

# The "Bauspar" System in Germany

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## Preface

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The acquisition of housing property is a major key for development and prosperity. Housing property provides the prerequisites for a responsible way of life. It encourages personal initiative. In turn, people who live in their own house or apartment develop a special relationship to their home, neighbourhood and city. Owning housing helps its owners to put down roots - it is regarded as a social obligation.

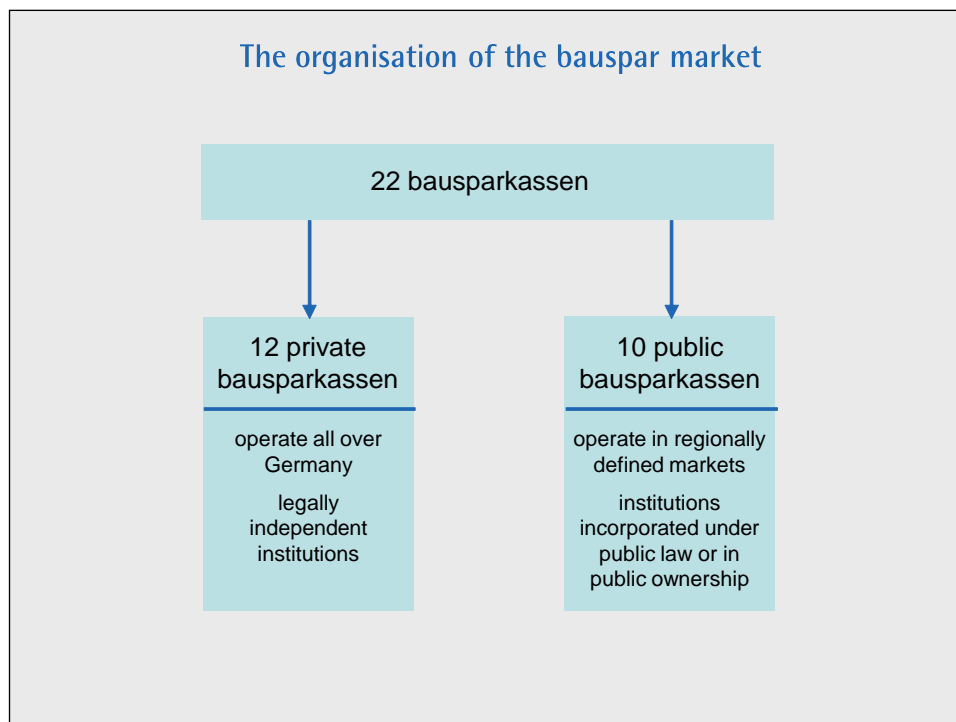
The concept of bauparen achieves a very specific contribution in this context. Its underlying principle of "help for self-help" has not lost its validity over the times. Baupar savers are part of a baupar community which imposes very special rights and obligations both on the individual baupar customers and on the bauparkassen as their custodians. The system has verified to be crisis-proof. It is safe because it relies on solid housing finance techniques with intrinsic risk buffers in the form of the savers' own assets. Warranting long-term fixed and low interest rates for credits, it protects people against financial overstrain.

The acquisition of housing property should also be possible for average-wage earners. It is a perfect old-age provision which – different from other forms of old-age provision – can be enjoyed at young age already. For many decades, the bauparkassen have successfully pleaded for this social mission, which is of essential importance for the creation and protection of jobs.

## The bauspar market in Germany

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There are currently 22 bausparkassen in Germany. The 10 public bausparkassen operate within regionally defined markets while each of the 12 private bausparkassen conducts business nationwide. The public law bausparkassen are either divisions of public banks or institutions incorporated under public law with their own legal personality, or public limited companies. The private bausparkassen operate exclusively as public limited companies. Private banks and insurance companies have also recognized the importance of the bauspar system for the financial services sector and have therefore either acquired shares in existing bausparkassen or have founded their own bausparkassen. The private bausparkassen cover about two thirds of the market and the public bausparkassen one-third.



## The development of the baupar system in Europe

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The European history of the baupar concept begins in Birmingham with the establishment of Kettley's Building Society in 1775. By means of monthly savings contributions, the members of this building society collected a pool of capital from which customers were then able to take out loans to build their homes.

In Germany, the first step in this direction was taken through the initiative of pastor Friedrich von Bodelschwingh in Bielefeld, who founded a German type of Building Society, the "Bauparkasse für Jedermann" ("Bauparkasse for Everyone") in 1885. However, the first actual boom for German bauparkassen only began in 1921, when author Georg Kropp established the "Gemeinschaft der Freunde (GdF)" (Society of Friends), as an organisation to promote home ownership in Wüstenrot near Heilbronn.

Against a background of an acute housing shortage combined with difficulties within the credit market, numerous bauparkassen were founded in the period up to 1931, many of them continuing to be mainstays of the baupar system to this very day.

After World War II, bauparkassen very quickly experienced an upswing, acting as a driving force in the necessary rebuilding of the home ownership sector. Whilst there was a noticeable relaxation in the housing market at the beginning of the eighties as a result of cyclical developments and income trends, by the mid eighties residential construction and with it the baupar system started recording growth figures once again. The system was successfully introduced into the new federal states in East Germany in 1990.

The increased demand for housing which arose in the nineties as a result of changing socio-demographic trends and political developments will continue into the first years of the new millennium, mainly because an increasing number of singles and young people are setting up their own homes. This is where the baupar system can help to form home ownership. The move to owner-occupied homes also initiates a removal chain, releasing rented housing for new tenants. It is in this sector that the baupar system continues to have excellent growth opportunities.

The European Federation of Building Societies (EFBS), one of the oldest European associations in the credit sector, was founded in 1962. This organisation, which set itself the goal of promoting and supporting the financing of private home ownership, currently has over members from the EU member states, the Mediterranean countries, the signatory states to the European Economic Area and the EU candidate countries.

## A chronicle of the bauspar system

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1775	Foundation of “Kettley’s Building Society” in Birmingham, Great Britain
1885	Foundation of the “Bausparkasse für Jedermann” by Pastor von Bodelschwingh in Bielefeld, Germany
1921-1931 from 1948	Founding phase of the majority of German bausparkassen Resumption of the bauspar business in the Federal Republic of Germany
1990	Introduction of the bauspar system in the new federal states in East Germany

### Founding years of the first bausparkassen in other European countries

1925	Austria
1928	France
1928	Czechoslovakia
1930	Switzerland
1927-1930	Poland: foundation of some 20 bausparkassen
1931	Bulgaria
before 1939	Denmark, Norway, Sweden, Belgium, Netherlands
1992	Slovakia: (re-) introduction of the bauspar system
1993	Czech Republic: (re-) introduction of the bauspar system
1997	Hungary
1998	Croatia
2004	Romania

### Overseas, Africa, Middle East: Founding years of the first building societies / savings and loan institutions

1831	USA
1840	New Zealand
1840	Australia
1858	South Africa
1904	Brazil
1922	Palestine
2001	India
2003	Kazakhstan
2004	China

### Lobbies / Associations

1914	Foundation of the world organisation International Union for Housing Finance (IUHF)
1947	Foundation of the central office of the public bausparkassen of Germany
1948	Foundation of the Association of Private German Bausparkassen (VdPB)
1962	Formation of the European Federation of Building Societies (EFBS)

## The historical concept of the baupar system

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The baupar system is an important factor in the supply of housing, capital formation and personal retirement provision.

The fundamental concept of the system is based on social-ethic ideas. It can best be illustrated by an example showing the advantages of this mutually supportive group especially when potential home buyers have no access to mortgage loans from a bank - which was the case in Germany in former times and is still true for many developing and emerging countries:

Ten potential home buyers without own capital want to save money with the objective of acquiring their own homes. If each of them is able to save one-tenth of the amount needed every year, then each would have the necessary capital after ten years. If these ten potential home buyers were to pool their resources, the first one could own a home after only one year by drawing on the savings of the other nine.

In the second year, the next one could purchase a home by drawing on the savings of nine plus the redemption payments made by the first participant who had been able to purchase his home in the first year.

