



**Notice  
on the  
granting of authorisation  
to conduct banking business  
pursuant to section 32 (1) of the German Banking Act  
(31 December 2007)**

**Note**

The comments and explanations in this Notice issued by the Deutsche Bundesbank and the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, or BaFin) on the prerequisites and formalities for the granting of authorisation for credit institutions provide interested parties with the necessary initial information.

**Contents**

1	Banking business requiring authorisation	(p 2)
2	Exceptions	(p 4)
3	Conditions for the granting of authorisation	(p 5)
4	Refusal of authorisation	(p 8)
5	Contents of the application for authorisation	(p 9)
6	Enterprises domiciled outside Germany	(p 13)
7	Prevention of money laundering, terrorism financing and fraudulent activities to the detriment of credit institutions	(p 18)
8	Fees and charges	(p 19)
9	Compensation scheme	(p 20)
10	Addresses	(p 21)

## 1 Banking business requiring authorisation

Anyone wishing to conduct banking business within the jurisdictional reach of the German Banking Act (*Kreditwesengesetz*) on the scale specified in section 1 (1) of the Banking Act generally needs **written authorisation** from the Federal Financial Supervisory Authority – hereinafter referred to as BaFin – pursuant to section 32 (1) of the Banking Act. This applies accordingly to enterprises domiciled outside Germany which wish to conduct banking business via a branch in Germany pursuant to section 53 of the Banking Act and also in the event that relevant services are offered on a cross-border basis from outside Germany (see section 6.1 of this Notice). Pursuant to section 53b of the Banking Act, enterprises domiciled in another state of the European Economic Area (EEA) may, under certain conditions, provide their services in Germany through a branch or on a cross-border basis without authorisation from BaFin (see section 6.2 of this Notice).

Authorisation must be obtained before commencing business operations; entries in public registers (eg the Commercial Register (*Handelsregister*) or the Register of Cooperative Societies (*Genossenschaftsregister*)) may be made only if the court of registration has been furnished with proof of such authorisation (section 43 (1) of the Banking Act). BaFin may grant authorisation subject to conditions which must be consistent with the objective pursued by the Banking Act; moreover, it may limit the authorisation to specific types of banking business (section 32 (2) of the Banking Act). The jurisdictional reach of the Banking Act is the Federal Republic of Germany. Depending on the legal form of the company to be established, the relevant provisions under company law must be complied with. It should thereby be borne in mind that credit institutions may not be operated in the legal form of a sole proprietorship (section 2b (1) of the Banking Act).

It is a punishable offence to conduct banking business without authorisation (section 54 of the Banking Act). If banking business is carried out without the required authorisation or if prohibited business is conducted, BaFin, pursuant to section 37 of the Banking Act, can order the enterprise and the members of its governing bodies to cease business operations immediately and to settle this business promptly. These powers of intervention can also be exercised vis-à-vis enterprises and members of their governing bodies involved in the initiation, conclusion or settlement of the unauthorised business.

Pursuant to section 1 (1) sentence 1 of the Banking Act, **credit institutions** are enterprises which conduct banking business commercially or on a scale which requires a commercially organised business undertaking. Business is performed commercially if the operation is intended to continue for a certain length of time and is conducted with the intention of making a profit. Alternatively, the criterion which requires a commercially organised business undertaking applies. This criterion does not hinge on whether a commercially organised business undertaking actually exists, but solely on whether the

scale of the business objectively requires a commercially organised business undertaking. The requirement to organise operations as a commercial business undertaking may also arise from the cumulative effect of conducting various types of banking business on a comparatively small scale.

The definition of **banking business** is laid down conclusively in section 1 (1) sentence 2 numbers 1 to 12 of the Banking Act. Accordingly, banking business comprises:

1. the acceptance of funds from others as deposits or of other unconditionally repayable funds from the public unless the claim to repayment is securitised in the form of bearer or order debt certificates, irrespective of whether or not interest is paid (deposit business),
  - 1a. the business specified in section 1 (1) sentence 2 of the Pfandbrief Act (*Pfandbriefgesetz*) (Pfandbrief business),
2. the granting of money loans and acceptance credits (lending business),
3. the purchase of bills of exchange and cheques (discount business),
4. the purchase and sale of financial instruments in the credit institution's own name for the account of others (principal broking services),
5. the safe custody and administration of securities for the account of others (safe custody business),
6. (Repealed)
7. the incurrance of the obligation to repurchase previously sold claims in respect of loans prior to their maturity,
8. the assumption of sureties, guarantees and other warranties on behalf of others (guarantee business),
9. the execution of cashless payment and clearing operations (giro business),
10. the purchase of financial instruments at the credit institution's own risk for placing in the market or the assumption of equivalent guarantees (underwriting business),
11. the issuance and administration of electronic money (e-money business), and

12. acting in the capacity of a central counterparty within the meaning of section 1 (31) of the Banking Act.

