

# **Law**

## **on Mortgage-backed Bonds**

(Issued by the 38th National Assembly on 27 September 2000; published in the *Darjaven Vestnik*, issue 83 of 10 October 2000; amended; issue 59 of 2006; in force on the date of entry into force of the Treaty of Accession of the Republic of Bulgaria to the European Union; amended; issues 52 and 59 of 2007; amended; issue 24 of 2009; effective as of 31 March 2009)

### *Chapter One*

#### **General Provisions**

**Article 1.** This Law shall regulate the terms and procedure for the issuance and redemption of mortgage-backed bonds.

**Article 2.** (1) Mortgage-backed bonds shall be securities issued by banks on the basis of their loan portfolio and secured by one or more first mortgages on real estate in favor of banks (mortgage loans).

(2) The real estate under para. 1 shall be insured against destruction and may be of the following types:

1. housing units, including leased out;
2. villas, seasonal and holiday housing;
3. commercial and administrative office space, hotels, restaurants and other similar real estate;
4. industrial and warehousing premises.

**Article 3.** Securities issued under procedures other than the one laid down by this Law may not be referred to with, or include in their appellation, the expression ‘mortgage-backed bond’, or any other combination of these words.

**Article 4.** Officials who have violated this Law shall be held liable jointly and severally with the issuing bank for any damages ensuing from such violation.

### *Chapter Two*

#### **Mortgage-backed Bonds Cover**

**Article 5.** (1) Outstanding mortgage-backed bonds shall be covered by mortgage loans of the issuing bank (principal cover).

(2) To substitute loans from the principal cover that have been repaid in full or in part, the issuing bank may include the following of its assets in the cover of mortgage-

backed bonds (substitution cover):

1. cash or funds on account with the Bulgarian National Bank and/or commercial banks;
2. claims on the Government of the Republic of Bulgaria or the Bulgarian National Bank, and claims fully secured by them;
3. claims on governments or central banks of states as determined by the Bulgarian National Bank;
4. claims on international institutions as determined by the Bulgarian National Bank;
5. claims fully backed by government securities issued by the Government of the Republic of Bulgaria, the Bulgarian National Bank, the governments, central banks or international institutions listed in items 3 and 4;
6. claims secured by gold;
7. claims fully backed by bank deposits denominated in Bulgarian leva or in a foreign currency for which the Bulgarian National Bank quotes daily a central exchange rate.

**Article 6.** (1) Mortgage loans shall be included into the calculation of the principal cover at the value of their outstanding principal but at no more than 80% of the mortgage appraisal value of the real estate under Article 2, para. 2, item 1, and at no more than 60% of the mortgage appraisal value of the real estate under Article 2, para. 2, items 2, 3 and 4 used as their collateral.

(2) Substitution cover of mortgage-backed bonds from any issue may not exceed 30% of the total amount of liabilities of the issuing bank under that issue.

(3) Mortgage-backed bonds cover from any issue (the sum total of the principal cover and the substitution cover) may not be less than the total amount of liabilities towards the principals of mortgage-backed bonds from that issue which are outstanding and in circulation outside the issuing bank.

(4) In making the calculations under the previous paragraphs for mortgage-backed bonds and assets constituting their cover denominated in different currencies, the official foreign exchange rate for the Bulgarian lev to the respective currency quoted by the Bulgarian National Bank on the day of the calculation shall apply.

**Article 7.** (1) The issuing bank shall keep a public register of the cover of mortgage-backed bonds issued by it.

(2) The register shall be kept separately by mortgage-backed bonds issue.

(3) The issuing bank shall adopt internal rules on the contents, the entry and deletion procedures and the keeping of the register.

(4) The issuing bank shall adopt internal rules on the terms and procedure authorizing access to the register.

**Article 8.** (1) Bondholder claims under mortgage-backed bonds from each issue shall be secured by a first pledge on the assets of the issuing bank included in the cover of that issue.

(2) The pledge shall be subject to entry in the Central Register of Special Pledges, with the respective issue of mortgage-backed bonds being indicated as a pledge creditor.

(3) The issuing bank shall request an entry and submit to the Central Register of Special Pledges all data required for the entry of the pledge within one month after executing a mortgage-backed bonds issue, and shall update that data at least once every six months thereafter.

(4) The pledge shall remain in force until the full redemption of the liabilities of the issuing bank under the respective issue of mortgage-backed bonds without the need for any renewal.

(5) Deletion of the pledge entry shall be made upon the full redemption of the issuing bank's liabilities under the respective issue of mortgage-backed bonds, on the basis of a document issued by the bank's auditors.

**Article 9.** (1) Assets recorded in the register as a cover of mortgage-backed bonds of a particular issue may be used as collateral solely for the liabilities of the issuing bank under that issue.

