ombudsman)

2. The following classes of persons are specified as being regulated financial service providers for the purposes of paragraph (c) of the definition of “regulated financial service provider” in section 2(1) of the Central Bank Act 1942 (as amended by section 2 of the Central Bank and Financial Services Authority of Ireland Act 2004):

(a) credit intermediaries who are required to be authorised by the Director of Consumer Affairs under Part IX of the Consumer Credit Act 1995 (No. 24 of 1995);

(b) pawnbrokers who are required to be authorised by the Director of Consumer Affairs under Part XV of the Consumer Credit Act 1995;

(c) creditors with respect to the performance of their obligations under the Consumer Credit Act 1995 and under the contract for the provision of credit to a consumer, and under any contract of guarantee relating to the provision of that credit;

(d) owners of goods that are subject to a hire-purchase agreement under a hire-purchase agreement with respect to the performance of their obligations under the Consumer Credit Act 1995 and under the agreement, and under any contract of guarantee relating to the agreement or any right to recover the goods from the hirer under the agreement;

(e) owners of goods that are subject to a consumer-hire agreement with respect to the performance of their obligations under the Consumer Credit Act 1995 and under the agreement, and under any contract of guarantee relating to the agreement or any right to recover the goods from the hirer under the agreement;

(f) mortgage lenders within the meaning of section 2 of the Consumer Credit Act 1995;

(g) the Voluntary Health Insurance Board established under the Voluntary Health Insurance Act 1957 (No. 1 of 1957).

‘relevant person’ means a natural person within the State, other than –

(a) a natural person who is, or satisfies the criteria to elect to be treated as, a professional client for the purposes of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007), or

- 
- (b) a person who is a regulated financial service provider;

### **E.C. (Markets in Financial Instruments) Regulators 2007**

#### **Section 2**

“professional client” means a client meeting the criteria laid down in Schedule 2 to these Regulations;

A professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client is required to be a client to whom paragraph 2 or 3 relates.

2. The following should all be regarded as professionals in all investment services and financial instruments for the purposes of these Regulations.

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a directive, entities authorised or regulated by a Member State without reference to a directive, and entities authorised or regulated by a non-Member State:

- (a) credit institutions;
- (b) investment firms;
- (c) other authorised or regulated financial institutions;
- (d) insurance companies;
- (e) collective investment schemes and management companies of such schemes;
- (f) pension funds and management companies of such funds;
- (g) commodity and commodity derivatives dealers;
- (h) locals;
- (i) other institutional investors

(2) Large undertakings meeting at least two of the following size requirements on a company basis:

balance sheet total: €20,000,000

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net turnover: €40,000,000

own funds: €2,000,000

(3) National and regional governments, public bodies that manage public debt, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

(5) The entities mentioned in paragraphs 1 to 4 are considered to be professionals.

They must however be allowed to request non-professional treatment and investment firms may agree to provide a higher level of protection. Where the client of an investment firm is an undertaking referred to above, the investment firm must inform it before any provision of services that, on the basis of the information available to the firm, the client is deemed to be a professional client, and will be treated as such unless the firm and the client agree otherwise.

The firm must also inform the customer that the customer can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when the client deems it is unable to properly assess or manage the risks involved.

(6) This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the investment firm to the effect that the client shall not be treated as a professional for the purposes of the applicable conduct of business regime.

The agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

Clients who may be treated as professionals on request

3.

(1) Clients who may be treated as professionals on request are clients other than those mentioned in subparagraphs (1) to (4) of paragraph 2 of this Schedule, including public sector bodies and private individual investors,

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may be treated as professional investors on request and may be allowed to waive some of the protections afforded by the conduct of business rules.

(2) Investment firms should therefore be allowed to treat any of the above clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. These clients should not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in subparagraphs (1) to (4) of paragraph 2 of this Schedule.

(3) Any such waiver of the protection afforded by the standard conduct of business regime shall be considered valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the investment firm, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making the client's own investment decisions and understanding the risks involved.

(4) In the case of small entities, the person subject to the assessment under subparagraph (3) of paragraph 3 of this Schedule should be the person authorised to execute transactions on behalf of the entity.

(5) A client who is to be treated as a professional client for the purpose of paragraph (3) of this Schedule must satisfy at least two of the following criteria:

(a) the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters;

(b) the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds €500,000;

(c) the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

(6) The clients referred to in paragraph (3) of this Schedule may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

(a) they must state in writing to the investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product;

(b) the investment firm must give them a clear written warning of the protections and investor compensation rights they may lose;

(c) they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

(7) Before deciding to accept any request for waiver, investment firms must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in subparagraph (5) of paragraph 3 of this Schedule.

(8) If, before 1 November 2007, clients have already been categorised as professionals under parameters and procedures similar to those set out in subparagraphs (3) to (6) of paragraph 3 of this Schedule, that categorisation may satisfy the requirements of this Schedule. Investment firms shall inform such clients about the conditions established in these Regulations for the categorisation of clients.

(9) Investment firms must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the firm informed about any change, which could affect their current categorisation. Should the investment firm become aware however that the client no longer fulfils the initial conditions, which made the client eligible for a professional treatment, the investment firm must take appropriate action.

‘retail credit firm’ means a person prescribed for the purpose of paragraph (g) of the definition of ‘credit institution’ in section 3 of the Consumer Credit Act 1995, or any other person who holds itself out as carrying on a business of, and whose business consists wholly or partly of, providing credit directly to relevant persons, but does not include—

(a) a person who is a regulated financial service provider, or

(b) a person who is an authorised credit intermediary under Part XI of the Consumer Credit Act 1995, or

(c) in relation to credit that was originally provided by another person, a person to whom all or any part of that other person’s interest in the credit is directly or indirectly assigned or otherwise disposed of, or

(d) a person who provides credit on a once only or occasional basis, but only if the provision of the credit does not involve a representation, or create an impression (whether in advertising, marketing or otherwise), that the credit would be offered to other persons on the same or substantially similar terms, or

(e) a person who is exempted, or who belongs to a class of persons that is exempted, under section 29A from being required to hold an authorisation as a retail credit firm;”

## **Consumer Credit Act 1995**

### **Section 3**

“credit institution” means-

(e) such person or class of persons as may be prescribed by the Bank for the purposes of this Act;

Aascent Financial Services Limited

ACC Bank Finance,

ACC Bank International,

ACC Bank Asset Finance,

AIB Combined Leasing Limited,

AIB Leasing Limited,

AIB International Leasing Limited,

Allied Irish Finance Limited,

Allied Irish Leasing Limited,

Arnotts plc.

Asgard Financial Services Limited

Anglo Irish International Financial Services Limited,

Bank of Ireland Car Loans Limited,

Bank of Ireland Leasing Limited,

Beneficial Trust of Ireland Limited,

BNP Capital Finance Limited,

CIT Group Finance (Ireland) Ltd.

CNH Capital plc.

Credit Service Ireland Limited, trading as Lake Leasing,

Eurofinance Limited,

FAI Finance Corporation Ltd.

Fiat Auto Financial Services Ireland:

Fitzwilliam Leasing Limited,

Friends First Finance Limited,

General Finance Trust Limited,

Hamilton Leasing (Ireland) Limited,

Hanvale Financial Services Limited,

Ibidem Limited,

ICC Finance Limited,

ILF Asset Finance Limited,

ILF Commercial Finance Limited,

ILF Leasing Limited,

Ilios Limited,

ING Finance (Ireland) Limited,

Irish Permanent Finance Limited,

Irish Buyway Limited,

Irish Life Finance Limited,

Irish Permanent (IOM) Limited

Knightsdale Limited,

Kynac Limited,

Lansdowne Leasing Limited,

Lease Services Limited,

Lombard & Ulster Banking Limited

M J Flood Leasing Limited,

Merrion Leasing Limited,

Montbrison Limited,

Motor Leasing Limited,

National Credit Finance Limited,

National Credit Financial Services Limited,

New Holland Finance (Ireland) Limited,

Nua Homeloans Limited

Open + Direct Retail Services Limited:

Phoenix Finance Trust Limited,

Raasay Limited,

Reloton Limited,

Romoss Investments Limited,

Smurfit Finance Limited,

Smurfit Leasing Limited,

Springboard Mortgages Limited,

START MORTGAGES Ltd.,

Stepstone Mortgages Funding Limited

The Hire-Purchase Company of Ireland Limited,

Thistle Finance Limited,

Tusa Financial Services Limited:

Western Finance Company Limited:

Woodchester Finance Limited,

Woodchester Home Loans Limited,

Woodchester Leaseline Limited,

Woodchester Leasing Limited,

Provided that the APR charged by such person in respect of any credit granted to a consumer is less than 23 per cent.

'this Part' includes all regulations in force under this Part;

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'transmitting' includes transmitting-

- (a) by means of a message or other form of communication, or
- (b) by means of a transfer instrument, or
- (c) by means of a clearing network.

### **29. Person prohibited from carrying on without authorisation**

29.-(1) A person shall not carry on a regulated business unless the person is the holder regulated business of an authorisation.

(2) A person who contravenes subsection (1) commits an offence and-

(a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €100,000.

(3) A person who, after being convicted of an offence under subsection (2), continues to contravene subsection (1) commits a further offence on each day or part of a day during which the contravention continues and-

(a) if tried summarily, is liable on conviction to a fine not exceeding €200 for each such day or part of a day, or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €7,500 for each such day or part of a day.

(4) This section does not have effect in relation to a person who carries on a money transmission business until 6 months after the commencement of section 27 of the Central Bank and Financial Services Authority of Ireland Act 2004.

### **29A. Power of Bank to exempt certain persons from being required to hold authorisation as a retail credit firm.**

29A.-(1) The Bank may exempt a person from being required to hold an authorisation as a retail credit firm in relation to the provision of credit if, in the opinion of the Bank –

(a) the total amount or value of the credit that is to be provided by the person is such that it is reasonable to assume that the borrower will be in a position to negotiate on equal terms or to obtain appropriate legal and financial advice, or

(b) the person is one who, under section 8(2) of the Central Bank Act 1971, is exempted, or is a member of a class of persons that is exempted, from being required to hold a banking licence, or

(c) the person is one who provides credit solely for charitable or public purposes and at a rate of interest or on other terms more favourable than those that are currently available commercially,

and the exemption would not be inconsistent with the proper and orderly regulation of the provision of credit and the protection of customers of retail credit firms.

(2) The Bank may also exempt the persons belonging to a specified class of persons from being required to hold an authorisation as a retail credit firm in relation to the provision of credit if, in the opinion of the Bank—

(a) the total amount or value of the credit that is to be provided by those persons is such that it is reasonable to assume that borrowers from those persons will be in a position to negotiate on equal terms or to obtain appropriate legal and financial advice, or

(b) the persons are ones who, under section 8(2) of the Central Bank Act 1971, are exempted, or belong to a class of persons that is exempted, from being required to hold a banking licence, or

(c) the persons are ones who provide credit solely for charitable or public purposes and at a rate of interest or on other terms more favourable than those that are currently available commercially,

and the exemption would not be inconsistent with the proper and orderly regulation of the provision of credit and the protection of customers of retail credit firms.

(3) The power to exempt a person, or the persons belonging to a specified class, from being required to hold an authorisation as a retail credit firm may be exercised by the Bank either on its own initiative or on an application made by or on behalf of the person, or the persons or any of the persons belonging to that class.

(4) An exemption granted under this section is subject to such conditions as the Bank thinks fit to impose.

(5) The Bank may at any time by notice in writing—

(a) impose additional conditions on a person to whom, or on the persons belonging to a class in respect of which, an exemption has been granted under this section, or

(b) vary or revoke a condition imposed under subsection (4) or this subsection.

(6) The Bank shall revoke an exemption granted under this section if it is satisfied –

(a) that the circumstances relevant to the exemption have changed and are now such that the exemption would no longer be granted, or

(b) that a condition of the exemption is not being, or has not been, substantially complied with.

(7) The Bank shall publish in *Iris Oifigiúil* a notice of every exemption granted, and every revocation made, under this section.

(8) Failure to comply with subsection (7) does not affect the validity of an exemption granted, or a revocation made, under this section.

(9) Section 29(1) does not apply to a person who, or a person belonging to a class of persons that, is exempted under this section so long as the person –

(a) does not carry on any kind of regulated business other than that to which the exemption relates, and

(b) complies with all conditions subject to which the exemption is granted.

### **30. Applications for authorisations**

30.-(1) A person who wishes to carry on a regulated business can apply to the Bank for an authorisation to carry on such a business.

(2) An application must-

(a) be in a form provided or specified by the Bank, and

(b) contain such information, and be accompanied by such documents, as the Bank requests, and

(c) be accompanied by the fee (if any) prescribed under section 33K of the Central Bank Act 1942 for the purposes of this subsection.

(3) The Bank may, by written notice given to an applicant, require the applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a period specified in the notice, not less than 14 days, the Bank may refuse the application.

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### 31. Grant and refusal of applications for authorisation

31.-(1) Except as provided by subsection (2), the Bank shall grant an application for an authorisation that complies with section 30.

(2) The Bank may refuse an application for an authorisation that complies with section 30 only if it is of the opinion that-

(a) to grant the application would be inconsistent with the effective enforcement of any law of the State the purpose of which is to prevent or inhibit money laundering or terrorism, or

(b) the applicant has failed to satisfy the Bank that the applicant is, or will be, able to properly fulfil the obligations imposed on holders of authorisations by or under this Part, or

(c) information given to the Bank by or on behalf of the applicant in connection with the application is materially false or misleading.

(3) If the Bank proposes to refuse an application, it shall serve on the applicant a notice in writing-

(a) specifying the grounds on which it is proposed to refuse the application, and

(b) informing the applicant that the applicant may, within 21 days after the giving of the notice, make written representations to the Bank showing why the application should be granted.

(4) Not later than 21 days after being given a notice under subsection (3), the applicant may make written representations to the Bank showing why the application should be granted.

(5) The Bank may refuse an application only after having considered any representations made by the applicant in accordance with subsection (4).

(6) If the Bank refuses an application, it shall immediately give to the applicant written notice of the refusal. The notice must include a statement setting out the reasons for the refusal.

(7) On granting an application for an authorisation, the Bank shall-

(a) record the appropriate particulars of the applicant in the register of persons authorised to carry on bureau de change businesses or money transmission businesses, and

(b) issue the applicant with an authorisation authorising the applicant to carry on the regulated business to which the application relates.

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**31A. Provisions supplementary to section 31 applicable to retail credit and home reversion firms**

31A.—For the purposes of section 31(2)(b), in order to obtain and retain authorisation, a retail credit firm or home reversion firm shall satisfy the Bank—

- (a) that, where applicable, the memorandum and articles of association of the firm will enable it to operate in accordance with this Act, and any condition or requirement that the Bank may impose,
- (b) as to the probity and competence of each of the firm's directors and managers,
- (c) as to the suitability of each of the firm's qualifying shareholders or partners,
- (d) as to the organisational structure and management skills of the firm and that adequate levels of staff and expertise will be employed to carry out its activities,
- (e) that the firm has and will follow procedures that will enable the Bank to be supplied with all information necessary for the performance of the Bank's supervisory functions and to enable the public to be supplied with information that the Bank specifies,
- (f) that the organisation of the firm's business structure is such that it, and any of its associated or related undertakings, (so far as appropriate and practicable) are capable of being supervised adequately by the Bank, and
- (g) as to the conduct of the firm's business, financial resources and any other matters that the Bank considers necessary in the interests of the proper and orderly regulation and supervision of authorised firms or in the interests of the protection of customers or potential customers.

**32. Effect and term of authorisation**

32.-(1) An authorisation authorises the holder to carry on a regulated business subject to and in accordance with the conditions of the authorisation.

(2) An authorisation remains in force until revoked under this Part.

**32A. Additional provisions applicable to retail credit and home reversion firms.**

32A.—(1) An authorisation granted by the Bank under section 31 to a retail credit or home reversion firm may specify classes of services, and additional services, that the firm may provide.

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(2) An authorisation granted by the Bank under section 31 of this Act to a retail credit firm may include an authorisation to act as a home reversion firm.

(3) The Bank may amend –

(a) the classes of retail credit services or other services that may be provided in accordance with subsections (1) or (2), or

(b) the designation or classification of firms or services.

(4) For the purposes of subsections (1) to (3), the Bank may use such designation or classification of firms or services as the Bank considers appropriate to describe the services provided.

(5) At any time before granting or refusing an authorisation to a firm, the Bank may –

(a) request such further information from the firm, or

(b) instruct an authorised officer to make such inquiries, or carry out such investigations,

as it considers necessary for the purpose of properly evaluating an application. Any such inquiries or investigations shall be carried out in accordance with this Act.

(6) In the case of a retail credit or home reversion firm authorised in another EEA Country, the Bank –

(a) shall have regard to any requirements imposed on the firm by an authority of that country that appears to the Bank to exercise a regulatory or supervisory role similar to that of the Bank in relation to the firm, and

(b) may exchange with that authority information relevant to the carrying out of the Bank's functions under this Act or the functions of that authority under the laws of that country.

### **33. Bank may impose conditions when granting an application for an authorisation**

33.-(1) In granting an application for an authorisation, the Bank may impose on the applicant such conditions as it considers necessary for the proper and orderly regulation of the applicant's business and, in particular, for preventing the business from being used to launder money or to finance terrorism.

(2) If the Bank grants an application subject to conditions, it shall specify those conditions in the authorisation granted to the applicant or in one or more documents annexed to that authorisation.

**33A. Imposition of conditions or requirements on authorised retail credit firms and home reversion firms**

33A.—(1) Without limiting section 33, the Bank may do all or any of the following in respect of an authorised retail credit firm or an authorised home reversion firm:

(a) make the firm's authorisation subject to such conditions or requirements, or both, as it considers appropriate, relating to—

(i) the proper and orderly regulation and supervision of retail credit firms or authorised home reversion firms, and

(ii) the protection of their customers or potential customers;

(b) impose conditions or requirements, or both, relating to the affairs or activities in an associated undertaking or a related undertaking;

(c) require the display on a credit agreement or home reversion agreement, or on any other relevant document, of a notice in a form provided or prescribed by the Bank of any information relevant to the agreement;

(d) at any time, impose conditions or requirements, or both, on an authorised firm and either amend or revoke any condition or requirement imposed under this paragraph or under paragraph (a), (b) or (c).

(2) A condition or requirement referred to in subsection (1) may be imposed in relation to any or all of the following:

(a) an authorised firm;

(b) all authorised firms;

(c) a class or classes of authorised firms;

(d) a specified period of time or times;

(e) an associated undertaking or related undertaking;

(f) such matters relating to the proper and orderly regulation and supervision of authorised firms, and the protection of their customers or potential customers, as the Bank considers appropriate.

(3) Without limiting subsections (1) and (2), the Bank may impose conditions or requirements on an authorised firm, or a class of authorised firms concerning—

- (a) the level of training, qualifications or professional competence of managers, officers or employees,
- (b) the provision of information to the Bank or to a person specified by the Bank, and
- (c) the application of a prescribed code of practice relating to—
  - (i) regulated financial service providers within the meaning of the Central Bank Act 1942, or
  - (ii) a class of regulated financial service providers whose business appears to be comparable to that of an authorised firm or a class of authorised firms.

#### **34. Bank may amend authorisation**

34. The Bank may from time to time amend an authorisation—

- (a) by varying any of its conditions, or
- (b) by replacing or revoking an existing condition, or
- (c) by adding a new condition,

but only after giving to that holder a notice in writing of its intention to do so and an opportunity to be heard by, or to make written representations to, the Bank in relation to the proposed amendment.

#### **No 34B**

#### **34C. Transitional provisions**

34C.—(1) Despite section 29, a person carrying on the business of a retail credit firm, or a home reversion firm, immediately before the commencement of Part 2 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 is taken to be authorised as a regulated business until the Bank has granted or refused authorisation to the person, provided the person applies to the Bank under section 30 for authorisation no later than 3 months after that commencement.

(2) If a person is taken to be authorised as a regulated business under subsection (1), the Bank may do either or both of the following:

(a) impose on that person such conditions or requirements or both as the Bank considers appropriate relating to the proper and orderly regulation and supervision of a regulated business;

(b) direct that person not to carry on the business of a retail credit firm, or the business of a home reversion firm, for such period (not exceeding 3 months) as is specified in the direction.

(3) A condition or requirement imposed, or a direction given, under this section is an appealable decision for the purposes of Part VIIA of the Central Bank 25 Act 1942.

### **35. Offence to fail to comply with certain conditions and requirements**

35.-(1) The holder of an authorisation shall comply with-

(a) the requirements imposed on holders of authorisations by this Part, and

(b) the conditions (if any) of the authorisation, and

(c) the requirements (if any) imposed by regulations in force under this Part.

(2) A person who fails to comply with subsection (1) commits an offence and-

(a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

### **36. Revocation of authorisation by Bank on application of holder**

36. The Bank shall revoke an authorisation on the application of the holder of the authorisation, but only if satisfied that the holder of the authorisation has fully complied with the provisions of this Part and the conditions of the authorisation.

### **36A. Revocation of authorisation by Bank otherwise than on application of holder**

36A.-(1) The Bank may revoke an authorisation on being satisfied on reasonable grounds that-

(a) the holder of the authorisation has not begun to carry on a regulated business within 12 months after the date on which the authorisation was granted, or

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- (b) the holder of the authorisation has not carried on such a business within the immediately preceding 6 months, or
  - (c) the authorisation was obtained by means of a false or misleading representation, or
  - (d) the holder of the authorisation has contravened or is contravening, or has failed or is failing to comply with a provision of this Part, a condition of the authorisation or a requirement imposed by or under this Part, or
  - (e) if the holder of the authorisation is a natural person, the holder is adjudicated bankrupt, or
  - (f) if the holder of the authorisation is a partnership, the partnership is dissolved by the death or bankruptcy of a partner or because of the operation of a provision of the Partnership Act 1890, or
  - (g) if the holder of the authorisation is a body corporate, the winding-up of the body has commenced, or
  - (h) the holder of the authorisation is so structured, or business of the holder is so organised, that the holder is no longer capable of being regulated to the satisfaction of the Bank, or
  - (i) the circumstances under which the authorisation was granted have changed to the extent that an application for authorisation would be refused had the application been made in the changed circumstances, or
  - (j) the holder of the authorisation suspends payments due to creditors, or is unable to meet any other obligations to creditors of the holder, or
  - (k) if the holder of the authorisation is a branch or subsidiary of a body corporate that has its head office in another country that is an EEA country, the authority of that other country that performs functions similar to those of the Bank under this Part has terminated the authority of that body to carry on a regulated business in that other country, or
  - (l) the holder of the authorisation, or officer of that holder, is convicted of-
    - (i) an offence against this Part or against any other designated enactment or designated statutory instrument, or
    - (ii) an offence involving fraud, dishonesty, breach of trust, money laundering or financing terrorism.
- (2) If the Bank proposes to revoke an authorisation, it shall serve on the holder of the authorisation a notice in writing informing the holder of the Bank's intention to revoke the authorisation. The notice must-
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- (a) specify the grounds on which it is proposed to revoke the authorisation, and
- (b) inform the holder of the authorisation that the holder may, within 21 days after service of the notice, make written representations to the Bank showing why the authorisation should not be revoked.
- (3) Not later than 21 days after a notice is served on the holder of an authorisation in accordance with subsection (2), the holder may make written representations to the Bank showing why the authorisation should not be revoked.
- (4) The Bank may revoke the authorisation only after having considered any representations made by the holder of the authorisation in accordance with subsection (3).
- (5) As soon as practicable after revoking an authorisation under this section, the Bank shall give written notice of the revocation to the person who was the holder of the authorisation. The notice must include a statement of the reasons for revoking the authorisation.
- (6) Revocation of an authorisation under this section takes effect on and from the date of the notice of revocation or, if a later date is specified in the notice, on and from that date, irrespective of whether an appeal against the revocation is made under Part VIIA of the Central Bank Act 1942.

### **36B. Bank may direct holder of authorisation to suspend business**

36B.-(1) If the Bank reasonably believes that there may be grounds for revoking an authorisation under section 36A, it may give to the holder of the authorisation a direction in writing prohibiting it from carrying on a regulated business otherwise than in accordance with conditions specified by the Bank.

- (2) A direction given under this section-
- (a) must include a statement of the Bank's reasons for giving the direction and specify the conditions with which the holder of the authorisation must comply, and
- (b) remains in force for such period (not exceeding 6 months) as is specified in the direction.
- (3) A direction takes effect from the date of the direction or, if a later date is specified in the direction, from that date, irrespective of whether or not the holder of the authorisation appeals against the direction.

(4) The holder of an authorisation shall comply with a direction given under this section and the conditions (if any) contained in the direction.

(5) The Bank may, by notice in writing given to the holder of the authorisation concerned, amend or revoke a direction given under this section.

(6) Without limiting subsection (5), the Bank may from time to time, by notice in writing given to the holder of the authorisation concerned, extend the period during which a direction remains in force by a further period not exceeding 6 months.

(7) A direction given under this section ceases to have effect-

(a) at the end of the period specified in the direction, or if the period is extended under subsection (6), at the end of the extended period, or

(b) on the revocation of the holder's authorisation under this Part, whichever first occurs.

(8) A person who contravenes a direction given under this section, or fails to comply with a condition of the direction, commits an offence and-

(a) if tried summarily, is liable on conviction to a fine not exceeding €2,000, or

(b) if tried on indictment, is liable on conviction to a fine not exceeding €75,000.

### **36C. Bank to publish notice of revocation or suspension**

36C. As soon as practicable after revoking an authorisation under section 36 or 36A, or giving a direction under section 36B, the Bank shall publish in a publication of its choice a notice giving particulars of the revocation or direction.

### **36D. Bank to establish and keep a register of persons authorised to carry on regulated businesses**

36D.-(1) The Bank is required to establish and keep a register of persons authorised to carry on regulated businesses.

(2) The register must contain the name and the address of the principal place of business of each person authorised to carry on a regulated business and such other information as the Bank determines.

(3) The register may be in book form, electronic form or such other form as the Bank determines from time to time. If the register is kept in an

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electronic form that is not visually readable, it must be capable of being reproduced in a visually readable form.

(4) The Bank is to keep the register at its head office or at such other place as it specifies by notice published in *Iris Oifigiúil*.

(5) Members of the public are entitled, without charge, to inspect the register during the ordinary business hours of the Bank.

(6) A member of the public is entitled to obtain a copy of the register or of an entry in a register on payment of a fee of such amount (if any) as may be prescribed under section 33K of the Central Bank Act 1942 for the purposes of this subsection.

### **36E. Bank to publish list of persons authorised to carry on regulated businesses**

36E. The Bank shall, not less frequently than once during every period of 12 months after the commencement of this section, publish in a publication of its choice a list of persons authorised to carry on regulated businesses. If regulations in force under this Part so require, the list must contain such other particulars as are prescribed by those regulations.

### **36F. Holders of authorisations to keep certain records**

36F.-(1) The holder of an authorisation shall-

(a) keep at an office or offices within the State such records as may be specified from time to time by the Bank, and

(b) notify the Bank in writing of the address of the office or offices where those records are kept.

Different kinds of records may be specified under this subsection for different kinds of authorisations.

(2) The requirement imposed by subsection (1) is additional to any other requirement imposed by law with respect to the keeping of records by the holder of an authorisation.

(3) The holder of an authorisation shall keep the records referred to in subsection (1) for such period as the Bank notifies in writing to that holder.

(4) The holder of an authorisation may keep documents wholly or partly in a non-legible form so long as they are capable of being reproduced in a legible form.

**36G. Appointment of inspectors**

36G.-(1) The Bank may, in writing, appoint employees of the Bank or other suitably qualified persons to be inspectors for the purpose of securing compliance with this Part, or with any specified provisions of this Part.

(2) The Bank may, in writing, revoke the appointment of an inspector whenever it considers it appropriate to do so.

**36H. Powers of inspectors with respect to holders of authorisations**

36H.-(1) An inspector may, at all reasonable times on production of evidence of the person's appointment, enter any premises at which the inspector reasonably believes that a regulated business is being carried on.

(2) An inspector who has entered premises in accordance with subsection (1) may exercise all or any of the following powers:

(a) inspect the premises;

(b) request any person on the premises who apparently has control of, or access to, records that relate to a regulated business to produce the records for inspection;

(c) inspect records produced in accordance with such a request or found in the course of inspecting the premises;

(d) take copies of those records or of any part of them, and

(e) request any person who appears to the authorised person to have information relating to the records, or to a regulated business, to answer questions with respect to the records or that business.

(3) A person to whom a request is made in accordance with subsection (2) shall-

(a) comply with the request so far as it is possible to do so, and

(b) give such other assistance and information to the inspector with respect to the regulated business as is reasonable in the circumstances.

(4) The powers conferred by subsection (2) may also be exercised in relation to any other person who, in the opinion of the Bank or an inspector, has information that is materially relevant to the exercise of those powers in relation to a regulated business.

(5) The production of a record in compliance with a request made under this section does not prejudice a person's lien over the record.

(6) Nothing in this section requires a legal practitioner to produce a record that contains a privileged communication made by or to the practitioner or to disclose any information that relates to the communication.

(7) In this section-

'legal practitioner' means a barrister or solicitor;

'suitably qualified person' means any person (other than an employee of the Bank) who, in the opinion of the Bank, has the qualifications and experience necessary to exercise the powers conferred on inspectors by this section.

### **36I. Offence to obstruct inspectors in the exercise of their powers**

36I. A person who-

(a) obstructs an inspector in the exercise of a power conferred on inspectors by this Part, or

(b) without reasonable excuse, fails to comply with a requirement or request made by an inspector under this Part, or

(c) in purported compliance with such a requirement or request, gives information that the person knows to be false or misleading,

commits an offence and is liable on summary conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 3 months, or both.

### **36J. Court may make enforcement orders**

36J.-(1) If a person has engaged, is engaging or is about to engage in conduct that involved, involves or would involve-

(a) contravening a provision of this Part, or

(b) attempting to contravene such a provision, or

(c) aiding, abetting, counselling or procuring a person to contravene such a provision, or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision, or

(e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the contravention by a person of such a provision, or

(f) conspiring with others to contravene such a provision,

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the Court may make an order restraining the person from engaging in the conduct. The Court may include in the order a requirement that the person do a specified act.

(2) If a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do an act that the person is required to do by or under a provision of this Part, the Court may make an order requiring the person to do that act.

(3) An order under this section may be made only on the application of the Bank or some other person whose interests have been, are or would be affected by the conduct or by the refusal or failure to do the act concerned.

(4) The Court may hear an application for an order under this section only if it is satisfied that the person in relation to whom the order is sought has been served with a copy of the application at least 7 days before the hearing.

(5) An order under this section may be made on such terms as the Court thinks appropriate.

(6) The Court may grant an interim order pending the determination of an application under this section.

(7) If the Bank applies to the Court to make an order under this section, the Court may not require the applicant or any other person to give an undertaking as to damages as a condition of granting an interim order.

(8) The Court may discharge or vary an order made under this section.

(9) The power of the Court to make an order restraining a person from engaging in conduct may be exercised-

(a) whether or not it appears to the Court that the person intends to repeat, or to continue, the conduct, and

(b) whether or not the person has previously engaged in that kind of conduct, and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in that kind of conduct.

(10) The power of the Court to grant an injunction requiring a person to do an act may be exercised-

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act, and

(b) whether or not the person has previously refused or failed to do that act, and

(c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act.

(11) Whenever the Court has power under this section to make an order restraining a person from engaging in particular conduct, or requiring a person to do a particular act, it may, either in addition to or instead of making such an order, order the person to pay damages to another person.

### **36K. Offences by persons concerned in management of bodies corporate**

36K.-(1) If a body corporate commits an offence under this Part, each person who was, at the time the offence is found to have been committed, an officer of the body commits an offence, unless the person establishes that-

(a) the body committed the offence without the person's knowledge, or

(b) although the person did have that knowledge, the person took all reasonably practicable steps to prevent the commission of the offence.

(2) A person may be charged with having committed an offence under this section even if the body corporate concerned is not charged with having committed an offence under this Part in relation to the same matter.

(3) A person who is convicted of an offence under this section is-

(a) if tried summarily, liable on conviction to a fine not exceeding €2,000 or to imprisonment for a term not exceeding 3 months, or both, or

(b) if tried on indictment, liable on conviction to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 12 months, or both.

### **36L. Decisions of Bank under this Part to be appealable decisions for purposes of Part VIIA of Central Bank Act 1942**

36L. The following decisions are appealable decisions for the purposes of Part VIIA of the Central Bank Act 1942:

(a) the refusal of an application made under section 30;

(b) the imposition of conditions on the granting of an authorisation (not being conditions prescribed by regulations in force under this Part);

(c) the amendment of an authorisation under section 34;

(d) the revocation of an authorisation under section 36A;

- (e) the giving of a direction under section 36B.

**36M. Bank may make regulations for purposes of this Part**

36M.-(1) The Bank may make regulations, not inconsistent with this Part, for or with respect to any matter that by this Part is required or permitted to be prescribed, or that is necessary or expedient to be prescribed, for carrying out or giving effect to this Part.

