

Bausparkassen Act

of November 1972 as revised and published on 15 February 1991 (BGBl.* I, p. 454 et seq.) together with the amendments due to the law revising the Credit Act and other provisions pertaining to credit institutions of 21 December 1992 (BGBl. I, p. 2211 et seq. [p. 2226 et seq.]), and the law implementing the Treaty of 2 May 1992 on the European Economic Area of 27 April 1993 (BGBl. I p. 512 et seq. [546]), Article 14 of the law which came into force on 1 January 1996 on the new regulation of home ownership assistance under aspects of fiscal law of 15 December 1995 (BGB. I, p. 1783 et seq. [1791 et seq.], Article 3 of the law which came into force on 1 April 1998 on the admission of shares quoted per unit of 25 March 1998 (BGBl. I, p. 590 et seq. [594]), Article 21 of the law which came into force on 1 April 1998 on the further development of Germany as a financial centre (Third Financial Market Promotion Act) of 24 March 1998 (BGBl. I, p. 529 et seq. [574] as well as Article 89 in connection with Article 110 of the introductory law which came into force on 1 January 1999 on the Insolvency Act of 5 October 1994 (BGBl. I, p. 2911 et seq. [2946, 2952 et seq.]).

* BGBl. = Bundesgesetzblatt = Federal Law Gazette

§ 1 Definition of Terms

(1) Bausparkassen are credit institutions, whose business objective is to accept bauspar deposits (Bauspareinlagen) from bauspar customers (Bausparer) and to grant bauspar loans (Bauspardarlehen) from these aggregate savings to bauspar customers for housing finance activities. Only bausparkassen are authorized to conduct this aforementioned bauspar business (Bauspargeschäft).

(2) A bauspar customer is a person who enters into a bauspar contract (Bausparvertrag) with a bausparkasse which gives the bauspar customer a legal claim to a bauspar loan after having made bauspar deposits.

(3) "Housing finance activities" as defined by this law are:

1. the construction, purchase, maintenance and improvement of buildings and flats used primarily for residential purposes, especially owner-occupied homes and flats, as well as the acquisition of the rights to the permanent use of real estate for housing;

2. the construction, purchase, maintenance and improvement of other buildings insofar as such other buildings are used for residential purposes;

3. the acquisition of parcels of land and of (99-year) land leaseholds for the construction of buildings insofar as such buildings are used primarily for residential purposes;

4. the acquisition of parcels of land and of (99-year) land leaseholds for the construction of buildings with other functions insofar as such buildings are in appropriate relation to buildings with residential purposes;
 5. activities for the development and improvement of residential areas;
 6. the redemption of liabilities incurred in the course of implementing measures in Nos. 1 through 5 above;
 7. the redemption of liabilities associated with parcels of land used primarily for housing purposes. Housing finance activities shall be deemed to comprise the redemption of liabilities incurred through baupar deposits; they shall also include commercial projects provided that such projects are implemented in connection with the construction of residential units or are located in residential areas and provided that such projects form part of the supply infrastructure of such areas.
- (4) The right of the federal states (Länder) to delegate special responsibilities to public law bauparkassen in the area of housing construction, or in areas of public interest remains unchanged.

§ 2 Legal Form

- (1) The only legal form under which private bauparkassen may operate is that of a public limited company (Aktiengesellschaft).
- (2) The legal form under which public law bauparkassen (öffentlich-rechtliche Bauparkassen) may operate shall be determined by the respective federal states.

§ 3 Supervision

- (1) The Federal Banking Supervisory Office (Bundesaufsichtsamt für das Kreditwesen) shall be authorized to supervise the bauparkassen in accordance with the provisions of this law and with the provisions of the Credit Act. Within the framework of its supervisory functions, it shall be authorized to give such instructions as may be necessary to reconcile the business operations of the bauparkassen with the General Business Principles and with the Standard Terms and Conditions for Baupar Contracts.

(2) Insofar as a bauparkasse is subject to supervision by any other governmental authority, such supervision shall be exercised in addition to that of the Federal Banking Supervisory Office.

(3) In cases of doubt, the Federal Banking Supervisory Office shall decide whether an enterprise shall be subject to the provisions of this law. Its conclusions shall be binding for the administrative authorities.

§ 4 Permissible Business Operations

(1) In addition to the baupar business, bauparkassen shall be restricted to the following activities:

1. To grant loans to serve as anticipatory or intermediate loans until such times as the baupar loan established in the baupar contract is due;

2. to grant loans for housing finance activities subject to the provisions of Para. 2, Article 4 below;

3. to administer third-party loans and to act as intermediary for such loans, as well as to approve third party loans in the bauparkasse's name or in the name of another third-party, insofar as such loans are for housing finance activities;

4. to assume guarantees for third-party loans subject to the provisions of Para. 2, Article 4 below, which the bauparkasse itself would be allowed to grant, and which are secured in accordance with Article 7 below;

5. for the purpose of granting baupar loans as well as loans in accordance with Nos. 1 and 2 above, as well as for the purpose of obtaining additional capital required for business operations

a) to accept third-party monies from credit institutions and other institutional investors,

b) to accept third-party monies from other creditors,

c) to issue bonds;

6. to acquire equity holdings in enterprises, when such investments promote business operations as defined in Article 1 and where liabilities for the bauparkasse are

limited by the legal form of this enterprise, and subject to the provision that the amount of the acquired equity holding does not exceed one-third of the enterprise's capital (nominal capital, sum of capital shares). Financial interests in excess of this limit shall be permissible insofar as the enterprise's business purpose is primarily devoted to such transactions, either by law or by its articles of association, as those which the bauparkasse itself is allowed to conduct; the sum total of such financial interests may not be in excess of 20% of the bauparkasse's liable equity resources;

7. to grant loans to enterprises in which the bauparkasse has equity holdings.

