



Bundesanstalt für Finanzdienstleistungsaufsicht

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## Articles of association of the Federal Financial Supervisory Authority

(Satzung der Bundesanstalt für Finanzdienstleistungsaufsicht)

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The original German text is binding in all respects.**

### Part I Structure and management

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## **Section 1**

### **Name, structure and organisation of the Supervisory Authority**

(1) The Federal Authority's full name is "Bundesanstalt für Finanzdienstleistungsaufsicht" (Federal Financial Supervisory Authority) (Supervisory Authority). The abbreviation "BaFin" may also be used in business relations.

(2) Four directorates are established to perform the Supervisory Authority's statutory functions, namely Regulatory Services/Human Resources, Banking Supervision, Insurance Supervision and Securities Supervision. The directorates consist of departments and sections; the latter may be comprised into groups. In addition, units may be set up to carry out cross-sectoral duties. The resultant organisational structure is laid down by the Executive Board of the Supervisory Authority with the approval of the Federal Ministry of Finance (Federal Ministry).

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## **Section 2**

### **Rights and duties of the bodies of the Supervisory Authority**

(1) The Executive Board has overall responsibility for managing the Supervisory Authority, without prejudice to the Federal Ministry's right to issue instructions.

(2) The President represents the Supervisory Authority before the courts and out of court. The President's permanent deputy is a Chief Executive Director, acting as Deputy President.

(3) Pursuant to section 6 (1) sentence 3 and subsection (2) sentence 5 of the Act Establishing the Federal Financial Supervisory Authority (Finanzdienstleistungsaufsichtsgesetz – FinDAG) the Executive Board unanimously adopts an organisational statute and rules of procedure, which require the approval of the Federal Ministry, as do amendments thereto. The Administrative Council is to be heard if provisions are adopted in the rules of procedure relating to the specific directorates which lead to additional cost burdens on one of the sectors of the financial services industry, namely banking, insurance or securities trading.

(4) The Executive Board regularly issues Publications of the Supervisory Authority.

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## **Part II**

### **Administrative Council**

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## **Section 3**

### **Appointment and dismissal of members of the Administrative Council, right of nomination**

(1) Only those persons in possession of the necessary expert knowledge required to perform the relevant duties shall become members of the Administrative Council. The members are appointed and dismissed by the Federal Ministry pursuant to section 7 of the FinDAG on proposals put forward by the associations of the banking and insurance industries cited in subsection (6) and by the Association of German Investment Companies (Bundesverband Deutscher Investmentgesellschaften). The Chairman of the Administrative Council and his Deputy are appointed for a term of five

years. The other members and their deputies are appointed for a period of four years, unless otherwise specified in section 7 (6) of the FinDAG; reappointment is possible in both cases. Appointments and dismissals shall be notified in the Publications of the Supervisory Authority.

(2) The proposal put to the Federal Ministry shall be accompanied by a curriculum vitae of the proposed member. Simultaneous membership or a deputy function in an authorised representative body of one of the supervised companies as well as membership in a supervisory board or another administrative board of any commercial company must be disclosed to the Chairman of the Administrative Council on appointment. Members with functions as defined under sentence 2 shall not be reappointed.

(3) Membership in the Administrative Council lapses if the member waives his membership by written declaration to the Federal Government or if the Federal Ministry establishes vis-à-vis the Administrative Council that the prerequisites of the appointment of the member are no longer fulfilled. Dismissal on exceptional grounds shall occur if the Federal Ministry establishes after hearing the Administrative Council that cogent grounds exist in the person of a member that justify the member's dismissal. In particular, such cogent grounds include those that would bar public officials from performing their duties (section 66 of the Federal Civil Service Act (Bundesbeamtengesetz)) or which would justify suspension from public office (section 38 of the Federal Disciplinary Act (Bundesdisziplinargesetz)), or a breach of the obligation of confidentiality specified in section 11 of the FinDAG. The member shall first be given an opportunity to state his position.

