

**Act Transposing Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes (DGSD Implementation Act, or *DGSD-Umsetzungsgesetz*)<sup>1</sup>**

**of 28 May 2015**

The Bundestag has adopted the following Act:

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Article 1	Deposit Guarantee Act ( <i>Einlagensicherungsgesetz</i> , or EinSiG)
Article 2	Amendment to the Deposit Guarantee and Investor Compensation Act ( <i>Einlagensicherungs- und Anlegerentschädigungsgesetz</i> )
Article 3	Amendment to the Banking Act ( <i>Kreditwesengesetz</i> )
Article 4	Amendment to the Recovery and Resolution Act ( <i>Sanierungs- und Abwicklungsgesetz</i> )
Article 5	Amendment to the Act Establishing the Federal Financial Supervisory Authority ( <i>Finanzdienstleistungsaufsichtsgesetz</i> )
Article 6	Amendment to the Capital Investment Code ( <i>Kapitalanlagegesetzbuch</i> )
Article 7	Amendment to the Regulation on the Allocation of Functions and Powers of a Compensation Scheme to the Compensation Scheme of German Banks ( <i>Entschädigungseinrichtung deutscher Banken GmbH</i> ) ( <i>Verordnung über die Zuweisung von Aufgaben und Befugnissen einer Entschädigungseinrichtung an die Entschädigungseinrichtung deutscher Banken GmbH</i> )
Article 8	Amendment to the Regulation on the Allocation of Functions and Powers of a Compensation Scheme to the Compensation Scheme of the Association of German Public Sector Banks ( <i>Entschädigungseinrichtung des Bundesverbandes Öffentlicher Banken Deutschlands GmbH</i> ) ( <i>Verordnung über die Zuweisung von Aufgaben und Befugnissen einer Entschädigungseinrichtung an die Entschädigungseinrichtung des Bundesverbandes Öffentlicher Banken Deutschlands GmbH</i> )
Article 9	Entry into force

### **Article 1**

### **Deposit Guarantee Act (*Einlagensicherungsgesetz*, or EinSiG)**

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<sup>1</sup> This Act serves to implement Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173 of 12 June 2014, page 149).

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### General provisions

#### Section 1

### Institutions' obligation to guarantee deposits

CRR credit institutions within the meaning of section 1 (3d) sentence 1 of the Banking Act (*Kreditwesengesetz*) shall guarantee their deposits as required by this Act through membership of a deposit guarantee scheme. Domestic branches that are maintained by undertakings which have their registered office outside Germany and that at a minimum conduct deposit business in accordance with section 1 (1) sentence 2 number 1 of the Banking Act and lending business in accordance with section 1 (1) sentence 2 number 2 of the Banking Act are also CRR credit institutions within the meaning of this Act.

#### Section 2

### Definition of terms

(1) Deposit guarantee schemes within the meaning of this Act mean

- 1 statutory compensation schemes in accordance with section 22 (2) and
- 2 institutional protection schemes that are recognised as deposit guarantee schemes in accordance with section 43.

(2) An institutional protection scheme within the meaning of this Act is a liability arrangement within the meaning of Article 113 (7) 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 646/2012 (OJ L 176 of 27 June 2013, page 1).

(3) Deposits within the meaning of this Act mean credit balances, including time deposits and savings deposits, that

- 1 result from funds left in an account or from temporary situations deriving from normal banking transactions and
- 2 that the CRR credit institution is required to repay under the legal and contractual conditions applicable.

A credit balance is excluded from the definition of deposits in sentence 1 above if

- 1 its existence can only be proven by a financial instrument within the meaning of section 2 (2b) of the Securities Trading Act (*Wertpapierhandelsgesetz*), unless it is a savings product that is evidenced by a certificate of deposit made out to a named person and that already existed on 2 July 2014,
- 2 its principal is not repayable at par or
- 3 its principal is only repayable under a particular guarantee or agreement provided by the CRR credit institution or a third party.

Deposits within the meaning of this Act shall also mean liabilities from securities transactions of a CRR credit institution that has also been granted authorisation to conduct banking transactions under section 1 (1) sentence 2 numbers 4 and 10 of the Banking Act or to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 of the Banking Act, provided that the liabilities of the CRR credit institution are designed to obtain possession or ownership of funds for its customers.

(4) Eligible deposits of a CRR credit institution within the meaning of this Act mean all deposits other than deposits that are excluded from protection under section 6.

(5) Covered deposits of a CRR credit institution within the meaning of this Act mean the part of eligible deposits that do not exceed the coverage level in accordance with section 8.

### Section 3 **Depositor information about deposit guarantees**

(1) The website of the deposit guarantee schemes shall contain all the necessary information for the creditors of a CRR credit institution who are holders of a deposit (depositors), in particular information about the compensation procedure and the conditions of deposit guarantees as provided for under this Act.

(2) The depositor information may include a factual description of the functioning of the deposit guarantee scheme, but shall not contain any reference to unlimited coverage of deposits.

### Section 4 **Depositor information and right to give notice in the event of transformation**

(1) In the case of a transformation that results in a change in deposit guarantee scheme, a CRR credit institution shall inform the depositors about the transformation and the change in deposit guarantee scheme at least one month before the transformation takes effect, unless the Federal Financial Supervisory Authority (BaFin) allows a shorter deadline on the grounds of preserving commercial secrecy or financial stability. BaFin shall decide within five working days on any reduction in the period under sentence 1 above on application by the CRR credit institution.

(2) Depositors shall be entitled within a period of three months following receipt of the information in accordance with subsection (1) above to withdraw or transfer to another CRR credit institution, without incurring any penalty, their eligible deposits within the meaning of section 2 (4), including all claims to interest on those deposits, to the extent that they exceed the coverage level under section 8, but limited to the amount present at the date of transformation.

## Part 2 Compensation for depositors

### Chapter 1 Right to compensation

### Section 5 **Legal claim for compensation**

(1) If a compensation event occurs, the depositor shall have a right to compensation as provided for in sections 6 to 15 from the deposit guarantee scheme of which the CRR credit institution is a member. If the depositor is not absolutely entitled to the deposit, the person who is absolutely entitled

shall be entitled to claim compensation, provided that that person has been identified or is identifiable at the time of the compensation event.

(2) The deposit guarantee scheme to which the CRR credit institution belongs is required to pay compensation for liabilities from securities transactions within the meaning of section 1 (3) sentence 2 of the Investor Compensation Act (*Anlegerentschädigungsgesetz*) as required by sections 3 to 5 of the Investor Compensation Act.

(3) If the authorisation to conduct deposit business in accordance with section 1 (1) sentence 2 number 1 of the Banking Act no longer applies, the deposit guarantee scheme shall only be liable for liabilities of the CRR credit institution that originated before the authorisation ceased to apply.

## Section 6 Deposits excluded from protection

No compensation in accordance with section 5 shall be paid for the following deposits:

- 1 deposits made by other CRR credit institutions on their own behalf and for their own account,
- 2 own funds within the meaning of number (118) of Article 4 (1) of Regulation (EU) No 575/2013,
- 3 deposits arising out of transactions as a result of which there has been a criminal conviction of persons for money laundering within the meaning of Article 1 (2) of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309 of 25 November 2005, page 15),
- 4 deposits by financial institutions within the meaning of number (26) of Article 4 (1) of Regulation (EU) No 575/2013,
- 5 deposits by investment firms within the meaning of number (1) of Article 4 (1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145 of 30 April 2004, page 1),
- 6 deposits that are no longer available and the holder of which has never been verified in accordance with Article 9 (1) of Directive 2005/60/EC,
- 7 deposits by insurance undertakings and by reinsurance undertakings within the meaning of Article 13 (1) to (6) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 of 17 December 2009, page 1),
- 8 deposits by collective investment undertakings within the meaning of number (7) of Article 4 (1) of Regulation (EU) No 575/2013,
- 9 deposits by pension and retirement funds, in particular by institutions for occupational retirement provision within the meaning of Article 6 (a) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235 of 23 September 2003, page 10),
- 10 deposits by public authorities, in particular public authorities of the German federal government, a German federal state, a legally dependent special fund of the German federal government or of a German federal state, a local authority, or of the national government, a regional government or a local authority of another country,
- 11 debt securities issued by a CRR credit institution and liabilities arising out of own acceptances and promissory notes.

## Section 7 Extent and calculation of the claim for compensation

(1) The depositor's claim for compensation shall be governed by the extent of their eligible deposits, and the maximum amount shall be limited to the coverage level defined in section 8.

