

Cover sheet

Regulation governing the auditing of the annual accounts of credit institutions and financial services institutions as well as the reports to be drawn up on these (Audit Report Regulation)

A Problem and objective

The objective of this revised version is to update the Audit Report Regulation (*Prüfungsberichtsverordnung*) in order to bring it into line with the Act implementing the amended Banking Directive and the recast Capital Adequacy Directive. Furthermore, the revised version is to include the new European provisions on preventing money laundering and the financing of terrorism.

Changes to the regulations on bank lending (including disclosure of borrowers' financial circumstances pursuant to section 18 of the German Banking Act (*Kreditwesengesetz* – hereinafter Banking Act)), on preventing financial crime, the Pfandbrief Act (*Pfandbriefgesetz*), Investment Act (*Investmentgesetz*) and the Solvency Regulation (*Solvabilitätsverordnung*) also made revisions necessary.

It was necessary to adjust the existing Audit Report Regulation to bring it into line with the current legal framework so that the Federal Financial Supervisory Authority (BaFin) can fulfil its mandate of supervising institutions.

B Solution

The Audit Report Regulation has been amended.

The auditing of institutions is regulated on the basis of the authorisation contained in section 29 (4) of the Banking Act and section 20 (4) of the Investment Act.

C Alternatives, consequences of the Regulation

Alternatives

None

D. Financial implications for general government

No implications for general government revenue and expenditure are expected.

E Other costs

BaFin's supervision of credit institutions and financial services institutions generates supervisory expenses for BaFin. These are regularly paid for by the supervised institutions if the costs are passed on pursuant to the Act concerning the Federal Financial Supervisory Authority (*Finanzdienstleistungsaufsichtsgesetz*) or fees are charged to counterparties within the framework of BaFin's supervisory activities. There are no further costs to industry. The legislation is not expected to have any other impact on individual prices, the general pricing level, and consumer prices, in particular.

F Bureaucracy costs

No additional information obligations are being introduced for the public.

Regulation governing the auditing of the annual accounts of credit institutions and financial services institutions as well as the reports to be drawn up on these (Audit Report Regulation)

On the basis of section 29 (4) of the Banking Act, as amended by article 2 number 15c of the Act of 20 March 2009 (Federal Law Gazette (*Bundesgesetzblatt*) I, page 607), and by reason of section 20 (4) of the Asset Management Act, which is amended by article 1 number 25 (d) of the Act of 21 December 2007 (Federal Law Gazette I, page 3089), and read in conjunction with section 1 numbers 3 and 5 of the Regulation Transferring the Authority Issue Statutory Orders to the Federal Financial Supervisory Authority (*Verordnung zur Übertragung von Befugnissen zum Erlass von Rechtsverordnungen auf die Bundesanstalt für Finanzdienstleistungsaufsicht*), section 1 number 3 as recast by article 1 number 2 of the Regulation from 21 April 2008 (Federal Law Gazette I, page 748) and section 1 number 5 as last amended by article 1 of the Regulation of 21 November 2007 (Federal Law Gazette I, page 2605), the Federal Financial Supervisory Authority, in agreement with the Federal Ministry of Justice and after consulting the Deutsche Bundesbank, hereby issues the following Regulation:

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Division 1

General provisions

Section 1

Scope of application

This Regulation governs the substance and timing of the audit of institutions pursuant to section 29 (1) and (2) of the Banking Act, section 20 (3) of the Investment Act, as well as the content of the audit reports.

Section 2

Risk orientation and materiality

The basic principles of risk-oriented auditing and materiality shall be taken into account, particularly with regard to the size of the institution, the scope of business, the complexity of the business conducted and the level of risk.

Section 3

Nature and scope of the report

(1) Subject to the provisions below, the scope of the report shall be consistent with the importance of the aspects described as well as the risk involved in these processes.

(2) The supervisory requirements for individual areas shall be taken into account in the assessments made in the audit report. Any significant aspects that occurred after the balance sheet date and have come to the attention of the auditor shall also be included and presented in the audit report.

(3) If an audit has been conducted in the reporting period pursuant to section 44 (1) sentence 2 of the Banking Act, the auditor shall make use of these audit outcomes when auditing prudential aspects. For aspects which were the object of the audit pursuant to section 44 (1) sentence 2 of the Banking Act, the assessment of prudential aspects can be restricted to changes up to the balance sheet date.

(4) If the Federal Financial Supervisory Authority (hereinafter BaFin) has announced provisions vis-à-vis the institution regarding the content of the audit pursuant to section 30 of the Banking Act, which shall be taken into account by the auditor when auditing the annual accounts, then this shall be noted in the audit report in connection with the audit mandate.

(5) At the auditor's discretion, the audit report may be divided into two sections, audit report part I and audit report part II. This division shall be continued for several years. Any major changes in the outcomes of audit report part I up until the end of the reporting period shall be reported in audit report part II. Every audit report part shall be promptly submitted to BaFin and the Deutsche Bundesbank upon completion.

Section 4

Annexes

Wherever explanatory notes are prepared on the particulars requested in this Regulation, these may be produced in the form of annexes to the audit report with a view to enhancing its clarity if a sufficient evaluation is included in the audit report itself and the reporting in the annexes does not make the audit report less clear.

Section 5

Reporting period

(1) The period covered by the audit (reporting period) shall be as a rule the financial year (year under review) ending on the due date of the annual accounts (balance sheet date). If the period under review differs from the financial year, the audit report must at least cover the financial year ending on the balance sheet date. If the audit has been interrupted, the duration of and reasons for the interruption have to be given in the report.

(2) Unless stated otherwise in this Regulation, stock data in the audit report shall relate to the balance sheet date.