(2) The sum total of claims arising from loans granted according to No. 2 of Para. 1 above and of the guarantees assumed according to No. 4 of Para. 1 above may not exceed 75% of the total amount of the bauparkasse loans and the loans granted according to No. 1 of Para. 1 above.

(3) The bauparkassen shall be authorized to invest available funds

1. as deposits with appropriate credit institutions and in registered bonds issued by such credit institutions;

2. in non-interest bearing treasury bonds and treasury bills of the Federal Government, in special funds of the Federal Government and in those of the Federal States (Länder), in comparable instruments of the European communities and their member states or in other contracting states of the Treaty on the European Economic Area, as well as in certificates of deposit of appropriate credit institutions provided that the residual term of such certificates does not exceed twelve months;

3. in bonds and in book entry securities of the Federal Government and in its special funds, in those of the Länder and in those of the European communities and their member states or in other contracting states of the Treaty on the European Economic Area;

4. in bonds whose principal and interest is guaranteed by any of the bodies listed in No. 3 above,

5. in other bonds which are officially traded on the domestic stock market or on another stock or similarly organised exchange of a member state of the European communities or in any of the other contracting states of the Treaty on the European Economic Area;

6. in claims arising from loans that are a part of a loan issued by a third party which are note-secured, provided that it is possible to assign such claims at least twice after having been acquired by the Bausparkasse and that the loans were extended

a) to one of the bodies mentioned in No. 3 above, or to any other domestic regional authority or any regional governmental or local authority of any member state of one of the European communities or any of the contracting states of the Treaty on the European Economic Area, which received a credit institution's solvency coefficient of zero according to Article 7 of the Directive of the Council from 18 December 1989;

b) to other appropriate authorities of public law corporations, either domestic or domiciled in any of the member states of one of the European communities or in any of the contracting states of the Treaty on the European Economic Area;

c) to enterprises that have issued securities, which are traded on the domestic stock exchange or on any stock exchange within the member states of one of the European communities or in any of the contracting states of the Treaty on the European Economic Area;

d) for investments whose principal and interest are guaranteed by one of the bodies mentioned in No. 3 above. The sum total of such claims of the Bausparkasse may not exceed its liable equity resources;

7. in shares of a managed investment fund (US: mutual fund; GB: unit trust) issued by an institutional investor or a foreign investment corporation that are subject to special governmental supervision in the interest of the shareholders, if the terms of the contract or articles of association of the institutional investor or investment corporation require that such investments be exclusively of the type of debt instruments mentioned in Nos. 1 through 6 above and of deposits with credit institutions.

(4) Bausparkassen may only acquire parcels of land, (99-year) land leaseholds, home ownership and co-ownership rights, home ownership rights and co-ownership rights based on (99-year) land leaseholds, where this is necessary to prevent the loss of claims and to obtain business premises as well as housing facilities for their employees.

(5) The Bausparkasse may not designate a specific point in time at which the Bauspar sum will be paid to the Bauspar customer.

§ 5 General Business Principles Standard Terms and Conditions for Bauspar Contracts

(1) Bausparkassen must conduct their operations on the basis of the General Business Principles and on the Standard Terms and Conditions for Bauspar Contracts.

(2) The General Business Principles must include provisions regulating 1. the calculations relevant to the implementation of bauspar contracts including individual valuation indices (No. 1 of Para. 1 of Article 8) and highlighting the longest, median and shortest waiting periods;

2. the composition of the allocation fund, the allocation date, and the preconditions for allocation as well as the order of allocation (Zuteilungsverfahren);

a) the calculation of funds temporarily ineligible for allocation as defined by Sentence 2 of Para. 1 of Article 6 and of the additional net earnings obtained from investing such funds as well as the use of the resulting off-line item called the "technical security reserve";

3. the calculation of property value for lending purposes;

4. the financing of activities designed to develop and improve residential areas;

5. the financing of buildings used exclusively or primarily for commercial purposes insofar as this is permissible according to Article 1;

6. the procedure governing the repayment of deposits made in respect to cancelled bauspar contracts;

7. a simplified procedure for the settlement of bauspar contracts, which protects the interests of the bauspar customer in the case where a bausparkasse ceases operations or the Federal Banking Supervisory Office revokes the bausparkasse's licence.

(3) The Standard Terms and Conditions for Bauspar Contracts must include provisions regulating

1. the amount and due dates of the deposits to be made by the bauspar customer and by the bausparkasse as well as the legal consequences arising from default;

2. the interest payable on bauspar deposits and on bauspar loans; 3. the amount of costs and fees chargeable to the bauspar customer;
4. the conditions for allocation and the rules governing the order of allocation as well as the terms governing the payment of the bauspar sum;
5. the security for the claims arising from the bauspar loan;
6. the conditions under which a bauspar contract may be split or combined with another bauspar contract or under which the bauspar sum may be increased or reduced;
7. the conditions under which claims arising from a bauspar contract may be transferred or under which notice of termination of a bauspar contract may be served as well as the legal consequences arising from the termination or a simplified settlement of a bauspar contract;
8. the court of jurisdiction or an arbitration court;
9. life insurance policies to be taken out, the amounts to be insured and the insurance premiums to be paid by the bauspar customer as well as the possibility of accepting already existing life insurance policies as security for the bauspar sum when a bauspar customer is required to take out such life insurance policies.