(2) The calculation of the amount of the claim for compensation shall be based on the amount of the eligible deposits when the compensation event occurs, including claims to interest on eligible deposits

up to the date on which the compensation event is determined in accordance with section 10 (1).

(3) The coverage level under section (8) refers to the depositor's aggregate claim against the CRR credit institution in accordance with subsection (2) above, irrespective of the number of accounts, the currency and the location at which the accounts are maintained.

(4) In the case of an account opened in the name of two or more persons or over which two or more persons have rights that are exercised by means of the signature of one or more of those persons (joint account), the share attributable to the individual account holder shall apply to the coverage level in accordance with section 8. In the absence of more specific provisions, the deposit shall be attributed to the account holders in equal parts.

(5) Subsection (4) shall apply *mutatis mutandis* to accounts that are maintained in the name of a condominium owners' association, provided that the members of the condominium owners' association are regarded as account holders.

(6) Subsection (4) shall apply *mutatis mutandis* if several persons are absolutely entitled to an eligible deposit.

(7) The compensation shall be paid in euro. If accounts are maintained in a currency other than the euro, the exchange rate to be applied shall be the European Central Bank's reference rate on the date on which BaFin determined the compensation event in accordance with section 10 (1). If no European Central Bank reference rate is available, the middle rate of the identifiable buying and selling rates on the reference date shall be used to calculate the exchange rate.

(8) CRR credit institutions shall provide the deposit guarantee scheme at any time on request with all information that it needs to prepare compensation payments, including information about the aggregated amount of eligible deposits of every depositor. For this purpose, the eligible deposits shall be marked in such a way that they can be determined immediately for every depositor. The CRR credit institution shall provide the deposit guarantee scheme with the data needed to make compensation payments to creditors in a computerised format that complies with the requirements of the deposit guarantee scheme.

## Section 8 Coverage level

(1) The amount of the claim for compensation shall be limited to the equivalent of €100,000 (coverage level).

(2) By way of derogation from subsection (1) above, the coverage level shall amount to the equivalent of €500,000 if and to the extent that

- 1 the depositor's aggregate claim against the CRR credit institution exceeds the amount stated in subsection (1) above because the following amounts that are not paid out on a regular basis have been credited:
    - (a) amounts resulting from real estate transactions relating to privately used residential properties,
    - (b) amounts that serve social purposes laid down in law and are linked to particular life events of a depositor, such as marriage, divorce, reaching pensionable age, retirement, dismissal, redundancy, birth, illness, need for long-term care, invalidity, disability or death,
    - (c) amounts that serve certain purposes and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction,
    - (d) amounts from payments under the law of other countries that are comparable with the benefits and payments stated in (a) to (c) above and
  - 2 the compensation event has occurred
    - (a) in a period of up to six months after the amounts under number 1 above have been credited, provided that these amounts become legally transferable after they have been credited, or
    - (b) in a period after the amounts under number 1 above have been credited of up to six months following the date on which these amounts become legally transferable for the first time after they have been credited.
- (3) Amounts within the meaning of subsection (2) number 1 (b) above are in particular:
- 1 benefits paid on the basis of the Social Security Code (*Sozialgesetzbuch*);



- 2 payments of credit balances (*Wertguthaben*) within the meaning of the Fourth Book of the Social Security Code;
- 3 benefits paid on the basis of the Act Governing Civil Servants' Pensions and Allowances (*Beamtenversorgungsgesetz*), the corresponding arrangements of the federal states, the Military Pensions Act (*Soldatenversorgungsgesetz*) and the Foreign Service Act (*Gesetz über den Auswärtigen Dienst*), and on the basis of the statutory provisions governing civil servants' benefits in the event of illness, long-term care and childbirth;
- 4 lump-sum payments or settlements under occupational pension arrangements, under tax-privileged pension schemes in accordance with section 10a or Part XI of the Income Tax Act (*Einkommensteuergesetz*), and from professional retirement schemes;
- 5 benefits paid on the basis of redundancy plans within the meaning of section 112 of the Works Constitution Act (*Betriebsverfassungsgesetz*), of section 32 (2) sentence 2 of the Executives' Committee Act (*Sprecherausschussgesetz*), on the basis of the statutory provisions governing employee representatives, or the provisions of church law under the Employee Representation Act of the Evangelical Church in Germany (*Mitarbeitervertretungsgesetz der Evangelischen Kirche in Deutschland*) and the staff representation systems;
- 6 compensation payments on the basis of sections 1a, 9, 13 and 14 of the Employment Protection Act (*Kündigungsschutzgesetz*), of section 113 of the Works Constitution Act and compensation payments for the loss of employment or on the basis of a termination agreement or on the basis of collective wage agreements;
- 7 contractual equalisation payments to implement pension equalisation requirements under section 22 of the Pension Equalisation Act (*Versorgungsausgleichsgesetz*);
- 8 reimbursements by an insurance undertaking that relate to substitutive health insurance within the meaning of section 12 of the Insurance Supervision Act;
- 9 payments made on the basis of a settlement covering the benefits governed by numbers 1 to 8 above.

(4) Amounts within the meaning of subsection (2) number 1 (c) above are in particular:

1. payments made on the basis of claims under the provisions of the 27th title of Part 8 of Book Two of the Civil Code (*Bürgerliches Gesetzbuch*);
2. payments made under the Act on Compensation for Wrongful Conviction (*Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen*);
3. payments made under the Criminal Injuries Compensation Act (*Gesetz über die Entschädigung für Opfer von Gewalttaten*);
4. payments made under Article 5 (5) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*Konvention zum Schutze der Menschenrechte und Grundfreiheiten*).

(5) A legal claim for compensation in accordance with section 5 in conjunction with subsection (2) above that exceeds the coverage level in accordance with subsection (1) above shall be filed separately by the depositor in writing, providing evidence of the facts substantiating the claim.

## Section 9

### **Limitation of claims for compensation; legal recourse**

(1) Claims for compensation against the deposit guarantee scheme shall become statute-barred five years after the depositor has been notified of the compensation event in accordance with section 12.

(2) Disputes about the reasons for and the amount of the claim for compensation shall be heard in the civil courts.

## Chapter 2

### Occurrence of the compensation event

## Section 10

### **Occurrence and determination of the compensation event**

(1) A compensation event within the meaning of this Act occurs if BaFin determines that

1. a CRR credit institution is unable for the time being, for reasons that are directly related to its financial circumstances, to repay deposits that are due and
2. the CRR credit institution has no current prospect of being able to do so.

(2) BaFin shall determine that a compensation event has occurred without undue delay, but in any event no later than five working days after becoming aware that a CRR credit institution is unable to repay deposits that are due. It shall also determine that a compensation event has occurred if it has ordered measures under section 46 (1) sentence 2 numbers 4 to 6 of the Banking Act in respect of the CRR credit institution and these measures last for more than six weeks.

(3) Objections to and appeals against the determination of the compensation event do not have suspensory effect.

#### Section 11

##### **Announcement that the compensation event has been determined; notification of the deposit guarantee scheme**

(1) BaFin shall without undue delay announce in the Federal Gazette that the compensation event has been determined.

(2) BaFin shall without undue delay notify the deposit guarantee scheme of which the CRR credit institution is a member that the compensation event has been determined.

#### Chapter 3

##### Compensation procedure

#### Section 12

##### **Notification of the depositors that the compensation event has been determined**

The deposit guarantee scheme shall notify the depositors of the CRR credit institution without undue delay about the occurrence of the compensation event and shall inform them that claims under section 5 in conjunction with section 8 (2) must be substantiated in accordance with section 8 (5). Depositors may be notified at the time compensation is paid.

#### Section 13

##### **Languages to be used in the compensation procedure**

(1) Any correspondence between the deposit guarantee scheme and the depositor shall be drawn up in one of the following languages:

- 1 in the official language of the Union institutions that is used by the CRR credit institution holding the covered deposit when writing to the depositor or
- 2 in the official language or languages of the member state in which the covered deposit is located.

(2) If a CRR credit institution operates directly in another member state without having established branches, the language that was chosen by the depositor when the account was opened shall be used.

#### Section 14

##### **Examination and settlement of claims for compensation**

(1) The deposit guarantee scheme shall verify claims for compensation by depositors without undue delay and shall institute suitable measures to ensure that depositors are compensated within the time limit specified in subsection (3) below.

