

Act no. XXX of 1997

on Mortgage Banks and Mortgage Bonds

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

Part I

SCOPE OF THE ACT

Section 1

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

Part II

MORTGAGE BANKS

Foundation of Mortgage Banks

Section 2

(1) Mortgage banks are specialized credit institutions.

(2) Unless otherwise provided in this Act, the foundation, operation, and supervision of mortgage banks shall be subject to the provisions of Act CXII of 1996 on Credit Institutions and Financial Enterprises (hereinafter: "CIFE"), whilst the investment services and auxiliary services to investment services of mortgage banks shall be subject to the provisions of Act CXXXVIII of 2007 on Investment Undertakings, Commodities Broker and on the Provisions of the Services Allowed to be Offered by Them (hereinafter: "IUCB").

(3) The incorporation of a mortgage bank requires registered capital of at least three billion Hungarian Forints paid up in cash.

(4) *Lost effect.*

(5) Mortgage banks are not required to join the National Deposit Insurance Fund of Hungary.

Mortgage Banks: Definition, Lines of Business

Section 3

(1) Mortgage banks are engaged in the business of lending money secured by mortgages, including mortgages in the form of an independent mortgage lien (hereinafter collectively referred to as: "mortgage") on real estate located in the territory of the Republic of Hungary or in a contracting state party to the Agreement on the European Economic Area (hereinafter: "EEA State"), the sources for which the bank collects by way of issuing mortgage bonds.

(2) Mortgage banks shall not engage in lines of business other than the following financial, investment and auxiliary financial services:

- a) accepting funds to be repaid from the public, not including the collection of deposits;
- b) extending financial loans covered by mortgages on real estate located in the territory of Hungary or an EEA State (hereinafter: “mortgage loan”);
- c) extending loans under absolute Government guarantee without stipulating a mortgage;
- d) providing surety and bank guarantee, and making other banker’s commitments (hereinafter collectively: “banker’s commitments”);
- e) custody services;
- f) taking securities into custody if issued by the mortgage bank itself and providing related services;
- g) safekeeping of securities issued by the mortgage bank itself;
- h) keeping securities accounts of the securities issued by the mortgage bank itself;
- i) keeping customers accounts of the securities issued by the mortgage bank itself;
- j) organizing the offering of self-issued mortgage bonds, bonds, certificates of deposit, and providing the related services.

(3) If, in connection with a mortgage loan, additional credit is provided simultaneously under absolute Government guarantee (this portion of the loan hereinafter referred to as “associated loan component”), the provisions of Section 5(1), Section 6, Section 7 and Sections 8(3)-(4) pertaining to mortgage loans shall apply to the entire loan amount, provided that the associated loan component may not be covered by the mortgage demanded as collateral.

(4) *Lost effect.*

(5) Apart from the financial, investment and non-core investment services mentioned in subsection (2), mortgage banks may only engage in the business of providing appraisal services to determine the mortgage lending value of real properties.

(6) - (9) *Lost effect.*

(10) Mortgage banks may engage in derivative transactions only for hedging purposes by reason of liquidity and risk management.

Section 3/A

(1) Mortgage banks are permitted to lend money against collateral property situated in the territory of an EEA State (hereinafter: “EEA mortgage loan”) or purchase, advance payments towards purchasing or discount mortgage loans (hereinafter: “purchasing EEA mortgage loans”) in case the mortgage on the property offered as collateral is held by the mortgage bank and offers the same degree of security to a mortgagee as mortgage under Hungarian law. Mortgage encumbered on property situated in an EEA State will, in particular, offer the same degree of security as mortgage under Hungarian law if

- a) the mortgage is recorded in an authentic public register;
- b) the mortgage bank may, in the event of court foreclosure, liquidation or other insolvency procedure, seek compensation from the mortgaged object on the basis of the mortgage recorded for mortgagee before other claims are satisfied.

(2) Another condition precedent to extending or purchasing EEA mortgage loans requires the mortgage bank:

- a) to justify by offering credible evidence in a written analysis that the regulations governing mortgage law, court foreclosure, liquidation and other insolvency procedures satisfies the conditions laid down in subsection (1) above; and
- b) to prepare a methodological and descriptive manual about the terms of extending and purchasing EEA mortgage loans covered by mortgages on the property situated in the territory of a particular EEA State; and furthermore

c) to submit the documents as defined in subsections *a)-b)* to the Hungarian Financial Supervisory Authority (hereinafter: “HFSA”) along with a written statement by the coverage supervisor to the effect that extending and purchasing EEA mortgage loans as envisaged in the methodological and descriptive manual satisfies the conditions set forth in subsection (1) above.

