

# Investor Compensation Act (Anlegerentschädigungsgesetz, or AnlEntG)<sup>\*</sup>

**Revised read-only version**

Unofficial text

Investor Compensation Act (*Anlegerentschädigungsgesetz*, or AnlEntG) of 28 May 2015 in the version published in the Federal Law Gazette I of 5 June 2015, page 786

in accordance with Article 2 of the Act Transposing Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on Deposit Guarantee Schemes (DGSD Implementation Act, or *DGSD-Umsetzungsgesetz*) (OJ L 173 of 12 June 2014, page 149).

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<sup>\*</sup> This translation is provided by the Deutsche Bundesbank and is for information purposes only. This translation is not official; the only authentic text is the German one as published in the Federal Law Gazette I (Bundesgesetzblatt I).

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## **Section 1 Definition of terms**

(1) Institutions within the meaning of this Act mean

- 1 financial services institutions that have been granted a licence to provide financial services as defined in section 1 (1a) sentence 2 numbers 1 to 4 (a) to (c) of the Banking Act (*Kreditwesengesetz*),
- 2 credit institutions that have been granted a licence to conduct banking transactions as defined in section 1 (1) sentence 2 number 4 or number 10 of the Banking Act or to provide financial services as defined in section 1 (1a) sentence 2 numbers 1 to 4 (a) to (c) of the Banking Act and that have not been granted a licence to conduct deposit and credit business as defined in section 1 (1) sentence 2 numbers 1 and 2 of the Banking Act and,
- 3 external capital management companies that have been granted a licence in accordance with section 20 (1) in conjunction with section 21 or section 22 of the Capital Investment Code (*Kapitalanlagegesetzbuch*) and that are authorised to provide the services or ancillary services designated in section 20 (2) numbers 1, 2 and 3 or subsection (3) numbers 2 to 5 of the Capital Investment Code.

(2) Securities transactions within the meaning of this Act mean

- 1 banking transactions or financial services as defined in section 1 (1) sentence 2 numbers 4, 5 or number 10 or subsection (1a) sentence 2 numbers 1 to 4 of the Banking Act and
- 2 services and ancillary services in accordance with section 20 (2) numbers 1, 2 and 3 or subsection (3) numbers 2 to 5 of the Capital Investment Code.

(3) Liabilities from securities transactions within the meaning of this Act are the obligations of an institution to repay funds that are owed to or that belong to investors from securities transactions and that are held for their account in connection with securities transactions. These also include investors' claims for the return of instruments that they own and that are held or kept in safe custody for their account in connection with securities transactions.

(4) A compensation event within the meaning of this Act occurs if the Federal Financial Supervisory Authority (BaFin) determines that an institution is unable, for reasons that are directly related to its financial circumstances, to settle liabilities from securities transactions, and has no prospect of being able to do so.

## **Section 2 Institutions' obligation to cover liabilities**

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

## **Section 3 Right to compensation**

(1) If a compensation event occurs, creditors of an institution shall have a right to compensation from the compensation scheme as provided for in section 4.

(2) The following shall have no right to compensation:

- 1 CRR credit institutions as defined in section 1 (3d) sentence 1 of the Banking Act, including branches of undertakings which have their registered office in other countries that have been granted a licence in accordance with section 1 (1) sentence 2 numbers 1 and 2 of the Banking Act, investment firms as defined in number (1) of Article 4 (1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive

93/22/EEC (OJ L 145 of 30 April 2004, page 1), and financial institutions within the meaning of article 4 (1) number (26) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 646/2012 (OJ L 176 of 27 June 2013, page 1) which have their registered office in Germany or in another country, to the extent that they act in their own name and for their own account,

