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New possibilities for bond issues in Poland

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The Polish Government intends to amend the Polish Bonds Act. The contemplated amendment (the "**Amendment**") will be the second of its kind since the Polish Bonds Act was passed in 1995 and is the result of reports prepared by a special working group, which was appointed by the Polish Financial Supervision Authority, on the development of the public market for long-term commercial debt instruments.

1. Purpose

The market for long-term commercial debt instruments is the least developed segment of the Polish capital market. Apart from competition from treasury bonds (crowding out) and the high costs of issuing commercial bonds, this situation results from unclear and insufficient regulations.

Through the Amendment, the Government aims to boost the Polish market for commercial long-term debt instruments by introducing new instruments and institutions, already known and proven in countries with more developed capital markets. The long-term objective is to make bond issues an additional source of financing, as an alternative and complementary to bank facilities.

2. New instruments available

Perpetual bonds are currently not available under Polish law, as bonds are required to have their maturity date specified. Under the Amendment, this requirement will be waived.

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The Amendment will specify events whose occurrence will result in the bonds' maturity: opening bankruptcy proceedings, liquidation of the issuer or its delay in payment of interest to the bondholders. Other situations triggering maturity may be specified in the bond issue terms. The Amendment will allow issuers to include a call option, which may be exercised not earlier than five years after the issue date. The catalogue of situations allowing for bonds to be redeemed, specified in the bond issue terms, will be accompanied with a detailed description of the payments which should be made to bondholders in each respective situation.

Subordinated bonds are not specifically regulated by Polish law. The Amendment adds them as a new category of bonds, which will be subordinated in case of the bankruptcy or liquidation of the issuer. The priority of enforcement of such obligations will be determined by the bond issue terms. It will not be possible to secure subordinated bonds.

Apart from new types of bonds, the Amendment introduces a new body – **the bondholders' meeting**. The issuer will be entitled to decide whether or not to establish such body for a particular bond issue. If established, the bondholders' meeting will be subject to the provisions of the Polish Bonds Act.

The function of the bondholders' meeting will be to represent the bondholders – every amendment of bond obligations will require a bondholders' meeting resolution. Such resolution will affect all bonds issued in a particular series.

Resolutions on key issues, such as, terms of redemption, securities or quorum requirements shall be deemed as qualified and will require a majority of 75% of votes cast. For other resolutions, an absolute majority will be required. Each resolution will require the issuer's approval.
For its validity, the bondholders' meeting must represent at least half of the nominal value of the bonds issued in a particular series, but excluding bonds directly or indirectly controlled by the issuer or its parent.

The bond issue terms may provide more stringent requirements for voting or a quorum. The bondholders' meeting will be convened by the issuer and in special cases by bondholders authorized by the relevant register court. It will also be possible for the court to repeal bondholders' meeting resolutions.

3. Market impact

The Amendment aims to make commercial bonds more available to market participants, which is likely to increase the volume of commercial bonds issued. Such market boost should result in greater competition and a decrease in issue costs.