

THE BANKING ACT
of August 29, 1997

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THE BANKING ACT

of August 29, 1997

TITLE 1

GENERAL PROVISIONS

Article 1

The present Act specifies the principles applicable in conducting banking activity, establishing and organising banks, including branches and representative offices of foreign banks, and also the principles applicable to the performance of banking supervision, rehabilitation proceedings, and bank liquidations and bankruptcies.

Article 2

A bank shall constitute a juridical person, established pursuant to the provisions of statute, operating on the basis of authorisation to conduct banking operations that expose to risk funds which have been entrusted to the bank and which are in any way repayable.

Article 3

The terms "*bank*" and "*kasa*" may be used solely in the name of banks complying with the definition given in Art. 2, and to describe the activities of or advertise such banks, with the proviso that:

- 1) this shall not apply to organisations employing the terms "*bank*" or "*kasa*" where the activity thereof explicitly indicates that these organisations are not engaged in banking operations,
- 2) the term "*kasa*" may also be utilised in the name of organisations, and to describe or advertise the activities thereof, where such organisations, pursuant to separate legislation, take savings deposits from persons belonging to the given organisation and extend cash advances to them.

Article 4

The terms employed in the present Act shall be construed as follows:

- 1) domestic bank - a bank having its registered office in the Polish Republic,
- 2) foreign bank - a bank having its registered office abroad,
- 3) international financial institution - a financial institution in which the majority of equity capital is held by a member state of the Organisation of Economic Cooperation and Development or by the central banks of such states,
- 4) bank card - a card that identifies the issuer and authorised cardholder, and allows the withdrawal of cash and performance of payments, and also, where the card is issued by a bank or other institution with statutory authority to extend credit, allows the withdrawal of cash and performance of payments on credit.

Article 5

1. Banking operations shall comprise:

- 1) the taking of deposits payable on demand or at a specified maturity, and the operation of such deposit accounts,
- 2) the operation of other bank accounts,
- 3) the extension of loans,
- 4) the extension of guarantees,
- 5) the issue of bank securities,
- 6) the performance of bank settlements,
- 7) the performance of other operations reserved exclusively for banks under separate legislation.

2. Where the following operations are performed by banks, they shall also be deemed banking operations:

- 1) the extension of cash advances,
- 2) operations involving cheques and bills of exchange,
- 3) the issue of bank cards and performance of operations using such cards,
- 4) forward financial transactions,
- 5) the purchase and disposal of debt,

- 6) the safekeeping of valuables and securities, and provision of safe deposit facilities,
 - 7) the performance of foreign exchange operations,
 - 8) the endorsement of bills or notes,
 - 9) the performance of operations commissioned by customers relating to the issue of securities.
3. The operations referred to in para. 2, subpara. 3, above shall also be treated as banking operations where they are performed by other organisations on instructions from banks.
 4. Subject to the provisions of Art. 67, the commercial activity referred to in para. 1 above may be performed solely by banks, in compliance with the present Act, and within the limits specified in the bank's articles of association.

Article 6

1. In addition to the performance of the banking operations referred to in Art. 5, paras. 1 and 2, banks may also:
 - 1) take up or acquire shares in public companies and the rights conferred by such shares, shares in other juridical persons which are not banks, or units in mutual funds, with the proviso that the total exposure to one organisation arising from the above shall not exceed 15% of the bank's capital,
 - 2) undertake commitments relating to the issue of securities,
 - 3) trade in securities,
 - 4) exchange debt for assets belonging to the debtor, on terms agreed on with such a debtor, with the proviso that the bank shall be required to resell such assets no later than within three years of their acquisition,
 - 5) acquire and dispose of real property and of debt collateralised by mortgages,
 - 6) provide financial consulting and advisory services,
 - 7) provide other financial services.
2. The limit referred to in para. 1, subpara. 1, above shall also apply to the additional payments by partners provided for under Art. 178 of the Commercial Code, and to contributions to, and capital liability in, limited partnerships.

3. The total funds applied to the purposes specified in para. 1, subparas. 1 and 5, and para. 2 shall not exceed 60% of the bank's capital.
4. The limits referred to in para. 1, subpara. 1, and para. 3 shall not apply to:
 - 1) the acquisition of shares in banks or of the rights conferred by such shares,
 - 2) the acquisition of shares, or of the rights conferred by such shares, in businesses providing the following services to the bank:
 - a) the issue of bank cards and performance of operations using such cards,
 - b) the training of bank staff,
 - c) financial consulting and advice,
 - d) the services provided by the clearing institutions referred to in Art. 67,
 - e) the services provided by interbank telecommunications companies, where at least 75% of the equity in such is held by banks,
 - 3) the acquisition of shares, or of the rights conferred by such shares, in companies running universal pension schemes or occupational pension schemes, or carrying on the business of brokerage, where at least 75% of the equity in such is held by banks or by the bank concerned.
5. The limits referred to in para. 1, subpara. 1, and para. 3 shall not apply to the institution referred to in Art. 105, para. 4, where 100% of the equity in that institution is held by banks.

Article 7

1. Declarations of intent for the purpose of performing banking operations may be made with the aid of electronic data media. Documents related to banking operations may be drawn up using electronic data media where such documents are properly recorded and safeguarded.
2. Where the present Act stipulates that a given legal document shall be drawn up in writing, this requirement shall be taken to be fulfilled where the form employed is that referred to in para. 1 above.

Article 8

Banks shall be required to maintain adequate liquidity, corresponding to the scale and types of activity conducted.

Article 9

Banks shall have an internal audit function that verifies the legality and propriety of the activity conducted by the bank and ensures that the accounts and reports filed by the bank are true and accurate.

Article 10

1. At cooperative banks affiliated to regional banks, the internal audit function may be performed by the relevant regional bank, in accordance with the principles laid down in the agreement on affiliation.
2. At cooperative banks affiliated to other banks, the internal audit function may be performed by the affiliating bank where provision for this is made in the agreement on affiliation.

Article 11

1. The authorisations, permits/licences, approvals and rulings/orders issued by the Commission for Banking Supervision and the President of the National Bank of Poland shall have the force of law of final administrative rulings.
2. The issue of the authorisations, permits/licences, approvals and rulings/orders referred to in para. 1 above shall be governed by the provisions of the Code of Administrative Procedure, subject to the exceptions provided for in the present Act.
3. The authorisations, permits/licences, approvals and rulings/orders referred to in para. 1 shall apply solely to organisations engaged in the activity referred to in Art. 1.
4. Unless the present Act provides otherwise, the opinions referred to in the Act shall be issued within 30 days.

TITLE 2

**THE ESTABLISHMENT AND ORGANISATION OF BANKS, AND OF BRANCHES
AND REPRESENTATIVE OFFICES OF BANKS**

Article 12

Banks may be established as state banks, cooperative banks or joint-stock banks.

Article 13

1. The founders of a joint-stock bank may be either natural or juridical persons, with the proviso that there shall be no fewer than three such founders.
2. The founders of a cooperative bank may only be natural persons, the number required being that laid down for the establishment of a cooperative in the Cooperatives Act of September 16, 1982 (as published and amended in *Dziennik Ustaw* {the Journal of Laws - trans. nos. 54/1995, item 288; 133/1995, item 654; 5/1996, item 32; 24/1996, item 110; 43/1996, item 189; 32/1997, item 183; and 121/1997, items 769 and 770).
3. The provisions of para. 1 above shall not apply to a bank that is founded by another bank, domestic or foreign.

A. State banks

Article 14

1. A state bank may be established by ordinance of the Council of Ministers at the request of the Minister of the Treasury, the latter having first obtained the opinion of the Commission for Banking Supervision. The same procedure shall apply to the liquidation of a state bank, save for the cases referred to in Art. 147, para. 1, subpara. 3.
2. The ordinance of the Council of Ministers establishing a state bank shall specify the name, registered office, objects and scope of activity of the bank, and also the bank's registered capital, including the dedicated funds provided from the Treasury which are to constitute the bank's assets.
3. State banks shall not be subject to entry in the register of state enterprises.

Article 15

1. The directing bodies of a state bank shall be its supervisory board and management board.
2. Members of supervisory boards and management boards shall not engage in activity in competition with that of the bank. In particular, they shall not be members of the supervisory or management boards of another bank, unless the state bank holds equity in that other bank.

Article 16

1. The supervisory board shall be appointed for a term of three years and shall be composed of persons holding appropriate qualifications in the field of finance. The chairperson of the supervisory board shall be appointed and recalled by the Prime Minister at the request of the Minister of the Treasury.
2. The Minister of the Treasury shall appoint the remaining members of the supervisory board; these persons shall not be members of the bank's management board. Members of the supervisory board shall be recalled under the same procedure as that applied for their appointment.

Article 17

The president of the management board of a state bank shall be appointed and recalled by the bank's supervisory board, having first sought the opinion of the Commission for Banking Supervision. The vice presidents and other members of the management board shall be appointed and recalled by the supervisory board at the request of the president of the management board.

Article 18

1. The supervisory board shall supervise the activity of the state bank, shall approve the accounts presented by the management board, together with the distribution of profit and method of absorbing losses, and shall receive reports on the bank's activity and issue recommendations to the management board; it may also suspend from office members of the management board.
2. Subject to para. 1 above, the bank's management board shall examine matters concerning the bank's activity and shall adopt resolutions on these matters,

performance of such resolutions being ensured by the president of the management board.

3. The supervisory board shall overturn resolutions of the management board where it determines that these fail to comply with legal regulations or the bank's articles of association.
4. The president of the management board of a state bank shall represent the bank externally, chair meetings of the management board and organise the bank's activity.
5. The detailed responsibilities of the supervisory board and management board of a state bank shall be specified in the bank's articles of association, as shall the persons authorised to represent the bank externally.

Article 19

The articles of association of a state bank shall be conferred on it by ordinance of the Minister of the Treasury, acting in consultation with the Minister of Finance and having sought the opinion of the Commission for Banking Supervision.

B. Cooperative banks

Article 20

1. A cooperative bank may be established pursuant to the procedure specified in the provisions of the Cooperatives Act, under an authorisation from the Commission for Banking Supervision granted in agreement with the Minister of Finance following an application from the bank's founders, in consideration of the principles set out in the Act on the Restructuring of Cooperative Banks and Bank Gospodarki Żywnościowej and on Amendments to Certain Legislation of June 24, 1994 (as published and amended in *Dziennik Ustaw* nos. 80/1994, item 369; 142/1995, item 704; 106/1996, item 496; 118/1996, item 561; and 121/1997, item 770). The provisions of Art. 30-38 shall be duly applicable.
2. The articles of association of a cooperative bank should be drawn up in the form of an authenticated deed, on pain of invalidity.

C. Joint-stock banks

Article 21

A joint-stock bank may be established on the basis of an authorisation granted by the Commission for Banking Supervision and issued in agreement with the Minister of Finance, in observance of the procedure laid down in the Commercial Code with respect to joint-stock companies; Art. 310 of the Code shall not apply.

Article 22

1. The responsibilities of supervisory body shall be performed by a supervisory board, consisting of no fewer than five persons elected by a shareholders' general meeting. Banks shall be required to notify the Commission for Banking Supervision of the composition of the supervisory board.
2. The bank's management board shall consist of no fewer than three persons.
3. The appointment of two of the members of the management board, one of which shall be the president, shall require the approval of the Commission for Banking Supervision. The application for such approval shall be submitted by the supervisory board.
4. The supervisory board shall advise the Commission for Banking Supervision of the remaining persons appointed to the management board and of any changes in the composition thereof.
5. The Commission for Banking Supervision may require the submission of such information and documents concerning the persons mentioned in paras. 3 and 4 above as may be necessary to grant the approval referred to in para. 3.
6. The Commission for Banking Supervision shall refuse approval for the appointment of the persons referred to in para. 3 where such persons:
 - 1) have been convicted of wilful criminal offences,
 - 2) are the subject of court proceedings involving criminal or fiscal offences.
7. The Commission for Banking Supervision may refuse approval for the appointment of the persons referred to in para. 3 where such persons:
 - 1) were responsible for documented financial losses at former places of employment,
 - 2) do not fulfil the requirements specified in Art. 30, para. 1, subparas. 2 and 3.
8. The provisions of para. 3 shall not apply where the appointment of members of the management board, including the president, involves their reappointment for another term of office, providing that the circumstances specified in paras. 6 and 7 do not apply to such persons.

Article 23

A joint-stock bank may also be established by foreign parties or with the participation of such parties.

Article 24

The cash considerations for equity made by foreign parties as a contribution to the bank's initial capital shall be provided in zloty.

Article 25

1. Where a party takes up or acquires shares in a bank or the rights conferred by such shares, or intends to do so, that party shall be required to:
 - 1) give notice to the bank concerned of the taking up or acquisition of its shares, or the rights conferred by such shares, where these shares or rights, together with any already held, would give that party a holding entitling them to over 5% of voting rights at a general meeting of the bank's shareholders,
 - 2) obtain in each case the approval of the Commission for Banking Supervision for the taking up or acquisition of shares, or the rights conferred by such shares, where such shares or rights, together with any already held, would give that party a holding entitling them to over 10%, 20%, 25%, 33%, 50%, 66% or 75%, respectively, of voting rights at a general meeting of the bank's shareholders, applying for such approval through the offices of the bank in which they intend to take up or acquire the shares.
2. Joint-stock banks shall be required to:
 - 1) notify the Commission for Banking Supervision immediately of the possession by a single shareholder of a holding entitling them to over 5% of voting rights at a general meeting of the bank's shareholders,
 - 2) apply immediately to the Commission for Banking Supervision, on behalf of the party referred to in para. 1, subpara. 2, above, for approval to acquire the shares concerned, or the rights conferred by such shares; Article 33 shall be duly applicable.
3. The Commission for Banking Supervision may refuse approval for the acquisition of shares, or the rights conferred by such shares, where the party intending to acquire such shares or rights does not give adequate guarantee of conducting the bank's affairs in a manner that will properly safeguard the interests of its customers, or where the funds assigned by the party in question to the acquisition of the shares or rights constitute the proceeds of a loan or advance, or the sources of such funds are undocumented.

4. Any party intending to dispose of shares, or the rights conferred by shares, shall be required to notify the Commission for Banking Supervision of their intentions where:
 - 1) the holding in question entitles them to over 10% of voting rights at a shareholders' general meeting,
 - 2) the disposal of the shares or rights will result in the proportion of that party's voting rights at a shareholders' general meeting falling below 20%, 33% or 50%, respectively.

Article 26

1. Any party acquiring shares, or the rights conferred by such shares, in contravention of the provisions of Art. 25, para. 1, shall be entitled to 5% of voting rights at a general meeting of the bank's shareholders, or to the proportion of voting rights indicated by an approval granted earlier.
2. Any resolution of a shareholders' general meeting adopted in breach of the provisions of para. 1 above shall be void.

