Bank Finance and Regulation Survey

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I. BANKS AND FINANCIAL INSTITUTIONS SUPERVISION

1) Applicable laws and regulations. Provide a list of the main laws and regulations that refer to the supervision and control of banks and financial institutions. Give a brief summary of the substance of each of them.

- The Act of 29 August 1997 – The Banking Law (consolidated text: Journal of Laws of 2002, no. 72, item. 665, with later amendments) (hereinafter the "**Banking Law**"). This act, which has been amended many times, is consistent with the European directives concerning banking regulations, including Directive 2000/12/EC. It stipulates regulatory requirements for banks, including banking secret requirements, provides structure of banking supervisory and regulates different aspects of banking activity;

- The National Bank of Poland Act of 29 August 1997 (consolidated text: Journal of Laws of 2005, no.1, item 2) ("**NBP Act**"); it regulates organization of National Bank of Poland ("**NBP**") and rights and obligations of NBP which is the central bank of Poland;

- The Supervision on Financial Market Act of 21 July 2006 (Official Journal of 2006, no. 157, item 1119, with later amendments) ("**Supervision Act**"); it establishes Commission of Financial Supervision which is a supervisory body over whole financial market;

- The Electronic Payment Instrument Act of 12 September 2002 (Official Journal of 2002, no. 169, item 1385) ("**Electronic Payment Instrument Act**"); it regulates, inter alia, issuance of electronic money and rules of obtaining license for such activity;

- The Bank Guarantee Fund ("BFG") Act of 14 December 1994 (consolidated text: Journal of Laws of 2009, no. 84, item 711 with later amendments) ("**BFG Act**"); it regulates deposits insurance regime, including requirements of deposits' guarantees;

- The Supplementary Supervision over Credit Institutions, Insurance Agencies and Investment Firms Comprising Part of a Financial Conglomerate Act of 15 April 2005 (Journal of Laws of 2005, no. 83, item 719) ("**Supplementary Supervision Act**"); This act is consistent with the European directive concerning supplementary supervision stipulated in Directive 2002/87/EC;

- The Trading in Financial Instruments Act of 29 July 2005 (consolidated text: Journal of Laws of 2010, no. 211, item 1384 with later amendments) ("**Financial Instruments Act**") regulates activity to the extent of trading in securities and other financial instruments, the rights and duties of the subjects participating in this trade and the exercise of supervision in this respect;

- The Investment Funds Act of 27 May 2004 (Journal of Laws of 2004, no. 146, item 1546 with later amendments) ("**Investment Funds Act**") regulates activity and regulatory requirements concerning investment funds and investment funds company.

2) Entities/Authorities in charge of the control and supervision. Purposes, powers and functions of each of them-their organization and structure (i.e. public or private, independency or body of the Government to which they belong, size, etc.)

From 1 January 2008 banking supervision is performed by the Commission of Financial Supervision (CFS). The Supervision Act which has been in force from 18 September 2006 provides new rules concerning supervision over the financial market in Poland. Before the Supervision Act, different kinds of financial institutions (such as banks, investment funds, stock exchange) had its own supervisory body. Now, all these separate supervisory bodies are being joined into one supervisory body – the Commission of Financial Supervision.

The CFS is an independent administrative collegiate body and consists of the President, two vice Presidents and four members: Ministry of Finance or its representative, Ministry of Social Security or its representative, Governor of the NBP, a representative of the President of the Republic of Poland. President and vice Presidents of the CFS are appointed by the Prime Minister. The executive body of the CFS is the Commission of Financial Supervision Office. The surveillance over CFS is made by Prime Minister.

The CFS is an independent, central public administration body, performing banking and other financial institutions supervision in the name of the state. For proceedings before the CFS, use is made of the regulations for proceedings before administration bodies. CFS decisions are adopted in the form of resolutions.

Among others, the CFS: performs a legal and financial evaluation of the founders of a financial institution in association with applications for the issue of permission for the establishment, gives

its consent to appoint the president and two members of management of a bank, issues a license to establish a financial institution (e.g. bank or insurance company) or gives consent to change its ownership, carries out audits in association with applications for permission for the commencement of the operational activity of a financial institutions. CFS inspectors are authorized to carry out audits in the central offices or organizational units of financial institutions. In the framework of audit activity, inspectors may among other things: review documents, draw-up copies thereof, oblige institution employees to provide oral or written explanations. An inspection takes place after prior written notification, although in justified cases inspections may be unannounced.

3) Describe briefly the activities under supervision and give a list of the different types of licenses available.

The supervision covers, in particularly:

- banking activities,
- pension funds activity,
- insurance activity,
- capital market activity, including brokerage houses,
- rating agencies activity with respect to UE Regulation of UE Parliament and Council no 1060/2010 dated 16th September 2009.

The Polish legislator adopted a certain specified list of activities performed by banks that, by virtue of their inclusion in the Banking Law, are given the name of banking activities. Some of these may be performed exclusively by banks, unless another act clearly envisages the possibility of their also being performed by other undertakings (banking activities in the strict sense). Other activities may also be performed by other undertakings, albeit, if they are performed by banks they are qualified as banking activities (banking activities in a broad sense). Activities qualified by the Banking Law as banking activities do not exhaust all the activities that may be undertaken by banks in the scope of provision of financial services. Banks may also undertake other activities indicated in separate acts and listed exhaustively and in detail in a bank's statute.

