

The “Bauspar” System in Germany

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Preface

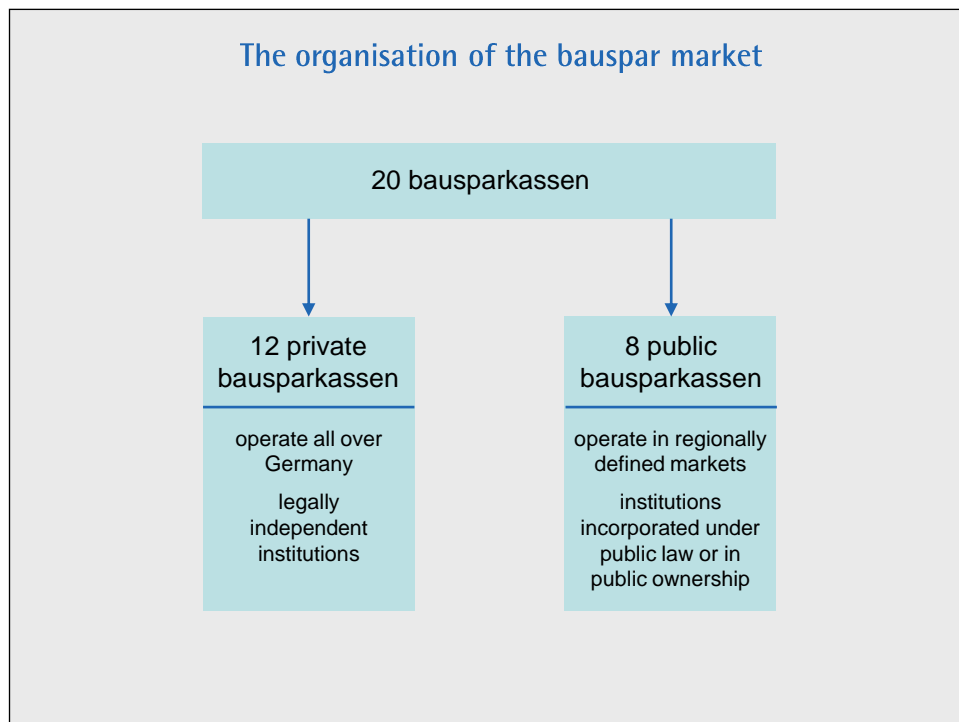
The acquisition of housing property is a major key for development and prosperity. Housing property provides the prerequisites for a responsible way of life. It encourages personal initiative. In turn, people who live in their own house or apartment develop a special relationship to their home, neighbourhood and city. Owning housing helps its owners to put down roots - it is regarded as a social obligation.

The concept of bauparen achieves a very specific contribution in this context. Its underlying principle of "help for self-help" has not lost its validity over the times. Baupar savers are part of a baupar community which imposes very special rights and obligations both on the individual baupar customers and on the bauparkassen as their custodians. The system has proved to be crisis-proof. It is safe because it relies on solid housing finance techniques with intrinsic risk buffers in the form of the savers' own assets. Warranting long-term fixed and low interest rates for credits, it protects people against financial overstrain.

The acquisition of housing property should also be possible for average-wage earners. It is a perfect old-age provision which – different from other forms of old-age provision – can be enjoyed at young age already. For many decades, the bauparkassen have successfully pleaded for this social mission, which is of essential importance for the creation and protection of jobs.

The bauspar market in Germany

There are currently twenty bausparkassen in Germany. The eight public bausparkassen operate within regionally defined markets while each of the twelve private bausparkassen conducts business nationwide. The public law bausparkassen are either divisions of public banks or institutions incorporated under public law with their own legal personality, or public limited companies. The private bausparkassen operate exclusively as public limited companies. Private banks and insurance companies have also recognized the importance of the bauspar system for the financial services sector and have therefore either acquired shares in existing bausparkassen or have founded their own bausparkassen. The private bausparkassen cover about two thirds of the market and the public bausparkassen one-third.



The development of the baupar system in Europe

The European history of the baupar concept begins in Birmingham with the establishment of Kettley's Building Society in 1775. By means of monthly savings contributions, the members of this building society collected a pool of capital from which customers were then able to take out loans to build their homes.

In Germany, the first step in this direction was taken through the initiative of pastor Friedrich von Bodelschwingh in Bielefeld, who founded a German type of Building Society, the "Bauparkasse für Jedermann" ("Bauparkasse for Everyone") in 1885. However, the first actual boom for German bauparkassen only began in 1921, when author Georg Kropp established the "Gemeinschaft der Freunde (GdF)" (Society of Friends), as an organisation to promote home ownership in Wüstenrot near Heilbronn.

Against a background of an acute housing shortage combined with difficulties within the credit market, numerous bauparkassen were founded in the period up to 1931, many of them continuing to be mainstays of the baupar system to this very day.

After World War II, bauparkassen very quickly experienced an upswing, acting as a driving force in the necessary rebuilding of the home ownership sector. Whilst there was a noticeable relaxation in the housing market at the beginning of the eighties as a result of cyclical developments and income trends, by the mid eighties residential construction and with it the baupar system started recording growth figures once again. The system was successfully introduced into the new federal states in East Germany in 1990.

The increased demand for housing which arose in the nineties as a result of changing socio-demographic trends and political developments will continue also in the next years, mainly because an increasing number of singles and young people are setting up their own homes. This is where the baupar system can help to form home ownership. The move to owner-occupied homes also initiates a removal chain, releasing rented housing for new tenants. It is in this sector that the baupar system continues to have excellent growth opportunities.

The European Federation of Building Societies (EFBS), one of the oldest European associations in the credit sector, was founded in 1962. This organisation, which set itself the goal of promoting and supporting the financing of private home ownership, currently has over 50 members from the EU member states, the Mediterranean countries, the signatory states to the European Economic Area.

A chronicle of the bauspar system

1775	Foundation of “Kettley’s Building Society” in Birmingham, Great Britain
1885	Foundation of the “Bausparkasse für Jedermann” by Pastor von Bodelschwingh in Bielefeld, Germany
1921-1931 from 1948	Founding phase of the majority of German bausparkassen Resumption of the bauspar business in the Federal Republic of Germany
1990	Introduction of the bauspar system in the new federal states in East Germany

Founding years of the first bausparkassen in other European countries

1925	Austria
1928	France
1928	Czechoslovakia
1930	Switzerland
1927-1930	Poland: foundation of some 20 bausparkassen
1931	Bulgaria
before 1939	Denmark, Norway, Sweden, Belgium, Netherlands
1992	Slovakia: (re-) introduction of the bauspar system
1993	Czech Republic: (re-) introduction of the bauspar system
1997	Hungary
1998	Croatia
2004	Romania

Overseas, Africa, Middle East: Founding years of the first building societies / savings and loan institutions

1831	USA
1840	New Zealand
1840	Australia
1858	South Africa
1904	Brazil
1922	Palestine
2001	India
2003	Kazakhstan
2004	China

Lobbies / Associations

1914	Foundation of the world organisation International Union for Housing Finance (IUHF)
1947	Foundation of the central office of the public bausparkassen of Germany
1948	Foundation of the Association of Private German Bausparkassen (VdPB)
1962	Foundation of the European Federation of Building Societies (EFBS)

The historical concept of the baupar system

The baupar system is an important factor in the supply of housing, capital formation and personal retirement provision.

The fundamental concept of the system is based on social-ethic ideas. It can best be illustrated by an example showing the advantages of this mutually supportive group especially when potential home buyers have no access to mortgage loans from a bank - which was the case in Germany in former times and is still true for many developing and emerging countries:

Ten potential home buyers without own capital want to save money with the objective of acquiring their own homes. If each of them is able to save one-tenth of the amount needed every year, then each would have the necessary capital after ten years. If these ten potential home buyers were to pool their resources, the first one could own a home after only one year by drawing on the savings of the other nine.