(2) The CRR credit institution shall without undue delay make available to the deposit guarantee scheme on request the documents needed to verify the claims for compensation by the depositors and for their compensation, as well as the necessary information about deposits and depositors.

(3) The deposit guarantee scheme shall settle claims by depositors for compensation in the period up to 31 May 2016 within 20 working days, and starting on 1 June 2016 within seven working days, of the date on which BaFin determined that a compensation event has occurred, without a request to the deposit guarantee scheme being necessary. Amounts that are temporarily subject to a higher coverage level in accordance with section 8 (2) shall be repaid within seven working days of receipt of notification of these amounts by the depositor in accordance with section 8 (5).

#### Section 15

##### **Exclusion, deferral and suspension of compensation**

(1) No compensation shall be paid where there have been no transactions relating to the deposit within the last 24 months and the value of this deposit is lower than the average administrative costs that would be incurred by the deposit guarantee scheme in paying any compensation.

(2) By way of derogation from section 14 (3), settlement of the claim for compensation may be deferred if

1. the depositor's claim for compensation is disputed,
2. there have been no transactions relating to the deposit within the last 24 months,
3. the amount to be compensated is part of a temporarily higher coverage level as defined in section 8 (2) or
4. the depositor is not absolutely entitled to the deposit.

In the case of sentence 1 number 4 above, the claim for compensation shall be settled within three months of the date on which the compensation event is determined by BaFin, and in the other cases within an appropriate period.

(3) Settlement of the claim for compensation can be suspended if

1. the deposit is subject to legal dispute: until there has been a final and unappealable ruling on the dispute,
2. the deposit is subject to restrictive measures that are imposed by a competent German authority, the European Union, another country or an international organisation, and that are legally binding for the Federal Republic of Germany: until the measures in question have been lifted,
3. there is evidence that the claim for compensation relates to assets that are linked to money laundering or terrorist financing, and investigation proceedings have been instituted against persons for this reason: until these proceedings have been closed.

#### Section 16

##### **Subrogation following payment of compensation**

Insofar as the deposit guarantee scheme settles the claim of an eligible depositor for compensation, the depositor's claims against the CRR credit institution shall be subrogated to the deposit guarantee scheme.

### Part 3

#### Deposit guarantee schemes

##### Chapter 1

###### Financing of and target level for deposit guarantee schemes and use of funds

## Section 17

### **Financing of and target level for deposit guarantee schemes**

(1) Deposit guarantee schemes shall have adequate financial means that are proportionate to their existing and potential liabilities (available financial means). They shall put in place adequate systems to determine their potential liabilities.

(2) The deposit guarantee schemes shall ensure that, by the end of 3 July 2024, their available financial means shall at least reach a target level of 0.8% of the amount of the covered deposits in accordance with section 8 (1) of their member CRR credit institutions. If a deposit guarantee scheme has used more than 0.8% of the amount of the covered deposits in accordance with section 8 (1) of their member CRR credit institutions for payouts by the end of 3 July 2024, the period during which the respective deposit guarantee scheme must reach the target level shall be prolonged until the end of 3 July 2028.

(3) If the available financial means fall short of the target level, the deposit guarantee schemes shall ensure that the collection of contributions shall resume until the target level is reached again. If, after the target level has been reached for the first time, the available financial means have been reduced to less than two-thirds of the target level, the contributions shall be set at a level allowing the target level to be reached again within six years.

(4) In order to determine the necessary target level in accordance with subsection (2) above, the CRR credit institutions shall, by 31 January each year, notify the deposit guarantee scheme of which they are a member of the amount of covered deposits in accordance with section 8 (1) they held as at 31 December of the preceding year. The deposit guarantee schemes shall forward the notifications by the CRR credit institutions to BaFin, the Deutsche Bundesbank and the resolution authority in aggregated form by 21 February each year.

(5) BaFin shall, by 31 March each year, inform the European Banking Authority of the amount of covered deposits in accordance with section 8 (1) in Germany, and of the amount of the available financial means of German deposit guarantee schemes, as at 31 December of the preceding year.

## Section 18

### **Available financial means**

(1) Available financial means within the meaning of this Act are defined as cash and deposits, as well as low-risk debt securities that can be liquidated within the period referred to in section 14 (3). Low-risk debt securities are items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013, as well as any assets that are considered by BaFin to be similarly safe and liquid on application by a deposit guarantee scheme.

(2) By way of derogation from subsection (1) above, available financial means may also be payment commitments of a CRR credit institution to a deposit guarantee scheme if

- 1 these payment commitments are fully collateralised and
- 2 the collateral for these payment commitments
  - (a) is at the disposal of the deposit guarantee scheme,
  - (b) consists of low-risk debt securities and (c) is unencumbered by any third-party rights.

(3) The total share of payment commitments under subsection (2) above in relation to the available financial means counting towards the target level shall not exceed 30% of the available financial means of the respective deposit guarantee scheme.

(4) The available financial means shall be invested in a low-risk and sufficiently diversified manner. They shall be invested in order to ensure the greatest possible safety and adequate liquidity of the investments, combined with a reasonable return. The income generated by investing the available financial means may be used to cover the administrative and other costs of the deposit guarantee schemes.

## Section 19

### **Calculation of contributions; methods for calculating contributions**

(1) The available financial means shall be raised by contributions to be made by the CRR credit institutions that are members of the deposit guarantee scheme as provided for under this Act. The obligation of the CRR credit institutions to make contributions shall not prevent additional financing of a deposit guarantee scheme from other sources.

(2) Contributions to deposit guarantee schemes shall be based on the amount of covered deposits of the CRR credit institutions that are members of the deposit guarantee scheme and the degree of risk incurred by the respective CRR credit institution.

(3) A deposit guarantee scheme may, with the approval of BaFin, use its own risk-based methods to calculate the risk-based contributions. The calculation of the contributions concerned shall be proportional to the risk of the CRR credit institutions that are members of the deposit guarantee scheme and shall take due account of the risk profiles of the various business models. The own risk-based methods for calculating the contributions may also take into account the asset side of the balance sheet and risk indicators such as capital adequacy, asset quality and liquidity.

(4) Lower contributions may be provided for in the case of CRR credit institutions that belong to low-risk sectors or for members of an institutional protection scheme that is not recognised as a deposit guarantee scheme.

(5) The European Banking Authority shall be informed of the methods under subsection (3) above that have been approved by BaFin.

## Section 20

### **Use of available financial means**

(1) The available financial means of the deposit guarantee schemes shall be used for the following purposes:

- 1 to compensate depositors as provided for under this Act,
- 2 for loss absorption amounts in accordance with section 145 of the Recovery and Resolution Act (*Sanierungs- und Abwicklungsgesetz*) in the course of the resolution of CRR credit institutions.

(2) Recognised institutional protection schemes may also use their available financial means for measures as provided for in section 49.

## Section 21

### **Duty of confidentiality and confidentiality of data**

(1) Persons employed by or acting on behalf of a deposit guarantee scheme may not disclose or use third-party secrets, in particular business or trade secrets, without authorisation. Under the Act on the Formal Obligation of Persons without Civil Servant Status (*Verpflichtungsgesetz*) of 2 March 1974 (Federal Law Gazette I, pages 469, 547), as amended by section 1 number 4 of the Act of 15 August 1974 (Federal Law Gazette I, page 1942), they shall be required by BaFin to perform their duties conscientiously.

(2) Unauthorised disclosure or use within the meaning of subsection (1) sentence 1 above shall not apply in particular if facts are transmitted to BaFin, the resolution authority, the Deutsche Bundesbank, the European Central Bank or the European Banking Authority to enable them to perform their functions.

(3) Deposit guarantee schemes shall ensure the confidentiality and the protection of the data pertaining to depositors' accounts. The requirements of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) shall apply to the collection, processing and use of such data.

## Chapter 2

### Statutory compensation schemes

#### **Part 1**

### **Establishment of statutory compensation schemes; assignment of CRR credit institutions**

## Section 22

### **Statutory compensation schemes**

(1) The statutory compensation schemes shall have the functions and powers under this Act, and in particular they shall collect the contributions of the CRR credit institutions that have been assigned to them, they shall invest the funds as provided for under this Act and, if a compensation event occurs, they shall compensate the creditors of a CRR credit institution that has been assigned to them for deposits that have not been repaid.