Article 5 section 1 of the Banking Law names the following activities that may be performed exclusively by banks:

1) taking of deposits payable on demand or at a specified maturity and conducting of accounts for these deposits,
2) conducting of other bank accounts,
3) extension of credits,
4) extension and conformation of bank guarantees and issue and confirmation of letters of credit,
5) issue of bank securities,
6) performance of bank monetary settlements,
7) issue of electronic money instruments,
8) performance of other activities reserved exclusively for banks under separate legislation.

In order to perform these activities a banking license is required. However, please note that the Electronic Payment Instrument Act provides that a joint stock company not being a bank may also issue electronic money on condition that it obtains special permission from the Commission of Financial Supervision. Such institution is named as the electronic money institution.

In order to establish a pension fund a license is required. A pension fund is a legal entity which accumulates and invests financial funds in order to pay to pension fund's members after they reach retirement age.

An insurance license is needed to perform insurance activity, including co and re – assurance.

A brokerage activity requires a license issued by CFS, and covers, inter alia: orders regarding acquire and sell of financial funds, turnover of financial funds for its own account, management of the financial funds portfolio, investment advisory.

4) Describe briefly non-regulated financial and banking activities.

In general entities which conduct financial activities are subject to special supervision of CFS. However, there are also many financial and banking activities which may be performed by entities not being subject to this supervision.

For example, banking activities in the broad sense may also be performed by entities not being banks. Such activities are:

1) providing of cash loans,
2) operations involving checks and bills of exchange, and operations relating to warrants,
3) issue of payment cards and performance of operations involving use of such cards,
4) forward transactions,
5) purchasing and selling of debts,
6) safekeeping of assets and securities, and provision of safe deposit facilities,
7) purchasing and selling foreign currencies,
8) extension and confirmation of endorsements,
9) performance of commissioned securities issue operations,
10) intermediation in money transfers and foreign exchange settlements.

Under Polish law there is a distinction between loan and credit. The latter may be given exclusively by banks. Loans may also be provided by entities which are not banks.

There are also some financial activities which may be performed by entities not being subject to special supervision, such as leasing, factoring or trading in receivables.

Also the Co-operative Savings and Credit Associations ("**SKOK**") shall be mentioned in this point. These entities exist and function on the basis of the special legal act and are not banks in the meaning of the Banking Law, although their purpose is gathering the pecuniary resources of their members, the granting to them of loans and credits, conducting of financial settlements on their instructions and acting as an intermediary in the conclusion of insurance contracts. This activity does however have a non-profit character.

The regulations of the Banking Law apply to the SKOK only in limited scope, in relation to pecuniary settlements conducted by the SKOK and bank and credit agreements concluded by the SKOK. Banking principles of supervision and financial security do not however apply to these institutions, and this includes the non-applicability of allocation of compulsory reserves. This enables the SKOK to compete effectively with the retail banks.

5) Describe briefly non-permitted financial and banking activities and/or government monopolies.

There are no government monopolies in the scope of financial activities, except for issuing of Polish legal money tender which is the exclusive authorization of the NBP.

II. BANKING ACTIVITIES

6) Different types of banking licenses. Activities permitted under each of them. Activities prohibited.

Conducting of banking operations in Poland is accessible only on an authorization basis. On the basis of the Banking Law, the body issuing authorizations is the CFS. Banks which have obtained the required authorizations are free to conduct any of the activities permitted in Banking Law.

The following are the basic authorizations that are issued by the CFS at various stages of a bank's creation and its conducting of operations:

- authorization to establish a bank in Poland,
- authorization for the commencement of conducting of banking operations,
- authorization for taking of positions by two members of a bank management board, including the chairman,
- authorizations for taking hold or acquisition of bank shares – in direct or indirect way,
- authorization for establishment by a domestic bank of a bank or bank branch abroad, and
- authorization for establishment by a foreign bank of a branch or representative office in Poland.

The scope of the authorization basis of banking operations was restricted after Poland's accession to the EU, since the principle of a single passport also started to apply in Poland (see point 8 e).

7) Procedures to be followed and requirements to be met to obtain each of the different licenses. Formalities to be fulfilled, documentation to be submitted, guaranties requested, time estimation, etc.

Authorization to establish a bank

Establishment of a bank in Poland that is to function in the form of a joint stock company or in the form of a co-operative requires the authorization of the CFS, in accordance with article 30a of the Banking Law.

The Banking Law formulates a catalogue of conditions that must be fulfilled by bank founders so as to obtain authorization for the establishment of a bank. These requirements refer to all the kinds of banks and, according to art. 30 of the Banking Law are the following:

- that accommodation has been assured possessing appropriate technical equipment, appropriately securing the custody of assets at the bank,
- that appropriate equity envisaged for the performance of intended operations has been assured,
- that founders and persons envisaged as management board members, including the chairman, give warranty of diligent and stable management of the bank,

- that at least 2 persons envisaged to take on management board member posts possess the educational and professional experience indispensable to manage the bank,
- that at least 2 persons, including the management board chairman, are fluent in Polish and know the Polish banking system well. On the motion of the founders, the CFS may waive this requirement if it is not indispensable on account of diligence supervision,
- that a presented plan of activity of the bank for an at least three-year period indicates that this activity will be safe for the pecuniary funds gathered at the bank.