- 2 private and public insurance undertakings which have their registered office in Germany or in another country,
- 3 management companies as defined in section 1 (14) of the Capital Investment Code which have their registered office in Germany or in another country, including German, EU and third-country investment funds managed by them in accordance with section 1 (1) of the Capital Investment Code,
- 4 the German federal government, a German federal state, a legally dependent special fund of the German federal government or of a German federal state, a local authority, or the national government, a regional government or a local authority of another country,
- 5 managing directors, general partners or members of supervisory bodies of the institution, persons holding 5% or more of the institution's capital, auditors within the meaning of section 28 of the Banking Act and creditors with a similar status or function in an undertaking that, together with the institution, constitutes a group as defined in section 18 of the Stock Corporation Act (*Aktiengesetz*), irrespective of its legal form,
- 6 spouses, civil partners and first and second-degree relatives of the persons referred to in number 5 above, unless the funds or financial instruments originate from the spouses', civil partners' or relatives' own assets,
- 7 undertakings that, together with the institution, constitute a group as defined in section 18 of the Stock Corporation Act, irrespective of their legal form,
- 8 creditors who brought about or took advantage of circumstances at the institution that caused the financial difficulties or significantly contributed to the deterioration in the institution's financial position; in particular, this relates to creditors who received high interest rates or financial advantages by virtue of individually negotiated arrangements,
- 9 undertakings that are required by the third book of the Commercial Code (*Handelsgesetzbuch*) to prepare a management report or are exempted from this obligation only because of their inclusion in consolidated financial statements, and comparable enterprises which have their registered office in other countries, as well as
- 10 creditors whose claims against the institution are connected to transactions as a result of which there has been a final and unappealable criminal conviction of persons for money laundering within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309 of 25 November 2005, page 15).

If the creditor of the institution acted for the account of a third party and if the trustee relationship is clearly designated as such, the eligibility of the claim in accordance with sentence 1 above shall be determined by reference to the third party.

(3) The claim of the person eligible for compensation against the compensation scheme shall become statute-barred five years after that person has been notified of the compensation event in accordance with section 5 (4) sentence 1.

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

#### **Section 4 Extent of the claim for compensation**

(1) The claim for compensation of the creditors of the institution shall be governed by the amount and extent of the institution's liabilities to the creditors from securities transactions, net of any rights of offset and retention attributable to the institution. There shall be no right to compensation if deposits or funds are not denominated in the currency of an EU member state or in euro.

(2) The amount of any claim for compensation shall be limited to 90% of the liabilities from securities transactions and the equivalent of €20,000.

(3) The calculation of the amount of the claim for compensation shall be based on the amount of the funds and the market value of the financial instruments on the date when the compensation event occurs. The right to compensation also includes claims for interest up to the limit designated in subsection (2) above. Claims for interest accrue starting on the date when the compensation event occurs until repayment of the liabilities, but at the latest until insolvency proceedings are opened. The right to compensation shall be reduced to the extent that the creditor's pecuniary loss resulting from the compensation event is offset by payments made by third parties.

(4) The limit designated in subsection (2) above refers to the creditor's aggregate claim against the institution, irrespective of the number of accounts, the currency and the location at which the accounts are maintained or the financial instruments are kept in safe custody. The compensation can be paid in euro.

(5) In the case of joint accounts, the share attributable to the individual account holder shall apply to the limit designated in subsection (2) above. In the absence of more specific provisions, the funds or financial instruments shall be attributed to the account holders in equal parts.

(6) If the creditor acted for the account of a third party, the limit designated in subsection (2) above shall be determined by reference to the third party.

#### **Section 5 Compensation procedure**

(1) BaFin shall determine that a compensation event has occurred without undue delay, but in any event no later than 21 days after becoming aware that an institution is unable to settle liabilities from securities transactions. It shall also determine that a compensation event has occurred if measures under section 46 (1) sentence 2 numbers 4 to 6 of the Banking Act have been ordered and these measures last for more than six weeks.

(2) Objections to and appeals against the determination of the compensation event do not have suspensory effect.

(3) BaFin shall announce the determination of the compensation event in the Federal Gazette. It shall notify the compensation scheme without undue delay about the determination of the compensation event.

(4) The compensation scheme shall notify the creditors of the institution without undue delay about the occurrence of the compensation event and the period in accordance with subsection (5) sentence 1 below; it shall take appropriate measures to compensate the creditors within the period designated in subsection (6) below. The institution shall make available to the compensation scheme the documents needed to compensate the creditors without undue delay, but in any event within one week.

(5) Claims for compensation shall be submitted to the compensation scheme in writing within one year of notification of the compensation event. After this period has expired, claims for compensation shall be statute-barred unless the person eligible for compensation is not responsible for the failure to meet the deadline.

(6) The compensation scheme shall verify the claims submitted without undue delay. The compensation scheme shall settle claims at the latest within three months after determining eligibility and the amount of the claims. In special cases, this period can be prolonged by up to three months with the approval of BaFin.

(7) Insofar as the compensation scheme settles the claim of a person eligible for compensation, that person's claims against the institution shall be subrogated to the compensation scheme.