(2) A regulation under section 33J or 33K of the Central Bank Act 1942 may require holders of authorisations to pay a levy or fee for the purposes of this Part, or both a levy and fee.

(3) If a regulation under section 33J or 33K of the Central Bank Act 1942 imposes a requirement to pay a levy or fee to the Bank and the holder of an authorisation fails to pay the fee within the period, or by the date, specified in the regulation, the Bank may, by proceedings brought in a court of competent jurisdiction, recover the amount of the levy or fee from the holder as a debt due to the Bank.

(4) A provision of a regulation under this section may-

(a) apply generally or be limited in its application by reference to specified exceptions or factors, or

(b) apply differently according to different factors of a specified kind, or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body, or may do any combination of those things.

**36N. Performance and exercise of Bank's functions and powers to be consistent with performance of certain responsibilities of Governor**

36N. The Bank shall perform and exercise the functions and powers imposed or conferred on it by this Part in a manner consistent with the performance by the Governor of the responsibilities imposed on the Governor by section 19A of the Central Bank Act 1942.

S.I. No. 782 of 2007

**MARKETS IN FINANCIAL INSTRUMENTS AND MISCELLANEOUS  
PROVISIONS ACT 2007 (COMMENCEMENT) (No. 2) ORDER 2007**

I, BRIAN COWEN, Minister for Finance, in exercise of the powers conferred on me by section 2(1) of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (No. 37 of 2007), hereby order as follows:

Citation

1. This Order may be cited as the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (Commencement) (No. 2) Order 2007. Commencement of section 19 of Markets in Financial Instruments and Miscellaneous Provisions Act 2007
2. Section 19 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 comes into operation on 1 February 2008.

**COMMENCEMENT OF SECTION 19 OF THE MARKETS IN FINANCIAL  
INSTRUMENTS AND MISCELLANEOUS PROVISIONS ACT 2007**

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Order provides for the commencement of section 19 of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 on 1 February 2008. This Order follows the earlier Commencement Order made on 1 November 2007 (S.I. No. 730 of 2007).

Section 19 amends Part V of the Central Bank Act 1997 to provide for the authorisation and regulation of non-deposit taking lenders by the Irish Financial Services Regulatory Authority (the Financial Regulator).

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## 15 Italy

### LEGISLATIVE DECREE 385 OF 1 SEPTEMBER 1993 as amended (The 1993 Banking Law)

#### Article 1

(Definitions)

1. In this Legislative Decree:

- a) “credit authorities” shall mean the Interministerial Committee for Credit and Savings, the Minister for the Economy and Finance and the Bank of Italy;
- b) “bank” shall mean an undertaking authorized to engage in banking;
- d) “Consob” shall mean the Commissione nazionale per le società e la borsa;
- d-bis) “COVIP” shall mean the Commissione di vigilanza sui fondi pensione;
- e) “ISVAP” shall mean the Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo;
- f) “UIC” shall mean the Ufficio italiano dei cambi;
- g) “financial intermediaries” shall mean the persons entered in the register provided for in Article 106.

#### TITLE II

#### BANKS

#### Chapter I

Notion of banking and fund-raising

#### Article 10

(Banking)

1. Fund-raising on a public basis and the granting of credit constitute banking. Banking is an entrepreneurial activity.
2. Banking shall be restricted to banks.

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3. In addition to banking, banks may engage in any other financial business, in accordance with the provisions applicable to each activity, and in related and instrumental activities. Restrictions established by law on such activities shall be unaffected.

#### **Article 11**

(Fund-raising)

1. For the purposes of this Legislative Decree the acceptance of repayable funds in the form of deposits or in other forms constitutes fundraising.

2. Persons other than banks may not engage in fund-raising on a public basis.

2-bis. The receipt of funds connected with the issue of electronic money shall not constitute fund-raising on a public basis.

3. The Credit Committee shall establish limits and criteria, having regard inter alia to the activities and legal form of the persons accepting funds, on the basis of which fund-raising shall not constitute fund-raising on a public basis where the funds are accepted from specific categories of persons defined on the basis of corporate or employment relationships.

4. The prohibition on fund-raising on a public basis shall not apply:

a) to member states, to international organizations of which one or more member states are members or to regional or local authorities which are permitted to raise funds under the national laws of member states;

b) to non-member states or to foreign persons authorized under special provisions of Italian law;

c) to companies with reference to fund-raising effected pursuant to the provisions of the Civil Code by means of the issue of bonds, other debt securities or other financial instruments;

d) to other forms of fund-raising specifically permitted by law, in compliance with the principle of the protection of savings.

4-bis. The Credit Committee shall establish criteria for the identification of financial instruments, however they are denominated, whose issue constitutes fund-raising.

4-ter. Where not otherwise regulated by law, the Credit Committee shall establish limits on the issue of financial instruments and, acting on a proposal formulated by the Bank of Italy after consulting Consob, may determine the maturity and face value of the financial instruments, other than bonds, used for fund-raising on a public basis.

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4-quater. For the purpose of protecting the restriction on banking, the Credit Committee may establish criteria and limits, even in derogation of those established by the Civil Code, for the fund-raising effected by persons that engage in the granting of financing on a public basis in any form.

4-quinquies. For the purpose of protecting savings, professional investors who are responsible pursuant to the Civil Code for the solvency of the company for bonds, other debt securities and other financial instruments issued by the company must comply with appropriate capital requirements established by the competent supervisory authorities.

5. In the instances referred to in paragraph 4, subparagraphs c) and d), the raising of sight funds and any form of fund-raising related to the issue or administration of generally spendable means of payment shall be precluded.

### **Article 12**

(Bonds and certificates of deposit issued by banks)

1. Banks, however formed, may issue registered and bearer bonds, including convertible bonds.

2. [Repealed]

3. The issue of non-convertible bonds and bonds convertible into securities of other companies shall be approved by resolution of the administrative body; Articles 2410, 2412, 2413, 2414 first paragraph, subparagraph 3, 2414-bis, 2415, 2416, 2417, 2418 and 2419 of the Civil Code shall not apply.

4. Where bonds are convertible into own shares the provisions of the Civil Code shall apply, except for Article 2410.

4-bis. The provisions of paragraphs 3 and 4 shall also apply to financial instruments subject to the regulations governing bonds provided for in the Civil Code.

5. The Bank of Italy, in compliance with the resolutions of the Credit Committee, shall regulate the issue by banks of non-convertible bonds and bonds exchangeable into securities of other companies as well as financial instruments other than holdings.

6. Banks may issue registered and bearer certificates of deposit. The Bank of Italy may regulate the procedures for such issue in compliance with the resolutions of the Credit Committee.

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7. The Bank of Italy shall regulate the issue by banks of subordinated loans, loans which are not redeemable and loans which are redeemable subject to authorization by the Bank of Italy. Such issues may also be made in the form of bonds or certificates of deposit.

## **Chapter II**

Banking authorization, branches and freedom to provide services

### **Article 13**

(Register)

1. The Bank of Italy shall enter banks authorized in Italy and branches of EC banks established within Italy in a register.
2. Banks shall indicate in their documents and correspondence that they are included in the register.

### **Article 14**

(Banking authorization)

1. The Bank of Italy shall grant authorization to engage in banking where the following conditions are met:
  - a) the legal form adopted is that of a società per azioni or a società cooperativa per azioni a responsabilità limitata;
  - a-bis) the registered office and the head office are located in Italy;
  - b) the paid-up capital is not less than that established by the Bank of Italy;
  - c) a programme of operations has been submitted together with the instrument of incorporation and bylaws;
  - d) the owners of significant holdings satisfy the integrity requirements established pursuant to Article 25 and the conditions are met for granting the authorization provided for in Article 19;
  - e) the persons performing administrative, managerial or control functions satisfy the experience, integrity and independence requirements established pursuant to Article 26.
  - f) close links do not exist between the bank or the components of the group it belongs to and other persons preventing the effective exercise of supervisory functions.

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2. The Bank of Italy shall refuse authorization where verification of the conditions indicated in paragraph 1 shows that sound and prudent management is not ensured.

2-bis. The Bank of Italy shall regulate the authorization procedure and the cases in which an authorization shall expire when a bank does not begin to engage in the activity.

3. Procedures for entry in the Company Register may not be initiated in the absence of the authorization referred to in paragraph 1.

4. The establishment of the first branch in Italy of a non-EC bank shall be authorized by the Bank of Italy after consulting the Ministry for Foreign Affairs, subject to satisfaction of conditions corresponding to those specified in paragraph 1, subparagraphs b), c) and e). Authorization shall be granted having regard inter alia to reciprocity.

## **Chapter VI**

Provisions concerning certain credit operations

### **Section I**

Real estate and public works credit

#### **Article 38**

(Notion of real estate credit)

1. Real estate credit shall have as its object the granting by banks of medium and long-term loans secured by a first mortgage on real property.

2. The Bank of Italy, in compliance with the resolutions of the Credit Committee, shall determine the maximum amount of such loans, which shall be defined in relation to the value of the mortgaged property or to the cost of the work to be done on the same, as well as the situations in which the existence of previously recorded mortgages shall not prevent the granting of loans.

#### **Article 39**

(Mortgages)

1. For the purposes of recording mortgages banks may elect as domicile their head office.

2. Where the completion of the contract and the disbursement of the money are separate acts, the keeper of the property registers, on the basis of the receipt provided by the beneficiary of the loan, shall note beside the earlier entry that the money has been disbursed and any change in the interest

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agreed to by the parties; in such cases the interest recorded in the notation shall have the same priority.

3. Bank claims arising from loans with indexing clauses shall be secured by the recorded mortgage up to the total amount effectively owed as a result of the application of such clauses. The adjustment of the mortgage shall be effected automatically where the mortgage record mentions the indexing clause.

4. Mortgages securing loans shall not be subject to revocation in bankruptcy where they have been recorded ten days prior to publication of the judgment declaring the bankruptcy. Article 67 of the Bankruptcy Law shall not apply to payments made by the debtor in respect of real estate loans.

5. Upon discharge of each fifth of the original debt, debtors shall be entitled to a proportional reduction of the amount recorded. They shall also be entitled to the partial release of one or more mortgaged properties where documents produced or professional valuations establish that the remaining encumbered properties constitute sufficient security for the amount still owing, in accordance with Article 38.

6. In the case of condominium buildings or complexes for which the individual portions, even if under construction, may be entered in the land registry separately, the debtor, the third-party purchaser, the promise purchaser or the assignee of the mortgaged property or part thereof, the latter three, with sole regard to the portion purchased or promised for purchase or assignment, shall be entitled to a division of the loan into quotas and, accordingly, to a proportionate division of the securing mortgage.

6-bis. The bank shall perform the duties referred to in paragraph 6 within ninety days of the date of receipt of the request to divide the loan into quotas accompanied by appropriate documentation proving the identity of the requesting party, the date of title and the entry in the land registry of the individual portions for which division of the loan has been requested. The time limit shall be extended to one hundred and twenty days where the request regards a loan to be divided into more than fifty quotas.

6-ter. Where the bank does not act by the time limit specified in paragraph 6-bis, the requesting party may petition the president of the court in whose jurisdiction the property is located. Where the president of the court, having heard the parties, grants the petition, he shall designate a notary who, individually or with assistants, shall draft a public instrument dividing the loan signed exclusively by the notary. Repayment of the amounts disbursed in respect of the divided loan quotas shall commence as from the date of the instrument establishing the division or any subsequent date established in the mortgage contract; such circumstance shall be mentioned in the instrument establishing the division.

6-quater. Unless otherwise agreed by the parties, the loan repayment period shall be equal to that originally established in the mortgage contract, and repayment shall be effected at the interest rate determined on the basis of the criteria established for the grace period immediately preceding the start of the loan repayment period. The head of the competent land registry office shall note the division of the loan and the related mortgage, the starting date and duration of the loan repayment period and the interest rate beside the entry in the mortgage record.

7. For the purposes of registration and mortgage charges and the honorarium and fees due to the notary, the mortgage documents and formalities, including notations, shall be considered as a single agreement, a single entry in the property registers and a single certificate. The notary's honorarium shall be reduced by half.

#### **Article 40**

(Early repayment and termination of the contract)

1. Debtors may repay all or part of their debt early by paying the bank a contractually determined all-inclusive early repayment fee. Contracts shall specify the manner of calculating such fee in accordance with the methods laid down by the Credit Committee for the sole purpose of ensuring the transparency of contractual conditions.

2. The bank may cite late payment as cause for the termination of the contract where it has occurred at least seven times, consecutively or otherwise. For this purpose, a payment shall be considered late where it is effected between thirty and one hundred and eighty days after the due date of the instalment.

#### **Article 41**

(Execution)

1. In actions for execution in connection with real estate credit notice of the contractual right of execution shall not be required.

2. The bank may initiate or proceed with actions for execution on properties mortgaged as security for real estate loans even after a declaration of the debtor's bankruptcy. The official receiver may intervene in the action. Where the sum realized from the execution exceeds the quota allotted to the bank, the excess shall be assigned to the bankruptcy.

3. The custodian of the attached properties, the court-appointed administrator or the official receiver shall pay over to the bank, after deducting expenses for administration and taxes, any income from the properties mortgaged in its favour, until satisfaction of its claims.

4. In ordering the sale or assignment of the property, the court shall provide for purchasers or assignees who do not intend to avail themselves of the right to assume the loan contract provided for in paragraph 5 to pay directly to the bank the part of the purchase price corresponding to the bank's total claims and shall set the time limit for such payment. Purchasers or assignees who do not effect payment within the time limit established shall be considered in default pursuant to Article 587 of the Code of Civil Procedure.

5. Purchasers or assignees may, without authorization by the court, assume the loan contract signed by the divested debtor, assuming all the obligations related thereto, provided that within fifteen days of the date of the decree provided for in Article 574 of the Code of Civil Procedure or of the date of the purchase or assignment they pay all the instalments due, accessory costs and expenses to the bank. Where the sale is in more than one lot, each purchaser or assignee shall pay the instalments due, accessory costs and expenses on a pro rata basis.

6. The transfer of the attached property and the assumption of the loan under paragraph 5 shall continue to be subject to issue of the decree provided for in Article 586 of the Code of Civil Procedure.

## TITLE V

### PERSONS OPERATING IN THE FINANCIAL SECTOR

#### Article 106

(General register)

1. The pursuit on a public basis of the activities of acquiring holdings, granting loans in whatever form, providing money transmission services and trading in foreign exchange shall be restricted to financial intermediaries entered in a register kept by the UIC.

2. Financial intermediaries specified in paragraph 1 may only engage in financial activities, without prejudice to any restrictions on such activities established by law.

3. Entry in the register shall be subject to the following conditions:

a) legal form of a società per azioni, società in accomandita per azioni, or società a responsabilità limitata or società cooperativa;

b) corporate purpose in conformity with the provisions of paragraph 2;

c) paid-up share capital of not less than five times the minimum capital required for the formation of a società per azioni;

d) owners of holdings and corporate officers satisfying the requirements established by Articles 108 and 109.

4. The Minister for the Economy and Finance, after consulting the Bank of Italy and the UIC:

a) shall specify the content of the activities referred to in paragraph 1 and the circumstances in which their pursuit shall be considered to involve the public. Consumer credit shall be considered to involve the public even where it is limited to members;

b) may, by way of derogation from the provisions of paragraph 3, where financial intermediaries carry on certain kinds of activity, limit the choice of legal form, allow the adoption of other legal forms and establish different capital requirements.

5. The UIC shall specify conditions for entry in the register and shall notify the Bank of Italy and Consob of entries therein.

6. The UIC may require financial intermediaries to provide figures, information, records and documents and, if necessary, may carry out on-the-spot verifications of such intermediaries, also with the cooperation of other authorities, for the purpose of verifying compliance with the requirements for entry in the register.

7. Persons performing administrative, managerial or control functions in financial intermediaries shall inform the UIC, in the manner it establishes, of similar positions held in other companies or entities of whatever kind.

#### **Article 107**

(Special register)

1. The Minister for the Economy and Finance, after consulting the Bank of Italy and Consob, shall establish objective standards with reference to the activity carried on, the volume of business and the ratio of debt to equity capital, on the basis of which to determine the financial intermediaries which must be entered in a special register kept by the Bank of Italy.

2. The Bank of Italy, in compliance with the resolutions of the Credit Committee, shall issue directions to financial intermediaries entered in the special register concerning capital adequacy and the limitation of risk in its various forms as well as administrative and accounting procedures and internal control mechanisms, as well as disclosure in such areas. Where necessary, the Bank of Italy shall adopt measures concerning individual intermediaries in such matters. With reference to certain kinds of activity the

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Bank of Italy may also issue regulations aimed at ensuring that they are carried on in a regular manner.

2-bis. The directions issued pursuant to paragraph 2 shall permit financial intermediaries entered in the special register to use:

a) credit risk assessments issued by external companies or entities provided for by Article 53, paragraph 2-bis, subparagraph a);

b) internal risk measurement systems for calculating capital requirements, subject to prior authorisation by the Bank of Italy.

3. Intermediaries shall send the Bank of Italy, in the manner and within the time limits it establishes, periodic returns, as well as any other figures or documents it may request.

4. The Bank of Italy may carry out inspections with the power to request the exhibition of documents and records deemed necessary.

4-bis. The Bank of Italy may prohibit intermediaries from undertaking new transactions and order a reduction in activities, in addition to prohibiting the distribution of profits or other elements of capital, for violation of laws or regulations issued pursuant to this decree.

5. Financial intermediaries entered in the special register shall remain entered in the general register; paragraphs 6 and 7 of Article 106 shall not apply to such intermediaries.

6. Financial intermediaries entered in the special register, where they have been authorized to provide investment services or acquired repayable funds in an amount exceeding their capital, shall be subject to the provisions of Title IV, Chapter I, Sections I and III, as well as the provisions of Article

97-bis insofar as they are compatible; Article 57, paragraphs 4 and 5, of Legislative Decree 58 of 24 February 1998 shall apply in place of Article 86, paragraphs 6 and 7, and Article 87, paragraph 1.

7. Article 47 shall apply to intermediaries entered in the register established by paragraph 1 that engage in the granting of loans in whatever form.

#### **Article 108**

(Integrity requirements for members)

1. The Minister for the Economy and Finance, after consulting the Bank of Italy and the UIC, shall establish the integrity requirements for owners of holdings in financial intermediaries in regulations issued under Article 17, paragraph 3, of Law 400 of 23 August 1988.

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2. In the regulations referred to in paragraph 1 the Minister for the Economy and Finance shall establish the thresholds for holdings for such paragraph to apply. For this purpose holdings owned through subsidiary companies, trust companies or nominees shall also be considered.

3. Failure to satisfy such requirements shall preclude the exercise of the voting rights and other rights attaching to holdings in excess of the abovementioned limit that enable the holder to exercise an influence over the company. In the event of non-compliance, resolutions or other acts adopted with the vote or decisive contribution of the holdings envisaged in paragraph 1 may be challenged under the provisions of the Civil Code. Challenge of the resolution shall be obligatory for persons exercising administrative and control functions. The holdings for which voting rights may not be exercised shall be counted for the purposes of establishing the due constitution of the related general meeting.

4. Holdings exceeding the limit referred to in paragraph 2 owned by persons who own holdings in financial intermediaries who do not satisfy the integrity requirements must be divested within the time limits established by the Bank of Italy.

#### **Article 109**

(Experience, integrity and independence requirements for corporate officers)

1. The experience, integrity and independence requirements for persons performing administrative, managerial or control functions in financial intermediaries shall be established by the Minister for the Economy and Finance, after consulting the Bank of Italy and the UIC, in regulations issued under Article 17, paragraph 3, of Law 400 of 23 August 1988.

2. Failure to satisfy the requirements shall result in disqualification from office. The disqualification shall be declared by the board of directors, the supervisory board or the management board within thirty days of the appointment or of its learning of subsequent failure.

3. The regulations referred to in paragraph 1 shall establish the causes requiring temporary suspension from office and its duration. The suspension shall be declared in the manner established by paragraph 2.

4. In the event of inaction by the board of directors, the supervisory board or the management board, the Bank of Italy shall declare the disqualification or suspension from office of persons performing administrative, managerial or control functions in financial intermediaries entered in the special register.

4-bis. In the event of failure to satisfy independence requirements established by the Civil Code or the bylaws of the financial intermediary, the provisions of paragraphs 2 and 4 shall apply.

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**Article 110**

(Notification requirements)

1. Any person who, through subsidiary companies, trust companies, nominees or otherwise, owns a significant holding in a financial intermediary shall notify the financial intermediary and the UIC or, where the financial intermediary is entered in the special register, the Bank of Italy. Variations in holdings shall be notified where they result in holdings exceeding the limit established by the Bank of Italy.
2. The Bank of Italy shall establish the grounds, manner and time limits for the notices referred to in paragraph 1, including cases in which the voting rights are exercisable by or attributed to a person other than the member.
3. The UIC or, where financial intermediaries are entered in the special register, the Bank of Italy may request information from any interested parties for the purpose of verifying compliance with the requirements referred to in paragraph 1.
4. Voting rights or other rights that enable the holder to exercise an influence over the company attaching to holdings for which notice has not been given may not be exercised. In the event of non-compliance, resolutions or other acts adopted with the vote or decisive contribution of the holdings envisaged in paragraph 1 may be challenged under the provisions of the Civil Code. Where financial intermediaries are entered in the special register, the challenge may also be initiated by the Bank of Italy within one hundred and eighty days of the date of the resolution or, where the resolution must be entered in the Company Register, within one hundred and eighty days of such entry or, if it must only be deposited with the office of the Company Register, within one hundred and eighty days of the date of such deposit. The holdings for which voting rights may not be exercised shall be counted for the purpose of establishing the due constitution of the related general meeting.

**Article 111**

(Deletion from the general register)

1. The Minister for the Economy and Finance, acting on a proposal from the UIC, shall order deletion from the general register:
  - a) for non-compliance with the provisions of Article 106, paragraph 2;
  - b) where one of the conditions referred to in Article 106, paragraph 3, subparagraphs a), b) and c), is no longer met;
  - c) in the event of serious violations of laws or of regulations adopted under this Legislative Decree.

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2. The Bank of Italy, Consob or the UIC within the scope of their respective authority may propose deletion from the register. In the case of financial intermediaries entered in the special register, deletion from the general register shall be ordered only after deletion from the special register by the Bank of Italy.

3. The order of deletion from the register shall be issued, except as a matter of urgency, following notification of the charges to the financial intermediary concerned and consideration of briefs to be submitted within thirty days. Such notification shall be effected by the UIC or, where financial intermediaries are entered in the special register, by the Bank of Italy.

4. Within sixty days of notification of the deletion order the administrative body shall convene a meeting of the members to modify the corporate purpose, take other action pursuant to the order or adopt a resolution for the voluntary liquidation of the company.

5. This Article shall not apply in the cases provided for in Article 107, paragraph 6.

#### **Article 112**

(Notifications by the board of statutory auditors)

1. Boards of statutory auditors shall inform the UIC or, where intermediaries are entered in the special register, the Bank of Italy, without delay of every act or fact they come to know of in the performance of their duties that may constitute an irregularity in the management of financial intermediaries or a violation of the provisions governing financial intermediation. To this end, the bylaws of intermediaries, regardless of the administrative and control system adopted, shall assign the body responsible for control functions the necessary duties and powers.

2. [Repealed]

#### **Article 113**

(Persons operating on a non-public basis)

1. The pursuit primarily on a non-public basis of activities referred to in Article 106, paragraph 1, shall be restricted to persons entered in a special section of the general register. The Minister for the Economy and Finance shall issue regulations implementing this paragraph.

2. The provisions of Article 108, paragraphs 1, 2 and 3, and those of Article 109 referring to integrity and independence requirements shall apply.

**Article 114**

(Final provisions)

1. Without prejudice to Article 18, the Minister for the Economy and Finance shall regulate the pursuit in Italy of activities referred to in Article 106, paragraph 1, by persons whose registered office is located in a foreign country.

2. The provisions of this Title shall not apply to persons already subject by law to substantially equivalent forms of supervision of their financial activities. The Minister for the Economy and Finance, after consulting the Bank of Italy and the UIC, shall verify whether the conditions for exemption exist.

3. [Repealed]

## 16 Latvia

Text consolidated by Tulkošanas un terminoloģijas centrs (Translation and Terminology Centre) with amending laws of: 7 March 1996; 30 May 1996; 17 October 1996; 30 October 1997; 21 May 1998; 1 June 2000; 11 April 2002; 24 October 2002; 8 May 2003; 20 November 2003; 20 November 2003-2; 11 December 2003; 27 May 2004; 28 October 2004; 26 May 2005; 9 June 2005; 22 June 2006; 22 February 2007.

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The Saeima<sup>1</sup> has adopted and the President has proclaimed the following law:

### **Credit Institution Law**

#### **Chapter I**

#### **General Provisions**

#### **Section 1.**

The following terms are used in this Law:

1) credit institution:

a) a bank – a capital company, which accepts deposits and other repayable funds from an unlimited circle of clients, issues credits in its own name and provides other financial services,

b) electronic money institution – a capital company, which issues and services electronic money and which is not a bank;

2) branch of a credit institution – a territorially or otherwise separated structural unit of a credit institution which does not have the status of a legal person and which acts in the name of the credit institution;

3) representative office – a structural unit of a credit institution which is located in another state and represents the interests of the credit institution, but does not engage in commercial activities;

4) financial services:

a) attraction of deposits and other repayable funds;

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- b) crediting;
  - b1) financial leasing;
  - c) performance of cash and non-cash payments;
  - d) issuance and servicing of non-cash means of payment (all means of payment, except bank notes and coins in any currency);
  - e) trading for own accounts or for accounts of customer with currency or financial instruments;
  - f) fiduciary operations (trust);
  - g) provision of investment services and non-core investment services;
  - h) issuance of guarantees and other binding obligations, which create an obligation to be liable to the creditor for the debt of a third person;
  - i) safekeeping of valuables;
  - j) [20 November 2003]
  - k) consultations with clients regarding issues of a financial nature;
  - l) [20 November 2003]
  - m) provision of such information as is related to the settlement of the debt obligations of a client; and
  - n) other transactions, which are similar in nature to the above-mentioned financial services;
- 5) credit – a compensatory transaction in which a bank transfers, on the basis of a written contract, money or other things to a client in ownership and which imposes a duty for the client to return the money or other things to the bank within a specified time;
- 6) deposit – keeping of monetary funds in an account of a bank for a specific or an unlimited period, with or without interest;
- 7) own funds – capital, reserves and obligations elements reflected in the audited financial statement of a credit institution, which are freely accessible to the credit institution with the usual operational risks associated, but not yet identified possible covering of losses;

20) financial institution – a commercial company which has been founded in order to provide one or more financial services (except the attraction of deposits and other repayable funds), or in order to acquire holdings in the equity capital of other commercial companies;

## **Section 2.**

(1) This Law determines the legal status of credit institutions, regulates their operations, liability and supervision, as well as determining the rights, duties and liability of those persons to whom the requirements of this Law are related.

Text consolidated by Tulkošanas un terminoloģijas centrs (Translation and Terminology Centre) with amending laws of: 15 April 1999; 1 June 2000; 16 May 2002; 27 March 2003.

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The Saeima<sup>1</sup> has adopted and the President has proclaimed the following Law:

## **On Insurance Companies and Supervision Thereof**

### **Chapter I**

#### **General Provisions**

#### **Section 7.**

(1) An insurer shall:

1) perform insurance in classes of insurance specified in licences issued by the Finance and Capital Market Commission;

2) provide intermediary services to another insurer, Member State insurer and re-insurer. Intermediary services may be provided to a non-Member State insurer in accordance with the provisions of Paragraph three of this Section; and

3) carry out entrepreneurial activity that is directly related to insurance.

(2) An insurer may not:

1) carry out other type of commercial activity except for cases provided for in law and Cabinet regulations;

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- 2) disseminate false, misleading advertising regarding its activity;
  - 3) disclose information acquired during the course of the insurance regarding the insured and policyholder, except in cases provided for in this Law and other laws. If the information is disclosed in cases provided for in laws, the insurer shall not be liable for the consequences of the disclosure of information.

(3) An insurer may provide intermediary services to a non-Member State insurer only in classes of insurance determined as compulsory in non-Member States, if:

- 1) an Insured Protection Fund is established for the relevant class from which an insurance compensation shall be paid in case of insolvency of the non-Member State insurer; and

- 2) the Finance and Capital Market Commission has agreed with the non-Member State insurance supervisory authority regarding co-operation and exchange of necessary information for the performance of the supervision function.

[1 June 2000; 16 May 2002; 27 March 2003]

#### **Section 42.**

(1) To the technical reserve cover may be applied only the following assets:

- 1) debentures and other debt securities which certify the obligations of the issuer to the holder of the security (hereinafter – debt security);

- 2) stock and other capital securities which certify a holding in the capital of the issuer (hereinafter – capital securities);

- 3) investment fund investment certificates or securities equivalent to them;

- 4) loans secured with mortgages;

- 5) investments in immovable property (land, buildings);

- 6) investments in credit institutions; and

- 7) debts of policy holder debtors from direct insurance operations.

(2) The assets referred to in Paragraph one of this Section may be applied to the technical reserve cover only if the following conditions are observed:

- 1) the assets shall be assessed net of their acquisition debt;

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- 2) third party debts or claims against third parties may be utilised only after subtracting all of the amount which the insurer owes to the third party;
  - 3) the payment time period has not been delayed by more than three months. The referred to condition applies to the debts of policy holder debtors from direct insurance operations;
  - 4) the credit institution has obtained a licence in the Republic of Latvia, the Republic of Estonia, the Republic of Lithuania, Member States or OECD member state, and it is permitted to provide financial services in the state which issued the licence; and
  - 5) the debt and capital securities are included in the official list or a list equivalent to this of stock exchanges registered in the Republic of Latvia, the Republic of Estonia, the Republic of Lithuania, the official list of a stock exchange registered in the Member States or an OECD member state, and if such stock exchanges are also full members of the International Federation of Stock Exchanges. This restriction shall not apply to debt securities of the Republic of Latvia, the Republic of Estonia, the Republic of Lithuania, Member State or OECD member state, which were emitted by the State and local governments.

[1 June 2000; 27 March 2003]

Text consolidated by Tulkošanas un terminoloģijas centrs (Translation and Terminology Centre) with amending laws of: 22 November 2001.

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The Saeima<sup>1</sup> has adopted and the President has proclaimed the following Law:

## **Consumer Rights Protection Law**

### **Section 8. Consumer Credit**

(1) In accordance with a consumer credit contract, the person who credits the consumer shall grant or promise to grant credit to the consumer. Such credit shall be executed as deferred payment, loan or other financial agreement.

(2) A consumer credit contract shall be entered into in writing, and the consumer shall be given one copy of such contract. The payment for goods or services shall be specified in cash. It is prohibited to specify transferable securities as a means of settlement in a consumer credit contract.

(3) A consumer shall have the right to perform his or her obligations prior to the time period specified in the consumer credit contract. In such case, the consumer shall have the right to fair reduction of the total cost of credit.

(4) The information to be included in a consumer credit contract, the methods for calculation of the annual interest rate, and fair reduction of the total cost of credit shall be regulated by Cabinet Regulations.

In force from 13.10.1998. Published in the newspaper Latvijas Vēstnesis No. 280/281 on 29.09.98. With amendments published until 6 November 2002.

Amendments 01.06.2000 (L.V., No. 223/225, 14 June 2000, L.V., Ziņotājs, No. 13, 2000) 05.07.2001, (L.V., No. 110, 20 July 2001, Ziņotājs, No.176, 2001) 24.10.2002, (L.V., No.161, 6 November 2002 28.09.2006 (L.V. No. 162, 11 October 2006)

The Saeima has adopted and the President has proclaimed the following Law:

## **LAW ON MORTGAGE BONDS**

### Article 1

The following terms are used in this Law:

1) mortgage bond – a security issued by a bank and secured by mortgage loans or loans secured by the Latvian Government and local government guarantees and other cover, as stipulated by this Law;

### Article 5

A bank has the right to issue mortgage bonds if it complies with the following conditions:

- 1) [28 September 2006]
- 2) it is permitted to provide all the banking services specified in Article 1, Clause 4 of the Credit Institution Law without any restrictions imposed by the Financial and Capital Market Commission; and
- 3) it has submitted to the Financial and Capital Market Commission rules approved by the bank's supervisory board regarding the valuation of the real estate to be mortgaged and the management of the mortgage bond cover register.

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## 17 Lithuania

We reproduce the relevant sections of the Lithuania Law that provides a framework for mortgage lending by non-credit institutions. The following are official translations by the Office of the Seimas (Parliament) Republic of Lithuania. The complete official laws are available at [www.lrs.lt](http://www.lrs.lt)

### Republic of Lithuania

#### LAW ON FINANCIAL INSTITUTIONS

10 September 2002 No IX-1068, Vilnius

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1. Purpose of the Law

1. This Law shall specify the services which are considered financial services, the requirements set for the founders, participants and heads of the financial undertakings and credit institutions engaged in the provision of financial services, the rights and duties thereof, conditions of, procedure for and peculiarities of the establishment, pursuit of business, termination and restructuring of financial institutions as well as conditions of, procedure for and peculiarities of supervision of the activities of the financial institutions providing licensed financial services.

