Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz,* EAEG)

In the wording of the announcement of
16 July 1998 (German Federal Gazette I, p 1842)
Last amended by
Article 1 of the Act of 25 June 2009* (German Federal Gazette I, p 1528).

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*Articles 1 and 2 of this Act serve to implement Directive 2009/14/EC amending Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on

deposit-guarantee schemes as regards the coverage level and the payout delay (OJ L 68 of 13 March 2009, p 3).

- Unofficial text -

Section 1
Definitions

(1) Institutions within the meaning of this Act are

1. deposit-taking credit institutions within the meaning of section 1 (3d) sentence 1 of the German Banking Act (*Gesetz über das Kreditwesen*) which have been granted authorisation pursuant to section 1 (1) sentence 2 numbers 1 and 2 of the Banking Act,

2. credit institutions which have been granted authorisation to conduct banking business within the meaning of section 1 (1) sentence 2 number 4 or 10 of the Banking Act or to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or sentence 3 of the Banking Act,

3. financial services institutions which have been granted authorisation to provide financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 or sentence 3 of the Banking Act, and

4. German asset management companies (*Kapitalanlagegesellschaften*) within the meaning of section 2 (6) of the Investment Act (*Investmentgesetz*) which have been granted authorisation pursuant to section 7 (1) of the Investment Act and which are authorised to provide the services and ancillary services specified in section 7 (2) numbers 1, 3 and 4 of the Investment Act.

(2) Deposits within the meaning of this Act are credit balances which result from funds left in an account or from intermediate positions within the scope of the business operations of an institution within the meaning of subsection (1) number 1 and which are repayable by same under statutory or contractual provisions. Deposits also include claims which the institution has securitised by issuing a certificate, although not bearer or order debt securities, debt instruments which meet the conditions of Article 22 (4) of Regulation 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ EC L 375 p 3), as well as liabilities arising from own bills.

(3) Securities transactions within the meaning of this Act are banking business or financial services within the meaning of section 1 (1) sentence 2 number 4, 5 or 10 or subsection (1a) sentence 2 numbers 1 to 4 of the Banking Act, or services and ancillary services pursuant to section 7 (2) numbers 1, 3 and 4 of the Investment Act.

(4) Liabilities arising from securities transactions within the meaning of this Act are an institution’s obligations to repay funds owed or belonging to investors from securities transactions and which are held for their account in connection with securities transactions. These also include investors’ claims to the restitution of instruments which they own and which are held or kept in safe custody for their account in connection with securities transactions.

(5) A compensation event within the meaning of this Act occurs if the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht,* hereinafter referred to as BaFin) determines that an institution, for reasons directly related to its financial circumstances, is unable to repay deposits or meet liabilities arising from securities transactions and there is no prospect of the deposits being repaid or of the liabilities being met at a later date.

Section 2
Institutions' obligation to provide cover

Institutions must cover their deposits and liabilities arising from securities transactions as provided for under this Act through membership of a compensation scheme.

Section 3
Claim to compensation

(1) If a compensation event occurs, the creditor of an institution has a right to compensation as provided in section 4 from the compensation scheme to which the institution has been assigned.

(2) No claim to compensation pursuant to subsection (1) will be granted to

1. institutions within the meaning of section 1 (1) number 1 and financial institutions within the meaning of Article 1 (6) of Directive 89/646/EEC of the Council of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ EC L 386, p 1) which are domiciled in Germany or abroad, if they are acting in their own name and for their own account,

2. private and public insurance companies domiciled in Germany or abroad,

3. German asset management companies, including the common funds managed by them, or investment stock corporations or collective investment undertakings domiciled abroad,

4. the German Federal Government, a German state government, a legally dependent special fund of the German Federal Government or a German state government, a German local authority, or the national government, a regional government or a local authority of another country,

5. managers, general partners or members of supervisory bodies of the institution, persons holding 5% or more of the institution's capital, auditors within the meaning of section 28 of the Banking Act and creditors with a similar status or function in an enterprise which, together with the institution, constitutes a group as defined in section 18 of the Stock Corporation Act (*Aktiengesetz*), irrespective of its legal form,