Bank founders must document fulfillment of the above conditions. For this purpose, they must present the CFS with a series of documents and information, together with an application for the granting of authorization for the establishment of a bank.

In accordance with article 31 of the Banking Law, this application should contain:

- specification of the bank's name and address,
- specification of the banking operations for which the bank is to be authorized, together with information on the object and scope of intended activities,
- data concerning the bank's founders,
- data on persons envisaged to take on posts of management board members,
- information on the initial capital.

The following should be annexed to the application:

- draft bank statute,
- program of activity and financial plan of the bank for a period of three years at least,
- documents concerning the founders and their financial situation,
- additional documents required to conduct some of brokerage activity by the bank,
- an opinion of the competent supervision authorities of the country of registered address of the applicant, if the founder is a foreign bank.

The CFS examines in detail the documents presented and it may call on the application to be supplemented in case of incompleteness and it may demand additional documents or data concerning in particular the founders and persons envisaged for positions as management board members, including information about their assets and family situations, if it decides that these are indispensable for taking a decision on issuing authorization.

A particularly thoroughly examined document is the draft bank statute, the indispensable components of which are regulated by the Banking Law. This is not a closed catalogue, but only the essential requirements that must be fulfilled by the bank statute.

In accordance with article 31 passage 3 of the Banking Law, the bank statute must specify, in particularly:

- the trading name, which should contain the separate word "bank" and distinguish it from other banks, and also indicate whether it is a state bank, a co-operative bank or is in the form of a joint stock company,
- registered office, scope and object of activity,
- governing bodies and their prerogatives, principles for decision-taking and making of representations in the scope of rights and obligations in regard to assets,
- the basic organizational structure of the bank, procedures for issuing internal regulations and procedures for adopting decisions with respect to assuming of obligations or disposing of assets, whose aggregate value in relation to one undertaking exceeds 5% of own funds,

- principles of functioning of the internal audit system,
- own funds and bank financial management principles.

The minimal initial capital required is Euro 5 000 000.

The statute is subject to confirmation by the CFS according to art. 34 passage 1 the Banking Law. Each amendment to the statute also requires acceptance by the CFS if it relates to the trading name of the bank, its registered office, the object of activity and the scope of operations of the bank, its governing bodies and their prerogatives, principles of functioning of internal audit, own funds and principles of financial management, privileging or restriction of shares as to voting rights, in the case of a bank in the form of a joint stock company, or the principles of determining the numbers of votes allotted to particular members, in case of these being different to the regulation of article 36 paragraph 3 sentence 1 of the Co-operative Act.

The CFS issues authorization for the establishment of a bank if an application has been properly filed and if all the conditions have been fulfilled that are indispensable to the establishment of a bank according to the Banking Law.

According to art. 33 the Banking Law the CFS has 3 months to issue a decision from the arrival of an application or from the supplementation of an application. It may however extend this deadline up to 6 months in justified cases, but it must inform the applicants of this within 3 months of the filing of the application or its supplementation.

The authorization for establishment of a bank specifies:

- the trading name of the bank and its registered office,
- the name or names of the founders and the taking hold of shares by them,
- the level of initial capital,
- the activity for the operation of which the bank is authorized,
- confirmation of the bank statute, and
- the conditions after the fulfillment of which the CFS will permit the commencement of operations by the bank.

The CFS refuses to grant authorization for the establishment of a bank when, in its opinion, the intended operations of the bank would violate the regulations of the law, the interests of clients or would not guarantee the security of the funds gathered at the bank or when the regulations of the law in force in the place of registered address or residence of the founder or its ties with other undertakings could make it impossible to effectively conduct supervision over the bank (article 37 of the Banking Law).

Authorization for the establishment of a bank loses force if the bank has not commenced operations within a year of it being granted.

Authorization to establish a foreign bank in Poland

In accordance with the definition in article 4 of the Banking Law, a foreign bank is a bank having its registered office outside of Poland, on the territory of a country that is not a member of the European Union.

The establishment of a branch of such a bank in the country takes place on the basis of authorization by the CFS, granted after consultation with the minister of finance and upon the

motion of the interested bank. The foreign bank files an application to the CFS for the granting of authorization for the establishment of a branch in Poland, specifying: the trading name and registered office of the applicant bank, a description of its activities, specification of the registered office of the branch and the kinds of operations to which the branch is to be authorized, as also the size of the funds allotted to be available to the branch and details about at least two persons who are to take on the posts of the director or his deputy in the branch. Draft branch regulations must also be annexed to the application and also an undertaking by the applicant bank to satisfy all claims that may arise between the branch and other undertakings. In case of authorization for the establishment of a bank, provisions are respectively applied to the regulations concerning indispensable components of the statute.

The bank branch is subject to obligation of entry into the register of entrepreneurs at the National Court Register according to art. 36 of National Court Register Act. Changes in the regulations require the consent of the CFS. Polish regulations are applied to the functioning of the branch; the branch has the obligation to conduct separate accounts in the Polish language and to retain documents associated with its functioning at the registered office of the branch. The appointment of the branch director and one of his deputies takes place with the consent of the CFS.

Authorization to establish a representative office of a foreign bank in Poland

According to art. 42 of the Banking Law establishment of a representative office of a foreign bank or credit institution in Poland requires the authorization of the CFS issued in consultation with the minister of finance. This procedure is identical irrespective of the country of registered office of the bank or credit institution. The application should further contain the following data:

- specification of the trading name and registered address of the bank or credit institution making the application and a description of the activity conducted by it,
- specification of the registered address of the representative office and the scope of its activity,
- information about the candidate for the post of representative.