(2) The issuing bank may not allow any encumbrances on its assets constituting the cover of outstanding mortgage-backed bonds with the exception of the procedure set under Article 8.

**Article 10.** The issuing bank shall account assets recorded in the register of mortgage-backed bonds cover separately from the rest of its assets.

### *Chapter Three*

## **Issuance and Redemption of Mortgage-backed Bonds**

**Article 11.** (1) In public offerings of mortgage-backed bonds, the provisions of the Law on Public Offering of Securities and the ordinances on its enactment shall apply.

(2) In offering mortgage-backed bonds in cases other than the case set out under para. 1, the provisions of the Law on Commerce shall apply.

**Article 12.** The offering or the draft prospectus for an issue of mortgage-backed bonds shall contain additional data valid at the time of their preparation, as follows:

1. the Rules of the issuing bank under Article 7, paras. 3 and 4, and its internal rules on conducting and documenting mortgage appraisals;

2. data on the mortgage loans held in the issuing bank's portfolio on the basis of which an issue is being made, including for each loan:

a) the size of the outstanding principal at the time of extending the loan and by the end of the most recent full quarter;

b) loan life at the time of extending the loan and the remaining term to maturity;

c) interest rates, fees and commissions on the loan;

d) risk classification of the loan by the end of each calendar year from the time it

was extended and by the end of the most recent full quarter;

e) type of real estate mortgaged as collateral in accordance with Article 2, para. 2, their mortgage appraisal value and the ratio between the outstanding principal and the mortgage appraisal value at the time of extending the loan and by the end of the most recent full quarter;

3. characteristics of the mortgage loan portfolio on the basis of which the issue is made, including a distribution of loans by:

- a) the size of the outstanding principal;
- b) the residual term to the final repayment of the loan;
- c) interest rate levels;
- d) their risk classification by the end of the most recent full quarter;
- e) the ratio between the outstanding principal and the most recent mortgage appraisal value of the real estate pledged as collateral.

**Article 13.** (amended; Darjaven Vestnik, issue 52 of 2007, effective as of 3 July 2007) The Financial Supervision Commission shall rule on the application for confirming a prospectus for an issue of mortgage-backed bonds according to the procedure set in Articles 91 and 92 of the Law on Public Offering of Securities.

**Article 14.** A loan recorded in the register of the cover of mortgage-backed bonds from a particular issue may be repaid at any time by bonds of the same issue at their face value.

## *Chapter Four*

### **Mortgage Appraisal of a Real Estate**

**Article 15.** A mortgage appraisal of real estate shall be the cash value at which the real estate may be sold at the time of the appraisal.

**Article 16.** (1) For the purposes of a mortgage appraisal under this Law, the comparative method, the revenue method and the cost-to-make method shall be used.

(2) A mortgage appraisal shall explicitly specify:

1. the method or combination of methods used as set out in para. 1 with the relative weight of each method in the appraisal;
2. the sources of data used in the analysis and calculations.

**Article 17.** Mortgage appraisals of real estate shall be performed by officers of the issuing bank or by physical persons designated by it having the relevant qualifications and experience.

**Article 18.** Subsequent mortgage appraisals of real estate used as collateral on the loans recorded in the register of mortgage-backed bonds cover shall be made at least once every twelve months for loans which:

1. have outstanding liabilities exceeding 1% of the issuing bank's own funds, or

2. have not been consistently classified as standard risk exposures throughout that period.

### *Chapter Five*

## **Redemption of Mortgage-backed Bonds in the Event of Bankruptcy of the Issuing Bank**

**Article 19.** (1) In case of declaring the issuing bank bankrupt, the assets recorded as of the date of declaring the bank bankrupt in the register of the mortgage-backed bonds cover shall not be included in the bankruptcy estate.

(2) Proceeds from the liquidation of assets recorded in the register as a cover on a particular issue of mortgage-backed bonds shall be distributed among the bondholders from that issue in proportion to the rights under their bond holdings.

(3) Any funds remaining after settling the claims under mortgage-backed bonds from a particular issue shall be included in the bankruptcy estate.

**Article 20.** (1) The asset pool under Article 19, para. 1 shall be managed by a holders' trustee of mortgage-backed bonds.

(2) The trustee shall be appointed by the bankruptcy court when it has been established that the bank has outstanding liabilities under mortgage-backed bonds.

**Article 21.** (1) The trustee shall be a person who meets the requirements set in Article 217, para. 1 and para. 2, items 1 – 3 of the Law on Public Offering of Securities and is not engaged in any relationship with the issuing bank or any of the holders of mortgage-backed bonds which give reasonable doubt as to the former's impartiality.