2. This Law shall be applied to all financial institutions – legal persons of the Republic of Lithuania and the establishments of financial institutions of foreign states operating in the Republic of Lithuania and providing in the Republic of Lithuania the financial services referred to in Article 3 of this Law, unless international treaties of the Republic of Lithuania provide otherwise.

##### Article 2. Definitions

7. “Financial undertaking” shall mean an undertaking of the Republic of Lithuania or an establishment of a foreign state’s undertaking operating in the Republic of Lithuania in accordance with the procedure set forth by the laws regulating the provision of financial services and activities of financial institutions and engaged in the provision of one or more financial services referred to in subparagraphs 2, 3 and 5-17 of paragraph 1 of Article 3 of this Law.

16. "Deposit" shall mean a positive balance of funds in an account opened by a depositor in a credit institution under a bank deposit or bank account agreement.

17. "Receipt of deposits and other repayable funds from non-professional participants of the market" shall mean the receipt of monetary funds from the persons not identified in advance for the purposes of management, use and/or disposal thereof subject to repayment with or without interest. The issuance of payment cards or other means which may be used as a means of payment for the purchase of goods or services only from the issuer of these cards or other means shall not be considered the receipt of deposits or other repayable funds from non-professional participants of the market.

23. "Credit institution" shall mean an undertaking or institution of the Republic of Lithuania or an establishment of a foreign state's undertaking operating in the Republic of Lithuania which are authorised to engage in receiving of deposits and other repayable funds from non-professional participants of the market and in lending thereof and engage therein, have the right to provide a part of or all other services referred to in paragraph 1 of Article 3 of this Law and assume the risk and liability related thereto.

37. "Lending" shall mean:

- 1) transfer of a sum of money to a debtor under a loan or crediting agreement;
- 2) purchase, advance payment (including factoring and forfeiting) or discounting of a pecuniary claim arising from an irrevocable payment obligation, with or without the taking of lending risk, irrespective of a person into whose accounting these claims are included and who collects monetary funds according to the claims.

42. "Pursuit of the provision of financial services" shall mean:

- 1) declaration of the provision of financial services in the documents regulating economic activities (founding documents, licences, patents, etc.);
- 2) the activities mainly consisting of the provision of financial services.

### **Article 3. Financial services**

1. Financial services shall be:

- 1) receipt of deposits and other repayable funds;
- 2) lending (including mortgage loans);
- 3) financial lease (leasing);
- 4) money transfer;

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- 5) issuance of payment cards and other means of payment and/or carrying out of operations therewith;
  - 6) provision of financial assurances and financial guarantees;
  - 7) conclusion of transactions, at one's own or a client's expense, on the money market instruments (cheques, bills, deposit certificates, etc.), a foreign currency, financial future and option transactions, the establishment of a currency exchange rate and interest rate, public securities and precious metals;
  - 8) investment services;
  - 9) financial mediation (activities of an agent);
  - 10) administering of money;
  - 11) provision of information as well as advice on issues of the granting and payment of a credit;
  - 12) lease of safes;
  - 13) currency exchange (in cash);
  - 14) settlement of payments between credit institutions (clearing);
  - 15) storage and administering of monetary funds;
  - 16) provision of advice to undertakings on the capital structure, production strategy and related issues as well as the advice and services related to reorganisation, restructuring and purchase of the undertakings;
  - 17) provision of the services related to securities emissions;
  - 18) issuance and administering of electronic money;
  - 19) administration of investment funds or investment companies with variable capital.
2. Licensed financial services shall be defined by laws of the Republic of Lithuania.
  3. It shall be prohibited to provide licensed financial services without a licence.
  4. Only a credit institution shall have the exclusive right to:
    - 1) receive deposits and other repayable funds from non-professional participants of the market;
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- 2) borrow from non-professional participants of the market in excess of the size of the equity capital;
  - 3) carry out money transfers;
  - 4) issue and administer electronic money.
5. Financial institutions may provide financial services in a foreign currency, where provided for by laws of the Republic of Lithuania.

#### **Article 4. Financial Institution**

1. A financial institution shall be a financial undertaking or a credit institution which meets both requirements set in paragraph 42 of Article 2 of this Law and engages in the provision of at least one of the financial services referred to in Article 3 of this Law.

2. (Repealed as of 1 May 2004)

3. The activities of a financial institution which is engaged in the provision of licensed financial services shall be supervised by the supervisory institutions specified in the laws of the Republic of Lithuania regulating pursuit of the activities of such institutions.

4. Financial institutions shall act in compliance with the Constitution of the Republic of Lithuania, this Law, the laws of the Republic of Lithuania regulating the provision of financial services and pursuit of the activities of financial institutions as well as a legal person of an appropriate legal form on the basis whereof a financial institution is established and operates and other legal acts.

5. Where the laws of the Republic of Lithuania regulating the provision of financial services and pursuit of the activities of financial institutions lay down other provisions than those laid down by this Law, the provisions of the laws regulating the provision of financial services and pursuit of the activities of financial institutions shall be applied.

#### **REPUBLIC OF LITHUANIA**

#### **LAW ON THE BANK OF LITHUANIA**

**1 December 1994 No. I-678, Vilnius (As last amended on 25 April 2006 – No. X-569)**

#### **Article 8. Functions and Activities of the Bank of Lithuania**

1. Implementing its primary objective, the Bank of Lithuania shall perform the following functions:

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- 1) issue the currency of the Republic of Lithuania;
  - 2) formulate and implement monetary policy;
  - 3) determine the Litas exchange rate regulation system and announce the official exchange rate of the Litas;
  - 4) manage, use and dispose of foreign reserves of the Bank of Lithuania;
  - 5) act as a State Treasury agent;
  - 6) in the manner and cases established by laws and other legal acts, issue and revoke licenses for credit institutions of the Republic of Lithuania as well as branches of credit institutions of foreign states, and supervise the activities thereof; it shall also perform other functions related to the activities of credit institutions, established by laws;
  - 7) establish principles and procedures for financial accounting and reporting of credit institutions of the Republic of Lithuania and branches of credit institutions of foreign states operating in the Republic of Lithuania;
  - 8) encourage stable and efficient operation of payment and securities settlement systems; and
  - 9) collect monetary, banking and balance of payments statistics, as well as data on Lithuanian financial and related statistics, implement standards on the collection, reporting and dissemination of the said statistics and compile the balance of payments of the Republic of Lithuania.

2. The Bank of Lithuania shall carry out activities necessary for the implementation of the functions laid down in Paragraph 1 of this Article and for the development and maintenance of the infrastructure needed for their implementation.

Article 8 on the date with effect from which the Council of the European Union abrogates the derogation of the Republic of Lithuania according to the procedure laid down in Article 122 (2) of the Treaty establishing the European Community:

#### **Article 8. Functions and Activities of the Bank of Lithuania**

1. In implementing the provisions of the Treaty establishing the European Community and acting as an integral part of the European System of Central Banks, the Bank of Lithuania shall perform the following functions:

- 1) issue banknotes and perform other related activities;
- 2) implement monetary policy;

- 
- 3) manage, use and dispose of the official foreign reserves of the Bank of Lithuania (hereinafter – foreign reserves);
  - 4) encourage stable and efficient operation of payment and securities settlement systems;
  - 5) collect statistical information necessary for the performance of the tasks of the European System of Central Banks from state and municipal institutions and economic entities.

2. In addition, the Bank of Lithuania shall:

- 1) act as a State Treasury agent according to the agreement with the Ministry of Finance;
- 2) in the manner and cases established by laws and other legal acts, issue and revoke licenses of credit institutions of the Republic of Lithuania as well as branches of credit institutions of foreign states, and supervise the activities thereof; it shall also perform other functions related to the activities of credit institutions, established by laws;
- 3) establish principles for financial accounting and reporting of credit institutions of the Republic of Lithuania and branches of credit institutions of foreign states operating in the Republic of Lithuania;
- 4) collect statistical information necessary for the performance of the functions of the Bank of Lithuania that are not related to the activities of the European System of Central Banks from state and municipal institutions and economic entities, set the procedures for the collection, compilation and dissemination of the said statistics and compile the balance of payments, the international investment position and financial accounts of the Republic of Lithuania;
- 5) without prejudice to the requirements derived from its participation in the European System of Central Banks and notably those resulting from operations on behalf of public entities, be able to grant loans secured by adequate collateral for the Bank of Lithuania, to credit institutions registered in the Republic of Lithuania in accordance with the procedure, conditions and terms established by the Bank of Lithuania.
- 6) issue coins in compliance with the requirements of the Treaty establishing the European Community and perform other related activities.

3. The Bank of Lithuania shall carry out the activities necessary for the implementation of the functions laid down in Paragraphs 1 and 2 of this Article and for the development and maintenance of the infrastructure needed for their implementation.

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**Official translation****REPUBLIC OF LITHUANIA****LAW ON INSURANCE****18 September 2003, No.IX-1737, Vilnius****Article 3. Insurance Activity**

1. The following shall have the right to engage in insurance activity in the Republic of Lithuania:

1) insurance undertakings - public companies, private companies, and European companies (*Societas Europaea*) established in the manner prescribed by laws of the Republic of Lithuania and which have obtained a licence to engage in insurance activity according to the procedures set out in this Law;

2) insurance undertakings of other European Union Member States, exercising the right of establishment and/or the right to provide services.

3) branches of insurance undertakings of foreign countries established in the Republic of Lithuania having a licence to carry on insurance activity as branches according to the procedure prescribed by this Law.

2. The entities referred to in paragraph 1 of this Article may not engage in the Republic of Lithuania in any other commercial economic activity other than insurance, reinsurance and related activity - management of insured and reinsured events, insurance and reinsurance mediation, consulting on questions relating to insurance and reinsurance, mediation in concluding pension accumulation contracts save supplementary voluntary accumulation, training insurance and reinsurance specialists, in-service training, as well as leasing of immovable property and valuation of property to be insured.

3. Persons referred to in paragraph 1 of this Article may engage in insurance-related insurance mediation activity only as dependent insurance intermediaries.

4. All other persons not named in this Law shall be prohibited from carrying on insurance activity in the Republic of Lithuania, except in the cases established by the Supervisory Commission, where the insurance coverage by a branch of a non-member- country insurance undertaking established in the Republic of Lithuania or a branch of an insurance undertaking of another Member State of the European Union is not recognised due to compulsory insurance in a non-member country.

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**Article 35. Assets Covering Technical Provisions**

1. By accumulation of assets covering insurance technical provisions undertakings have to take into consideration the type of business carried on by a undertaking and aim to guarantee safety, liquidity, diversification, time matching and profitability of investment.

2. Insurance technical provisions must be covered by the assets that are expressed in the currency which determines the undertaking's obligations that are set in the insurance and reinsurance contracts, following currency matching rules set by the Supervisory Commission.

3. Only the assets of the groups listed below may cover insurance technical provisions:

- 1) securities of the Government, the central bank and municipality;
- 2) real estate;
- 3) term deposits at banks;
- 4) loans guaranteed by immovable property;
- 5) mortgage bonds;
- 6) shares admitted to the official listing on the stock exchange or on a trading list of a regulated market;
- 7) shares not admitted to the official listing on the stock exchange or on a trading list of a regulated market, provided that there is an authorisation from the Supervisory Commission;
- 8) debentures of undertakings admitted to the official listing on the stock exchange or on a trading list of a regulated market;
- 9) debentures of undertakings not admitted to the official listing on the stock exchange or on a trading list of a regulated market, provided that there is an authorisation from the Supervisory Commission;
- 10) shares of variable capital investment companies and investment units of investment funds;
- 11) derivative financial instruments, provided that there is a authorisation from the Supervisory Commission;
- 12) other investments set by the Supervisory Commission, provided that an authorisation from the Supervisory Commission has been obtained in the cases set by the Supervisory Commission;

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- 13) cash in the settlement account and on hand.
4. The portion of a premium that has not been required to be paid as well as the reinsurers' share of technical provisions may be covered by:
- 1) insurance and reinsurance premiums that have not been required to be paid;
  - 2) reinsurers' debts;
  - 3) other assets specified in paragraph 3 of this Article.
5. The Supervisory Commission shall have the right to limit, for a motivated cause, the investments covering technical provisions:
- 1) into shares and debentures of closely linked undertakings;
  - 2) into shares and debentures of undertakings, whose shares have been acquired by members of the supervisory board, the board or the head of administration of an insurance undertaking or in whose supervisory or management bodies members of the supervisory board and the board of the insurance undertaking hold positions;
  - 3) which may undermine the financial stability of an insurance undertaking or have any other negative impact on the activity of an insurance undertaking, the interests of the policyholders, insured, beneficiaries and/or injured party.
6. The Supervisory Commission shall determine the procedure for covering technical provisions with assets, its conditions, limitations and currency matching rules.
7. An insurance undertaking must administer the list of assets covering insurance technical provisions following the procedure set out by the Supervisory Commission. The court when applying temporary security measures, or any other state institutions applying sanctions related to the assets registered in this list, must obtain an opinion of the Supervisory Commission on the potential consequences of temporary security measures or sanctions for the financial position of the insurance undertaking as well for the interests of the policyholders, insured, beneficiaries and injured party. The Supervisory Commission must furnish its opinion conclusion to the court within 24 hours.

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## Law on Mortgage Bonds

### CHAPTER ONE

#### GENERAL PROVISIONS

##### Article 1. Purpose of the Law

This Law shall define the peculiarities relating to issuance, trading, redemption of mortgage bonds, peculiarities of granting mortgages, as well as requirements for credit institutions, issuing mortgage bonds and granting mortgages.

##### Article 2. Main definitions of this Law

1. "Mortgage value" shall mean ...
2. "Mortgage bonds" shall mean debt securities of a credit institution, the redemption thereof is secured by the pledge of the claim rights of the issuing credit institution against mortgages as well as the pledge of other assets.
3. "Mortgages" shall mean loans, which are refinanced by the credit institution by using funds received from sale of mortgage bonds, or extended by using temporarily free resources, the claim rights on which are pledged to secure redemption of mortgage bonds.
4. "Other additional assets" shall mean ...
5. "Loans" shall mean loans extended by a credit institution from credit resources, the repayment of which is secured by the mortgage of real estate.
6. "Credit institution" shall mean an enterprise or institution of the Republic of Lithuania, or a branch of an enterprise of a foreign state operating in the Republic of Lithuania, which has a license and/or authorisation to engage and engages in activities of a credit institution and issues mortgage bonds, extends mortgages, and meets the requirements established in this Law.
7. "Temporary free resources" shall mean resources received from repayment of mortgages and interest on these mortgages by beneficiaries before their use for redemption of mortgage bonds and payment of interest on mortgage bonds or granting mortgages.

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## 18 Luxembourg

### Law of 5 April 1993 on the financial sector, as amended

(Unofficial English translation by the CSSF)

#### Art. 1. Definitions

(Law of 13 July 2007)

Unless otherwise prescribed, for the purposes of this law:

“credit institution” means a credit institution as defined in article 4(1) of Directive 2006/48/EC. In Luxembourg, this refers to legal persons whose activities consist in receiving from the public deposits or other repayable funds and in granting credits for their own account, as well as persons considered as credit institutions under Part I, Chapter 1 of this law. The persons whose activities consist in receiving deposits or other repayable funds from the public and in granting credits for their own account may be called either credit institutions or banks;

“financial institution” means an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annexe I;

“professionals of the financial sector” means credit institutions and the other PFS;

“PFS” means the persons referred to in Part I, Chapter 2, excluding the persons referred to in article 13(2);

### Chapter I: Authorisation of banks or credit institutions established under Luxembourg law

#### Section 1: Provisions of general application

##### Art. 2 Authorisation requirement

(1) No “...”<sup>2</sup> person established under Luxembourg law may carry on the business of a credit institution without holding a written authorisation from the Minister responsible for the “*Commission de surveillance du secteur financier*”<sup>3</sup> [Commission for Supervision of the Financial Sector].

(2) No person may be authorised to carry on the business of a credit institution either through another person or as an intermediary for the carrying-on of such business.

(3) No person other than a credit institution may carry on the business of taking deposits or other repayable funds from the public. This prohibition shall not apply to the taking of deposits or other funds repayable by the State, by local authorities or by public international bodies of which one or more "Member States"<sup>4</sup> are members, or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

"Section 3: Specific provisions relating to banks issuing mortgage bonds"

#### **Art. 12-1 Definition - Principal activity**

(Law of 21 November 1997)

"(1) Mortgage banks are credit institutions having as their main object the following activities:

(a) the granting of loans secured by rights in rem in immoveable property or by charges on real property, and the issuing on that basis of debt instruments secured by those rights or charges, such instruments being known as mortgage bonds;

(b) the granting of loans secured by bonds, or by other similar debt instruments fulfilling the requirements set out in paragraph 2, which are in turn coupled with the guarantees indicated in subparagraph (a) above, and the issuing on that basis of debt instruments covered by those guarantees, such instruments being known as mortgage bonds;

(c) the granting of loans to public entities and the issuing of debt instruments secured by the debt entitlements resulting from those loans, such instruments being known as mortgage bonds;

(d) the granting of loans secured by:

- public entities,

- bonds issued by public entities,

- bonds fulfilling the requirements set out in paragraph 2 which are issued by credit institutions established in any State which is a Member State of the "European Union", a Contracting Party to the Agreement on the European Economic Area or a Member country of the Organisation for Economic Cooperation and Development (OECD), such bonds being in turn secured by debts owed to public entities, and the issuing on that basis of debt instruments secured by the debt entitlements resulting from those loans, such instruments being known as mortgage bonds.

(2) Loans granted in accordance with the foregoing provisions may be granted in any form, including in the form of the acquisition of bonds or other similar debt instruments fulfilling the criteria laid down by “article 43(4) of the law of 20 December 2002 relating to undertakings for collective investment”<sup>22</sup>. Such bonds or other similar debt instruments must be issued by credit institutions or public entities as defined in paragraph 4 below and must be coupled with the guarantees mentioned in subparagraphs (a) to (d) of paragraph 1 above.

(3) Bonds issued in accordance with the provisions of subparagraphs (a) and (b) of paragraph 1 are known as “mortgage bonds” (*lettres de gage hypothécaires*). Those issued in accordance with the provisions of subparagraphs (c) and (d) of paragraph 1 are known as “public-sector bonds” (*lettres de gage publiques*).

(4) (a) For the purposes of this section, “rights in rem in immovable property” shall mean rights in property and the separate attributes thereof, surface rights, rights in rem acquired on the acquisition of a long lease and all other similar rights in rem in immovable property provided for by the laws of States which are Member States of the “European Union”<sup>23</sup>, Contracting Parties to the Agreement on the European Economic Area or Member countries of the OECD, conferring any right over immovable property located within any such State that is capable of being asserted against third parties.

(b) For the purposes of this section, “charges on real property” shall mean ordinary mortgages (*hypothèques*), mortgages in which the mortgagee takes possession and receives the produce, rents and profits (*antichrèses*) and all other similar charges on real property provided for by the laws of States which are Member States of the “European Union”<sup>24</sup>, Contracting Parties to the Agreement on the European Economic Area or Member countries of the OECD, conferring any charge over immovable property located within any such State that is capable of being asserted against third parties.

In order to meet legal requirements, the rights in rem in immovable property and charges on real property referred to in subparagraphs (a) and (b) above must be such as to authorise the holder thereof to enforce those rights and charges with a view to obtaining payment of all debts secured thereby, without any possibility of such enforcement being impeded by any third-party rights, whether of a public or private nature.

(c) For the purposes of this section, “public entities” shall mean States which are Member States of the “European Union”<sup>25</sup>, Contracting Parties to the Agreement on the European Economic Area, Member countries of the OECD, their institutions or bodies, central administrations, regional or local authorities, other public authorities and other public bodies or undertakings of those States.

(5) The provisions of Articles 86 and 94-8 of the Law of 10 August 1915 on commercial companies, as amended, shall apply to mortgage bonds.

(6) The form taken by mortgage bonds may be prescribed by Grand-Ducal regulation."

**"Chapter 2: Authorisation of other professionals of the financial sector.  
"..."**

### **Section 1: General provisions"**

#### **Art. 13 Scope**

"(1) This Chapter applies to any natural person established in Luxembourg for professional reasons, as well as to any legal person governed by Luxembourg law whose regular occupation or business is to exercise a financial sector activity or one of the connected or ancillary activities referred to in sub-section 3 of section 2 of this Chapter on a professional basis, save for the persons referred to in paragraph (2) of this article. The abbreviation "PFS" used in and by reference to this Law, denotes exclusively professionals of the financial sector as thus defined, to the exclusion of the professionals of the financial sector covered by paragraph (2) of this article.

Such persons shall be known as investment firms where their regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

(2) This chapter shall not apply to:

(a) credit institutions as referred to in the preceding chapter;

(b) insurance or reinsurance undertakings governed by the law of 6 December 1991 on the insurance sector, as amended;

(c) persons who provide investment services exclusively for their parent undertaking, for their subsidiaries or for another subsidiary of their parent undertaking;

(d) persons who provide a service under this chapter other than an investment service, exclusively to one or more undertakings forming part of the same group as the undertaking providing the service, unless otherwise provided;

(e) persons who provide a service under this chapter where that service is provided in an incidental manner in the course of a professional activity and if the latter is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

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- (f) persons who do not provide any investment services or activities other than dealing on own account unless they are market makers or deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;
- (g) persons who provide investment services consisting exclusively in the administration of employee-participation schemes;
- (h) persons who provide investment services which only involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertaking, for their subsidiaries or for another subsidiary of their parent undertaking;
- (i) the members of the European System of Central Banks nor to other national bodies performing similar functions, nor to other public bodies charged with or intervening in the management of the public debt;
- (j) undertakings for collective investment governed by the law of 30 March 1988 relating to undertakings for collective investment, the law of 13 February 2007 on specialised investment funds or the law of 20 December 2002 relating to undertakings for collective investment, as amended, nor to their depositaries, managers and advisers;
- (k) pension funds governed by the law of 13 July 2005 on institutions for occupational retirement provision in the form of sepcav or assep nor to pension funds subject to the supervision of the Commissariat aux Assurances, nor to their depositaries, asset managers and liabilities managers;
- (l) persons dealing on own account in financial instruments, or providing investment services in commodity derivatives or derivative contracts included in Annexe II, Section B (10) to the clients of their main business, provided this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of Sections A and C of Annexe II or the exercise of one or more of the activities listed in Annexe I;
- (m) persons providing investment advice in the course of providing another professional activity not covered by sub-sections 1 and 2 of this chapter provided that the provision of such advice is not specifically remunerated;
- (n) persons whose main business consists of dealing on own account in commodities and/or commodity derivatives. This exemption does not apply where persons dealing on own account in commodities and/or commodity derivatives are part of a group the main business of which is the provision of other investment services listed in Sections A and C of Annexe II or the exercise of one or more activities listed in Annexe I;
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(o) firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the account of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets;

(p) undertakings within the meaning of the law of 15 June 2004 relating to the investment company in risk capital (SICAR), nor to their depositaries and managers;

(q) securitisation undertakings, nor to fiduciary-representatives having dealings with such undertakings;

(r) other persons carrying on any activity the taking up and pursuit of which are governed by special laws.

(3) The rights conferred by Directive 2004/39/EC on credit institutions and investment firms shall not extend to the provision of services as counterparty in transactions carried out by public bodies dealing with public debt or by members of the European System of Central Banks performing their tasks as provided for by the Treaty and the Statute of the European System of Central Banks and of the European Central Bank or performing equivalent functions under national provisions."

#### **Art. 14 Authorisation requirement**

(1) (Law of 13 July 2007) "No person may have as a regular occupation or business an activity of the financial sector nor a connected or complementary activity of the financial sector within the meaning of sub-section 3 of section 2 of this chapter without holding a written authorisation of the Minister responsible for the CSSF."

(2) (Law of 12 March 1998) "No person may be authorised to carry on any financial sector business either through another person or as an intermediary for the carrying-on of such business."

#### **Art. 15 Authorisation procedure**

(Law of 12 March 1998)

"(1) Authorisation shall be granted upon written application, following an investigation by the CSSF to establish whether the conditions laid down by this Law are fulfilled. "Where the services offered or activities performed by PFS also concern insurance products, the authorisation is granted upon written application and after investigation by the CSSF and by the

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Commissariat aux Assurances on the conditions required under this law and the conditions required under the law of 6 December 1991 on the insurance sector, as amended.”

(2) The authorisation shall be granted for an unlimited period of time.

Where authorisation is granted, the PFS may immediately start to carry on business.

(3) (Law of 13 July 2007) “The authorisation of an investment firm shall specify the investment services or activities listed in Section A of Annexe II which it is authorised to provide. In addition, the authorisation may cover one or more ancillary services set out in Section C of Annexe II. The authorisation as investment firm may not be granted where only ancillary services are provided.”

(4) “The CSSF shall consult the competent authorities of the Member States responsible for the supervision of the investment firms, credit institutions, insurance undertakings or UCITS management companies, prior to granting authorisation to a credit institution which is:

- a subsidiary of an investment firm, credit institution, insurance undertaking or UCITS management company authorised in the European Union, or

- a subsidiary of the parent undertaking of an investment firm, credit institution, insurance undertaking or UCITS management company authorised in the European Union, or

- controlled by the same persons, whether natural or legal, as an investment firm, a credit institution, an insurance undertaking or a UCITS management company authorised in the European Union.”

(Law of 5 November 2006) “The CSSF consults these competent authorities in particular when assessing the suitability of the shareholders and the reputation and professional qualification of the directors of the investment firm requesting the authorisation, when the shareholder is one of the institutions referred to “in the previous sub-paragraph” or when the directors involved in the management of the investment firm requesting authorisation also take part in the management of one of the institutions referred to “in the previous sub-paragraph”. For this purpose, the CSSF and the other relevant competent authorities shall inform each other of any useful information relating to the granting of the authorisation and subsequently for the assessment of the ongoing compliance with operating conditions.”

(5) The application for authorisation must be accompanied by all such information as may be needed for the assessment thereof and by a programme of operations indicating the type and volume of business

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envisaged and the administrative and accounting structure of the institution in question.

(6) Authorisation shall "..."<sup>54</sup> be required before any change is made to the object, name or legal form of the institution in question and for the setting up or acquisition of any agency, branch or subsidiary in Luxembourg or abroad. "Investment firms shall obtain authorisation before extending their activities to other investment services or activities or to other ancillary services not covered by their authorisation."

(7) The decision taken on any application for authorisation must be supported by a statement of the reasons on which it is based and must be notified to the applicant within six months of receipt of the application or, if the application is incomplete, within six months of receipt of the information needed for the adoption of the decision. Such a decision shall in any event be adopted within twelve months of receipt of the application, failing which the absence of a decision shall be deemed to constitute notification of a decision refusing the application. An appeal against the decision may be lodged within one month, and may be struck out if it is not so lodged, before the Tribunal administratif [administrative court], which shall determine the matter as a court adjudicating on the substance."

(8) (Law of 13 July 2007) "The application of the provisions of this article shall, where applicable, be adapted to the existence of measures decided by the authorities of the European Union and limiting or suspending the decisions regarding requests for authorisation submitted by third countries."

## **"Section 2: Specific provisions relating to certain categories of PFS**

### **Art. 28-4 Professionals carrying on lending operations**

(Law of 2 August 2003)

"(1) Professionals carrying on lending operations are professionals engaging in the business of granting loans to the public for their own account.

(2) The following, in particular, shall be regarded as lending operations for the purposes of this article:

(a) financial leasing operations involving the leasing of moveable or immovable property specifically purchased with a view to such leasing by the professional, who remains the owner thereof, where the contract reserves unto the lessee the right to acquire, either during the course of or at the end of the term of the lease, ownership of all or any part of the property leased in return for payment of a sum specified in the contract;

(b) factoring operations, either with or without recourse, whereby the professional purchases commercial debts and proceeds to collect them for his own account.

(3) This article shall not apply to persons engaging in the granting of consumer credit, including financial leasing operations as defined in paragraph 2(a) of this article, where that activity is incidental to the pursuit of any activity covered by the Law of 28 December 1988 on the right of establishment.

This article shall not apply to persons engaging in securitisation operations.

(4) Authorisation to act as a professional carrying on lending operations may be granted only to legal persons and shall be conditional on the production of evidence showing the existence of a share capital of not less than "730,000 euros"<sup>71</sup>.

### **PART III: Prudential supervision of the financial sector**

#### **Chapter 1: The competent authority responsible for supervision and its task**

##### **Art. 42 The competent authority**

"The CSSF shall be the competent authority responsible for the supervision of credit institutions and other professionals of the financial sector." "It shall also be the competent authority responsible for the prudential supervision of payment and securities settlement systems authorised by the Minister."

"The CSSF is responsible for the cooperation and exchange of information with other authorities, bodies and persons within the limits, under the conditions and according to the terms laid down in this law. It shall be the Luxembourg contact point for the purposes of Directive 2004/39/EC."

The CSSF shall inform the competent authorities of the other Member States responsible for the supervision of credit institutions and investment firms that it is designated to receive requests for exchange of information or cooperation pursuant to this law."

##### **Art. 43 Purpose of supervision**

(1) The CSSF shall exercise its powers of prudential supervision exclusively in the public interest. Where the public interest so warrants, it may publish its decisions.

(2) The CSSF shall monitor the application of the laws and regulations relating to the financial sector by the persons subject to its supervision.

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(3) The CSSF shall ensure the implementation of international agreements and “of Community law” applicable to the area falling within the scope of its powers. To that end, it shall also be required to carry out all consultations and to effect all communications prescribed by international agreements or by Community law within its field of competence.

#### **Art. 44 Professional secrecy of the CSSF**

(Law of 13 July 2007)

(1) All persons who work or have worked for the CSSF, as well as auditors or experts instructed by the CSSF, are bound by the obligation of professional secrecy referred to in article 16 of the law of 23 December 1998 creating a commission de surveillance du secteur financier. This secrecy implies that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual professionals of the financial sector cannot be identified, without prejudice to cases covered by criminal law.

(2) Where a credit institution or investment firm undergoing a financial reconstruction or liquidation procedure, the CSSF, as well as the auditors or experts instructed by the CSSF, may divulge confidential information which does not concern third parties in civil or commercial proceedings if necessary for carrying out those proceedings.

(3) The reception, exchange and transmission of confidential information by the CSSF pursuant to this law are subject to the conditions laid down in this article.

This article does not prevent the CSSF from exchanging confidential information with the competent authorities, other authorities, bodies and persons or from transmitting them confidential information within the limits, under the conditions and according to the terms laid down in this law and in other legal provisions governing the professional secrecy of the CSSF.

(4) Communication of information by the CSSF authorised under this law is subject to the following conditions:

- the information transmitted to competent authorities of a Member State supervising credit institutions, investment firms, insurance undertakings or reinsurance undertakings or to other administrative authorities of a Member State supervising markets in financial instruments are for the purpose of performing the supervisory task of the receiving authorities;
- the information communicated to competent authorities of a third country, other authorities, bodies or persons of a third country, must be relevant for the exercise of their functions;

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- the information communicated by the CSSF must be covered by the professional secrecy of the competent authorities, other authorities, bodies and persons receiving it and the professional secrecy imposed on those competent authorities, other authorities, bodies and persons must provide safeguards at least equivalent to those inherent in the professional secrecy incumbent on the CSSF;
  - the competent authorities, other authorities, bodies and persons receiving information from the CSSF, must use this information only for the purposes for which it has been communicated to them and must be in a position to ensure that no other use is made thereof;
  - the competent authorities, other authorities, bodies and persons of a third country receiving information from the CSSF afford the same right to information to the CSSF;
  - information received from competent authorities, other authorities, bodies or persons may be disclosed by it only with the express consent of those competent authorities, other authorities, bodies and persons and, as the case may be, solely for the purposes for which those competent authorities, other authorities, bodies and persons have given their consent, except in duly justified circumstances. In this latter case, the CSSF shall immediately inform the competent authority that communicated the transmitted information.

The condition of the previous indent does not apply to the transmission to the Commissariat aux Assurances of information received by the CSSF under paragraph (1) of article 44-2, of 44-3 or paragraph (3) of article 54.

(5) Without prejudice to cases covered by criminal law, the CSSF may use confidential information received pursuant to this law only in the performance of its duties and for the exercise of functions within the scope of this law, or in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

However, the CSSF may use the information received for other purposes where the competent authority, other authority, body or person having transmitted the information consents thereto.

(6) The CSSF, which receives confidential information under paragraph (1) of article 44-2, of 44-3 or paragraph (3) of article 54, may only use this information in the performance of its functions:

- to check that the conditions governing the taking-up of the business of professionals of the financial sector are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to supervision of liquidity, solvency, large exposures, capital adequacy in relation to market risks, administrative and accounting procedures and internal control mechanisms, or

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- to impose penalties, or
  - in administrative appeals against decisions taken by the CSSF, or
  - in court proceedings brought against decisions refusing to grant authorisation or withdrawing such authorisation.

