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Section 3: Specific provisions relating to banks issuing mortgage bonds

Subsection 1: Definitions, activities of a mortgage bank and protection of the name of mortgage bonds

Art. 12-1 Definition of the principal activity of a mortgage bank

(1) Mortgage banks are credit institutions having as their main object the following activities:

- (a) grant loans secured by rights in rem in immoveable property or by charges on real property, and issue on that basis debt instruments secured by those rights or charges, such instruments are called mortgage bonds;
- (b) grant loans secured by bonds, or by other similar debt instruments fulfilling the requirements in paragraph 2, which are in turn equipped with the guarantees indicated in subparagraph (a) or (e), and issue on that basis debt instruments covered by those guarantees, such instruments are called mortgage bonds;
- (c) grant loans to public entities and issue debt instruments secured by the debt entitlements resulting from those loans, such instruments are called mortgage bonds;
- (d) grant 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 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) or another State as defined in Article 12-3(2)(c) dash 2, such bonds being in turn secured by debts owed by public entities,
 - other commitments made in any form by public entities,and issue on that basis debt instruments secured by the debt entitlements resulting from those loans, such instruments are called mortgage bonds;
- (e) grant loans secured by rights in rem in moveable property or charges on moveable property and the issuing on that basis of debt instruments secured by those rights or charges, such instruments are called mortgage bonds;
- (f) granting loans to credit institutions established in 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) and which participate in a system of institutional guarantee as defined in Article 12-3(2)(e) and issue on that basis debt instruments secured by the debt entitlements resulting from those loans, such instruments are called mortgage bonds;
- (g) grant loans secured by
 - bonds issued by credit institutions established in 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) and which participate in a system of institutional guarantee as defined in Article 12-3(2)(e),
 - other commitments made in any form by credit institutions established in 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

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for Economic Co-operation and Development (OECD) and which participate in a system of institutional guarantee as defined in Article 12-3(2)(e)

and issue on that basis debt instruments secured by the debt entitlements resulting from those loans, such instruments are called 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 which:

- fulfil the criteria laid down by Article 43(4) of the law of 17 December 2010 relating to undertakings for collective investment. Such bonds or other similar debt instruments must be issued by credit institutions or by public entities or by a credit institution which is a member of a system of institutional guarantee as defined in Article 12-3 (2)(e) below and must be coupled with the guarantees mentioned in paragraph 1(a) to (g) of the present Article;
- or are issued by a securitisation vehicle or a sub-fund of a securitisation vehicle where a minimum of 90% of the assets is made up of debt, in any form, on or secured by public entities. This threshold is reduced to 50% where the collateral for the public-sector bonds of the credit institution includes no more than 20% of such instruments referred to in the previous sentence. These bonds and debt instruments shall have the first credit quality step granted by a rating agency which is registered on the list of credit rating agencies of ESMA according to the Regulation no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. A credit institution may only apply one of the two methods described in this subparagraph;
- or are issued by a securitisation vehicle or a sub-fund of a securitisation vehicle where a minimum of 90% of the assets is made up of debt, in any form, on or secured by credit institutions which are members of a system of institutional guarantee as defined in Article 12-3 (2)(e). This threshold is reduced to 50% where the collateral for the mutual mortgage bonds of the credit institution includes no more than 20% of such instruments referred to in the previous sentence. These bonds and debt instruments shall have the first credit quality step granted by a rating agency which is registered on the list of credit rating agencies of ESMA according to the Regulation no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. A credit institution may only apply one of the two methods described in this subparagraph;
- or are issued by a securitisation vehicle or a sub-fund of a securitisation vehicle where a minimum of 90% of the assets is made up of debt secured by rights in rem in immovable property or by charges on real property. This threshold is reduced to 50% where the collateral over the mortgage bonds of the credit institution includes no more than 20% of such instruments referred to in the previous sentence. These bonds and debt instruments shall have the first credit quality step granted by a rating agency which is registered on the list of credit rating agencies of ESMA according to the Regulation no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. A credit institution may only apply one of the two methods described in this subparagraph;
- or are issued by a securitisation vehicle or a sub-fund of a securitisation vehicle where a minimum of 90% of the assets is made up of debt secured by rights in rem in moveable property or by charges on moveable property as defined in paragraph 4(a) and (b) above, taken separately by category of mortgage bonds as defined in Article 12-5(2). This threshold is reduced to 50% where the collateral over the moveable-property bonds of the credit institution includes no more than

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20% of such instruments referred to in the previous sentence. These bonds and debt instruments shall have the first credit quality step granted by a rating agency which is registered on the list of credit rating agencies of ESMA according to the Regulation no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. A credit institution may only apply one of the two methods described in this subparagraph;

- or are secured by public entities;
- or are secured by a credit institution which is a member of a system of institutional guarantee as defined in Article 12-3(2)(e) below.