(2) The trustee shall have the powers of an assignee in bankruptcy in respect of the assets defined in Article 19, para. 1, as well as in respect of any outstanding liabilities of the issuing bank under mortgage-backed bonds.

**Article 22.** (1) The trustee shall manage the assets defined in Article 19, para. 1 by individual mortgage-backed bonds issue.

(2) (amended; Darjaven Vestnik, issue 59 of 2007, effective as of 1 March 2008) The trustee shall sell the assets under the procedure set forth in Articles 486–501 of the Civil Procedure Code and shall account any proceeds to an escrow account opened for each issue with commercial banks as determined by the Bulgarian National Bank.

(3) The trustee shall publish in the Darjaven Vestnik and in at least two national daily newspapers the place and time for the tender referred to under para. 2 not later than one month prior to the date of the tender.

**Article 23.** (1) The bondholders of any issue of mortgage-backed bonds of a bank which has been declared bankrupt shall have the right to obligate the trustee to sell loans included in the issue cover to a buyer specified by them.

(2) The trustee shall follow precisely the terms set in the decision of the bondholders' general meeting under para. 1.

**Article 24.** The liabilities of the issuing bank under a mortgage-backed bonds issue shall be deemed repaid when the amount of outstanding principals of the sold loans becomes equal to the total amount of liabilities on principals and interest accrued on the bonds prior to the sales.

### **Additional Provisions**

**§ 1.** Within the meaning of this Law:

1. ‘sales comparison method’ in preparing a mortgage appraisal of a real estate shall be an analysis of the value of the appraised real estate based on a comparison of prices realized at recent sales of real estate with similar features; an appraisal using this method includes data about the features and location of comparable properties, the time of the sales at the indicated prices and the sources of information about such sales;

2. ‘income method’ in preparing a mortgage appraisal of a real estate shall be an analysis of the value of the appraised real estate based on its income-generation capacity, in two scenarios: by capitalising the net income from the property over a particular period, or by discounting, for a certain number of periods, of cash flows resulting from the use of the property; in the first case, an appraisal using this method includes data on the sources of information about the net income from the property and on the manner of determining the compounding rate, and, in the second case, on the sources of information and the composition of cash flows, the period of discounting, the method of determining the final value and the discount rate;

3. ‘depreciated replacement cost method’ in preparing a mortgage appraisal of a real estate shall be an analysis of the value of the appraised real estate based on the possible cost for its creation (substitution) as of the time of the appraisal, increased by the cost of the land or the cost of construction rights and any improvements made less accumulated depreciation; an appraisal using this method includes data on the sources of information about the specified parameters.

**§ 2.** (1) Classification of risk exposures, risk classification of loans under Article 12, item 2, ‘d’ and item 3, ‘d’, and Article 18, item 2 shall be done in accordance with the requirements laid down in an ordinance issued by the Bulgarian National Bank.

(2) The lists of governments, central banks and international institutions under Article 5, para. 2, items 3 and 4 shall be established by the Bulgarian National Bank in an ordinance on the capital adequacy of banks.

(3) (amended; Darjaven Vestnik, issue 59 of 2006; effective as of 1 January 2007; amended; issue 24 of 2009; effective as of 31 March 2009) The issuing bank shall adopt internal rules on conducting and documenting mortgage appraisals of real estate under Chapter Four which shall comply with the requirements of Article 73, para. 4 of the Law on Credit Institutions.

### **Transitional and Final Provisions**

§ 3. The Law on Supplementary Voluntary Pension Insurance (published in the Darjaven Vestnik, issue 65 of 1999; amended; issues 110 and 111 of 1999, issues 1 and 64 of 2000) shall be amended as follows:

1. in Article 44:

a) in para. 1, item 4, at the end, ‘and mortgage-backed bonds issued by banks’ shall be added;

b) in para. 2, at the end, ‘and mortgage-backed bonds issued by banks’ shall be added.

2. in Article 45, item 2, at the end, ‘except for securities issued under the Law on Mortgage-backed Bonds’ shall be added.

3. in Article 46, a new para. 3 shall be created to read:

‘(3) A pension insurance company may invest up to 10% of the pension fund’s assets in securities issued by one and the same company, in case of securities under the Law on Mortgage-backed Bonds.’

§ 4. In Article 52, para. 1, item 5 of the Insurance Law (published in the Darjaven Vestnik, issue 86 of 1996; amended, issue 1 of 1997; issue 21 of 1997 – Constitutional Court Decision No. 6 of 1997; amended, issue 58 of 1997, issues 21, 52, 93 and 132 of 1998, issue 88 of 1999), at the end, ‘mortgage-backed bonds issued under the Law on Mortgage-backed Bonds’ shall be added.

