

Deposit Guarantee and Investor Compensation Act

of July 16, 1998

1. Definitions

(1) For the purposes of this Act, institutions shall mean

1. deposit-taking credit institutions as defined in section 1 (3d) sentence 1 of the Banking Act,
2. credit institutions which have been granted a licence to conduct banking business as defined in section 1 (1) sentence 2 numbers 4 or 10 of the Banking Act or to provide financial services as defined in section 1 (1a) sentence 2 numbers 1 to 4 of the Banking Act,
3. financial services institutions which have been granted a licence to provide financial services as defined in section 1 (1a) sentence 2 numbers 1 to 4 of the Banking Act, and
4. credit institutions which have been granted a licence to conduct banking business as defined in section 1 (1) sentence 2 number 6 of the Banking Act provided that they transact the business referred to in section 1 (6) sentence 1 number 2 of the Act on Investment Companies.

(2) For the purposes of this Act, "deposits" shall mean any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions of an institution as defined in subsection (1) 1 and which it must repay under the legal and contractual conditions applicable. These also include debts evidenced by a certificate issued by an institution but not bearer or order bonds, bonds which satisfy the conditions prescribed in Article 22 (4) of the Council Directive 85/611/EEC of December 20, 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for

collective investment in transferable securities (Official Journal of the European Communities No. L 375, p. 3), and liabilities in respect of own bills.

(3) For the purposes of this Act, investment business shall mean banking business or financial services as defined in section 1 (1) sentence 2 numbers 4, 5 or 10 or subsection (1a) sentence 2 numbers 1 to 4 of the Banking Act.

(4) For the purposes of this Act, liabilities arising from investment business shall mean an institution's obligations in respect of investment business to give a customer possession or ownership of funds or financial instruments or rights under financial instruments as defined in section 1 (11) of the Banking Act.

(5) For the purposes of this Act, compensation shall be payable if the Federal Banking Supervisory Office determines that, for reasons directly related to its financial circumstances, an institution is unable to repay deposits or meet its liabilities arising from investment business and there is no prospect of repayment or the liabilities being met at a later date.

2. Institutions' obligation to arrange for cover

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

3. Right to compensation

(1) If compensation is payable, 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 right to compensation pursuant to subsection 1 shall be granted to

1. institutions as defined in section 1 (1) 1 and financial institutions as defined in Article 1 number 6 of Council Directive 89/646/EEC of December 15, 1989 on the co-ordination 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 (Official Journal of the European Communities No. L 386, p. 1) domiciled in Germany or abroad, if they are acting in their own name and for their account,
2. private and public insurance enterprises domiciled in Germany or abroad,
3. investment companies, including the special funds managed by them, or public limited investment companies or collective investment undertakings domiciled abroad,
4. the Federal Government, a Land Government, a legally dependent special fund of the Federal Government or a Land Government, a local authority, another state or a regional government or a local authority of another state,
5. managers, general partners or members of supervisory bodies of the institution, persons holding 5 % or more of the institution's capital, auditors as defined in 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 Companies Act, irrespective of its legal form,
6. spouses 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 as defined in section 18 of the Companies Act, irrespective of their legal form,

8. creditors who have any responsibility for or have taken advantage of certain facts relating to the institution (especially if they have received high rates of interest 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. incorporated enterprises as defined in section 267 (2) and (3) of the Commercial Code and similar enterprises domiciled abroad, and
10. creditors whose claims on the institution arise out of transactions in connection with which a criminal conviction has been obtained against certain persons for money laundering, as defined in Article 1 of Council Directive 91/308/EEC of June 10, 1991 on prevention of the use of the financial system for the purpose of money laundering (Official Journal of the European Communities No. L 166, p. 77).

If the creditor of an institution has acted for the account of a third party, determination of the right to compensation in accordance with sentence 1 is to relate to the third party provided that the trust relationship is clearly shown in the account designation.

(3) The claim of the person entitled to compensation on the compensation scheme is barred under the Statute of Limitations after five years.

(4) Disputes about the reasons and amount of the claim to compensation may be settled under the Code of Civil Procedure.

4. Scope of the claim to compensation

(1) The claim to compensation of the creditor of the institution shall be based on the amount and size of the creditor's deposits or the liabilities to him resulting from investment business, taking due account of any set-

off and counterclaims of the institution. There is no claim to compensation to the extent that deposits or funds are not denominated in the currency of a state of the European Economic Area or in ECU.