Art. 12-2 Definition of the incidental and ancillary activities of a mortgage bank

(1) Mortgage banks may engage in other banking and financial activities only in so far as these are incidental and ancillary to their main activity.

For the purposes of this provision, the following shall be regarded as incidental activities:

- (a) selling and purchasing securities in their own name for the account of third parties, but excluding forward transactions;
- (b) with a view to granting mortgage loans, loans to public entities or loans of the type referred to in Article 12-1(1):
 - receiving capital sums as deposits from third parties, with or without interest;
 - taking out loans and furnishing security for such loans;
 - issuing bonds which are not subject to the mandatory cover requirements laid down for mortgage bonds provided for in Article 12-1(1).”
- (c) providing custody and management services in respect of securities for third parties;
- (d) acquiring holdings in undertakings, where such holdings are intended to further operations carried out in accordance with Article 12-1 and the liability of the mortgage bank resulting from those holdings is limited by the legal form of the undertaking, provided however that each holding does not in total exceed one third of the nominal value of all the shares in the undertaking in which the holding is acquired. A larger holding shall be authorised in so far as the corporate object of the undertaking is in essence – by virtue either of the law or of its statutes – to engage in operations of the same type as those which the mortgage bank is itself authorised to carry out; the total amount of such holdings may not exceed twenty per cent of the mortgage bank’s own funds.

(2) Mortgage banks may use the funds available in order to:

- (a) deposit them with other suitable credit institutions;
- (b) redeem their mortgage bonds, public-sector bonds, moveable-property bonds and mutual mortgage bonds;
- (c) purchase:
 - bills of exchange and cheques,
 - securities, debts, Treasury bills and Treasury bonds the debtor in respect of which is a public entity,
 - debt instruments in respect of which the payment of interest and the repayment of capital are guaranteed by a public entity,
 - other debt instruments listed on a stock exchange;

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- (d) make advances against pledges of securities in accordance with internal rules to be laid down by the mortgage bank. Such rules must specify the securities eligible to be accepted by way of pledge and fix the authorised amount of the advance;
 - (e) invest them in investment fund shares as assets invested in accordance with the principle of risk-spreading, where those shares have been issued by a capital investment company or a foreign investment company which is subject to special official surveillance in order to protect holders of securities, provided that, under the terms of the contractual conditions or statutes of the capital investment company or investment company, the assets may be invested only in debt instruments of the type referred to in (c) and in bank deposits.
- (3) Mortgage banks may acquire immoveable property and moveable property only to avoid losses on mortgages and to meet their own needs.

Art. 12-3 Technical definitions

(1) Bonds issued in accordance with the provisions of article 12-1 (1),

- (a) and (b) are known as “mortgage bonds” (*lettres de gage hypothécaires*);
- (c) and (d) are known as “public-sector bonds” (*lettres de gage publiques*);
- (e) are known as moveable-property bonds (*lettres de gage mobilières*) followed by the denomination of the category of assets which makes up the collateral;
- (f) and (g) are known as mutual mortgage bonds (*lettres de gage mutuelles*).

(2) For the purposes of this section:

(a) “Rights in rem in immoveable 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 immoveable property provided for by the laws of Member States of the European Union, Contracting Parties to the Agreement on the European Economic Area, or Member countries of the Organisation for Economic Co-operation and Development (OECD), or another State as defined in (c) dash 2, conferring any right over immoveable property located within any such State that can be asserted against third parties.

“Rights in rem in moveable property” shall mean rights in property and the separate attributes thereof, and all other similar rights in rem in moveable property provided for by the laws of Member States of the European Union, Contracting Parties to the Agreement on the European Economic Area, or Member countries of the Organisation for Economic Co-operation and Development (OECD), or another State as defined in (c) dash 2, conferring any right over moveable property entered in a public register in one of these States that can be asserted against third parties.