(3) The manual mentioned in subsection (2) (b) shall contain a detailed description of the contractual terms a mortgage bank intends to apply during the extension and purchase of EEA mortgage loans, the method of calculating the mortgage lending value of the real property offered as security, an introduction of the lending process along with a description of the procedures for the availability of the mortgage on the property required as collateral and for foreclosure.

(4) A mortgage bank may start extending and purchasing mortgage loans covered by property situated in a particular EEA State one month after submission of the documents mentioned in subsection (2) to the HFSA, unless the HFSA objects.

(5) Mortgage banks shall monitor the changes in the legal system of affected EEA States and shall notify both the HFSA and the coverage supervisor of material changes affecting lending.

(6) If a change in the legal system of an EEA State triggers the need to modify the methodological and descriptive manual, the modifications shall be subject to the provisions set forth in sections (2)-(4).

(7) The ratio of EEA mortgage loans to the total loan portfolio may not surpass 15%.

Section 4

(1) Mortgage banks may only make banker’s commitments against real estate collateral and solely to customers to whom they have extended a mortgage loan.

(2) *Lost effect.*

(3) Mortgage banks may provide custody services to customers to whom they have provided a mortgage loan.

Mortgage Lending

Section 5

(1) The ratio of mortgage loans with term to maturity not less than five years may not fall short of eighty per cent of the total loan portfolio at the time when the loan agreements are concluded, or the mortgage loans and the independent mortgage liens are purchased.

(2) The transfer or encumbrance of a property mortgaged to a mortgage bank requires the approval of the mortgage bank as from the point of time when the mortgage is stipulated in the favour of the mortgage bank, or the independent mortgage lien is purchased, until the same is terminated. The restraint of the transfer and encumbrance of the property shall be automatically recorded in the property register on behalf the mortgage bank concurrently with registering or re-registering the mortgage (independent mortgage lien) - also without a separate application to that effect; however, if it is not registered, the mortgagee may not enforce the restraint vis-à-vis a third party acquiring right in the property in good faith.

(3) The value of the unpaid principal portfolio arising from mortgage loans and from the repurchasing of independent mortgage liens (not including unpaid principal arising from associated loan components and the portion of the repurchase price associated with associated loan components) may not exceed seventy per cent of total mortgage lending value of the real estate serving as security.

(4) The methodological principles of determining mortgage lending value are set forth in a separate regulation. Based on the regulation the mortgage bank shall prepare a manual for determining mortgage lending value – such manual shall be approved by the HFSA.

(5) *Lost effect.*

(6) *Lost effect.*

(7) The land registry authority shall process applications of mortgage banks for the registration of mortgages and the restraint of transfer and encumbrance in an anticipatory procedure within five working days.

Section 6

Mortgage loan agreements concluded by a mortgage bank or, if set in separate documents, both the loan agreement and the mortgage agreement shall be notarized. However, concluding a loan agreement and a mortgage agreement in the form of a fully cogent private document shall be sufficient, provided that

(a) such agreements serve no other purpose but the origination of a mortgage as general collateral for the mortgage bank;

(b) all the parties assuming obligations in such agreements make a unilateral notarized covenant before the loan disbursement starts (or before amendments, if any, of the agreement take effect) declaring their acceptance of obligations under the agreement and its amendments, if any, and their willingness to tolerate the satisfaction of the contractual claims of the mortgage bank.

Section 7

Mortgage banks may charge lost profits in case of repayment of the loan before maturity. In case of prepayment of mortgage loans granted to consumers, provisions of the Act no. CLXII of 2009 shall apply.

Section 8

(1) A mortgage bank may purchase, may make advance payments towards (including via factoring and forfeiting) and may discount nothing else but mortgage loans and associated loan components (hereinafter referred to collectively as “purchase of mortgage loans”).

(2) Mortgage banks may purchase claims arising from mortgage loan agreements or associated loan agreements from a financial institution or an insurance company limited by shares, provided that

a) such agreement is concluded against a mortgage on property situated in Hungary or an EEA State as collateral and mortgagee has the benefit of restraint on transferring and encumbering the property or the mortgage agreement includes the communication that in case a mortgage bank replaces the original holder of title, the restraint of transfer and encumbrance shall inure to the benefit of the mortgage bank and provided that such agreement has been concluded in line with the rules set forth in section 3(3) with respect to the associated portion of the loan,

b) the auditor of the selling financial institution or insurance company limited by shares rates such agreements as problem free;

c) the mortgage bank calculated the mortgage lending value of the mortgaged property covering such agreements in keeping with the relevant rules and the principal value of the mortgage loan may not exceed mortgage lending value, and the principal of and interest on the associated loan component may not be higher than the amount provided with the government’s absolute guarantee; and

d) the documents setting forth such agreements comply with the requirements provided in section 6 regardless of whether or not the unilateral covenant mentioned in section 6(b) was made before or after the disbursement of the loan.

