

Implementing Rules for the Bausparkassen Act (Bausparkassen Regulation)

On the basis of § 10 of the Bausparkassen Act as last amended by § 1(12) of the Act of December 21, 2015 (BGBl. I p. 2399), in conjunction with § 1 of the Regulation on the transfer of competence to issue Implementing Decrees pursuant to § 10 clause 1 of the Bausparkassen Act to the Federal Financial Supervisory Authority, amended by § 1 para 4 (2) of the Decree of December 13, 2002 (BGBl. 2003 I p. 2), the Federal Financial Supervisory Authority, having consulted the German National Bank and the Federal Associations of Bausparkassen, provides the following:

§ 1 Simulation of bauspar models

(1) For the purposes of § 8 para 4, § 2 and under the provisions of § 4, para 3 of the Bausparkassen Act on assessing whether pool liquidity is durably ensured and the Bausparkasse can at any given point in time draw on this durably ensured pool liquidity to satisfy applications to disburse bauspar loans and bauspar credit balances, bauspar simulation models are deemed appropriate only if they allow for a sufficiently precise extrapolation of the bauspar contract in the meaning of § 1 para 1 of the Bausparkassen Act and are capable of representing the associated interest expenditure and income over a period of normally 20 years (simulation period).

(2) To check the quality of the bauspar simulation model all Bausparkassen shall carry out back-testing at least once per year. To check the quality of the parameters used in the simulation, comparisons between target and actual data shall be carried out at least once per year. The results of these back-tests and comparisons between target and actual data shall be summarised in a validation report drawn up by the Bausparkasse. The validation report shall be submitted to

1. an independent auditor or an independent auditing firm on the occasion of a one-time inspection under § 8 para 5 of the Bausparkassen Act
2. the Federal Financial Supervisory Authority (Bundesanstalt) once per year as part of the collective management report pursuant to § 3.

(3) In application of § 8 para 5 of the Bausparkassen Act the auditor shall more particularly examine the following items to assess whether the bauspar simulation model is appropriate in the meaning of para 1:

1. the assumptions underlying the simulation appear plausible and are explained and justified in a transparent manner,
2. the parameters used in the simulation were selected in a plausible and transparent way on the basis of adequate methods and with a sufficient degree of accuracy, taking into account possible behavioural patterns of the customer and macroeconomic circumstances,
3. the internal accounting periods of the simulation models do not exceed three months,
4. assuming that all simulation parameters remain constant, the simulation shall result in an equilibrium in terms of constant turnover and portfolio data and that once a tariff is phased out its portfolio will eventually reach zero provided the simulation period is sufficiently long,
5. sampling or any other appropriate method to compress the data pool allows for a sufficiently accurate representation of the contract portfolio,
6. the structure of the model and the modus operandi including the determination of premises and parameters have been documented in writing and are being updated on a regular basis, and

7. the results of the validation report according to para 2 are not in conflict with the requirements of para 1.

The audit report pursuant to § 8 para 5 of the Bausparkassen Act shall prove beyond doubt that the requirements of para 1 and 2 for a bauspar simulation model are fulfilled. The auditor shall submit the audit report and the audit certificate pursuant to § 8 para 5 of the Bausparkassen Act to the Federal Financial Supervisory Agency as soon as the audit is terminated.

(4) The Federal Financial Supervisory Authority may forbid the Bausparkasse to use the bauspar simulation model for all or some of the purposes listed in para 1 if it does not meet the requirements of paras 1 to 3. When assessing whether the requirements of paras 1 to 3 are met, the Federal Financial Supervisory Authority generally takes account of the audit report and the audit certificate mentioned in para 3.

§ 2 Simulations and Forecasts

(1) § 8 para 4 of the Bausparkassen Act and this Regulation stipulate that the simulations and forecasts shall cover a baseline scenario and appropriate stress tests for each Bausparkasse. A baseline scenario mainly represents the income and liquidity developments as expected by the Bausparkasse, taking into account the expected market interest rates over a given period of time. Stress scenarios cover situations where some parameters such as the market interest rate or the acquisition of new customers deviate from the baseline scenario in a way which is unfavourable from the point of view of the Bausparkasse.

(2) The results of a simulation carried out according to § 8 para 4 of the Bausparkassen Act on the basis of a bauspar simulation model (simulation results) shall be documented by the Bausparkasse in a transparent manner. To this end the Bausparkasse shall draw up a report. In this report, the following items shall be specified and justified in a transparent manner:

1. the assumptions underlying the simulation results
2. the simulation parameters and interdependencies leading to the corresponding simulation results.

