

Yale University

EliScholar – A Digital Platform for Scholarly Publishing at Yale

YPFS Documents

[Browse by Media Type](#)

10-17-2008

Act on the Establishment of a Financial-Market Stabilisation Fund

Federal Republic of Germany: Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)/Federal Financial Supervisory Authority

Follow this and additional works at: <https://elischolar.library.yale.edu/ypfs-documents>

Recommended Citation

Federal Republic of Germany: Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)/Federal Financial Supervisory Authority, "Act on the Establishment of a Financial-Market Stabilisation Fund" (2008). *YPFS Documents*. 835.

<https://elischolar.library.yale.edu/ypfs-documents/835>

This Document is brought to you for free and open access by the Browse by Media Type at EliScholar – A Digital Platform for Scholarly Publishing at Yale. It has been accepted for inclusion in YPFS Documents by an authorized administrator of EliScholar – A Digital Platform for Scholarly Publishing at Yale. For more information, please contact elischolar@yale.edu.



Federal Financial
Supervisory Authority

Law & Regulation

Topic Own funds

Act on the Establishment of a Financial-Market Stabilisation Fund

Financial-Market Stabilisation Fund Act – FMStFG

Date: 17.10.2008

As published in the announcement of: 17 October 2008 (Federal Law Gazette I p. 1982)

Last amended by: Article 1 of the Act of 17 July 2009 (Federal Law Gazette I, p. 1980)

On this page:

- Section 1 Establishment of the Fund
- Section 2 Purpose of the Fund
- Section 3 Legal Status
- Section 3a Financial-Market Stabilisation Agency
- Section 4 Decisions on Stabilisation Measures; Administration
- Section 5 Separation of Assets, Liability of the Federation
- Section 5a Acquisition of Shares
- Section 6 Authorisation to Assume Guarantees
- Section 6a Guarantees for Special-Purpose Vehicles
- Section 6b Obligation to Pay a Compensatory Fee
- Section 6c Obligation to Further Compensate Losses
- Section 6d Application Period
- Section 7 Recapitalisation
- Section 8 Assumption of Risks
- Section 8a Liquidation Institutions under Federal Law
- Section 8b Liquidation Institutions under Land Law
- Section 9 Borrowing Authorisation
- Section 10 Conditions for Stabilisation Measures
- Section 10a Financial-Market Stabilisation Fund Panel
- Section 11 Annual Statement of Accounts and Provision of Information to Parliament
- Section 12 Administrative Costs
- Section 13 Time Limit and Participation on the Part of the Länder
- Section 14 Taxes
 - Section 14a Special Tax-Law Provisions in Connection with Transfers of Assets under Sections 6a and 8a

Section 14b Special Tax-Law Provisions on Special-Purpose Vehicles and Liquidation Institutions

- under Sections 6a and 8a

Section 14c Tax-Law Treatment of Payments into the Special-Purpose Vehicle or the Liquidation

- Institution and Amounts Paid Out by the Special-Purpose Vehicle or the Liquidation Institution
- Section 14d Special Tax-Law Provisions in Connection with Liquidation Institutions under Land Law
- Section 14e Rules for the Application of Sections 14 to 14d
- Section 15 Immediate enforceability
- Section 16 Legal Recourse
- Section 17 Promulgation of Ordinances

¹⁾This working translation is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

The Bundestag has passed the following Act with the consent of the Bundesrat:

Section 1

Establishment of the Fund

A fund of the Federation under the name “Financial-Market Stabilisation Fund – FMS” shall be established.

Section 2

Purpose of the Fund

(1) The Fund shall serve to stabilise the financial market by overcoming liquidity shortages and by creating the framework conditions for a strengthening of the capital base of institutions within the meaning of section 1(1b) of the Banking Act, of insurance undertakings and pension funds within the meaning of section 1(1) numbers 1 and 2 of the Insurance Supervision Act, of investment companies within the meaning of the Investment Act as well as of the operators of stock and futures exchanges and their respective parent enterprises, insofar as these are financial holding companies, mixed financial holding companies, insurance holding companies or mixed insurance holding companies and the abovementioned enterprises have their seat in Germany (financial-sector enterprises). Private-law entrusted owners of Landesbanken organised under public law, even where the owners are not financial holding companies, shall also be considered to be financial-sector enterprises within the meaning of the first sentence above.

(2) The Fund shall be a special trust within the meaning of Article 110(1) and Article 115(2) of the Basic Law.

Section 3

Legal Status

The Fund shall have no legal capacity. In legal relations, the Fund may act, sue and be sued in its own name. There shall be no attachment of or other measures of compulsory execution against the Fund. Section 394, first sentence, of the Civil Code shall be applied accordingly. The place of general jurisdiction of the Fund shall be the seat of the Deutsche Bundesbank.

Section 3a

Financial-Market Stabilisation Agency

(1) With effect from 23 July 2009, the Financial-Market Stabilisation Agency established by this Act in the version of 17 October 2008 shall become a public-law agency directly at federal level, having legal capacity and coming under the jurisdiction of the Federal Ministry of Finance. Its name shall be “Federal Agency for Financial-Market Stabilisation – FMSA” (the Agency) The Agency shall have its seat in Frankfurt am Main.

(2) The Agency shall exercise the tasks conferred upon it on the basis of this Act in the name of the Fund. Additionally, the Agency shall exercise the tasks conferred upon it under section 8a of this Act. The Agency shall be subject to the legal and technical supervision of the Federal Ministry of Finance.

(3) The Agency shall be managed by a Management Committee comprising three members who are to be appointed by the Federal Ministry of Finance in consultation with the Deutsche Bundesbank. Where civil servants are seconded to the Agency, the Management Committee shall be their superior with regard to personnel matters and operational matters.

(4) Within the first four months following the end of a financial year, the Agency shall produce annual financial statements and a management report in accordance with the provisions of the Commercial Code applicable to large corporations. The auditor is to be appointed by the Federal Ministry of Finance at the Agency's proposal. The annual financial statements are to be approved by the Management Committee. The annual financial statements and the management report are to be audited in accordance with the provisions of the Commercial Code. There shall be no obligation to produce consolidated accounts. The Disclosure Act shall not to be applied.

(5) In accordance with an ordinance to be issued pursuant to section 4(2), the Agency may avail itself of appropriate third parties in carrying out its tasks. The Agency may in conducting its transactions avail itself of the Deutsche Bundesbank within the framework of section 20 of the Bundesbank Act. The Federation shall bear the costs of the Agency. The Agency shall be authorised to demand from financial-sector enterprises applying for a stabilisation measure under sections 6 and 7 to 8a the reimbursement of costs on the basis of an undertaking or of a contract or to establish such by administrative act. The costs shall also include the costs of third parties of whom the Agency avails itself pursuant to the first sentence above.

(6) The Federal Ministry of Finance shall be empowered to issue, in agreement with the Deutsche Bundesbank and by way of ordinance which does not require the consent of the Bundesrat, the statutes of the Agency. The Federal Ministry of Finance may amend the statutes by way of ordinance in agreement with the Deutsche Bundesbank. Insofar as is necessary, the statutes shall include in particular provisions on the organisation of the Agency, its representation, the reimbursement of costs as well as on the budget management, economic management and rendering of accounts of the Fund and of the Agency.

