

# Act on the Bayerische Landesanstalt für Aufbaufinanzierung<sup>1</sup>

(LfA Act - LfAG)  
(Bay RS 762-5-F)

in the version of the official publication dated 20.06.2001,  
amended by the amending law dated 25.05.2003 (Bavarian Government Gazette  
[GVBl.] p. 334/2003)

## Chapter I

### LEGAL FORM, FUNCTION, SHARE CAPITAL

#### Clause 1

(1) Bayerische Landesanstalt für Aufbaufinanzierung is a financial institution of the Free State of Bavaria. It is an institution with legal personality established under public law with its seat in Munich. It bears the name "LfA Förderbank Bayern".

(2) Guarantor of the Bank is the Free State of Bavaria. It shall assume liability for any loans taken out by the Bank and for any bonds issued by the Bank, for forward deals made as forward transactions, for rights from options and for other loans granted to the Bank, as well as for loans to third parties insofar as these loans are expressly guaranteed by the Bank.

#### Clause 2

(1) The Bank shall be subject to the legal supervision of the Bavarian Ministry of Finance (legal supervisory authority). It may impose any requirements necessary in order to maintain the Bank's business operations in compliance with the laws and articles of association.

(2) For the fulfilment of its tasks, the legal supervisory authority may inspect and check the business documents in their entirety at any time, request information as well as take part in meetings of the Administrative Board or those of its committees in an advisory capacity.

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<sup>1</sup> Bavarian State Institute for Development Financing

(3) The Administrative Board may take any suitable measures in order to guarantee the fulfilment of the Bank's tasks.

### Clause 3

(1) The Bank has been commissioned by the state to financially support undertakings of business enterprises as well as other measures for the improvement and support of Bavaria's economic, traffic and environmental structure within the scope of the financial, economic, transport, environmental and labour market policy and in compliance with the state-aid provisions of the European Community. In order to fulfil its task, the Bank may engage in financing operations in the following areas:

1. SMEs, 2. technology and innovation, 3. undertakings with particular importance for regional, structural or labour market policy, 4. environmental protection, 5. infrastructure, 6. risk capital.

(2) It may also engage in financing operations for regional authorities and special-purpose associations under public law, as well as contribute to financing projects of the European Investment Bank or similar European financing institutions launched in the common interest with particular impact on Bavaria.

(3) The financing operations shall be based on the granting of loans and credits, assumption of guarantees, entering into of financial participations as well as on the granting of other financial aid. In the case of the granting of loans and credits, financial institutions shall, as a general rule, be involved according to the pass-through principle or by way of syndicated financing transaction. With regard to the financial institutions, the Bank shall adhere to the principle of non-discrimination.

(4) The Bank shall procure the necessary means by taking out loans and credits from the Free State of Bavaria, from the Federal State of Germany as well as from other institutions. It shall be entitled to issue bonds with the approval of the Administrative Board.

(5) The Bank may only engage in other banking operations insofar as these are directly linked to the fulfilment of its tasks. Trading in securities, the deposit business transactions and giro operations shall only be permitted to the Bank on its own account and only to the extent as they are directly linked with the fulfilment of its public development tasks.

### Clause 4

The Bank shall assume guarantees by order of and in the manner prescribed by the Bavarian Ministry of Finance at the expense of the Free State of Bavaria, as well as monitor state and state-guaranteed loans and credits.

### Clause 5

Furthermore, the Bank shall manage and realise any assets entrusted to it on a

fiduciary basis by the Bavarian Ministry of Finance for management and realisation for the account of the state. For the sale and encumbrance of plots of land and stakes entrusted to it on a fiduciary basis, it shall require the approval of the Bavarian Ministry of Finance.

#### Clause 6

(1) The Bavarian Government may assign to the Bank in writing the execution of any further tasks within the scope of the state's finance, economic, transport, environmental and labour market policy.

(2) The Bavarian Ministry of Finance may assign to the Bank in writing the execution of special financial operations.

(3) The assignment of tasks pursuant to paragraph 1 and the assignment of financial operations pursuant to paragraph 2 may not conflict with the European Law on State Aid, in particular with the principles and requirements of the European Community for the business operations of a public development bank.

#### Clause 7

(1) The Bank's share capital shall amount to a minimum of three hundred million euros.

(2) The Bavarian Ministry of Finance may assign further assets to the Bank based on budgetary approval, and increase the Bank's share capital. It may also increase the share capital from the Bank's equity upon proposal by the Administrative Board. Any increase of the share capital shall be published by the Management Board without undue delay.

## **Chapter II**

### **ORGANISATION**

#### Clause 8

(1) The Bank's articles of association shall be decided upon and adopted by the Administrative Board. It shall be subject to the approval of the legal supervisory authority. This shall also apply to any amendment of the articles of association.

(2) The Management Board shall publish the articles of association and any amendments thereto.

#### Clause 9

The Bank's bodies shall be the Management Board and the Administrative Board.