(3) Unless otherwise agreed in an agreement on purchasing a mortgage loan, such an agreement transfers all the rights of the selling financial institution or insurance company limited by shares to the mortgage bank, provided such rights are covered by the agreement or arise from the contractual relationship securing the purchase.

(4) Mortgage banks may purchase an independent mortgage lien filed on property situated in Hungary, provided that the selling credit institution,

a) has registered such lien as collateral of a mortgage loan in line with all the other criteria provided in subsection (2), and

b) repurchases such lien in instalments or by deferred payment immediately upon the sale on condition that the lien is transferred to the repurchasing credit institution when the purchase price is paid up in full.

(5) No amount receivable by the mortgage bank under subsection 4 b) (hereinafter: “repurchase price”) shall exceed the amount of remaining claims existing under the mortgage loan secured by independent lien and under the associated loan component,

(6) If the repurchasing credit institution breaches any of its payment obligations existing under one or more repurchase agreements concluded with a mortgage bank, furthermore, if the HFSA has brought the repurchasing credit institution under liquidation, the mortgage bank acquires title to all the mortgage loans covered by independent lien and the associated loan component falling within the scope of the repurchase agreement with the legal consequences described in subsection (3) at the date application for liquidation is submitted to court. The mortgage bank itself may, in its capacity of statutory assignee, notify the debtor of this fact within the scope of the duty of the assignor to give notice (Cf. 328(4) of the Civil Code). If that occurs, the mortgage bank is under no obligation to surrender to the credit institution anything during settlement but the portion of the repurchase price paid in excess by the credit institution considering the consolidated total amount of the repaid portion of the repurchase price and the loan or the remaining amount receivable under the loan after charging depreciation recognized by the credit institution, which are due and payable to the mortgage bank.

Restrictions on Investments

Section 9

(1) Mortgage banks may only acquire or maintain direct ownership interest in other credit institutions, insurance companies limited by shares, managers of investment funds and complementary enterprises. Mortgage banks may also acquire or maintain direct ownership interest in other kind of companies, if such companies are engaged exclusively in the business of managing, utilizing and selling real property as provided in subsection 10(2).

(2) The total stake acquired in a company that is subject to the limitation of its lines of business as defined in subsection (1) may not exceed ten per cent of the mortgage bank’s regulatory capital.

(3) The restriction specified in subsection (2) shall not be applied to separately registered and managed and regularly appraised temporary ownership stakes held by a mortgage bank as a result of liquidation or foreclosure for a period of no more than three years from the date of acquisition.

Restrictions on Property Investments

Section 10

(1) A mortgage bank's total property investments may not exceed five per cent of its regulatory capital, not including real estate serving banking operations directly and property acquired as provided in subsection (2).

(2) Mortgage banks may acquire property, other than real estate serving bank operation directly, only in course of:

a) credit-property swap transactions concluded in order to mitigate or prevent losses arising from financial services, and

b) liquidation or foreclosure proceedings initiated against a debtor.

(3) Property acquired in the manner described in subsection (2) shall be sold within three years by public auction.

Part III

MORTGAGE BONDS

Method and Conditions of Issuing Mortgage Bonds

Section 11

(1) Mortgage bonds are registered, transferable securities issued exclusively by a mortgage bank in accordance with this Act.

(2) Provisions of the legal regulation on bonds shall be applicable on mortgage bonds originated in the territory of the Republic of Hungary with the exceptions indicated in this Act.

(3) Mortgage bonds shall include:

a) the designation that it is a mortgage bond;

b) the name and due signature of the issuer;

c) *Lost effect*;

d) the name of the holder of the mortgage bond;

e) the alphabetic code of the mortgage bond series along with identification and serial numbers;

f) the nominal value of the mortgage bond;

g) interest rate, the method of calculating interest;

h) if interest rate is variable:

ha) the initial interest rate,

hb) the principles of interest rate modification,

hc) the method of calculating interest;

i) the maturity date of the mortgage bond;

j) the dates and amount of interest payments and redemption (repayment);

k) restrictions, if any, relating to transfer;

l) the total nominal value of issued series;

m) the date and place of issue of the mortgage bond;

n) the coverage supervisor's certificate of the existence of the required collateral and entry thereof into the register of collateral.

(4) In case of origination of the mortgage bond in the territory of another member state of the Organization for Economic Co-operation and Development (hereinafter: "OECD"), provisions of

point *d*) subsection (3), subsection 12(2) and section 6(3) of Act CXX of 2001 on Capital Markets (hereinafter: “ACM”) shall not be applicable. In this case the mortgage bond shall be deemed as registered also, when the owner of the account on which it is registered can be identified unambiguously. Mortgage bonds originated as described above will qualify as mortgage bond further on, when the permanent global mortgage note, which is deposited with an institution entitled to deposit or to keep securities in safe custody, will be exchanged for a definitive mortgage note. For the exchange of permanent global mortgage notes for definitive mortgage notes the provisions of the respective member state will be applicable.

