

# By-laws of the Deposit Protection Fund



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Convenience translation for information purposes only.  
The original German text is binding in all respects.

## Section 1 – Deposit Protection Fund

A Deposit Protection Fund of German Banks (Einlagensicherungsfonds deutscher Banken), hereinafter referred to as the “Fund”, has been established as a dependent special fund within the Association of German Banks (Bundesverband deutscher Banken), hereinafter referred to as the “Banking Association”.

## Section 2 – Purpose of the Fund

1. The purpose of the Fund is to provide assistance in the interest of depositors in the event of imminent or actual financial difficulties of banks, particularly when the suspension of payments is imminent, in order to prevent the impairment of public confidence in the private banks.
2. All measures apt to be of assistance may be taken in the implementation of the purpose described in Subsection (1), in particular payments to individual creditors, primarily in accordance with Section 6 hereof, payments to banks, the assumption of guarantees or the assumption of obligations in connection with action taken under Section 46 of the German Banking Act (Kreditwesengesetz).

## Section 2a – Participation in the Fund

1. All banks (including domestic branches of foreign banks within the meaning of Section 53 (1) and Section 53b (1) respectively of the German Banking Act) which are members of the Banking Association, hereinafter referred to individually as “bank”, shall be obliged to participate in the Fund unless exempted from participation under Subsection (2). Domestic branches of foreign banks within

the meaning of Section 53 (1) and Section 53b (1) respectively of the German Banking Act shall be additionally subject to the “Supplementary arrangements for the participation of branches of foreign banks in the Deposit Protection Fund” annexed to these By-laws.

2. Upon application, exemption from participation in the Fund may be granted to branches of foreign banks.
3. Banks which are extraordinary members of the Banking Association shall not participate in the Fund.

## Section 3 – Conditions for participation in the Fund

1. The conditions for participation in the Fund shall be that
  - (a) the bank has the resources needed for business operations that satisfy the requirements on the basis of which the competent supervisory authority grants licences to conduct banking business under Section 32 and 33 of the German Banking Act and
  - (b) the bank has at least two managers who possess the necessary personal qualifications and trustworthiness; in this context, the necessary personal qualifications shall, in particular, require that the individuals in question have extensive banking experience and offer assurance for a business policy which excludes the jeopardising of deposits and complies with the principles laid down in subclause (d) and
  - (c) no facts exist which indicate that the owner of a qualified participating interest (Section 1 (9) of the German Banking Act) or their legal representative or representative according to the articles of association or general partner is not trustworthy or for other reasons fails to satisfy the

requirements to be set in the interest of a sound and prudent management of the bank and

- (d) the bank can demonstrate that it has a sustainable business model and
  - (e) the bank has a balanced overall result in current business operations, maintains the necessary liquidity and satisfies the requirements to be set for the orderly conduct of banking business in accordance with the provisions of the German Banking Act and
  - (f) the bank is a member of the Auditing Association of German Banks (Prüfungsverband deutscher Banken), hereinafter referred to as the “Auditing Association”, and
  - (g) the bank satisfies at least the requirements which lead to placement in the BBB+ rating category under the rating procedure pursuant to Section 4a and
  - (h) the bank satisfies the requirements for membership of the Banking Association, has filed an application for membership in accordance with Section 6, subsection 6 of the Articles of Association of the Banking Association, and the Board of Directors has declared that, following confirmation of participation in the Fund, no obstacles to membership exist.
2. Participation in the Fund shall begin as soon as the newly admitted bank has paid the advance on the annual contribution for the year of admission and the one-time payment pursuant to Section 5a (7) and has furnished the declarations pursuant to Section 5 (2) and (10) and the Banking Association has subsequently confirmed its participation.
  3. The requirement that a bank have more than one manager within the meaning of Subsection (1), subclause (b) may, upon application, be waived in individual cases, provided that no jeopardising of the interests of the Fund need be expected.

## Section 4 – Termination of participation in the Fund

1. Participation in the Fund shall terminate
    - (a) upon termination of membership of the bank in the Banking Association or
    - (b) upon termination of membership of the bank in the Auditing Association or
    - (c) upon exclusion from participation in the Fund.
  2. A bank may be excluded from participation in the Fund
    - (a) if the bank does not meet, or no longer meets, the conditions for its participation in the Fund set out in Section 3 (1), subclauses (a) - (e) or if it does not submit the declaration in accordance with Section 5 (10), sentence 3, even upon request, or
    - (b) if, following the rating procedure pursuant to Section 4a, it has been placed in category B- or a lower category and an improvement in the rating is not anticipated.
  3. A bank may also be excluded from participation in the Fund
    - (a) if it has committed not only a non-material breach of significant obligations towards the Banking Association, particularly obligations arising from or in connection with the present By-laws, or
    - (b) if it has otherwise committed a material and sustained breach of a provision of the Articles of the Banking Association, the present By-laws or a resolution passed by a competent body of the Banking Association.

Such exclusion shall not take place if the bank proves to the Banking Association that it is not responsible for the occurrence of the event in question or the breach of duties is non-material.
- 3a.** It shall usually constitute a material breach of significant obligations towards the Banking Association if the bank

- (a) gives incomplete or incorrect information to the Banking Association or the Auditing Association in connection with the Fund or
- (b) fails to provide the information required for the risk assessment pursuant to Section 4a in time or
- (c) fails to comply with the obligation to maintain confidentiality with respect to the outcome of the risk assessment (particularly with respect to the rating score) pursuant to Section 3 of the Risk Assessment Rules or
- (d) is in default with the payment of contributions for more than two months after written reminder or
- (e) fails to include in its General Business Conditions for domestic business the clause prescribed by Section 5 (1) or fails to make such clause the basis of its business relations with its domestic customers or
- (f) fails to furnish the declaration pursuant to Section 5 (2) on request or
- (g) fails to make available without undue delay to the Banking Association the information set out in Section 5 (3) or
- (h) fails to support the Auditing Association in its auditing activity pursuant to Section 5 (4) or fails to fulfil without undue delay any condition set by the Auditing Association pursuant to Section 5 (5) or
- (i) fails to fulfil without undue delay any condition set by the Banking Association pursuant to Section 5 (7) or
- (j) fails to indemnify the Banking Association against losses pursuant to Section 5 (10), sentence 1 or
- (k) fails to furnish the declaration required under Section 5 (10), sentence 2 or
- (l) fails to comply with the notification requirement under Section 5 (10), sentence 5 or
- (m) contrary to Section 5b (2), advertises the security of deposits or
- (n) makes incorrect statements to customers or potential customers concerning the protection ceiling and the kind of deposits protected.

- 4. Exclusion from participation in the Fund shall be threatened with six months' notice. In the case of Subsection (2), subclause (b), exclusion may only be threatened if the bank belongs to rating category B- or a lower category for more than two years in succession.
- 5. The Board of Directors of the Banking Association shall decide on exclusion after hearing the bank concerned. The Board shall consider in its decision whether, measured against the interests of the Fund, exclusion constitutes an unreasonable hardship for the bank.
- 6. A decision of the Board of Directors concerning the exclusion of a bank shall be communicated to such bank in writing; the decision shall become effective one month after receipt thereof by the bank. The bank may request a review of the decision by the Delegate's Assembly of the Banking Association; such request to the Delegates Assembly shall be made by written notice to the offices of the Banking Association which must reach the Banking Association within the period stated in sentence 1, second part. The request to the Delegates Assembly of the Banking Association shall have suspensive effect. Exclusion shall not take place if the Delegate's Assembly of the Banking Association objects to the exclusion by a simple majority. The decision of the Delegates Assembly shall be communicated to the bank in writing and shall become effective one month after receipt by the bank.
- 7. If a participating interest is acquired in a bank by means of which the acquirer holds the majority of the voting rights or capital or can otherwise directly or indirectly exercise a dominant influence within the meaning of Section 5 (10), the bank's participation in the Fund shall terminate without any proceedings for exclusion after expiry of a period of nine months from the date of acquisition of the participating interest, irrespective of whether such a participating interest is

sold on within this period to another person or another enterprise. Participation in the Fund shall not terminate if

- (a) the Banking Association was given the opportunity beforehand to ascertain that the owner of a qualified participating interest (Section 1 (9) of the German Banking Act) or their legal representative or representative according to the articles of association or general partner is trustworthy and otherwise satisfies the requirements to be set in the interest of a sound and prudent management of a bank (qualification) and
  - (b) within the period specified in sentence 1 all facts are disclosed that allow the conclusion of trustworthiness and qualification and dispel any doubts about these and thus all the required examination findings were made possible.
- The Banking Association may extend the period or, where participation has already terminated, allow provisional readmission for a limited time.

8. Banks whose participation in the Fund terminates shall remain liable to pay the annual contribution to the extent that and for as long as deposits held by the bank continue to be protected by the Fund pursuant to Section 6 (including pursuant to Section 6 (14)) and Section 6 (18)). Deposits that are made after termination of participation in the Fund and that are no longer protected pursuant to Section 6 (14) shall be omitted when determining the assessment basis within the meaning of Section 5a (3), sentence 1. In addition, the provisions of the present By-laws, including the obligations arising the obligation to indemnify the Banking Association for losses, to submit information, to tolerate audits and to issue and comply with requirements, shall apply to the bank whose participation in the Fund has terminated for as long as any deposits of the bank are protected (Section 6 (14)). The Banking Association may delegate the performance of such audits for the period from termination of participation in the Fund until termination of protection of deposits to the Auditing Association or another suitable third party; such delegation must be notified to the

bank concerned in writing. In the event of such delegation of the tasks of the Auditing Association to another suitable third party, all references in the present By-laws to the Auditing Association shall apply analogously to any other suitable third party appointed by the Banking Association.

9. The bank whose participation in the Fund has terminated shall provide on request to the Auditing Association details and proof of the deposits still protected under the By-laws. The details and proof may be verified on the basis of the provisions contained in the present By-laws and in the Articles of the Auditing Association on the furnishing of information, the presentation of documents and proof and the performance of on-site audits. Where such details or proof are not provided in due time, the most recently determined assessment basis, own funds factor and loss buffer ratio shall continue to apply for the purpose of calculating the annual contribution.

## Section 4a – Risk assessment

1. The banks shall undergo a risk assessment annually. The risk assessment shall be based on a rating to be performed by the Auditing Association, the own funds factor and the loss buffer ratio. Further details are contained in the “Risk Assessment Rules”, which form part of the present By-laws. In deviation from sentence 1, the rating may also be performed where there is reason to believe that the situation of the bank has changed significantly since the last rating.
2. The banks shall be obliged to provide the information needed for the rating within the periods set by the Auditing Association, in compliance with the requirements of Section 5 (12). Notwithstanding any further consequences resulting from Section 4 (2) and (3) in particular, a bank which fails to present

the information needed for the rating or presents information that is inadequate because of its limited meaningfulness shall be assigned to category C under the “Risk Assessment Rules” after expiry of a reasonable period of time allowed for subsequent delivery of the information needed.

3. The information needed to calculate the own funds factor and the loss buffer ratio must be obtained on the cut-off dates 31 March and 30 June, 30 September and 31 December of each year and transmitted to the Auditing Association by no later than the 15th calendar day after the end of the following month, in compliance with the requirements of Section 5 (12). Notwithstanding any further consequences resulting from Section 4 (3) in particular, the legal consequences of failure to deliver the required information or of delivery of inadequate information shall be determined by Section 5a (12).