## Clause 10

(1) The Management Board shall manage the Bank's business operations and shall represent it unless otherwise provided for by law or the articles of association.

(2) The Management Board shall consist of the chairing member (Chairman of the Management Board), a deputy for the Chairman (Deputy Chairman of the Management Board) and at least one further member. The Chairman may be represented by the Deputy Chairman or, in the event of his being prevented therefrom, by another member of the Management Board.

(3) The Chairman of the Management Board and the Deputy Chairman of the Management Board shall be nominated by the Bavarian Ministry of Finance in agreement with the Chairman of the Administrative Board. They shall be appointed by the Bavarian State Government. The other members of the Management Board shall be appointed by the Bavarian Ministry of Finance in agreement with the Chairman of the Administrative Board. The appointment shall be for a maximum of five years; a renewal of the appointment shall be permitted. The Management Board members may be removed at any time from their position for good cause by the authority responsible for their appointment, their employment contract notwithstanding. A good cause is namely gross breach of duty or the inability to duly conduct business.

(4) The legal relations of the Management Board members vis-à-vis the Bank shall be governed by employment contracts under private law. The afore-mentioned employment contracts shall be concluded by the Bavarian Ministry of Finance on behalf of the Bank; the Bavarian Ministry of Finance shall also determine the Management Board members' official title for the duration of the appointment.

(5) With the consent of the Administrative Board, the Management Board shall adopt its own rules of procedure, which shall require the approval of the legal supervisory authority.

(6) The granting of an unlimited power of attorney, the employment as well as the termination of the employment relationship of any holders of unlimited power of attorney shall require the prior approval of the Bavarian Ministry of Finance and of the Chairman of the Administrative Board.

## Clause 11

(1) The Board of Management shall be deemed quorate if at least half of its members participate in the process for adopting resolutions or are duly represented; in every case, however, at least one member of the Management Board shall be obliged to participate in the process for adopting resolutions. In the event of a member of the Management Board being prevented from participating in the process for adopting resolutions, a representative authorised by the Management Board for such purposes legal supervisory authority may represent the absent member with the approval of the legal supervisory authority. Any topics which are subject to cooperative counselling and adoption of resolution shall be determined by the articles of association.

(2) Any declaration by the Management Board shall be binding upon the Bank if they are made by two members of the Management Board; they may also be made by one member of the Management Board and one holder of power of attorney determined by the Management Board, or by two such holders of power of attorney. For declarations made to the Bank to be effective, their issuance vis-à-vis an authorised representative shall suffice.

## Clause 12

(1) The Administrative Board shall decide upon and adopt the rules for the Bank's business activities and monitor the entire business management of the Bank within the scope of its authorities pursuant to Clause 2 paragraph 3. It shall advise the Management Board, may request information from it and make recommendations to the Management Board. The Administrative Board may inspect and check the business documents in their entirety at any time. It may also commission individual members of the Administrative Board herewith, or special experts with certain tasks. The Administrative Board may request from the Management Board at any time a report on the Bank's affairs. An individual member may also request a report, but only to be issued to the Administrative Board; if the Management Board refuses to report to the Administrative Board, the report may only be requested if the Chairman of the Administrative Board supports the request. To what extent individual transactions, including, but not limited to credit and land transactions as well as participations, require the approval of the Administrative Board shall be set forth in the articles of association. In other respects, it shall also govern the competencies of the Administrative Board. The members of the Administrative Bank shall be subject to the Bank's goals.

(2) The Administrative Board shall comprise one representative each from the Bavarian Ministries of Finance, Economic Affairs, Transport and Technology as well as of Labour, Social and Family Affairs, one representative from the industrial sector and two representatives from the banking sector with decision-making powers. The representatives from the banking sector shall be appointed by the respective recommendation of the Bavarian Savings Banks and Giro Association [*Bayerischer Sparkassen- und Giroverband*], the Cooperative Associations of Bavaria [*Genossenschaftsverbands Bayern*] and the Bavarian Banking Association [*Bayerischer Bankenverband e. V.*], whereby each association shall - on the basis of a rolling system - be represented on the Administrative Board with a representative with decision-making authority for two consecutive terms of office of three years each and in the following three-year term of office as guest member in an advisory capacity. The Administrative Board shall be chaired by the representative of the Bavarian Ministry for Economic Affairs, Transport and Technology.

(3) The members of the Administrative Board and their representatives shall be nominated by the institutions represented by them and be appointed for three years by the Bavarian Ministry of Finance. A renewed appointment shall be permitted. The term of office shall be terminated prematurely in the case of a change of the employer or upon termination of the employment relationship.

### Clause 13

(1) The Administrative Board shall adopt its resolutions by simple majority of the votes cast; in the event of a tie, the vote of the Chairman shall be decisive. For the constitution of a quorum, the participation of at least half of its members in the process for adopting resolutions shall be required.

(2) The Administrative Board may form committees from among its members and assign certain tasks to them.

