

## Memorandum and Articles of Association of Investitionsbank Berlin

*according to the Ordinance on the Memorandum and Articles of Association of Investitionsbank Berlin as of 21 August 2018 (Official Gazette, p. 526)*

### Section 1 Tasks of Investitionsbank

- (1) Investitionsbank is the structure and subsidy bank of the Federal State of Berlin.
- (2) Investitionsbank performs the tasks assigned to it under section 5 of the Investitionsbank Law.
- (3) The following principles additionally apply to export financing in accordance with section 5 (2), No. 5 of the Investitionsbank Law:

1. Any participation on the part of Investitionsbank in syndicated loans with a share of up to 25% or up to a sum of €5m is subject to a corresponding request by and lead function of one or more banks/financing institutions, and is not subject to any terms and conditions that are more favourable for the company or less favourable for Investitionsbank than the terms and conditions granted to the company by other banks/financing institutions involved in such consortium. This condition is fulfilled if the request is made and/or the leadership taken by a business development institution or a financing institution which in relation to Investitionsbank has the following characteristics by directly or indirectly:

- a) owning the majority of the subscribed capital; or
- b) holding the majority of votes representing the company's shares; or
- c) being able to appoint more than half of the members of the administrative, management or supervisory committee of the company.

The financing share of business development institutions may not exceed 50% unless the consortium members involved unanimously agree from case to case that the business development institutions may contribute a larger share which may not, however, exceed 75%.

2. In the event that Investitionsbank holds a share of up to 25% in syndicated loans or up to €5 million with Investitionsbank having initiated such loan and/or being the lead lender, all of the preconditions stated below must be fulfilled:
  - a) co-operation with at least one co-lead arranger other than a business development institution or financing institution in which Investitionsbank directly or indirectly:
    - aa) owns the majority of the subscribed capital; or
    - bb) holds the majority of votes representing the company's shares; or
    - cc) is able to appoint more than half of the members of the administrative, management or supervisory committee of the company.
  - b) The beneficiary may not be granted any terms and conditions that are more favourable than the terms and conditions granted by other banks or financing institutions involved in the consortium, and Investitionsbank will not accept any terms and conditions that are less favourable than those offered by other banks or financing institutions.
  - c) Investitionsbank's maximum total share of 25% may not be exceeded unless the consortium members involved unanimously agree from case to case that Investitionsbank/the business development institutions may contribute a larger share which may not, however, exceed 50%.

- d) Investitionsbank will agree to co-operate in a consortium with all banks having their registered office or an establishment in the EU.
3. Investitionsbank will not act alone unless:
- a) a country belonging to OECD country risk category 7 is concerned or
  - b) a country belonging to OECD risk category 5 or 6 is concerned which is additionally listed in part 1 of the DAC list, and unless the financing sum is less than €5m and the term of the loan exceeds 4 years.
- (4) Investitionsbank will only be authorised to do any other business in as far as such business is directly related to its tasks as contemplated in subsection 2 hereof. Within such context, Investitionsbank will, in particular, be authorised:
1. to buy and sell receivables and securities and to enter into acceptance commitments,
  2. to perform treasury management.

Investitionsbank will be authorised to perform securities trading and to carry out deposit-taking and giro business on its own account only and only in as far as such trading or business is directly related to the performance of its public business development tasks.

## **Section 2 Performance of tasks, exclusions**

Investitionsbank will be prevented from performing tasks if:

1. the performance thereof would violate any laws or the subsidy rules issued by the European Commission for business development institutions,
2. it would not be possible to cover the resultant expenditure by other revenues pursuant to section 14 (2), sentence 2 of the Investitionsbank Law (total cost recovery principle) or
3. the performance thereof would apparently conflict with the management principles as contemplated in section 14 (1), sentence 1 of the Investitionsbank Law.

## **Section 3 Treasury management guidelines**

In order to limit the risks that are acceptable within the scope of treasury management, the Management Board, on the basis of the guidelines issued by the Administrative Board, will set forth within the framework of the risk strategy clearly defined procedures and limit structures with regard to market price and address default risks and will determine monitoring standards reasonable with a view to the extent of the business. Positions in derivate instruments will be generally justified within the scope of comprehensive bank management for risk limitation or risk reduction of existing positions only or for the purpose of optimising equity commitment.

