

**RESOLUTION No. 312/2012**  
**OF THE POLISH FINANCIAL SUPERVISION AUTHORITY**

of 27 November 2012

**on the Mode of Exercising Supervision over Banking Activity**

Pursuant to Article 11 section 1 and Article 3 section 2 in conjunction with Article 1 section 2 item 1 and item 6 of the Act of 21 July 2006 on Financial Market Supervision (Journal of Laws of 2012 items 1149 and 1166) it is resolved, as follows:

**§1.** 1. The Resolution provides for the mode of exercising supervision over banking activity as defined by the Act of 29 August 1997 - Banking Law (Journal of Laws of 2002 No. 72, item 665, as amended<sup>1)</sup>), hereinafter referred to as the “Banking Law Act”, the Act of 12 September 2002 on Electronic Payment Instruments (Journal of Laws of 2012 item 1232), the Act of 15 April 2005 on Supplementary Supervision over Credit Institutions, Insurance Companies, Re-Insurance Companies and Investment Companies Constituting Financial Conglomerate (Journal of Laws No. 83, item 719, as amended<sup>2)</sup>), hereinafter referred to as the “Supplementary Supervision Act”, the Act of 16 November 2000 on Counteracting Money Laundering and Terrorism Financing (Journal of Laws of 2010 No. 46, item 276, as amended<sup>3)</sup>), hereinafter referred to as the “Act on Counteracting Money Laundering and Terrorism Financing” and other acts regulating banking activity.

2. The supervision referred to in section 1 shall cover:

- 1) considering motions related to incorporation, organisation and operation of banks, branches, representative offices of foreign banks and representative offices of credit institutions;
- 2) activities of regulatory nature;
- 3) analytical supervision;
- 4) performing supervisory actions;
- 5) accepting notifications about the intention of credit institutions to conduct activity on the territory of the Republic of Poland and sending notifications about the intention of domestic banks to conduct activity on the territory of another member state (host member state as defined by Article 4 section 1 item 23 of the Banking Law Act), and about the intention a financial institution with its registered office on the territory of the Republic of Poland to perform on the territory of a host member state actions as provided for in Article 5 section 2 and Article 6 section 1 items 1-4 and items 6-8 of the Banking Law Act.

3. As part of the supervision referred to in section 2 items 3 and 4, the consolidated supervision as defined by Chapter 11b of the Banking Law Act and the supplementary supervision as defined by the Supplementary Supervision Act are performed.

4. The tasks involved in the supervision over banking activity exercised by the Polish Financial Supervision Authority, hereinafter referred to as “PFSA”, are performed with the aid of the Polish Financial Supervision Authority Office, hereinafter referred to as “PFSA Office”.

**§2.** PFSA Office verifies whether the motions for granting a license or consent as well as notifications about the intention of credit institutions to conduct activity on the territory of the Republic of Poland, notifications about the intention of domestic banks to conduct activity on the territory of a host member state or notifications about the intention of a financial institution with its registered office on the territory of the Republic of Poland to perform on the territory of a host member state actions as provided for in Article 5 section 2 and Article 6 section 1 items 1-4 and items 6-8 of the Banking Law Act, contain the information necessary for accepting and considering them, and in particular, whether they fulfil the requirements specified in the provisions of the Banking Law Act and other provisions.

**§3. 1.** In the scope necessary for PFSA to grant the licenses referred to in Article 30a of the Banking Law Act, PFSA Office performs the assessment of the legal status and financial standing of bank founders. The assessment is performed in particular on the basis of documents and information referred to in §6 items 1 and 2 of Resolution No. 389/2008 of the Polish Financial Supervision Authority of 17 December 2008 on the List of Documents Enclosed with the Motions to the Polish Financial Supervision Authority for Granting License for Bank Incorporation, Granting Consent to Appointing Members of the Bank Management Board and with the Information on the Management Board Composition Submitted to the Polish Financial Supervision Authority by the Bank Supervisory Board (Official Journal of PFSA No. 8, item 43, as amended<sup>4</sup>), subject to the exceptions provided for in §6 item 3 of this Resolution.

2. If the fact of the founder being dependent on a specific entity may impact the determination whether the founder provides the guarantee of sound and prudent bank management, PFSA Office assesses on the basis of the documents and information necessary in case of a specific mover, also the legal status and financial standing of the dominant entity.

**§4. 1.** PFSA Office verifies whether the draft of the statute meets the conditions specified in Article 31 section 3 of the Banking Law Act, and in particular whether the banking operations and other types of banking activity were explicitly determined and whether the said statute does not cause the effects referred to in Article 37 of this Act.

2. In the scope necessary for PFSA to grant the permit to amend the statute, PFSA Office analyses the following documents and information provided by the mover:

- 1) valid official copy of the entry in the National Court Register;
- 2) current bank statute, certified in line with the provisions of other acts;
- 3) document stating the content of the intended amendments to the bank statute together with the rationale therefor;
- 4) information about the mode of paying for shares and in case of an in-kind contribution—also the information about the type and value of this contribution and the data making it possible to determine whether it fulfils the requirements listed in Article 30 sections 2 and

5 of the Banking Law Act; if the amendment to the statute refers to the share capital amount, PFSA Office also verifies whether as a result of subscribing by shareholders for the shares of the new issue the limits referred to in Article 25 section 1 of the Banking Law Act were reached or exceeded.

**§5.** 1. PFSA Office verifies whether the plan of action and financial plan of the bank enclosed with the motion for granting the license for bank incorporation include:

- 1) information concerning the planned territorial scope of activity;
- 2) determination of target clients and the possibility of acquiring them as well as the assessment of competitiveness against other banks;
- 3) expected balance sheets and income statements with detailed information on costs and income, profit distribution, indication of sources and mode of covering losses for the period of at least three years as well as the assumptions concerning the foreign currency transactions, if the bank plans to be involved therein in this period.

2. PFSA Office verifies whether the plan of action and the financial plan take account of the requirements concerning proper conducting of banking activity under the Banking Law Act and other provisions of law.

**§6.** 1. PFSA Office verifies whether the office space wherein banking activity is to be conducted contains appropriate technical equipment properly safeguarding the valuables stored at the bank, taking into consideration the scope and type of banking activity conducted and ensuring proper service for bank clients.

2. In order to make findings referred to in section 1, PFSA Office analyses in particular the documents submitted by the founders specifying the legal status of the premises, mode of acquisition thereof and opinion of the entity having powers as defined by Article 27 section 1 and Article 29 section 1 of the Act of 22 August 1997 on Protection of Persons and Property (Journal of Laws of 2005 No. 145, item 1221, as amended<sup>5)</sup>), stating that it is possible to use or adapt the premises for banking purposes.

**§7.** 1. In the scope necessary for PFSA to issue a decision, PFSA Office assesses whether candidates for the position of a bank management board president or member meet the requirements referred to in Article 22b and Article 30 of the Banking Law Act. PFSA Office analyses the documents and information submitted by the movers, provided for in the resolution referred to in §3 section 1.

2. PFSA Office verifies whether there are any other circumstances concerning the candidates referred to in section 1, that if concealed and then disclosed could have an adverse impact on the clients' confidence in the bank.

3. PFSA Office also verifies whether at least 2 persons intended to be bank management board members, inclusive of the bank management board president, have the education and professional experience essential for the management of a bank, including whether they have relevant length of service in banking or other financial institutions and whether they have a command of the Polish language and good knowledge of the Polish banking system.

4. In the scope necessary for PFSA to issue the decision referred to in Article 30 section 1a of the Banking Law Act, PFSA Office gathers and analyses documents and information concerning the solutions adopted by banks ensuring sound and prudent bank management, despite the proven command of the Polish language of the candidate for a president or other member of a bank management board.

**§8.** 1. In the scope necessary for PFSA to issue a resolution in the case referred to in Article 27 section 2 of the Act of 29 August 1997 on Mortgage Bonds and Mortgage Banks (Journal of Laws of 2003 No. 99, item 919, as amended<sup>6)</sup>), PFSA Office assesses whether the candidates for the trustees and deputies thereof in a mortgage bank meet the requirements set forth in Article 27 section 3 of this Act. The provisions of §7 section 1 apply to this assessment accordingly.

2. Moreover, PFSA Office analyses the submitted documents and information about the candidates concerning:

- 1) professional résumé, with special attention to work in financial institutions with indication of functions performed and related responsibility as well as experience at work in other institutions;
- 2) knowledge of real estate market and capital market;
- 3) the fact of applying for a post in other financial and non-financial institutions, either in the process of incorporation or already functioning.

3. PFSA Office verifies whether there are no other circumstances concerning the candidates referred to in section 1, that if concealed and then disclosed could have an adverse impact on the clients' confidence in the bank.