(6a) The Agency shall not carry out any business that requires authorisation under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177 of 30 June 2006, p. 1), or 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, p. 1), in the applicable version. The Agency shall not be considered to be a credit institution

or financial services institution within the meaning of the Banking Act, an investment services enterprise within the meaning of the Securities Trading Act or an insurance undertaking within the meaning of the Insurance Supervision Act.

(7) The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to ordinances under subsection (6) above.

Section 4

Decisions on Stabilisation Measures; Administration

(1) Upon application by the financial-sector enterprise in the cases referred to in sections 6, 7 and 8, the Federal Ministry of Finance shall decide at its duty-bound discretion and taking into account the significance of the respective financial-sector enterprise covered by the stabilisation measure to financial-market stability, the urgency and the principle of the most effective and economical deployment of Fund resources possible, on the stabilisation measures to be undertaken by the Fund pursuant to sections 5a, 7, 6 and 8. Insofar as general principles, matters of particular importance as well as decisions on substantial obligations in accordance with an ordinance issued on section 10 of this Act are involved, an inter-ministerial committee (Steering Committee) shall decide on a proposal made by the Agency. There shall be no legal entitlement to benefits from the Fund. The Federal Ministry of Finance shall be responsible for the administration of the Fund. The benefits are to be made dependent upon conditions and obligations.

(2) The Federal Government may by way of ordinance which does not require the consent of the Bundesrat transfer the decision on the measures under sections 6, 7 and 8 and the administration of the Fund to the Agency; subsection (1), second sentence, above shall remain unaffected. The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to the ordinance.

The Steering Committee shall consist of one representative each from the Federal Chancellery, the Federal Ministry of Finance, the Federal Ministry of Justice and the Federal Ministry of Economics and Technology as well as one member proposed by the Länder. As a further member, a representative of the Deutsche Bundesbank shall belong to the Steering Committee in an advisory capacity. Further members may also belong to the Steering Committee in an advisory capacity. The Federal Ministry of Finance may establish rules of procedure for the Steering Committee.

(4) The Federal Government shall determine the guidelines for the administration of the Fund by way of ordinance which does not require the consent of the Bundesrat. The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to ordinances under the first sentence and subsection (2) above.

Section 5

Separation of Assets, Liability of the Federation

The Fund shall be separated from the other assets of the Federation, its rights and liabilities. The Federation shall be directly liable for the liabilities of the Fund; the Fund shall not be liable for the other liabilities of the Federation.

Section 5a

Acquisition of Shares

The Fund shall be authorised, in connection with the stabilisation of a financial-sector enterprise, to acquire shares in the enterprise concerned from such or from third parties. Such an acquisition of shares is only to be undertaken where there is a substantial interest on the part of the Federation and the purpose sought by the Federation cannot be better and more economically achieved by other means. Sections 65 to 69 of the Federal Budget Code shall not apply.

Section 6

Authorisation to Assume Guarantees

(1) The Fund shall be empowered to assume for the Fund guarantees of up to 400 billion euros for debt instruments issued by and liabilities accrued by financial-sector enterprises from the entry into force of this Act until 31 December 2010 which have a term of up to 60 months in order to remedy liquidity shortages and to support refinancing on the capital market; the term of the liabilities to be covered may not exceed 60 months and may exceed 36 months only in justified, exceptional cases and for a maximum of one third of the guarantees granted to an enterprise. The first sentence above shall apply accordingly to the assumption of guarantees for liabilities of special purpose vehicles which have assumed the risk positions of a financial-sector enterprise. A fee at an appropriate amount shall be levied for the assumption of guarantees.

(1a) Insofar as debt instruments and other receivables are guaranteed by the Fund,

1. the premature assertion of the claims, even as a result of a termination, shall be excluded,
2. the claim holders may not assert their claims through attachment or compulsory execution with respect to the issuer. Section 394, first sentence, of the Civil Code shall be applied accordingly.
3. the claim holders shall not participate in insolvency proceedings concerning the assets of the debtor.

In insolvency proceedings concerning the assets of the debtor of the claims, the Fund may file its recourse claims against the debtor in the form of an insolvency claim. Section 41(2) of the Insolvency Code shall not apply in this respect.

(2) Section 39(2) and 39(3) of the Federal Budget Code shall not apply.

(3) A guarantee shall be offset against the maximum amount of the corresponding facility of the authorisation at the amount at which the Fund can be drawn on from the guarantee. Interest and costs shall only be offset against the respective facility of the authorisation insofar as this is required by law or, upon assumption, a joint liability amount is stipulated for primary obligation, interest and costs. Insofar as in the cases of an assumption of guarantee under subsection 1 above the Fund is released from its liability without having been drawn on or has obtained compensation for benefits provided, a guarantee shall no longer be offset against the maximum amount.

(4) The Federal Government may by way of ordinance which does not require the consent of the Bundesrat issue more detailed provisions concerning

1. the type of guarantee and the type of risks which may be covered by it,

2. the minimum level of own funds which financial-sector enterprises benefiting from the measures under subsection (1) above must possess,
3. the calculation and offsetting of the amounts guaranteed,
4. the consideration and the other conditions of the guarantee,
5. upper limits for the assumption of guarantees for liabilities of individual financial-sector enterprises as well as for particular types of guarantees, and
6. other conditions required to safeguard the purpose of this Act in the context of the assumption of guarantees under subsection (1) above.

(5) The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to the ordinance under subsection (4) above.

Section 6a

Guarantees for Special-Purpose Vehicles

(1) Notwithstanding section 6(1), first and second sentences, and section 6(1), third sentence, second half-sentence, the Fund may assume guarantees under section 6(1) for debt instruments issued after 23 July 2009 by special-purpose vehicles to credit institutions, financial holding companies or the domestic and foreign subsidiaries thereof (transferring enterprises), which are demonstrably issued exclusively as consideration for the assumption of structured securities and related transactions providing cover; the terms of the guarantees shall be based on the term of the debt instruments issued by the special-purpose vehicles. These guarantees shall be considered to be subordinate within the meaning of section 39(2) of the Insolvency Code.

(2) The assumption of a guarantee under section 1 shall require that

1. the transferring enterprise did not acquire the structured securities after 31 December 2008,
2. the structured securities are transferred by the transferring enterprise to the special-purpose vehicle at 90 percent of their book value as of 30 June 2008, at 90 percent of their book value as of 31 March 2009 or at the actual economic value, depending on which of these values is the highest. The transfer value may not exceed the book value as of 31 March 2009. The book values shall be taken from the audited annual financial statements as of the appropriate cut-off date; otherwise the book value determined pursuant to the provisions applicable to the annual financial statements, which is to be confirmed by an auditor, shall apply. The deduction from the book value pursuant to the first sentence above need only be applied at the amount that allows the transferring enterprise to retain a core capital ratio of at least 7 percent,
3. the transferring enterprise determines the current fair value for inactive markets as the actual economic value of the structured securities. The valuation is to be audited by a third-party expert appointed by the Fund and to be confirmed by the banking supervision authority,
4. the credit institution and the financial holding company already had their seat in Germany as of 31 December 2008 and the special-purpose vehicle has its seat in Germany, was founded exclusively for the transferring enterprise and solely administers structured securities of the transferring enterprise,
5. the contractual term of the longest-dated structured security does not exceed the term of the guarantee, and
6. the debt instruments under subsection (1) above are not tradable.