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

1. 90 per cent of the deposits and the equivalent of ECU 20,000, and
2. 90 per cent of the liabilities arising from investment business and the equivalent of ECU 20,000.

Liabilities arising from investment business of an institution as defined in section 1 (1) 1 holding a licence to conduct banking business or to provide financial services as defined in section 1 (1) sentence 2 numbers 4 or 10 or subsection (1a) sentence 2 numbers 1 to 4 or the Banking Act are deemed to be deposits provided that the liabilities relate to the institution's obligation to give the customers possession or ownership of funds.

(3) The calculation of the amount of the claim to compensation shall be based on the amount of the deposits or funds and the market value of the financial instruments on the date when it is determined that compensation is payable. The claim to compensation includes, up to the limit specified in subsection 2, also the interest accrued until settlement of the claim.

(4) The limit provided in subsection 2 shall apply to the creditor's aggregate claim on the institution, irrespective of the number of accounts, the currency and the location where the accounts are carried or the financial instruments are held. The compensation may be paid in Deutsche Mark.

(5) In the case of joint accounts the limit provided in subsection 2 shall be based on each account holder's share. In the absence of special provisions, the deposits, funds or financial instruments shall be divided equally among the account holders.

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

5. Compensation procedure

(1) The Federal Banking Supervisory Office shall determine that compensation is payable immediately, but not later than 21 days after it has come to its notice that an institution is unable to repay deposits or meet obligations arising from investment business. It shall publish the ruling in the Federal Gazette. Objections to and appeals against the ruling have no postponing effect. The Federal Banking Supervisory Office immediately notifies the compensation scheme to which the institution has been assigned of the ruling.

(2) The compensation scheme shall immediately notify the creditors of the institution that compensation is payable and of the period provided in subsection 3 sentence 1; it takes appropriate measures to compensate the creditors within three months of the date when it was determined that compensation is payable. To this end, the institution immediately makes available to the compensation scheme the documents necessary for the compensation of the creditors.

(3) The claim to compensation shall be submitted in writing to the compensation scheme within one year from the date of notification that compensation is payable. The right to compensation is barred after expiry of this period unless the failure to meet the deadline is beyond the control of the person entitled to compensation.

(4) The compensation scheme shall immediately check the claims submitted and pay them not later than three months after the establishment of eligibility and the amount of the claims. In special cases this period may be extended by up to three months with the approval of the Federal Banking Supervisory Office.

(5) To the extent that the compensation scheme pays the claim to compensation of an eligible person, the latter's claims on the institution are transferred to the compensation scheme.

(6) If a creditor's claim is related to business in connection with which persons are under investigation in criminal proceedings in relation to money laundering as defined in Article 1 of Directive 91/308/EEC, the compensation scheme may suspend any payment until the proceedings have been terminated.

6. Compensation schemes

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

The following are categories of institutions:

1. private institutions as defined in section 1 (1) 1
2. public institutions as defined in section 1 (1) 1, and
3. other institutions.

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

(2) The Federal Banking Supervisory Office may, at an institution's request, assign it to another compensation scheme, if

1. the institution is able to demonstrate a justified interest in the assignment requested,
2. the performance of the function provided in subsection 3 of the compensation scheme to which the institution belongs is not endangered, and
3. the other compensation scheme consents to the assignment requested.

The Federal Banking Supervisory Office may also assign institutions to other compensation schemes if all institutions belonging to a compensation scheme have requested to be assigned to other compensation schemes and these compensation schemes consent to the assignment requested. The 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 regulation.

(3) The compensation schemes are responsible for collecting the contributions of the institutions assigned to them, investing the funds as provided in section 8 (1) and, if compensation is payable, compensating the creditors of an institution assigned to them for deposits not repaid or liabilities arising from investment business not met.

(4) The Reconstruction Loan Corporation manages the compensation schemes. To that extent it is subject to supervision by the Federal Banking Supervisory Office. It will receive reasonable remuneration from the special funds for the management of the schemes.

(5) The Federal Banking Supervisory Office decides on objections to administrative acts by the compensation scheme.