(3) The Federal Financial Supervisory Authority may impose the design of the scenarios and, where appropriate, ask for additional scenarios if this is deemed necessary for a given purpose.

(4) When assessing whether the requirements of § 10 (10) letters a to k of the Bausparkassen Act are fulfilled the Federal Financial Supervisory Authority may include the simulation results in its consideration. To assess clause 1 the Federal Financial Supervisory Authority may also refer to other business indicators which are related to the bauspar model. The Bausparkasse shall forecast the development of these business indicators over a period of 20 years as a rule (forecast period). Business indicators in the meaning of clause 2 are more particularly

1. the volume of anticipatory loans or intermediate loans according to § 4 para 1 (1) of the Bausparkassen Act,
2. the volume of other building loans according to § 4 para 1 (2) of the Bausparkassen Act,
3. the volume of cash investments according to § 4 para 3 of the Bausparkassen Act,
4. the volume of liabilities incurred to grant bauspar loans and loans according to § 4 para 1(1,2) of the Bausparkassen Act and to procure additional funds required for operational purposes according to § 4 para 1(5) of the Bausparkassen Act,

5. the volume of the Bauspar Technical Reserve Fund pursuant to § 6 para 2 of the Bausparkassen Act,
6. the volume of all expenses and income to be allocated to the indicators listed in points 1 to 5,
7. the volume of non-interest bearing liabilities,
8. the volume of administrative expenses,
9. the volume of net commission income,
10. the partial operating result in the meaning of clause 5,
11. the savings pool interest margin in the meaning of clause 6,
12. the savings pool based interest margin in the meaning of § 1 para 4 clause 1 of the Bausparkassen Act,
13. the savings pool based interest surplus in the meaning of § 1 para 4 clause 2 of the Bausparkassen Act and
14. the entire interest surplus.

The partial operative result in the meaning of clause 4(10) is the sum of interest surplus and commission surplus minus administrative expenses. The savings pool interest margin in the meaning of clause 4(11) is the difference between the average interest on bauspar loans and the average interest on bauspar deposits. The average interest on bauspar loans in the meaning of clause 6 is the ratio between interest income and the average annual bauspar loan portfolio. The average interest on bauspar deposits in the meaning of clause 6 is the ratio between interest expenses and the average annual bauspar deposit portfolio. The assumptions underlying the forecast of the development of the indicators listed in clause 4 points 1 to 9 shall be explained and justified in a transparent manner.

(5) The Federal Financial Supervisory may select additional indicators to be forecast if this is deemed necessary in order to assess whether the requirements under § 10(10) letters a to k of the Bausparkassen Act are fulfilled.

(6) The Bausparkasse shall document the results of a forecast made according to para 4 and 5 (forecast results) in a transparent manner. Para 1 clause 1 and para 3 apply accordingly. The Bausparkasse shall explain and justify the assumptions underlying the forecast results, the parameters used for the forecast and the interdependencies leading to the corresponding forecast results as well as their relationship with the simulation results pursuant to para 2 in a transparent manner.

(7) The Federal Financial Supervisory Authority may determine the way in which the simulation results and forecast results are to be presented and justified, including notably a joint report covering both sets of results.

(8) When applying for an authorization pursuant to § 6 para 1 clause 2(2) and para 2 clause 4, to § 9 para 1 clause 1 and 2 and to § 14 para 1 and 3 of the Bausparkassen Act, the Bausparkasse shall as a rule join the following items to its application:

1. up-to-date simulation and forecast results and
2. a report on the simulation and forecast results. Both items shall meet the requirements of paras 1 to 7.

§ 3 Collective management report

(1) Pursuant to § 3 para 5 of the Bausparkassen Act the Bausparkasse shall submit a collective status report to the Federal Financial Supervisory Authority by the end of each calendar year. The report shall provide a description of the status quo of the bauspar pool and the general macroeconomic framework and, in addition, include the information and documents specified in § 2 para 8 clause 1(1,2). § 2 para 8 clause 2 applies by analogy. Moreover, the Bausparkasse shall provide information about

1. the risks of bauspar tariffs whose interest deviate significantly from the market interest rate,
2. the proportion of tariffs in absolute and relative terms based on the sum total of bauspar contracts broken down into savings and loan phase whose individual customer/Bausparkasse input ratio exceeds 1 000. In addition, the report shall illustrate the effects of these tariffs on interest income and pool liquidity, assess related risks and describe measures for mitigating such risks,
3. measures for hedging risks from long term liabilities and
4. an assessment as to whether the obligations undertaken in the meaning of § 3 para 5 clause 1(1) of the Bausparkassen Act are assured over the simulation period.