## Section 5 – Rights and obligations of banks participating in the Fund

1. Each bank shall be obliged to include in its General Business Conditions (Allgemeine Geschäftsbedingungen) the following clause and shall base its business relations with its customers thereon:

### **No.20: Deposit Protection Fund**

#### *(1) Scope of protection*

*The Bank is a member of the Deposit Protection Fund of the Association of German Banks (Einlagensicherungsfonds des Bundesverbandes deutscher Banken e.V.). In accordance with its By-laws – subject to the exceptions provided for therein – the Deposit Protection Fund protects deposits, i.e. credit balances which result from funds left in an account or from temporary situations deriving from banking transactions and which the Bank is required to repay under the conditions applicable.*

*Not protected are, inter alia, deposits forming part of the Bank’s own funds, liabilities from bearer and order bonds, as well as deposits of credit institutions within the meaning of Article 4 (1), point (1) of Regulation (EU) No.575/2013, financial institutions within the meaning of Article 4 (1), point (26) of Regulation (EU) No.575/2013, investment firms within the meaning of Article 4 (1), point (1) of Directive 2004/39/EC and central, regional and local authorities.*

*Deposits of other creditors as natural persons and as foundations with legal capacity are only protected if*

- (i) the deposit is not a liability from a registered bond or a promissory note and*
- (ii) the term of the deposit is not more than 18 months. Deposits that already existed before 1 January 2020 shall not be subject to this limitation of term. After 31 December 2019, the ‘grandfathered’ status pursuant to the preceding sentence shall cease to apply as soon as the deposit in question falls due, can be terminated or otherwise reclaimed, or if the deposit is transferred by way of individual or universal succession in title.*

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*Liabilities of banks that already existed before 1 October 2017 are protected in accordance with and under the conditions laid down in the provisions of the By-laws of the Deposit Protection Fund applying until 1 October 2017. After 30 September 2017, the 'grandfathered' status pursuant to the preceding sentence shall cease to apply as soon as the liability in question falls due, can be terminated or otherwise reclaimed, or if the liability is transferred by way of individual or universal succession in title.*

### *(2) Protection ceilings*

*The protection ceiling for each creditor is, until 31 December 2019, 20%, until 31 December 2024, 15%, and, as of 1 January 2025, 8.75% of the Bank's own funds within the meaning of Article 72 of Regulation (EU) No.575/2013 used for deposit protection purposes. Deposits established or renewed after 31 December 2011 shall be subject to the respective new protection ceilings as of the aforementioned dates, irrespective of the time when the deposits are established. Deposits established before 31 December 2011 shall be subject to the old protection ceilings until maturity or until the next possible termination date.*

*This protection ceiling shall be notified to the customer by the Bank on request. It is also available on the internet at [www.bankenverband.de](http://www.bankenverband.de).*

### *(3) Validity of the By-laws of the Deposit Protection Fund*

*Further details of protection are contained in Section 6 of the By-laws of the Deposit Protection Fund, which are available on request.*



### *(4) Transfer of claims*

*To the extent that the Deposit Protection Fund or its mandatory makes payments to a customer, the respective amount of the customer's claims against the Bank, together with all subsidiary rights, shall be transferred simultaneously to the Deposit Protection Fund.*

### *(5) Disclosure of information*

*The Bank shall be entitled to disclose to the Deposit Protection Fund or to its mandatory all the necessary information in this respect and to place documents at their disposal.*

The clause should, if necessary, be worded differently in line with the following:

- 1.** Banks for which a different protection ceiling has been set pursuant to Section 6 (8) (c) shall be obliged to amend the clause under (2) accordingly.
- 2.** Newly admitted banks with a protection ceiling of EUR 250,000 shall use under (2), instead of sentences 1, 2 and 3, the following wording "The protection ceiling per creditor is EUR 250,000".
- 2.** The banks shall be obliged to submit to the Banking Association declarations by which they authorise the competent supervisory and resolution authorities, as well as the Auditing Association, to inform the Banking Association of any matter which might make deposits held with the respective bank seem possibly to be in jeopardy. At the same time, the Banking Association shall be authorised to obtain all information necessary for this purpose from such banks and to inform them of all matters of which it may become aware in the course of its activities. The wording of the respective Declaration of Authorisation is annexed to the present By-laws.



3. The banks shall be obliged to inform the Association without undue delay of the creation, modification and termination of a qualified participating interest and make available all information to allow an assessment of whether the partners concerned are trustworthy and satisfy the requirements to be set in the interest of a sound and prudent management of the bank.
4. The banks shall be obliged to support the Auditing Association in its auditing activity.
5. The Auditing Association may, in the circumstances specified in Section 11 of the Articles of the Auditing Association in the version of 13 October 2016, impose conditions which must be complied with by the bank without undue delay. Section 11 of the Articles of the Auditing Association in the version of 13 October 2016 is annexed to these By-laws.
6. Each bank shall be obliged to advise the Banking Association without undue delay if it intends to open a branch abroad.
7. Each bank shall be obliged to comply with the conditions that the Banking Association imposes in connection with a measure taken for the bank pursuant to Section 2 (2); such conditions may relate to assets or personnel. Where necessary in connection with measures pursuant to Section 2 (2), the Banking Association may, in addition, require from the respective bank and its bodies information on all business affairs and the submission of books and records. When performing the activities pursuant to Section 2 (2), the Banking Association or its mandatory shall be liable to the banks only for wilful misconduct and gross negligence.
8. If, in connection with a measure pursuant to Section 2 (2), the Banking Association conducts securities business concluded by the bank which the latter

is prevented from performing as a result of an order prohibiting sales and payments in accordance with Section 46 of the German Banking Act, the consent of the bank to any action necessary on the part of the Banking Association to ensure the proper performance of such business shall be regarded as furnished.

9. Any expenditure incurred in the implementation of measures pursuant to Section 2 (2) shall be reimbursed by the bank to the Banking Association, unless prohibited by mandatory provisions of law. The right to assert other claims shall remain unimpaired.
10. Each bank shall be obliged to indemnify the Banking Association against losses which the Banking Association may have suffered by reason of a measure of assistance in favour of another bank in which the bank holds the majority of the shares or can otherwise exercise, directly or indirectly, a dominant influence. Notwithstanding the obligation resulting from the preceding sentence, the banks concerned must submit express declarations to this effect. Furthermore, banks must furnish a declaration applying the foregoing sentences analogously
  - from a natural or legal person or partnership who or which does not participate in the Fund, but holds a majority of the shares in the bank and can directly or indirectly exercise a dominant influence over the bank, or
  - from several banks or natural or legal persons or partnerships not participating in the Fund who or which together can directly or indirectly exercise a dominant influence over the bank.

In determining whether in such cases a majority holding or a dominant influence exists, Section 16 et seq. of the German Stock Corporation Act (Aktiengesetz) shall apply analogously, irrespective of the legal form of the bank or the shareholding banks, credit institutions, natural or legal persons and partnerships. To implement the obligations provided for in sentences 1 to 4, the banks shall notify the Banking Association without undue delay of the banks in which they hold a majority of the

shares or in which they can otherwise directly or indirectly exercise a dominant influence; similarly, the banks shall inform the Banking Association if the foregoing situations apply in their case. The wording of the respective Declaration of Undertaking is annexed to the present By-laws.

- 11.** Each bank shall be obliged to report without undue delay to the Banking Association the commencement of a liquidation of its banking operations. The Banking Association may impose conditions under Subsection (7), unless it can be excluded that measures pursuant to Section 2 (2) may become necessary during the liquidation.
- 12.** The banks shall make available to the Banking Association and the Auditing Association within the designated periods or when requested all the information required under these By-laws or otherwise needed for performance of the tasks of the Fund; they shall make available this information via the stipulated transmission channel in a format suitable for automatic processing, in compliance with the specifications of the Banking Association and the Auditing Association.

## Section 5a – Funding and target level

- 1.** The financial resources of the Fund shall be raised by the banks by way of annual contributions and special contributions. The Banking Association shall seek to reach a Fund target level of at least 0.8% of the amount of the covered deposits pursuant to Section 6 of all banks participating in the Fund. The banks shall, in addition, pay a surcharge to cover administrative costs.
- 2.** The banks shall be obliged to pay to the Banking Association annually by 31 March at the latest a contribution of 0.6‰ (assessment factor) of the liabilities on their books protected by the Fund or the Compensation Scheme of German Private Banks (Entschädigungseinrichtung deutscher Banken GmbH [EdB]) (annual contribution). The Deposit Protection Committee shall review the appropriateness of the assessment factor referred to in sentence 1 annually, taking due account of the envisaged target level pursuant to Subsection (1), the funds needed for actual or possibly imminent measures of assistance pursuant to Section 2 (2), the risk assessments pursuant to Section 4a, as well as current market developments. The Board of Directors of the Banking Association shall resolve upon any adjustment of the assessment factor at the recommendation of the Deposit Protection Committee. The adjusted assessment factor must not exceed 1.2‰ and may be lowered to 0‰. The assessment factor shall be fixed in each case by the Board of Directors and notified to the banks in the year preceding the year in which the respective annual contribution is levied.
- 3.** The annual contribution shall be determined on the basis of the average amount of liabilities of the bank protected by the Fund pursuant to Section 6 and by the EdB (assessment basis) on 31 March and 30 June of the preceding year and on 30 September and 31 December of the year before the preceding year. Liabilities protected by the EdB shall be weighted at 35%. Where liabilities

are not protected by the EdB but are covered as deposits pursuant to Section 6, they shall be weighted as follows:

- deposits of up to EUR 5 billion 100%
- deposits of between EUR 5 billion and EUR 10 billion 90%
- deposits of between EUR 10 billion and EUR 25 billion 80%
- deposits of between EUR 25 billion and EUR 50 billion 60%
- deposits of between EUR 50 billion and EUR 100 billion 40%
- deposits of over EUR 100 billion 20%

When calculating the annual contribution, liabilities that are protected by virtue of transitional arrangements (particularly Section 6 (18) of these By-laws) shall also be taken into account. In special cases, the Board of Directors of the Banking Association may, at the recommendation of the Deposit Protection Committee, fix a different assessment basis for individual banks.

4. The information needed to determine the assessment basis pursuant to Subsection (3) shall be obtained on the cut-off dates 31 March and 30 June, 30 September and 31 December, compiled for the Auditing Association (extended presenter data file [Einreicherdatei Erweitert]) in compliance with its specifications (specification for the provision of data) and transmitted to it (extended reporting data file [Meldedatei Erweitert]) by no later than the 15th calendar day after the stipulated dates.
5. If, when the annual contribution is fixed, the Declarations of Undertaking required pursuant to Section 5 (10) have been furnished, the bank shall receive a 10% discount on the annual contribution (after addition or deduction of the markups or markdowns pursuant to Subsection (6) if, before the annual contribution is fixed, it submits a valid confirmation from the Auditing Association to the effect that at least one of the declarations furnished pursuant to Section 5 (10) is, in the opinion of the Auditing Association, of material value

for discount purposes. When assessing the material value, due account shall be taken of the extent to which

- (a) the Declarations of Undertaking would be enforceable at law and in practice at reasonable effort and
- (b) the credit standing and freely disposable assets of the parties furnishing the Declaration of Undertaking would be sufficient to fully cover any hypothetical loss incurred by the Fund in compensating depositors.

The bank shall be required to make available to the Auditing Association the information and proof necessary for the assessment and to bear the cost of such assessment by the Auditing Association. For newly admitted banks, the material value shall be assessed for discount purposes until and including the third year following the year of admission and shall constitute the assessment of material value for the fourth following year. No discount shall be granted for Declarations of Undertaking that are furnished by banks.

6. Depending on the results of the risk assessment performed by the Auditing Association pursuant to Section 4a, the annual contribution may increase (markup) or decrease (markdown). The risk assessment currently available (including one based on Section 4a (2), sentence 2 or Section 5a (12), sentence 2) when the annual contribution is determined shall apply. For the rating, the own funds factor and the loss buffer ratio, markups or markdowns shall be calculated individually for this purpose. The individual markups or markdowns shall be added up, with any markups or markdowns for the rating being weighted at 50% and any markups or markdowns for the own funds factor and the loss buffer ratio each being weighted at 25%. The size of the markups or markdowns for the rating, the own funds factor and the loss buffer ratio shall be resolved upon by the Deposit Protection Committee in accordance with the following provisions:
  - (a) The markups shall, as a whole, not exceed ten times the annual contribution

(excluding any discounts pursuant to Subsection (5)), while the non-weighted individual markups for the rating, the own funds factor and the loss buffer ratio respectively (excluding the weighting pursuant to sentence 3) shall not exceed ten times the annual contribution either. The markdown on the annual contribution shall not exceed 7.5% overall.