7. Entrusted compensation schemes

(1) The Federal Ministry of Finance is authorised to assign, by regulation, functions and powers of a compensation scheme to a private-law legal entity if the latter is prepared to take over the functions of the compensation scheme and offers reasonable assurance that the claims of the persons eligible to be compensated will be paid (entrusted compensation scheme). A legal entity offers adequate assurance if

1. the persons responsible under the law or by-laws for the management and representation of the legal entity are trustworthy and suitable,
2. it has the equipment and organisation necessary for the performance of its functions, in particular for the collection of contributions, the management of the funds and payment of the compensation claims, and for this purpose has resources of its own equivalent to one million ECU or more.

By the regulation provided in sentence 1, the Federal Ministry of Finance may reserve the right to approve the by-laws and changes in the by-laws of the legal entity.

(2) If entrusted with the responsibility for the compensation scheme as provided in subsection 1, the private-law legal entity takes over the rights and obligations of the compensation scheme concerned provided in section 6. The provisions of section 6 (1) and (2) on the assignment of the institutions and of section 6 (5) shall apply as appropriate.

(3) Entrusted compensation schemes are subject to supervision by the Federal Banking Supervisory Office. The Federal Banking Supervisory Office shall counteract irregularities which may impair the proper handling of the compensation or jeopardise the assets accumulated for paying compensation. The Federal Banking Supervisory Office may issue orders which are suitable and necessary to eliminate or prevent such irregularities. The Federal Banking Supervisory Office has the rights to receive information from and audit the compensation schemes as provided for in section 44 (1) of the Banking Act.

8. Resources available to the compensation scheme

(1) The funds for paying compensation are raised by contributions from the institutions. The institutions are required to pay contributions to the compensation scheme to which they have been assigned. The contributions of the institutions must cover the claims on the compensation scheme, the administrative and other costs arising in connection with the compensation scheme's activities. The funds accumulated for compensation shall be invested, with a view to diversifying the risk, in a way that ensures the maximum security and adequate liquidity of the assets while earning a reasonable yield.

(2) The institutions are required to pay annual contributions on September 30 each year. The compensation scheme may, after obtaining approval from the Federal Banking Supervisory Office, lower or suspend contributions, if the funds available for paying compensation suffice, and set a non-recurring payment in addition to the annual contribution for institutions required to pay contributions for the first time. The compensation scheme shall collect special contributions and take up loans if this is necessary to carry out the compensation procedure.

(3) The details of the annual contributions are regulated by the Federal Ministry of Finance by regulation after consulting the compensation schemes, with particular reference to the type and scale of the transactions guaranteed and the number, size and business structure of the institutions assigned to the compensation scheme. The regulation may also contain provisions on special contributions, borrowing and the investment of funds. The Federal Ministry of Finance may transfer such authority by regulation to the Federal Banking Supervisory Office.

(4) Enforcement on the basis of the contribution notices sent by the compensation scheme will take place in accordance with the provisions of the Administration Enforcement Act. The official copy of the enforcement order will be issued by the compensation scheme. Objections to and appeals against the contribution notices have no postponing effect.

(5) The compensation scheme is liable for meeting the obligations under section 3 (1) only with the assets available resulting from the contributions paid after deduction of the costs in accordance with subsection 1 sentence 2. These assets are not liable for other obligations of the compensation schemes. An entrusted compensation scheme shall hold and manage these assets separately from its other assets.

9. Obligations of the institutions to co-operate, audits

(1) The institutions are required to submit to the compensation scheme to which they have been assigned the approved annual accounts with the relevant audit report immediately and if requested to provide all the information and present all the documents which the compensation scheme needs to perform the functions assigned to it under this Act. The compensation scheme may carry out audits at the institutions assigned to it for the purpose of assessing the risk of compensation having to be paid. The staff employed or engaged by the compensation scheme shall be permitted to enter the institution's premises and offices during customary office hours to the extent that this is necessary for the performance of the compensation scheme's functions under this Act.

(2) The person required to provide information may refuse to answer questions the replies to which would expose him or one of the relatives specified in section 383 (1) 1 to 3 of the Code of Civil Procedure to the risk of criminal prosecution or of proceedings under the Act on Breaches of Administrative Regulations. The person required to provide information shall be instructed of his right to refuse to provide information.

(3) In the case of an enterprise which has submitted an application for a licence to the Federal Banking Supervisory Office as provided in section 32 (1) sentence 2 of the Banking Act, the compensation scheme to which it will be assigned on the granting of the licence may perform audits for the purpose of assessing the risk of compensation having to be paid if the licence is granted.

(4) The compensation scheme may transfer the authority to perform audits provided for in subsections 1 and 3 to a suitable third party.