Section 12

(1) Mortgage bonds issued as part of a series shall be of identical face value and shall constitute identical rights. Unless issued in dematerialized form, the serial numbering of mortgage bonds belonging to the same series shall be continuous, and they shall be issued in identical format. Mortgage bonds, issued in the same series, may also be issued in consolidated denominations.

(2) Physical mortgage bonds existing in print shall include interest and principal repayment coupons that specify the required instalments of repaying interest and principal.

Section 13

(1) *Lost effect.*

(2) If a prospectus of a kind envisaged in section 45(2) of the ACM is published as part of a mortgage bond issue, the prospectus shall contain the value of ordinary and supplementary (excess) cover supporting the issue in addition to the requisites mentioned in the ACM.

(3) Repurchased mortgage bonds may not be offered for sale once again, and shall be deemed to have been withdrawn from circulation and the issuing mortgage bank is not required to ensure the existence of the related collateral.

Cover Assets for Mortgage Bonds

Section 14

(1) Mortgage banks shall at all times have sufficient cover assets of a value higher than the sum of the face value of and the interest on outstanding mortgage bonds. Cover assets may include ordinary cover and supplementary (excess) cover.

(2) Mortgage banks shall comply with the requirements set out in subsection (1) by ensuring that:

a) the consolidated value of principal claims recognized as cover assets, less any adjustments of value, exceeds 100 per cent of the unpaid face value (unpaid principal balance) of outstanding mortgage bonds;

b) the consolidated value of the interest on outstanding principal claims recognized as cover assets, less any adjustments of value, exceeds 100 per cent of the interest on the unpaid face value (unpaid principal balance) of outstanding mortgage bonds.

(3) Principal claims arising from mortgage loans covered by mortgage recorded in the property register, interest due under the agreement and service charges applicable regularly under the loan agreement at a specific percentage of the unpaid principal balance during the term to maturity (hereinafter: “interest and similar income”) may be accepted as ordinary cover. The repurchase price, the amount of principal receivable against associated loan components, interest and similar income

due under the agreement and the value of derivative transactions calculated as set forth in subsection (6) may also be accepted as ordinary cover.

(4) Mortgage banks shall ensure the existence of cover assets for their mortgage bonds at all times also in terms of present value in addition to maintaining the ratios mentioned in subsection (2).

(5) Whenever a mortgage bond and its cover assets are not denominated in the same currency, the mortgage bank shall conclude derivative transactions to hedge against currency exchange risks.

(6) If a mortgage bank enters into derivative transactions affecting its mortgage bonds and their cover assets, such derivative transactions may also be accepted as ordinary cover in accordance with the relevant provisions of a separate regulation, provided the agreement with the partner in the derivative transaction grants permission to that effect. The partner in a derivative transaction may not exercise its right to cancellation in respect of a derivative transaction recognized as ordinary cover. The register of ordinary cover assets shall show the amounts receivable or payable under derivative transactions for the purposes of recognition as ordinary cover at an amount adjusted with the security for the same. If the adjusted amount represents a liability for the mortgage bank, it shall be recorded as a negative figure in the register of cover. The balance calculated at the net present value of amounts receivable or payable under a derivative transaction and recognized as ordinary cover may not surpass 12% of the net present value of the liabilities arising from outstanding mortgage bonds.

(7) If the unpaid principal balance or the repurchase price of a mortgage loan exceeds sixty per cent of the mortgage lending value of the cover asset, no more than 60% can be recognized as ordinary cover. In the event the property accepted as collateral is residential property [cf. section 147(4) a) of Act LIII of 1994 on Forced Collection By Courts], the unpaid principal balance or the repurchase price of a mortgage loan shall be recognized at no more than 70% of the mortgage lending value.

(8) The ratio of ordinary cover to total cover assets may not be less than eighty per cent.

(9) Mortgage banks shall reach the ratio defined in subsection (8) by the third calendar year of operation.

(10) The ratio of ordinary cover to the assets covering mortgage bonds may not be less than sixty per cent in the first year and seventy per cent in the second year of operation of a mortgage bank.

