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# **Covered Bonds Act**

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## **Chapter 1 GENERAL PROVISIONS**

### **§ 1. Scope of Act**

(1) This Act regulates the grant of additional authorisations to credit institutions for issuance of covered bonds, the terms and conditions of issuance and coverage of covered bonds, the separation of a covered bond portfolio from the other assets of a credit institution, and state supervision over, and responsibility for, covered bonds.

(2) The provisions of the Administrative Procedure Act apply to the administrative proceedings prescribed in this Act, taking into account the specifications arising from this Act, the Credit Institutions Act, the Securities Market Act and the Financial Supervision Authority Act.

### **§ 2. Covered bond**

(1) A covered bond is a bond issued by a credit institution that has obtained the additional authorisation specified in subsection 3 (1) of this Act, liabilities arising from which shall be secured in accordance with the procedure provided for in this Act. The provisions of this Act do not apply to securities issued by other persons, regardless of the name or terms and conditions of the securities.

(2) For the purposes of this Act, an issuer means a credit institution that has obtained the additional authorisation specified in subsection 3 (1) of this Act, regardless of whether the credit institution has issued covered bonds or assumed an obligation to issue covered bonds.

(3) The claims provided for in this Act may be used as cover assets of covered bonds. A claim is a cover asset of a covered bond if it has been entered in the cover register for covered bonds maintained by the issuer (hereinafter *cover register*).

(4) The provisions of the Law of Property Act concerning pledges do not apply to the coverage of covered bonds.

(5) The types of covered bonds are the mortgage covered bond and the mixed asset covered bond. For the purposes of this Act, the type of a covered bond is determined by reference to the claims that can be used as the main cover asset of the covered bond (hereinafter *primary cover asset*).

(6) The set of cover assets entered in the cover register for the coverage of covered bonds of the same type constitutes a cover pool. Covered bonds of the same type, their cover pool, and the derivative instruments entered in the cover register constitute a covered bond portfolio.

## **Chapter 2 ISSUER OF COVERED BONDS**

### **Division 1**

# Additional Authorisation

## § 3. Additional authorisation to issue covered bonds

(1) To issue covered bonds, a company shall hold the authorisation specified in § 13 of the Credit Institutions Act (hereinafter *main authorisation*) and an additional authorisation to issue covered bonds (hereinafter *additional authorisation*).

(2) Companies entered in the commercial register in Estonia shall be issued with an additional authorisation by the Financial Supervision Authority.

(3) An additional authorisation shall be granted for an unspecified term.

(4) An additional authorisation shall expire:

- 1) in the case of expiry of the main authorisation – when the main authorisation expires;
- 2) in the case of voluntary discontinuation of the issuance of covered bonds – when the authorisation for the voluntary discontinuation is obtained from the Financial Supervision Authority;
- 3) in the case of revocation of the additional authorisation – when the additional authorisation is revoked.

(5) Upon the expiry of an additional authorisation, the credit institution shall not issue any new covered bonds. Expiry of an additional authorisation shall not entail the expiry of the main authorisation, unless otherwise provided by law.

## § 4. Application for additional authorisation

(1) To apply for an additional authorisation, members of the management board of a company (hereinafter *applicant*) shall submit a written petition and the following documents and information (hereinafter in this Division jointly *application*):

- 1) additions to the business plan specified in § 13<sup>2</sup> of the Credit Institutions Act;
- 2) information about the information technology and other technological tools and systems, security systems, control mechanisms and systems necessary for the issuance of covered bonds and the administration of covered bond portfolios;
- 3) an analysis of the risks associated with the issuance of covered bonds and the management of a covered bond portfolio;
- 4) the plan for separation of the covered bond portfolio specified in subsection 9 (2) of this Act;
- 5) the internal rules specified in § 10 of this Act;
- 6) data of the applicant's cover pool monitor, including the monitor's name, residence or seat, personal identification code or, in the absence thereof, date of birth or registry code, and the written consent to act as the monitor;
- 7) the monitor's client contract or a draft thereof.

(2) If it follows from the risk analysis specified in clause (1) 3) of this section or from other circumstances that in order to issue covered bonds, in addition to the amendments provided for in this Act, additional amendments must be made in the organisational structure of the credit institution or in the internal rules specified in the Credit Institutions Act and in other documents regulating the activities of the credit institution, the applicant shall submit information on such amendments with the application.

(3) The additions to the business plan specified in clause (1) 1) of this section shall be submitted for a period of at least three years and the additions shall include descriptions, forecasts and analysis of the following:

- 1) the organisational structure associated with the management of the applicant's covered bond portfolio, and the rights, obligations and responsibilities attached to the relevant positions;
- 2) the covered bond portfolios and the composition of the cover pool thereof, and substantial economic indicators;
- 3) the policy for the issuance of covered bonds and designing thereof;
- 4) the current state of compliance with liquidity requirements and the long-term liquidity management strategy;
- 5) the general risk management principles and the risk management strategy relating to the issuance of covered bonds.

(4) If, during the processing of an application, amendments are made to the information or documents specified in subsection (1) of this section, the applicant shall submit the relevant updated information or documents to the Financial Supervision Authority immediately after the amendments are made or become known to the applicant.

(5) The provisions of § 13<sup>3</sup> of the Credit Institutions Act shall apply to the review of applications for additional authorisations, whereby the provisions on applications for the main authorisation and on the Credit Institutions Act also extend to applications for the additional authorisation and to this Act.

## § 5. Decision to grant or refuse additional authorisation

(1) The Financial Supervision Authority shall make a decision to grant or refuse an additional authorisation within three months of the receipt of all the necessary documents and information that meet the requirements,

but no later than within six months after the receipt of the application for the additional authorisation. If the additional authorisation is applied for simultaneously with the main authorisation, the time limits provided for in subsection 14 (1) of the Credit Institutions Act shall apply to granting the additional authorisation and the Financial Supervision Authority shall make a decision to grant or refuse the additional authorisation simultaneously with the decision on the grant of the main authorisation.

(2) The Financial Supervision Authority may refuse to grant the applicant the additional authorisation if:

- 1) the applicant does not meet the requirements set for credit institutions or for the public offering or trading of securities in the Credit Institutions Act or in other legislation or has repeatedly or materially violated these requirements within the last five years;
- 2) the applicant has no capability to ensure the existence of sufficient internal capital within the meaning of subsection 63<sup>1</sup>(1) of the Credit Institutions Act to cover all risks relating to the activities described in the additions to the business plan that are not subject to the own funds requirements;
- 3) the applicant does not meet the requirements established for issuers in this Act or legislation issued on the basis thereof;
- 4) the applicant does not have sufficient resources and experience necessary for the issuance of covered bonds and administration of a covered bond portfolio;
- 5) the applicant's internal rules are not sufficiently detailed or unambiguous to regulate the activities of an issuer of covered bonds;
- 6) the applicant's cover pool monitor does not meet the requirements provided for in this Act or legislation issued on the basis thereof.

(3) Among other matters, the following shall be considered when assessing that provided for in clause (2) 4) of this section:

- 1) the level of the organisational and technical administration of the applicant's activities;
- 2) the professional training and experience of persons involved in the management of the covered bond portfolio, and the clarity of their rights, obligations and responsibilities;
- 3) the activities, financial position and reputation of the applicant, its parent company and other persons belonging to the same consolidation group as the applicant.

## **§ 6. Revocation of additional authorisation**

The Financial Supervision Authority may revoke an additional authorisation if:

- 1) it appears that, when applying for the additional authorisation, the applicant submitted misleading or false information or documents to the Financial Supervision Authority;
- 2) the issuer does not meet the requirements in force with regard to the grant of additional authorisations;
- 3) the issuer has repeatedly or materially violated the provisions of this Act;
- 4) the issuer has, with its activities, prevented the Financial Supervision Authority from exercising supervision on the basis of this Act;
- 5) the issuer is unable to meet the financial or other obligations it has assumed in connection with covered bonds or, for any other reason, its activities significantly impair the interests of investors or other clients or adversely affect the regular functioning of the securities market;
- 6) the issuer has failed to comply with a precept of the Financial Supervision Authority within the term or to the extent prescribed;
- 7) the issuer has not issued any new covered bonds within five years of the receipt of the additional authorisation or of the redemption of all previously issued covered bonds.

## **§ 7. Voluntary discontinuation of issuance of covered bonds**

(1) The Financial Supervision Authority shall permit an issuer, on the basis of the application of the latter, to discontinue the issuance of covered bonds and shall revoke the additional authorisation if the issuer certifies the fact specified in subsection 36 (5) of this Act.

(2) If, based on the information and documents submitted with the application for the revocation of the additional authorisation, it is not possible to establish the fact specified in subsection 36 (5), the Financial Supervision Authority may require the submission of additional information and documents.

(3) The additional information and documents shall be submitted within a reasonable term determined by the Financial Supervision Authority. The Financial Supervision Authority may refuse to review the application if the credit institution fails to submit the information or documents required by the Financial Supervision Authority by the due date.

(4) The decision to grant or refuse authorisation to discontinue the issuance of covered bonds shall be made by the Financial Supervision Authority within two months of the submission of all the necessary information and documents, but no later than six months after the receipt of the respective application.

## **§ 8. Publication**

(1) The Financial Supervision Authority shall publish a decision to grant, amend or revoke an additional authorisation on its website no later than on the business day following the day of making such decision.

(2) In addition to the provisions of subsection (1) of this section, the Financial Supervision Authority shall also publish a notice concerning the revocation of an additional authorisation in at least one daily national newspaper.

(3) If an additional authorisation is revoked on the basis of clause 6 1) of this Act, the Financial Supervision Authority shall disclose the circumstances of the violation and the data of the persons responsible for the violation, applying the provisions of subsection 18 (4) of the Credit Institutions Act.

## **Division 2**

### **Additional Requirements for Issuer's Organisational Structure and Risk Management**

## **§ 9. Risk management**

(1) Prior to issuing covered bonds, an issuer shall adapt its risk management system specified in § 82 of the Credit Institutions Act to enable it to adequately identify, measure and manage the risks associated with the administration of the covered bond portfolio.