Article 27

1. The acquisition or holding of shares by a subsidiary organisation shall be deemed to constitute the acquisition or holding of such shares by the parent organisation. Parent or subsidiary organisations shall be construed to be the organisations described under Art. 4, subpara. 16, of the Act on Public Trading in Securities of August 21, 1997 (as published in *Dziennik Ustaw* no. 118, item 754).
2. The provisions of the present Act shall not prejudice those of Title 9 of the Act referred to in para. 1 above.

Article 28

1. Shares in banks shall be registered by name, with the exception of those admitted for public trading. The disposal of registered shares by shareholders within one year of the date the bank is entered in the commercial register shall require the approval of the Commission for Banking Supervision.
2. Where approval for a bank's shares being admitted for public trading is subsequently withdrawn, the bank's bearer shares shall be exchanged for registered shares.
3. Where a bank has issued bearer shares that are not publicly traded, these shall also be exchanged for registered shares.

Article 29

A foreign party that is a shareholder in a bank, and has paid any applicable taxes and charges, shall have the right to purchase foreign currency at a bank authorised to deal in foreign exchange and to remit abroad such foreign currency without a separate foreign exchange permit, where the Polish zloty used to purchase such currency was derived from:

- 1) participation in the bank's profits, this being attested to in a certificate issued by the bank following approval of the bank's accounts, such approval having been made in accordance with separate regulations,
- 2) the sale or retiral of shares in the bank, these having been taken up or acquired in accordance with Art. 25,
- 3) sums due to that party on the bank's liquidation,
- 4) sums obtained as compensation under compulsory purchase orders or in consequence of other measures equivalent to compulsory purchase.

D. Procedures applicable to the establishment of banks

Article 30

1. The establishment of a bank may be performed where:
 - 1) it is ensured that the bank will be provided with:
 - a) capital of an amount commensurate to the kinds of banking activity anticipated and the scale of operations intended, subject to the proviso that, without prejudice to Art. 13, para. 3, no one founder, or group of founders related to one parent organisation, may provide a cash consideration for equity in excess of half of the initial capital,
 - b) premises equipped with suitable facilities for the proper safekeeping of funds and valuables, taking into consideration the scope and kinds of banking activity to be conducted,
 - 2) the founders and persons proposed for members of the bank's management board give adequate guarantee of conducting the bank's affairs in a manner that will properly safeguard the interests of its customers,
 - 3) at least two of the persons proposed for members of the bank's management board possess the education and professional experience necessary to direct a bank,
 - 4) the founders submit a plan of the bank's operations for at least the immediate

three years which indicates that these operations will not endanger the funds held in the bank's custody.

2. Part of the initial capital may be provided in the form of non-cash considerations, these to consist of equipment or real property, where such will be of direct use in the conduct of banking activity, subject, however, to the cash consideration for initial capital being no less than the amount specified in Art. 32, para. 1, and to the value of the non-cash considerations not exceeding 15% of the initial capital.
3. Should the bank's capital be increased, the value of the non-cash considerations shall not exceed 15% of the bank's core capital.
4. In particularly justified cases, the Commission for Banking Supervision may approve a relaxation of the limits referred to in paras. 2 and 3 above.
5. A bank's initial capital shall not constitute the proceeds of a loan or advance, or come from sources which remain undocumented.

Article 31

1. An application to the Commission for Banking Supervision for authorisation to establish a bank should include:
 - 1) the bank's proposed name and registered office,
 - 2) specification of the kinds of banking operation for which the bank is to be authorised, and information on the objects and scope of intended activity,
 - 3) information on:
 - a) the founders and persons proposed for members of the bank's management board,
 - b) the bank's initial capital.
2. The application shall have appended thereto:
 - 1) a draft of the bank's articles of association,
 - 2) the bank's programme of activity and financial plan for at least the immediate three years,
 - 3) the documents required by the Commission for Banking Supervision on the bank's founders and their financial situation,
 - 4) the opinion of the applicant's home country supervisory authorities, where the founder is a foreign bank.
3. The bank's draft articles shall specify, in particular:

- 1) the bank's name, which should contain the term "bank", distinguish itself from the names of other banks and indicate whether the bank in question is to be a state bank, joint-stock bank or cooperative bank,
 - 2) the bank's registered office, objects and scope of activity,
 - 3) the bank's directing bodies and organisational structure, and the procedures applicable to the making of declarations with respect to financial rights and obligations on behalf of the bank,
 - 4) the principles governing the internal audit function,
 - 5) the bank's capital and the principles governing conduct of its finances.
4. Where the application for authorisation to establish a bank is submitted by more than 10 founders, these shall be required to empower 1-3 persons as their attorneys, who shall represent them in dealings with the Commission for Banking Supervision during the period preceding the grant of authorisation for establishment of the bank. Power of attorney should be drawn up in the form of an authenticated deed.

Article 32

1. The initial capital provided by the bank's founders shall be no less than the zloty equivalent of 5,000,000 Ecu, calculated at the exchange rate published by the NBP and ruling on the day authorisation to establish the bank is granted, subject to the provisions of para. 2 herein.
2. The Commission for Banking Supervision shall specify, by resolution:
 - 1) the detailed principles applicable to the assembling of initial capital at cooperative banks,
 - 2) the detailed principles for the provision of initial capital to joint-stock banks and state banks.

Article 33

1. The Commission for Banking Supervision:
 - 1) shall summon the founders to supplement their application where it fails to satisfy the requirements set out in Art. 31, and may also call for other additional information or documents, in particular with respect to the founders and persons proposed for members of the bank's management board, including information on their financial and family situation, where such information is essential to rule on authorisation for establishment of the bank,
 - 2) shall rule on the question of authorisation for establishment of the bank within no more than three months of receiving the application or additional

information thereto.

2. In justified cases, the Commission for Banking Supervision may extend the time period referred to in para. 1, subpara. 2, above to six months, advising the founders of this within three months of receiving the application or additional information thereto.

Article 34

1. In the authorisation granted for establishment of the bank, the Commission for Banking Supervision shall specify the bank's name and registered office, the names of the founders and the shares taken up by them, the amount of initial capital, the banking operations for which authorisation is being granted, and the conditions to be met for the Commission for Banking Supervision to permit commencement of operations, and shall also approve the bank's draft articles of association.
2. The bank's articles should conform to the authorisation for establishment of the bank. Any amendment of those articles shall require the approval of the Commission for Banking Supervision where such amendment relates to the matters referred to in para. 1 above, and also to the bank's objects and geographical scope of activity, powers to represent the bank, the amount of capital, or preference attaching to shares with respect to voting rights; Art. 310 of the Commercial Code shall not apply.
3. Art. 33 shall be duly applicable to applications for approval of amendments to the bank's articles of association.

Article 35

The Commission for Banking Supervision may participate in registration proceedings involving banks.

Article 36

1. A bank may commence operations following receipt of an appropriate permit from the Commission for Banking Supervision.
2. The application for a permit to commence operations shall be submitted by the bank's management board.
3. A permit to commence operations may be issued where it is determined that the bank:
 - 1) is properly prepared in organisational terms for the commencement of operations,
 - 2) has assembled the full amount of initial capital,
 - 3) is in possession of suitable facilities for the safekeeping of funds and other

valuables, taking into consideration the scope and kinds of banking activity to be conducted,

- 4) fulfils the other conditions stipulated in the ruling on authorisation to establish the bank.

Article 37

The Commission for Banking Supervision shall refuse authorisation for establishment of the bank or approval for amendment of its articles of association where the requirements in force for the establishment of banks have not been fulfilled, or where the activity intended by the bank would contravene provisions of statute or prejudice the interests of its customers, or would not guarantee the safety of the funds held by the bank.

Article 38

The authorisation referred to in Art. 34, para. 1, and permit referred to in Art. 36, para. 1, shall become void where the bank has not commenced operations within one year of the grant of authorisation for its establishment.

Article 39

1. The establishment of a bank abroad by domestic parties or with the involvement of domestic parties, and the establishment abroad of a branch of a domestic bank, shall require a permit from the Minister of Finance. Where the founder of the bank or branch of a bank is a domestic bank, issue of such a permit shall require the agreement of the Commission for Banking Supervision.
2. An application for establishment of a bank abroad by domestic parties or with the involvement of domestic parties should include:
 - 1) the bank's proposed name, registered office and organisational form,
 - 2) information on the bank's founders and initial capital.
3. The application shall have appended thereto:
 - 1) a letter of intent and draft of the articles of association,
 - 2) the bank's programme of activity and financial plan for at least the immediate three years,

- 3) information on the legal regulations in force in the host country with respect to:
 - a) permits for the assumption of activity by the bank,
 - b) tax regulations applicable to the operations of banks,
 - c) regulations on the transfer of foreign exchange and on banking supervision.
4. An application for establishment abroad of a branch of a bank should include a letter of intent and the information specified in para. 3, subpara. 3, above, as applicable to branches of banks.

Article 40

1. The establishment in Poland of a branch of a foreign bank shall take place on the basis of an authorisation granted by the Commission for Banking Supervision and issued in agreement with the Minister of Finance, following an application from the bank concerned.
2. The application referred to in para. 1 above should include:
 - 1) the name and registered office of the applicant bank, and a description of its activity,
 - 2) specification of the kinds of banking operation for which the bank's branch is to be authorised, and the registered office of the branch,
 - 3) specification of the amount of capital funds which the branch has been endowed with,
 - 4) information on at least two persons proposed for the posts of branch manager and deputy managers.
3. The application shall have appended thereto an undertaking from the applicant foreign bank that it will satisfy all claims on the branch that may arise from its relations with other organisations. Art. 31, para. 2, shall be duly applicable.
4. In the authorisation granted for establishment in Poland of a branch of a foreign bank, the Commission for Banking Supervision shall specify, in particular, the registered office of the branch, the banking operations for which authorisation is being granted to the branch, and the minimum amount of capital funds required for the activity of the branch.
5. Branches of foreign banks shall be subject to entry in the commercial register.
6. The provisions of Art. 33-38 shall be duly applicable to procedures for the establishment in Poland of a branch of a foreign bank, as shall regulations issued pursuant to Art. 32.

Article 41

Branches of foreign banks operating within the Polish Republic shall be governed by the provisions of Polish law.

Article 42

1. Foreign banks may open representative offices in Poland on the basis of an authorisation granted by the Commission for Banking Supervision and issued in agreement with the Minister of Finance, following an application from the bank concerned.
2. The application referred to in para. 1 above should include:
 - 1) the name and registered office of the applicant bank, and a description of its activity,
 - 2) the location of the representative office and its scope of activity,
 - 3) information on the person proposed for the post of representative of the bank.
3. The provisions of Art. 33, Art. 37 and Art. 38 shall be duly applicable to procedures for the opening of a bank's representative office.
4. A bank's representative office shall not conduct banking operations.

E. Conversion of a state bank into a joint-stock bank

Article 43

A state bank may be converted into a joint-stock bank.

Article 44

The Council of Ministers, at the request of the Minister of the Treasury and having sought the opinion of the Commission for Banking Supervision, shall, by ordinance:

- 1) convert state banks into joint-stock companies involving Treasury equity,
- 2) determine to what extent the assets of the state bank concerned shall be contributed to the joint-stock company as a consideration for equity, and to what extent these shall be sold to the joint-stock company being set up with Treasury involvement.

Article 45

The incorporation of a state bank as a joint-stock company shall not result in any changes to contractual agreements concluded by the bank or powers vested in it under administrative rulings. The conversion of the bank shall be conducted on the basis of a balance sheet drawn up as of the date of incorporation. As of that date, the joint-stock bank shall assume all the rights and obligations of the state bank.

Article 46

On the day on which the joint-stock bank obtains personality at law, the state bank shall be liquidated and its directing bodies dissolved.

Article 47

With respect to matters not regulated by the present Act, the conversion of a state bank into a joint-stock bank shall be governed by the procedure laid down in the Commercial Code for the formation of a joint-stock company, with the exception of Art. 313 and Art. 347.

Article 48

The sale to third parties of shares held by the Treasury in a bank converted from a state bank shall be governed by the relevant provisions of Parts IV and V of the Act on the Commercialisation and Privatisation of State Enterprises of August 30, 1996 (as published and amended in *Dziennik Ustaw* nos. 118/1996, item 561; 156/1996, item 775; 32/1997, item 184; 98/1997, item 603; 106/1997, item 673; 121/1997, item 770; and 137/1997, item 926).

TITLE 3

BANK ACCOUNTS

Article 49

1. Banks shall operate bank accounts for natural and juridical persons, and also for organisations not possessed of personality at law, where the latter have legal capacity.
2. Bank accounts shall be operated in zloty and foreign currencies.

3. Banks shall be free to dispose of the funds entrusted to them, and in return shall make all effort to ensure the safety of such funds.

Article 50

1. Banks may, in particular, operate the following kinds of bank account:
 - 1) current accounts,
 - 2) auxiliary accounts,
 - 3) time deposit accounts,
 - 4) savings accounts (savings deposits).
2. Savings accounts shall be operated for natural persons. They may also be operated for school savings associations and employee savings-and-loan associations.
3. Savings accounts shall not be used by the accountholders for the performance of settlements related to the conduct of business activity.

Article 51

The holder of a bank account shall be free to dispose of the funds held on account. The deposit agreement which the accountholder concludes with the bank may contain provisions restricting the freedom to dispose of such funds.

Article 52

A savings account may be operated for several persons (a joint account), with each such person enjoying the rights of accountholder within the limits set in the deposit agreement.

Article 53

Funds held on a bank account may bear interest at a fixed or variable rate, at the level and on the terms specified in the deposit agreement. For the purpose of computing interest, a month shall be taken to constitute 30 days, while a year shall be taken to constitute 365 days.

Article 54

1. The opening of a bank account shall take place through conclusion of a written

deposit agreement with the bank.

2. A deposit agreement should specify, in particular:
 - 1) the parties to the agreement,
 - 2) the kind of account being opened,
 - 3) the currency in which the account is to be operated,
 - 4) the length of time for which the account is being opened,
 - 5) the rate of interest earned on the account and the circumstances in which this may be changed,
 - 6) the manner in which funds held on account can be used,
 - 7) the dates for payment or capitalisation of interest,
 - 8) the dates for the performance of payment instructions given by the accountholder,
 - 9) the bank's liability for the timely and proper performance of settlements, and the penalty payable in the event of failure to perform an accountholder's instruction by the agreed date,
 - 10) the procedure and conditions for amending the agreement,
 - 11) the manner and dates applicable in terminating the agreement or giving notice thereof,
 - 12) the procedure for terminating agreements in the case of dormant accounts.
3. The deposit agreement shall indicate the principles and procedure applicable in determining fees and commission payable for services related to the operation of the account.

Article 55

1. Evidence of conclusion of a savings deposit agreement may be a passbook or other document attesting to conclusion of the agreement. The name of the document should contain the appropriate form of the word "savings".
2. The documentary evidence issued as to conclusion of a savings deposit agreement shall be made out to the name of the depositor.