(8) If the creditor's claim is connected to transactions as a result of which persons are being investigated in criminal proceedings relating to money laundering within the meaning of Article 1 of Directive 2005/60/EC, the compensation scheme can suspend payment of the compensation until the criminal proceedings have been terminated.

## **Section 6 Compensation scheme**

(1) A compensation scheme to which the institutions in accordance with section 1 (1) are assigned shall be established at Kreditanstalt für Wiederaufbau (KfW) in the form of a federal special fund without legal capacity. The compensation scheme may act with legal effect, sue or be sued.

(2) The compensation scheme shall be responsible for collecting the contributions of the institutions that have been assigned to it, investing the funds in accordance with section 8 (1) and, if a compensation event occurs, compensating the creditors of an institution that has been assigned to it for liabilities from securities transactions that have not been settled.

(3) KfW shall administer the compensation scheme. It shall be subject to supervision by BaFin in this respect. Section 7 (3) sentences 2 to 4 shall apply *mutatis mutandis*. It shall receive reasonable compensation from the special fund for the costs of administration.

(4) BaFin shall decide on objections to administrative decisions by the compensation scheme.

(5) The compensation scheme shall verify the proper functioning of its systems at regular intervals. It shall inform BaFin about the results of the tests.

(6) If BaFin becomes aware of circumstances at an institution that will probably result in the occurrence of a compensation event, it shall inform the compensation scheme of this.

## **Section 7 Entrusted compensation scheme; authority to issue orders**

(1) The Federal Ministry of Finance is authorised to assign, by way of a regulation, the functions and powers of the compensation scheme to a legal person under private law if that legal person is prepared to assume the functions of the compensation scheme and offers reasonable assurance that the claims of persons eligible for compensation will be settled (entrusted compensation scheme). A legal person offers reasonable assurance if

- 1 the persons who manage and represent the legal person under the law or the articles of association are fit and proper,
- 2 the legal person has the resources and organisation needed to perform the functions of the compensation scheme, in particular in relation to collecting the contributions, managing the funds and making compensation payments, and has own funds equivalent to at least €1 million for this purpose.

By way of the regulation under sentence 1 above, the Federal Ministry of Finance may reserve the right to approve the articles of association of the legal person and any amendments to them.

(2) In the event that it is entrusted in accordance with subsection (1) above, the legal person under private law shall assume the rights and obligations of the compensation scheme in accordance with section 6. The requirements of section 6 (1) relating to the assignment of institutions and of section 6 (4) to (6) shall apply *mutatis mutandis*.

(3) An entrusted compensation scheme shall be subject to supervision by BaFin. BaFin shall counteract undesirable developments that could impair the proper conduct of compensation activities or that could endanger the assets accumulated for conducting compensation activities. BaFin may issue orders that are appropriate and necessary to rectify or prevent such undesirable developments. BaFin shall have the right to receive information from and to inspect the entrusted compensation scheme in accordance with section 44 (1) of the Banking Act.

### **Section 8 Financial means of the compensation scheme**

(1) The financial means required to pay compensation shall be raised by collecting contributions from the institutions. The contributions paid by the institutions must cover the claims against the compensation scheme, the administrative costs incurred and other costs incurred by the compensation scheme as a result of its activities. The financial means accumulated to pay compensation shall be invested using a diversification strategy that ensures the greatest possible safety and adequate liquidity of the investments, combined with a reasonable return.

(2) The institutions are required to pay annual contributions to the compensation scheme at the end of each contribution assessment year. The contribution assessment year runs from 1 October of one year to 30 September of the following year. A limit for the collection of annual contributions shall be stipulated in the regulation in accordance with subsection (9) sentence 1 below. In addition to the annual contribution, institutions that were assigned to a compensation scheme after 1 August 1998 are required to make a one-time payment. Subject to approval by BaFin, the compensation scheme may reduce or suspend the obligation to pay contributions if the available financial means are sufficient to pay compensation.

(3) After being informed by BaFin that a compensation event in accordance with section 5 (3) sentence 2 has occurred, the compensation scheme shall without undue delay determine the amount of funds required and shall then also collect extraordinary contributions, subject to subsection (4) below, if this is necessary to conduct the compensation procedure. The compensation scheme shall be entitled to cover the funds required for a compensation event by way of extraordinary contributions to be collected in partial amounts, to the extent that this allows the obligation in accordance with section 5 (6) to be discharged, taking into account the duration, size and circumstances of the compensation event. If partial amounts are collected, the compensation scheme shall inform the institutions concerned about the procedure it intends to adopt.