Section 6

Concluding summary

(1) In a concluding summary comments shall be made on all major issues so as to provide a general overview of the institution's financial situation, its risk-bearing capacity, the correctness of its conduct of business – especially the establishment of suitable risk management policies and procedures – and its compliance with other supervisory requirements, unless this has already been covered in the report's introductory statement pursuant to section 321 (1) sentence 2 of the German Commercial Code (*Handelsgesetzbuch*). With regard to the institution's situation, the comments shall focus in particular on its business development, assets and liabilities, liquidity position, profit and loss and the scope and volume of its off-balance-sheet business. The concluding summary shall also state whether the balance sheet items have been properly valued, and particularly whether the value adjustments and provisions are appropriate, and whether the provisions of the Money Laundering Act (*Geldwäschegesetz*) and the reporting requirements have been fulfilled. The summary shall set forth any significant findings that have emerged from the audit over and above the assessments specified under section 321 (1) sentence 3 of the Commercial Code.

(2) The audit report shall be signed, indicating both place and date.

Section 7

Reporting frequency

If, pursuant to this Regulation, the auditor is obliged to report only changes, the auditor shall draw up a full report at appropriate intervals that goes beyond the presentation of the changes.

Division 2

Details of the institution

Section 8

Description of legal, financial and organisational basis

(1) The report shall detail the extent to which the institution made use of or exceeded its authorisation to conduct banking business or to provide financial

services and complied with any requirements attached thereto during the period under review.

(2) Material changes in the institution's legal, financial and organisational situation during the period under review shall be described. In particular, the report shall cover:

1. changes to the legal form, and the statutes or articles of association,
2. changes to the capital and company structure,
3. changes to management board and changes in its composition, stating the respective responsibility of the individual managers,
4. changes to the structure of banking operations, of the financial services provided and of other operations assignable to financial sector business in the broader sense of the term,
5. the forthcoming commencement of new lines of business,
6. changes to the legal and business relations with affiliated enterprises and other enterprises, concerning economically significant business policy agreements governing intercompany cooperation, especially regarding the nature and scope of the agreed services; reporting on such aspects may be waived provided a dependent company report pursuant to section 312 of the German Stock Corporation Act (*Aktiengesetz*) has been written and submitted to BaFin and the Deutsche Bundesbank,
7. changes to the institution's organisational structure as well as changes to the operational organisation that are important as regards risk aspects; the current organisational chart shall be attached as an annex to the audit report,
8. changes to the institution's membership of a financial conglomerate pursuant to section 1 (20) of the Banking Act, as well as changes to the superordinated financial conglomerate enterprise pursuant to section 10b (3) sentences 6 to 8 or (4) of the Banking Act, or section 104q (3) sentences 6 to 8 or (4) of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*).

(3) The auditor shall report separately on the outsourcing of significant activities and processes in due consideration of the requirements set out in section 25a (2) of the Banking Act.

(4) The auditor shall describe and assess the integration of agents bound by contract within the meaning of section 2 (10) sentence 1 of the Banking Act in the risk management structure. Comments shall be given on the conformity of the information provided in the public register with the information held by the institution. The report shall further detail how the institution ensures that its signed agents have the necessary professional qualifications and are trustworthy.

Section 9

Branches

The auditor shall comment on major foreign branches. This assessment shall include their earnings structure, their impact on the risk profile, the risk situation and the risk provisioning of the entire credit institution, as well as their integration into the risk management structure of the entire credit institution.

Division 3

Prudential supervisory requirements

Subdivision 1

Risk management and business organisation

Section 10

Adequacy of risk management and the business organisation

(1) The auditor shall assess the adequacy of the risk management pursuant to section 25a (1) sentence 3 number 1 of the Banking Act as well as the further requirements regarding a sound business organisation pursuant to section 25a (1) sentence 6 number 1 of the Banking Act, taking due account of the complexity and scope of the risks incurred by the institution. Particular attention shall be paid to counterparty credit risk, market price risk including interest rate risk in the banking book, and liquidity and operational risks. The report must also state whether Pfandbrief banks comply with section 27 of the Pfandbrief Act.

(2) The adequacy of the institution's internal audit system shall be assessed.

Section 11

Interest rate risk in the banking book

(1) An assessment shall be made of the appropriateness of the institution's arrangements for properly determining the effects of a sudden and unexpected change in interest rates as stipulated by section 25a (1) sentence 7 of the Banking Act as well as for meeting the notification requirement pursuant to section 24 (1) number 14 of the Banking Act. Particular attention shall be paid to changes made since the last period under review.

(2) The potential loss at the last point in time of calculation due to the given change in interest rates pursuant to section 25a (1) sentence 7 of the Banking Act shall be stated as well as the calculation methodology used.

(3) Subsections (1) and (2) shall not apply to home housing cooperatives with a saving facility.

Subdivision 2

Trading book and banking book

Section 12

Assignment of transactions to the trading book or the banking book

A check must be made to ascertain whether the procedure for assigning, and where necessary reassigning, items to the banking book or the trading book during the reporting period was consistent with both the statutory provisions pursuant to section 1a of the Banking Act and the institution's internal criteria.

Section 13

Non-trading-book institutions

Where the institution has classified itself as a non-trading-book institution during the period under review, it shall be assessed whether the institution's internal structure and operational organisation ensures that any exceeding of the limits laid down in section 2 (11) sentence 1 of the Banking Act is detected; any deficiencies shall be reported. Compliance with the limits laid down in section 2 (11) sentence 1 of the Banking Act shall be examined. In the event that the limits laid down in section 2 (11) sentence 1 numbers 1 or 2 of the Banking Act

are exceeded, the amount, percentage and duration of the excess shall be noted in the report.

Subdivision 3

Own funds, solvency requirements and liquidity position

Section 14

Measuring own funds

(1) An assessment shall be made of the appropriateness of the measures taken by the institution to properly determine the level of liable capital, modified available capital and tier 3 capital for the purposes of reports to the banking supervisory authorities; material procedural changes during the period under review shall be described.

(2) Loans within the meaning of section 10 (2a) sentence 2 numbers 4 and 5 of the Banking Act shall also be assessed as to whether they have been granted at market conditions and are adequately collateralised in line with banking practices.