Article 56

1. The funds held on savings accounts belonging to one person, irrespective of the

number of deposit agreements concluded by that person, shall not be liable to seizure under a court or administrative collection order up to the equivalent of three times the average monthly salary in the corporate sector, exclusive of profit-sharing bonuses, as reported by the President of the Central Statistical Office in relation to the period directly preceding the day on which the said order is issued.

2. The Treasury shall not be liable for the obligations of banks, with the exception of the following:
 - 1) sums in excess of the guarantee cover obtaining under the statutory system of deposit guarantees set out in the Act on the Bank Guarantee Fund of December 14, 1994 (as published and amended in *Dziennik Ustaw* nos. 4/1995, item 18; 133/1995, item 654; 24/1997, item 119; 79/1997, item 484; 85/1997, item 538; and 88/1997, item 554), where such sums are due on savings accounts to which documentary title has been made out to the name of the accountholder and which are held at the following banks: Powszechna Kasa Oszczędności Bank Państwowy, Polska Kasa Opieki SA and Bank Gospodarki Żywnościowej SA, with the proviso that this liability of the Treasury shall extend no further than December 31, 1999,
 - 2) sums in excess of the guarantee cover obtaining under the statutory system of deposit guarantees set out in the Act referred to in subpara. 1 above, where such sums are due on the following savings deposits:
 - a) housing savings books issued no later than October 23, 1990,
 - b) savings-and-loan accounts held in accountholders' names at banks operating housing credit associations under procedures set out in separate regulations, where such deposits have been held for no less than two years, with this liability being applicable to the equivalent of three times the cover provided under the guarantees of the Bank Guarantee Fund,
 - 3) those where liability has been assumed under guarantees and endorsements.

Article 57

1. In the event of the death of a holder of savings accounts, the bank shall be required to pay out from such accounts:
 - 1) the sum spent on the accountholder's funeral expenses, this being payable to the person presenting invoices attesting to the expense they have incurred in this respect, with this sum being no greater than the expense of funerals held in accordance with the custom accepted in the given community,
 - 2) a sum no greater than twenty times the average monthly salary in the corporate sector, exclusive of profit-sharing bonuses, as reported by the President of the Central Statistical Office in relation to the last month prior to the death of the accountholder, with this sum not exceeding the balance on the accounts and

being payable to the person indicated by the accountholder in the deposit agreement.

2. Para. 1 above shall not apply to the accounts referred to in Art. 52.
3. The amounts referred to in para. 1 shall not be included in the estate of the deceased accountholder.

Article 58

Where a savings deposit agreement does not provide otherwise, the agreement shall be terminated where no operations have been performed on the account save periodic accrual of interest for a period of five years, and where the balance on the account is no greater than the minimum balance specified in the agreement.

Article 59

A minor may be the holder of a savings account, and on reaching 13 years of age may withdraw funds from that account, provided that no written objection to this is received from the minor's legal guardian.

Article 60

1. Where a bank is notified of the loss of documentary evidence of conclusion of a savings deposit agreement, or of a cheque or blank cheque, it shall become liable for any cash withdrawals and transfers carried out at its office operating the savings account as of the moment that office receives such notification.
2. The deposit agreement concluded between the bank and the accountholder should specify the liability borne in other circumstances by the bank for cash withdrawals following receipt of notification of the loss of the documents referred to in para. 1 above.

Article 61

The principles and procedure applicable to the annulment of documents attesting to conclusion of a savings deposit agreement shall be specified by ordinance of the Minister of Justice, acting in consultation with the Commission for Banking Supervision.

Article 62

The annulment of lost documents attesting to conclusion of a savings deposit agreement in the course of the enforced collection of funds from a savings account under a court or administrative collection order shall be governed by the provisions of the Code of Civil Procedure and by regulations on administrative debt collection.

TITLE 4

BANK SETTLEMENTS

Article 63

1. Bank settlements shall be understood as operations involving the adjustment of bank account balances, performed on the instructions of customers or as a result of actions which ex lege yield such changes in customers' title to assets.
2. Settlements shall be performed on a cash or non-cash basis.
3. Non-cash settlements shall be conducted using hard copy or electronic data media, this including the use of bank cards.

Article 64

Where accountholder instructions to perform a settlement are carried out by several banks, each of these banks shall be jointly and severally liable to the accountholder for any damage suffered due to non-performance or incorrect performance of the instructions. A bank shall be free from such liability where it provides evidence that the damage did not arise through any fault of its own.

Article 65

1. In performing payment from a bank account, the bank shall be required to verify the authenticity and formal correctness of the document serving as the basis for the payment and the identity of the person giving the payment instruction.
2. Where the payment is effected using electronic data media, the measures referred to in para. 1 above shall be performed by automatically authenticating the personal identification number or password used, or both.
3. Where the payment is effected using an embossed bank card that does not involve

electronic data media, authentication shall be carried out by comparing the signature on the card to that on the document confirming performance of the transaction.

Article 66

Banks shall be required to accept cash deposits to bank accounts, and to count and sort the notes and coin taken in such deposits.

Article 67

Banks may establish clearing houses in the form of registered companies in order to exchange payment instructions and determine their mutual claims arising from such instructions.

Article 68

The President of the National Bank of Poland shall specify, by regulation:

- 1) the forms and procedure for the performance of settlements via banks,
- 2) the detailed principles applicable to the preparation, recording, transfer and safekeeping of the documents referred to in Art. 7,
- 3) the manner of clearing interbank settlements,
- 4) the methods and procedure for counting, sorting, packaging and designating packages of notes and coin, and for conducting activities related to delivering notes and coin to the banks.

TITLE 5

LOANS AND ADVANCES, AND THE TREATMENT OF LARGE EXPOSURES

Article 69

1. Under a loan agreement, the bank shall undertake to make available to the borrower a certain amount of funds for a period stipulated in the agreement, these funds to be utilised for a specified purpose, while the borrower shall undertake to apply these funds in accordance with the conditions laid down in the agreement, to repay the outstanding balance of the loan together with interest at specific repayment dates, and to pay a fee on the loan extended.
2. A loan agreement should be drawn up in writing and should specify, in particular:

- 1) the parties to the agreement,
- 2) the amount and currency of the loan,
- 3) the purpose for which the loan is being made,
- 4) the repayment date and terms,
- 5) the rate of interest payable on the loan and the circumstances in which this may be changed,
- 6) the loan security to be provided,
- 7) the bank's powers in monitoring loan utilisation and repayment,
- 8) the dates and method of disbursing funds to the borrower,
- 9) the loan fee payable, if the agreement makes provision for such,
- 10) the conditions applicable in amending or terminating the agreement.

Article 70

1. The bank shall make the extension of a loan contingent on the borrower's creditworthiness. Creditworthiness shall be understood as the capacity to repay the loan taken, together with interest, at the dates specified in the agreement. The borrower shall be required to present, at the bank's request, such documents and information as are necessary to assess creditworthiness.
2. Where a natural or juridical person, or organisation not possessed of personality at law yet having legal capacity, is not deemed creditworthy, the bank may extend a loan on the following conditions:
 - 1) the pledging of special loan security,
 - 2) the presentation - in addition to security for the loan - of a financial recovery programme for the organisation concerned, implementation of which will, in the bank's opinion, ensure that the borrower becomes creditworthy within a given period of time.
3. The borrower shall be required to facilitate measures taken by the bank to assess their financial and economic situation and to monitor loan utilisation and repayment.

Article 71

1. The total amount of loans and cash advances extended, bonds and other debt securities acquired, exposures under guarantees, endorsements and letters of credit, and other exposures of the bank to a single party, or to a group of parties related by

capital and management and incurring common economic risk, shall not exceed 25% of the bank's capital.

2. A group of parties related by capital and management, as referred to in para. 1 above, shall be understood as:
 - 1) two or more natural or juridical persons, or organisations not possessed of personality at law, where it can be demonstrated that these parties are related to each other in that they incur common economic risk, since one of these parties controls the others, directly or indirectly, or
 - 2) two or more natural or juridical persons, or organisations not possessed of personality at law, where the circumstances defined in subpara. 1 above do not apply, yet where these parties can be recognised as incurring one and the same economic risk, since they are related in such a way that the financial condition of one may affect the financial condition of the others.
3. Para. 1 above shall not apply where:
 - 1) the bank's exposure is to the Treasury, the National Bank of Poland, an international financial institution, or the governments or central banks of member states of the Organisation of Economic Cooperation and Development,
 - 2) the bank's exposure is secured by an assignment of the rights attached to securities issued by the Treasury, the National Bank of Poland or an international financial institution, this exemption applying to the value of the assignment so taken,
 - 3) the bank's exposure is secured by cash collateral, title to which has been transferred to the bank, this exemption applying to the value of the collateral so taken.
4. The aggregate amount of the bank's exposures in excess of 10% of its capital to the parties referred to in para. 1 above shall not exceed 800% of the bank's capital.
5. The limits referred to in paras. 1 and 4 above shall not apply to funds placed at the National Bank of Poland or other banks.
6. The bank's management board shall be required to notify the Commission for Banking Supervision of each case where a loan is extended exceeding 10% of the bank's capital.
7. Banks shall in their own capacity set internal large exposure limits and conduct periodic reviews thereof, applying criteria which take into consideration the specific nature of their own activity, and in particular the industries and geographic regions concerned, while observing the general limits in force.

Article 72

1. The Chairperson of the Securities and Exchange Commission, acting in agreement with the Commission for Banking Supervision, shall, by regulation, establish limits other than those laid down in Art. 6, para. 1, subpara. 1, and para. 3, and in Art. 71, para. 1, with respect to banks engaged in operations on the capital market, and shall specify the conditions and scope of such operations.
2. The President of the National Bank of Poland, acting in agreement with the Chairperson of the Securities and Exchange Commission, shall set out, by regulation, separate procedures for satisfying the regulatory reserve requirement in relation to funding obtained on the capital market.

Article 73

1. For the purpose of jointly providing loan finance, banks may conclude a loan syndication agreement.
2. Under the agreement referred to in para. 1 above, the banks involved shall specify the terms for extending the loan and the security to be taken, and shall designate the bank empowered to conclude the loan agreement.
3. The banks referred to in para. 1 shall bear the risk associated with the loan in proportion to the amount of funding contributed to the syndication.

Article 74

During the life of the loan agreement, the borrower shall be required, at the bank's request, to present such information and documents as are necessary to assess their financial and economic situation and to enable monitoring of loan utilisation and repayment.

Article 75

1. Where the lending bank determines that the terms of the loan have not been observed, or where timely repayment performance is jeopardised by the borrower's poor financial condition, the bank may:
 - 1) give notice of termination of the loan agreement, in whole or in part,
 - 2) require additional security for loan repayment, or require the submission by a specific date of a recovery programme for the borrower, together with implementation of such a programme on its approval by the bank.
2. The period of notice referred to in para. 1, subpara. 1, above shall constitute 30 days, or in the event of the borrower being threatened with bankruptcy - 7 days, unless the loan agreement provides for a longer period.

3. Unless the loan agreement provides otherwise, on expiry of the notice given regarding termination of the loan agreement, the borrower shall be required immediately to repay the outstanding balance of the loan together with interest due to the bank for the period of loan utilisation.

Article 76

1. The interest applicable to the loan shall be specified in the loan agreement, with the proviso that, where a variable rate of interest is applied:
 - 1) the loan agreement shall specify the circumstances in which the loan may reprice,
 - 2) the borrower and guarantors should be advised, in the manner indicated in the agreement, of each repricing of the loan.
2. In advertising and product offers concerning the terms on which consumer loans are available, banks shall be required to specify the annual percentage rate payable on such loans.

Article 77

The loan agreement may stipulate that a separate fee is due to the bank on a loan facility made available to the borrower yet remaining undrawn.

Article 78

The provisions referring to loan security and interest shall be duly applicable to agreements concluded by the bank to make cash advances.

Article 79

1. In extending loans, cash advances, guarantees and endorsements to, or opening bank accounts for, organisations considered subsidiaries or associates of the bank under the Accounting Act of September 29, 1994 (as published and amended in *Dziennik Ustaw* nos. 121/1994, item 591; 32/1997, item 183; 43/1997, item 272; 88/1997, item 554; 118/1997, item 754; and 139/1997, items 933 and 934), its own shareholders and members (cooperative banks), and members of staff and of the directing bodies of the bank, of another bank belonging to the same banking group, or of the bank's parent organisation, the bank concerned shall not apply terms more favourable than those generally applied to the given form of agreement, and in particular shall not apply more favourable rates of interest.

2. The extension of a loan, advance, guarantee or endorsement to:
 - 1) a member of the bank's directing bodies, where the bank's total exposure to this person exceeds the zloty equivalent of 5,000 Ecu, calculated at the exchange rate published by the NBP - shall require a joint resolution of the management board and supervisory board, adopted by a 2/3 majority in a secret ballot in the presence of a least half the members of both bodies, and without participation from the person concerned,
 - 2) a member of the bank's directing bodies, where the bank's total exposure to this person does not exceed the zloty equivalent of 5,000 Ecu, calculated at the exchange rate published by the NBP - shall be governed by a written policy adopted by the supervisory board (or shareholders' general meeting),
 - 3) a person occupying a managerial position at the bank - shall be governed by a written policy adopted by the supervisory board.
3. The aggregate amount of loans, cash advances, guarantees and endorsements extended to members of the bank's directing bodies and persons occupying managerial positions at the bank shall not exceed 10% of the bank's core capital, and at cooperative banks shall not exceed 25% of the bank's core capital.
4. The bank shall, in a written policy, establish the conditions for extending the loans, cash advances, guarantees and endorsements referred to in para. 1 above, and shall maintain a separate record of these.
5. In extending loans, cash advances, guarantees and endorsements to, or opening bank accounts for:
 - 1) parties related by capital and management to bank shareholders (joint-stock banks) and cooperative members (cooperative banks) - para. 1 above shall be duly applicable,
 - 2) parties related by capital and management to members of the bank's directing bodies and persons occupying managerial positions at the bank - paras. 1-4 above shall be duly applicable.
6. Banks shall notify the Commission for Banking Supervision of any extension of a loan, cash advance, guarantee or endorsement to a member of the bank's directing bodies, person occupying a managerial position at the bank, bank shareholder or member (cooperative banks), or party related to the above by capital and management, where in any single case this exceeds the zloty equivalent of 30,000 Ecu, calculated at the exchange rate published by the NBP.
7. Persons occupying managerial positions shall be understood to be members of staff reporting directly to members of the management board, and also branch managers and deputy managers, and chief accountants.

TITLE 6

GUARANTEES, ENDORSEMENTS AND LETTERS OF CREDIT

Article 80

Banks may extend guarantees and endorse bills or notes at the instruction of customers.

Article 81

A guarantee shall constitute a unilateral undertaking from the guarantor bank that, on performance by the authorised party (the beneficiary) of certain conditions for payment, which may be attested to by documents indicated in the said undertaking, these being appended by the beneficiary to their claim for payment, drawn up in the prescribed form, the bank will then disburse funds to the beneficiary, either directly or via the offices of another bank.