- (b) Markups may be imposed for an A- rating or lower, an own funds factor of 20 or lower or a loss buffer ratio of 20% or lower.
  - (c) A markdown may be granted for an AA+ or AAA rating or a loss buffer ratio of 150% or higher. No markdown shall be available for the own funds factor.
- 7.** In addition to the annual contribution, newly admitted banks shall be required in the year of admission to make a one-time payment amounting to 1.8‰ of the assessment basis for the annual contribution. The annual contribution for the newly admitted bank in the year of admission and the following three years, as well as the one-time payment of 1.8‰, shall be subject to the assessment basis pursuant to Subsection (3) as applied to the annual contribution for the fourth following year. The one-time payment shall amount to at least EUR 60,000. In the year of admission, an advance on the annual contribution and the one-time payment totalling 2.41.8‰ based on the relevant own funds pursuant to Section 6 (8) (a), but no less than an amount of EUR 60,000, shall be levied; in the following three years, the advance on the respective annual contribution shall be 0.61.8‰ based on the relevant own funds pursuant to Section 6 (8) (a), but no less than EUR 15,000. A statement of final assessment shall be provided following presentation of the documents required for collection of the annual contribution for the fourth following year together with collection of this annual contribution. By way of exception, newly established banks shall pay for the year of their admission only an amount of EUR 25,000 as an advance on the annual contribution and the one-time payment.

- 8.** Once the envisaged target level has been reached, the Board of Directors of the Banking Association may, at the recommendation of the Deposit Protection Committee, resolve that the requirement to pay an annual contribution may be waived for banks which (i) have been participating in the Fund for more than 20 years, (ii) are assigned to the BBB+ category or a higher category under the rating procedure pursuant to Section 4a and (iii) are not required to pay a higher annual contribution because of the own funds factor and/or the loss buffer ratio. The waiver under sentence 1 shall also apply to subsidiaries for which such a bank has furnished a declaration pursuant to Section 5 (10).
- 9.** If the resources of the Fund for measures of assistance within the meaning of Section 2 (2) are insufficient, or if otherwise required to enable the Fund to perform its tasks, the Board of Directors of the Banking Association may, at the recommendation of the Deposit Protection Committee, resolve that one or more special contributions shall be levied in each business year. The sum total of the annual contribution and all special contributions in a business year shall not exceed 200% of an annual contribution calculated with the assessment factor of 0.6‰ (excluding any discounts pursuant to subsection (5) or markups and markdowns pursuant to subsection (6)).
- 10.** The banks may provide up to 30% of the annual contribution by assuming a contractual payment commitment secured by financial collateral. This possibility to provide part of the annual contribution by assuming payment commitments shall only apply for periods after provision of the statement of final assessment pursuant to Section 5a (7), sentence 5. Banks which have taken advantage of the opportunity to assume payment commitments shall not, particularly in the event of payment-related measures pursuant to Section 2 (2), be placed in a better financial position than if they had provided the annual contributions in full through payment. Further details of payment commitments and the

ban on placing banks in a better financial position pursuant to sentence 3 are contained in the “Rules on the provision of contributions by way of payment commitments”, which form part of these By-laws.

**11.** In addition, all banks shall pay a basic annual amount as a surcharge to cover administrative costs. This basic amount shall generally be EUR 35,000. It shall, however, be limited to the amount of the contribution payable by the bank in the respective year and shall be at least EUR 10,000. For groups, the basic amount for all banks participating in the Fund shall, upon application, be limited to EUR 150,000. The application must be made by the group parent or – if this is not a bank – by a bank mandated by it that participates in the Fund.

**12.** If the information required for the assessment basis, the own funds factor and the loss buffer ratio is not available, not available in full or not available in the stipulated form to the Auditing Association on 15 August of each assessment year, a penalty surcharge of 10% of the annual contribution, but not more than EUR 20,000, shall be payable by the bank concerned. If the relevant information is not duly submitted later before expiry of 31 August, the following shall apply additionally:

- (a) If the extended presenter data file (Einreicherdatei Erweitert) and the extended reporting data file (Meldedatei Erweitert) are not available or not available in full, the Auditing Association shall estimate at its due discretion the volume of covered deposits, paying due regard to the size and structure of the business of the bank and of a group of comparable banks. Such estimate shall be governed accordingly by Section 319 (1) of the German Civil Code (Bürgerliches Gesetzbuch [BGB]).
- (b) If the information required to determine the own funds factor or the loss buffer ratio is not available, the bank shall be assigned the lowest score for the own funds factor or the loss buffer ratio.

(c) The penalty surcharge shall increase to 20% of the annual contribution, but not more than EUR 50,000.

Information delivered after 31 August shall no longer be taken into account in favour of the bank unless the bank proves that it was not to blame for the delay. In individual cases, a bank may, upon application, be granted deadline extensions until no later than 15 September of a given year. In such cases, instead of 15 or 31 August, the extended deadlines fixed shall apply.

**13.** If, after payment of an annual or special contribution, it turns out (by way of audits performed by the Auditing Association or otherwise) that the information the bank is required to submit pursuant to Section 4a and 5a (4) was incomplete or incorrect and if the incomplete or incorrect information leads to a lower annual or special contribution being fixed, the annual or special contribution thus levied shall be deemed to be an advance payment and final assessment shall be made on the basis of the complete and correct information. Where subsequent adjustments of the annual or special contribution levied lead to a requirement on the part of the bank to make an additional payment, interest shall be charged on the amount of the additional payment from the time when the original annual or special contribution is payable to the time when the additional payment is made at the rate specified in Section 288 (2) of the German Civil Code, but at no less than 5%.

**14.** The provisions of this Section 5a shall apply for the first time to the annual contribution payable in 2018. They shall apply to the annual contribution payable in 2018 and 2019, subject to the proviso that, in deviation from Subsection (3), sentence 1, the assessment basis shall be geared only to the cut-off dates 31 March 2018 and 30 June 2018 and that the annual contribution for 2018 shall be fixed and paid by 31 December 2018 at the latest. For newly admitted banks, sentence 2 shall apply analogously provided the fourth full business year

falls within 2018 or 2019; in addition, Subsection (7) shall remain unaffected. Earlier periods shall be subject to the respective rules on contributions and on surcharges to cover administrative costs contained in the version of the By-laws of the Fund registered on 13 October 2016, which thus form part of the present By-laws. The obligation to provide information pursuant to Subsection (4) shall remain unaffected and must be complied with for the first time for the cut-off date 30 September 2017.

## Section 5b – Information on deposit protection and advertising

1. It shall be permissible to give information about participation in the Fund; the banks may publicise the fact that they participate in the Fund and describe how the Fund works in general by means of a notice displayed in their counter areas, via company details (Impressum) and/or general information on their websites, by letter (also in electronic form) to certain persons and in reply to inquiries. Information on protection of individual products and on the individual protection ceilings shall be provided by the banks solely where specifically requested. The banks shall be responsible for the accuracy of the information and descriptions they provide; the Banking Association shall not be liable for such information and descriptions.
2. It shall not be permitted to advertise the protection of deposits or the participation in the Fund in the press, on the radio, on television or in electronic media, by means of door drops, email or similar publicity. The banks shall be obliged to take steps against third parties which improperly advertise the security of their deposits.

3. A uniform logo has been created for all banks which are members of the Banking Association. All banks participating in the Fund may display such logo in their counter areas, windows or display cases and on the doors of all branches and use such logo on their websites and in their correspondence (including electronic correspondence). The Delegate's Assembly of the Banking Association shall determine the details of the permitted forms of use, in particular with respect to the size and design of the logo. In addition, Subsection (1) and (2) shall apply to the use of the logo.

## Section 6 – Scope of deposit protection

1. Credit balances, including time deposits and savings deposits, which result from amounts left in an account or from temporary situations deriving from banking transactions and which the bank is required to repay under the legal and contractual conditions applicable (deposits) shall be protected at banks as follows:
2. Deposits of
  - natural persons (also where they are acting in the exercise of their commercial or self-employed professional activity) and
  - foundations with legal capacity under German law or foundations under foreign law that are comparable to foundations with legal capacity under German law shall be protected unless the deposit
    - (a) forms part of the own funds within the meaning of Article 4 (1), point (118) of Regulation (EU) No.575/2013 (CRR) (this shall apply irrespective of the extent to which the own funds are recognised for prudential purposes; the deposit must not be a subordinated liability or a liability from the bank's profit-participation rights capital either) or

- (b) is a liability of the bank from an own acceptance or promissory note or
- (c) is a liability of the bank from a securities repurchase agreement or repo transaction or from a securities lending transaction or
- (d) is a liability from a bearer bond, order bond or a right comparable to any of these debt instruments that, by its nature, is tradeable on the capital markets, or from a comparable debt instrument under foreign law or
- (e) was created in connection with transactions because of which persons have been convicted in criminal proceedings of money laundering within the meaning of Article 1 (2) of Directive 2005/60/EC or
- (f) was created in connection with legal acts that would be challengeable in insolvency proceedings pursuant to Section 129 et seq. of the German Insolvency Code (Insolvenzordnung [InsO]), in conjunction with Section 46c of the German Banking Act, irrespective of whether a reduction of assets is involved.

**3.** Deposits of other creditors shall only be protected if

- (a) the deposit is not covered by Subsection (2), subclauses (a) to (f) and
- (b) the deposit is not a liability from a promissory note or a registered bond or from a comparable debt instrument under foreign law and
- (c) the deposit has a maximum term of 18 months. The currently agreed term of the deposit at the time when the compensation event was determined pursuant to Section 10 (1) of the German Deposit Guarantee (Einlagensicherungsgesetz [EinSiG]) Act shall apply. No allowance shall be made in this respect for any early termination or other reclamation rights on the part of the creditor or the bank. If the deposit has been renewed, the terms that expired before renewal shall not be taken into account in its designated term. Deposits for which no terms have been agreed shall only be protected if the creditor may terminate or otherwise reclaim the deposit within a period of 18 months at most on the conditions applying at the time when the compensation event was determined pursuant to Section 10 (1) of the

German Deposit Guarantee Act. Deposits which already existed before 1 January 2020 shall not be subject to the limitation of term. After 31 December 2019, the ‘grandfathered’ status under preceding sentence 6 shall cease to apply as soon as the deposit in question falls due, can be terminated or otherwise reclaimed, or if the deposit is transferred by way of individual or universal succession in title.