## 2 Exceptions

Section 2 (1) of the Banking Act specifies which enterprises are not deemed to be credit institutions and thus do not require authorisation from BaFin, for example,

- investment companies, even if they manage and hold in safe custody exposures in the form of collective investment undertakings for the account of others pursuant to section 7 (2) number 4 of the Investment Act (*Investmentgesetz*) as well as investment stock corporations (number 3b),
- private and public insurance enterprises (number 4),
- enterprises engaged in pawnbroking, insofar as they conduct this business by granting loans against pledges (number 5),
- enterprises recognised under the Act Concerning Risk Capital Investment Companies (*Gesetz über Unternehmensbeteiligungsgesellschaften*) as risk capital investment companies (number 6),
- enterprises which conduct banking business solely with their parent enterprise or with their subsidiaries or affiliated enterprises (number 7),
- enterprises which, without being involved in cross-border activities, conduct banking business solely in the form of principal broking services on domestic stock exchanges or in domestic multilateral trading systems within the meaning of section 1 (1a) sentence 2 number 1b of the Banking Act on or in which derivatives are traded (derivatives markets) for other members of these markets or trading systems, if clearing members of these markets or trading systems are liable for the fulfilment of the contracts which the aforementioned enterprises conclude on the said markets or in the said trading systems (number 8), and
- enterprises which engage in principal broking services only in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5 of the Banking Act provided that they are not part of a group whose principal activity consists in rendering financial services within the meaning of section 1 (1a) sentence 2 numbers

1 to 4 of the Banking Act or banking business within the meaning of section 1 (1) sentence 2 numbers 1, 2, 8 or 11; the principal broking services, financial services within the meaning of section 1 (1a) sentence 2 numbers 1 to 4 of the Banking Act in relation to derivatives within the meaning of section 1 (11) sentence 4 numbers 2 and 5 of the Banking Act and proprietary business in financial instruments at a group level are of secondary significance to the principal activity; and the principal broking services are provided only for principal activity customers in objective connection with principal activity operations (number 9).

In cases of doubt, BaFin shall decide whether an enterprise is subject to the provisions of the Banking Act (section 4 of the Banking Act).

In individual cases, BaFin, under certain conditions and upon application, may exempt an institution from the obligation to comply with specific provisions, especially if the enterprise does not require supervision in this respect given the nature of the business which it conducts (see section 2 (4) of the Banking Act).

Furthermore, BaFin, upon application and under certain conditions, in consultation with the Deutsche Bundesbank, may exempt an enterprise which conducts only e-money business from the obligation to comply with specific provisions if the enterprise does not require supervision in this respect given the nature or the volume of the business which it conducts (see section 2 (5) of the Banking Act).

The types of business which are generally prohibited in the Federal Republic of Germany (eg employee savings banks) are listed in section 3 of the Banking Act.

### **3 Conditions for the granting of authorisation**

Pursuant to section 33 (1) sentence 1 of the Banking Act, which lays down the mandatory criteria for refusing authorisation without recourse to BaFin's discretion, authorisation may be granted only if the following conditions are met.

- The resources needed for business operations, in particular sufficient initial capital, must be available in Germany.
  
- Deposit-taking credit institutions – which are enterprises that intend to receive deposits or other repayable funds from the public and to conduct lending business – and central counterparties within the meaning of section 1 (31) of the Banking Act require initial capital amounting to at least €5 million (section 33 (1) sentence 1 number 1d of the Banking Act).

- For securities trading banks, the initial capital must amount to at least €730,000 (section 33 (1) sentence 1c in conjunction with section 1 (3d) sentence 3 of the Banking Act).
- For enterprises which solely conduct e-money business, the initial capital must amount to at least €1 million (section 33 (1) sentence 1 number 1e of the Banking Act).
- To obtain authorisation to conduct Pfandbrief business, a minimum initial capital of €25 million is normally required (section 2 (1) sentence 2 number 1 of the Pfandbrief Act).
- In addition to these statutory minimum requirements, the following special requirements for initial capital have been developed on the basis of BaFin's administrative practice.
  - To establish a building and loan association (*Bausparkasse*), a minimum initial capital of €15 million is normally required.
  - To obtain authorisation solely to conduct guarantee business, a minimum initial capital of €1.5 million is required. If the guarantee business is conducted exclusively with public-sector counter-guarantees, liable capital amounting to at least €500,000 is required.

The criteria for sufficient initial capital are laid down in section 33 (1) sentence 1 in conjunction with section 10 (2a) sentence 1 numbers 1 to 6 of the Banking Act. These clauses specify that the initial capital must consist of tier 1 capital made up of several capital components, which are variously defined depending on the credit institution's form under company law. The key criterion for the tier 1 capital is that it must be freely and indefinitely available and may not be derived from borrowing. Tier 1 capital is essentially comprised of paid-up capital and reserves. In the case of partnerships, withdrawals by the proprietor or the general partners as well as loans drawn down by them must be deducted from the tier 1 capital amount. In the case of public limited companies, preference shares with a deferred payment obligation must be deducted.