(11) Supplementary (excess) cover serves to complement ordinary cover and may consist of the following assets:

- a) money deposited to a separate blocked account at National Bank of Hungary;
- b) securities issued by the national banks of the member states of the European Union, the members states of the EEA and the member states of the OECD, as well as securities issued by the European Central Bank;
- c) securities issued by the member states and fully fledged members of the European Union, the EEA and the OECD;
- d) securities issued by the European Investment Bank (EIB), the International Bank for Reconstruction and Development (IBRD), the Council of Europe Development Bank (CEB) and the European Bank for Reconstruction and Development incorporating the liabilities of the issuer;
- e) securities issued under absolute guarantee provided by the Government of Hungary;
- f) securities issued with a guarantee provided by one of the issuers mentioned in subsection c) and d) for the repayment of principal and interest;
- g) loans guaranteed by the Government of Hungary, other than those mentioned in subsection 3(3) hereof;
- h) securities qualifying as covered bond under subsection 14(1) of the Government Decree no. 196/2007 on the Management of Credit risk and the Calculation of Credit Risk Capital Requirement, provided that such covered bond will be accepted as eligible asset by any national bank of a member

state of the European Union or by the European Central Bank, except for covered bonds issued by the mortgage bank itself, or by any credit institution or investment company in close connection to the mortgage bank in terms of point II/5 of Annex 2 of the CIFE.

(12) The total amount receivable from one and the same entity listed in subsections (11) *c*), *d*), *f*) and *b*) can be accepted as supplementary (excess) cover not surpassing 2% of the outstanding covered bonds issued by the mortgage bank. Assets as described under subsection (11) *b*) can be accepted as supplementary (excess) cover not surpassing up to 25% of all supplementary (excess) cover, and, their total value may not surpass 5% of the outstanding covered bonds issued by the mortgage bank.

(13) Mortgage banks shall immediately notify the HFSA if

a) the cover assets for outstanding mortgage bonds do not meet the requirements set forth in subsection (1);

b) the ratio of ordinary cover to total cover assets falls short of eighty per cent.

(14) Mortgage banks shall keep a register of mortgaged objects used as cover assets for mortgage bonds, and of the values of the ordinary and supplementary (excess) cover, in which cover assets shall be identified item by item.

(15) Mortgage banks shall prepare a manual of keeping the register of cover assets, which needs HFSA approval.

Section 14/A

(1) An EEA mortgage loan can be recognized as ordinary cover in case the mortgage bank

a) had extended, purchased, made advance payments towards or discounted mortgage loans in the particular member state during the preceding two calendar years;

b) has become properly confident of the risks associated with the cover and

c) its manual of keeping the register of cover assets allows him to recognize loans extended against lien on property situated in the given member state as cover asset.

(2) The HFSA approves the procedures of cover registration drawn up in line with subsection (1) *c*) in case the conditions provided in subsections (1) *a*)-*b*) are met in respect of mortgage loans extended against lien on property situated in the given member state.

Transferring Liabilities Arising from Mortgage Bonds

Section 15

(1) In the event of the transformation or liquidation of a mortgage bank, the mortgage bank may, with the permission of the HFSA, transfer its liabilities existing under mortgage bonds or derivative transactions recognized as cover to another mortgage bank.

(2) In the case of transferring liabilities arising from a mortgage bond or a derivative transaction, the provisions of Act IV of 1959 on the Civil Code of the Republic of Hungary (hereinafter referred to as "Civil Code") shall apply, provided however that the transfer shall not be subject to the consent of the holder of the mortgage bond or the partner to the derivative contract. By such transfer, liabilities arising from the mortgage bond shall accrue to the mortgage bank that accepts the bond as of the date of receipt of the permit.

(3) Applications for a permission to transfer liabilities shall at least contain the following:

a) a legal representation by the transferor and the transferee regarding the grant and acceptance of transfer;

b) the unpaid principal balance and interest on the liability arising from the mortgage bonds to be transferred;

c) itemized designation of the assets covering mortgage bonds to be transferred, including detailed information on derivative transactions recognized as cover and an indication of the mortgage lending value of real estate mortgaged as security;

d) the counter value and date of the transfer;

e) certification that the transferee has, in addition to the minimum guarantee capital covering the liabilities arising from its own mortgage bonds, the minimum guarantee capital needed to cover the liabilities arising from the mortgage bonds to be accepted, and the cover assets required for performing the liabilities arising from the mortgage bonds.

(4) The HFSA may reject approval of the transfer if it jeopardizes fulfilment of liabilities arising from the mortgage bonds affected by the transfer. The HFSA may also refuse to approve partial transfer if such partial transfer jeopardizes the fulfilment of the liabilities arising from the mortgage bonds affected by the transfer.

(5) Liabilities arising from mortgage bonds may only be transferred along with the concurrent transfer of the related ordinary and supplementary (excess) cover assets.

(6) The mortgage bank accepting the portfolio shall offer new mortgage bonds on the original terms and conditions defined by the mortgage bank transferring the same.