Section 15

Own funds

(1) The report shall state the amount and composition of the institution's own funds pursuant to section 10 of the Banking Act at the close of business on the balance sheet date and under the assumption that the audited accounts are approved, for branches within the meaning of section 53 (1) of the Banking Act after taking due account of the special provisions of section 53 (2) number 4 of the Banking Act. Components of own funds acquired or held through/by other institutions, financial enterprises, primary insurance companies and reinsurance companies shall be listed separately, citing the relevant institutions.

(2) Noteworthy features in the development of own funds or individual own fund components during the reporting period, in particular substantial own fund components that the institution newly allocates as tier 1 capital, tier 2 capital or as tier 3 capital in the financial year, shall be assessed. Withdrawals by the proprietor or the general partners shall be reported. If interim results are

allocated during the year pursuant to section 10 (3) of the Banking Act, this must also be reported.

(3) Tier 1 capital securities without their own issues in domestic shares, as well as contributions to the capital from silent partners, which continue to be assigned or have been reassigned to own funds, shall be reported together with the main features of the individual tranches; noteworthy features shall be highlighted.

(4) Temporary or callable capital components, if not already recorded pursuant to subsection (3), shall be listed in annual bands by their earliest possible call date or earliest possible outflow.

(5) The approach of unrealised reserves within the meaning of section 10 (2b) in conjunction with section 10 (4a) of the Banking Act shall be illustrated and their accuracy verified. The reporting format shall be as set out in section 3 (1) of the Reports Regulation (*Anzeigenverordnung*) in conjunction with Annex 2 of that regulation. If unrealised reserves derived from the undervaluation of real property are assigned to the liable capital, compliance with section 10 (4b) of the Banking Act in determining these reserves shall be assessed.

(6) Unencumbered personal assets of the proprietor or the general partners of the credit institution which are assigned to the liable capital pursuant to section 64e (5) of the Banking Act, or for which such assignment has been applied for, shall be assessed and elucidated in detail; the report shall also cover the liabilities and unencumbered personal assets of a proprietor or general partner that are not shown in the balance sheet.

Section 16

Solvency ratio

(1) An assessment shall be made as to whether the measures taken by the institution to properly determine the solvency ratio are adequate. In particular, any changes compared with the previous reporting period shall be described.

(2) The determination of the solvency ratio on the balance sheet date shall be broken down by the respective capital charges. The evolution of the capital ratio shall be described.

Section 17

Liquidity position

(1) The liquidity position and liquidity management system shall be assessed. Measures taken to improve the liquidity position shall be reported.

(2) An assessment shall be made as to whether the measures taken by the institution to properly determine the liquidity ratio are appropriate. In particular, any changes compared with the previous reporting period shall be assessed.

Subdivision 4

Disclosure

Section 18

Verifying compliance with the disclosure requirements pursuant to the Solvency Regulation

The auditor shall assess the suitability of the processes to determine and disclose the information pursuant to sections 319 to 337 of the Solvency Regulation. The audit report shall specify whether the disclosure requirements set out in sections 319 to 337 of the Solvency Regulation were complied with by the institution.

Subdivision 5

Supervisory reporting system

Section 19

Supervisory reporting system

The organisation of the reporting system shall be assessed. The completeness and correctness of the reports and returns shall be monitored, and any material infringements identified must be listed.

Subdivision 6

Precautions to prevent money laundering and the financing of terrorism, and fraudulent activities at the expense of the institution

Section 20

Timing of the audit and reporting period

- (1) The audit takes place once a year. The auditor determines the starting date of the audit and the reporting period at his/her own discretion subject to the following provisions.
- (2) The reporting period for the audit is always the time between the cut-off date for the last audit and the cut-off date for the following audit.
- (3) The audit must have been initiated at the latest 15 months after the start of the relevant reporting period.
- (4) Compliance with the requirements of the Money Laundering Act, as well as sections 25c to 25h of the Banking Act, need only be assessed every two years for credit institutions whose balance sheet total does not exceed €400 million on the balance sheet date, beginning with the first full financial year of conducting banking business or providing financial services, unless the institution's risk situation requires a shorter auditing cycle. The same applies to securities trading firms that are not authorised to acquire the ownership or possession of customer funds or securities and do not trade in financial instruments on their own account.

Section 21

Description and assessment of the measures taken to prevent money laundering and the financing of terrorism, and fraudulent activities at the expense of the institution

(1) The auditor shall assess whether the risk analysis conducted by the institution corresponds with the institution's actual risk situation. Furthermore, the auditor shall describe the institution's internal safeguards for preventing money laundering and the financing of terrorism, and fraudulent activities at the expense of the institution, and assess their adequacy. This shall include

1. the internal policies developed and updated by the institution, the adequacy of business and customer-related safeguards and controls for preventing money laundering and the financing of terrorism, and fraudulent activities at the expense of the institution,
2. the status and activity of the anti-money-laundering officer and his/her deputy, including their competencies as well as an assessment of whether they have the resources and procedures necessary to properly execute their tasks; in the case of institutions which are not subsidiaries within the meaning of the Banking Act of an institution or an insurance enterprise obligated according to the Money Laundering Act, this shall also apply to their subsidiaries and their foreign branches and subsidiaries, and
3. as assessment as to whether staff tasked with executing transactions and with initiating and establishing business relations are appropriately apprised of the methods used in money laundering and the financing of terrorism, as well as fraudulent activities at the expense of the institution, and are aware of the duties entailed.

The audit pursuant to sentences 2 and 3 shall take account of the risk analysis conducted by the institution as well as the audit carried out by the internal audit department in the reporting period and its outcome.

(2) Furthermore, the auditor shall report on and assess to what extent the institution has complied with customer due diligence, especially the enhanced due diligence in cases of increased risk.

(3) In addition, the report must state whether the requirement to make and keep records, as well as the obligation to record and report suspicious cases internally are met.