(2) The issuer shall draw up a plan for the separation of covered bond portfolios, which describes the process of separation of the covered bond portfolios, along with the following:

- 1) descriptions and locations of the documents and data, information technology and other technological tools and systems necessary for the administration of a covered bond portfolio;
- 2) a list of the employees necessary for the administration of a covered bond portfolio and a description of their duties;
- 3) the procedure for post-separation administration of a covered bond portfolio;
- 4) a substantiated forecast of the amount of the costs of management and administration of a separated covered bond portfolio during the first year.

(3) If an issuer has not started issuing covered bonds within one year of the completion of the risk analysis specified in clause 4 (1) 3) of this Act, the risk analysis shall be reviewed and updated prior to an issuance of covered bonds.

## **§ 10. Additional requirements for issuer's internal rules**

(1) In addition to the provisions of subsection 63 (2) of the Credit Institutions Act, the internal rules of an issuer shall determine the following:

- 1) the procedure for operation of the information technology and other tools and systems and the relevant control mechanisms necessary for the issuance of covered bonds and the administration of covered bond portfolios;
- 2) the procedure for identification and resolution of security incidents related to the issuance of covered bonds and the administration of covered bond portfolios, and for the implementation of measures with regard thereto;
- 3) the procedure for the issuance of covered bonds and the administration of covered bond portfolios, including the procedure for maintaining the cover register, preservation of the register data and entry of assets in and deletion of assets from the cover register;
- 4) the procedure and methodology for stress testing of covered bond portfolios;
- 5) the procedure and methodology for valuation and revaluation of properties standing as security for a mortgage credit specified in subsection 25 (1), housing construction credit specified in clause 30 (1) 2), and commercial mortgage credit specified in clause 30 (1) 3) of this Act;
- 6) the procedure for and frequency of updating the plan for separation of covered bond portfolios;
- 7) the procedure and methodology for calculating the present value of covered bonds and the cover pool.

(2) The plan specified in clause (1) 6) of this section shall be updated at least once a year. Organisation of such updating shall be the responsibility of the managers of the issuer specified in subsection 48 (1) of the Credit Institutions Act.

## **§ 11. Cover register**

(1) An issuer shall maintain a separate cover register for both types of covered bonds. A cover register is a database the purpose of which is to collect, systematise and store data about the cover pool required on the basis of this Act for mortgage covered bonds and mixed asset covered bonds. Entries made in the cover register have legal effect for the composition of the cover pool.

(2) A cover register shall consist of the main register and sub-registers. In addition to the other cases provided by law, a sub-register shall be created to ensure that the entire cover pool and all derivative instruments related

to a specific covered bond portfolio will be properly recorded. When creating sub-registers, the issuer shall take into account the size of the covered bond portfolio, the complexity of its structure and other relevant indicators.

(3) The Financial Supervision Authority may require that the number of sub-registers be increased or reduced or that a sub-register be joined with the main register if this is necessary to ensure clearer recording of the data on cover pool and other assets.

(4) The entry of personal data in the cover register shall only be permitted for the purpose of identification of the cover pool and on the condition that the personal data are processed in accordance with the legislation in force. For a claim arising from a mortgage credit specified in subsection 25 (1) of this Act, the name of the credit recipient, the credit currency and the credit balance, the date and number of the credit agreement and information on the immovable property encumbered with the mortgage shall be entered in the cover register.

(5) The entry of a claim serving as a cover asset of covered bonds in the cover register or its deletion from the cover register shall not require the consent of the debtor or the third party concerned and the issuer shall have no obligation to inform the debtor or the third party concerned of the entry of the claim in the cover register or the deletion thereof from the register, unless otherwise provided for in this Act.

(6) The debtor of a claim and the counterparty to a derivative instrument entered in the cover register shall at any time, and an interested party shall in a justified case, have the right to obtain information as to whether the claim or derivative instrument that is related thereto has been entered in the cover register. The obligation to provide the information shall lie with the issuer, the cover pool administrator and the bankruptcy trustee of the covered bond portfolio.

(7) The issuer shall ensure the preservation of the data entered in the cover register and the reproduction of the data for entitled persons and institutions while the claim that necessitated the entry of the data in the cover register is included in the register and within ten years of the removal of the claim from the register.

(8) A more detailed composition of the data to be entered in the cover register shall be established by a regulation of the minister responsible for the area.

## **§ 12. Cover pool monitor**

(1) For the performance of the duties provided for in this Act, an issuer shall appoint an independent cover pool monitor (hereinafter *monitor*).

(2) The duties of a monitor constitute assurance audit services to which the provisions of the Auditors Activities Act shall apply with the specifications provided for in this Act.

(3) An audit firm guaranteeing that only a trustworthy sworn auditor with an impeccable business reputation and with sufficient knowledge and experience to this end will perform the duties of the monitor may be appointed as a monitor. An audit firm that provides the audit service specified in § 93 of the Credit Institutions Act to the issuer shall not be the monitor.

(4) The client contract for the performance of the monitor's duties shall be submitted to the Financial Supervision Authority within three business days of its signing.

## **§ 13. Appointment and end of term of office of monitor**

(1) The issuer's general meeting shall have the authority to appoint a monitor. A monitor shall be appointed for a term that shall not be less than one year. The issuer shall notify the Financial Supervision Authority of the intention to appoint a monitor by submitting the information and documents specified in clause 4 (1) 6) of this Act to the Financial Supervision Authority at least ten days before the relevant decision is made.

- (2) The term of office of a monitor shall end when:
- 1) a cover pool administrator is appointed;
  - 2) resolution proceedings are commenced;
  - 3) the covered bond portfolio is declared bankrupt;
  - 4) the general meeting removes the monitor;
  - 5) the monitor resigns at the monitor's own request;
  - 6) the monitor's term of appointment expires.

(3) Upon the resignation at the monitor's own request, the monitor shall notify the issuer and the Financial Supervision Authority thereof at least 30 days in advance. Upon the removal of the monitor by the general meeting, the issuer shall notify the Financial Supervision Authority of the planned removal ten days before the relevant decision is made, unless prior notification is not possible for good reason.

(4) No new monitor shall be appointed in the cases specified in clauses (2) 1)–3) of this section.

(5) A court shall, in the proceedings commenced on the basis of a petition of the Financial Supervision Authority, appoint a new monitor if:

- 1) the general meeting has not appointed a new monitor or there is a reason to believe that a new monitor cannot be appointed before the end of the term of office of the current monitor;
- 2) the current monitor does not meet the requirements established by law or there are deficiencies in the performance of their duties.

(6) The term of office of a monitor appointed by a court shall continue until the general meeting appoints a new monitor.

#### **§ 14. Duties of monitor**

(1) The duty of a monitor is to verify:

- 1) the compliance of stress testing of a covered bond portfolio and the changes introduced to the covered bond portfolio as a result of stress testing with requirements;
- 2) the existence of a sufficient cover pool and its compliance with requirements;
- 3) the compliance of the maintenance of the cover register with requirements;
- 4) the compliance of the valuation of immovable properties encumbered with a mortgage securing credit and included in the cover pool with requirements;
- 5) the compliance of the issuer's risk management and reporting with requirements;
- 6) the compliance of the terms and conditions of covered bonds with requirements.

(2) The monitor shall have the right to determine the scope and duration of the verification on each occasion. The monitor may carry out an on-site verification at the issuer's seat or place of business, notifying the issuer thereof at least two business days in advance.

(3) The issuer shall allow the monitor to examine documents and information systems and shall provide the monitor with the information that is necessary for the performance of the monitor's duties.

(4) The monitor shall notify the issuer of any deficiencies detected during verification in a format that can be reproduced in writing and shall set a reasonable deadline for the elimination of the deficiencies. The monitor shall notify the Financial Supervision Authority of the deficiencies that are not fully eliminated by the deadline set.

(5) The monitor is required to notify the Financial Supervision Authority, immediately and in a format that can be reproduced in writing, of any circumstances or decisions that have come to the knowledge of the monitor and that result or may result in:

- 1) a material violation of the laws and regulations governing the activities of the issuer;
- 2) a material violation of the conditions under which the additional authorisation was granted;
- 3) a situation, or the risk of a situation arising, in which the issuer is unable to meet its financial or other obligations arising from covered bonds and from the derivative instruments entered in the cover register.

(6) The information specified in subsection (5) of this section shall be submitted simultaneously to the issuer's management body, unless there are good reasons not to do so.

(7) The monitor shall draw up a report on verification activities that gives an overview of performance of the duties specified in subsection (1) of this section, the deficiencies detected and the measures taken to eliminate them. The reporting period shall correspond to the issuer's financial year. The report shall be submitted to the issuer and the Financial Supervision Authority within three months of the end of the issuer's financial year. Even a person whose term of office as a monitor has ended shall comply with the obligation to submit the report.

(8) Upon the appointment of a cover pool administrator or, based on the Financial Crisis Prevention and Resolution Act, special administrator, the monitor shall provide the cover pool administrator or special administrator with all the information that may be necessary for the performance of the duties of the cover pool administrator or special administrator. Upon the declaration of bankruptcy of a covered bond portfolio, the monitor shall provide the bankruptcy trustee of the covered bond portfolio with all the information that may be necessary for the performance of the duties of the bankruptcy trustee of the covered bond portfolio.

## **Chapter 3**

## **ISSUANCE AND COVERAGE OF COVERED BONDS**

### **Division 1**

# General Terms and Conditions of Issuance and Coverage of Covered Bonds

## § 15. Offering of covered bonds

(1) The provisions of the Securities Market Act concerning the offering of bonds shall apply to the offering of covered bonds, with the specifications provided for in this Act.

(2) Covered bonds shall not be issued unless they are covered to the extent required in this Act.