(7) The mortgage bank accepting the portfolio shall, within thirty days of receipt of the decision issued in approval, publish in a national daily newspaper and in the Exchange Journal an announcement about taking transfer of the portfolio and about the cancellation of the mortgage bonds offered by the transferring mortgage bank.

Appointing a Coverage Supervisor

Section 16

(1) Mortgage banks shall appoint a coverage supervisor to fulfil the tasks set forth in section 17. The appointment of a coverage supervisor takes effect subject to approval by the HFSA.

(2) Only auditing firms and natural persons may be appointed as coverage supervisor.

(3) To become eligible for engagement as a coverage supervisor, auditing firms shall comply with the requirements set forth in Section 133(1) of the CIFE and shall not perform any other auditing assignments for the contracting mortgage bank.

(4) Natural persons eligible for appointment as a coverage supervisor shall have:

a) no prior criminal record,

b) a university or college degree in the special discipline, and

c) professional liability insurance.

(5) A university or college degree in the special discipline mentioned in subsection (4)*b)* shall certify graduation from a university or college of law, administration, finance and accounting or engineering.

(6) Persons not eligible to act as a coverage supervisor shall include:

a) the founders, shareholders, senior executives, supervisory board members and auditors of a mortgage bank, their close relatives [Section 685*b)* of the Civil Code], and mortgage bank employees;

b) persons who terminated a position listed in subsection *a)* within less than two years;

c) persons with a direct ownership interest in a mortgage bank;

d) persons who carry on business relations with the mortgage bank or with the persons defined in subsection *a)* or are employed by a person holding a controlling interest in the mortgage bank;

e) persons who are indebted to the mortgage bank under any title,

(7) A coverage supervisor may be appointed for a fixed period of time, not to exceed five years; however, with the option to get re-appointed after the term expires. The contract of engagement concluded between a mortgage bank and a coverage supervisor may not be validly terminated without the approval of the HFSA.

(8) A principal engaging a coverage supervisor may not give the latter instructions pertaining to the scope of business of a coverage supervisor.

(9) A coverage supervisor may at any time inspect books and other files of the mortgage bank that contain data necessary for the performance of its tasks, and may solicit information in connection with performance of its tasks. Even in the absence of such requests, the mortgage bank shall keep the coverage supervisor informed about principal and interest repayments on mortgage loans entered into the register of cover assets and about any changes affecting the mortgaged objects and the supplementary (excess) cover.

(10) Excepting the case defined in section 17(2), a coverage supervisor shall keep confidential the facts, data, and business information revealed to it in course of its activities.

(11) While fulfilling its statutory duties, a coverage supervisor shall act with due diligence as expected from a person performing such tasks, and the coverage supervisor's liabilities shall otherwise be governed by general rules of civil liability.

The Scope of Business and Duties of a Coverage Supervisor

Section 17

(1) Coverage supervisors shall monitor and certify as set forth in Section 11(3)*n*) and Section 18(1) that:

- a*) the necessary collateral for mortgage bonds is available at all times as required;
- b*) the mortgaged objects recognized as cover assets for mortgage bonds have been recorded along with the related property registration data and mortgage lending value in the register of ordinary and supplementary cover assets.

(2) Coverage supervisors shall immediately notify the HFSA in writing if the collateral coverage of outstanding mortgage bonds fails to meet the requirements set forth in section 14(1).

(3) Data relating to the mortgaged properties entered into the register of cover assets and to the ordinary or supplementary (excess) cover assets may only be deleted with the written approval of the coverage supervisor.

Disclosure Obligations

Section 18

(1) Mortgage banks shall report in a submission to the HFSA in line with HSFA rules the unpaid principal balance and interest of outstanding mortgage bonds calculated for the last day of the quarter to date along with mortgage lending values certified by the coverage supervisor after each calendar quarter and shall thereafter publish the same in a national daily newspaper and in the Exchange Journal on or before the last day of the month.

(2) The publication and the submission shall contain in respect of the collateral:

- a*) the value of the ordinary cover, and
- b*) the values of supplementary (excess) cover, itemized according to Section (14)11.

Section 19

In addition to the mandatory content specified in the ACM, the annual report of mortgage banks shall contain also the following:

- a) the values of cover assets for outstanding mortgage bonds calculated for 31 December, along with an itemized list of assets recognized as supplementary (excess) cover;
- b) the number of foreclosure sales initiated at the request of the mortgage bank, and the difference in value between the result of the sale and the balance of the mortgage loan existing at that time for completed sales;
- c) the number, legal character, and classification by line of cultivation of properties received for the purposes of mitigating or avoiding losses connected to mortgage lending or as a result of liquidation or foreclosure;
- d) the amounts repaid against mortgage loans.