(4) If the execution of internal safeguards or customer due diligence has been contractually outsourced by the institution to a third person or another enterprise, this must be reported.

(5) In the case of an institution which is the superordinated enterprise within the meaning of section 25g of the Banking Act, the auditor shall describe and assess to what extent it has implemented appropriate measures in order to ensure the group-wide uniform establishment of the internal safeguards specified in section 25g of the Banking Act in its subordinated enterprises and branches as well as compliance with the obligations additionally specified there and, where appropriate, the fulfilment of stricter obligations that apply in the foreign state. Subsection (1) sentence 4 and (4) shall be applied. If the measures to be taken pursuant to sentence 1 are not permitted or not feasible in a third country, the auditor shall also report and assess to what extent the institution has implemented appropriate measures in order to ensure that subordinated enterprises and branches do not establish or continue any business relations or process any transactions there, and that they terminate any existing business relations.

(6) Credit institutions shall be assessed to determine to what extent they have fulfilled their obligations to establish, verify and transmit complete payer data in cashless payment transactions. The same applies to measures taken by the aforementioned institutions to identify and deal with incoming payment orders with incomplete payer data.

(7) The auditor shall report to what extent credit institutions have fulfilled their obligations pursuant to section 24c (1) of the Banking Act. In particular, he/she shall check whether the procedures in place ensure accurate recording of the collected identification data with correct allocation to the account or safe custody account in the retrieval system. Where appropriate, the auditor shall comment on the proper fulfilment of BaFin's instructions pursuant to section 6a of the Banking Act.

Subdivision 7
Institutions belonging to a group

Section 22

Exemptions for institutions belonging to a group

- (1) The provisions of section 10 concerning internal monitoring procedures, section 15 (1) sentence 2, subsection (2) to (5), section 16 as well as section 23 (1) sentence 3 and section 25 (3) of this Regulation shall not apply to enterprises that belong to groups of institutions or financial holding groups which make use of the option pursuant to section 2a (1), (5) or (6) of the Banking Act.
- (2) Section 17 shall not apply if the option permitted under section 10 (4) of the Liquidity Regulation (*Liquiditätsverordnung*) is exercised.
- (3) The auditor shall report on whether the conditions pursuant to section 2a of the Banking Act are fulfilled.

Division 4
Particulars relating to lending business

Section 23

Reporting on lending business

- (1) The material structural features and risks of lending business pursuant to section 19 of the Banking Act shall be described and assessed. Major noteworthy features shall be highlighted. This section of the report also covers compliance with sections 13 and 13a of the Banking Act. In addition, an account shall be given of compliance with section 15 of the Banking Act.
- (2) The institution-specific procedures for ensuring the appropriate identification and grouping of single borrower units pursuant to section 19 (2) of the Banking Act shall be assessed; changes compared with the last audit cut-off date shall be noted separately.
- (3) The selection procedure used to determine which exposures are to be examined shall be described.

(4) A risk classification of the credit institution's entire exposure volume into categories shall be included in the data overview in accordance with the institution-specific procedures for measuring and determining counterparty credit risk. A graphic representation in the data overview shall suffice.

(5) Risk concentrations and the way they are dealt with within the institution, including their integration into the risk strategy and risk management system, shall be commented on.

Section 24

Country-related risk

The total extent of the country-related exposures incurred by the institution, as well as the method used to manage and monitor them, shall be assessed. In particular, an opinion shall be given on whether the estimation of country-related exposures is based on suitable analyses.

Section 25

Noteworthy loans

(1) Noteworthy loans shall be described separately, classified by risk category and listed in an overall statement, indicating the source reference. The value of these loans shall be assessed pursuant to section 26. If several borrowers are deemed to be a single borrower pursuant to section 19 (2) of the Banking Act, then the total of these loans shall be used as a basis.

(2) The following loans, in particular, shall be deemed noteworthy:

1. Loans to managers which are exceptionally significant in view of their magnitude or particular features,
2. loans for which sizeable risk provisions are necessary or were necessary in the concluded financial year,
3. loans in respect of which there is good reason to assume that they will become non-performing together with major parts of the institution's total lending business,
4. loans for which an exceptional type of collateral has been provided.

(3) Noteworthy general credit lines shall be assessed according to risk category classification and listed in an overall statement, indicating the source. General credit lines shall be deemed noteworthy if they reach or exceed the large exposure threshold pursuant to section 13 (1) sentence 1 of the Banking Act.

(4) The loans and general credit lines shall be reported with their limits, utilisation, collateral, as well as all further information important for the assessment. Aspects that are particularly relevant in terms of risk shall be highlighted.

Section 26

Assessing the underlying value of loans

(1) Assessing the underlying value of loans within the meaning of section 25 (2) number 2 shall include monitoring the suitability of risk provisions.

(2) If the assessment of the loan within the meaning of section 25 (2) number 3 is based on the collateral provided, its intrinsic value should be evaluated; if possible, the prospective realisation value shall be cited as well.

(3) In the case of noteworthy loans to foreign borrowers, the associated country-related risk shall also be assessed.

Section 27

Compliance with the disclosure provisions of section 18 of the Banking Act

Credit institutions shall be audited for their compliance with section 18 of the Banking Act during the reporting period. The auditor shall assess the suitability of the institution's procedures.

Division 5

Financial reporting aspects

Subdivision 1

Institution's financial situation (including business and earnings performance)

Section 28

Business performance in the year under review

(1) The business performance shall be assessed and explained by comparing the relevant figures for the year under review with those from the preceding year.

(2) In the case of institutions with business areas for which separate annual accounts are prepared under German law (areas drawing up separate accounts), the business performance of the areas drawing up separate accounts and that of the other areas shall be described and explained separately.

(3) In the case of credit institutions which belong to a cooperative society audit association, a housing audit association or which are audited by the audit office of a savings bank and giro association, ratios for the totality of credit institutions or groups of comparable credit institutions of the audit association concerned or the area of the audit office concerned (average ratios) shall be cited for comparative purposes when describing and assessing the net asset, liquidity and earnings positions.