(5) The compensation scheme spells out the details of the audits in audit guidelines which require the approval of the Federal Banking Supervisory Office. The cost incurred by the compensation scheme or a suitable third party as provided for in subsection 4 on account of the performance of audits shall be refunded by the institution or enterprise concerned.

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 data supplied. The compensation schemes shall notify the Federal Banking Supervisory Office of the auditor they have appointed immediately after making the appointment. Within one month of the receipt of such notification, the Federal Banking Supervisory Office 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 have no postponing effect. The annual report must contain information on the activities and the financial situation of the compensation scheme, in particular the amount and investment of the funds, the use of funds for compensation paid, the level of contributions and the administrative costs.

(2) The compensation schemes shall submit the approved annual report to the Federal Banking Supervisory Office and the Deutsche Bundesbank not later than May 31 each year. The auditor shall submit the report on the audit of the annual report to the Federal Banking Supervisory Office and the Deutsche Bundesbank immediately after the completion of the audit. The Federal Banking Supervisory Office and the Deutsche Bundesbank shall also, at their request, be provided with the information prescribed in subsection 1 sentence 4.

11. Exclusion from the compensation scheme

(1) If an institution fails to meet the contribution or co-operation requirements provided in section 8 or section 9, or does not comply with them correctly, in full or in time, the compensation scheme concerned shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank. If the institution also fails to meet its obligations within one month of receipt of being requested to do so by the Federal Banking Supervisory Office, the compensation scheme may give notice to the institution of its exclusion from the compensation scheme after a period of twelve months. Upon expiry of this period the compensation scheme, with the consent of the Federal Banking Supervisory Office, may exclude the institution from the compensation scheme, if the institution continues to fail to meet the obligations. After the exclusion, the compensation scheme will be liable only for those obligations of the institution which originated before the expiry of this period.

(2) If the licence 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 or if institutions as defined in section 1 (1) 4 cease conducting the business referred to in section 1 (6) sentence 1 number 2 of the Act on Investment Companies, the compensation scheme will be liable only for the obligations of the institution which originated before the rescinding of the license or the cessation of the business.

12. Schemes safeguarding the viability of institutions

(1) Institutions as defined in section 1 (1) 1 which are members of the guarantee schemes operated by the regional savings bank and giro associations or the guarantee scheme of Federal Association of Peoples' 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 by-laws, protect

the member institutions themselves, in particular safeguard their liquidity and solvency, and have at their disposal the funds necessary for this purpose (schemes guaranteeing 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 the Federal Banking Supervisory Office regarding the requirements of subsection 1; section 7 (3) sentence 4 and section 10 apply as appropriate. The schemes safeguarding the viability of institutions are required to notify the Federal Banking Supervisory Office of changes to their by-laws. The Federal Banking Supervisory Office informs the Federal Ministry of Finance if facts are known which warrant the assumption that a scheme safeguarding the viability of institutions is failing to meet the requirements of subsection 1. After having consulted the relevant schemes safeguarding the viability of institutions, the Federal Ministry of Finance may rule that the requirements of subsection 1 are not met.

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

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

(2) The level and scope of cover as defined in subsection 1 is limited to that part of the cover which exceeds the cover offered in the home state. No cover is provided for banking business or financial services relating to foreign exchange, units of account or derivatives as defined in section 1 (11) sentence 4 number 5 of the Banking Act.

(3) If a branch which has joined a compensation scheme in accordance with subsection 1 fails to meet its obligations to the compensation scheme, the compensation scheme shall notify the Federal Banking Supervisory Office and the Deutsche Bundesbank. The Federal Banking Supervisory Office requests the branch to meet its obligations within a period to be determined by the Federal Banking Supervisory Office. If the branch fails to comply with this request, the Federal Banking Supervisory Office notifies the competent authorities of the home state which granted the licence referred to in subsection 1 sentence 2. The Federal Banking Supervisory Office and the competent authorities of the home state, in co-operation with the compensation scheme, take all the measures necessary to ensure that the obligations under this Act are met by the branch.

(4) If the competent authorities of the home state fail to take any measures or if the measures provided for in subsection 3 prove to be inadequate, the compensation scheme, with the consent 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. After the exclusion, the compensation scheme is only liable for the obligations of the branch which originated before the expiry of this period.

14. Branches of German institutions in other states of the European Economic Area

The level and scope of compensation which the compensation scheme provides to creditors of branches of German institutions in other states of the European Economic Area must not exceed the level and scope of cover offered by the corresponding compensation scheme in the other state.