(b) “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, Contracting Parties to the Agreement on the European Economic Area or Member countries of the Organisation for Economic Co-operation and Development (OECD) or another State as defined in (c) dash, conferring any charge over immoveable property located within any such State that can be asserted against third parties.

“Charges on moveable property” shall mean any mortgage and all other charges on moveable property provided for by the laws of Member States of the European Union, Contracting Parties to the Agreement on the European Economic Area, or Member countries of the Organisation for Economic Co-operation and

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Development (OECD), or another State as defined in (c) dash 2, conferring any charge over moveable property that can be asserted against third parties. This mortgage and these charges on moveable property shall be entered in a public register in a Member State of the European Union, of the European Economic Area or in a Member country of the Organisation for Economic Co-operation and Development (OECD) or another State as defined in (c) dash 2.

(c) "Public entities" shall mean:

- the Member States of the European Union, the Contracting Parties to the Agreement on the European Economic Area, the Member countries of the OECD,
- the other States, when they profit from the first credit quality step granted by a rating agency which is registered on the list of credit rating agencies of ESMA according to the Regulation no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, if the collateral of the public-sector bonds, mortgage bonds, moveable-property bonds and mutual mortgage bonds contains at most 50% of their aggregated exposures on these States,
- or the other States, when they profit from the second credit quality step granted by a rating agency which is registered on the list of credit rating agencies of ESMA according to the Regulation no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, if the collateral of the public-sector bonds, mortgage bonds, moveable-property bonds and mutual mortgage bonds contains at most 10% of their aggregated exposures on these States.

When applying the two dashes above, the term "State" comprises the institutions or bodies, central administrations, regional or local authorities, other public authorities and other public bodies or undertakings of each State.

(d) "Public undertaking" shall mean: any undertaking over which the State or other territorial authorities may directly or indirectly exercise a dominant influence by virtue of their ownership of it, their financial participation therein or the rules which govern it.

A dominant influence shall be presumed when the State or other territorial authorities, directly or indirectly in relation to an undertaking:

- hold the major part of the undertaking's subscribed capital, or
- control the majority of the votes attached to the shares issued by the undertaking, or
- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body.

(e) "System of institutional guarantee" shall mean: a system

- the statutory object of which is to resolve imminent or existing economic difficulties of the member institutions of the system;
- which within the frame of its objective shall grant the necessary support to maintain liquidity and solvency in order to avoid the inability to pay of the member institutions by means of immediately available funds,
- the mechanism of which for the control and the classification of the risks of the individual member institutions and of the guarantee system is adequate and which informs the member institution of the respective risk classification,
- which publishes at least once a year a report comprising an inventory (assets and liabilities), a profit and loss account, a report of the situation and a report of the risks regarding the guarantee system as a whole,
- which has enough members with a commercial activity that is essentially similar,

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- the members of which have the obligation to provide to the guarantee system at its request and without delay the annual reports, the coefficients and values of the member institutions and their branches,
- the members of which have the obligation to inform the guarantee system without delay of their intention to take over an undertaking that is not a member of the system or to modify or end an existing participation in such an undertaking,
- the members of which have the obligation to inform the guarantee system without delay as soon as it becomes obvious that the member institution is not capable of covering the risks resulting from its activity by its capital or to fulfil its obligations without delay,
- the members of which have the obligation, in the case of imminent or existing economic difficulties of the affected member institution and on request by the guarantee system, to prepare a restoration plan in order to remedy this situation, a plan in which the necessary measures and their effects on the monetary situation and the income return of the institution are detailed and that foresees that the affected member institution has the obligation, after having obtained the consent of the guarantee system, to implement this restructuring plan,
- the mechanism of which for the control and the classification of risks for the individual member institutions as well as for the guarantee systems has been confirmed as being sufficient and adequate by the CSSF with the opinion of the Luxembourg central bank, or by another comparable supervisory authority, which is responsible for the guarantee system and which is regularly controlled.

Art. 12-4 Specific provisions

- (1) In order to meet the legal requirements, the rights in rem in immoveable property, the rights in rem in moveable property, the charges on real property and the charges on moveable property referred to above must be such as to authorise their holder 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.

Rights in rem in immoveable property, rights in rem in moveable property, charges on real property and charges on moveable property are held either directly by the mortgage bank issuing mortgage bonds or on behalf of the mortgage bank by a third party credit institution established in a Member State of the European Union, of the European Economic Area or in a Member country of the Organisation for Economic Co-operation and Development (OECD) or an other State as defined in Article 12-3(2)(c) dash 2.