## § 16. Protection of name of covered bonds

(1) Only an Estonian credit institution or a credit institution founded in a state that is a contracting party to the EEA agreement (hereinafter *EEA country*), which has obtained the additional authorisation and meets the conditions provided for in this Act, may use the word “*pandikiri*” [covered bond], its derivatives or foreign language equivalents in the name of bonds when offering the same in Estonia.

(2) A credit institution founded in an EEA country may only use the word “*pandikiri*” [covered bond], its derivatives or foreign language equivalents in the name of bonds when offering the same in Estonia if all of the following conditions are met:

1) the credit institution of the EEA country is permitted to issue, in its country of location, bonds meeting the conditions provided for in the first subparagraph of Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32–96);

2) the bonds offered in Estonia as covered bonds meet the conditions provided for in the first subparagraph of Article 52(4) of Directive 2009/65/EC of the European Parliament and of the Council and are included in the list provided for in the third subparagraph of the same paragraph, which is submitted by the country of location of the EEA country's credit institution or branch of a foreign credit institution to the European Commission and to the European Securities and Markets Authority;

3) all prospectuses, reports and advertising materials shall indicate the original foreign language name of such bonds and the foreign legal act on the basis of which the bonds are issued.

(3) Upon offering covered bonds, an Estonian credit institution with the additional authorisation may only use the word “*hüpoteekpandikiri*” [mortgage covered bond], its derivatives or foreign language equivalents in the name of the bonds if the bonds meet the requirements provided for mortgage covered bonds in this Act.

(4) Upon offering covered bonds in Estonia, a credit institution founded in an EEA country may only use the word “*hüpoteekpandikiri*” [mortgage covered bond] or its derivatives in the name of the bonds if, in addition to the provisions of subsection (2) of this section, the following conditions are met:

1) the cover pool meets the requirements provided for in §§ 19, 20, 25 and 26 of this Act;

2) pursuant to the legislation of the country of location of the EEA country's credit institution or branch of a foreign credit institution or the terms and conditions of the covered bonds, the cover assets included in the cover pool are valued and insured at least in a manner equivalent to that provided for in §§ 27–29 of this Act.

## § 17. Terms and conditions of covered bonds

(1) The terms and conditions of covered bonds shall not grant the holders of the covered bonds the right to demand early redemption of the covered bonds.

(2) The terms and conditions of covered bonds shall provide the redemption value of the covered bonds.

(3) It shall be possible to unambiguously determine the maturity of the payment obligation arising from a covered bond on the basis of the terms and conditions of the covered bonds.

(4) Any suspensive condition included in the terms and conditions of covered bonds which, when fulfilled, will extend the maturity of the payment obligation arising from a covered bond, shall be void unless both of the following requirements are met:

1) the suspensive condition does not allow the issuer to extend the maturity of the payment obligation at its discretion;

2) it is possible to unambiguously determine the new maturity of the payment obligation on the basis of the terms and conditions of the covered bonds.

(5) The terms and conditions of covered bonds shall not restrict the right of the holders of the covered bonds to require the issuer to duly comply with all payment obligations arising from the covered bonds.

(6) The provisions of this Chapter, with the exception of the provisions of subsections (1)–(4) of this section, may be derogated from in the terms and conditions of covered bonds only in favour of the holders of the covered bonds if this is in compliance with other legislation.

## **§ 18. Main collateral and overcollateral**

(1) The present value of all covered bonds of the same type and the net liabilities, within the meaning of subsection 24 (2) of this Act, arising from derivative instruments entered in the cover register shall be covered by a cover pool at any time. The present value of the cover pool shall exceed the liabilities covered by at least two per cent.

(2) The nominal value of all covered bonds of the same type shall be covered by a cover pool of at least equivalent nominal value at any time. If the known redemption value of covered bonds is higher than their nominal value at the time of issuance, all covered bonds of the same type shall, in addition to that provided for in subsection (1) of this section, be covered by a cover pool whose nominal value is at least equal to the redemption value of the covered bonds. The nominal value of the credits specified in §§ 25 and 30 of this Act shall be deemed equal to the outstanding amount of the credits.

(3) If the nominal value of the cover pool exceeds the nominal value of all the covered bonds of the same type by at least five per cent, it shall be presumed that the requirement provided for in subsection (1) of this section is met for the relevant covered bond portfolio.

(4) The pool of cover assets whose value corresponds to the present value, nominal value or redemption value of covered bonds constitutes the main collateral. The pool of cover assets to be added to the main collateral in the amount of two per cent of the present value of covered bonds in accordance with the second sentence of subsection (1) of this section constitutes the mandatory overcollateral.

(5) Taking into account the restrictions arising from this Act and other legislation, an issuer may also include additional cover assets in the cover pool in addition to the main collateral and the mandatory overcollateral. The portion of the cover pool exceeding the requirements provided for in subsections (1) and (2) of this section constitutes voluntary overcollateral.

(6) The issuer shall ensure, through the application of appropriate calculation models prescribed in its internal rules and through clear documentation of the use thereof, that the cover pool required on the basis of this Act exists at any time. Organisation of the existence of the cover pool that meets requirements, including the liquidity buffer specified in § 21 of this Act, shall be the responsibility of the managers of the issuer specified in subsection 48 (1) of the Credit Institutions Act.

(7) No cover pool or cover assets may be transferred, encumbered or removed from the cover register if, as a result thereof, the value of the cover pool or the liquidity buffer provided for in § 21 of this Act decreases or is likely to decrease below the level provided for in this Act or in the terms and conditions of the covered bonds. The restriction provided for in this subsection does not apply, after the occurrence of an event specified in subsection 33 (1) of this Act, to transactions aimed at meeting the liabilities arising from covered bonds and from the derivative instruments entered in the cover register or covering the costs of management of the covered bond portfolio.

(8) The minister responsible for the area may establish more detailed requirements for the methodology for calculating the present value by a regulation.

## **§ 19. Minimum proportion of primary cover assets**

(1) The primary cover assets specified in subsections 25 (1) and 30 (1) of this Act shall constitute at least 80 per cent of the main collateral of the relevant covered bond portfolio.

(2) Based on an application submitted by the issuer, the Financial Supervision Authority may authorise a temporary derogation from the provisions of subsection (1) of this section if the issuer simultaneously applies other measures to bring the cover pool into conformity with requirements.

## **§ 20. Substitute collateral**

(1) In addition to primary cover assets, the following cover assets (hereinafter *substitute collateral*) may be included in a cover pool:

- 1) claims on or guaranteed by central banks within the European System of Central Banks, and central governments, public sector entities, regional governments or local authorities of the Member States of the European Union;
- 2) claims on or guaranteed by third-country central governments and central banks, multilateral development banks and international organisations that qualify for the credit quality step 1 in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337);
- 3) claims on or guaranteed by third-country public sector entities, regional governments and local authorities, for which a risk weight has been assigned the same way as for claims on credit institutions and investment firms or central governments and central banks in accordance with Article 115(1) or (2), and Article 116(1), (2) or (4)



of Regulation (EU) No 575/2013 of the European Parliament and of the Council and which qualify for the credit quality step 1 according to the risk weight so assigned;

4) claims specified in clauses 2) and 3) of this subsection, which qualify as a minimum for the credit quality step 2 in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council, provided that they do not exceed 20 per cent of the nominal value of the outstanding covered bonds in the covered bond portfolio that they cover;

5) claims on credit institutions and investment firms, which qualify for the credit quality step 1 in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council, provided that they do not exceed 15 per cent of the nominal value of the outstanding covered bonds in the covered bond portfolio that they cover;

6) claims on credit institutions and investment firms in the European Union with a term to maturity not exceeding 100 days, which qualify as a minimum for the credit quality step 2 in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council, provided that they do not exceed 15 per cent of the nominal value of the outstanding covered bonds in the covered bond portfolio that they cover;

7) net claims specified in subsection 24 (1) of this Act arising from derivative instruments that meet the conditions provided for in § 23 of this Act, which cannot be treated as the claims specified in clause 5) or 6) of this subsection, provided that they do not exceed 12 per cent of the nominal value of the outstanding covered bonds in the covered bond portfolio that they cover.

(2) Claims on one credit institution or investment firm specified in clause (1) 5) or 6) of this section or on the counterparty to a derivative instrument specified in clause (1) 7) of this section shall not exceed two per cent of the nominal value of the outstanding covered bonds in the covered bond portfolio that they cover. The limit provided for in this subsection does not apply to claims on central banks within the European System of Central Banks.

## **§ 21. Liquidity buffer**

(1) To ensure the liquidity of a covered bond portfolio, a liquidity buffer shall be formed, which may only comprise the following cover assets:

1) level 1 and level 2A assets specified in Articles 10 and 11 of Commission Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1–36), except the issuer's own covered bonds;

2) deposits meeting the characteristics specified in Article 129(1)(c) of Regulation (EU) No 575/2013 of the European Parliament and of the Council, provided that they do not constitute more than 15 per cent of the sum of the main collateral and the mandatory overcollateral.

(2) A cover asset included in the liquidity buffer as specified in subsection (1) of this section shall meet the following conditions:

1) it shall not be in default or, in the estimation of the credit institution, doubtful;

2) in the case of a deposit, it shall be ensured that the funds deposited will be fully available without delay upon the occurrence of an event specified in subsection 36 (1) of this Act;

3) securities shall be kept in a separate securities account of the issuer or in a manner that enables the securities included in the liquidity buffer to not be frozen in accordance with subsection 41 (1) of the Bankruptcy Act.

(3) To calculate the minimum level of the liquidity buffer, the difference between the payments to be made in order to meet all the liabilities arising from covered bonds and from the derivative instruments entered in the cover register, on the one hand, and the cash flow to be received from the cover pool, on the other hand, shall be calculated on a daily basis for each of the following 180 days (hereinafter *daily difference*). Thereafter the sum of the accumulated daily differences shall be calculated for each of the following 180 days, and the highest negative result shall be covered by cover assets meeting the conditions provided for in subsections (1) and (2) of this section at any time.