(4) Extraordinary contributions are advance payments made to cover the funds required if a compensation event occurs. The amount of funds required results from the aggregate compensation payable in the compensation event plus the administrative and other costs that will be incurred in administering the compensation event, less the financial means of the compensation scheme available to pay compensation at the time the compensation event was determined. The compensation scheme shall determine the aggregate compensation payable on the basis of the documents to be provided by the institutions in accordance with section 5(4) sentence 2. If the aggregate compensation cannot be determined with sufficient accuracy using the documents, the compensation scheme shall estimate the amount in particular by reference to the data available to it regarding the compensation event, the average compensation payment and the costs incurred in previous compensation events involving the institutions assigned to it. If the compensation scheme

determines that the amount of funds actually required for the aggregate compensation payable exceeds the amount determined in accordance with sentence 3 or sentence 4 above, the compensation scheme shall collect further extraordinary contributions without undue delay after determining the shortfall in order to cover the amount of funds required. Extraordinary contributions are due when the notices concerning the extraordinary contributions have been announced.

(5) If the funds required by the compensation scheme to allow it to discharge its obligations under section 5 (6) cannot be covered within the required period by collecting extraordinary payments, it shall take out a loan. If the compensation scheme does not expect to be able to service the loan from the available assets, it shall collect extraordinary payments to cover principal and interest payments and costs. Extraordinary payments shall each be due six weeks before the due date of the relevant loan payments, although no earlier than two weeks after the notices concerning the extraordinary payments have been announced. Instead of collecting contributions in accordance with subsection (3) sentence 1 above, the compensation scheme may take out a loan if it expects to be able to repay this loan in full, including interest and costs, within the current and the subsequent contribution assessment year out of the available assets, without having to collect special payments.

(6) The obligation to pay extraordinary contributions and make extraordinary payments shall apply to all undertakings that were assigned to the compensation scheme at the beginning of the contribution assessment year in which an extraordinary contribution or payment is collected. It shall not apply to institutions that left the compensation scheme before the date on which the compensation event was determined.

(7) The amount of the extraordinary contribution to be paid and the extraordinary payment to be made in each case shall be measured by reference to the ratio of the most recent full annual contribution payable by the individual institution to the aggregate amount of the annual contributions and one-time payments and, in the cases described in sentence 3 below, the notional annual contributions of all institutions required to pay contributions or make payments in accordance with subsection (6) above. In the case of institutions that have not yet been required to pay an annual contribution, the most recent annual contribution payable shall be replaced by the one-time payment in accordance with subsection (2) sentence 4 above. The regulation in accordance with subsection (9) sentence 1 below may stipulate that, in the cases described in sentence 2, the compensation scheme may, on application by an institution and after the submission of substantiated projections, calculate a notional annual contribution that shall replace the most recent annual contribution payable, provided that this results in a considerable difference compared with the institution's one-time payment. If uniform and fair allocation of the payment obligation to the institutions can no longer be assured, taking into account the requirements set out in subsection (9) sentence 1 clause 2 below, because of the recognition of special reserves in accordance with section 340g of the Commercial Code, the regulation in accordance with subsection (9) sentence 1 below may also stipulate that, in the cases described in sentence 1 above, the compensation scheme may calculate a notional annual contribution that shall replace the most recent annual contribution payable in the case of institutions that recognise a special reserve in accordance with section 340g of the Commercial Code; when calculating this notional annual contribution, only half of the amount of special reserves within the meaning of section 340g of the Commercial Code that are recognised in excess of the amount in accordance with section 340e (4) of the Commercial Code shall be taken into account. The compensation scheme shall be entitled to collect several extraordinary contributions and extraordinary payments in each contribution assessment year. The extraordinary contributions and extraordinary payments collected in each contribution assessment year may not, in the aggregate, exceed five times the amount of the most recent annual contribution payable by an institution; in the case of institutions that have not yet been required to pay an annual contribution, the extraordinary contributions and extraordinary payments collected in each contribution assessment year may not, in the aggregate, exceed five times the amount of the one-time payment or the notional annual contribution. If an institution has paid extraordinary contributions or made extraordinary payments over a period of three consecutive contribution assessment years, extraordinary contributions and extraordinary

payments collected in directly succeeding years may not, in the aggregate, in each contribution assessment year exceed twice the amount of the most recent annual contribution payable by an institution. With BaFin's approval, the compensation scheme may exempt an institution, in whole or in part, from its obligation to pay an extraordinary contribution or make an extraordinary payment if the aggregate amount of the payments to be made to the compensation scheme would jeopardise that institution's ability to discharge its obligations to its creditors.