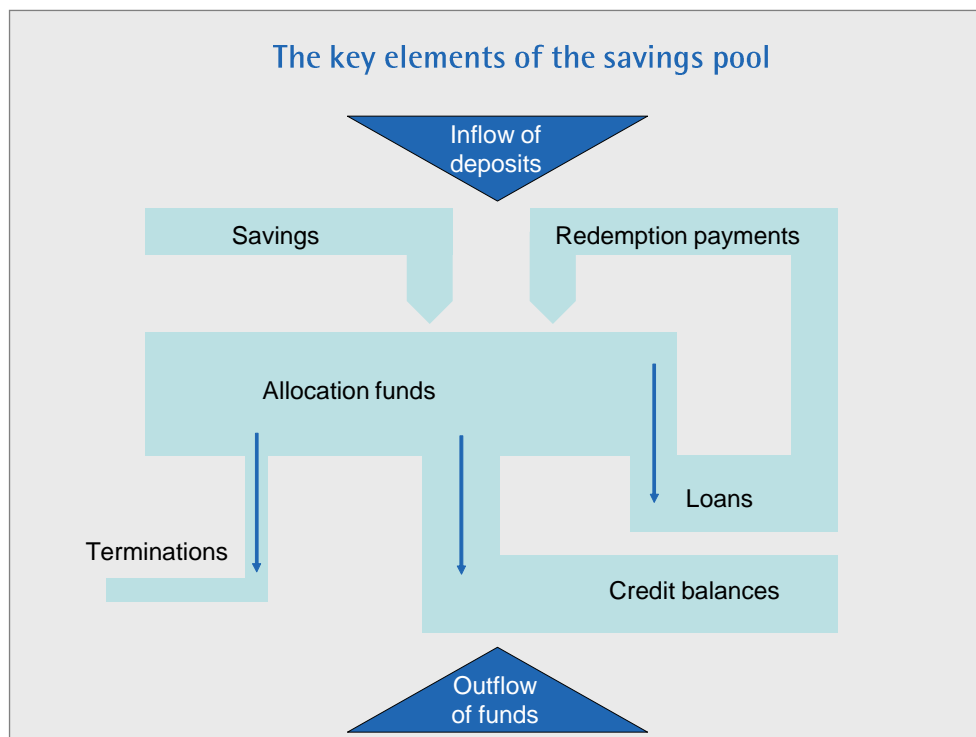
Using this method, all those who have pooled their resources reach their objective over the ten year period and 4.5 years earlier on average than if each had saved the necessary money alone.

The baupar system made a substantial contribution to overcome the housing shortage in Germany in the 1920s. Nowadays the concept is focussed on a safe way to home ownership and sustained financing .

## The allocation system

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Today, with a total of some 30 million baspar contracts, the baspar business is no longer as continuous as in the historic model and requires precise handling. The number of contracts concluded fluctuates depending on the state of the economy and income levels so that the flow of cash into the pool of funds is uneven. This also applies to the outflow of funds from the pool. One of the major tasks facing the managers of a basparkasse is therefore to keep the fluctuations of cash entering or leaving the pool as low as possible over a lengthy period of time.



Nevertheless, this does not change the basic idea of a 'closed pool'. The pooled deposits are called the "allocation fund". This fund is fuelled by the combined savings of the potential home buyers during the savings phase as well as by the redemption payments.

The allocation fund is used to pay out the contractually agreed sum to customers when their contracts are allocated. They receive both the credit balance in their account and a low-interest loan up to the amount of the agreed sum.

The advantages are obvious: The capital saved keeps the burden of financing down, the fixed interest on the loan offers protection against rising interest rates on the markets. The independence from the development of interest rates on the capital markets (at the beginning of the nineties interest rates on German capital mar-



kets rose to far above 10%) is another major advantage offered by a bauspar contract. Customers may also terminate their agreements after the savings phase if they do not need the loans and can use the deposits for their individual requirements.

## How a bauspar contract works

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A bauspar contract is divided into four phases: the contract conclusion phase, the savings phase, the allocation phase and the loan phase.

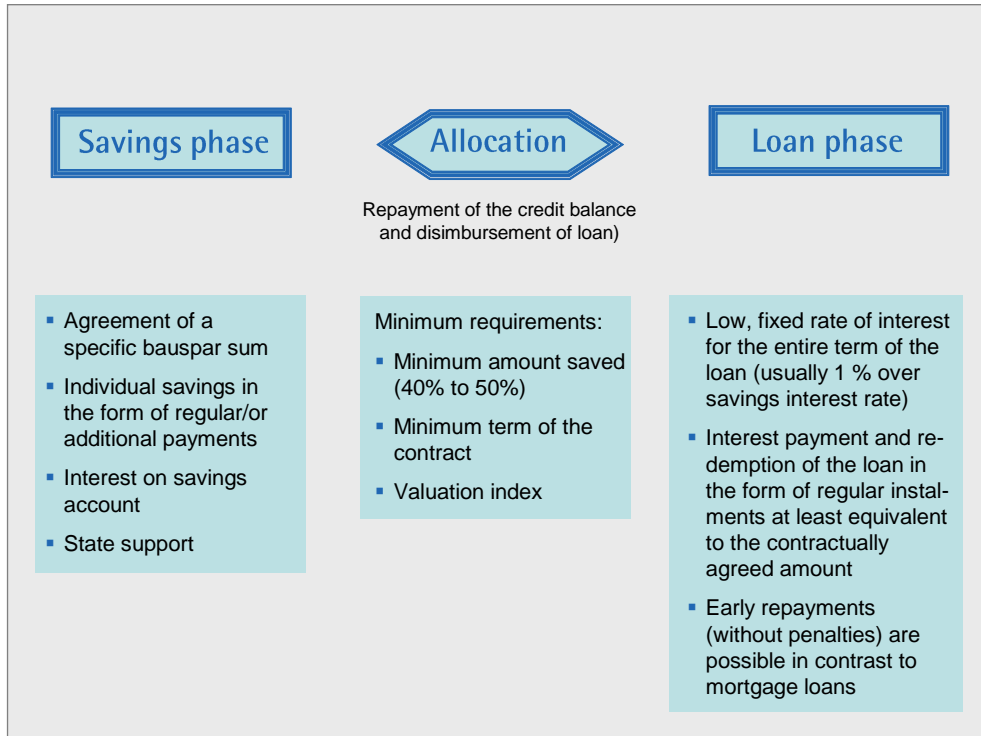
In the contract conclusion phase, the bausparkasse and the bauspar customer agree upon the bauspar sum and the remaining contract conditions, the so-called tariff, defining the saving and loan interest rates and the modalities of saving and redemption. Depending on the tariff, the interest rate of the loan is usually between 1.5 % and 4.25 %. The bausparkassen offer tailor-made tariffs for different target-groups (standard, fast-track or long-term). So-called option or variable tariffs are also offered in which the customer can choose between several tariff types. This gives him the chance to react flexibly even after the contract has been concluded if his savings objective should alter during the savings process. The contract is concluded through sales representatives, in branch offices or through cooperating or allied companies (e.g. banks, insurance companies, saving banks).

Before customers can draw on their contractually agreed sum, this must be allocated. The allocation is effected when 40 % or 50 % (depending on the tariff) of the bauspar sum has been saved, a certain minimum savings period has elapsed and/or the so-called target valuation index has been achieved. The valuation index stands for the saving performance the bauspar customer has made for the community of savers. The valuation index expresses the customer's saving performance for the benefit of the pool. It is calculated on the basis of the amount of savings and the length of time it has existed ("time-by-money system").

The valuation index also determines the order in which allocations are made to bauspar customers from the allocation fund. The customer with the highest valuation index takes priority over those with a lower valuation index in the allocation of the contractually agreed sum.

The loan phase begins with the allocation. The total bauspar sum, comprising both the deposits and a low-interest loan, which has a fixed rate of interest until it is finally redeemed, is disbursed to the customer. The interest on the loan is usually one percentage point higher than the interest attracted by the deposits, i.e. de-

pending on the contract (tariff) between 1.5 % and 4.25 % p.a. The loan is repaid in regular instalments which, in the most popular tariffs, amount to 6 ‰ per month or 7.2 % p.a. of the baupar sum. In contrast to mortgage loans, the customer may also make early repayments at any time (without being liable to repayment penalties).



## The legal framework of the bauspar business

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As credit institutions, the German bausparkassen are subject to the full provisions of the German Credit Sector Act and therefore to government supervision through the Federal Banking Supervisory Authority. The special structure and techniques of the bauspar system in Germany require that the German Credit Sector Act is supplemented by special provisions governing Bausparkassen. Such provisions are contained in the Bausparkassen Act of 16 November 1972, as last amended on 1 August 2008. In addition to the provisions pertaining to supervision, the Act regulates the organisational structure of the bausparkassen and sets forth the regulatory framework for their business operations. It also regulates the minimum allocation requirements and contains provisions on a technical security reserve which is intended to make the waiting period constant.

The general bauspar terms and conditions, i.e. the conditions for the contractual relationship with bauspar customers in the saving and loan phase have to be approved by the Federal Banking Supervisory Authority.

The same applies for the general business terms and conditions, i.e. the business foundations of the institute and the mathematic foundations of the bauspar tariffs.

The conclusion of bauspar and loan contracts is not subject to approval by the Federal Banking Supervisory Authority. In any case, these contracts have to be based on the general bauspar terms and conditions.

Loans that are provided by the bausparkassen on a market-finance basis are not subject to approval either (cf. page 19).

## The legal foundations

### **Statutory requirements**

#### **German Credit Sector Act**

General rules pertaining to the supervision of the operation of credit institutions

#### **Bausparkassen Act:**

Specific rules:

- legal form
- audit and supervision
- permissible business activities
- framework for general business principles and general conditions for bauspar contracts
- appropriation of bauspar funds for housing financing
- securing of the bauspar loan

#### **Bausparkassen Regulation:**

Stipulates ceilings for the investment of available funds and the granting of specific loans

#### **German Civil Code**

Rules concerning the loan contract

## The advantages of the bauspar system

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The advantages of a bauspar loan are expressed in the following five points in particular:

- stable interest rate within the savings and loan phase
- no risk of interest-rate changes
- possibility to early repay the loan at any time without early repayment penalty
- fast freedom from debt
- second-rank provision of security.

These advantages are not available to those funding their homes without bauspar funds. With a traditional mortgage, for example, individuals must pay the interest rate prevailing on the capital market, the amount of which is determined by the interest rates which the credit institutions themselves pay for refinancing. This interest rate is subject to constant fluctuations.