§ 6 Tying of Bauspar Funds

(1) Allocation funds, especially bauspar deposits and redemption payments on bauspar loans may only be used, subject to the provisions of Para. 3 of Article 4, for the bauspar business and for the repayment of third-party monies added to the allocation fund, as well as according to the provisions of the legal regulations to be adopted under Article 10 for the granting of loans as defined by No. 1 of Para 1 of Article 4; the allocation funds are to be employed in a manner that keeps the waiting periods equal in length and as short as possible. Earnings from the investment of allocation funds, which are momentarily unavailable for disbursement because the prerequisites of the bauspar contract have not been fulfilled, must be included in the technical security reserve which is designed to protect the affairs of the bauspar customer up to the difference between the net interest earned from interim investments of the allocation funds and the net interest that would have been earned had the funds been allocated as bauspar loan. The bausparkasse may liquidate the

technical security reserve at the end of any one business year provided it exceeds three percent of the baupar deposits on the date of liquidation.

(2) Claims arising from baupar loans, the property liens registered as security for such loans, as well as from any other type of security, may only be sold or pledged to serve as collateral for conducting the baupar business and for making the types of transactions mentioned in No. 1 of Para. 1 of Article 4. The same shall apply to claims arising from loans within the meaning of the provisions of No. 1 of Para. 1 of Article 4 and to the property liens registered as security for such loans, or other types of collateral registered as security for such loans.

§ 6a Avoidance of Exchange-Rate Risks

The bauparkasse, in exercising the due diligence of a businessman, must take the necessary precautions to avoid exchange-rate risks in the course of its business. It must form separate allocation funds especially for baupar contracts transacted either in foreign currency or in units of account and must ensure a currency-congruent use of the allocation funds and available monies. In individual cases, the Federal Banking Supervisory Office may grant release from the obligation to form such separate allocation funds provided that the interests of the baupar customer are not adversely affected to any substantial degree by this action.

§ 7 Securing Claims Arising from Loans

(1) Claims arising from baupar loans and from loans according to No. 2 of Para. 1 of Article 4 as well as from claims arising from loans according to No. 1 of Para. 1 of Article 4, unless secured by rights assigned under a baupar contract, shall be secured by mortgage or by a land charge (Grundschuld) of a domestic property. The Grundschuld is equivalent to claims held by a bauparkasse against a credit institution for the assignment, either wholly or in part, of a Grundschuld administered by a credit institution as trustee of the respective bauparkasse claim. In the absence of additional adequate security, loans may not exceed the first four-fifths of the collateral value of the property.

(2) It shall also be permissible to secure claims as defined by the first Sentence of Para. 1 above by encumbering real estate located in any of the member state/states of the European communities or in any contracting state of the Treaty on the European Economic Area or in Switzerland, provided that the financial institutions of those states ordinarily accept such encumbrances on land as security for claims arising from housing loans.

(2a) It shall also be possible to secure claims as defined in the first Sentence of Para. 1 above by encumbering real estate located in European states other than those covered by Para.2 above if

1. the state is a full member of the Organisation for Economic Cooperation and Development,

2. the encumbrance on land in this state is ensuring the repayment of and payment of interest on the claims and

3. the total sum of these lendings does not exceed the liable equity of the bauparkasse.

(3) The requirement for an encumbrance on property as security for a loan may be waived if another form of security (Ersatzsicherheiten), adequate in amount, can be provided.

(4) The requirement for an encumbrance on property as security for a loan or of another form of security (Ersatzsicherheiten) may be waived where:

1. the borrower agrees to refrain from hindering the creation of an encumbrance on the property by selling or pledging the same object as security for any other liability; or

2. because of the small loan amount, security on the baupar loan, according to No. 1 of Para. 1 of Article 4 does not seem to be required.

(5) The requirement for security on a loan may be waived where loans are made to

1. domestic public authorities and public law corporations;

2. the European communities, their member states or any of the contracting states of the Treaty on the European Economic Area and the European Investment Bank;

3. regional governmental or local authorities of any member state of one of the European communities or any of the contracting states of the Treaty on the European Economic Area, which received a credit institution's solvency coefficient of zero according to Article 7 of the Directive of the Council from 18 December 1989;

4. other borrowers whose loans have been guaranteed by one of the bodies mentioned in Nos. 1 through 3 above.

(6) The Federal Banking Supervisory Office may allow loans on pledged property outside of the states specified in Nos. 2 and 2a if the negotiated land charges or additional security suggests that an exception is justified.

(7) The assumed lending value of the pledged object may not exceed the property's market value. When establishing its value for lending purposes the only factors to be taken into consideration may be the lasting qualities (value) of the pledged object and the net earnings regularly generated to any owner when properly managed.

§ 8 Denial and Revocation of an Operating Licence

(1) Except for the reasons listed in Para. 1 of Article 33 of the Credit Act, licences to operate a bauparkasse may be denied if the General Business Principles and/or the Standard Terms and Conditions of the Baupar Contracts

1. suggest the possibility that the execution of baupar contracts cannot be fulfilled over time because the total of the contributions of individual baupar contracts do not exhibit an adequate correlation, with regard to the entire life spans, between the performance of the baupar customer and the performance of the bauparkasse, or

2. stipulate savings and redemption instalments and/or other obligations which unduly postpone the allocation of baupar contracts or otherwise inadequately regard the interests of the baupar customer.