(4) If the issuer has, in compliance with subsection 17 (4) of this Act, established a suspensive condition in the terms and conditions of covered bonds the fulfilment of which will extend the maturity of the payment obligation arising from a covered bond, the maturity to be observed upon the fulfilment of the suspensive condition may be used as the basis for the purpose of the calculation provided for in subsection (3) of this section for that payment obligation.

(5) Notwithstanding the provisions of subsections (3) and (4) of this section, the liquidity buffer shall account for at least two per cent of the nominal value of the cover pool.

(6) The liquidity buffer shall be part of the cover pool and shall be considered in the calculation of the main collateral and the mandatory overcollateral.

(7) The liquidity buffer shall be entered in a separate sub-register of the cover register.

## **§ 22. Stress testing of covered bond portfolios**

(1) An issuer shall, at least once every three months, perform a stress test on a covered bond portfolio to assess the risks set out in the methodology specified in clause 10 (1) 4) of this Act. Ensuring the performance of stress tests shall be the responsibility of the managers of the issuer specified in subsection 48 (1) of the Credit Institutions Act.

(2) If the value of the cover pool, as calculated during the stress test, no longer meets the requirements provided for in subsections 18 (1)–(3) of this Act, the cover assets to be entered in the cover register shall be increased by the maximum deficiency determined as a result of the stress test.

(3) The minister responsible for the area may, by a regulation, establish more detailed requirements for the procedure and methodology of stress testing of covered bond portfolios.

## **§ 23. Use of derivative instruments**

(1) To hedge risks arising from covered bonds, an issuer shall have the right to use derivative instruments and enter them in the cover register if all of the following conditions are met:

- 1) the derivative instrument transaction has been made on the basis of a framework agreement that only allows netting for claims arising from derivative instruments entered in the cover register;
- 2) the counterparty to the transaction is a person specified in clauses 6 (2) 1)–4) of the Securities Market Act;
- 3) the terms and conditions of the framework agreement or transaction ensure that, in the event of the issuer's insolvency, if it does not lead to the insolvency of the covered bond portfolio related to the particular derivative instrument, the counterparty to the transaction has no right to prematurely terminate the transaction or framework agreement;
- 4) the sole purpose of the transaction is to hedge the issuer's risks arising from the specific type of covered bonds;
- 5) the counterparty to the transaction has given consent to the inclusion of the derivative instrument in the cover register.

(2) The consent specified in clause (1) 5) of this section is presumed if a framework agreement between the parties provides or if the issuer has otherwise informed the counterparty to the derivative instrument that the framework agreement is entered into for the purpose of hedging the risks arising from the specific covered bond portfolio.

(3) If the issuer has the right to require the counterparty to a derivative instrument to provide collateral on the basis of the claim arising from the derivative instrument, the security shall be comprised of claims specified in clauses 20 (1) 1)–6) of this Act and shall be entered in a separate sub-register of the cover register.

## **§ 24. Net claims and liabilities arising from derivative instruments**

(1) A net claim is the amount resulting from the netting of the values of derivative instruments entered into between the issuer and a counterparty to the derivative instrument on the basis of a framework agreement meeting the conditions specified in subsection 23 (1) of this Act, which the counterparty owes to the issuer on the basis of the relevant agreement at the moment of calculation of the values.

(2) A net liability is the amount resulting from the netting of the values of derivative instruments entered into between the issuer and a counterparty to the derivative instrument on the basis of a framework agreement meeting the conditions set out in subsection 23 (1) of this Act, which the issuer owes to the counterparty on the basis of the relevant agreement at the moment of calculation of the values.

# **Division 2 Coverage of Mortgage Covered Bonds**

## **§ 25. Primary cover assets of mortgage covered bonds**

(1) Only the issuer's claims that arise from a credit granted to a natural person against a mortgage established on residential property situated in the territory of an EEA country (hereinafter *mortgage credit*) may constitute primary cover assets of mortgage covered bonds, provided that such claims comply with the conditions provided for in this Division.

(2) For the purposes of this Act, residential property means the property specified in Article 4(1)(75) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(3) Claims arising from a mortgage credit granted to a natural person against residential property situated in the territory of another EEA country may only be used as a cover asset of mortgage covered bonds if the mortgage or other right of security that secures the mortgage credit provides the creditor with protection that is equivalent to the protection provided by a mortgage established under Estonian legislation. It is presumed that cover assets meeting the requirements laid down in Article 208(2) of Regulation (EU) No 575/2013 of the

European Parliament and of the Council provide the creditor with protection that is equivalent to the protection provided by a mortgage established on the basis of Estonian legislation.

(4) The recipient of a mortgage credit shall not be in default at the time when the credit is entered in the cover register.

(5) A cover register shall not include a mortgage credit in the case of which the issuer's claim arising from the credit or the mortgage securing the claim is encumbered or is subject to a restraint on disposition.

(6) If the same mortgage established on an immovable property secures claims arising from various credit agreements, the claims arising from these credit agreements may only serve as cover assets of mortgage covered bonds if the credits have been granted to the same person or persons on the basis of all the credit agreements secured by the corresponding mortgage and all the credits have been granted in the same currency. In this case, when calculating the proportion provided for in subsection 26 (1) of this Act, the claims arising from all credit agreements shall be deemed to be claims arising from one credit agreement and all the claims shall be summed up.

## **§ 26. Ratio of credit to value of property securing mortgage credit**

(1) The claims of an issuer arising from a mortgage credit may be used as a cover asset of mortgage covered bonds in an amount of up to 70 per cent of the value of the property securing the mortgage credit. Nevertheless, all the issuer's claims arising from the mortgage credit entered in the cover register are included in the cover pool in their entirety.

(2) A mortgage accounting for at least 110 per cent of the issued credit amount shall be established on the property securing a mortgage credit to be entered in the cover register (hereinafter *sum of mortgage*). The sum of mortgage may exceed the value of the property securing the credit.

## **§ 27. Obligation to insure property standing as security for mortgage credit**

(1) A property standing as security for a mortgage credit to be entered in the cover register shall, until the credit recipient has met all the obligations owed to the issuer, be insured under the terms and conditions normally used to insure such properties in the EEA country in such a way as to ensure that all relevant risks are insured.

(2) An undeveloped residential building plot need not be insured. If a residential building, apartment building or apartment is constructed or a residential building or apartment under construction is purchased, the insurance obligation shall arise at the moment when the building being constructed becomes a construction works with an interior space that is separated from the external environment by a roof and other parts of the building envelope.

(3) In the absence of an insurance contract meeting the conditions provided for in subsections (1) and (2) of this section, the issuer shall delete the claims arising from the mortgage credit from the cover register, unless an insurance contract meeting requirements is entered into within 30 days of the day when the issuer became aware of the absence of the insurance contract.

(4) This section does not regulate the right of an issuer to demand the entry into an insurance contract or the payment or reimbursement of insurance premiums.

## **§ 28. Requirements for valuation of property standing as security for mortgage credit, and qualification of valuator**

(1) A mortgage credit may only be included in the cover register if the market value of the property standing as security for the credit has been valued by a valuator meeting the requirements provided for in subsection 53 (2) of the Creditors and Credit Intermediaries Act in compliance with the requirements provided for in subsection (3) of the same section and the regulation issued on the basis of subsection (4) of the same section.

(2) The minister responsible for the area may establish, by a regulation, additional requirements arising from subsection (1) of this section for valuations of properties standing as security for a mortgage credit, and for the valuation reports, methods and procedure.

## **§ 29. Revaluation of property standing as security for mortgage credit**

(1) The value of a property standing as security for a mortgage credit entered in the cover register shall be reviewed at least once a year and revaluated, if necessary.

(2) In addition to the provisions of subsection (1) of this section, the value of a property standing as security for a mortgage credit entered in the cover register shall be additionally reviewed and revaluated, if necessary:

- 1) in the event of a significant change in market conditions;

2) in the event that the information available to the issuer indicates that a significant decline has occurred or is occurring on the national or local real estate market, including if it concerns only one specific property type, residential building type or other narrower category of properties.

(3) In the cases provided for in subsections (1) and (2) of this section, the value of a property standing as security for a mortgage credit entered in the cover register may be revaluated by indexed valuation. Upon the entry in the cover register, the most recent valuation or revaluation of the market value of the property standing as security for the mortgage credit, which shall not be older than 12 months, shall be taken as the basis.

## **Division 3**

### **Coverage of Mixed Asset Covered Bonds**

#### **§ 30. Primary cover assets of mixed asset covered bonds**

(1) Only the issuer's claims that arise from the following may constitute primary cover assets of mixed asset covered bonds:

- 1) a mortgage credit specified in subsection 25 (1) of this Act;
- 2) a credit granted to a natural person against a mortgaged residential building plot specified in subsection 31 (2) of this Act and situated in the territory of an EEA country (hereinafter *housing construction credit*);
- 3) a credit granted to a legal person against a mortgaged residential property specified in subsection 25 (2), mortgaged residential building plot specified in subsection 31 (2) or mortgaged commercial immovable property specified in subsection 31 (3) of this Act and situated in the territory of an EEA country (hereinafter *commercial mortgage credit*);
- 4) a credit granted to, or debt securities issued by, an EEA country;
- 5) a credit granted to, or debt securities issued by, a regional government or local authority of an EEA country;
- 6) a credit granted to, or debt securities issued by, an EEA country's legal person governed by public law;
- 7) a credit or debt securities guaranteed by an EEA country or a regional government or local authority of an EEA country.

(2) The credit and debt securities specified in clause (1) 4) of this section may be used as a cover pool if one of the following conditions is met:

- 1) the legal person governed by public law cannot be liquidated as a result of bankruptcy or other insolvency proceedings;
- 2) in the event of bankruptcy or other insolvency proceedings concerning the legal person governed by public law, or a threat of such proceedings, the obligations of the legal person will be fully taken over by a person who cannot be liquidated as a result of the bankruptcy or other insolvency proceedings.

(3) At the moment when a claim specified in subsection (1) of this section is entered in the cover register, it shall not be in default.