**4.** Deposits of the following creditors, even those within the meaning of Subsection 2 and 3, shall not be covered by the Fund:

- (a) credit institutions within the meaning of Article 4 (1), point (1) of the Capital Requirements Regulation (CRR), including comparable undertakings domiciled abroad;
- (b) financial institutions within the meaning of Article 4 (1), point (26) CRR, including comparable undertakings domiciled abroad. An asset management company which purchases, sells or holds financial instruments solely for the purpose of investing assets of its own and, according to the generally accepted view and an overall assessment of the situation, does not operate in the market like a trader, shall not be deemed to be a financial institution;
- (c) investment firms within the meaning of Article 4 (1), point (1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on Markets in Financial Instruments, amending Directives 85/611/EEC and 93/6/EEC of the Council and Directive 2000/12/EC of the European Parliament and of the Council and repealing Directive 93/22/EEC of the Council (OJ L 145 of 30.4.2004, p. 1), including comparable undertakings domiciled abroad;
- (d) the German federal government, a German federal state, a municipality or another central, regional or local authority, another country or a regional government or a local authority of another country;
- (e) managers of the bank;

- (f) general partners of the bank. This also applies if the creditor is not a manager;
  - (g) natural or legal persons or partnerships which hold the majority of the shares in the bank or which, on their own or together with others, may directly or indirectly exercise a dominant influence over the bank; to assess whether someone holds the majority of the shares or whether a dominant influence is exercised, Section 16 et seq. of the German Stock Corporation Act shall apply analogously, irrespective of the legal form of the bank or of the natural or legal persons and partnerships involved. This subclause (g) shall not apply if the deposit is part of the coverage assets within the meaning of Section 125 of German Act on the Supervision of Insurance Undertakings (Gesetz über die Beaufsichtigung der Versicherungsunternehmen [VAG]);
  - (h) members of a board of the bank designated to supervise the management, where the supervisory powers of such board are provided by statute (supervisory board);
  - (i) spouses or minor children of persons referred to in subclauses (e) to (h), except where the monies originate from the spouse's or minor child's own assets.
5. Deposits of creditors who are acting for the account of a third party shall not be protected if the deposit would not be protected were the third party the creditor of the deposit.
  6. In the case of deposits of capital management companies (Kapitalverwaltungsgesellschaften) and their custodian banks, all domestic and foreign "special assets" (Sondervermögen), i.e. segregated fund assets, shall be regarded as a separate creditor and not as connected to the managing capital management company.
  7. If a non-protected deposit becomes a protected deposit thanks to a change of creditor (by way of individual or universal succession in title) or if a

non-protected liability becomes a protected deposit by some other manner, the deposit shall not be protected if, within six months thereafter, measures pursuant to Section 2 (2) have been taken, reconstruction or reorganisation proceedings under the German Bank Reorganisation Act (Kreditinstitute-Reorganisationsgesetz) have been initiated, measures pursuant to Section 45 to 46 of the German Banking Act or Section 36 to 38 of the German Recovery and Resolution Act (Sanierungs- und Abwicklungsgesetz) have been ordered, an insolvency petition has been filed, the occurrence of a compensation event has been determined pursuant to Section 10 of the German Deposit Guarantee Act or comparable measures have been taken by German or foreign supervisory and/or resolution authorities. The earliest measure or earliest result of a measure shall apply in this respect. In deviation from sentence 1, a deposit shall, however, be protected if a non-protected creditor within the meaning of Subsection (4), subclause (a) has both acquired the deposit and resold it to a person not listed in Subsection (4) within five bank working days, provided

- the deposit, when acquired by the non-protected creditor within the meaning of Subsection 4, subclause (a), was protected or
- the non-protected creditor within the meaning of Subsection 4, subclause (a) acquired the deposit directly from the debtor (issuer).

The five-day period shall be based on the underlying contractual transactions (Verpflichtungsgeschäfte) and not on any subsequent fulfilment transactions (Erfüllungsgeschäfte).

8. Compensation shall be subject to the following protection ceilings:
  - (a) Each creditor shall be compensated up to a maximum protection ceiling of 15% of the bank's own funds within the meaning of Article 72 CRR. The own funds shall consist of the Common Equity Tier 1 capital pursuant to Article 50 CRR, the Additional Tier 1 capital pursuant to Article 61 CRR and the Tier 2 capital pursuant to Article 71 CRR; for calculation of the protection ceiling,



the Tier 2 capital shall only be taken into account up to an amount of 25% of the Tier 1 capital within the meaning of Article 25 CRR. The circumstances determined by the Auditing Association on the basis of the last audit report prepared by the bank's annual financial statements auditor shall apply; in addition, increases in capital which are recognised by a certified public accountant after such date may be taken into account upon application by the bank. If the competent supervisory authority defines an adjustment item for the own funds, the Banking Association shall be authorised to lower the protection ceiling accordingly. Deposits in excess of the protection ceiling shall be protected up to the respective ceiling. From 1 January 2025, the protection ceiling shall be 8.75% of the own funds within the meaning of sentence 1. In deviation from subclause (d), sentence 5, deposits established or renewed after 31 December 2011 shall be subject to the new protection ceilings as of the aforementioned dates.

- (b) In deviation from subclause (a), the protection ceiling for newly admitted banks until the end of the third full calendar year of their participation in the Fund shall be EUR 250,000. At the end of the third full calendar year, a review shall be conducted. Thereafter, the protection ceiling shall be governed by subclause (a), unless the conditions set out in subclause (c) apply. The protection ceiling for newly admitted banks may in an individual case be raised by the Auditing Association at the request of the bank to the level of the protection ceiling pursuant to Subsection (8), subclause (a) if, in the opinion of the Auditing Association, the risk of recourse to the Banking Association appears to be largely ruled out. This may be assumed particularly if a Declaration of Undertaking pursuant to Section 5 (10) that is of material value within the meaning of Section 5a (5) has been provided for the bank (irrespective of whether the Declaration of Undertaking was furnished by a bank or a third party). If the bank was created through transformation within the meaning of Section 1 (1) of the German Transformation Act (Umwandlungsgesetz) or a

commercially comparable transformation or restructuring is involved, the protection ceiling may be raised in accordance with the preceding Subsection if

- the transferor entity previously participated in the Fund and
  - its protection ceiling was determined on the basis of subclause (a), sentence 1 and
  - the transferor entity (i) is assigned, in accordance with the rating procedure under Section 4a, to category BBB+ or a higher category and (ii) is not subject to a higher annual contribution because of the own funds factor and/or the loss buffer ratio and
  - the business transferred largely characterises the business of the transferee entity and, in the opinion of the Auditing Association, the risk profile of the newly admitted institution must be regarded as at least largely equivalent to the previous risk profile of the transferor entity.
- (c) Where a bank displays a special risk profile, the Auditing Association may lower its protection ceiling to EUR 250,000. This may, in particular, happen if
- the Auditing Association has made negative audit findings which substantiate the danger of recourse to the Fund or
  - the bank has been assigned to category B- or a lower category under the rating procedure or
  - any other material increases in risk have occurred.
- (d) Compensation of creditors shall be based on the protection ceiling which has been notified to the bank as the result of the assessment made by the Auditing Association and which is available on the internet at [www.bankenverband.de](http://www.bankenverband.de). Any reduction of the protection ceiling shall become effective as of the time it is made available on the internet. The Banking Association may publish the new protection ceiling at the expense of the bank in the Federal Gazette and in a daily newspaper at the registered office of the bank. The bank shall be obliged to notify without undue delay all creditors affected by a reduction of the protection ceiling. These deposits shall be protected

up to the old protection ceiling until maturity or until the next possible termination date after notification of the reduction.

- (e) For banks which, when submitting an application for participation in the Fund, belong to an institutional protection scheme within the meaning of Section 43 of the German Deposit Guarantee Act and, when admitted to the Fund, have been members of the Auditing Association for at least three full calendar years, the protection ceiling following a review after admission to the Fund shall be governed by subclause (a) instead of subclause (b), unless the conditions set out in subclause (c) apply.
- 9.** In computing the protected deposits, all deposits of one creditor shall be added together; counterclaims of the bank, if any, shall be deducted, even if these are not yet due. Furthermore, the provisions of Section 768, 770 and 776 of the German Civil Code applicable in respect of guarantors shall apply analogously for the benefit of the Banking Association.
- 10.** The treatment of trust accounts shall be geared to the trustor. The same shall apply to other open trust accounts, provided that the trust relationship and the trustor are unambiguously designated in the name of the account and the existence of the trust relationship is demonstrated to the Fund. In all other cases, trust accounts, subject to the provision in Subsection 5, shall be treated as accounts of the trustee.
- 11.** In the case of joint accounts, credit balances and claims shall for the purpose of protection be attributed to the account holders in equal shares, irrespective of the kind of account and of the legal relationship between the account holders. Thereafter, the deposits of the individual joint account holders arising from their personal relationship with the bank shall be protected first. If such deposits do not exhaust the protection ceiling, the portion of the joint credit balance pertaining to the individual account holder shall be used to protect the joint

credit balance. The foregoing provisions shall apply analogously to accounts held in the name of an association of condominium owners.

- 12.** Within the limits of the protection ceiling, payments shall also cover any interest claims for the period until determination of the compensation event pursuant to Section 10 (1) of the German Deposit Guarantee Act. However, the Fund shall make payments only for interest at market rates. The Fund may subject the making of all payments to an individual creditor to the condition that such creditor waives the assertion of interest claims against the bank which are not protected pursuant to sentence 2.
- 13.** Compensation for deposits held in foreign currency may be provided in euros. Calculation of such compensation shall be based on the European Central Bank (ECB) reference rate applying on the date on which the compensation event was determined pursuant to Section 10 (1) of the German Deposit Guarantee Act. Should such a reference rate not be available, the conversion rate prevailing at the place of payment on the date on which the compensation event was determined shall apply.
- 14.** If the participation of a bank in the Fund shall terminate, such bank shall give notice thereof without undue delay to creditors which have deposits with it and shall bring the consequences of such termination to their attention. The Banking Association shall publish the termination at the expense of the bank in the Federal Gazette (Bundesanzeiger) and in a daily newspaper at the registered office of the bank. Deposits which are established or renewed later than one month after publication in the Federal Gazette or which are transferred by way of individual or universal succession in title or which the creditor does not terminate or reclaim at the earliest possible date thereafter shall not be protected.

**15.** Liabilities of the bank that are to be included in the scope of protection of the Fund on the basis of abusive legal acts shall not be protected. An abusive legal act shall be deemed to exist particularly if a construction is chosen which, compared with the envisaged scope of protection of the Fund, gives the creditor an advantage in connection with a measure pursuant to Section 2 that is not intended under these By-laws.

**16.** The Fund shall only provide compensation in accordance with the By-laws if and insofar as creditors are not compensated by another protection scheme or by a compensation scheme as provided for under the German Deposit Guarantee Act or the German Investor Compensation Act (Anlegerentschädigungsgesetz). The Banking Association may – even after compensation has been provided – request submission of information and proof with regard to the reported or repaid deposits and their creditors, particularly as concerns eligibility for compensation under these By-laws and the ranking of deposits within the meaning of Section 46f (4) of the German Banking Act. Compensation shall only be provided if the requested information and proof are submitted within the stipulated periods.

**17.** Any compensation payments already made must be reimbursed if it turns out that the conditions for compensation were not fulfilled or if information and proof requested under these By-laws were not submitted, not submitted in full or not submitted in time.

**18.** Liabilities that were already protected before 1 October 2017 under Section 6 of the version of the By-laws of the Fund registered with the Register of Associations (Vereinsregister) on 13 October 2016, which thus form part of these By-laws, shall continue to be protected as provided for thereunder. After 30 September 2017, the ‘grandfathered’ status under sentence 1 shall cease to

apply as soon as the liability concerned falls due, can be terminated or otherwise reclaimed, or if the liability is transferred by way of individual or universal succession in title.

**19.** A right in law to enforce intervention or payments by the Fund shall not exist.

## Section 7 – Deposit Protection Committee

- 1.** A Deposit Protection Committee shall be formed within the Banking Association. Its elected members shall comprise
  - (a) one representative of each of the big branch banks,
  - (b) four representatives of the regional banks,
  - (c) three representatives of the private bankers and
  - (d) one representative of the foreign banks.These members must be active owners or managers of banks participating in the Fund.
- 2.** The elected members of the Committee shall be elected for a term of three years by the Delegates’ Assembly of the Banking Association. They shall remain in office until a new election is held after the expiry of their term of office unless an elected member of the Committee resigns or is removed by the Delegates’ Assembly. If an elected member of the Committee ceases to be an active owner or manager of the bank, their membership shall terminate immediately. If an elected member of the Committee retires before the expiry of their term of office, a by-election shall be held for the remainder of the term of office of the retiring member.
- 3.** The Committee shall elect from among its members its chair and its deputy chair.
- 4.** Meetings of the Committee shall be convened by its chair or, if they are

prevented from attending, by the deputy chair. A meeting of the Committee must be called upon the request of all delegates of one group of banks. Meetings conducted and resolutions passed by the Committee in writing, in text form, by telephone or with the help of other means of telecommunication (e.g. video conference) shall be permissible (also in hybrid form) if the chair or, if they are prevented from doing so, the deputy chair so determines in an individual case.