(2) Except for the reasons mentioned in Para. 2 of Article 35 of the Credit Act, the Federal Banking Supervisory Office may also withdraw licences where facts are brought to its attention that would justify the denial of licences according to Sentence 1 above and where the interests of the baupar customer cannot be appropriately protected by other measures according to this law or to the Credit Act.

§ 9 Modifications and Amendments to the General Business Principles and Standard Terms and Conditions for Baupar Contracts

(1) Modifications and amendments to the General Business Principles and the Standard Terms and Conditions for Baupar Contracts affecting the provisions of Nos. 1, 2 and 4 through 9 of Paras. 2 and 3 of Article 5 as well as of the General Business Principles and the Standard Terms and Conditions for Baupar Contracts

that are to form the basis for a new bauspar tariff (Bauspartarif) require approval of the Federal Banking Supervisory Office. Such approval may also be granted for existing contracts insofar as changes and amendments appear to be necessary to protect the interests of the bauspar customer in an appropriate manner. Para. 1 of Article 8 above shall apply to the denial of licences mutatis mutandis. The Federal Banking Supervisory Office shall be notified of any other modifications or amendments at least three months prior to their entry into effect.

(2) Where it appears that a bausparkasse can no longer satisfy the commitments of the bauspar contracts, the Federal Banking Supervisory Office may require that the bausparkasse concerned amends its general Business Terms/Principles and its Standard Terms and Conditions for Bauspar Contracts. Under similar conditions the Federal Banking Supervisory Office may, irrespective of the authority accorded to it under Para. 1 of Article 46 of the Credit Act, prohibit the realisation of new contracts by the respective bausparkasse.

§ 10 Adoption of Legal Regulations

In order to enable bausparkassen to meet their commitments vis-à-vis their creditors, especially to protect the assets entrusted to them, and to ensure the ability of the bausparkassen to make the payments required of the bauspar contracts as well as to ensure an order of allocation which is as even as possible, the Federal Minister of Finance, after having heard the opinions of the Deutsche Bundesbank and the Federal Associations of Bausparkassen, may enact legislation concerning

1. the temporary investment of funds available for allocation which have not yet been claimed by the bauspar customer;
2. the permissible share of large-scale bauspar contracts (bauspar contracts whose contractual amount is in excess of the amount regulated by legislation) relative to the entire unallocated contract sum of bauspar contracts, as well as the permissible percentage of large-scale bauspar contracts relative to all the bauspar contracts of a bausparkasse which were transacted within one calendar year; for this purpose, all bauspar contracts transacted by one individual within one calendar year shall be deemed to form a single bauspar contract; bauspar contracts shall be included in the permissible share of large-scale bauspar contracts of those bauspar customers who have paid, as defined by the General Business Principles, the minimum amount to be saved within one year from the date on which the contract was transacted;

3. the terms governing the granting of loans to finance the construction of commercial projects and the permissible share of such loans in the total portfolio of a bauparkasse's claim; this share may not exceed three percent;
4. the total percentage, as well as percentage to an individual commercial enterprise, of the bauparkasse's liable equity resources to which loans may be granted under No. 7 of Para. 1 of Article 4;
5. the permissible share of claims on loans relative to the total amount of claims on loans requiring substitute security;
6. the amount of a loan which a bauparkasse may transact, in individual cases, either by receiving a liability claim, or as defined by Para. 4 of Article 7, without a liability claim, as well as the permissible share of such loans relative to the total amount of claims on loans of a bauparkasse;
7. the minimum requirements governing allocation to ensure an appropriate individual baupar customer/bauparkasse performance ratio, especially the minimum amounts to be saved and the fixation of a minimum valuation index;
8. the details regarding extra net earnings according to Para. 1 of Article 6 and the inclusion of such extra earnings into the technical security reserve; 9. the conditions under which the technical security reserve, with respect to the extra net earnings according to Para. 1 of Article 6 may be liquidated, and latest date at which they must be liquidated; 10. a transitional arrangement ending 31 December 1995, governing the simplified fixation of the minimum allocation conditions in order to ensure an appropriate individual baupar customer / bauparkasse performance ratio as regards baupar tariffs offered as of 1 January 1991. The Federal Minister of Finance shall be authorised to transfer the above authority to the Federal Banking Supervisory Office by way of legal decree.

§ 11 Dismissal of Managers

In addition to the reasons mentioned in Article 36 of the Credit Act, the Federal Banking Supervisory Office may also require the dismissal of bauparkassen managers where such managers have violated, either wilfully or neglectfully, the provisions of this law, the legal regulations adopted in implementation of this law, the instructions of the Federal Banking Supervisory Office, or the provisions of Paras. 2 and 3 of Article 5 of the General Business Principles or the Standard Terms and

Conditions for Bauspar Contracts and where such managers continue to do so in spite of a warning issued by the Federal Banking Supervisory Office.

§ 12 Ombudsman

(1) The Federal Banking Supervisory Office shall appoint an ombudsman to each bausparkasse. Prior to such appointment, the bausparkasse and the competent authority where under Para. 2 of Article 3 state supervision other than by the Federal Banking Supervisory Office exists, must have the opportunity for a hearing. The appointment may be cancelled at any time.

(2) The ombudsman shall ensure that the provisions of the General Business Principles and the Standard Terms and Conditions for Bauspar Contracts governing the allocation procedure are duly observed.

