

**Resolution No. 367/2010
of the Polish Financial Supervision Authority
of 12 October 2010**

amending the Resolution No. 381/2008 of PFSA of 17 December 2008 on other deductions from original own funds, their value, scope and conditions for a deduction of these items from the bank's original own funds, other bank's balance sheet items that are included into the bank's supplementary own funds, their value, scope and conditions of their inclusion in the bank's supplementary own funds, reductions of supplementary own funds, their value, scope and conditions of deducting such items from the bank's supplementary own funds; and the scope and method of including banks' activities in holdings when calculating own funds

Pursuant to Art. 127(5)(2)(c—e) and Art. 141j (1) of the Act of 29 August 1997 The Banking Act (Journal of Laws (Dz.U.) of 2002 No. 72, item 665, as amended¹), it is resolved as follows:

§ 1. The terms used in the Resolution shall have the following meanings:

- 1) the Banking Law Act— Act of 29 August 1997 the Banking Law;
- 2) the Accounting Act — the Act of 29 September 1994 on accounting (Journal of Laws of 2009 No. 152, item 1223, as amended²);
- 3) IAS— International Accounting Standards, International Financial Reporting Standards and related interpretations published in the form of the European Commission's regulations;
- 4) minority interests — interests as specified in IAS;
- 5) company's goodwill — the surplus value of the shares to the corresponding part of the net assets priced at their fair value;
- 6) foreign exchange differences on translation - exchange differences resulting from the translation into the Polish currency of entities located outside the territory of the Republic of Poland;
- 7) lower level parent entity — the entity that is dependent on a particular entity and, at the same time, is the parent entity to one or more other entities;
- 8) Resolution on the capital adequacy of banks — Resolution No. 76/2010 of the Polish Financial Supervision Authority of 10 March 2010 on the scope and detailed procedures for determining capital requirements for specific types of risk (Journal of Laws PFSA No. 2, item 11).

¹ Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2002 No. 126, item 1070, No. 141, item 1178, No. 144, item 1208, No. 153, item 1271, No. 169, item 1385 and 1387 and No. 241, item 2074, of 2003 No. 50, item 424, No. 60, item 535, No. 65, item 594, No. 228, item 2260 and No. 229, item 2276, of 2004 No. 64, item 594, No. 68, item 623, No. 91, item 870, No. 96, item 959, No. 121, item 1264, No. 146, item 1546 and No. 173, item 1808, of 2005 No. 83, item 719, No. 85, item 727, No. 167, item 1398 and No. 183, item 1538, of 2006 No. 104, item 708, No. 157, item 1119, No. 190, item 1401 and No. 245 item 1775, of 2007 No. 42, item 272 and No. 112, item 769, of 2008 No. 171, item 1056, No. 192, item 1179, No. 209, item 1315 and No. 231, item 1546, of 2009 No. 18, item 97, No. 42, item 341, No. 65, item 545, No. 71, item 609, No. 127, item 1045, No. 144, item 1176, No. 165, item 1316, No. 166, item 1317, No. 168, item 1323 and No. 201, item 1540 and of 2010 No. 40, item 226 and No. 81, item 530.

² Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2009 No. 165, item 1316 and of 2010 No. 47, item 278.

§ 2. 1. Other deductions from original own funds referred to in Article 127(2)(3)(f) of the Banking Law Act are:

- 1) bank's capital commitment in financial institutions, credit institutions, national banks, foreign banks and insurance companies, expressed in the form of:
 - a) owned shares or participation units,
 - b) amounts qualified as subordinated liabilities,
 - c) other capital commitment in the components included in the equity or capital of these entities, including additional payments to a limited liability company at balance sheet value,subject to § 5;
- 2) shortfall of provisions for risk associated with the operation of a bank, understood as the difference between provisions required by separate regulations and their actual level;
- 3) in case of a bank calculating risk-weighted exposures amounts using the IRB approach, negative amounts resulting from the calculation referred to in § 76-79 of Annex 5 to the resolution on the capital adequacy of banks and expected loss amounts calculated in accordance with § 72-73 of Annex 5 to that resolution;
- 4) subject to § 14 par. 1 of the resolution on the capital adequacy of banks, securitization exposure amounts, to which, in accordance with § 46-123 of Annex 18 to the resolution on the capital adequacy of banks, the risk weight of 1250% is assigned, calculated in the manner specified in the mentioned Annex;
- 5) unrealised losses on debt instruments classified as available for sale
- 6) unrealised losses on equity instruments classified as available for sale;
- 7) unrealised losses on other receivables classified as available for sale;
- 8) negative foreign exchange differences on translation;
- 9) unrealised gains on valuation of real estate investments;
- 10) in the case of a bank initiating a securitization transaction, referred to in § 6 of Annex 18 to the Resolution on the capital adequacy of banks, net income from the capitalization of future income from securitized assets constituting credit quality support for securitization positions.

