



RGW Rocławski Graczyk i Wspólnicy Adwokacka Spółka komandytowa

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1. Changes in the land register and mortgage act

On 20 February 2011, the act dated 26 June 200 (Journal of Laws of 2009, No. 131, item 1075) came into force on amendment of the land register and mortgage act and certain other acts, amending the land register and mortgage act dated 6 July 1982 (Journal of Laws of 2001, No. 124, item 124, as amended). The amendment introduces a number of material changes with respect to the institution of mortgage.

- **Definition of the new mortgage**

The amended act abandons the former division into an ordinary and deposit mortgage. The new act provides for one type of a contractual mortgage based on the existing model of deposit mortgage. A single mortgage will be capable of securing various financial receivables (including interest and secondary claims) both, the existing and future ones, in Polish or foreign currency, of one or several creditors, up to a specified sum of money.

- **Plurality of currencies**

The parties will have the option of creating a mortgage in a currency other than the currency in which mortgage claims are expressed. A change of currency will not be considered to be a change of mortgage content unless it involves a change of mortgage amount.

- **Principle of accessory character of a mortgage**

The new act provides for a deviation from the principle of accessory character of a mortgage. One contractual mortgage may also secure several claims derived from different legal relations of the same creditor as well as those of different entities, if they are intended to finance the same undertaking. It is also possible to secure a claim on another claim of the same creditor. A mortgage does not expire after a claim has been discharged if subsequent claims subject to security may arise in the future.



- **Mortgage administrator**

One of the new institutions that appear in the amended act is a mortgage administrator. He is an indirect substitute appointed by creditors if several debts incurred to finance one undertaking are secured. His duties include the conclusion of a mortgage agreement and the exercise of rights and duties of a mortgage creditor in his own name but on account of creditors whose claims are secured. A mortgage administrator may be one of the creditors or even a third party.

- **Assignment of a mortgage claim**

Pursuant to the new regulations, in case of an assignment of a mortgage claim the mortgage itself passes to the assignee as well, unless the act provides otherwise. It is not necessary to conclude a separate agreement to transfer the mortgage to a purchaser of a claim. The assignment of a mortgage claim requires an entry in the land register. If a mortgage secures several other debts owing to the mortgage creditor then in case one of them is assigned, the mortgage passes to the purchaser in proportion to the amount of that debt compared to the total of claims secured by that mortgage, unless the parties agreed otherwise. If a mortgage claim is transferred without the mortgage the transferor should notify thereof the owner of property who is not a personal debtor.

- **Right to dispose of a vacant mortgage position**

The amended act provides for modification of the principle of *moving mortgages forward*. In case a mortgage expires, the owner of property is entitled to create, within the limits of the expired mortgage, to dispose of the vacant mortgage position. This right may consist in creating in the vacant position a new mortgage or numerous mortgages or transferring to the vacant position another mortgage or already existing mortgages on a specified property. Movement to the vacant position may involve not only mortgages with lower priority but also those with higher or equal priority of payment, depending on the relevant agreement between the owner and mortgage creditor.

- **Institution of excessive security interest**

A mortgage secures a claim up to a specified sum of money. If mortgage security is excessive, the owner of mortgaged property may demand that the amount of mortgage be decreased.



2. **The new act on protection of confidential information**

On 2 January 2011, the new act on protection of confidential information came into force as passed on 5 August 2010 (Journal of Laws of 2010, No. 182, item 1228). The aforementioned legal instrument supersedes previous regulations in force with respect to the protection of information which means that the act on protection of confidential information dated 22 January 1999 (Journal of Laws of 2005, No. 196, item 1631, as amended) became invalid.

- **New definition of confidential information**

Within the meaning of the new act, confidential information is the information unauthorized disclosure of which would or could cause damage to the Republic of Poland or would be unfavourable from the viewpoint of its interests, also while being developed and regardless of the form and manner of their expression. The legislator abandoned the two-stage division into state secret and confidential information, while introducing new definitions of top secret, classified, confidential and proprietary information and changing the range of information covered by individual secrecy clauses.

- **Principles of classification of secret information**

Insertion of a specific clause is conditioned by the degree of harmfulness to the Republic of Poland in case a given item of information is disclosed. The strictest protection was reserved for information with the security classification “*top secret*”. Unauthorized publication of information so distinguished may cause unusually serious damage to the Republic of Poland. Unauthorized publication of information provided with security classification “secret” means serious damage to the Republic of Poland. Other information of a secret nature shall bear the clause “*confidential*” (if unauthorized disclosure thereof causes damage to the Republic of Poland) or *proprietary* (unless more strictly classified, and unauthorized disclosure thereof may have a harmful influence on public authorities carrying out the tasks entrusted to them).

- **Availability of secret information**

Information shall be classified by the person who is authorized to sign a document or mark the material other than the document. Classified information may only be made available to a person authorized after successful completion of verifying proceedings and being granted by the authority conducting the proceedings security clearance to access secret information.