(3) The ombudsman shall be authorised to inspect the books and documents of the bausparkasse insofar as these relate to the allocation procedure. In the event of any dispute between the bausparkasse and the ombudsman as regards his duties, the Federal Banking Supervisory Office is the decision authority.

(4) The ombudsman shall inform the Federal Banking Supervisory Office of his findings and observations. He shall not be bound by instructions from the Federal Banking Supervisory Office.

(5) The ombudsman shall be paid adequate compensation by the Federal Banking Supervisory Office; the cost thereof shall be separately refunded by the bausparkasse in exercise, mutatis mutandis, of Para. 3 of Article 51 of the Credit Act.

§ 13 Special Auditing Duties

In the course of auditing a bausparkasse's annual financial statement, the auditors shall be required to establish whether

1. the bauspar sums were allocated in accordance with the Standard Terms and Conditions for Bauspar Contracts;
2. the bausparkasse has complied with the provision of No. 2 of Para. 2 of Article 5 on the General Business Principles and with the provision of No. 5 of Para 3. of Article 5 on the Standard Terms and Conditions for Bauspar Contracts; and

3. the provisions of the legal regulations adopted according to Article 10 have been observed. The conclusions of the auditors shall be incorporated into the auditing report.

§ 14 Transfer of the Contract Portfolio

(1) Any contract by which a bauparkasse's portfolio of baupar contracts, including its accompanying assets and liabilities, is transferred to one or several other bauparkassen, either wholly or in part, must have the approval of the Federal Banking Supervisory Office. Such approval shall be published by the Federal Banking Supervisory Office in the Federal Gazette (Bundesanzeiger); the baupar customer shall be considered notified as of the day of its publication. Upon approval, the rights and duties of the bauparkasse and of the baupar customer under the baupar contracts shall pass to the transferee bauparkasse; Article 415 of the Civil Code (BGB) shall not be applicable. Approval of transfer may only be denied where the transfer of the above rights and duties would jeopardise the interest of the baupar customer of either the transferring or the transferee bauparkasse.

(2) Such contracts must be made in writing.

§ 15 Prohibition of Payments

In the event that there is the risk that a bauparkasse cannot satisfy its obligations and there is the need to take measures to fend off bankruptcy [*insolvency proceedings under the Insolvency Act] in the interest of the baupar customer and of the bauparkasse's other creditors, the Federal Banking Supervisory Office may temporarily prohibit payments of any kind. Under the same conditions, the Federal Banking Supervisory Office may agree to simplified procedures according to No. 7 of Para. 2 of Article 5.

* Came into force as of 1.1.1999 by virtue of Article 89 in connection with Article 110 of the Introductory Law on the Insolvency Act of 5.10.1994 (BGBl. I, p. 2911 et seq. [2946, 2952 et seq.]

§ 16 The Name "Bauparkasse"

(1) Enterprises authorised to conduct the business of a bauparkasse shall be the only ones permitted to use the word "Bauparkasse" or an expression in which the word "Bauparkasse" or the prefix "Baupar"- appears as part of their names to designate their business purpose or to advertise the kind of services they offer.

(2) Para. 1 above shall not be applicable to enterprises using the word "Bausparkasse" or the prefix "Bauspar" as part of their names in a context that rules out the impression that they conduct the business of a bausparkasse.

(3) The provisions of Article 42 and Article 43 of the Credit Act shall apply mutatis mutandis.

§ 17 Exemptions

Article 14 and Sentence 1 of Article 15 of this law shall not be applicable to bausparkassen which are subject to special governmental supervision.

§ 18 Provisions Governing Existing and New Legally Dependent Bausparkassen

(1) Credit institutions authorised to conduct the bauspar business on the date of entry into effect of this law shall be deemed to possess the licence required for conducting the class of banking business which bausparkassen are permitted to operate as defined by Article 32 of the Credit Act. The deadline mentioned in Para. 1 of Article 35 of the Credit Act shall commence on the date on which this law enters into effect.

(2) Upon the entry into effect of this law, the bausparkassen which were operated in the legal form of Gesellschaft mit beschränkter Haftung (private limited company) may continue to operate in this legal form of organisation.

(3) Upon the entry into effect of this law, credit institutions which were authorised to conduct the bauspar business through legally dependent business units shall be deemed bausparkassen to the extent of such bausparkassen business. They shall be required to administer the assets and the liabilities of their bausparkassen business units separately from their other assets and liabilities, to draw up separate annual financial statements of their bausparkassen operations and to publish separate annual reports on their bausparkassen activities. The provision governing audits, annual financial statements and annual reports of credit institutions shall apply mutatis mutandis. The operating capital assigned to such bausparkassen business units and the reserves shown in such separate annual financial statements shall be deemed to constitute liable equity resources of a bausparkasse.

(4) Prior to the entry into effect of this law, bausparkassen which conducted business transactions other than those permitted under Article 4 or transactions on a wider

scale than that permissible under Article 4, Article 6 and Article 7 as well as under Article 10 of the legal regulations shall not be subject to these provisions insofar as existing contracts are concerned. The Federal Banking Supervisory Office may set appropriate deadlines by which this type of transaction must be executed.

(5) Para. 3 above shall also apply mutatis mutandis to such credit institutions which operate the bauparkassen business through legally dependent business units after the entry into effect of this law.

§ 19 Transitional Provisions

(1) The legal provisions already in existence in the bauparkassen sector as well as the instructions hitherto given on the basis of the present legal regulations, shall remain in force insofar as the provisions of this law or of the Credit Act do not contradict them. Legal regulations containing wider stipulations than this law in respect to the activities of specific types of bauparkassen shall remain unaffected.