(3) The actual economic value determined under subsection (2) number 3 above shall be subject to an appropriate deduction for further risks which could arise in the specific portfolio up to the end of term of the structured securities. The Fund shall determine the amount of the deduction in the individual case. The value resulting from this shall be the fundamental value.

(4) The Agency shall decide on the assumption of a guarantee under subsection (1) above upon application by the transferring enterprise. Section 4(1) shall be applied accordingly. The application must also contain the constituting documents of the special-purpose vehicle.

(5) The Fund shall define the detailed conditions for a guarantee under subsection (1) above in each individual case in accordance with the following criteria:

1. Before a transfer to the special-purpose vehicle, the transferring enterprises must fully disclose to the Fund, the third-party expert and the banking supervision authority all risks related to the securities to be transferred. To test their susceptibility to losses, transferring enterprises must, before a transfer, conduct stress tests for the major risks in each case on the basis of the rules set out by the Fund. The aim of these stress tests shall be to determine what action, if any, is necessary for the transferring enterprise, particularly as regards risk management, sufficient risk provisions for macroeconomic developments or business strategy. The results of the stress tests shall not be published. Where the transferring enterprise is a subsidiary company, the obligation to conduct stress tests shall apply to the parent enterprise.
2. The Fund must receive remuneration for the guarantee that reflects the market value thereof. The remuneration shall in principle consist of an individual percentage, reflecting the risk of default relating to the guarantee being drawn on, of the maximum amount of the guarantee provided, plus a margin. The calculation of the remuneration shall take into account the interest-rate advantage for the transferring enterprise resulting from the deferred payment of the difference between the transfer value determined pursuant to subsection (2) number 2 above and the fundamental value. The remuneration may be paid to the Fund wholly or partly by issuing equity shares in the transferring enterprise or in the entrusted owner within the meaning of section 2(1), first sentence.
3. The guarantee shall, in principle, be provided upon first request in the form normally used in the banking industry. It shall cover both the principle and the interest as well as any other amounts due to the creditors in connection with their claim, and it shall, in principle, be issued in euros. The Fund is to cover currency risks engendered by the granting of a guarantee in another currency. The transferring enterprise is to bear the costs of this cover.
4. The assumption of a guarantee shall require a sound business model and, in principle, shall require the transferring enterprise to be adequately capitalised in the individual case.
5. The Fund may demand that the transferred structured securities be administered by third parties instead of by the transferring enterprise. The Fund may give instructions regarding the administration and realisation of the transferred securities. Where the transferring enterprise carries out the administration, a separation in terms of function and organisation from the transferring enterprise's other business is to be ensured.
6. The upper limit, in relation to an individual transferring enterprise and its associated enterprises, for the assumption of guarantees shall be based on the sum of the transferring enterprise's risk-weighted assets and on the remaining facility of the authorisation available to the Fund for guarantees.

(6) Section 6(2) and 6(3) of this Act, sections 16 and 17 of the Financial-Market Stabilisation Acceleration Act, as well as section 5(2) and 5(5) to 5(9) of the Financial-Market Stabilisation Fund Ordinance in the version in force on 23 July 2009 shall apply accordingly to the granting of guarantees

under subsection (1) above. Subject to the payment of the compensatory fees under sections 6b and 6c, section 5(2) number 5 of the Financial-Market Stabilisation Fund Ordinance shall not, however, apply to dividends or distributions of profits to the shareholders.

Section 6b

Obligation to Pay a Compensatory Fee

(1) For the duration of the term of the guarantee, but not exceeding 20 years, transferring enterprises shall, on an annual basis out of the amount to be distributed to the shareholders, pay the special-purpose vehicle compensation, which shall be calculated as follows:

1. For every financial year, a liability shall accrue that is equal to a fixed share of the difference between the transfer value determined pursuant to section 6a(2) number 2 and the fundamental value determined pursuant to section 6a(3), up to a maximum of the amount to be distributed to shareholders for that financial year. The fixed share shall be calculated as the amount of the difference divided by the number of whole years of the term of the guarantee; it shall be equal to at least one twentieth of the amount of the difference.
2. Where the amount to be set for a financial year does not equate to the fixed share under number 1 above because the amount to be distributed to the shareholders is too small, the former amount shall be raised accordingly in the following years up to the respective amount to be distributed to the shareholders.
3. Where the transferring enterprise is a subsidiary, its parent enterprise is to pay a proportion of the compensation obligation that corresponds to the parent's proportional participation in the transferring enterprise from the amount it is to distribute to the shareholders and shall be considered to be the transferring enterprise to this extent. The obligation to pay compensation out of the amount to be distributed to the other shareholders of the subsidiary shall remain unaffected by this.
4. The transferring enterprise may issue preference shares at a value of up to half of the share capital existing on 23 July 2009, with a preferred dividend corresponding to their proportional participation and having priority over the obligation under this subsection to make a payment out of the amount to be distributed to shareholders; the preference shares may also carry voting rights. The authorisation to make transfers to profit reserves under section 58(2), first sentence, of the Stock Corporation Act shall be reduced by the amount of the preferred dividend.

(2) Where a positive balance is achieved after the structured securities have been realised in full, this balance shall be assigned to the transferring enterprise to be paid out to its shareholders. This shall not include holders of preference shares under subsection (1) number 4 above and section 6c(3).

(3) The actual economic value of the transferred securities and the consequences of subsections (1) and (2) above are to be stated in the management report and the group management report of the transferring enterprise.

Section 6c

Obligation to Further Compensate Losses

(1) Where the transferring enterprise is constituted in the legal form of a stock corporation and the compensatory fees paid over the term of the guarantee under section 6b are not sufficient to compensate for losses against the transfer value determined pursuant to section 6a(2) number 2, compensation for losses not compensated for is to be paid to the Fund even beyond the term of the

guarantee, in full including interest, out of the amount to be distributed to the shareholders (extended liability). The compensation may, by mutual agreement, also be paid by issuing shares to the Fund.

(2) For the duration of the extended liability, the articles of association may only authorise, pursuant to section 58(2), second sentence, of the Stock Corporation Act, the transfer of a smaller portion of the annual net income.

(3) The transferring enterprise may issue preference shares at a value of up to half of the share capital existing on 23 July 2009, with a preferred dividend corresponding to their proportional participation and having priority over the Fund's entitlements to the amount to be distributed to shareholders; the preference shares may also carry voting rights. The authorisation to make transfers to profit reserves under section 58(2), first sentence, of the Stock Corporation Act shall be reduced by the amount of the preferred dividend.

(4) For transferring enterprises which are not constituted in the legal form of a stock corporation, the Fund must stipulate an obligation of extended liability equivalent to subsections (1) and (2) above in the conditions for the guarantee.

(5) The legal and contractual entitlements to extended liability shall not be subject to limitation.

(6) The consequences of subsections (1) to (5) above are to be stated in the management report and group management report of the transferring enterprise.