6. spouses, registered partners and first and second-degree relatives of the persons referred to in number 5, unless the deposits, funds or financial instruments stem from the spouses' or relatives' own assets,

7. enterprises which, together with the institution, constitute a group within the meaning of section 18 of the Stock Corporation Act, irrespective of its legal form,

8. creditors who were instrumental in initiating or have taken advantage of particular circumstances at the institution, especially if they have received high interest rates or financial advantages by virtue of individually negotiated agreements, which gave rise to the financial difficulties or significantly contributed to the deterioration of the institution's financial situation,

9. enterprises which, pursuant to the provisions of the third book of the Commercial Code (*Handelsgesetzbuch*), are obliged to compile a management report or are exempted from this obligation only because of their inclusion in consolidated financial statements, comparable enterprises domiciled abroad, and

10. creditors whose claims on the institution are connected to transactions as a result of which a criminal conviction has been obtained against certain persons for money laundering within the meaning of Article 1 of Directive 91/308/EEC of the Council of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering (OJ EC L 166 p 77).

If the creditor of an institution has acted for the account of a third party, determination of the claim to compensation in accordance with sentence 1 shall relate to the third party insofar as the fiduciary relationship is clearly labelled as such in the account designation.

(3) The claim of the person entitled to compensation (compensatee) on the compensation scheme is statute-barred after five years.

(4) Disputes about the reasons for and the amount of the claim to compensation shall be settled in the civil courts.

Section 4
Scope of the claim to compensation

(1) The claim to compensation of the creditor of the institution is based on the amount and scope of the creditor's deposits or of the liabilities to the creditor arising from securities transactions, taking account of any set-off and retention rights of the institution. There is no claim to compensation if deposits or funds are not denominated in the currency of an EU member state or in euro.

(2) The amount of the claim to compensation is limited to

1. the equivalent of €50,000 of the deposits, and

2. 90 per cent of the liabilities arising from securities transactions and the equivalent of €20,000.

Liabilities arising from securities transactions of an institution within the meaning of section 1 (1) number 1 authorised to conduct banking business or provide financial services within the meaning of section 1 (1) sentence 2 number 4 or 10 or subsection (1a) sentence 2 numbers 1 to 4 of the Banking Act are deemed to be deposits provided that the liabilities refer to the institution's obligation to obtain the possession or ownership of funds for its customers.

(3) The calculation of the amount of the claim to compensation shall be based on the amount of the deposits or monetary amounts and the market value of the financial instruments upon the occurrence of the compensation event. The claim to compensation includes, up to the limits pursuant to subsection (2), claims to interest. Interest accrues starting on the occurrence of the compensation event up to repayment of the liabilities, and at the latest up to the initiation of insolvency proceedings. The claim to compensation is reduced insofar as the asset loss sustained by the creditor as a result of the compensation event is offset by payments by third parties.

(4) The limit pursuant to subsection (2) refers to the creditor's aggregate claim on the institution, irrespective of the number of accounts, the currency or the location at which the accounts are maintained or the financial instruments are held. The compensation may be paid in euro.

(5) In the case of joint accounts, the limit pursuant to subsection (2) is based on each account holder's relative share. In the absence of special provisions, the deposits, monetary amounts or financial instruments will be attributed to the account holders in equal parts.

(6) If the creditor has acted for the account of a third party, the limit pursuant to subsection (2) shall apply to the third party.

Section 5
Compensation procedure

(1) BaFin shall determine that a compensation event has occurred promptly, but no later than five working days after it has come to its notice that an institution is unable to repay deposits and no later than 21 days after it has come to its notice that an institution is unable to meet obligations arising from securities transactions. It shall also determine that a compensation event has occurred if measures pursuant to section 46a (1) numbers 1 to 3 of the Banking Act have been ordered and they continue for more than six weeks. Objections to and appeals against the determination of a compensation event do not have suspensory effect. BaFin will publicise compensation events which have been determined pursuant to sentences 1 and 2 in the Federal Gazette (*Bundesanzeiger*). BaFin will promptly notify the compensation scheme to which the institution has been assigned of the determination of a compensation event.