- (2) 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.
- (3) No entity may issue transferable securities or other debt instruments under the denomination of "mortgage bonds" (in French: *lettres de gage*; in German: *Pfandbriefe*), or under any identical or similar denomination in another language, if it does not fulfil the conditions laid down by this section.

Subsection 2: Collateral of the mortgage bonds, control by a réviseur spécial and preferential right of the mortgage bond holders

Art. 12-5 Collateral

- (1) Ordinary collateral shall be comprised of the debts with their guarantees as described in Article 12-1(1), and held as property by the mortgage bank as consideration for its commitments resulting from the issue of mortgage bonds.

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In the case that the collateral became property of the bank by means of a transfer of property for guarantee purposes, this transfer of property shall be executed to guarantee the debts inscribed as assets on the balance sheet of the mortgage bank. The property transfer for guarantee purposes shall be based on a financial guarantee contract within the meaning of the Law of 5 August 2005 on financial guarantee contracts or another similar guarantee to which a foreign law is applicable.

- (2) Only loans as described in Article 12-1(1)(c) and (d) and exactable of public entities provided the latter cannot rely on any exception laid down in the underlying relation which gave rise to the loan, shall be used as collateral for public-sector bonds (*lettres de gage publiques*).
- (3) The collateral shall be divided into as many categories as there are different categories of mortgage bonds issued.
- (4) For each of the categories, ordinary collateral may be replaced, to the extent of 20% of the nominal value of the mortgage bonds in circulation by substitute collateral comprising:
 - (a) cash;
 - (b) assets held in central banks or credit institutions having their seat or registered office in a State which is a Member State of the European Union, of the European Economic Area or a Member country of the Organisation for Economic Co-operation and Development (OECD) or an other State as defined in Article 12-3(2)(c) dash 2;
 - (c) bonds fulfilling the criteria laid down by Article 42(3) of the Law of 17 December 2010 on collective investment undertakings."
- (5) The nominal amount of the collateral shall at all times represent at least 102% of the nominal amount of the mortgage bonds in circulation. The present value of the collateral shall at all times represent at least 102% of the present value of the mortgage bonds in circulation. This collateral shall have an overall interest income at least identical to the interest on these mortgage bonds.

In order to ensure global cover, in terms of both principal and interest, for the mortgage bonds in circulation and the other debts eligible for the preferential treatment referred to in Article 12-8, mortgage banks must take appropriate measures and may have recourse, in particular, to derivatives. The assets resulting from such measures must be included in the collateral required by this Law. Any sums payable by virtue of those measures shall enjoy, following set-off as the case may be, the preferential status referred to in Article 12-8.

Sums payable by virtue of the derivatives used to cover other operations shall not enjoy that preferential status.

- (6) Debts resulting from loans coupled with guarantees provided for in Article 12-1(1)(a), (b) and (e) may be used as collateral only up to a maximum of 60% of the estimated realisation value of the immovable or moveable property serving as guarantee. This threshold is raised to 80% for debts resulting from loans coupled with guarantees provided for in Article 12-1(1)(a) and (b) and that finance residential property. That estimated value is to be determined on a genuine and prudent basis in accordance with the valuation rules laid down in Article 12-7(2); it shall take into consideration only the sustainable aspects of the property and the sustainable revenue it is capable of providing to any owner making normal use of it in accordance with its intended purpose.

The provisions of the above paragraph do not apply to loans granted in the form of bonds or debt instruments.

As regards real estate, residential property as well as real estate used for industrial, commercial or professional purposes can be used as guarantee.

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As regards moveable assets, categories of assets such as aircrafts, ships, boats and objects relating to railways can be used as guarantee. This list is not exhaustive and prior to the financing of a new category of assets an authorisation request has to be submitted to the Commission.

Art. 12-6 Mortgage bond register and transparency

- (1) All mortgage banks shall be required to draw up a register, known as the “mortgage bond register” (*registre des gages*), in which details of all assets serving as collateral must be entered individually. That register shall be composed of as many parts as there are different types of collateral securing the different types of mortgage bonds issued, in application of the provisions of Article 12-5(3).
- (2) The mortgage banks publish information regarding the composition of the collateral pools, the mortgage bonds and the mortgage bond issuer. The specifications for this publication are defined by the CSSF.

