

Legal notice

All effort has been made to ensure the accuracy of this translation, which is based on the original Slovenian text. All translations of this kind may, nevertheless, be subject to a certain degree of linguistic discord. In case of any uncertainties regarding the English translation the questions may be addressed to:

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The original text of this act is written in the Slovenian language; in case of any doubt or misunderstanding, the Slovenian text shall therefore prevail. Original text can be found on the web page

<http://www.uradni-list.si/1/objava.jsp?urlid=201210&stevilka=368>

MORTGAGE BOND AND MUNICIPAL BOND ACT (ZHKO-1)

I. INTRODUCTORY PROVISIONS

Article 1

(Content of the Act)

This Act shall regulate mortgage and municipal bonds, and the terms and conditions and security requirements for their issuance.

Article 2

(Mortgage bonds and municipal bonds)

Mortgage bonds and municipal bonds are bonds issued under the terms and conditions of this Act and backed by cover assets; the holders of such bonds enjoy a senior position on repayment from such assets.

Article 3

(Cover assets)

(1) Cover assets are assets held by issuers and entered in the cover register. They are intended primarily for the repayment of liabilities from the issued mortgage bonds or

municipal bonds and the derivative instruments referred to in Article 24 of this Act, which are entered into by the issuer in relation to the cover assets.

(2) Cover assets for mortgage bonds are receivables from mortgage loans and substitute cover assets provided for by this Act and the derivative financial instruments referred to in Article 24 of this Act, which are entered into by the issuer in relation to the cover assets.

(3) The cover assets for municipal bonds are receivables from loans to entities governed by public law, substitute cover assets provided for by this Act, and the derivative financial instruments referred to in Article 24 of this Act which are entered into by the issuer in relation to the cover assets.

Article 4

(Name protection)

The phrases 'mortgage bond' or 'municipal bond' and their derivatives or other designations that might imply a mortgage bond or a municipal bond shall not be used for any other types of securities.

Article 5

(Mortgage loans and loans to entities governed by public law)

(1) According to this Act, a mortgage loan shall be a loan granted under this Act and secured by a mortgage on residential and commercial property, but only provided that the property is situated in the area of the signatory states of the Agreement on the European Economic Area (Uradni list RS – Official Gazette of the Republic of Slovenia) No 9/05 – MP (International Treaties; hereinafter: Agreement on the European Economic Area) and Switzerland.

(2) The provisions of this Act that govern mortgage loans shall only apply to mortgage loans giving rise to receivables that represent the cover assets referred to in paragraph (2) of Article 3 of this Act.

(3) According to this Act, a loan granted to a entities governed by public law shall be a loan that is:

1. granted under this Act to a state or to a local community, or a debt security issued by a state or a local community;

2. granted to other legal entities, or a debt security issued by other legal entities, provided that such other legal entities' liabilities from loans or a debt security are guaranteed by the state.

(4) The states referred to in the preceding paragraph shall include:

– the Republic of Slovenia, and

– other signatory states of the Agreement on the European Economic Area and Switzerland whose credit ratings, assessed according to the Eurosystem Credit Assessment Framework, at a minimum correspond to the Eurosystem's credit quality threshold established by the Bank of Slovenia's regulation on the implementation of the monetary policy.

(5) A local community is a local community of any country referred to in the preceding paragraph, whose credit rating, assessed according to the Eurosystem Credit Assessment Framework, at a minimum corresponds to the Eurosystem's credit quality threshold established by the Bank of Slovenia's regulation on the implementation of the monetary policy.

(6) The guarantee referred to in paragraph (3) of this Article shall be irrevocable and unlimited, and shall ensure that payment is made without delay or no later than within five business days of default. The guarantor shall not make the debtor's compliance with his obligations conditional upon prior commencement of legal or other proceedings against the debtor.

Article 6

(Applicability of provisions of other acts)

(1) The act governing the financial instruments market shall apply to mortgage bonds and municipal bonds, unless otherwise provided by this Act.

(2) The act governing banking shall apply to the issuer of mortgage bonds and municipal bonds, unless otherwise provided by this Act.

(3) The act governing consumer credit shall apply to mortgage loans granted to consumers unless, otherwise provided by this Act.

Article 7

(Abbreviation and definitions)

(1) The abbreviation used in this Act shall have the following meaning: 'ZBan-1' shall mean the Banking Act (Uradni list RS, Nos 99/10 – Official Consolidated Text, 52/11 – amended, 9/11 – ZPlaSS-B, 35/11, 59/11 and 85/11).

(2) The terms used in this Act shall have the following meanings:

1. 'Residential property' shall mean the land, buildings and individual parts of buildings in partial ownership that are intended for residential purposes, such as the land in an area intended for construction, housing units, residential houses, garages and holiday homes.

2. Commercial property shall mean the land, buildings and individual parts of buildings in partial ownership that are intended for commercial purposes, such as the land in an area intended for construction, finished commercial premises, offices, shops, hotels, places of business and warehouses.

3. 'Mortgage' shall mean a mortgage, a maximum mortgage or land charge that gives a creditor a preferential right to receive payment from the disposal of real property ahead of other creditors. For the purpose of this Act, a mortgage shall also mean a creditor's right that is established over a debtor's property in another signatory state of the Agreement on the European Economic Area and Switzerland and that (in accordance with the regulations in force in such state) gives a creditor the right to receive payment from the disposal of real property ahead of other creditors, and that may be compared to entitlements under a mortgage on a property in the Republic of Slovenia.