(2) Statutory compensation schemes are

- 1 legal persons under private law to which the functions and powers of a statutory compensation scheme under this Act have been allocated by way of a statutory order issued under section 23 (1) (entrusted compensation schemes),
- 2 compensation schemes established at Kreditanstalt für Wiederaufbau (KfW) by way of a statutory order under section 23 (2).

(3) BaFin shall decide on objections to administrative decisions by the statutory compensation schemes.

(4) In discharging its obligations under section 5, the statutory compensation scheme shall only be liable up to the amount of the assets available to it on the basis of the contributions paid, net of costs. An entrusted compensation scheme shall hold and administer these assets separately from its other assets.

### Section 23 Authority to issue orders

(1) The Federal Ministry of Finance is authorised to assign, by way of a statutory order that does not require the approval of the Bundesrat, to a legal person under private law the functions and powers of a statutory compensation scheme if that legal person is prepared to assume the functions of the compensation scheme and offers reasonable assurance that the claims of persons eligible for compensation will be settled. A legal person offers reasonable assurance if

- 1 the persons who manage and represent the legal person under the law or the articles of association are fit and proper and
- 2 it has the resources and organisation needed to perform its functions, in particular in relation to collecting contributions, managing the funds and making compensation payments, and has own funds equivalent to at least €1 million for this purpose.

By way of the statutory order under sentence 1 above, the Federal Ministry of Finance may reserve the right to approve the articles of association of the legal person and any amendments to them, and to issue more detailed requirements governing the liquidation and winding-up of the compensation scheme.

(2) The Federal Ministry of Finance is authorised, by way of a statutory order that does not require the approval of the Bundesrat, to establish statutory compensation schemes at KfW and to issue more detailed requirements governing the administration of statutory compensation schemes and the appropriate remuneration of their management, if statutory compensation schemes in accordance with section 22 (2) number 1 are not available, and in particular if such a compensation scheme is liquidated or wound up.

### Section 24 Assignment of CRR credit institutions to a statutory compensation scheme

(1) One of the following groups of institutions shall be assigned to each of the statutory compensation schemes:

- 1 the group of CRR credit institutions established under private law or
- 2 the group of CRR credit institutions established under public law.

(2) BaFin may, on request, assign a CRR credit institution to another statutory compensation scheme if

- 1 the CRR credit institution is able to demonstrate a justified interest in the requested assignment,
- 2 this will not endanger performance of the function of the statutory compensation scheme to which the CRR credit institution belongs and

3 the other compensation scheme agrees to the requested assignment.

(3) BaFin may also assign CRR credit institutions to another statutory compensation scheme if all CRR credit institutions that belong to a compensation scheme

1 have requested assignment to another compensation scheme and

2 the other compensation scheme agrees to the requested assignment.

(4) An application under subsection (2) or subsection (3) above shall be made at least six months before the intended change of compensation scheme.

(5) A CRR credit institution shall be exempt from assignment to a statutory compensation scheme if it belongs to an institutional protection scheme recognised in accordance with section 43.

## Section 25

### **Legal consequences of a change of statutory compensation scheme**

(1) During the application period in accordance with section 24 (4), a CRR credit institution shall continue to be required to pay contributions and make payments to its existing compensation scheme in accordance with sections 26 and 27 (1) numbers 1 and 2.

(2) If a CRR credit institution is assigned to another statutory compensation scheme on application, the statutory compensation scheme to which the CRR credit institution previously belonged shall transfer to the new compensation scheme the contributions and payments that were paid or made in the twelve months before the end of its assignment, with the exception of extraordinary contributions and extraordinary payments in accordance with section 27 (1) numbers 1 and 2.

(3) The CRR credit institution shall inform its depositors of the change within one month of the change of statutory compensation scheme.

## Part 2

### **Obligation to pay contributions; use of contributions and payments to cover the amount of funds required**

## Section 26

### **Obligation to pay annual contributions and make one-time payments**

(1) Until the target level of the statutory compensation scheme to which they are assigned is reached, CRR credit institutions shall make annual contributions to that statutory compensation scheme as at the end of each contribution assessment year (annual contributions). The annual contributions serve to raise the available financial means in accordance with section 19 (1) sentence 1 and to cover the administrative and other costs that are incurred by the statutory compensation scheme in the course of its activities. The annual contributions shall be calculated in accordance with section 19 (2) to (4), plus an appropriate flat-rate surcharge to cover the administrative and other costs. The compensation scheme may collect minimum contributions. The contribution assessment year runs from 1 October of one year to 30 September of the following year.

(2) In addition to the annual contribution, CRR credit institutions that were assigned to a statutory compensation scheme after 1 August 1998 are required to make a one-time payment calculated in accordance with section 19 (2) to (4).

## Section 27

### **Obligation to pay extraordinary contributions and make extraordinary payments**

(1) If the available financial means of a statutory compensation scheme are insufficient to compensate the depositors of a CRR credit institution assigned to the compensation scheme if a compensation event occurs, the CRR credit institutions assigned to this statutory compensation scheme shall be required

1 to pay extraordinary contributions as advance payments to cover the funds required in accordance with section 29 if a compensation event occurs or

2 to make extraordinary payments to repay loans to cover the funds required in accordance with

section 30 if a compensation event occurs.

(2) The obligation to pay extraordinary contributions and make extraordinary payments shall only apply to CRR credit institutions that were already assigned to the statutory compensation scheme at the beginning of the contribution assessment year in which an extraordinary contribution or extraordinary payment is collected, and that still belonged to the statutory compensation scheme at the date on which the compensation event was determined.

(3) The amount of the extraordinary contribution to be paid and the extraordinary payment to be made by the CRR credit institutions required to pay the contribution or make the payment under subsections (1) and (2) above shall in each case be measured by reference to the ratio of the most recent full annual contribution payable by the respective CRR credit institution to the aggregate amount of all the most recently payable full annual contributions and one-time payments in accordance with section 26 (2). In the case of CRR credit institutions that have not yet been required to pay an annual contribution, the most recent annual contribution payable shall be replaced by the one-time payment in accordance with section 26 (2).

(4) The statutory compensation scheme shall be entitled to collect several extraordinary contributions and extraordinary payments as provided for in sections 29 and 30 in each contribution assessment year. However, in each contribution assessment year a statutory compensation scheme may only collect extraordinary contributions and extraordinary payments not exceeding 0.5% of the covered deposits of the CRR credit institutions assigned to that scheme. With BaFin's approval, a statutory compensation scheme may require payment of higher extraordinary contributions in exceptional circumstances to safeguard the proper functioning of the statutory compensation scheme.

(5) With BaFin's approval, the statutory compensation scheme may defer, in whole or in part, collection of an extraordinary contribution or extraordinary payment from a CRR credit institution if the aggregate amount of the payments to be made to the statutory compensation scheme would jeopardise that CRR credit institution's ability to discharge its obligations to its creditors. Such deferral shall be granted on application by the CRR credit institution. Together with the application, the CRR credit institution shall submit the confirmation of a German public auditor or a German public auditing firm that the aggregate amount of the payments to be made to the statutory compensation scheme in the respective contribution assessment year would jeopardise its ability to discharge its obligations to its creditors. Such deferral shall be granted for a maximum of six months but may be renewed for a further six months in each case on application by the CRR credit institution. The deferred extraordinary contributions or extraordinary payments shall be paid when BaFin determines that their payment no longer jeopardises the liquidity and solvency of the credit institution. The deferred amounts are due when the deferral period expires.

## Section 28

### **Determination of the amount of funds required if a compensation event occurs**

(1) After being informed by BaFin that a compensation event in accordance with section 11 (2) has occurred, the compensation scheme shall determine the amount of funds required without undue delay.

(2) The amount of funds required results from the aggregate compensation payable in this compensation event plus the administrative and other costs that will be incurred in administering this compensation event.

(3) The compensation scheme shall determine the aggregate compensation payable on the basis of the documents to be provided by the CRR credit institutions in accordance with section 14 (2). If the aggregate compensation payable cannot be determined with sufficient accuracy using these documents, the compensation scheme shall estimate the aggregate compensation payable in particular by reference to the following data:

- 1 the data available to it regarding the compensation event,
- 2 the average compensation payment and
- 3 the costs incurred for previous compensation events involving the CRR credit institutions assigned to it.

## Section 29

### **Use of extraordinary contributions to cover the amount of funds required**

(1) If the amount of funds determined to be required for a compensation event exceeds the



available financial means of the compensation scheme at the time when the compensation event is determined, the compensation scheme shall, subject to section 30, collect extraordinary contributions in this amount without undue delay if this is necessary to conduct the compensation procedure.