5. The Committee shall constitute a quorum if at least six of its members participate in the decision-making process. Members of the Committee who are unable to attend may authorise another member to exercise their voting rights; the member unable to attend shall be deemed present in such cases. A majority of not less than six votes shall be required for the passing of a resolution.
6. The Committee shall have the following functions:
  - (a) decisions regarding measures of assistance (Section 2 (2)) within the scope of the competence of the support management of the Deposit Protection Fund determined by the Board of Directors,
  - (b) the establishment of guidelines regarding the investment of the assets of the Fund,
  - (c) submission of the annual accounts detailing the assets of the Fund,
  - (d) the execution of all duties assigned to the Committee by the Board of Directors of the Banking Association; the taking of decisions pursuant to Section 4 (5) may not be assigned,
  - (e) in addition to the functions set out in subclauses (a) – (d), the other duties assigned to it by the present By-laws.

The Board of Directors of the Banking Association may at any time take over the functions of the Committee. The Board of Directors of the Banking Association may issue rules of procedure for the Committee setting out, in particular, the functions of the Committee in more detail.

## Section 7a – Deposit Protection Risk Committee and Task Force

1. A Deposit Protection Risk Committee shall be formed within the Banking Association. It shall comprise the
  - (a) President of the Banking Association,
  - (b) Chair of the Deposit Protection Committee,
  - (c) Deputy Chair of the Deposit Protection Committee.In addition, the Chair of the Advisory Board of EIS Einlagensicherungsbank GmbH shall be an advisory member of the Risk Committee by virtue of their office. The President of the Banking Association may appoint an elected member of the Board of Directors or an elected member of the Deposit Protection Committee to serve as a member of the Risk Committee in their place on a permanent basis. The President may at any time revoke this appointment and opt to serve on the Risk Committee themselves. Except as provided for by Section 7a (4), sentence 3, members of the Board of Directors are not otherwise entitled to participate.
2. The Risk Committee shall elect its chair and deputy chair from among its members.
3. The Risk Committee shall be convened by its chair or, if they are prevented from doing so, by the deputy chair. It shall be convened, in particular, if the Task Force deems it necessary for the Risk Committee to address a matter due to the risk situation. Meetings conducted and resolutions passed (also outside a meeting) by the Committee in writing, in text form, by telephone or with the help of other means of telecommunication (e.g. video conference) shall be permissible (also in hybrid form) if the chair or, if they are prevented from doing so, the deputy chair so determines in an individual case.

4. The Risk Committee shall constitute a quorum if at least two of its members attend the meeting or express their opinion in a written or telephone vote. If members of the Committee are unable to participate, they may authorise another member to exercise their voting rights; in such cases, the member unable to participate shall be deemed to be present. If and as long as a conflict of interest exists involving one or more members of the Risk Committee (Section 11 (5)), the President of the Banking Association shall appoint one or more elected members of the Board of Directors and/or the Deposit Protection Committee as substitute member(s) of the Risk Committee. A simple majority shall be required to pass a resolution. In the event of a tied vote, the chair or, in the chair's absence, the deputy chair, shall have a casting vote.
5. Ahead of measures to be decided by the Deposit Protection Committee, the Risk Committee shall take action apt to be of assistance (Section 2 (2)) and undertake preparatory work. In this process, the Risk Committee shall be supported by, and cooperate with, the Task Force in accordance with Section 7a (7). The Task Force shall regularly attend meetings of the Risk Committee in an advisory capacity. In addition, the Risk Committee may decide to call on the member of the Senior Management of the Banking Association with responsibility for deposit protection to serve in an advisory capacity.
6. The Deposit Protection Committee may issue rules of procedure for the Risk Committee setting out, in particular, the functions of the Risk Committee in more detail.
7. A joint Task Force shall be set up with the Auditing Association to prepare the activities of the Risk Committee and to support the Risk Committee in carrying out its functions. The Task Force shall comprise the

- (a) Head of Deposit Protection
- (b) Management of the Deposit Protection Fund and
- (c) Management Board of the Auditing Association.

Details of the Task Force and of the cooperation between the Banking Association and the Auditing Association shall be set out in a separate agreement.

8. Notwithstanding the provisions of Section 11, the Task Force and the Risk Committee may only pass on information to third parties (including banks and representatives of banks) or to parties within the Banking Association insofar as this is necessary to duly carry out the functions of the Task Force or the Risk Committee and provided that no legal barriers, especially of an antitrust or contractual nature, prevent this.

## Section 8 – Retention of the Auditing Association

1. The Auditing Association shall be retained in connection with examining whether the conditions for participation in the Fund are met. To examine whether the conditions pursuant to Section 3 (1) (c) have been met, checks may be conducted also on the following persons or enterprises:
  - (a) Persons or enterprises who or which intend to acquire or have already acquired a qualified participating interest within the meaning of Section 1 (9) of the German Banking Act in a bank, or
  - (b) enterprises which in relation to a bank or a holder of a qualified participating interest within the meaning of the aforementioned subclause (a) are or are to become affiliated companies within the meaning of Section 15 of the German Stock Corporation Act or Section 271 (2) of the German Commercial Code (Handelsgesetzbuch).

2. The Auditing Association shall be retained to prepare and support measures apt to be of assistance (Section 2 (2)) if and to the extent that this is expedient.
3. The Auditing Association shall also be retained to check at banks the information required for calculation of the annual contribution and special contribution pursuant to Section 4a and 5a.
4. The Auditing Association may, in addition, be retained by the Board of Directors of the Banking Association if and to the extent that this is expedient for the performance of the tasks of the Fund.

### **Section 9 – Publication of participation in the Fund**

The Banking Association may publish the names of the banks participating in the Fund and any changes in this regard.

### **Section 10 – No claims of the bank**

The banks shall have no right in law that the Fund renders assistance or with respect to the assets of the Fund. The latter shall apply in particular to banks whose participation in the Fund has terminated.

### **Section 11 – Obligation of confidentiality and secrecy, avoidance of conflicts of interest**

1. The members of the bodies and committees of the Banking Association and its member associations shall be obliged to keep in the strictest confidence and to make no unauthorised disclosure or use of anything of which they become aware in such capacity regarding the activities of the Fund and the Auditing Association and the results thereof, as well as the circumstances of the participating banks and their customers, even after termination of their membership in such bodies and committees. Such obligation shall also be imposed upon employees of, and other persons engaged by, the Banking Association.
2. The members of the Board of Directors and of the committees, as well as the employees of the Banking Association, shall be bound by procedures designed to avoid violations of the Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen) and of the corresponding requirements of EU law.
3. Subsection (1) shall not apply to communications that bodies of the Banking Association make at their due discretion to the competent supervisory or resolution authorities, to the Compensation Scheme of German Private Banks or to the Auditing Association in connection with the purposes of the Fund. Furthermore, subsection (1) shall not apply to communications to a member association of the Banking Association in connection with the admission, the exclusion or the calculation of the membership contributions of a bank.
4. The obligation to maintain confidentiality and secrecy under subsections (1) and (2) shall also apply in regard to banks which are members of the Auditing Association without already participating in the Fund.

5. The members of the bodies and committees of the Banking Association as well as those of the Risk Committee shall be obliged to act in the interests of the Deposit Protection Fund in matters concerning the Fund. When making their decisions, they shall neither pursue personal interests nor consider business opportunities for the bank they represent. Any affected member of a body shall report conflicts of interest to their chair without delay. The respective chair shall disclose their own conflicts of interest to their deputy chair. The chair in question or, if they are prevented from doing so, their deputy, shall decide what measures should be taken to prevent, resolve or mitigate conflicts of interest.

## **Section 12 – Dissolution of the Fund**

The dissolution of the Fund and the use of the Fund assets shall be matters for decision by the Member's Assembly (Mitgliederversammlung).

## **Annex to Section 2a (1) of the By-laws of the Deposit Protection Fund**

### **Supplementary arrangements for the participation of branches of foreign banks in the Deposit Protection Fund**

For participating branches of foreign banks within the meaning of Section 53 (1) or Section 53b (1) of the German Banking Act, the following supplementary arrangements shall apply.

### **Section 1 – Treatment of branches of foreign banks within the meaning of Section 53 (1) of the German Banking Act**

Subject to the other requirements and clarifications in the By-laws and in this annex, branches of foreign banks will receive the same treatment with respect to participation in the Fund as if they were independent banks.

Where branches of banks from third countries are, by virtue of a statutory order issued by the responsible German authorities pursuant to Section 53c of the German Banking Act, treated wholly or partially as equivalent to branches pursuant to Section 53b (1) of the German Banking Act, the following special arrangements for branches pursuant to Section 53b (1) of the German Banking Act may also be applied wholly or partially to these branches at the discretion of the Deposit Protection Committee.

### **Section 2 – Conditions for participation in the Fund (Section 3 (1) of the By-laws of the Deposit Protection Fund)**

The basis for determining compliance with the requirement to have the resources needed for business operations shall be,

- (a) for branches of foreign banks within the meaning of Section 53 (1) of the German Banking Act, the capital placed at the disposal of the branch pursuant to Section 53 (2) (2), sentence 3 of the German Banking Act, and
- (b) for branches within the meaning of Section 53b (1) of the German Banking Act, the situation of the entire bank and the requirements with respect to capital resources on the basis of which the competent authority in the home state of the bank grants permission to conduct banking business.

### **Section 3 – Own funds factor and loss buffer ratio (Section 4a of the By-laws of the Deposit Protection Fund)**

The rules for calculating the own funds factor and the loss buffer ratio pursuant to Section 4a in conjunction with the “Risk Assessment Rules” shall be applied to the branches of foreign banks within the meaning of Section 53 (1) of the German Banking Act with the proviso that the circumstances of the branch shall apply.

For branches within the meaning of Section 53b (1) of the German Banking Act, the calculation shall be based on the circumstances of the whole bank including all of its branches.



The branches of foreign banks shall be obliged to make available to the Auditing Association without undue delay the information needed for the calculation of the own funds factor and the loss buffer ratio.

### **Section 4 – General Business Conditions (Section 5 (1) of the By-laws of the Deposit Protection Fund)**

When applying Section 5 (1) of the By-laws of the Deposit Protection Fund, branches of a foreign bank within the meaning of Section 53 (1) or Section 53b (1) of the German Banking Act shall add the following sentences to the end of Section (1) of No.20 of their General Business Conditions:

- *“The Deposit Protection Fund shall only make compensation payments if and insofar as deposits exceed the protection ceiling of the home country deposit protection scheme. The scope of the home country deposit protection may be obtained on the internet from the website of the responsible deposit protection scheme, the address of which shall be provided by the bank on request.”*

Branches within the meaning of Section 53b (1) of the German Banking Act shall, in addition, delete the first Subsection of Section (2) of No.20 when applying Section 5 (1) of the By-laws of the Deposit Protection Fund.

### **Section 5 – Declaration of Authorisation (Section 5 (2) of the By-laws of the Deposit Protection Fund)**

Branches of a foreign bank within the meaning of Section 53 (1) or Section 53b (1) of the German Banking Act shall add to the Declaration of Authorisation within the meaning of Section 5 (2), sentence 1 of the By-laws of the Deposit Protection Fund the following paragraph for each competent supervisory and resolution authority of its home state:

- *“I (we) hereby authorise the [banking supervisory authority/resolution authority] of our home state, [official title of the competent banking supervisory or resolution authority], to inform the Association of German Banks – Deposit Protection Fund – of any matter which indicates that deposits held with me (us) might possibly be in jeopardy. In addition, I (we) authorise the Association of German Banks – Deposit Protection Fund – to obtain all information necessary for this purpose from [official title of the competent banking supervisory or resolution authority] and to inform this authority of all incidents of which it becomes aware in the course of its activities. This declaration shall be irrevocable for the duration of my (our) participation in the Deposit Protection Fund within the Association of German Banks and – as long as deposits held with me (us) are protected by the By-laws of the Deposit Protection Fund – during the period specified in Section 4 (8) of the By-laws of the Deposit Protection Fund.”*

## **Section 6 – Auditing of branches (Section 5 (4) of the By-laws of the Deposit Protection Fund)**

In addition to Section 5 (4) of the By-laws of the Deposit Protection Fund, branches of foreign banks shall be obliged to make available to the Auditing Association any information which the latter deems necessary – including information which can be obtained only from the head office of the bank –, to consent to information being obtained from the supervisory and resolution authorities of their home states and to allow themselves to be audited by the Audit Association. The Audit Association shall have the right to carry out throughout the bank and without restrictions in terms of place or subject matter all auditing activities deemed necessary for a sound assessment of the situation of the branch.