BaFin reserves the right to decide on a case-by-case basis whether the initial capital in the amounts specified above is really sufficient and meets the actual requirements of the new institution. In this context it should also be noted that, according to BaFin's general administrative practice, the overall capital ratio pursuant to section 2 (6) sentence 2 of the German Solvency Regulation (*Solvabilitätsverordnung*) may not fall below 12% in the first three years following commencement of business operations.

- The institution must have at least two trustworthy **senior managers** (see section 1 (2) sentence 1 of the Banking Act) who have the necessary professional qualifications and work for it not merely in an honorary capacity (see section 32 (1) and section 33 (1) sentence 1 numbers 2, 4 and 5 of the Banking Act). No facts may be known which cast doubt on the personal trustworthiness of the applicant or of a senior manager (see section 33 (1) sentence 1 number 2 of the Banking Act). Facts which may give rise to such doubts include committing punishable offences against property (such as criminal breach of trust or fraud), violation of statutory regulations, in particular in the area of business, trade, competition or tax law, or if the applicant has demonstrated through his/her private or business conduct that sound management cannot be expected of him/her.

Pursuant to section 33 (2) sentence 1 of the Banking Act, a prerequisite for the professional qualifications of senior managers is that they have adequate theoretical and practical knowledge of the banking business concerned, as well as managerial experience. A person shall normally be assumed to have the professional qualifications necessary for managing a credit institution if he/she can demonstrate three years' managerial experience at a credit institution of comparable size and type of business (section 33 (2) sentence 2 of the Banking Act). A person with managerial experience is someone who has held a position of responsibility in the senior management of a credit institution or at least immediately below the senior management level. However, the fulfilment of this standard assumption is not a mandatory prerequisite or formality for the granting of authorisation, nor is it proof of professional qualifications, ie professional qualifications may also be acquired in other ways. The criterion of professional qualifications is therefore subject to an individual case evaluation, which takes account of all the circumstances and the particular features of the relevant credit institution.

- The proprietor or legal representative or representative pursuant to the articles of association or general partner of an enterprise which holds a **qualified participating interest** in a credit institution (section 1 (9) of the Banking Act) must satisfy the requirements to be set in the interests of the sound and prudent management of the institution. This requires, in particular, that the holder of the qualified participating interest is trustworthy (section 33 (1) sentence 1 number 3 of the Banking Act). In case of doubt, untrustworthiness shall also be presumed if there are facts warranting the assumption that the funds which he/she has raised in order to purchase the qualified participating interest have been acquired by an action which objectively constitutes a criminal offence (section 33 (1) sentence 1 number 3 in conjunction with section 2c (1a) sentence 1 number 1 clause 2 of the Banking Act).
- The credit institution's **head office** must be domiciled in Germany (section 33 (1) sentence 1 number 6 of the Banking Act).

- The institution must be prepared or in a position to make the **organisational arrangements** necessary for the proper operation of the business for which it is seeking authorisation (section 33 (1) sentence 1 number 7 of the Banking Act).

#### **4 Refusal of authorisation**

Pursuant to section 33 (3) of the Banking Act, BaFin, at its dutiful discretion, may also refuse to grant authorisation if facts are known which warrant the assumption that effective supervision of the institution is impaired. This is especially the case if

- the institution is associated with other individuals or enterprises in a corporate network or is closely linked to such a network, which impairs effective supervision of the institution owing to the structure of cross-shareholdings or because of inadequate economic transparency (section 33 (3) sentence 2 number 1 of the Banking Act);
- effective supervision of the institution is impaired by the laws, regulations and administrative provisions of a non-EEA state applicable to such individuals or enterprises (for example, if the laws of the non-EEA state prohibit the disclosure of information to BaFin; section 33 (3) sentence 2 number 2 of the Banking Act);
- the institution is a subsidiary of an institution domiciled in a non-EEA state that is not effectively supervised in the state where it is domiciled or has its head office or whose competent supervisory body is not prepared to cooperate satisfactorily with BaFin (section 33 (3) sentence 2 number 3 of the Banking Act).

BaFin may also refuse to grant authorisation if the application for authorisation contains insufficient information or documentation (section 33 (3) sentence 3 of the Banking Act).

## 5 Contents of the application for authorisation

The prospective authorisation holder must apply for authorisation in writing. In the case of corporations, this is done by the executive board or senior management on behalf of the company; in the case of partnerships, by each general partner. Section 32 of the Banking Act in conjunction with section 14 of the Regulation Concerning Reports and the Submission of Documentation under the Banking Act (Reports Regulation) (*Anzeigenverordnung*) essentially specifies what information and documentation must be included with the application for authorisation. There is no printed application form, nor are there any formal requirements other than that the application must be made in writing.