II. ISSUANCE OF MORTGAGE BONDS AND MUNICIPAL BONDS

Article 8

(Authorisation to issue mortgage bonds and municipal bonds)

(1) Mortgage bonds and municipal bonds may only be issued by a bank authorised to issue mortgage bonds and municipal bonds under this Act (hereinafter: Issuer).

(2) Prior to issuing mortgage bonds and municipal bonds, the bank shall obtain an authorisation from the Bank of Slovenia.

(3) The authorisation referred to in the preceding paragraph may be issued as an authorisation to issue mortgage bonds, an authorisation to issue municipal bonds, or an authorisation to issue mortgage and municipal bonds.

Article 9

(Conditions for obtaining an authorisation to issue mortgage bonds and municipal bonds)

(1) The bank referred to in Article 8 of this Act may obtain an authorisation provided that the following conditions are satisfied:

1. the existence of appropriate systems for managing risks associated with the issuance of mortgage bonds and municipal bonds as well as with the risks associated with cover pool assets;

2. the quantitative and qualitative availability of suitable staff, the organisational and technical capacity to issue mortgage bonds and municipal bonds, and to finance the real property owned by entities governed by public law and other legal entities;

3. the provision of services relating to the granting of mortgage loans and loans to entities governed by public law and to the issuance of mortgage and municipal bonds separately from the bank's other operations (hereinafter: Separate Operations);

4. the existence of rules for maintaining the cover register referred to in Article 37 of this Act;

5. In case of determining the value of real property according to the methodology for assessing the mortgage lending value, the bank shall have the rules for property valuation as referred to in Article 29 of this Act and at least one independent property valuer employed on a permanent and full-time basis or under a contract for work (hereinafter: Independent Valuer) as specified in paragraph (4) of Article 26 of this Act.

(2) The Bank of Slovenia may prescribe the method for determining compliance with the conditions referred to in the preceding paragraph.

Article 10

(Separate operations)

The Separate Operations referred to in point 3, paragraph 1 of Article 9 of this Act shall mean that the bank keeps books of account and other records relating to the granting of

mortgage loans and loans to entities governed by public law, the issuing of derivative financial instruments referred to in Article 24 of this Act in relation to the cover assets and the issuing of mortgage bonds and municipal bonds separately from the documents connected with the bank's other operations.

Article 11

(Request for authorisation to issue mortgage bonds and municipal bonds)

(1) A request for authorisation to issue mortgage bonds and municipal bonds shall be accompanied by a proof of compliance with the terms and conditions specified in Article 9 of this Act.

(2) The issuance of the authorisation shall be subject, *mutatis mutandis*, to the provisions applicable to the issuance of the authorisation to perform banking services according to the ZBan-1.

Article 12

(Refusal of the request for authorisation to issue mortgage bonds and municipal bonds)

The Bank of Slovenia shall refuse to issue an authorisation in the following cases:

1. when a bank fails to satisfy the conditions referred to in Article 9 of this Act;
2. when a bank's programme of operations shows that the conditions for the performance of this activity in accordance with the provisions of this Act have not been met.

Article 13

(Termination of the authorisation to issue mortgage bonds and municipal bonds)

The authorisation to issue mortgage bonds and municipal bonds shall be terminated:

- when a bank fails to issue bonds within two years of the date of authorisation,
- when a bank's general meeting adopts a resolution to wind up the bank and to initiate winding-up proceedings,
- if there are grounds for terminating the authorisation to perform banking services, or
- in the case of withdrawal of the authorisation to perform banking services according to ZBan-1.

Article 14

(Withdrawal of the authorisation to issue mortgage bonds and municipal bonds)

(1) The Bank of Slovenia shall withdraw the authorisation referred to in Article 8 of this Act:

- when the issuer no longer satisfies the conditions referred to in Article 9 of this Act,

- when the issuer fails to appoint a new cover register administrator within 30 days of the expiry or withdrawal of the authorisation.

(2) The authorisation withdrawal procedure shall be subject, *mutatis mutandis*, to the provisions of ZBan-1.

Article 15

(Separation of the cover assets)

(1) Upon the withdrawal of authorisation to issue the mortgage and municipal bonds referred to in Article 14 of this Act, the cover assets and liabilities from mortgage and municipal bonds issued shall be separated from the issuer's assets and liabilities, and, at the same time, the Bank of Slovenia shall appoint a trustee of cover assets.

(2) In the case referred to in the preceding paragraph, the provisions of paragraph 3 of Article 46, paragraphs 1 to 4 and 7 to 11 of Article 47, and the provisions of Article 48 of this Act shall apply, *mutatis mutandis*.

Article 16

(Purchase of loans from other banks)

(1) For the purpose of providing cover assets for issuing mortgage bonds and municipal bonds, the issuer may grant mortgage loans and loans to entities governed by public law alone or may purchase them from other banks (hereinafter: other Lenders).

(2) Other Lenders may come to an arrangement with the issuer to continue, in whole or in part, the operations relating to implementation of the loan agreement.

(3) In the case referred to in the preceding paragraph, the other Lender and issuer shall conclude a written agreement.

Article 17

(Statement of the cover register administrator)

Prior to the issue of mortgage bonds, the issuer shall obtain a statement signed by the cover register administrator, certifying that the intended issue is backed by appropriate cover assets in accordance with the provisions of this Act.

Article 18

(Early realisation of bonds)

Holders of mortgage and municipal bonds shall not be entitled to request early realisation of their bonds.