(2) If the compensation scheme determines that the amount of funds actually required for the aggregate compensation payable in the compensation event exceeds the amount of funds determined to be required, the compensation scheme shall collect further extraordinary contributions without undue delay after determining the shortfall in order to cover the amount of funds required.

(3) Extraordinary contributions are due when the notices concerning the extraordinary contributions have been announced.

#### Section 30

##### **Use of loans to cover the amount of funds required; extraordinary payments**

(1) If a compensation event occurs and the compensation scheme cannot within the required period cover the amount of funds determined to be required to allow it to discharge its obligation under section 14 (3) by collecting extraordinary contributions, it shall take out a loan.

(2) If the compensation scheme does not expect to be able to service the loan from the available financial means, it shall collect extraordinary payments to cover principal and interest payments and the costs of this loan. Extraordinary payments shall each be due six weeks before the due date of the relevant payment related to the loan, although no earlier than two weeks after the notices concerning the extraordinary payments have been announced.

(3) Instead of collecting extraordinary contributions in accordance with section 29, the compensation scheme may take out a loan if it expects to be able to repay this loan in full, including interest and costs, within the current and the subsequent contribution assessment year out of the available financial means, without having to collect special payments in accordance with subsection (2) above.

#### Section 31

##### **Reporting obligation; repayment of extraordinary contributions and extraordinary payments**

(1) After a compensation procedure has been completed, the statutory compensation scheme shall report to the CRR credit institutions assigned to it about the use of the extraordinary contributions and extraordinary payments.

(2) After the compensation procedure has been completed, the statutory compensation scheme shall repay to the CRR credit institutions assigned to it the extraordinary contributions paid and extraordinary payments made, to the extent that the extraordinary contributions were not used to conduct the compensation event and the extraordinary payments were not used to service a loan.

#### Section 32

##### **Immediate enforceability; judicial enforcement**

(1) Objections to and appeals against contribution notices do not have suspensory effect.

(2) Contribution notices issued by the compensation scheme shall be enforced in accordance with the provisions of the Act on Administrative Enforcement (*Verwaltungsvollstreckungsgesetz*).

#### Section 33

##### **Authority to issue orders**

(1) The Federal Ministry of Finance is authorised, by way of a statutory order that does not require the approval of the Bundesrat, to issue more detailed requirements governing

- 1 the methods for calculating contributions as provided for in section 19 (2) to (4),
- 2 the calculation and collection of annual contributions, including the coverage of administrative and other costs, and the collection of minimum contributions as provided for in section 26 (1)

- sentences 3 and 4, one-time payments, extraordinary contributions and extraordinary payments,
- 3 the collection of default interest in the case of late payment of contributions,
  - 4 the arrangements for taking out loans,
  - 5 the requirements for investing available financial means,
  - 6 the conditions for classifying payment commitments in accordance with section 18 (2) and (3) as available financial means.

The statutory compensation schemes shall be consulted before the statutory order is issued.

(2) The European Banking Authority shall be notified of the contents of the statutory order.

(3) The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

### **Part 3**

#### **Inspection of CRR credit institutions by statutory compensation schemes**

##### Section 34

#### **Obligation for CRR credit institutions to provide information**

(1) The CRR credit institutions shall, without undue delay, submit to the statutory compensation scheme to which they are assigned their adopted annual financial statements together with the associated audit report and shall on request provide all information and documents that the compensation scheme needs to perform its functions under this Act.

(2) The CRR credit institutions shall inform the compensation scheme of any significant change in their business model or any change in other material circumstances that could significantly increase the volume of the covered deposits or that could give rise to or increase the risk that a compensation event might occur.

##### Section 35

#### **Inspections of CRR credit institutions**

(1) In order to assess the risk that a compensation event might occur and to monitor compliance with the obligations under section 7 (8), the statutory compensation scheme shall perform regular and *ad hoc* inspections of the CRR credit institutions assigned to it. It shall tailor the intensity and frequency of the inspections to the probability that a compensation event will occur at a CRR credit institution and to the amount of the aggregate compensation expected to be payable in this case.

(2) In the case of an undertaking that has submitted to BaFin an application for authorisation in accordance with section 32 (1) sentence 2 of the Banking Act, the compensation scheme to which the institution will be assigned if authorisation is granted may perform inspections in order to assess the risk that a compensation event might occur in the event that authorisation is granted.

(3) Objections to and appeals against the inspection order do not have suspensory effect.

##### Section 36

#### **Performance of inspections**

(1) Statutory compensation schemes shall perform the inspections in accordance with section 35 using their own expert examiners or shall engage suitable third parties to perform the inspections. Suitable third parties are German public auditors, German sworn auditors, German public auditing firms and German sworn auditing firms, as well as other third parties with the necessary skills and experience, provided that there are no circumstances that could give rise to possible conflicts of interest for these persons with regard to the CRR credit institutions to be inspected. The compensation scheme shall require the persons engaged to perform the inspections to notify it without undue delay if such circumstances exist. The inspections may not be performed by the auditor of the CRR credit institution's financial statements or the auditor of its disclosure obligations and rules of conduct.

(2) The statutory compensation scheme shall specify the details of the inspections in guidelines

that must be approved by BaFin.

(3) The staff of the statutory compensation scheme or the persons acting on its behalf in accordance with subsection (1) above shall be permitted to enter the locations and business premises of the CRR credit institution during normal working and business hours to the extent that this is necessary for the compensation scheme to perform its functions under this Act. Any person obliged to provide information may refuse to do so in respect of any questions, the answers to which would place them or one of their relatives referred to in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung*) at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*). The person obliged to furnish information shall be informed about their right to refuse to do so.

(4) The staff of the statutory compensation scheme as well as persons acting on its behalf in accordance with subsection (1) above may enter the business premises of a CRR credit institution during normal working and business hours if BaFin has ordered measures under section 46 of the Banking Act to be taken against this institution. All documents that they require to prepare a compensation procedure in accordance with sections 12 to 15 shall be placed at their disposal. If functions of the CRR credit institution have been outsourced to another undertaking, sentences 1 and 2 above shall apply *mutatis mutandis* to that undertaking.

#### Section 37

#### **Report on the results of inspections**

(1) A report shall be prepared on the results of the inspections in accordance with section 35.

(2) The report shall contain the finding whether there are circumstances at the inspected CRR credit institution that give rise to the risk that a compensation event might occur at the CRR credit institution.

(3) If the inspection identified significant violations by the CRR credit institution of this Act, the Banking Act or Regulation (EU) No 575/2013, the report shall also contain these findings.

#### Section 38

#### **Costs of inspections; costs of the compensation procedure**

(1) The CRR credit institutions shall reimburse the statutory compensation scheme to which they are assigned for the costs incurred for inspections in accordance with section 35.

(2) The statutory compensation schemes shall reimburse the suitable third parties for the personnel and non-personnel expenses incurred for an inspection in accordance with sections 35 to 37.

(3) The CRR credit institution shall reimburse the statutory compensation scheme to which it is assigned for the expenses incurred to perform or prepare a compensation procedure in accordance with sections 12 to 15.

#### Section 39

#### **Obligation of CRR credit institutions to report on rectified deficiencies**

(1) If, in the course of an inspection in accordance with section 35, the statutory compensation scheme identifies a deficiency in respect of legal, organisational or financial conditions, including the net assets, financial position, results of operations and risk position of the CRR credit institution, and if the deficiency is capable of increasing the risk that a compensation event might occur, the compensation scheme can request the CRR credit institution to report to it about the measures the CRR credit institution has planned to rectify the deficiency and their implementation.

(2) This shall not affect the powers of the statutory compensation scheme under section 35.

#### Section 40

#### **Notification of BaFin**

If, in the course of an inspection in accordance with section 35 or by other means, the statutory

compensation scheme becomes aware of circumstances that give rise to or increase the risk that a compensation event might occur at a CRR credit institution, it shall notify BaFin without undue delay.

## **Part 4**

### **Exclusion from the statutory compensation scheme and administrative procedures**

#### **Section 41**

##### **Exclusion from the statutory compensation scheme; legal consequences**

(1) If a CRR credit institution does not comply with its obligations to pay contributions, make payments, or cooperate in accordance with section 7 (8), sections 26, 27, 35, 36, 38 and 39, or does not comply with them correctly, in full or in good time, the statutory compensation scheme to which the CRR credit institution is assigned shall notify BaFin and the Deutsche Bundesbank.