Part IV.

RULES APPLICABLE FOR INSOLVENCY

Liquidation of Mortgage Banks

Section 20

(1) In the course of liquidation proceedings against a mortgage bank, rules relating to the liquidation of credit institutions shall be applied notwithstanding the provisions set forth in subsections (2)-(3) and in section 20/A.

(2) To ensure that claims arising from mortgage bonds and derivative transactions recognized as cover, courts will also assign an administrator of cover in addition to the liquidator. The administrator of cover will, in turn, appoint a natural person to perform this duty on its behalf on the basis of employment by, membership in or contract of engagement with the administrator. The administrator of cover shall not be identical to the receiver appointed by the liquidator to conduct the liquidation procedure of the mortgage bank.

(3) In the event a mortgage bank is brought under liquidation, the claims arising from mortgage bonds and derivative transactions recognized as cover shall not become overdue (payable).

(4) The administrator of cover satisfies the claims arising from mortgage bonds, regardless of whether or not they are reported to the liquidator, by charging them to the assets of the mortgage bank listed under subsection (5) outside the liquidation procedure at the dates of interest payment and redemption (repayment) specified by the mortgage bond. The contracting partners to derivative transactions recognized as ordinary cover share identical rights as mortgage bond holders to the tune of the claims arising from the derivative transactions recognized as cover, and the rules of the paying claims arising from mortgage bonds shall govern, as applicable, the satisfaction of such claims.

(5) In the event of liquidating a mortgage bank the following shall be used exclusively for meeting the liabilities towards mortgage bond holders after paying of the fee of the administrator of cover and the costs incurred by the registration and satisfaction of particular claims specified in this subsection and in connection with the activities of the liquidator.

- a) the ordinary and supplementary cover recognized in the register of cover at the starting date of liquidation
- b) the part of the ordinary cover in excess of the limit specified in Section 14(7) and not recognized as cover and the portion of liquid assets held but not recognized as cover by the mortgage bank at

the starting date of liquidation which comply with the requirements in this Act in respect of supplementary cover.

The assets recognized as cover and the liquid assets mentioned in subsections *a)* and *b)* shall not be part of the net assets available for liquidation.

(6) If the assets of a mortgage bank specified in subsection (5) fail to cover the satisfaction of claims arising from mortgage bonds and derivative transactions recognized as cover the amounts payable to mortgage bond holders and the contracting parties of derivative transactions recognized as cover shall be met from the cover pro rata to the claims. If payments are made pro rata to satisfy claims as they become payable the administrator of cover shall effect payment of the unsatisfied claims from and to the tune of income realized subsequently from the assets specified in Section 5 in the order of maturity dates and pro rata in respect of claims maturing simultaneously on the same date. In the event of overdue performance mortgage bond holders shall be entitled to penalty interests at a rate specified in the terms of reference of the mortgage bond issue.

Section 20/A

(1) The administrator of cover and the natural person appointed to perform the duties of the administrator of cover shall be subject to the rules of the liquidator of the financial institution and the administrator of cover, respectively.

(2) The administrator of cover may act in exclusive capacity on behalf of a mortgage bank in respect of the assets specified in Section 20(5) while the rights of the coverage supervisor shall continue to remain in effect unchanged.

(3) The administrator of cover may initiate the transfer of mortgage bonds as envisaged in Section 15 or the repurchase of outstanding mortgage bonds and shall enforce any claims on cover on behalf of the mortgage bank. Furthermore the administrator of cover may engage in derivative transaction for collateral purposes and such transactions shall classify as derivative transactions recognized as cover. The provisions of Section 14(8) need not be applied after the starting date of liquidation, provided that in case the administrator of cover sells an asset specified in Section 20(5) then the counter-value replacing the asset may only be used to satisfy liabilities towards mortgage bond holders. The administrator of cover is responsible for keeping separate registers of the assets of the mortgage bank specified in Section 20(5) and the net asset available for liquidation.

(4) The administrator of cover shall do everything within its control to ensure that the assets specified in 20(5) are sufficient to satisfy claims in full as they fall due (maintenance of uninterrupted solvency). If uninterrupted solvency cannot be maintained, the administrator of cover shall take measures towards the satisfaction of mortgage bond holders pro rata to their unpaid principal, regardless of the dates at which mortgage bonds mature.

(5) After the starting date of liquidation, the administrator of cover shall have the exclusive right to dispose of the assets specified in Section 20(5) and all measures by the liquidator in respect of such assets shall be null and void. Once all the claims of mortgage bond holders and contracting partners to derivative transactions recognized as ordinary cover are satisfied or transferred to another mortgage bank, the assets specified in Section 20(5) are reclassified as net assets available for liquidation.