**§9.** 1. PFSA Office performs tasks related to assessment of notifications referred to in Article 25 of the Banking Law Act.

2. In the scope necessary for PFSA to issue a decision on considering a given entity a dominant entity, PFSA Office gathers documents and information reflecting on the fact of exerting by a given entity a significant influence over other entities.

3. In the scope necessary for PFSA to issue a decision on considering a given entity an entity closely connected with the bank, section 2 shall apply accordingly.

**§10.** In the scope necessary for PFSA to issue a decision, PFSA Office assesses the motion for granting a license to open on the territory of the Republic of Poland a representative office of a foreign bank or credit institution, in particular on the basis of the following documents and information provided by the mover:

- 1) statute of a foreign bank and a copy of the entry in the register kept by the relevant court or administrative authorities in the country of origin of a foreign bank;
- 2) declarations of relevant governing bodies of a foreign bank or credit institution about the intention to open and operate the representative office on the territory of the Republic of Poland;
- 3) declarations of relevant governing bodies of a foreign bank or credit institution that in their activity on the territory of the Republic of Poland they will observe provisions of the Polish law, and in particular that the representative office:

- a) will conduct activity only in the scope of advertisement and promotion of a foreign bank or credit institution, within the limits provided for in the license,
- b) will not assume liabilities unrelated to the functioning thereof,
- c) will not perform any actions in the interest of an entity other than the represented foreign bank or credit institution;
- 4) professional résumé of a candidate for a representative of a foreign bank;
- 5) annual report of a foreign bank for the preceding year;
- 6) power of attorney granted by a foreign bank or credit institution to a person authorised to represent a foreign bank or credit institution in the scope of opening a representative office.

**§11.** 1. In the scope necessary to determine whether the conditions referred to in Article 36 section 3 of the Banking Law Act necessary for PFSA to issue a license for starting operating activity by a bank or a branch of a foreign bank have been met, PFSA Office conducts at a date agreed on with the bank an inspection to verify in particular:

- 1) compliance of data contained in the documents forming the basis for the license to incorporate the bank with the actual state, and in particular:
  - a) correctness of making payments towards the initial capital,
  - b) sources of covering costs of organisation,
  - c) bank management board composition,
  - d) shareholding structure - founders (share register),
  - e) legal status of the premises intended for the bank's registered office,
  - f) compliance of the notarial deed and entries in the commercial register with the PFSA decision and the statute;
- 2) providing the bank with a set of internal regulations and instructions necessary to conduct the intended activity;
- 3) equipping the bank with a set of stamps and seals;
- 4) equipping the bank with requisite forms, printed materials and cheque forms;
- 5) extent of staff preparation (training and education);
- 6) booking methods applied;
- 7) preparation to provide reports as required by the National Bank of Poland;
- 8) equipping the bank with computer hardware and software;
- 9) providing the bank with other standard office equipment (including telephone, telex and fax facilities);
- 10) ensuring conditions for providing cash service and securing valuables stored at the bank;
- 11) securing IT systems;
- 12) proper labelling of the premises as well as availability and clearness of information intended for clients.

2. The provisions of §40-44 shall apply accordingly to performing supervisory actions.

**§12.** On completion of the inspection referred to in §11, a report and other documentation containing the information defined in §11 section 1 as well as conclusions from the inspection and materials justifying these conclusions are developed. The provisions of §48 shall apply accordingly to an inspection report.

**§13.** 1. In the scope necessary for PFSA to issue a decision referred to in Article 5 section 2 of the Act of 7 December 2000 on the Functioning of Co-operative Banks, Their Associations and on Associating Banks (Journal of Laws No. 119, item 1252, as amended<sup>7)</sup>), PFSA Office analyses the following documents provided by the mover:

- 1) valid official copy of the entry in the National Court Register;
- 2) current bank statute, certified in line with the provisions of other acts;
- 3) opinion of the board of the association whereto a bank belongs on the planned extension of the scope of the bank's activity;
- 4) plan defining the strategy of the bank operation on an extended territory.

2. PFSA Office verifies whether the plan referred to in section 1 item 4 includes in particular:

- 1) determination of planned development of the network of bank outlets and services provided by those outlets, taking into account the already existing bank organisational units and specific features of their operation;
- 2) determination of the bank's staff preparation to the planned extension of the scope of the bank's activity;
- 3) determination of prospective bank clients on the extended territory and possibilities of acquisition thereof;
- 4) estimation of expected costs of territorial expansion of the scope of activity;
- 5) assessment of competitiveness against other banks conducting activity on the territory referred to in the motion.

**§14.** 1. In the scope necessary for PFSA to send to relevant supervisory bodies of a host member state a notification about the intention of a domestic bank to open a branch on the territory of this member state, PFSA Office gathers and analyses the information referred to in Article 48c sections 2 and 4 of the Banking Law Act.

2. In the scope necessary for PFSA to issue a decision referred to in Article 48d section 2 of the Banking Law Act, PFSA Office assesses:

- 1) fulfilment of requirements defined by Article 48c section 2 of the Banking Law Act;
- 2) adequacy of the bank organisational structure and its financial situation to the scope of intended activity;
- 3) compliance of the intended activity with the provisions of law;
- 4) potential impact of the intended activity on sound and prudent bank management.

**§15.** In the scope necessary for PFSA to send to relevant supervisory bodies of a host member state a notification about the intention of a domestic bank to conduct cross-border activity on the territory of such member state, PFSA Office verifies whether the intended activity is compliant with the license granted to the bank.

**§16.** 1. In the scope necessary for PFSA to issue a confirmation referred to in Article 48h section 2a of the Banking Law Act and send to relevant supervisory bodies of a host member state a notification about the intention of a financial institution with its registered office on the territory of the Republic of Poland to conduct on the territory of such member state the acts referred to in Article 5 section 2 and Article 6 section 1 items 1-4 and items 6-8 of the Banking Law Act, PFSA Office gathers and analyses the information referred to in Article

48c sections 2 and 4 of the Banking Law Act and verifies whether this institution meets the conditions referred to in Article 48h section 1 of the Banking Law Act.

2. In the scope necessary for PFSA to issue a decision on refusal to send the notification referred to in section 1, provisions of §14 section 2 shall apply accordingly.

**§17.** In the scope of tasks related with accepting by PFSA notifications about the intention of credit institutions to conduct the activity on the territory of the Republic of Poland, PFSA Office analyses:

- 1) the need of determining the conditions that the branch of a credit institution should meet when conducting activity on the territory of the Republic of Poland in the common interest, in particular in order to protect consumer interest, ensure security of economic transactions or prevent infringement of law and prepares a draft letter of the PFSA Chairman in that respect;
- 2) whether the activity specified in the notification covers the actions referred to in Article 48j of the Banking Law Act and Annex I to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the Taking Up and Pursuit of the Business of Credit Institutions (Official Journal of the European Union L 177 of 30 June 2006, p. 1, as amended).

**§18.** In the scope necessary for PFSA to issue a decision referred to in Article 124a of the Banking Law Act, PFSA Office assesses the undertaking itself and the risk related to the transaction of purchase of a bank's enterprise or its organised part and analyses the following documents and information provided by the mover (purchaser):

- 1) mover's valid statute;
- 2) excerpt from the National Court Register or other equivalent document issued by a body of the state where the mover's registered office is located;
- 3) resolutions of mover's governing bodies required for conclusion of the bank's enterprise purchase agreement;
- 4) financial statements for the last financial year together with the opinion of a certified auditor;
- 5) basic terms and conditions of purchase of a bank's enterprise, draft agreement or preliminary agreement;
- 6) schedule of transactions of a bank's enterprise purchase.

**§19.** In the scope necessary for PFSA to issue a decision referred to in Article 124 of the Banking Law Act, in relation to banks operating as joint-stock companies, PFSA Office assesses mergers of banks and analyses the following documents and information provided by the movers:

- 1) movers' valid statutes;
- 2) movers' valid official copies of entries in the Entrepreneurs Register;
- 3) merger schedule;
- 4) draft terms of merger together with enclosures referred to in Article 499 of the Act of 15 September 2000 – Commercial Companies Code (Journal of Laws No. 94, item 1037, as amended<sup>8)</sup>), hereinafter referred to as the “Commercial Companies Code” and expert opinion drawn up pursuant to Articles 502 and 503 of the Commercial Companies Code;

- 5) report of management boards of merging banks justifying the merger, referred to in Article 501 of the Commercial Companies Code;
- 6) business plan of the bank after the merger for the period of at least three years (if the merger does not materially change the profile or the scope of activity of the taking-over bank, strategy of activity of the bank after the merger may be presented instead);
- 7) information about the preparation and planned course of works under banks' merger, with special attention to integration of IT systems and mode of securing interests of clients and minority shareholders;
- 8) information about planned changes to the composition of governing bodies of the bank after the merger (management board and supervisory board);
- 9) information about the expected shareholding structure of the bank after the merger.