The scope of activity of the representative office may include exclusively the conducting of activity in the scope of advertising and promotion of the foreign bank. In accordance with the regulations of the act on freedom of commercial activity, a bank representative office must be entered into the register of representative offices of foreign enterprises that is conducted by the minister of economy.

Authorization to establish a bank abroad by a domestic bank

The establishment of a bank abroad by a domestic bank requires the authorization of the CFS. This does not exclude the entitlements of the competent supervision bodies of a given state that may be envisaged in the legislation of that state. The necessity of obtaining the consent of the CFS has as its purpose above all the protection of the interests of creditors and depositors of the bank at home, since it should examine how the establishment of a bank abroad will influence the situation of the domestic bank.

According to art. 39 of the Banking Law an application for the granting of authorization should contain:

- specification of the name, registered address and organizational form of the bank,
- data concerning the founders and initial capital

The following should be annexed to the application:

- draft statute of the bank,
- grounds for establishing a bank abroad,
- the program of activity and financial plan of the bank for a period of at least 3 years,
- information about the regulations in force in the host state concerning authorization for the undertaking of operations by the bank, taxation regulations with respect to the activity of a bank and regulations concerning the transfer of hard currency and on banking supervision.

Authorization to establish abroad a branch of a domestic bank

A bank seeking the establishment of a branch presents the CFS with grounds for the opening of a branch and information about the regulations in force in the host state concerning authorization for the establishment of branches of a bank, taxation regulations concerning the activity of branches of banks and regulations concerning the transfer of hard currency and on banking supervision.

A domestic bank which opened a branch abroad has the obligation to notify the CFS of the undertaking and cessation of activity by this branch.

Authorization to establish abroad a representative office of a domestic bank

The Banking Law has not regulated the principles for opening of representative offices abroad by domestic banks. Banks may open such representative offices, but they nonetheless do so on the basis of the regulations of the country in which the representative office is to be located.

Undertaking of banking operations by banks

To undertake banking operations in Poland the bank must fulfill both the requirements set forth in the Banking Law – which relate to conducting banking operations and specific requirements connected with a given legal structure in which a bank is to operate i.e. set forth in the Commercial Companies Code (for banks functioning as joint stock companies) and the Co-operative Act (for co-operative banks).

Requirements arising out of the regulations of the CCC and Co-operative Act

After obtaining the authorization of the CFS for the establishment of a bank, the management of a bank "under organization" must apply to the department of the National Court Register having jurisdiction for the registered address of the bank for an entry into the register of entrepreneurs. A register entry is constitutive for the obtaining of legal personality by the bank.

An application for the entry of a bank functioning in the form of a joint stock company into the register of entrepreneurs should, pursuant to article 318 of the CCC, contain such data as:

- the trading name, registered address and trading address of the company or an address for service of documents,
- the subject of company activity, the initial capital level,
- the number and nominal value of shares,
- the target capital level, if such is envisaged by the statute,
- the number of preference shares and the form of preference,

- surnames and first names of management board members and the manner of representation of the company,
- surnames and first names of supervisory board members,
- if shareholders contribute non-monetary contributions, a note of this circumstance,
- period of duration of the company, if this is designated,
- designation of the journal allotted for company announcements, if the statute indicates such a journal,
- if the statute envisages the granting of personal entitlements to specified shareholders or participation titles in company revenue or assets not arising out of shares, a note of this circumstance.

In accordance with article 320 of the CCC, the following should be appended to the application for entry into the register of a bank functioning in the form of a joint stock company:

- the statute,
- notarized deeds on the founding of the company and the taking hold of shares,
- a declaration by all management board members that payments for shares and non-monetary contributions required by the statute have been performed in accordance with law,
- proof of payment for shares, confirmed by a bank or investment company, made to the account of the bank under organization at a domestic bank,
- a document confirming the institution of company governing bodies, with a specification of their personal composition,
- CFS authorization for establishment of a bank and for taking on of posts by two management board members, including the chairman,

Co-operative banks are subject to entry into the same register and on the same principles as banks functioning in the form of joint stock companies.

In accordance with regulations universally in force, the registration announcement is published together with basic data about the bank in the Official Court and Commercial Gazette (Monitor Sądowy i Gospodarczy).

On the basis of article 35 of the Banking Law as a particular regulation, the CFS may be a participant in the registration procedure of the bank. The CFS may make an application to the registration court to be admitted to participation in the procedure, from the moment of commencement of the procedure through its legally binding progress. This is an entitlement of the CFS, but is not the obligation of the CFS.

Authorization to conduct banking operations

According to art. 36 of the Banking Law the bank management board applies to the CFS with an application for the issue of authorization for the conducting of banking operations.

This is the second authorization, presenting the state of preparations for the undertaking of operational activity, which must be obtained by a bank functioning in the form of a joint stock company and a co-operative bank before the undertaking of activity. A state bank must also obtain such authorization.

The state of preparations of a bank is subject to assessment by the CFS, which takes into account if the bank:

- is appropriately prepared organizationally for the commencement of operations;
- has gathered the initial capital in its entirety;
- has available appropriate conditions for the safe-keeping of monetary funds and other stores of value (deposits), taking into account the scope and kind of conducted banking operations;
- fulfills other conditions specified in the authorization for establishment of a bank, if such were tabled by the CFS.