Low interest rates between 1.5% and 4.25% can be provided by the bauspar-kassen because they do not depend on the capital market for their refinancing needs as they use the appropriated savings deposits of their customers. Moreover, they guarantee this fixed rate of interest for the lifetime of the loan when the saving contract is signed.

With mortgages, the interest rate is only fixed for the first term of the loan, which is usually 5, 10 or 15 years. If the interest rate on the capital market has risen by the end of this period, then the mortgage can become much more expensive for its remaining term.

Another advantage of the bauspar loan is that borrowers may early repay their loans at any time without having to pay an early repayment fee to the bauspar-kasse. This increases the flexibility of the borrower since he can use non-scheduled inflows of funds for repayment and thus reduce his loan burden as a whole.

As bauspar customers “create” their own creditworthiness through the saving phase of the bauspar contract, the bausparkassen are content with “secondary” securities for the bauspar loan. This way bauspar customers can finance their homes with a well-balanced mix of financial resources where the bauspar loan can close the gap between the sum required and the loan granted under first-rank security.

Especially in transition and emerging economies, bausparen offers interesting advantages and options:

In emerging economies, the saving rates are often very low as the confidence in the banking sector is not very high or even got lost. The bauspar system is easy to understand and a safe method of saving and can make a contribution to re-establish the confidence into the banking industry. Bausparen helps to stabilise the banking sector in an indirect way and can thus help to achieve more growth.

In contrast to other credit institutions, bausparkassen are prepared to offer also small-scale loans – depending on the contractually agreed sum. This is an important advantage in emerging countries, as their housing stock is often extensive, but in desperate need of repair for which, smaller loans are required in general.

In many emerging countries the provision of loans for private households is rather restricted or implies exorbitant interest rates and very short repayment times. This is mainly due to the fact that credit institutions are not in a position to evaluate the creditworthiness of potential customers as the majority of people do not have a bank account or because credit agencies do not exist. This lack of information can be closed by bausparen, as bauspar customers establish their own creditworthiness by their regular saving. Those who are able to save a small portion of their income regularly will be reliable borrowers. This is reflected by the extremely low failure rate of bauspar loans.

## The use of baupar contracts for housing finance purposes

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The German Bausparkassen Act also regulates the purposes for which baupar loans may be used ("purpose to finance housing"). The main use of baupar funds are the construction and/or purchase of homes and owner-occupied flats, the acquisition of building plots, the modernisation and repair of housing as well as the redemption of home loans.

The Bausparkassen Regulation which has been adopted on the basis of the Bausparkassen Act contains more precise provisions governing the temporary investment of the baupar funds which have already been allocated for disbursement but have not yet been drawn on by the customers, large-scale baupar contracts (with contract sums over 300,000 Euros) as well as the granting of certain types of loans, e.g. unsecured loans (up to 30,000 Euros) or loans with simplified security conditions (i.e. so-called "good-faith collateral" where borrowers pledge not to encumber their property with any mortgages that would take priority over the loan made by the bauparkasse).

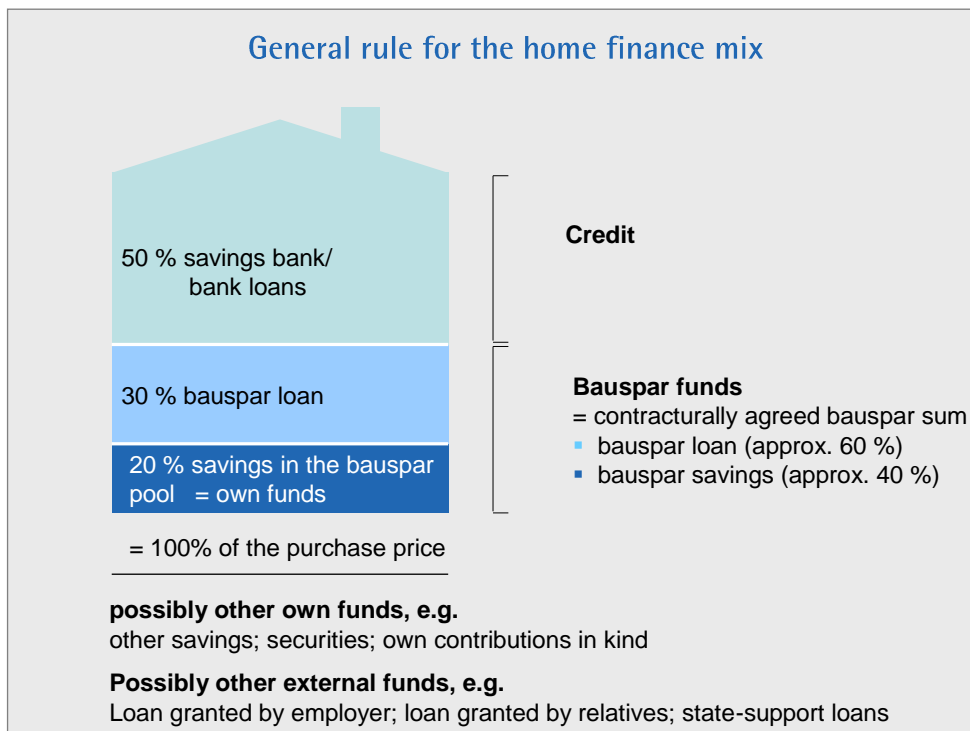
Housing finance purposes include the following:

- Construction / purchase of
  - houses
  - owner-occupied flats
- purchase of a plot
- Modernisation / repair of
  - houses
  - owner-occupied flats
- Tenant-funded modernization of housing
- Redemption of home loans
- Construction cost grants, rent advances
- Inheritance disputes
- Acquisition of homes in other EU member states
- Construction / purchase of combined commercial and residential properties
- Acquisition of dwelling rights in retirement homes
- Measures to develop residential areas

## The ideal mix to finance housing

The most widely-used home finance mix in Germany is a combination of a baupar loan and a mortgage credit. It is of special importance to note that bauparkassen are the only institutional providers who accept junior loans. As a rule, they leave the senior loans to the mortgage lenders (up to a loan value of 60%), providing them with the greatest possible security for the loans, contending themselves with a subordinated security, although they are prepared to finance up to 80% of the home loan. Nevertheless, they run very little risk in doing so because their customers have already shown that they are able to restrict their consumption during the savings phase. The extremely low failure rates underscore this fact (regularly less than 0.1% of the total loan portfolio of all German bauparkassen).

As a rule it is advisable for a home loan to be structured as follows (see also the chart below): The home buyer obtains a mortgage credit to finance 50% of the purchase price secured by an entry in the Land Register as the so-called first mortgage. At least 20% should comprise the home buyer's own capital including baupar credit balance, and the remaining 30% may be covered by the baupar loan. In practice, the home buyer's own capital ratio is frequently higher; 40% is not uncommon. This shows that home ownership is solidly financed in Germany in most cases.





## The importance of the baupar system for housing construction

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Providing the residents of a country with housing that is adequate both in terms of size and quality is an ambitious and difficult task. The Bauparkassen are of great importance in accomplishing this task in Germany, making a substantial contribution to the funding of the construction, purchase and/or modernisation of homes. Particularly during the first few decades following World War II, the baupar system contributed to the reconstruction needed in the housing sector and has today developed into a significant economic factor. In the period from 1948 German bauparkassen have allocated baupar funds totalling over one trillion Euros. These funds have helped to finance over 13 million homes in single-family and apartment houses, including 9 million newly-built homes.

### The economic effects of the baupar system

- The baupar system helps people to buy their own homes.
- In the period from 1948 till today baupar funds totalling over one trillion Euros were allocated.
- The significance of the baupar system in the funding of modernisation measures is rising, particularly in the context of the climate protection efforts.
- The baupar system stimulates private initiative, thus relieving the state in the provision of housing.
- The baupar system leads to a continuous creation of home ownership which in its turn stabilises the level of construction activity.
- The baupar system secures jobs and restrains excessive price jumps in the housing market.
- Home ownership formed by the baupar system is one pillar of financial retirement provisions and provides relief to the welfare state.
- The baupar system makes a contribution to stabilising the financial system and helps to increase economic growths and the government revenue.

## The market financed business of the bausparkassen

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Bauspar customers wishing to have financing at their disposal prior to the allocation of their bauspar contracts may be granted loans by the bausparkassen from funds which do not originate from the pool of deposits. These loans are refinanced on the capital market. A distinction is made here between "intermediate loans" and "anticipatory loans".

Intermediate loans may be used by bauspar customers who have already saved the minimum amount in order to bridge the waiting period until their contracts are allocated for loan disbursement.

Intermediate loans are granted up to the amount of the contractually agreed sum at capital market conditions. During the term of the intermediate loan, the customer pays only the interest on the loan and makes no repayments. Once the bauspar contract is allocated the intermediate loan is discharged at once using the bauspar sum paid out, leaving the low-interest bauspar loan as residual debt.

With an anticipatory loan, the minimum required savings have not yet been accumulated. The customer is therefore required to pay not only the interest on this loan, but also the savings instalments on his bauspar contract.