Article 82

1. Neither a bank acting as intermediary in the performance of a guarantee nor the guarantor themselves shall be obliged to verify the circumstances indicated by the documents accompanying a claim for payment under a guarantee. Acceptance of a claim for payment or accompanying documents, where the defects thereof render them invalid or inapplicable, shall constitute a risk taken by the bank in accepting such documents.
2. Should the undertaking referred to in Art. 81 contain commitments other than those indicated in the instruction referred to in Art. 80, the guarantor bank shall be required to perform in accordance with the declarations given in its undertaking, unless the beneficiary consents to amending the contents of that undertaking.
3. Where the guarantor bank receives a guarantee from another bank (a second guarantee), stipulating that in certain circumstances it will cover the payment made by the guarantor in performance of its guarantee, the legal obligation thereby arising shall be treated as a separate liability between the original and second guarantors.

Article 83

1. A bank may confirm the obligation made by another bank under a guarantee which the latter has extended; in such cases, claims for performance of the guarantee may be presented to the bank that extended the guarantee or the bank that confirmed it, or to both banks together, until full satisfaction of the creditor's claim.
2. Para. 1 above shall be duly applicable to the confirmation by a bank of obligations arising under endorsements made by another bank.

Article 84

Endorsements made by a bank shall be governed by the provisions of the Civil Code, with the proviso that an endorsement by a bank shall always constitute a cash liability.

Article 85

1. A bank (the issuing bank), acting at the instruction of a customer but on its own behalf, may make a written commitment to a third party (the beneficiary) that it will pay a specified sum to the beneficiary on performance by that beneficiary of all the conditions stipulated in a letter of credit (a documentary letter of credit).
2. A documentary letter of credit must in particular specify the name and address of the principal and the beneficiary, the amount and currency of the letter of credit, the date on which the letter of credit expires, and a description of the documents to be presented by the beneficiary in order to be eligible to claim payment under the letter of credit.
3. The liability of the issuing bank shall crystallise on presentation by the beneficiary of the relevant documents in accordance with the terms of the letter of credit.
4. The provisions of paras. 1-3 above shall be duly applicable to standby letters of credit.

Article 86

1. A bank (the issuing bank), acting at the instruction of a customer but on its own behalf, may make a written commitment to another bank that it will reimburse sums paid to the beneficiary or purchase drafts drawn by the beneficiary on the bank specified (a clean letter of credit).
2. A clean letter of credit must in particular specify the name and address of the party authorised to claim payments, the amount and currency of the letter of credit, and the date on which the letter of credit expires.
3. The liability of the issuing bank shall crystallise on the performance of payment to the beneficiary as provided for in the letter of credit, subject to presentation by the beneficiary of proof of identity.
4. Where a clean letter of credit makes payment contingent on fulfilment by the beneficiary of conditions other than that specified in para. 3 above, payment may be performed solely on fulfilment of all such conditions.

Article 87

1. Claims under guarantees and endorsements extended by the bank, and letters of credit, where these have crystallised, shall expire after six years.
2. The period for expiry of claims under guarantees and letters of credit shall commence on the date a valid claim for payment is presented, and during this period the claim shall be enforceable, even though the obligation underlying the guarantee or letter of credit has already expired.

Article 88

The Commission for Banking Supervision shall specify, by regulation, the detailed conditions applicable to the extension of guarantees and endorsements by banks.

TITLE 7

THE ISSUE OF BANK SECURITIES

Article 89

1. Banks may issue bank securities, on terms that shall be made public.
2. Banks shall advise the President of the National Bank of Poland of any intended issue of securities 30 days prior to the date of issue, indicating the terms and value of the issue.
3. The President of the National Bank of Poland may specify, by regulation, the value and terms of issues of bank securities that require the approval of the President of the National Bank of Poland.

Article 90

1. Bank securities shall serve to gather funds by banks, in zloty or other convertible currencies, with the name of such securities including the words "bank security", and the inscription on such securities including:
 - 1) specification of the nominal value of the security,
 - 2) the bank's undertaking to:
 - a) accrue interest at a specified rate,
 - b) pay a given sum to a party with relevant authorisation at the dates specified; unless the inscription on the security provides otherwise, the

authorised party shall not be entitled to call on the bank to redeem the security prior to maturity,

- 3) specification of the holder of the security, where the security is registered by name, or an annotation that the security is payable to bearer,
 - 4) the principles applicable to transfer of the rights attached to the security,
 - 5) the serial number of the security and date of issue,
 - 6) the signatures of persons authorised to make declarations with respect to financial rights and obligations on behalf of the bank.
2. The signatures referred to in para. 1, subpara. 6, above may be reproduced by mechanical means.
 3. Neither the inscription borne on a bank security nor the public notice given by the issuing bank of the terms of the issue shall contain any comparison with the terms applicable to securities issued by other institutions.
 4. Banks may also issue securities in book entry form. The depository facility for such securities shall be provided by the bank issuing the said securities.
 5. Where a bank security is in book entry form, all the information specified in para. 1 above shall be entered on the depository receipt or other document issued by the bank to the party with relevant authorisation.
 6. The rights attached to bank securities issued in book entry form shall subsist on these securities being first entered in a custody account for bank securities, and are vested in the holder of that account.
 7. Transfer of the rights attached to a bank security issued in book entry form shall be effected on performance of an appropriate entry in a custody account for bank securities as a result of the conclusion of the relevant agreement. The benefits accruing from bank securities prior to performance of such an entry shall be due to the party acquiring the securities, unless the agreement provides otherwise.

Article 91.

Banks shall not extend loans or advances for the purchase of bank securities of their own issue.

Article 92

Bank securities shall not be governed by the provisions of the Act referred to in Art. 27, para. 1.

TITLE 8

PARTICULAR RIGHTS AND DUTIES OF BANKS

Article 93

1. In order to secure their exposures arising from banking operations, banks may require the provision of the forms of security envisaged in the Civil Code and the law on bills of exchange, and generally accepted in domestic and foreign commerce.
2. Banks may deduct from their liabilities claims that have not yet matured where the debtor party has been put into liquidation, and in all other cases where they are entitled to collect on claims prior to maturity. Such deductions shall not involve amounts due on bank accounts where these are subject to enforced collection against tax liabilities.

Article 94

The Minister of Justice, in consultation with the Commission for Banking Supervision, shall specify, by ordinance, reduced rates of court fees and exemptions from such fees in proceedings involving the securing of claims under loans, advances, guarantees and endorsements made by banks.

Article 95

Bank books of account and excerpts from such books, signed by persons authorised to make declarations with respect to financial rights and obligations on behalf of the bank, and with the bank's seal affixed, together with all other declarations drawn up in this manner containing commitments, the release of obligations, the waiving of rights or confirmation of repayment of debt, or attesting to the extension of a loan or advance and the amount and repayment terms thereof, shall be vested with the legal authority of official public documents and shall constitute the basis for performing entries in real estate registers and other public records.

Article 96

1. Banks may issue enforced collection orders on the basis of their books or other documents related to the performance of banking operations.
2. An enforced collection order issued by a bank should specify the bank issuing the order and on behalf of which the collection is to be effected, the debtor under obligation to pay, the amount of the debtor's liability, together with interest due and payment dates, and the date of issue of the order, and should denote the banking

operation giving rise to the claim being enforced and mention that such claim has matured. The enforced collection order should bear the seal of the bank issuing the order, and the signatures of persons authorised to act on behalf of the bank.

3. Further collection orders may be issued where it is necessary to enforce claims against several parties or collect on several items of the debtor's assets.

Article 97

1. An enforced collection order issued by a bank may constitute the basis for enforced debt collection pursuant to the provisions of the Code of Civil Procedure following a writ of execution issued by a court, effective solely with respect to the direct counterparty to the banking operation, where that counterparty has filed a written statement submitting to debt collection and where the claim underlying the order has arisen directly from that banking operation.
2. The statement referred to in para. 1 should specify the amount to which the debtor accepts collection, together with the final date on which the bank may issue an enforced collection order. The debtor may also submit to debt collection by surrendering items to the bank where the bank has secured its claim through a non-possessory lien or by taking title to property.
3. An application from a bank for the writ of execution referred to in para. 1 above shall be examined by the court immediately, and in all events no later than within three days of the application being filed.

Article 98

1. An enforced collection order issued by a bank may also constitute the basis for collection from a third party, where that party assumes liability for the debt arising from the banking operation referred to in Art. 97, para. 1.
2. Where, following completion of the banking operation referred to in Art. 97, para. 1, the obligation to perform is transferred to other parties as a result of inheritance or corporate reconstruction, or where it is necessary to enforce collection on property jointly owned by husband and wife, the legal authority for such collection may be based on an enforced collection order issued by the bank and supported by a court writ of execution which the court addresses to the parties concerned.

Article 99

1. On receipt of the relevant licence from the President of the National Bank of Poland, banks shall be entitled to perform specified foreign exchange operations and associated settlements, these including, in particular:

- 1) operating bank accounts in foreign currencies,
- 2) extending loans and advances in foreign currencies, and taking borrowings in such currencies,
- 3) extending guarantees and endorsements in foreign currencies,
- 4) conducting the purchase and sale of foreign exchange, subject to para. 2 herein,

with the scope of the above operations being determined by the extent to which the President of the National Bank of Poland deems that the given bank provides adequate guarantee of the safe and proper performance of such operations.

2. On receipt of the relevant licence from the President of the National Bank of Poland, granted in consultation with the Minister of Finance, banks shall be entitled to:
 - 1) purchase foreign currencies from business organisations,
 - 2) purchase foreign currencies from the National Bank of Poland,
 - 3) sell foreign currencies for the purposes specified by statute or in a foreign exchange permit,
 - 4) act as intermediaries in remitting payments and accepting receipts associated with foreign trade in merchandise, services and intangibles.
3. The banking operations provided for under paras. 1 and 2 above shall be subject to foreign exchange controls, conducted by the President of the National Bank of Poland.
4. Where it is determined that the operations referred to in paras. 1 and 2 are being conducted in breach of legal regulations, the bank's articles of association or the licence issued, or that further conduct of such operations would jeopardise the safety of the funds held by the bank, the President of the National Bank of Poland may prohibit the bank from performing particular operations, or may revoke the licence issued, in whole or in part.

Article 100

The banks referred to in Art. 99, paras. 1 and 2, shall be entitled to open and maintain bank accounts at banks abroad, and to place foreign exchange on such accounts.

Article 101

1. A bank's claim may be secured by the transfer to the bank by the debtor of title to moveable assets or securities until such time as the debt is paid, together with interest and any fees due.
2. Where title is transferred to an asset identified as being of a particular type, or to a

group of assets, the debtor shall be required to set apart and mark the asset or group of assets in question, and also - unless the agreement with the bank provides otherwise - to maintain a record of any changes in the collateral to which title has been transferred.

Article 102

1. A bank's claim may be secured by the debtor or another party transferring to the bank's account a certain sum, in zloty or convertible currency, with the bank undertaking that it shall refund this sum on repayment of the debt, together with interest and any fees due.
2. The bank shall not be required to refund that part of the sum paid into its account which corresponds to the outstanding balance of principal, interest and fees remaining past due.

Article 103

1. A bank's declaration that it will refund the sum transferred to its account should be made in writing, on pain of invalidity.
2. The refund of the sum transferred to the bank's account shall be performed against return of the declaration referred to in para. 1 above.

Article 104

1. Banks, bank staff and other persons involved in the performance of banking operations shall be bound by the obligation of banking secrecy, which applies to all information:
 - 1) concerning banking operations and persons that are party to agreements with the bank, where such information is obtained during negotiations or relates to the conclusion or performance of an agreement with the bank, with the exception of cases where disclosure of information is a precondition for the proper performance of the agreement concluded by the bank,
 - 2) concerning persons that are not party to agreements, as referred to in subpara. 1 above, yet have carried out actions associated with the conclusion of such an agreement, with the exception of those cases where the present Act provides for disclosure of such actions.
2. Banks shall not be bound by the obligation of secrecy with respect to the counterparty to an agreement. The information involved shall not be divulged to third parties, save for the cases specified in Art. 105 and Art. 106, para. 3, and also in cases where the

counterparty to an agreement supplies the bank with written authorisation to communicate particular information to a person indicated by that counterparty.

Article 105

1. Banks shall be required to disclose information that is subject to the obligation of banking secrecy solely:
 - 1) to other banks, where this relates to claims on counterparties, and to movements and balances on bank accounts, insofar as such information is required in connection with the extension of loans, advances, guarantees or endorsements, or with foreign exchange operations, and also to banks belonging to the same banking group in connection with the consolidation of group accounts,
 - 2) at the request of:
 - a) persons duly authorised by resolution of the Commission for Banking Supervision, with the scope of information provided being that referred to in para. 3 herein, and bank examiners, with the scope of information provided being that referred to in Art. 139, para. 1, subpara. 2;
 - b) a court or public prosecutor in connection with legal proceedings under way against a natural person in cases involving criminal or fiscal offences, where the said person is an accountholder at the bank;
 - c) a court or public prosecutor in connection with legal proceedings under way in cases involving criminal or fiscal offences committed with respect to the activity of a juridical person or organisation not possessed of personality at law, with the information provided relating to bank accounts and banking operations conducted by the said juridical person or organisation;
 - d) a court in connection with legal proceedings under way in cases involving inheritance or the division of the joint property of husband and wife, and also legal proceedings under way against a natural person in cases involving alimony or pensions related to alimony, where the said person is party to an agreement with the bank;
 - e) the President of the Central Customs Office in connection with:
 - legal proceedings under way against a natural person in cases involving criminal or fiscal offences, where the said person is party to an agreement with the bank,
 - legal proceedings under way in cases involving criminal or fiscal offences committed with respect to the activity of a juridical person or organisation not possessed of personality at law, where such are accountholders at the bank;

- f) the President of the Supreme Chamber of Inspection, with the scope of information provided being that necessary to carry out the inspection procedures specified in the Act on the Supreme Chamber of Inspection of December 23, 1994 (as published and amended in *Dziennik Ustaw* nos. 13/1995, item 59; 64/1996, item 315; 89/1996, item 402; 28/1997, item 153; 79/1997, item 484; 96/1997, item 589; 121/1997, item 770; and 133/1997, item 883);
 - g) the Chairperson of the Securities and Exchange Commission, in performance of his/her supervisory responsibilities pursuant to the Act referred to in Art. 27, para. 1;
 - h) the President of the Bank Guarantee Fund, with the scope of information provided being that specified in the Act referred to in Art. 56, para. 2, subpara. 1;
 - i) the external auditor appointed to audit the bank's accounts by contractual agreement with the bank;
 - j) the Agency for the Supervision of Pension Funds, in performance of its supervisory responsibilities with respect to the operation of banks as depository institutions pursuant to the Act on the Organisation and Operation of Pension Funds of August 28, 1997 (as published in *Dziennik Ustaw* no. 139, item 934).
2. The scope of information provided by banks to tax authorities or fiscal inspection agencies, and the principles applicable to the provision of that information, shall be those laid down in separate legislation.
 3. Banks, governmental agencies and other parties to whom information that is subject to the obligation of banking secrecy has been disclosed shall be bound to utilise such information solely within the limits to which they are authorised under para. 1 above.
 4. Banks may establish an institution for the collection and provision to banks of information on claims on counterparties, and movements and balances on bank accounts, insofar as such information is required in connection with the extension of loans, cash advances, guarantees or endorsements.
 5. Banks shall be liable for any damages resulting from their divulging of information that is subject to the obligation of banking secrecy and from the utilisation of such information for purposes other than those intended.
 6. Banks shall not be liable for any damages resulting from the divulging of information that is subject to the obligation of banking secrecy by the persons and institutions authorised under the present Act to require banks to provide such information.