Section 6d

Application Period

The application under section 6a(4) may only be submitted up to 22 January 2010.

Section 7

Recapitalisation

(1) The Fund may participate in the recapitalisation of financial-sector enterprises, in particular it may against the provision of a contribution acquire shares or silent participations and assume other components of the own funds of these companies, including such created by the legislation of the Länder.

(2) The Federal Ministry of Finance shall decide on the assumption and sale of participations under subsection (1) above. The Fund is only then to participate where there is a substantial interest on the part of the Federation and the purpose sought by the Federation cannot be better and more economically achieved by other means. Sections 65 to 69 of the Federal Budget Code shall not apply.

(3) The Federal Government may by way of ordinance which does not require the consent of the Bundesrat issue more detailed provisions concerning

1. the consideration and the other conditions of the recapitalisation,
2. upper limits for the participation in own fund items of individual financial-sector enterprises as well as for particular types of own fund items,
3. the conditions under which the Fund may resell its participation in the own fund items, and

4. other conditions required to safeguard the purpose of this Act in the context of the recapitalisation under subsection (1) above.

(4) The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to the ordinance under subsection (3) above.

Section 8

Assumption of Risks

(1) The Fund may acquire or by other means cover risk positions, in particular receivables, securities, derivative financial instruments, rights and obligations from loan commitments or warranties and participations, in each case together with corresponding collateral, acquired by financial-sector enterprises before 13 October 2008. The same shall apply for special-purpose vehicles which have assumed the risk positions of a financial-sector enterprise.

(2) The Federal Government may by way of ordinance which does not require the consent of the Bundesrat issue more detailed provisions concerning

1. the type of risk positions which may be acquired or the risks of which may be covered,
2. the type of acquisition or cover, including the conditions, representations and considerations applying to such,
3. upper limits for the assumptions of risks in relation to individual financial-sector enterprises and their associated enterprises as well as for certain types of risk positions,
4. repurchase rights to the benefit of, and repurchase obligations to the detriment of, the beneficiary financial-sector enterprises and other suitable forms of their participation in the risks assumed by the Fund, and
5. other conditions required to safeguard the purpose of this Act in the context of the assumption of risk under subsection (1) above.

(3) The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to the ordinance under subsection (2) above.

Section 8a

Liquidation Institutions under Federal Law

(1) Upon application by the transferring company, the Agency may establish public-law institutions having partial legal capacity, to which the risk positions acquired by 31 December 2008, as well as the business divisions of the transferring company that are not strategically required, may be transferred, by legal transaction or transformation, for the purpose of liquidation (liquidation institutions). Transferring companies shall mean credit institutions and financial holding companies which already had their seat in Germany on 31 December 2008, as well as their domestic and foreign subsidiaries or special-purpose vehicles which have assumed risk positions from them. Before a transfer under the first sentence above, transferring companies may assume risk positions, acquired by 31 December 2008, from domestic and foreign subsidiaries or special-purpose vehicles that have assumed risk positions from them. By the assumption of guarantees, by sub-participations or by other means, the liquidation institutions may also cover the risk positions or business divisions without a transfer. In legal relations, they may act, sue and be sued in their own name, they have their own financial reporting and

accounting system, and they are to be entered in the commercial register without delay by the register court. The liquidation institutions' costs shall be covered by their assets. The administrative costs incurred by the Agency from coordination and monitoring activities for the liquidation institutions shall be borne by the latter. The assets of a liquidation institution are to be kept separate from the assets of other liquidation institutions and from the other assets of the Agency, its rights and liabilities. Without prejudice to the regulation under subsection (4) number 1, sixth sentence, below, the Agency, the Fund or the Federation shall not be liable for the liabilities of the liquidation institutions; a liquidation institution shall not be liable for the liabilities of other liquidation institutions. Section 3a(4) shall apply accordingly to the liquidation institutions. To the extent that the tasks of the Agency or the liquidation institutions are carried out by other legal or natural persons, it must be ensured contractually that the Federal Court of Audit also has rights to carry out inspections on the premises of these persons.

(2) The Agency shall monitor the liquidation institutions. The monitoring shall assure, in particular, that the liquidation institutions comply with the rules under law and their constituting articles. In addition, the Agency may, in agreement with the liquidation institutions, assume coordination tasks for the liquidation institutions, in particular regarding principles of risk assessment, regarding refinancing and regarding the sale of assumed assets in a manner that minimises the effect on the market; in other respects the liquidation institution shall be responsible for the administration of the specific assets. The seat and details of the tasks, organisation and dissolution of the liquidation institutions, including the Agency's monitoring of them, shall be stipulated in separate constituting articles, which shall be adopted by the Agency in consultation with the liquidation institution; section 4(1), first to third sentences, shall apply accordingly. Provisions may also be decided in the constituting articles regarding

1. the liquidation institutions' level of own funds,
2. the supply of the own funds by third parties or other participation in the own funds by third parties,
3. the tasks, powers and obligations of those holding a participation in the own funds, and
4. rights to occupy posts, or powers of consent, for the establishment of management bodies and the appointment of the liquidation institutions' management staff; those holding a participation in the liquidation institution may be given a right to make proposals; the fifth sentence below shall remain unaffected.

The establishment of management bodies and the appointment of management staff shall require the consent of the Agency. The constituting articles shall be published in the Federal Gazette.

(3) The Agency shall make the decision as to the establishment of a liquidation institution for the assumption of risk positions or business divisions not strategically required upon application by the transferring company or, in the case of a special-purpose vehicle, upon joint application by the special-purpose vehicle and the credit institution whose risk positions the special-purpose vehicle has assumed; section 4(1), first to third sentences, shall apply accordingly.

(4) The Agency shall define the more detailed conditions for the establishment of liquidation institutions to assume risk positions or business divisions not strategically required according to the following criteria:

1. It must be ensured that the direct or indirect shareholders or members of the transferring company assume an obligation to compensate losses of the liquidation institutions corresponding to their proportional participation and that those obliged to compensate losses are made jointly and severally liable in relation to third parties. Where the transferring company is a special-purpose vehicle, this shall be applied to the direct or indirect shareholders or members of the credit institution whose risk positions the special-purpose vehicle has assumed. It shall be permissible for some shareholders or members to

assume an obligation to compensate losses that does not correspond to their respective share if compliance with the rules under European law is ensured. Shareholders or members may be made liable for the liquidation institutions' liabilities which have been transferred; the second and third sentences above shall apply accordingly. For the eventuality that the shareholders or members obliged to compensate losses are jointly and severally unable or no longer able to fulfil their commitments, it is to be provided that the company has an obligation, which shall be subordinate where applicable, to compensate for the losses out of the amount to be paid to the shareholders under number 2 below. Subordinate to this, it may also be provided that the Agency has an obligation to compensate the liquidation institution for losses, and that the Agency or the Federation has a right of recourse against the transferring company and its direct or indirect shareholders or members.