**Art. 44-1 Cooperation of the CSSF with the competent authorities of Member States**

(Law of 13 July 2007)

(1) The CSSF shall cooperate with the competent authorities of the other Member States responsible for the supervision of credit institutions and investment firms whenever necessary for the purpose of carrying out their relevant prudential supervisory duties making use of their powers set out in this law.

The CSSF shall render assistance to these authorities, in particular by exchanging information and cooperating in any supervisory activities.

(2) The CSSF shall closely cooperate with the Commissariat aux Assurances whenever necessary for the purpose of carrying out their relevant prudential supervisory duties, including performing additional supervision pursuant to Chapter 3 of Part III of this law, making use of their powers set out in this law.

The CSSF shall render assistance to the Commissariat aux Assurances, in particular by exchanging all information which is essential or relevant to the exercise of their relevant prudential supervisory missions, including the supplementary supervision as referred to in Chapter 3 of Part III of this law, and, where applicable within the scope of supervisory activities.

(3) Where the CSSF has good reasons to suspect that acts, if carried out in Luxembourg, would have been such as to be contrary to the provisions of this law, are being or have been carried out in another Member State by entities not subject to its supervision, it shall notify the competent authority of that other Member State in as specific manner as possible.

Where the CSSF receives comparable information from an authority of another Member State, it shall take appropriate measures. The CSSF shall inform the notifying competent authority of the outcome of the action and, to the extent possible, of significant interim developments.

(4) The CSSF may request the cooperation of the competent authority of another Member State responsible for the prudential supervision of credit institutions and investment firms in a supervisory activity or for an on-the-spot verification or in an investigation.

Where the CSSF receives such a request with respect to an on-the-spot verification or investigation from such an authority, the CSSF shall, within the framework of its competences, act upon that request either by carrying out the request itself or by having an auditor or expert carrying it out, or by allowing the authority which made the request to carry it out itself.

(5) The CSSF may refuse to act on a request for cooperation in carrying out an investigation, on-the-spot verification or supervisory activity where:

- the investigation, on-the-spot verification or supervisory activity might adversely affect the sovereignty, security or public policy of the State of Luxembourg, or
- judicial proceedings have already been initiated in respect of the same actions and against the same persons before the Luxembourg courts, or
- a final judgment has already been delivered in relation to such persons for the same actions in Luxembourg.

In the case of such a refusal, the CSSF shall inform the requesting authority accordingly, providing as detailed information as possible.

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## 19 Malta

### BANKING ACT

To regulate the business of banking.

**15th November, 1994**

**ACT XV of 1994 as amended by Acts XXIV and XXV of 1995, VI of 2001, XVII of 2002, IV and IX of 2003, XIII of 2004 and XX of 2007; and Legal Notice 425 of 2007.**

The short title of this Act is the Banking Act.

Short title. Interpretation.

**Amended by: XXIV. 1995.362; XXV. 1995.434; XVII. 2002.157; IX. 2003.76; XIII. 2004.82; XX. 2007.85.**

2. (1) In this Act, unless the context otherwise requires -

“bank” or “credit institution” means any person carrying on the business of banking, and unless otherwise stated, shall include an electronic money institution;

“business of banking” means the business of a person who as set out in subarticle (2) accepts deposits of money from the public withdrawable or repayable on demand or after a fixed period or after notice or who borrows or raises money from the public (including the borrowing or raising of money by the issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness), in either case for the purpose of employing such money in whole or in part by lending to others or otherwise investing for the account and at the risk of the person accepting such money;

(2) A person shall be deemed to be accepting deposits of money if, whether as principal or as agent, he accepts from the public deposits of money as a regular feature of his business, or if, whether as principal or as agent, he advertises or solicits for such deposits, without regard to the terms and conditions under which such deposits are solicited or received and without regard to whether certificates or other instruments are issued in respect of any such deposits.

Provided that the acceptance of money against any issue of debentures or debenture stock or other instruments creating or acknowledging indebtedness offered to the public in accordance with any law in force in Malta shall not of itself be deemed to constitute acceptance of deposits of

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money for the purposes of this Act and any regulations or Banking Rules made there under.

## **FINANCIAL INSTITUTIONS ACT**

To regulate the business of financial institutions.

**15th November, 1994**

**ACT XXII of 1994 as amended by Acts XXIV and XXV of 1995, XVII of 2002, IV of 2003, XIII of 2004 and XII of 2006; and Legal Notice 425 of 2007.**

“financial institution” means any person who regularly or habitually acquires holdings or undertakes the carrying out of any activity listed in the Schedule for the account and at the risk of the person carrying out that activity:

## **SCHEDULE**

### **(Article 2)**

#### **ACTIVITIES OF FINANCIAL INSTITUTIONS**

1. Lending (including personal credits, mortgage credits, factoring with or without recourse, financing of commercial transactions including forfeiting);
2. Financial leasing;
3. Venture or risk capital;
4. Money transmission services;
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);
6. Guarantees and commitments;
7. Trading for own account or for account of customers in:
  - (a) money market instruments (cheques, bills, Certificates of deposits, etc.);
  - (b) foreign exchange;
  - (c) financial futures and options;
  - (d) exchange and interest rate instruments;
  - (e) transferable instruments;
8. Underwriting share issues and the participation in such issues;

9. Money broking.

### LICENSING REQUIREMENTS

Licences for business of financial institutions.

**Amended by: XII. 2006.68.**

3. (1) No business of a financial institution shall be transacted in or from Malta except by a company which is in possession of a licence granted under this Act by the competent authority.

10. (1) A financial institution shall not -

(a) grant any credit facility against the security of its own shares or against any other securities issued by the financial institution itself or against any shares or any other securities of another body corporate in which the financial institution has control;

(b) grant or permit to be outstanding credit facilities or extend other services under terms and conditions more favourable than the financial institution would have otherwise applied.

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## 20 Netherlands

Unofficial draft translation of Financial Supervision Act of 28th September 2006 Alleen de officiële Nederlandse tekst, zoals in het Staatsblad gepubliceerd, is geldig. Aan deze vertaling kunnen geen rechten worden ontleend.

### **Act of 28th September 2006, on rules relating to the financial markets and their supervision (Financial Supervision Act)**

#### **PART 1 - GENERAL PROVISIONS**

##### **CHAPTER 1.1 INTRODUCTORY PROVISIONS**

###### **Part 1.1.1 Definitions**

###### **Section 1:1**

In this Act and the provisions ensuing from this Act, unless otherwise stipulated, the following terms shall have the following meaning:

*bank*: the party which business it is to receive funds, outside a restricted circle, from parties other than professional market parties, and to grant credits for its own account;

*financial institution*: a party, other than a credit institution, that has as its main business the performance of one or more of the activities, meant under 2 -12 in annex 1 to the Recast Banking Directive, or the acquisition and holding of units;

*redeemable funds*: funds that must be redeemed at some point, for whatever reason, and regarding which it is clear beforehand which nominal sum should be redeemed;

*restricted circle*: a circle composed of persons or companies from which a person or company receives redeemable funds,

- a. that is exactly defined;
- b. of which the criteria of access are defined beforehand, are verifiable and do not result in easy access of persons or companies not belonging to the circle; and
- c. within which the members of the circle already had a legal relationship with the person or company having the funds available at the time at which the redeemable funds are received, based on which they may in all reasonableness be aware of his/her/its financial condition;

*European credit institution:* credit institution established in another Member State that holds a licence there to carry on its business;

*deposit:* a credit that is formed by funds in an account or that temporarily arises out of normal bank transactions, and that a bank must repay pursuant to the applicable statutory and contractual conditions, as well as debts represented by debt instruments issued by a bank, with the exception of bonds that satisfy the conditions stated in Section 22, fourth paragraph, of the UCITS Directive;

*European credit institution:* credit institution established in another Member State that holds a licence there to carry on its business;

*European life insurer or non-life insurer:* life insurer or non-life insurer established in another Member State that holds a licence there to carry on its business corresponding to the licence meant in Section 2:27;

*financial instrument;*

- a. securities
- b. a unit in a collective investment scheme, not being a security;
- c. an instrument usually negotiated on the money market;
- d. a right to transfer goods in time, or an equivalent instrument focused on settlement in money;
- e. an interest instalment contract;
- f. an interest swap, currency swap or share swap; or
- g. an option to acquire or alienate the aforementioned instrument, including an equivalent instrument focused on settlement in money;

*financial product:*

- a. an investment object;
  - b. a current account including the ancillary payment facilities;
  - c. electronic money;
  - d. a financial instrument;
  - e. credit;
  - f. a savings account including the ancillary savings facilities;
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g. an insurance; or

h. another product to be designated by order in council;

*financial institution*: a party, other than a credit institution, that has as its main business the performance of one or more of the activities, meant under 2 -12 in annex 1 to the Recast Banking Directive, or the acquisition and holding of units;

*financial undertaking*:

a. a management company;

b. a collective investment scheme;

c. an investment firm;

d. a depositary;

e. a clearing institution;

f. a financial service provider;

g. a financial institution;

h. a credit institution; or

i. an insurer;

*credit institution*: a bank or electronic money institution;

*life insurer*: the party that has as its business the conclusion of life insurance contracts for its own account and the settlement of such life insurance contracts;

*life insurance*: a life insurance as meant in Section 975 of Book 7 of the Dutch Civil Code, it being understood that the life insurer's performance is only made in money, or a funeral expenses and benefits in kind insurance as meant in this section;

## CHAPTER 1.2 SUPERVISORS

### Part 1.2.1 General provisions

#### § 1.2.1.1. Responsibilities

##### Section 1:24

1. Prudential supervision shall focus on the solidity of financial undertakings and contributing to the stability of the financial sector.
2. Under this Act, the Netherlands Central Bank shall be required to exercise the prudential supervision of financial undertakings and to decide on the admission of financial undertakings to the financial markets.

##### Section 1:25

1. Supervision of conduct shall focus on orderly and transparent financial market processes, clear relations between market parties and due care in the treatment of clients.
2. Under this Act, the Netherlands Authority for the Financial Markets shall be required to exercise the supervision of conduct of the financial markets and to decide on the admission of financial undertakings to those markets.

### Part 2.2.2 Pursuit of the business as a credit institution and financial institution

#### § 2.2.2.1. Authorization obligation and requirements for credit institutions established in the Netherlands

##### Section 2:11

1. No person established in the Netherlands may carry on the business of a bank or electronic money institution without being authorized by the Netherlands Central Bank.
2. The first subsection shall not concern financial undertakings established in the Netherlands and authorized by the Netherlands Central Bank under this part to carry on the business of a bank in so far as it concerns the business of an electronic money institution.
3. The first subsection shall not apply to those who receive funds made available as meant in Section 3:2.

**Part 2.2.3 Pursuit of the business of life insurer and non-life insurer****§ 2.2.3.1. Authorization obligation and requirements for life insurers and non-life insurers established in the Netherlands****Section 2:27**

1. No person may carry on the business of a life insurer or non-life insurer without being authorized by the Netherlands Central Bank.
2. Within the business of a life insurer and the business of a non-life insurer a distinction shall be made between the classes listed in the Classes Annex to this Act.
3. In relation to the prohibition to carry on the business of a life insurer, the first subsection shall not apply to financial undertakings that solely carry on the business of a funeral expenses and benefits in kind insurer holding an authorization as meant in Section 2:48 (1).
4. The first subsection shall not apply to guarantee funds as meant in Section 3:6.

**Section 2:28**

1. A person authorized to carry on the business of a life insurer shall not be authorized to carry on the business of a non-life insurer.
2. A person authorized to carry on the business of a non-life insurer shall not be authorized to carry on the business of a life insurer.

**Section 2:29**

1. The life insurer authorized to carry on the business of a life insurer in the Permanent Health Insurance class shall not be eligible for authorization to carry on the business of a life insurer in another class.
2. The life insurer authorized to carry on the business of a life insurer in a branch other than the Permanent Health Insurance class shall not be eligible for authorization to carry on the business of a life insurer in the Permanent Health Insurance class.

**Section 2:30**

Without prejudice to Section 2:31, the Netherlands Central Bank shall only authorize a life insurer established in the Netherlands in respect of the Capitalization Activities class or the Collective Pension Funds Management class provided the applicant is authorized for the General Life Insurance class and ensures and shows proof that:

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- a. it will perform the activities listed in the aforementioned Capitalization Activities class or the Collective Pension Funds Management class to such a degree that it is of subordinate importance to its business as a whole; and
  - b. in case of an application for the Collective Pension Funds Management class it shall comply with any other rules to be laid down under or pursuant to order in council.

**§ 2.2.2.4. Branch and provision of services by financial institutions established in another Member State**

**Section 2:24**

1. If the Netherlands Central Bank receives a notification from a Supervisory Authority of another Member State of the intention of a financial institution established in another Member State to carry on its business from a branch situated in the Netherlands or by providing services to the Netherlands, it shall, without delay, inform the financial institution concerned of this receipt.
2. Within two months of receiving the notification relating to the intention to carry on the business from a branch in the Netherlands, the Netherlands Central Bank may inform the Supervisory Authority of the other Member State which conditions it should observe for reasons of public interest in the pursuit of its business from a branch situated in the Netherlands or by providing services to the Netherlands. The Netherlands Central Bank shall send a copy of this to the financial institution.

**Section 2:25**

1. A financial institution established in another Member State having been issued a declaration to carry on its business by the Supervisory Authority of that Member State corresponding to the certificate of supervised status meant in Section 3:110 and which intends to carry on its business from a branch situated in the Netherlands may do so two months after receiving the notification, meant in Section 2:24 (1), or immediately on receiving the notification, meant in Section 2:24 (2).
2. The financial institution may perform the activities, meant in Annex 1, under 2 - 14, to the Recast Banking Directive, unless the declaration meant in the first subsection expressly provides otherwise or the notification meant in Section 2:24 (1) does not list the performance of those activities.

**Section 2:26**

A financial institution established in another Member State having been issued a declaration by the Supervisory Authority of that Member State to carry on its business corresponding to the certificate of supervised status, meant in Section 3:110, and which carries on its business by providing

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services to the Netherlands, may perform the activities listed in Annex 1, under 2 - 14, to the Recast Banking Directive, unless the declaration issued in that Member State corresponding to the certificate of supervised status meant in Section 3:110 expressly provides otherwise or it has not informed the Supervisory Authority of the Member State in which it is established of the activities which it intends to perform by providing services to the Netherlands.

### **Part 2.2.6 Offering credit**

#### **§ 2.2.6.1. Authorization obligation and requirements**

##### **Section 2:60**

1. No person may offer credit without being authorized by the Netherlands Authority for the Financial Markets.
2. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, of the first subsection if the applicant shows proof that it cannot reasonably comply with those provisions and that the interests which this part and Part 4, Conduct of business supervision of financial undertakings seek to protect are sufficiently protected otherwise.

##### **Section 2:61**

1. Section 2:60 (1) shall not concern financial undertakings which:
  - a. are authorized by the Netherlands Central Bank to carry on the business of an insurer, in so far as the authorization allows them to offer investment objects;
  - b. have been issued a certificate of supervised status by the Netherlands Central Bank under Part 2, Prudential supervision of financial undertakings, in so far as that certificate allows them to offer investment objects; or
  - c. are authorized by the Netherlands Central Bank under this part to carry on the business of a bank.
2. Section 2:60 (1) shall not concern municipal credit banks regarding which Section 4:37 (1 and 2) is complied with.

##### **Section 2:62**

- Section 2:60 (1) shall not concern financial undertakings established in another Member State which:
- a. carry on their business as a bank from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.2 allows them to offer credit;

b. carry on their business as a financial institution from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.2 allows them to offer credit.

c. carry on their business as an insurer from a branch situated in the Netherlands or by providing services to the Netherlands, in so far as part 2.2.3 or 2.2.4 allows them to offer credit.

## **CHAPTER 3.2 INVITING REDEEMABLE FUNDS**

### **Section 3:5**

1. Inviting, receiving or having redeemable funds in the operation of a business outside a restricted circle from parties other than professional market parties in the Netherlands is prohibited.

2. The first subsection shall not concern:

a. banks authorized as meant in Section 2:11 (1), or 2:20 (1) by the Netherlands Central Bank, and banks established in another Member State which carry on their business from a branch situated in the Netherlands or by providing services to the Netherlands which comply with the provisions in Section 2:15 or 2:16 with regard to performing activities listed in item 1 of Annex I to the Recast Banking Directive;

b. banks established in another Member State authorized by the Supervisory Authority of that Member State to carry on their business which comply with the conditions imposed in that other Member State for providing services to another Member State;

c. the Member States as well as the regional or local authorities of those Member States; and

d. the persons inviting, receiving or having redeemable funds by providing securities in accordance with the provisions under Chapter 5.1.

3. An exemption from the first subsection may be provided by ministerial regulation.

4. The Netherlands Central Bank may, on application, grant a waiver of the first subsection, whether or not for a fixed term, if the applicant shows proof that the interests which this part seeks to protect are sufficiently protected otherwise. Rules may be laid down under or pursuant to order in council which the holder of a waiver should observe and with regard to granting a waiver.

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**PART 5 - FINANCIAL MARKETS CONDUCT SUPERVISION****CHAPTER 5.1 RULES FOR OFFERING SECURITIES****Part 5.1.1 Introductory provisions****Section 5:1**

For the purposes of the provisions under this chapter the following shall be taken to mean:

a. offering securities to the public: making a sufficiently determined offer addressed to more than one person as meant in Section 217 (1) of Book 6 of 248 the Dutch Civil Code to conclude a contract to purchase or otherwise acquire securities, or issuing an invitation to make an offer on such securities;

b. offeror: the party offering those securities to the public;

c. offering programme: a plan which would permit the issuance of non-equity securities or of the securities meant under d under 2<sup>o</sup> having a similar type and/or class, in a continuous and repeated manner during a specified period;

d. equity security:

1<sup>o</sup>. transferable share or equivalent transferable security issued by a legal person, company or institution, or any other equivalent negotiable paper or right;

2<sup>o</sup>. any other transferable security issued by a legal person, company or institution by which, by exercising the right conferred by this security, by converting or exchanging, another equity security as meant under 1<sup>o</sup> may be acquired, provided the transferable security is issued by the legal person, company or institution, or by a group company forming part of a group, which also issued the equity security to be acquired;

e. non-equity security: security that is not an equity security, to be divided into the following categories:

1<sup>o</sup>. transferable security issued by a legal person, company or institution, by which through exercising the right conferred by this security, by converting or exchanging, another security may be acquired, and which is not issued by the legal person, company or institution, or by a group company forming part of a group which also issued the equity security to be acquired;

2<sup>o</sup>. a transferable security issued by a legal person, company or institution which by exercising the right conferred by this security gives the right to a settlement in money;

3°. any other security that is not an equity security.

### **Section 5:1a**

The provisions under this chapter shall not concern money market instruments with a term of less than 12 months.

### **Part 5.1.2 Prohibition and exceptions**

#### **Section 5:2**

No-one may offer securities to the public in the Netherlands or have securities admitted to trading on a regulated market situated or operating in the Netherlands unless a prospectus relating to the offer or the admission is available to the public which is approved by the Netherlands Authority for the Financial Markets or by a Supervisory Authority of another Member State.

#### **Section 5:3**

1. Section 5:2 shall not concern offering securities to the public if:

- a. the securities are solely offered to qualifying investors;
- b. securities are offered to less than 100 persons, other than qualifying investors;
- c. the securities offered may only be acquired at a consideration of at least € 50,000 per investor;
- d. the nominal value per security is at least € 50,000; or
- e. the total consideration of the offer of securities to the public is less than € 100,000, which limit shall be calculated over a period of twelve months.

2. The prohibition meant in Section 5:2 shall furthermore not concern offering the following categories of securities to the public:

- a. shares or depositary receipts for shares issued in substitution of shares or depositary receipts for shares of the same category or class already issued, if the issuance of those new securities does not involve any increase in the issued share capital;
- b. securities which are offered in connection with a takeover by a public exchange offer, provided a document is available to the public which contains information equivalent to the information in a prospectus;
- c. securities which are offered or allotted or to be allotted by a merger or split-off, provided a document is available which contains information equivalent to the information in a prospectus;

d. shares or depositary receipts for shares offered, allotted or to be allotted free of charge to shareholders, and dividends which shall be paid out in the form of shares or depositary receipts for shares of the same category or class as the securities in respect of which such dividends are paid out, provided a document is made available which contains information on the number of securities on offer, the nature of the securities, the reasons for and the details of the offer; or

e. securities admitted or allotted or to be allotted by an employer which has securities already admitted to trading on a regulated market, or by a legal person, company or institution forming part of the same group as the employer, to existing or former directors, existing or former members of the supervisory board or existing or former employees, provided a document is made available which contains information on the number of securities on offer, the nature of the securities, the reasons for and the details of the offer.

#### **Section 5:4**

Section 5:2 shall not concern the admission to trading on a regulated market situated or operating in the Netherlands of:

a. shares or depositary receipts for shares which, viewed over a period of twelve months, represent less than ten per cent of the number of shares or depositary receipts for shares of the same category or class already admitted to trading on the same regulated market situated or operating in the Netherlands;

b. shares or depositary receipts for shares issued in substitution of shares or depositary receipts for shares of the same category or class already admitted to trading on the same regulated market, and of which the issuance shall not involve an increase in the issued share capital;

c. securities offered in connection with a takeover by a public exchange offer, provided a document is available containing information equivalent to the information in the prospectus;

d. securities offered, allotted or to be allotted in connection with a merger or split-off, provided a document is available containing information equivalent to the information in the prospectus;

e. shares or depositary receipts for shares offered, allotted or to be allotted free of charge to the shareholders or paid out as dividend in the form of shares or depositary receipts for shares thereof of the same category or class as the securities in respect of which they are paid out, provided such securities are of the same category or class as the securities already admitted to trading on the same regulated market and a document is made available containing information on the number of securities on offer, the nature of the securities, the reasons for and the details of the offer;

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f. securities offered, allotted or to be allotted by an employer or a legal person, company or institution forming part of the same group as the employer, to existing or former directors, existing or former members of the supervisory board or existing or former employees, provided those securities are of the same category or class as the securities already admitted to trading on the same regulated market and a document is made available which contains information on the number of securities on offer, the nature of the securities, the reasons for and the particulars of the offer;

g. shares or depositary receipts for shares ensuing from the conversion or exchange of other securities or from the exercise of rights conferred on other securities, provided those shares or depositary receipts for shares are already admitted to trading on the same regulated market; or

h. securities already admitted to trading on another regulated market if:

1°. those securities, or securities of the same category or class, are admitted to trading on that other regulated market for a period of more than eighteen months;

2°. those securities were first admitted to trading on a regulated market after the date of entry into force of the Prospectus Directive and the admission to trading on that other regulated market was associated with an approved prospectus made available to the public in conformity with Section 5:21;

3°. the prospectus for those securities where they were first admitted to listing after 30 June 1983 is approved in conformity with Directive no. 80/390/EEC of the European Parliament and of the Council of 17 March 1980 coordinating the requirements for the drawing up, scrutiny and the distribution of the listing particulars to be published for the admission of securities to official stock exchange listing (OJ L 100) or Directive no. 2001/34/EC of the European Union and of the Council of 28 May 2001 on the admission of securities to the official listing on a stock exchange and on information to be published on those securities (OJ L 184) unless the provision under 2° applies;

4°. the applicable obligations for trading on that other regulated market have been fulfilled;

5°. the person seeking the admission of securities to trading on the regulated market shall make a summary document available to the public in a language accepted by the Netherlands Authority for the Financial Markets;

6°. the summary document shall be made available to the public in the manner meant in Section 5:21; and

7°. the contents of the summary shall comply with Section 5:14 and the document shall state where the most recent prospectus can be obtained and where the financial information published by the issuer pursuant to its ongoing disclosure obligation is available.

#### **Section 5:5**

An exemption of this chapter may be provided by ministerial regulation.

### **Part 5.1.3 Offering securities to the public and admitting securities to trading on a regulated market**

#### **§ 5.1.3.1. Power to approve**

#### **Section 5:6**

1. The Netherlands Authority for the Financial Market may approve a prospectus, where the issuer is established in the Netherlands and it concerns offers of securities to the public or the admission of securities to trading on a regulated market:

- a. in the Netherlands or in another Member State of equity securities;
- b. in the Netherlands of non-equity securities as meant in Section 5:1 (e) (1° and 2°);
- c. in the Netherlands or in another Member States of non-equity securities as meant in Section 5:1 (e) (3°), with a nominal value per security of less than € 1,000; or
- d. in the Netherlands of non-equity securities as meant in Section 5:1 (e) (3°) with a nominal value per security of at least € 1,000.

2. The Netherlands Authority for the Financial Markets may also approve a prospectus where it concerns offers of securities to the public or the admission of securities to trading on a regulated market:

- a. of equity securities or non-equity securities as meant in Section 5:1 (e) (3°) with a nominal value per security of less than € 1,000:

1°. in the Netherlands by an issuer established in a non-Member State;

2°. in the Netherlands or another Member State by an issuer established in a non-Member State where upon an earlier offer of those securities to the public or the admission of those securities to trading on a regulated market the approval by the Netherlands Authority for the Financial Markets was opted for; or

3°. in the Netherlands or another Member State by an issuer established in a non-Member State where upon an earlier offer of those securities to the public or the admission of those securities to trading on a regulated market another party had opted for approval by a Supervisory Authority of another Member State and the issuer in respect of the offer of those securities to the public or the admission of those securities to trading on a regulated market opts for approval by the Netherlands Authority for the Financial Markets;

b. of non-equity securities as meant in Section 5:1 (e) (1° and 2°) or non-equity securities as meant in Section 5:1 (e) (3°) with a nominal value per security of at least € 1,000:

1°. in another Member State by an issuer established in the Netherlands;

2°. in the Netherlands by an issuer established in another Member State; or

3°. in the Netherlands or in another Member State by an issuer established in a non-Member State.

3. Where the first subsection opening words and under c or d or the second subsection concerns non-equity securities of which the nominal value is not expressed in euros, the nominal value of the securities shall be converted into euros for the purposes of the limits mentioned in those provisions, whereby a converted value of almost € 1,000 shall be equivalent to € 1,000.

#### **Section 5:7**

The Netherlands Authority for the Financial Markets may also approve a prospectus where a Supervisory Authority of another Member State entitled to approve the prospectus has requested the Netherlands Authority for the Financial Markets to approve the prospectus and the Netherlands Authority for the Financial Markets has agreed.

#### **Section 5:8**

1. Where the Netherlands Authority for the Financial Markets may approve a prospectus under Section 5:6 (1 or 2), it may request a Supervisory Authority of another Member State to take a decision with regard to the approval of the prospectus. Where that body agrees, the Netherlands Authority for the Financial Markets shall decide to disregard the application and inform the applicant. From the time of the notification the Netherlands Authority for the Financial Markets may no longer approve the prospectus.

2. The Netherlands Authority for the Financial Market shall inform the applicant and Our Minister of the request it has made under the first subsection within three working days.

3. Where the Supervisory Authority of the other Member State agrees to take a decision regarding the approval of the prospectus, the Netherlands Authority for the Financial Markets shall, without delay, dispatch the documents relating to the application to that body.

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## 21 Poland

### THE BANKING ACT of August 29, 1997

#### DISCLAIMER

This text translated by the National Bank of Poland is based on the consolidated working text of the Banking Act and therefore can only be used for information purposes. Only normative acts containing universally binding provisions, promulgated in the Polish language in a journal of laws are the sources of law in Poland.

The binding text of the Banking Act is the Polish consolidated text promulgated in the Journal of Laws No. 72/2002 item 665, with further amendments promulgated in:

Journal of Laws No. 126/2002 item 1070, No. 141/2002 item 1178, No. 144/2002 item 1208, No.153/2002 item 1271, No. 169/2002 items 1385 and 1387 and No. 241/2002 item 2074; Journal of Laws. No. 50/2003 item 424, No. 60/2003 item 535, No. 65/2003 item 594, No.228/2003 item 2260 and No. 229/2003 item 2276; Journal of Laws No. 64/2004 item 594, No. 68/2004 item 623, No. 91/2004 item 870, No.96/2004 item 959, No. 121/2004 item 1264, No. 146/2004 item 1546 and No. 173/2004 item 1808; Journal of Laws No. 83/2005 item 719, No. 85/2005 item 727, No.167/2005 item 1398 and No. 183/2005 item 1538; Journal of Laws No. 104/2006 item 708, No. 157/2006 item 1119, No. 190/2006 item 1401 and No. 245/2006 item 1775; Journal of Laws No. 42/2007 item 272 and No.112/2007 item 769.

The amendment promulgated in Journal of Laws No. 112/2007 will enter into force as of 28 December 2007.

All effort has been taken to ensure the accuracy of this translation based on the Polish text which cannot be treated as an official source of law. Nevertheless, all translations of this kind may be subject to a certain degree of linguistic discord. Should you have any uncertainties regarding the translation reproduced in this publication, please submit your questions to the editors.

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**CHAPTER 1****GENERAL PROVISIONS**

**Article 1.** The present Act specifies the principles of conducting the business of banking, establishing and organising banks, including branches and representative offices of foreign banks, and branches of credit institutions, and also the principles of performance of banking supervision, rehabilitation proceedings, and bank liquidations and bankruptcies.

**Article 2.** A bank shall constitute a legal person, established pursuant to the provisions of statute, operating on the basis of authorisations to perform banking operations that expose to risk funds which have been entrusted to the bank and which are in any way repayable.

**Article 3.** The terms “bank” and “kasa” [bank, loan society, savings and credit-union – tr.] maybe used solely in the names of banks complying with the definition given in Art. 2, and to describe the activities of or advertise such banks, with the proviso that:

1) this shall not apply to organisational units employing the terms “bank” or “kasa” where the activity thereof explicitly indicates that these entities are not engaged in banking operations,

2) the term “kasa” may also be used in the name of units, and to describe or advertise the activities thereof, where such units, pursuant to a separate act, take savings deposits from natural persons affiliated with the given entity and extend cash advances to them.

**Article 5.**

1. Banking operations shall comprise:

1) acceptance of deposits payable on demand or at a specified maturity, and the operation of such deposit accounts,

2) operation of other bank accounts,

3) extension of loans,

4) issue and confirmation of bank guarantees, and issue and confirmation of letters of credit,

5) issue of bank securities,

6) performance of bank monetary settlements,

6a) issue of electronic money,

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7) performance of other operations reserved solely for banks under separate legislation.

2. Where the following operations are performed by banks, they shall also be deemed banking operations:

- 1) extension of cash advances,
- 2) operations involving cheques and bills of exchange, and operations relating to warrants,
- 3) issue of payment cards and performance of operations by using such cards,
- 4) financial forward transactions,
- 5) purchase and disposal of claims,
- 6) safekeeping of valuables and securities, and provision of safe deposit facilities,
- 7) purchase and sale of foreign exchange,
- 8) extension and confirmation of guaranties,
- 9) execution of actions commissioned [by customers] relating to the issue of securities,
- 10) acting as an intermediary in the performance of money orders and foreign exchangesettlements.

3. The issue of the electronic money and performance of payments using such instrument, shall be subject to separate regulations.

4. Subject to the provision of para. 5 herein, the business activity involving the operations referred to in para. 1 may be performed solely by banks.

5. Entities other than banks may perform the operations referred to in para. 1 where so authorized under the provisions of separate legislation.

7) financial institution – an undertaking other than a bank or credit institution, whose basic activity generating most of its income consists in business activity involving:

- a) acquiring and disposing equities and shares,
- b) extending internally funded loans,
- c) making assets available under lease agreements,

- d) providing services relating to the acquisition and disposal claims,
- e) providing money transmission services,
- f) issuing and administering payment instruments,
- g) extending guarantees or other guarantees, or entering into other commitments not reported in the balance sheet,
- h) trading, for its own account or that of another natural or legal person, or an organisational unit without legal personality, where the latter has legal capacity:
  - financial forward transactions,
  - money market instruments,
  - securities,
- i) participating in issues of securities or providing services related to such issues,
- j) providing asset management services,
- k) providing financial advice services, including investment advice,
- l) providing brokerage services on the money market,

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## 22 Portugal

### Legal Framework of Credit Institutions and Financial Companies

Translation by the Bank of Portugal available at [www.bportugal.pt/publish/legisl/rgicsf\\_e.pdf](http://www.bportugal.pt/publish/legisl/rgicsf_e.pdf)

#### TITLE I

#### General Provisions

##### Article 1

##### Purpose

1 – This Decree-Law governs the taking up and pursuit of the business of credit institutions and financial companies.

2 – Credit institutions having the legal status of public enterprise become subject to the provisions of this Decree-Law that are not incompatible with their status.

##### Article 2

##### Credit institutions

1 – A credit institution is an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.