## **Section 7 – Assessment base for the annual contribution (Section 5a (2) and (3) of the By-laws of the Deposit Protection Fund)**

The assessment of the annual contribution pursuant to Section 5a (2) and (3) of the By-laws of the Deposit Protection Fund shall be based on the protected deposits pursuant to Section 6 of the By-laws of the Deposit Protection Fund which are included by the branch in the statement of assets and liabilities within the meaning of Section 53 (2) No. 2 of the German Banking Act or, in the absence of a requirement to prepare such a statement, in the monthly balance sheet statistics pursuant to Section 18 of the German Bundesbank Act (Bundesbankgesetz). If the foreign bank participates in a deposit guarantee scheme in its home state, the portion of deposits which does not exceed the protection ceiling of the home-state deposit guarantee scheme shall be deducted. Branches shall be obliged to document the amount of deposits covered by sentence 1 and sentence 2 and to furnish proof of

this to the Banking Association. On request, the branch shall furnish evidence of an auditor's confirmation satisfying the requirements of German Auditing Standard IDW490 that the information is accurate.

## **Section 8 – Protection of deposits (Section 6 (1) of the By-laws of the Deposit Protection Fund)**

Deposits at branches of foreign banks shall be protected under the conditions set out in Section 6 of the By-laws of the Deposit Protection Fund only in so far as they are included by the branch in the statement of assets and liabilities within the meaning of Section 53 (2) No. 2 of the German Banking Act or would have to be included if such a statement had to be prepared.

## **Section 9 – Protection ceiling (Section 6 (8) of the By-laws of the Deposit Protection Fund)**

For branches of foreign banks within the meaning of Section 53 (1) of the German Banking Act, the protection ceiling pursuant to Section 6 (8) (a) of the By-laws of the Deposit Protection Fund shall be set on the basis of the relevant own funds within the meaning of Article 72 of the CRR at the time of the most recent published annual financial statements of the branch. Section 53 (2) No. 4 of the German Banking Act shall not apply.

For branches of foreign banks within the meaning of Section 53b (1) of the German Banking Act, the protection ceiling pursuant to Section 6 (8) (a) of the By-laws of the Deposit Protection Fund shall on application by the bank be fixed as follows:

**Option 1:** If the branch maintains in Germany endowment capital within the meaning of Section 53 (2) No. 4 of the German Banking Act, this capital may be taken as the basis for calculating the protection ceiling pursuant to Section 6 (8) (a) of the By-laws provided that such endowment capital is available permanently or at least until the next balance sheet date of the head office.

**Option2:** The branch shall be allocated as the basis for calculating the protection ceiling that portion of the entire bank's prudentially recognised own funds within the meaning of Article72 of the CRR which reflects the ratio of total assets of the branch, adjusted to exclude all transactions with own offices and affiliated companies, to the similarly adjusted total assets of the bank as at the balance sheet date.

The branch shall be obliged to furnish the following information, certified by the auditor of the bank as a whole:

- the total assets of the bank as a whole, adjusted to exclude all transactions with own offices and affiliated companies,
- the total assets of the branch, adjusted to exclude all transactions with own offices and affiliated companies,
- the amount of prudentially recognised liable own funds of the bank as a whole, broken down into Tier1 and Tier2 capital.

In principle, these figures shall be as at the last balance sheet date of the head office; they may, however, also be requested as at another date specified by the Auditing Association or also as at several dates if the Auditing Association is of the opinion that the figures as at the balance sheet date do not reflect the average business situation of the branch.

**Option3:** The protection ceiling shall be fixed without the need for any further information at a flat amount of EUR 1 million (EUR 750,000 as of 1 January 2020 and EUR 450,000 as of 1 January 2025).

For newly admitted branches of banks, Section 6 (8) (b) shall apply.

## **Section 10 – Relationship with the home-state deposit guarantee scheme (Section 6 (16) of the By-laws of the Deposit Protection Fund)**

If the foreign bank participates in a deposit guarantee scheme in its home state, the Deposit Protection Fund shall – subject to the provisions in Section 6 of the By-laws of the Deposit Protection Fund – only provide compensation in accordance with the By-laws of the Deposit Protection Fund if and to the extent that deposits exceed the protection ceiling of the home-state deposit guarantee scheme.

## Annex to Section 4a of the By-laws of the Deposit Protection Fund

### Risk Assessment Rules

#### 1. General rules

- (1) The rating and the calculation of the own funds factor and the loss buffer ratio shall be performed by the Auditing Association. The Auditing Association may use the services of third parties to fulfil its tasks or, in particular, entrust an affiliated company with the work. The Auditing Association shall also have the right to commission auditors or accountancy firms to perform support services for rating foreign banks if it appears useful to do so in view of the accounting rules or other legal requirements in the home state in question.
- (2) The rating result, the own funds factor and the loss buffer ratio shall be disclosed only to the management of the bank concerned, the Board of Management of the Auditing Association, the member of the Senior Management of the Banking Association with responsibility for deposit protection and, where necessary for the purposes of calculating the annual contribution or a special contribution, the staff of the Banking Association.

The rating result, the own funds factor and the loss buffer ratio shall be treated in the strictest confidence by all concerned. In particular, the affected banks shall not make them public either in the course of doing business or in advertising; they may, however, be made available to the Compensation Scheme of German Banks for the purpose of calculating contributions. The Auditing Association shall have the right to inform the competent supervisory and resolution authorities

and the supervisory body of the bank concerned of the results of the risk assessment, especially the rating result. The Auditing Association and/or a third party commissioned in accordance with Subsection (1) of this annex shall have the right to make the results of the risk assessment available to their competent supervisory authority.

- (3) The bank shall be able to appeal to a court of arbitration with respect to the results of the risk assessment; this court shall determine whether, in the case in question, the rating, the own funds factor and the loss buffer ratio have been performed and calculated in conformity with the prescribed procedure. The bank concerned and the Auditing Association shall each appoint an arbitrator. The arbitrators shall agree on a chairperson, who should be a certified public accountant who specialises in auditing banks. Recourse to arbitration shall have no suspensive effect on any obligation to pay an increased contribution or on other measures. Should the court of arbitration come to the conclusion that the rating or the own funds factor or the loss buffer ratio has not been calculated correctly, the amount of the increased contribution which deviates from the correctly calculated contribution shall, however, be reimbursed.

A bank which loses arbitration proceedings in full or in part shall bear the costs thereof to the extent that it loses such proceedings.

## 2. Rules for the rating procedure

- (4) Rating shall be carried out on the basis of an assessment of key quantitative and qualitative aspects of the financial profile and business profile using a system of ratios and criteria. In this respect, the description of the rating procedure shall apply which is produced by the Auditing Association or a third party commissioned in accordance with Subsection (1) of this annex and notified to the Deposit Protection Committee. The rating procedure shall be overseen by legally required supervisory bodies and by the European Securities and Markets Authority (ESMA).
- (5) A bank for which another bank participating in the Fund has furnished a Declaration of Undertaking pursuant to Section 5 (10) of the By-Laws of the Deposit Protection Fund shall be assigned on request the rating of the shareholding bank if the latter bank's rating is better than its own. The foregoing arrangement shall also apply if the Declaration of Undertaking has been furnished by a domestic bank which does not participate in the Fund or a bank domiciled in another EEA or EFTA state provided that the shareholding bank has submitted to rating in accordance with these rules. The conditions prevailing at the time when the annual contribution is set pursuant to Section 5a (2), sentence 2 shall apply.
- (6) The rating procedure shall result in the bank being assigned to one of the 22 categories from AAA to D.<sup>1</sup>  
The frequency of the deposit protection audits shall depend partly on the rating of the individual bank.

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1) Rating categories: AAA, AA+, AA, AA-, A+, A, A-;  
BBB+, BBB, BBB-, BB+, BB, BB-, B+, B, B-;  
CCC+, CCC, CCC-, CC, C;  
D

- (7) Newly admitted banks which are not yet able to submit annual financial statements as a deposit-taking institution for three full business years shall be assigned to the entry level E (in accordance with the rating procedure description) until submission of the annual financial statements for the third full business year. Entry level E shall not lead to any surcharges or discounts when calculating the annual contributions. Banks with entry level E status may be audited more frequently and more extensively by the Auditing Association than other banks participating in the Fund.

If a corresponding rating result is obtained at a later date, banks may be assigned to the category BBB or lower while they still have entry level status; for the purpose of calculating the annual contribution or any special contributions, the entry level shall continue to apply.

## 3. Rules for calculating the own funds factor

- (8) The own funds factor shall be calculated as the ratio of (i) protected liabilities in accordance with the assessment basis for the annual contribution (Section 5a (3) of the By-laws of the Deposit Protection Fund) – whereby, for the purpose of calculating the own funds factor, the protected liabilities pursuant to Section 6 (including Section 6 (17)) of the By-laws of the Deposit Protection Fund shall be weighted at 100% – to (ii) own funds eligible for recognition within the meaning of Article 72 of the CRR (whereby these may also contain elements which the bank has refrained from including in own funds for prudential purposes but evidence of which has been furnished to the Auditing Association). To determine the annual contribution for the following year, an average amount shall be calculated from the figures as at 31 March and 30 June of the current year and as at 30 September and 31 December of the previous year. The own funds

factor shall be calculated using the procedure for calculating the own funds factor produced by the Auditing Association or by a third party commissioned in accordance with Subsection (1) of this annex and notified to the Deposit Protection Committee.

**(9)** For newly admitted banks, the own funds factor shall be calculated retrospectively for the period up to and including the third year following the year of admission and shall be the own funds factor for the fourth year following the year of admission.

#### **4. Rules for calculating the loss buffer ratio**

**(10)** The loss buffer ratio shall be the ratio of (i) own funds eligible for recognition within the meaning of Article 72 of the CRR (whereby these may also contain elements which the bank has refrained from including in own funds for prudential purposes but evidence of which has been furnished to the Auditing Association) and those liabilities of the bank which are bail-in-able and which are not senior to protected liabilities pursuant to Section 6 of the By-laws of the Deposit Protection Fund to (ii) the risk-weighted positions of the bank pursuant to Part Three, Title II of the CRR. To determine the annual contribution for the following year, an average amount shall be calculated from the figures as at 31 March and 30 June of the current year and as at 30 September and 31 December of the previous year. The loss buffer ratio shall be calculated using the procedure for calculating the loss buffer ratio produced by the Auditing Association or by a third party commissioned in accordance with Subsection (1) of this annex and notified to the Deposit Protection Committee.

**(11)** For newly admitted banks, the loss buffer ratio shall be calculated retrospectively for the period up to and including the third year following the year of admission and shall be the loss buffer ratio for the fourth year following the year of admission.