(2) Pursuant to § 2 para 2 and 6 the collective management report of the Bausparkasse shall be supplemented by threshold values for selected and appropriate parameters of the simulation and forecast results above or below which corrective measures would be required. If, during the simulation period, these values evolve above or below the threshold, the Bausparkasse shall indicate appropriate corrective measures. If the values evolve above or below the threshold during the first five years of the simulation period, the effects of appropriate corrective measures shall be described in both quantitative and qualitative terms.

(3) By derogation from para 1 clause 1 the Federal Financial Supervisory Authority may determine when and how often within a calendar year the Bausparkasse shall submit a collective management report.

§ 4 Minimum requirements for bauspar tariffs

(1) The General Terms for bauspar contracts shall contain a minimum valuation index or other appropriate allocation requirements to guarantee durably ensured collective liquidity.

(2) The input of the bauspar customer in the meaning of § 5 para 4 clause 1 of the Bausparkassen Act is the ratio between interest on deposits accrued in the savings stage and the interest on deposits (bauspar customer input). The input of the Bausparkasse in the meaning of § 5 para 4(1) of the Bausparkassen Act is the ratio between interest on loans accrued in the redemption stage and interest on loans (input of the Bausparkasse). The lowest individual bauspar customer /Bausparkasse input ratio for a bauspar tariff in the meaning of § 5 para 4(1) of the Bausparkassen Act shall, subject to clause 4, amount to no less than 0.400 at the allocation stage. Based on the merits of individual cases the Federal Financial Supervisory Authority may depart from clause 3 and set different customer/Bausparkasse input ratios provided durably secured collective liquidity is deemed guaranteed for the bauspar tariffs under a given allocation fund.

(3) When assessing whether durably secured collective liquidity is guaranteed the Federal Financial Supervisory Authority may refer to the simulation results pursuant to § 2 para 2. Moreover, proof of durably secured collective liquidity shall be provided in the form of a collective customer/Bausparkasse input ratio which is adequate over an extended period and, if required, by additional indicators to be specified by the Federal Financial Supervisory Authority. The collective

customer/Bausparkasse input ratio is the quotient of the total of the saved amount under bauspar contracts whose credit balance was disbursed to the bauspar customer within a calendar year and the total of the Bausparkassen input in relation to the bauspar contracts for which the first loan payment was made within the calendar year. When calculating the Bausparkassen input the Federal Financial Supervisory Authority may ask to consider not only regular repayments but also higher unscheduled repayments (special repayments). The figures of the collective customer/Bausparkasse input ratio for the past calendar year shall be submitted to the Federal Financial Supervisory Authority once per year.

(4) In case the allocation requirements do not durably guarantee collective liquidity or if the numbers for the collective customer/Bausparkasse input ratio reach - not only temporarily - unsustainably high levels, the Bausparkasse shall adapt the allocation requirements immediately and in an appropriate manner.

(5) In the General Terms for bauspar contracts the difference between the nominal interest on loans and the interest on credit balances of a bauspar tariff (differential of interest receivable and payable of that tariff) shall be set in such a way that the sustained ability of the Bausparkasse to fulfil its obligations can be reasonably assumed. When setting the interest margin of a tariff the level of individual customer/Bausparkasse input ratios shall be taken into appropriate consideration.

§ 5 Grants of anticipatory or intermediate loans and other building loans from allocation funds

(1) When applying for an authorization pursuant to § 6 para 1 clause 2 (2) of the Bausparkassen Act, the Bausparkasse shall demonstrate i. a. by referring to simulation results that claims for the disbursement of bauspar loans and bauspar deposits can be satisfied from its durably ensured pool liquidity at all times. The Federal Financial Supervisory Authority can furthermore claim additional relevant information, especially from the collective management report, which might be necessary to assess if the conditions of § 6 (1) No. 2 of the Bausparkassen Act are fulfilled.

(2) The duration of loans pursuant to § 4 para 1(1,2) of the Bausparkassen Act which are financed from allocation funds shall not exceed a period of twelve years. The Federal Financial Supervisory Authority may reduce this period if the interests of the bauspar customers would otherwise not be sufficiently safeguarded. This case may arise more particularly if the allocation at the minimum valuation index is uncertain or when there are doubts regarding the capacity of the Bausparkasse to satisfy claims for the disbursement of bauspar loans and bauspar deposits from its durably ensured pool liquidity at any point in time. The Federal Financial Supervisory may allow exceptions from clause 1 in special cases upon request.