III. COVER ASSETS

Article 19

(Cover assets for mortgage bonds)

(1) Only receivables from loans that are compliant with the provisions of this Act may be considered as cover assets for mortgage bonds in circulation.

(2) Notwithstanding the provision of the preceding paragraph, a maximum of 20% of the cover assets may be provided by the substitute cover assets referred to in Article 20 of this Act.

(3) Only receivables from mortgage loans for which the mortgage is entered in the land register with the highest order of precedence of property collateralisation or lower order of precedence, provided that the cover assets also include all receivables with a higher order of precedence of property collateralisation, may be considered as mortgage bond cover assets.

(4) Cover assets shall be free from encumbrances and may not be used or pledged for any other purpose.

Article 20

(Substitute cover assets)

(1) Substitute cover assets shall include the following:

1. balances on accounts with the Bank of Slovenia;

2. investments in marketable debt securities issued and guaranteed by a state referred to in paragraph 4 of Article 5 of this Act, its central bank or the European Central Bank. The guarantee shall satisfy the conditions referred to in paragraph 6 of Article 5 of this Act.

3. Investments in other debt securities issued by the European Investment Bank, the European Bank for Reconstruction and Development or other banks and used as a collateral for receivables within the European System of Central Banks according to the European Central Bank's criteria published in the Articles of Association governing the European System of Central Banks.

(2) Substitute cover assets shall be free from encumbrances and may not be used or pledged for any other purpose.

Article 21

(Cover assets consisting of purchased receivables from mortgage loans)

Receivables from mortgage loans purchased by the issuer from Other Lenders pursuant to Article 16 of this Act may be considered as cover assets only provided that, in addition to the terms and conditions of this Act, they also satisfy the following two conditions:

1. that other lenders transfer to the issuer not only the receivables under the loan agreement, but also all types of mortgage entitlements and entitlements to other types of loan security provided under loan agreements, unless they are transferred to the issuer by virtue of the law itself, and entitlements under insurance contracts made for the pledged property that are restricted to the issuer;

2. that other lenders deliver to the issuer all documents by which the issuer can claim its entitlements under the loan agreement in respect of mortgages established for the purpose of protection of claims under loan agreements and other loan security types referred to in the preceding point.

Article 22

(The volume and matching of cover asset investments)

(1) The issuer may issue mortgage bonds only to the extent that is necessary to ensure at all times the coverage for liabilities from bonds in circulation and derivative financial instruments referred to in Article 24 of this Act by means of cover assets in at least the same nominal amount.

(2) Notwithstanding the provision of the preceding paragraph, the matching of cover assets with liabilities from mortgage bonds and the derivative financial instruments referred to in Article 24 of this Act shall be ensured at all times according to the present value principle; in this case, the cover assets' present value shall exceed the present value of liabilities for mortgage bonds by at least 2%.

(3) When issuing mortgage bonds, the issuer shall match the time limits and interest payments as well as the currency exposure of cover assets with liabilities for mortgage bonds issued and the derivative financial instruments referred to in Article 24 of this Act, which are entered into by the issuer in relation to the cover assets.

(4) The compliance with the conditions referred to in paragraphs 1 to 3 of this Article shall be verified at least once a month.

(5) More detailed instructions for matching the coverage referred to in paragraphs 2 and 3 of this Article shall be provided by the Bank of Slovenia.

Article 23

(Cover asset reserves)

(1) Notwithstanding the provisions of paragraphs 1 and 2 of Article 22 of this Act, the issuer shall compare the amount of matured receivables from cover assets entered in the cover register with the amount of matured liabilities from issued mortgage bonds and the matured liabilities from derivative financial instruments entered into, which are referred to in Article 24 of this Act, on a daily basis over the next 180-day period.

(2) Following the comparison of the largest calculated difference between the matured liabilities and matured receivables referred to in the preceding paragraph, the issuer shall provide coverage in the form of assets referred to in points 2 and 3 of paragraph 1 of Article 20 of this Act, which meet the criteria of eligibility for the protection of claims within the European System of Central Banks.

Article 24

(Derivative financial instruments)

(1) The issuer may use futures contracts, options and other derivative instruments in connection with cover asset investments if they contribute to reducing the risks or achieving the matching of the cover asset investments referred to in Article 22 of this Act.

(2) The Bank of Slovenia shall prescribe the maximum volume of derivative financial instruments included in cover assets, the type and credit rating of customers with which these transactions may be entered into and other detailed instructions for the use of such instruments.

Article 25

(Restrictions on the use of individual cover asset investments)

(1) The share of mortgage loans for which a mortgage is established on residential property under construction may not exceed 5% of the cover assets.

(2) The share of mortgage loans for which a mortgage is established on commercial property may not exceed 20% of the cover assets.

(3) The share of mortgage loans to individuals or legal entities which are considered as a group of related parties may not exceed 20% of the cover assets; however, a bank's exposure to these persons may not exceed the maximum exposure under ZBan-1.

Article 26

(Mortgage lending value of real property)

(1) The mortgage lending value of real property shall be the estimated long-term market value of real property used as a basis for a mortgage loan.

(2) The mortgage lending value of real property shall be the value of real property as determined by a prudential analysis of the possibilities of selling the property in the future carried out by an independent property valuer by taking into consideration the long-term sustainability aspects of such property, the usual and the local market conditions, and its current and alternative proper uses without taking account of speculative elements.