## Annex to Section 5 (2) of the By-laws of the Deposit Protection Fund

### Text of the Declarations of Authorisation

- I (we) hereby authorise the **Federal Financial Supervisory Authority** to inform the Association of German Banks – Deposit Protection Fund – of anything which shows that deposits held by me (us) might be possibly in jeopardy. In addition, I (we) authorise the Association of German Banks – Deposit Protection Fund – to obtain all information necessary for such purpose from the Federal Financial Supervisory Authority and to inform the Federal Financial Supervisory Authority of all incidents of which it may become aware in the course of its activities. This declaration shall be irrevocable for the duration of my (our) participation in the Deposit Protection Fund within the Association of German Banks and – as long as deposits held with me (us) are protected by the By-laws of the Deposit Protection Fund – during the period specified in Section 4 (8) of the By-laws of the Deposit Protection Fund.
- I (we) hereby authorise the **European Central Bank** to inform the Association of German Banks – Deposit Protection Fund – of anything which shows that deposits held by me (us) might be possibly in jeopardy. In addition, I (we) authorise the Association of German Banks – Deposit Protection Fund – to obtain all information necessary for such purpose from the European Central Bank and to inform the European Central Bank of all incidents of which it may become aware in the course of its activities. This declaration shall be irrevocable for the duration of my (our) participation in the Deposit Protection Fund within the Association of German Banks and – as long as deposits held with me (us) are protected by the By-laws of the Deposit Protection Fund – during the period specified in Section 4 (8) of the By-laws of the Deposit Protection Fund.
- I (we) hereby authorise the **Deutsche Bundesbank** to inform the Association of German Banks – Deposit Protection Fund – of anything which shows that deposits held by me (us) might be possibly in jeopardy. In addition, I (we) authorise the Association of German Banks – Deposit Protection Fund – to obtain all information necessary for such purpose from the Deutsche Bundesbank and to inform the Deutsche Bundesbank of all incidents of which it may become aware in the course of its activities. This declaration shall be irrevocable for the duration of my (our) participation in the Deposit Protection Fund within the Association of German Banks and – as long as deposits held with me (us) are protected by the By-laws of the Deposit Protection Fund – during the period specified in Section 4 (8) of the By-laws of the Deposit Protection Fund.
- I (we) hereby authorise the Auditing **Association of German Banks** to inform the Association of German Banks – Deposit Protection Fund – of anything which shows that deposits held by me (us) might be possibly in jeopardy or of anything which concerns my (our) obligations arising from the By-laws of the Deposit Protection Fund. In addition, I (we) authorise the Association of German Banks – Deposit Protection Fund – to obtain all information necessary for such purpose from the Auditing Association of German Banks and to inform the Auditing Association of German Banks of all incidents of which it may become aware in the course of its activities. This declaration shall be irrevocable for the duration of my (our) participation in the Deposit Protection Fund within the Association of German Banks and – as long as deposits held with me (us) are protected by the By-laws of the Deposit Protection Fund – during the period specified in Section 4 (8) of the By-laws of the Deposit Protection Fund.
- I (we) hereby authorise **all other responsible supervisory and resolution authorities** to inform the Association of German Banks – Deposit Protection

Fund – of anything which shows that deposits held by me (us) might be possibly in jeopardy. In addition, I (we) authorise the Association of German Banks – Deposit Protection Fund – to obtain all information necessary for such purpose from these responsible supervisory and resolution authorities and to inform them of all incidents of which it may become aware in the course of its activities. This declaration shall be irrevocable for the duration of my (our) participation in the Deposit Protection Fund within the Association of German Banks and – as long as deposits held with me (us) are protected by the By-laws of the Deposit Protection Fund – during the period specified in Section 4 (8) of the By-laws of the Deposit Protection Fund.

## **Annex to Section 5 (5) of the By-laws of the Deposit Protection Fund**

### **Section 11 of the Articles of the Auditing Association of German Banks**

- (1)** (1) The Auditing Association may impose on a member bank conditions
- 1.** if an objection is made
    - (a)** by the competent supervisory authority or public audit firm or
    - (b)** by the Auditing Association within the scope of an audit or as the result of an admission audit conducted on application for membership which relates to the German Banking Act (KWG), other statutory provisions, legal ordinances, orders, administrative regulations, supervisory practice of the competent supervisory authorities or the principles of internal operation or
  - 2.** if developments or circumstances arise with the member bank that, in accordance with §45 German Banking Act (KWG) or §36 Act on the Recovery and Resolution of Financial Institutions (SAG), would justify actions by the supervisory authority or
  - 3.** if the rating result of the member bank according to §4 paragraph 1 sentence 1 No. 6 is inferior to “BBB” or
  - 4.** if an “increased latent risk” pursuant to sentence 2 is detected by the Auditing Association or
  - 5.** if, in the course of a resolution action according to the Act on the Recovery and Resolution of Financial Institutions (SAG) or an assisting action in accordance with §2 paragraph 2 of the By-laws of the Deposit Protection Fund, a “disproportionate claim” at the expense of the Deposit Protection Fund in the sense of sentence 3 is imminent or



6. if said conditions are apt to avert any misuse or any otherwise imminent threat of recourse to the Deposit Protection Fund.

(2) An increased latent risk which may have a seriously detrimental effect on the present or future financial position, net asset position and/or earnings position of a bank and which leads to a “capital lock-up” of the member bank’s equity and/or hidden reserves is in particular deemed to exist

1. if in the course of an audit an asset or debit item cannot be conclusively assessed (e.g. due to the absence of any proof of the value of the asset item or an inability to assess the value of a security) or
2. if – set against the financial situation of the bank or the borrower – lending on an unsecured basis is deemed to be too high or
3. if a loan – irrespective of its regulatory risk weighting – accounts for 100% of the bank’s own funds (not applicable to loans that – according to the assessment standards of the Auditing Association – are regarded as fully collateralised or to loans to central banks, central governments and regional governments in member states of the Organisation for Economic Cooperation and Development (OECD) as well as to international organisations if the borrower is endowed with a rating of at least “BBB” assigned by an acknowledged rating agency or a comparable evaluation by the Auditing Association exists; moreover, loans guaranteed by one of the categories of borrowers specified above are exempt as well as loans to central counterparties in accordance with §1 paragraph 31 German Banking Act residing in a member state of the OECD).

(3) In particular, the risk of a “disproportionate claim” at the expense of the Deposit Protection Fund is imminent if the rating of the member bank according to §4 paragraph 1 sentence 1 No. 6 is inferior to “A-” and

1. the portion of unprotected liabilities plus the bank’s own funds in relation to total liabilities plus the bank’s own funds makes up for less than 10% (in this respect total liabilities are to be adjusted by

liabilities from derivatives provided that they are subject to accredited netting agreements; unprotected liabilities are the adjusted total liabilities after deducting deposits protected by the Deposit Protection Fund, deposits covered by the German Banks’ Compensation Scheme (Entschädigungseinrichtung deutscher Banken GmbH) or any other approved European compensation scheme as well as liabilities collateralised by assets) or

2. considerable portions of the member bank’s assets serve as collateral for its liabilities or
3. the member bank does not feature funding activities that are diversified with respect to maturities and sources, in particular if the volume of deposits protected by the Deposit Protection Fund or covered by other compensation schemes amount to more than the thirtyfold of unprotected liabilities or account for more than twentyfold of the bank’s own funds.

(2) (1) In addition, the Auditing Association may impose conditions designed to ensure compliance with the reported relevant circumstances and the business policy objectives as stated at the time of application for admission or during the course of the owner control procedure, which formed the basis for the admission of the member bank or the change of shareholder. (2) If the institution wishes to make a substantial change in this regard, a prior assessment is to be performed by the Auditing Association.

(3) The Auditing Association may also impose conditions if a member bank intends to carry out a substantial change in its business model or any other change pursuant to §10 paragraph 1 sentence 1 No. 8 and the condition is designed to prevent any increase in the existing risk exposure of the member bank or to safeguard a limitation of the volume of the member bank’s protected deposits from customers until the completion of an assessment of the intended change.

**(4)** Furthermore, the Auditing Association may impose conditions if it obtains information from outside of a deposit protection audit regarding a significant risk to the net asset position, the financial situation or the profitability of the member bank and if the conditions serve to prevent any increase in the existing risk of the member bank or to safeguard a limitation of the volume of the member bank's protected deposits from customers until the completion of an assessment of the issue in question.

**(5)** If a qualified participating interest (§1 paragraph 9 German Banking Act (KWG)) in a member bank is acquired or a procedure pursuant to §6 paragraph 1 sentence 1 No. 2 to No. 4 is initiated before an owner control procedure pursuant to §4 paragraph 1 sentence 1 No. 2, §6 and §10 paragraph 1 sentence 1 No. 6 has been completed, the Auditing Association may impose one or several conditions – on the basis of paragraph 1 sentence 1 No. 6 as mentioned above – which are suitable to maintain the existing risk situation until the completion of the owner control procedure.

**(6)** (1) At the request of the Auditing Association, the member bank shall confirm in writing to the Auditing Association that the conditions are being complied with. (2) The Auditing Association may assure itself of the compliance with the conditions within the scope of audits. (3) If the Auditing Association has ascertained, following an examination of the circumstances, that the prerequisites for the imposition of a condition no longer apply, it shall cancel the condition and inform the member bank thereof in writing.

**(7)** (1) A member bank shall be entitled to have any conditions which the Auditing Association has imposed on it through the Executive Board verified by the Advisory Board. (2) Any such recourse to the Advisory Board pursuant to §25 paragraph 2 shall have no suspensive effect and shall not release the member

bank from its duties arising from the conditions (including the duty under paragraph 6 sentence 1 and 2 above – subject to any other Advisory Board decision if necessary – to recognise compliance with conditions as binding and to have the compliance with these verified by the Auditing Association). (3) In this event, the Advisory Board shall be provided with all documents and information which formed the basis for the imposition of conditions; §24 paragraph 3 sentence 1 shall not apply in this respect.

## Annex to Section 5 (10) of the By-laws of the Deposit Protection Fund

### Briefkopf

Verpflichtungserklärung gemäß § 5 Absatz 10 des Statuts des innerhalb des Bundesverbandes deutscher Banken e.V. bestehenden Einlagensicherungsfonds

Ich (Wir)

.....  
stehe(n) zu  
.....

(im Folgenden „Bank“) in einer Verbindung, wie sie § 5 Absatz 10 des Statuts des innerhalb des Bundesverbandes deutscher Banken e.V. bestehenden Einlagensicherungsfonds umschreibt. Ich (Wir) verpflichte(n) mich (uns), den Bundesverband deutscher Banken e.V. von allen Verlusten freizustellen, die diesem durch Maßnahmen gemäß § 2 Absatz 2 des Statuts des Einlagensicherungsfonds zu Gunsten der Bank entstehen.

Diese Erklärung bleibt bis zum

### Letterhead

Declaration of Undertaking pursuant to § 5 (10) of the By-laws of the Deposit Protection Fund within the Association of German Banks

I (We)

.....  
have a relationship with  
.....

(hereinafter referred to as “Bank”) as described in § 5 (10) of the By-laws of the Deposit Protection Fund within the Association of German Banks. I (We) undertake to indemnify the Association of German Banks against any losses which the Association may suffer from measures taken in favour of the Bank pursuant to § 2 (2) of the By-laws of the Deposit Protection Fund.

This declaration shall remain in effect until revocation, irrespective of whether

Widerruf wirksam, und zwar unabhängig davon, ob meine (unsere) Verbindung im Sinne des § 5 Absatz 10 des Statuts des Einlagensicherungsfonds zu der Bank in irgendeiner Weise fortbesteht. Sie ist unwiderruflich, solange eine solche Verbindung fortbesteht. Wird diese Erklärung in einem Zeitpunkt widerrufen, in dem bereits Tatsachen vorliegen, die zu Maßnahmen gemäß § 2 Absatz 2 des Statuts des Einlagensicherungsfonds führen, so gilt meine (unsere) Verpflichtung gemäß Absatz 1 dieser Erklärung auch hinsichtlich dieser Maßnahmen.

Für Streitigkeiten aus dieser Erklärung ist ausschließlich das Landgericht Berlin zuständig.

Für alle Rechtsbeziehungen, die sich aus dieser Erklärung ergeben, gilt das Recht der Bundesrepublik Deutschland.

Ich (Wir)

.....  
ernenne(n) und bevollmächtige(n) hiermit unwiderruflich  
.....

or not my (our) relationship with the Bank within the meaning of § 5 (10) of the By-laws of the Deposit Protection Fund persists in any manner. This declaration shall be irrevocable for as long as such relationship persists. If this declaration shall be revoked at a time when facts have already arisen which lead to the taking of measures pursuant to § 2 (2) of the By-laws of the Deposit Protection Fund, my (our) obligation under the first paragraph hereof shall also apply with respect to the taking of such measures.