(3) Bausparkassen who have applied for or received an authorisation pursuant to § 6 para 1(2) of the Bausparkassen Act shall comply with the following requirements:

1. as a priority, compare the updated figure of bauspar deposits and bauspar loans with the actual figure at least once per year, make a comparison between the updated and the actual figures at the end of the calendar year and submit the outcome to the Federal Financial Supervisory;
2. In cases of serious discrepancies between actual and target figures in the meaning of point 1 a deviation analysis shall be carried out the results of which shall be notified to the Federal Financial Supervisory indicating also the root causes of the deviation and pointing to measures which are capable of preventing such deviations henceforth.

(4) The Bausparkasse shall notify the Federal Financial Supervisory Authority immediately in writing if simulation results, forecast results or other indicators seem to suggest that there is no certainty that the Bausparkasse is capable of satisfying claims for the disbursement of bauspar loans and bauspar deposits from its durably ensured pool liquidity at all times.

(5) Pursuant to § 6 para 1 (2) of the Bausparkassen Act the Federal Financial Supervisory Authority may also deny, upon notification or subsequently add ancillary provisions to or revoke authorizations if

1. the requirements pursuant to para 1 clause 1 or para 2 are not met or
2. serious deviations in the meaning of para 2 point 2 occur more than once and cannot be proven to be due to external factors which were impossible for the Bausparkasse to anticipate.

When deciding about denying, revoking or supplementing an authorisation with an ancillary provision the Federal Financial Supervisory Authority takes account of the interests of the bauspar customers. When the conditions to revoke an authorisation are met, the Federal Financial Supervisory may decide to refrain from doing so to instead notably limit the duration of the authorization ex post and add instructions to it if this is deemed adequate and necessary to enable the Bausparkasse to adjust its pool management over an appropriate period of time to the fact that it may no longer use its allocation funds as under the original authorization.

§ 6 Applications for the approval of tariffs and portfolio transfers

(1) When applying for an authorization pursuant to § 9 para 1 clause 1 and 2 and to § 14 para 3 of the Bausparkassen Act i. a. the following documents shall be enclosed:

1. the General Business Principles and General Terms for bauspar contracts, the object of the application, and
2. proof that the requirements pursuant to § 4 have been met.

The documents can also be sent electronically to the Federal Financial Supervisory Authority.

(2) When applying for an authorization pursuant to § 14 para 1 of the Bausparkassen Act i. a. the following documents shall be enclosed:

1. the contract under which the portfolio of bauspar contracts including their assets and liabilities are to be transferred entirely or in parts to one or several other Bausparkassen, and
2. proof that the requirements pursuant to § 4 have been met.

(3) § 2 para 8 remains unaffected by paras 1 and 2.

§ 7 Transfer to the Bauspar Technical Reserve Fund

(1) The transfer to the Bauspar Technical Reserve Fund pursuant to § 6 para 2 clause 2 of the Bausparkassen Act takes place once per year at the end of the fiscal year. In cases where the balance between the actual interest income in the meaning of para 2 and the target interest income in the meaning of para 3 is positive, six tenths of the balance shall be transferred to the Fund.

(2) The actual interest income is the product of market interests and the sum of bauspar deposits not invested in bauspar loans and the Fund plus the product of bauspar loans and the average of the tariff bauspar loan interest rates weighted by the bauspar loans. The market interest rate is the quotient of the market interest income and the size of market investments and loans of the Bausparkasse.

(3) The target interest rate is the product of the pool interest rate and the pool funds in the meaning of § 1 para 7 of the Bausparkassen Act. The pool interest rate is the average of the tariff bauspar loan interest rates weighted by the bauspar deposits.

(4) Some tariffs or tariff options may result in the individual customer/Bausparkasse input ratio exceeding 1 000; in these cases it is possible to apply the credit interest rate for bauspar deposits plus 2 percent instead of the interest rate on bauspar loans.

§ 8 Use of the Bauspar Technical Reserve Fund

(1) Capital from the Bauspar Technical Reserve Fund shall be employed pursuant to § 6 para 2 (1) of the Bausparkassen Act when the allocation at a target valuation index which for regular bauspar customers results in a customer/Bausparkasse input ratio of 1 000 cannot be maintained without adding non-pool capital to the allocation funds (upper deployment variation index). All bauspar tariffs of an allocation fund are subject to a uniform upper deployment valuation index which shall be indicated in the General Business Principles and shall be determined according to the General Terms for bauspar contracts of the bauspar tariff option with the largest monetary share in the non-allocated contract portfolio and whose lowest individual customer/Bausparkasse input ratio concomitantly amounts to less than 0.800.