(8) After a compensation procedure has been completed, the compensation scheme shall report to the institutions about the use of the extraordinary contributions and extraordinary payments. After the compensation procedure has been completed, it shall repay to the institutions the extraordinary contributions paid and extraordinary payments made, to the extent that the extraordinary contributions were not used to conduct the compensation event and the extraordinary payments were not used to service a loan in accordance with subsection (5) sentences 1 and 2 above.

(9) After consulting the compensation scheme, the Federal Ministry of Finance shall stipulate the further details of the annual contributions, one-time payments, extraordinary contributions and extraordinary payments by way of a regulation that does not require the approval of the Bundesrat; the nature and extent of the protected transactions, the business volume and the number, size and business structure of the institutions assigned to the compensation scheme, as well as the risk that they might cause a compensation event, shall be taken into account in calculating the annual contributions, one-time payments, extraordinary contributions and extraordinary payments. The regulation may also contain requirements governing the collection of default interest in the case of late payment of contributions, on taking out loans and on investing the financial means. The Federal Ministry of Finance may delegate this authority to BaFin by way of a regulation.

(10) Contribution notices issued by the compensation scheme shall be enforced in accordance with the provisions of the Act on Administrative Enforcement (*Verwaltungsvollstreckungsgesetz*). The compensation scheme shall be responsible for delivering the enforceable copy. Objections to and appeals against contribution notices do not have suspensory effect.

(11) In discharging its obligations under section 3 (1), the compensation scheme shall only be liable up to the amount of the assets available to it on the basis of the contributions paid, net of the costs in accordance with subsection (1) sentence 2 above. An entrusted compensation scheme shall hold and administer these assets separately from its other assets.

## **Section 9 Inspections of institutions**

(1) In order to assess the risk that a compensation event might occur, the statutory compensation scheme should perform regular and *ad hoc* inspections of the institutions assigned to it. It shall tailor the intensity and frequency of the inspections to the probability that a compensation event will occur at an institution and to the amount of the aggregate compensation expected to be payable in this case. Objections to and appeals against the inspections do not have suspensory effect.

(2) The institutions shall, without undue delay, submit to the compensation scheme to which they are assigned their adopted annual financial statements together with the associated audit report and shall on request provide all information and documents that the compensation scheme needs to perform its functions under this Act. The staff of the compensation scheme or the persons acting on its behalf shall be permitted to enter the locations and business premises of the institution during normal working hours to the extent that this is necessary for the compensation scheme to perform its functions under this Act. Any person obliged to provide information may refuse to do so in respect of any questions, the answers to which would place them or one of their relatives referred to in section 383 (1) numbers 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung*) at risk of criminal prosecution or proceedings under the Act on Breaches of Administrative Regulations (*Gesetz über Ordnungswidrigkeiten*). The person obliged to furnish information shall be informed about their right to refuse to do so.

(3) In the case of an undertaking that has submitted to BaFin an application for authorisation in accordance with section 32 (1) sentence 2 of the Banking Act, the compensation scheme to which the institution would be assigned if authorisation were to be granted may perform inspections in order to assess the risk that a compensation event might occur in the event that authorisation is granted.

(4) Inspections in accordance with subsections (1) and (3) above for the compensation scheme at KfW shall be performed by the Deutsche Bundesbank. BaFin shall instruct Deutsche Bundesbank to perform the inspections at the proposal of the compensation scheme. An entrusted compensation scheme in accordance with section 7 shall perform the inspections in accordance with subsections (1) and (3) above using its own expert examiners or shall engage suitable third parties to perform the inspections. Suitable third parties are German public auditors, German sworn auditors, German public auditing firms and German sworn auditing firms, as well as other third parties with the necessary skills and experience, provided that there are no circumstances that could give grounds for suspecting possible conflicts of interest for these persons with regard to the institutions to be inspected. The entrusted compensation scheme shall require the persons engaged to perform the functions in accordance with sentence 3 above to notify it without undue delay if such circumstances exist. The inspections may not be performed by the auditor of the institution's financial statements or the auditor of its disclosure obligations and rules of conduct. The inspected undertakings shall reimburse the compensation scheme for the costs incurred for inspections. The compensation scheme shall reimburse the Deutsche Bundesbank or, in the cases described in sentence 3 above, the suitable third parties, for the personnel and non-personnel expenses incurred.