(2) The responsibilities and rights in the field of bauparkassen assigned by legal regulation to the Federal Supervisory Office for Insurance and for bauparkassen shall be transferred to the Federal Banking Supervisory Office.

(3) The responsibility of the Länder for confirming the conversion arrangement for bauparkassen which are subject to their special jurisdiction, shall remain unchanged.

(4) At least 60% of the surplus net earnings as defined by Para. 1 of Article 6 accruing prior to 1 January 2001 must be included into the technical security reserve. Surplus earnings as defined by Para. 1 of Article 6, insofar as they are temporarily unavailable for allocation, need not be included into the technical security reserve if they are from bauparkassen contracts transacted before 1 January 1991.

(5) In exception to Sentence 1 of No. 6 of Para. 1 of Article 4, a bauparkasse may own equity holdings in an enterprise exceeding one-third of the enterprise's nominal capital, if the bauparkasse legally took over or acquired such equity holdings prior to 31 May 1990.

§ 20 Amendment and Repeal of Legal Provisions

(1) The law pertaining to the supervision of private insurance companies and bauparkassen as revised and published on 6 June 1931 (Reichsgesetzblatt* I p.

315, 750), last amended by the Authentication Act of 28 August 1969 (BGBl. I p. 1513) shall be revised as follows:

1. The words "and bauparkassen" shall be deleted from the heading.
2. Section VII and Article 133, Para. 2 of Article 135, Article 136, Para. 2 of Article 146, Para. 2 of Article 151, Para. 1 and the final half-Sentence of Para. 2 in Article 158 shall be repealed.
3. In Para. 1 of Article 134, the words "or a bauparkasse" and the words "or the holding(s) of baupar contracts" shall be deleted and the reference contained in brackets, namely "Articles 14, 112" shall be replaced by the reference "Article 14".
4. In Para. 4 of Article 137 the words "or the bauparkasse" shall be deleted.
5. a) In Article 140 the words "or a bauparkasse" shall be deleted in Para 1.
b) In Para. 2, the words "or a baupar contract" shall be deleted and the words "such contracts" shall be replaced by the words "of any such contract".
6. In Para. 1 of Article 141, the words "or the members of the managing board, personally liable shareholders, managers or liquidators of a bauparkasse" shall be deleted.
7. a) In Sentence 1 of Article 150, the words "insurance and bauparkassen" shall be replaced by the word "insurance".
b) In Sentence 2 of Article 150, the words "insofar as bauparkassen are concerned, the advisory council for bauparkassen" shall be deleted.
8. In Sentence 2 of Article 152 and in Article 156 the words "and bauparkassen" shall be deleted.

(2) The law pertaining to the establishment of a Federal Supervisory Office for Insurance and Bauparkassen of 31 July 1951 (BGBl. I, p. 480), which was revised by the law to amend the law pertaining to the establishment of a Federal Supervisory Office for Insurance and Bauparkassen of 22 December 1954 (BGBl. I, p. 501), and the First, Second and Third Implementation Regulations pertaining to this law (BGBl. I 1952 p. 94, 610 and 1953 p. 75) shall be amended as follows:

1. The words "Insurance and Bausparkassen" shall be replaced by the word "Insurance" in the heading of the law and in the heading of the implementation regulations, in Sentence 1 of Article 1, in No. 7 of Article 8 and in Sentence 1 of Article 10a of the law, in the introduction to the First, Second and Third Implementation Regulations and in Article 1 of the First and Second Implementation Regulations.

2. The words "and bausparkassen" shall be deleted in Sentence 1 of Article 1, Article 6, the first half-Sentence of Article 8 and Para. 2 of Article 10 of the law and in Article 3 and Para. 1 of Article 4 of the First Implementation Regulations.

3. The reference "12" and the words "and bausparkassen" in Article 2 will be deleted in the Third Implementation Regulations.

4. Para 2. of Article 2 of the law, Para. 3 and Para. 4 of Article 3 and Sentence 2 in Para. 2 of Article 10 of the Third Implementation Regulations shall be repealed.

5. The words "and the advisory council for bausparkassen" shall be deleted in Article 8 of the First Implementation Regulations.

(3) The words "and bausparkassen" shall be deleted in Para. 1 of Article 112 in the Law on Composition Proceedings of 26 February 1935 (Reichsgesetzblatt I, p. 321), last revised by the law to amend the Court Registrars Act, the Authentication Act and the transformation of the oath of disclosure into an affirmation in lieu of oath of 27 June 1970 (BGBl. I, p. 911) and the words "or the Bausparkassen Act of 16 November 1972 (BGBl. I, p. 2097) shall be inserted after the reference to "Reichsgesetzblatt I, p. 315, 750".

(4) The Credit Act shall be amended as follows:

1. No. 6 in Para. 1 of Article 2 shall be repealed.

2. No. 2 of Article 3 shall be worded as follows: "2. The acceptance of sums of money, if the majority of the money lenders are entitled to be granted loans from these sums of money or objects purchased on credit (special purpose savings institutions); this shall not apply to bausparkassen".

3. After Article 22, the following provision shall be inserted as Article 22a: "Article 22a Bauspar Deposits Articles 21 and 22 shall not apply to bauspar deposits".

4. Para. 2 of Article 40 shall be revised as follows: "(2) Credit institutions within the meaning of Article 1 of the Bausparkassen Act of 16 November 1972 (BGBl. I, p. 2097) may use the designation "bausparkasse", registered cooperatives belonging to an auditing association may use the designation "savings and loan banks"."