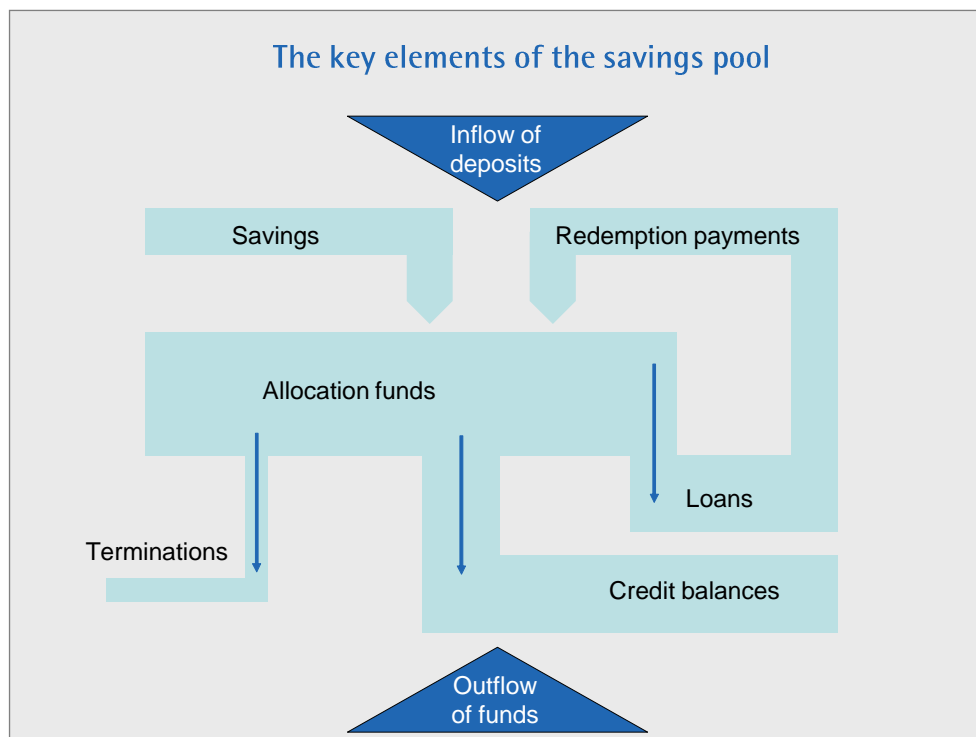
In the second year, the next one could purchase a home by drawing on the savings of nine plus the redemption payments made by the first participant who had been able to purchase his home in the first year.

Using this method, all those who have pooled their resources reach their objective over the ten year period and 4.5 years earlier on average than if each had saved the necessary money alone.

The baupar system made a substantial contribution to overcome the housing shortage in Germany in the 1920s. Nowadays the concept is focussed on a safe way to home ownership and sustained financing .

The allocation system

Today, with a total of more than 30 million baspar contracts, the baspar business is no longer as continuous as in the historic model and requires precise handling. The number of contracts concluded fluctuates depending on the state of the economy and income levels so that the flow of cash into the pool of funds is uneven. This also applies to the outflow of funds from the pool. One of the major tasks facing the managers of a basparkasse is therefore to keep the fluctuations of cash entering or leaving the pool as low as possible over a lengthy period of time.



Nevertheless, this does not change the basic idea of a 'closed pool'. The pooled deposits are called the "allocation fund". This fund is fuelled by the combined savings of the potential home buyers during the savings phase as well as by the redemption payments.

The allocation fund is used to pay out the contractually agreed sum to customers when their contracts are allocated. They receive both the credit balance in their account and a low-interest loan up to the amount of the agreed sum.

The advantages are obvious: The capital saved keeps the burden of financing down, the fixed interest on the loan offers protection against rising interest rates on the markets. The independence from the development of interest rates on the capital markets (at the beginning of the nineties interest rates on German capital mar-

kets rose to far above 10%) is another major advantage offered by a bauspar contract. Customers may also terminate their agreements after the savings phase if they do not need the loans and can use the deposits for their individual requirements.

How a bauspar contract works

A bauspar contract is divided into four phases: the contract conclusion phase, the savings phase, the allocation phase and the loan phase.

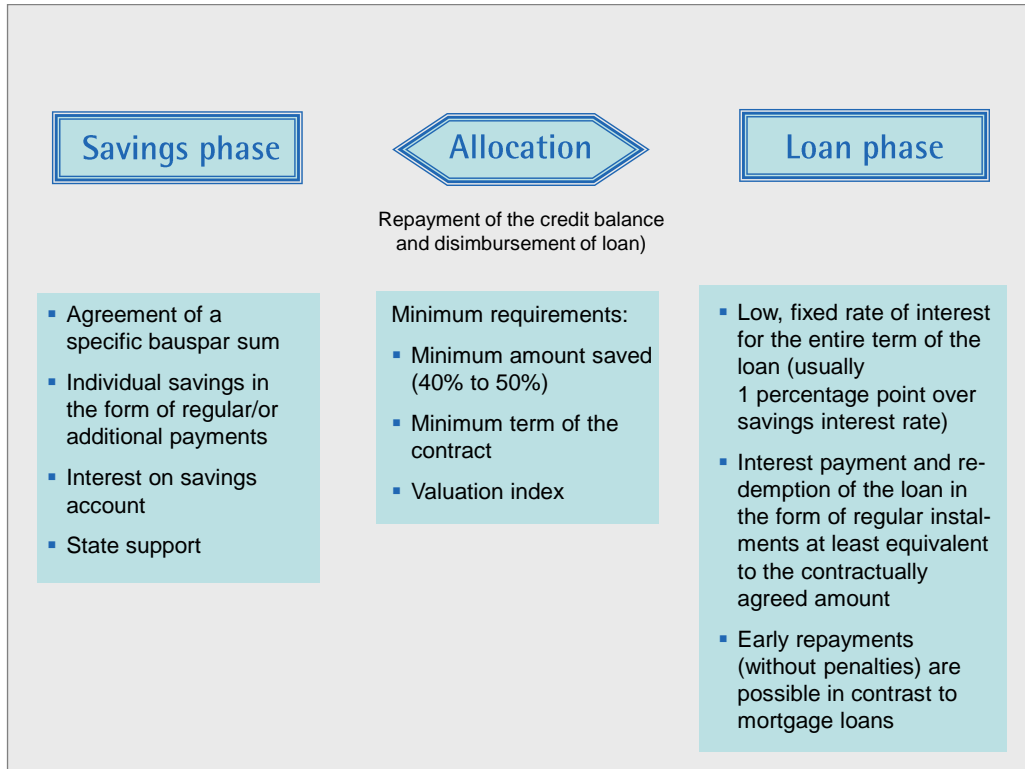
In the contract conclusion phase, the bausparkasse and the bauspar customer agree upon the bauspar sum and the remaining contract conditions, the so-called tariff, defining the saving and loan interest rates and the modalities of saving and redemption. Depending on the tariff, the interest rate of the loan is currently between 1.5 % and 3.5 %. The bausparkassen offer tailor-made tariffs for different target-groups (standard, fast-track or long-term). So-called option or variable tariffs are also offered in which the customer can choose between several tariff types. This gives him the chance to react flexibly even after the contract has been concluded if his savings objective should alter during the savings process. The contract is concluded through sales representatives, in branch offices or through co-operating or allied companies (e.g. banks, insurance companies, saving banks).

Before customers can draw on their contractually agreed sum, this must be allocated. The allocation is effected when 40 % or 50 % (depending on the tariff) of the bauspar sum has been saved, a certain minimum savings period has elapsed and/or the so-called target valuation index has been achieved. The valuation index stands for the saving performance the bauspar customer has made for the community of savers. The valuation index expresses the customer's saving performance for the benefit of the pool. It is calculated on the basis of the amount of savings and the length of time it has existed ("time-by-money system").

The valuation index also determines the order in which allocations are made to bauspar customers from the allocation fund. The customer with the highest valuation index takes priority over those with a lower valuation index in the allocation of the contractually agreed sum.

The loan phase begins with the allocation. The total bauspar sum, comprising both the deposits and a low-interest loan, which has a fixed rate of interest until it is finally redeemed, is disbursed to the customer. The interest on the loan is usually one percentage point higher than the interest attracted by the deposits, i.e. de-

pending on the contract (tariff) between 1.5 % and 3.5 % p.a. The loan is repaid in regular instalments which, in the most popular tariffs, amount to 6 ‰ per month or 7.2 % p.a. of the bauspar sum. In contrast to mortgage loans, the customer may also make early repayments at any time (without being liable to repayment penalties).



The legal framework of the bauspar business

As credit institutions, the German bausparkassen are subject to the full provisions of the German Credit Sector Act and therefore to government supervision through the Federal Banking Supervisory Authority. The special structure and techniques of the bauspar system in Germany require that the German Credit Sector Act is supplemented by special provisions governing Bausparkassen. Such provisions are contained in the Bausparkassen Act of 16 November 1972, as last amended on 29 December 2015. In addition to the provisions pertaining to supervision, the Act regulates the organisational structure of the bausparkassen and sets forth the regulatory framework for their business operations. It also regulates the minimum allocation requirements and contains provisions on a technical security reserve which is also intended to make the waiting period constant.