(2) BaFin shall request the CRR credit institution to comply with its obligations to the statutory compensation scheme within one month of being requested by BaFin to do so. If the CRR credit institution does not comply with its obligations within the period specified in sentence 1 above, the compensation scheme may notify the CRR credit institution that it will be excluded from the compensation scheme, giving a notice period of a further month. If the CRR credit institution has not complied with its obligations after the expiry of the notice period for exclusion under sentence 2 above, the compensation scheme concerned shall exclude the CRR credit institution, with the approval of BaFin.

(3) The statutory compensation scheme shall continue to fully cover deposits that have been received up to the date of the exclusion of the CRR credit institution under subsection (2) sentence 3 above, as provided for under this Act.

(4) The excluded CRR credit institution shall notify its depositors without undue delay about its exclusion from the statutory compensation scheme and the legal consequences of exclusion.

#### **Section 42**

##### **Sanctions**

(1) Compliance with the administrative acts that the statutory compensation scheme imposes within its statutory powers shall be enforced by means of sanctions in accordance with the provisions of the Act on Administrative Enforcement.

(2) In the case of measures in accordance with section 26 (1) sentence 1, section 34 sentences 1 and 2, section 35 (2), section 36 (3) sentence 1 and subsection (4) sentences 1 and 2, a coercive fine of up to €50,000 can be imposed, and in the case of measures in accordance with section 35 (1) sentence 1, a coercive fine of up to €100,000 can be imposed.

## **Chapter 3**

### **Institutional protection schemes recognised as deposit guarantee schemes**

#### **Part 1**

##### **Recognition of institutional protection schemes and ongoing obligations**

#### **Section 43**

##### **Conditions for recognising institutional protection schemes**

(1) An institutional protection scheme can on application be recognised by BaFin as a deposit guarantee scheme if the institutional protection scheme

- 1 assumes responsibility for compensating depositors of the CRR credit institutions that are members of the scheme as provided for in sections 5 to 16,
- 2 complies with the requirements of Article 113(7) of Regulation (EU) No 575/2013 and
- 3 offers reasonable assurance that it can properly perform its functions under this Act.

(2) An institutional protection scheme shall offer reasonable assurance that it can properly perform

its functions under this Act if

- 1 the scheme has at least two persons at its disposal who manage and represent the scheme under the law or the articles of association and are fit and proper,
- 2 the management of the scheme is overseen by a supervisory body and the members of this supervisory body are trustworthy in accordance with section 25d (1) of the Banking Act and have the necessary expertise to fulfil their control function,
- 3 the scheme has the technical and human resources it needs to perform the functions of a deposit guarantee scheme under this Act, and has an organisation and a decision-making structure that will safeguard in particular the compensation of depositors, the collection of contributions and the administration of funds,
- 4 the available financial means in accordance with section 18 are administered and invested separately from the other assets of the scheme and
- 5 the articles of association of the institutional protection scheme comply with the minimum requirements of section 47 (1) and (2).

#### Section 44

#### **Application for recognition**

(1) The application for recognition shall in particular include the following documents and information:

- 1 a savings plan as provided for in subsection (2) below;
- 2 the statutes or articles of association and the fundamental contractual arrangements of the institutional protection scheme;
- 3 the names of the persons in accordance with section 43 (2) number 1 and the members of the supervisory body in accordance with section 43 (2) number 2, as well as information about the facts needed for the fit and proper assessment;
- 4 the guidelines and legal bases for the inspection of the CRR credit institutions that are members of the institutional protection scheme with regard to risks that are relevant to compensation;
- 5 an organisational plan that describes the decision-making structure of the institutional protection scheme;
- 6 information about the obligations to the institutional protection scheme of the CRR credit institutions that are members of the institutional protection scheme, in particular about the obligations to submit adopted annual financial statements together with the associated audit report, as well as the information obligations in accordance with section 34 (1).

(2) A savings plan shall contain the following information:

- 1 information about the current financial resources of the scheme and the expected development of its financial resources;
- 2 detailed information about the collection of annual and extraordinary contributions from the CRR credit institutions that are members of the institutional protection scheme;
- 3 information about the risk-based collection of contributions in accordance with section 19 and
- 4 information about the covered deposits held by the CRR credit institutions that are members of the institutional protection scheme.

The savings plan shall also contain estimates of how measures in accordance with section 49 could affect the length of the accumulation phase in the future, and shall also consider their effects. To the extent that the target level is expected to be reached by means of payment commitments in accordance with section 18 (2), information shall be disclosed about compliance with the requirements of section 18 (2).

#### Section 45

#### **Notification obligations**

(1) The recognised institutional protection schemes shall notify BaFin without undue delay of the following:

- 1 a resolution to amend their articles of association;
- 2 the appointment of a person in accordance with section 43 (2) number 1, together with information

- about the facts that are material for that person's fit and proper assessment;
- 3 the withdrawal of a person in accordance with section 43 (2) number 1;
  - 4 of the appointment of a member of the supervisory body in accordance with section 43 (2) number 2, together with information about the facts that are needed to assess whether that person is trustworthy and has the necessary expertise;
  - 5 the withdrawal of a member of the supervisory body in accordance with section 43 (2) number 2;
  - 6 the intention of the governing bodies of the scheme to bring about a decision on the relinquishment of recognition in accordance with section 43 or the liquidation of the institutional protection scheme.
- (2) The savings plan in accordance with section 44 (2) shall be updated annually and submitted to BaFin by 10 February each year.

#### Section 46

### **Revocation of recognition; legal consequences**

(1) If the conditions for recognition in accordance with section 43 no longer apply, BaFin may revoke the recognition. Objections to and appeals against the revocation do not have suspensory effect.

(2) The institutional protection scheme shall inform the CRR credit institutions that are currently its members about the revocation of recognition and shall notify them of the statutory compensation scheme to which they have been assigned in accordance with section 24 (1).

(3) On receipt of the revocation, the institutional protection scheme shall transfer to the statutory compensation scheme to be nominated by BaFin within five working days the available financial means up to the amount stated in section 17 (2), including claims against the CRR credit institutions on the basis of existing payment commitments under section 18 (2).

(4) If the CRR credit institutions concerned are assigned to different statutory compensation schemes, the available financial means shall be divided up in proportion to the amount of covered deposits of the CRR credit institutions concerned. Temporarily covered deposits in accordance with section 8 (2) shall not be included.

## **Part 2**

### **Minimum requirements for the articles of association; withdrawal of a CRR credit institution from a recognised institutional protection scheme**

#### Section 47

### **Requirements for the articles of association and amendments to the articles of association; withdrawal of a CRR credit institution from a recognised institutional protection scheme**

(1) At a minimum, the articles of association of a recognised institutional protection scheme shall govern the following matters:

- 1 the collection of contributions in accordance with section 48;
- 2 the conditions for implementing measures as provided for in section 49;
- 3 inspection rights and rights to receive information in accordance with sections 34 and 35 relating to the CRR credit institutions that are members of the recognised institutional protection scheme and arrangements governing suitable measures that can be used to enforce these rights;
- 4 the conditions relating to and the extent of the disclosure of own and third-party secrets to BaFin, in particular business and trade secrets of the scheme and its member CRR credit institutions, in accordance with the arrangements governing a deposit guarantee scheme under this Act or the Banking Act;
- 5 arrangements authorising the recognised institutional protection scheme to take out loans;
- 6 in the event of revocation, provisions governing the transfer of assets in accordance with section 46 (3) to another deposit guarantee scheme to be nominated by BaFin;
- 7 arrangements governing the exclusion of CRR credit institutions from the scheme in accordance with section 41, whereby section 41 (2) shall be implemented subject to the condition that measures relating to the CRR credit institution are undertaken by the recognised institutional protection scheme with the approval of BaFin.

(2) Any amendment to the articles of association of a recognised institutional protection scheme shall only become effective three months after its notification in accordance with section 45 (1), unless BaFin determines prior to that date that it has no objections.

(3) If a recognised institutional protection scheme has excluded a CRR credit institution from the scheme in accordance with section 41 (2) sentence 3 with the approval of BaFin, BaFin shall notify the CRR credit institution that it has determined that the CRR credit institution is no longer a member of a deposit guarantee scheme in accordance with section 1 sentence 1. The exclusion by the recognised institutional protection scheme shall become effective when BaFin's determination in accordance with sentence 1 above is immediately enforceable or final and absolute.