(3) If the mortgage lending value of real property has not been determined, the market value of such real property shall be used instead. The market value of property is the price determined by an independent valuer, at which the property could be sold by the seller to the buyer on the basis of a purely commercial relationship, without coercion. In this case, the provisions of this Act relating to the mortgage lending value of real property shall be applied, *mutatis mutandis*, so that the term 'mortgage lending value' is replaced by the term 'market value'.

(4) The independent property valuer referred to in the preceding paragraph shall be a person who has the necessary qualifications, knowledge and experience in property valuation and is independent in decision making regarding transactions secured by real property. Real property valuations made by independent valuer shall be fully compliant with the international property valuation standards adopted by the International Valuation Standards Committee (IVSC).

Article 27

(General market value)

The general market value shall be the value of residential property determined in accordance with the mass appraisal methods under the Real Property Mass-Appraisal Act (Uradni list RS, Nos 50/06 and 87/11).

Article 28

(The mortgage loan level)

(1) The level of receivables from mortgage loans that can be taken into consideration for cover assets shall not exceed the following levels:

1. 80% of the mortgage lending value of the mortgaged property or, if the issuer decides to use the general market value, 50% of the general market value of property for loans secured by mortgage on residential properties;

2. 60% of the mortgage lending value of the mortgaged property for loans secured by mortgage on commercial properties.

(2) When the level of receivables from mortgage loans exceeds the restriction referred to in the preceding paragraph, only an appropriate portion of the loan may be considered as cover assets.

Article 29

(Property valuation rules)

The methodology for determining the mortgage lending value of real property shall be laid down by property valuation rules to be adopted by all issuers.

Article 30

(Property valuation)

(1) The mortgage lending value based on real property valuation rules and the general market value based on the methods of mass real property valuation shall be determined individually for each real property.

(2) The value of real property shall be documented in a transparent and clear manner. The mortgage lending value shall also include the date of valuation and signature of the independent property valuer referred to in Article 26 of this Act.

(3) During the property mortgage loan term, the issuer shall regularly monitor the value of the mortgaged property and re-assess this value at least once a year for commercial property and at least once every three years for residential property. Issuers may also use statistical methods to monitor the value and identify the real property that requires revaluation.

(4) If the property monitoring referred in the preceding paragraph and the data published by the Statistical Office of the Republic of Slovenia or by a competent public authority or organisation of the country in which the real property is situated or, in the absence of such public authority or organisation in a particular country, by another generally recognised source of information about market prices of real property, show that the value of real

property and the general market prices of real property in the area where the real property is situated have dropped by more than 20%, or if a borrower is late in meeting his obligations for mortgage loans by more than 90 days, a new assessment of the mortgage lending value of the real property with an emphasis on the assessment of the basic assumptions of future trends in a particular market shall be made when using the general market value and on each publication of a new, lower index of property value, i.e. on a new general property valuation.

(5) In the transfer of mortgage loans from other lenders referred to in Article 16 of this Act, such other lenders shall verify whether the valuation of mortgaged real property is consistent with this Act.

(6) If other lenders fail to perform real property valuation in accordance with this Act, the real property shall be evaluated by the issuer prior to the transfer.

Article 31

(Substitution of inadequate mortgage loans)

(1) Cover register administrator shall require from the issuer and at his request the issuer shall replace receivables from mortgage loans with receivables from other mortgage loans or other assets that meet the requirements of cover assets under this Act:

1. within 60 days of the date of receipt of the cover register administrator's written request when, during the term of the mortgage loan, the value of real property declines to such an extent that the value of the outstanding mortgage loan exceeds the mortgage lending value or the real property's general market value level referred to in paragraph (1) of this Act; or

2. Within 30 days of the date of receipt of the cover asset administrator's written request when the lender falls behind in meeting its obligations under the loan agreement; or

3. Within 30 days of the date of receipt of the cover asset administrator's written request, which should be made immediately upon the expiration of the time limit for entering the mortgage in the land register referred to in paragraph (4) of Article 38 of this Act.

(2) Notwithstanding the provisions of the preceding paragraph of this Article, in case of a decline in the real property value referred to in point 1 of the preceding paragraph of this Act, the issuer may supplement the existing receivables from mortgage loans by receivables from other mortgage loans or other suitable assets; however, only to the extent of the deficit in the cover assets resulting from a decline in the real property value.

IV. MORTGAGE LOANS

Article 32

(Mortgage loan agreement)

A mortgage loan agreement shall be concluded in writing and any claims under this agreement shall be secured by a lien on a single or several pieces of real property.

(2) When a building is erected on the real property referred to in the preceding paragraph, insurance shall be taken out for the building with an insurance company for the duration of the agreement, and shall cover the usual risks arising in respect of the site and the type of

the building, which is the subject of insurance for a sum insured that equals at least the loan amount recorded in the cover register; the insurance policy shall be pledged to the lender.

Article 33

(Special rules for loans secured by land charge against a property)

If a mortgage loan is secured by land charge, the issuer shall be a lawful holder of a certificate of land charge. The land charge certificate may also be kept by another person on behalf of the issuer, provided that, in the event of bankruptcy of such other person, the issuer has the right of exclusion under the part of the land charge certificate referring to a claim under the loan agreement, which is taken into consideration in cover assets.

Article 34

(Early repayment of the loan)

For early repayment of a mortgage loan in full or in part, the loan agreement may stipulate a fee not exceeding 1 % of the amount of early repayment of the loan for each full year of the duration of the loan agreement. The amount of the fees for early repayment of consumer mortgage loans shall be determined in accordance with the law governing consumer credits.