(2) The compensation scheme shall promptly notify the institution's creditors of the occurrence of a compensation event and of the deadline pursuant to subsection (3) sentence 1; it will take appropriate measures to compensate the creditors within the period specified in subsection (4). To this end, the institution shall make the documents necessary for the creditors’ compensation available to the compensation scheme promptly, and at the latest within one week.

(3) The claim to compensation shall be submitted to the compensation scheme in writing within one year from the date of notification that a compensation event has occurred. The right to compensation is barred after expiry of this period unless the compensatee is not responsible for failing to meet the deadline.

(4) The compensation scheme shall examine the submitted claims promptly. The compensation scheme shall meet duly examined claims which are intended to provide compensation for deposits no later than 20 working days after BaFin has determined that a compensation event has occurred. The compensation scheme shall meet claims which are submitted later than two weeks after the occurrence of a compensation event has been determined no later than 20 working days after receiving the claim. Section 4 (2) sentence 2 shall apply *mutatis mutandis*. In special cases, subject to BaFin's approval, the deadline pursuant to sentences 2 and 3 may be extended up to 30 working days . The compensation scheme shall meet claims which are intended to provide compensation for the institution’s liabilities arising from securities transactions no later than three months after it has established eligibility and the amount of the claims. In special cases, subject to BaFin's approval, this period may be extended by up to three months.

(5) Insofar as the compensation scheme meets a compensatee's claim to compensation, the latter's claims on the institution are transferred to the compensation scheme.

(6) If the creditor's claim is connected to business as a result of which persons are under investigation in criminal proceedings in relation to money laundering within the meaning of Article 1 of Directive 2005/60/EC, the compensation scheme may suspend payment of compensation until the proceedings have been terminated.

Section 6
Compensation schemes

(1) Compensation schemes will be set up at the KfW banking group (*Kreditanstalt für Wiederaufbau*) as special Federal funds having no legal personality for each of the categories of institutions referred to in sentence 2.

The categories of institutions are

1. private institutions within the meaning of section 1 (1) number 1,
2. public institutions within the meaning of section 1 (1) number 1, and
3. other institutions.

The compensation schemes may act, sue or be sued in legal actions.

(2) BaFin may, upon request, assign an institution to another compensation scheme if

1. the institution is able to demonstrate a justified interest in the assignment requested,

   this does not jeopardise the performance of the function pursuant to subsection (3) of the compensation scheme to which the institution belongs, and

2. the other compensation scheme agrees to the assignment requested.

BaFin may also assign institutions to other compensation schemes if all institutions belonging to one compensation scheme have requested to be assigned to other compensation schemes and these compensation schemes agree to the assignment requested. Contributions and payments which an institution has paid within its previous compensation scheme are not transferred to the new compensation scheme; this also applies if there is a change of compensation scheme by law because the authorisation remit has changed. Details of the liquidation and winding-up of the compensation scheme to which the institutions were hitherto assigned will be regulated by the Federal Ministry of Finance by way of a statutory order.

(3) The compensation schemes are responsible for collecting contributions from the institutions assigned to them, for investing the funds pursuant to section 8 (1) and, if a compensation event occurs, for compensating the creditors of an institution assigned to them for deposits not repaid or for unfulfilled liabilities arising from securities transactions.

(4) The KfW banking group manages the compensation schemes. To that extent it is subject to supervision by BaFin. Section 7 (3) sentences 2 to 4 shall apply *mutatis mutandis*. It receives reasonable remuneration from the special funds for managing the schemes.

(5) BaFin decides on objections to administrative acts by the compensation scheme.

(6) The compensation schemes shall regularly review the functional viability of their systems. They shall inform BaFin of the results of such reviews.