2 – A credit institution is also an undertaking which issues means of payment in the form of electronic money.

##### Article 3

##### Types of credit institutions

The following are credit institutions:

- a) Banks;
- b) Caixas económicas (savings banks);
- c) Caixa Central de Crédito Agrícola Mútuo (central mutual agricultural credit bank) and caixas de crédito agrícola mútuo (mutual agricultural credit banks);
- d) Credit financial institutions;

- e) Investment companies;
- f) Financial leasing companies;
- g) Factoring companies;
- h) Credit purchase financing companies;
- i) Mutual guarantee companies;
- j) Electronic money institutions;
- l) Other undertakings, which, in meeting the definition in the preceding Article, are classified as such according to the law.

#### **Article 4**

##### **Activities of credit institutions**

1 – Banks may carry on the following activities:

- a) Acceptance of deposits or other repayable funds;
- b) Lending, including the granting of guarantees and other commitments, financial leasing, and factoring;
- c) Money transmission services;
- d) Issuance and administration of means of payment, e.g. credit cards, travelers cheques and bankers drafts;
- e) Trading for own account or for account of clients in money market instruments, foreign exchange, financial futures and options, exchange or interest-rate instruments, goods and transferable securities;
- f) Participation in securities issues and placement and provision of related services;
- g) Money broking;
- h) Portfolio management and advice, safekeeping and administration of securities;
- i) Management and management consultancy in relation to other assets;
- j) Advice to undertakings on capital structure, industrial strategy and related questions as well as advice and services relating to mergers and purchase of undertakings;

- 
- l) Dealings in precious metals and stones;
  - m) Acquisition of holdings in companies;
  - n) Trading in insurance policies;
  - o) Credit reference services;
  - p) Safe custody services;
  - q) Leasing of movable property, under the terms allowed to financial leasing companies;
  - r) Provision of the investment services referred to in Article 199-A, not covered by the preceding subparagraphs;
  - s) Other similar transactions not forbidden by law.
- 2 – Other credit institutions may only carry out those transactions permitted by the laws and regulations governing their activity.

#### **Article 5**

##### **Financial companies**

A financial company is an undertaking other than a credit institution, whose principal activity is to carry on one or more of the activities referred to in Article 4 (1) (b) to (i) except for financial leasing and factoring.

#### **Article 6**

##### **Types of financial companies**

1 – The following are financial companies:

- a) Dealers;
- b) Brokers;
- c) Foreign-exchange or money-market mediating companies;
- d) Investment fund management companies;
- e) Credit card issuing or management companies;
- f) Wealth management companies;
- g) Regional development companies;
- h) (Revoked);

- 
- i) Exchange offices;
  - j) Credit securitisation fund management companies;
  - l) Other companies classified as such by law.

2 – FINANGESTE - Empresa Financeira de Gestão e Desenvolvimento, S.A. (Management and Development Financial Undertaking) is also a financial company.

3 – For the purposes of this Decree-Law, insurance undertakings and pension fund management companies are not considered as financial companies.

4 – The activity of pawnbrokers is covered by special legislation.

#### **Article 7**

##### **Activity of financial companies**

Financial companies may only carry out the transactions permitted by the laws and regulations governing their activity.

#### **Article 8**

##### **Principle of exclusiveness**

1 – Only credit institutions other than electronic money institutions may receive deposits or other repayable funds from the public for their own account.

2 – Only credit institutions and financial companies may carry on a professional basis the activities referred to in Article 4 (1) (b) to (i) and (r) with the exception of the consultancy activities referred to in (i).

3 – The provisions of paragraph 1 do not prevent the following bodies from receiving repayable funds from the public, according to the applicable laws, regulations or statutes:

- a) The State, including public funds and institutes having legal status and with administrative and financial autonomy;
- b) Autonomous regions and local authorities;
- c) The European Investment Bank and other international organisations of which Portugal is a member and whose legal status allows them to receive repayable funds from the public within the national territory;
- d) Insurance undertakings, in respect of capitalisation operations.

**Article 9****Repayable funds received from the public and credit granting**

1 – For the purposes of this Decree-Law, funds raised through the issuance of bonds under the provisions and within the limits of the Company Law are not considered repayable funds received from the public; nor are funds raised through the issuance of commercial paper, under the provisions and within the limits of the applicable legislation.

2 – For the purposes of the foregoing Articles, the following are not considered as granting of credit:

- a) Long-term loans and other forms of loans and advances between a company and its partners;
- b) Credit granted by a company to its workers for social reasons;
- c) Postponement or anticipation of payment agreed between the parties to contracts for the acquisition of goods or services;
- d) Cash facilities, when legally permitted, between companies in a control relationship or which form part of the same group;
- e) The issue of tickets or cards for payment of goods and services supplied by the issuing company.

## 23 Romania

### Ordinance No. 28 of 26 January 2006

Published in Monitorul Oficial al României, Part One, No. 89 of 31 January 2006 governing certain financial and fiscal measures

#### PART I

Regulations governing certain financial and fiscal operations

#### TITLE I

Provisions on lending activity performed by non-bank financial institutions

#### CHAPTER I

##### General provisions

##### SECTION 1

##### Scope

Art. 1. – This Title regulates the minimum access requirements for non-bank financial institutions to lending activity in order to ensure and maintain financial stability.

Art. 2. – (1) Lending activity represents any form of financing performed by non-bank financial institutions in compliance with the provisions of Art. 7 para. (1).

(2) The National Bank of Romania is the sole authority entitled to decide whether the activity performed by an entity is treated as lending activity and whether it is governed by the provisions of this Title.

Art. 3. – (1) Lending activity shall be performed through credit institutions defined in compliance with the provisions of Law No. 58/1998 on banking activity, as republished, and through non-bank financial institutions, based on the provisions of this Title and of special laws governing their activity.

(2) Entities other than those referred to in para. (1) may not perform lending activities with professional status in Romania.

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**SECTION 2****Definitions**

Art. 4. – For the purpose of this Ordinance, the terms and logos given below shall mean:

- a) non-bank financial institution – legal person incorporated with a view to performing, with professional status, lending activities such as those referred to in Art. 7 para. (1) and whose financing sources arise from own resources or resources borrowed from credit institutions, from other financial institutions, or, as the case may be, from other sources provided for by special laws;
- b) activities allowed to be performed by non-bank financial institutions – the activities, as referred to in Art. 7 and Art. 8, performed based on the provisions of this Title and, as the case may be, based on the provisions of special laws governing their activity;
- c) managers – the persons who, consistent with incorporation documents and/or the decision of statutory bodies of non-bank financial institutions, are vested with the power to run and co-ordinate their day-to-day activities and to engage the liability of non-bank financial institutions;
- d) significant shareholder – the natural person, legal person or group of natural and/or legal persons acting jointly, who holds directly or indirectly 10 percent or more of share capital of a company, or of the voting rights, or a participation, allowing to exercise a significant influence over the management and business policy of the company;
- e) notification – the action of non-bank financial institutions, including the submission of documents set by the National Bank of Romania in order to be granted by it the document attesting the registration and allowing the performance of lending activity;
- f) General Register of Non-bank Financial Institutions (hereinafter referred to as “General Register”) – a register opened and kept by the National Bank of Romania, in which the non-bank financial institutions meeting the general requirements laid down under Chapter II, Section 1 are recorded;
- g) Special Register of Non-bank Financial Institutions (hereinafter referred to as “Special Register”) – a register opened and kept by the National Bank of Romania, in which the non-bank financial institutions meeting the requirements laid down under Art. 27 are recorded;
- h) Entry Register of Mutual Benefit Societies and Pawnshops (hereinafter referred to as “Entry Register”) – a register opened and kept by the National Bank of Romania, in which mutual benefit societies and pawnshops are recorded.

**SECTION 4****Allowed activities**

Art. 7. - (1) Non-bank financial institutions may perform the following lending activities:

a) granting of credits, including, without being limited to consumer credits, mortgage credits, real-estate credits, micro-credits, financing of commercial transactions, factoring, discount, forfeiting operations;

b) financial leasing;

c) issuing of guarantees and assuming commitments, including credit guarantee;

d) granting of credits in exchange of goods for safekeeping, i.e. pledging via pawnshops;

e) granting of credits to members of non-profit-making associations based on free will of employees/pensioners in order to grant their members financial support, i.e. mutual benefit societies;

f) other lending forms in the nature of credits.

(2) Non-bank financial institutions, when performing activities related to consumer credit, may issue and manage credit cards for their customers and may perform activities associated with these processing transactions in accordance with the National Bank of Romania regulations in the field.

(3) Non-bank financial institutions may provide ancillary and advisory services related to the activities laid down in para. (1).

(4) Non-bank financial institutions may perform mandate operations in their relation to other non-bank financial institutions and/or credit institutions regarding the performed lending activity.

Art. 8. - (1) Non-bank financial institutions may perform, pursuant to Art. 7, as the case may be, the following operations in movable and immovable assets:

a) operations needed to perform their activity;

b) rental of movable and immovable assets to third parties, including operational leasing, provided that the value of the rented movable and immovable assets does not exceed the limit defined by

**SECTION 5****Interdictions**

Art. 9. – Non-bank financial institutions shall be forbidden to:

- a) accept deposits or other repayable funds from the general public;
- b) issue bonds, except public offering to qualified investors in the meaning of the law on capital market;
- c) include in their core business any other activity than that laid down under Art.7 para. (1);
- d) include in their secondary business any other activity than that laid down under Art.7 paras. (2)-(4) and Art.8.

Art. 12. – Non-bank financial institutions may not perform the following operations:

- a) transactions in movable and immovable assets, except for those referred to under Art. 8;
- b) pledging their own shares against the debts of the non-bank financial institution;
- c) granting credits conditioned by sale or purchase of the shares of the non-bank financial institution;
- d) granting credits secured by shares issued by non-bank financial institutions;
- e) granting credits conditioned by the customer's acceptance of other services not related to lending operation.

**CHAPTER II****Requirements and registers****SECTION 1****General requirements**

Art.13. – (1) This Section is applicable solely to the non-bank financial institutions which are subject to registration in the General Register.

(2) Upon establishment, non-bank financial institutions shall meet the general requirements as laid down in this section.

Art. 14. - (1) The minimum share capital of non-bank financial institutions shall be set by the National Bank of Romania regulations and shall not be lower than the equivalent in the domestic currency (leu) of EUR 200,000. The National Bank of Romania is entitled to set differentiated levels of minimum share capital in terms of the type of activity of the non-bank financial institutions.

(2) Minimum share capital of non-bank financial institutions shall be paid up in full, in cash, upon subscription.

(3) The shares issued by non-bank financial institutions shall be only nominal ones.

(4) Non-bank financial institutions may raise the share capital by cash contributions and incorporation of reserves from net profit, of dividends from net profit due to shareholders after payment of dividend tax, and of retained earnings.

Art.15. - (1) Non-bank financial institutions shall provide detailed information to the National Bank of Romania concerning the quality of significant shareholders, the structure of groups the shareholders belong to, and the financial standing of the group as well.

(2) The National Bank of Romania may require any information about any entity belonging to the group.

Art. 16. - Managers of non-bank financial institutions shall fulfil at least the following requirements:

- a) they must have the moral integrity required by their positions;
- b) they must not have engendered bankruptcy of any entity;
- c) they must hold a university degree;
- d) they must have the experience in a field deemed relevant by the National Bank of Romania.

Art. 17. - (1) Non-bank financial institutions shall, in compliance with the NBR regulations, issue internal regulations for the purpose of performing their core business in accordance with the rules of a prudent and sound practice.

(2) The internal lending regulations of non-bank financial institutions shall establish rules concerning at least creditworthiness of the borrower, criteria and terms of lending.

Art. 18. - (1) Non-bank financial institutions shall organise and run the accounting records in compliance with the provisions of Law No. 82/1991–Accounting Act, as republished, and with the specific regulations issued by the National Bank of Romania, with the approval of the Ministry of Public Finance.

(2) Financial statements of non-bank financial institutions shall be subject to auditing in compliance with the provisions of Art. 48 and 49 hereof.

Art. 19. - Non-bank financial institutions shall set up, regulate and use specific credit risk provisions which are deductible from profit tax in accordance with the provisions of Law No. 571/2003 on Tax Code. Credit classification, setting the necessary specific credit risk provisions and the setting-up, regularisation and use thereof shall be performed by applying accordingly the National Bank of Romania’s regulations on classification of credits and placements and the setting-up, regularisation and use of specific credit risk provisions issued for credit institutions.

Art. 20. - Receipt and payment operations relative to lending activity shall be performed through accounts opened by non-bank financial institutions with credit institutions, Romanian legal entities, as well as with foreign credit institutions’ branches authorised by the National Bank of Romania to operate in Romania, and through the own cash offices of non-bank financial institutions.

Art. 21. - Non-bank financial institutions shall inform the NBR about the structure of the credit portfolio and shall provide any information required by the central bank, for statistical and analysis purposes, in accordance with the requirements laid down in the NBR regulations.

## **SECTION 2**

### **Notification**

Art. 22. - (1) The establishment of non-bank financial institutions shall be notified to the National Bank of Romania within 30 days from their inscription in the Trade Register.

(2) Non-bank financial institutions may perform the specific activities, as laid down in their scope of activity, only after receiving the document attesting the registration in the General Register from the National Bank of Romania.

Art. 23. - (1) The procedure and terms of notification shall be established through NBR regulations.

(2) The application for inscription in the General Register shall be accompanied by documents which concern, without being limited to, the following:

- a) incorporation act submitted by the Trade Register;
- b) inscription certificate from the Trade Register;
- c) information on the managers and administrators, i.e. identification data, along with curriculum vitae and criminal record;
- d) list of participations of non-bank financial institutions and significant shareholders / founding members / managers in other commercial companies;
- e) feasibility study that shall include at least the type of operations to be performed, organisation chart and estimates of the financial standing for the next two years;
- f) identity of financial auditor;
- g) internal regulations governing the operations to be performed.

Art. 24. - Any change to the documents initially submitted by non-bank financial institutions shall be notified to the NBR within 30 days from its occurrence.

### **SECTION 3**

#### **General Register**

Art. 25. - (1) Following the notification to the NBR by non-bank financial institutions in accordance with the provisions of Art. 22 para. (1), they shall be registered and inscribed in the General Register of non-bank financial institutions kept at the National Bank of Romania provided their compliance with the requirements laid down in Section 1.

(2) The National Bank of Romania shall issue and send the document attesting their registration in the General Register to the non-bank financial institutions within 60 days from the notification date.

### **SECTION 4**

#### **Special requirements**

Art. 26. - (1) This Section is applicable solely to the non-bank financial institutions which are subject to registration in the Special Register.

(2) The registration of non-bank financial institutions in the Special Register shall not exclude the meeting of general requirements laid down in Section 1.

Art. 27. - (1) The National Bank of Romania shall establish, through regulations, the criteria for non-bank financial institutions' registration in the Special Register.

(2) The criteria laid down in para. (1) may refer, without being limited, to the following:

- a) turnover;
- b) volume of credits;
- c) indebtedness;
- d) total assets;
- e) shareholders' equity.

Art. 28. - (1) Following the fulfilment of the criteria and the registration in the Special Register, non-bank financial institutions shall observe all the requirements laid down in paras. (2)-(5).

(2) The quality of shareholders and the structure of groups they belong to shall ensure prudent and sound management over non-bank financial institutions and shall allow efficient supervision. The shareholders shall:

- a) have a stable financial standing in order to prove satisfactorily the origin of the funds for acquiring the participation in non-bank financial institutions and create prerequisites for its possible financial backing;
- b) provide enough information to ensure transparency for the identification of the group they belong to;
- c) provide information about the significant shareholders in accordance with the requirements established by NBR regulations.

(3) Managers and administrators of the non-bank financial institution shall fulfil the following professional qualification and experience requirements:

- a) managers should have a university degree and experience of at least 2 years in one of the fields deemed relevant by the National Bank of Romania;
- b) at least one of the administrators should have experience of at least one year in the accounting and financial field.

(4) The organisation and management of non-bank financial institutions shall imply the following:

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a) non-bank financial institutions shall be governed by their own by-law, which shall lay down in detail the tasks and powers of each department referred to in the organisation chart, as well as interdepartmental liaison;

b) non-bank financial institutions shall establish, as part of their organization chart, at least one risk management committee and one audit committee, the minimum tasks of which shall be laid down by the National Bank of Romania regulations;

c) the management of non-bank financial institutions shall be ensured by at least two managers, employees of the concerned institution, appointed in compliance with the Articles of Incorporation thereof;

d) the managers shall ensure the day-to-day management of the activity of non-bank financial institutions, shall exercise solely the duties related to the position which they were appointed to and at least one of them shall have a certificate of Romanian language proficiency;

e) the administrators of non-bank financial institutions shall be natural persons only.

(5) Non-bank financial institutions shall observe prudential requirements, which arise out, without being limited to, of:

a) own funds;

b) exposure to a single debtor and aggregate exposure;

c) exposure to the persons having special relationships with non-bank financial institutions;

d) asset quality, setting-up and use of risk provisions;

e) organisation and internal control.

Art. 29. – (1) Non-bank financial institutions shall draft internal norms with a view to enforcing special requirements and shall submit them to the National Bank of Romania within 5 days from the day of commencing activity.

(2) The modifications to internal norms on performing activity shall be submitted to the National Bank of Romania within 5 days from the day they were approved by statutory bodies.

(3) The National Bank of Romania may ask non-bank financial institutions to modify the internal norms when they fail to comply with the requirements of this Title, of the applicable regulations and of an activity carried out on prudent and sound foundations.

**SECTION 5****Special Register**

Art. 30. - (1) When non-bank financial institutions comply with the criteria referred to in the National Bank of Romania's regulations, they shall be automatically registered with the Special Register and shall be subject to the National Bank of Romania supervision.

(2) The National Bank of Romania shall issue and send the non-bank financial institutions the document attesting their registration with the Special Register.

Art. 31. - Non-bank financial institutions registered with the Special Register shall be kept in the General Register database as well.

Art. 32. - (1) Non-bank financial institutions registered with the Special Register shall observe the obligations referred to in Section 4 and the regulations issued thereto, irrespective of their observance or non-observance of the criteria considered when they were registered with the Special Register.

(2) The National Bank of Romania shall further exercise its supervisory prerogatives over non-bank financial institutions which no longer fulfil the criteria laid down in Art. 27 para. (2).

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## 24 Slovakia

### ACT ON BANKS

The full wording of Act No. 483/2001 Coll. dated 5 October 2001 on banks and on changes and the amendment of certain acts, as amended by Act No. 430/2002 Coll., Act No.510/2002 Coll., Act No. 165/2003 Coll., Act No. 603/2003 Coll., Act No. 215/2004 Coll., Act No. 554/2004 Coll., Act No. 69/2005 Coll., Act No. 340/2005 Coll., Act No. 341/2005 Coll., Act No. 214/2006 Coll., Act No. 644/2006 Coll. and Act No. 209/2007.

The National Council of the Slovak Republic has adopted this Act:

### SECTION I

#### PART ONE

#### BASIC PROVISIONS

##### Article 1

This Act governs some relations associated with the establishment, organisation, management, business operations, and termination of banks in the territory of the Slovak Republic and certain relations in association with the operation of foreign banks in the territory of the Slovak Republic in order to regulate and supervise banks, branch offices of foreign banks and other entities with the objective of ensuring safe functioning of the banking system.

##### Article 2

(1) A bank is a legal entity with its registered office in the territory of the Slovak Republic, founded as a joint stock company, which:

a) accepts deposits and

b) provides loans

and which holds a banking licence to perform activities according to a) and b) above. Any other legal form of a bank is prohibited.

(2) In addition to the activities specified in paragraph 1, a bank may carry out the following other activities, if these are specified in its licence:

a) domestic fund transfers and cross-border fund transfers (hereinafter the "payments and clearing"),

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b) the provision of investment services, investment activities and ancillary services in accordance with a separate law, 1a) and investments in securities for own account;

c) trading for the bank's own account;

1. in financial instruments of the money market in Slovak crowns and foreign currencies, including exchange services,

2. in financial instrument of the capital market in Slovak crowns and foreign currencies,

3. in precious metal coins, commemorative banknotes and coins, sheets of banknotes and sets of circulation coinage,

d) management of receivables for the client's account, including advisory services,

e) financial leasing,

f) provision of guarantees, 2 and opening and endorsing of letters of credit,<sup>3</sup>

g) issuing and administration of payment instruments,<sup>4</sup>

h) business advisory services,

i) issuing of securities, participation in securities issues, and provision of related services,

j) financial brokerage,

k) safe custody of assets,

l) renting of safe deposit boxes,

m) provisions of banking information,

n) mortgage transactions pursuant to Article 67, paragraph 1,

o) performing the function of a depository pursuant to separate regulations,

p) processing of banknotes, coins, commemorative banknotes and coins.

(3) A banking licence is a licence to establish a bank or branch office of a foreign bank and to perform banking operations by this bank or branch office of a foreign bank in the extent specified by this licence and according to conditions established therein or by provisions of this Act and separate regulations.

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(4) If a special permit is required for providing certain activities listed in paragraph 2 pursuant to a separate regulation, a banking licence to perform these activities may only be issued after the special permit comes into force; this does not apply to foreign banks, which are subject to the provisions of Articles 11 to 20.

(5) Activities listed in paragraphs 1 and 2 (hereinafter referred to as “banking activities”) may also be performed by foreign banks through their branch offices which have a banking licence to do so pursuant to Article 8.

(6) A bank may only issue registered shares in book entry form; a change of their form is prohibited.

(7) A foreign bank is a legal entity based outside the territory of the Slovak Republic, which has a licence to perform these activities granted in its home country.

(8) Branch office of a foreign bank is an organisational unit of a foreign bank located in the territory of the Slovak Republic<sup>7</sup> which directly performs activities specified in paragraph 1 in particular; all branch offices of a foreign bank established in the territory of the Slovak Republic by a bank based in a Member State of the European Union or other country of the European Economic Area (hereinafter referred to as “a Member State”) are deemed to constitute a single branch office for the purposes of the licence to perform banking activities.

(9) A bank or branch office of a foreign bank, except as provided in paragraph 10, may not carry out business activities other than banking activities.

(10) A bank or branch office of a foreign bank may carry out other than banking activities for a third person only if these are related to its operations. Approval from the National Bank of Slovakia shall be required for these activities. These activities shall not be recorded in the Business Register.

(11) In association with performing banking activities, a bank or branch office of a foreign bank shall also be obligated to perform tasks assigned by the National Bank of Slovakia in the field of monetary policy and payments and settlements pursuant to a separate law.

(12) The provisions of a separate law shall apply to a bank or branch office of a foreign bank unless this Act stipulates otherwise.

(13) Banks and branch offices of foreign banks shall perform payments and clearing between themselves in the Slovak Republic pursuant to a separate regulation.

**PART TWELVE****MORTGAGE BANKING****Article 67**

(1) For the purposes of this Act, a mortgage transaction means:

- a) the provision of mortgage loans and the related issuance of mortgage bonds,
- b) the provision of municipal loans and the related issuance of municipal bonds by a bank.

(2) Mortgage transactions may be effected in Slovak crowns or in a foreign currency.

(3) In case of their execution in a foreign currency, the exchange rate risk shall be born by the bank or branch office of a foreign bank conducting mortgage transactions (hereinafter referred to as "mortgage bank"). A mortgage bank has the duty to adopt measures to prevent exchange rate risks arising from coverage of mortgage bonds or municipal bonds by assets under mortgage loans and municipal loans.

**Article 68**

A mortgage loan is a loan with a maturity of at least four years and a maximum of thirty years, secured by the right of lien established upon a domestic real estate, including an uncompleted construction, which is at least to the amount of 90 percent financed by the issue and sale of mortgage bonds by a mortgage bank pursuant to a separate regulation, which a mortgage bank provides for the following purposes:

- a) acquisition of domestic real estate or any part thereof,
- b) construction or modification of existing structures,
- c) maintenance of domestic real estate, or
- d) repayment of an outstanding loan drawn for purposes specified in letters a) to c), which is a mortgage loan provided by a mortgage bank in bankruptcy.
- e) repayment of an outstanding loan drawn for purposes mentioned in letters a) to c) other than a mortgage loan.

**Article 69**

A municipal loan is a loan with a maturity of at least four years and a maximum of thirty years, secured by the right of lien established upon real estate owned by a municipality or a regional authority, financed at least by 90% by the issue and sale of municipal bonds according to a separate regulation, which banks provide for the acquisition of domestic real estate,

construction or modification of existing structures, maintenance of domestic real estate and other buildings with the objective of their use for public service purposes.

**Article 70**

A mortgage bank may deposit its temporarily unemployed funds raised in mortgage transactions in a bank or branch office of a foreign bank.

Furthermore, it may use these funds to purchase:

- a) mortgage bonds issued by another mortgage bank,
- b) municipal bonds<sup>62</sup> issued by another mortgage bank,
- c) bank bills issued by the National Bank of Slovakia,
- d) government bonds,
- e) treasury bills.

**Article 71**

The issues and the particulars of mortgage bonds and municipal bonds shall be governed by a separate regulation. The National Bank of Slovakia may stipulate for a mortgage bank in its licence to perform mortgage transactions special conditions for financing of mortgage and municipal loans for a maximum period of two years after such licence was granted.

**Article 72**

(1) Mortgage bonds and municipal bonds issued may only be duly secured by mortgage bank's claims from mortgage and municipal loans which are secured by a pledge on real estate in accordance with Article 74 and which do not exceed 70 percent of the value of pledged real estate valued in accordance with Article 73.

(2) Mortgage and municipal loans going beyond the limit stipulated in paragraph 1 may only be granted on condition that the total amount of claims of a mortgage bank overrunning the limit does not exceed 10 percent of the total amount of outstanding mortgage and municipal loans.

(3) Assets used to secure the principal of issued mortgage bonds and municipal bonds, including the right of lien to real estate pursuant to Article 74, may not be pledged by the mortgage bank or otherwise used to guarantee its liabilities.

#### **Article 73**

(1) For the purposes of this Act, the value of real estate shall be determined by a mortgage bank on the basis of an overall assessment of the real estate concerned. In determining the value, the mortgage bank may only take into account permanent features of the real estate and benefits that can be derived by the owner from the real estate in the long run. For real estate burdened by a lien or transfer restrictions in accordance with Article 74, paragraph 2, a mortgage bank shall lower the value of the real estate by the amount of claims guaranteed by such lien or transfer restrictions.

(2) A mortgage bank shall only be bound by its own valuation of real estate.

#### **Article 74**

(1) The right of lien securing claims of a mortgage bank under mortgage or municipal loans shall arise upon its entry in the real estate register of the Slovak Republic pursuant to a separate regulation on the basis of a proposal of the mortgage bank and the owner of the real estate. The mortgage bank shall have the status of a mortgagee.

(2) A mortgage loan or a municipal loan may not be secured by a lien on real estate on which other lien has already been established and is still outstanding, or which is subject to a real estate transfer restriction, except for liens and transfer restrictions established in accordance with a separate regulation<sup>66</sup>, liens established in favour of the same mortgage bank in order to secure another mortgage or municipal loan it has provided, liens established in favour of a building savings bank or the State Housing Development Fund, and liens established in order to secure the fulfilment of claims resulting from transfers of residential or non-residential premises for a regulated price pursuant to a separate regulation<sup>66a</sup>. Until the expiration of such a lien, a mortgage bank may not agree according to a separate regulation or allow for the entry of the right of lien, which has already been entered in the real estate register in the first order, in any other order decisive in terms of satisfaction of the rights of lien, except for the rights of lien specified in the first sentence which are to secure the claims of the mortgage bank from a mortgage loan or a municipal loan.

(3) Real estate shall not be deemed encumbered by a lien or transfer restriction where a claim charged with another lien or a transfer restriction expires as a result of the extended mortgage loan or municipal loan used to settle this claim, and where the lien on real estate or transfer restriction expires. For the purposes of this Act, real estate shall also not be deemed

encumbered by a lien where a mortgage bank, for at least a period from the first day of providing even a part of funds under a mortgage or municipal loan through to the expiration of the right of lien used to secure the mortgage bank's claims from mortgage or municipal loans, agrees according to a separate regulation<sup>66aa</sup> the first order decisive in terms of satisfaction of the rights of lien for this particular right of lien, except for the rights of lien specified in the first sentence of paragraph 2, and secures this order by way of its entry in the real estate register.

(4) A lien on real estate established to secure claims under a mortgage loan or municipal loan shall expire upon repayment of the loan and accessories. A mortgage bank shall announce the expiry of the lien on real estate to the relevant state administration authority in charge of the real estate register.

(5) In exercising its right of lien, a mortgage bank may sell real estate pledged as security by distraint in accordance with a separate regulation<sup>67</sup>, on the basis of an agreement made in the form of a notarial deed between the mortgage bank, its debtor, and the mortgagor, where not identical with the debtor, if the parties agree on a distraint in accordance with a separate regulation in the said agreement. Such agreement shall establish a legal obligation, and specify the beneficiary and the person subject to this obligation, a legal cause, objects and time limits for the completion.

#### **Article 75**

(1) A mortgage bank shall provide mortgage and municipal loans according to general terms and conditions it issues for granting mortgage and municipal loans that must in particular contain:

- a) the due form of application for a mortgage or municipal loan,
- b) a procedure for applying for a mortgage and municipal loan,
- c) the terms and conditions for granting mortgage and municipal loans, including an overall definition of the type, method and extent of securing a mortgage bank's claims under a mortgage or municipal loan agreement and the definition of costs to be claimed from the client and associated with the mortgage loan or the municipal loan and the conclusion of such an agreement,
- d) the manner in which a mortgage or municipal loan agreement may be terminated,
- e) a procedure to be followed by a mortgage bank in the event a debtor defaults on repayment of a mortgage or municipal loan or its accessories,
- f) changes in a mortgagor's situation, which shall entitle a mortgage bank to demand early repayment of a mortgage loan or municipal loan,

g) the conditions for exercising liens on real estate established to secure mortgage or municipal loans.

(2) A mortgage bank may not demand early repayment of its claims under mortgage or municipal loans for reasons on part of the mortgage bank or its legal successors; this shall also apply where a mortgage bank is wound up and liquidated.

(3) The information that a mortgage bank is obligated to make available within its operating premises according to Article 37, paragraph 1 must also include the mortgage bank's general terms and conditions for granting mortgage loans and municipal loans in accordance with paragraph 1 and the percent amount of the bonus pursuant to Article 84, paragraph 1 and Article 85a, paragraph 1 set for individual calendar years. The mortgage bank shall be obligated to provide the client with additional information at his request.

(4) A mortgage loan agreement or a municipal loan agreement must be in writing and it must contain:

a) the identification data of a mortgage bank and the client on at least the following scope:

1. the first name, surname, birth register number, if such has been assigned, the date of birth and the address of permanent residence, where concerned is a natural person,

2. the name, identification number, if such has been assigned, and the address of registered office and place of business, where concerned is a legal person,

b) the amount of a mortgage loan or a municipal loan granted and its maturity, the rules for principal and interest payments on the granted mortgage or municipal loan, the level of per annum percent interest rate on the granted mortgage or municipal loan and a detailed specification of other costs to be claimed from the client that are associated with the mortgage or municipal loan and the conclusion on an agreement on such a loan,

c) the precise designation of domestic real estate on which a mortgage loan or a municipal loan is granted; the precise designation of such domestic real estate in supplement to a mortgage loan agreement or a municipal loan agreement concluded no later than before even a part of funds is provided under the mortgage or municipal loan shall be deemed as meeting this condition,

d) the conditions dependent on objective circumstances, on the occurrence of which the level of per annum percent interest rate or other costs to be claimed from the client may be adjusted,

e) a detailed specification of the type, method and extent of securing the mortgage bank's claims under a mortgage loan agreement or a municipal loan agreement,

f) other terms and conditions for granting and repayment of a mortgage loan or a municipal loan required according to the mortgage bank's general terms and conditions for granting mortgage and municipal loans,

g) the conditions for accelerated repayment, if any, of a mortgage loan or a municipal loan at the client's initiative.

(5) A mortgage loan agreement or a municipal loan agreement may also contain other requisites agreed between a mortgage bank and the client.

(6) A mortgage bank may not claim from the client the payment of interest, charges and other costs that are not determined in a mortgage loan agreement or a municipal loan agreement.

#### **Article 76**

(1) A list of mortgage and municipal loans and their amounts, liens and claims of a mortgage bank under mortgage and municipal loans that serve to back mortgage and municipal bonds, or other assets serving as substitute coverage, must be kept separately by a mortgage bank in its register of mortgages.

(2) The register of mortgages and the documents on the basis of which the entries have been made in the register of mortgages must be kept by a mortgage bank separately from other documents and protected against misuse, destruction, damage or loss.

(3) By the end of January and July of each calendar year, a mortgage bank shall be obligated to notify the National Bank of Slovakia and the Ministry of all entries made in the register of mortgages in the last six months.

(4) The due form and method for keeping the register of mortgages pursuant to paragraph 2 and the due form of information disclosed pursuant to paragraph 3 shall be determined in detail by the National Bank of Slovakia and the Ministry by means of a generally applicable regulation.

