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Panel on Covered Bond Supervision and  
Regulation

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# Is Covered Bond regulation necessary?

- The public:  
“Regulation is necessary, we live in a crisis. Banks must be regulated”
  - A student, undergraduate level, economics:  
“Regulation is costly for the banks, borrower will pay higher interest rates as banks will add the regulatory costs to the interest rates”
  - A member of a supervisory board:  
“Dear board members, Please provide in all annual reports the costs of regulation. It must be clear to politicians, shareholders and the tax-payer”
  - The board member of a covered bond bank:  
“I am proud to be regulated. Our covered bond presentations show that we are regulated. We are UCITS 52/4, compliant! We want to price our bonds at tight levels”
- > What is true for our market? Is regulation more beneficial or costly?

# The regulator steps in

## The Depfa ACS case, 2009

- **Settlement Agreement between the Financial Regulator and DEPFA ACS BANK**

- The Financial Regulator has entered into a [Settlement Agreement](#) with effect from 16 December 2009 with DEPFA ACS BANK in relation to breaches of a regulatory requirement under the Asset Covered Securities Act 2001 (as amended) (“the Act”).
- The Financial Regulator has reasonable cause to suspect that breaches of a regulatory requirement occurred whereby DEPFA ACS BANK failed on a number of occasions to obtain the approval of its Cover-Assets Monitor (“the CAM”) or the Financial Regulator prior to making or amending an entry in its register of public credit covered securities business, such approval being required pursuant to subsection 53(5) of the Act.
- The breaches were notified in the first instance to the Financial Regulator by DEPFA ACS BANK.
- In determining the appropriate sanction, the Financial Regulator took into account the following:
  - The CAM has confirmed that at all times the cover assets pool remained in compliance with all other requirements of the Act, including over collateralisation requirements on both a regulatory and contractual basis
  - No investors suffered a financial loss; and
  - DEPFA ACS BANK has since introduced new procedures and controls (including those proposed by an external consultant) and new management and reporting structures to prevent future incidences of this nature.
- The Financial Regulator has reprimanded DEPFA ACS BANK and required it to pay a monetary penalty in the sum of €250,000.
- The Financial Regulator confirms that DEPFA ACS BANK co-operated fully and was open and transparent with the Financial Regulator throughout the examination. The matter is now closed.

<http://www.centralbank.ie/press-area/press->

[releases/Pages/Settlement%20Agreement%20between%20the%20Financial%20Regulator%20and%20DEPFA%20ACS%20BANK.aspx](http://www.centralbank.ie/press-area/press-releases/Pages/Settlement%20Agreement%20between%20the%20Financial%20Regulator%20and%20DEPFA%20ACS%20BANK.aspx)

# What happened after minimum legal OC was breached?

## Pooled-Cédulas-Territoriales

ENTIDAD	31/12/2004	30/06/2005	30/09/2005	31/12/2005	31/3/2006
CAJA DEL MEDITERRANEO	409%	238%	243%	233%	246%
CAJA DUERO	165%	156%	157%	141%	145%
UNICAJA	294%	299%	300%	304%	294%
CAJA SAN FERNANDO	209%	169%	169%	170%	178%
CAJASUR	201%	193%	229%	229%	211%
CAJA GENERAL DE CANARIAS	327%	310%	302%	353%	303%
CAJA ESPAÑA	460%	311%	297%	297%	270%
CAIXA NOVA	311%	186%	179%	181%	191%
IBERCAJA	208%	225%	212%	197%	219%
INSULAR CANARIAS	293%	222%	229%	331%	210%
CAJA NAVARRA	196%	245%	294%	296%	297%
CAJA GRANADA	769%	308%	308%	273%	318%
CAJA MURCIA	229%	187%	178%	170%	164%
CAJA TARRAGONA	216%	212%	206%	202%	202%
EL MONTE	627%	291%	270%	248%	260%
CAJA BURGOS	241%	235%	244%	244%	268%
<b>TOTAL OVER-COLLATERALISATION</b>	<b>310%</b>	<b>239%</b>	<b>240%</b>	<b>240%</b>	<b>237%</b>

Legal requirement of  
over-collateralization: 143 %

Source: <http://www.cedulascajas.com/issues/>

- No data error! According to my information (but not officially confirmed by a regulator), Caja Duero was forced to hold a deposit at Banca de España to fulfill the legal minimum.