(4) A deputy shall be nominated, and appointed by the Federal Ministry, for each member of the Administrative Council within the meaning of section 7 of the FinDAG for the event of a member being unable to perform his duties. The Deputy Chairman deputises for the Chairman of the Administrative Council; if both the Chairman and the Deputy are unable to perform their duties, then another member of the Administrative Council from the Federal Ministry shall take the chair; in this case, depending on the number of seats held by the Federal Ministry additional representatives of the Federal Ministry shall act as Deputy Administrative Council members. If a member of the Administrative Council or a deputy leaves before the end of the period for which they have been appointed, then a replacement member shall be appointed without undue delay for the remaining term.

(5) The members of the Administrative Council serve in an honorary capacity. They shall be reimbursed for travel expenses in accordance with the regulations of the Federal Travel Expenses Act (Bundesreisekostengesetz). A daily allowance shall not be granted.

(6) For the appointment of the representatives of the groups of companies specified in section 7 (3) of the FinDAG, the following associations and umbrella associations shall have a right to nominate by name:

1. the Central Credit Committee (Zentraler Kreditausschuss) for the five representatives of the credit institutions;
2. the German Insurance Association (Gesamtverband der Deutschen Versicherungswirtschaft e.V.) for the four representatives of the insurance undertakings;
3. the Association of German Investment Companies (Bundesverband Deutscher Investmentgesellschaften e.V.) for the representative of the asset management companies.

The right of nomination applies as long as the statutory distribution of seats in the Administrative Council remains unchanged.

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## **Section 4**

### **Powers of the Administrative Council, obligation of confidentiality**

(1) The Administrative Council monitors and assists the Management of the Supervisory Authority. Its duties comprise in particular:

1. the adoption of the budget (section 12 (2) of the FinDAG) presented by the Executive Board;

2. the approval of the annual accounts and discharge of the Executive Board in accordance with section 12 (3) and (5) of the FinDAG, taking into account the auditor's report and any findings of the Federal Court of Audit (Bundesrechnungshof) of which the Administrative Council has gained knowledge;
3. the hearing prior to mandating the auditor for the Supervisory Authority;
4. the issuing of the rules of procedure of the Administrative Council (section 7 (2) of the FinDAG);
5. the establishment of agreement on amendments to the Articles of Association of the Supervisory Authority (section 5 (3) of the FinDAG);
6. the hearing of formal agreements relating to cooperation between the Supervisory Authority and other institutions; agreements relating to cooperation and the exchange of information with other supervisory authorities shall remain unaffected.
7. (Repealed)

(2) In order for the Administrative Council to be able to perform its duties, the President shall inform it by way of regular reports of the management activities of the Supervisory Authority; the Chief Executive Directors shall inform it of their directorates' activities. In this regard, the Administrative Council has a right to be informed and to be heard by the President and the Chief Executive Directors. The Administrative Council may demand a report on the affairs of the Supervisory Authority at any time from the President and the Chief Executive Directors. An individual member of the Administrative Council may also demand a report, but only to the Administrative Council. If the President or the Chief Executive Director concerned refuses to report in this case, then the report can only be demanded if three other Administrative Council members support the demand.

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## **Section 5 Representation of the Administrative Council**

The Administrative Council is represented by the Chairman and, if he is unable to perform his duties, by his Deputy. Moreover, representation is only possible by the deputy appointed under section 3 (4) sentence 2.

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## **Section 6 Meetings of the Administrative Council**

(1) The Administrative Council shall meet as the need arises, but at least once a year. The meetings are not public.

(2) The meetings of the Administrative Council are convened by the Chairman or, if he is unable to perform his duties, by his Deputy. The Administrative Council is to be convened on application by the Federal Ministry, the Executive Board or at least four members of the Administrative Council.

(3) The President and the Chief Executive Directors shall on principle take part in the meeting of the Administrative Council. In the event that they are not able to attend the meeting, the President shall be represented by a Chief Executive Director acting as Deputy President and the Chief Executive Directors shall be represented by a head of a department of their directorate. Without prejudice to the provisions of sentence 5, the Chairman of the Staff Council or, if he is unable to attend, his deputy as well as a representative of the Deutsche Bundesbank have the right to attend the meetings. The Chairman may invite other employees of the Supervisory Authority, external experts and other persons providing information if their attendance is appropriate. The attendance of employees of the Supervisory Authority and third parties may be barred for individual items on the agenda.

