

**Act on the Implementation of a Package of Measures to Stabilise the Financial Market  
(Financial-Market Stabilisation Act – FMStG)\***

of 17 October 2008

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

**Article 1**

**Act on the Establishment of a Financial-Market Stabilisation Fund (Financial-Market  
Stabilisation Fund Act – FMStFG)**

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

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## Section 1

### **Establishment of the Fund**

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

## Section 2

### **Purpose of the Fund**

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

above.

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

### Section 3

#### **Legal Status**

The Fund shall have no legal capacity. In legal relations, the Fund may act, sue and be sued in its own name. The place of general jurisdiction of the Fund shall be Berlin.

### Section 3a

#### **Financial-Market Stabilisation Agency – Establishment, Name, Legal Form, Legal Status**

(1) Upon entry into force of the Act, a “Financial-Market Stabilisation Agency – FMSA” (the Agency) shall be established as a dependent agency under public law at the Deutsche Bundesbank which is organisationally separate from the Deutsche Bundesbank. In legal relations, the Agency may act, sue and be sued in its own name. The place of general jurisdiction of the Agency shall be the seat of the Deutsche Bundesbank.

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

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

(4) The Agency shall be kept separate from the other assets of the Deutsche Bundesbank, its rights and liabilities.

(5) In accordance with an ordinance to be issued pursuant to section 4(2), the Agency may avail itself of appropriate third parties in discharging its duties. The Agency may in conducting its transactions avail itself of the Deutsche Bundesbank within the framework of

section 20 of the Bundesbank Act. The Fund shall bear the costs of the Agency.

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

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

#### Section 4

##### **Decisions on Stabilisation Measures; Administration**

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

(2) The Federal Government may by way of ordinance which does not require the consent of the Bundesrat transfer the decision on the measures pursuant to this Act and the administration of the Fund to the Financial-Market Stabilisation Agency; subsection (1), second sentence, above shall remain unaffected. The Budget Committee and the Finance Committee of the Deutscher Bundestag shall be informed without delay of the issue of and

amendments to the ordinance.

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

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

## Section 5

### **Separation of Assets, Liability of the Federation**

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

## Section 6

### **Authorisation to Assume Guarantees**

(1) The Federal Ministry of Finance shall be empowered to assume for the Fund guarantees of up to 400 billion euros for debt instruments issued by and liabilities accrued by financial-sector enterprises from the entry into force of this Act until 31 December 2009 which have a term of up to 36 months in order to remedy liquidity shortages and to support refinancing on the capital market. The first sentence above shall apply accordingly to the assumption of guarantees for liabilities of special purpose vehicles which have assumed the risk positions of a financial-sector enterprise. A fee at an appropriate amount shall be levied for the assumption of guarantees.

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

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

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

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

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

## Section 7

### **Recapitalisation**

(1) The Fund may participate in the recapitalisation of financial-sector enterprises, in particular it may against the provision of a contribution acquire shares or silent participations

and assume other components of the own funds of these companies, including such created by the legislation of the *Länder*.

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

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

1. the consideration and the other conditions of the recapitalisation,
2. upper limits for the participation in own fund items of individual financial-sector enterprises as well as for particular types of own fund items,
3. the conditions under which the Fund may resell its participation in the own fund items, and
4. other conditions required to safeguard the purpose of this Act in the context of the recapitalisation under subsection (1) above.

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

## Section 8

### **Assumption of Risks**

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

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

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

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

## Section 9

### **Borrowing Authorisation**

(1) To cover expenses and measures under sections 7 and 8 of this Act, the Federal Ministry of Finance shall be empowered to take out loans of up to 70 billion euros for the Fund.

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

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

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

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

## Section 10

### **Conditions for Stabilisation Measures**

(1) Financial-sector enterprises drawing on the stabilisation measures of the Fund under sections 6 to 8 of this Act must guarantee a solid and prudent business policy.

(2) The Federal Government may by way of ordinance which does not require the consent of the Bundesrat issue more detailed provisions concerning the requirements to be fulfilled by the beneficiary financial-sector enterprises on

1. the business strategy and, in the case of banks, especially the granting of loans to small and medium-sized enterprises, and the sustainability of the business model pursued,
2. the use of the monies received,
3. the remuneration of their bodies, employees and main vicarious agents,
4. the level of own funds,
5. the distribution of dividends,
6. the period within which these requirements are to be fulfilled,
7. measures to avoid distortions of competition,
8. the way in which account is to be rendered to the Fund,
9. an undertaking on compliance with the requirements to be met in numbers 1 to 8 above, to be given by the authorised representative body with the consent of the supervisory body and to be published,
10. other conditions required to safeguard the purpose of this Act under subsection (1) above.