The application and all the necessary documentation must be submitted to BaFin **in triplicate**.

The application for authorisation must contain the following **information**:

- the corporate name;
- the legal form of the enterprise;
- the registered office and address as well as – if possible – the telephone and fax numbers of the enterprise;
- the object of the enterprise;
- an indication for which of the banking business activities specified in section 1 (1) sentence 2 of the Banking Act authorisation is being sought;
- the names of at least two senior managers who work for the enterprise not merely in an honorary capacity (section 32 (1) number 2 of the Banking Act in conjunction with section 33 (1) sentence 1 number 5 of the Banking Act);
- the composition of the governing bodies;
- the date on which business operations are likely to commence.

The following **documentation with further information** must also be included with the application.

- Certified photocopies of the formation records (the deed of formation, if applicable the formation report), the articles of association, articles of incorporation or the

partnership agreement and the first resolution on the appointment of the senior managers as well as the rules of procedure envisaged for them (section 14 (2) sentence 2 of the Reports Regulation).

- Suitable evidence of having the resources needed for business operations (section 32 (1) sentence 2 number 1 of the Banking Act in conjunction with section 14 (3) of the Reports Regulation).

Evidence of the establishment of an enterprise consists of confirmation from a deposit-taking credit institution (section 1 (3d) sentence 1 of the Banking Act) domiciled in an EEA state stating that the initial capital has been paid up and is freely available to the managers, unencumbered by rights of third parties. The initial capital may not be encumbered by any loans, liens or other restrictions of the credit institution or third parties (principle of real provision of capital).

In the case of existing enterprises which wish to commence business operations requiring authorisation, evidence of the available capital – which must be at least equivalent to the required initial capital – may, with BaFin's consent, also be furnished by means of written confirmation from an external auditor, whereby the capital must be calculated according to the principles applicable to credit institutions (see section 14 (3) sentence 2 of the Reports Regulation).

- The information which is required to assess the trustworthiness of the applicants and the senior managers (see section 32 (1) sentence 2 number 3 of the Banking Act and section 14 (4) of the Reports Regulation in conjunction with section 5 (1) sentence 1 number 2 and sentence 2 of the Reports Regulation).

This information is to be supplied in the form of a statement by each applicant and senior manager as to whether criminal proceedings are being conducted against them, whether criminal proceedings have previously been conducted against them on account of a crime or other offence, or whether they or an enterprise managed by them is or has been involved as a debtor in insolvency proceedings, or in proceedings for making a statutory declaration, or in any comparable proceedings. An example of such a statement is available on BaFin's website (<http://www.bafin.de>). Previously pending criminal proceedings may be disregarded if they were discontinued for lack of sufficient evidence or owing to a procedural impediment or if they resulted in an acquittal or if the relevant entry in the Federal Central Register of Convictions (*Bundeszentralregister*) has been removed or discharged.

If such a statement cannot be provided, the facts and circumstances on which the criminal, insolvency or comparable proceedings are based must be described in detail, if possible accompanied by informative documentation. For clarification, it

should be noted that it is also necessary to declare any convictions which are not evident – because they fall short of the relevant degree of penalty – from a police certificate of good conduct.

- The information which is required to assess the professional qualifications of the proprietors and the senior managers (see section 32 (1) sentence 2 number 4 of the Banking Act and section 14 (6) of the Reports Regulation in conjunction with section 5 (1) sentence 1 number 1 of the Reports Regulation).

Each proprietor and senior manager must submit a complete, signed *curriculum vitae* containing all of his/her first names, name at birth, date and place of birth, his/her home address and nationality as well as a detailed description of his/her professional training, the names of all the enterprises for which he/she has worked and information on the nature of the functions performed there, including any secondary activities except for those performed in an honorary capacity. When describing the nature of the functions performed, he/she must, in particular, specify his/her powers of representation, his/her internal decision-making authority and the business areas under his/her control within the enterprise.

- A viable business plan (see section 32 (1) sentence 2 number 5 of the Banking Act in conjunction with section 14 (7) of the Reports Regulation), which must contain the following information.
  - The nature of the planned business with a substantiated indication of its future course; for this purpose, projected balance sheets and projected profit and loss accounts (in accordance with the Directive on the Accounting of Credit Institutions and Financial Services Institutions (*Verordnung über die Rechnungslegung der Kreditinstitute und Finanzdienstleistungsinstitute*)) for the first three full financial years after the commencement of business operations must be submitted.
  - A description of the organisational structure of the institution, accompanied by an organisation chart indicating, in particular, the responsibilities of the senior managers and the respective planned staffing levels; it must be indicated whether, and if so, where, branches are to be established and whether the intention is to conduct banking business in another EEA state by way of cross-border services; in addition, it should be stated whether the intention is to outsource operational units to other enterprises (section 25a (2) of the Banking Act).
  - A description of the planned internal monitoring procedures.
  - Specification of whether the institution is likely to be a trading book or a non-trading book institution when it commences business operations (section 2 (11) of

the Banking Act).