(4) The Administrative Council has a quorum if at least half its members are present, whereby at least one member of the Bundestag and one representative each of the credit institutions and the insurance undertakings must be present or represented. The Administrative Council's resolutions require a simple majority of the votes cast. In case of a tie, the

Chairman or his Deputy shall have the casting vote. The details shall be governed by the rules of procedure. The rules of procedure shall in particular contain provisions relating to the convening of the Administrative Council, deliberations and the final adoption of resolutions.

(5) Minutes shall be prepared on the results of the meetings and the course of the deliberations and shall be signed by the Chairman or his Deputy. The details shall be governed by the rules of procedure.

(6) In the case of section 4 (1) sentence 2 no. 1, the Administrative Council shall adopt a resolution within a period of two months after presentation. If no resolution is adopted within this period, then the budget presented by the Executive Board shall be deemed to have been adopted.

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## **Section 7 Procedure**

The Administrative Council may adopt resolutions in writing or by way of telecommunications. The details shall be governed by the rules of procedure.

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## **Section 8 Advisory Board**

(1) The Advisory Board shall elect a Chairman from among its members and establish rules of procedure for the conduct of its meetings. The Advisory Board shall be convened as the need arises, at least once a year, by the Chairman or, if he is unable to do so, by his deputy or, to the extent that the Chairman and his deputy are unable to perform their duties or have not yet been elected, by the Executive Board. The Advisory Board shall be convened on application by the Federal Ministry or the Executive Board. It shall also be convened on application by one quarter of its members. Each member of the Advisory Board has the right to submit proposals for deliberation. These are to be notified to the members of the Advisory Board prior to any decision as to the contents of the agenda and shall be deliberated if supported by four Advisory Board members. The President, the Chief Executive Directors and a representative of the Federal Ministry participate in the meetings of the Advisory Board. In the event that the President and the Chief Executive Directors are unable to attend, section 6 (3) sentence 2 applies mutatis mutandis. The meetings are not public. The Chairman of the Advisory Board may invite external advisers to attend the meetings.

(2) The members shall be appointed by the Federal Ministry for a term of five years; they may be reappointed. The regulations of section 3 (3), subsection (4) sentence 4 and subsection (5) apply mutatis mutandis to the members of the Advisory Board. In the case that members are not able to attend, members may appoint deputies taking into account the right of nomination under subsection (4). The Federal Ministry and the Chairman of the Advisory Board are to be informed of this prior to the meeting.

(3) The President or, if he is unable to perform his duties, his deputy shall pledge the Advisory Board members and their deputies as well as external advisers to perform their duties conscientiously and to preserve confidentiality. This pledge shall be recorded in writing. On reappointment reference to the previous pledge shall suffice.

(4) For the appointment of the members from the groups of companies specified in section 8 (2) sentence 3 of the FinDAG, the following associations have a right of nomination by name:

1. the Association of German Banks (Bundesverband deutscher Banken e.V.) for one representative from the banking industry;
2. the German Savings Banks Association (Deutscher Sparkassen- und Giroverband e.V.) for one representative from the banking industry;

3. the Association of German Cooperative Banks (Bundesverband der Volks- und Raiffeisenbanken e.V.) for one representative from the banking industry;
4. the Association of Foreign Banks in Germany (Verband der Auslandsbanken e.V.) for one representative of the banking industry;
5. the Association of German Public Sector Banks (Bundesverband Öffentlicher Banken Deutschlands e.V.) for one representative of the banking industry;
6. the Association of German Mortgage Banks (Verband deutscher Hypothekendarstellungen e.V.) in consultation with the Association of Private Building Societies (Verband der Privaten Bausparkassen e.V.) and the Federal Office of State Building Societies (Bundesgeschäftsstelle der Landesbausparkassen) for one representative of the banking industry;
7. the Association of German Investment Companies (Bundesverband Deutscher Investmentgesellschaften e.V.) for one representative of the asset management companies and the financial services institutions;
8. the German Insurance Association (Gesamtverband der Versicherungswirtschaft e.V.) for four representative of the insurance industry;
9. the Association of Private Health Insurance Companies (Verband der privaten Krankenversicherung e.V.) for one representative;
10. the Association of Company Pension Funds (Arbeitsgemeinschaft für betriebliche Altersversorgung e.V.) for one representative.