### Clause 14

(1) The members of the Management Board and the Administrative Board as well as all other persons employed at the Bank shall be obliged to maintain confidentiality with respect to the matters and facilities of the Bank as well as with respect to its business activities. They may not testify in or outside of court, or issue any declarations without approval, even after the termination of their employment relationship.

(2) The power to grant the members of the Management Board and, insofar as any interests of the Bank are affected, the members of the Administrative Board permission to testify shall lie with the legal supervisory authority. In other respects, the Chairman of the Management Board shall grant the persons employed at the Bank permission to testify. The permission to testify as witness may only be denied if the testimony given would be of disadvantage to the interests of the Federal Republic of Germany, the Free State of Bavaria or any other German federal state, or if it would seriously jeopardise or substantially hamper the fulfilment of any public tasks.

(3) Without the approval of the Administrative Board, the members of the Management Board as well as all other persons employed at the Bank shall not be allowed to operate a commercial business or conduct business for their own account or for the account of third parties in the Bank's line of business. Neither shall the said persons be allowed to be a member of the management board, or managing director, or general partner of another trading company without approval. The Administrative Board's approval may only be granted for certain trades or trading companies, or for certain types of business. In other respects, § 88 paragraphs 2 and 3 of the German Stock Corporation Act [*Aktiengesetz*] shall apply accordingly.

## **Chapter III**

### **MANAGEMENT**

### Clause 15

(1) The Bank shall conduct its business according to sound commercial principles, taking into consideration the special tasks assigned to the Bank.

(2) The Bank shall bear its personnel and material costs on its own.

## Clause 16

The Management Board shall report to the Administrative Board and the legal supervisory authority with respect to the Bank's performance in the past financial year in the form of an annual report.

## Chapter IV

### ANNUAL FINANCIAL STATEMENT AND DISTRIBUTION OF PROFITS

#### Clause 17

(1) The Bank's financial year shall be the calendar year.

(2) The Bank's accounting procedures shall comply with the statutory provisions and the principles of proper accounting.

(3) The preparation, audit and publication of the annual financial statement and of the statement of affairs shall comply with the statutory provisions, in particular with the German Commercial Code [*Handelsgesetzbuch*] and the German Banking Act [*Gesetz über das Kreditwesen*]. The auditor shall be determined by the Administrative Board with approval of the Bavarian Ministry of Finance and shall be commissioned by the Administrative Board.

(4) The Management Board shall present the audited annual financial statement and statement of affairs, the auditor's report, the annual report and the proposal for the use of the annual net income to the Administrative Board and the Bavarian Ministry of Finance without undue delay. The Administrative Board and, subsequently, the Bavarian Ministry of Finance shall assess the annual financial statement within six months following the close of the financial year, approve the statement of affairs and take a resolution concerning the use of the annual net income and the discharge of the Management Board.

(5) The Management Board shall publish the annual financial statement promptly after its approval.

#### Clause 18

The annual net income shall be used in the following order:

1. At least twenty-five percent of the annual net income shall be allocated to a statutory reserve which may only be made use of with approval of the legal supervisory authority;

2. Of the remaining share of the annual net income, other reserves may be built with approval of the Bavarian Ministry of Finance;

3. In other respects, the annual net income shall be paid to the Free State of Bavaria who shall use at least fifty percent specifically for the fulfilment of the Bank's tasks. To round off this amount, a carry-forward to new account shall be possible.

## **Chapter V**

### **FINAL PROVISIONS**

#### Clause 19

(1) The Bank shall benefit from the same privileges as the Free State of Bavaria with respect to construction, housing and leasing matters.

(2) As far as the fulfilment of the Bank's tasks is concerned, the federal and municipal authorities shall be obliged to provide the Bank with administrative assistance at no extra charge. The municipality may request the reimbursement of the special expenses they incur in this respect.

(3) The Federal Government shall determine to what extent the Bank shall be entitled, in the interest of its business transactions, to request information from authorities, in particular via the remittance of files and criminal records.

(4) The Bank shall dispose of an official seal. Any documents of the Bank which are duly signed and bear the Bank's official seal shall be deemed official deeds and shall not require any certification.

#### Clause 20

(1) The Bank may only be dissolved by law.

(2) In the event of the Bank being dissolved, a liquidation procedure shall be initiated for any and all pending transactions in order to wind up the said transactions. The Bank's assets shall be transferred to the Free State of Bavaria following the fulfilment of any and all liabilities. The Free State of Bavaria shall assume any ongoing liabilities of the Bank.

#### Clause 21

(1) The Law is a matter of urgency. It shall come into force on 20 November 1950. [1]

(2) The Bavarian Ministry of Finance shall pass the provisions required for the implementation of the Law.

Footnote 1: This provision shall affect the Law's entry into force in its original version dated 7 December 1950 (Bavarian Government Gazette [*GVBl.*] 1951 p.4). The new publication date 20 June 2001 (Bavarian Government Gazette [*GVBl.*] p. 235) came



into force on 1. July 2001; the amending law dated 25 May 2003 came into force on 1 July 2003.

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