#### **Article 77**

A mortgage bank shall be obligated to maintain separate analytical records of mortgage transactions in its accounting system.

**Article 78**

(1) The National Bank of Slovakia shall appoint a mortgage controller to each mortgage bank to supervise the conduct of mortgage transactions in accordance with this Act and a separate regulation. In the same manner, it shall appoint a deputy for each mortgage controller who shall represent the mortgage controller in his absence in the full extent of all his rights and obligations.

(2) The National Bank of Slovakia shall discuss the appointment of a mortgage controller and his deputy beforehand with the mortgage bank concerned.

(3) A mortgage controller and his deputy shall be dismissed by the National Bank of Slovakia.

(4) A mortgage controller or his deputy may only be a natural person who has the necessary professional competence and integrity to carry out this activity. A natural person with completed university education, who has at least five-years experience in economics or law in the banking sector shall be deemed professionally competent. A person shall be deemed to have the necessary integrity if he has not been lawfully sentenced for a criminal offence committed in the discharge of a management office or any intentional criminal offence.

**Article 79**

(1) A mortgage controller shall perform his duties on his own, independently and impartially. In carrying out his activity, he shall only be bound by generally binding regulations, a contract to perform the function of a mortgage controller and decisions issued in the course of supervision or oversight pursuant to a separate regulation<sup>13</sup> over the operation of a mortgage controller.

(2) Any disputes between a mortgage controller and a mortgage bank shall be settled by the National Bank of Slovakia where the matter relates to supervision, or a supervisory authority pursuant to a separate regulation<sup>15</sup> in case of matters falling into the jurisdiction of such supervisory authority pursuant to a separate regulation.

**Article 80**

(1) A mortgage controller shall supervise the issuance of mortgage bonds and municipal bonds with regard to their particulars and coverage pursuant to a separate regulation.

(2) Prior to each issue of mortgage bonds or municipal bonds, a mortgage controller shall be obligated to issue a written certificate testifying that they are covered in accordance with a separate regulation,<sup>68</sup> and that an entry was made in the register of mortgages.

(3) A mortgage controller shall check whether a mortgage bank provides mortgage and municipal loans, including their securing through mortgage and whether a mortgage bank meets its obligations in respect of the mortgage register in accordance with this Act and other generally binding regulations.

(4) If requested by a mortgage bank, a mortgage controller shall be obligated to assist in activities related to the performance of mortgage operations, which could not be completed by the mortgage bank without his assistance.

#### **Article 81**

(1) If a mortgage controller detects any shortcomings pursuant to Article 80, he shall be obligated to immediately notify his findings in writing to the National Bank of Slovakia, and in case of shortcomings described in Article 80, paragraph 1, also to a supervisory authority pursuant to a separate regulation.<sup>15</sup> Article 93 of this Act shall not apply to the disclosure of information according to this paragraph.

(2) In performing his duties, a mortgage controller shall act in his own name and for the account of the mortgage bank.

(3) A mortgage bank has the duty to enable the mortgage controller to perform his duties, in particular it shall be obligated to allow him to inspect accounting records, the register of mortgages, and other documents related to mortgage transactions.

(4) The amount of remuneration of a mortgage controller and his deputy shall be determined by the National Bank of Slovakia upon agreement with the mortgage bank. The remuneration shall be paid by the mortgage bank.

(5) A mortgage bank shall conclude with a mortgage controller a contract to perform the function of mortgage controller detailing the rights and duties of the mortgage bank and the mortgage controller. A mortgage bank shall conclude with a deputy mortgage controller a contract to perform the function of deputy mortgage controller detailing the rights and duties of the mortgage bank and the deputy mortgage controller.

#### **Article 82**

(1) The activity of a mortgage controller and his deputy shall be subject to supervision exercised by the National Bank of Slovakia and supervision performed by a supervisory authority pursuant to a separate regulation.

(2) If, in the course of supervision, the National Bank of Slovakia detects shortcomings in the activity of a mortgage controller or his deputy, other than shortcomings described in Article 80, paragraph 1, it may fine him up to SKK 100,000.

(3) If, in the course of supervision performed according to separate regulations, a supervisory authority detects shortcomings in the activity of a mortgage controller or his deputy described in Article 80, paragraph 1, it shall proceed in accordance with a separate regulation.

### **Article 83**

The National Bank of Slovakia and the Ministry shall stipulate the details of the position and activity of a mortgage controller and his deputy by a generally applicable legal regulation.

### **Article 84**

(1) A borrower under a mortgage loan agreement (Article 75, paragraph 4), for purposes set out in Article 68, letters a) to d), (hereinafter referred to as “mortgagor”), who is a natural person, shall be entitled to a bonus from the state budget of the Slovak Republic according to terms conditions set out in this Act (hereinafter referred to as “government bonus”).

(2) The government bonus means a percentage by which the rate of interest fixed in a mortgage loan agreement is reduced. The government bonus shall be determined for individual calendar years by the respective State Budget Act and shall apply to all mortgage loan agreements in the relevant year; without prejudice to Article 122a.

(3) For the purposes of calculation of the government bonus on a mortgage loan provided in a foreign currency, the amount of mortgage loan shall be converted to Slovak crowns using the exchange rate announced by the National Bank of Slovakia<sup>31</sup> as of the date when the mortgage loan agreement was concluded.

(4) A government bonus may be granted for a mortgage loan of up to SKK 2,500,000 per residential real estate, also in case of a married couple and the acquisition of such real estate into shared ownership. For the purposes hereof, residential real estate means apartment buildings as defined in a separate regulation.

(5) A mortgage loan on which a government bonus is granted shall typically be repaid in regular monthly instalments. If instalments of a mortgage loan are agreed-upon otherwise, the sum of government bonuses on this mortgage loan may not exceed the sum that would have been provided as a government bonus in the instance of regular monthly instalments.

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**Article 85**

(1) A claim to a government bonus from the state budget of the Slovak Republic shall be exercised by a mortgagor via a mortgage bank on the basis of an application submitted to the mortgage bank.

(2) A government bonus shall be granted to a mortgagor on an annual basis throughout the loan maturity period fixed in a mortgage loan agreement, but only under one mortgage loan agreement. Any amendment to a mortgage loan agreement which results in an increase in the mortgage loan amount up to the limit fixed in Article 84, paragraph 4, is deemed to be the same mortgage loan agreement.

(3) If the mortgagor concludes more than one mortgage loan agreement, the government bonus shall be provided on the agreement to which a written statement to that effect is attached; if such statement is contained in several mortgage loan agreements concluded in the same year, the mortgagor shall lose his claim for a government bonus under all agreements for that year for a period of the next 12 calendar months, starting on the first day of the calendar month following the receipt of the written information from the Ministry or an entity appointed by it concerning the existence of several agreements on which a claim for a government bonus has been exercised. For a married couple or co-owners the claim in this case expires for both spouses or all co-owners.

(4) The claim to a government bonus shall expire

a) during a period when on the grounds of default on the part of a mortgagor, a mortgage bank reclassifies a claim arising under a mortgage loan to such classified claims for which it is reasonably assumed that they will not be satisfied to the full amount of their nominal value, or

b) when a mortgagor

1. fails to use the loan for the intended purpose,

2. transfers an obligation from the mortgage loan to another person except to a person close to him, or

3. repays the mortgage loan before the lapse of four years since its granting.

(5) When shared ownership of a married couple or co-ownership expires or when a mortgagor dies, a claim to government bonus shall pass onto a person to which outstanding obligations from the mortgage loan will pass.

(6) If the borrower of a mortgage loan fails to meet the conditions set out in paragraph 4 letter b) item 3, the borrower shall be obliged to repay, via the mortgage bank, the government bonus provided for the entire period of

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maturity of the mortgage loan agreed in the mortgage loan agreement, without undue delay.

#### **Article 85a**

(1) A borrower under a mortgage agreement (Article 75(4)) concluded for the purposes mentioned in Article 68(a) to (c) shall be entitled, under the conditions laid down in this Act, to a young people's subsidy from state budget funds (hereinafter "young people's state subsidy"), provided that this borrower is a natural person not younger than 18 years and not older than 35 years (hereinafter "young mortgagor"). If the young mortgagor is a married couple, the age requirement under the first sentence must be met by each spouse.

(2) The young people's state subsidy shall mean a percentage by which the interest rate stipulated in the mortgage agreement is reduced by the state. The young people's state subsidy shall be set each year in the State Budget Act for the respective budgetary year and shall, for the duration of that year, apply to all mortgage agreements concluded under the conditions laid down in paragraphs (1) and (3).

(3) A young mortgagor shall receive a young people's state subsidy where:

a) as at the date of the mortgage loan application, the young mortgagor has an average monthly income, calculated over the calendar year preceding the year when the mortgage loan application was made, not exceeding 1.3-fold of the national monthly nominal wage in the Slovak Republic, as established by the Statistical Office of the Slovak Republic for the second but one calendar quarter preceding the calendar quarter in which the application for the mortgage loan was made; if the young mortgagor is a married couple, the average monthly income of each spouse may not exceed 1.3-fold of the national monthly nominal wage in the Slovak Republic, as established by the

Statistical Office of the Slovak Republic for the second but one calendar quarter preceding the calendar quarter in which the application for the mortgage loan was made;

b) the mortgagee bank undertakes that for a period of five years from when the mortgage loan is provided and interest is first charged thereon, the mortgagor:

1. will have the interest rate stipulated in the mortgage agreement reduced by an amount equal to the young people's state subsidy under paragraph (2) but not by more than 1%;

2. may defer repayment of the mortgage loan principal;

3. may make the mortgage loan repayments on an extraordinary and free-of-charge basis.

c) the mortgage loan application was submitted after 1 January 2007.

(4) For the purposes of calculating the young people's state subsidy for a mortgage loan provided in foreign currency, the amount of the mortgage loan shall be converted according to the exchange rate published by the National Bank of Slovakia<sup>31</sup>) for the date when the mortgage loan agreement was concluded.

(5) The young people's state subsidy shall be provided for an amount not exceeding SKK 1.5 million of a mortgage loan provided for a single piece of residential property; this shall also apply in cases of married couples or the acquisition of such property into a tenancy in common.

(6) Where a mortgage loan is provided together with the young people's state subsidy, it shall usually be agreed that the repayments, including interest, will be made in regular monthly instalments. If the mortgage loan repayments are agreed otherwise, the amount provided through the young people's state subsidy for the mortgage loan may not exceed the amount that would be provided through that subsidy were the repayments to be made on a regular monthly basis. The provisions of the first and second sentences are without prejudice to the provision of paragraph 3(b) points 2 and 3.

#### **Article 85b**

(1) A young mortgagor who exercises his right to the young people's state subsidy shall do so on the basis of an application submitted to the mortgagee bank.

(2) The young people's state subsidy to a young mortgagor shall be provided on an annual basis for a period of five years from when interest is first charged on the mortgage loan, and only under one mortgage agreement. Any amendment to a mortgage agreement which results in an increase in the mortgage loan up to the amount mentioned in Article 85a(5) shall be deemed the same mortgage loan agreement.

(3) If a young mortgagor concludes more than one mortgage agreement, the young people's state subsidy shall be provided under that agreement to which a written statement to this effect is attached. If such statement is contained in more than one mortgage agreement concluded in the same calendar year, the young mortgagor shall lose his right to the young people's state subsidy under all the mortgage agreements for the period of the next 12 calendar months; this period shall commence on the first day of the calendar month following receipt of written information from the Ministry, or a legal person appointed by it, regarding the existence of more than one mortgage agreement under which the right to the young people's bonus has been

claimed. Where such a case involves a married couple or co-owners, the right shall expire for both spouses or all co-owners.

(4) A young mortgagor who has fallen into arrears on his mortgage loan shall not be entitled to the young people's state subsidy for the period that the mortgagee bank, for this reason, classifies the mortgage loan as a claim that it may reasonably expect will not be repaid in the full amount of its nominal value.

(5) The right to the young people's state subsidy shall expire where:

a) the young mortgagor:

1. does not use the mortgage loan for its intended purpose;
2. transfers an obligation under the mortgage loan to another person who is not a close person; for a transfer to a close person, this person must meet the conditions laid down in Article 85a(1) and 3(a);
3. repays the mortgage loan within a period of four years from when it was provided;
4. when concluding the mortgage agreement that includes the young people's state subsidy, submitted false information about his average monthly income; or

b) a natural person granted the young people's state subsidy submitted false information about his age when concluding the mortgage agreement including the young people's state subsidy.

(6) Where a young mortgagor ceases to be a joint tenant in a joint tenancy between spouses or a co-owner in a tenancy in common, or where he dies, his right to the young people's state subsidy shall pass to whomever assumes his outstanding obligations under the mortgage agreement.

(7) Where a young mortgagor loses his right to the young people's state subsidy under paragraph 5(a) points 3 or 4, he shall, through the mortgagee bank, return without delay the amount of that subsidy which he has already received. Where a natural person loses his right to the young people's state subsidy under paragraph 5(b), he shall, through the mortgagee bank, return without delay the amount of that subsidy which he has already received.

(8) The mortgagee bank shall bear no liability for the truthfulness of the information on the amount of the average monthly income referred to in Article 85a(3)(a).

(9) After five years have passed from when interest was first charged on the mortgage loan, the young mortgagor shall lose his right to the young people's state subsidy and shall at the same time gain the right to a state subsidy.

(10) The provisions of Articles 86 to 88 shall also apply to a mortgage agreement including the young people's state subsidy.

#### **Article 86**

(1) The Ministry of Construction and Regional Development of the Slovak Republic shall remit government bonus payments to mortgage banks on a monthly basis.

(2) Requests for a government bonus payment for a specific month shall be submitted by mortgage banks to the Ministry of Construction and Regional Development of the Slovak Republic no later than the 25th day of the following month.

(3) The Ministry of Construction and Regional Development of the Slovak Republic shall transfer the funds pursuant to paragraph 2 by the 25th day of the month following the delivery of a request by a mortgage bank for a government bonus, to a special account of the mortgage bank opened for this purpose with the National Bank of Slovakia. From this account, the mortgage bank may draw funds for individual mortgagors eligible to government bonuses.

(4) Government bonuses granted to mortgagors for the year in question shall be cleared by a mortgage bank within the time limit set by the Ministry of Construction and Regional Development of the Slovak Republic.

(5) A mortgage bank is responsible for:

- a) timely exercise of claims to government bonuses from the state budget,
- b) correct calculation of the amount of government bonuses,
- c) return of government bonuses in case of violations of the government bonus terms and conditions.

#### **Article 87**

(1) A central register of mortgage loan agreements on which a government bonus is claimed shall be kept by the Ministry or a legal person it Commissions to do so.

(2) Mortgage banks shall be obligated to provide the Ministry or a person Commissioned by it with information on new mortgage loan agreements for the purposes mentioned in paragraph 1. Such information must contain:

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- a) the mortgagor's birth certificate number,
  - b) the mortgage loan agreement number,
  - c) a statement on the exercise of claim to a government bonus,
  - d) the amount of a mortgage loan in Slovak crowns,
  - e) the amount of monthly instalments,
  - f) the mortgage loan maturity date,
  - g) the interest rate agreed in the mortgage loan agreement,
  - h) the purpose of the mortgage loans granted,
  - i) the amount of government bonus in Slovak currency,
  - j) the precise designation of real estate to be mortgaged in order to secure a mortgage bank's claims from a mortgage loan.

(3) State supervision over compliance with the terms and conditions for the distribution of government bonuses shall be ensured by the Ministry. The Ministry shall be authorised to request from a mortgage bank any information and documents needed to review compliance with the terms and conditions of government bonuses. The provisions of a separate regulation<sup>72</sup> shall apply as appropriate to such state supervision.

(4) The employees and members of bodies or the person Commissioned pursuant to paragraph 1 and the Ministry shall be obligated to keep confidential all facts connected with the performance of activities pursuant to paragraphs 1 to 3. Such obligation shall continue to apply after the termination of the Commission given to such a person to perform the task mentioned in paragraph 1, or the termination of employment or a similar work relationship or office in the bodies of such person. The foregoing is without prejudice to the provisions of Article 91, paragraphs 2 to 7, Article 92, paragraphs 1 to 6, and Article 93.

(5) If, in performing the state supervision, the Ministry reveals shortcomings in a mortgage bank's operation consisting of a failure to comply with the terms and conditions for granting government bonuses, it shall charge the mortgage bank with an obligation to return to the state budget a sum amounting to the government bonus illegitimately used.

(6) In addition to the measure according to paragraph 5, the Ministry may also impose upon a mortgage bank, depending on the severity of the breach of the obligation and the length of duration of the unlawful condition, a fine up to the double of the illegitimately used amount of a government bonus on a mortgage loan. In the event of a failure to meet the measure in accordance

with paragraph 5, such a fine may also be imposed repeatedly, but not more than to a total amount not exceeding the amount according to the first sentence. Such fines shall constitute the revenue to the state budget.

(7) Proceedings pursuant to paragraphs 5 and 6 shall abide by the provisions of a generally applicable regulation on administrative proceedings.

(8) The Ministry shall supply the Ministry of Construction and Regional Development of the Slovak Republic on a monthly basis with information on total claims for government bonuses at individual mortgage banks in the given calendar month, in order that the funds are remitted in accordance with Article 86, paragraph 3; this information shall be provided no later than the 20th day of the following month. The Ministry shall also provide the Ministry of Construction and Regional Development of the Slovak Republic, in order to facilitate its work in granting government bonuses, with summary data on the purposes for which mortgage loans have been provided on the basis of information from mortgage banks pursuant to Article 76, paragraph 3, within ten working days of the date of delivery of this information to the Ministry.

#### **Article 88**

For the purposes of mortgage transactions and government bonuses, the provisions of this Act and a separate law<sup>13</sup> relating to real estate shall apply equally to residential and non-residential premises.

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## 25 Slovenia

THIS TEXT IS AN UNOFFICIAL TRANSLATION AND MAY NOT BE USED AS A BASIS FOR SOLVING ANY DISPUTE

The official language of the document translated herein is Slovene. In case of any doubt or misunderstanding the Slovene version should therefore be considered final.

### **BANKING ACT (ZBan-1)**

#### **Chapter 1: General provisions**

##### **1.1. Contents of the Act**

###### **Article 1**

(Subject of the Act)

This act shall regulate the following:

1. Conditions for setting up, operation, supervision and winding up of credit institutions established in the Republic of Slovenia and
2. Conditions under which persons established outside the Republic of Slovenia may provide banking services, mutually recognized financial services and services of issuing electronic money in the territory of the Republic of Slovenia.

###### **Article 2**

(Transposed EU Directives)

This Act shall transpose the following Directives of the European Parliament and of the Council into the law of the Republic of Slovenia:

1. Directive 2006/48/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, (OJ L 177, 30 June 2006, p. 1);

###### **Article 3**

(1) No person without a banking licence may accept deposits unless stipulated otherwise by a separate regulation. No person without a banking licence may offer interest or other compensation on deposits, which constitutes a tax expense according to a separate regulation.

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(2) Unless stipulated otherwise by a separate regulation, no person may provide, without a banking licence, loans or credits as part of its business or other activity by using repayable funds obtained from other persons on the basis of a public offer.

(3) No person may perform payments and clearing for another person as part of its business or other activity without a banking licence, unless stipulated otherwise by a separate regulation.

(4) No person may issue bank payment cards without a banking licence.

#### **Article 7**

(Banking services)

Banking services shall mean accepting of deposits from the public and lending for the banks' own account.

#### **Article 8**

(Accepting deposits from the public)

(1) Accepting deposits from the public shall mean accepting deposits from uninformed persons.

(2) A deposit for the purpose of defining the acceptance of deposits shall mean any money deposit which is made by a person (hereinafter referred to as the "depositor") on behalf of another person (hereinafter referred to as the "recipient of payment") on the basis of a contract on money deposit or on the basis of another legal transaction in which the depositor is granted the right to request repayment of the deposited money from the recipient of payment within specified time limits.

(3) According to paragraph (1) of this Article, an uninformed person shall mean a natural or legal person who does not possess the appropriate professional knowledge and experience required for evaluating risks connected with payment of deposits.

(4) An uninformed person from paragraph (1) of this Article shall be deemed to be any natural or legal person unless the recipient of payment proves otherwise.

(5) Notwithstanding paragraph (4) of this Article, states, central banks, financial corporations and their subsidiary undertakings shall not be deemed as uninformed persons and no evidence to the contrary shall be allowed.

(6) Accepting of deposits from the public shall not be deemed as accepting of money deposits for issuing electronic money if electronic money is issued for the deposited amount immediately upon deposit.

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**Article 13**

(Bank, savings bank, electronic money institutions and credit institutions)

(1) "Bank" shall mean a legal person that performs banking services subject to an authorization for the provision of such services issued by a competent supervisory authority.

(2) "Electronic money institution" shall mean a legal person that performs electronic money issuing services subject to an authorization for the provision of such services issued by a competent supervisory authority.

(3) The term "credit institution" shall refer collectively to banks, savings banks and electronic money institutions.

**Article 15**

(Financial institution and financial undertaking)

(1) "Financial institution" shall mean a legal person

1. Other than a credit institution and
2. Whose sole or predominant activity includes the following:
  - acquisition of equity interests or
  - performance of mutually recognized financial services from points 2. through 12. and 15. of Article 10 of this Act.

(2) "Special financial institution of a Member State" shall mean the Member State's financial institution from paragraph (1) of Article 101 of this Act.

(3) "Other financial undertaking" shall mean an insurance company, reinsurance company, asset management company, pension company or other legal person

1. Other than a credit institution and
2. That performs additional or other financial services.

(4) "Pension company" shall mean a legal person that performs the activity of additional voluntary pension insurance.

(5) The term "financial undertaking" shall refer collectively to credit and financial institutions and other financial undertakings.

(6) The minister (hereinafter referred to as the “minister”) responsible for finance shall lay down the criteria for identifying the performance of the predominant activity referred to in paragraph (1) of this Article.

### **Consumer Credit Act**

Pursuant to the second indent of the first paragraph of Article 107 and the first paragraph of Article 91 of the Constitution of the Republic of Slovenia I hereby issue the following Order on the Promulgation of the Consumer Credit Act (ZPotK)

I hereby promulgate the Consumer Credit Act (Zakon o potrošniških kreditih; ZPotK), which was adopted by the National Assembly of the Republic of Slovenia at its session of 18 July 2000.

No.: 001-22-126/00, Ljubljana, 26 July 2000

Milan Kucan

President of the Republic of Slovenia

### **CONSUMER CREDIT ACT**

#### **Article 1** (subject of act)

(1) The present act shall regulate credit contracts in which a consumer taking credit under the conditions and for the purpose stipulated by the present act appears as the credit-taker.

(2) This Act shall transpose the following Directives into the law of the Republic of Slovenia:

1. Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit
2. Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit
3. Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

#### **Article 2** (terms)

(1) A credit contract under the present act is a contract by which the creditor provides or undertakes to provide a consumer with credit in the form of:

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1. delayed payment, particularly in the sale of goods or provision of services
  2. loans, particularly cash loans or overdrafts on a current account
  3. other similar financial agreements that in economic terms have the same purpose as credit

(2) A consumer is a natural person who is active in transactions under the present act for purposes outside such person's professional or income-earning activities.

(3) Creditors are legal or natural persons or a group of such persons that provide or undertake to provide credit to a consumer within the framework of their activities, business or profession.

(4) Credit brokers are legal and natural persons that within the framework of their activities, business or profession mediate in the conclusion of credit contracts within the framework of a creditor's activities, and are authorised to do so by the creditor through a contract.

(5) The total cost of credit covers all costs, including interest and other fees, that are directly connected to the credit contract and must be paid by the consumer during ordinary repayment of the credit.

(6) The effective interest rate is the total cost of the credit expressed as an annual percentage of the amount of credit approved. The annual percentage shall be calculated in accordance with Articles 17 and 18 of the present act.

(7) According to this Act, a consumer mortgage credit contract is a contract, with which the creditor grants or promises to grant the consumer a credit whose repayment is secured with a mortgage or a land charge on a real estate. (licence to perform consumer credit services)

## **VII. SUPERVISION OF IMPLEMENTATION OF PRESENT ACT**

### **Article 22**

(1) Before commencing the performance of consumer credit services creditors must obtain a licence for the performance of such services (hereinafter: licence).

(2) A licence shall not be required by banks and savings banks that obtain a licence for the performance of credit transactions under the act governing banking. A licence shall not be required by the Housing Fund of the Republic of Slovenia. A licence shall not be required by creditors that only provide credit to their own employees or by not-for-profit organisations that only provide credit for social and educational purposes.

(3) The licence specified in the first paragraph of this article shall be issued by the office responsible for consumer protection (hereinafter: the authority).

**Article 23** (issue of licence)

The authority shall issue a licence at the request of a creditor under the rules of general administrative procedure.

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## 26 Spain

### LAW OF AUTONOMY OF THE BANCO DE ESPAÑA

Law 13/1994, of 1 June

(Official State Gazette of 2 June)

In defining the institutional role of the Bank within the Spanish administration and the precise scope of its autonomy, the new law balances the provisions of the Treaty on European Union with the mandates of our Constitution, and co-ordinates this equilibrium through various provisions. Article 7, for example, which defines the objectives towards which monetary policy should be directed, sets price stability as a priority objective, which is an essential, though admittedly not the sole, element of the «economic stability» referred to in article 40 of the Constitution. As long as it does not detract from this primary objective, monetary policy shall support the general economic policy of the government. In the light of article 97 of the Constitution, which gives the government responsibility for directing domestic and foreign policy, article 24 of the law assigns to the government the exclusive responsibility for appointing all members of the Bank's governing bodies. Article 20 authorises the Economy and Finance Minister and the Secretary of State for the Economy to attend the meetings of the Bank Council as they deem necessary, and to submit motions to the Council as needed, thereby providing the government with an appropriate channel to expound its arguments even in areas in which the Bank can make independent decisions. Article 10 specifies the Bank's responsibility to report on monetary policy to Parliament and the government, so that these institutions can monitor and debate the monetary policy being pursued on a regular basis. The Bank may report to Parliament and the government on any obstacles that hinder monetary policy from achieving price stability, which will help permit an appropriate balance in overall economic policy-making. Finally, in areas other than monetary policy, including the supervision of credit institutions, the Bank shall be subject not only to relevant laws, but also to the regulations drafted by the government to implement such laws, with administrative acts and resolutions being subject to ordinary appeal to the Economy and Finance Minister. In sum, the law makes the Bank a special institution within the administration; it is subordinate to the government in general terms but nonetheless enjoys full autonomy in the area of monetary policy, so as better to defend the objective of price stability set out in the law itself.

Although this law introduces significant changes in the areas mentioned above (i.e. steering of monetary policy and the status of the governing bodies of the Bank), there are no significant changes in the status of the other functions that current legislation assigns to the Bank. In particular, the Bank's

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supervisory functions over credit institutions will still be regulated by Law 26/1988, of July 29, on Discipline and Intervention of Credit Institutions, and other applicable legislation. It should be kept in mind that under the terms of article 14.4 on the Statutes of the European System of Central Banks and the European Central Bank, national central banks may perform functions separate from monetary policy-making which do not interfere with this task, and these shall be subject to national legislation and shall not be considered part of the functions of the European System of Central Banks.

## **DISCIPLINE AND INTERVENTION OF CREDIT INSTITUTIONS**

### **Law 26/1988, of 29 July (BOE day 30)**

#### **(Correction of errors, BOE of 4 August 1989 )**

Numerous experiences accumulated over many years internationally and in Spain herself have demonstrated the absolute need for financial institutions to be submitted to a special regime of administrative supervision that is, in general, much more intense, than the regulatory framework borne by most other sectors of the economy. These institutions raise financial resources from a very broad public that is largely lacking in the necessary information and expertise for making its own evaluation of the solvency of the institutions. Public regulation and supervision aspire to palliate the effects of this lack of information and expertise and promote confidence in financial institutions, an indispensable condition for the development and proper functioning of institutions which are essential not just for depositors of funds, but for the economy as a whole, given the pivotal role they play in payment systems.

These problems are usually dealt with in all parts by articulating special supervisory provisions for these institutions. The mechanisms basically consist of a set of rules aimed at providing supervisory authorities with full information on the situation and evolution of financial institutions, and of another set of rules intended to restrict or prohibit those practices or operations that augment risks of insolvency or lack of liquidity, and to strengthen the capital with which the institutions can handle those risks without causing harm to depositors. The effectiveness of the rules will obviously depend on the delegation of sufficient enforcement powers to the supervisory authorities for financial institutions. This regulatory system must be complemented by the development and implementation of those powers in the form of an adequate system of administrative sanctions.

Our legal system contains many laws and regulations establishing rules inspired in the criteria set out above for different types of financial institution and laying down administrative penalties for violation of those rules. That regulatory framework has very serious deficiencies, however, which may be grouped into two categories: those that obscure the proper application of the rule of no crime or punishment without prior law applicable to the essential elements of enforcement rules (delegation of enforcement powers to the

authorities, precise definition of infractions and sanctions); and those which arise from the enormous dispersion and variety of the instruments in which the laws are set out, with the attendant voids and lack of coordination.

In order to address these deficiencies, and at the same time following the policy promoted by the EEC on fostering the creation of a common supervisory framework for financial institutions, it is necessary to publish the present Law. The objective is to adapt the enforcement powers for these matters to the constitutional norms applicable to the relevant doctrine laid down by the Spanish Constitutional Court and also to cover the broadest possible group of financial institutions, thereby generalising this facet of their regulatory framework.

By way of summary of the content of this law, the most notable principles and solutions are:

I. Common enforcement rules are established for a group of credit institutions (*entidades de crédito*), a name more consistent with our juridical tradition than the term “credit establishments” (*establecimientos de crédito*) that it replaces and which, moreover, extends to other types of financial institutions that essentially pursue the activity that defines a credit institution.

II. The parties subject to the enforcement provisions are clearly determined, by involving the infringing entity and those persons holding directorships or powers of management or control, where such persons are accountable within the entities.

III. The infractions are defined with the aim of defining the punishable conducts, having regard to their gravity, striking a balance between the indispensable level of specificity and the necessary degree of generality, so as to avoid the law being rendered unenforceable in the future and without relying on an excessively exhaustive list of prohibited acts, given that any such list would be as impossible as it would be useless for an activity undergoing such rapid change.

IV. A range of sanctions scaled to the seriousness of the infractions is established, without detriment to the affected parties’ right to legal certainty and to application of the principle of proportionate punishment.

V. Lastly, in relation to enforcement powers, application of the Law rests with the state, without prejudice to the exercise of the powers delegated to regional governments for these matters. In all events, the regional governments must respect the principles that are declared basic under paragraphs 11, 13 and 18 of article 149.1 of the Spanish Constitution, while powers are reserved to the state in relation to infractions affecting monetary or capital adequacy rules.

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Along with the development of these central issues, and of the closely linked procedural questions, this Law is also used to regulate other important aspects bearing relation to enforcement provisions and whose regulation was fragmentary, incomplete or defective: the powers of the administration to safeguard that the names and activities reserved to credit institutions are not used and pursued by natural or legal persons lacking authority to do so; and the measures for intervention and substitution of management bodies which may, in exceptional circumstances, be adopted by the competent authorities. In relation to the important sector of insurance undertakings, this Law does not confine itself to filling legal voids, but opts to bring insurers, with the logical adaptations, within the scope of the sanctioning provisions and solutions in relation to intervention and substitution of directors. The purpose of doing so is to take one more step toward achieving homogeneity of administrative sanctioning provisions for the financial world and to overcome the deficiencies detected in the application of the related provisions of Law 33/1984, enacted on 2 August, on Regulation of Private Insurance. (Ley de Ordenación del Seguro Privado)

This Law, however, goes beyond the strict regulation of rules governing credit institutions. In the absence of a general law regulating the activity of credit institutions – which is needed but whose complexity precludes it being drawn up hastily – it has been considered appropriate to use the approval of this Law to resolve certain important substantive problems in the legal regimes governing diverse categories of financial institutions.

Thus, this Law contains provisions that form part of an effort to construct a comprehensive framework for the activities of credit institutions, broadening the scope of this category to include the Instituto de Crédito Oficial, to financial leasing companies and to companies that act as mediators in the money market, and eliminating rules in force prior to this Law that force certain financial institutions to undergo an artificial specialisation or that represent an unnecessary restriction on the activity of others. Noteworthy in this regard is the extension to all credit institutions of the possibility of issuing debentures without limits tied to their capital; the extension to banks of the authority to issue mortgage bonds or, together with savings banks and credit cooperatives, to engage in financial leasing; and the delegation of authority to the government to submit all credit institutions to the rules on cash reserves requirements, investments and capital adequacy. Nevertheless, the unification of treatment of credit institutions is not absolute. In particular, limitations are maintained on the capacity of specified specialist credit institutions to use certain means of raising funds from the public.