### Bridging the savings period

The bausparkassen offer two types of loans to bridge the savings period until the bauspar contract is allocated for disbursement:

- Intermediate loans:  
Precondition: attainment of the minimum agreed savings amount – usually 40 %
- Anticipatory loans:  
Requirement: monthly regular savings instalment (4 ‰ to 7 ‰)

Both types of loan must be refinanced on the capital market.

The loan terms depend on the capital market situation. Depending on individual requirements, loans may be granted at a fixed interest rate for short, medium and/or long-term requirements.

## Key market data

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The market penetration of the bauspar sector is very high:

- Every second German household has at least one bauspar contract.
- Some 26 million persons in Germany have a bauspar contract.
- About 30 million bauspar contracts are currently in force totalling a bauspar sum of about 763 billion Euro. This sum is about 32 % of the gross domestic product.

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## Legal foundations

### Bausparkassen Act

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of November 1972 as revised and published on 15 February 1991 (BGBl.\* I, p. 454 et seq.) together with the amendments due to the law revising the Credit Act and other provisions pertaining to credit institutions of 21 December 1992 (BGBl. I, p. 2211 et seq. [p. 2226 et seq.]), and the law implementing the Treaty of 2 May 1992 on the European Economic Area of 27 April 1993 (BGBl. I p. 512 et seq. [546]), Article 14 of the law which came into force on 1 January 1996 on the new regulation of home ownership assistance under aspects of fiscal law of 15 December 1995 (BGB. I, p. 1783 et seq. [1791 et seq.], Article 3 of the law which came into force on 1 April 1998 on the admission of shares quoted per unit of 25 March 1998 (BGBl. I, p. 590 et seq. [594]), Article 21 of the law which came into force on 1 April 1998 on the further development of Germany as a financial centre (Third Financial Market Promotion Act) of 24 March 1998 (BGBl. I, p. 529 et seq. [574], Article 89 in connection with Article 110 of the introductory law which came into force on 1 January 1999 on the Insolvency Act of 5 October 1994 (BGBl. I, p. 2911 et seq. [2946, 2952 et seq.]), Article 3 § 11 of the law which came into force on 26 March 1998 on the admission of shares dated of 25. March 1998 (BGBl. I S. 590), Article 11 of the law which came into force on 1 May 2002 on the integrated financial service supervision of 22. April 2002 (BGBl. I p. 1310), Article 13 of the law which came into force on 1 July 2002 on the Fourth Financial Market Promotion Act of 21. June 2002 (BGBl. I S. 2010), Article 5 of the law which came into force on 24 July 2002 on the changes of the petroleum tax act and other laws of 23 July 2002 (BGBl. I p. 2778), Article 33 of the law which came into force on 22 February 2003 on the Third Act concerning the revision of the administration procedure of 21 August 2002 (BGBl. I p. 3322), Article 7 of the law which came into force on 6 April 2004 on the implementation of Directive 2002/47/EC dated 6 June 2002 on financial collateral arrangements and revision of the mortgage bank act and other laws of 5 April 2004 (BGBl. I p. 502), Article 13a Nr. 3 of the law which came into force on 1 November 2008 on the implementation of the Markets in financial instruments (MiFID) and investment services Directive of 16 July 2007 (BGBl. I p. 1330) as well as Article 3 of the law which came into force on 30 July 2008 on the improved inclusion of owner occupied housing in the supplementary pension allowance of 29 July 2008.

\* BGBl. = Bundesgesetzblatt = Federal Law Gazette

#### § 1 Definition of terms

**(1)** Bausparkassen are credit institutions, whose business objective is to accept bauspar deposits (Bauspareinlagen) from bauspar customers (Bausparer) and to grant bauspar loans (Bauspardarlehen) from these aggregate savings to bauspar customers for housing finance activities. Only bausparkassen are authorized to conduct this aforementioned bauspar business (Bauspargeschäft).

**(2)** A bauspar customer is a person who enters into a bauspar contract (Bausparvertrag) with a bausparkasse which gives the bauspar customer a legal claim to a bauspar loan after having made bauspar deposits. A bauspar contract can also be concluded as supplementary pension allowance contract in the sense of the act on the certification of supplementary pension allowance contracts of 26 June 2001 (BGBl. I p. 1310, 1322), as revised and changed by Article 2 of the act of 29 July 2008 (BGBl. I p. 1509), according to its relevant version.

**(3)** "Housing finance activities" as defined by this law are:

1. the construction, purchase, maintenance and improvement of buildings and flats used primarily for residential purposes, especially owner-occupied homes and flats, as well as the acquisition of the rights to the permanent use of real estate for housing;
2. the construction, purchase, maintenance and improvement of other buildings insofar as such other buildings are used for residential purposes;
3. the acquisition of parcels of land and of land leaseholds for the construction of buildings insofar as such buildings are used primarily for residential purposes;
4. the acquisition of parcels of land and of land leaseholds for the construction of buildings with other functions insofar as such buildings are in appropriate relation to buildings with residential purposes;
5. activities for the development and improvement of residential areas;
6. the redemption of liabilities incurred in the course of implementing measures in Nos. 1 through 5 above;
7. the redemption of liabilities associated with parcels of land used primarily for housing purposes.

Housing finance activities shall be deemed to comprise the redemption of liabilities incurred through baupar deposits; they shall also include commercial projects provided that such projects are implemented in connection with the construction of residential units or are located in residential areas and provided that such projects form part of the supply infrastructure of such areas.

**(4)** The right of the federal states (Länder) to delegate special responsibilities to public law bauparkassen in the area of housing construction, or in areas of public interest remains unchanged.

## § 2 Legal form

**(1)** The only legal form under which private bauparkassen may operate is that of a public limited company (Aktiengesellschaft).

**(2)** The legal form under which public law bauparkassen (öffentlich-rechtliche Bauparkassen) may operate shall be determined by the respective federal states.

## § 3 Supervision

**(1)** The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) shall be authorized to supervise the bauparkassen in accordance with the provisions of this law and with the provisions of the Credit Act. Within the framework of its supervisory functions, it shall be authorized to give such instructions as may be necessary to reconcile the business operations of the bauparkassen with the General Business Principles and with the Standard Terms and Conditions for Baupar Contracts.

**(2)** Insofar as a bauparkasse is subject to supervision by any other governmental authority, such supervision shall be exercised in addition to that of the Federal Financial Supervisory Authority.

**(3)** In cases of doubt, the Federal Financial Supervisory Authority shall decide whether an enterprise shall be subject to the provisions of this law. Its conclusions shall be binding for the administrative authorities.

## § 4 Permissible business operations

**(1)** In addition to the baupar business, bauparkassen shall be restricted to the following activities:

1. To grant loans to serve as anticipatory or intermediate loans until such times as the baupar loan established in the baupar contract is due;
2. to grant loans for housing finance activities subject to the provisions of Para. 2, Article 4 below;
3. to administer third-party loans and to act as intermediary for such loans, as well as to approve third-party loans in the bauparkasse's name or in the name of another third-party, insofar as such loans are for housing finance activities;
4. to assume guarantees for third-party loans subject to the provisions of Para. 2, Article 4 below, which the bauparkasse itself would be allowed to grant, and which are secured in accordance with Article 7 below;
5. for the purpose of granting baupar loans as well as loans in accordance with nos. 1 and 2 above, in order to perform the obligations arising from contracts under § 1 Para. 2 sentence 2, as well as for the purpose of obtaining additional capital required for business operations
  - a) to accept third-party monies from credit institutions and other institutional investors,
  - b) to accept third-party monies from other creditors,
  - c) to issue bonds;
6. to acquire equity holdings in enterprises, when such investments promote business operations as defined in Article 1 and where liabilities for the bauparkasse are limited by the legal form of this enterprise, and subject to the provision that the amount of the acquired equity holding does not exceed one-third of the enterprise's capital (nominal capital, sum of capital shares). Financial interests in excess of this limit shall be permissible insofar as the enterprise's business purpose is primarily devoted to such transactions, either by law or by its articles of association, as those which the bauparkasse itself is allowed to conduct; the sum total of such financial interests may not be in excess of 20% of the bauparkasse's liable equity resources;
7. to grant loans to enterprises in which the bauparkasse has equity holdings,
8. to account for the opportunity to conclude contracts on the acquisition, purchase or usage of land and rooms,
9. to conduct property valuation and production site analysis also independently from granting own loans.

**(2)** The sum total of claims arising from loans granted according to No. 2 of Para. 1 above and of the guarantees assumed according to No. 4 of Para. 1 above may not exceed 75% of the total amount of the baupar loans and the loans granted according to No. 1 of Para. 1 above.