Article 106

1. Banks shall be required to undertake measures to prevent the use of their activities for

purposes associated with the criminal offence referred to in Art. 299 of the Criminal Code of June 6, 1997 (as published in *Dziennik Ustaw* no. 88/1997, item 553) or for the purpose of concealing criminal activity.

2. In the event of justified grounds arising for suspecting the existence of the circumstances referred to in para. 1 above, the bank shall notify the public prosecutor of this fact.
3. In the event of receipt of notification regarding the use of the bank for the purposes referred to in para. 1, the public prosecutor may:
 - 1) require information on movements and balances on the bank accounts of the customer that is referred to in the notification, this including the requiring of such information under proceedings instituted pursuant to Art.307 of the Code of Criminal Procedure of June 6, 1997 (as published in *Dziennik Ustaw* no. 89/1997, item 555),
 - 2) suspend payment of funds from that customer's bank account for a period no longer than three months.
4. Banks shall be required to maintain a record of cash deposits in excess of a certain amount, and of the particulars of the parties performing such deposits and the parties to whose account the deposits are made.
5. The Commission for Banking Supervision shall specify, by resolution, the procedure to be followed by banks in the cases referred to in Art. 299 of the Act referred to in para. 1 above, and shall stipulate the amount referred to in para. 4 and the procedures for maintaining the records referred to therein.

Article 107

A bank employee who, in violation of their responsibilities, fails to give notification of the circumstances referred to in Art. 106, para. 1, or fails to comply with the procedures specified in Art. 106, para. 4, shall be subject to disciplinary sanction, which shall not absolve the said employee of criminal liability should their actions display the attributes of a criminal offence.

Article 108

The bank shall not be liable for any damages that may arise as a result of the performance in good faith of the responsibilities specified in Art. 106, paras. 1 and 3. In such cases, where the circumstances referred to in Art. 106, para. 1, were not associated with a criminal offence or the concealment of criminal activity, liability for damages arising as a result of the non-performance of banking operations shall be borne by the Treasury.

Article 109

1. Banks may issue general terms and conditions of agreements with customers and other rules in respect of their activities, these specifying:
 - 1) the terms and conditions for opening and maintaining bank accounts,
 - 2) the kinds of loan extended and the terms and conditions of loan agreements and agreements on cash advances,
 - 3) the terms and conditions for the provision of safe deposit facilities,
 - 4) the terms and conditions for the performance of other banking services.
2. The provisions of the general terms and conditions of agreements with customers and other rules referred to in para. 1 above shall be binding on the parties to an agreement, insofar as such parties do not make provision in the agreement for different rights and duties.

Article 110

Banks may charge commission or fees on banking operations they perform, and fees for the performance of other operations, including fees for the preparation, compilation and presentation of information subject to the obligation of banking secrecy for the persons, agencies and institutions authorised to require such information under the present Act, with the exception of those cases where such information is provided at the request of:

- 1) a court or public prosecutor in connection with criminal or fiscal proceedings under way against a natural person, where the said person is party to an agreement with the bank,
- 2) a public prosecutor in cases concerning the use of banking activities for purposes associated with the criminal offence referred to in Art. 299 of the Criminal Code of June 6, 1997 (as published in *Dziennik Ustaw* nos. 88/1997, item 553; and 128/1997, item 840),
- 3) persons duly authorised by resolution of the Commission for Banking Supervision, and bank examiners.

Article 111

Banks shall be required to display at their places of business, in a manner generally accessible to the public, the interest rates applicable to bank accounts, loans and advances, and also fee and commission schedules, terms for the capitalisation of interest, and applicable exchange rates.

Article 112

Matters of dispute arising in relations between the National Bank of Poland and other banks in respect of:

- 1) the reserve requirement,
- 2) interbank settlements,
- 3) trading in securities

- shall be referred to the Commercial Division of Warsaw Voivodship Court.

TITLE 9

THE ASSOCIATION AND AMALGAMATION OF BANKS

Article 113

1. Domestic joint-stock banks may amalgamate to form banking groups.
2. A banking group shall constitute a group of banks organised in such a way that the bank termed the "parent bank" holds an equity interest in another bank or banks, termed "subsidiary banks", conferring the right to over 50% of the total votes exercisable at shareholders' general meetings of each subsidiary bank.
3. A banking group shall be established by contractual agreement, with the duration of such a group being no less than 5 years.
4. A subsidiary bank shall not hold equity in its parent bank.
5. A subsidiary bank which, on the day the banking group is established, possesses shares in its parent bank, shall be required to dispose of such shares within six months of the agreement establishing the banking group being submitted for entry in the commercial register.
6. A subsidiary bank shall not acquire for its own account, nor take an assignment of, shares in its parent bank, with the exception of cases where the acquisition of shares occurs under enforced debt collection procedures in satisfaction of the claims of the subsidiary bank. In such cases, the subsidiary bank shall be required to dispose of the shares in the parent bank within six months of their acquisition.
7. A parent bank shall not be related by capital and management with another domestic bank as the subsidiary thereof.
8. A bank may belong solely to one banking group; this shall not deprive banks belonging to such a group of the right to acquire shares in other banks, including banks within the same group, subject to the provisions of para. 4 above.

Article 114

1. A bank belonging to a banking group shall be liable, on the same terms as an endorser, for the liabilities of the remaining banks of the group, this liability being proportionate to the nominal value of its interest in the equity of those banks at the date when such liability arises.
2. Where the agreement establishing a banking group is terminated or a given bank withdraws from the group, the provisions of para. 1 above shall still apply to liabilities which arose during the bank's membership in the group.
3. As of the day the group accounts are consolidated, a banking group shall be treated as the equivalent of a single bank in calculating the norms and limits laid down in the present Act.
4. The Commission for Banking Supervision shall specify, by resolution, the detailed procedures for calculating the capital of banks belonging to a banking group for the purposes indicated in para. 3 above, and may also specify detailed procedures for calculating the norms referred to in para. 3 as applicable to such groups.
5. The date of consolidation of the group accounts shall be the first day of the month immediately following the month in which the appropriate body of the parent bank approved the first consolidated group accounts.

Article 115

1. Banks belonging to the same banking group shall use names and trademarks which indicate their membership in the said group.
2. Where the persons referred to in Art. 378 of the Commercial Code occupy such posts in two or more banks belonging to the same banking group, this shall not constitute activity in competition with the banks concerned.

Article 116

The liquidity of each bank belonging to a banking group shall be guaranteed by all the remaining banks of the group.

Article 117

1. The conclusion of the agreement referred to in Art. 113, para. 3, may take place following adoption of the relevant resolutions by the shareholders' general meetings of the banks intending to establish the banking group.
2. The agreement concluded by banks on establishment of a banking group should be

drawn up in writing, and should specify, in particular:

- 1) the parent bank and subsidiary banks,
 - 2) the duration of the agreement,
 - 3) the number of shares in the subsidiary banks held by the parent bank, the value of such shares, and the number of votes conferred by them,
 - 4) the number of shares in subsidiary banks held by fellow subsidiaries, the value of such shares, and the number of votes conferred by them,
 - 5) the names and trademarks indicating membership in the group,
 - 6) the principles applicable to the obligation to guarantee the current liquidity of each bank belonging to the group, and the procedure for performance of that obligation,
 - 7) the principles and procedures for agreeing on the financial and operating policies of the group,
 - 8) the terms on which banks may withdraw from the group.
3. The agreement establishing a banking group may provide for the appointment of a supervisory board of the banking group and may define the board's composition, powers and manner of operation.
4. The management board of each bank belonging to the group shall submit to the court of registration the agreement referred to in para. 2 above, and shall notify the court of amendments to that agreement or of its termination.
5. The validity of amendments to the agreement establishing a banking group, or the dissolution thereof, shall be contingent on the adoption of the relevant resolutions by the shareholders' general meetings of the banks belonging to the group.
6. The management board of the parent bank shall give notice of the formation of a banking group in the publications prescribed for such notice and in *Monitor Sądowy i Gospodarczy* [The Court and Commercial Gazette - trans.]. Such notice should detail, in particular:
- 1) the date of conclusion of the agreement establishing a banking group,
 - 2) significant provisions of that agreement,
 - 3) the date the agreement was submitted for entry in the commercial register,
 - 4) the names and registered offices of the banks belonging to the banking group,
 - 5) the number and nominal value of the shares of the parent bank,
 - 6) the number and nominal value of the shares of the subsidiary banks, indicating the number and nominal value of shares taken up by the parent bank and the number of votes held by the parent bank at shareholders' general meetings of

the subsidiary banks.

7. In the event of changes in the composition of the banking group or of its dissolution, the provisions of para. 6 above shall be duly applicable.

Article 118

1. The parent bank shall notify the Commission for Banking Supervision and the Minister of Finance of the formation of a banking group no later than one month prior to the agreement establishing the group taking effect.
2. The parent bank shall append the agreement establishing the banking group to the notification referred to in para. 1 above. The parent bank shall advise the Commission for Banking Supervision and the Minister of Finance of each amendment to the agreement no later than 14 days following the adoption of such an amendment.

Article 119

1. Where the agreement does not provide otherwise, the disposal to parties not belonging to the banking group of a minority holding in a subsidiary bank or of shares in the parent bank of the group shall not result in the expiry of the rights and duties of the banking group, nor of the banks belonging to that group, as stipulated in the agreement establishing the banking group and in the provisions of the present Act.
2. Reducing the equity interest in a subsidiary bank held by other banks belonging to the same banking group shall not be effective in respect of that bank's creditors.
3. A reduction in the number of votes held by a parent bank at a shareholders' general meeting of a subsidiary bank, causing this number to fall below that specified in Art. 113, para.2, shall signify termination of the agreement establishing the banking group, subject to the provisions of Art. 120, para. 1, subpara. 2.

Article 120

1. The agreement establishing a banking group shall be terminated:
 - 1) on expiry of the period for which the agreement was concluded, or
 - 2) following notice of termination of the agreement given by the parent bank,
this being no earlier, however, than specified in Art. 113, para. 3.
2. The termination of the agreement establishing a banking group shall take place on the final day of the financial year, this being no earlier, however, than six months from the date when notice of termination was given.

3. Until the day the agreement establishing a banking group is terminated, the parent bank shall continue to exercise its voting rights at shareholders' general meetings of the subsidiary banks as stipulated in the agreement.

Article 121

1. Banks shall have the right to associate in banking chambers of commerce.
2. Banking chambers of commerce shall be governed by the provisions of the Act on Chambers of Commerce of May 30, 1989 (as published and amended in *Dziennik Ustaw* nos. 35/1989, item 195; 75/1992, item 368; 43/1996, item 189; 121/1997, items 769 and 770 and 139/1997, item 934).

Article 122

1. Bank shall be entitled to affiliate with other banks pursuant to a contractual agreement.
2. In the agreement, the affiliated banks may empower one of the affiliating banks to:
 - 1) represent the common interests of the banks affiliated to it, particularly in relations with the Commission for Banking Supervision,
 - 2) take voluntary deposits from the banks, one purpose being to safeguard their liquidity,
 - 3) draw on refinancing facilities on behalf of the affiliated banks,
 - 4) carry out economic ventures in the common interest of the affiliated banks,
 - 5) take other measures provided for under the present Act or in the agreement.
3. Notification of the formation of an affiliation shall be provided to the Commission for Banking Supervision, as shall the agreement on affiliation.

Article 123

1. The presidents of the management boards of the banks shall constitute a supervisory board of the affiliated banks.
2. The terms of reference and operating procedure of the supervisory board of the affiliated banks shall be specified in the agreement, as shall the procedure for performance of its resolutions.

Article 124

1. Joint-stock banks shall be entitled to merge with each other.
2. The merger of banks referred to in para. 1 above shall be governed by the provisions of the Commercial Code. A bank set up as a result of a merger should fulfil the regulatory requirements for authorisation.
3. The performance of a merger by contributing the assets of one bank to another in exchange for equity shall require the approval of the Commission for Banking Supervision.

Article 125

The provisions of this Title shall not prejudice those of the Act on the Amalgamation and Consolidation of Certain Joint-Stock Banks of June 14, 1996 (as published and amended in *Dziennik Ustaw* nos. 90/1996, item 406; 156/1996, item 775; and 121/1997, item 770).

TITLE 10

BANK CAPITAL AND FINANCES

Article 126

In order to ensure their economic safety, banks shall be required to possess capital commensurate to the scale of the operations they conduct.

Article 127

1. A bank's capital shall comprise:
 - 1) core capital,
 - 2) supplementary capital.
2. A bank's core capital, depending on the legal status of the bank in question, shall comprise: registered equity (state banks - trans.), paid-up and registered share capital (joint-stock banks - trans.) or the members' share fund (cooperative banks - trans.), together with other funds (capital) appropriated from net profit, share premiums and additional contributions to capital by shareholders, and the resource fund created in cooperative banks, with these to be used exclusively to absorb net losses, pursuant to the present Act and the bank's articles of association, and also a general risk fund, held against unidentified risk arising from banking operations.
3. Subject to approval by the Commission for Banking Supervision, a bank's

supplementary capital may comprise, in particular:

- 1) funds accepted by the bank for a period of at least 5 years, which under contractual agreement cannot be withdrawn from the bank earlier, and in the event of the bank's bankruptcy or liquidation shall be subordinated to the claims of all other creditors, with the amount of such funds included in capital being no greater than 50% of core capital and being reduced annually by 20% of the initial value during the final 5 years of the agreement; where such funds are accepted in foreign currency they shall be translated into zloty at the mid-rate published by the National Bank of Poland ruling on the date the agreement is concluded,
 - 2) a revaluation reserve established by value adjustments to fixed assets, performed pursuant to separate regulations.
4. The Commission for Banking Supervision may include in the supplementary capital of cooperative banks a specified portion of cooperative members' additional liability, this being no greater than 50% of the amount referred to in Art. 7, para. 2, of the Act referred to in Art. 20, para. 1.
 5. The Commission for Banking Supervision:
 - 1) may specify, by resolution, other items of bank balance sheets to be included in supplementary capital, and the conditions and procedure for such inclusion,
 - 2) shall specify, by resolution, the procedure and conditions for the inclusion referred to in para. 4 above.
 6. The Commission for Banking Supervision may specify, by resolution, items of bank balance sheets that are to constitute deductions in calculating a bank's capital base.
 7. The endowment capital provided to a branch of a foreign bank in Poland should comply with the requirements set forth in the present Act.
 8. The components of capital referred to in para. 3, subpara. 1, and para. 4 shall together be no greater than 50% of core capital. Supplementary capital shall be no greater than 50% of the bank's capital base.