Section 29

Assessing the financial position

(1) The development of the net asset position shall be assessed. Special features which are relevant to the assessment of the net asset position, especially the nature and extent of off-balance-sheet assets and liabilities, shall be highlighted.

(2) This report section shall also cover

1. the nature and scope of hidden reserves and hidden losses,
2. material agreements and pending legal disputes where these may have adverse effects on the net asset position, and the formation of the requisite provisions for liabilities and charges,
3. all letters of comfort issued, describing their contents and assessing their enforceability.

Section 30

Assessing the earnings position

(1) The trend in earnings shall be described.

(2) Based on the documents of the credit institution, this report section shall also cover the earnings deriving from the main lines of business; the most important sources of and factors for generating earnings shall be described separately.

(3) Possible effects of risks on the development of earnings shall be described; this applies particularly to interest rate risk.

Section 31

Risk situation and risk provisioning

(1) The institution's risk situation shall be assessed.

(2) The procedure for determining risk provisioning shall be described and assessed. The type, scope and development of risk provisioning shall be explained and the adequacy of risk provisioning shall be assessed.

If new risk provisioning needs were identified for the period after the balance sheet date, this shall be included in the report.

Subdivision 2

Findings, explanatory notes on the accounting system

Section 32

Explanatory notes

(1) The individual balance sheet items, off-balance-sheet items and profit and loss account items shall be described and compared with the figures of the previous year, taking the principle of materiality into consideration.

(2) Contingent liabilities and other liabilities shall be described, taking the relative importance of the item into consideration. If particulars are given, the following shall be considered:

1. Contingent liabilities: For liabilities from guarantees and warranty contracts, information on type and amount and a breakdown by borrower (credit institutions and non-credit institutions) are required. In the case of credit guarantee communities, the amounts not yet valued and the

incidental costs must also be given, whereby the amounts shall be estimated if precise figures are not available. The report shall state whether the necessary provisions have been made.

2. Other liabilities: Repurchase commitments from non-genuine repo agreements (sale and repurchase agreements with an option to repurchase) shall be broken down by type of asset and by maturity.

Division 6

Reporting on groups of institutions, financial holding groups, financial conglomerates, and group audit reports

Section 33

Area of regulation

(1) This section shall be applied to superordinated and subordinated enterprises within a group of institutions pursuant to section 10a (1) sentence 1 and (2) sentence 1 of the Banking Act, or to a financial holding group domiciled in Germany pursuant to section 10a (3) sentence 1 of the Banking Act, to financial conglomerates pursuant to section 10b of the Banking Act, as well as to the group Audit Report.

(2) In addition, this section shall be applied to institutions pursuant to section 10a (14) sentence 1 of the Banking Act. If the institution belongs to a group of institutions or a financial holding group subject to consolidated supervision by BaFin, the auditor shall only assess the consolidation in the audit report of the highest superordinated enterprise in Germany.

Section 34

Location of report

The report pursuant to this section can be included in the group audit report rather than in the audit report of the superordinated enterprise of the group of institutions or financial holding group if both reports are drawn up by the same auditor in the reporting period.

Section 35

Enterprises to be included in supervisory consolidation

- (1) The enterprises included in the consolidation pursuant to section 10a of the Banking Act shall be described, citing the type of enterprise and whether consolidation is compulsory.

- (2) The auditor shall assess whether the procedures and processes implemented by the superordinated enterprise ensure that all enterprises to be included in the consolidation pursuant to section 10a of the Banking Act are in fact included. If use has been made of the exemption pursuant to section 31 (3) of the Banking Act, the auditor shall assess whether the conditions have been met.

- (3) If there are material discrepancies between the consolidated group as defined for the purposes of the group accounts and for consolidation pursuant to section 10a of the Banking Act, these shall be commented on.

Section 36

Reporting on supervised groups

- (1) The audit report must provide an overview of the group's situation and its risk structure. Subject to section 25a (1a) of the Banking Act section 10 shall be applied accordingly.

- (2) The measures that the group uses to meet the requirements of sections 13b and 13c of the Banking Act shall be described. This includes assessing compliance with the reporting requirements pursuant to section 13b (1) and section 13c (1) sentence 1 of the Banking Act.

Section 37

Consolidated own funds

- (1) In the case of superordinated institutions, the report shall describe the group's own funds pursuant to section 10a of the Banking Act at the close of business on the superordinated institution's balance sheet date. The special features of own funds components of the main subordinated enterprises shall be shown at the level at which they enter the consolidation; special features of the capital shares of foreign subsidiaries shall be detailed, especially components where there are doubts about whether they correspond to the components

recognised in section 10 of the Banking Act. Sections 14 to 17 shall be applied accordingly.

(2) Wherever consolidated accounts are used as the basis to determine consolidated own funds pursuant to section 10a (7) of the Banking Act, the following shall also be reported:

1. special features of the fair value determination. The use of the option to value financial instruments at their fair value when drawing up consolidated accounts pursuant to section 315a of the Commercial Code shall be assessed,
2. whether the requirements of the currently valid version of the Transitional Regulation Governing Consolidated Financial Statements (*Konzernabschlussüberleitungsverordnung*) of 12 February 2007 (Federal Law Gazette I, p 150) were met. In particular, the amount and structure of adjustments and their effects on the own funds shall be assessed.

(3) Section 19 shall be applied to the superordinated institution's reporting system at the level of the group of institutions or financial holding group.