An authorization for commencement of operations relates to domestic banks, branches of foreign banks in Poland and to commencement of activity by a domestic bank abroad.

An authorization is issued for an unspecified time. On the explicit motion of the bank founders, authorization may be issued for a specified time.

8) Legal structure admitted/requested for each of the different licenses.

a) Different types of legal structures that may be used, i.e. corporations, limited liability partnership, branches, subsidiaries, etc.

The following legal structures may be used in relation to banks:

- state banks,
- co-operative banks,
- banks in the form of joint stock companies, and
- branches of credit institutions.

State banks may be established by the Council of Ministers on the basis of an ordinance. At present, there is one functioning state bank – Bank Gospodarstwa Krajowego ("BGK").

Co-operative banks are co-operatives. Their founders can only be natural persons, not less than 10 in number. The Co-operative Banks Act lists the banking activities that may be performed by co-operative banks. The number and kinds of these activities are restricted in relation to banking activities that may be undertaken by general banks on the basis of the Banking Law. Depending upon the size of its own funds, a co-operative bank may conduct activity on limited territory.

If a bank is neither a state bank nor a co-operative bank the only legal form in which it may conduct its activity is a joint stock company. Banks may not have a form of limited liability company. Special kinds of banks in the form of joint stock companies are mortgage banks.

Foreign banks may establish branches in Poland. Depending on the country of origin this may require permission in Poland. Foreign banks may also establish representative offices in Poland, however their activities may be limited exclusively to promotional activities.

Bank co-operation structures

Polish regulations also contain provisions relating to non-formalized structures in which banks are active. These are consortiums, financial conglomerates and holdings.

In the establishment of holdings and conglomerates, it is not possible to speak of the establishment of a separate legal structure or of co-operation on a contract basis. Holdings and conglomerates are the products of concentration on world financial markets, based on factual ties between members of these groups.

Consortiums

In accordance with article 73 of the Banking Law, a consortium is created as a result of the conclusion of an agreement between two or more banks for the purpose of jointly extending a credit facility. A consortium agreement does not establish a new entity, but only allows for the spreading of risk associated with the extension of credits to banks that are parties thereto whilst adhering to capital commitment limits. On account of the relatively small capital of banks in Poland, large consortiums are organized with the participation of foreign banks.

Financial conglomerate

The institution of a conglomerate and the appropriate supplementary supervision regulations were introduced into Polish law as a result of the implementation of directive 2002/87/EC and directives 98/78/EC and 2000/12/EC.

As the largest financial groups, operating on world financial markets, conglomerates provide global services and combine entities in various sectors of these markets, i.e. credit institutions, insurance associations and investment companies. Conglomerates were regulated in EU law only in 2002 by directive 2002/87/EC, whereas until 2005 Polish law did not refer to them directly at all.

Only in article 4 of the Supplementary Supervision Act was a financial conglomerate defined as a group of undertakings in which:

at least one undertaking is a regulated entity (that is a credit institution, insurance agency or investment company), albeit: (i) it is a parent undertaking in relation to an undertaking from the financial sector on account of significant capital participation, a management contract or other contract of a similar character, or (ii) it is not such an undertaking, but the group conducts activity mainly in the financial sector,
at least one undertaking belongs to the insurance sector and at least one undertaking belongs to the banking sector or the investment services sector,
the consolidated activity of the group undertakings belonging to the insurance sector and the consolidated activity of the undertakings belonging to the banking sector and the insurance services sector is significant (i.e., the arithmetic average of the leverage ratio of this sector and the equity to liability ratio of this sector comes to in excess of 10%. The banking and investment services sectors are taken into account together in calculating the average. The activity of the group in other sectors is also significant if the balance-sheet amount of the least significant sector in the group exceeds the equivalent of 6 billion

EUR). Conglomerates are subject to a particular form of supervision (see Chapter III, part 3.4).

A significant component of the structure is the requirement that one of the undertakings in the conglomerate must be a regulated undertaking having its registered office on the territory of the European Union member state.

The domestic supervisory body informs the leading undertaking in such a group of the fulfillment of the prerequisites that are required for the group of undertakings to qualify as a conglomerate, whereas the leading undertaking has the obligation to inform the other undertakings in the group.

The Banking Law defines a parent undertaking as an undertaking that:

- directly or indirectly through other undertakings possesses a majority of votes in the bodies of another undertaking, or also does so on the basis of agreements with other persons, or
- that is authorized to appoint or recall the majority of members of the managing bodies of another undertaking, or where
- more than a half of the management board members of the second undertaking are simultaneously management board members, authorized proxies or persons holding management posts in the first undertaking or else another undertaking that is in a relationship where it is subsidiary to the first, or every other undertaking that
- in the assessment of the CFS may in another manner have a significant influence upon another undertaking.

The act on supplementary supervision defines the leading undertaking as a parent undertaking that is a regulated undertaking or an unregulated parent undertaking. If there are a number of parent undertakings in a financial conglomerate, the leading undertaking is the parent undertaking that is the regulated undertaking with the largest balance-sheet amount in the most significant financial sector of a financial conglomerate. In case of lack of a parent undertaking, the leading undertaking is the regulated undertaking with the largest balance-sheet amount in the most significant financial sector of a financial conglomerate.