## **Section 4 Confidentiality, conflicts of interest and corporate governance**

- (1) The members of the executive committees and their deputies are obliged not to disclose to any third party any confidential information and secrets of Investitionsbank, in particular, business and trade secrets which may have come to their knowledge as a result of their activities in the executive committees of Investitionsbank. This obligation will continue and remain in effect even after membership in an executive committee has ended.
- (2) A member of an executive committee may not take part in discussions and resolutions concerning any matters where a decision can result in a direct advantage or disadvantage for the member himself or herself, his or her spouse, his or her relatives up to the third degree or relatives by marriage up to the second degree or any person represented by such member by operation or law or power of attorney, or if such member lacks impartiality for any other

reason. In cases of doubt, the members of the committee concerned will, in the absence of the member concerned, decide whether such conditions are fulfilled.

- (3) The Management Board and the Administrative Board will apply the Corporate Governance Code (CGC) in its applicable version as issued by the Senate Department of Finance.

### **Section 5 Management Board**

- (1) The Management Board consists of a chairman and at least one more member. The Administrative Board decides upon the appointment, removal from office and the terms of employment of the members of the Management Board. The chairman of the Management Board is appointed by the Administrative Board.
- (2) The Management Board is appointed for a maximum of five years. Appointment for further terms of a maximum of five years is permitted. Members of the Management Board who are older than 60 years can only be appointed for a term which ends on the expiration of the month in which they reach the age of 65. The resolution concerning re-appointment of the Management Board may be passed no more than twelve and no less than six months before the expiration of the current term.
- (3) The Administrative Board can remove a member of the Management Board from office for cause. Removal from office for cause is particularly justified in cases of gross violation of obligations, incapacity to correctly manage Investitionsbank's business or any sustainable and significant impairment of the relationship of trust.
- (4) The Administrative Board adopts the business rules for the Management Board on the basis of the latter's proposal. The chairman of the Management Board distributes the Management Board's business subject to agreement with the other members of the Management Board. The chairman informs the Administrative Board on rules adopted.

### **Section 6 Tasks and authorities of the Management Board**

- (1) The Management Board manages Investitionsbank's business in its own responsibility and subject to law, this memorandum and articles of association, the guidelines adopted by the Administrative Board, as well as the business rules applicable to the Management Board. Irrespective of consent requirements and general reporting obligations, the Management Board shall inform the Administrative Board on important matters of Investitionsbank. The Management Board is responsible for implementing the resolutions passed by the Administrative Board and the supporting organisation.
- (2) Irrespective of the distribution of business, the members of the Management Board are jointly responsible for managing the business of Investitionsbank Berlin. The members of the Management Board are jointly authorised to appoint deputies.
- (3) The Management Board usually passes its resolutions after a board discussion. The Management Board constitutes a quorum if at least two of its members take part in the passing of the resolution or if at least two of its members are duly represented by a deputy. In any case, however, at least one member of the Management Board must take part in the passing of the resolution. In the event that a member of the Management Board is prevented from taking part in the passing of a resolution, such member will be represented by an individual authorised by the Management Board to this effect with the Administrative Board's approval.
- (4) The Management Board will represent Investitionsbank in and out of court. Investitionsbank will be represented by the Administrative Board in any matters concerning the members of the Management Board. The Administrative Board acts through its chairman or, if the chairman is prevented, through a deputy.

- (5) Details are laid down in the business rules.

### **Section 7 Power of representation and signatory powers**

- (1) Investitionsbank is represented by two members of the Management Board or by one member of the Management Board and one authorised signatory appointed by the Management Board or by two authorised signatories. The Management Board is at liberty to issue deviating rules for day-to-day business or for certain transactions.
- (2) The names and signatures of those authorised to sign on behalf of Investitionsbank are communicated in the form of signature lists, public notices or in any other suitable manner.
- (3) Any declarations by Investitionsbank with legally binding effect are made under the official name of Investitionsbank.

### **Section 8 Administrative Board**

- (1) The Administrative Board consists of six members to be appointed by the Berlin Senate and three members to be appointed by the personnel representation committee. The chairman and his or her deputies are appointed from the members of the Administrative Board. The resolution requires the majority of the votes of the members of the Administrative Board appointed by the Berlin Senate.
- (2) The members of the Administrative Board are appointed for a term of four years. Appointment for further four-year terms is permitted. After expiration of the term, the former members will continue managing the business of the Administrative Board until a new Administrative Board is appointed.
- (3) Individuals appointed to the Administrative Board have special economic experience and expertise, and are capable of promoting and effectively supporting Investitionsbank in the performance of its tasks.
- (4) The Berlin Senate and the personnel representation committee can remove the members appointed by them from office at any time.
- (5) In the event that an appointed member of the Administrative Board is prematurely removed from office, a new member will be appointed for the residual term of the member removed from office.
- (6) The members of the Berlin Senate can be represented by authorised representatives in the Administrative Board and its committees; this does not apply to the function of the chairman.
- (7) The members of the Administrative Board receive remuneration to be fixed by the Berlin Senate up to an amount that reflects the responsibility and scope of activities of such members as well as the economic situation and success of Investitionsbank.