Section 38

Additional particulars

Subject to sections 36 and 37 in the audit report on the superordinated enterprise additional particulars are required on superordinated enterprises of a group of institutions or financial holding group which make use of the exception pursuant to section 2a (6) of the Banking Act, as well as on subordinated enterprises which make use of the exception pursuant to section 2a (1) of the Banking Act:

1. the names of the enterprises belonging to the group which make use of the exemption pursuant to section 2a (1) or (6) of the Banking Act as well as the extent to which they make use of the exception,
2. transfers of own funds or repayments of liabilities by the superordinated enterprise in favour of subordinated enterprises which make use of the exemption pursuant to section 2a (1) of the Banking Act,
3. transfers of own funds or repayments of liabilities in favour of the superordinated enterprise if it makes use of the exemption pursuant to section 2a (6) of the Banking Act,

Section 39

Minimum reporting requirements in the group audit report

(1) Regardless of whether or not the option pursuant to section 34 is exercised, the following subsections, as well as sections 2 to 8, 35 (1) and (2) and section 38 numbers 1 and 2, shall be applied to the group audit report accordingly.

(2) The group's economic situation shall be described and explained pursuant to Division 5 of this Regulation.

(3) The auditor shall explain how segment reporting based on business criteria is translated into the corresponding reporting variables for external accounting.

(4) The particulars in the audit report of an individual institution belonging to a group may be referred to if the group's situation is substantially determined by that institution, and if the objects concerned are adequately described in the group audit report.

Section 40

Supplementary provisions for financial conglomerate enterprises (sections 10b and 13d of the Banking Act)

(1) If the institution is a superordinated financial conglomerate enterprise within the meaning of section 10b (3) sentences 6 to 8 or (4) of the Banking Act, the auditor shall describe whether the calculation of own funds and the solvency of

the financial conglomerate correspond to section 10b (1) of the Banking Act and report whether the institution met the reporting requirements pursuant to section 10b (2) sentences 2 and 3 of the Banking Act.

(2) The auditor shall report what measures the superordinated enterprise uses to meet the requirements of section 13d (1) of the Banking Act. This report section also covers compliance with the reporting requirements pursuant to section 13d (2) in conjunction with section 64g (1) and section 13d (4) of the Banking Act.

Division 7

Special types of business

Subdivision 1

Pfandbrief business

Section 41

Reporting on the earnings situation in Pfandbrief business

(1) For institutions conducting Pfandbrief business, the present value of the assets used as collateral must be given, broken down by mortgage Pfandbriefe, public Pfandbriefe, ship Pfandbriefe and aircraft Pfandbriefe.

(2) The breakdown is not necessary if this information is contained in the notes to the financial statements or an annex to the audit report.

Section 42

Reporting on the transparency requirements pursuant to section 28 of the Pfandbrief Act

For institutions conducting Pfandbrief business, an account shall be given of their compliance with section 28 of the Pfandbrief Act, in particular whether the information specified therein is complete and correct.

Section 43

Supplementary reporting in the case of institutions which conduct Pfandbrief business

For institutions conducting Pfandbrief business and issuing mortgage Pfandbriefe, ship Pfandbriefe or aircraft Pfandbriefe, the information on the assets used as collateral in the description of individual loans (sections 25, 26) must include the loan value calculated by the respective credit institution, with details of the net return (including gross profit, operating costs and the discount rate used) and the property value or ship/aircraft lending value. The report must state whether the lending value was determined according to statutory provisions. The assessment of individual cover loans and their description may be based on the results of the audit on coverage by BaFin. Sentence 3 shall not apply to

1. loan increases (additional lending),
2. non-performing loans
3. loans within the meaning of section 25 (2),
4. loans secured by commercial or industrial real estate where the individual loan exceeds 4% of the liable capital,
5. loans granted to construction enterprises, real estate development companies or housing enterprises which finance residential construction where the total amount of these loans exceeds 6% of the liable capital. When calculating the loan total, loans secured by completed construction of rental and owner-occupied flats, where income is essentially secure, and owner-occupied houses that have already been sold may be excluded.

Subdivision 2

Building and loan associations

Section 44

Organisation and stipulations

(1) The reporting pursuant to sections 8 and 10 shall highlight the special features of the building and loan association business. This shall include any possible requirements, the suitability of the loan business with a special focus on risk concentrations and how these are handled within the institution, including their integration into the risk strategy and risk management system, as well as the suitability of the organisation, management and control of sales and

marketing, also with regard to risks arising from contracts in connection with sales and marketing activities.

(2) The report shall describe and assess the compliance with the legal and prudential supervisory requirements specific to building and loan associations and the general conditions for building and loan contracts (*Allgemeine Bedingungen für Bausparverträge*) and general business principles (*Allgemeine Geschäftsgrundsätze*). Material infringements shall be described and assessed. The utilisation rate and the amount outstanding under the quotas pursuant to the applicable business restrictions shall be indicated.

(3) The report section pursuant to section 18 shall include reports and notifications prescribed for building and loan association legislation.

Section 45

Reporting on the lending business of building and loan associations

(1) The assessment pursuant to section 44 shall also cover the collateralisation of the loan claims and the suitability of the calculation of the loan value.

(2) In the case of building and loan associations, utilised loans under saving and loan contracts at the end of the reporting year shall be listed in line with the breakdown in annex 2 item 1 number 7. Multiple loans under saving and loan contracts to the same borrower shall be aggregated. For each size category, the number of loans, the total amount of the loans and their percentage share in the total portfolio of loans under savings and loan contracts shall be indicated. These are to be subdivided into loans under savings and loan contracts, interim and bridging loans and other building loans.

Section 46

Reporting on the business performance of building and loan associations

As part of the report section pursuant to section 28, the business performance of the building and loan association shall also be described using suitable ratios specific to building and loan associations on assets and earnings and on its

collective lending business. The following particulars shall be provided and assessed.

1. The change in and structure of new saving and lending business. Particularly longer-term trends (e.g. five-year comparisons) shall be presented. The new contracts taken up and the unallocated stock of savings under contract broken down by tariff and divided up into meaningful size categories, noting the respective number as well as the respective total amount of the savings amounts, shall be indicated.
2. Newly contracted savings and loan contracts intended for sale to customers, as well as the contracting partners, divided into the group's credit institutions, insurance corporations, local government, property developers and others, stating whether there is a binding commitment for splitting and transfer to third parties.
3. The ratio of the targeted savings amounts under savings and loan contracts that were cancelled during the year under review prior to the full payment of the contract fee to new business concluded in the year under review (cancellation rate). The cancellation rate shall also be given at least for the previous year.
4. The number and targeted savings amount of contracts that, to date, have not been taken up, or not fully taken up, and have not been cancelled.