5. The following provision shall be inserted as Article 52a after Article 52: "Article 52a Forms for the Annual Financial Statements of Public Credit Institutions. The Federal Minister of Justice is empowered, in agreement with the Federal Minister of Economics, to prescribe the preparation of the annual financial statements of public credit institutions through regulations and to issue any other regulations for the organisation of such annual financial statements insofar as this is required in order to harmonise the structure of the annual financial statements of these credit institutions to the prescribed organisation of the annual financial statements of other credit institutions."

(5) Chapter V of the First Part of the Regulations issued by the Reich president on measures in the areas of the judicature and administration of 14 June 1932 (Reichsgesetzblatt I, pp. 385, 288), the implementation and amendment regulations on the simplified handling of bauspar contracts of June 1953 (Reichsgesetzblatt I, p. 372) and the Second Implementation and Amendment Regulations on the simplified handling of bauspar contracts of 7 September 1934 (Reichsgesetzblatt I, p. 827) shall not be applied to any bauspar contracts which are concluded after this law takes effect.

§ 21 Effective Date

This Act shall take effect on 1 January 1973 *).

*) The alterations due to the amendment of the Bausparkassen Act went into effect on 1 January 1991, the alterations of Para. 2 of Article 4 and Sentence 4 in Para. 3 of Article 18 due to the Fourth Amendment of the Credit Act on 1 January 1993 and the amendments of Para. 3 of Article 4, Para. 2, 5 and 6 of Article 7 due to the Law on the Implementation of the Treaty on the European Economic Area went into effect on 1 January 1994, the amendments of No. 5c in Para. 1 of Article 4 and of Para. 2 of Article 4 by virtue of the law on the new regulation of home ownership assistance under aspects of fiscal law on 1 January 1996 and the amendments by virtue of the law on the admission of shares quoted per unit as well as the Third Financial Market Promotion Act on 1 April 1998. The amendment by virtue of the introductory law on the Insolvency Act came into force on 1 January 1999.

Ordinance to Protect the Creditors of Bausparkassen (Bausparkassen Ordinance)

dated 19 December 1990

§ 1 Granting of Anticipatory and Intermediate Loans from Allocation Funds

(1) It shall be permissible to use for a limited period 70% of the amounts allocated to, though not yet taken up by bauspar customers for granting loans according to No. 1 of Para. 1 of Article 4 of the Bausparkassen Act. Anticipatory loans within the framework of bauspar contracts not eligible for allocation because the minimum saving requirement has not been fulfilled shall not exceed 25% of the loan volume permitted according to Sentence 1 above.

(2) Fifty percent of such legally committed credit shall, in each case, be accounted against the loan quotas permitted according to Sentence 1 above.

(3) The presumed term permitted for the loans according to Paras. 1 and 2 above shall not exceed 48 months. Loans with a presumed term of over 36 months shall not be permitted to exceed 25 % of the quota mentioned in Sentence 1 of Para. 1 above.

(4) The Federal Banking Supervisory Office shall, in individual cases, be permitted upon request to grant exemptions in respect of the provisions of Paras. 1 to 3.

§ 2 Large-Scale Bauspar Contracts

(1) Bauspar contracts involving a bauspar sum of over DM 450,000 shall be deemed to represent large-scale bauspar contracts. The bauspar contracts concluded with an individual bauspar customer in the course of one calendar year shall be deemed to represent one contract.

(2) The share of the unallocated large scale bauspar contracts in the total stock of unallocated bauspar contracts of a bausparkasse shall not be permitted to exceed 15 %.

(3) The share of large-scale bauspar contracts, concluded within one calendar year, in the total bauspar sum contractually agreed upon by a bausparkasse in the course of the respective calendar year shall not be permitted to exceed 30 %.

(4) The shares of baupar contracts which baupar customers have paid up within the first year from the date of contract conclusion the full minimum saving balance necessary for allocation shall be permitted according to Paras. 2 and 3 above.

§ 3 Financing of Commercial Buildings

The share of the loans granted to finance construction projects of a commercial character shall not be in excess of 3 % of the total stock of the claims arising to a bauparkasse from the loans it has granted.

§ 4 Loans to Institutional Investors

(1) Loans according to No. 7 of Para. 1 of Article 4 of the Bauparkassen Act shall not be permitted to exceed 60 % of the bauparkasse's liable equity resources.

(2) A bauparkasse shall be permitted to grant loans to a single enterprise in which it owns a financial interest of the kind mentioned in Para. 1 above up to 20 % of its liable equity resources.

§ 5 Alternative Security

The share of the loans, for which alternative security is provided, in the total stock of the claims arising from the loans of a bauparkasse shall not be permitted to exceed 25 %.

§ 6 Loans against Formal Obligations, Loans without Security

(1) In individual cases, baupar loans not exceeding DM 30,000 may, according to No. 1 of Para. 4 of Article 7 of the Bauparkassen Act, be granted against a formal obligation not to impede collateralisation, and baupar loans requiring no security to be provided according to No. 2 of Para. 4 of Article 7 of the Bauparkassen Act shall not exceed DM 20,000 in any one lending case. In individual cases, other loans not exceeding DM 20,000 may, according to No. 1 of Para. 4 of Article 7 of the Bauparkassen Act, be granted against a formal obligation not to impede collateralisation, and other loans requiring no security to be provided according to No. 2 of Para. 4 of Article 7 of the Bauparkassen Act shall not exceed DM 10,000 in any one lending case.