**(3)** The bauparkassen shall be authorized to invest available funds

1. as deposits with appropriate credit institutions and in registered bonds issued by such credit institutions;
2. in non-interest bearing treasury bonds and treasury bills of the Federal Government, in special funds of the Federal Government and in those of the federal states (Länder), in comparable instruments of the European communities and their member states or in another contracting state of the Treaty on the European Economic Area, as well as in certificates of deposit of appropriate credit institutions provided that the residual term of such certificates does not exceed twelve months;

3. in bonds and in book entry securities of the Federal Government and in its special funds, in those of the federal states (Länder) and in those of the European communities and their member states or in other contracting states of the Treaty on the European Economic Area;
4. in bonds whose principal and interest is guaranteed by any of the bodies listed in No. 3 above,
5. in other bonds which are admitted to trade in an organised market in accordance with § 2 Para. 5 of the Securities Acquisition and Takeover Act (Wertpapierhandelsgesetz);
6. in claims arising from loans that are a part of a loan issued by a third-party which are note-secured, provided that it is possible to assign such claims at least twice after having been acquired by the bauparkasse and that the loans were extended
  - a) to one of the bodies mentioned in No. 3 above, or to any other domestic regional authority or any regional governmental or local authority of any member state of one of the European communities or any of the contracting states of the Treaty on the European Economic Area, which received a credit institution's solvency coefficient of zero according to Article 7 of the Directive of the Council from 18 December 1989;
  - b) to other appropriate authorities of public law corporations, either domestic or domiciled in any of the member states of one of the European communities or in any of the contracting states of the Treaty on the European Economic Area;
  - c) to enterprises that have issued securities, which are admitted to trade in an organised market in accordance with § 2 Para. 5 of the Securities Acquisition and Takeover Act (Wertpapierhandelsgesetz);
  - d) for investments whose principal and interest are guaranteed by one of the bodies mentioned in No. 3 above. The sum total of such claims of the bauparkasse may not exceed its liable equity resources;
7. in shares of a managed investment fund (US: mutual fund; GB: unit trust) issued by an institutional investor or a foreign investment corporation that are subject to special governmental supervision in the interest of the shareholders, if the terms of the contract or articles of association of the institutional investor or investment corporation require that such investments be exclusively of the type of debt instruments mentioned in Nos. 1 through 6 above and of deposits with credit institutions.

**(4)** Bauparkassen may only acquire parcels of land, land leaseholds, home ownership and co-ownership rights, home ownership rights and co-ownership rights based on land leaseholds, where this is necessary to prevent the loss of claims and to obtain business premises as well as housing facilities for their employees.

**(5)** The bauparkasse may not designate a specific point in time at which the baupar sum will be paid to the baupar customer.

## § 5 General business principles standard terms and conditions for baupar contracts

**(1)** Bauparkassen must conduct their operations on the basis of the General Business Principles and on the Standard Terms and Conditions for Baupar Contracts.

**(2)** The General Business Principles must include provisions regulating

1. the calculations relevant to the implementation of baupar contracts including individual valuation indices (No. 1 of Para. 1 of Article 8) and highlighting the longest, median and shortest waiting periods;

2. the composition of the allocation fund, the allocation date, and the preconditions for allocation as well as the order of allocation (Zuteilungsverfahren);
  - a) the calculation of funds temporarily ineligible for allocation as defined by Sentence 2 of Para. 1 of Article 6 and of the additional net earnings obtained from investing such funds as well as the use of the resulting off-line item called the "technical security reserve";
3. the calculation of property value for lending purposes;
4. the financing of activities designed to develop and improve residential areas;
5. the financing of buildings used exclusively or primarily for commercial purposes insofar as this is permissible according to Article 1;
6. the procedure governing the repayment of deposits made in respect to cancelled baspar contracts;
7. a simplified procedure for the settlement of baspar contracts, which protects the interests of the baspar customer in the case where a basparkasse ceases operations or the Federal Financial Supervisory Authority revokes the basparkasse's licence.

**(3)** The Standard Terms and Conditions for Baspar contracts must include provisions regulating

1. the amount and due dates of the deposits to be made by the baspar customer and by the basparkasse as well as the legal consequences arising from default;
2. the interest payable on baspar deposits and on baspar loans;
3. the amount of costs and fees chargeable to the baspar customer;
4. the conditions for allocation and the rules governing the order of allocation as well as the terms governing the payment of the baspar sum;
5. the security for the claims arising from the baspar loan;
6. the conditions under which a baspar contract may be split or combined with another baspar contract or under which the baspar sum may be increased or reduced;
7. the conditions under which claims arising from a baspar contract may be transferred or under which notice of termination of a baspar contract may be served as well as the legal consequences arising from the termination or a simplified settlement of a baspar contract;
8. the court of jurisdiction or an arbitration court;
9. life insurance policies to be taken out, the amounts to be insured and the insurance premiums to be paid by the baspar customer as well as the possibility of accepting already existing life insurance policies as security for the baspar sum when a baspar customer is required to take out such life insurance policies.

## § 6 Tying of baspar funds

**(1)** Allocation funds, especially baspar deposits and redemption payments on baspar loans may only be used, subject to the provisions of Para. 3 of Article 4, for the baspar business and for the repayment of third-party monies added to the allocation fund, as well as according to the provisions of the legal regulations to be adopted under Article 10 for the granting of loans as defined by No. 1 of Para 1 of Article 4; the allocation funds are to be employed in a manner that keeps the waiting periods equal in length and as short as possible. Earnings from the investment of allocation funds, which are momentarily unavailable for disbursement because



the prerequisites of the bauspar contract have not been fulfilled, must be included in the technical security reserve which is designed to protect the affairs of the bauspar customer up to the difference between the net interest earned from interim investments of the allocation funds and the net interest that would have been earned had the funds been allocated as bauspar loan. The bausparkasse may liquidate the technical security reserve at the end of any one business year provided it exceeds three percent of the bauspar deposits on the date of liquidation.

**(2)** Claims arising from bauspar loans, the property liens registered as security for such loans, as well as from any other type of security, may only be sold or pledged to serve as collateral for conducting the bauspar business and for making the types of transactions mentioned in No. 1 of Para. 1 of Article 4. The same shall apply to claims arising from loans within the meaning of the provisions of No. 1 of Para. 1 of Article 4 and to the property liens registered as security for such loans, or other types of collateral registered as security for such loans.

### § 6a Avoidance of exchange-rate risks

The bausparkasse, in exercising the due diligence of a businessman, must take the necessary precautions to avoid exchange-rate risks in the course of its business. It must form separate allocation funds especially for bauspar contracts transacted either in foreign currency or in units of account and must ensure a currency-congruent use of the allocation funds and available monies. In individual cases, the Federal Financial Supervisory Authority may grant release from the obligation to form such separate allocation funds provided that the interests of the bauspar customer are not adversely affected to any substantial degree by this action.

### § 7 Securing claims arising from loans

**(1)** Claims arising from bauspar loans and from loans according to No. 2 of Para. 1 of Article 4 as well as from claims arising from loans according to No. 1 of Para. 1 of Article 4, unless secured by rights assigned under a bauspar contract, shall be secured by mortgage or by a land charge (Grundschuld) of a domestic property. The Grundschuld is equivalent to claims held by a bausparkasse against a credit institution for the assignment, either wholly or in part, of a Grundschuld administered by a credit institution as trustee of the respective bausparkasse claim. In the absence of additional adequate security, loans may not exceed the first four-fifths of the collateral value of the property.

**(2)** It shall also be permissible to secure claims as defined by the first Sentence of Para. 1 above by encumbering real estate located in any of the member state/states of the European communities or in any contracting state of the Treaty on the European Economic Area or in Switzerland, provided that the financial institutions of those states ordinarily accept such encumbrances on land as security for claims arising from housing loans.

**(2a)** It shall also be possible to secure claims as defined in the first Sentence of Para. 1 above by encumbering real estate located in European states other than those covered by Para.2 above if

1. the state is a full member of the Organisation for Economic Cooperation and Development,
2. the encumbrance on land in this state is ensuring the repayment of and payment of interest on the claims and
3. the total sum of these lendings does not exceed the liable equity of the bausparkasse.

**(3)** The requirement for an encumbrance on property as security for a loan may be waived if another form of security (Ersatzsicherheiten), adequate in amount, can be provided.

**(4)** The requirement for an encumbrance on property as security for a loan or of another form of security (Ersatzsicherheiten) may be waived where

1. the borrower agrees to refrain from hindering the creation of an encumbrance on the property by selling or pledging the same object as security for any other liability; or
2. because of the small loan amount, security on the bauspar loan, according to No. 1 of Para. 1 of Article 4 does not seem to be required.

**(5)** The requirement for security on a loan may be waived where loans are made to

1. domestic public authorities and public law corporations;
2. the European communities, their member states or any of the contracting states of the Treaty on the European Economic Area and the European Investment Bank;
3. regional governmental or local authorities of any member state of one of the European communities or any of the contracting states of the Treaty on the European Economic Area, which received a credit institution's solvency coefficient of zero according to Article 7 of the Directive of the Council from 18 December 1989;
4. other borrowers whose loans have been guaranteed by one of the bodies mentioned in Nos. 1 through 3 above.

**(6)** The Federal Financial Supervisory Authority may allow loans on pledged property outside of the states specified in Nos. 2 and 2a if the negotiated land charges or additional security suggests that an exception is justified.

**(7)** The assumed lending value of the pledged object may not exceed the property's market value. When establishing its value for lending purposes the only factors to be taken into consideration may be the lasting qualities (value) of the pledged object and the net earnings regularly generated to any owner when properly managed.

## § 8 Denial and revocation of an operating licence

**(1)** Except for the reasons listed in Para. 1 of Article 33 of the Credit Act, licences to operate a bausparkasse may be denied if the General Business Principles and/or the Standard Terms and Conditions of the Bauspar Contracts

1. suggest the possibility that the execution of bauspar contracts cannot be fulfilled over time because the total of the contributions of individual bauspar contracts do not exhibit an adequate correlation, with regard to the entire life spans, between the performance of the bauspar customer and the performance of the bausparkasse, or
2. stipulate savings and redemption instalments and/or other obligations which unduly postpone the allocation of bauspar contracts or otherwise inadequately regard the interests of the bauspar customer.