Article 35

(Real property)

The real property that has been mortgaged as a security for a claim that is included in the cover assets shall be free from personal easements, and shall not be encumbered with a right of superficies, unless the same claim is also secured by a mortgage on the building for which the right of superficies has been created.

Article 36

(Protection of confidential information)

Notwithstanding the duty to protect confidential information in accordance with ZBan-1, other lenders may disclose to the issuer all information about a mortgage loan, mortgage, borrower and any other parties to a mortgage loan agreement that are required by the issuer to assess the credit risk associated with a mortgage loan.

V. COVER REGISTER AND COVER REGISTER ADMINISTRATOR

Article 37

(Obligation to keep a cover register)

(1) Each issuer shall keep a cover register and shall not transfer this task to other persons.

(2) The cover register shall include the individual entries of mortgage loan receivables, other investments and the derivative financial instruments referred to in Article 24 of this Act, which represent cover assets for issued mortgage bonds.

(3) The cover register shall also include a record of all mortgage bonds issued.

(4) The cover register shall reveal at all times the nominal value of cover assets and mortgage bonds in circulation.

(5) The property entered in the cover register may be subject to enforcement only by holders of mortgage bonds for the purpose of the repayment of claims under such bonds to the issuer and by creditors under the derivative financial instruments referred to in Article 24 of this Act. The issuer shall lodge objections regarding the inadmissibility of attachment of cover assets without delay, and shall notify the cover register administrator forthwith of the attachment of cover assets and of the objections lodged in respect of the inadmissibility of attachment of such assets. The issuer's objection shall stay the attachment of cover assets.

(6) The issuer may request that a claim entered in the cover register be set off only with matured liabilities from mortgage bonds and the financial instruments referred to in Article 24 of this Act.

Article 38

(Recording of data in the cover register and their cancellation)

(1) Only assets approved by the cover register administrator may be recorded in the cover register.

(2) The cover register administrator shall refuse the registration when the proposed loan receivables or other assets fail to satisfy the cover asset requirements or when such an entry would mean a violation of this Act.

(3) The assets registered in the cover register may only be struck off the register subject to the written approval of the cover register administrator.

(4) Notwithstanding the provisions of this Act, registration in the cover asset register may also include receivables that are subject to land registry proceedings for establishing a mortgage on real property; however, such registration shall not be made more than 12 months after the date of registration of a notice of pending action for initiating the proceedings for mortgage registration in the land register. On the expiration of this period, the issuer shall cancel any receivables that fail to meet the conditions referred to in paragraph (2) of this Article, subject to the cover register administrator's written consent.

(5) The portion of receivables referred to in the preceding paragraph shall at no time exceed 10% of the cover assets.

Article 39

(Cover register administrator)

(1) Every issuer shall have a cover register administrator (hereinafter: Cover Register Administrator) who shall have at least one deputy. The provisions of this Act relating to the cover register administrator shall also apply, *mutatis mutandis*, to the deputy cover register administrator.

(2) The cover register administrator shall be independent from the issuer, and shall ensure that the register is maintained in accordance with this Act, as well as the regulations issued on the basis thereof and shall perform the other tasks provided for by this Act.

(3) The cover register administrator shall be appointed by the issuer.

Article 40

(Conditions for appointing a cover register administrator)

(1) Only the following persons may be appointed cover register administrators:

1. a certified public accountant who meets the requirements of the act governing auditing or persons with other professional qualifications;

2. a person having previously obtained a licence from the Bank of Slovenia to perform the activities of cover register administrator;

3. a person whose previous activity raises no doubt as to that person's suitability for the role of administrator.

(2) Provisions of ZBan-1 shall apply, *mutatis mutandis*, to the procedure of issuing and withdrawing the Bank of Slovenia's licence to perform the duties of cover register administrator.

Article 41

(Duties of the cover register administrator)

(1) The cover register administrator shall ensure that the cover assets provide coverage for the total value of the mortgage bonds in circulation and liabilities from the derivative financial instruments referred to in Article 24 of this Act, at any time pursuant to Article 22 of this Act.

(2) The cover register administrator shall ensure that assets are registered in this register in accordance with the provisions of this Act.

(3) Prior to the issuance of mortgage bonds, the cover register administrator shall confirm that the cover assets provide sufficient and adequate coverage for the bonds, pursuant to Article 22 of this Act.

(4) An issuer may request a cancellation of a mortgage as a security for the claims entered as coverage in the cover register only subject to prior approval from the cover register administrator.

(5) When the cover register administrator determines that the cover assets do not sufficiently cover the mortgage bonds and liabilities from the derivative financial instruments referred to in Article 24 of this Act, or that they are otherwise contrary to the provisions of this Act, the cover register administrator shall forthwith notify the Bank of Slovenia thereof.

(6) The cover register administrator shall be obliged to regularly notify the Bank of Slovenia of his findings pursuant to this Act.

Article 42

(Responsibilities of the cover register administrator)

(1) The cover register administrator shall have the right and duty to examine the books of account and other documents of the issuer that are in any way associated with mortgage bonds and cover assets.

(2) The issuer shall keep the cover register administrator regularly informed of the performance of cover asset-related repayments and any other changes associated with these assets.