### **Section 9 Tasks of the Administrative Board**

- (1) The Administrative Board will, in particular, decide upon
  1. proposed resolutions by the supporting organisation,
  2. the approval of the annual financial statement,
  3. the appointment of the auditors and the appointment of auditors in special cases,
  4. the budget,
  5. the appointment, employment, dismissal and removal from office of members of the Management Board,

6. the terms and conditions of the contracts for the members of the Management Board and their other matters,
  7. loans as contemplated in section 15 of the German Banking Law (intra-entity loans)
  8. the subscription to direct participations and participations by subsidiaries of Investitionsbank (indirect participations) in cases where the participation share is not financed from public business development programmes or where the amount of the participation exceeds the limits determined in such business development programmes; in the event that the Administrative Board has already approved a corresponding participation option issued for a limited term, its repeated approval is not necessary when such participation option is exercised,
  9. the acquisition, charging and sale of real property and rights equivalent to real property when the value of the transaction exceeds the sum of €2 million,
  10. waiver of receivables due to the bank exceeding the sum of €2 million,
  11. the guidelines and principles for bank business, in particular, export financing,
  12. the guidelines for limiting risk in treasury business,
  13. appointment of the chairman of the Advisory Board,
  14. remuneration for the members of the Advisory Board,
  15. adoption of business rules for the Administrative Board and its committees, the Advisory Board and the Management Board.
- (2) The Administrative Board can decide that certain transactions and measures of particular importance for the bank are contingent upon the Administrative Board's approval.
- (3) Reports must be submitted to the Administrative Board as follows:
1. Once a year on:
    - a) the proposed business policy, including personnel planning and organisation,
    - b) the implementation of the plans as contemplated in number a),
    - c) the most important audit results of the internal audit department; the Administrative Board will be immediately informed on any particularly important results.
  2. Every six months on:
    - a) the development of the business development activities,
    - b) the taking over and disposal of participations in as far as the decision was not contingent upon the Administrative Board's approval,
    - c) the development of business and events at affiliated companies in as far as these are apparently of significant importance for the earnings position or liquidity of the bank,
    - d) the waiver of receivables unless such waiver was contingent upon the Administrative Board's approval, compiled according to the number and total sum of individual cases exceeding the waiver sum of €5,000, as well as individual cases where the waiver sum exceeds €200,00.
  3. At least four times a calendar year: on the development of business, including the earnings position.
  4. In all other respects: according to statutory and regulatory requirements.

## **Section 10 Administrative Board meetings**

- (1) The Administrative Board meets at least four times per calendar year and otherwise as often as business requires. The invitation to the meeting is issued by the Chairman of the Administrative Board or, if he or she is unable to attend, by the Deputy Chairman. The Management Board can be instructed to issue the invitation. Meetings of the Administrative Board must be convened when requested by the supervisory authority, the Management Board or at least three of its members, stating in such request the subject matter to be discussed.