**(2)** Except for the reasons mentioned in Para. 2 of Article 35 of the Credit Act, the Federal Financial Supervisory Authority may also withdraw licences where facts are brought to its attention that would justify the denial of licences according to Sentence 1 above and where the interests of the bauspar customer cannot be appropriately protected by other measures according to this law or to the Credit Act.

## § 9 Modifications and amendments to the general business principles and standard terms and conditions for bauspar contracts

**(1)** Modifications and amendments to the General Business Principles and the Standard Terms and Conditions for Bauspar Contracts affecting the provisions of Nos. 1, 2 and 4 through 9 of Paras. 2 and 3 of Article 5 as well as of the General

Business Principles and the Standard Terms and Conditions for Bauspar Contracts that are to form the basis for a new bauspar tariff (Bauspartarif) require approval of the Federal Financial Supervisory Authority; § 37 Para. 4 of the act on the administration procedure should be applied. Such approval may also be granted for existing contracts insofar as changes and amendments appear to be necessary to protect the interests of the bauspar customer in an appropriate manner. Para. 1 of Article 8 above shall apply to the denial of licences mutatis mutandis. The Federal Financial Supervisory Authority shall be notified of any other modifications or amendments at least three months prior to their entry into effect.

**(2)** Where it appears that a bausparkasse can no longer satisfy the commitments of the bauspar contracts, the Federal Financial Supervisory Authority may require that the bausparkasse concerned amends its general Business Terms/Principles and its Standard Terms and Conditions for Bauspar Contracts. Under similar conditions the Federal Financial Supervisory Authority may, irrespective of the authority accorded to it under Para. 1 of Article 46 of the Credit Act, prohibit the realisation of new contracts by the respective bausparkasse.

## § 10 Adoption of legal regulations

In order to enable bausparkassen to meet their commitments vis-à-vis their creditors, especially to protect the assets entrusted to them, and to ensure the ability of the bausparkassen to make the payments required of the bauspar contracts as well as to ensure an order of allocation which is as even as possible, the Federal Minister of Finance, after having heard the opinions of the Deutsche Bundesbank and the Federal Associations of Bausparkassen, may enact legislation concerning

1. the temporary investment of funds available for allocation which have not yet been claimed by the bauspar customer;
2. the permissible share of large-scale bauspar contracts (bauspar contracts whose contractual amount is in excess of the amount regulated by legislation) relative to the entire unallocated contract sum of bauspar contracts, as well as the permissible percentage of large-scale bauspar contracts relative to all the bauspar contracts of a bausparkasse which were transacted within one calendar year; for this purpose, all bauspar contracts transacted by one individual within one calendar year shall be deemed to form a single bauspar contract; bauspar contracts shall be included in the permissible share of large-scale bauspar contracts of those bauspar customers who have paid, as defined by the General Business Principles, the minimum amount to be saved within one year from the date on which the contract was transacted;
3. the terms governing the granting of loans to finance the construction of commercial projects and the permissible share of such loans in the total portfolio of a bausparkasse's claim; this share may not exceed three percent;
4. the total percentage, as well as percentage to an individual commercial enterprise, of the bausparkasse's liable equity resources to which loans may be granted under No. 7 of Para. 1 of Article 4;
5. the permissible share of claims on loans relative to the total amount of claims on loans requiring substitute security;
6. the amount of a loan which a bausparkasse may transact, in individual cases, either by receiving a liability claim, or as defined by Para. 4 of Article 7, without a liability claim, as well as the permissible share of such loans relative to the total amount of claims on loans of a bausparkasse;
7. the minimum requirements governing allocation to ensure an appropriate individual bauspar customer/bausparkasse performance ratio, es-

pecially the minimum amounts to be saved and the fixation of a minimum valuation index;

8. the details regarding extra net earnings according to Para. 1 of Article 6 and the inclusion of such extra earnings into the technical security reserve;
9. the conditions under which the technical security reserve, with respect to the extra net earnings according to Para. 1 of Article 6 may be liquidated, and latest date at which they must be liquidated;
10. a transitional arrangement ending 31 December 1995, governing the simplified fixation of the minimum allocation conditions in order to ensure an appropriate individual bauspar customer/bausparkasse performance ratio as regards bauspar tariffs offered as of 1 January 1991.

The Federal Minister of Finance shall be authorised to transfer the above authority to the Federal Financial Supervisory Authority by way of legal decree.

### § 11 Dismissal of managers

In addition to the reasons mentioned in Article 36 of the Credit Act, the Federal Financial Supervisory Authority may also require the dismissal of bausparkassen managers where such managers have violated, either wilfully or neglectfully, the provisions of this law, the legal regulations adopted in implementation of this law, the instructions of the Federal Financial Supervisory Authority, or the provisions of Paras. 2 and 3 of Article 5 of the General Business Principles or the Standard Terms and Conditions for Bauspar Contracts and where such managers continue to do so in spite of a warning issued by the Federal Financial Supervisory Authority.

### § 12 Ombudsman

**(1)** The Federal Financial Supervisory Authority shall appoint an ombudsman to each bausparkasse. Prior to such appointment, the bausparkasse and the competent authority where under Para. 2 of Article 3 state supervision other than by the Federal Financial Supervisory Authority exists, must have the opportunity for a hearing. The appointment may be cancelled at any time.

**(2)** The ombudsman shall ensure that the provisions of the General Business Principles and the Standard Terms and Conditions for Bauspar Contracts governing the allocation procedure are duly observed.

**(3)** The ombudsman shall be authorised to inspect the books and documents of the bausparkasse insofar as these relate to the allocation procedure. In the event of any dispute between the bausparkasse and the ombudsman as regards his duties, the Federal Financial Supervisory Authority is the decision authority.

**(4)** The ombudsman shall inform the Federal Financial Supervisory Authority of his findings and observations. He shall not be bound by instructions from the Federal Financial Supervisory Authority.

**(5)** The ombudsman shall be paid adequate compensation by the Federal Financial Supervisory Authority; the cost thereof shall be separately refunded by the bausparkasse in exercise, *mutatis mutandis*, of Para. 3 of Article 51 of the Credit Act.

### § 13 Special auditing duties

In the course of auditing a bausparkasse's annual financial statement, the auditors shall be required to establish whether

1. the bauspar sums were allocated in accordance with the Standard Terms and Conditions for Bauspar Contracts;

2. the bauparkasse has complied with the provision of No. 2 of Para. 2 of Article 5 on the General Business Principles and with the provision of No. 5 of Para 3. of Article 5 on the Standard Terms and Conditions for Baupark Contracts; and
3. the provisions of the legal regulations adopted according to Article 10 have been observed. The conclusions of the auditors shall be incorporated into the auditing report.

#### § 14 Transfer of the contract portfolio

**(1)** Any contract by which a bauparkasse's portfolio of baupark contracts, including its accompanying assets and liabilities, is transferred to one or several other bauparkassen, either wholly or in part, must have the approval of the Federal Financial Supervisory Authority. Such approval shall be published by the Federal Financial Supervisory Authority in the Federal Law Gazette (Bundesanzeiger); the baupark customer shall be considered notified as of the day of its publication. Upon approval, the rights and duties of the bauparkasse and of the baupark customer under the baupark contracts shall pass to the transferee bauparkasse; Article 415 of the Civil Code (BGB) shall not be applicable. Approval of transfer may only be denied where the transfer of the above rights and duties would jeopardise the interest of the baupark customer of either the transferring or the transferee bauparkasse.

**(2)** Such contracts must be made in writing.

#### § 15 Prohibition of payments

In the event that there is the risk that a bauparkasse cannot satisfy its obligations and there is the need to take measures to fend off insolvency proceedings under the Insolvency Act in the interest of the baupark customer and of the bauparkasse's other creditors, the Federal Financial Supervisory Authority may temporarily prohibit payments of any kind. Under the same conditions, the Federal Financial Supervisory Authority may agree to simplified procedures according to No. 7 of Para. 2 of Article 5.

The rules of the insolvency act concerning the protection of payment and investment services, clearing schemes as well as securities in rem of central banks and of financial securities apply accordingly.

#### § 16 The name "Bauparkasse"

**(1)** Enterprises authorised to conduct the business of a bauparkasse shall be the only ones permitted to use the word "Bauparkasse" or an expression in which the word "Bauparkasse" or the prefix "Baupark"- appears as part of their names to designate their business purpose or to advertise the kind of services they offer.

**(2)** Para. 1 above shall not be applicable to enterprises using the word "Bauparkasse" or the prefix "Baupark" as part of their names in a context that rules out the impression that they conduct the business of a bauparkasse.

**(3)** The provisions of Article 42 and Article 43 of the Credit Act shall apply *mutatis mutandis*.

#### § 17 Exemptions

Article 14 and Sentence 1 of Article 15 of this law shall not be applicable to bauparkassen which are subject to special governmental supervision.