(2) The share of all uncollateralized loans specified in Para. 1 above, shall not be permitted to be in excess of 30 %, the share of all uncollateralized loans granted

according to Para. 1 above shall not be permitted to exceed 20 % and the share of loans pursuant to the second half of Sentence 2 in Para. 1 shall not be permitted to exceed 5% of the total stock of claims arising from loans granted by a bauparkasse.

§ 6a Limitation of Loans Pursuant to Para. 1 in Articles 5 and 6

The share of all loans specified in Para. 1 of Articles 5 and 6 shall not exceed a total of 45% of the total stock of claims arising from loans granted by a bauparkasse.

§ 7 Preconditions for Allocation

(1) The Standard Terms and Conditions for baupar contracts shall include minimum valuation indices or other appropriate preconditions for allocation that will permanently result in a collective baupar saver/bauparkasse performance ratio of at least 1.0.

(2) The individual baupar customer/bauparkasse performance ratio shall, subject to Para. 3 and 4 below, be at least 0.5 upon the date of allocation. Moreover, where by the launching of new baupar tariffs, or new elements thereof, it is impossible to derive conclusions from experience gained with comparable tariffs as to the height of the factors presumed to reduce the waiting period, the individual baupar customer/bauparkasse performance ratio shall be at least 0.7 on the date of allocation provided that the minimum saving balance was fully paid on the date of contract conclusion.

(3) The preconditions for allocation may be fixed in divergence to the provisions of Para. 2 above provided that a collective baupar customer/bauparkasse performance ratio of at least 1.0 appears to be permanently guaranteed in respect of the baupar tariffs covered by an allocation fund.

(4) Where the preconditions for allocation do not permanently lead to a collective baupar customer/bauparkasse performance ratio of at least 1.0, or if inappropriately high values result, not only of a temporary nature for the baupar customer/bauparkasse performance ratio, the bauparkasse shall be required to adjust its preconditions for allocation without delay.

5) Upon application in special cases, the Federal Supervisory Office shall be able to permit exceptions to the upper ceiling of the collective baupar customer/bauparkasse performance ratio.

6) The values for the collective bauspar customer/ bausparkasse performance ratio must be verifiably submitted to the Federal Supervisory Office on an annual basis.

§ 8 Transfers to the Technical Security Reserve

(1) Transfers to the technical security reserve shall be made at the end of any one business year and shall be calculated from the monies that can temporarily not be allocated according to Sentence 2 of Para. 1 of Article 6 of the Bausparkassen Act (fluctuation reserve) on the dates on which the preceding year's funds available for allocation are established. The amounts available for transfer shall be calculated from the respective fluctuation reserve amounts multiplied by the difference between the rate of interest payable outside the collective and the rate of interest payable within the collective.

(2) The rate of interest payable outside the collective shall be calculated either on the basis of the interest a bausparkasse earns from investments according to Para. 3 of Article 4 of the Bausparkassen Act and from granting anticipatory and intermediate loans, according to No. 1 of Para. 1 of Article 4 on the Bausparkassen Act or on the basis of the yield, ascertained and promulgated by the Deutsche Bundesbank, of fully-taxed fixed-interest securities. The rate of interest payable within the collective shall be deemed to be the interest rate payable on bauspar loans weighted by the sum unallocated bauspar contracts.

§ 9 Use of Technical Security Reserve

(1) The technical security reserve shall be used, insofar as it is impossible to maintain allocation on the basis of a target valuation index which, in the absence of money transfer from outside the collective to the allocation fund (upper use valuation index), leads to an individual bauspar customer/bausparkasse performance ratio of 1.0 for bauspar customers making regular payments. A uniform upper use valuation index to be mentioned in the General Business Principles shall be applicable to all bauspar tariffs covered by the same allocation fund; this index shall be ascertained according to the Standard Terms and Conditions for Bauspar Contracts for the bauspar tariff which records the largest sum percentage in the stock of unallocated contracts.

(2) The technical reserve may be used insofar as the individual bauspar customer/bausparkasse performance ratio ascertained according to Para. 1 above would exceed 0.8 (lower use valuation index).

(3) Subject to approval by the Federal Banking Supervisory Office, the technical reserve may be used before the lower use valuation index has been reached insofar as this is necessary in the interest of controlling any immediate risk to the maintenance of the bausparkasse's permanent allocation capability.

(4) The bausparkasse shall be permitted to take from the reserve such amounts of money as would arise when charging a rate of interest on the monies from outside the collective that are added to the allocation fund which corresponds to the difference between the annual percentage rate of interest on the monies from outside the collective added to the allocation fund and the rate of interest payable within the collective (Para. 2 of Article 8).

§ 10 Transitional Regulations

In derogation of Article 7, it shall be permissible to incorporate preconditions for allocation into the standard tariffs on offer from 1 January 1991 involving a minimum saving balance of 40 % and a monthly rate of redemption of 6 per mil of the bauspar sum, which means a minimum waiting period of 45 months where the minimum saving balance is deposited in a single instalment; in respect of all the other bauspar tariffs, an individual bauspar customer/bausparkasse performance ratio of 0.5 shall be required. Evidence of collectively balanced performance ratios shall be supplied (according to Paras. 1 and 4 of Article 7) before 1 January 1996.

§ 12 Entry into Effect, Annulment

This Ordinance shall enter into effect on 1 January 1991*. On the same date, the Ordinance of 16 January 1973 (BGBl. I, p. 41) shall become inoperative.

* Came into force in this version on 1 December 1998