1a. Where one of the direct or indirect shareholders or members of the transferring company is a Land, joint and several liability shall not be established; the obligation to assume losses corresponding to the proportional participation under number 1, first sentence, above shall remain unaffected. Where an association of savings banks or a holding company in which savings banks participate directly or indirectly (Association) acts as shareholder or member, it must be provided that the losses of the liquidation institution that the Association is to bear in each case are first compensated for from the amount to be distributed to the Association under number 2 below (step 1) and then, to the extent that the amount is insufficient, compensated for directly by the Association (step 2). The cumulative total of the losses to be borne by the Association shall be limited to the amount, to be established by the Agency, which the Association had to bear on 30 June 2008 on the basis of the state guarantee for German public institutions². To the extent that the Association's performance under steps 1 and 2 is not sufficient to cover the loss it is to bear in accordance with its proportional participation, the difference in each case will be advanced by the Agency and refinanced in the following years from the amount to be distributed to the Association under number 2 below. The Federal Government and relevant Land shall share the financial burdens arising under this mechanism at a ratio of 65:35; the details shall be stipulated in an administrative agreement. Any provisions of Land law beyond this shall remain unaffected.

2. Where the assumption of an obligation to compensate for losses under number 1 above is not practicable because shareholding in or membership of the transferring company is not closed, for example where the company is listed on the stock exchange, the transferring company is to assume the obligation to compensate for the losses out of the amount to be distributed to the shareholders. Where the transferring company is a special-purpose vehicle, this shall apply to the credit institution whose risk positions it has assumed; the equivalent shall apply for subsidiaries as transferring companies. Sections 6b and 6c shall apply accordingly for the obligation of the transferring company to compensate for the losses out of the amount to be distributed to the shareholders.

3. Where a positive balance in favour of the Agency is achieved once the transferred risk positions and business divisions not strategically required have been realised in full, and the shareholders or members of the transferring company are not already entitled to this balance on the basis of their participation in the liquidation institution, the balance shall be assigned to the shareholders or members or to the transferring company to be paid out to its shareholders or members. Section 6b(2), second sentence, shall apply accordingly.

4. Without prejudice to numbers 1 and 2 above, the Agency may determine the consideration to be granted for the assumption of risk positions or business divisions not strategically required, or for providing cover for these.

5. Before a transfer to the liquidation institution, the transferring company must disclose to the Agency

all risks relating to the risk positions or business divisions not strategically required which are to be transferred or covered.

6. The assumption of risk positions or business divisions not strategically required shall be subject to the prerequisite that the transferring company, or the credit institution whose risk positions have been assumed in the case of a special-purpose vehicle, has a sound business model and, in principle, adequate capital in the specific case, and that the liquidation institution has a liquidation plan which prescribes in detail the intended liquidation of the assumed risk positions and business divisions not strategically required.

7. The transferring company or its direct or indirect shareholders or members must ensure that their responsibility for employees, pension liabilities and other burdens associated with employment relationships is preserved in full, even after risk positions and business divisions not strategically required have been transferred to liquidation institutions.

8. The obligations described in section 5(2) numbers 1 to 5 and section 5(5) to (9) of the Financial-Market Stabilisation Fund Ordinance of 20 October 2008 (electronic Federal Gazette AT123 2008 V1) shall apply accordingly for institutions which avail themselves of measures under section 8a. The Agency may define other conditions which may also be attached to stabilisation measures under section 8.

(5) The liquidation institutions shall not be considered to be credit institutions or financial services institutions within the meaning of the Banking Act, investment services enterprises within the meaning of the Securities Trading Act or insurance undertakings within the meaning of the Insurance Supervision Act; section 3a(6a), first sentence, shall apply accordingly. Section 3, section 6(2) and 6(3), sections 6a, 7 to 9, 14, 22a to 22o, section 24(1) numbers 6, 8 and 11 to 14, as well as section 24(1a), 24(2) and 24(4), section 25, section 25a(1), first sentence, sections 25b to 25h, section 26(1), first to third sentences, section 29(2), first sentence, sections 37, 39 to 44a, 44c, 47 to 49, 54, 55a, 55b, 56, 59, 60 and 60a of the Banking Act, as well as sections 9 and 10 of the Securities Trading Act, shall be applied accordingly to the liquidation institutions; the latter shall be considered obliged parties within the meaning of section 2(1) of the Money Laundering Act. To that extent they are subject to supervision by BaFin. Section 15 of the Act on Financial Services Supervision shall be applied accordingly.

(6) Liquidation institutions shall be subject to the compulsory cost allocation under section 16 of the Act on Financial Services Supervision. Section 16 of the Act on Financial Services Supervision, section 5, section 6(1), section 6(2), first sentence, number 1, section 7(1) and 7(3), section 8(1) number 1, section 8(2), first sentence, number 5, as well as sections 9 to 12b of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act on Financial Services Supervision shall be applied accordingly using the following criteria:

1. The supervisory costs caused by the liquidation institutions shall be determined separately as costs of an additional group in section 5(7) of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act on Financial Services Supervision;
2. notwithstanding section 7(3), first sentence, of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act on Financial Services Supervision, the compulsory cost allocation shall commence upon the establishment of the liquidation institution; notwithstanding section 7(3), second sentence, of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act on Financial Services Supervision, it shall cease upon the dissolution of the liquidation institution;

3. notwithstanding section 8(1) number 1 of the Ordinance on the Imposition of Fees and Allocation of Costs Pursuant to the Act on Financial Services Supervision, the liquidation institution's balance sheet for the fiscal year ending in the year for allocation purposes shall be decisive.

(7) Any contract establishing an obligation on the part of the transferring company or its direct or indirect shareholders or members to compensate for the losses of a liquidation institution, or to pay to the relevant liquidation institution future amounts to be distributed to the shareholders, shall not constitute an inter-company agreement.

(8) The liquidation institutions may take part, as transferee legal entities, in hive-downs and spin-offs, in each case by absorption, in accordance with the following provisions:

1. The direct or indirect shareholders of the transferring legal entity, or the transferring legal entity itself, may be granted a participation in the liquidation institutions within the context of the division. The participation may be limited to an entitlement to a surplus achieved after completion of the liquidation. The participants in the liquidation institution and further details of the participation shall be determined in the constituting articles of the liquidation institutions under subsection (2) above. To the extent that the shareholders of the transferring legal entity are subjected to an obligation to compensate for losses or make subsequent payments, or are made liable for the liabilities of a liquidation institution, the resolution of the transferring legal entity pursuant to section 125 in conjunction with section 13 of the Transformation Act shall require the consent of all shareholders who, in accordance with the underlying rules, are obliged to compensate for losses or make subsequent payments or are liable for liabilities; number 4 below shall remain unaffected. Where participations are allotted to indirect shareholders within the meaning of subsection 4(1), second sentence, above, a resolution of these shareholders shall additionally be necessary; where obligations to compensate for losses or to make subsequent payments, or a liability for liabilities, are imposed upon them, the resolution shall require the consent of all shareholders.
2. Compensation entitlements between the legal entities involved in the division may be created.
3. The contract for the division and assumption shall not require auditing within the meaning of section 125 in conjunction with sections 9 to 12 of the Transformation Act. The Management Committee shall make the resolution required for the transfer to take effect pursuant to section 125 in conjunction with section 13 of the Transformation Act on behalf of the Agency; it is also responsible for the waiver declaration pursuant to section 127, second sentence, in conjunction with section 8(3) of the Transformation Act. The report pursuant to section 127 of the Transformation Act is to be issued by the liquidation institution's body responsible for management under the constituting articles pursuant to subsection (2) above.
4. Subject to the third sentence above, the resolution of the transferring legal entity pursuant to section 125 in conjunction with section 13 of the Transformation Act shall require a majority comprising at least two thirds of the votes cast or of the subscribed capital or equity capital represented; a simple majority shall suffice where half of the subscribed capital or equity capital is represented. Provisions to the contrary in the articles of association shall be irrelevant. The first and second sentences above shall not apply for legal entities in the legal form of public-law institutions directly at Land level.
5. Where a liquidation institution participates in a division, sections 22 and 23, section 126(2), first and second sentences, and sections 133 and 141 of the Transformation Act shall not apply.