#### **§ 31. Requirements applicable to housing construction credit and commercial mortgage credit**

(1) The provisions of §§ 25–29 of this Act and legislation issued on the basis thereof concerning mortgage credits and residential property shall apply to commercial mortgage credits and commercial immovable properties and to housing construction credits and residential building plots, unless otherwise provided for in this section.

(2) For the purposes of this Act, a residential building plot means a property specified in Article 125(1)(a) of Regulation (EU) No 575/2013 of the European Parliament and of the Council.

(3) For the purposes of this Act, a commercial immovable property means an immovable property, an apartment ownership, a right of superficies, or a right of superficies in an apartment, which accommodates or the physical share of which comprises premises that can be used for a commercial purpose or on which a building usable for a commercial purpose can be built.

(4) The claims of an issuer arising from a commercial mortgage credit or a housing construction credit may be used as a primary cover asset of mixed asset covered bonds in an amount of up to 60 per cent of the value of the property standing as security for the commercial mortgage credit or housing construction credit. Nevertheless, all the issuer's claims arising from the commercial mortgage credit or housing construction credit entered in the cover register are included in the cover pool in their entirety.

## **Chapter 4**

### **SEPARATION OF COVERED BOND PORTFOLIOS**

#### **Division 1**

# **Enforcement Proceedings Concerning Cover Pools and Separation of Covered Bond Portfolios**

## **§ 32. Enforcement proceedings concerning cover pools**

(1) The provisions of the Code of Enforcement Procedure shall apply to enforcement proceedings to be conducted in respect of cover pools, with the specifications provided for in this section.

(2) A cover pool can only be made subject to a claim for payment, seized or be made subject to a restraint on disposition for the purpose of performance of the obligations that arise from covered bonds and from derivative instruments related to covered bonds. A claim for payment, seizure or restraint on disposition can only be established on the cover pool as a whole and only for the amount of the claim raised by a creditor of the covered bond portfolio. The issuer or the cover pool administrator shall keep accounts of claims for payment, seizures and restraints on disposition.

(3) The imposition of a claim for payment, seizure or other restraint on disposition on a cover asset or cover pool for reasons not related to covered bonds shall not result in the revocation of the additional authorisation or the appointment of a cover pool administrator if the issuer meets all the other requirements arising from this Act and there are no other grounds for revoking the additional authorisation or for appointing a cover pool administrator. If, in the aforementioned case, the value of the cover pool falls below the statutory level, the issuer shall immediately replace the cover asset that is subject to a claim for payment, seizure or restraint on disposition with another cover asset of the same value.

## **§ 33. Separation of covered bond portfolios**

(1) A covered bond portfolio shall be considered to be separated when:

- 1) the issuer is declared bankrupt;
- 2) a moratorium is established in respect of the issuer;
- 3) resolution proceedings are commenced in respect of the issuer;
- 4) the additional authorisation or main authorisation of the issuer expires;
- 5) the court ruling providing for compulsory dissolution of the issuer enters into force;
- 6) the authorisation for voluntary dissolution of the issuer as a credit institution or for voluntary discontinuation of the issuance of covered bonds is obtained;
- 7) the decision adopted by the Financial Supervision Authority in respect of the issuer under subsection (2) of this section takes effect.

(2) The Financial Supervision Authority may adopt a decision on the separation of a covered bond portfolio prior to the occurrence of an event specified in clauses (1) 1)–6) of this section if:

- 1) the issuer violates or is likely to violate materially the requirements of this Act or other legislation regarding the activities of a credit institution in the near future;
- 2) the issuer is likely to become insolvent in the near future.

## **§ 34. Consequences of separation of covered bond portfolios**

(1) A cover pool shall not be part of the issuer's bankruptcy estate and a moratorium shall not extend to a covered bond portfolio. After the separation of a covered bond portfolio, an independent pool of designated assets is formed, in which the cover pool and the proceeds received therefrom can only be used to satisfy the claims of the holders of the respective type of covered bonds and of the counterparty to the derivative instrument entered in the corresponding cover register and to cover the expenses related to the management of the covered bond portfolio.

(2) Separate accounts shall be kept of both types of covered bond portfolios. The cover pool of one type of covered bonds and the proceeds to be received therefrom shall not be used to meet the liabilities arising from the other type of covered bonds and the related covered bond portfolio.

(3) With the separation of covered bond portfolios, except in the event provided for in clause 33 (1) 3) of this Act:

- 1) the right to manage the covered bond portfolios and the right to participate, instead of the issuer, in court proceedings concerning a covered bond portfolio shall transfer to the cover pool administrator;
- 2) the issuer shall lose the right to make any transactions with the assets included in a covered bond portfolio.

(4) The separation of a covered bond portfolio shall not affect the rights and obligations arising from covered bonds or from the derivative instruments and the cover assets entered in the cover register, unless otherwise provided for in this Act. The claims of the holders of covered bonds and of the counterparties to the derivative instruments entered in the cover register shall be satisfied on the account of the cover pool and the proceeds

to be received therefrom, in accordance with the terms and conditions of the covered bonds and derivative instruments.

(5) The provisions of subsections 36 (2)–(4) of the Bankruptcy Act concerning bankruptcy estate shall apply to the transactions made by the issuer with the covered bond portfolio after an event specified in subsection 33 (1) of this Act. Satisfaction of the claims included in the cover pool to the issuer shall be deemed to be satisfaction in favour of the covered bond portfolio. The issuer shall immediately give the proceeds of the satisfaction of the claims included in the cover pool to the disposal of the cover pool administrator, except in the case provided for in subsection 35 (1) of this Act.

(6) An issuer shall not be deleted from the commercial register before the transfer or liquidation of its covered bond portfolios.

### **§ 35. Covered bond portfolio in resolution proceedings and in reorganisation plan**

(1) No cover pool administrator shall be appointed in resolution proceedings, and the covered bond portfolio shall be managed and disposed of in accordance with the provisions of the Financial Crisis Prevention and Resolution Act, applying the provisions of subsections 34 (1), (2) and (4) of this Act.

(2) Upon the submission of a reorganisation plan provided for in § 107 of the Credit Institutions Act to the Financial Supervision Authority, the issuer shall analyse the impact of the reorganisation plan on the covered bond portfolio.

## **Division 2 Cover Pool Administrator**

### **§ 36. Appointment of cover pool administrator**

(1) If an issuer is declared bankrupt or the compulsory dissolution of an issuer is decided, a court shall, on the proposal of the Financial Supervision Authority, appoint a cover pool administrator for covered bond portfolios in the ruling on bankruptcy or the ruling on the compulsory dissolution.

(2) If a main authorisation or an additional authorisation is revoked, a decision on the separation of a covered bond portfolio is adopted or a moratorium is established, the Financial Supervision Authority shall file a petition with a court for the appointment of a cover pool administrator. The court shall appoint a cover pool administrator without delay, but no later than within three days after the receipt of the petition from the Financial Supervision Authority. Until the cover pool administrator is appointed, the monitor shall have the right to make urgent transactions necessary for the management of the covered bond portfolio on the account of the cover pool, acting as the representative of the issuer.

(3) An entry regarding the appointment of a cover pool administrator shall be made in the commercial register.

(4) The court that decided the appointment of a cover pool administrator, the separation of a covered bond portfolio or the compulsory dissolution of an issuer shall immediately send to the registration department of the Tartu County Court copies of its decisions and of the decisions of a higher court made on the basis of subsection (2) of this section and §§ 43, 44 and subsection 48 (2) of this Act, as well as decisions made in respect of the compulsory dissolution of the issuer. An entry shall be made in the register immediately after the ruling has been sent to the registration department.

(5) If the issuer certifies that all covered bonds have been redeemed and all other obligations arising from covered bond portfolios have been met by the moment of obtaining the authorisation for voluntary dissolution of the issuer as a credit institution or for voluntary discontinuation of the issuance of covered bonds, the Financial Supervision Authority shall not file a petition specified in subsection (2) of this section and no cover pool administrator shall be appointed. In this case, this Act does not apply to the remaining cover pool once the decision of the Financial Supervision Authority specified in subsection 7 (4) of this Act or subsection 117 (3) of the Credit Institutions Act takes effect.

### **§ 37. Requirements for cover pool administrator**

(1) A person who meets the requirements set out in the Bankruptcy Act for bankruptcy trustees and the requirements provided for in subsection 56 (2) of the Credit Institutions Act may be appointed as a cover pool administrator.

(2) The issuer's temporary administrator, bankruptcy trustee, moratorium administrator or liquidator, a person who has been the issuer's monitor, a person specified in subsection 48 (3) of the Credit Institutions Act, a bankrupt debtor, or a manager, employee, member of the revision committee or controller of the issuer, or a person who performs the duties provided for in § 93 of the Credit Institutions Act shall not be a cover pool administrator.

### **§ 38. Proprietary liability of cover pool administrator**

(1) A cover pool administrator shall bear proprietary liability for the direct proprietary damage wrongfully caused by a violation of his or her obligations.

(2) The limitation period for a claim for reimbursement of damage arising from a violation of the obligations of a cover pool administrator shall be three years of the day when the victim became aware of the damage and of the circumstances on which the liability of the administrator is based, but not more than three years of the release of the cover pool administrator.

### **§ 39. Professional liability insurance of cover pool administrator**

(1) To ensure reimbursement of damage caused by a cover pool administrator, the cover pool administrator shall enter into a professional liability insurance contract with a company holding an authorisation for insurance activities in Estonia, under the following terms and conditions:

- 1) the insured event involves causing, by the cover pool administrator, direct proprietary damage through a violation of the cover pool administrator's obligations;
- 2) the minimum amount of the insured sum per insured event is at least 63,910 euros;
- 3) if the insurance contract provides for an excess, the insurer shall reimburse the full amount of the damage caused and claim the excess from the policyholder.

(2) A professional liability insurance contract entered into on the basis of this Act need not cover damage that:

- 1) occurs due to intentional violation of obligations of the cover pool administrator;
- 2) is usually precluded pursuant to the policy conditions of insurance undertakings entering into professional liability insurance contracts of a cover pool administrator based on international insurance or reinsurance practice.