The general bauspar terms and conditions, i.e. the conditions for the contractual relationship with bauspar customers in the saving and loan phase have to be approved by the Federal Banking Supervisory Authority.

The same applies for the general business terms and conditions, i.e. the business foundations of the institute and the mathematic foundations of the bauspar tariffs.

The legal foundations

Statutory requirements

German Credit Sector Act

General rules pertaining to the supervision of the operation of credit institutions

Bausparkassen Act:

Specific rules:

- legal form
- audit and supervision
- permissible business activities
- framework for general business principles and general conditions for bauspar contracts
- appropriation of bauspar funds for housing financing
- securing of the bauspar loan

Bausparkassen Regulation:

Stipulates ceilings for the investment of available funds and the granting of specific loans

German Civil Code

Rules concerning the loan contract

Price Indication Regulation

- rules concerning advertisement for credit agreements
- rules on the calculation of the Annual Percentage Rate of Charge

The advantages of the bauspar system

The advantages of a bauspar loan are expressed in the following five points in particular:

- stable interest rate within the savings and loan phase
- no risk of interest-rate changes
- possibility to early repay the loan at any time without early repayment penalty
- fast freedom from debt
- second-rank provision of security.

These advantages are not available to those funding their homes without bauspar funds. With a traditional mortgage, for example, individuals must pay the interest rate prevailing on the capital market, the amount of which is determined by the interest rates which the credit institutions themselves pay for refinancing. This interest rate is subject to constant fluctuations.

Low interest rates between 1.5% and 3.5% can be provided by the bausparkassen because they do not depend on the capital market for their refinancing needs as they use the appropriated savings deposits of their customers. Moreover, they guarantee this fixed rate of interest for the lifetime of the loan when the saving contract is signed.

With mortgages, the interest rate is only fixed for the first term of the loan, which is usually 5, 10 or 15 years. If the interest rate on the capital market has risen by the end of this period, then the mortgage can become much more expensive for its remaining term.

Another advantage of the bauspar loan is that borrowers may early repay their loans at any time without having to pay an early repayment compensation to the bausparkasse. This increases the flexibility of the borrower since he can use non-scheduled inflows of funds for repayment and thus reduce his loan burden as a whole.

As bauspar customers “create” their own creditworthiness through the saving phase of the bauspar contract, the bausparkassen are content with “secondary” securities for the bauspar loan. This way bauspar customers can finance their homes with a well-balanced mix of financial resources where the bauspar loan can close the gap between the sum required and the loan granted under first-rank security.

Especially in transition and emerging economies, bausparen offers interesting advantages and options:

In emerging economies, the saving rates are often very low as the confidence in the banking sector is not very high or even got lost. The bauspar system is easy to understand and a safe method of saving and can make a contribution to re-establish the confidence into the banking industry. Bausparen helps to stabilise the banking sector in an indirect way and can thus help to achieve more growth.

In contrast to other credit institutions, bausparkassen are prepared to offer also small-scale loans – depending on the contractually agreed sum. This is an important advantage in emerging countries, as their housing stock is often extensive, but in desperate need of repair for which, smaller loans are required in general.

In many emerging countries the provision of loans for private households is rather restricted or implies exorbitant interest rates and very short repayment times. This is mainly due to the fact that credit institutions are not in a position to evaluate the creditworthiness of potential customers as the majority of people do not have a bank account or because credit agencies do not exist. This lack of information can be closed by bausparen, as bauspar customers establish their own creditworthiness by their regular saving. Those who are able to save a small portion of their income regularly will be reliable borrowers. This is reflected by the extremely low failure rate of bauspar loans.

The use of baupar contracts for housing finance purposes

The German Bausparkassen Act also regulates the purposes for which baupar loans may be used ("purpose to finance housing"). The main use of baupar funds are the construction and/or purchase of homes and owner-occupied flats, the acquisition of building plots, the modernisation and repair of housing as well as the redemption of home loans.

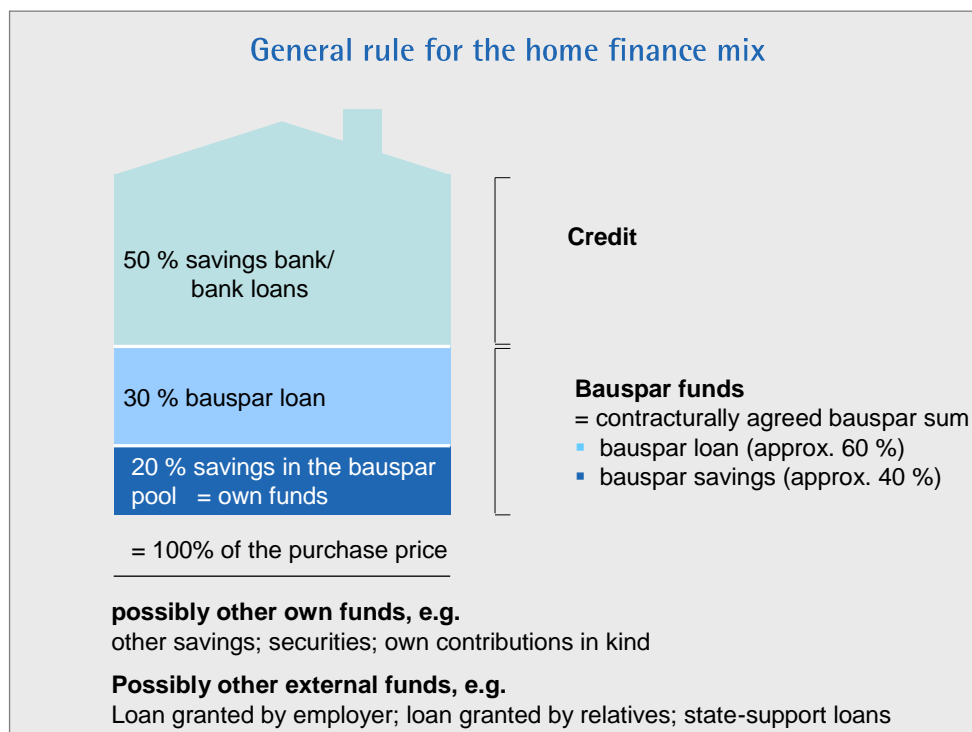
Housing finance purposes include the following:

- Construction / purchase of
 - houses
 - owner-occupied flats
- purchase of a plot
- Modernisation / repair of
 - houses
 - owner-occupied flats
- Tenant-funded modernization of housing
- Redemption of home loans
- Construction cost grants, rent advances
- Inheritance disputes
- Acquisition of homes in other EU member states
- Construction / purchase of combined commercial and residential properties
- Acquisition of dwelling rights in retirement homes
- Measures to develop residential areas

The ideal mix to finance housing

The most widely-used home finance mix in Germany is a combination of a baupar loan and a mortgage credit. It is of special importance to note that bauparkassen are the only institutional providers who accept junior loans. As a rule, they leave the senior loans to the mortgage lenders (up to a loan value of 60%), providing them with the greatest possible security for the loans, contending themselves with a subordinated security. Nevertheless, they run very little risk in doing so because their customers have already shown that they are able to restrict their consumption during the savings phase. The extremely low failure rates underscore this fact (regularly less than 0.1% of the total loan portfolio of all German bauparkassen).

As a rule it is advisable for a home loan to be structured as follows (see also the chart below): The home buyer obtains a mortgage credit to finance 50% of the purchase price secured by an entry in the Land Register as the so-called first mortgage. At least 20% should comprise the home buyer's own capital including baupar credit balance, and the remaining 30% may be covered by the baupar loan. In practice, the home buyer's own capital ratio is frequently higher. This shows that home ownership is solidly financed in Germany in most cases.



The importance of the baupar system for housing construction

Providing the residents of a country with housing that is adequate both in terms of size and quality is an ambitious and difficult task. The Bauparkassen are of great importance in accomplishing this task in Germany, making a substantial contribution to the funding of the construction, purchase and/or modernisation of homes. Particularly during the first few decades following World War II, the baupar system contributed to the reconstruction needed in the housing sector and has today developed into a significant economic factor. In the period from 1948 German bauparkassen have allocated baupar funds totalling over one trillion Euros. These funds have helped to finance over 13 million homes in single-family and apartment houses, including 9 million newly-built homes.