Section 47

Reporting on the liquidity position of building and loan associations

The volume and use of the funds borrowed on the money and capital market shall be described.

Section 48

Use of derivatives

(1) If derivative hedges are used, the auditor shall report and assess whether the transactions serve solely to limit risk from permissible operations, and whether they are suitable for achieving the respective hedging purpose.

(2) If the institution uses derivative hedging instruments, the auditor shall assess whether this has been duly taken into account in the risk management system.

Section 49

Reporting on the financial position of building and loan associations

The net interest result shall be broken down as follows and compared with the respective prior-year figure:

1. collective margin and collective net interest result (comparison of the interest paid on the savings deposits under savings and loan contracts used to refinance loans under savings and loan contracts, and the interest received from loans under savings and loan contracts),
2. margin and net interest result from the interim investment of free collective funds,
3. margin and net interest result from that part of interim and bridging loan business and from other loans under savings and loans contracts that is refinanced through external borrowing excluding deposits under savings and loan contracts (where volumes are significant),
4. remaining net interest result from own funds and non-interest-bearing liabilities (residual).

The calculation shall be simplified by using average stocks and average interest rates. The particulars shall cover the existence and application of interest-rate-adjustment clauses in the case of interim and bridging loans.

Section 50

Description of collective lending business as well as interim and bridging financing provided by building and loan associations

(1) The report shall provide information on the allotment procedure and allotment situation using suitable variables. Changes compared with the last few financial years shall also be described here if necessary. The report shall also cover the extent of and the reason for injecting funds from outside the collective body of savers into the total amount available for allotment. If repayment-

extending loans have been granted, separate information shall be provided about such injection of funds from outside the collective body of savers.

(2) The building and loan associations' mathematical simulation system (collective simulation) shall be described. The future allotment situation shall be described and assessed based on mathematical simulations. The description shall be based on at least one realistic and one pessimistic scenario for the specific collective. The quality of the simulations shall be assessed using target/actual comparisons based on the prior-year projections. The assessment shall, as far as possible, also include the results of such quality assurance measures that are suitable for disclosing model errors.

(3) An account shall also be given of material effects of the allotment scenarios on the collective liquidity and earnings positions of the building and loan association. Particular attention must be paid to the impact of a scenario of low interest rates on loans and high yield commitments on contracts compared with the prevailing market rates. Special risks arising from the interaction of the various tariffs and tariff variants shall be highlighted.

(4) In addition, details shall be provided for each tariff on the payments made by savers in proportion to the payments made by the building and loan associations within the meaning of section 8 (1) number 1 of the Act on Building and Loan Associations (*Gesetz über Bausparkassen*).

(5) Wherever an exemption has been approved pursuant to section 1 (4) of the Regulation concerning Building and Loan Associations (*Bausparkassen-Verordnung*), the auditor shall report whether the underlying simulation model can still be considered suitable.

(6) The following information shall also be provided:

1. the total volume of the interim and bridging loans granted by third parties for which the building and loan association has made unconditional replacement commitments,

2. the calculation of the amount transferred to the fund required by the building and loan association rules pursuant to section 8 (1) of the Regulation concerning Building and Loan Associations, the interest rates pursuant to section 8 (2) and (3) of the Regulation concerning Building and Loan Associations, as well as recourse to the fund required by the building and loan association rules pursuant to section 9 of the Regulation concerning Building and Loan Associations,
3. the calculation of the payments made by the collective of savers in proportion to the payments made by the building and loan associations, and the figures for the past five years.

The report shall determine whether the actual period of utilisation of loans pursuant to section 1 (1) and (2) of the Regulation concerning Building and Loan Associations materially exceeded the assumed maturities in the case of repaid and outstanding loans (section 1 (3) of the Regulation concerning Building and Loan Associations).

Subdivision 3

Financial services institutions

Section 51

Ratio according to section 10 (9) of the Banking Act

In the case of portfolio managers who are not authorised to acquire the ownership or possession of customers' money or securities and who do not trade in financial instruments for their own account, the report shall state whether section 10 (9) of the Banking Act was complied with during the reporting period as well as on the balance sheet date. The report must state the use of and the compliance with the conditions of section 2 (8a) in conjunction with section 64h (7) of the Banking Act.

Section 52

Provisions for individual financial services institutions

(1) In the case of financial services institutions that are not authorised to acquire the ownership or possession of customers' money or securities, the report shall assess whether the contractual agreements between the financial services institution and its customers and the powers of attorney granted to the institution by these customers does not give it the right to acquire ownership or possession of customers' money or securities. The auditor shall assess whether the monitoring undertaken by the internal control system is sufficient to ensure that the institution does not actually acquire ownership or possession of the funds or securities attributable to its customers.

(2) The existing rights of a financial services institution to acquire ownership or possession of customers' money or securities shall be categorised and the various categories shall be described with respect to their subject. The report shall also state that the conduct of deposit and safe custody business is not entailed and shall state whether an adequate level of monitoring by the internal control system is guaranteed.

(3) This report section shall also state whether financial services institutions that do not trade in financial instruments for their own account held their own portfolio of financial instruments during the year under review. If appropriate, it shall be noted that these were legitimately assigned to fixed assets or the liquidity reserves.

(4) In the case of investment brokers, contract brokers and portfolio managers, operators of multilateral trading systems and enterprises which conduct placement business which are not entitled to acquire ownership or possession of customer funds or securities when providing financial services, and which do not trade in financial instruments for their own account, the auditor shall confirm that the necessary means within the meaning of section 33 (1) sentence 1 number 1 letter a, and sentence 2 in conjunction with section 10 (2a) sentence 1 numbers 1 to 7 of the Banking Act are available.