(4) If a CRR credit institution leaves a recognised institutional protection scheme it shall, in accordance with section 24 (1), be assigned to a statutory compensation scheme. Section 25 (2) shall apply *mutatis mutandis*. Sentences 1 and 2 above shall not apply in the case of an exclusion undertaken in accordance with subsection (3) above.

#### Section 48

### **Collection of contributions by recognised institutional protection schemes**

(1) The collection of contributions by a recognised institutional protection scheme shall be governed by its articles of association.

- (2) At a minimum, the articles of association shall provide that
- 1 the financial means needed to reach the target level in accordance with section 17 (2) shall be raised at least once a year by contributions to the institutional protection scheme;
  - 2 extraordinary contributions shall be collected in the event that the available financial means are insufficient to compensate the depositors if a compensation event occurs;
  - 3 several extraordinary contributions and extraordinary payments may only be collected in a single contribution assessment year if the conditions set out in section 27 (4) sentences 2 and 3 are met;
  - 4 the collection of an extraordinary contribution or an extraordinary payment can be deferred in accordance with section 27 (5) if the aggregate amount of payments to be made to the recognised institutional protection scheme would jeopardise a CRR credit institution's ability to discharge its obligations to its creditors;
  - 5 the CRR credit institutions that are members of the scheme are required to pay their contributions on first demand and to issue a corresponding guarantee.

(3) The articles of association may provide for the collection of minimum contributions from the CRR credit institutions. The articles of association of the recognised institutional protection scheme shall govern the further details of the calculation and collection of annual contributions and extraordinary contributions. If payment commitments of a CRR credit institution to the institutional protection scheme in accordance with section 18 (2) and (3) are included, the requirements governing these payment commitments shall be governed by the articles of association.

(4) BaFin shall notify the European Banking Authority of the requirements of the articles of association governing the collection of contributions.

## **Part 3**

### **Support measures by recognised institutional protection schemes**

#### Section 49

### **Support measures implemented by recognised institutional protection schemes**

(1) To avoid the viability of a member CRR credit institution as a going concern from being jeopardised, a recognised institutional protection scheme shall have the right to implement measures to avert going concern risk, in particular to safeguard that CRR credit institution's liquidity and solvency, provided that

- 1 the protection scheme has appropriate systems and procedures in place for selecting and implementing such measures and monitoring affiliated risks,
- 2 the liquidation institution has not taken any resolution action under section 62 of the Recovery and

Resolution Act,

- 3 the costs of this measure do not exceed the costs needed to perform the functions of the institutional protection scheme,
- 4 this measure is linked to conditions imposed on the CRR credit institution that is being supported, involving at least more stringent risk monitoring and greater inspection rights for the recognised institutional protection scheme compared with the existing arrangements,
- 5 this measure is linked to a commitment by the CRR credit institution being supported with a view to securing access for depositors to covered deposits and
- 6 based on an assessment, BaFin confirms that the CRR credit institutions that are members of the institutional protection scheme are able to pay the extraordinary contributions to be collected in accordance with subsection (3) below.

The articles of association of the protection scheme shall govern the further details. The protection scheme shall consult BaFin on the measures and the conditions imposed on the CRR credit institution.

(2) If, after consulting the resolution authority, BaFin determines that the conditions for taking resolution action under section 62 of the Recovery and Resolution Act have been met, the measures referred to in subsection (1) above shall not be taken.

(3) If the recognised institutional protection scheme uses the available financial means for measures in accordance with subsection (1) above, it shall ensure that its member CRR credit institutions shall without undue delay replenish the financial means used for the measures, where necessary in the form of extraordinary contributions, where

- 1 the need to reimburse depositors arises and the available financial means amount to less than two-thirds of the target level in accordance with section 17 (2) or
- 2 the available financial means fall below 25% of the target level in accordance with section 17 (2).

## Chapter 4

### Supervision and inspection rights

#### Section 50

#### **Supervision of deposit guarantee schemes**

(1) Deposit guarantee schemes are subject to supervision by BaFin.

(2) BaFin shall counteract undesirable developments that could impair the proper conduct of compensation activities or that could endanger the financial means available to conduct compensation activities. BaFin may issue orders that are appropriate and necessary to rectify or prevent such undesirable developments. If persons who manage and represent the deposit guarantee scheme by virtue of the law or the articles of association intentionally or recklessly breach the requirements of this Act, regulations issued to implement this Act or orders issued by BaFin, and if they persist in this behaviour even after being warned by BaFin, BaFin may require their dismissal and may prohibit them from carrying out their activities.

(3) BaFin shall have the right to receive information from and to inspect the deposit guarantee schemes in accordance with section 44 (1), (4) and (5) of the Banking Act.

(4) If BaFin becomes aware of circumstances at a CRR credit institution that will probably result in the occurrence of a compensation event, it shall inform the deposit guarantee scheme to which the CRR credit institution has been assigned of this.

#### Section 51

#### **Inspections by BaFin**

If BaFin is notified by a deposit guarantee scheme of circumstances that could give rise to the risk that a compensation event might occur at a CRR credit institution that is a member of that deposit guarantee scheme, it shall examine without undue delay whether there is a need to institute supervisory measures against the CRR credit institution.



## Section 52

### **Inspections of deposit guarantee schemes**

(1) After the end of each calendar year, deposit guarantee schemes shall prepare an annual report, which they shall submit to BaFin and the Deutsche Bundesbank by 31 May of each year.

(2) The annual report shall contain the following information:

1. information on the activities and the financial position of the deposit guarantee scheme, in particular the amount of the available financial means and how they are invested, as well as their use for compensation events,
2. information on the level of contributions,
3. information on administrative costs and
4. an updated version of the savings plan in accordance with section 45 (2).

## Section 53

### **Audit report**

(1) The deposit guarantee schemes shall engage a German public auditor or a German public auditing firm to audit the annual report for completeness and for the accuracy of the information in it. The deposit guarantee schemes shall notify BaFin of the auditor they have engaged without undue delay following their engagement. Within one month of receiving of such notification, BaFin may request the engagement of a different auditor if this appears necessary to achieve the object of the audit; objections to and appeals against such requests do not have suspensory effect.

(2) The auditor shall submit the report on the audit of the annual report to BaFin and the Deutsche Bundesbank without undue delay on completion of the audit.

(3) The deposit guarantee schemes shall also notify BaFin and the Deutsche Bundesbank on request about the information in accordance with section 52 (2) contained in the annual report. Section 9 of the Banking Act shall apply *mutatis mutandis*.

## Section 54

### **Stress tests of systems**

(1) The deposit guarantee schemes shall perform stress tests to verify the proper functioning of their systems at regular intervals, and at least every three years. The first test shall be performed by 3 July 2017.

(2) The deposit guarantee schemes shall use the information necessary to perform stress tests of their systems for this purpose only. They shall keep such information no longer than is necessary for this purpose.

(3) BaFin shall be informed about the results of the stress tests. It shall forward the results to the European Banking Authority.

## Section 55

### **Audit by the Federal Court of Auditors (*Bundesrechnungshof*)**

(1) The Federal Court of Auditors (*Bundesrechnungshof*) shall examine the budget and financial management of the deposit guarantee schemes. Sections 89, 90 and 92 to 100 of the Federal Budget Regulation (*Bundeshaushaltsordnung*) shall apply *mutatis mutandis*. In the case of recognised institutional protection schemes, the audit shall be limited to the proper and cost-effective performance of their functions relating to the compensation of depositors in accordance with sections 5 to 16 as well as their financing and target level in accordance with sections 17 to 19.

(2) The Federal Court of Auditors shall be notified without undue delay if supreme federal authorities issue, or issue guidance on, general requirements affecting the deposit guarantee schemes that relate to the subject matter of the audit in accordance with subsection (1) above. The Federal Court

of Auditors shall be consulted before such requirements are issued.

## Chapter 5

### Cooperation with other deposit guarantee schemes

#### Section 56

##### **Branches of domestic CRR credit institutions in another state of the European Economic Area**

(1) A deposit guarantee scheme shall protect the deposits of a branch of a member CRR credit institution in another state of the European Economic Area. To enable investors to be compensated by the deposit guarantee scheme of the host member state on behalf of and in accordance with the instructions of the domestic deposit guarantee scheme, the domestic deposit guarantee scheme shall provide the necessary funding for compensating depositors to the deposit guarantee scheme of the host member state prior to payout and shall compensate the latter for the costs incurred for the compensation procedure.