**§20.** In the scope necessary for PFSA to issue a decision referred to in Article 124 of the Banking Law Act, in relation to banks operating as co-operatives, PFSA Office assesses mergers of banks and analyses the following documents and information provided by the movers:

- 1) movers' valid statutes;
- 2) movers' valid official copies of entries in the Entrepreneurs Register;
- 3) merger schedule with the following enclosures:
  - a) opinion of a certified auditor on the audited financial statements of the movers as at the takeover date,
  - b) resolutions of general meetings referred to in Articles 97 and 98 §2 of the Act of 16 September 1982 – Co-operative Law (Journal of Laws of 2003 No. 188, item 1848, as amended<sup>9)</sup>) or drafts thereof approved by the management board and the supervisory board;
- 4) business plan of the bank after the merger for the period of at least three years (if the merger does not materially change the profile or the scope of activity of the taking-over bank, strategy of activity of the bank after the merger may be presented instead);
- 5) information about the preparation and planned course of works under banks' merger, with special attention to integration of IT systems and mode of securing interests of clients and shareholders;
- 6) information about planned changes to the composition of governing bodies of the bank after the merger (management board, supervisory board and groups of members).

**§21. 1.** PFSA Office develops guidelines for draft resolutions and drafts of PFSA resolutions determining the rules of banks operation aimed at ensuring security of cash accumulated in bank accounts aimed at ensuring security of cash accumulated in bank accounts and, in particular, specifying:

- 1) other items decreasing the bank's original own funds, their value, scope and conditions of such decrease, other items of the bank balance sheet recognised as bank's additional own funds, their value, scope and conditions of recognising them as bank's additional own funds, and scope and mode of taking into account the banks' operation in holdings when determining the mode of calculating the bank's own funds;
- 2) the scope and detailed rules of setting capital requirements for individual types of risk;

- 3) detailed rules and conditions of taking into account the exposures when determining the compliance with the limit for concentration of exposures;
  - 4) detailed rules of functioning of the risk management system and internal control system and detailed conditions of internal capital estimation by banks and making reviews of the process of internal capital estimation and maintenance.
2. The drafts referred to in section 1 are developed considering in particular the analyses aimed at identification of risk in the banking activity as well as:
- 1) the norm aimed at ensuring security of funds accumulated in bank accounts (prudential norms) as provided for in legal acts of the European Union, documents of the Basel Committee on Banking Supervision, guidelines and recommendations of the European Banking Authority, regulatory and implementing technical standards of the European Commission, as well as prudential norms adopted in other states;
  - 2) information obtained as a result of inspection in banks and analyses performed as part of the analytical supervision as well as the information obtained from the National Bank of Poland, Polish Bank Association, Bank Guarantee Fund and from other institutions;
  - 3) operation of banks in holdings as referred to in Article 141f section 1 of the Banking Law Act;
  - 4) operation of banks in financial conglomerates as referred to in Article 4 of the Supplementary Supervision Act.

**§22.** PFSA Office in the course of analytical supervision or during the inspection analyses the agreements referred to in Article 6a sections 1 and 7 of the Banking Law Act.

**§23.** PFSA Office co-operates and exchanges information with relevant supervisory bodies as regards exercising consolidated supervision, supplementary supervision, supervision over branches and representative offices of foreign banks operating on the territory of the Republic of Poland, supervision over branches and representative offices of domestic banks operating on the territory of host member states and third states and supervision over branches and representative offices of credit institutions operating on the territory of the Republic of Poland, as well as in relation to cross-border activity.

**§24. 1.** The supervisory review and assessment process or review and verification of results of the previous process are conducted at least once a year for the banks.

2. The supervisory review and assessment process refers to the assessment of size of the risk that the bank is exposed to, assessment of the quality of the risk management system, assessment of the level of capital covering the risk related to the bank activity and assessment of the compliance with the provisions of law regulating banks' activity, the statute and the decision on granting a license for the bank incorporation.

3. The supervisory review and assessment process covers in particular:

- 1) bank risk profile;
- 2) stress tests' results;
- 3) the degree of the bank's exposure to the risk of concentration of exposures, including big exposures;

- 4) the degree of the bank's exposure to the interest rate risk, including determination whether the sudden and unexpected change of the interest rates level by 200 basis points would decrease the bank's economic value by over 20% of own funds;
- 5) liquidity risk;
- 6) impact of risk diversification effect;
- 7) correctness of revaluation of financial instruments classified to the trading portfolio;
- 8) adjustment and mode of application of the rules and procedures introduced by the bank to manage residual risk related to the use of acknowledged credit risk mitigation techniques;
- 9) the process of managing the risk in the bank's activity, including the methods of identification, measurement, monitoring and control of this risk as well as tools for its mitigation;
- 10) adequacy of the bank's own funds to the receivables that were subject to securitisation due to the economic nature of transactions and the extent of the risk transfer;
- 11) adequacy of the capital under capital requirements to the risk in the bank's activity;
- 12) the process of estimation and maintenance of internal capital with regard to the bank's risk profile;
- 13) compliance of the bank operation with the provisions of law regulating the activity of banks, statute and decision on granting the license for bank incorporation;
- 14) correctness of the scope and mode of publishing by banks the information of quantitative and qualitative nature concerning capital adequacy and the scope of information subject to publishing.

4. When determining the scope and frequency of the supervisory review and assessment process, the principle of proportionality must be applied, in particular taking the following into consideration:

- 1) importance and size of the bank in the banking system;
- 2) results of financial standing analysis;
- 3) bank's score in the assessment system;
- 4) results of the previous supervisory review and assessment.

5. PFSA Office informs the banks about the results of the supervisory review and assessment.

6. In case of identifying any irregularities, PFSA shall take the necessary supervisory actions in line with Articles 138 and 138a of the Banking Law Act.

**§25.** The supervisory review and assessment process may be carried out in particular through:

- 1) analytical supervision;
- 2) supervisory actions as defined in §38 section 1 items 2 and 3.

**§26.** For the purpose of exercising supervision, the methodologies of review and analysis of the banks activity are developed in line with the effective provisions of law and best banking practice. The general methodological assumptions of the supervisory review and assessment process are disclosed to banks.

**§27.** As part of the analytical supervision, PFSA Office analyses the data provided by banks and treats the data as the basis for monitoring of:

- 1) connections of banks with their subsidiaries;

- 2) economic situation of individual banks, their subsidiaries and of the banking system;
- 3) observance by the banks subject to consolidated supervision of prudential regulations on a consolidated basis;
- 4) observance by the banks subject to supplementary supervision of prudential regulations in that regard;
- 5) individual risks related to the banking activity;
- 6) observance by the banks of provisions regarding in particular:
  - a) concentration of bank's exposures referred to in Article 71 of the Banking Law Act,
  - b) loans, cash loans, bank guarantees and sureties granted to members of bank governing bodies or persons holding managerial positions at the bank, referred to in Article 79a of the Banking Law Act,
  - c) establishing provisions towards risk related to banks' activity (specific provisions) and impairment charges,
  - d) capital adequacy, including:
    - solvency ratio,
    - capital requirements for particular types of risk and capital requirements for exceeding the limits and breaching other norms as provided for by the provisions regulating banks' activity,
  - e) mortgage bonds in trading;
- 7) changes to the banks' ownership structure and processes of consolidation in the banking sector;
- 8) the information referred to in §14 section 1 item 5 of Resolution No. 385/2008 of the Polish Financial Supervision Authority of 17 December 2008 on Detailed Rules and Methods of Publication of Qualitative and Quantitative Information on Capital Adequacy by Banks and the Scope of Published Information (Official Journal of PFSA No. 8, item 39, as amended<sup>10)</sup>) to perform comparative analyses of trends and practices in the area of remuneration;
- 9) gathered data on the number of people at the bank whose annual earnings exceed in the Polish zlotys the equivalent of EUR 1,000,000 converted at the average rate published by the National Bank of Poland, effective on the last business day of the bank's financial year, including the information on the type and nature of the work performed at the bank and remuneration components.

**§28.** PFSA Office also analyses the data provided by banks' dominant entities and other entities operating in the same holding as the bank as well as by a leading entity in a financial conglomerate, referred to in Article 4 section 5 of the Supplementary Supervision Act.

**§29.** Exercising of analytical supervision also covers:

- 1) making periodical analyses of economic situation of supervised banks, branches of credit institutions and branches of foreign bank within the scope of powers of the host member state;
- 2) making periodical analyses of consolidated banks' financial statements;
- 3) monitoring execution of PFSA recommendations addressed to banks;

4) considering notifications of trustees operating at mortgage banks about the cases of the bank's failure to execute their recommendations.