Article 128

1. Banks shall be required to maintain their capital base at a level that represents no less than 8% of risk-weighted assets and off balance sheet commitments (the minimum risk-based capital ratio).
2. A bank commencing operating activity shall be required to maintain its risk-based capital ratio at no less than 15% for the first 12 months of operations, and at no less than 12% for the following 12 months.
3. The Commission for Banking Supervision shall define, by regulation, the method to be used in calculating a bank's risk-based capital ratio and the percentage risk weights

to be assigned to particular categories of asset and off balance sheet commitment.

Article 129

1. Banks shall conduct their finances independently, on the basis of a financial plan, in a manner which ensures that income earned covers operating expense and other obligations.
2. The appropriation of net profit to particular components of capital, and the purpose thereof, together with the principles to be employed in absorbing losses, shall be specified in the bank's articles of association.

Article 130

1. Banks shall be entitled to expense against income provisions to a general risk reserve, intended to safeguard against the risk associated with banking operations. Banks shall establish and apply this reserve on the basis of an assessment of such risk, taking into consideration in particular the amount of claims and off balance sheet commitments not covered by specific provisions, performed pursuant to separate regulations.
2. The maximum annual provision referred to in para. 1 above shall amount to 1.5% of the average value of outstanding loans and advances at the end of the particular quarters of the financial year concerned, this value being reduced by the amount of loans and advances against which the bank has performed 100% specific provisions pursuant to separate regulations. The annual provision shall not, however, exceed the appropriation to the general risk fund referred to in Art. 127, para. 2, as performed in the given year from previous year's earnings. Provisions shall be performed in the month immediately following each quarter.
3. The bank shall release the general risk reserve where it considers that the circumstances justifying maintenance of the reserve have ceased to apply.

TITLE 11

BANKING SUPERVISION

Article 131

1. The activity of banks, and of branches and representative offices of foreign banks, shall be subject to supervision conducted by the Commission for Banking Supervision, the scope and principles of such supervision being set out in the present Act and the Act on the National Bank of Poland of August 29, 1997, (as published in *Dziennik Ustaw* no. 140, item 938).

2. Pursuant to the provisions of an international agreement, or on a reciprocal basis, supervision of the activity of a branch or representative office of a foreign bank operating in Poland, and of a branch or representative office of a domestic bank operating abroad, may be conducted on terms agreed with a foreign agency of banking supervision.
3. Pursuant to the provisions of an international agreement, or on a reciprocal basis, the Commission for Banking Supervision may provide information concerning a bank to the banking supervision agency of another country, where:
 - 1) this shall not prejudice the economic interests of the state, nor the obligation of banking secrecy,
 - 2) it is ensured that the information so obtained shall be utilised solely for the purposes of banking supervision,
 - 3) there is a guaranteed prohibition on information so obtained being transmitted to parties outside the agency of banking supervision.
4. The Commission for Banking Supervision may provide the Securities and Exchange Commission, the Agency for the Supervision of Pension Funds and the State Agency of Insurance Supervision with such information as is necessary for these agencies to perform their responsibilities in supervising legal compliance and fair trading on the securities market, in the operations of pension funds and on the insurance market. The principles and procedure applicable to providing such information shall be specified in an agreement between the Commission for Banking Supervision and the aforementioned regulatory agencies.

Article 132

The Minister of Finance or Minister of the Treasury may apply to the Commission for Banking Supervision for the institution of the supervisory measures or sanctions referred to in Art. 133 and Art. 138.

Article 133

1. The objective of supervision is to ensure:
 - 1) the safety of funds held on bank accounts,
 - 2) compliance by the banks with the provisions of the present Act, the Act on the National Bank of Poland, their articles of association, and the rulings issued on authorisation to establish those banks.
2. The measures taken in performance of banking supervision shall involve, in particular:
 - 1) reviewing the solvency, liquidity and financial performance of banks,

- 2) reviewing loans, advances, guarantees and endorsements for compliance with the regulations in force in these respects,
 - 3) reviewing the security taken against loans and advances, and timeliness of repayment,
 - 4) reviewing the interest rates applied on the loans, advances and bank accounts referred to in Art. 79, para. 1,
 - 5) assessing the financial situation of banks.
3. On-site examinations shall be carried out by bank examiners on presentation of an authorisation issued by the General Inspector of Banking Supervision and a staff identity card.

Article 134

1. Solely certified auditors fulfilling the qualifications referred to in Art. 20, para. 1, subpara. 2, of the Act on Certified Auditors and Their Self-Regulatory Body of October 13, 1994 (as published and amended in *Dziennik Ustaw* nos. 121/1994, item 592; and 102/1996, item 475) may be appointed to audit the accounts of a bank or a branch of a foreign bank.
2. Banks shall be required to submit to the Commission for Banking Supervision audited accounts, on a consolidated and unconsolidated basis, together with the auditor's opinion and report, within 15 days of the accounts being approved, enclosing a copy of the resolution or decision of the body approving the accounts to the effect that the accounts have been approved.

Article 135

1. Where irregularities are determined in the audit commissioned by a bank, the Commission for Banking Supervision may require the bank to retain certified auditors to ascertain the truth and accuracy of all the accounts prepared by the bank, inspect the books of account, analyse the loan portfolio and carry out other measures specified in Art. 133, para. 2. The cost of such an audit review shall be borne by the bank.
2. The audit review specified in para. 1 above may also be commissioned directly by the Commission for Banking Supervision. In this case, the cost of the audit shall be borne by the National Bank of Poland.
3. The Commission for Banking Supervision shall be empowered to declare reservations concerning the audit review referred to in para. 1 above. Should the audit reveal irregularities, the cost of such an audit shall be borne by the bank.

Article 136

1. The certified auditor performing an audit of a bank's accounts or the audit reviews referred to in Art. 134 and Art. 135 shall be required to notify the Commission for Banking Supervision immediately of any facts disclosed during their reviews which indicate:
 - 1) the commission of a criminal offence,
 - 2) a violation of banking regulations,
 - 3) a violation of sound banking practice or other circumstance endangering the interests of the bank's customers,
 - 4) the possibility that a negative opinion will be expressed on the bank's accounts, or that the expression of an opinion will be disclaimed.
2. In taking the action provided for under Art. 135, para. 2, the auditors shall be governed by the regulations applicable to bank supervisors taking such action.

Article 137

The Commission for Banking Supervision may establish mandatory standards of bank liquidity and other standards regulating the permissible level of banking risk.

Article 138

1. In performance of its supervisory responsibilities, the Commission for Banking Supervision may issue recommendations to banks, these involving, in particular:
 - 1) taking the necessary measures to restore liquidity or to achieve and observe the standards referred to in Art. 137,
 - 2) increasing capital,
 - 3) desisting from particular forms of advertising.
2. The Commission for Banking Supervision may order a bank to cease payouts from net profit or refrain from opening new offices until such time as liquidity is restored or the bank achieves the standards referred to in Art. 137.
3. Where it is determined that a bank is failing to comply with the recommendations provided for under para. 1 above, or that the bank's operations are in violation of legislation or its articles of association, or are endangering the interests of accountholders, the Commission for Banking Supervision may, after first cautioning the bank in writing:

- 1) apply to the appropriate directing body of the bank for the recall of the president, vice president or other member of the management board directly responsible for the irregularities noted,
 - 2) suspend from office the members of the management board referred to in subpara. 1 above pending the adoption of a resolution on the application for their recall at the next meeting of the supervisory board; suspension from office shall involve such persons being excluded from participation in decisions of the bank in respect of its financial rights and obligations,
 - 3) restrict the scope of the bank's activity,
 - 4) revoke the authorisation to establish the bank and order the bank's liquidation; Art. 147 shall be duly applicable in this respect.
4. The Commission for Banking Supervision may also suspend from office a member of the management board where:
- 1) that person has been charged with a criminal or fiscal offence,
 - 2) that person has caused the bank major financial loss.
- The provisions of para. 3, subpara. 2, above shall be duly applicable.
5. The Commission for Banking Supervision shall recall a member of the management board where that person is convicted under a final and conclusive court verdict of a criminal offence against property or documents, or a fiscal offence.
6. A bank's activities may also be restricted or its authorisation revoked where it is determined that the bank no longer satisfies the regulatory requirements for authorisation.
7. The measures instituted in performance of supervisory responsibilities shall not prejudice contractual agreements which the bank has entered into.

Article 139

1. Banks, and branches and representative offices of foreign banks, shall be required to:
 - 1) notify the Commission for Banking Supervision of the commencement and cessation of operations; this shall also apply to the commencement and cessation of operations by a domestic branch of a domestic bank,
 - 2) permit authorised persons to perform the measures provided for under Art. 133, para. 2, in particular making available to them books of account, balance sheets, records, plans, reports and other documents, and allowing them, on receipt of a written request, to make copies of such documents and other information media, and also provide explanatory information as required by such persons,

- 3) advise the Commission for Banking Supervision immediately of the measures that will be taken to remedy any irregularities noted during the performance of supervisory activity, and comply with any rulings issued.
2. The provisions of Art. 138 shall be duly applicable to the performance of supervision with respect to a branch of a foreign bank.

Article 140

A domestic bank that has opened a branch or representative office abroad shall be required to notify the Commission for Banking Supervision of the commencement and cessation of operations by such branch or representative office.

Article 141

1. In the event of a bank failing to comply with recommendations issued in response to its conduct of operations in violation of legislation or its articles of association, or of a refusal to furnish the explanations and information referred to in Art. 139, the Commission for Banking Supervision may impose financial penalties on members of the management board up to the equivalent of three months gross remuneration of the person so penalised, calculated with reference to that person's remuneration in the last three months prior to imposition of the penalty.
2. Such penalties shall not be imposed where over six months have elapsed since banking supervision became aware of the deed described in para. 1 above, or over two years have elapsed since the deed took place.
3. The imposition of a financial penalty shall not impede application of other measures provided for under this Title.
4. The Commission for Banking Supervision shall forward sums received from financial penalties to the Bank Guarantee Fund.
5. The penalties referred to in para. 1 shall be subject to enforced collection pursuant to the procedures envisaged in the regulations on administrative debt collection.

TITLE 12

BANK REHABILITATION PROCEEDINGS, LIQUIDATIONS AND BANKRUPTCIES

A. Rehabilitation proceedings

Article 142

1. In the event of a bank suffering a net loss, being threatened with such a loss or finding itself in danger of insolvency, the management board shall immediately advise the Commission for Banking Supervision to this effect, shall submit a rehabilitation programme, and shall ensure implementation of the said programme.
2. The Commission for Banking Supervision may stipulate a date by which the rehabilitation programme referred to in para. 1 above is to be drawn up, and may require such a programme to be supplemented or revised.
3. Should the bank fail to perform the measures referred to in para. 1, the Commission for Banking Supervision may order the bank to institute rehabilitation proceedings.
4. A bank that has suffered the loss referred to in para. 1 may merge with another bank only when so authorised by the Commission for Banking Supervision.

Article 143

1. Where a rehabilitation programme is inadequate or the implementation thereof is deficient, the Commission for Banking Supervision may:
 - 1) prohibit or restrict payouts from net profit for the previous year, and also order the appropriation to capital of the bank's earnings, in whole or in part,
 - 2) prohibit or restrict the extension of loans and cash advances to the bank's shareholders (members of cooperative banks), members of the management and supervisory boards, and staff,
 - 3) require the bank's management board to call an extraordinary general meeting of shareholders to examine the bank's position, adopt a decision on absorbing any net losses incurred and adopt other resolutions, including ones to increase the bank's capital within a period no longer than six months.
2. The extraordinary general meeting should be convened by the management board within 14 days; should it fail to do so, the meeting may be summoned by the Commission for Banking Supervision. The costs of calling and holding the meeting shall be borne by the bank.
2. The prohibitions and requirement referred to in para. 1 above shall not be subject to appeal.

Article 144

1. Subject to the provisions of Art. 20 of the Act referred to in Art. 56, para. 2, subpara. 1, the Commission for Banking Supervision may order the appointment of a custodian to supervise performance of the rehabilitation programme by the bank.

2. The custodian shall be entitled to participate in meetings of the bank's directing bodies and to obtain all information necessary for the discharging of his/her duties.
3. The custodian shall be entitled to file objections to resolutions and decisions of the management and supervisory boards with the commercial court of appropriate jurisdiction within 14 days of the resolutions or decisions being adopted. Filing such an objection shall stay performance of the said resolutions or decisions.
4. The custodian shall be entitled to petition the courts to set aside a resolution of a shareholders' general meeting or general meeting of a cooperative bank, should this prejudice the interests of the bank. In such cases, the custodian shall enjoy the powers provided for under Art. 414 and Art. 415 of the Commercial Code, and in respect of cooperative banks - Art. 42 of the Cooperatives Act.
5. An order of the Commission for Banking Supervision on appointment of a custodian shall be immediately enforceable and shall not be subject to appeal.
6. The duties of custodian may be performed by a natural person with professional qualifications and experience regarding the organisation and operating principles of banks. The custodian may also be a juridical person.
7. The custodian shall submit quarterly reports on his/her activity to the Commission for Banking Supervision, including in such reports an assessment of the performance of the rehabilitation programme by the bank's management board.
8. The remuneration of the custodian shall be set by the Commission for Banking Supervision, at a level not exceeding the remuneration of the president of the management board of the bank to which the custodian has been appointed. The expense involved in the performance of the duties of custodian shall be charged to the bank's operating expenses.

Article 145

1. Where the bank's management board fails to submit a rehabilitation programme as stipulated in Art. 142, para. 1, or where performance of this programme proves ineffective, the Commission for Banking Supervision may order the bank to be placed under administration for the duration of the rehabilitation programme. The appointment of administrators shall not affect the organisation and operation of the bank as a juridical person, with the exception of those changes provided for under the present Act.
2. The administrators shall assume the power to adopt resolutions and take decisions in all matters reserved for the bank's management and directing bodies under the present Act and the bank's articles of association. The bank's management board shall be dissolved ex lege on the day the administrators are appointed, and proxies and powers of attorney granted prior to that day shall be rescinded. While the administration is in place, the decision-making powers of other directing bodies of the bank shall be suspended.