(3) A bankruptcy trustee, a bailiff, an advocate and a sworn auditor whose liability arising from his or her professional activities has been insured pursuant to law need not enter into the contract specified in subsection (1) of this section if the existing professional liability insurance contract covers the person's activities as a cover pool administrator.

(4) A cover pool administrator shall submit a copy of the professional liability insurance contract to the Financial Supervision Authority no later than on the day when his or her term of office begins.

### **§ 40. Remuneration of cover pool administrator**

(1) A court shall, on a proposal of the Financial Supervision Authority, determine the remuneration of a cover pool administrator for the performance of his or her duties that corresponds to the administrator's qualifications and the volume and complexity of the administrator's duties. The annual remuneration shall not exceed 0.5 per cent of the value of the cover pool.

(2) A cover pool administrator shall have the right to demand reimbursement of the necessary expenses incurred in the performance of his or her duties. The Financial Supervision Authority shall verify whether the expenses incurred in the performance of the cover pool administrator's duties were justified and approve the amount of the necessary and justified expenses. An application for reimbursement of expenses shall be submitted with the report specified in subsection 41 (9) of this Act. In the application for reimbursement of expenses, the administrator shall indicate the amount of the expenses and the reason or ground for, and the time of, incurring the expenses.

(3) The remuneration and justified expenses of a cover pool administrator shall be covered on the account of the cover pool. If the cover pool administrator manages several covered bond portfolios, a court shall determine the distribution of the remuneration between the covered bond portfolios. The justified expenses shall be covered on the account of the covered bond portfolio to the management of which the expenses are related.

### **§ 41. Rights and obligations of cover pool administrator**

(1) Upon the appointment of a cover pool administrator, the right to manage and dispose of covered bond portfolios shall transfer to the cover pool administrator.

(2) The cover pool administrator shall immediately, but no later than within two weeks after his or her appointment, ascertain whether the cover pool and the proceeds to be received therefrom are sufficient to meet the issuer's liabilities arising from covered bonds and from the derivative instruments entered in the cover register and to pay the expenses of management of a covered bond portfolio.

(3) If a covered bond portfolio appears to be insolvent in accordance with subsection 49 (2) of this Act, the cover pool administrator shall immediately notify the Financial Supervision Authority thereof.

(4) The cover pool administrator shall represent the issuer in the management and disposal of covered bond portfolios, including in meeting the liabilities arising from covered bonds and from the derivative instruments entered in the cover register, in the acceptance of satisfaction of claims included in the cover pool, in the enforcement of mortgages and other cover assets, and in legal disputes.

(5) The cover pool administrator shall manage covered bond portfolios with the necessary diligence arising from their nature, and in a manner ensuring that the liabilities arising from covered bonds and from the derivative instruments entered in the cover register are met in the best possible way. To this end, the cover pool administrator shall have the right to transfer and encumber the cover pool, enter into derivative instruments on the account of the cover pool, and perform other necessary operations. The cover pool administrator shall have the right to use the cover pool and the proceeds to be received therefrom to cover the expenses necessary for the management of a covered bond portfolio.

(6) To perform his or her duties, the cover pool administrator shall have the right to use the assistance of the issuer's employees and the issuer's tools, compensating the issuer for the expenses relating to their use. The issuer is required to deliver the contracts and other documents related to covered bonds and the cover pool to the cover pool administrator and provide the cover pool administrator with access to the information systems used for the management of the covered bond portfolio.

(7) Upon the management of a covered bond portfolio, the cover pool administrator is required to observe the requirements provided for in respect of issuers by the Credit Institutions Act and this Act, including the requirements for banking secrecy and for processing of personal data established on credit institutions.

(8) The cover pool administrator shall comply with the reporting and disclosure obligation provided for in §§ 54 and 55 of this Act.

(9) In addition to the obligations provided for in subsection (8) of this section, the cover pool administrator shall submit to the Financial Supervision Authority a report on the current state of a covered bond portfolio and on the performance of his or her activities in the management of the covered bond portfolio, immediately after performing the duty specified in subsection (2) of this section and thereafter on a monthly basis. The reporting period shall be a calendar month and a report shall be submitted to the Financial Supervision Authority within five business days after the end of the reporting period.

(10) The cover pool administrator and the issuer's bankruptcy trustee, moratorium administrator or liquidator, and the cover pool administrator and the bankruptcy trustee of a covered bond portfolio shall cooperate and provide each other with information that may be relevant to the bankruptcy proceedings concerning the issuer or a covered bond portfolio, liquidation proceedings, moratorium, and management of a covered bond portfolio. Even a person whose term of office as a cover pool administrator has ended shall comply with the obligation specified in the first sentence of this subsection.

#### **§ 42. Supervision over cover pool administrator**

The provisions of § 69 of the Bankruptcy Act do not apply to a cover pool administrator. Supervision over cover pool administrators shall be exercised by the Financial Supervision Authority pursuant to the procedure provided for in Chapter 6 of this Act.

#### **§ 43. Release of cover pool administrator**

(1) A court shall release a cover pool administrator at his or her request. The cover pool administrator shall notify the court and the Financial Supervision Authority of such a request in writing 30 days in advance.

(2) A court shall, on the basis of a petition of the Financial Supervision Authority, release a cover pool administrator from office if the cover pool administrator has failed to perform his or her duties or performs them inadequately or there are other good reasons for the release of the cover pool administrator.

(3) If a court releases a cover pool administrator on the basis of subsection (1) or (2) of this section, it shall appoint a new cover pool administrator on the proposal of the Financial Supervision Authority.

### **Division 3**

## **Liquidation and Transfer of Separated Covered Bond Portfolio**

#### **§ 44. Liquidation of separated covered bond portfolio**

(1) Within 20 business days of the date of meeting all the liabilities arising from covered bonds and from the derivative instruments entered in the cover register, the cover pool administrator shall submit to the Financial Supervision Authority the last of the reports specified in subsections 41 (9) and 54 (1) of this Act and disclose the information specified in § 55 with the notice regarding the liquidation of the covered bond portfolio. In addition, the cover pool administrator shall publish a notice regarding the liquidation of the covered bond portfolio in the official publication *Ametlikud Teadaanded*.



(2) After the cover pool administrator has performed all the obligations provided for in subsection (1) of this section, the Financial Supervision Authority shall, within ten business days, file a petition for release of the cover pool administrator with a court.

(3) From the date of entry into force of the court ruling on the release of the cover pool administrator, this Act shall no longer apply to the portion of the cover pool that remains after the liabilities arising from covered bonds and from the derivative instruments entered in the cover register are met and the expenses of management of the covered bond portfolio are paid. The person whose term of office as the cover pool administrator has ended shall, insofar as possible, assist in the inclusion of the assets specified in the first sentence of this subsection in the issuer's bankruptcy estate or other assets.

(4) An appeal can be filed against the ruling by which a court adjudicates the petition specified in subsection (2) of this section.

#### **§ 45. Transfer of covered bond portfolio in its entirety**

(1) With the permission of the Financial Supervision Authority, a cover pool administrator may transfer a separated covered bond portfolio in its entirety to another Estonian credit institution that holds the additional authorisation to issue covered bonds or to a credit institution of an EEA country specified in clause 16 (2) 1) of this Act (hereinafter *acquirer*).

(2) The provisions of other Acts regarding the transfer of claims, rights and obligations shall apply to the transfer of a covered bond portfolio in its entirety, insofar as this Division does not provide otherwise.

(3) The provisions of §§ 175–185 of the Law of Obligations Act do not apply to the transfer of a covered bond portfolio in its entirety.

(4) A contract for the transfer of a covered bond portfolio in its entirety shall include the following:

- 1) the business names and seats of the transferring credit institution and the acquiring credit institution;
- 2) an agreement on the assumption of all the rights and obligations included in the covered bond portfolio, including contracts serving as a basis for the cover assets;
- 3) a list of all the contracts, rights and obligations to be assumed;
- 4) the conditions and procedure for the transfer of rights and obligations, and for the transfer of related documents and administrative records.

(5) Having obtained the permission from the Financial Supervision Authority, the cover pool administrator shall immediately publish a notice regarding the transfer of the covered bond portfolio in the official publication *Ametlikud Teadaanded*, on the issuer's website and in at least one daily or weekly national newspaper. The acquirer shall publish the same notice on its website.

(6) All the rights, cover assets and obligations related to the covered bond portfolio being transferred, including responsibility for the obligations arising before the transfer of the rights and obligations, shall be transferred to the acquirer.

(7) An agreement which derogates from the provisions of subsection (6) of this section is void. Deficiencies in the list specified in clause (4) 3) of this section or in the conditions and procedure specified in clause (4) 4) of this section shall not affect the transfer of rights and obligations to the acquirer.

(8) If a covered bond portfolio is transferred in its entirety, the transfer of the rights and obligations included in the covered bond portfolio shall not require the consent of the holders of covered bonds, other parties to contracts, creditors or other interested parties.

(9) The rights and obligations shall transfer at the time prescribed in the contract for the transfer of the covered bond portfolio, but no earlier than 30 days after the publication of the notice specified in subsection (5) of this section.

(10) The acquirer shall, within a reasonable time after the acquisition of the covered bond portfolio, inform the holders of the covered bonds, the debtors of the claims constituting the cover pool, the counterparties to derivative instruments related to the cover pool and the third parties concerned of all the circumstances necessary for the exercise and performance of the respective rights and obligations.

(11) Satisfaction of the claims included in the cover pool to the issuer after the transfer of the covered bond portfolio shall be deemed to be satisfaction in favour of the covered bond portfolio and the issuer shall immediately give the proceeds of the satisfaction of the claims to the acquirer's disposal.