(2) Capital from the Bauspar Guarantee Fund may be employed pursuant to § 6 para 2 clause 1(1) of the Bausparkassen Act when the allocation at a target valuation index at the level of the lower deployment valuation index cannot be maintained. All bauspar tariffs of an allocation fund are subject to a uniform lower deployment valuation index which shall be indicated in the General Business Principles and the amount of which shall not exceed the highest minimum valuation index of all tariffs according to the General Terms for bauspar contracts by more than a factor of 1,4.

(3) In cases referred to in para 1 and 2 the Bausparkasse may withdraw from the Bauspar Guarantee Fund the amount which is the result of applying an interest rate to the capital market funds injected into the allocation fund which corresponds to the difference between the effective annual interest rate for the injected capital and the interest rate on the pool.

(4) To secure a pool based interest margin in the meaning of § 6 para 2 clause 1 (2) of the Bausparkassen Act the Bausparkasse may withdraw up to eight tenth of a possible negative difference between the actual interest income (§ 7 para 2) and the target interest income (§ 7 para 3) from the Bauspar Guarantee Fund by the end of the fiscal year.

(5) § 6 para 2 clauses 3 to 6 of the Bausparkassen Act and paras 1 to 4 apply equally to capital which is paid into the Fund beyond the requirements of § 7 para 1.

§ 9 Large-scale bauspar contracts

(1) Large scale bauspar contracts are bauspar contracts with a target contract amount in excess of 350 000 Euro. All bauspar contracts concluded by one customer within twelve months are deemed to form one single contract.

(2) The share of unallocated large scale bauspar contracts in the total unallocated target contract amount of the bauspar portfolio of a Bausparkasse shall not exceed 15 percent.

(3) The share of large scale bauspar contracts concluded within one calendar year in the total amount of bauspar contracts concluded by the Bausparkasse within the same calendar year shall not exceed 30 percent.

(4) Bauspar contracts for which the customer has paid the minimum savings amount required for allocation within the first year after which the contract was concluded count towards the share of large scale bauspar contracts which are admissible pursuant to para 2 and 3.

§ 10 Commercial financing

The share of loans granted to finance commercial construction projects shall not exceed three percent of the total portfolio of claims from loans of a Bausparkasse.

§ 11 Loans to associated companies

(1) Loans as defined by § 4 para1(7) of the Bausparkassen Act may be granted to a Bausparkasse up to a maximum of 60 percent of its own funds pursuant to § 72 of the Regulation (EU) 575/2013 of the European Parliament and the Council of 26 June 2013 on prudential requirements for credit institutions and investment funds and amending Regulation(EU) 648/2012 (ABl. L 176 of 27.6.2013, p. 1, L 208 of 2.8.2013, p. 68, L 321 of 30.11.2013, p. 6, L 193 of 21.7.2015, p. 166) amended by the Delegated Act (EU) 2015/62 (ABl. L 11 of 17.1.2015, S. 37).

(2) An individual company associated with a Bausparkasse may be granted loans as defined in para 1 of up to 20 percent of the own funds of the Bausparkasse pursuant to § 72 of Regulation (EU) 575/2013.

§ 12 Loans based on a letter of commitment, loans without collateral

(1) Loans based on a letter of commitment pursuant to § 7 para 4(1) of the Bausparkassen Act or without collateral in accordance with § 7 para 4(2) of the Bausparkassen Act may be granted in individual cases up to a maximum amount of 30 000 Euro.

(2) The share of all loans under para 1 shall not exceed a total of 30 percent of the total portfolio of claims from loans of a Bausparkasse.

§ 13 Restrictions on loans not secured by liens of property

The portion of loans for which substitute collateral pursuant to § 7 para 3 of the Bausparkassen Act is provided and of loans under § 12 para 1 shall not exceed in their totality 45 percent of the total portfolio of claims from loans of a Bausparkasse.

§ 14 Transitional rules

(...)

§ 15 Entry into force, abrogation

This Regulation enters into force on the day after its promulgation. Concomitantly the Bausparkassen Regulation of 19 December 1990 (BGBl. I p. 2947), as last amended by § 1 of the Regulation of 24 April 2009 (BGBl. I p. 999) ceases to be in force.