The requirements may vary according to the type and addressee of the stabilisation measure. They shall be defined on the basis of this Act and the ordinance issued thereon by contract,

voluntary undertaking or administrative act. The ordinance to be issued under the first sentence above may also stipulate legal consequences of non-compliance with the abovementioned requirements.

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

#### Section 10a

##### **Financial-Market Stabilisation Fund Panel**

(1) The Deutscher Bundestag shall elect for the duration of one legislative period a panel which comprises members of the Budget Committee. The panel shall be assigned to the Budget Committee and shall have nine members. The Deutscher Bundestag shall determine the composition and *modus operandi*. The panel shall end its activity upon dissolution of the Fund.

(2) The panel shall be informed about all issues concerning the Fund by the Federal Ministry of Finance. The panel shall be authorised to summon members of the Steering Committee or of the Management Committee to appear. The panel shall furthermore discuss core and strategic issues and long-term developments of financial-market policy.

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

#### Section 11

##### **Annual Statement of Accounts and Provision of Information to Parliament**

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

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

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

## Section 12

### **Administrative Costs**

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

## Section 13

### **Time Limit and Participation on the Part of the *Länder***

(1) The fund's stabilisation measures shall be available up to 31 December 2009. The Fund shall then be wound up and dissolved.

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

(3) Insofar as *Landesbanken* or special purpose vehicles which have assumed the risk positions thereof are supported by the measures of the Fund, the *Länder* shall bear financial burdens arising herefrom according to their shareholdings in the *Landesbanken* or special purpose vehicles at the time of the entry into force of this Act. In line with its shareholding at the time of the entry into force of this Act, the Federation shall bear the burdens of the financial institutions under section 2 in which it holds a participation.

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

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

## Section 14

### **Taxes**

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

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

(3) Section 8c of the Corporation Tax Act and section 10a, last sentence, of the Trade Tax Act shall not be applied upon acquisition or reassignment of stabilisation components by the Fund.

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

## Section 15

### **Immediate Enforceability**

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

## Section 16

### **Legal Recourse**

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

Section 17

**Promulgation of Ordinances**

Notwithstanding the provisions of section 1 of the Act on the Promulgation of Ordinances, ordinances under this Act may also be promulgated via the promulgation of ordinances in the electronic Federal Gazette<sup>†</sup>). Ordinances promulgated in the electronic Federal Gazette are to be referenced for information purposes in the Federal Law Gazette indicating the place of their publication and the date of their entry into force.

**Article 2**

**Act on the Acceleration and Simplification of the Acquisition of Shares and Risk Positions of Financial-Sector Enterprises by the Fund “Financial-Market Stabilisation Fund – FMS”**

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<sup>†</sup>) <http://www.ebundesanzeiger.de>

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## Section 1

### **Scope of Application**

This Act shall apply to financial-sector enterprises within the meaning of section 2 of the Financial-Market Stabilisation Fund Act.

## Section 2

### **Undertaking**

(1) The provisions of the Stock Corporation Act on the responsibility of the management board to manage the company on its own responsibility as well as on the competencies of the bodies shall not preclude the admissibility and effect of an undertaking given pursuant to section 10(2), first sentence, number 9 of the Financial-Market Stabilisation Fund Act. The undertaking shall become effective upon it being given.

(2) The authorised representative bodies shall also have a right and duty towards the company and all of its shareholders to comply with the undertaking. Decisions which run contrary to the undertaking, especially with regard to policy on dividends, may be challenged for this reason. Section 254(2) of the Stock Corporation Act shall apply accordingly.

(3) The subsections above shall apply accordingly to financial-sector enterprises in legal forms other than a stock corporation.

### Section 3

#### **Statutorily Authorised Capital**

(1) The management board of a financial-sector enterprise constituted as a stock corporation shall until 31 December 2009 be empowered to increase the share capital by up to 50% of the share capital present at the time of the entry into force of this Act by issuing new shares to the Financial-Market Stabilisation Fund (Fund) against contributions. The management board may only make use of the authorisation with the consent of the supervisory board.

(2) The share capital increase shall not require the consent of the general meeting. If there is already more than one class of share, the issue shall not require the consent of the shareholders of the various classes.

(3) The subscription right of shareholders shall be excluded.

(4) A previous contribution by the Fund to the assets of the company may be accounted towards the contribution obligation and shall exempt the Fund from its contribution obligation.

(5) Unless this Act stipulates otherwise, sections 185 to 191 of the Stock Corporation Act shall apply accordingly to the capital increase and issue of the shares. Section 182(4), first sentence, of the Stock Corporation Act shall not apply. The increase of capital shall be entered in the commercial register without delay. There shall be no verification. Section 246a(2), second sentence, of the Stock Corporation Act shall apply accordingly.