- If qualified participating interests are held in the credit institution (see section 32 (1) sentence 2 number 6 of the Banking Act in conjunction with section 14 (5) of the Reports Regulation), the application for authorisation must also include the following:
  - the names of all the holders of a direct or indirect qualified participating interest;
  - the amount of this participating interest in each case;
  - the data required to assess the trustworthiness of these holders or legal representatives or general partners;<sup>1</sup>
  - if these holders are required to draw up annual accounts: their annual accounts for the past three financial years, along with the audit reports compiled by independent external auditors if such reports are to be prepared.
  - If an applicant or holder of a qualified participating interest in the credit institution belongs to a group, the structure of the group must be described, accompanied by an organisation chart of the group. If consolidated group accounts are to be drawn up, the consolidated group accounts for the past three financial years must be submitted; this applies accordingly to consolidated group audit reports compiled by independent external auditors.
- The application for authorisation must also include any facts indicating a close relationship pursuant to section 1 (10) of the Banking Act between the institution and other natural persons or other enterprises (see section 32 (1) sentence 2 number 7 of the Banking Act).

Pursuant to section 14 of the Reports Regulation, BaFin may request further documentation and information. In particular, the following documentation may often have to be submitted.

- It is often requested that budgeted figures be submitted for compliance with the ratios under the Solvency Regulation and the Liquidity Regulation (*Liquiditätsverordnung*).
- If operational units that are material to conducting banking business are to be

---

<sup>1</sup> See the statement pursuant to page 10.

outsourced to other enterprises, the requirements under section 25a (2) of the Banking Act as well as under the Minimum requirements for risk management (*Mindestanforderungen an das Risikomanagement*, or MaRisk) (BaFin Circular 5/2007) must be observed; section 14 (3) sentence 2 of the Money Laundering Act (*Geldwäschegesetz*) applies in parallel.

## **6 Subsidiaries, branches, representative offices and cross-border services of enterprises domiciled outside Germany**

A foreign enterprise wishing to conduct banking business or provide financial services in Germany via a subsidiary, a branch or by way of cross-border services generally requires authorisation from BaFin (see section 6.1 of this Notice). In this respect, special preferential regulations – based on the harmonisation of European prudential legislation by means of EU Directives – apply to enterprises which are domiciled in another EEA state and wish to conduct banking business or provide financial services in Germany (see section 6.2 of this Notice).

A credit institution or financial services enterprise domiciled and legitimately operating outside Germany may establish a **representative office**, ie a branch which itself does not conduct any banking business or provide any financial services – not even in part – and only performs advisory and monitoring functions, in Germany pursuant to section 53a of the Banking Act if the foreign institution has given BaFin and the Deutsche Bundesbank prior notice of its intention to establish a representative office (see section 15 of the Reports Regulation) and BaFin has confirmed receipt of such notification. Authorisation pursuant to section 32 of the Banking Act is not required in this respect.

### **6.1 Enterprises domiciled outside Germany in a non-EEA state**

**Subsidiaries** (section 1 (7) of the Banking Act) of a foreign enterprise are subject without qualification to the authorisation procedure pursuant to section 32 of the Banking Act described in sections 3 to 5 of this Notice. If the parent enterprise (section 1 (6) of the Banking Act) is a foreign credit institution, the competent foreign supervisory authority for this credit institution must also give its consent to the establishment of the subsidiary (see section 33 (1) sentence 1 number 8 of the Banking Act).

The following provisions and supplements apply to legally dependent **branches** of enterprises domiciled outside Germany (see section 53 of the Banking Act).

The authorisation requirement and the above-mentioned prerequisites and formalities for the granting of authorisation apply as appropriate to enterprises domiciled in a non-EEA state which intend to conduct banking business on the scale specified in section 1 (1)

sentence 1 of the Banking Act via a branch to be established in Germany. For the purposes of the Banking Act, this branch is deemed to be a credit institution; if an enterprise maintains several branches in Germany, these are deemed to be a single credit institution (section 53 (1) of the Banking Act). In addition to the prerequisites and formalities for the granting of authorisation specified in sections 3 to 5 of this Notice, the following provisions should be noted.

- In order to commence business operations, the branch must have sufficient working capital in Germany (also referred to as endowment capital), which is to be made available to it by the foreign enterprise. The working capital that is needed for the granting of authorisation corresponds to the initial capital of legally independent credit institutions, which means that the amount is determined by the requirements in section 33 (1) sentence 1 number 1 of the Banking Act (see section 3 of this Notice); in the case of deposit-taking credit institutions, it must be at least €5 million.
- The foreign enterprise must appoint at least two natural persons residing in Germany as senior managers of the branch (see section 53 (2) number 1 of the Banking Act). As set out in section 3 of this Notice, these senior managers must have the necessary professional qualifications and be trustworthy.

