

New Polish Bonds Legislation

On 15 January 2015 Parliament adopted a new Act on Bonds that will become effective on 1 July 2015, applying to all bonds issued after that date. The new Act builds on, and legitimizes the current market practice. It also introduces a number of new institutions (such as bondholder meetings or new types of bonds) intended to further the issue of bonds and the development of the market in long-term non-treasury debt instruments. Finally, the new Act aims to improve transaction certainty and security by, inter alia, increased legislative clarity and resolving some pre-existing controversies. This newsletter outlines the new Act's key features.

Terms of issue instead of bond documents

Bondholder rights will no longer be set out in the bond document itself, but in separate terms of issue (even when a bond is issued in the form of a document). The terms of issue will have to constitute a consolidated document and be drafted in Polish, unless the bonds have a par value equivalent to EUR 100,000 or more - in which case the terms of issue can be in English.

Amendment of terms of issue

It will be possible to amend the terms of issue either by way agreements between the issuer and each bondholder or by way of a resolution of the bondholders' meeting (where there is one) followed by a consent of the issuer.

A unilateral amendment of the terms of issue will be, in principle, inadmissible except for limited "technical" matters (change of security agent, change of the entity which keeps the bonds register, establishment of an additional security upon request of the representing bank).

Bondholders' meeting

The terms of issue may provide for the establishment of a bondholders' meeting representing all the bondholders holding bonds of a single issue or bonds bearing the same code. When the terms of issue will provide for a bondholders' meeting, the following main rules will apply:

- Meetings shall be convened by the issuer in cases and on dates set forth in the terms of issue or at the issuer's own initiative. Bondholders representing at least 1/10 (subject to any lower threshold set in the terms of issue) of the total nominal value of the bonds will have a separate right to request the issuer to call a meeting or, if the issuer fails to comply, seek a special authorization for the court to convene the meeting themselves.

Please do not hesitate to contact us for further information on this topic.



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- The statutory powers of the bondholders' meeting will include amendments to the key provisions of the terms of issue with majorities depending on the nature of the amendments and the status of the bonds. In principle amendments will require a majority of $\frac{3}{4}$ of votes; however for bonds listed on a regulated market or on an alternative trading system, unanimous approval of all bondholders present at the meeting will be required. An unanimous approval of all bondholders present will also be required for a reduction of the par value of bonds.
- Issuer's affiliates (as defined under Article 3 Sec. 1 Item 44 of the Accounting Act) will be precluded from attendance.
- Resolutions of the bondholders' meeting which glaringly breach bondholders' interests or infringe either best business practice or the law can be challenged in court.

These new mechanics – inspired by solutions existing in corporate law – are designed to strengthen bondholder protection. However, they may also complicate the position of issuers and give rise to new types of arguments in which experience from corporate disputes is likely to be an asset.

New types of bonds

The Act also introduces two new types of bonds:

- **Perpetual bonds** may not be redeemed, they only entitle the bondholder to interest for an unspecified time. Perpetual bonds mature only in the case of declaration of bankruptcy, the opening of the liquidation of the issuer or the issuer's default in payment. However, the issuer's default does not entitle to seek redemption if the bonds were classified as own funds of the credit institution or investment company.
- **Subordinated bonds** - the issuer will also be able to provide in the terms of issue that in the case of bankruptcy or liquidation the unsecured bonds will be satisfied after all other creditors.

Other

The Act confirms the right of issue of bonds by special purpose vehicles and by foreign entities. The Act also provides that legal limitations on maximum interest will not apply to bonds.