Along the same lines, powers to register, monitor and inspect all credit institutions, as well as mutual guaranty companies, are concentrated in the Bank of Spain. This concentration is justified, first, by the similarity of activities and the problems of these entities, which need coordinated treatment; second, by the de facto relations that often exist between credit

institutions of different types; and third, in the specific case of official credit entities, by the ICO's disqualification from discharging its previous supervisory functions as a result of its conversion into a holding company of such undertakings.

In other areas, this Law creates a common system for monitoring equity holdings in credit institutions which, while respecting the general principle of freedom of holdings, guarantees transparency in control relations by means of public disclosure and reporting to supervisory authorities. In the particular case of banks, and given their special importance in the financial system, special rules are established requiring persons who acquire significant holdings in banks to report such holdings both to the investee and to the supervisory authority, with acquisitions of holdings representing more than 15% of the bank's capital subject to an authorisation requirement. Exercise of voting and other nonfinancial rights is subject to such notice or authorisation requirement.

The Law consolidates and generalises the provisions under which financial authorities have been empowered to minimum capital requirements for credit institutions, to determine their accounting statements and to impose minimum provisions in their standard contracts for the sake of ensuring transparency of the credit institutions and protecting the interests of their clientele.

Finally, the Law takes up the general regulation of financial leasing. The provisions in this regard reproduce, improving certain technical aspects, those laid down in previous regulations. But changes are introduced in the tax treatment, which under the previous rules was tantamount to acceptance of an unlimited principles of free depreciation. Thus, the new provisions stipulate separation of lease charges into a financial charge component and into a component representing recovery of the leased asset's cost by the lessor, which would be equivalent to the concept of depreciation in the case of an outright acquisition. The Law accepts the principle that this second component is an expense which may be amortised by the lessor, but stipulates that the amount thereof must be the same or increase over the term of the lease agreement, in order to avoid amortisable expenses being brought forward by means of decreasing the amounts thereof. At the same time, tax deductibility is rejected in the case of leases of assets which by their nature are not depreciable. These rules, taken together with the government's authority to establish minimum time frames (a possibility already present under the existing legislation, but which has not been used), should allow limits to be placed on practices that would entail abuse of the flexibility that financial leases provide in relation to corporate income tax rules, without eliminating that flexibility.

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## LEGAL FRAMEWORK FOR FINANCIAL CREDIT ENTITIES

### Royal Decree 692/1996 of 26 April 1996

(BOE 24 May)

The purpose of this Royal Decree is to develop the legal arrangements for financial credit entities, the basic aspects of which were defined in the first additional provision of Law 3/1994, of 14 April, adapting Spanish legislation on credit institutions to the Second Council Directive on Banking Co-ordination and introducing other modifications relating to the financial system, and in the seventh additional provision of Royal Decree-law 212/1995, of 28 December, on urgent measures in budget, tax and financial matters which modified the same.

Financial credit entities (*establecimientos financieros de crédito*) constitute a new class of financial institution that replace the different categories of credit institutions with a restricted scope of operations (*entidades de ámbito operativo limitado*) created under Royal Decree 771/1989, of 23 June. From the legal framework governing the latter institutions the new entities conserve their status as credit institutions, but with two important changes regarding their financing possibilities, on the one hand, and their operating capacity, on the other.

Despite their status as credit institutions, financial credit entities are prohibited from receiving repayable funds from the public in the form of deposits, loans, temporary assignment of financial assets or other comparable instruments. This restriction makes it possible to release financial credit entities from the obligation to be covered by a deposit guarantee fund and justifies less demanding rules on the requirements for pursuing their activity in comparison with the conditions demanded of other credit institutions, and specifically of banks, while at the same time obliging them, as is logical, to seek alternative channels for their financing.

Financial credit entities are also released from the rigid delimitation imposed on their operating capacity under the regulations of credit institutions subject to a restricted scope of operations, marking a fundamental difference with the latter institutions.

Consequently, financial credit entities may pursue one or more of the activities typical of credit institutions (lending, factoring, financial leasing, issuing and administering credit cards, and provision of guarantees and similar commitments).

In short, this Royal Decree, by virtue of the powers vested in the national government under section 7 of the first additional provision of Law 3/1994, establishes certain specific aspects of the regulation of financial credit entities as credit institutions characterised by their broad operating capacity and

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certain limitations on their possibilities for obtaining financing. This instrument provides, first of all, for financial channels as alternatives to the acceptance of repayable funds from the public, highlighted by the issue of securities subject to the Spanish Stock Market Act (*Ley del Mercado de Valores*) and the possibility of securitising their assets according to the legal rules applicable to securitisation funds.

Second, the rules are laid down for creating financial credit entities, largely in conformity with the provisions of Royal Decree 1245/1995, of 14 July, on the creation of banks, cross-border activities and other issues relating to the legal framework for credit institutions. Having regard to the differences between financial credit entities and banks—mainly in relation to their financing structure—the requirements placed on the former for pursuing their activities are relaxed in comparison with those demanded of the latter. Thus, the new rules establish a minimum share capital below that required for the creation of banks and the minimum number of members of the board of directors of the entity is lowered.

Third, these rules take up the transformation of credit institutions with a restricted scope of operations into financial credit entities as the only means available to them for continuing to pursue their activity as from 1 January 1997, unless they choose to convert themselves into some other type of credit institution.

Lastly, this Royal Decree introduces into Spanish law governing credit institutions two new requirements aimed at reinforcing prudential supervision of financial institutions as laid down in Council Directive 95/26/EC, of 29 June, amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non-life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurances, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (*Ucits*) with a view to reinforcing prudential supervision, which modified the set of Community directives that establish the single market in banking, investment and insurance services.

In relation to the first, intended to avoid situations in which a credit institution opts for the law of one European Union Member State with the aim of eluding stricter prudential rules in force in another Member State in which it plans to pursue or pursues most of its activities, Community law requires that every financial institution must be authorised in the Member State in which it has its registered office, if the institution is a legal person, or that its head office be located in the Member State in which it is authorised, if it is not, at the same time as it establishes the obligation that the head office of a financial institution always be situated in its home Member State and that it actually operates there. Consequently, the requirement is introduced for pursuit of the business of credit institution in Spain that both the institution's

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registered office and its effective management and administration be located in Spanish territory.

Second, in order to avoid that financial institutions maintain certain close links with other natural and legal persons where those relationships, or the law applied to the persons with whom they are maintained, prevent the effective exercise of prudential supervision, Community law establishes as a condition for granting or maintaining authorisation the absence of links of such nature. This Royal Decree therefore introduces as an additional requirement for the pursuit of the business of credit institution in Spain a new criterion for assessing the suitability of shareholders with significant holdings. According to the new rule, such shareholders may be considered not to fulfil the suitability requirement if the close links maintained by the institution, or that would be maintained in the case of an authorisation, with other natural or legal persons, or the law applicable to any of the same, prevent effective discharge of supervisory functions.

By virtue of the above, at the proposal of the Minister of Economy and Finance, with the agreement of the Council of State and upon prior deliberation by the Council of Ministers in its meeting of 26 April 1996, I provide:

## **CHAPTER I**

### **Definition and activities of financial credit entities**

#### **Article 1. Definition, activities and reservation of name**

1. Financial credit entities shall be considered credit institutions and their principal activity shall consist in the pursuit of one or more of the following businesses:

a) Lending, including consumer credit, mortgage credit and financing of commercial transactions.

b) Factoring, with or without recourse, and complementary activities such as investigation and classification of clientèles, accounting of debtors and, in general, any other activity intended to favour the administration, evaluation, security and financing of the accounts receivable assigned thereto that arise in domestic or international trade operations.

c) Financial leasing, including the following complementary activities:

1st. Maintenance and upkeep of the leased properties.

2nd. Grant of financing in relation to a present or future financial lease.

3rd. Intermediation in and management of financial leasing transactions.

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4th. Non-financial leasing transactions, which may or may not be supplemented with a purchase option.

5th. Commercial reports and advisory services.

d) Issuing and administering credit cards.

e) Grant of guarantees and similar commitments.

2. As accessory activities, financial credit entities may carry on any other activities necessary for better pursuit of the principal activity.

3. The name "establecimiento financiero de crédito", as well as its abbreviation "E.F.C.", are reserved to these institutions, which shall be obliged to include them in their registered name.

#### **Article 2. Financing of financial credit entities**

1. Financial credit entities shall not receive repayable funds from the public in the form of deposits, loans, temporary assignment of financial assets or other similar means, for any use whatsoever. Consequently, they shall not be subject to the legislation on deposit guarantees.

2. For the purposes of the preceding paragraph, the following shall not be considered repayable funds from the public:

a) Financing granted by credit institutions.

b) Contribution of funds by entities belonging to their same group, within the meaning of group laid down in article 4 of Law 24/1988 , of 28 July , on the Stock Market ; or by shareholders of financial credit entities with holdings of five percent or more of the entity's capital.

c) Issues of securities subject to the Stock Market Act and the provisions implementing the same, provided such securities are issued with a maturity of more than one month.

d) Guarantees and other sureties intended to diminish the risk exposure incurred by clients in respect of operations within their registered corporate objects.

3. Financial credit entities may securitise their assets subject to the general legal provisions regulating securitisation funds.

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## CHAPTER II

### Legal rules on creation of financial credit entities

#### Article 3. Authorisation and registration of financial credit entities

1. The Minister of Economy and Finance shall be responsible for authorising the creation of financial credit entities, upon prior report from the Bank of Spain. The authorisation shall specify the activities which the financial credit entity may pursue according to the programme filed by the entity.

2. The authorisation must be resolved upon within three months after receipt of the application in the Directorate General of the Treasury and Finance Policy, or after the required documents have been filed, and, in all events, not later than six months after receipt of the application. An application not resolved upon within this time limit may be considered refused. For the presumed refusal to have effect, a request must be filed for the certificate of presumed act referred to in article 44 of Law 30/1992, of 26 November, on the Legal Framework for Public Administrations and Common Administrative Procedure. (Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común).

3. Once the financial credit entity has obtained authorisation and been incorporated and registered in the Companies Registry, before commencing operations it must be registered in the special register of financial credit entities that will be created in the Bank of Spain. Registrations in this special register, and cancellations of registrations, shall be published in the *Boletín Oficial del Estado* (Spanish Official State Gazette) and notified to the European Commission. The authorisation may be revoked if one year after its grant the financial credit entity has not yet commenced its operations for reasons attributable to the promoters.

#### Article 4. Authorisation of financial credit entities subject to control by foreign persons

1. Creation of Spanish financial credit entities whose control, as defined in article 4 of Law 24/1988, of 28 July, on the Stock Market, will be held by foreign persons, is subject to the provisions laid down in that respect in this Royal Decree.

2. If the Spanish financial credit entity will be controlled by a credit institution authorised in another European Union Member State, by the parent undertaking of a credit institution authorised in another Member State, or by the same natural or legal persons who control a credit institution authorised in another Member State, the Bank of Spain, prior to issuing the report referred to in article 3.1, shall consult with the authorities responsible for supervising the foreign credit institution.

3. If the Spanish financial credit entity will be controlled by one or more persons, credit institutions or otherwise, with registered office or authorised in a nonmember country, the entity may be required to post a guarantee covering all activities it pursues. The authorisation may be refused, in addition to for the reasons provided in the foregoing articles, where Spain has been notified, in accordance with the terms of article of the Second Council Directive on Banking Co-ordination of 15 December 1989, of a decision adopted by the Council of the European Union on finding that Community credit institutions do not receive in the said country treatment offering them the same competitive opportunities as given to its domestic credit institutions and that effective market access conditions are not fulfilled.

In this event, the Minister of Economy and Finance may likewise suspend the grant of the license or limit its effects. Authorisations granted to the financial credit entities indicated in this part 3 of article 4 shall be notified by the Bank of Spain to the Commission of the European Union, specifying the structure of the group to which the controlled credit institution belongs.

#### **Article 6. Application requirements**

1. The application for authorisation to create a financial credit entity shall be addressed to the Directorate General of the Treasury and Finance Policy (Dirección General del Tesoro y Política Financiera) in duplicate, accompanied by the following documents:

- a) Draft articles of association, accompanied by a certificate of registry clearance for the proposed registered name.
- b) Programme of operations specifying the types of business envisaged, administrative and accounting procedures and internal control mechanisms.
- c) List of members who will incorporate the company, specifying their shareholdings. In the case of members organised as legal persons, holdings in their capital of five percent or more shall be indicated. For members who will have a significant holding, there shall also be submitted, if they are natural persons, information on their professional background and activity, and their net worth and financial situation, and, in the case of legal persons, the audit reports, where such exist, for the last two years, the composition of their management bodies, and the detailed structure of the group to which they belong, if applicable.
- d) List of persons who will sit on the first board of directors and who will act as general managers or similar officers, with detailed information on the professional background and activities of all of them.
- e) Evidence of having made a deposit in the Bank of Spain, in cash or government debt securities, equal to 20 percent of the minimum share capital stipulated in article 5.

2. In any case, the promoters may be required to provide all data, reports or background information considered appropriate for verifying fulfilment of the conditions and requirements laid down in this Royal Decree.

## **LAW 2/1981, OF 25th MARCH, REGULATING MORTGAGE MARKET**

**(Updated with Law 41/2007)**

### **Preliminary regulation**

#### **Article 1**

The financial institutions referred to in this Act can grant mortgage loans and issue the securities necessary to fund them in accordance with the requirements and objectives established in it, without prejudice to the fact that these institutions or others can issue and transfer obligations, secured or not, in accordance to the current legislation.

This Act, and its regulations, shall be applied to all securities regulated therein and issued in Spanish territory.

### **Section I. FINANCIAL INSTITUTIONS AND VALUATION COMPANIES**

#### **Article 2**

The credit institutions which are detailed below can grant loans and credits and issue the securities regulated in this Act, under the conditions that are determined in the regulations:

- a) Banks and, when permitted under their articles of association, official credit institutions,
- b) The savings banks and the Spanish Confederation of Savings Banks (*Confederación Española de Cajas de Ahorros*),
- c) Credit cooperatives,
- d) Financial credit establishments.

### **SECTION II.-FINANCIAL ASSETS TRANSACTIONS.**

#### **Article 4**

The objective of the loan operations referred to in this Law shall be to finance, with ordinary or maximum sum mortgage secured on real estate, the construction, renovation and acquisition of dwellings, urban development and public infrastructure work, construction of agricultural, tourism, industrial and commercial buildings and any other building work or activity as well as any other loans granted by the entities mentioned in article 2 and

guaranteed by real estate mortgage under the conditions established in this Law, whatever their purpose.

The disposals of the loans, the mortgage collateral of which correspond to real estate under construction or renovation, can be fixed to a calendar agreed with the lender according to the execution of the building work or the investment and the evolution of the sales or allocations of the housing.

#### **Article 5**

The loans and credits referred to in this Law shall be in every case secured by real estate mortgage constituted with first range over the full ownership of the entire property. If over the same property there are other mortgages or it is affected by disposal prohibitions, resolutive condition or any other limitation over the ownership, one and other shall be cancelled or they must be placed over the mortgage which is constituted before the issuance of securities.

The loan or credit secured by this mortgage shall not exceed 60 per 100 of the valuation of the mortgaged asset. When the construction, renovation or acquisition of homes is financed, the loan or credit can amount to 80 per 100 of the valuation, notwithstanding the exceptions envisaged in this Law.

If, for reasons related to the market or for any other circumstances, the value of the mortgaged asset decreases below the initial valuation more than 20 per 100, the financial institution can demand to extend the mortgage to other assets, unless the debtor opt to repay the loan in its totality or to pay the part of the loan exceeding the amount resulting from applying to the current valuation the percentage which determined originally the amount of the loan.

The loans and credits referred to in this article can include those others which are secured by real estate situated within the European Union through equivalent guarantees to those defined in this Law.

The following will be determined in the regulations:

1. The assets which can not be accepted as guarantee because they do not represent a sufficiently stable and lasting security. Under no circumstances can officially sponsored housing under public protection be excluded as mortgageable assets.
2. The cases in which the 60 per 100 is exceeded between the guaranteed loan or credit and the value of the mortgaged asset, with the maximum limit of 80 per 100, as well as in those where the Administration, depending on the characteristics of the mortgaged assets, may establish percentages lower than 60 per 100. The maximum limit of 80 per 100 will under all circumstances be applied to the loans and credits guaranteed with a mortgage over officially protected housing.

3. The issue conditions for the securities issued with mortgage guarantee over real estate under construction.

4. The conditions in which the 80 percent ratio between the guaranteed loan or credit and the value of the mortgaged dwelling can be exceeded, without exceeding 95 percent of that value, using additional guarantees provided by insurance companies or credit institutions.

5 The way in which the equivalence of the real guarantees over real estate in other Member States of the European Union will be appreciated as well as the conditions for the issue of securities which are issued taking them as guarantee.

#### **Article 6**

The financial institutions referred to in article 2<sup>o</sup>.1, can grant guarantees to cover the repayment of other borrower's loans when the borrower subscribes, as a counter guarantee, in favour of the guarantor, a real state mortgage that meets all the requirements established in this Law. Those funds obtained by the guaranteed borrower thereby shall be used for the purposes stated in article 4.

The amount of those guarantees shall not be considered by the guarantor in the calculation of the maximum limit to the issuance of securities referred to in article 16 and 17 and subsequent ones, even if in any case they shall be considered as risk capital.

#### **Article 7**

1. In order to mobilize a mortgage credit by issuing the securities regulated in this Law, the mortgaged assets must have been valued by the valuation services of the Institutions referred to in article 2, or, by other valuation services fulfilling the requirements to be established.

2. The Minister for Finance, after the Official Credit Institute has provided a report, shall regulate:

a) The general rules on valuation of the assets subject to be mortgaged. Both the valuation services of the credit institutions and the specialized institutions that may be constituted for this purpose shall be subject to these regulations.

b) The way in which the valuation shall be stated.

c) The rules governing the inspection of the aforementioned rules.

#### **Article 8**

The mortgaged assets shall be insured against damage for the valuation value, under the conditions stated by the rules.

**Article 9**

In concordance with the regulations, it shall be established the minimum percentage that shall represent the own resources of the financial institutions referred to in article 2, regarding the assets at risk under loans or guarantees secured by mortgage collateral.

**SECTION III.-LIABILITY TRANSACTIONS****Article 11**

The institutions referred to in article 2 which have mortgage loans or credits with the requirements established in the previous section can issue *cédulas hipotecarias* and mortgage bonds, in series or individually and with the financial characteristics desired in accordance with what it is stated in the following articles. In particular, the *cédulas hipotecarias* and mortgage bonds can include early repayment clauses as decided by the issuer according to that specified in the terms of issue. Always provided that the applicable regulation is Law 24/1988, of 28th July, on the Stock Market, these issues will be adapted to the regime envisaged thereof.

**Article 12**

The *cédulas hipotecarias* can be issued by all of the institutions referred to in article 2.

The capital and interests of the *cédulas hipotecarias* shall be particularly guaranteed, without the need for registry entry, by mortgage, particularly those which at any time are entered in favour of the issuing institution and are not serving as a collateral of mortgage bonds, without prejudice its universal asset liability and, if any, by the substitution assets included in section two of article 17 and by economic flows generated by the derivative financial instruments linked to each issue, under the conditions determined in the regulations.

The institution issuing the *cédulas hipotecarias* will keep a special accounting register of the loans and credits that serve as collateral of the issues of *cédulas hipotecarias* and, if any, of the substitute assets fixed that cover them, as well as the derivative financial instruments linked to each issue. This special accounting register must also identify, for the purposes of calculating the limit established in article 16, from the total registered loans and credits, those that fulfil the conditions required in the second section of this Law. The annual accounts of the issuing institution shall contain, as determined in the regulations, the essential details of said register.

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The issues of *cédulas hipotecarias* will not be affected by chapter X of Legislative Royal Decree, of 22nd December, which passes the consolidated text of the Limited Liability Companies' Law. Nor shall they be entered in the Trade Register.

### **Article 13**

The mortgage bonds can be issued by all of the institutions referred to in article 2.

The capital and interests of the bonds will be specially guaranteed, without the need for entry in the register, by mortgage over the mortgage loans and credits performed in public deed, without prejudice to the universal asset liability of the issuing institution, and, if any, by the substitution assets covered in section two of article 17 performed in public deed and by the economic flows generated by the derivative financial instruments linked to each issue, under the conditions determined in the regulations.

All of the loans and credits affected by an issue of mortgage bonds must meet the requirements of section II of this Law.

The institution issuing the mortgage bonds will keep a special accounting register of the mortgage loans and credits affected by the issue and, if any, of the substitution assets included in the cover, as well as of the derivative financial instruments linked to the issue.

A syndicate of bondholders can be constituted when the bonds are issued in series, in which case the issuing institution shall designate a commissioner to attend the execution of the public deed mentioned in the second paragraph of this article on behalf of the future bondholders. Said person, whose appointment must be ratified by the bondholders' plenary, will be the syndicate's chairperson, and apart from the powers conferred in the said deed or attributed by the aforementioned plenary, will legally represent the syndicate, check that the institution maintains the percentage referred to in article 17.1 and perform the corresponding actions.

The chairperson, and the syndicate in everything relating to its composition, powers and competences, shall be governed by the rules in chapter X of Legislative Royal Decree, of 22nd December, which passes the consolidated text of the Limited Liability Companies' Law, insofar as they do not contradict the content of this Law.

### **Article 14**

The *cédulas hipotecarias* and mortgage bonds incorporate their holder's credit right against the issuing institution, guaranteed as set out in articles 12 and 13, and shall entail execution in order to claim payment from the issuer, after they expire. The holders of the said securities shall be creditors with

special preference, as indicated in number 3 of article 1923 of the Civil Code, over any other creditors as regards all of the mortgage loans and credits entered in favour of the issuer in case of *cédulas hipotecarias*, except for those that cover the mortgage bonds, and in relation to the mortgage loans and credits serving as a collateral in case of bonds and, in both cases, in relation to the substitution assets and the economic flows generated by the derivative instruments linked to the issues, if any. The bondholders of an issue shall have prevalence over the holders of *cédulas hipotecarias* over a loan or credit serving as collateral by said issue. All of the holders of *cédulas hipotecarias*, whatever their date of issue, shall have the same prevalence over the loans and credits that guarantee them, and, if any, over the substitution assets and over the economic flows generated by the derivative instruments linked to the issues.

In the event of the issuer's bankruptcy, the holders of *cédulas hipotecarias* and the mortgage bond holders shall enjoy the special privilege established in number 1 of section 1 of article 90 of the Bankruptcy Law 22/2003, of 9th July.

Notwithstanding the above, in accordance with number 7 of section 2 of article 84 of the Bankruptcy Law 22/2003, of 9th July, during the bankruptcy, and as credits against the mass, there will be satisfied all the payments which correspond to the repayment of the capital and interest of the issued *cédulas hipotecarias* and mortgage bonds, which are pending on the date of the bankruptcy application up to the amounts received by the debtor from the mortgage loans and credits and, if any, from the substitution assets which backup the *cédulas hipotecarias* and mortgage bonds and the economic flows generated by the financial instruments linked to the issues.

In the event that, temporarily, the revenue received by the debtor is insufficient in order to meet the payments set out in the previous paragraph, the bankruptcy administration must pay them by liquidating the substitution assets serving as a collateral of the issue, and if these are insufficient, funding/financial operations must be performed in order to comply with the payment obligations to the holders of *cédulas hipotecarias* or bondholders, subrogating the financial backer in their position.

In the event that the procedure is to be followed according to that indicated in number 3 of article 155 of the Bankruptcy Law 22/2003, of 9th June, the payment to all of the owners of *cédulas hipotecarias* issued by the issuer shall be done proportionally, regardless of the issue date of their securities. If the same credit is affected by payment of *cédulas hipotecarias* and to an issue of bonds, the bond owners will be paid first.

**Article 15**

The institutions referred to in article 2 can offer third parties to participate in all, or a part of, one or several mortgage credits in their portfolio, through the issue of securities named participaciones hipotecarias (mortgage passthroughs).

Those mortgage credits serving as collateral for an issuance of mortgage bonds can not be subject to such participaciones.

Said participation can be done at the beginning or during the life of the granted loan.

Nevertheless, the term of the participation can not be longer than the residual term of the mortgage loan and the interest can not be higher than the one established for the loan.

The mortgage participation's holder shall take enforcement procedures against the issuer, always provided that the non performance of its duties is not a consequence of the debtor's default, whose loan is subject to the participación. In the event of an execution process against said debtor, the holder of the participaciones will have equality of rights as the mortgage creditor, and shall received on a pro rata basis the proceeds of its participación in the transaction and notwithstanding that the issuer receives the possible difference between the interest rate agreed in the loan and that assigned in the participation, in the event that this was lower. The holder of the participación can oblige the mortgage creditor to urge the execution.

If the mortgage creditor fails to urge the judicial execution in the 60 days after he is requested to do so, the participation's holder can subrogate in said execution, for the amount of its respective participation. The part of credits assigned as participaciones hipotecarias shall not be counted as capital at risk.

In the case of bankruptcy of the institution issuing the participación, the business of issuance of the participation can only be contested under the terms of article 10 and therefore the holder of that participation will enjoy an absolute right of separation/segregation.

**Article 16**

The institutions shall not issue Cédulas hipotecarias for an amount greater than 80 per 100 of the non-repaid mortgage loans and mortgage credits in their portfolios fulfilling the requirements stated in Section II, after the amount of those loans serving as a collateral of mortgage bonds has been deducted.

The cédulas hipotecarias can be backed up to a limit of 5 percent of the issued capital by the substitution assets listed in section two of article 17.

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**Article 17**

One. The updated value of the mortgage bonds must be at least 2 percent less than the updated value of the affected mortgage loans and credits. The calculation method for the updated value will be determined in the regulations.

Two. The mortgage bonds can be backed up to a limit of 10 percent of the capital of each issue by the following substitution assets:

- a) Fixed-income securities represented by notes on account issued by the State, other Member States of the European Union or the Spanish Official Credit Institute,
- b) Cédulas hipotecarias listed on an official secondary market, or on an administered market, provided that said cédulas hipotecarias are not guaranteed by any loan or credit with mortgage collateral granted by the issuer of the bonds or by other institutions in its group,
- c) Mortgage bonds listed in an official secondary market, or on an administered market, with a credit classification equivalent to that of the Kingdom of Spain, provided that said securities are not guaranteed by any loan or credit with mortgage guarantee granted by the issuer of the bonds or by other institutions in its group
- d) securities issued by Mortgage Securitisation Funds or Asset Securitisation Funds listed on an official secondary market or on an administered market, with a credit classification equivalent to that of the Kingdom of Spain, provided that said securities are not guaranteed by any loan or credit granted by the issuer of the mortgage bonds or by other institutions in its group,
- e) other fixed-interest securities listed on an official secondary market or on an administered market, with a credit classification equivalent to that of the Kingdom of Spain, provided that said securities were not issued by the issuer of the mortgage bonds or by other institutions in its group,
- f) Other low risk and high liquidity assets determined in the regulations

**Article 18**

One. The issuer is bound to maintain at all times the percentages referred to in the previous two articles.

Two. If due to the repayment of the loans and credits, the amount of the issued *cédulas hipotecarias* and bonds exceeds, respectively, the established limits, the institutions can opt to acquire their own mortgage bonds, *cédulas hipotecarias* or *participaciones hipotecarias* (mortgage passthroughs) until the proportion is re-established or, in the event that there is the cancellation of mortgages affected by an issue of bonds, to substitute them for others that meet the required conditions, through the corresponding public deed.

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## 27 Sweden

**SFS no. 2004:297 Ministry/Agency: Ministry of Finance The Banking and Finance Business Act (2004:297) (Unofficial translation)**

**Promulgated on 19 May 2004**

### **Chapter 1. Introductory provisions**

#### **Area of application of the Act**

Section 1. This Act contains provisions on banking and financing business. The Act does not apply to activity engaged in by the Riksbank or the Swedish National Debt Office.

Section 2. Where appropriate, the provisions of this Act apply to foreign undertakings activity in Sweden. In other respects, the Foreign Branch Offices Act (SFS 1992:160) is applicable.

#### **Definition of Banking Business**

Section 3. In the Act, banking business means a business which includes

1. the processing of payment through general payment systems, and
2. the acceptance of deposits from the public which are available to the depositor within at most thirty days.

General payment systems mean systems for processing payments from a large number of mutually independent payers intended to reach a large number of mutually independent final recipients of payments.

#### **Definition of Financing Business**

Section 4. In this Act, financing business means business including commercial activity intended to

1. receive repayable funds from the public, directly or indirectly via a closely linked undertaking, and
2. provide credit, lodge surety for credit or, with a view to financing, acquiring receivables or leasing movable property.

Close links are considered to exist between undertakings that belong to the same group or which are so closely linked in another way, by common ownership, by agreement or such like, that the financial development for the

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owner of one or more of the undertakings is significantly influenced by the development in one or more of the other undertakings.

7. Financial institution: an undertaking that is not a credit institution, securities business, electronic money institution or corresponding foreign undertaking, and whose main activity is to

a. acquire shares and participations,

b. engage in securities trading without being subject to licence pursuant to Chapter 1, section 3 of the Securities Business Act (SFS 1991:981), or

c. conduct one or more of the activity listed in Chapter 7, section 1, second paragraph, sub-sections 2-10 and 12, without being subject to licence pursuant to Chapter 2, section 1,

## **Chapter 2. Banking and financing business subject to licence**

### **The obligation to obtain a licence**

Section 1. Banking or financing business may only be conducted after obtaining a licence, unless otherwise stated in this Act.

### **Exemptions from the obligation to obtain a licence for banking business**

Section 2. A licence to conduct banking business is not required for issue of electronic money pursuant to the Electronic Money Issue Act (SFS 2002:149).

### **Exemptions from the obligation to obtain a licence for financing business**

Section 3. A licence is not required for financing activity conducted by

1. a bank,

2. a foreign banking undertaking, which has a licence to conduct banking business in Sweden pursuant to Chapter 4, section 4,

3. an insurance undertaking, a securities business, the Swedish Ships Mortgage Bank or pawnbrokers pursuant to the Pawnbrokers Act (SFS 1995:1000) to the extent that it is permitted in accordance with the legislation applicable to them,

4. an undertaking that provides financing in connection with the sales of services which are offered or goods produced or sold by the undertaking,

5. a limited company or an economic association if

a. the activity consists of acquiring claims on a few occasions, and

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- b. funds for activity are not currently acquired from the public,
  - 6. an undertaking which meets the financing requirements solely of other undertakings which are part of the same group or corresponding foreign group of companies, provided that the group or group of undertakings does not have the main aim of engaging in financial business,
  - 7. an economic association which
    - a. has at most 1,000 natural persons as members at any time,
    - b. only accepts persons as members who belong to a clearly defined limited sphere and this sphere is specified in the rules of the association,
    - c. only receives refundable funds from its members or from financial undertakings, and
    - d. has as the sole objective of using such funds as referred to in c. to meet the financing requirements of members.

Exceptions pursuant to the first paragraph, sub-section 5 or 7, for activity conducted by limited companies or economic associations apply also to equivalent business conducted by the equivalent foreign undertakings.

## **Chapter 7. Activity and possession of property and related matters**

### **Financial activity**

Section 1. A credit institution may only engage in financial activity and activity that is naturally associated with this activity.

A credit institution may in its activity, inter alia

- 1. borrow funds, for instance, by accepting deposits from the public or issuing bonds or similar debt instruments,
- 2. grant and broker loans, for instance, in the form of consumer loans and loans secured by mortgages in real estate or instruments of indebtedness,
- 3. participate in conjunction with financing, for instance, by acquiring claims and leasing movable property,
- 4. negotiate payments,
- 5. provide means of payment,
- 6. issue guarantees and assume similar obligations,
- 7. participate in issues of securities,

8. provide financial advice,
9. hold securities in safekeeping,
10. conduct documentary credit activity,
11. provide bank safe deposit services,
12. engage in currency trading,
13. engage in securities trading on the conditions provided for in the Securities Business Act (SFS 1991: 981), and
14. provide credit information subject to the conditions prescribed in the Credit Information Act (SFS 1973:1173).

### **The Financing Operations Act (SFS 1992:1610)**

[Amendments up to 1 March, 2000], this Act was combined with the Banking and Financing Operations Act in 2004.

## **Chapter 1. Introductory Provisions**

### **Definitions**

#### **Section 1. For the purposes of this Act:**

1. "Financing operations" means business operations which have as their purpose the granting of loans, issuing guarantees for loans, brokering loans to consumers, or assisting in financing by acquiring claims or leasing personal property;
2. "Credit market undertaking" means a Swedish limited liability company or a Swedish economic association which has received a licence pursuant to this Act to conduct financing operations;
5. "Credit institution" means an institution the operations of which include borrowing funds from the public and the granting of loans on its own behalf;
6. "Financial institution" means an undertaking which is not a credit institution but the primary operations of which consist of the acquisition of shares or ownership interests, or currency trading, or securities operations, or conducting one or more of the operations set forth in Chapter 3, section 1, second paragraph, sub-sections 2-11;

### **Licence Requirement**

Section 2. Subject to the exceptions set forth in section 3 and Chapter 2, sections 9 and 10, financing operations may only be conducted pursuant to a licence from the Swedish Financial Supervisory Authority.