# Insolvency of a Pfandbrief bank and administration: 1884 -1886

## Der gemeinsame Curator der Pfandbriefbesitzer.

### a) Die Bestellung des gemeinsamen Curators.

#### §. 9.

Die Bestellung eines gemeinsamen Curators für die Pfandbriefbesitzer kann erfolgen, entweder

- a) über Ansuchen des k. k. Regierungskommissärs,
- b) über Ansuchen eines Dritten, oder
- c) durch das k. k. Gericht von Amtswegen.

Ad a) Wird auf ein Vermögensobject einer Anstalt, welche unter staatlicher Aufsicht Pfandbriefe auszustellen berechtigt ist, Execution geführt, so hat das die Execution bewilligende

k. k. Gericht hievon den k. k. Regierungskommissär von Amtswegen zu verständigen, welcher verpflichtet ist, in dem Falle, wenn das Object zur vorzugsweisen Deckung für die Pfandbriefbesitzer zu dienen hat, das Gericht hievon in Kenntniss zu setzen. Das Gericht hat auf Grund dieser Mittheilung die bewilligte Execution dahin zu beschränken, dass dieselbe nur unbeschadet des Rechtes der Pfandbriefbesitzer auf vorzugsweise Befriedigung Geltung habe; der Regierungskommissär ist überdies verpflichtet, wenn er die Rechte der Pfandbriefbesitzer für gefährdet erachtet, die Bestellung eines gemeinsamen Curators zur Vertretung der Besitzer der Pfandbriefe bei dem hiezu zuständigen Gerichte zu erwirken (§. 3 des cit. Ges.). Der Regierungskommissär wird insbesondere auch im Falle der Liquidation der Anstalt um die Bestellung eines gemeinsamen Curators für die Pfandbriefbesitzer ansuchen. Vgl. den Fall der k. k. priv. galiz. Rustical-Creditanstalt (Compass 1885, S. 115 ff.). Vgl. dazu auch §. 12.

Nebstdem bestand (Stat. vom 29. Juli 1874 Z. 10965, letztes Statut vom 7. Septbr. 1881) die böhmische Boden-Creditgesellschaft in Prag, über deren Vermögen am 23. Decbr. 1884 der Conkurs eröffnet wurde; die Abwicklung des Pfandbriefgeschäftes hat im Jahre 1886 die anglo-österreichische Bank in Wien übernommen und zu dem Zwecke an Stelle der bisherigen (5%, 5 $\frac{1}{2}$ % u. 6%) Pfandbriefe eigene 4 $\frac{1}{2}$ % Pfandbriefe ad hoc ausgegeben.

Pavliček, Das Pfandbriefrecht.

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## Telegraphische Handelsdepeschen.

Prag, 23. December. Die böhmische Bodencredit-Gesellschaft hat heute Nachmittags 4 Uhr den Conkurs angemeldet.

Das Conkurs-Edict der böhmischen Bodencredit-Gesellschaft wurde um 8 Uhr Abends affigirt. Conkursleiter ist Landesgerichtsrath Pavliček; zum Masseverwalter wurde der Kaufmann Siegmund Joseph Morawek, zu dessen Stellvertreter Advocat Dr. Brdicka in Prag, zum Pfandbriefcurator Dr. Anton Pavliček in Carolinenthal ernannt. Die Gläubiger-Tagsfahrt findet am 3. Jänner statt; die Anmeldefrist dauert bis 28 Februar, während die Liquidation auf den 7. März festgesetzt ist.

Source: Pavliček, Das Pfandbriefrecht (1894) und Wiener Zeitung (23.12.1884)

# No regulator

## The Achmea Hypotheekbank case, 2008

By John Glover (Bloomberg, 18.09.2008)

- Sept. 18 (Bloomberg) -- Achmea Hypotheekbank NV, a unit of Dutch insurer Achmea Holding NV, said an audit of its covered bond program showed some of the **mortgages it used as collateral didn't meet the criteria laid out in the documentation**. As of the end of last month, about 12 percent of the underlying home loans were so-called second-priority mortgages, used without including the related first-priority loans, the Hague-based lender said in an e-mailed statement . Achmea is replacing the mortgages that aren't eligible, the statement said. This will be done ``within the shortest possible time," the statement said, without being more specific. Covered bonds, which are secured by mortgages or loans to public sector institutions, typically require borrowers to set aside assets that can be sold to ensure repayment. They differ from asset-backed securities in that the assets remain on the issuer's balance sheet.

--Editors: Paul Armstrong, Andrew Reiersen

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