As a rule, BaFin assumes that senior managers who have worked mainly outside the jurisdictional reach of the Banking Act have the necessary professional qualifications if they can demonstrate that they have gained at least three years' worth of recent managerial experience at a credit institution of comparable size and type of business – which may also be domiciled in another state – and have one year's experience of bank-related work within the jurisdictional reach of the Banking Act. At least one of the senior managers must have three years' managerial experience at credit institutions within the jurisdictional reach of the Banking Act. The senior managers must speak German or have at least a good command of English. As a rule, communication between BaFin and the credit institutions is in German. Therefore, irrespective of his/her language proficiency, every senior manager must ensure that he/she can understand all written and verbal communication in German. If necessary, a translator is to be engaged at the institution's expense.

Apart from the particulars listed in section 5 of this Notice, which are required pursuant to section 32 of the Banking Act and section 14 of the Reports Regulation, the foreign enterprise's written application for authorisation must contain the following information.

- The corporate name, legal form, registered office and address of the foreign enterprise.
- The address of the foreign enterprise's head office.

- The names of the members of the foreign enterprise's governing bodies.
- The foreign enterprise's object according to its articles of association.
- The nature of the business operations actually conducted by the enterprise in its country of domicile and, if different, in the country in which its head office is located.
- The name and address of the authority responsible for supervising the foreign enterprise in its country of domicile and, if different, in the country in which its head office is located.
- The address of the envisaged branch in the Federal Republic of Germany.
- The name of a registered agent in the Federal Republic of Germany empowered to accept service during the authorisation procedure.

The following documentation must be enclosed with the application for authorisation in duplicate in German or with a German translation.

- The articles of association, articles of incorporation or partnership agreement of the foreign enterprise and confirmation that the enterprise has been entered in a public register.
- The most recent annual accounts (annual balance sheet together with the profit and loss account) and management report (annual report) of the foreign enterprise.
- Evidence that the foreign enterprise has been granted authorisation to conduct banking business by the competent supervisory authority for the enterprise in the other state (see section 53 (2) number 5 sentence 2 of the Banking Act) and that this authority has given its approval to the establishment of the branch.
- A statement by the foreign enterprise, signed with legally binding effect, that it has decided to establish the branch and appoint as senior managers the persons named in the application for authorisation.
- Written confirmation in accordance with section 5 of this Notice regarding the working capital freely available to the branch.
- A complete, signed *curriculum vitae* of each senior manager in accordance with section 5 of this Notice.
- A statement by each senior manager regarding any criminal, insolvency or

comparable proceedings in accordance with section 5 of this Notice.

- Evidence of the power of representation of the person(s) filing the application for authorisation.

Banking business conducted in Germany is also deemed to be a **cross-border service** if the enterprise providing the service is domiciled or habitually resident outside Germany and deliberately targets the German market in order to repeatedly offer banking business on a commercial basis to enterprises and/or persons domiciled or habitually resident in Germany. The foreign enterprise wishing to conduct banking business or provide financial services in Germany must, therefore, establish a subsidiary or a branch in Germany in accordance with the above-mentioned requirements in order to obtain the necessary authorisation. However, under certain conditions, it is possible for enterprises conducting cross-border banking business to be exempted pursuant to section 2 (4) of the Banking Act, although this applies only to limited business areas and only if there is no additional need for supervision owing to effective home country supervision (see the BaFin Notice regarding the authorisation requirements pursuant to section 32 (1) of the Banking Act in conjunction with section 1 (1) and (1a) of the Banking Act for conducting cross-border banking business and/or providing cross-border financial services (*Hinweise zur Erlaubnispflicht nach § 32 Abs. 1 KWG in Verbindung mit § 1 Abs. 1 und Abs. 1a KWG von grenzüberschreitend betriebenen Bankgeschäften und/oder grenzüberschreitend erbrachten Finanzdienstleistungen*) issued in April 2005).

## **6.2 Enterprises domiciled in another EEA state (see section 53b of the Banking Act)**

An applicant enterprise which is a **subsidiary or an affiliated enterprise** of a deposit-taking credit institution, an e-money institution, a primary insurance company or a securities trading firm and whose parent enterprise is authorised in another EEA state can be granted authorisation to conduct banking business pursuant to section 1 (1) sentence 2 numbers 1, 2, 4, 10 or 11 of the Banking Act only after BaFin has consulted the competent agencies in the home state pursuant to section 33b of the Banking Act. This also applies if the enterprise is controlled by the same natural persons or enterprises which control a deposit-taking credit institution, an e-money institution, a primary insurance company or a securities trading firm domiciled in another EEA state.