Subject to the leading undertaking in the group, the proper supervision body is CFS.

Holdings

The issue of holdings was regulated by an amendment to the Banking Law dated 23 august 2001, as a result of the adaptation of Polish regulations to directive 2000/12/EC. Holdings are based on factual relations of dominance and subordination or so-called close ties and do not have to possess separate organizational structures or assets. They are established when particular undertakings come into relationships of capital dependency.

In its article 4, the Banking Law divides holdings into financial, mixed-activity, banking and hybrid holdings.

A financial holding is a group of undertakings where the original parent undertaking is a financial institution, that is not an unregulated parent undertaking in the meaning of the act on supplementary supervision (or in other words, this is not a dominant undertaking

that is not a regulated undertaking that together with subsidiary undertakings, of which at least one is a regulated undertaking with its registered office in an European Union member state, form a financial conglomerate), and the remaining members of the group are exclusively or mostly banks, credit institutions or financial institutions. It is also a guideline that at least one undertaking in the group is a domestic bank, a foreign bank or a credit institution.
A mixed-activity holding is a group of undertakings in which the parent undertaking is not a bank, credit institution or financial institution nor an unregulated parent undertaking, whereas at least one of the subsidiary undertakings is a domestic bank, foreign bank or credit institution.
A hybrid holding is a group of undertakings in which the parent undertaking is a financial institution that is not an unregulated parent undertaking, and the majority of the group is made up of undertakings that are not domestic banks, foreign banks, credit institutions or financial institutions, while at least one of the subsidiary undertakings is a domestic bank.

The Banking Law divides bank holdings into domestic and foreign.

A domestic bank holding is a group in which the original parent undertaking is a domestic bank or the composition of which includes a domestic bank and undertakings closely related therewith. Undertakings closely related with a domestic bank that is a holding member are also treated as being in the composition of the holding.

A foreign bank holding is a group in which the original parent undertaking is a foreign bank or credit institution and at least one subsidiary undertaking is a domestic bank, foreign bank, credit institution or financial institution.

b) Capital requirements and own fund rules.

The minimum initial capital of a bank in the form of a joint stock company has been set as the equivalent in PLN of an amount of 5 million EUR, whereas for a co-operative bank it is 1 million EUR. The requirements relating to initial capital are in accordance with article 5 of the Directive 2000/12 on taking up and pursuit of the business of credit institutions.

In accordance with article 30 section 2 of the Banking Law, the value of non-monetary contributions contributed for the initial capital may not exceed 15% of that capital.

A bank should possess appropriate own funds, the level of which should be adapted to the kind of banking operations envisaged to be conducted and the level of intended activity. The CFS may refuse to issue authorization in case of it acknowledging that the level of assured funds, of which the initial capital forms only a part, is insufficient.

The initial capital of a bank in the form of a joint stock company, a state bank and a co-operative bank contributed in monetary form should be paid in PLN to a bank account at a domestic bank opened for the purpose of making payments for bank initial capital. The payment of the initial capital of a bank in the form of a joint stock company, and also of a co-operative bank, should be performed before the entry of a bank into the National Court Register.

c) Transfer of control and ownership regime. Is it regulated?

Authorization to acquire or take hold of bank shares

A person who intends, indirectly or directly, to take hold of or acquire shares or rights from shares in a bank makes an application to the CFS. Such authorization is required if as a result of taking hold or acquisition of shares the person would attain or exceed the thresholds of 10%, 20%, 33%, 50% of votes at the shareholders' general meeting. If the bank statute envisages the privileging or restriction of shares, the notification must also relate to the share in initial capital in the above specified amounts and the number of votes without privilege or restriction corresponding thereto. The obligation to gain authorization also relates to the pledgee and user of shares if they are entitled to perform the right of voting from a share (shares taken hold of as security, in accordance with article 340 of the CCC). In case of authorization relating to a parent undertaking taking hold of or acquiring shares indirectly, this also applies to subsidiary undertakings.

The CFS refuses authorization regarding take hold of or acquires shares or rights from shares, if:

- a person making an application did not fill in all deficiencies in an application or its attachments within the specified period of time;
- a person making an application did not provide the CFS with required additional information or documents;
- it is justified by necessity of careful and stable management of the bank, because of the possible influence of a person making an application on the bank or because of the financial assessment of a person making an application.

Performance of the voting right from bank shares taken hold of or acquired in violation of provisions stipulated in the Banking Law is ineffective and all resolutions adopted in this manner are invalid (unless they would be adopted without including these shares).

The CFS may initiate litigation to confirm the invalidity of the resolutions of the general meeting if a person who has acquired shares but not yet received the authorization consent of the CFS took part in voting at a shareholder's general meeting. The CFS may also instruct the sale of the shares, within a designated period, and if they are not sold during that period it may initiate bank management by commissioner or restrict the scope of activity of the bank, or withdraw authorization for the establishment of the bank and take a decision on its liquidation.

Apart from the obligation to obtain the above consent, a person that has acquired or taken hold of shares giving it, together with shares already possessed, voting rights at a shareholders' general meeting exceeding the thresholds of 5%, 10%, 20%, 25%, 33%, 50%, 66%, 75% is obliged to immediately inform the bank of this, and the bank will within 14 days inform the CFS.