(7) If BaFin becomes aware of circumstances at an institution which threaten to give rise to the occurrence of a compensation event, it shall duly inform the compensation scheme to which the institution has been assigned.

Section 7
Entrusted compensation schemes

(1) The Federal Ministry of Finance shall be authorised to assign, by way of a statutory order, functions and powers of a compensation scheme to a legal person under private law if the latter is prepared to take over the functions of the compensation scheme and offers reasonable assurance that the claims of compensatees will be met (entrusted compensation scheme). A legal person offers adequate assurance if

1. the persons responsible according to law or the articles of association or incorporation for managing and representing the legal person are trustworthy and have the necessary professional qualifications,

2. it has the facilities and organisation necessary to perform its functions, in particular to collect contributions, manage the funds and pay compensation claims, and for this purpose has resources of its own equivalent to one million euro or more.

The Federal Ministry of Finance may, by way of the statutory order pursuant to sentence 1, reserve the right to approve the legal person's articles of association or incorporation and changes thereto.

(2) If entrusted with responsibility for the compensation scheme in accordance with subsection (1), the legal person under private law succeeds to the rights and obligations of the compensation scheme concerned in accordance with section 6. The provisions of section 6 (1) and (2) on the assignment of the institutions and of section 6 (5) to (7) shall apply *mutatis mutandis*.

(3) Entrusted compensation schemes are subject to supervision by BaFin. BaFin shall counteract irregularities which may impair the proper handling of the compensation or jeopardise the assets accumulated for paying compensation. BaFin may issue orders that are appropriate and necessary to remedy or prevent such irregularities. BaFin has the right to receive information from and audit the compensation schemes in accordance with section 44 (1) of the Banking Act.

Section 8
Financial resources of compensation schemes

(1) The funds for paying compensation are raised by collecting contributions from the institutions. The institutions are required to pay contributions to the compensation scheme to which they have been assigned. The contributions paid by the institutions must cover the claims on the compensation scheme as well as the administrative and other costs incurred in connection with the compensation scheme's activities. The funds accumulated for compensation purposes shall be invested with a view to diversifying the risk in a way that ensures the greatest possible safety and adequate liquidity of the invested assets paired with a reasonable return.

(2) The institutions are required to pay annual contributions at the end of each accounting year. The accounting year extends from 1 October of one year to 30 September of the following year. An upper limit for the collection of annual contributions shall be specified in the statutory order pursuant to subsection (8) sentence 1. Institutions assigned to a compensation scheme after 1 August 1998 have to make a one-off payment in addition to the annual contribution. Subject to BaFin's approval, the compensation scheme may lower or suspend compulsory contributions if the funds available for paying compensation are sufficient.

(3) After being informed by BaFin of a compensation event pursuant to section 5 (1) sentence 5, the compensation scheme shall promptly determine the amount of funds required and thereafter promptly collect special contributions subject to subsection (4) if this is necessary in order to carry out the compensation procedure. The compensation scheme is entitled to cover the funds needed for a compensation event by way of special contributions, which are to be collected in partial amounts, insofar as the obligation pursuant to section 5 (4) can be met in this way taking into account the duration, size and circumstances of the compensation event. If partial amounts are collected, the compensation scheme shall inform the institutions concerned about the procedure it intends to follow.

(3a) Special contributions are advance payments to cover the funds needed if a compensation event occurs. The funds needed are the aggregate compensation payable in a compensation event plus the administrative and other costs incurred in

handling the compensation event less the funds available to the compensation scheme at the time the compensation event was determined. The compensation scheme shall determine the aggregate compensation on the basis of the documents to be provided by the institutions pursuant to section 5 (2) sentence 2. If the aggregate compensation cannot be determined with an adequate degree of precision on the basis of the documents provided, the compensation scheme shall estimate the amount on the basis, in particular, of the data at its disposal concerning the compensation event, the average compensation payment and the costs incurred in previous compensation events at the institutions assigned to it. If the compensation scheme ascertains that the funds actually needed for the aggregate compensation exceed the amount determined in accordance with sentence 3 or 4, the compensation scheme shall be required to collect further special contributions promptly after establishing this fact in order to cover the need for funds. Special contributions fall due as soon as notification concerning the special contributions is given.