The economic effects of the baupar system

- The baupar system helps people to buy their own homes.
- In the period from 1948 till today baupar funds totalling over one trillion Euros were allocated.
- The significance of the baupar system in the funding of modernisation measures is rising, particularly in the context of the climate protection efforts.
- The baupar system stimulates private initiative, thus relieving the state in the provision of housing.
- The baupar system leads to a continuous creation of home ownership which in its turn stabilises the level of construction activity.
- The baupar system secures jobs and restrains excessive price jumps in the housing market.
- Home ownership formed by the baupar system is one pillar of financial retirement provisions and provides relief to the welfare state.
- The baupar system makes a contribution to stabilising the financial system and helps to increase economic growths and the government revenue.

The market financed business of the bauparkassen

Bauspar customers wishing to have financing at their disposal prior to the allocation of their bauspar contracts may be granted loans by the bauparkassen from funds which do not originate from the pool of deposits. These loans are refinanced on the capital market. A distinction is made here between "intermediate loans" and "anticipatory loans".

Intermediate loans may be used by bauspar customers who have already saved the minimum amount in order to bridge the waiting period until their contracts are allocated for loan disbursement.

Intermediate loans are granted up to the amount of the contractually agreed sum at capital market conditions. During the term of the intermediate loan, the customer pays only the interest on the loan and makes no repayments. Once the bauspar contract is allocated the intermediate loan is discharged at once using the bauspar sum paid out, leaving the low-interest bauspar loan as residual debt.

With an anticipatory loan, the minimum required savings have not yet been accumulated. The customer is therefore required to pay not only the interest on this loan, but also the savings instalments on his bauspar contract.

Bridging the savings period

The bauparkassen offer two types of loans to bridge the savings period until the bauspar contract is allocated for disbursement:

- Intermediate loans:
Precondition: attainment of the minimum agreed savings amount – usually 40 %
- Anticipatory loans:
Requirement: monthly regular savings instalment (4 ‰ to 7 ‰)

Both types of loan must be refinanced on the capital market.

The loan terms depend on the capital market situation. Depending on individual requirements, loans may be granted at a fixed interest rate for short, medium and/or long-term requirements.

Key market data

The market penetration of the bauspar sector is very high:

- Every second German household has at least one bauspar contract.
- Some 26 million persons in Germany have a bauspar contract.
- About 30 million bauspar contracts are currently in force totalling a bauspar sum of about 763 billion Euro. This sum is about 32 % of the gross domestic product.

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Bausparkassen Act

Unofficial text in the version published on 15 February 1991 (BGBl.* I, p. 454), as last amended by § 6(14) of the Act of 28 August 2013 (BGBl. I, p. 3395), taking into account the amendments made during the 2nd and 3rd readings by the Deutscher Bundestag on 3 December 2015 concerning the draft Second Act amending the Bausparkassen Act (Bundestag document 18/6903).

* 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 authorised to conduct this 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. A bauspar contract can also be concluded as a supplementary pension allowance contract within the meaning of the Act on the certification of supplementary pension allowance contracts (*Altersvorsorgeverträge-Zertifizierungsgesetz*) of 26 June 2001 (BGBl. I p. 1310, 1322), as last amended by § 2(8) of the Act of 1 April 2015 (BGBl. I p. 434), in the latest version. Every bauspar customer of a bausparkasse is a member of a special-purpose savings collective (*Kollektiv*).

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

1. the construction, purchase, maintenance and improvement of buildings used primarily for residential purposes and flats, especially owner-occupied houses and flats, as well as the acquisition of rights to the permanent use of real estate for housing;
2. the construction, purchase, maintenance and improvement of other buildings, in so far as such other buildings are used for residential purposes;
3. the acquisition of building land and of land leaseholds for the construction of buildings in so far as such buildings are used primarily for residential purposes;
4. the acquisition of building land and of land leaseholds for the construction of buildings with other functions in so far 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 points 1 to 5;
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 bauspar deposits; they shall also include commercial projects and the acquisition of commercial buildings, provided that they are intended to form part of the supply infrastructure of residential areas.

(4) The collectively determined interest margin is the ratio between the collectively determined net interest income and the annual average portfolio of bauspar deposits. The collectively determined net interest income is the sum of the income

from baupar loans and the baupar deposits not invested in baupar loans minus the interest paid on baupar deposits.

(5) Allocation is making available the baupar credit balance and the baupar loan from the available allocation fund after fulfilment of the contractually agreed preconditions for allocation.

(6) The allocation fund is the sum of the baupar deposits, the funds transferred for granting baupar loans and the technical security reserve within the meaning of § 6(2), minus the sum of the baupar loans granted.

(7) The pool of funds is the sum of the baupar deposits and the technical security reserve within the meaning of § 6(2).

(8) The waiting period is the period from the beginning of the baupar contract until the allocation.

(9) The supervisory authority is the authority within the meaning of § 1(5) of the Credit Sector Act (*Kreditwesengesetz*).

(10) The right of the Länder to delegate special responsibilities to public law bauparkassen in the area of housing construction or other public services shall remain unaffected.

§ 2 Licence to conduct business; Legal form

(1) Anyone wishing to conduct baupar business shall require a licence issued in writing or electronically by the supervisory authority. In addition to the prerequisites set forth in § 32 of the Credit Sector Act, the issue of a licence requires that a bauparkasse

1. has at its disposal Tier 1 capital within the meaning of § 25 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176 of 27.6.2013, p. 1) amounting to at least EUR 20 million,
2. has suitable managers, who in particular possess adequate experience in credit and baupar business and are not at the same time members of the management of a parent or sister undertaking,
3. has drawn up General Business Principles and Standard Terms and Conditions for Baupar Contracts, each of which comply with the requirements under § 5,
4. possesses suitable regulations and instruments within the meaning of § 8(1) to manage, monitor and control risks arising from baupar business,
5. submits a business plan to the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) in which it explains how it will conduct baupar business on a regular and sustained basis,
6. has the necessary organisational structure at its disposal to conduct baupar business on a regular and sustained basis, and
7. makes apparent that sustainable sales activity and its control and management are permanently assured in order, through the conclusion of sufficient new baupar contracts (new business), to be able to ensure waiting periods which are constant and as short as possible.

Fulfilment of these requirements shall be presented in the licence application.

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

(3) By way of derogation from § 33(3) of the Credit Sector Act, the necessary licence shall also be refused if the conditions under paragraphs 1 and 2 are not fulfilled. The Federal Financial Supervisory Authority may also refuse to issue the licence if the application, contrary to paragraph 1, third sentence, does not contain sufficient information or documents.

(4) The supervisory authority may also revoke the licence, apart from in the cases referred to in § 35(2) of the Credit Sector Act, if the prerequisites pursuant to paragraph 1, second sentence, points 1 to 4, 6 and 7 and paragraph 2 are no longer fulfilled. If the European Central Bank is the supervisory authority, the Federal Financial Supervisory Authority may submit to it, in accordance with the first sentence and § 35(2) and (2a) of the Credit Sector Act, draft decisions pursuant to § 14(5) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287 of 29.10.2013, p. 63).

(5) If the supervisory authority revokes the licence for bauspar business or the licence expires pursuant to § 35(1) of the Credit Sector Act, the entire portfolio of bauspar contracts, together with the accompanying assets and liabilities pursuant to § 14(1), shall be transferred to another bausparkasse. In so far as is necessary for this purpose, other assets and liabilities shall be transferred at the same time, such as claims arising out of an investment pursuant to § 4(1), point 10, in conjunction with § 4(3), the funds supplied for granting bauspar loans and liabilities arising from transactions pursuant to § 4(1), point 5.

(6) If the bausparkasse fails to comply with a request from the Federal Financial Supervisory Authority to make the transfer within the meaning of paragraph 5 within a reasonable time, the Federal Financial Supervisory Authority may order the liquidation of the business. For bausparkassen which are not legal persons under public law, § 38(1), second and third sentences, of the Credit Sector Act shall apply *mutatis mutandis*.

(7) The regulations of the Recovery and Liquidation Act (*Sanierungs- und Abwicklungsgesetz*), the Credit Institution Reorganisation Act (*Kreditinstitute-Reorganisationsgesetz*) and § 48t of the Credit Sector Act shall all be unaffected.

§ 2a Invalidity of contracts or agreements with controlling effect

Contracts and agreements through which the management of a bausparkasse is placed in whole or in part under another person shall be invalid in so far as the other person is not a bausparkasse.