15. Secrecy

Persons employed by the compensation scheme and persons commissioned by it may not disclose or exploit, use without authorisation, facts which should be kept secret in the interests of a third party (especially business and trade secrets). Under the Act on the formal obligation of persons with non-civil servant status

(Gesetz über die förmliche Verpflichtung nichtbeamteter Personen) of March 2, 1974 (Federal Law Gazette I p. 469, 547), they shall be required by the Federal Banking Supervisory Office to conscientiously perform their duties. Unauthorised disclosure or exploitation as defined in sentence 1 is not deemed to occur, in particular, if facts are disclosed to Federal Banking Supervisory Office or the Deutsche Bundesbank.

16. Non-application of the Act on the Supervision of Insurance Enterprises

(Versicherungsaufsichtsgesetz)

The provisions of the Act on the Supervision of Insurance Enterprises do not apply to compensation schemes as defined in sections 6 and 7 and to schemes safeguarding the viability of institutions as defined in section 12.

17. Provisions governing fines

(1) A breach of administrative regulations is committed by anyone who

1. intentionally or thoughtlessly, in violation of section 9 (1) sentence 1, fails to submit the annual accounts with the relevant audit report, does not submit them correctly, does not submit them in full or does not submit them in time, or

2. intentionally or negligently, in violation of section 9 (1) sentence 1,

(a) fails to provide information, does not provide it correctly, does not provide it in full or does not provide it in time, or

(b) fails to submit a document, does not submit it correctly, does not submit it in full or does not submit it in time.

(2) A breach of administrative regulations may be punished by a fine not exceeding one hundred thousand Deutsche Mark.

(3) For the purposes of section 36 (1) 1 of the Act on Breaches of Administrative Regulations, the administrative authority is the Federal Banking Supervisory Office.

18. Time of application

(1) If compensation is payable because of a failure to meet obligations arising from investment business, a claim to compensation under this Act only exists if compensation is payable after September 25, 1998.

(2) Claims to compensation under this Act may be filed for the first time as from November 1, 1998. If creditors have been 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 November 1, 1998.

19. Transitional provisions

(1) Institutions already active and required to pay contributions in accordance with section 8 (1) when this Act comes into force, shall pay a contribution for the first time within two months after the coming into force of this Act to the compensation scheme to which they have been assigned. The first contribution amounts to

1. 0.03 per cent of the balance sheet item "Amounts owed to customers" or a corresponding balance sheet item of the last annual accounts for institutions as defined in section 1 (1) 1; registered mortgage bonds (*Hypotheken-Namenspfandbriefe*), registered communal bonds (*Öffentliche Namenspfandbriefe*), liabilities to affiliated undertakings of the institution as defined in section 18 of the Companies Act domiciled abroad which conduct banking business as defined in section 1 (1) sentence 2 number 2 of the

Banking Act as well as obligations to return securities under stock lending and securities repurchase transactions may be disregarded; if an institution's first contribution in accordance with clauses 1 and 2 exceeds the volume of deposits covered in accordance with section 4, liabilities to creditors who in accordance with section 3 (2) sentence 1 numbers 4 or 7 have no right to compensation may also be disregarded when calculating the first contribution;

2. 1 per cent of the liable capital for institutions as defined in section 1 (1) 2 which are not institutions as defined in section 1 (1) 1 or 4, or the equivalent of ECU 7,300 or more;
3. 1 per cent of the liable capital for institutions as defined in section 1 (1) 3 which are authorised to acquire ownership or possession of funds or securities of customers in providing financial services, or the equivalent of ECU 1,250 or more; if institutions trade in financial instruments for their account, the equivalent of ECU 7,300 or more;
4. 0.1 per cent of the liable capital for institutions as defined in section 1 (1) 3 which are not authorised to acquire ownership or possession of funds or securities of customers in providing financial services, or the equivalent of ECU 50 or more; if institutions trade in financial instruments for their account, the equivalent of ECU 730 or more;
5. 0.1 per cent of the liable capital for institutions as defined in section 1 (2) 4, or the equivalent of ECU 730 or more.

The amount of the liable capital shall be based on the amount on August 1, 1998. The contribution obligation may be met by transferring funds from existing guarantee schemes.

(2) The annual report in accordance with section 10 shall be submitted for the first time in 1999 covering the period from August 1, 1998 to December 31, 1998.