

# Bausparkassen Act

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

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

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

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

(8) The waiting period is the period from the beginning of the bauspar 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 bausparkassen 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 bauspar 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 bausparkasse

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 bauspar 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 Bauspar 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 bauspar business,
5. submits a business plan to the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) in which it explains how it will conduct bauspar business on a regular and sustained basis,
6. has the necessary organisational structure at its disposal to conduct bauspar 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 bauspar 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 bausparkassen may operate is that of a public limited company (*Aktiengesellschaft*). The legal form under which public law bausparkassen (*öffentlich-rechtliche Bausparkassen*) 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 bausparkasse 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)** Bausparkassen 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 bausparkasse,
2. the portfolio of bauspar 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 bauspar loans together with their collateral

(collective status report). Within the collective status report, the bausparkasse 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 bauspar business and forecasts of further commercial indicators connected to bauspar 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 bauspar business to be used by the bausparkassen in accordance with the regulations of § 8(4), the bausparkasse must report this without delay to the Federal Financial Supervisory Authority. The bausparkasse shall also present, on request, up-to-date results of a bauspar-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 bauspar business, bausparkassen shall be restricted to the following activities:

1. to grant loans to serve as anticipatory financing or intermediate financing of payments by the bausparkasse on bauspar contracts of their bauspar 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 bausparkasse'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 bausparkasse itself would be allowed to grant, and which are secured in accordance with § 7;
5. for the purpose of granting bauspar 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 bausparkasse 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 bausparkasse itself is allowed to conduct; the sum total of such financial interests may not be in excess of 20% of the bausparkasse'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 bausparkasse 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 bauspar 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 bauspar loans and the loans granted according to paragraph 1, point 1.

**(3)** The bausparkassen 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 bausparkasse 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)** Bauparkassen 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 baupar contract, bauparkassen may not commit to disbursing the baupar 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 bauparkasse in the baupark contracts does not appear to be guaranteed.

The bauparkasse 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 baupark deposits.

**(3)** Claims arising from baupark 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 baupark 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 bauparkasse may form only one uniform allocation fund for all baupark contracts. Exceptions shall be possible only transitionally for a limited period and only with the authorisation of the Federal Financial Supervisory Authority.

**(2)** Bauparkassen shall form separate allocation funds for baupark 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 baupark customers are not adversely affected to any substantial degree by this action.

#### § 7 Securing claims arising from loans

**(1)** Claims arising from baupark 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 baupark 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 bauparkasse 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 bauparkasse. 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 bauparkasse 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 bauparkasse.

**(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 bausparkasse 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 bauspar business**

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

**(3)** The bausparkasse, 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, bausparkassen shall routinely use suitable procedures and methods based on appropriate technical assumptions relating to bauspar business, with which the development of bauspar business, and in particular bauspar deposits and bauspar loans, can be forecasted sufficiently precisely (technical simulation models for bauspar 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 bausparkasse'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 Baupar 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 baupar 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 baupar 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 Bauparkassen and the necessary technical principles of the Bauparkassen 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 Baupar 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 lifetimes 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 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,
  - d) within the meaning of §6(2), fourth sentence, the interests of the bauspar customer are adequately protected,
  - e) within the meaning of § 6 (2), fourth sentence, a bauspar-specific risk exists for the sustainable conduct of bauspar 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 bausparkasse in the bauspar 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 bauspar customer in an appropriate manner,
  - j) within the meaning of § 14 (1), fourth sentence, as a result of the transfer, the interests of the bauspar customers of the transferor or transferee bausparkasse are jeopardised, and
  - k) within the meaning of § 16 (3), second sentence, the plan for orderly liquidation, considering the interests of the bauspar 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 bausparkasse 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 bausparkasse 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 bauspar 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 bauspar 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 bausparkassen 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 bausparkasse. Prior to such appointment, the bausparkasse 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 bausparkasse in so far as these relate to the allocation procedure. In the event of any dispute between the bausparkasse and the ombudsman as regards his duties, the Federal 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 bausparkasse in conformity with § 51(3) of the Credit Sector Act.

## § 13 Special auditing duties

In the course of auditing a bausparkasse'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 bausparkasse 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 bausparkasse's portfolio of bauspar contracts, including its accompanying assets and liabilities, is to be transferred to one or more other bausparkassen, 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 bausparkasse under the bauspar contracts, including in relation to the bauspar



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 baupark 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 Baupark Contracts, in so far as the amendments or additions appear necessary for adequate protection of the interests of the baupark customers, unless the amendments or additions appear unsuitable or unnecessary for the amalgamation of the baupark 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 baupark 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 baupark customers. In so far as appears necessary to avert detriment to the interests of the baupark customers, the bauparkasse shall endeavour to transfer its baupark 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 baupark business to another bauparkasse pursuant to § 14(1) or that the liquidation entails no detriment for the baupark customers,
2. its current portfolio of baupark contracts with the accompanying assets and liabilities,
3. how the baupark 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 bauspar customers, does not appear to offer any guarantee. This can be assumed in particular if the disadvantages of a liquidation for the bauspar customers can probably be avoided through a transfer.

(4) The obligations of the bausparkasse under paragraphs 1 and 2 shall be part of the liquidation. If the bausparkasse 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 bauspar 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 bausparkasse.

(5) If the Federal Financial Supervisory Authority approves the plan or draws up a plan, the bausparkasse 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 bausparkasse 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 bausparkasse.

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

## § 18 Provisions governing existing and new legally dependent bausparkassen

(1) Credit institutions authorised to conduct bauspar 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 bausparkassen. 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 bauspar business through legally dependent business units shall be deemed bausparkassen to the extent of such bausparkassen business. They shall be required to administer the assets and the liabilities of their bausparkasse separately from their other assets and liabilities, to draw up separate annual financial statements for their bausparkasse 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 bausparkasse and shown in separate annual financial statements shall be deemed to constitute liable equity capital of the bausparkasse.

**(3)** Bausparkassen 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 bausparkassen 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 bausparkassen 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 bausparkassen shall remain unaffected.

**(2)** (deleted)

**(3)** The responsibility of the Länder for confirming the conversion arrangement for bausparkassen 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 bauspar contracts transacted before 1 January 1991.

**(5)** By way of derogation from § 4(1), point 6, first sentence, a bausparkasse may own equity holdings in an enterprise exceeding one-third of the enterprise's nominal capital, if the bausparkasse 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 bausparkasse 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 bauspar 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)