§ 3 Supervision

(1) The supervisory authority shall supervise the bausparkassen in accordance with the provisions of this Act, the Credit Sector Act and the laws and regulations referred to in § 6(1), first sentence, of the Credit Sector Act. Within the framework of its supervisory functions, it shall be authorised to give such instructions as may be necessary to reconcile the business operations of the bausparkassen with the General Business Principles and with the Standard Terms and Conditions for Bauspar Contracts.

(2) Insofar as a bausparkasse is subject to supervision by any other governmental authority, such supervision shall be exercised in addition to that of the supervisory authority.

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

(4) The bauparkasse shall apply for the licences issued by the Federal Financial Supervisory Authority under this Act in writing or electronically. It shall in each case enclose with the application all documents and information required to assess the application. The Federal Financial Supervisory Authority may refuse the licence if the application does not contain adequate documents or information.

(5) Bauparkassen shall report regularly, and at least once a year, to the Federal Financial Supervisory Authority on

1. the feasibility of fulfilling the commitments assumed by the bauparkasse,
2. the portfolio of baupar contracts with the accompanying assets and liabilities,
3. transfers to the allocation fund,
4. intermediate investment of the allocation fund resources,
5. withdrawals from the allocation fund and
6. the current claims arising from baupar loans together with their collateral

(collective status report). Within the collective status report, the bauparkasse shall comment separately on the feasibility of fulfilling longer-term commitments. The collective status report shall contain in particular updates concerning the expected development of baupar business and forecasts of further commercial indicators connected to baupar business.

(6) If the prerequisites of § 2(1), point 3, in conjunction with § 5(4), are not met according to the results of the technical simulation models for baupar business to be used by the bauparkassen in accordance with the regulations of § 8(4), the bauparkasse must report this without delay to the Federal Financial Supervisory Authority. The bauparkasse shall also present, on request, up-to-date results of a baupar-specific simulation model, in so far as this is required for the performance of the tasks of the Federal Financial Supervisory Authority.

§ 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 financing or intermediate financing of payments by the bauparkasse on baupar contracts of their baupar customers (anticipatory loans or intermediate loans);
2. to grant other loans for housing finance activities subject to the provisions of paragraph 2 (other building loans);
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, in so far as such loans are for housing finance activities;
4. to assume guarantees for third-party loans subject to the provisions of paragraph 2, which the bauparkasse itself would be allowed to grant, and which are secured in accordance with § 7;
5. for the purpose of granting baupar loans as well as loans in accordance with points 1 and 2, in order to fulfil the commitments arising from contracts under § 1(2), second sentence, 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) subject to a licence pursuant to § 2(1), first sentence, of the Mortgage Bond Act (*Pfandbriefgesetz*), to issue mortgage bonds within the meaning of § 1(1), second sentence, point 1, of the Mortgage Bond Act in accordance with the provisions of the Mortgage Bond Act;
 - d) to issue other bonds.
6. to acquire equity holdings in enterprises, when such investments promote business operations as defined in § 1 and where liability for the bauparkasse arising from the equity holdings is limited by the legal form of this enterprise, on condition that the total amount of the individual 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 in so far 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 capital. The regulations of paragraph 3, first sentence, point 8, and second and third sentences shall remain unaffected hereby;
 7. to grant loans to enterprises in which the bauparkasse has equity holdings;
 8. to account for the opportunity to conclude contracts on the acquisition, sale or use of land and premises;
 9. to conduct property valuation and location analysis also independently from granting own loans;
 10. to invest available funds in accordance with paragraph 3;
 11. to conduct other transactions which are directly related to bauparkasse business or to the transactions admissible in accordance with points 1 to 10, are useful to this business and in any case entail a low risk and do not open up any new business spheres.
- (2)** The sum total of claims arising from loans granted according to paragraph 1, point 2, and of the guarantees assumed according to paragraph 1, point 4, may not exceed the total amount of the bauparkasse loans and the loans granted according to paragraph 1, point 1.
- (3)** The bauparkassen shall be authorised to invest available funds
1. as deposits with a credit institution under the single supervisory mechanism pursuant to § 6 of Regulation (EU) No 1024/2013 or credit institutions subject to State supervision in the European Union, in another contracting State to the Agreement on the European Economic Area or in the Swiss Confederation,
 2. in bearer bonds issued by the credit institutions referred to in point 1,
 3. in certificates of deposit of the credit institutions referred to in point 1, provided that the residual term of such certificates does not exceed twelve months,
 4. in book-entry securities, non-interest-bearing treasury bonds and treasury bills of the Federal Government, the special funds of the Federal Government and the Länder, in comparable instruments of the European Union, its Member States or other contracting States to the Agreement on the European Economic Area or the Swiss Confederation,
 5. in bonds
 - a) issued by any of the bodies identified in point 4,
 - b) the principal and interest of which is guaranteed by any of the bodies identified in point 4 or

- c) which are admitted for trading on an organised market in accordance with § 2(5) of the Securities Trading Act (*Wertpapierhandelsgesetz*) and for which compliance with the performance obligations arising from the bond appears to be guaranteed for their entire term;
6. in claims arising from loans which have been note-secured, provided that it is possible to assign such claims at least twice after having been acquired by the bauparkasse and that the loans were extended
- a) to one of the bodies identified in point 4, to any other regional government or local authority within the meaning of Article 115 of Regulation (EU) No 575/2013 of a Member State of the European Union or another contracting State to the Agreement on the European Economic Area or the Swiss Confederation,
 - b) to other appropriate authorities or institutions governed by public law, either domestic or domiciled in another Member State of the European Union or in another contracting State to the Agreement on the European Economic Area or in the Swiss Confederation,
 - c) to enterprises that have issued securities, which are admitted for trading on an organised market in accordance with § 2(5) of the Securities Trading Act (*Wertpapierhandelsgesetz*), or
 - d) against guarantee of the principal and interest by one of the bodies identified in point 4.

The sum total of such claims of the bauparkasse may not exceed its liable equity capital;

7. in investment shares of an asset pool, the funds of which are invested according to the principle of risk diversification, issued by a capital management company or by a foreign investment firm which in each case, for the protection of unit-holders, is subject to special public supervision, if, according to the conditions of the contract or the articles of incorporation of the capital management company or investment firm, the assets may be invested only in the debt securities as defined in the points 1 to 6 and 8 and in bank deposits;
8. in shares
- a) which are fully paid-up and
 - b) which have been admitted for trading or admitted to or included in another organised market or admitted for trading on a stock exchange in a State outside the European Economic Area or admitted to or included in another organised market in that State.

Taking into account investment shares in accordance with the first sentence, point 7, the investments in accordance with the first sentence, point 8, in total may not exceed the total allocation fund pursuant to § 1(6). Taking into account investment shares in accordance with the first sentence, point 7, the investments in accordance with the first sentence, point 8, with the same enterprise in total may not exceed 0.2% of the total allocation fund pursuant to § 1(6).

(3a) In so far as, in the context of the occupational pension scheme, a bauparkasse, to meet claims under an occupational pension scheme, cedes assets in a permissible manner and in a permissible volume to a third party which serve exclusively to meet liabilities arising from pension-related commitments and are rendered inaccessible to all other creditors, the third party when investing these assets shall not be subject to the restrictions set forth in paragraph 3. The assets shall be invested, taking into account the nature and duration of the pension-related commitments, in such a way that the greatest possible security and profitability are achieved, while maintaining a suitable diversification and spread and the liquidity to fulfil the liabilities.

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

(5) Before allocation of a bauspar contract, bausparkassen may not commit to disbursing the bauspar sum at a specific point in time.

§ 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 the Standard Terms and Conditions for Bauspar Contracts.

(2) The General Business Principles must include provisions regulating

1. the calculations relevant to the settlement of bauspar contracts including individual valuation indices (§ 5(4), point 1) and the associated 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*);
- 2a. the calculation of the additional net earnings obtained from investing the pool of funds in accordance with §1(7) as well as the use of the resulting off-line item known as the “technical security reserve”;
3. the calculation of the 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 in so far as this is permissible according to § 1;
6. the procedure governing the repayment of deposits made in respect to cancelled bauspar contracts;
7. simplified settlement of bauspar contracts, which protects the interests of the bauspar customer in the case where a bausparkasse ceases business activities or the supervisory authority 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 payments 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 assigned or pledged 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 agreement;

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 taking into account existing life insurance policies when a bauspar customer is required to take out such life insurance policies.