(4) If the funds needed by the compensation scheme cannot be covered in good time to meet its obligations pursuant to section 5 (4) by collecting special contributions, it must take out a loan. If it is expected that the compensation scheme will be unable to service the loan from the available assets, it must collect special payments to cover capital repayments, interest payments and charges. Special payments fall due six weeks prior to maturity of the loan repayments in each case, although no sooner than two weeks after notification concerning the special payments is given. Instead of collecting contributions in accordance with subsection (3) sentence 1, the compensation scheme may take out a loan if it can be expected to repay this loan completely, including interest and charges, within the current and the subsequent accounting year out of the available assets without having to collect special payments.

(5) The obligation to pay special contributions and special payments applies to all enterprises which were allocated to the compensation scheme at the beginning of the accounting year in which a special contribution or special payment is collected. This does not apply to institutions which left the compensation scheme before the occurrence of a compensation event was determined.

(6) The amount of each special contribution and special payment is measured by the ratio of the last full annual contribution payable by each individual institution to the total amount of the annual contributions, one-off payments and, in the cases covered by sentence 3, notional annual contributions by all institutions subject to contribution or payment requirements pursuant to subsection (5). In the case of institutions which have not yet had to pay an annual contribution, the last payable annual contribution shall be replaced by the one-off payment pursuant to subsection (2) sentence 4. In cases covered by sentence 2, the statutory order pursuant to subsection (8) sentence 1 may provide that, at an institution’s request and after presentation of plausible budgeted figures, the compensation schemes calculate a notional annual contribution to replace the last payable annual contribution if this results in a considerable deviation from the institution’s one-off payment. The compensation scheme is entitled to collect several special contributions and special payments in one accounting year. The special contributions and special payments collected in one accounting year may not, in total, exceed five times the last annual contribution payable by an institution or, in the case of institutions which have not yet had to pay an annual contribution, five times the one-off payment or five times the notional annual contribution. If an

institution has paid special contributions or special payments over a period of three consecutive accounting years, special contributions and special payments collected in immediately subsequent years may not exceed, in total, twice the last annual contribution payable by an institution or, in the case of institutions which have not yet had to pay an annual contribution, twice the one-off payment or twice the notional annual contribution in each accounting year. Subject to BaFin's approval, the compensation scheme may wholly or partly exempt an institution from the obligation to pay a special contribution or a special payment if the fulfilment of that institution’s obligations towards its creditors would be jeopardised as a result of the total sum of payments to be made to the compensation scheme.

(7) Upon conclusion of a compensation procedure the compensation scheme shall report to the institutions on the use of the special contributions and special payments. It shall refund special contributions and special payments to the institutions after conclusion of the compensation procedure inasmuch as the special contributions were not used to deal with the compensation event or the special payments were not used to service a loan pursuant to subsection (4) sentences 1 and 2.

(8) Details of the annual contributions, the one-off payments, the special contributions and the special payments are regulated by the Federal Ministry of Finance by way of a statutory order and without requiring approval by the Bundesrat (Upper House of Parliament), after consulting the compensation schemes; the computation of the annual contributions, special contributions and special payments must take due account of the type and scale of the insured transactions, the business volume, and the number, size and business structure of the institutions assigned to the compensation scheme as well as their risk of bringing about a compensation event. The statutory order may also contain provisions on collecting interest on arrears for contributions that are paid late, on raising loans and on investing the funds. The Federal Ministry of Finance may delegate this authority to BaFin by way of a statutory order.

(9) Enforcement on the basis of the contribution notices issued by the compensation scheme will take place in accordance with the provisions of the Administration Enforcement Act (*Verwaltungs-Vollstreckungsgesetz*). The copy of the enforceable decision is issued by the compensation scheme. Objections to and appeals against the contribution notices do not have suspensory effect.