(6) The administrator of cover may not engage in the business of providing financial services, investment services and supplementary investment services of a kind listed in section 3(2).

(7) The administrator of cover or any mortgage bond holder may demand within two years after the starting date of liquidation that the court should order additions to the assets specified in section 20(5) from the assets available for liquidation upon offering evidence that the aforementioned assets fail to cover meeting the claims of mortgage bond holders. Missing the deadline precludes the right

to do so. If the court decides to add to the assets specified in section 20(5) the administrator of cover shall have the exclusive right to dispose of the affected assets once the court's decision takes effect.

(8) Other than the acceptance of the closing balance sheet of liquidation, the court may only decide to complete liquidation and to wind up a mortgage bank after all the claims arising from mortgage bonds and the derivative transactions recognized as cover have been satisfied or transferred to an other mortgage bank or after the net assets assigned to satisfy them have been depleted in full.

Execution Proceedings against Mortgage banks

Section 21

(1) In the course of execution proceedings against a mortgage bank, Act no LIII of 1994 on Execution by Court shall be applied with the deviations set forth in subsections (2)-(3).

(2) In respect of assets of a mortgage bank, as defined in Section 20(5), only mortgage bond holders and the contracting parties to derivative transactions recognized as cover may conduct forced collection up to the amount of their claims.

(3) The liabilities towards mortgage bond holders and the contracting parties to derivative transactions recognized as cover shall be satisfied following the settlement of the expenses of forced collection.

Part V.

MEANS OF PERFORMANCE OF SUPERVISION

Special Supervision of Mortgage banks

Section 22

The HFSA has special rights to supervise mortgage banks in addition to the competencies set forth in the CIFE and the ACM. As part of its special rights to supervise mortgage banks the HFSA conducts every year on site audit according to the audit plan it compiles.

Measures and Extraordinary Measures

Section 23

In addition to the means provided in the CIFE and the ACM, the HFSA may take the following measures and extraordinary measures:

a) it may order the restoration of cover if the sum of the unpaid principal balance of and the interest on outstanding mortgage bonds exceeds the amount of the cover, and set a deadline for doing so. The cover may be restored by recognizing supplementary (excess) cover, by the placement of additional mortgage loans or by repurchasing mortgage bonds;

b) it may require the mortgage bank to transfer claims arising from mortgage bonds and the portfolio of mortgage loans recognized as cover assets, including amounts receivable from the repurchase price (hereinafter collectively referred to as "portfolio of mortgage loans") as well as the

supplementary (excess) cover, if its capital adequacy ratio falls short of four per cent for more than 90 days, and cannot be restored within the deadline set by the HFSA.

Fines

Section 24

Lost effect.

Part VI.

MISCELLANEOUS PROVISIONS

Protection of the Name

Section 25

Lost effect.

Section 25/A.

Regulations on Mortgage Banks Operating as Branch Offices

(1) Mortgage banks operating as branch offices may only be established by foreign credit institutions authorized to issue mortgage bonds. For the purposes of this provision, the securities issued under the following terms shall be regarded as mortgage bonds:

- a) the issuer shall be a credit institution which is subject to special supervision;
- b) in the event of bankruptcy of the issuing credit institution, mortgage bond holders are granted priority of settlement;
- c) coverage is provided by a mortgage loan or by a loan to the public sector;
- d) strict laws are enacted for the protection of securities holders.

(2) In respect of mortgage banks operating as branch offices, the provisions of

- a) subsection 5(1) and (3);
- b) subsection 9(2);
- c) subsection 10(1);
- d) subsection 14(1)

shall be observed separately on the basis of accounting and other records, regardless of the foreign credit institution.

(3) Mortgage banks operating as branch offices may not acquire ownership in arable land.

Part VII

CLOSING PROVISIONS

Section 26

(1) This Act shall enter into effect on the 30th day following its promulgation.

(2) This Act is designed to ensure harmonization with Council Directive [85/611/EEC](#) of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to

undertakings for collective investment in transferable securities (UCITS), as amended by council directive 88/200/EEC of 20 March 1988.

Authorizations

Section 27

- (1) An authorization shall be granted
- a)* to the Minister responsible for agricultural policy, in respect of agricultural land,
 - b)* to the Minister responsible for the regulation of money markets, capital markets and insurance markets, in respect of real property other than agricultural land,
to establish in a decree the methodological principles of determining the collateral value of such property.
- (2) An authorization shall be granted to the Minister responsible for the regulation of money markets, capital markets and insurance markets to specify in a decree
- a)* the detailed rules of recognizing and recording derivative instruments as cover assets, and
 - b)* the rules of calculating the present value of the cover assets of mortgage bonds.
 - c)* *Lost effect.*

Section 28-35

Lost effect.