**§30.** The analysis of data and information obtained from banks covers in particular:

- 1) bank's strategy, risk management system, internal control system, internal audit reports, annual reports of the bank management board for the supervisory board;
- 2) data provided by banks to the National Bank of Poland under other provisions of law;
- 3) annual financial statements of banks together with the opinion of a certified auditor and copies of resolutions of the general shareholders meeting and on distribution of profit or loss covering;
- 4) financial statements of entities that were originally dominant entities;
- 5) official copies of entries to mortgage bonds register submitted by trustees operating at mortgage banks;
- 6) reports on execution of the reorganisation procedure submitted by banks obliged thereto.

**§31.** PFSA Office prepares the results of analyses of the banking sector in the form of a quarterly comprehensive assessment of the banking sector's economic situation and other studies of cross-sectional or individual nature.

**§32.** 1. In order to immediately exercise the power of PFSA, referred to in Article 144 section 1 and Article 145 section 1 of the Banking Law Act, if the financial situation or the mode of execution of the bank's reorganisation procedure justify appointment of a custodian or receivership administration, PFSA Office gathers the information about the persons that have relevant qualifications and declared readiness to act as a custodian or member of receivership administration.

2. PFSA Office provides a template of the form for submitting applications referred to in section 1.

**§33.** 1. PFSA Office, making a preliminary assessment of qualifications of the persons interested in acting as custodian takes into account in particular whether the applicant has:

- 1) university degree, in particular in law or economics;
- 2) at least two years of professional experience in the banking sector, in particular related to project management and managing teams composed of at least five people, or acting as auditor, certified auditor, financial controller or chief accountant.

2. In the absence of a university degree in law or economics, PFSA Office may take into account post-graduate studies or specialist training in law, banking, finance and accounting, management or other post-graduate studies or training related to economics.

**§34.** 1. PFSA Office, making a preliminary assessment of qualifications of the persons interested in acting as member of a bank's receivership administration, takes into account in particular whether the applicant has:

- 1) university degree, in particular in law or economics;
- 2) at least three years of professional experience in management boards or on managerial positions related to managing teams composed of at least twenty people as regards banking risk management, internal audit or finance and accounting.

2. In the absence of a university degree in law or economics, PFSA Office may take into account post-graduate studies or specialist training in law, banking, finance and accounting, management or other post-graduate studies or training related to economics.

**§35.** PFSA Office may offer to the persons referred to in §32 section 1:

- 1) participation in special seminars on the rules of:
  - a) acting as bank's custodian or member of bank's receivership administration, inclusive of effective legal provisions,
  - b) prudential supervision over banks, in particular as regards amendments to the provisions governing the banks activity and practical application thereof as well as review of current trends in regulatory and supervisory systems;
- 2) participation in training courses s available for employees of PFSA Office and offered by PFSA Office as part of its educational activity.

**§36.** PFSA Office gathers information about legal persons that may act as bank's custodian.

**§37.** 1. Should PFSA take a decision referred to in Article 158 of the Banking Law Act, on the suspension of the bank's activity and establishment of receivership administration, unless it has already been established earlier, PFSA Office carries out actions related to execution of this decision.

2. Employees of PFSA Office carrying out the actions referred to in section 1, upon their arrival to the bank shall notify:

- 1) at the bank head office - bank management board president;
- 2) at a branch or another organisational unit of the bank – branch director or person managing this unit.

3. In execution of the actions referred to in section 1, employees of PFSA Office are obliged to:

- 1) start working on the day of suspending the bank's activity, at the same time in the head office, branches and other organisational units of the bank, at least 5-10 minutes before the bank's opening hours;
- 2) present to the bank management and bank employees the decision of PFSA on suspension of the bank's activity and establishment of receivership administration, provided that it has not been established earlier;
- 3) display the decision of PFSA on suspension of the bank's activity and establishment of receivership administration, provided that it has not been established earlier, and the communication of PFSA in that respect in every branch and other organisational unit of the bank in a place visible to clients; in case of simultaneous decision of PFSA on takeover of the bank by another bank – display the decision of PFSA in this regard.

4. In justified cases, from the moment of initiating the actions referred to in section 1, the employees of PFSA Office performing those actions should have the protection by the Police guaranteed. For that purpose, the person managing the actions referred to in section 1, is obliged to inform the relevant unit of the Police on the date of initiating those actions in case of the activity suspension, 30 minutes before initiating them, at the latest.

5. The employees of PFSA Office performing the actions referred to in section 1, inspect source documents at bank's premises. In justified cases and upon consent of the bank where the actions referred to in section 1 are performed, the documents may be inspected at PFSA Office provided that the bank is informed in writing which source documents are to be inspected at PFSA Office.

6. In the case of actions referred to in section 1, the persons performing them should obtain from the bank management and relevant employees the written declarations that according to their knowledge all the receivables and liabilities are recognised in the bank's books. Should they refuse to make such declaration, the persons performing the actions will take note of this fact in the report on performance of actions related to activity suspension.

7. After finishing the actions referred to in section 1, the persons performing those actions make a written report thereon within 7 days. The report shall contain:

- 1) name of the unit where the actions were performed and its address;
- 2) name, surname and position of the person managing the performance of actions;
- 3) the date of the beginning and end of the actions, indicating potential breaks in performance thereof;
- 4) indication of the scope of documents that were inspected and their dates;
- 5) name and surname of the person managing the bank, and if necessary, the persons managing organisational units and dates when they took up their positions;
- 6) list of enclosures with the report;
- 7) information about the approach of the bank management board to findings of the report from the actions performed;
- 8) reservation that the report is for internal use only;
- 9) elements necessary to assess the bank's economic situation.

8. The reports referred to in section 7 are made for each organisational unit of the bank. Those reports should be signed by the person managing performance of actions and by an authorised bank employee, directly upon termination thereof.

9. The reports are drawn in two copies that are stored by PFSA Office.

10. Working papers are developed from the performed actions referred to in section 1. The working papers contain the information providing justification for the findings presented in the report.

**§38.** 1. PFSA Office performs at banks the supervisory actions, including but not limited to:

- 1) controls of preparation to initiate operating activity;
- 2) inspections;
- 3) explanatory proceedings;
- 4) validation proceedings.

2. In the scope and mode determined in agreements with relevant supervisory bodies, the inspectors referred to in §39 and the persons authorised by PFSA may take part in the supervisory actions performed and information visits made at the dominant entity of the domestic bank with the registered office abroad.

3. PFSA Office may also perform supervisory actions at branches of a domestic bank located abroad.

4. In the scope and mode determined in agreements with relevant supervisory bodies, the inspectors referred to in §39 and the persons authorised by PFSA may take part in the joint supervisory actions performed by inspectors of foreign supervisory bodies in entities with their registered office on the territory of the Republic of Poland.

**§39.** 1. The supervisory actions are performed by authorised employees of PFSA Office, hereinafter referred to as “inspectors”.

2. The supervisory actions are performed by teams composed of at least two persons. Also the persons authorised under the resolution, referred to in Article 105 section 1 item 2 letter (a) of the Banking Law Act may be part of the inspection team.

3. The inspector indicated for this role, hereinafter referred to as “inspector manager”, manages the works of the inspection team. The process of inspection, except for inspections aimed at controlling fulfilment of requirements under the Act on Counteracting Money Laundering and Terrorism Financing, shall be supervised by an employee designated by a director of a competent organisational unit of PFSA Office.

**§40.** The documents authorising to perform the supervisory actions include:

- 1) authorisation to perform the inspection at a given bank issued by the Chairman of PFSA or another person empowered by the former;
- 2) authorisation to perform supervisory actions issued by the Chairman of PFSA;
- 3) relevant ID.

**§41.** 1. The inspector authorised to perform supervisory actions is precluded from participation in those actions if the results thereof may impact the inspector’s rights or obligations or the rights or obligations of the inspector’s spouse, relatives, relations or persons related thereto under adoption, custody or guardianship and persons wherewith the inspector is in close relationship.

2. The reasons for precluding the inspector are communicated to the inspector manager who informs their superior. The decision on precluding the inspector is taken by the Deputy Chairman of PFSA in charge of the competent organisational unit of PFSA Office; in justified cases the decision may be changed by the Chairman of PFSA.

**§42.** 1. The inspection team, immediately upon their arrival to the controlled entity, shall notify about it:

- 1) at the bank head office - bank management board president, or in their absence, a management board member substituting therefor;
- 2) at a branch or another organisational unit of the bank – branch director or person managing this unit, or in their absence, a person substituting therefor;
- 3) at a branch of credit institution or foreign bank - branch director or in their absence, a person substituting therefor;

4) at a representative office of foreign bank and credit institution – representative or in their absence, a person substituting therefor, hereinafter referred to as “manager of the controlled unit”.