(10) The compensation scheme is liable for meeting the obligations pursuant to section 3 (1) solely with the assets available as a result of the contributions paid after deduction of the costs pursuant to subsection (1) sentence 3. An entrusted compensation scheme shall hold and manage these assets separately from its other assets.

Section 9
Audit of the institutions

(1) The compensation scheme shall perform regular and *ad hoc* audits of the institutions assigned to it in order to assess the risk of a compensation event occurring. It shall gear the intensity and frequency of audits pursuant to sentence 1 to the probability of an institution being faced with compensation event and to the total amount of the compensation likely in such an event. Objections to and appeals against audits pursuant to sentences 1 and 2 do not have suspensory effect.

(2) The institutions are required to promptly submit to the compensation scheme to which they have been assigned their approved annual accounts together with the relevant audit report and, if requested, to provide all the information and present all the documents which the compensation scheme needs to perform its functions under this Act. The staff employed or engaged by the compensation scheme shall be permitted to enter the institution's premises and offices during normal working hours insofar as this is necessary for the compensation scheme to perform its functions under this Act. A person obliged to furnish information may refuse to do so in respect of any questions, the answers to which would place him/her or one of his/her 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 his/her right to refuse to do so.

(3) In the case of an enterprise which 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 audits in order to assess the risk of a compensation event occurring if authorisation is granted.

(4) For the compensation schemes at the KfW banking group, the audits pursuant to subsections (1) and (3) are performed by the Deutsche Bundesbank. On the suggestion of the compensation schemes, BaFin instructs the Deutsche Bundesbank to perform the audits. Entrusted compensation schemes pursuant to section 7 shall have the audits pursuant to subsections (1) and (3) performed by their own expert auditors or commission suitable third parties to perform the audits. Suitable third parties are external auditors, certified public accountants, auditing and public accounting firms as well as other third parties with the requisite skills and experience, unless there are any circumstances which give grounds for suspecting possible conflicts of interest for these persons with regard to the institutions to be audited. The entrusted compensation scheme shall require the persons commissioned with the tasks pursuant to sentence 3 to notify it promptly if such circumstances are found to exist. The audits may not be performed by the auditor of the institution’s accounts or the auditor of the institution’s disclosure obligations and code of corporate governance. The audited enterprises shall reimburse the costs of the audits to the respective compensation scheme. The compensation schemes shall reimburse staff and other operating expenditure to the Deutsche Bundesbank or, in the cases specified in sentence 3, to the suitable third parties.

(5) The compensation scheme specifies the details of the audits in audit guidelines which require the approval of BaFin.

(6) The staff employed by the compensation scheme as well as persons whose services it uses may enter an institution's business premises during normal office and business hours if BaFin has ordered measures pursuant to section 46a of the Banking Act to be carried out against this institution. All documents which they require to prepare a compensation procedure pursuant to section 5 (1) sentences 1 and 2 are to be placed at their disposal. If parts of the institution have been outsourced to another enterprise, sentences 1 and 2 shall apply *mutatis mutandis* to this enterprise.

(7) The institution shall reimburse the compensation scheme’s expenses incurred in executing or preparing a compensation procedure within the meaning of section 5.

(8) If the compensation scheme, while performing an audit pursuant to section 1 or in another way, obtains knowledge of circumstances which substantiate the risk of the occurrence of a compensation event at an institution, it shall notify BaFin promptly.

Section 10
Audit of the compensation schemes

(1) At the end of each calendar year, the compensation schemes shall draw up an annual report and commission an independent external auditor or an independent accounting firm to audit the completeness of the annual report and the correctness of the information given. The compensation schemes shall notify BaFin of the auditor they have appointed promptly after making the appointment. Within one month of receiving of such notification, BaFin may request the appointment 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. The annual report must contain information on the compensation scheme's activities and financial situation, in particular the amount and investment of the funds, the use of the funds to pay compensation claims, the level of the contributions and the administrative costs.