(4) The General Business Principles and the Standard Terms and Conditions for Bauspar Contracts

1. must make apparent the long-term guarantee of the feasibility of fulfilling the commitments assumed by the bausparkasse, and in particular show in relation to their entire lifetimes, an adequate correlation between the performance of the bauspar customer and of the bausparkasse (individual valuation indices) and
2. may not contain any provisions which delay the allocation unreasonably, lead to unreasonably long contract lifetimes or fail to afford adequate protection of other interests of bauspar customers.

(5) If a bausparkasse applies General Business Principles and Standard Terms and Conditions for Bauspar contracts with different contents for the same allocation fund, these contents shall be designed in such a way that a balance is largely ensured between them. In the case of tariffs which are no longer offered by a bausparkasse, a derogation from this clause shall be possible in justified exceptional cases.

§ 6 Tying

(1) The allocation fund within the meaning of § 1(6) may be used solely for bauspar business and for the repayment of third-party monies transferred to the allocation fund. Funds from the allocation fund which temporarily cannot be used for allocation may be used by the bausparkasse in the intervening period

1. for investment pursuant to § 4(3) and
2. with the authorisation of the Federal Financial Supervisory Authority, for granting loans pursuant to § 4(1), points 1 and 2, if the bausparkasse, on the basis of sustainably guaranteed liquidity of its allocation fund, is in a position at all times to satisfy claims for disbursement of bauspar loans and bauspar deposits without the injection of own funds and borrowed funds and without the funds of the technical security reserve.

The allocation fund shall be employed with the aim of keeping waiting periods as short as possible. The Federal Financial Supervisory Authority may revoke authorisation in accordance the second sentence, point 2, at any time, especially if the conditions set forth in the second sentence, point 2, are no longer fulfilled.

(2) Bausparkassen shall constitute a technical security reserve to protect the interests of bauspar customers, which ensures the following:

1. the guarantee of waiting periods which are constant and as short as possible and
2. the collectively agreed interest margin necessary for the sustainable conduct of bauspar business.

For this purpose, surpluses from investment of the pool of funds shall be added to the technical security reserve to the amount of the difference between the earnings obtained from the investment of the pool of funds and the net interest that would have been earned had the entire pool of funds been allocated as bauspar loans (surplus net earnings). The technical security reserve shall be employed by the bausparkasse in accordance with the first sentence. Furthermore, it may be employed, with the authorisation of the Federal Financial Supervisory Authority, to avoid a bauspar-specific risk for the sustainable conduct of bauspar business. A bauspar-specific risk for the sustainable conduct of bauspar business may exist in particular if

1. the waiting periods are unreasonably long,
2. the allocation does not appear to be guaranteed or
3. the fulfilment of the commitments assumed by the bausparkasse in the bauspar contracts does not appear to be guaranteed.

The bausparkasse may liquidate this technical security reserve at the end of a financial year provided that at this time it exceeds 3 per cent of the bauspar deposits.

(3) Claims arising from bauspar loans and the property liens and other types of collateral registered as security for such loans may be sold, serve as security for loans or be pledged only for conducting bauspar business and anticipatory and intermediate loan business. The same shall apply to claims arising from anticipatory and intermediate loans and other building loans for housing finance activities and the property liens and other types of collateral registered as security for such loans. § 4(1), point 5(c) shall remain unaffected hereby.

§ 6a Requirements for allocation funds

(1) In principle, a bausparkasse may form only one uniform allocation fund for all bauspar contracts. Exceptions shall be possible only transitionally for a limited period and only with the authorisation of the Federal Financial Supervisory Authority.

(2) Bausparkassen shall form separate allocation funds for bauspar contracts transacted either in foreign currency or in units of account in order to avoid exchange rate risks. In individual cases, the Federal Financial Supervisory Authority may grant release from the obligation to form such separate allocation funds provided that the interests of the bauspar customers are not adversely affected to any substantial degree by this action.

§ 7 Securing claims arising from loans

(1) Claims arising from bauspar loans and from loans according to § 4(1), point 2, as well as from claims arising from loans according to § 4(1), point 1, unless secured by assignment of rights arising from a bauspar contract, shall be secured by mortgage or by a land charge (*Grundschuld*) on a domestic property. The land charge shall be equivalent to claims held by a bausparkasse against a credit institution for the assignment, either wholly or in part, of a land charge administered by the credit institution as trustee in favour of the bausparkasse. In the absence of adequate additional security (additional security), loans may not exceed the first four-fifths of the lending value of the property. Where owner-occupied housing is financed, the bausparkasse may grant loans up to the lending value of the property.

(2) It shall also be permissible to secure claims as defined by the first sentence of paragraph 1 by encumbering real estate located in another Member State of the European Union or in another contracting State to the Agreement on the European Economic Area or in Switzerland, provided that the financial institutions in this Member State or contracting State 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 paragraph 1 by encumbering real estate located in States other than the European States covered by paragraph 2 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 capital of the bausparkasse.

(3) Security in the form of land charges may be waived if another form of security (substitute security), adequate in amount, is provided.

(4) Security in the form of land charges or substitute security may be waived where

1. because of the small loan amount, a statement by the borrower seems sufficient, in which he undertakes to the bauparkasse to refrain from hindering the possible 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 seems to be unnecessary. Where secured loans in accordance with paragraphs 1 to 3 and loans in accordance with points 1 or 2 are to serve the same financing measure, the loans in accordance with points 1 or 2 shall be secured in accordance with paragraphs 1 to 3.

(5) Security on a loan may be waived where loans are made to

1. domestic public authorities and institutions governed by public law;
2. the European Union, its Member States or any of the contracting States to the Agreement on the European Economic Area and the European Investment Bank;
3. other regional governments or local authorities within the meaning of Article 115 of Regulation (EU) No 575/2013 of a Member State of the European Union and another contracting State to the Agreement on the European Economic Area;
4. other borrowers whose loans have been guaranteed by one of the bodies identified in points 1 to 3.

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

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

§ 8 Risk management, technical simulation models for baupark business

(1) The bauparkasse must have at its disposal an independent risk management system geared to its interests corresponding to § 25(1) of the Credit Sector Act. This system shall also include in particular procedures and methods to assess whether the prerequisites of § 5(4) are met on an ongoing basis.

(2) The bauparkasse may not transfer or outsource to third parties key activities for the management and control of the specific risks of the baupark business. These activities shall include in particular the risk management of the collective baupark business, the collective management and the related internal audit activities.

(3) The bauparkasse, with the diligence of a prudent businessman, shall take the necessary steps to avoid exchange rate risks arising from the conduct of its business.

(4) In the context of their risk management, bauparkassen shall routinely use suitable procedures and methods based on appropriate technical assumptions relating to baupark business, with which the development of baupark business, and in particular baupark deposits and baupark loans, can be forecasted sufficiently precisely (technical simulation models for baupark business).

(5) The suitability of a technical simulation model for bauspar business shall be examined, before it is used for the first time and in the event of significant modifications, by an independent auditor or an independent audit firm. The auditor shall evaluate in particular whether the development of the bauspar business can be forecasted sufficiently precisely with the technical simulation model for bauspar business. The auditor shall report on the nature and scope as well as on the results of the audit in writing or electronically and with sufficient clarity (audit report). The auditor shall summarise the result of the audit in an audit opinion attached to the audit report. § 28(1) and (2) of the Credit Sector Act shall apply *mutatis mutandis*.

§ 9 Amendment of the General Business Principles and Standard Terms and Conditions for Bauspar Contracts

(1) Amendments and additions to the General Business Principles and the Standard Terms and Conditions for Bauspar Contracts concerning the provisions of § 5(2) and (3), points 1, 2 and 4 to 9, as well as the General Business Principles and the Standard Terms and Conditions for Bauspar Contracts that are to form the basis for new bauspar tariffs, shall require approval of the Federal Financial Supervisory Authority; § 37(4) of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) shall be applied. Such approval may also be granted with effect for existing contracts in so far as amendments and additions appear to be necessary to protect the interests of the bauspar customer in an appropriate manner. Approval can be refused especially if the conditions of § 5, or the legal regulation to be adopted in accordance with § 10 formalising § 5, are not met. The Federal Financial Supervisory Authority shall be notified of any other amendments and additions at least three months prior to their entry into effect.

(2) Where it appears that a bausparkasse can no longer guarantee fulfilment of the commitments it has assumed in the bauspar contracts, the Federal Financial Supervisory Authority may require that the bausparkasse concerned amends its General Business Principles and its Standard Terms and Conditions for Bauspar Contracts. Under similar conditions, the Federal Financial Supervisory Authority may, without prejudice to the authority accorded to it under § 46(1) of the Credit Sector Act, prohibit the bausparkasse from concluding new contracts.