Any disputes arising in connection with this declaration shall fall within the exclusive jurisdiction of the Landgericht Berlin.

All legal relationships resulting from this declaration shall be subject to the law of the Federal Republic of Germany.

I (We)

.....  
hereby irrevocably appoint and authorise  
.....

als Zustellungsbevollmächtigten für alle Schriftstücke, Erklärungen und jede andere Form von Mitteilungen aus oder im Zusammenhang mit möglichen oder bereits anhängigen Rechtsstreitigkeiten aus oder im Zusammenhang mit dieser Erklärung. Für den Fall, dass der ernannte Zustellungsbevollmächtigte diese Aufgabe aus rechtlichen oder tatsächlichen Gründen nicht mehr ausüben kann, verpflichte(n) ich (wir) mich (uns), unverzüglich einen anderen im Gebiet der Bundesrepublik Deutschland ansässigen Zustellungsbevollmächtigten zu ernennen und diese Ernennung dem Einlagensicherungsfonds unverzüglich mitzuteilen.<sup>1</sup>

as process agent for all papers, declarations and any other form of communications resulting from or in connection with potential or already pending litigation resulting from or in connection with this declaration. If the appointed process agent can no longer perform this function for legal or factual reasons, I (we) shall be obliged to appoint without delay another process agent resident on the territory of the Federal Republic of Germany and to notify the Deposit Protection Fund promptly of such appointment.<sup>2</sup>

<sup>1</sup> Dieser ist zu streichen, wenn der Unterzeichner dieser Erklärung seinen Sitz in der Bundesrepublik Deutschland hat.

<sup>2</sup> This paragraph should be deleted if the signatory to this declaration is resident in the Federal Republic of Germany.

Diese Erklärung wird in englischer und deutscher Sprache unterzeichnet. Im Falle von Abweichungen ist allein der deutsche Text maßgeblich.

This declaration is executed in English and German. In case of discrepancies, the German version shall prevail.

\_\_\_\_\_  
Ort und Datum / Place and Date

\_\_\_\_\_  
Unterschrift / Signature<sup>3</sup>

\_\_\_\_\_  
Name / Name<sup>4</sup>

\_\_\_\_\_  
Funktion / Function<sup>5 6</sup>

\_\_\_\_\_  
Ort und Datum / Place and Date

\_\_\_\_\_  
Unterschrift / Signature<sup>3</sup>

\_\_\_\_\_  
Name / Name<sup>4</sup>

\_\_\_\_\_  
Funktion / Function<sup>5 6</sup>

<sup>3</sup> Die Unterschrift ist mit einem Firmenstempel zu versehen (soweit vorhanden), zu beglaubigen und ggf. mit Apostille zu versehen bzw. zu legalisieren, soweit der Bankenverband nicht hierauf verzichtet. / The signature has to be sealed with the company seal (if applicable), notarized and, as the case may be, apostilled or legalized, unless the Association of German Banks waives such requirement.

<sup>4</sup> Name des Unterzeichnenden in Großbuchstaben / Name of signatory in capital letters

<sup>5</sup> Funktion des Unterzeichnenden in Großbuchstaben / Function of signatory in capital letters

<sup>6</sup> Soweit die Vertretungsberechtigung des Unterzeichners nicht aus öffentlich einsehbaren Registern ersichtlich ist, sind marktübliche Nachweise der Vertretungsberechtigung beizufügen. / To the extent the signing authority of the signatory is not evident from public registers, customary proof of signing authority has to be submitted.

## **Annex to Section 5a (10) of the By-laws of the Deposit Protection Fund**

### **Rules on the provision of contributions by way of payment commitments**

Where payment commitments are assumed pursuant to Section 5a (10) of the By-laws of the Deposit Protection Fund, the following rules shall apply:

#### **Section 1 – Conditions for assuming payment commitments**

- (1)** The assumption of a payment commitment in an assessment year shall require the bank
  - (a)** has concluded with the Banking Association, once only but by 15 March of the assessment year at the latest, a master agreement for payment commitments in accordance with Section 2 of this annex and a master agreement for financial collateral in accordance with Section 8 of this annex and,
  - (b)** has agreed with the Banking Association, by 15 March of the assessment year at the latest, the assumption of a payment commitment for the assessment year in accordance with Section 3 of this annex and
  - (c)** has secured the payment commitment by 31 March of the assessment year at the latest by providing financial collateral in accordance with section 7 of this annex.
- (2)** The date mentioned in subsection (1) (c) is a cut-off deadline.

#### **Section 2 – Master agreement for payment commitments**

- (1)** The master agreement shall form the basis for concluding agreements on the assumption of payment commitments in accordance with Section 3 of this annex in each assessment year. The master agreement shall specify the content of the agreements on the assumption of payment commitments, the procedure for concluding the agreements and the further conditions for exercising this option.
- (2)** The Banking Association shall use a standard template for the master agreement.

#### **Section 3 – Agreements on the assumption of payment commitments**

- (1)** The agreements on the assumption of payment commitments shall specify the extent to which the bank will assume payment commitments. The agreements shall also specify, in particular,
  - (a)** that payment commitments shall be irrevocable and non-terminable,
  - (b)** that each payment commitment shall be secured by certain types of financial collateral in accordance with Section 6 to 11 of this annex,
  - (c)** that the bank shall undertake to pay upon the first request and
  - (d)** that it shall be permissible to transfer payment commitment agreements to other banks in accordance with Section 5 of this annex.
- (2)** The Banking Association shall use a standard template for agreements on the assumption of payment commitments.

## Section 4 – Request for and due date of payment

- (1)** The Banking Association shall request the payment provided by way of the payment commitment in full or in partial amounts to the extent that the Banking Association deems this necessary in order to carry out measures pursuant to Section 2 (2) of the By-laws of the Deposit Protection Fund. This shall apply in particular if the other available assets of the Fund are not sufficiently liquid. The amount of the payment requested from the individual bank shall be calculated on the basis of the proportion of the payment commitments of the individual bank to the total amount of payment commitments.
- (2)** The Banking Association shall, in addition, request the payment from an individual bank which has assumed a payment commitment
  - (a)** if the bank fails to provide or replace financial collateral or fails to do so in due time or in full, or
  - (b)** if reorganisation measures are ordered for the bank, though not if early intervention measures or crisis management measures within the meaning of Articles 27 and 2 (1), No. 102 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU and Regulations (EU) No. 1093/2010 and (EU) No. 648/2012 of the European Parliament and of the Council (OJ L173 of 12.6.2014, p. 190) are ordered, or
  - (c)** if liquidation or insolvency proceedings or comparable proceedings under non-German law have been initiated over the bank's assets, or
  - (d)** if the bank's participation in the Deposit Protection Fund ends.

- (3)** The Banking Association may, in addition, request payments if it deems these necessary with respect to the ban on placing banks in a better financial position within the meaning of Section 5a (10), sentence 2 of the By-Laws of the Deposit Protection Fund (especially with respect to previous measures taken by the Fund pursuant to Section 2 (2) of the Fund). Corresponding checks shall be conducted at least once a year. The amount of the payment requested from the individual bank shall be calculated on the basis of the proportion of the payment commitments of the individual bank to the total amount of payment commitments.
- (4)** The requests pursuant to Subsection (1) to (3) shall be made in writing, electronically or orally, stating the reason for the request and with confirmation of receipt provided by the banks. The payment shall be due upon receipt by the banks of the request.

## Section 5 – Transfer of payment commitments

- (1)** The banks shall have the right, subject to the approval of the Banking Association, to transfer agreements on the assumption of payment commitments in accordance with Section 3 of this annex to other banks which have concluded master agreements in accordance with Section 2 of this annex. The transferee bank shall take over in full all the obligations resulting from the agreement on the assumption of payment commitments and, in particular, give an undertaking to the Banking Association that it will pay upon the first request. On the transfer, the transferee bank shall assume the position of the transferring bank with respect to the financial collateral provided in accordance with Section 7 and 8 of this annex for the transferred payment commitments if and to the extent that the transferee bank does not provide financial collateral of its own in accordance with Section 8 of this annex at the time of the transfer.

- (2) The Banking Association shall approve a transfer in accordance with Subsection (1) if the transferee bank simultaneously takes over all or a significant part of the transferring bank's covered deposits by way of universal or individual succession. In addition, the Banking Association shall grant its approval only if the transfer is compatible with the ban on placing banks in a better financial position within the meaning of Section 5a (10), sentence 2 of the By-laws of the Deposit Protection Fund and if a threat to the financial stability of the Fund can be excluded.

## Section 6 – Collateralisation of payment commitments

- (1) The bank shall provide financial collateral to secure the payment commitments.
- (2) The market value of the collateral less a haircut in accordance with Section 11 of this annex (haircut-adjusted value) shall always correspond to the total amount of the payment commitments assumed by the bank.

## Section 7 – Provision of financial collateral

- (1) Financial collateral shall consist exclusively of low-risk debt securities or cash collateral which are realisable and which can be made available in a reasonable amount of time and at a reasonable cost.
- (2) Financial collateral may be provided by way of title transfer or pledge.

## Section 8 – Master agreement for financial collateral

- (1) The basis for providing financial collateral in connection with the conclusion of agreements on the assumption of payment commitments in individual

assessment years pursuant to Section 7 of this annex shall be a master agreement for financial collateral. The master agreement shall govern definitively the composition of the financial collateral and the procedure for the provision thereof.

- (2) The Banking Association shall use a standard template for the master agreement.
- (3) The master agreement for financial collateral shall specify, in particular,
- (a) what low-risk debt securities or cash collateral may form part of the financial collateral and
  - (b) that the haircut-adjusted value of the financial collateral shall always equal at least the sum of all the payment commitments assumed by a bank and
  - (c) that the bank shall have the right, without prejudice to paragraph (e), to swap financial collateral provided that the criteria set out in paragraphs (a) and (b) continue to be met and
  - (d) that, if the haircut-adjusted value of the sum of all the financial collateral provided by a bank falls below the sum of all the payment commitments assumed by that bank (coverage shortfall), the bank shall be required to transfer additional financial collateral of a haircut-adjusted value which at least equals the amount of the shortfall in coverage or, alternatively, the bank may meet its payment commitments by making a payment to the Deposit Protection Fund in the amount of the coverage shortfall and
  - (e) that the bank shall replace financial collateral with other suitable financial collateral if the former collateral has fallen due, if it no longer meets the requirements set out in Section 9 of this annex or in other cases agreed upon by the bank and the Banking Association and
  - (f) that the bank shall be entitled to any income from the financial collateral and
  - (g) that the bank shall be obliged to inform the Banking Association without delay of any circumstances which could impair the bank's ability to meet its payment commitments or its obligations under the master agreement for financial collateral.

## **Section 9 – Eligible financial collateral**

The Banking Association may place restrictions on, or set criteria to be met by, low-risk debt securities or cash collateral which are eligible as financial collateral. The Banking Association shall publish a list of eligible low-risk debt securities and cash collateral on its website.

## **Section 10 – Management of financial collateral**

- (1)** The Banking Association may designate a third party to manage the financial collateral. In this case, an agreement shall be concluded between the Banking Association and the collateral manager.
- (2)** The cost of the collateral management shall be borne by the bank. If the collateral is managed by a third party, the bank's obligation to bear the cost shall be specified in the agreement.

## **Section 11 – Haircuts, valuation**

- (1)** The Banking Association shall set haircuts for the financial collateral provided and shall apply these to determine the haircut-adjusted value of the financial collateral. The haircuts shall reflect the credit, market and liquidity risk of the financial collateral in question and an evaluation of the expected loss in the event of a sale and the expected period of time until the sale of the financial collateral is complete.
- (2)** The Banking Association may involve the Audit Association in the determination of the haircuts.



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