(6) The supervisory board shall be authorised to amend the articles of association of the company insofar as this is necessary as a result of the share capital increase and the issue of new shares under the subsections above.

### Section 4

#### **Offsetting against Existing Authorised Capital**

The nominal value up to which the management board may increase the share capital

on the basis of the authorisations already granted to it at the time of the entry into force of this Act shall decrease to the extent to which the share capital is increased in application of the provisions of section 3.

## Section 5

### **Form of the Shares**

(1) The management board shall decide on the content of the share rights and the conditions for the issue of shares. The management board may in particular stipulate that new shares have a preferred dividend and priority in the case of distribution of the company's assets. The management board may also in particular issue non-voting preference shares whose preferred dividend is not payable in arrears.

(2) The decision of the management board shall require the consent of the supervisory board.

(3) An issue price corresponding to the exchange price shall be appropriate in any event. Without prejudice to this, the management board may decide with the consent of the supervisory board that the issue price is less than the exchange price of the shares. Section 9 of the Stock Corporation Act shall apply.

(4) An advance payment of the contribution by the Fund shall exempt the Fund from its contribution obligation.

(5) Insofar as the shares issued to the Fund have a preferred dividend or priority in the case of the distribution of the company's assets, they shall lose these privileges in the event of a transfer to a third party. The Fund may stipulate that the preference shares issued to it are converted into ordinary shares carrying voting rights in the event of a transfer to a third party.

## Section 6

### **Report to the General Meeting**

The management board must present to the next ordinary general meeting a written report on the capital increase and issue of new shares which explains, in legal and economic terms, in particular the scope of the capital increase, the issue price and the shares' preferred dividend and priority in liquidation.

## Section 7

### **Resolution of the General Meeting on Capital Increases**

(1) Where a general meeting is convened to adopt a resolution on the share capital increase and the exclusion of the subscription right to the benefit of the fund, section 16(4) of the Securities Acquisition and Takeover Act shall apply accordingly. The period of notice for convening the meeting shall be no less than one day.

(2) The exclusion of the subscription right to authorise the Fund to accept the shares shall be permissible and appropriate in any event.

(3) The resolution on the share capital increase shall be registered for entry in the commercial register without delay. The resolution, insofar as it is not manifestly void, shall be entered in the commercial register without delay. Section 246a(4), second sentence, of the Stock Corporation Act shall apply accordingly.

(4) A previous contribution by the Fund to the assets of the company may be accounted towards the contribution obligation and shall exempt the Fund from its contribution obligation.

## Section 8

### **Profit Participation Rights**

(1) The management board of a financial-sector enterprise constituted as a stock corporation shall until 31 December 2009 be empowered to issue profit participation rights to the Fund. The management board may only make use of the authorisation with the consent of the supervisory board.

(2) The issue of the profit participations rights shall not require the consent of the general meeting.

(3) The subscription right of shareholders shall be excluded.

## Section 9

### **Application *Mutatis Mutandis***

(1) Sections 3 to 8 shall apply *mutatis mutandis* to financial-sector enterprises constituted in the legal form of the partnership limited by shares or the European company (SE).

(2) The Fund may become a member of financial-sector enterprises constituted in the legal form of a cooperative society. Amendments to the statutes of cooperative societies, the purpose of which lies in bringing about an increase in capital by the Fund, shall be registered for entry without delay and entered without delay in the register of cooperative societies insofar as the underlying decision is not manifestly void.

(3) Section 7(1) shall apply accordingly to the decision-making procedure where mutual societies grant profit participation rights within the meaning of section 53c(3a) of the Insurance Supervision Act to the Fund.

## Section 10

### **No Duty to Inform the Economic Committee**

Section 106(2), second sentence, and 106(3) number 9a as well as section 109a of the Works Constitution Act shall not apply to the acquisition of shares by the Fund.

## Section 11

### **No Disclosure Duty for Substantial Participations**

Section 27a of the Securities Trading Act shall not apply to the acquisition of shares by the Fund.

## Section 12

### **No Mandatory Offer**

In the case of the attainment of control of a target company by the Fund, the Federal

Financial Supervisory Authority shall release the Fund from the obligation to make and publish a mandatory offer pursuant to section 35 of the Securities Acquisition and Takeover Act.

### Section 13

#### **Realisation**

In the event of the resale of the shares, silent participations and other rights acquired by the Fund, the Fund is to grant a subscription right to the shareholders and members of the financial-sector enterprises concerned.

### Section 14

#### **No Stock Exchange Listing**

Section 40(1) of the Stock Exchange Act and section 69 of the Stock Exchange Admission Ordinance shall not apply to the issue of shares to the Fund. The above provisions shall be applied following a transfer of the shares to a third party. The period in section 69(2) of the Stock Exchange Admission Ordinance shall start to run upon transfer to the third party.