Article 43

(Withdrawal of authorisation issued to the cover register administrator)

(1) The Bank of Slovenia shall withdraw the authorisation issued to the cover register administrator when:

1. the authorisation is obtained by providing untruthful information;
2. the administrator grossly violates his duties under this Act; in such a case, the provisions of paragraph (2) of Article 68 of ZBan-1 shall apply, *mutatis mutandis*, to the identification of serious violations of duty;
3. circumstances occur that give rise to reasonable doubt as to the suitability of the person appointed as administrator.

(2) In the case referred to in the preceding paragraph, the issuer shall appoint a new cover register administrator within 30 days of receipt of the decision on authorisation withdrawal.

VI BANKRUPTCY OF THE ISSUER AND BANKRUPTCY OF OTHER LENDERS

Article 44

(Preferential treatment in the event of bankruptcy)

(1) Repayment of claims from mortgage bonds and the derivative financial instruments referred to in Article 24 of this Act from the cover assets, including costs, shall be given priority over all other claims against the issuer.

(2) Claims against the bankruptcy estate shall be lodged by the cover asset trustee on his own behalf, and for the account of the mortgage bond holders and creditors under derivative financial instruments referred to in Article 24 of this Act.

(3) In their mutual relationship, the claims of all holders of mortgage bonds and creditors under derivative financial instruments referred to in Article 24 of this Act shall have the same order of priority.

Article 45

(Commencement of bankruptcy proceedings against the issuer)

(1) In case of commencement of bankruptcy proceedings against the issuer, the cover assets, including the derivative financial instruments referred to in Article 24 of this Act, shall be separated from the bankruptcy estate, and shall be primarily intended to provide continued repayment of liabilities from mortgage bonds and repayment of creditors under the derivative financial instruments referred to in Article 24 of this Act.

(2) The legal consequences of bankruptcy proceedings shall have no effect on claims by holders of mortgage bonds and on claims by creditors under the derivative financial instruments referred to in Article 24 of this Act.

(3) Mortgage bond holders and creditors under the derivative financial instruments referred to in Article 24 of this Act shall be parties to the bankruptcy proceedings against the issuer only in the case referred to in Article 49 of this Act.

Article 46

(Designation of a cover asset trustee)

(1) In the case referred to in paragraph 1 of Article 45 of this Act, the court shall designate a cover asset trustee (hereinafter: Cover Asset Trustee) at the proposal of the Bank of Slovenia.

(2) The Cover Asset Trustee shall not be the same person as the official receiver of the issuer.

(3) The provisions of the act governing bankruptcy and ZBan-1 relating to official receivers shall apply, *mutatis mutandis*, to the Cover Asset Trustee.

Article 47

(Responsibilities of the cover asset trustee)

(1) As of the date of his appointment, the cover asset trustee shall be entitled to manage and hold the cover assets to the extent necessary for further and continued settlement of liabilities to holders of mortgage bonds and creditors under the derivative financial instruments referred to in Article 24 of this Act. No permission of the court shall be required for managing and holding the cover assets.

(2) The administration of cover assets in accordance with the preceding paragraph shall include the right to obtain liquidity loans for a continued settlement of liabilities from mortgage bonds and the derivative financial instruments referred to in Article 24 of this Act, and the repayment of loans from the cover assets.

(3) The court which has conduct of the bankruptcy proceedings may authorise the cover asset trustee to realise the cover assets and make an early repayment of his obligations to holders of mortgage bonds and creditors under the derivative financial instruments referred to in Article 24 of this Act. The court shall grant this authorisation if the exercise of the right to early repayment results in better terms for payment to the holders of mortgage bonds and creditors under the derivative financial instruments referred to in Article 24 of this Act.

(4) The cover asset trustee shall also acquire the right to hold that part of the receivables from mortgage loans that are not considered to cover assets pursuant to paragraph (2) of Article 28 of this Act. On the due date of the receivables from this loan, the cover asset

administrator shall allocate a proportional share of the assets to the bankruptcy estate of the issuer.

(5) The issuer's official receiver may at any time request that the cover asset trustee allocate a portion of the assets that will, beyond any doubt, not be required for the settlement of liabilities for issued mortgage bonds to the issuer's bankruptcy estate.

(6) The official receiver's request from the preceding paragraph shall be decided upon by a court of justice, after having obtained the cover asset trustee's opinion.

(7) The cover asset trustee shall transfer the portion of the cover assets remaining after the meeting of all liabilities from mortgage bonds and the derivative financial instruments referred to in Article 24 of this Act to the issuer's bankruptcy estate. The same shall also apply to the assets remaining after the last liability from mortgage loans and the derivative financial statements referred to in Article 24 of this Act come under the statute of limitations.

(8) The cover asset trustee shall draw up an opening balance sheet, which is to include cover assets and liabilities, and notes to this opening balance sheet within 30 days of assuming his duties. He shall also prepare an annual report on cover assets and liabilities within 30 days of the end of each calendar year.

(9) The cover asset trustee shall also report to the bankruptcy court or to the Bank of Slovenia on their request.

(10) After the due date of the last payment of liabilities for mortgage bonds and for the derivative financial instruments referred to in Article 24 of this Act, the cover asset trustee shall draw up a closing balance sheet and a final report.

(11) The cover asset trustee shall be reimbursed for his expenses and receive payment of his fees from the cover assets in accordance with the rules applicable to official receivers.

Article 48

(Transfer of cover assets to other issuers)

(1) The cover asset trustee may transfer the total cover assets and the total liabilities for issued mortgage bonds to other issuers by contract.