In addition, the Advisory Board shall comprise three members from academia, in particular from the banking management and insurance business management fields, as well as scientific associations, three representatives of consumer protection organisations, one representative of the Deutsche Bundesbank and one representative each from the independent professions, the associations of small and medium-sized companies, the trade unions and one representative of industry. A simultaneous membership in other boards of the Supervisory Authority is possible.

(5) On application by the Executive Board, the Federal Ministry of Finance or at least one quarter of its members, the Advisory Board may make recommendations on specialist matters to the Supervisory Authority. This shall require that more than half of the members of the Advisory Board support such recommendation. In deliberations about aspects of cooperation between the Supervisory Authority and the Deutsche Bundesbank the representative of the Deutsche Bundesbank shall not have a voting right.

(6) Minutes shall be prepared on the results of the meeting and the course of the deliberations and shall be signed by the Chairman or his Deputy. The details are governed by the rules of procedure.

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## **Part III**

### **Budgetary management**

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## **Section 9**

### **Budget**

(1) The budget shall be prepared pursuant to the principles of sections 105 to 112 of the Federal Budget Code (Bundeshaushaltsordnung).

(2) The Executive Board shall submit the following to the Administrative Council:

1. as of 31 March each year, supporting documents for the funds actually utilised in the past financial year;

2. as of 1 September each year at the latest, the draft budget for the following financial year.

Each of these deadlines may be prolonged on application by the Executive Board by up to one month. The Federal Ministry shall determine, subject to statutory requirements, the time when the budget shall be prepared and presented.

(3) Measures of material or substantial financial importance as well as entering into liabilities for which the budget contains no authorisation require the approval of the Administrative Council.

(4) (Repealed)

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## **Section 10**

### **Budgetary management**

(1) The financial year of the Supervisory Authority corresponds to the calendar year.

(2) Budgetary management and the rendering of accounts are subject to the regulations of the Federal Budget Code (Bundeshaushaltsordnung). The books shall be established and kept in compliance with the principles of the Federal Budget Code. Payments in the administrative sector shall be made via the bank account of the Supervisory Authority. Within three months of the end of the financial year the Executive Board shall prepare annual accounts of actual revenues and expenditure in compliance with the federal provisions governing the rendering of accounts, which shall be presented to the Administrative Council.

(3) The annual accounts are to be audited, without prejudice to the audit carried out by the Federal Court of Audit under section 111 of the Federal Budget Code, by an auditor, whereby a different auditor is to be mandated by invitation to tender by the Executive Board in consultation with the Federal Ministry at least every four years; the Federal Ministry shall act in agreement with the Federal Court of Audit. Auditors may be public accountants or accountancy firms. The Executive Board shall present the annual accounts and the auditor's report to the Federal Court of Audit. The Federal Court of Audit informs the Administrative Council on any findings that are of relevance to the decision on the discharge of the Executive Board.

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## **Part IV**

### **Transfer of rights and duties, publication**

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## **Section 11**

### **Transfer of rights and duties**

The administrative agreements entered into by the Federal Ministry with the Federal Banking and Insurance Supervisory Offices, in particular relating to property management, the IT Service Center and the exchange of staff, shall be transferred to the Supervisory Authority with the same rights and duties unless specified otherwise. The Administrative Council shall be informed of these administrative agreements.

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**Section 12****Publication**

The Articles of Association and any amendments thereto shall be published in the Federal Gazette (Bundesanzeiger) and in the Publications of the Supervisory Authority.

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**Additional Information****Publications**

[Repealed publications](#)

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