6. A list of the assets to be transferred (partial balance sheet) may also be used as a closing balance sheet; the provisions concerning the annual balance sheet and the auditing thereof shall apply accordingly to the partial balance sheet, to the extent that its limited scope does not necessitate otherwise. The register court may enter the division only if the closing balance sheet has been drawn up as of a cut-off date no more than twelve months before the division is registered. In other respects, the provision of section 125 in conjunction with section 17(2) of the Transformation Act shall apply.
7. A partial balance sheet may also be used as an interim balance sheet (section 125 in conjunction with section 63(1) number 1 of the Transformation Act). This need not be audited.
8. Where participations are allotted to indirect shareholders within the meaning of subsection (4) number 1, second sentence, above, declarations pursuant to section 140, section 146(1) and section 148(1) of the Transformation Act are also to be submitted, during registration for the trade register of the transferring legal entity, to the legal representatives of all enterprises holding a direct or indirect participation in the transferring legal entity which are not allotted an indirect or direct participation in the liquidation institution within the context of the division. Section 313(2) of the Transformation Act shall also be applied to this declaration.
9. The details of the division are to be stipulated in the constituting articles of the liquidation institutions pursuant to subsection (2) above. Divisions under this subsection shall mean hive-downs and spin-offs, in both cases by absorption, within the meaning of the Transformation Act of 28 October 1994, as amended on 17 December 2008 (Federal Law Gazette I, p. 2586) in conjunction with number 1 above of this subsection, to which the provisions of the Transformation Act shall be applied accordingly to the extent that this Act and the constituting articles of the liquidation institutions pursuant to subsection (2) above do not provide otherwise.

(9) Sections 16 to 19 of the Financial-Market Stabilisation Acceleration Act shall be applicable accordingly to the transfer and covering of risk positions and business divisions not strategically required pursuant to subsections (1) to (8) above.

(10) Notwithstanding section 6(1), second sentence, the Fund may assume guarantees under section 6(1) for debt instruments and other liabilities issued or created by liquidation institutions after 23 July 2009 exclusively to refinance or cover the structured securities they have assumed. Notwithstanding section 6(1), first sentence, the terms of the guarantees shall be based on the term of the debt instruments and other liabilities issued or created by the liquidation institution. The assumption of a guarantee shall require that the debt instruments of the liquidation institutions are not tradable. Section 6(1a) to 6(3) shall apply accordingly. Where the Fund is a direct or indirect shareholder under section 8a(4), first sentence, number 1, first sentence, it may, offsetting the authorisation to assume guarantees under section 6(1), first sentence, assume an obligation to compensate for losses, and a liability for transferred liabilities, of the liquidation institutions under section 8a(4), first sentence, number 1, first and fourth sentences.

(11) To the extent that risk positions or business divisions not strategically required are to be transferred to a liquidation institution by way of a measure under the Transformation Act, section 7c of the Financial-Market Stabilisation Acceleration Act shall apply accordingly.

2). Gewährträgerhaftung

Section 8b

Liquidation Institutions under Land Law

(1) A liquidation institution under Land law shall be a public-law institution under Land law, which has the task, by means of transfers of a legal or economic nature, of relieving credit institutions, financial holding companies, their domestic and foreign subsidiaries or special-purpose vehicles which have assumed risk positions from them, of risk positions and business divisions not strategically required, and to which the following shall be provided in or on the basis of Land legislation:

1. The liquidation institution under Land law may not carry out any business that requires authorisation under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ L 177 of 30 June 2006, p. 1) or 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, p. 1), in the applicable version.
2. A transferring company's risk positions acquired up to 31 December 2008 and business divisions not strategically required may be transferred to the liquidation institution under Land law by means of a legal transaction or transformation, for the purpose of liquidation. Section 8a(1), second to fourth sentences, shall apply accordingly.
3. The conditions under section 8a(4), numbers 5, 6 and 8, first sentence, shall apply accordingly for the assumption by the liquidation institution under Land law of risk positions and business divisions not strategically required.

(2) Where the preconditions stated in subsection (1) above are met, the provisions of section 3a(4), first and fourth to sixth sentences, as well as section 8a(5) to 8a(7) and 8a(9) shall apply accordingly to liquidation institutions under Land law. Supervision under section 8a(5), third sentence, shall also extend to the conditions under subsection (1) number 1 above.

Section 9

Borrowing Authorisation

(1) To cover expenses and measures under sections 5a, 7 and 8 and section 8a(4), first sentence, number 1a of this Act and to cover measures under sections 1 to 4 of the Rescue Takeover Act, the Federal Ministry of Finance shall be empowered to take out loans of up to 70 billion euros for the Fund.

(2) The amounts from repaid loans shall accrue back to the borrowing facility under subsection (1) above.

(3) In the case of discount securities, the net amount shall be offset against the borrowing authorisation.

(4) Subject to the conditions of section 37(1), second sentence, of the Federal Budget Code, the facility for the authorisation defined in subsection (1) above may with the consent of the Budget Committee of the Deutscher Bundestag be exceeded by up to 10 billion euros.

(5) In the event of recourse to the Fund due to a guarantee under section 6, section 6a or section 8a(10) of this Act, the Federal Ministry of Finance shall be empowered to take up further loans of up to 20 billion euros for the Fund.

Section 10

Conditions for Stabilisation Measures

- (1) Financial-sector enterprises drawing on the stabilisation measures of the Fund under sections 6, 7 and 8 of this Act must guarantee a solid and prudent business policy.
- (2) The Federal Government may by way of ordinance which does not require the consent of the Bundesrat issue more detailed provisions concerning the requirements to be fulfilled by the beneficiary financial-sector enterprises on
1. the business strategy and, in the case of banks, especially the granting of loans to small and medium-sized enterprises, and the sustainability of the business model pursued,
 2. the use of the monies received,
 3. the remuneration of their bodies, employees and main vicarious agents,
 4. the level of own funds,
 5. the distribution of dividends,
 6. the period within which these requirements are to be fulfilled,
 7. measures to avoid distortions of competition,
 8. the way in which account is to be rendered to the Fund,
 9. an undertaking on compliance with the requirements to be met in numbers 1 to 8 above, to be given by the authorised representative body with the consent of the supervisory body and to be published,
 10. other conditions required to safeguard the purpose of this Act under subsection (1) above.