§ 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 for the allocation of the bauspar sums as well as to ensure an order of allocation which is as constant as possible, the Federal Minister of Finance, after having heard the opinions of the Deutsche Bundesbank and the Federal Associations of Bausparkassen, may enact provisions by legal regulation concerning

1. the detailed requirements for the interim use of the funds of the allocation fund pursuant to § 6(1);
2. the permissible share of bauspar contracts whose contractual amount exceeds the amount to be regulated in the legal regulation (large-scale bauspar contracts) relative to the entire unallocated contract sum of bauspar contracts of a bausparkasse, as well as the permissible share of large-scale bauspar contracts concluded within a calendar year relative to the entire sum of the bauspar contracts concluded by the bausparkasse in that year; for this purpose, the contracts concluded by one bauspar customer within twelve months shall be deemed to form a single contract; bauspar contracts on which the bauspar customers have paid the minimum amount to be saved for allocation, as defined by the General Business Principles, within the first year of conclusion of the contract shall be included in the permissible share of large-scale bauspar contracts;

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 claims arising from loans; this share may be established at no more than three per cent;
4. the total percentage, as well as percentage to an individual commercial enterprise, of the bauparkasse's liable equity capital up to which loans may be granted under § 4(1), point 7;
- 4a. investments pursuant to § 4(3), first sentence, especially through quantitative and qualitative specifications, which may also contain restrictions, extending beyond the requirements set forth in § 4(3), second and third sentences, if this appears necessary to ensure the greatest possible security and profitability, with liquidity at all times subject to maintaining a suitable diversification and spread;
5. suitable additional security;
6. suitable substitute security and the permissible share of loans requiring substitute security relative to the total amount of claims on loans of a bauparkasse;
- 6a. the amount to which a bauparkasse may grant loans, in individual cases, without security in accordance with § 7(4), point 2, and loans against a statement of intent as defined by § 7(4), point 1, as well as the permissible share of such loans relative to the total amount of claims on loans of a bauparkasse; the share may be established at no more than 30 per cent;
7. the following conditions and requirements, including the necessary definitions of terms:
 - a) the detailed conditions of § 5(1) to (3), and in particular the establishment of minimum requirements governing provisions in the General Business Principles and the Standard Terms and Conditions for Bauspar Contracts;
 - b) the detailed conditions of § 5(4) and (5), such as provisions on the tariff interest margin,
 - c) the minimum conditions governing allocation to ensure an appropriate individual bauspar customer/bauparkasse performance ratio, especially the minimum amounts to be saved and the calculation of a minimum valuation index;
 - d) the conditions under which the bauparkasse has to adapt its allocation conditions, and
 - e) the requirements regarding the individual bauspar customer/bauparkasse performance ratio, especially the establishment of upper and lower limits;
8. the details regarding extra net earnings in accordance with § 6(2), first and second sentences, and the addition of such extra earnings to the technical security reserve;
9. the detailed conditions under which the technical security reserve in accordance with § 6(2), third to fifth sentences, can be used and the latest date by which it must be used and the detailed conditions under which this technical security reserve in accordance with § 6(2), sixth sentence, may be liquidated, and latest date by which it must be liquidated;
10. procedures and methods of the Bausparkassen and the necessary technical principles of the Bausparkassen which may be drawn on to examine whether
 - a) within the meaning of § 5(4), the General Business Principles and the Standard Terms and Conditions for Bauspar Contracts make apparent the long-term guarantee of the feasibility of fulfilling the commitments assumed by the bauparkasse and do not contain any provisions which would delay the allocation unreasonably, would lead to unreasonably long contract life-

- times or would fail to afford adequate protection of other interests of baupar customers,
- b) within the meaning of § 5(5), first sentence, a balance is largely ensured between baupar tariffs,
 - c) within the meaning of §6(1), second sentence, point 2, the bauparkasse, on the basis of sustainably guaranteed liquidity of its allocation fund, is in a position at all times to satisfy claims for disbursement of baupar loans and baupar deposits without the injection of own funds and borrowed funds and without the funds of the technical security reserve,
 - d) within the meaning of §6(2), fourth sentence, the interests of the baupar customer are adequately protected,
 - e) within the meaning of § 6 (2), fourth sentence, a baupar-specific risk exists for the sustainable conduct of baupar business,
 - f) within the meaning of § 6 (2), fifth sentence, point 1, the waiting periods are unreasonably long,
 - g) within the meaning of § 6 (2), fifth sentence, point 2, the allocation does not appear to be guaranteed,
 - h) within the meaning of § 6 (2), fifth sentence, point 3, the fulfilment of the commitments assumed by the bauparkasse in the baupar contracts does not appear to be guaranteed,
 - i) within the meaning of § 9 (1), second sentence, and §14(3), the amendments and additions appear to be necessary to protect the interests of the baupar customer in an appropriate manner,
 - j) within the meaning of § 14 (1), fourth sentence, as a result of the transfer, the interests of the baupar customers of the transferor or transferee bauparkasse are jeopardised, and
 - k) within the meaning of § 16 (3), second sentence, the plan for orderly liquidation, considering the interests of the baupar customers, does not appear to offer any guarantee;
11. detailed provisions on the nature, scope, time and form of the documents and information that the bauparkasse has to enclose with the application in accordance with § 3(4);
 12. detailed provisions on the nature, scope, time and form of the collective status reports which the bauparkasse has to draw up in accordance with § 3(5), especially the establishment of scenarios, quantities, parameters, reference dates, and calculation methods for the collective status report including the updates and forecasts, as well as the determination of the form in which these results are to be presented to the Federal Financial Supervisory Authority and the time limit for doing so;
 13. detailed provisions on the requirements for a technical simulation model for baupar business in accordance with § 8(4) and its scope, as well as on the nature, scope and form of the results of a simulation model for baupar business, without prejudice to § 3(6) concerning the time at which these results are to be presented to the Federal Financial Supervisory Authority;
 14. detailed provisions on
 - a) the subject of the audit to be undertaken pursuant to § 8(5) and the time at which it is to be carried out and
 - b) the content of the audit reports to be drawn up pursuant to § 8(5) and the audit certificates as well as the time when these are to be submitted to the Federal Financial Supervisory Authority.

The Federal Minister of Finance shall be authorised to transfer the above authority to the Federal Financial Supervisory Authority by way of legal regulation.

§ 11 Dismissal of managers

In addition to the reasons identified in § 36 of the Credit Sector Act, the Federal Financial Supervisory Authority may also require the dismissal of bauparkassen managers where such managers have contravened, either intentionally or negligently, the provisions of this Act, the regulations adopted in implementation of this Act, the instructions of the Federal Financial Supervisory Authority, or the provisions referred to § 5(2) and (3) 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 Financial Supervisory Authority.

§ 12 Ombudsman

(1) The Federal Financial Supervisory Authority shall appoint an ombudsman to each bauparkasse. Prior to such appointment, the bauparkasse and, where other State supervision in accordance with § 3(2) exists, the authority competent for this supervision shall be consulted. The appointment may be revoked at any time.

(2) The ombudsman shall ensure that the provisions of 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 bauparkasse in so far as these relate to the allocation procedure. In the event of any dispute between the bauparkasse and the ombudsman as regards his duties, the Federal Financial Supervisory Authority shall decide.

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

(5) The ombudsman shall be paid adequate compensation by the Federal Financial Supervisory Authority; the cost thereof shall be separately refunded by the bauparkasse in conformity with § 51(3) of the Credit Sector Act.

§ 13 Special auditing duties

In the course of auditing a bauparkasse's annual financial statement, the auditors shall also establish whether

1. the bauspar sums were allocated in accordance with the Standard Terms and Conditions for Bauspar Contracts;
2. the bauparkasse has complied with the provision of the General Business Principles referred to in § 5(2), point 2, and with the provision of the Standard Terms and Conditions for Bauspar Contracts referred to in § 5(3), point 5; and
3. the provisions of the legal regulation adopted in accordance with § 10 have been observed.

The conclusions shall be incorporated in the audit report.

§ 14 Transfer of the contract portfolio

(1) Any contract by which a bauparkasse's portfolio of bauspar contracts, including its accompanying assets and liabilities, is to be transferred to one or more other bauparkassen, either wholly or in part, must have the approval of the Federal Financial Supervisory Authority. Such approval shall be published by the Federal Financial Supervisory Authority in the Federal Law Gazette (*Bundesanzeiger*); the bauspar customers shall be considered notified as of the day of its publication.