Art. 12-7 Special *réviseur d'entreprises agréé* (approved statutory auditor)

- (1) All mortgage banks must have a special *réviseur d'entreprises agréé* (approved statutory auditor) who is distinct from the *réviseur d'entreprises agréé* (approved statutory auditor) who performs the legal audit of audits its accounts. That special *réviseur d'entreprises agréé* shall be appointed by the CSSF on a proposal by the credit institution concerned. The special *réviseur d'entreprises agréé* (approved statutory auditor) shall be required to report to the supervisory authority on the findings and observations made by him in performing his duties. The special *réviseur d'entreprises agréé* may be removed from office by the CSSF at any time.
- (2) The special *réviseur d'entreprises agréé* (approved statutory auditor) shall be under a duty to ensure that the collateral to be provided under this Law by mortgage banks is duly established and registered in the mortgage bond register, that the value thereof is in the prescribed amount and that it continues to exist.

The special *réviseur d'entreprises agréé* (approved statutory auditor) shall also be required to ascertain whether the estimated value of the items of immoveable property and of moveable property serving as guarantees in rem has been determined in accordance with the valuation rules to be drawn up to that end by the credit institution with the approval of the CSSF, and whether the maximum rate of cover in respect of which the immoveable property or the moveable property in question may serve as guarantee has been respected.

The special *réviseur d'entreprises agréé* (approved statutory auditor) shall not be required to ascertain whether the estimated value of the immoveable property or the moveable property in question corresponds to its actual value.

- (3) The collateral entered in the mortgage bond register may not be deleted therefrom without the written consent of the special *réviseur d'entreprises agréé* (approved statutory auditor).

The special *réviseur d'entreprises agréé* (approved statutory auditor), acting jointly with the mortgage bank, shall be required to ensure the safe-keeping of the collateral entered in the mortgage bond register and of the deeds and documents relating to such collateral. At the request of the mortgage bank, he shall release the said collateral, deeds and documents to that bank and shall consent to the removal from the mortgage bond register of the entries relating thereto, in so far as the other items of collateral entered therein are sufficient to cover fully the mortgage bonds in circulation.

- (4) In the performance of his duties, the special *réviseur d'entreprises agréé* (approved statutory auditor) shall remain completely independent of the credit institution, the mortgage bond holders and the supervisory authority.

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- (5) The special *réviseur d'entreprises agréé* (approved statutory auditor) shall not represent the mortgage bond holders.
- (6) Before mortgage bonds are issued, each of them shall be endorsed with a certificate of the special *réviseur d'entreprises agréé* (approved statutory auditor) certifying the existence of the cover required by law and the entry thereof in the mortgage bond register. The signature of the certificate by the special *réviseur d'entreprises agréé* (approved statutory auditor) may be in manuscript, printed or in the form of a signature stamp.
- (7) All disputes between the special *réviseur d'entreprises agréé* (approved statutory auditor) and the mortgage bank shall be settled by the CSSF.

Art. 12-8 Preferential right to payment of mortgage bond holders

- (1) Without prejudice to the conditions to be fulfilled and the formalities to be completed for the creation and continuation of the guarantees comprised in the collateral, that collateral shall serve, in the first instance, to guarantee to the holders of mortgage bonds the payment of the full amount of the debt due to them from the mortgage bond issuer in question. The collateral may not be attached or form the subject of any execution or enforcement measure by personal creditors of the issuer other than the mortgage bond holders.
- (2) Registration of the collateral in the mortgage bond register shall confer upon the mortgage bond holders a preferential right over that collateral in priority to all other rights, preferences and priorities of any kind whatever, including Treasury rights, without there being any need for the conclusion of any special contract earmarking or pledging the same or any other contract, or for the delivery of the collateral to the mortgage bond holders or to any agreed third party, the service of any document or the completion of any other formality. The entry in the register shall constitute good evidence of the date thereof.
- (3) Regardless of their date of issue, all mortgage bonds guaranteed by the same type of collateral respectively allocated to them shall rank *pari passu*, whether mortgage bonds (*lettres de gage hypothécaires*), public-sector bonds (*lettres de gages publiques*), moveable-property bonds (*lettres de gage mobilières*) or mutual mortgage bonds (*lettres de gage mutuelles*), and the same preferential rights shall attach to them in the event of the collective liquidation of the mortgage bank.