2. Prior to initiating the supervisory actions, the inspectors present the documents listed in §40, and the inspector manager informs the controlled entity on its rights and obligations during the inspection.

3. The inspector manager records the fact of performing supervisory actions in the mode customary for the controlled entity.

4. The employees of the controlled entity should be informed about initiation of the supervisory actions in the mode customary for the controlled entity.

5. The supervisory actions should be performed on the days and within the hours of work at the controlled entity or when the controlled entity actually conducts business activity.

**§43.** 1. The inspection team should inspect the source documents at the premises of the controlled entity. In justified cases and upon consent of the controlled entity, the documents may be inspected at PFSA Office, provided that the controlled entity is informed in writing which source documents are to be inspected at PFSA Office.

2. The management of the controlled unit shall ensure for the inspectors proper conditions for effective performance of the supervisory actions; in particular the management ensures the room or rooms meeting the occupational health and safety requirements and makes the necessary technical devices available for use.

3. The inspector performing the supervisory actions under Article 139 section 1 item 2 of the Banking Law Act, requests the controlled entity to make copies of documents and data storage devices referred to in section 1, as well as of the materials, breakdowns and calculations based on those documents.

4. The inspector performing the supervisory actions under Article 139 section 1 item 2 of the Banking Law Act, requests the employee of the controlled entity to provide oral or written explanations in the scope of the control or inspection.

5. Should a document of the controlled entity be developed in a foreign language, the inspector requests the controlled entity to present the document in the original version and translated into Polish by a certified translator.

**§44.** 1. The supervisory actions are performed upon prior written notification to the manager of the controlled unit about the intention to initiate the supervisory actions. In justified cases, as defined by Article 79 section 2 of the Act of 2 July 2004 on Freedom of Commercial Activity (Journal of Laws of 2010, No. 220, item 1447, as amended<sup>11)</sup>), supervisory actions may be performed without prior notification. The justification for the lack of notification about the intention to initiate supervisory actions shall be recorded in the inspection book and the report on the supervisory actions.

2. The supervisory actions are initiated no earlier than after 7 days and no later than 30 days of the day of delivering the notification about the intention to initiate supervisory actions. In

the case of failure to initiate the supervisory actions within 30 days of the notification delivery, another notification is necessary before initiating the supervisory actions.

3. The notification about the intention to initiate supervisory actions includes:

- 1) indication of the issuing body;
- 2) date and place of issue;
- 3) indication of the controlled entity;
- 4) indication of the objective scope of the supervisory actions;
- 5) signature of the person authorised to issue a notification.

**§45.** 1. The inspection report of a representative office of a foreign bank or credit institution is signed by members of the inspection team and next the inspection manager submits it to a representative of a foreign bank or credit institution indicating the deadline for signing thereof. The fact of refusal to sign the report, delay in signing thereof or voicing some reservations thereto shall not withhold the post-inspection proceedings.

2. In case of identifying during the inspection of a representative office of a foreign bank or a representative office of a credit institution of any irregularities in their operation, a post-inspection letter is sent within 30 days of the end of the inspection calling on them to remedy the irregularities.

**§46.** 1. The objectives of inspection in the controlled entity include in particular:

- 1) assessment of the risk management process and of the internal control system;
- 2) assessment of compliance of the controlled entities' activity with the provisions of the Banking Law Act, the Act of 29 August 1997 on the National Bank of Poland (Journal of Laws of 2005 No. 1, item 2, as amended<sup>12)</sup>), provisions of the Act on Counteracting Money Laundering and Terrorism Financing, statute and decision to issue a license for establishing a controlled entity;
- 3) assessment of PFSa recommendations' execution;
- 4) verification of data provided by controlled entities to the National Bank of Poland.

2. The inspections may focus on a specific issue or be comprehensive. The former concern the selected areas of activity of the controlled entity while the latter the entire economic situation of the controlled entity.

3. The comprehensive inspections cover in particular the control of:

- 1) credit risk;
- 2) liquidity risk;
- 3) market risk;
- 4) operational risk;
- 5) capital, including the process of assessment and maintenance of internal capital;
- 6) management system and internal control system as well as observance of provisions regulating activity of banks, statutes and conditions as defined by the license for bank incorporation.

**§47.** 1. The inspection manager organises the final meeting with the management of the controlled unit in order to present the inspection results and discuss the irregularities identified. In the case of a comprehensive inspection and in justified cases also in the case of

the inspection focusing on a specific issue, a representative of the supervisory board and a certified auditor, and in co-operative banks also a representative of the associating bank are invited to the final meeting by the controlled entity. In banks under the reorganisation proceedings, also the custodian supervising the reorganisation programme execution is invited to the meeting.

**§48.** 1. The report containing the findings and conclusions from the performed supervisory actions is developed from the inspection.

2. The report shall also contain:

- 1) name and address of the unit where the inspection was carried out;
- 2) name and surname of the manager of the controlled unit, and if necessary also of the persons managing the organisational units and the date of assuming their positions;
- 3) name, surname and position of the inspection manager;
- 4) start and end date of the inspection indicating the potential breaks in the inspection;
- 5) determination of the scope of actions performed, date whereat the documents of the controlled entity were inspected and the scope of inspection;
- 6) list of enclosures with the report;
- 7) data about the number of copies of the report and enclosures therewith and the information about delivery of one copy to the manager of the controlled unit where the inspection was carried out;
- 8) information about the approach of the management board of the controlled entity and management of the controlled unit to findings included in the inspection report;
- 9) reservation that the report is for internal use only;
- 10) date and place of signing the report.

3. Working papers are developed from the inspection. The working papers contain the information providing justification for the inspection findings presented in the inspection report.

4. The inspection report is developed within 30 business days of the end of the inspection and addressed to:

- 1) management board of the controlled entity and management of the controlled unit;
- 2) supervisory board – in case of comprehensive inspection;
- 3) PFSA Office.

5. In special justified cases, the deadline referred to in section 4 may be prolonged but for no more than another 15 business days.

6. The inspection report signed by the person managing the inspection and supervising the inspection process is submitted for signature to:

- 1) at the bank head office – two members of the management board;
- 2) at a bank organisational unit – two persons out of those authorised to make declarations of will on behalf of this unit;
- 3) at a branch of a foreign bank – branch director.

7. The procedure of signing the inspection report should not take longer than:

- 1) 7 business days at organisational units of the bank as part of the comprehensive inspection or inspection focusing on a specific issue, counting of the day of submitting the report for signature;
- 2) 14 business days at the head office of the bank as part of the comprehensive inspection, counting of the day of submitting the report for signature;
- 3) 7 business days at the head office of the bank as part of the inspection focusing on a specific issue, counting of the day of submitting the report for signature, with the proviso that in special justified cases the deadline may be prolonged by another 7 or 14 business days, respectively.

8. The inspection report may be:

- 1) signed without reservations;
- 2) signed with reservations; or
- 3) not signed

by the controlled entity.

**§49.** 1. To the report, upon its signing, the manager of the controlled unit where the inspection was carried out may voice reservations or grounded explanations as to facts and findings covered by this report.

2. The reservations or explanations referred to in section 1, should be enclosed with every copy of the report.

**§50.** 1. In case of obtaining in the course of supervisory actions the information that may indicate the existence of some infringements by employees or management of the controlled unit of the provisions of law whereunder they may be criminally liable, the person managing the supervisory actions is obliged to immediately notify about it the director of a competent organisational unit of PFSA Office or a person substituting therefor, while observing the official procedure.

2. Upon consultation with the director of a competent organisational unit of PFSA Office the inspection manager, after the approval of the person in charge the supervisory actions, develops a proposal of the motion and the documentation and submits it with the letter signed by the director of a competent organisational unit of PFSA Office for financial and legal approval in line with the rules and mode set forth in internal regulations of PFSA Office.

**§51.** The refusal to sign the report for the controlled entity or delay in its signing does not impact its validity and carrying out of post-inspection actions.

**§52.** In case of identifying any irregularities in the controlled entity a draft of post-inspection recommendations is developed from the inspection and submitted by the director of a competent organisational unit of PFSA Office for signature to the Deputy Chairman of PFSA in charge of this unit.

**§53.** 1. The post-inspection recommendations are provided to the bank or branch of a credit institution no later than within 30 business days of the date of delivering by the controlled entity a signed report or explanations concerning the reason for not signing it to PFSA Office.

2. In justified cases the deadline referred to in section 1 may be prolonged by the Deputy Chairman of PFSA in charge of a competent organisational unit of PFSA Office to three months.

3. In the case of voicing reservations to the inspection report, the response thereto is enclosed with the recommendations referred to in section 1 and signed by the Deputy Chairman of PFSA in charge of a competent organisational unit of PFSA Office.