(5) In the case of financial services institutions that trade in financial instruments for their own account, the report shall describe the structure of the financial

instruments held in the institution's own portfolio. This shall include turnover volumes and the number of transactions during the reporting period.

Section 53

Exemptions

(1) The provisions of sections 15, 16 (2) and section 18 shall not apply to financial services institutions which are not authorised to acquire ownership or possession of customer funds or securities, and which do not trade in financial instruments for their own account. Sections 23 to 27 shall be applied under the condition that the nature and scope of the loans and the compliance with the reporting system shall be reported.

(2) Furthermore, sections 11, 13 to 15, 16 (2), sections 18 and 23 to 27 shall not apply to financial services institutions which conduct investment broking, investment advice, operate a multilateral trading system, conduct placement business or contract broking pursuant to section 1 (1a) sentence 2 numbers 1 to 2 of the Banking Act, and are not entitled to acquire ownership or possession of customer funds or securities and which do not trade in financial instruments for their own account.

Subdivision 4

Factoring

Section 54

Reporting on institutions which conduct factoring business

In the case of institutions which conduct factoring business the report shall cover concentration on one or a few clients or industries.

Subdivision 5

Leasing

Section 55

Reporting on institutions which conduct leasing business

In the case of institutions which conduct leasing business the composition of the assets leased, the types of contract, the depreciation methods, the allocation of

special lease payments, the losses on sales and provisioning against such losses shall be indicated.

Subdivision 6

Audit of safe custody business

Section 56

Subject of the audit

(1) In the case of credit institutions which operate safe custody business, without being investment services enterprises within the meaning of section 2 (4) of the Securities Trading Act (*Wertpapierhandelsgesetz*), the auditor shall assess compliance with the regulations of the Safe Custody Act (*Depotgesetz*) as well as with the provisions of sections 128 and 135 of the German Stock Corporation Act once per year (audit of safe custody business).

(2) The auditor may waive the audit of safe custody business if all safe custody contracts have been terminated. Safe custody contracts are terminated when the securities are returned to the customers or delivered to third parties on behalf of those customers, or the safe custody contracts have been transferred to another credit institution with the customers' agreement.

Section 57

Timing of the audit and reporting period

(1) The audit shall take place once per year. The auditor shall specify the starting date of the audit and the reporting period at his own dutiful discretion subject to the following provisions.

(2) The reporting period for the first audit shall be the period between the commencement of safe custody business or safe custody functions and the cut-off date of the first audit. The reporting period for the following audit shall be the respective period between the cut-off date of the last audit and the cut-off date of the following audit.

(3) The audit shall have been initiated at the latest 15 months after the start of the relevant reporting period.

Section 58

Special requirements for the audit report on safe custody business

(1) The audit report shall contain information on the orderly conduct of the safe custody and management of securities for others, on the custody ledger, on the disposals on customer securities and authorisations as well as on the compliance with sections 128 and 135 of the German Stock Corporation Act.

(2) The report on this audit shall be submitted separately from the report on the audit of the annual accounts and promptly after completion of the audit; one copy of the audit shall be submitted to both BaFin and the Deutsche Bundesbank, unless they waive such submission. In the case of the credit institutions named in section 26 (1) sentence 4 of the Banking Act, the report shall only be submitted upon request by BaFin.

(3) The report shall include a concluding summary containing a description and appraisal of the audited operations and compliance with the provisions of sections 128 and 135 of the German Stock Corporation Act and an assessment of whether the audited operations have been properly carried out and the audited functions were properly fulfilled. The concluding summary shall list the noteworthy complaints that have emerged from the audit.

Section 59

Auditing safe custody banks within the meaning of the Investment Act

If a credit institution or a branch of a credit institution operates as a safe custody bank pursuant to section 20 (1) sentence 1 or (2) of the Investment Act, the results of the audit of these activities must be reported in a separate section. The audit shall state whether the credit institution or the branch has properly fulfilled the obligations as a safe custody bank set out in sections 22 to 29 of the Investment Act. The organisation charged with the tasks pursuant to sentence 2 shall be broadly described and its compliance assessed. The commissioning asset management companies and investment stock corporations together with the number of domestic collective investment funds managed for these and the net

volume of fund assets shall be listed. An account shall be given of any significant occurrences, especially concerning the issuance and redemption of units in collective investment funds, conflicts of interest (section 22 of the Investment Act), the exercising of control functions (section 27 of the Investment Act) and the deduction from the collective investment schemes of remuneration and reimbursed costs (section 29 of the Investment Act). Whenever investors have made a claim pursuant to section 28 of the Investment Act vis-à-vis the safe custody bank or via the safe custody bank on an asset management company, this shall also be reported.

Division 8

Data overviews

Section 60

Data overviews

As part of the audit report, the templates in annexes 1 to 5 applicable to the respective institution shall be completed and attached. The templates in annexes 1 to 4 shall be supplemented by the corresponding prior-year data.

Division 9

Final provisions

Section 61

First-time application

(1) The provisions of this Regulation shall apply for the first time to the audit of the financial year beginning after 31 December 2008. For the financial years beginning prior to 1 January 2009, the Audit Report Regulation of 17 December 1998 (Federal Law Gazette I, p 3690), as last amended by article 8 of the Act of 30 July 2009 (Federal Law Gazette I, p 2479), shall continue to apply.

(2) Regarding the audit for the first financial year beginning after 31 December 2008, the words "trading portfolio" shall be replaced by "financial operations" in annex 1 item 4 number 4.

Section 62

Entry into force, repeal

This Regulation shall enter into force on the day following its promulgation. The Audit Report Regulation of 17 December 1998 (Federal Law Gazette I, p 3690), as last recently amended by article 8 of the Act of 30 July 2009 (Federal Law Gazette I, p 2479), shall simultaneously be repealed.