Upon approval, the rights and duties of the transferor bauparkasse under the baupar contracts, including in relation to the baupar customers, shall pass to the transferee bauparkasse; § 415 of the Civil Code (BGB) shall not be applicable. Approval may be denied only where the transfer would jeopardise the interests of the baupar customers of the transferor or the transferee bauparkasse.

(2) The contract shall be drawn up in writing.

(3) For the amalgamation of the pools of funds, the Federal Financial Supervisory Authority shall approve, on application, within twelve months of a transfer in accordance with paragraph 1 or a merger of the bauparkasse, amendments or additions to the General Business Principles and the Standard Terms and Conditions for Baupar Contracts, in so far as the amendments or additions appear necessary for adequate protection of the interests of the baupar customers, unless the amendments or additions appear unsuitable or unnecessary for the amalgamation of the baupar contact portfolios.

§ 15 Prohibition of payments, approval of the simplified settlement

(1) In the event that there is a risk that a bauparkasse cannot satisfy its obligations and fending off insolvency proceedings appears necessary considering the interests of the baupar customers and of the bauparkasse's other creditors, the Federal Financial Supervisory Authority may temporarily prohibit payments of any kind. Under the same conditions, the Federal Financial Supervisory Authority may agree to a simplified settlement (§ 5(2), point 7). The provisions of the Insolvency Code concerning the protection of payment and securities settlement systems as well as of securities in rem of central banks and of financial securities shall apply *mutatis mutandis*.

(2) The provisions of the Recovery and Liquidation Act (*Sanierungs- und Abwicklungsgesetz*), the Credit Institution Reorganisation Act (*Kreditinstitute-Reorganisationsgesetz*), the Deposit Guarantee Act (*Einlagensicherungsgesetz*) and § 48t of the Credit Sector Act shall remain unaffected.

§ 16 Cessation of business activities

(1) If a bauparkasse decides to cease its business activities or the Federal Financial Supervisory Authority orders the liquidation of the business of a bauparkasse pursuant to § 2(6), the bauparkasse shall be liquidated under the current legal provisions, taking into account the interests of the baupar customers. In so far as appears necessary to avert detriment to the interests of the baupar customers, the bauparkasse shall endeavour to transfer its baupar business to another bauparkasse in accordance with § 14(1). § 2(5) shall apply *mutatis mutandis*.

(2) The bauparkasse shall present a plan for liquidation pursuant to paragraph 1 to the Federal Financial Supervisory Authority, unless insolvency proceedings have been opened with respect to its assets. In the plan, the bauparkasse shall describe the following in particular to the Federal Financial Supervisory Authority:

1. that it has endeavoured unsuccessfully to transfer its baupar business to another bauparkasse pursuant to § 14(1) or that the liquidation entails no detriment for the baupar customers,
2. its current portfolio of baupar contracts with the accompanying assets and liabilities,
3. how the baupar contracts with the accompanying assets and liabilities are to be liquidated, showing the allocations probably still being made separately,
4. the nature, volume and time of satisfaction of its creditors,
5. whether and, where appropriate, which contracts are transferred to another bauparkasse and
6. when the liquidation will probably be terminated.

(3) The plan shall require the approval of the Federal Financial Supervisory Authority. The Federal Financial Supervisory Authority may refuse approval if the plan for orderly liquidation, taking into account the interests of the bauparkasse customers, does not appear to offer any guarantee. This can be assumed in particular if the disadvantages of a liquidation for the bauparkasse customers can probably be avoided through a transfer.

(4) The obligations of the bauparkasse under paragraphs 1 and 2 shall be part of the liquidation. If the bauparkasse fails to fulfil them or fulfils them only inadequately or if the conditions under paragraph 3, second sentence, are met and the Federal Financial Supervisory Authority refuses its approval of the plan, the Federal Financial Supervisory Authority may take measures to ensure an orderly liquidation, taking into account the interests of the bauparkasse customers. It may in particular

1. in accordance with paragraph 6 in conjunction with § 38(2) of the Credit Sector Act, issue instructions regarding the liquidation and apply for or undertake the appointment of liquidators and
2. draw up a plan for the bauparkasse.

(5) If the Federal Financial Supervisory Authority approves the plan or draws up a plan, the bauparkasse shall be liquidated in accordance with this plan under the current legal provisions. In the case of a subsequent amendment of the plan, paragraphs 2 to 6 shall apply *mutatis mutandis*.

(6) Unless otherwise provided in this Act, § 38(2) to (3) of the Credit Sector Act shall apply. If the conditions under paragraph 4 are met, it shall be assumed that the persons otherwise appointed to liquidate offer no guarantee of orderly liquidation within the meaning of § 38(2), second sentence, of the Credit Sector Act. The provisions of the Recovery and Liquidation Act (*Sanierungs- und Abwicklungsgesetz*), the Credit Institution Reorganisation Act (*Kreditinstitute-Reorganisationsgesetz*) and § 48t of the Credit Sector Act shall remain unaffected.

§ 17 The name "Bausparkasse"

(1) Enterprises authorised to conduct the business of a bauparkasse shall alone be permitted to use the word "Bausparkasse" or an expression in which the word "Bausparkasse" or the prefix "Bauspar" appears in their name, as a supplement to their name, to designate their business purpose or for advertising purposes.

(2) Paragraph 1 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 bauparkasse.

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

§ 18 Provisions governing existing and new legally dependent bauparkassen

(1) Credit institutions authorised to conduct bauparkasse business on the date of entry into force of this Act shall be deemed to possess the licence required under § 32 of the Credit Sector Act for conducting the banking business permitted to bauparkassen. The deadline mentioned in § 35(1) of the Credit Sector Act shall commence on the date on which this Act enters into force.

(2) Upon the entry into force of this Act, credit institutions which were authorised to conduct bauparkasse business through legally dependent business units shall be deemed bauparkassen to the extent of such bauparkassen business. They shall be required to administer the assets and the liabilities of their bauparkasse separately from their other assets and liabilities, to draw up separate annual financial statements for their bauparkasse and to publish a separate annual report. The provisions governing audits, annual financial statements and annual reports of credit institutions shall apply *mutatis mutandis*. The share of liable equity capital of the credit institution assigned to the bauparkasse and shown in separate annual

financial statements shall be deemed to constitute liable equity capital of the bauparkasse.

(3) Bauparkassen which conducted business transactions prior to the entry into force of this Act, other than those permitted under § 4 or transactions on a wider scale than that permissible under §§ 4, 6 and 7 as well as under the legal regulations pursuant to § 10 shall not be subject to these provisions in so far as existing contracts are concerned. The Federal Financial Supervisory Authority may set appropriate deadlines for the settlement of these transactions.

(4) Paragraph 3 shall also apply mutatis mutandis to such credit institutions which operate bauparkassen business through legally dependent business units after the entry into force of this Act.

§ 19 Transitional provisions

(1) The legal provisions already in existence in the bauparkassen sector as well as the instructions given on the basis of the present legal regulations shall remain in force in so far as they are not precluded by the provisions of this Act or of the Credit Sector Act or Regulation (EU) No 575/2013. Legal regulations containing wider stipulations than this Act in respect of the activities of specific types of bauparkassen shall remain unaffected.

(2) (deleted)

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

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

(5) By way of derogation from § 4(1), point 6, first sentence, 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.

(5a) The provisions of § 4(3), first sentence, point 8, and of § 4(3), second and third sentences, shall apply for the first time to investments made from 1 January 2017.

(6) The earnings added to the technical security reserve in accordance with § 6(1), second sentence, in the version applicable until 28 December 2015 shall be considered on expiry of 28 December 2015 as formed in accordance with § 6(2) in the version valid 29 December 2015, in so far as this special technical reserve could not be liquidated by the bauparkasse by 28 December 2015 in accordance with § 6(1), third sentence, in the version applicable until 28 December 2015. From 29 December 2015 the special technical reserve can be used and liquidated exclusively in accordance with § 6(2) in the version of this Act valid 28 December 2015.

(7) § 8(5) shall apply for the first time to the technical simulation models for baupar business to be used in accordance with § 8(4), which are used 18 months after entry into force of the legal regulation to be adopted pursuant to § 10, which contains provisions pursuant to § 10, first sentence, point 13.

§ 20 (Amendment and repeal of legal provisions)

§ 21 (Entry into force)

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 re-

quired 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 para 1(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.