**§54.** 1. PFSA Office conducts explanatory proceedings.

2. The explanatory proceedings aim at examining an individual issue occurring in the course of activity of a bank, branch and representative office of a foreign bank or branch and representative office of a credit institution. The explanatory proceedings may aim at verifying the information provided for the purpose of the supervisory review and assessment process.

3. The provisions of the Resolution, except for §48-51, shall apply accordingly to explanatory proceedings.

4. An official memo is made from the explanatory proceedings and signed by the person in charge of the proceedings.

5. Should the findings of the explanatory proceedings suggest the need to conduct the inspection, the person in charge of the explanatory proceedings shall submit a relevant motion to the director of a competent organisational unit of PFSA Office.

**§55.** In the cases referred to in Article 138 section 3 and Article 141 section 2 of the Banking Law Act, PFSA Office informs the party about instigating administrative proceedings, in accordance with Article 61 §4 of the Act of 14 June 1960 - Code of Administrative Proceedings (Journal of Laws of 2000 No. 98, item 1071, as amended<sup>13)</sup>), hereinafter referred to as the “Code of Administrative Proceedings”.

**§56.** 1. PFSA Office conducts validation proceedings.

2. The validation proceedings are an important element of the process of supervisory validation of statistical methods referred to in Article 128 section 3 and 128d of the Banking Law Act, and aim at verifying compliance of the bank’s solutions with the information enclosed with the motion with regard to fulfilment of relevant regulatory requirements.

3. The validation proceedings are conducted by a team composed of at least 2 persons.

4. Prior to conducting validation proceedings team members present the documents referred to in §40. The provisions of §41-44 shall apply accordingly.

5. The documentation with findings from the validation proceedings is developed and it forms the basis for formulating:

- 1) PFSA decision for the moving entity - when PFSA acts as consolidating supervisor;
- 2) PFSA opinion for consolidating supervision - when PFSA acts as host supervisor.

6. In justified cases, after conducting the validation proceedings, in supplementation to the decision or opinion referred to in section 5, PFSA may issue recommendations referred to in

§53, at dates as defined by the Code of Administrative Proceedings or Article 128d sections 2 and 9 of the Banking Law Act.

**§57.** 1. Subject to sections 2-6, the provisions of the Resolution, except for §38 section 1 item 1, shall apply accordingly to supervisory actions executed:

- 1) as part of the consolidated supervision in entities operating in holdings, referred to in Article 141f section 1 of the Banking Law Act,
- 2) as part of the supplementary supervision, in entities composing a financial conglomerate, referred to in Article 4 of the Supplementary Supervision Act,
- 3) in ancillary banking services enterprises providing services for enterprises operating in those holdings,
- 4) in entities referred to in Article 6a sections 1 and 7 of the Banking Law Act.

2. The supervisory actions are documented with a report and working papers containing the information justifying the inspection findings as presented in the report.

3. The person managing the supervisory actions develops and signs the report within 14 business days of the date of terminating the supervisory actions and upon signing the report by the person supervising the process of inspection submits it for signing to:

- 1) two members of management of the controlled unit;
- 2) controlled entity wherein supervisory actions are performed as part of the consolidated or supplementary supervision;

4. The procedure of signing the report by a controlled unit shouldn't last longer than 7 business days of the day of submitting the report for signature.

5. The inspection report may be:

- 1) signed without reservations;
- 2) signed with reservations; or
- 3) not signed

by the controlled unit.

6. In special justified cases the person managing the supervisory actions, upon the request of the controlled unit may prolong the deadline referred to in section 4, by the maximum of another 7 business days.

**§58.** The provisions of §46, 47 and §48 section 1 and sections 3-8 do not apply to inspection in the representative office of a foreign bank and credit institution.

**§59.** 1. In order for PFSA to determine, by way of resolution, acknowledged external credit assessment institutions within the scope of creditworthiness assessments issued by them, in accordance with Article 128 section 6 items 5 and 6 of the Banking Law Act, hereinafter referred to as "resolution on acknowledgement", PFSA Office gathers and analyses the information concerning the external credit assessment institution, hereinafter referred to as the "credit assessment institution" and methodology used by this institution in the process of issuing creditworthiness assessments, obtained under Article 128 section 5 of the Banking Law Act and on their own from universally available sources:

- 1) from a bank intending to use creditworthiness assessments, referred to in §6 section 2 item 1 letter (a) of Resolution No. 76/2010 of the Polish Financial Supervision Authority of 10 March 2010 on the Scope and Detailed Procedures for Determining Capital Requirements for Particular Types of Risk (Official Journal of PFSA No. 2, item 11, as amended<sup>14</sup>), hereinafter referred to as the “Resolution on Bank Capital Adequacy”, issued by a specific credit assessment institution;
- 2) from a credit assessment institution.

2. PFSA Office gathers and analyses the information for the purpose referred to in section 1, when at least one bank announces the intention to use the assessments of a specific credit assessment institution.

**§60.** For the purpose referred to in §59 section 1, PFSA Office:

- 1) assesses fulfilment of the requirements referred to in §61;
- 2) determines the connections referred to in §64.

**§61.** Acknowledgement of the credit assessment institution, referred to in §59, covers acknowledgement of the credit assessment institution in the scope of creditworthiness assessments issued by this institution for the purpose of determining capital requirements for credit risk:

- 1) except for securitisation items, upon determining that, taking into account the criteria defined in §67, the assessment methodology used by credit assessment institution meets the requirements of objectivity, independence, ongoing review as well as transparency and overtness, and the creditworthiness assessment developed with the use of this methodology meets the requirements of reliability, market acceptance as well as transparency and overtness. If the institution is registered as a credit rating agency in line with the Regulation (EC) No. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on Credit Rating Agencies (OJ EC L 302 of 17 November 2009, p. 1, as amended), it is assumed that the requirements of objectivity, independence, ongoing review as well as transparency and overtness have been met in relation to the assessment methodology;
- 2) as regards securitisation items, upon determining that the conditions set forth in item 1 are met and the credit assessment institution has relevant experience in issuing assessments for securitisation items, which is evidenced by the use by entities operating in the market of the assessments issued by this institution.

**§62.** PFSA may assume, without the analyses referred to in §59, that the credit assessment institution is acknowledged for the purposes defined by §61, if this institution has been acknowledged by relevant supervisory bodies of a member state for that purposes.

**§63.** PFSA Office publishes on the website of PFSA Office the resolution on acknowledgement and information explaining the procedure of acknowledgement of this institution.

**§64.** 1. In the case referred to in §61 item 1, PFSA Office performs the actions as defined by §68, in the scope necessary for determining by PFSA the connection of creditworthiness assessments with credit quality levels, which shall be understood as assigning

creditworthiness assessments of the credit assessment institution to credit quality levels referred to in Enclosure No. 4 with the Resolution on Bank Capital Adequacy.

2. In the case referred to in §61 item 2, PFSA Office performs the actions as defined by §69, in the scope necessary for determining by PFSA the connection of creditworthiness assessments with credit quality levels referred to in Enclosure No. 18 with the Resolution on Bank Capital Adequacy.

**§65.** PFSA may reach conclusions referred to in §64, without performing by PFSA Office the actions referred to therein, when such conclusions have already been reached by relevant supervisory bodies of a member state.

**§66.** In the scope necessary to issue the resolution on acknowledgement, PFSA Office takes account of the creditworthiness assessments made at the order of banks and additionally the non-ordered assessments provided that:

- 1) the conditions referred to in §61 are met;
- 2) the information gathered by PFSA Office suggests that the non-ordered creditworthiness assessments issued by the credit assessment institution are not used to make the assessed entities to order the issue of creditworthiness assessments.

**§67.** 1. PFSA Office analyses whether the credit assessment institution meets the conditions referred to in §61 item 1 as regards methodology of operation and individual creditworthiness assessments.