Licences may be granted to Swedish limited liability companies and economic associations and to foreign credit institutions.

The operations of foreign credit institutions conducted through branch offices in Sweden shall be governed by the provisions of this Act, where applicable, and otherwise of the Foreign Branch Offices Act (SFS 1992:160). (SFS 1997:453).

### **Section 3. A licence is not required where the financing operations:**

1. are conducted by a state or municipal authority;
2. relate only to financing in connection with the sale of services which are offered, or products which are produced or sold, by the undertaking;
3. relate to financing only in connection with the sale of services which are offered, or products which are produced or sold, by another undertaking within the same group or with another close affiliation and where funds for the operations are not acquired from the public;
4. satisfy financial needs only within a group of undertakings with a common economic interest and where funds for the operations are not acquired from the public;
5. constitute ordinary liquidity management and cannot be considered as having an independent object ancillary to the undertaking's primary operations;
6. constitute pawnbroking operations pursuant to the Pawnbroking Act (SFS 1995:1000);
7. are included in operations which are subject to the supervision of the Swedish Financial Supervisory Authority pursuant to another Act;
8. are conducted by a limited liability company where
  - the company has been granted the right to determine issues regarding subsidies to undertakings, or the company is a parent company to such a company in accordance with section 1 of the Decision-making (Regional Development Companies) Act (SFS 1994:77);

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- the State holds a sufficient number of shares in the company so as to hold more than fifty per cent of the voting capital, or the company is a subsidiary of a company of which the State owns shares to the above-stated extent; and

- funds for the operations are not acquired from the public;

9. are conducted by an economic association which

a) accepts deposits only from its own members;

b) only has the object of using the members' deposits to satisfy the financing needs of its own members;

c) only accepts natural persons as members; and

d) has no more than 1,000 members;

10. are conducted by an undertaking which

- possesses a share capital or subordinated claims in an amount which, in each borrowing undertaking (associated undertaking), is greater than the undertaking's other lending to affiliated undertakings;

- lends funds only to affiliated undertakings the shares or ownership interests of which are not listed on a Swedish or foreign exchange, an authorised marketplace, or any other regulated market; and

- does not acquire funds for operations from the public; or

11. are conducted by a foundation the capital of which was predominantly contributed by the State or one or more municipalities, or by a limited liability company which is wholly-owned by the State or one or several municipalities directly or through another undertaking; and

- the operations of which are intended to financially support technical or other development work; and

- funds for the operations are not acquired from the public.

A close affiliation as referred to in sub-section 3 shall be deemed to exist where then undertaking is managed by the same or primarily the same persons, or where the profit from the companies' operations, in whole or to a significant degree, directly or indirectly, inure to the same or primarily the same persons. (SFS 1996:1004).

### Chapter 3. Operating regulations

#### Operations

Section 1. A credit market undertaking may only conduct financing operations and operations naturally connected therewith. In compliance with the provisions of this Chapter, a credit market undertaking in its operations may, inter alia:

1. borrow funds, inter alia, by issuing bonds or other similar debt instruments;
2. grant and broker loans, inter alia, in the form of consumer loans and loans secured by real property or instruments of indebtedness;
3. participate in conjunction with financing, inter alia, by acquiring claims and leasing personal property;
4. negotiate payments;
5. provide means of payment;
6. issue guarantees and assume similar obligations;
7. provide financial advice;
8. hold securities in safekeeping;
9. act as custodian institution for securities funds;
10. participate in the sale of insurance services;
11. provide debt collection services;
12. provide bank safe deposit services;
13. conduct currency trading; and
14. provide credit information subject to the conditions prescribed in the Credit Information Act (SFS 1973:1173). (SFS 1997:453).

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**Law (1996:100) on Obligation to Notify Certain Financial Operations**  
(unofficial translation undertaken by London Economics)

**Definitions**

1 § /Ceases to have effect U:2008-04-01/ In this act, the following definitions apply: currency exchange: professional trading of foreign notes and coins and travel checks denominated in foreign currency, payment transfer: professional transfer of money on third party's behalf, other financial activity: professional activity which mainly constitutes of undertaking one or more of the activities as referred to in 7 Chap. 1 § second paragraph 2-12 law (2004:297) regarding bank and financing business, financial institution: physical or legal person engaging in currency exchange, payment transfer or other financing activity. Law (2004:319)

1 § /Comes into effect I:2008-04-01/ In this act, the following definitions apply:

1. currency exchange: professional trading of foreign notes and coins and travel checks denominated in foreign currency,

2. money transfer: professional transfer of money or money's worth on third party's behalf,

3. other financial activity: professional activity which mainly constitutes of undertaking one or more of the activities referred to in 7 Chap. 1 § second paragraph 2-3 and 5-12 law (2004:297) regarding bank and financing business, and

4. financial institution: physical or legal person engaging in currency exchange, money transfer or other financial activity. Law (2008:100)

**Obligation to notify**

2 § /Ceases to have effect U:2008-04-01/ A physical or legal person intending to engage in currency exchange in significant proportions, payment transfer or other financial activity shall report the activity to Finansinspektionen (FSA). Notification does not have to be undertaken by companies referred to in 2 § first paragraph 1-3, 5 and 6 law (1993:768) regarding measures against money laundering.

Finansinspektionen shall keep a register over persons who have undertaken a notification according to the first paragraph.

A person who has been noted in the register shall be taken out when a decision on injunction in accordance with 8-10 §§ to close down the business has become legally binding. A financial institution shall also be taken out of the register should it notify that it no longer engages in activities requiring

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notification or if in other ways is clear that the business has closed down. Law (2004:319)

2 § /Comes into effect I:2008-04-01/ A physical or legal person intending to engage in currency exchange of significant proportions, money transfers or other financial activity shall notify Finansinspektionen of the activity. Notification does not have to be undertaken by companies referred to in 2 § first paragraph 1-3, 5 and 6 law (1993:768) regarding measures against money laundering.

Finansinspektionen shall keep a register over persons who have undertaken a notification according to the first paragraph.

Persons who have been noted in the register shall be taken out when a decision on injunction in accordance with 8-10 §§ to close down the business has become legally binding. A financial institution shall also be taken out of the register should it notify that it no longer engages in activity requiring notification or if in other ways is clear that the business has closed down. Law (2008:100)

### **Requirements on proprietor and management**

3 § Those who have significantly neglected obligations in the business or in other economic matters or have been guilty of serious criminal activity may not engage in activities requiring notification according to 2 § first paragraph. For legal persons this requirement is effective for those with a qualified holding in the institution or is part of its management.

Qualified holding refers to a direct or indirect ownership in the financial institute, if the holding represents ten percent or more of capital or of the total votes or otherwise render possible a significant influence over the institute's management.

When a financial institution, which has notified its activity according to 2 § first paragraph, becomes aware of changes undertaken in the circle which is referred to in the first paragraph, the institute shall immediately notify the change to Finansinspektionen. If a legal person has a qualified holding in the institution, the legal person shall as soon as possible notify the changes in the institution's management to the inspection (FSA). (Law 2004:319)

### **Measures against money laundering**

4 § /Ceases to have effect U:2008-04-01/ Directives on obligations for physical or legal persons engaging in significantly large currency exchange, payment transfer or other financial activity to contribute to prevent money laundering can be found in law (1993:768) regarding measures against money laundering. Law (2004:319)

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4 § /Comes into effect I:2008-04-01/ Directives on obligations for physical or legal persons engaging in significantly large currency exchange, money transfer or other financial activity to contribute to prevent money laundering can be found in law (1993:768) regarding measures against money laundering. Law (2008:100)

### **Consumer protection**

5 § A physical or legal person engaging in currency exchange shall clearly inform on currency exchange rates used and fees charged, and provide expenses documentation which indicates the person's name, buy- and sell rates and fees.

Directives on consumer protection etc. with regards to such transfers can be found in law (1996:268) regarding payment transfers within EEC (European Economic Community).

6 § If a physical or legal person engaging in currency exchange does not provide information according to 5 §, the marketing law (1995:450) shall apply.

Information according to 5 § shall therefore be regarded as of particular importance from consumer viewpoint as referred to in 4 § second paragraph marketing law. Law (2004:319)

Requirements on information disclosure/Clause ceases to have power U:2008-04-01/

Information disclosure from and examinations regarding financial institutions/Clause comes into effect I: 2008-04-01/

7 § / Ceases to have effect U:2008-04-01/ Financial institutions who have reported its activity according to 2 § first paragraph shall upon Finansinspektionen's request disclose the business information needed for the inspection to control that law (1993:768) regarding measures against money laundering and law (2002:444) regarding punishment for financing particularly serious crimes in certain cases, etc, is followed. Law (2004:319)

7 § /Comes into effect I: 2008-04-01/ Financial institutions who have reported its activity according to 2 § first paragraph shall upon Finansinspektionen's request disclose the business information needed for the inspection to control that law (1993:768) regarding measures against money laundering, law (2002:444) regarding punishment for financing particularly serious crimes in certain cases, etc, and ordinance (EG) number 1781/2006 regarding information about the payer who shall accompany the transfer of assets. Law (2008:100).

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7a § / Comes into effect I:2008-04-01/ Finansinspektionen may, when the inspection finds necessary, undertake an examination of a financial institution for which this law is applicable.

Such an examination may only comprise of the business activity affected by notification obligations according to this law. Law (2008:100)

#### **Interventions etc.**

8 § If a physical or legal person is engaging in such activity which requires notification according to 2 first paragraph without having made a notification, Finansinspektionen shall order the person to undertake a notification. If the person does not follow the order, the inspection shall order the person to close the business.

If it is uncertain whether duty of notification exists regarding certain activity, Finansinspektionen may order the person to provide the business information necessary in order to estimate the case. Law (2004:319)

9 § Finansinspektionen shall, upon receiving a notification according to 2 first paragraph or 3 § third paragraph, and furthermore at least once a year, control that the condition in 3 § first paragraph is fulfilled.

If the requirement in 3 § first paragraph is not fulfilled, the inspection may, if the business is led by a physical person, order the person to stop the activity.

If the business is led by a legal person, the inspection may order the person to undertake a correction. If correction is not undertaken the inspection may order the person to stop the activity.

If it is a proprietor which is referred to in 3 § second paragraph who does not fulfil the requirement in 3 §. first paragraph, the inspection may order this person to dispose of an adequate amount of the stocks or shares so that the possession thereafter is not qualified or, if the proprietor is not a legal person, to exchange the disqualified person from its management. Law (2004:319)

10 § / Ceases to have effect U:2008-04-01/ Finansinspektionen may order a financial institution to undertake correction if

1. Information according to 7 § is not disclosed
2. The institution after a notification according to 2 § first paragraph breaches a legal directive (1993:768) regarding measures against money laundering or a direction which has been communicated on basis of that law.

If correction is not undertaken, the inspection may order the institution to cease business activity. Law (2004:319)

10 § / Comes into effect I:2008-04-01/ Finansinspektionen may order a financial institution to undertake correction if

1. Notifications according to 7 § is not disclosed, or
2. the institution, after a notification according to 2 § first paragraph, infringes on a legal directive (1993:768) regarding measures against money laundering or a directive which has been communicated on basis of that law or a directive in ordinance (EG) number 1781/2006 regarding information about the payer who shall accompany transfer of assets.

If correction is not undertaken, the inspection may order the institution to close down the business. Law (2008:100)

11 § Orders according to 8-10 §§ may be combined with fines.

Finansinspektionen may decide that a decision regarding orders shall come into effect immediately. Law (2004:319)

### **Appeals**

12 § Finansinspektionen's decision according to 2 § third paragraph first sentence and 8 § second paragraph may not be appealed. The inspection's decision in other respects according to this law may be appealed with public administration. Permission of appeal is required when appealing to administrative court of appeals. Law (2004:319)

### **Fees**

13 § Financial institutions encompassed by notification obligations shall finance Finansinspektionen's activities with regards to this law through annual charges.

The government may inform of regulations regarding such fees as referred to in the first paragraph. Law (2004:319)

### **Provisional regulations**

**2004:319**

**This law comes into effect 1 July 2004.**

A legal person engaging in currency exchange of significant extent or payment transfer at the time when this law comes into power shall, as of 1 January 2005 at the latest, report the names of the persons encompassed by the particular requirements according to 3 § first paragraph. If notification fails, the inspection shall order the institution to close down the business.

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Finansinspektionen shall, owing to a notification according to bullet point 2, control that the condition in 3 § first paragraph is fulfilled. The inspection shall also control that the same condition is fulfilled for physical persons taken into the register according to 2 § second paragraph. If such a physical person does not fulfil the requirements, the inspection may order this person to close down the business. If the requirement is not fulfilled for such a legal person as referred to in bullet point 2, the inspection may order the legal person to close down the business. When an order to close down the business has come into effect, the inspection shall according to 2 § third paragraph remove the physical and the legal person from the register, respectively. If it is a proprietor which is referred to in 3 § second paragraph who does not fulfil the requirements, the inspection may order this person to dispose of an adequate amount of the stocks or shares so that the possession thereafter is not qualified or, if the proprietor is a legal person, to exchange the disqualified person from its management.

**Finansinspektionen's (the Swedish Financial Supervisory Authority) Regulations and General Guidelines Governing Covered Bonds;**  
(translation by Finansinspektionen)

decided 21 September 2004.

Finansinspektionen hereby prescribes the following pursuant to section 1 of the Covered Bonds (Issuance) Ordinance (2004:332).

Finansinspektionen hereby issues general guidelines pursuant to the provisions broken down into sections.

**Chapter 1. Scope and definitions**

1 § These regulations and general guidelines contain provisions regarding the issuance of covered bonds. The regulations shall be applied by the following undertakings:

- Swedish banks and credit market undertakings which apply for a licence to issue covered bonds; and
- Swedish banks and credit market undertakings which have received a licence from Finansinspektionen to issue covered bonds.

2 § For the purposes of these regulations and general guidelines:

1. the Act: means the Covered Bonds (Issuance) Act (2003:1223);
2. cover pool: means that which is set forth in Chapter 1, section 2 of the Act.

**Chapter 2. Conditions for licences**

1 § An undertaking shall in connection with an application for a licence to issue covered bonds submit the following documents to Finansinspektionen:

1. A copy of the minutes of the board of directors meeting evidencing that the board of directors has resolved to apply for a licence;
2. A description of the planned business indicating the undertaking's handling of covered bonds and cover pools;
3. A separate plan in accordance with the provisions set forth in Chapter 2, section 1, subsection 3 of the Act, or a description that the conversion has taken place;
4. A financial plan for the next three financial years indicating that the undertaking's financial status is sufficiently stable that the interests of other creditors will not be jeopardised in the event that the company issues covered bonds;
5. A description of the manner in which the covered bonds business shall be organised in order that sound internal supervision may be achieved with respect thereto;
6. Information regarding IT systems which will be used in the planned business.

## 28 United Kingdom

Below we reproduce the targeted rules on the capital requirements for non-credit institution mortgage lenders. These rules are in the Financial Services Authority Handbook, Prudential Source Book for Mortgage and Home Finance Firms, and insurance intermediaries (MIPRU), section MIPRU 4, subsection MIPRU 4.2.

The list of regulated activities as produced by the FSA is reproduced, and this should be read in conjunction with the MIPRU.

We also reproduce the Financial Services Act, Regulated Activities Order 2001, Chapter II, Articles 5 and 9 that relate to the accepting of deposits and repayable funds from the public. This order was provided by the FSA.

### Prudential Source Book for Mortgage and Home Finance Firms, and insurance intermediaries, targeted rules on capital requirements

<b>Capital resources requirement: application according to regulated activities</b>							
4.2.9	<b>R</b> Unless any of the <i>rules</i> on capital resources for <i>firms</i> carrying on <i>designated investment business</i> , for <i>credit unions</i> or for <i>social housing firms</i> apply, the capital resources requirement for a <i>firm</i> varies according to the <i>regulated activity</i> or activities it carries on.						
4.2.10	<b>R</b> Table: Application of capital resources requirements						
	<table border="1"> <thead> <tr> <th></th> <th>Regulated activities</th> <th>Provisions</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>(a) <i>insurance mediation activity</i>; or  (b) <i>home finance mediation activity (or both)</i>; and no other <i>regulated activity</i>.</td> <td>MIPRU 4.2.11 R</td> </tr> </tbody> </table>		Regulated activities	Provisions	1.	(a) <i>insurance mediation activity</i> ; or  (b) <i>home finance mediation activity (or both)</i> ; and no other <i>regulated activity</i> .	MIPRU 4.2.11 R
	Regulated activities	Provisions					
1.	(a) <i>insurance mediation activity</i> ; or  (b) <i>home finance mediation activity (or both)</i> ; and no other <i>regulated activity</i> .	MIPRU 4.2.11 R					

	Regulated activities	Provisions
2.	(a) <i>home financing</i> ; or  (b) <i>home financing and home finance administration</i> ; and no other regulated activity.	MIPRU 4.2.12 R to MIPRU 4.2.17 E
3.	<i>home finance administration</i> ; and no other regulated activity.	MIPRU 4.2.18 R to MIPRU 4.2.19 R
4.	<i>insurance mediation activity</i> ; and  (a) <i>home financing</i> ; or  (b) <i>home finance administration</i> (or both).	MIPRU 4.2.20 R
5.	<i>home finance mediation activity</i> ; and  (a) <i>home financing</i> , or  (b) <i>home finance administration</i> (or both).	MIPRU 4.2.21 R
6.	Any combination of regulated activities not within rows 1 to 5.	MIPRU 4.2.22 R

#### Capital resources requirement: mediation activity only

4.2.11






R

- (1) If a firm carrying on *insurance mediation activity* or *home finance mediation activity* (and no other regulated activity) does not hold *client money* or other *client* assets in relation to these activities, its capital resources requirement is the higher of:
- (a) £5,000; and
  - (b) 2.5% of the *annual income* from its *insurance mediation activity* or *home finance mediation activity* (or both).
- (2) If a firm carrying on *insurance mediation activity* or *home finance mediation activity* (and no other regulated activity) holds *client money* or other *client* assets in relation to these activities, its capital resources requirement is the higher of:
- (a) £10,000; and

- (b) 5% of the *annual income* from its *insurance mediation activity* or *home finance mediation activity* (or both).

**Capital resources requirement: home financing and home finance administration (but not home finance administration only)**.....

- 4.2.12 **R** (1) The capital resources requirement for a *firm* carrying on *home financing*, or *home financing and home finance administration* (and no other *regulated activity*) is the higher of:
- (a) £100,000; and
  - (b) 1% of:
    - (i) its total assets plus total undrawn commitments and unreleased amounts under the *home reversion plan*; less:
    - (ii) excluded loans or amounts plus intangible assets (see Note 1 in the table in **■** MIPRU 4.4.4 R).
- (2) Undrawn commitments and unreleased amounts means the total of those amounts which a *customer* has the right to draw down or to receive from the *firm* but which have not yet been drawn down or received, excluding those under an agreement:
- (a) which has an original maturity of up to one year; or
  - (b) which can be unconditionally cancelled at any time by the lender or provider.
- 4.2.13 **G** When considering what is an undrawn commitment or unreleased amount, the FSA takes into account an amount which a *customer* has the right to draw down or to receive under a *home finance transaction*, but which has not yet been drawn down or received, whether the commitment or obligation is revocable or irrevocable, conditional or unconditional.
- 4.2.14 **R** When calculating total assets, the *firm* may exclude a loan or plan which has been transferred to a third party only if it meets the following conditions:
- (1) the first condition is that the loan or the plan has been transferred in a legally effective manner by:
    - (a) novation; or
    - (b) legal or equitable assignment; or
    - (c) sub-participation; or
    - (d) declaration of trust; and
  - (2) the second condition is that the *home finance provider*:

- (a) retains no material economic interest in the loan or the plan;  
and
- (b) has no material exposure to losses arising from it.
- 4.2.15  (1) When seeking to rely on the second condition, a *firm* should ensure that the loan or plan qualifies for the 'linked presentation' accounting treatment under Financial Reporting Standard 5 (Reporting the substance of transactions) issued in April 1994, and amended in December 1994 and September 1998 (if applicable to the *firm*).
- (2) Compliance with (1) may be relied upon as tending to establish compliance with the second condition.
- 4.2.16  The requirement that the loan qualifies for the 'linked presentation' accounting treatment under FRS 5 is aimed at those *firms* which report according to FRS 5. Other *firms* which report under other standards, including International Accounting Standards, need not adopt FRS 5 in order to meet the second condition.
- 4.2.17  (1) When seeking to rely on the second condition, a *firm* should not provide material credit enhancement in respect of the loan or plan unless it deducts the amount of the credit enhancement from its capital resources before meeting its capital resources requirement.
- (2) Credit enhancement includes:
- (a) any holding of subordinated loans or notes in a transferee that is a special purpose vehicle; or
- (b) over collateralisation by transferring loans or plans to a larger aggregate value than the *securities* to be issued; or
- (c) any other arrangement with the transferee to cover a part of any subsequent losses arising from the transferred loan or plan.
- (3) Contravention of (1) may be relied upon as tending to establish contravention the second condition.
- 4.2.18  **Capital resources requirement: home finance administration only**.....  
The capital resources requirement for a *firm* carrying on *home finance administration* only, which has all or part of the *home finance transactions* that it administers on its balance sheet, is the amount which is applied to a *firm* carrying on *home financing* or *home financing and home finance administration* (and no other *regulated activity*) (see  MIPRU 4.2.12 R).

- 4.2.19 **R** The capital resources requirement for a *firm* carrying on *home finance administration* only, which has all the *home finance transactions* that it administers off its balance sheet, is the higher of:
- (1) £100,000; and
  - (2) 10% of its *annual income*.
- Capital resources requirement: insurance mediation activity and home financing or home finance administration**
- 4.2.20 **R** The capital resources requirement for a *firm* carrying on *insurance mediation activity* and *home financing* or *home finance administration* is the sum of the requirements which are applied to the *firm* by:
- (1) the capital resources *rule* for a *firm* carrying on *insurance mediation activity* or *home finance mediation activity* (and no other *regulated activity*) (see **■** MIPRU 4.2.11 R); and
  - (2) (a) the capital resources requirement *rule* for a *firm* carrying on *home financing* or *home financing* and *home finance administration* (and no other *regulated activity*) (see **■** MIPRU 4.2.12 R); or
    - (b) if, in addition to its *insurance mediation activity*, the *firm* carries on *home finance administration* with all the assets that it administers off balance sheet, the capital resources *rule* for such a *firm* (see **■** MIPRU 4.2.19 R).
- Capital resources requirement: home finance mediation activity and home financing or home finance administration**
- 4.2.21 **R**
- (1) If a *firm* carrying on *home finance mediation activity* and *home financing* or *home finance administration* does not hold *client money* or other *client* assets in relation to its *home finance mediation activity*, the capital requirement is the amount applied to a *firm*, according to the activities carried on by the *firm*, by:
    - (a) the capital resources requirement *rule* for a *firm* carrying on *home financing* or *home financing* and *home finance administrator* (and no other *regulated activity*) (see **■** MIPRU 4.2.12 R); or
    - (b) if, in addition to its *home finance mediation activity*, the *firm* carries on *home finance administration* with all the assets that it administers off balance sheet, the capital resources *rule* for such a *firm* (see **■** MIPRU 4.2.19 R).
  - (2) If the *firm* holds *client money* or other *client* assets in relation to its *home finance mediation activity*, the capital resources requirement is:

- (a) the amount calculated under (1); plus
- (b) the amount which is applied to a *firm* carrying on *insurance mediation activity* or *home finance mediation activity* (and no other *regulated activity*) that holds *client money* or other *client assets* in relation to these activities (see ■ MIPRU 4.2.11R (2)).

**Capital resources requirement: other combinations of activities**.....

- 4.2.22 **R** The capital resources requirement for a *firm* carrying any other combination of *regulated activities* is the amount which is applied to a *firm* carrying on *insurance mediation activity* and *home financing* or *home finance administration* (see ■ MIPRU 4.2.20 R).

**Regulated activities taken from the FSA Handbook, Glossary, and referring to the Financial Services and Markets Act Part II. The reader should refer to <http://fsahandbook.info/FSA/glossary-html/handbook/Glossary/R?definition=G974>**

In accordance with section 22 of the Financial Services and Markets Act (The classes of activity and categories of investment)) any of the following activities specified in Part II of the Regulated Activities Order (Specified Activities):

- (a) accepting deposits (article 5);
- (aa) issuing electronic money (article 9B);
- (b) effecting contracts of insurance (article 10(1));
- (c) carrying out contracts of insurance (article 10(2));
- (d) dealing in investments as principal (article 14);
- (e) dealing in investments as agent (article 21);
- (f) arranging (bringing about) deals in investments (article 25(1));
- (g) making arrangements with a view to transactions in investments (article 25(2));
- (ga) arranging (bringing about) regulated mortgage contracts (article 25A(1));
- (gb) making arrangements with a view to regulated mortgage contracts (article 25A(2));
- (gc) arranging (bringing about) a home reversion plan (article 25B(1));

(gd) making arrangements with a view to a home reversion plan (article 25B(2));

(ge) arranging (bringing about) a home purchase plan (article 25C(1));

(gf) making arrangements with a view to a home purchase plan (article 25C(2));

(gg) operating a multilateral trading facility (article 25D);

(h) managing investments (article 37);

(ha) assisting in the administration and performance of a contract of insurance (article 39A);

(i) safeguarding and administering investments (article 40); for the purposes of the permission regime, this is sub-divided into:

(i) safeguarding and administration of assets (without arranging);

(ii) arranging safeguarding and administration of assets;

(j) sending dematerialised instructions (article 45(1));

(k) causing dematerialised instructions to be sent (article 45(2));

(l) establishing, operating or winding up a collective investment scheme (article 51(1)(a)); for the purposes of the permission regime, this is sub-divided into:

(i) establishing, operating or winding up a regulated collective investment scheme;

(ii) establishing, operating or winding up an unregulated collective investment scheme;

(m) acting as trustee of an authorised unit trust scheme (article 51(1)(b));

(n) acting as the depositary or sole director of an open-ended investment company (article 51(1)(c));

(o) establishing, operating or winding up a stakeholder pension scheme (article 52 (a)<sup>26</sup>);

(oa)<sup>25</sup> providing basic advice on stakeholder products (article 52B);

(ob) establishing, operating or winding up a personal pension scheme (article 52(b));<sup>26</sup>

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(p) advising on investments (article 53); for the purposes of the permission regime, this is sub-divided into:

- (i) advising on investments (except pension transfers and pension opt-outs);
- (ii) advising on pension transfers and pension opt-outs;
- (pa) advising on regulated mortgage contracts (article 53A);
- (pb) advising on a home reversion plan (article 53B);
- (pc) advising on a home purchase plan (article 53C);
- (q) advising on syndicate participation at Lloyd's (article 56);
- (r) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's (article 57);
- (s) arranging deals in contracts of insurance written at Lloyd's (article 58);
- (sa) entering into a regulated mortgage contract (article 61(1));<sup>16, 24</sup>
- (sb) administering a regulated mortgage contract (article 61(2));<sup>16, 24</sup>
- (sc) entering into a home reversion plan (article 63B(1));
- (sd) administering a home reversion plan (article 63B(2));
- (se) entering into a home purchase plan (article 63F(1));
- (sf) administering a home purchase plan (article 63F(2));
- (t) entering as provider into a funeral plan contract (article 59);
- (u) agreeing to carry on a regulated activity (article 64);

which is carried on by way of business and relates to a specified investment applicable to that activity or, in the case of (l), (m), (n) and (o), is carried on in relation to property of any kind.

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**Chapter II**  
**Accepting Deposits***The activity***5 Accepting deposits**

- (1) Accepting deposits is a specified kind of activity if--
- (a) money received by way of deposit is lent to others; or
  - (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.
- (2) In paragraph (1), "deposit" means a sum of money, other than one excluded by any of [articles 6 to 9A], paid on terms--
- (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
  - (b) which are not referable to the provision of property (other than currency) or services or the giving of security.
- (3) For the purposes of paragraph (2), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if--
- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
  - (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
  - (c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

**NOTES****Initial Commencement***To be appointed*

To be appointed: this provision comes into force on the day on which the Financial Services and Markets Act 2000, s 19 comes into force: see art 2(1).

**Appointment**

Appointment: 1 December 2001 (being the day on which the Financial Services and Markets Act 2000, s 19 came into force): see SI 2001/3538, art 2(1).

**Amendment**

Para (2): words "articles 6 to 9A" in square brackets substituted by SI 2002/682, art 3(1).

Date in force: 27 April 2002: see SI 2002/682, art 1(2)(b); for transitional provisions in relation to persons issuing electronic money immediately before that date see art 9 thereof.

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*Exclusions***6 Sums paid by certain persons**

- (1) A sum is not a deposit for the purposes of article 5 if it is--
- (a) paid by any of the following persons--
    - (i) the Bank of England, the central bank of an EEA State other than the United Kingdom, or the European Central Bank;
    - (ii) an authorised person who has permission to accept deposits, or to effect or carry out contracts of insurance;
    - (iii) an EEA firm falling within paragraph 5(b), (c) or (d) of Schedule 3 to the Act (other than one falling within paragraph (ii) above);
    - (iv) the National Savings Bank;
    - (v) a municipal bank, that is to say a company which was, immediately before the coming into force of this article, exempt from the prohibition in section 3 of the Banking Act 1987 by virtue of section 4(1) of, and paragraph 4 of Schedule 2 to, that Act;
    - (vi) Keesler Federal Credit Union;
    - (vii) a body of persons certified as a school bank by the National Savings Bank or by an authorised person who has permission to accept deposits;
    - (viii) a local authority;
    - (ix) any body which by virtue of any enactment has power to issue a precept to a local authority in England and Wales or a requisition to a local authority in Scotland, or to the expenses of which, by virtue of any enactment, a local authority in the United Kingdom is or can be required to contribute (and in this paragraph, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament);
    - (x) the European Community, the European Atomic Energy Community or the European Coal and Steel Community;
    - (xi) the European Investment Bank;
    - (xii) the International Bank for Reconstruction and Development;
    - (xiii) the International Finance Corporation;
    - (xiv) the International Monetary Fund;
    - (xv) the African Development Bank;
    - (xvi) the Asian Development Bank;
    - (xvii) the Caribbean Development Bank;
    - (xviii) the Inter-American Development Bank;
    - (xix) the European Bank for Reconstruction and Development;
    - [(xx) the Council of Europe Development Bank;]

- (b) paid by a person other than one mentioned in sub-paragraph (a) in the course of carrying on a business consisting wholly or to a significant extent of lending money;
- (c) paid by one company to another at a time when both are members of the same group or when the same individual is a majority shareholder controller of both of them; or
- (d) paid by a person who, at the time when it is paid, is a close relative of the person receiving it or who is, or is a close relative of, a director or manager of that person or who is, or is a close relative of, a controller of that person.

(2) For the purposes of paragraph (1)(c), an individual is a majority shareholder controller of a company if he is a controller of the company by virtue of paragraph (a), (c), (e) or (g) of section 422(2) of the Act, and if in his case the greatest percentage of those referred to in those paragraphs is 50 or more.

(3) In the application of sub-paragraph (d) of paragraph (1) to a sum paid by a partnership, that sub-paragraph is to have effect as if, for the reference to the person paying the sum, there were substituted a reference to each of the partners.

## NOTES

### Initial Commencement

#### *To be appointed*

To be appointed: this provision comes into force on the day on which the Financial Services and Markets Act 2000, s 19 comes into force: see art 2(1).

### Appointment

Appointment: 1 December 2001 (being the day on which the Financial Services and Markets Act 2000, s 19 came into force): see SI 2001/3538, art 2(1).

### Amendment

Para (1): sub-para (a)(xx) substituted by SI 2002/1310, art 4(1).

Date in force: 5 June 2002: see SI 2002/1310, art 1.

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UK Parliament SIs 2000-Present/2001/501-550/Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)/Part II Specified Activities/9 Sums received in consideration for the issue of debt securities

**9 Sums received in consideration for the issue of debt securities**

(1) Subject to paragraph (2), a sum is not a deposit for the purposes of article 5 if it is received by a person as consideration for the issue by him of any investment of the kind specified by article 77 or 78.

(2) The exclusion in paragraph (1) does not apply to the receipt by a person of a sum as consideration for the issue by him of commercial paper unless--

(a) the commercial paper is issued to persons--

(i) whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses; or

(ii) who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses; and

(b) the redemption value of the commercial paper is not less than £100,000 (or an amount of equivalent value denominated wholly or partly in a currency other than sterling), and no part of the commercial paper may be transferred unless the redemption value of that part is not less than £100,000 (or such an equivalent amount).

[(3) In paragraph (2), "commercial paper" means an investment of the kind specified by article 77 or 78 having a maturity of less than one year from the date of issue.]

**NOTES**

**Initial Commencement**

*To be appointed*



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