3. The administrators shall also carry out other responsibilities as specified in the administration order.
4. The bank's supervisory board may petition the Chief Administrative Court to set aside the administration order. Filing such a petition shall not stay performance of the order.
5. The administrators shall draw up a rehabilitation programme and agree the said programme with the Commission for Banking Supervision, shall administer performance of the programme, and shall report to the Commission for Banking Supervision and the bank's supervisory board on the results achieved under the programme at intervals of no less than three months.
6. The appointment of administrators shall be recorded in the commercial register applicable to the given bank.

Article 146

1. Where necessary, the administrators shall be granted unpaid leave of absence from their place of employment for the duration of their duties.
2. The duration of such unpaid leave of absence shall be included in the period of employment and other periods calculated to determine eligibility for employment rights.
3. The remuneration of administrators shall be set by the Commission for Banking Supervision, at a level not exceeding the remuneration of members of the bank's existing management board. The expense of the administration shall be borne by the bank.

B. Bank liquidations and takeovers

Article 147

1. Where, six months following an extraordinary general meeting of shareholders convened in accordance with the procedure specified in Art. 143, para. 1, subpara. 3, the losses incurred by the bank exceed half of its capital, the Commission for Banking Supervision may:
 - 1) order the bank to be taken over by another bank, with the agreement of the acquiring bank,
 - 2) order the bank to be put into liquidation,
 - 3) in the case of a state bank - apply to the Council of Ministers for the bank to be put into liquidation.

2. The Commission for Banking Supervision may also issue an order for a bank to be taken over by another bank or liquidated within a period of time other than that specified in para. 1 above where circumstances indicate that the bank is threatened with insolvency or that its capital base may decrease to such an extent that it would no longer meet the regulatory requirements for authorisation.
3. Within seven days from delivery of the order referred to in paras. 1 and 2, the bank's supervisory board may petition the Chief Administrative Court to set aside the order. Filing such a petition shall not stay performance of the order, although disposal of the assets of a bank put into liquidation shall not be commenced prior to the court hearing the petition, nor shall the acquiring bank in a takeover commence taking possession of the said assets.

Article 148

1. On issue of an order by the Commission for Banking Supervision for a bank to be taken over by another bank:
 - 1) the management board, administration and supervisory board of the bank being acquired shall be dissolved, and the decision-making powers of the shareholders' general meeting shall be suspended,
 - 2) the acquiring bank shall assume administration of the assets of the bank being acquired,
 - 3) proxies and powers of attorney issued by the bank being acquired shall be rescinded.
2. The acquiring bank shall twice give notice of the takeover order in the national press and in *Monitor Sądowy i Gospodarczy*, and shall call on the bank's creditors to come forward and submit their claims within one month of publication of the last notice. The latter requirement shall not apply to creditors with claims in respect of bank accounts. In the case of cooperative banks, it shall suffice to give notice in the local press and in *Monitor Spółdzielczy* (the Cooperative Gazette - trans.).
3. The acquiring bank shall submit information on the takeover for entry in the commercial register applicable to the bank being acquired, filing for the latter to be deleted from the register.

Article 149

1. The takeover of the bank shall be effected on the basis of a balance sheet drawn up as of the day of the takeover. As of that day, the acquiring bank shall assume the claims and obligations of the bank being acquired, together with all other assets and liabilities.
2. The balance sheet referred to in para. 1 above should be audited by a certified auditor

authorised to audit the accounts of banks.

Article 150

The capital of the bank being acquired shall be assigned to cover the net losses incurred by that bank.

Article 151

The acquiring bank shall perform payments to the shareholders or cooperative members of the bank being acquired from the proceeds of realising such of the bank's assets as remain after the claims of creditors have been satisfied or secured, such payments being proportional to the interest held in that bank's equity, or shall issue to those shareholders its own shares, or in the case of a cooperative bank shall grant members of the bank being acquired the right to a corresponding share in its members' share fund. Distribution of the bank's own shares shall be performed by reference to an established issue price, this being no greater than the book value of the shares, while the right to a share in the members' share fund of a cooperative bank shall be valued by reference to the most recent approved balance sheet of the acquiring bank.

Article 152

The acquiring bank may demand an alteration to the substance of an obligation entered into at law by the bank being acquired in the year preceding the takeover, where the legal instrument involved grants the bank's counterparty a claim on more favourable terms than those generally applied during that period by the bank being acquired. The petition filed in this matter by the acquiring bank shall be heard by the commercial division of the voivodship court of appropriate geographical jurisdiction.

Article 153

1. Administration of the assets of a bank under liquidation shall be assumed by a liquidator appointed by the Commission for Banking Supervision, who shall assume the powers reserved for the bank's directing bodies under the present Act and the bank's articles of association. The liquidator shall represent the bank under liquidation both in and out of court.
2. On the day administration of the assets of the bank under liquidation is assumed by the liquidator:
 - 1) the management board, supervisory board and other directing bodies of the bank shall be dissolved,

- 2) the members of the bank's supervisory and management boards shall be recalled ex lege.

Article 154

The liquidation shall be carried out according to the principles applicable to the liquidation of registered companies or cooperatives, or pursuant to the regulations referred to in Art. 14, subject to the following:

- 1) no dividend payment nor cooperative interest payment shall be performed during the liquidation proceedings,
- 2) the opening balance sheet at the commencement of liquidation proceedings, programme of liquidation and financial statement of the liquidation performed shall require the approval of the Commission for Banking Supervision,
- 3) the liquidator shall report to the Commission for Banking Supervision on the course of liquidation proceedings at intervals of no less than one month,
- 4) the distribution to shareholders (cooperative members) of the assets remaining after the claims of creditors have been satisfied or secured shall be performed no earlier than one year after final notice is given of commencement of the liquidation.

Article 155

1. The liquidator shall be entitled to demand an alteration to the substance of the obligations referred to in Art. 152. The liquidator may deduct liabilities in respect of bank accounts, albeit not yet outstanding, from the claims held by the bank under liquidation.
2. On completion of liquidation proceedings, the liquidator shall draw up a report of liquidation and submit this to the Commission for Banking Supervision and to the court of registration, filing for the bank to be deleted from the commercial register.

Article 156

The detailed conditions and procedure for the takeover or liquidation and the appointment of the liquidator shall be stipulated in the order referred to in Art. 147, para. 1.

Article 157

The Commission for Banking Supervision may dismiss a liquidator retained by the bank, should that liquidator be performing the liquidation in a manner that jeopardises the safety of

the funds held at the bank. In such circumstances, the Commission for Banking Supervision shall appoint a new liquidator.

C. Bank bankruptcies

Article 158

1. Where a bank's balance sheet indicates that its assets are not sufficient to cover its liabilities, the bank's management board, administrators or liquidator shall immediately notify the Commission for Banking Supervision, which shall order the suspension of the bank's operations and thereupon order its takeover by another bank, with the agreement of the acquiring bank, or petition the voivodship court of appropriate jurisdiction for a declaration of bankruptcy, advising the Bank Guarantee Fund of this fact. The Commission for Banking Supervision shall be the sole party empowered to file such a petition for bankruptcy.
2. In the case of cooperative banks, the notification referred to in para. 1 above may also be given by the management board of the regional bank in which the cooperative bank concerned is a shareholder.
3. In the absence of the notification referred to in para. 1, the Commission for Banking Supervision may also act on its own initiative in ordering the suspension of operations or takeover of the bank, or petitioning for a declaration of bankruptcy.
4. Public notice of the order on suspension of operations shall be given in a national daily newspaper and in *Monitor Sądowy i Gospodarczy*.
5. An order on suspension of operations shall not be subject to appeal.
6. In issuing the order referred to in para. 1 above, the Commission for Banking Supervision may suspend the operations of the bank's management board and other directing bodies, and at the same time place the bank under administration.

Article 159

1. While its operations are suspended, a bank shall not:
 - 1) settle liabilities, with the exception of justified expense incurred in its ongoing activity, or conduct banking operations, excepting the pursuit of debt recovery in relation to claims under loans or cash advances previously extended, or letters of credit previously issued,
 - 2) make payments from net profit or pay out interest on deposits.
2. Enforced collection proceedings shall not be instituted against a bank whose operations have been suspended, and such proceedings instituted previously shall be suspended. Enforced collections on accounts held at the bank shall also be suspended.

3. The conditions applicable to the bank's activity while its operations are suspended, and the scope of such activity, shall be specified in the order referred to in Art. 158, para. 1.

Article 160

1. The commercial division of the voivodship court of appropriate geographical jurisdiction, sitting in the presence of three professional judges, shall rule on a petition for a declaration of bankruptcy no later than within one month of receiving the said petition.
2. Prior to ruling on a petition for a declaration of bankruptcy, the court shall take testimony from a representative of the Commission for Banking Supervision, and also from the president and, where appropriate, other members of the last management board of the bank concerned, and in the case of a state bank or a joint-stock bank wholly owned by the Treasury, the court shall also hear testimony from a representative of the Minister of the Treasury, and from a representative of the Bank Guarantee Fund, where the bank has received assistance from that Fund.
3. The court shall appoint a trustee in bankruptcy, this person being familiar with the organisation and operating principles of banks. The trustee in bankruptcy may also be another bank.
4. In declaring bankruptcy, the court shall appoint a custodian to represent the bankrupt bank in bankruptcy proceedings.
5. The Commission for Banking Supervision and the bank concerned shall both be entitled to appeal against a court ruling on a petition for a declaration of bankruptcy.

Article 161

As of the day bankruptcy is declared:

- 1) all liabilities of the bankrupt bank which have yet to mature shall become due for repayment,
- 2) the following shall be terminated:
 - a) deposit agreements; interest on deposit accounts shall be accrued up to the day bankruptcy is declared,
 - b) loan agreements and agreements on advances, where funds have not been disbursed to the borrower prior to the declaration of bankruptcy,
 - c) agreements on endorsements, guarantees and letters of credit, where the bank has not received fees for the provision of such facilities prior to the declaration of bankruptcy,

- d) agreements on safe deposit facilities and the safekeeping of valuables, with the articles or securities concerned being released on a date agreed with the party who deposited them at the bank.
- 3) the Bank Guarantee Fund shall become a participant in the bankruptcy proceedings.

Article 162

As of the day administration of the bankrupt bank is assumed by the trustee in bankruptcy, the directing bodies of the bank shall be dissolved ex lege and the administrators and custodian referred to in Art. 144, para. 1, shall be dismissed.

Article 163

1. Immediately on his/her appointment, the trustee in bankruptcy shall submit notice of the bank's bankruptcy for entry in the commercial register applicable to the given bank, and shall twice place a notice in a national daily newspaper and in *Monitor Sądowy i Gospodarczy* calling on the bank's creditors to come forward and submit their claims within three months of the last notice appearing, unless the court sets an earlier date for them to do so.
2. The requirement for creditors to come forward shall not apply to those with claims in respect of bank accounts.
3. The trustee in bankruptcy shall report on his/her activity to the Commission for Banking Supervision every three months.

Article 164

1. Bank shareholders (cooperative members) representing two thirds of the capital of the bankrupt bank may file a petition for the conclusion of a settlement between the bankrupt bank and its creditors; in the case of cooperative banks, such a petition may also be filed by the regional bank in which the cooperative bank is a shareholder.
2. Prior to ruling on the permissibility of a settlement, the receiving magistrate shall take testimony from the trustee in bankruptcy and a representative of the Commission for Banking Supervision; in the case of a bank where liability for savings deposits is borne by the Treasury, the receiving magistrate shall also hear testimony from a representative of the Minister of Finance.

Article 165

1. Should a settlement not be reached, the receiving magistrate, having sought the opinion of the Commission for Banking Supervision, shall determine the conditions under which the bank may be acquired by other banks and shall set a closing date for the submission of the relevant bids.
2. The right to acquire the bank shall be granted by the receiving magistrate on the basis of an evaluation of the written bids received, having first sought the opinion of the Commission for Banking Supervision.
3. The bank shall be acquired free of all encumbrance save liabilities in respect of bank accounts, and also land easements.
4. The trustee in bankruptcy shall submit notice of the acquisition of the bank for entry in the commercial register applicable to the given bank.

Article 166

1. Should the bank not be disposed of in whole, the trustee in bankruptcy, with the consent of the receiving magistrate, shall proceed to dispose of the component parts of the bank's assets. Disposal of real property held by the bank shall be performed in accordance with the provisions of the Code of Civil Procedure concerning auctions.
2. The component parts of the bank's assets shall be acquired free of all encumbrance save land easements.

Article 167

Art. 204 of the Bankruptcy Act shall be duly applicable to the settlement of claims on the bankrupt bank which are not covered under Art. 165, para. 3, subject to the following:

- 1) claims of the Bank Guarantee Fund referred to in Art. 30 of the Act referred to in Art. 56, para. 2, subpara. 1, and claims of the Treasury arising from the satisfaction of its liabilities with respect to savings deposits, shall be settled following settlement of claims pursuant to Art. 204, § 1, subparas. 1 and 2, of the Bankruptcy Act,
- 2) claims with respect to bank accounts shall be settled following settlement of the claims referred to in subpara. 1 above,
- 3) claims of the Treasury and the National Bank of Poland arising from guarantees extended by them to repay a portion of the funds held on savings accounts shall be settled following settlement of the claims referred to in subpara. 2 and prior to settlement of the bank's tax liabilities.

Article 168

Matters relating to bank bankruptcies which are not regulated under the present Act shall be governed by the provisions of the Bankruptcy Act, with the proviso that Art. 13 and Art. 218, § 1, subpara. 1, thereof shall not be applicable.

Article 169

The liquidation or bankruptcy of a bank, or the appointment of administrators, shall make void any rights held by members of the bank's management or directing bodies concerning severance pay and remuneration for the period following termination of their contract of employment.

TITLE 13

CIVIL AND CRIMINAL LIABILITY

Article 170

1. The unauthorised performance of banking operations shall not constitute grounds for charging interest, fees or commission, or obtaining other consideration.
2. Whosoever accepts interest, fees, commission or other consideration for the operations referred to in para. 1 above shall be obliged to return them.

Article 171

1. Whosoever, lacking proper authorisation, carries on the business of accepting funds from other natural or juridical persons or organisations not possessed of personality at law in order to extend loans or advances or expose such funds to risk in another way shall be liable to a fine of up to 5,000,000 zloty and to imprisonment for a term of up to three years.
2. The same liability shall apply to anyone who, in conducting gainful activity in violation of the provisions of the present Act, employs the terms "*bank*" or "*kasa*" in the name of an organisation which is not a bank, or to describe or advertise the activities thereof.
3. The same liability shall also apply to anyone performing the activity specified in paras. 1 and 2 above where they are acting on behalf of, or in the interests of, a juridical person or organisation not possessed of personality at law.
4. Whosoever, being required to furnish authorised agencies with information concerning a bank and its customers, to the extent specified in the present Act,

communicates false information or conceals true information, shall be liable to a fine and to imprisonment for a term of up to three years.

5. Whosoever, being bound by the obligation of banking secrecy, divulges or makes use of information constituting a banking secret in breach of the authorisation provided in the present Act, shall be liable to a fine of up to 1,000,000 zloty and to imprisonment for a term of up to three years.