## § 18 Provisions governing existing and new legally dependent bausparkassen

**(1)** Credit institutions authorised to conduct the bauspar business on the date of entry into effect of this law shall be deemed to possess the licence required for conducting the class of banking business which bausparkassen are permitted to operate as defined by Article 32 of the Credit Act. The deadline mentioned in Para. 1 of Article 35 of the Credit Act shall commence on the date on which this law enters into effect.

**(2)** Upon the entry into effect of this law, the bausparkassen which were operated in the legal form of Gesellschaft mit beschränkter Haftung (private limited company) may continue to operate in this legal form of organisation.

**(3)** Upon the entry into effect of this law, credit institutions which were authorised to conduct the bauspar business through legally dependent business units shall be deemed bausparkassen to the extent of such bausparkassen business. They shall be required to administer the assets and the liabilities of their bausparkassen business units separately from their other assets and liabilities, to draw up separate annual financial statements of their bausparkassen operations and to publish separate annual reports on their bausparkassen activities. The provision governing audits, annual financial statements and annual reports of credit institutions shall apply mutatis mutandis. The operating capital assigned to such bausparkassen business units and the reserves shown in such separate annual financial statements shall be deemed to constitute liable equity resources of a bausparkasse.

**(4)** Prior to the entry into effect of this law, bausparkassen which conducted business transactions other than those permitted under Article 4 or transactions on a wider scale than that permissible under Article 4, Article 6 and Article 7 as well as under Article 10 of the legal regulations shall not be subject to these provisions insofar as existing contracts are concerned. The Federal Financial Supervisory Authority may set appropriate deadlines by which this type of transaction must be executed.

**(5)** Para. 3 above shall also apply mutatis mutandis to such credit institutions which operate the bausparkassen business through legally dependent business units after the entry into effect of this law.

## § 19 Transitional provisions

**(1)** The legal provisions already in existence in the bausparkassen sector as well as the instructions hitherto given on the basis of the present legal regulations, shall remain in force insofar as the provisions of this law or of the Credit Act do not contradict them. Legal regulations containing wider stipulations than this law in respect to the activities of specific types of bausparkassen shall remain unaffected.

**(2)** (deleted)

**(3)** The responsibility of the federal states (Länder) for confirming the conversion arrangement for bausparkassen which are subject to their special jurisdiction, shall remain unchanged.

**(4)** At least 60 % of the surplus net earnings as defined by Para. 1 of Article 6 accruing prior to 1 January 2001 must be included into the technical security reserve. Surplus earnings as defined by Para. 1 of Article 6, insofar as they are temporarily unavailable for allocation, need not be included into the technical security reserve if they are from bauspar contracts transacted before 1 January 1991.

**(5)** In exception to Sentence 1 of No. 6 of Para. 1 of Article 4, a bausparkasse may own equity holdings in an enterprise exceeding one-third of the enterprise's nominal capital, if the bausparkasse legally took over or acquired such equity holdings prior to 31 May 1990.

## § 20 Amendment and repeal of legal provisions

**(1)** The law pertaining to the supervision of private insurance companies and bauparkassen as revised and published on 6 June 1931 (Reichsgesetzblatt\* I p. 315, 750), last amended by the Authentication Act of 28 August 1969 (BGBl. I p. 1513) shall be revised as follows:

1. The words "and bauparkassen" shall be deleted from the heading.
2. Section VII and Article 133, Para. 2 of Article 135, Article 136, Para. 2 of Article 146, Para. 2 of Article 151, Para. 1 and the final half-Sentence of Para. 2 in Article 158 shall be repealed.
3. In Para. 1 of Article 134, the words "or a bauparkasse" and the words "or the holding(s) of baupar contracts" shall be deleted and the reference contained in brackets, namely "Articles 14, 112" shall be replaced by the reference "Article 14".
4. In Para. 4 of Article 137 the words "or the bauparkasse" shall be deleted.
5. a) In Article 140 the words "or a bauparkasse" shall be deleted in Para 1.  
b) In Para. 2, the words "or a baupar contract" shall be deleted and the words "such contracts" shall be replaced by the words "of any such contract".
6. In Para. 1 of Article 141, the words "or the members of the managing board, personally liable shareholders, managers or liquidators of a bauparkasse" shall be deleted.  
a) In Sentence 1 of Article 150, the words "insurance and bauparkassen" shall be replaced by the word "insurance".  
b) In Sentence 2 of Article 150, the words "insofar as bauparkassen are concerned, the advisory council for bauparkassen" shall be deleted.
7. In Sentence 2 of Article 152 and in Article 156 the words "and bauparkassen" shall be deleted.

**(2)** The law pertaining to the establishment of a Federal Supervisory Office for Insurance and Bauparkassen of 31 July 1951 (BGBl. I, p. 480), which was revised by the law to amend the law pertaining to the establishment of a Federal Supervisory Office for Insurance and Bauparkassen of 22 December 1954 (BGBl. I, p. 501), and the First, Second and Third Implementation Regulations pertaining to this law (BGBl. I 1952 p. 94, 610 and 1953 p. 75) shall be amended as follows:

1. The words "Insurance and Bauparkassen" shall be replaced by the word "Insurance" in the heading of the law and in the heading of the implementation regulations, in Sentence 1 of Article 1, in No. 7 of Article 8 and in Sentence 1 of Article 10a of the law, in the introduction to the First, Second and Third Implementation Regulations and in Article 1 of the First and Second Implementation Regulations.
2. The words "and bauparkassen" shall be deleted in Sentence 1 of Article 1, Article 6, the first half-Sentence of Article 8 and Para. 2 of Article 10 of the law and in Article 3 and Para. 1 of Article 4 of the First Implementation Regulations.
3. The reference "12" and the words "and bauparkassen" in Article 2 will be deleted in the Third Implementation Regulations.
4. Para 2. of Article 2 of the law, Para. 3 and Para. 4 of Article 3 and Sentence 2 in Para. 2 of Article 10 of the Third Implementation Regulations shall be repealed.
5. The words "and the advisory council for bauparkassen" shall be deleted in Article 8 of the First Implementation Regulations.

**(3)** The words "and bausparkassen" shall be deleted in Para. 1 of Article 112 in the Law on Composition Proceedings of 26 February 1935 (Reichsgesetzblatt I, p. 321), last revised by the law to amend the Court Registrars Act, the Authentication Act and the transformation of the oath of disclosure into an affirmation in lieu of oath of 27 June 1970 (BGBl. I, p. 911) and the words "or the Bausparkassen Act of 16 November 1972 (BGBl. I, p. 2097) shall be inserted after the reference to "Reichsgesetzblatt I, p. 315, 750".

**(4)** The Credit Act shall be amended as follows:

1. No. 6 in Para. 1 of Article 2 shall be repealed.
2. No. 2 of Article 3 shall be worded as follows: "2. The acceptance of sums of money, if the majority of the money lenders are entitled to be granted loans from these sums of money or objects purchased on credit (special purpose savings institutions); this shall not apply to bausparkassen".
3. After Article 22, the following provision shall be inserted as Article 22a: "Article 22a Bauspar Deposits Articles 21 and 22 shall not apply to bauspar deposits".
4. Para. 2 of Article 40 shall be revised as follows: "(2) Credit institutions within the meaning of Article 1 of the Bausparkassen Act of 16 November 1972 (BGBl. I, p. 2097) may use the designation "bausparkasse", registered co-operatives belonging to an auditing association may use the designation "savings and loan banks"."
5. The following provision shall be inserted as Article 52a after Article 52: "Article 52a Forms for the Annual Financial Statements of Public Credit Institutions. The Federal Minister of Justice is empowered, in agreement with the Federal Minister of Economics, to prescribe the preparation of the annual financial statements of public credit institutions through regulations and to issue any other regulations for the organisation of such annual financial statements insofar as this is required in order to harmonise the structure of the annual financial statements of these credit institutions to the prescribed organisation of the annual financial statements of other credit institutions."

**(5)** Chapter V of the First Part of the Regulations issued by the Reich president on measures in the areas of the judicature and administration of 14 June 1932 (Reichsgesetzblatt I, pp. 385, 288), the implementation and amendment regulations on the simplified handling of bauspar contracts of June 1953 (Reichsgesetzblatt I, p. 372) and the Second Implementation and Amendment Regulations on the simplified handling of bauspar contracts of 7 September 1934 (Reichsgesetzblatt I, p. 827) shall not be applied to any bauspar contracts which are concluded after this law takes effect.

## § 21 Effective date



# Regulation to Protect the Creditors of Bausparkassen

## (Bausparkassen Regulation)

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of 19 December 1990 as revised together with the amendments due to the Regulation for a revision of the Bausparkassen Regulation dated 17 November 1998 (BGBl. I p. 3428), the second Regulation for a revision of the Bausparkassen Regulation dated 2 Dezember 1999 (BGBl. I p. 2394) which came into force on 3 December 1999, Article 3 Para. 16 of the law which came into force on 1 January 2002 on the revision of the Insurance Supervision Act and the implementation of Directive 98/78/EC of 27 October 1998 supplementary supervision of insurance undertakings in an insurance group as well as the rules concerning the euro currency transition of 21 December 2000 (BGBl. I p. 1857) and the third Regulation of the Bausparkassen Regulation of 24 April 2009 (BGBl. I p. 999)

Due to § 10 of the Bausparkassen Act of 16 November 1972 (BGBl. I pp. 2097), which has been amended by Article 1 Nr. 10 of the law of 13 Dezember 1990 (BGBl. I p. 2770), in connection with § 1 of the Regulation to transfer the competence to issue regulations according to § 10 sentence 1 of the Bausparkassen Act towards the Federal Banking Supervisory Authority of 8 January 1973 (BGBl. I S. 17), the Federal Banking Supervisory Authority having heard the Federal Central Bank and the Bausparkassen head organisations orders hereby:

### § 1 Granting of anticipatory and intermediate loans from allocation funds

**(1)** The amounts accumulated for the allocation and already allocated, but not yet transferred amounts to the bauspar customers can be used preliminary up to 70 % for granting a loan according to § 4 Para. 1 Nr. 1 of the Bausparkassen Act. Anticipatory loans within the framework of bauspar contracts not eligible for allocation because the minimum saving requirement has not been fulfilled shall not exceed 25 % of the loan volume permitted according to Sentence 1 above.