Subsection 3: Administration of a mortgage bank in the case of suspension of payments and compulsory liquidation

Art. 12-9 Creation of patrimonial compartments and retention of the license of a mortgage bank for a limited activity

- (1) The judgement of the District Court in financial matters, which pronounces according to part IV either the suspension of payments or the compulsory liquidation of a mortgage bank, entails by operation of law the split of the assets of the bank in two parts:
 - (a) the different categories of mortgage bonds with their collateral and the corresponding reserves deposited with the Central bank, that form separate estates within the meaning of Article 12-5 (3), constitute as many separate and different patrimonial compartments. The assets of a mortgage bank with limited activity comprises also all the sums that result from the collection, the repayment or the payment of the assets or the realization of the collateral inscribed in the register as defined in Article 12-6 or of the guarantees that have been provided in relation to the collateral in which form or name whatsoever. These separate patrimonial compartments do not have a legal personality different from that of the bank with limited activity which is administered by the administrator defined in Article 12-10.

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The guarantees and the preferential right of the mortgage bond holders defined in Article 12-8 are applicable to the patrimonial compartments. Chapters 1 and 2 of part IV are not applicable to the mortgage bank with limited activity.

- (b) the remaining parts of the mortgage bank, i.e. the ancillary and auxiliary activities as defined in Article 12-2. Chapters 1 and 2 of part IV are applicable to the remaining parts.
- (2) Notwithstanding the provisions of Article 450 of the Commercial Code, the collective liquidation of a mortgage bank shall not have the effect of causing the mortgage bonds and other debts covered by the preferential rights referred to in Article 12-8 to become due and payable.

The provisions of Articles 444, subparagraph 2 and 445 of the Commercial Code are not applicable to contracts executed by or with the mortgage bank, or to legal transactions executed by it or for its benefit, when these contracts or these transactions are directly connected to operations described in Article 12-1 and to contracts for derivatives relating thereto.

- (3) The object of the mortgage bank with limited activity is to ensure the administration of the patrimonial compartments described in paragraph (1)(a) and the complete and timely fulfilment of the obligations resulting from the mortgage bonds.
- (4) The initial license of the mortgage bank mentioned in Article 12-1 is maintained by operation of law in the mortgage bank with limited activity for the execution of its object as defined in paragraph (3). The mortgage banks with limited activity continue to be subject to the legal and regulatory framework that is applicable to them.
- (5) When the District Court applying Articles 12-11 or 12-2 opens a procedure for suspension of payments or compulsory liquidation with regard to a patrimonial compartment, the mortgage bank with limited activity continues with the remaining patrimonial compartments.

Art. 12-10 Administration of the patrimonial compartments of a mortgage bank with limited activity

- (1) The judgement described in Article 12-9 (1) nominates for the mortgage bank with limited activity one or several administrators who cooperate in order to fulfill the obligations resulting from the mortgage bonds at their respective maturities. The function of the administrator is executed as long as the rehabilitation and liquidation procedures which are implemented after the judgement referred to in Article 12-9 (1) have effect.
- (2) At the request of the CSSF the judgement can provide for a list of functions and resources with regard to technology and staff that are essential and necessary for the administration of the mortgage bank with limited activity to which the administrator can resort.
- (3) The administrator exercises the function of manager for the patrimonial compartments of the mortgage bank with limited activity. He judicially and extrajudicially represents the mortgage bank with limited activity as well as the patrimonial compartments, including with regard to the administrator or the liquidator of the assets referred to in Article 12-9 (1)(b).
- (4) The administrator possesses the necessary respectability and professional qualification. The court revokes the nomination of the administrator at the request of the CSSF. The remuneration of the administrator is fixed by the court. The remuneration of the administrator and the other expenses relating to the administration are

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guaranteed by a privilege that precedes the other debts, including those in favour of the mortgage bond holders. The liability of the administrator is governed by the rules for the liability of administrators. The remuneration as consideration for the services rendered by the administrator according to paragraph 2 as well as the other expenses in relation to the administration are paid by the mortgage bank with limited activity.