A deposit-taking credit institution, a securities trading firm or an e-money institution domiciled in another EEA state may conduct banking business in Germany either through a **branch** or by providing **cross-border services** without authorisation from BaFin provided that the following conditions are met (section 53b (1) of the Banking Act).

- The enterprise has been granted authorisation by the competent agencies of the home state and is supervised by the competent agencies.
- The business is covered by the authorisation granted.
- The enterprise is subject to the requirements laid down by the pertinent EC Directives.

The competent agencies of the home state must inform BaFin about the intended establishment of a branch. BaFin notifies the branch to be established of the reports prescribed for its operations and the conditions applying to the performance of the planned operations. After receipt of the notification from BaFin, but no later than after a period of two months, the branch can be established and commence operations (section 53b (2) of the Banking Act).

An enterprise domiciled in another EEA state which is a subsidiary of one or more deposit-taking credit institutions and conducts banking business within the meaning of section 1 (1) sentence 2 numbers 1 to 3, 5 and 7 to 9 of the Banking Act may engage in these operations through a branch or by providing cross-border services in Germany without requiring authorisation from BaFin provided that the following conditions are met (section 53b (7) of the Banking Act).

- The subsidiary's articles of association permit such operations.
- The parent enterprise(s) is (are) authorised to operate as a deposit-taking credit institution in the EEA state in which the subsidiary is domiciled.
- The operations performed by the subsidiary are likewise conducted in the home state.
- The parent enterprise(s) hold(s) at least 90 per cent of the voting rights in the subsidiary.
- The parent enterprise(s) has (have) submitted convincing evidence of the prudent management of the subsidiary to the competent agencies of the subsidiary's home state and, with the approval of these agencies, has (have) jointly and severally guaranteed the obligations incurred by the subsidiary, if appropriate.
- The subsidiary is included in the supervision of the parent enterprise on a consolidated basis.

## **7 Prevention of money laundering, terrorism financing and fraudulent activities to the detriment of credit institutions**

Pursuant to the Banking Act as well as the Money Laundering Act, credit institutions are obliged to observe the provisions regarding the combating of money laundering, the financing of terrorism and fraudulent activities to the detriment of institutions (see also the Guidelines of the former Federal Banking Supervisory Office (BaKred, now BaFin) of 30 March 1998 concerning measures to be taken by credit institutions to combat and prevent money laundering (*Maßnahmen der Kreditinstitute zur Bekämpfung und Verhinderung der Geldwäsche*). In particular, as a specific organisational duty pursuant to section 25a (1) sentence 6 number 3 of the Banking Act, institutions must put in place appropriate safeguards suited to their respective business and customers against money laundering and against fraudulent activities to the detriment of the institution. In addition, pursuant to section 25b of the Banking Act, they must fulfil specific organisational duties in connection with cross-border cashless payments.

Pursuant to, inter alia, section 14 (2) number 1 of the Money Laundering Act, every credit institution must appoint an anti-money laundering officer as an internal security measure. Furthermore, pursuant to section 24c of the Banking Act, credit institutions are obliged to maintain a data file facilitating automated access to account details as from the date on which business operations commence. Data on all accounts or safe custody accounts which are subject to the obligation to furnish proof of identity pursuant to section 154 (2) sentence 1 of the Tax Code (*Abgabenordnung*) as well as certain information about the account holder, any party authorised to draw on the accounts and any other economic beneficiary (section 8 (1) of the Money Laundering Act) are to be stored on this data file.

BaFin alone is responsible for monitoring compliance with money laundering regulations.

The activity of conducting cross-border banking business without having a physical presence in Germany is not subject to the provisions of the Money Laundering Act.

## **8 Fees and charges**

Pursuant to section 14 of the Act Concerning the Federal Financial Supervisory Authority (*Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht*), the procedure for granting authorisation to conduct banking business is subject to a fee. The amount charged is based on section 2 (1) of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act Establishing the Federal Financial Supervisory Authority (*Verordnung über die Erhebung von Gebühren und die Umlegung von Kosten nach dem Finanzdienstleistungsaufsichtsgesetz (FinDAGKostV)*) in conjunction with the fee elements under number 1.1.13.2.x.x of the Annex to section 2 (1) of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act Establishing the Federal Financial Supervisory Authority (fee schedule). A fee may also be charged if the applicant withdraws the application for authorisation or if BaFin refuses to grant authorisation (see section 3 of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act Establishing the Federal Financial Supervisory Authority).

Furthermore, pursuant to section 16 of the Act Concerning the Federal Financial Supervisory Authority, if the costs incurred by BaFin are not covered by fees, separate reimbursement or any other receipts, they must be borne, inter alia, by the credit institutions according to a suitable distribution key. Detailed provisions on the charges and their collection are laid down in the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act Establishing the Federal Financial Supervisory Authority.