The requirements may vary according to the type and addressee of the stabilisation measure. They shall be defined on the basis of this Act and the ordinance issued thereon by contract, voluntary undertaking or administrative act. The ordinance to be issued under the first sentence above may also stipulate legal consequences of non-compliance with the abovementioned requirements.

- (3) The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to the ordinance under subsection (2) above..

Section 10a

Financial-Market Stabilisation Fund Panel

- (1) The Deutscher Bundestag shall elect for the duration of one legislative period a panel which comprises members of the Budget Committee. The panel shall be assigned to the Budget Committee and shall have nine members. The Deutscher Bundestag shall determine the composition and modus operandi. The panel shall end its activity upon dissolution of the Fund.
- (2) The panel shall be informed about all issues concerning the Fund by the Federal Ministry of Finance. The panel shall be authorised to summon members of the Steering Committee or of the Management Committee to appear. The panel shall furthermore discuss core and strategic issues and long-term developments of financial-market policy.

(3) The meetings of the panel shall be classified as secret. The members of the panel shall not disclose any matters which become known to them through their activity. This shall apply to all meeting participants.

Section 11

Annual Statement of Accounts and Provision of Information to Parliament

(1) The Federal Ministry of Finance shall produce an annual statement of accounts for the Fund at the end of each financial year. It shall be enclosed as an annex to the budget account of the Federation.

(2) The annual statement of accounts must permit the balance of the Fund including receivables and liabilities to be identified in a clear manner as well as demonstrate the income and expenditure.

(3) A budget or business plan shall not be drawn up. The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed regularly about the current status. The panel under section 10a of this Act shall be informed without delay of all cases of major import.

Section 12

Administrative Costs

The Federation shall bear the costs for the administration of the Fund.

Section 13

Time Limit and Participation on the Part of the Länder

(1) The Fund's stabilisation measures, including the measures under sections 6a and 8a, shall be available up to 31 December 2010. The Fund shall then be wound up and dissolved.

(1a) The Fund may participate in financial-sector enterprises in which it already holds a participation as a result of measures under section 7 even after 31 December 2010 insofar as this is necessary to maintain the shareholding of its equity participation in the enterprise or to cover stabilisation measures granted.

(2) Following the winding-up of the Fund, the remaining final result shall be shared between the Federation and Länder at a ratio of 65:35. The participation of the Länder shall be limited to a maximum amount of 7.7 billion euros. One half of the distribution to the individual Länder shall be made according to population (as of 30 June 2008) and the other half according to the 2007 gross domestic product at current prices.

(3) Insofar as Landesbanken or special purpose vehicles which have assumed the risk purpose vehicles at the time of the entry into force of this Act. In line with its shareholding at the time of the entry into force of this Act, the Federation shall bear the burdens of the financial institutions under section 2 in which it holds a participation.

(4) The Federal Government shall determine the winding-up and dissolution of the Fund by way of ordinance in each case which requires the consent of the panel under section 10a and the Bundesrat.

(5) The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and amendments to ordinances under subsection (4) above. If such measures are supported by the measures of the Fund, the Länder shall bear financial burdens arising herefrom according to their shareholdings in the Landesbanken or special

Section 14

Taxes

(1) The Fund shall not be subject to trade tax or corporation tax. It shall not constitute a trader within the meaning of the Turnover Tax Act.

(2) Tax is not to be deducted from the investment income of the Fund; where tax on investment income is withheld and paid although there was no obligation to do so, the payment debtor must amend the tax return in this respect. Payments by the Fund shall not be subject to withholding tax on investment income. For the purposes of double taxation agreements, the Fund shall be considered as a person resident in Germany and subject to German taxation.

(3) Section 8c of the Corporation Tax Act and section 10a, last sentence, of the Trade Tax Act shall not be applied upon acquisition or reassignment of stabilisation components by the Fund. The first sentence above shall also apply for the acquisition or reassignment of stabilisation components by another domestic central, regional or local authority or an establishment comparable to the Fund which is set up by authority, if the stabilisation measures are carried out within the time limit stated in section 13(1). The first sentence above shall be applied accordingly to measures within the meaning of the Rescue Takeover Act.

(3a) To the extent that spin-offs within the meaning of section 15(1) of the Transformation Tax Act constitute necessary preparation for stabilisation measures within the meaning of sections 6 to 8 of this Act, section 15(3) of the Transformation Tax Act as amended by Article 5, number 2 of the Act of 14 August 2007 (Federal Law Gazette I, p 1912) shall not be applied. Losses that can be offset, remaining losses carried forward, negative income not compensated for and interest carried forward under section 4h(1), second sentence, of the Income Tax Act, shall remain with the transferring entity.

(4) The legal acts performed by the Fund as acquirer for the fulfilment of the tasks allocated to it and its acquisitions as expropriation beneficiary shall be exempt from real property transfer tax. Acquisitions of shares by the Fund shall not be taken into account when determining the percentage in accordance with section 1(2a) of the Real Property Transfer Act.

Section 14a

Special Tax-Law Provisions in Connection with Transfers of Assets under Sections 6a and 8a

(1) Notwithstanding section 6(6) of the Income Tax Act, the value for the transferring enterprise of the debt securities within the meaning of section 6a(1) is to be recognised at the value at which the transferring enterprise transferred the structured securities under section 6a(2) number 2. For the special-purpose vehicle within the meaning of section 6a(1), the value of the structured securities received is to be recognised at the value of the debt securities within the meaning of section 6a(1)

issued for the purchase.

(2) In the case of a spin-off by absorption within the meaning of section 8a, the transferring entity is to recognise the risk positions and business divisions not strategically required (transferred assets) within the meaning of section 8a(1), first sentence, at book value in its closing tax balance sheet. The participation granted in the course of the spin-off to the transferee liquidation institution within the meaning of section 8a shall be considered to have been purchased at book value and shall take the place of the transferred assets for tax purposes. Section 14(3a) shall apply accordingly. The transferee legal entity shall assume the legal status of the transferring entity, particularly as regards depreciation and the reserves reducing taxable profit. Where the duration for which an asset has belonged to the business assets is relevant to taxation, the period it has belonged to the business assets of the transferring entity is to be attributed to the transferee legal entity.

(3) In the case of a hive-down by absorption within the meaning of section 8a, the liquidation institution is to recognise the business assets transferred at book value. The book value of the assets transferred, plus any compensation liability and minus any compensation entitlement of the transferring party within the meaning of section 8a(8) number 2, shall be considered to be the transferring party's sale price and the purchasing cost of its participation in the liquidation institution. Subsection (2), fourth and fifth sentences, above shall apply accordingly.

(4) Section 8a(8) number 6 shall apply to the transfer's value date for tax purposes.

Section 14b

Special Tax-Law Provisions on Special-Purpose Vehicles and Liquidation Institutions under Sections 6a and 8a

(1) The special-purpose vehicle within the meaning of section 6a(1) shall be considered to be a commercial undertaking within the meaning of section 35c(1) number 2 e) of the Trade Tax Act and section 19(3) number 2 of the Trade Tax Implementing Ordinance if it demonstrably acquires and administers solely the assets stated in section 6a(1) (including their sale and reinvestment) and issues the debt instruments necessary for the acquisition.