2. As part of the analysis referred to in section 1, PFSA Office assesses the methodology used by the credit assessment institution, taking into account whether this institution meets the following criteria:

- 1) in the scope of the objectivity criterion, PFSA Office verifies whether the methodology of issuing creditworthiness assessments is adequate in terms of strictness, regularity and continuity; it is also verified on the basis of historical experience;
- 2) in the scope of the independence criterion, PFSA Office verifies whether the methodology of issuing creditworthiness assessments is free from external political influence or limitation or economic pressure that could impact the creditworthiness assessment, with the proviso that PFSA Office when verifying the assessment may take into account in particular:
  - a) ownership and organisational structure of the credit assessment institution,
  - b) documentation describing financial standing of the credit assessment institution,
  - c) staff and expert knowledge of the credit assessment institution,
  - d) corporate governance in the credit assessment institution;
- 3) in the scope of the ongoing review criterion:
  - a) PFSA Office verifies whether the creditworthiness assessments issued by the credit assessment institution are reviewed, after each significant credit event, at least once a year and take account of changing financial conditions,
  - b) prior to acknowledgement of the credit assessment institution, PFSA Office verifies whether the methodologies of assessment concerning individual market segments are compliant with the following standards:

- c) historical verification covering the period of at least one year,
    - information concerning regularity of conducting reviews by this institution is available for PFSA Office,
    - information concerning the scope of contacts of the credit assessment institution with persons holding managerial positions in the entities assessed by this institution is available for PFSA Office,
  - d) PFSA Office takes the actions necessary to obtain from the credit assessment institution current information about all material changes concerning the methodologies used by this institution to issue creditworthiness assessments;
- 4) in the scope of the transparency and overtness criterion, PFSA Office verifies whether the methodology used by the credit assessment institution when issuing creditworthiness assessments has been made available to make it possible for all its potential users to verify whether it is correct.
3. As part of the analysis referred to in section 1, PFSA Office when verifying individual creditworthiness assessments may take into account:
- 1) in the scope of the reliability and market acceptance criterion, acknowledgement of reliability and accuracy of those assessments by the entities using them, by:
    - a) market share of the credit assessment institution,
    - b) income of the credit assessment institution and documentation describing its financial standing,
    - c) existence of market valuation made on the basis of those assessments,
    - d) establishing whether at least two banks use individual creditworthiness assessments issued by this institution when issuing debt securities or assessing credit risk;
  - 2) in the scope of the transparency and overtness criterion, existence of equal access to assessments at least for domestic banks and credit institutions that have justified interest in learning about those assessments.

**§68.** 1. In the scope necessary to issue the resolution on acknowledgement, in order to distinguish between relative risk levels presented in each creditworthiness assessment and indicate connections between those assessments and credit quality levels, referred to in §64 section 1, PFSA Office:

- 1) takes into account the following factors:
  - a) quantitative factors understood as long-term default ratio related to all items whereto the same creditworthiness assessment was issued, with the proviso that in case of credit assessment institutions, who have not been operating for a long time or whose database on defaults is small, PFSA Office analyses the obtained forecasts of long-term default ratio related to the items whereto the same creditworthiness assessment was issued,
  - b) qualitative factors understood as a group of issuers covered with the assessments of a given institution, scope of assessments, importance of each assessment and definitions of default adopted by the credit assessment institution;
- 2) compares the default ratios according to individual creditworthiness assessments of the credit assessment institution, compares the ratios with the model developed on the basis

of default ratios according to other credit assessment institution calculated for the group of issuers representing balanced credit risk level;

- 3) in the scope necessary to issue the resolution on acknowledgement, it is assumed that a higher credit quality level corresponds to the creditworthiness assessment in the creditworthiness assessment scale, corresponding to a higher risk weight, if the default ratios indicated in the creditworthiness assessment issued by the credit assessment institution are significantly and systematically higher than the model.

2. If PFSA increased risk weight assigned to a specific creditworthiness assessment of the credit assessment institution, and the institution proves that the default ratios indicated in the institution's assessment are no longer significantly and systematically higher than the model, PFSA may decide to reinstate for such assessment the previous credit quality level in the creditworthiness assessment scale.

**§69.** In the scope necessary to issue the resolution on acknowledgement, in order to distinguish between relative risk levels presented in each creditworthiness assessment and indicate connections between those assessments and credit quality levels, referred to in §64 section 2, PFSA Office analyses default ratios or loss ratios, scope of transactions subject to assessment by the credit assessment institution, meaning of the creditworthiness assessment and necessity of taking into account the connection adjustment to ensure that different securitisation items with the same risk level have the same risk weight.

**§70.** PFSA Office conducts the analysis referred to in §59, on the basis of the following information concerning the credit assessment institution:

- 1) general information concerning:
  - a) the use of creditworthiness assessments of the credit assessment institution to determine risk weights as part of the standard approach,
  - b) the use of creditworthiness assessments to determine risk weights of securitisation items,
  - c) scope of creditworthiness assessment issued,
  - d) type of issued creditworthiness assessments whether ordered or not, together with justification of the policy adopted in this regard,
  - e) indications of relevant authorities that conduct or will conduct the acknowledgement procedure of the credit assessment institution when the acknowledgement procedure is simultaneously conducted by a relevant authority of a member state,
  - f) states where the institution conducts activity;
- 2) presentation covering:
  - a) description of the ownership and organisational structure of the institution, in particular the information concerning:
    - owners of the institution including its major shareholders,
    - the most important subsidiaries,
    - other provided services,
  - b) number of employees employed on a full time basis,
  - c) number of the most important clients or subscribers of the institution and percentage of related income,

- d) documentation concerning financial standing of the institution, including financial statements for the last three years and financial forecasts for the next three years (in case of institutions drafting such statements) or a support letter (as regards financial support) from the dominant entity,
  - e) information whether the institution observes the norms of conduct similar to the norms adopted on the market or compliant with the best practice rules applied internationally;
- 3) information necessary to verify whether the credit assessment institution meets the criteria defined by §61, covering:
- a) in terms of methodology, to verify the objectivity criterion:
    - general description of methodologies and processes of issuing creditworthiness assessment and description of the mode of determining, implementing and changing the methodology, in particular the description of the implemented processes guaranteeing consistent application of the assessment methodology in case of all creditworthiness assessments, including the role of rating committees and guidelines of their operation, scope of information provided by entities subject to assessment, access to information not subject to public announcement for market participants,
    - for each group of assets where to a given standard methodology is consistently applied, general description of quantitative entry data, in particular basic variables, data sources, adopted assumptions and applied quantitative techniques, scope of information provided by entities subject to assessment,
    - for each group of assets where to a given standard methodology is consistently applied, general description of qualitative entry data, in particular the scope of qualitative assessment,
    - summary of major differences between standard methodologies according to geographical areas,
    - description of the methodology applied to verify the correctness, consistency and ability to distinguish between assessment systems together with accurate results of the analysis and the related conclusions,
  - b) in terms of methodology, to verify the independence criterion:
    - description of procedures aimed at ensuring fair and objective creditworthiness assessments, including the mechanisms making it possible for the institution to identify the actual or potential conflicts of interest, prevent them, react appropriately if they occur and eliminate them,
    - detailed description of safeguards when the shareholders, subsidiaries or other entities belonging to the group wherein the credit assessment institution operates are subject to assessment,
    - information about the existence of an internal audit unit or of other measures ensuring effective implementation of internal procedures,
    - information about qualifications of members of rating teams and committees, including knowledge of quantitative methods and experience in issuing

- creditworthiness assessments, as well as improving the qualifications by relevant training programmes,
- description of the most important elements of the code of practice of the credit assessment institution,
  - information whether the policy of remuneration applicable to the staff dealing with creditworthiness assessment does not impact independence and objectivity of making creditworthiness assessments,
  - detailed description of the institution’s policy as regards prices of creditworthiness assessments,
  - information whether the persons taking part in issuing creditworthiness assessments do not have business relationships with the entities subject to assessment that could hinder issuing independent and high quality creditworthiness assessments,
- c) in terms of methodology, to verify the ongoing review criterion:
- general information about reviews of creditworthiness assessments, containing in particular description of the implemented process, its most important features, scope, frequency, information about employees and teams involved in this process, applied measures, approach, most important stages of the process of monitoring, update of data, considered information provided by an entity subject to creditworthiness assessment, automated warning systems, mechanisms owing to which systematic errors in creditworthiness assessments may lead to potential changes in the creditworthiness assessment methods,
  - summary of results of reviews conducted,
  - information whether the historical verification system has been in place for at least a year,
- d) in terms of methodology, to verify the transparency and overtness criterion:
- information on announcing the methodology used when issuing creditworthiness assessments,
  - descriptions of methods used to make public the methodology and conditions of access to creditworthiness assessments for potential users,
  - description of the policy of transparency with regard to ordered and non-ordered creditworthiness assessments,
- e) as regards individual creditworthiness assessments:
- in order to verify the reliability and market acceptance criterion, the data indicating that the market uses the creditworthiness assessments issued by the institution, in particular market share, number of entities wherefor the institution issued an assessment, duration of the institution’s activity on the market, income on operations consisting in issuing creditworthiness assessments,
  - in order to verify the transparency and overtness criterion, the general description of the announcement procedures;
- 4) information necessary to connect creditworthiness assessments with the credit quality levels, covering:
- a) as regards exposures other than securitisation items:

- information about the definition of default adopted by the credit assessment institution,
  - information about the cumulative default rate for the three-year period for each category of creditworthiness assessment (subsequently provided once a year in case of acknowledgement of the credit assessment institution) and at least two latest cumulative default rates, if available,
  - information about ten-year average of three-year cumulative default rates with the proviso that should they be unavailable, then estimation of the credit assessment institution of the ten-year average of three-year cumulative default rates,
  - information about the target probability of default for each category of creditworthiness assessment, if applicable,
  - description of the methodology used for cumulative default rates, including the principles of group selection (statistical or dynamic/ adjusted), information about the definition of default used, insolvency aggregation (weighting mechanism),
  - statistical significance of default rates,
  - dynamic characteristics of the creditworthiness assessment methodology,
  - meaning of the creditworthiness assessment category,
  - scope of creditworthiness assessments issued by a given institution,
  - time horizon of the creditworthiness assessment,
  - transition matrices,
  - geographical area where the assessments are issued,
- b) as regards securitisation items:
- information about used the definition of default or impairment whereunder the default or impairment rates are set,
  - data concerning the rates referred to in letter (a), second, third, fifth and sixth indent for individual categories of creditworthiness assessments together with the description of main factors impacting those values,
  - data on losses or recoveries,
  - meaning of the creditworthiness assessment category,
  - scope of creditworthiness assessments issued by a given institution,
  - time horizon of the creditworthiness assessment,
  - transition matrices,
  - geographical area where the assessments are issued;
- 5) additional information concerning creditworthiness assessments as regards collective investment institutions as defined by Article 1 item 2 of Directive 85/611/EEC of 20 December 1985 on the Coordination of Laws, Regulations and Administrative Provisions Relating to Undertakings for Collective Investment in Transferable Securities (UCITS) (OJ EC L 375 of 31 December 1985, p. 3, as amended) containing:
- a) presentation of creditworthiness assessments as regards collective investment institutions considered to refer mainly to credit quality of assets belonging thereto,
  - b) description of factors and scope wherein they are taken into account when issuing creditworthiness assessment,

- c) meaning of the creditworthiness assessment category,
- d) scope of creditworthiness assessments issued by a given institution,
- e) time horizon of the creditworthiness assessment,
- f) transition matrices,
- g) geographical area where the assessments are issued.

**§71.** The following resolutions expire:

- 1) Resolution No. 2/2008 of the Polish Financial Supervision Authority of 7 January 2008 on the Mode of Exercising Banking Supervision (Official Journal of PFSA No. 1, item 1 and of 2009 No. 6, item 23);
- 2) Resolution No. 257/2011 of the Polish Financial Supervision Authority of 4 October 2011 on Standards of Selecting Candidates for Custodian or Member of the Receivership Administration of the Bank (Official Journal of PFSA No. 11, item 41).

**§72.** The Resolution shall be promulgated in the Official Journal of the Polish Financial Supervision Authority.

**§73.** The Resolution shall enter into force as of the day of adopting it.

Polish Financial Supervision Authority  
Chairman

Andrzej Jakubiak

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<sup>1)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2002 No. 126, item 1070, No. 141, item 1178, No. 144, item 1208, No. 153, item 1271, No. 169, item 1385 and item 1387 and No. 241, item 2074, of 2003 No. 50, item 424, No. 60, item 535, No. 65, item 594, No. 228, item 2260 and No. 229, item 2276, of 2004 No. 64, item 594, No. 68, item 623, No. 91, item 870, No. 96, item 959, No. 121, item 1264, No. 146, item 1546 and No. 173, item 1808, of 2005 No. 83, item 719, No. 85, item 727, No. 167, item 1398 and No. 183, item 1538, of 2006 No. 104, item 708, No. 157, item 1119, No. 190, item 1401 and No. 245, item 1775, of 2007 No. 42, item 272 and No. 112, item 769, of 2008 No. 171, item 1056, No. 192, item 1179, No. 209, item 1315 and No. 231, item 1546, of 2009 No. 18, item 97, No. 42, item 341, No. 65, item 545, No. 71, item 609, No. 127, item 1045, No. 131, item 1075, No. 144, item 1176, No. 165, item 1316, No. 166, item 1317, No. 168, item 1323 and No. 201, item 1540, of 2010 No. 40, item 226, No. 81, item 530, No. 126, item 853, No. 182, item 1228 and No. 257, item 1724, of 2011 No. 72, item 388, No. 126, item 715, No. 131, item 763, No. 134, item 779 and 781, and No. 165, item 984, No. 199, item 1175, No. 201, item 1181 and No. 232, item 1378 and of 2012 item 855.

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- <sup>2)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2006 No. 157, item 1119 and of 2009 No. 42, item 341.
- <sup>3)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2010 No. 182, item 1228 and of 2011 No. 134, item 779, No. 199, item 1175, No. 234, item 1391 and No. 291, item 1707.
- <sup>4)</sup> Amendments to the consolidated text of the Resolution were promulgated in the Official Journal of PFSA of 2009 Nr. 2, item 5 and of 2011 No. 4, item 7.
- <sup>5)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2006 No. 104, item 708, of 2008 No. 171, item 1055 and No. 180, item 1112, of 2009 No. 98, item 817, of 2010 No. 47, item 278, No. 182, item 1228 and No. 229, item 1496, of 2011 No. 106, item 622, No. 170, item 1015 and No. 171, item 1016 and of 2012 item 908.
- <sup>6)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2005 No. 184, item 1539 and No. 249, item 2104, of 2006 No. 157, item 1119 and of 2009 No. 157, item 1241.
- <sup>7)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2001 No. 111, item 1195, of 2002 No. 141, item 1178 and No. 216, item 1824, of 2003 No. 137, item 1303 and No. 228, item 2260, of 2004 No. 91, item 870, of 2006 No. 157, item 1119, of 2007 No. 52, item 344, of 2008 No. 209, item 1315 and of 2009 No. 127, item 1050.
- <sup>8)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2001 No. 102, item 1117, of 2003 No. 49, item 408 and No. 229, item 2276, of 2005 No. 132, item 1108, No. 183, item 1538 and No. 184, item 1539, of 2006 No. 133, item 935 and No. 208, item 1540, of 2008 No. 86, item 524, No. 118, item 747, No. 217, item 1381 and No. 231, item 1547, of 2009 No. 13, item 69, No. 42, item 341 and No. 104, item 860, of 2011 No. 92, item 531, No. 102, item 585, No. 106, item 622, No. 133, item 767, No. 201, item 1182 and No. 234, item 1391 and of 2012 item 596.
- <sup>9)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2002 No. 240, item 2058, of 2004 No. 99, item 1001, of 2005 No. 122, item 1024 and No. 233, item 1993, of 2006 No. 94, item 651, of 2007 No. 125, item 873, of 2008 No. 163, item 1014 and No. 225, item 1503, of 2009 No. 77, item 649, of 2011 No. 106, item 622 and No. 133, item 767 and of 2012 item 951.
- <sup>10)</sup> Amendments to the consolidated text of the Resolution were promulgated in the Official Journal of PFSA of 2010 No. 2, item 11 and No. 8, item 37, of 2011 No. 11, item 43, No. 13, item 49 and No. 13, item 50.
- <sup>11)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2010 No. 239, item 1593, of 2011 No. 85, item 459, No. 106, item 622, No. 112, item 654, No. 120, item 690, No. 131, item 764, No. 132, item 766, No. 153, item 902, No. 163, item 981, No. 171, item 1016, No. 199, item 1175, No. 204, item 1195 and No. 232, item 1378 and of 2012 item 855.
- <sup>12)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2005 No. 167, item 1398, of 2006 No. 157, item 1119, of 2007 No. 25, item 162, No. 61, item 410, of 2008 No. 209, item 1315 and 1317, of 2009 No. 69, item 589, No. 143, item 1164, of 2010 No. 109, item 709, No. 257, item 1724, of 2011 No. 75, item 398, No. 117, item 676 and of 2012 item 855 and 908.
- <sup>13)</sup> Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2001 No. 49, item 509, of 2002 No. 113, item 984, No. 153, item 1271 and No. 169, item 1387, of 2003 No. 130, item 1188 and No. 170, item 1660, of 2004 No. 162, item 1692, of 2005 No. 64, item 565, No. 78, item 682 and No. 181, item 1524, of 2008 No. 229, item 1539, of 2009 No. 195, item 1501 and No. 216, item 1676, of 2010 No. 40, item 230, No. 167, item 1131, No. 182, item 1228 and No. 254, item 1700, of 2011 No. 6, item 18, No. 34, item 173, No. 106, item 622 and No. 186, item 1100 and of 2012 item 1101.
- <sup>14)</sup> Amendments to the consolidated text of the Resolution were promulgated in the Official Journal of PFSA of 2010 No. 8, item 38, of 2011 No. 8, item 29, No. 9, item 32, No. 11, item 42, No. 13, item 48 and No. 13, item 49 and of 2012 item 8.