(2) The contract referred to in the preceding paragraph shall specifically include the names of the transferor and of the transferee, the agreement on the transfer of assets and the assumption of liabilities as a whole, an accurate designation of each property right and liability that is the subject of the transfer, as well as the amount of compensation to which the transferor is entitled.

(3) The conclusion of the contract referred to in the preceding paragraph shall require prior approval of the Bank of Slovenia. The approval granting procedure shall be subject to the application of the provisions of ZBan-1.

Article 49

(Separate bankruptcy proceedings)

(1) When cover assets prove inadequate for the continued repayment of liabilities for mortgage bonds and the derivative financial instruments referred to in Article 24 of this Act,

separate bankruptcy proceedings shall be instituted against the cover assets backing mortgage-covered bonds in accordance with ZBan-1 at the request of the Bank of Slovenia.

(2) The request for instituting separate bankruptcy proceedings referred to in the preceding paragraph may also be addressed to the Bank of Slovenia by the cover register administrator.

(3) When holders of mortgage bonds and creditors under the derivative financial instruments under Article 24 of this Act do not receive payment in full during the separate bankruptcy proceedings referred to in paragraph 1 of this Article, they shall be entitled to lodge a claim for the remaining part of their receivables from mortgage bonds and derivative financial instruments in ordinary bankruptcy proceedings against the issuer within 30 days of the conclusion of the separate bankruptcy proceedings referred to in paragraph 1 of this Article.

(4) As of the commencement of separate bankruptcy proceedings against the issuer, interest on receivables from mortgage bonds and the derivative financial instruments referred to in Article 24 of this Act shall not cease to accrue.

(5) In the event of separate bankruptcy proceedings, no repayment shall be made to creditors during the ordinary bankruptcy proceedings against the issuer, prior to the expiration of the time limit referred to in paragraph 3 of this Article.

Article 50

(Bankruptcy of other creditors)

When the legal act of loan takeover referred to in Article 16 of this Act is successfully challenged in bankruptcy proceedings against other creditors, the issuer shall not repay the funds received, but shall pay only the financial compensation referred to in paragraph (2) of Article 278 of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (Uradni list RS, Nos 126/07, 40/09, 59/09, 52/10, 106/10 – ORZFPPIPP21, 26/11, 47/11 – ORZFPPIPP21-1 and 87/11 – ZPUOOD).

VII. MUNICIPAL BONDS

Article 51

(Application of the provisions of this Act to municipal bonds and loans to entities governed by public law)

(1) The issuance of municipal bonds shall be subject to the application, *mutatis mutandis*, of the provisions of Article 17, Articles 19 to 24 except paragraph 3 of Article 19, point 2 of paragraph 1 of Article 31, Article 36, Article 37, paragraphs 1 to 3 of Article 38, Articles 39 to 40, paragraphs 1 to 3 and 5 to 6 of Article 41, and Articles 42 to 50. The words 'mortgage bonds' shall be replaced by the words 'municipal bonds', and the words 'mortgage loans' shall be replaced by the words 'loans to entities governed by public law'.

(2) When issuing mortgage and municipal bonds, the issuer shall keep separate cover registers.

VIII. REPORTING TO THE BANK OF SLOVENIA

Article 52

(Reporting)

(1) The issuer shall send the Bank of Slovenia an extract from the cover register signed by the cover register administrator on the last day of each quarter. The extract from the cover register shall be sent to the Bank of Slovenia within 10 days of the expiration of each quarter.

(2) The issuer's annual report shall also contain the following information:

1. the number of mortgage loans associated with claims registered in the cover register and classified into different categories according to the amount transferred to the cover register and according to area in which the real property is situated;

2. the mortgage loan amounts associated with the claims that are transferred to the cover register and for which a lien is established on:

- commercial property,
- residential property,
- residential buildings under construction;

3. the number of sales carried out under enforcement action, the number of commenced enforcement proceedings as at 31 December of the preceding year, and the number of enforcement proceedings completed during the year.

(3) the information referred to in points 1 and 3 of the preceding paragraph shall be shown for commercial and residential property separately.

(4) The reporting requirements referred to in points 1 and 2 of paragraph 2 of this Article shall also apply, *mutatis mutandis*, to the loans granted to entities governed by public law.

IX. SUPERVISION

Article 53

(Supervision of the implementation of the provisions of this Act)

The implementation of the provisions of this Act shall be supervised by Bank of Slovenia.

X. PENAL PROVISIONS

Article 54

(Major offences committed by the issuer)

(1) A fine between EUR 83,500 and EUR 250,000 shall be imposed on the issuer in the following cases:

1. failure to treat assets as cover assets contrary to Article 19 of this Act;
2. treatment of assets as cover assets contrary to Article 20 of this Act;
3. treatment of receivables from loans by other lenders as cover assets contrary to Article 21 of this Act;

4. issuing of mortgage bonds to an extent contrary to paragraph 1 of Article 22 of this Act;
5. failure to ensure consistency of cover assets with liabilities for mortgage bonds, including according to the net present value principle (paragraph 2 of Article 22 of this Act);
6. failure to reconcile the cover assets with liabilities for issued mortgage bonds pursuant to the provision of paragraph 3 of Article 22 of this Act;
7. failure to comply with the obligation to calculate and provide cover in the form of liquid assets in accordance with paragraphs 1 and 2 of Article 23 of this Act;
8. use of derivative financial instruments contrary to the Bank of Slovenia's regulations referred to in paragraph 2 of Article 24 of this Act;
9. failure to observe individual restrictions on the cover asset investments referred to in Article 25 of this Act;
10. failure to observe restrictions on the amount of claim from a mortgage loan which may be considered as cover assets referred to in Article 28 of this Act;
11. failure to value real property pursuant to Article 30 of this Act;
12. failure to comply with the cover register administrator's requirements in respect of the mortgage loans referred to in paragraph 1 of Article 31 of this Act;
13. failure to observe the provisions regarding mortgage loans referred to in Article 32 of this Act;
14. failure to observe the provisions regarding the land charge referred to in Article 33 of this Act;
15. failure to keep a cover register in accordance with the provisions of Articles 37, 38 and paragraph (1) of Article 39 of this Act;
16. failure to notify the cover register administrator in accordance with paragraph 2 of Article 42 of this Act.