(5) The compensation scheme shall specify the details of the inspections in guidelines that must be approved by BaFin.

(6) The staff of the compensation scheme as well as persons engaged by it may enter the business premises of an institution during normal working and business hours if BaFin has ordered measures under section 46 of the Banking Act to be taken against this institution. All documents that they require to prepare a compensation procedure in accordance with section 5(1) sentences 1 and 2 shall be placed at their disposal. If functions of the institution have been outsourced to another undertaking, sentences 1 and 2 above shall apply to that undertaking *mutatis mutandis*.

(7) The institution shall reimburse the compensation scheme for its expenses incurred to perform or prepare a compensation procedure as defined in section 5.

(8) If, in the course of an inspection in accordance with subsection (1) above or by other means, the compensation scheme becomes aware of circumstances that give rise to the risk that a compensation event might occur at an institution, it shall notify BaFin without undue delay.

## **Section 10 Audit of the compensation scheme**

(1) After the end of each calendar year, the compensation scheme shall prepare an annual report and shall engage an independent German public auditor or an independent German public auditing firm to audit the annual report for completeness and for the accuracy of the information in it. The compensation scheme shall notify BaFin of the auditor it has engaged without undue delay following the auditor's appointment. Within one month of receiving of such notification, BaFin may request the appointment of a different auditor if this appears necessary to achieve the object of the audit; objections to and appeals against such requests do not have suspensory effect. The annual report shall contain information on the activities and the financial position of the compensation scheme, in particular the amount of the financial means and how they are invested, the use of the financial means for compensation events, the amount of the contributions and the administrative costs.

(2) The compensation scheme shall submit its adopted annual report to BaFin and the Deutsche Bundesbank by 31 May of each year. The auditor shall submit the report on the audit of the annual report to BaFin and the Deutsche Bundesbank without undue delay on completion of the audit. BaFin and the Deutsche Bundesbank shall also be notified on request about the information in accordance with subsection (1) sentence 4 above. Section 9 of the Banking Act shall apply *mutatis mutandis*.

(3) If performance of the functions and exercise of the powers of the compensation scheme have been transferred to an entrusted compensation scheme in accordance with section 7, the Federal Court of Auditors (*Bundesrechnungshof*) shall audit the proper budget and financial management of the entrusted compensation scheme. Sections 89, 90 and 92 to 100 of the Federal Budget Regulation (*Bundeshaushaltsordnung*) shall apply *mutatis mutandis*. The Federal Court of Auditors shall be notified without undue delay if supreme federal authorities issue, or issue guidance on, general requirements affecting the compensation scheme. The Federal Court of Auditors shall be consulted before such requirements are issued.

### **Section 11 Exclusion from the compensation scheme**

(1) If an institution does not comply with its obligations to pay contributions or cooperate in accordance with section 8 or section 9, or does not comply with them correctly, in full or in good time, the compensation scheme shall notify BaFin and the Deutsche Bundesbank. If the institution still does not comply with its obligations within one month of being requested to do so by BaFin, the compensation scheme may notify the institution of its exclusion from the compensation scheme, giving a notice period of twelve months. If the institution continues to fail to comply with its obligations, the compensation scheme may exclude the institution from the compensation scheme after this period has expired, with BaFin's approval. Following exclusion of the institution, the compensation scheme shall only be liable for the institution's liabilities that originated before this period expired.

(2) If the authorisation to conduct securities transactions in accordance with section 1 (2) ceases to apply, the compensation scheme shall only be liable for the institution's liabilities that originated before the authorisation ceased to apply.

### **Section 12 Branches of undertakings which have their registered office in another state of the European Economic Area**

(1) Branches of an undertaking within the meaning of section 53b of the Banking Act have the right to join a compensation scheme on the same conditions applying to domestic institutions in cases where the amount or extent of compensation under this Act exceeds the protection in the undertaking's home state. A condition for this is that the undertaking has been granted authorisation in its home state to conduct the transactions of a securities trading firm as defined in section 1 (3d) of the Banking Act.