**(2)** Fifty percent of such legally committed credit shall, in each case, be accounted against the loan quotas permitted according to Sentence 1 above.

**(3)** The presumed term permitted for the loans according to Paras. 1 and 2 above shall not exceed 48 months. Loans with a presumed term of over 36 months shall not be permitted to exceed 25 % of the quota mentioned in Sentence 1 of Para. 1 above.

**(4)** The Federal Financial Supervisory Authority shall, in individual cases, be permitted upon request to grant exemptions in respect of the provisions of Paras. 1 to 3.

### § 2 Large-scale bauspar contracts

**(1)** Bauspar contracts involving a bauspar sum of over 300,000 Euros shall be deemed to represent large-scale bauspar contracts. The bauspar contracts concluded with an individual bauspar customer in the course of one calendar year shall be deemed to represent one contract.

**(2)** The share of the unallocated large-scale bauspar contracts in the total stock of unallocated bauspar contracts of a bausparkasse shall not be permitted to exceed 15 %.

**(3)** The share of large-scale bauspar contracts, concluded within one calendar year, in the total bauspar sum contractually agreed upon by a bausparkasse in the course of the respective calendar year shall not be permitted to exceed 30 %.

**(4)** The shares of bauspar contracts which bauspar customers have paid up within the first year from the date of contract conclusion the full minimum saving balance necessary for allocation shall be permitted according to Paras. 2 and 3 above.

### § 3 Financing of commercial buildings

The share of the loans granted to finance construction projects of a commercial character shall not be in excess of 3 % of the total stock of the claims arising to a bausparkasse from the loans it has granted.

### § 4 Loans to institutional investors

**(1)** Loans according to No. 7 of Para. 1 of Article 4 of the Bausparkassen Act shall not be permitted to exceed 60 % of the bausparkasse's liable equity resources.

**(2)** A bausparkasse shall be permitted to grant loans to a single enterprise in which it owns a financial interest of the kind mentioned in Para. 1 above up to 20 % of its liable equity resources.

### § 5 Alternative security

(deleted)

### § 6 Bauspar loans against formal obligations, loans without security

**(1)** Bauspar loans against formal obligations according to Para. 4 No. 1 of the Bausparkassen Act or bauspar loans requiring no security to be provided according to Article 7 Para. 4 No. 2 of the Bausparkassen Act can only be granted in individual cases up to a loan amount of 300,000 Euros.

**(2)** The share of all loans specified in Para. 1 above, shall not exceed 30 % of the overall total stock of claims arising from loans granted by a bausparkasse.

### § 6a Limitation of loans not secured by right in rem

The share of all loans for which other formal obligations have been agreed according to Article 7 Para. 3 of the Bausparkassen Act as well as loans according to Article 6 Para. 1 of this Regulation shall not exceed a total of 45% of the total stock of claims arising from loans granted by a bausparkasse.

### § 7 Preconditions for allocation

**(1)** The Standard Terms and Conditions for bauspar contracts shall include minimum valuation indices or other appropriate preconditions for allocation that will permanently result in a collective bauspar saver/bausparkasse performance ratio of at least 1.0.

**(2)** The individual bauspar customer/bausparkasse performance ratio shall, subject to Para. 3 and 4 below, be at least 0.5 upon the date of allocation. Moreover, where by the launching of new bauspar tariffs, or new elements thereof, it is impossible to derive conclusions from experience gained with comparable tariffs as to the height of the factors presumed to reduce the waiting period, the individual bauspar customer/bausparkasse performance ratio shall be at least 0.7 on the date of allocation provided that the minimum saving balance was fully paid on the date of contract conclusion.

**(3)** The preconditions for allocation may be fixed in divergence to the provisions of Para. 2 above provided that a collective bauspar customer/bausparkasse performance ratio of at least 1.0 appears to be permanently guaranteed in respect of the bauspar tariffs covered by an allocation fund.

**(4)** Where the preconditions for allocation do not permanently lead to a collective bauspar customer/bausparkasse performance ratio of at least 1.0, or if inappropriately high values result, not only of a temporary nature for the bauspar customer/bausparkasse performance ratio, the bausparkasse shall be required to adjust its preconditions for allocation without delay.

**(5)** Upon application in special cases, the Federal Supervisory Office shall be able to permit exceptions to the upper ceiling of the collective bauspar customer/bausparkasse performance ratio.

**(6)** The values for the collective bauspar customer/bausparkasse performance ratio must be verifiably submitted to the Federal Supervisory Office on an annual basis.

## § 8 Transfers to the technical security reserve

**(1)** Transfers to the technical security reserve shall be made at the end of any one business year and shall be calculated from the monies that can temporarily not be allocated according to Sentence 2 of Para. 1 of Article 6 of the Bausparkassen Act (fluctuation reserve) on the dates on which the preceding year's funds available for allocation are established. The amounts available for transfer shall be calculated from six tenth of the relevant assets of the upper use valuation index, multiplied with the difference from the rate of interest payable outside the collective according to Para. 2 and the rate of interest payable within the collective according to Para. 3.

**(2)** The rate of interest payable outside the collective shall be calculated either on the basis of the interest a bausparkasse earns from investments according to Para. 3 of Article 4 of the Bausparkassen Act and from granting anticipatory and intermediate loans, according to No. 1 of Para. 1 of Article 4 on the Bausparkassen Act or on the basis of the yield, ascertained and promulgated by the Deutsche Bundesbank, of all consolidated domestic bearer bonds. The once chosen method can only be changed for a reasonable cause.

**(3)** The collective interest rate is the sum of the propositions of the individual bauspar tariff variations in the unallocated contract portfolio weighed interest rate for bauspar loans. With tariff variants whose lowest individual bauspar customer savings/bausparkasse performance ratio is at least 0.8 %, the bausparkasse can include in the calculation alternatively, instead of the interest rate for bauspar loans, the interest rate for the bauspar deposits plus 2.75 %.

## § 9 Use of technical security reserve

**(1)** The technical security reserve shall be used, insofar as it is impossible to maintain allocation on the basis of a target valuation index which, in the absence of money transfer from outside the collective to the allocation fund (upper use valuation index), leads to an individual bauspar customer/bausparkasse performance ratio of 1.0 for bauspar customers making regular payments. A uniform upper use valuation index to be mentioned in the General Business Principles shall be applicable to all bauspar tariffs covered by the same allocation fund; this index shall be ascertained according to the Standard Terms and Conditions for Bauspar Contracts for the bauspar tariff which records the largest sum percentage in the stock of unallocated contracts.

**(2)** The technical reserve may be used insofar as the individual bauspar customer/bausparkasse performance ratio ascertained according to Para. 1 above would exceed 0.8 (lower use valuation index). For all bauspar tariffs from an allotment sum a uniform upper use valuation index applies which needs to be mentioned in the General Business Principles, which shall be determined according to the General Standard Terms and Conditions of those bauspar tariff variations which have the largest share in total with the unallocated contract portfolio and their lowest individual bauspar customer savings/bausparkasse performance ratio is less than 0.8.

**(3)** Subject to approval by the Federal Financial Supervisory Authority, the technical reserve may be used before the lower use valuation index has been reached insofar as this is necessary in the interest of controlling any immediate risk to the maintenance of the bauparkasse's permanent allocation capability.

**(4)** The bauparkasse shall be permitted to take from the reserve such amounts of money as would arise when charging a rate of interest on the monies from outside the collective that are added to the allocation fund which corresponds to the difference between the annual percentage rate of interest on the monies from outside the collective added to the allocation fund and the rate of interest payable within the collective (Para. 3 of Article 8).

**(5)** If a bauparkasse dissolves during the fiscal year a part of the allocation reserve fund which reduces the taxable profit, it can withdraw from this allocation reserve fund an amount up to four tenths of the dissolved part.

## § 10 Transitional regulations

In derogation of Article 7, it shall be permissible to incorporate preconditions for allocation into the standard tariffs on offer from 1 January 1991 involving a minimum saving balance of 40 % and a monthly rate of redemption of 6 per mil of the baupar sum, which means a minimum waiting period of 45 months where the minimum saving balance is deposited in a single instalment; in respect of all the other baupar tariffs, an individual baupar customer/bauparkasse performance ratio of 0.5 shall be required. Evidence of collectively balanced performance ratios shall be supplied (according to Paras. 1 and 4 of Article 7) before 1 January 1996.

## § 12 Entry into effect, annulment