2. The items referred to in par. 1 (1-4), are included in deductions from original own funds in the amount equal to 50% of their value, subject to § 4 (3).

3. The item referred to par. 1 item 10 reduces the original own funds of the bank specified in Article 127 par. 2 item 1 of the Act, referred to in the introductory sentence.

§ 3. 1. Other items of supplementary own funds referred to in Article 127(3)(3) of the Banking Law Act include:

- 1) unrealised gains on debt instruments classified as available for sale;
- 2) unrealised gains on equity instruments classified as available for sale;
- 3) unrealised gains on valuation of real estate investments;
- 4) positive foreign exchange differences on translation;

2. The items referred to in par. 1(1-3) are included up to 80% of their value (before income tax).

3. The bank calculating risk-weighted exposure amounts using the IRB approach may recognise as other items of supplementary own funds positive amounts resulting from revaluation and provisions included in the calculations referred to in § 76-79 of the Annex 5 to the resolution on the capital adequacy of banks, up to 0.6% of risk-weighted exposure amounts calculated using the IRB approach.

4. Risk-weighted exposure amounts, referred to in par. 3, do not include the amounts calculated in relation to securitization positions, to which, in accordance with the resolution on the capital adequacy of banks, a risk weight of 1250% is attributed.

§ 4. 1. Reductions of supplementary own funds, referred to in Article 127 (3)(4) of the Banking Law Act, are the items referred to in § 2 (1)(1 - 4).

2. The items referred to in par. 1 are included in deductions from supplementary own funds in the amount equal to 50% of their value, subject to par. 3.

3. If 50% of the total amount of the items referred to in § 2(1)(1-4) exceeds the total amount of the items referred to in Article 127 (3) of the Banking Law Act, the difference must be subtracted from the bank's original own funds.

§ 5. 1. Reduction of original own funds, referred to in § 2 (1)(1) is the bank's capital involvement in a particular entity if:

1) it is a national bank, foreign bank, credit institution or financial institution:

a) and the involvement represents more than 10% of capital (own funds) of the entity,

b) and the involvement represents not more than 10% of capital (own funds) of the entity and in combination with other capital involvements of the bank in national banks, foreign banks, credit and financial institutions not exceeding 10% of capital (own funds) of those entities individually, represents more than 10% of the bank's own funds, before their reduction by the items set out in § 2 (1)(1);

2) it is an insurance company and the involvement represents at least 20% of share capital of that entity or allows to exercise at least 20% of the voting rights in the bodies of that entity.

2. In the case of indirect capital involvement of a bank (through non-financial institutions), the capital involvement of the bank is calculated as a part of the capital involvement of the lower level parent entity to a national bank, foreign bank, credit or financial institution, in proportion to the share of the bank's capital involvement in original own funds of the entity, not exceeding the bank's capital involvement in a subsidiary. This rule also applies if the indirect relations between the bank and a national bank, foreign bank, credit or financial institution are of a multilevel nature.

3. Par. 1 and 2 shall apply respectively to the supplementary own fund deductions.

§ 6. 1. A bank holding company, referred to in Article 141f par. 1 of the Banking Law Act, obliged to prepare consolidated financial statements, regardless of the requirement of equity calculation on the basis of individual financial statements, is required to calculate on a consolidated basis the equity of the group consisting of entities included in the consolidated financial statements, applying the principles specified in Article 127 of the Banking Law Act and § 1 and 2 of the resolution.

2. When calculating the bank's own fund on a consolidated basis, the following balance sheet items shall be taken into account, respectively:

1) goodwill of the company's subsidiaries;

2) minority interests;

3) foreign exchange differences on translation.

3. Consolidated bank's own funds are to be increased and reduced by the items referred to in par. 2, respectively in relation to the structure of subsidiaries' equities.

§ 7. The Resolution enters into force on 31 December 2010.

for and on behalf of the Polish Financial Supervision Authority

per procura of the Chairman of the Polish Financial Supervision Authority
Lesław Gajek