(2) A fine between EUR 1,100 and EUR 4,200 shall be imposed on the responsible person of the issuer for committing an offence referred to in the preceding paragraph.

(3) A fine between EUR 83,500 and EUR 500,000 shall be imposed on an issuer that is considered a medium-sized or large company under the act governing commercial companies for the offence referred to in paragraph 1 of this Article.

Article 55

(Minor offences committed by the issuer)

(1) A fine between EUR 4,200 and EUR 125,200 shall be imposed on the issuer in the following cases:

1. failure to conclude the agreement referred to in paragraph (3) of Article 16 of this Act;
2. failure to report to the Bank of Slovenia in the manner laid down by Article 52 of this Act.

(2) A fine between EUR 500 and EUR 4,200 shall be imposed on the responsible person of the issuer for committing an offence referred to in the preceding paragraph.

Article 56

(Offences committed by the cover register administrator)

A fine between EUR 100 and EUR 3,800 shall be imposed on the cover register administrator for:

1. acting contrary to the provision of paragraph 2 of Article 38 of this Act on registering assets in the cover register;
2. acting contrary to the provisions of Article 41 of this Act.

Article 57

(Offences committed by other persons)

(1) A fine between EUR 1,000 and EUR 5,000 shall be imposed on an individual for issuing a security in contravention of Article 4 of this Act.

(2) A fine between EUR 50,000 and EUR 150,000 shall be imposed on sole entrepreneur and self-employed individuals for issuing a security in contravention of Article 4 of this Act

(3) A fine between EUR 83,500 and EUR 250,000 shall be imposed on a legal entity and a fine between EUR 83,500 and EUR 500,000 shall be imposed on a legal entity that is considered to be a medium-sized or a large company in accordance with the law governing commercial companies for issuing a security in contravention of Article 4 of this Act.

(4) A fine between EUR 83,500 and EUR 250,000 shall be imposed on a bank for issuing mortgages or municipal bonds without obtaining the Bank of Slovenia's authorisation for this purpose (paragraph (1) of Article 8 of this Act), or on a bank whose authorisation has expired (Article 13 of this Act) or has been withdrawn (Article 14 of this Act).

(5) A fine between EUR 1,100 and EUR 10,000 shall be imposed on a responsible person for the offence referred to in paragraph 2, 3 or 4 of this Article.

(6) A fine between EUR 1,000 to EUR 5,000 shall be imposed on the cover asset trustee for failure to act in accordance with Article 47 of this Act.

Article 58

(Offence procedure)

(2) The offence procedure shall be conducted and decided upon by an authorised officer of the Bank of Slovenia who meets the conditions established by the act governing offences and regulations issued on the basis thereof.

(2) The Bank of Slovenia shall adopt internal regulations on job organisation and classification in order to define in more detail the terms and conditions as well as the method of conferring and terminating the powers of the person considered to be the Bank of Slovenia's authorised officer referred to in the preceding paragraph.

(3) Notwithstanding the provision of Article 330 of ZBan-1, the offence procedure shall be conducted according to the act governing offences.

Article 59

(Offence procedure conducted by the Securities Market Agency)

(1) The offence procedure referred to in paragraphs 1 to 3 of Article 57 and paragraph 5 of Article 57 of this Act in the part relating to the violation of Article 4 of this Act shall be conducted and decided upon by an authorised officer of the Securities Market Agency who meets the conditions laid down by the act governing offences and the regulations issued on the basis thereof.

(2) The Securities Market Agency shall adopt internal regulations on job organisation and classification in order to define in more detail the terms and conditions, as well as the method of conferral and termination of powers on the person considered as the authorised officer of the Agency referred to in the preceding paragraph.

(3) The offence procedure referred to in paragraph 1 of this Article shall be conducted in accordance with the act governing offences.

Article 60

(The level of fines)

A fine exceeding the minimum fine determined within a specific range can be imposed through an expedited procedure for an offence under this Act.

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 61

(Implementing regulations)

The Bank of Slovenia shall issue implementing regulations in accordance with the provisions of this Act within fifteen days of the effective date of this Act.

Article 62

(Exclusion of the existing mortgage and municipal bonds)

The bonds issued prior to the effective date of the Mortgage Bond and Municipal Bond Act (Uradni list RS, No 17/06 in 58/09), which include the words 'mortgage bond' or 'municipal bond' and their derivatives shall not be considered as mortgage bonds or municipal bonds under this Act.

Article 63

(Repeal of regulations)

On the effective date of this Act, the Mortgage Bond and Municipal Bond Act (Uradni list RS, Nos 17/06 and 58/09) shall cease to apply.

Article 64

(Entry into force)

This Act shall come into force on the fifteenth day of its publication in the Official Gazette of the Republic of Slovenia (*Uradni list Republike Slovenije*).