- (5) The patrimonial compartments are managed independently and separately only in the interest of the mortgage bond holders. The administrator manages the collateral, exercises gradually at their respective maturities the rights of the mortgage bond holders over the collateral in the name of the mortgage bond holders and in the name of the mortgage bank, in the name or for the account of whom these values are held by third parties or inscribed or registered with third parties or in public registers.
- (6) Notwithstanding the provisions stipulated in the judgement that nominates him and notwithstanding the authority of the CSSF, the administrator executes all operations with regard to the mortgage bank with limited activity, provided that they are necessary for the management of the patrimonial compartments and that these operations are in the interest of the complete payment of the mortgage bonds at their respective maturity.

The administrator can issue new mortgage bonds for the account of the mortgage bank with limited activity.

The administrator informs the CSSF and the court, regularly or at their request, of the current status of his mandate. The administrator establishes a balance sheet at the beginning of his function. He establishes annually a balance sheet and a report on the situation of the bank with limited activity as well as of the patrimonial compartments.

- (7) The administrator may conclude with a mortgage credit institution which is authorised and supervised by the competent authorities of 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) a service contract relating to the management of mortgage bonds and the realisation of the underlying security as and when the mortgage bonds mature. The validity of the service contract is subject to the prior and written consent by the CSSF.
- (8) The administrator may also transfer the mortgage bonds and the collateral in their entirety to a mortgage credit institution which is comparable to a mortgage bank such as described in the present law, which is supervised at a level comparable to that of the CSSF by a public authority. The CSSF authorises the transfer beforehand. At the request of the administrator and before the transfer, the District Court of Luxembourg in commercial matters shall legally acknowledge the transfer, after a hearing of CSSF and the administrator. The notarized contract, concluded in the name and for the account of the mortgage bank with limited activity by the administrator with the institution to which the patrimonial compartments are transferred shall contain at least the following points:
- a) the name, registered office and address of the assignor and the assignee,
 - b) the agreement regarding the transfer of the entirety of the values inscribed in the register, the obligations resulting from the mortgage bonds as well as their counterparties, if applicable,
 - c) a detailed description of the values to be transferred and the obligations resulting from the mortgage bonds.

The administrator and the representative of the assignee institution inscribe the transfer in the registers of commerce and companies of the registered office of the mortgage

English translation for informational purposes; only the French original version is legally binding!

banks, both assignor and assignee. A certified copy of the transfer agreement is attached to the inscription. The inscription shall be performed in the register of commerce and companies of the assignor bank, then in the register of the assignee bank. The inscription is published in Memorial.

The inscription of the assignment in the register of commerce and companies at the registered office of the assignor bank has as effect the transfer of the values and obligations contained in the transfer contract.

- (9) The CSSF exercises its supervisory function as well as its complete authority with respect to the patrimonial compartments of the mortgage bank with limited activity and with respect to the administrator.

Art. 12-11 Suspension of payments of a patrimonial compartment

- (1) If a patrimonial compartment of a mortgage bank with limited activity is in a situation where

- a) its liquidity is endangered or
- b) its commitment towards the mortgage bond holders is endangered, or
- c) the execution of the administrator's function described in Article 12-10 is endangered due to the economic situation of the patrimonial compartment,

the District Court of Luxembourg in commercial matters can declare, at the request of the CSSF, the administrator nominated in application of Article 12-10 or the Public Prosecutor, having informed CSSF in advance, the suspension of payments with regard to this patrimonial compartment.

- (2) The judgement referred to in paragraph 1 nominates an administrator within the meaning of Article 60-2 (14) for this patrimonial compartment. The judgement can also indicate a renewable term of the suspension of the suspension of payments as well as the conditions and details of the suspension of payments.
- (3) Notwithstanding the provision of the present article, the provisions of Articles 60-2 (2) to (24) with the exception of (10), 60-3 and 60-4 are applicable to the suspension of payments of a patrimonial compartment.

Art. 12-12 Dissolution and liquidation of a patrimonial compartment

- (1) The dissolution and the liquidation of a patrimonial compartment of a mortgage bank with limited activity can occur if

- a) it seems that the suspension of payments according to Article 12-11, that was decided before cannot rehabilitate the situation that justified it, or that
- b) its liquidity is irrevocably endangered, or that
- c) its commitments towards the mortgage bond holders cannot be fulfilled.

- (2) Only the CSSF or the Public Prosecutor with the CSSF correctly informed, can request the Court to pronounce the dissolution and the liquidation described in paragraph 1.

- (3) Notwithstanding the provisions of the present article, Article 61 (2) to (20) is applicable to the liquidation of the patrimonial compartment of a mortgage bank with limited activity.