#### **§ 46. Permissibility of transfer of covered bond portfolio in its entirety**

(1) A covered bond portfolio may be transferred in its entirety to another Estonian credit institution that has obtained the additional authorisation to issue covered bonds if both of the following conditions are met:

- 1) the acquirer meets all the requirements established on issuers by the Credit Institutions Act, this Act and other legislation and has not violated these requirements repeatedly or materially during the last five years;
- 2) the acquirer is able to ensure the existence of sufficient internal capital within the meaning of subsection 63<sup>1</sup>(1) of the Credit Institutions Act to cover risks relating to the acquisition of the covered bond portfolio to which the own funds requirements do not apply.

(2) A covered bond portfolio may be transferred in its entirety to an acquirer being a credit institution founded in another EEA country if all of the following conditions are met:

- 1) the acquirer meets all the requirements established on credit institutions and issuers of covered bonds by the law of the acquirer's country of location, and the acquirer has not violated these requirements repeatedly or materially during the last five years;
- 2) according to the law of the acquirer's country of location, the covered bonds included in the covered bond portfolio being transferred and the related derivative instruments entered in the cover register are covered and the rights of the holders of the covered bonds and of the counterparties to the derivative instruments entered in the cover register are protected at a level that is at least equivalent to that guaranteed by Estonian law;
- 3) the law of the acquirer's country of location guarantees the rights of the debtors of the claims constituting cover assets of the covered bonds at a level that is at least equivalent to that guaranteed by Estonian law, and the transfer will not render the performance of the obligations more expensive or difficult for the debtor of any such claim;
- 4) the law of the acquirer's country of location allows the acquirer to acquire the covered bond portfolio being transferred;
- 5) the acquirer holds all the necessary authorisations and approvals for the acquisition of the covered bond portfolio being transferred that are required for the transaction according to the law of the acquirer's country of location.

#### **§ 47. Proceedings for granting permission for transfer of covered bond portfolio**

(1) To obtain permission for the transfer of a covered bond portfolio, the acquirer shall, no later than on the 20<sup>th</sup> day after the entry into the contract for the transfer of the covered bond portfolio in its entirety, submit a written petition and the following information and documents (hereinafter in this Division *application*) to the Financial Supervision Authority:

- 1) the contract for the transfer of the covered bond portfolio;
- 2) an assessment of the impact of the acquisition of the covered bond portfolio on the acquirer, forecasts of the acquirer's annual balance sheets and financial indicators, including income and expenses by area of activity, the acquirer's prudential plan and plans for the economic indicators of covered bond portfolios.

(2) If the acquirer is a credit institution founded in another EEA country, the application shall, in addition to that provided for in subsection (1) of this section, include the following:

- 1) sufficient evidence that the acquirer meets the conditions provided for in clause 46 (2) 1) of this Act;
- 2) a substantiated legal assessment of a sworn advocate regarding the compliance of the law of the acquirer's country of location with the conditions provided for in clauses 46 (2) 2)-4) of this Act;
- 3) a description of how the obligations of the debtors of the claims constituting cover assets of the covered bonds will be performed for the acquirer;
- 4) the authorisations and approvals specified in clause 46 (2) 5) of this Act.

(3) The provisions of § 13<sup>3</sup> of the Credit Institutions Act shall apply to the review of applications for transfer of a covered bond portfolio, with the provisions on applications for the main authorisation and on the Credit Institutions Act also extending to applications for the permission for transfer of a covered bond portfolio and to this Act. If the acquirer is a credit institution founded in another EEA country, the Financial Supervision Authority shall, when processing an application for the permission, cooperate with the financial supervision authority of that EEA country.

(4) The Financial Supervision Authority may refuse to grant permission for the transfer of a covered bond portfolio if:

- 1) the conditions provided for in § 46 of this Act are not met;
- 2) other circumstances appear that damage the legitimate interests of the holders of covered bonds and of the counterparties to the derivative instruments entered in the cover register.

#### **§ 48. Proceeds from transfer of covered bond portfolio, and release of cover pool administrator**

(1) The proceeds received from transfer shall be used to cover the expenses of management of the covered bond portfolio. The funds remaining after all expenses are covered shall be included by the cover pool administrator in the issuer's bankruptcy estate or other assets.

(2) If the issuer does not have any other covered bond portfolios and after the cover pool administrator has performed the obligations imposed on him or her in subsection (1) of this section, the Financial Supervision Authority shall immediately file a petition for release of the cover pool administrator with a court.

## **Division 4**

### **Insolvency of Separated Covered Bond Portfolio**

#### **§ 49. Insolvency of separated covered bond portfolio**

(1) The Bankruptcy Act shall apply to an insolvent separated covered bond portfolio, with the specifications provided for in this Act.

(2) A separated covered bond portfolio is insolvent if one of the following circumstances occurs:

1) it is not possible to satisfy the legitimate claim of even one holder of covered bonds or counterparty to a derivative instrument entered in the cover register on the account of the cover pool or the proceeds to be received therefrom, and this impossibility is not temporary due to the economic situation of the covered bond portfolio;

2) the present value of the cover pool does not cover the present value of the liabilities arising from covered bonds and from the derivative instruments entered in the cover register and the expenses of management of the covered bond portfolio.

(3) Only the Financial Supervision Authority shall have the right to file a bankruptcy petition in respect of a separated covered bond portfolio.

(4) Clause 14 (1) 1), §§ 15–26 or subsections 27 (1)–(4) of the Bankruptcy Act do not apply to the filing of a bankruptcy petition in respect of a covered bond portfolio. A court shall hear the bankruptcy petition immediately but no later than on the following business day and decide on the declaration of bankruptcy on the basis of evidence appended to the bankruptcy petition.

(5) Only the holders of covered bonds, the counterparties to the derivative instruments entered in the cover register whose claims arise on the basis of § 48 of the Bankruptcy Act, and other persons whose claims may be satisfied on the account of the cover pool or the proceeds to be received therefrom pursuant to law, can be creditors in bankruptcy proceedings concerning a covered bond portfolio.

(6) Claims arising from covered bonds and derivative instruments shall have the same ranking and shall be satisfied before the claims of other creditors.

#### **§ 50. Bankruptcy trustee of covered bond portfolio**

(1) A court shall appoint the bankruptcy trustee of a covered bond portfolio on the proposal of the Financial Supervision Authority. The provisions of § 61 of the Bankruptcy Act do not apply to the bankruptcy trustee of a covered bond portfolio.

(2) A person who, prior to the declaration of the bankruptcy of a covered bond portfolio, performed the duties of the monitor or cover pool administrator, or a person specified in subsection 37 (2) of this Act, shall not be a bankruptcy trustee of the covered bond portfolio.

(3) In addition to the provisions of the Bankruptcy Act, a bankruptcy trustee shall:

1) submit to the Financial Supervision Authority, without delay, the information requested by the latter and allow the Financial Supervision Authority to examine the documentation related to the bankruptcy proceedings concerning the covered bond portfolio;

2) if necessary, or if so prescribed by the legislation of the other EEA country, notify the commercial register, registrar of the land register or other relevant register of the EEA country where the cover pool is located about the bankruptcy ruling concerning the covered bond portfolio.

(4) In addition to that specified in § 68 of the Bankruptcy Act, a court may release the bankruptcy trustee of a covered bond portfolio on the proposal of the Financial Supervision Authority. If a bankruptcy trustee is released, a new bankruptcy trustee shall be appointed in accordance with the procedure provided for in subsection (1) of this section.

(5) The provisions of subsection 41 (10) of this Act shall apply to the cooperation between the bankruptcy trustee of a covered bond portfolio, and the bankruptcy trustee or moratorium administrator of the issuer.

#### **§ 51. Bankruptcy committee of covered bond portfolio**

(1) The bankruptcy committee of a covered bond portfolio shall have five members, three of whom shall be appointed by the Financial Supervision Authority.

(2) The provisions of subsection 74 (7) of the Bankruptcy Act do not apply to bankruptcy proceedings concerning a covered bond portfolio.

## **§ 52. Formation and sale of bankruptcy estate**

(1) On the basis of a bankruptcy ruling, the covered bond portfolio concerned shall become a separate bankruptcy estate of the issuer.

(2) Satisfaction of a claim included in the cover pool of the bankrupt covered bond portfolio to the issuer shall be deemed to be satisfaction in favour of the bankruptcy estate in bankruptcy proceedings concerning the covered bond portfolio. The issuer or its bankruptcy trustee shall give the proceeds of the satisfaction immediately to the disposal of the bankruptcy trustee of the covered bond portfolio.

(3) The bankruptcy trustee shall have the right to sell the cover pool in its entirety with the consent of the bankruptcy committee.

## **§ 53. Termination of bankruptcy proceedings**

(1) The bankruptcy proceedings concerning a covered bond portfolio shall not be terminated by a compromise.

(2) To the extent that it is not possible to satisfy claims arising from covered bonds and from the derivative instruments entered in the cover register in the bankruptcy proceedings concerning the covered bond portfolio, a creditor shall have the right to file claims, to the extent not satisfied, against the issuer pursuant to the general procedure, including in bankruptcy proceedings.

(3) In addition to the bodies of bankruptcy proceedings specified in subsection 162 (1) of the Bankruptcy Act, the bankruptcy trustee of a covered bond portfolio shall also submit the final report to the Financial Supervision Authority.

# **Chapter 5 REPORTING AND DISCLOSURE**

## **§ 54. Requirements for reports**

(1) In addition to the reporting obligations arising from other legislation, an issuer shall prepare regular supervisory reports and submit them to the Financial Supervision Authority.

(2) The period covered by a supervisory report shall be a quarter.

(3) Supervisory reports shall be submitted within 25 days after the end of a reporting period.

(4) In addition to the provisions of subsection (1) of this section, the Financial Supervision Authority shall have the right, upon exercising supervision, to require issuers to provide additional periodic and one-time reports and data. The frequency and term of submission of the additional reports and data shall be determined by the Financial Supervision Authority.

(5) The person who submitted the report is required to preserve the documents serving as the sources for the initial data used in the preparation of reports submitted to the Financial Supervision Authority for at least five years.