## 9 Compensation scheme

Pursuant to section 1 *et seq* of the Deposit Guarantee and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz*),

- deposit-taking credit institutions and
- credit institutions which engage in principal broking services, underwriting business, investment advice, investment broking, contract broking, portfolio management, proprietary trading, placement business or operating a multilateral trading facility

must cover their deposits and liabilities arising from securities business through membership of a compensation scheme.

Pursuant to section 32 (3) of the Banking Act, BaFin must consult the guarantee scheme appropriate for the institution before granting authorisation. If you have any enquiries regarding the contributions to be paid or require further information, please contact the relevant compensation scheme directly.

## 10 Addresses

Applications for authorisation to conduct banking business must be submitted to BaFin:

**Bundesanstalt für Finanzdienstleistungsaufsicht** Tel: +49 228 41080  
 Graurheindorfer Str. 108  
 53117 Bonn, Germany Fax: +49 228 4108 1550  
 E-mail: [poststelle@bafin.de](mailto:poststelle@bafin.de)  
 Internet: <http://www.bafin.de>

Before applying for authorisation, please contact BaFin and the Regional Office of the Deutsche Bundesbank (*Hauptverwaltung*) which will be responsible for ongoing supervision at your institution as additional requirements may be necessary in individual cases.

If you have any questions regarding this Notice, please also contact the appropriate Regional Office of the Deutsche Bundesbank; if necessary, the Regional Office concerned will pass on your enquiry to BaFin along with its comments.

**DEUTSCHE BUNDESBANK** Tel: +49 30 34750  
**Hauptverwaltung Berlin** Fax: +49 30 3475 1290  
 Leibnizstr. 10 E-mail: [banken.hv-berlin@bundesbank.de](mailto:banken.hv-berlin@bundesbank.de)  
 10625 Berlin, Germany

**DEUTSCHE BUNDESBANK** Tel: +49 211 8740  
**Hauptverwaltung Düsseldorf** Fax: +49 211 8742286  
 Berliner Allee 14 E-mail: [banken.hv-duesseldorf@bundesbank.de](mailto:banken.hv-duesseldorf@bundesbank.de)  
 40212 Düsseldorf, Germany

**DEUTSCHE BUNDESBANK** Tel: +49 69 23880  
**Hauptverwaltung Frankfurt** Fax: +49 69 2388 1111  
 Taunusanlage 5 E-mail: [bankenaufsicht.hv-frankfurt@bundesbank.de](mailto:bankenaufsicht.hv-frankfurt@bundesbank.de)  
 60329 Frankfurt am Main,  
 Germany

**DEUTSCHE BUNDESBANK**  
**Hauptverwaltung Hamburg**  
Willy-Brandt-Str. 73  
20459 Hamburg, Germany

Tel: +49 40 37070  
Fax: +49 40 3707 4172  
E-mail: [bankenaufsicht.hv-hamburg@bundesbank.de](mailto:bankenaufsicht.hv-hamburg@bundesbank.de)

**DEUTSCHE BUNDESBANK**  
**Hauptverwaltung Hannover**  
Georgsplatz 5  
30159 Hannover, Germany

Tel: +49 511 30330  
Fax: +49 511 3033 2796  
E-mail: [banken.hv-hannover@bundesbank.de](mailto:banken.hv-hannover@bundesbank.de)

**DEUTSCHE BUNDESBANK**  
**Hauptverwaltung Leipzig**  
Strasse des 18. Oktober 48  
04103 Leipzig, Germany

Tel: +49 341 8600  
Fax: +49 341 8602599  
E-mail: [bankenaufsicht.hv-leipzig@bundesbank.de](mailto:bankenaufsicht.hv-leipzig@bundesbank.de)

**DEUTSCHE BUNDESBANK**  
**Hauptverwaltung Mainz**  
Hegelstr. 65  
55122 Mainz, Germany

Tel: +49 6131 3770  
Fax: +49 6131 377355  
E-mail: [bankenaufsicht.hv-mainz@bundesbank.de](mailto:bankenaufsicht.hv-mainz@bundesbank.de)

**DEUTSCHE BUNDESBANK**  
**Hauptverwaltung München**  
Ludwigstr. 13  
80539 München, Germany

Tel: +49 89 28895  
Fax: +49 89 2889 3630  
E-mail: [institutsaufsicht.hv-muenchen@bundesbank.de](mailto:institutsaufsicht.hv-muenchen@bundesbank.de)

**DEUTSCHE BUNDESBANK**  
**Hauptverwaltung Stuttgart**  
Marshallstr. 3  
70173 Stuttgart, Germany

Tel: +49 711 9440  
Fax: +49 711 9441921  
E-mail: [bankenabteilung.hv-stuttgart@bundesbank.de](mailto:bankenabteilung.hv-stuttgart@bundesbank.de)

You can find further information on the Deutsche Bundesbank's website at <http://www.bundesbank.de/bankenaufsicht/bankenaufsicht.en.php>.