(2) With the exception of the liquidation institutions established, the Agency within the meaning of section 3a(1) shall not constitute any undertaking of a commercial nature within the meaning of section 4 of the Corporation Tax Act nor any public-sector undertaking within the meaning of section 2(1) of the Trade Tax Implementing Ordinance.

(3) Notwithstanding section 1(1) number 6 of the Corporation Tax Act, the liquidation institution shall have unlimited corporation tax liability and shall constitute an undertaking of a commercial nature within the meaning of section 4 of the Corporation Tax Act; it shall be a tax debtor of corporation tax. The legal consequences of a concealed distribution of profits within the meaning of section 8(3) of the Corporation Tax Act are not to take effect purely because the liquidation institution makes losses.

(4) The liquidation institution shall be liable for trade tax if it is to be regarded as a commercial undertaking having a fixed place of business; in this case it shall be a debtor of trade tax. Subsection (1) above shall apply accordingly to the liquidation institution liable for trade tax to which only risk positions within the meaning of section 8a(1), first sentence, have been transferred; for other liquidation institutions, section 19(1) and 19(2) of the Trade Tax Implementing Ordinance shall be applied accordingly.

Section 14c

Tax-Law Treatment of Payments into the Special-Purpose Vehicle or the Liquidation Institution and Amounts Paid Out by the Special-Purpose Vehicle or the Liquidation Institution

(1) The following shall be considered to be negative income within the meaning of section 20(1) number 1 or section 20(1) number 10 a) of the Income Tax Act:

1. payments within the meaning of section 6b(1) to the special-purpose vehicle, and
2. payments within the meaning of section 8a(4), first sentence, number 2 to the liquidation institution if the shareholder or member of the transferring enterprise within the meaning of section 8a(4), first sentence, number 2 does not hold a participation in the liquidation institution.

The payments shall also reduce the tax base, within the meaning of section 43a(1), first sentence, numbers 1 and 2 of the Income Tax Act, for the investment income from the participation in the transferring enterprise; the payments shall also be considered as negative income when applying the Investment Tax Act. Where the party obliged to pay compensation within the meaning of section 8a(4), first sentence, numbers 1 and 2 holds a participation in the liquidation institution, payments within the meaning of section 8a(4), first sentence, numbers 1 and 2 to the liquidation institution shall be treated as contributions.

(2) Section 8b of the Corporation Tax Act shall not be applied to the income

1. of the special-purpose vehicle, within the meaning of section 6b(1), and
2. of the liquidation institution, within the meaning of section 8a(4), first sentence, number 2.

(3) The special-purpose vehicle is to show the income within the meaning of section 6b(1) as an addition and the amounts paid out within the meaning of section 6b(2) as a withdrawal in a special account which may not become overdrawn as a result of the amounts paid out; section 27(2) of the Corporation Tax Act shall apply accordingly. Amounts paid out within the meaning of section 6b(2) shall only constitute business expenditure for the special-purpose vehicle to the extent that they are considered to be paid out of the account to be maintained under the first sentence above. The first and second sentences above shall apply accordingly for a liquidation institution which receives income within the meaning of section 8a(4), first sentence, numbers 1 and 2 from parties obliged to pay compensation who do not hold a participation in the liquidation institution, and directly or indirectly pays out amounts within the meaning of section 8a(4), first sentence, number 3 to these shareholders.

(4) Amounts paid out by the special-purpose vehicle within the meaning of section 6b(2) shall be considered to be income within the meaning of section 20(1) number 1 of the Income Tax Act.

(5) Benefits paid by the liquidation institution within the meaning of section 8a(4) number 3 which are due to the shareholders within the meaning of section 8a(4), first sentence, number 3 from the participation in the liquidation institution, shall be considered

1. to be income within the meaning of section 20(1) of the Income Tax Act, if the entitled party is not a legal person under public law,
2. to be domestic income within the meaning of section 20(1) number 10 a) of the Income Tax Act, if the entitled party is a legal person under public law.

The first sentence above shall be applied accordingly to benefits paid by the liquidation institution within the meaning of section 8a(4), first sentence, number 3 which are due to shareholders within the meaning of section 8a(4), first sentence, number 3 without their holding a participation in the liquidation institution, if

1. the beneficiary has made payments within the meaning of section 8a(4), first sentence, number 1 to the liquidation institution, to the extent that the benefits exceed the sum of the payments (minus repayments) to the liquidation institution. The shareholder is to substantiate this; the shareholder shall apply subsection (3) above accordingly,
2. the beneficiary has made payments within the meaning of section 8a(4) number 2 to the liquidation institution;

where, in these cases, the transferring enterprise within the meaning of section 8a(1), second sentence, is the enterprise obliged to forward the investment income, it shall be the debtor of this investment income for the purposes of division VI part 3 of the Income Tax Act. If benefits which are economically comparable with the benefits within the meaning of section 8a(4), first sentence, number 3 are provided before the time stated in section 8a(4), first sentence, number 3, the first and second sentences above shall be applied accordingly within the meaning of section 8b. Where the beneficiary who does not hold a participation in the liquidation institution has made payments within the meaning of section 8a(4), first sentence, numbers 1 and 2, the second sentence, number 2 above shall first be applied to the benefits afforded by the liquidation institution within the meaning of section 8a(4), first sentence, number 3 up to the amount of these payments. The shareholder is to substantiate this; the shareholder shall apply subsection (3) above accordingly.

Section 14d

Special Tax-Law Provisions in Connection with Liquidation Institutions under Land Law

Section 14a(2) to 14a(4) shall apply accordingly in connection with transfers of assets to the liquidation institutions under Land law within the meaning of section 8b. Section 14b(2) to 14b(4) shall be applied accordingly to the liquidation institutions under Land law within the meaning of section 8b.

Section 14e

Rules for the Application of Sections 14 to 14d

(1) Section 14(3), first and second sentences, and section 14(3a) as amended by Article 10 of the Act of 16 July 2009 (Federal Law Gazette I, p. 1959) shall be applied for the first time for the 2008 assessment and collection period.

(2) Sections 14a to 14d in the version in force from 23 July 2009 onwards shall first be applied to the 2009 assessment period and 2009 collection period.

Section 15

Immediate enforceability

Objections shall be excluded. Any action for rescission against measures under this Act and the ordinances based on this Act shall not have the effect of delaying proceedings.

Section 16

Legal Recourse

The Federal Administrative Court shall rule in the first and last instance on public-law disputes of a non-constitutional nature under this Act. In other respects the competency of the ordinary courts shall remain unaffected. Here the Federal Court of Justice shall rule in the first and last instance.

Section 17

Promulgation of Ordinances

Notwithstanding the provisions of section 1 of the Act on the Promulgation of Ordinances, ordinances under this Act may also be promulgated in the electronic Federal Gazette*). Ordinances promulgated in the electronic Federal Gazette shall be referenced for information purposes in the Federal Law Gazette indicating the place of their publication and the date of their entry into force.

*) <http://www.ebundesanzeiger.de>

Additional information

Please note

German version is binding

This translation is furnished for information purposes only and may refer to an older version of the text. The original German text is binding in all respects.