(2) The compensation schemes shall submit the approved annual report to BaFin and the Deutsche Bundesbank by 31 May of each year. The auditor shall submit the report on the audit of the annual report to BaFin and the Deutsche Bundesbank promptly upon completing the audit. BaFin and the Deutsche Bundesbank shall also, at their request, be provided with the information prescribed in subsection (1) sentence 4. Section 9 of the Banking Act shall apply *mutatis mutandis*.

Section 11
Exclusion from the compensation scheme

(1) If an institution fails to meet the contribution or cooperation requirements pursuant to section 8 or section 9, or does not comply with them correctly, in full or in time, the compensation scheme concerned shall notify BaFin and the Deutsche Bundesbank. If the institution also fails to meet its obligations within one month of being called upon by BaFin to do so, the compensation scheme may notify the institution of its exclusion from the compensation scheme after a period of 12 months. Upon expiry of this period the compensation scheme, subject to BaFin's approval, may exclude the institution from the compensation scheme if the institution continues to fail to meet the obligations. Following exclusion, the compensation scheme is liable only for the institution’s obligations which originated before expiry of this period.

(2) If the authorisation to conduct deposit business in accordance with section 1 (1) sentence 2 number 1 of the Banking Act or to conduct investment business in accordance with section 1 (3) is rescinded, the compensation scheme is liable only for the institution’s obligations which originated before the rescission of the authorisation.

Section 12
Schemes safeguarding the viability of institutions

(1) Institutions within the meaning of section 1 (1) number 1 which are members of the guarantee schemes operated by the regional savings bank and giro associations or the guarantee scheme of the Federal Association of German People's Banks and Raiffeisen Banks (*Bundesverband der Deutschen Volksbanken und Raiffeisenbanken*) are not assigned to any compensation scheme as long as these guarantee schemes, by virtue of their statutes, protect the member institutions themselves, in particular safeguard their liquidity and solvency, and have at their disposal the requisite funds (schemes safeguarding the viability of institutions).

(2) Without prejudice to supervision by other government bodies, schemes safeguarding the viability of institutions are subject to supervision and audit by BaFin with regard to the requirements of subsection (1); section 7 (3) sentence 4 and section 10 shall apply *mutatis mutandis*. The schemes safeguarding the viability of institutions are required to notify BaFin of any changes to their statutes. BaFin informs the Federal Ministry of Finance if facts justify the assumption that a scheme safeguarding the viability of institutions does not meet the requirements of subsection (1). After consulting the relevant scheme safeguarding the viability of institutions, the Federal Ministry of Finance may rule that the requirements of subsection (1) are not met.

Section 13
Branches of enterprises domiciled in another state of the European Economic Area

(1) Branches of an enterprise within the meaning of section 53b of the Banking Act have the right to join a compensation scheme on the conditions applying to domestic institutions, insofar as the amount or scope of compensation under this Act exceeds the cover in the enterprise's home state. Admission is conditional on the enterprise having been granted authorisation in its home state to conduct the business of a deposit-taking credit institution or a securities trading firm within the meaning of section 1 (3d) of the Banking Act.

(2) The amount and scope of cover as defined in subsection (1) is limited to that part of the cover which exceeds the cover provided in the home state. No cover is provided for banking business or financial services involving foreign exchange or units of account.

(3) If a branch which has joined a compensation scheme in accordance with subsection (1) fails to meet its obligations towards the compensation scheme, the compensation scheme shall notify BaFin and the Deutsche Bundesbank. BaFin will call on the branch to meet its obligations within a period to be determined by BaFin. If the branch fails to comply with this request, BaFin will notify the competent authorities of the home state which granted the authorisation referred to in subsection (1) sentence 2. BaFin and the competent authorities of the home state, in cooperation with the compensation scheme, will take all the measures necessary to ensure that the branch meets its obligations under this Act.