TITLE 14

INTERIM PROVISIONS, AMENDMENTS TO EXISTING PROVISIONS AND FINAL PROVISIONS

Article 172

1. Banks which, on the day the present Act takes effect, do not fulfil the capital requirements provided for herein shall be required:
 - 1) by December 31, 1998 - to achieve the risk-based capital ratio specified in Art. 128 and increase their capital to the level required for authorisation,
 - 2) within three months of the present Act taking effect - to draw up a programme for achieving the risk-based capital ratio referred to in subpara. 1 above and submit the said programme to the Commission for Banking Supervision.
2. In justified cases, the Commission for Banking Supervision shall extend the date specified in para. 1, subpara. 1, with this being extended no further, however, than to December 31, 1999.

Article 173

1. Banks which, on the day the present Act takes effect, do not fulfil the requirements concerning initial capital provided for herein shall be required to increase this capital to the level specified in Art. 32, para. 1, by December 31, 1999.
2. The provisions of para. 1 above shall not apply to cooperative banks.

Article 174

1. The risk fund referred to in Art. 96 of the Act referred to in Art. 193 shall be wound up as of the first day of the financial (fiscal) year beginning on or after January 1, 1998, with the equivalent of the provisions and appropriations held in this fund, less

corporate income tax calculated pursuant to para. 3 herein, being transferred to the bank's reserve capital, and the tax due becoming a liability of the bank to central government.

2. With respect to the provisions and appropriations held in the risk fund referred to in para. 1 above:
 - 1) where these represent appropriations from the bank's profit, they shall not be liable to corporate income tax,
 - 2) where these represent provisions expensed against earnings:
 - a) 50% of the amount concerned shall not be liable to tax, and
 - b) 50% of the amount concerned shall be liable to tax, with the tax due being paid in equal monthly instalments over a period of three fiscal years beginning with the fiscal year commencing in 1998.
3. The amount referred to in para. 2, subpara. 2b), shall not be combined with income from other sources, and the tax due shall be calculated by applying to that amount a rate of taxation of 40%.
4. Payment of the corporate income tax referred to in para. 2 shall be made on the dates for advance tax payments laid down in separate regulations.

Article 175

The provisions of Title 2 shall also be applicable to proceedings which, prior to the present Act taking effect, have not been concluded by the grant of authorisation by the President of the National Bank of Poland for the establishment of a bank, or opening of a branch of a foreign bank or of a branch of a domestic bank abroad, or opening of a representative office of a foreign bank.

Article 176

Rehabilitation, liquidation and bankruptcy proceedings instituted prior to the day the present Act takes effect shall as of that day be continued pursuant to the provisions of the present Act.

Article 177

1. Banks in operation on the day the present Act takes effect shall be deemed banks for the purpose of the Act and shall retain their powers and obligations insofar as these are not contrary to the Act.
2. Banks considered "banks with a foreign equity involvement" in operation on the day the present Act takes effect shall henceforth be deemed "banks involving foreign shareholders".

3. Equity capital contributed in foreign currencies to banks established by foreign parties or involving foreign shareholders shall be translated into zloty at the mid-rate published by the National Bank of Poland ruling on the date the present Act takes effect.

Article 178

1. A bank which commenced operations prior to the taking effect of the Act referred to in Art. 190 and does not possess authorisation from the President of the National Bank of Poland for the establishment of a bank shall be authorised to conduct the banking operations provided for in its articles of association insofar as these are not contrary to the provisions of the present Act.
2. With respect to the banks referred to in para. 1 above, the revocation of authorisation provided for under Art. 138, para. 3, subpara. 4, and para. 6, shall be replaced by an order prohibiting the conduct of certain banking operations, or of all such operations.

Article 179

The restrictions provided for under the present Act on the acquisition and taking up of equity in other juridical persons, including the acquisition by banks of shares in joint-stock companies and the exchange of debt for assets belonging to the debtor, shall not apply in the course of the proceedings specified in the Act on the Financial Restructuring of Enterprises and Banks and on Amendments to Certain Legislation of February 3, 1993 (as published and amended in *Dziennik Ustaw* nos. 18/1993, item 82; 52/1996, item 235; 106/1996, item 496; 118/1996, item 561; and 98/1997, item 603).

Article 180

Banks which, on the day the present Act takes effect, exceed the limits specified in Art. 6, para. 1, subpara. 1, and para. 3, and in Art. 71 shall be required to comply with those limits by December 31, 1999.

Article 181

Agreements concluded by a bank prior to the day the present Act takes effect, including guarantees and endorsements extended by it prior to that date, shall be governed by the regulations previously in force, subject to the provisions of Art. 152.

Article 182

1. Previous implementing regulations, insofar as these are not contrary to the provisions of the present Act, shall remain in force until the issue of the implementing regulations provided for in the present Act, this being no longer, however, than six

months.

2. Within six months of the present Act having taken effect, the President of the National Bank of Poland shall publish in *Dziennik Urzędowy Narodowego Banku Polskiego* (the Official Gazette of the National Bank of Poland - trans.) a list of the implementing regulations issued and in force.

Article 183

Documentary title to savings deposits made out to bearer and issued under deposit agreements concluded prior to the present Act taking effect shall remain valid until such agreements expire, unless the parties to the agreement previously resolve to convert these into the savings deposit agreements referred to in Art. 50, para. 2.

Article 184

The provisions of Art. 49 of the Act referred to in Art. 27, para. 1, shall not be applicable to banks.

Article 185

Bank Gospodarstwa Krajowego shall constitute a state bank and shall operate pursuant to the provisions of the Banking Act, with the proviso that its scope of activity shall also include performance of operations:

- 1) relating to credit institutions liquidated or deemed to have been liquidated under the following decrees issued on October 25, 1948:
 - a) the Decree on the Principles and Procedure for the Liquidation of Certain Banking Institutions (as published and amended in *Dziennik Ustaw* nos. 52/1948, item 410; 35/1949, item 256; and 31/1951, item 240),
 - b) the Decree on the Principles and Procedure for the Liquidation of Certain Institutions Providing Long-Term Credit (as published and amended in *Dziennik Ustaw* nos. 52/1948, item 411; and 31/1951, item 241),
 - c) the Decree on Banking Reform (as published and amended in *Dziennik Ustaw* nos. 36/1951, item 279; and 31/1957, item 136).
- 2) commissioned by the Minister of Finance, with the terms for the performance of such operations being agreed with the commissioning party.

Article 186

The following amendments are hereby enacted to the Act on the Acquisition of Real Property by Foreign Nationals of March 24, 1920 (as published in *Dziennik Ustaw* no. 54/1996, item 245):

- 1) Art. 3e, para. 2 - following the words "cases where" insert the words "the company's shares have been admitted for public trading or",
- 2) Art. 8, para. 1 - insert new subparas. 6 and 7, to read:
 - "6) the acquisition of real property by a foreign party that is a bank and also a mortgage through acquisition of title to the said property as a result of an unsuccessful auction under enforced collection procedures,
 - 7) the acquisition or taking up by a bank that is a juridical person referred to in Art. 1, para. 2, subpara. 3, of shares in a company referred to in Art. 3e as a result of the pursuit by the bank of claims arising from banking operations."

Article 187

The following amendments are hereby enacted to the Act on Corporate Income Tax of February 15, 1992 (as published and amended in *Dziennik Ustaw* nos. 106/1993, item 482; 134/1993, item 646; 1/1994, item 2; 43/1994, item 163; 80/1994, item 368; 87/1994, item 406; 90/1994, item 419; 113/1994, item 547; 123/1994, item 602; 127/1994, item 627; 5/1995, item 25; 86/1995, item 433; 96/1995, item 478; 133/1995, item 654; 142/1995, item 704; 25/1996, item 113; 34/1996, item 146; 90/1996, item 405; 137/1996, item 639; 147/1996, item 686; 9/1997, item 44; 28/1997, item 153; 79/1997, item 484; 96/1997, item 592; and 107/1997, item 685; 118/1997, item 754; 121/1997, item 770; 123/1997, items 776 and 777; 137/1997, item 926; and 139/1997, items 932-934):

- 1) Art. 12, para. 1, subpara. 5 - replace the full stop with a comma and insert a new subpara. 6, to read:
 - "6) in banks - an amount equivalent to the general risk reserve, established pursuant to the Banking Act of August 29, 1997 (as published in *Dziennik Ustaw* no. 140, item 937), released or otherwise applied.",
- 2) Art. 15 - following para. 1g, insert a new para. 1h, to read:
 - "1h. In banks, tax-deductible expense shall also include the general risk reserve, as established during the fiscal year pursuant to Art. 130 of the Act referred to in Art. 12, para. 1, subpara. 6.",
- 3) Art. 16, para. 1, subpara. 25b - delete the words "while in banks this shall also be reduced by half of that part of the risk fund applied to repaid loans (advances)".

Article 188

The following amendments are hereby enacted to the Act on the Restructuring of Cooperative Banks and Bank Gospodarki Żywnościowej and on Amendments to Certain Legislation of June 24, 1994 (as published and amended in *Dziennik Ustaw* nos. 80/1994, item 369; 142/1995, item 704; 106/1996, item 496; and 121/1997, item 770):

- 1) Art. 3 - delete the words "with the approval of the President of the National Bank of Poland acting in agreement with the Minister of Finance, following an application from the founders",
- 2) Art. 5, para. 1, subpara. 1 - insert the words "in accordance with the principles and procedure specified under Title 3 of the Banking Act",
- 3) Art. 5, para. 1 - delete subpara. 2,
- 4) Art. 6 - replace "Art. 8" with "Art. 6. para. 1, subpara. 1",
- 5) Art. 18, para. 3 - reword to read as follows:
 - "3. Shareholders of the national affiliating bank shall be entitled to one vote at the shareholders' general meeting for every share held. The shareholders referred to in para. 2 shall together not take up more than 24% of shares conferring voting rights at a shareholders' general meeting."
- 6) Art. 23:
 - a) in para. 2, replace the words "President of the National Bank of Poland" with the words "the Commission for Banking Supervision",
 - b) in para. 6, replace the words "President of the National Bank of Poland" with the words "the Commission for Banking Supervision",
- 7) following Art. 31 - insert a new Art. 31a, to read:
 - "Art. 31a. 1. Regardless of the powers specified in the agreement on affiliation concluded pursuant to the provisions of the Banking Act, Bank Unii Gospodarczej SA, Warsaw, and Gospodarczy Bank Południowo-Zachodni SA, Wrocław, shall in respect of the cooperative banks which they affiliate be vested with the rights and duties provided for under Art. 4, Art. 5, para. 2, Art. 6, Art. 8, para. 1, and Art. 15, para. 4.
 2. The banks referred to in para. 1 above may consent to the trading area of an affiliated cooperative bank being expanded to cover the boundaries of the region defined under the procedure specified in Art. 30, paras. 2 and 3."

Article 189

The following amendments are hereby enacted to the Act on Tax Liability of December 19, 1980 (as published and amended in *Dziennik Ustaw* nos. 108/1993, item 486; 134/1993, item 646; 5/1995, item 25; 85/1995, item 462; 75/1996, item 357; and 121/1997, item 770):

- 1) Art. 34b - following para. 7, insert new paras. 8-12, to read:
 - "8. A taxpayer that is a natural person not engaged in business activity and has neither expressed consent to a tax office being provided with the information referred to in Art. 34a, paras. 1-3, nor authorised the bank to provide such information to a tax office, may file an objection within three days of being notified by a tax office that it has demanded of a financial institution that it compile and forward such information, where this has been done in violation of the provisions of the present Act, or it is determined that an error has been made in identifying the taxpayer.
 9. The objection, with a substantiation enclosed, shall be filed in writing, via the tax office, with the regional court of appropriate jurisdiction over the debtor's place of residence or registered office.
 10. The party filing the objection shall pay a set fee.
 11. The court shall set aside the demand of the tax office where this is in violation of the provisions of the present Act, failing which it shall dismiss the objection. The court shall be required to substantiate its ruling. The court's ruling shall be subject to appeal.
 12. The Minister of Justice shall specify, by ordinance, the fee payable in filing an objection."
- 2) following Art. 49i - insert a new Art. 49j, to read:

"Art. 49j. 1. During the period prior to December 31, 1999, the financial institutions indicated in Art. 34a, paras 1-3, may submit an application to the tax office which demanded they submit information, requesting that the scope of such information be restricted.

 2. The application referred to in para. 1 above shall be filed within 14 days of receipt of the demand for information and shall require substantiation.
 3. The tax office shall finally determine the scope of information to be submitted within 30 days of receiving the application."

Article 190

The following amendments are hereby enacted to Art. 81 of the Accounting Act of September

29, 1994 (as published and amended in *Dziennik Ustaw* nos. 121/1994, item 591; 32/1997, item 183; 43/1997, item 272; 88/1997, item 554; 118/1997, item 754; and 139/1997, items 933 and 934):

- a) para. 1 - replace the words "President of the National Bank of Poland" with the words "the Commission for Banking Supervision",
- b) para. 2, subpara. 2 - replace the words "President of the National Bank of Poland" with the words "the Commission for Banking Supervision".

Article 191

The following amendments are hereby enacted to the Act on Certain Forms of Support to Residential Construction and on Amendments to Certain Legislation of October 26, 1995 (as published and amended in *Dziennik Ustaw* nos. 133/1995, item 654; 106/1996, item 496; 156/1996, item 775; 80/1997, item 507; 103/1997, item 651 and 115/1997, item 741):

- 1) Art. 3:
 - a) in para. 2, replace the words "President of the National Bank of Poland" with the words "the Commission for Banking Supervision",
 - b) in para. 4, replace the words "President of the National Bank of Poland" with the words "the Commission for Banking Supervision",
- 2) Art. 7 - replace the words "President of the National Bank of Poland" with the words "the Commission for Banking Supervision".

Article 192

In Art. 10, para. 4, of the Act on the Amalgamation and Consolidation of Certain Joint-Stock Banks of June 14, 1996 (as published and amended in *Dziennik Ustaw* nos. 90/1996, item 406; 156/1996, item 775; and 121/1997, item 770), the words "President of the National Bank of Poland" shall be replaced with the words "the Commission for Banking Supervision".

Article 193

The Banking Act of January 31, 1989 (as published and amended in *Dziennik Ustaw* nos. 72/1992, item 359; 6/1993, item 29; 28/1993, item 127; 134/1993, item 646; 80/1994, item 369; 121/1994, item 591; 4/1995, item 18; 133/1995, item 654; 10/1996, item 61; 75/1996, item 357; 90/1996, item 406; 106/1996, item 496; 149/1996, item 703; 23/1997, item 117; 24/1997, item 119; 71/1997, item 449; 88/1997, item 554, 121/1997, items 769 and 770; and 137/1997, item 926), is hereby declared null and void, with the exception of the provisions of Art. 121, paras 2 and 3.

Article 194.

The present Act shall take effect as of January 1, 1998.

President of the Polish Republic:

A.Kwaśniewski