(2) The domestic deposit guarantee scheme shall provide the deposit guarantee scheme of the host member state with the information needed to make preparations for compensating depositors and for performing stress tests. The domestic deposit guarantee scheme shall use appropriate procedures to safeguard the effective exchange of information with other deposit guarantee schemes, their member CRR credit institutions, supervisory authorities and with other agencies on a cross-border basis, where appropriate.

(3) In order to facilitate effective cooperation between deposit guarantee schemes in accordance with subsections (1) and (2) above, the domestic deposit guarantee schemes shall enter into a cooperation agreement with the deposit guarantee scheme of the host member state. The domestic deposit guarantee schemes shall notify BaFin of the existence and content of the agreements. BaFin shall notify them to the European Banking Authority.

#### Section 57

##### **Branches of CRR credit institutions which have their registered office in another state of the European Economic Area**

(1) A domestic deposit guarantee scheme under this Act is responsible for repaying deposits of branches of a CRR credit institution which has its registered office in another state of the European Economic Area on behalf of and in accordance with the instructions of the deposit guarantee scheme of the home member state, to the extent that the domestic deposit guarantee scheme has received from the deposit guarantee scheme of the home member state the necessary funding to compensate depositors prior to payout, as well as the costs incurred for the compensation procedure. Repayment can be deferred in accordance with section 15 (2). The deposit guarantee scheme shall not bear any liability with regard to acts done in accordance with the instructions of the deposit guarantee scheme of the home member state.

(2) The deposit guarantee scheme is entitled to receive correspondence from the depositors on behalf of the deposit guarantee scheme of the home member state and shall provide information to the depositors concerned on behalf of that deposit guarantee scheme.

(3) BaFin shall request the branch to nominate the deposit guarantee scheme in the home member state that is responsible for it and shall designate the domestic deposit guarantee scheme that is responsible for this branch for the purposes of subsection (1) above. The domestic deposit guarantee scheme designated by BaFin shall seek to ensure that a cooperation agreement within the meaning of section 56 (3) is entered into with the deposit guarantee scheme of the home member state without undue delay. Section 56 (3) sentences 2 and 3 shall apply *mutatis mutandis*.

#### Section 58

##### **Payment of contributions if activities of a CRR credit institution are transferred**

If some of the activities of a CRR credit institution are transferred to another CRR credit institution in another state of the European Economic Area and thus become subject to another deposit guarantee

scheme in the European Economic Area outside the scope of this Act, the contributions of that CRR credit institution paid during the last 12 months preceding the transfer, with the exception of extraordinary contributions and extraordinary payments in accordance with section 27 (1) numbers 1 and 2, shall be transferred to the other deposit guarantee scheme in proportion to the amount of covered deposits transferred.

#### Section 59

### **Branches of CRR credit institutions which have their registered office in third countries**

(1) If domestic branches of a CRR credit institution that has its registered office outside the European Economic Area have deposit protection that is equivalent to that provided for in this Act, BaFin shall on application exempt this branch from assignment in accordance with section 24 (1). The protection shall be regarded as equivalent if only the deposits designated in section 6 are excluded from protection and depositors' deposits are protected by a coverage level that is at least equivalent to that provided for in section 8 (1).

(2) A branch of a CRR credit institution that has its registered office outside the European Economic Area, and that is not a member of a deposit guarantee scheme under this Act, shall provide to the depositors of this branch all significant information concerning the guarantee arrangements for their deposits. The information referred to in sentence 1 above shall be made available in the language that was agreed by the depositors and the CRR credit institution when the account was opened, or in German, and shall be clear and comprehensible.

#### Chapter 6

### Provisions concerning administrative fines

#### Section 60

### **Provisions concerning administrative fines**

(1) A person who, wilfully or recklessly, contrary to section 34 (1) does not submit annual financial statements together with the associated audit report or does not do so correctly, in full or in good time, commits an administrative offence.

- (2) A person commits an administrative offence if they, wilfully or recklessly,
- 1 contrary to section 34 (1) do not provide information requested or do not do so correctly, in full or in good time, or do not submit a document or do not do so correctly, in full or in good time or
  - 2 contrary to section 41 (4), do not provide information or do not do so correctly, in full or in good time.

(3) The administrative offence carries a fine of up to €100,000.

(4) The administrative authority within the meaning of section 36 (1) number 1 of the Act on Administrative Offences is BaFin.

#### Part 4

### Institutional protection schemes and deposit guarantee schemes that are not recognised

#### Section 61

### **Requirements for schemes that are not recognised**

(1) Section 3 (2), section 41 (4) and section 23a (1) sentence 9 of the Banking Act shall apply *mutatis mutandis* to contractual schemes to protect deposits and institutional protection schemes that are not recognised as deposit guarantee schemes, as well as to their member CRR credit institutions. Schemes that are subject to a legal obligation to compensate depositors shall have in place adequate financial means or relevant financing arrangements to enable them to fulfil their obligations.

(2) Without prejudice to any existing supervision by other government bodies with regard to the requirements of subsection (1) above, schemes in accordance with subsection (1) above are subject to

supervision and inspection by BaFin. Section 44 (1) of the Banking Act shall apply *mutatis mutandis*.

## Part 5 Concluding provisions

### Section 62 **Non-application of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*)**

The provisions of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) shall not apply to deposit guarantee schemes.

### Section 63 **Transitional provisions**

(1) Sections 3 to 5 of the Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz*) of 16 July 1998 (Federal Law Gazette I page 1842), as most recently amended by Article 6 of the Act of 15 July 2014 (Federal Law Gazette I page 934), shall continue to apply in the version in force until that date to compensation events determined before the entry into force of the Deposit Guarantee Act (*Einlagensicherungs-gesetz*) of 28 May 2015 (Federal Law Gazette I page 786).

(2) Until the amounts designated in section 17 (2) have been reached for the first time, the thresholds in accordance with section 49 (3) shall not apply in relation to these amounts, but to the existing available financial means.

(3) Section 8 of the Deposit Guarantee and Investor Compensation Act of 16 July 1998 (Federal Law Gazette I page 1842), as most recently amended by Article 6 of the Act of 15 July 2014 (Federal Law Gazette I page 934), and the provisions of the Regulation on Contributions to the Compensation Scheme of German Banks (*EdB-Beitragsverordnung*) of 10 July 1999 (Federal Law Gazette I page 1540) issued in accordance with section 8 (8) sentence 1 of the Deposit Guarantee and Investor Compensation Act, as most recently amended by Article 5 of the Regulation of 30 January 2014 (Federal Law Gazette I page 322), and the Regulation on Contributions to the Compensation Scheme of the Association of German Public Sector Banks (*EdVÖB-Beitragsverordnung*) of 10 July 1999 (Federal Law Gazette I page 1538), as most recently amended by Article 4 of the Regulation of 30 January 2014 (Federal Law Gazette I page 322), shall continue to apply to the annual contributions, one-time payments, extraordinary contributions and extraordinary payments to be collected for contribution assessment years ending on or before 30 September 2014.

(4) By way of derogation from section 19 (2) to (4), the annual contributions for the contribution assessment year ending on 30 September 2015 for the CRR credit institutions assigned in accordance with section 24 (1) numbers 1 and 2 shall be collected in accordance with section 8 of the Deposit Guarantee and Investor Compensation Act of 16 July 1998 (Federal Law Gazette I page 1842), as most recently amended by Article 6 of the Act of 15 July 2014 (Federal Law Gazette I page 934), and the provisions of the Regulation on Contributions to the Compensation Scheme of German Banks of 10 July 1999 (Federal Law Gazette I page 1540) issued in accordance with section 8 (8) sentence 1 of the Deposit Guarantee and Investor Compensation Act, as most recently amended by Article 5 of the Regulation of 30 January 2014 (Federal Law Gazette I page 322), and the Regulation on Contributions to the Compensation Scheme of the Association of German Public Sector Banks of 10 July 1999 (Federal Law Gazette I page 1538), as most recently amended by Article 4 of the Regulation of 30 January 2014 (Federal Law Gazette I page 322).

(5) The articles of association of a recognised institutional protection scheme in accordance with section 47 (1) may permit the collection of the annual contribution by the protection scheme for the contribution year ending in 2015 to depart from the requirements of this Act.