(4) If the competent authorities of the home state do not take any measures or if the measures provided for in subsection (3) prove to be inadequate, the compensation scheme, with the approval of the competent authorities of the home state, may exclude the branch from the compensation scheme subject to a period of notice of 12 months. Following exclusion, the compensation scheme will be liable only for the branch's obligations which originated before expiry of this period.

(5) The compensation schemes will cooperate, in consultation with BaFin, with the compensation schemes of the home state in the cases described in subsections (1) to (4).

Section 14

(Repealed)

Section 15
Confidentiality requirement

Persons employed or engaged by the compensation scheme may not disclose or use third-party secrets, in particular,business and trade secrets, without being authorised to do so. Under the Act on the Formal Obligation of Persons without Civil Servant Status (*Gesetz über die förmliche Verpflichtung nichtbeamteter Personen*) of 2 March 1974 (Federal Law Gazette I pp 469, 547), they shall be required by BaFin to perform their duties conscientiously. In particular, such disclosure or use without being authorised to do so within the meaning of sentence 1 shall not be deemed to be given if facts are passed on to BaFin or the Deutsche Bundesbank.

Section 16
Non-application of the Insurance Supervision Act

The provisions of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) do not apply to compensation schemes within the meaning of sections 6 and 7 and schemes safeguarding the viability of institutions within the meaning of section 12.

Section 17
Provisions on administrative fines

(1) An administrative offence shall be deemed to have been committed by any person who

1. wilfully or recklessly, in violation of section 9 (2) sentence 1, does not submit the annual accounts with the relevant audit report or does not do so correctly, in full or in time, or

2. wilfully or recklessly, in violation of section 9 (2) sentence 1,

    1. does not provide information or does not do so correctly, in full or in time, or

    2. does not submit documentation or does not do so correctly, in full or in time.

(2) A breach of administrative regulations is punishable by a fine not exceeding €50,000.

(3) The competent administrative authority within the meaning of section 36 (1) number 1 of the Act on Breaches of Administrative Regulations is BaFin.

Section 17a
Administrative sanctions

(1) The compensation scheme can enforce compliance with the orders which it issues within its statutory powers by means of administrative sanctions pursuant to the provisions of the Administration Enforcement Act.

(2) In the case of measures pursuant to section 8 (1) and (2) sentence 1, section 9 (2) sentence 1, (3) and (5) sentences 1 and 2, the maximum amount of the sanction is €50,000; in the case of measures pursuant to section 9 (1) sentence 1, the maximum amount is €100,000.

Section 18
Timing of applications

(1) In the case of a compensation event due to non-fulfilment of obligations arising from investment business, a claim to compensation under this Act only exists if the compensation event in question occurred after 25 September 1998.

(2) Claims to compensation under this Act may be filed for the first time from 1 November 1998. If creditors were notified in accordance with section 5 (2) at an earlier date, the period for filing claims in accordance with section 5 (3) does not begin until 1 November 1998.

Section 19
Application and transitional provisions

(1) The compensation schemes and institutions may, until 31 December 2010, continue to apply section 5 in the version valid until 29 June 2009.

(2) Institutions which left a compensation scheme before 30 June 2009 can no longer be called upon in connection with the settlement of compensation cases with that compensation scheme.

(3) With regard to compensation events which were determined before 30 June 2009 and in the case of which the compensation procedure has not yet been completed, section 8 (3) to (10) in the version valid as from 30 June 2009 shall apply subject to the following provisos:

1. “After being informed by BaFin” pursuant to section 8 (3) sentence 1 shall be replaced by “after 30 June 2009”.

2. If the compensation scheme took out a loan before 30 June 2009 to cover its need for funds, the obligation to collect special contributions pursuant to section 8 (3) sentence 1 does not apply insofar as the need for funds is met by the loan.

(4) German asset management companies which, on 29 June 2009, are authorised to provide individual asset management services pursuant to section 7 (2) number 1 of the Investment Act and have not made use of this authorisation for more than one year shall not be deemed to be institutions within the meaning of section 1 (1) number 4 up to 29 September 2009.