Further, a person intending to transfer of shares that:
entitles it to performance of over 10% of the votes at a general shareholders' meeting, or the transfer of which gives a shares remaining in its hands that will entitle it to the performance of less than 10%, 20%, 33%, 50% of the votes at the shareholder's general meeting, should notify the CFS.

The above regulations are also applied when there is a change in the number of votes at a shareholders' general meeting as a result of changes in the bank statute or an expiry of privilege of shares.

A performance of voting right in violation of the obligation to obtain authorization is ineffective, and resolutions of the general shareholders' meeting adopted in violation thereof are invalid.

Irrespective of the above regulations, in case of acquisition or taking hold of shares of banks that are public companies, the regulations of the Turnover in Financial Instruments Act of 29 July 2005 are applied, which envisage obtaining respective consents from the Securities and Exchange Commission.

d) Personal requirement and restrictions that may apply in each case for officers, directors, shareholders, etc.

A part of the composition of the bank management board is also subject to confirmation by the CFS.

The management board of a bank functioning in the form of a joint stock company and a co-operative bank is comprised of at least three natural persons appointed by the supervisory board. According to art. 22b of Banking Law the appointment of two bank management board members, including the chairman, takes place with the consent of the CFS. The supervisory board puts forward a motion for appointment, annexing appropriate documents.

The CFS refuses to give consent for the appointment of a management board member if the person proposed for this post:

- has a criminal record for an intentional offence or a fiscal offence, with the exclusion of offences prosecuted upon private accusation;
- caused documented losses at his place of work or in association with the fulfillment of the post of member of a governing body of a legal entity;
- has had a prohibition imposed on him against conducting commercial activity on his own account and fulfilling the functions of representative or plenipotentiary of an entrepreneur, member of a supervisory body in a joint stock company, limited liability company or co-operative;
- does not meet the requirements envisaged for management board members in circumstances of obtaining of authorization for establishment of a bank.

CFS may withhold the issuing of authorization if: criminal proceedings or proceedings for a fiscal offence are being conducted against such a person, or if that person has a criminal record for another offence.

The remaining composition of the bank management board is notified to the CFS by the supervisory board, with indication to whose competence the management of credit risk and internal audit are allotted.

e) Special requirements/restrictions for foreigners either individual or legal entities (including short description of WTO/GATS commitments and exemptions).

The "single passport" principle
Directive 2000/12/EC concerning the taking up and pursuit of the business of credit institutions introduced a so-called single passport system that is a uniform European authorization.

This principle means that credit institutions with their registered offices in the remaining EU member states may conduct operations in Poland on the basis of an authorization issued by the competent supervision authorities in their parent countries. Similarly, Polish banks may conduct activity in EU countries on the basis of an authorization issued by the CFS.

In implementing the regulations of Directive 2000/12/EC, the Banking Law set a form and a procedure indispensable to the undertaking of operations by credit and financial institutions in Poland and by Polish banks on the territory of the EU member states. The functioning of the single passport principle requires strict collaboration of supervision authorities of the member states in accordance with uniform standards.

Conducting of operations by credit institutions on the territory of Poland.
A credit institution may conduct operations on the territory of Poland through the establishment of a branch and in the form of cross-border activity.

A credit institution may undertake operations in Poland through establishment of a branch after two months have passed from the receipt by the CFS of notification from the appropriate supervision authorities of the parent country.

According to art. 48L of Banking Law the notification must contain:
- a name and address on the territory of Poland where it will be possible to obtain documents concerning the activity of the branch,
- a program of activity specifying in detail the activities that the credit institution intends to perform, and a description of the organizational structure of the branch,
- the names of persons envisaged to take on the posts of the branch director and his deputy, and
- the level of the amount of equity of the credit institution and the level of the solvency ratio.

A credit institution may conduct operations in Poland in the form of cross-border operations in the scope transpiring from the authorization granted by the competent supervision authorities of its parent state.

9) Is there a Deposits Insurance? Is it mandatory or based on self-regulations? Provide a brief explanation of how it operates.

Deposits Insurance is provided by Bank Guarantee Fund ("BFG"). The organization of the BFG is regulated in the BFG Act. The basic purposes of the Fund are based on guaranteeing to

depositors the payment of guaranteed funds in case of inaccessibility, up to a level specified in the act, and the granting of assistance to entities included in the system of guarantees.

The BFG was established by the BFG Act. It operates as a legal entity. The Fund bodies are the Fund Council and Management Board. The Council comprises President and 7 members appointed by the minister proper to matters of financial institutions, the NBP Governor, the CFS President and the Union of Polish Banks. The President of Fund Council is appointed by the minister proper to matters of financial institutions after opinion declared by the NBP Governor and the CFS President. The Management Board comprises 3-5 members appointed by the Fund Council. Persons holding functions in Fund bodies cannot hold functions in the bodies of or be employees of banks.

The guarantee system assumes that it includes domestic banks and branches of banks with their registered offices in a state that is not a member state of the European Union – insofar as they are not participants of a pecuniary funds guarantee system or the guarantee system in which they participate does not assure the guarantee of pecuniary funds up to the level specified in the Polish act. The funds guaranteed by the BFG come to:

- the funds guaranteed by the BFG come to a PLN equivalent of Euro 100,000.

Banks included in the guarantee system are obliged to contribute an annual payment to the Fund. Apart from this, banks included in the system are obliged to create a guaranteed funds protection fund to satisfy claims of depositors in case of fulfillment of guarantee terms by any entity included in this system. Banks have restricted freedom of disposition of guaranteed funds protection funds.