### Section 15

#### **Silent Partnership**

An arrangement regarding the provision of an asset contribution by the Fund as silent partner in a financial-sector enterprise shall not represent an inter-company agreement. In particular, it shall not require the consent of the general meeting or entry in the commercial register.

### Section 16

#### **Acquisition of Risk Positions**

(1) Transfers of risk positions and collateral to the Fund shall not be subject to appeal under insolvency law. Barriers to cession and transfer under civil law, including the requirement for consent of a third party, shall not preclude the effectiveness of the transfer to the Fund. The transfer of a receivable or of a contractual relationship to the Fund shall not represent a compelling reason for termination within the meaning of section 314 of the Civil

Code. Sections 307 to 309 of the Civil Code and section 354a(2) of the Commercial Code shall not apply to transfers to the Fund and the contractual conditions utilised by the Fund.

(2) The participants in the transfer of risk positions to the Fund may collect, process and use personal data insofar as this is necessary for the transfer. Section 203 of the Penal Code shall not preclude a transfer of information in the context of the transfer of risk positions to the Fund.

(3) Assets transferred to the Fund by means of agreed trusteeship shall not form part of the insolvency estate of the trustee.

## Section 17

### **Competition Law**

The provisions of the first to third part of the Act against Restraints of Competition shall not apply to the Fund.

## Article 3

### **Amendment to the Banking Act**

The Banking Act, as published on 9 September 1998 (Federal Law Gazette I, p. 2776), most recently amended by Article 3 of the Act of 13 August 2008 (Federal Law Gazette I, p. 1690), shall be amended as follows:

The following sentences shall be added to section 36(1a):

“In the case of negligent conduct, the special commissioner’s liability for damages shall be limited to 1 million euros for an activity at an institution. If this institution is a stock corporation whose shares are admitted to trading on the regulated market, the liability for damages within the meaning of the sixth sentence above shall be limited to 4 million euros. The limitations under the sixth and seventh sentences above shall also apply where the powers of more than one body have been transferred to the special commissioner or the special commissioner has committed more than one act giving rise to liability of damages.”

## **Article 4**

### **Amendment to the Insurance Supervision Act**

The Insurance Supervision Act, as published on 17 December 1992 (Federal Law Gazette 1993 I, p. 2), most recently amended by Article 4 of the Act of 13 August 2008 (Federal Law Gazette I, p. 1690), shall be amended as follows:

The following subsection (3) shall be added to section 83a:

“(3) In the case of negligent conduct, the special commissioner’s liability for damages shall be limited to 1 million euros for an activity at an insurance undertaking. If this undertaking is a stock corporation whose shares are admitted to trading on the regulated market, the liability for damages within the meaning of the first sentence is limited to 4 million euros. The limitations under the first and second sentences above shall also apply where the powers of more than one body have been transferred to the special commissioner or the special commissioner has committed more than one act giving rise to liability of damages.”

## **Article 5**

### **Amendment to the Insolvency Code**

Section 19(2) of the Insolvency Code of 5 October 1994 (Federal Law Gazette I, p. 2866), which was most recently amended by Article 9 of the Act of 12 December 2007 (Federal Law Gazette I, p. 2840), shall be worded as follows:

“(2) Over-indebtedness shall exist if the debtor’s assets no longer cover the existing liabilities unless the continuation of the enterprise is deemed highly probable according to the circumstances.”

## **Article 6**

### **Further Amendments to the Banking Act, to the Insurance Supervision Act and to the Insolvency Code**

(1) Section 36(1a), sixth to eighth sentence of the Banking Act as published on 9 September 1998 (Federal Law Gazette I, p. 2776), which was most recently amended by Article 3 of this Act, shall be repealed.

(2) Section 83a(3) of the Insurance Supervision Act as published on 17 December 1992 (Federal Law Gazette 1993 I, p. 2), which was most recently amended by Article 4 of this Act, shall be repealed.

(3) Section 19(2) of the Insolvency Code of 5 October 1994 (Federal Law Gazette I, p. 2866), which was most recently amended by Article 5 of this Act, shall be worded as follows:

“(2) Over-indebtedness shall exist if the debtor’s assets no longer cover the existing liabilities. In the assessment of the debtor’s assets, however, the continuation of the enterprise shall be taken as the basis if this is deemed highly probable according to the circumstances.”

## **Article 7**

### **Entry into Force**

(1) Subject to subsection (2), this Act shall enter into force on the day after its promulgation.

(2) Article 6 shall enter into force on 1 January 2011.

The above Act is hereby executed. It shall be promulgated in the Federal Law Gazette.

Berlin, 2008

The Federal President

The Federal Chancellor

The Federal Minister of Finance

The Federal Minister of Justice