(2) The amount and extent of the protection within the meaning of subsection (1) above shall be limited to the portion that exceeds the protection in the home state. Banking transactions or financial services relating to foreign currencies or units of account are not protected.

(3) If a branch that is included in a compensation scheme in accordance with subsection (1) above does not comply with its obligations to the compensation scheme, the compensation scheme shall notify BaFin and the Deutsche Bundesbank of this. BaFin shall request the branch to comply with its obligations within a period to be stipulated by BaFin. If the branch does not comply with BaFin's demand, BaFin shall notify the competent authorities of the home state that granted the authorisation referred to in subsection (1) sentence 2 above. BaFin and the competent authorities of the home state shall, in cooperation with the compensation scheme, take all measures necessary to ensure that the branch complies with its obligations under this Act.

(4) If the competent authorities of the home state do not take any measures, or if the measures under subsection (3) above prove to be insufficient, the compensation scheme may, with the approval of the competent authorities of the home state, exclude the branch from the compensation scheme with a notice period of twelve months. Following exclusion of the branch, the compensation scheme shall only be liable for the branch's liabilities that originated before this period expired.

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

### **Section 13 Duty of confidentiality**

Persons employed by or acting on behalf of the compensation scheme may not disclose or use third-party secrets, in particular business or trade secrets, without authorisation. Under the Act on the Formal Obligation of Persons without Civil Servant Status (*Verpflichtungsgesetz*) of 2 March 1974 (Federal Law Gazette I, pages 469, 547), as amended by section 1 number 4 of the Act of 15 August 1974 (Federal Law Gazette I, page 1942), they shall be required by BaFin to perform their duties conscientiously. Unauthorised disclosure or use of third-party secrets shall not apply in particular if facts are transmitted to BaFin or the Deutsche Bundesbank.

### **Section 14 Non-application of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*)**

The provisions of the Insurance Supervision Act shall not apply to compensation schemes within the meaning of sections 6 and 7.

### **Section 15 Provisions concerning administrative fines**

(1) A person who, wilfully or recklessly, contrary to section 9 (2) sentence 1 does not submit the annual financial statements together with the associated audit report or does not do so correctly, in full or in good time, commits an administrative offence.

(2) A person who, wilfully or recklessly, contrary to section 9 (2) sentence 1 does not provide information or does not do so correctly, in full or in good time, or who does not submit a document or does not do so correctly, in full or in good time, commits an administrative offence.

(3) The administrative offence carries a fine of up to €50,000.

(4) The administrative authority within the meaning of section 36 (1) number 1 of the Act on Administrative Offences (*Gesetz über Ordnungswidrigkeiten*) is BaFin.

### **Section 16 Sanctions**

(1) The compensation scheme can enforce compliance with the administrative acts that it imposes within its statutory powers by means of sanctions in accordance with the provisions of the Act on Administrative Enforcement (*Verwaltungsvollstreckungsgesetz*).

(2) In the case of measures in accordance with section 8 (1) and subsection (2) sentence 1, section 9 (2) sentence 1, subsections (3) and (6) sentences 1 and 2, a coercive fine of up to €50,000 can be imposed, and in the case of measures in accordance with section 9 (1) sentence 1, a coercive fine of up to €100,000 can be imposed.

### **Section 17 Temporal application**

(1) A right to compensation under this Act for a compensation event leading to non-settlement of liabilities from securities transactions exists only if this compensation event occurred after 25 September 1998.

(2) Claims for compensation under this Act may be submitted for the first time on or after 1 November 1998. If the notification in accordance with section 5 (4) was made prior to this date, the period in accordance with section 5 (5) for submitting claims shall not begin until 1 November 1998.

### **Section 18 Application and transitional provisions**

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

(2) Institutions that left a compensation scheme before 30 June 2009 can no longer be called on to settle compensation events involving this compensation scheme.

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

1 The words “being informed by BaFin” in section 8 (3) sentence 1 shall be replaced by “30 June 2009”.

2 If the compensation scheme already took out a loan before 30 June 2009 to cover the funds required, the obligation to collect extraordinary contributions in accordance with section 8 (3) sentence 1 shall not apply if the funds required are covered by the loan.

(4) Capital management companies that have been granted a licence that is on force on 29 June 2009 to provide individual asset management services in accordance with section 7 (2) number 1 of the Investment Act (*Investmentgesetz*), but that have not made use of this licence for more than one year, shall not be deemed to be institutions as defined in section 1 (1) number 4 until 29 September 2009.