(6) If any deficiencies are identified in a submitted report, the issuer shall submit a corrected report without delay.

(7) The content of the supervisory reports, the basis for their preparation and the procedure for submission thereof shall be established by a regulation of the minister responsible for the area.

## **§ 55. Disclosure of information relating to covered bonds**

(1) In addition to the disclosure obligation arising from other legislation, an issuer shall disclose information about covered bond portfolios once a quarter. Information about the first three quarters of a year shall be disclosed within one month of the end of the respective quarter. Information about the fourth quarter shall be disclosed within two months of the end of the quarter. The disclosed information shall be available on the issuer's website about at least the last five years.

(2) The following information shall be disclosed based on the types of covered bond portfolios:

- 1) the nominal value and present value of outstanding covered bonds and of the cover pool;
- 2) the maturity structure of the covered bonds and the cover pool;
- 3) the percentage of fixed-interest cover assets in the cover pool and the percentage of fixed-interest covered bonds in the liabilities of the covered bond portfolio;
- 4) the graduated breakdown of the interest rates on fixed-interest and non-fixed-interest cover assets;
- 5) the percentage of cover assets denominated in a foreign currency in the cover pool and the percentage of covered bonds denominated in a foreign currency in the liabilities of the covered bond portfolio;

- 6) the geographical distribution of the value of cover assets, at least to the accuracy of the country, based on the location of the property standing as security for a mortgage credit or commercial mortgage credit, and the location of the debtor or issuer in the case of other cover assets;
- 7) the distribution of substitute collaterals, in terms of their value, between the types specified in subsection 20 (1) of this Act;
- 8) the level of the liquidity buffer;
- 9) the percentage of the amount of substitute collaterals, which have been in default for over 90 days or which the issuer estimates to be doubtful, in the cover pool.

(3) In addition, the following information shall be disclosed on the primary cover assets of mortgage covered bonds:

- 1) the graduated breakdown of the amounts of mortgage credits;
- 2) the percentage of the amount of mortgage credits, which have been in default for over 90 days or which the issuer estimates to be doubtful, in the cover pool.

(4) In addition, the following information shall be disclosed on the primary cover assets of mixed asset covered bonds:

- 1) the graduated breakdown of the amounts of debt obligations;
- 2) the distribution of debt obligations, in terms of their value, between the types specified in subsection 30 (1) of this Act;
- 3) the percentage of the amount of debt obligations, which have been in default for over 90 days or which the issuer estimates to be doubtful, in the cover pool.

(5) The minister responsible for the area may, by a regulation, establish more detailed requirements for the composition and manner of publication and the formal requirements for the information to be disclosed in respect of covered bond portfolios.

## **Chapter 6**

# **SUPERVISION**

### **§ 56. Bases and exercise of supervision**

(1) The Financial Supervision Authority shall exercise supervision over the compliance of the activities of issuers and cover pool administrators with the requirements provided for in this Act and the legislation issued on the basis thereof, pursuant to the procedure provided for in Chapter 9 of the Credit Institutions Act with the specifications provided for in this Act. Upon exercising supervision, the Financial Supervision Authority shall have all the rights provided for in the Credit Institutions Act and the Financial Supervision Authority Act.

(2) To exercise supervision, the Financial Supervision Authority shall have the right to request reports, free information, documents and oral or written explanations concerning facts relevant to the exercise of supervision from the persons specified in subsection 99 (1) of the Credit Institutions Act as well as from monitors and cover pool administrators.

(3) In addition to the provisions of subsection 99 (2) of the Credit Institutions Act, the Financial Supervision Authority shall have the right to require, for the purpose of exercising supervision, credit institutions, monitors and cover pool administrators to submit all information and documents necessary for verification of the compliance of covered bond portfolios with requirements.

(4) In addition to the provisions of other legislation, the Financial Supervision Authority shall have the right to issue precepts to issuers requiring:

- 1) the inclusion of cover assets in a cover register;
- 2) the entry of cover assets meeting the conditions provided for in subsections 21 (1) and (2) of this Act in the liquidity buffer sub-register;
- 3) the removal of non-compliant cover assets or derivative instruments from the cover register;
- 4) the correction of incorrect entries in the cover register;
- 5) the revaluation of a property standing as security for a mortgage credit or a commercial mortgage credit in accordance with the methodology determined by the Financial Supervision Authority;
- 6) the conduct of a stress test on a covered bond portfolio in order to assess the risks determined by the Financial Supervision Authority and in accordance with the methodology determined by the Financial Supervision Authority;
- 7) the replacement of a monitor;
- 8) the provision of a monitor with information and with access to documents and information systems;
- 9) the calculation of the present value of covered bonds or the cover pool in accordance with the methodology determined by the Financial Supervision Authority.

(5) On the basis of clauses (4) 1) and 2) of this section, the Financial Supervision Authority may require the increase of cover assets by an amount exceeding the level prescribed by law or the terms and conditions of covered bonds if there is a significant risk that the occurrence of an event specified in subsection 33 (1) of this Act could result in the insolvency of the covered bond portfolio.

(6) In addition to the provisions of subsection 108 (1) of the Credit Institutions Act, an issuer shall notify the Financial Supervision Authority immediately of any changes to information or circumstances, which constituted the basis for granting the additional authorisation, including submit the following information and documents:

- 1) in the case of changes to the procedures and methodologies specified in clauses 10 (1) 3), 4) and 7) of this Act – the amended procedures and methodologies;
- 2) in the case of changes to the plan for separation of covered bond portfolios – the amended plan;
- 3) the results of the stress test specified in subsection 22 (1) of this Act;
- 4) the circumstances that affect or may materially affect the financial position of a covered bond portfolio;
- 5) other information if so prescribed by this Act.

(7) The Financial Supervision Authority shall not require disclosure of the information specified in clauses (6) 1)–4) of this section on the basis of subsection 108 (2) of the Credit Institutions Act.

#### **§ 57. Penalty payment**

In the event of non-compliance or inappropriate compliance with an administrative act issued on the basis of this Act, the Financial Supervision Authority may impose a penalty payment pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act and at the maximum rates provided for in subsection 104<sup>1</sup>(2) of the Credit Institutions Act.

#### **§ 58. List**

The Financial Supervision Authority shall maintain a list of issuers, which shall be disclosed in accordance with the procedure established on the basis of subsection 53 (4) of the Financial Supervision Authority Act.

## **Chapter 7 LIABILITY**

#### **§ 59. Violation of requirements for coverage of covered bonds**

(1) A violation of the requirement to cover covered bonds as provided for in §§ 18–21, subsection 22 (2), §§ 23, 25–31, 66 or 67 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.

#### **§ 60. Violation of requirements for name protection**

(1) A violation of the requirements for name protection provided for in § 16 of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.

#### **§ 61. Failure to perform stress test**

(1) Non-compliance or late compliance with the obligation to perform a stress test as provided for in subsection 22 (1) of this Act is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.

#### **§ 62. Presentation of incomplete data in the plan for separation of covered bond portfolios**

(1) Presentation of incorrect data in the plan for separation of covered bond portfolios provided for in subsection 9 (2) of this Act or failure to update the plan is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.

### **§ 63. Failure to submit information**

(1) Failure to comply with the requirements to disclose a report, document, explanation or other information provided for in this Act, failure to submit the same to the Financial Supervision Authority or to submit the same to the Financial Supervision Authority on time, or submission or disclosure of incorrect or misleading information is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 400,000 euros.

### **§ 64. Violation of obligations of cover pool administrator**

A violation or late performance of the obligation of a cover pool administrator to ascertain the solvency of a covered bond portfolio in accordance with subsection 41 (2) of this Act or the obligation to notify about the insolvency of a covered bond portfolio in accordance with subsection 41 (3) of this Act is punishable by a fine of up to 300 fine units.

### **§ 65. Proceedings**

Extra-judicial proceedings concerning the misdemeanours provided for in this Act shall be conducted by the Financial Supervision Authority.

## **Chapter 8 IMPLEMENTING PROVISIONS**

### **Division 1 Transitional Provisions**

#### **§ 66. Commencement of issuance of covered bonds**

An issuer may issue covered bonds or submit to the Financial Supervision Authority an application for approval of a covered bond prospectus from 1 October 2019.

#### **§ 67. Valuation of property conducted before entry into force of this Act**

A valuation of a property standing as security for a mortgage credit or a commercial mortgage credit, which was carried out before the entry into force of this Act, may be deemed to comply with the requirements of this Act if the market value of the property was determined in accordance with the legislation in force at the time of the valuation and all of the following conditions are met:

- 1) the methodology and rules of procedure applied ensured an objective and impartial valuation;
- 2) the valuation or the result thereof was documented in a format that can be reproduced in writing and in such a way as to enable the identification of, *inter alia*, the person or issuer's organisational unit conducting the valuation, the methodology and rules of procedure applied in the valuation, and the source data used for making the valuation.

#### **§ 68. Ratio of mortgage established before entry into force of this Act to amount of credit**

(1) If the mortgage established on a property standing as security for a mortgage credit issued before the entry into force of this Act does not comply with the provisions of subsection 26 (2) of this Act, the issuer's claims arising from the mortgage credit may be used as a primary cover asset of mortgage covered bonds in an amount not exceeding ten-elevenths of the sum of mortgage, but not more than the proportion provided for in subsection 26 (1).

(2) If the mortgage established on a property standing as security for a commercial mortgage credit or housing construction credit issued before the entry into force of this Act does not comply with the provisions of subsection 26 (2) of this Act, the issuer's claims arising from the commercial mortgage credit may be used as a primary cover asset of mixed asset covered bonds in an amount not exceeding ten-elevenths of the sum of mortgage, but not more than the proportion provided for in subsection 31 (4).

### **Division 2**

## **Amendment of Acts**

§ 69. –§ 75. The provisions amending other Acts are omitted from this translation.

### **Division 3 Entry into Force of Act**

#### **§ 76. Entry into force of Act**

This Act enters into force on 1 March 2019.

Eiki Nestor  
President of the Riigikogu