10) Interest rate. Is it regulated? Should the answer be affirmative, explain briefly its regulatory framework.

The maximum interest rate was introduced by the Act on Amendment of the Civil Code and Amendment of Selected Other Acts of 7 July 2005 (Journal of Laws of 2005, no. 157, item 1316), the so-called "anti-usury act". From 20 February 2006, the maximum level of interest arising out of legal transactions, including banking activities, has been specified. The level of this interest may not exceed four times the level of the NBP Lombard credit rate. At present (since 6th April 2011), this rate comes to 5.50%, so the maximum interest rate thus comes to 22% on an annual basis. The rate depends on the level of the NBP Lombard credit rate, and thus is changeable.

Also a statutory right to interest on late payments of e.g. tax duties or liabilities is also provided in Polish law. Currently the statutory interest is 13%.

11) Sanctions (civil, administrative, or criminal) for violations of the legal and regulatory dispositions.

Articles 170 and 171 of the Banking law provide different kinds of sanctions for violating the regulatory dispositions concerning banking activity.

Under art. 170 any person who has received interest, commission, a fee, or other remuneration for banking activities performed without the necessary permit must return them.

Article 171 constitutes the basis for criminal liability. Firstly any person who without a permit has been conducting activity consisting of accumulating cash means of other natural or legal persons, or organizational units having no legal personality, in order to grant credits, loans or to weigh risk thereon in any other manner, shall be liable to a fine of up to 5,000,000 PLN and a penalty of up to 3 years deprivation of liberty.

Also words "kasa" and "bank" are protected. Any person who, while performing profit-gaining activity contrary to the requirements specified in the Banking Law, has been using the words "bank" or "kasa" in the name of an organizational unit not being a bank or for specifying its activity or advertising, shall be liable to the same penalty.

The Banking Act also provides criminal liability for breach of obligations towards supervisory authorities. Any person who, being obliged to prepare or submit to the CFS consolidated financial statements or other reports in connection with consolidated supervision, fails to discharge this duty or discharges it in a negligent or untimely manner shall be liable to a fine of up to 500,000 PLN or penalty of up to 2 years deprivation of liberty.

III. BANK SECRECY LAWS

12) Is clients' information protected? Are there any restrictions for its use?

Yes, the Banking Law includes regulations concerning banking secrecy. They stipulate a general prohibition of disclosing information constituting banking secrecy.

13) Should answer to number 12) be affirmative, please describe the legal framework, i.e. scope, limitation, exceptions.

A bank, the persons employed therein and persons through whom the bank performs banking activities are obliged to maintain banking secrecy. Banking secrecy covers all information concerning banking activities (including information concerning clients), obtained during negotiations and in the course of concluding and performing contracts, on the basis of which a bank performs banking activities.

The Banking Law envisages an exception to the general principle prohibiting disclosure of banking secrecy only in the situations numerically listed in article 104.
According to art 104 section 2 of the Banking Law the obligation to preserve bank confidentiality does not apply to cases in which:

1 without disclosure of the information covered by bank confidentiality – due to the essence and nature of the banking operation or due to the provisions in force – it is impossible properly to carry out the contract on the basis of which the banking operation is performed or properly to perform the acts connected with the performance and conclusion of this contract;
2 the information covered by bank confidentiality is disclosed to domestic or foreign entrepreneurs whom the bank entrusted with the performance, permanent or temporary, of operations connected with carrying on banking activity to the extent necessary properly to perform such operations;

3 the information covered by bank confidentiality is provided to advocates or legal counsel in connection with the provision of legal assistance to the bank;

4 the provision of the information covered by bank confidentiality is necessary in order to carry out and conclude contracts of sale of receivable debts classified pursuant to separate provisions in the category of lost receivable debts;

5 the provision of the information covered by bank confidentiality is necessary in order to carry out and conclude contracts of sale of receivable debts or contracts of subparticipation or securitization and contracts of provision of investment rating of securitised receivable debts and insurance against the insolvency risk of debtors of securitised receivable debts connected with them;

6 disclosure of information to other banks, credit or financial institutions belonging to the same financial holding is necessary in order to carry out obligations countering money laundering and financing of terrorism, as described by relevant regulations.

In specified cases, a bank is obliged to disclose banking secrecy on the demand of entities that are named in the Banking Law. At the date of implementation of EU banking Directives to the Banking Law there were only a few institutions entitled to receive banking secrecy from banks. This list has become longer and longer and presently covers, among others: banks, the CFS, courts, prosecutors' offices, the President of Bank Guarantee Fund Management, the President of Supreme Audit Office, the President of Office of Competition and Consumer Protection, General Inspector of Fiscal Audit, a custom chamber director, supervisory bodies, Chef of Central Anti-corruption Body and General Inspector of Financial Information.

14) Sanctions (civil, administrative, or criminal) for violations.

A bank is liable for losses arising out of the disclosure of banking secrets and the exploitation of this information not in accordance with its purpose. However, it does not bear liability if the loss arose from the disclosure of banking secrecy by persons and institutions authorized to demand from the bank information constituting banking secrecy. Over and above that, the Banking Law envisages a fine of up to 1,000,000 PLN and a penalty of deprivation of liberty for up to 3 years for those disclosing or exploiting information constituting banking secrecy contrary to the authorization specified in the act.