- (2) As a rule, meetings of the Administrative Board are held in person. Exceptions to this may be permitted in the business rules.
- (3) The members of the Management Board attend the meetings of the Administrative Board, unless the Administrative Board decides otherwise in individual cases.
- (4) The Administrative Board constitutes a quorum if at least half of its members, including the chairman or a deputy of the chairman, are present or represented pursuant to section 8 (6) hereof. In the event that the Administrative Board does not constitute a quorum, a new meeting can be convened within two weeks in order to handle the same agenda. The invitation will be sent or made available to the members of the Administrative Board at least ten working days before the meeting. Such period does not include the day of posting the invitation and the day of the meeting. At such meeting, the Administrative Board constitutes a quorum no matter how many of its members are present. This fact will be stated in the invitation to the second meeting.
- (5) Resolutions are passed with the majority of the votes of the members of the Administrative Board present or represented pursuant to section 8 (6) hereof. Further details on the admissibility of other forms of resolution, in particular, the admissibility of written votes (voting messages) are laid down in the business rules. Resolutions concerning the appointment and removal from office of the members of the Management Board as well as any resolutions in conjunction with the public tasks assigned to Investitionsbank additionally require the majority of votes of the members appointed by the Berlin Senate. The foregoing also applies in the case of (4), sentence 5 and (6), sentence 1. Abstentions will not be taken into account when determining the proportion of votes. In the case of a tie, the chairman or, if the latter is prevented from attending, his or her deputy will have the casting vote. Votes will be cast by secret ballot when requested by a member.
- (6) In urgent cases, resolutions may also be passed outside of face-to-face meetings, unless a member of the Administrative Board objects to such procedure within five working days; further details are laid down in the business rules. For the purpose of adopting a resolution as aforesaid, the chairperson proposes the resolution to be adopted, states the reasons therefor, and requests that the members of the Administrative Board cast their votes immediately, but in no case later than by the end of a period of two weeks to be set. The Management Board may be instructed to prepare these decisions. Votes not received after the expiration of the period set will be deemed to be abstentions. The resolution is deemed to be adopted as soon as the majority of members have approved it. In particularly urgent cases where a resolution is also no longer possible outside a face-to-face meeting, the resolution can be replaced by a decision made by the chairman of the Administrative Board in agreement with one deputy pursuant to section 8 (1), sentence 2 hereof. The decision must be submitted to the Administrative Board at its next ordinary meeting for retroactive adoption of the resolution. In such a case, the members of the Administrative Board will be immediately informed thereof.
- (7) Minutes will be prepared for each meeting of the Administrative Board; such minutes must be signed by the person chairing the meeting. The minutes must state the place and date of the meeting, the participants, the items of the agenda, the essential content of the meeting, and the resolutions passed by the Administrative Board. A violation of sentence 1 or sentence 2 will not render a resolution invalid. The minutes must be sent to each member of the Administrative Board within three weeks and approval thereof must be obtained at the next ordinary meeting of the Administrative Board.
- (8) More details are laid down in the business rules.

## **Section 11 Committees**

- (1) The responsibility of the committees is determined by business rules to be issued by the Administrative Board. Section 8 (1) and section 10 (5), sentence 3, apply analogously to membership in such committees and to the resolutions passed by them.
- (2) The Management Board attends the committee meetings unless a committee decides otherwise in individual cases.

### **Section 12 Rights and competence of the supporting organisation**

In addition to the cases stipulated by law, the Senate also decides on the remuneration of the members of the Administrative Board and represents the Bank vis-à-vis the members of the Administrative Board.

### **Section 13 Advisory Board**

- (1) The Advisory Board formed at Investitionsbank supports the Management Board and the Administrative Board in general issues concerning Investitionsbank as well as Investitionsbank in the pursuit of its interests.
- (2) The members of the Advisory Board are appointed at the Management Board's proposal by the Administrative Board for a term of four years. Appointment for further four-year terms is permitted.
- (3) The chairman of the Advisory Board is appointed by the Administrative Board.
- (4) Meetings of the Advisory Board must be convened by its chairman at least once a year. The Management Board attends the meetings of the Advisory Board.
- (5) The Administrative Board issues business rules for the Advisory Board. Remuneration to be determined by the Administrative Board can be paid to the members of the Advisory Board.
- (6) Section 4 (1) applies analogously.

### **Section 14 Appropriation of profits, profit for the year**

- (1) Investitionsbank's profit for the year must be appropriated to its special-purpose provisions unless the Berlin Senate decides otherwise.
- (2) In as far as the Berlin Senate intends to deviate from a profit appropriation proposal submitted by the Administrative Board, the Berlin Senate will give the Administrative Board the opportunity to comment on this and to explain its view. The Berlin Senate passes its final resolution after receipt of the Administrative Board's comments.

### **Section 15 Validity of the federal state budget code**

Investitionsbank is subject to the provisions of section 112 (2) of the Budget Code of the Federal State of Berlin. Section 94 (3) of the Budget Code of the Federal State of Berlin is not applicable.

### **Section 16 Publications**

Any official publications required by law, the provisions of this memorandum and articles of association or instructions issued by the supporting organisation are published in the Electronic Federal Gazette [elektronischer Bundesanzeiger].

### **Section 17 Coming into effect, expiry**

This ordinance comes into effect on the day following publication in the Official Gazette for Berlin. At the same time, the Ordinance on the Memorandum and Articles of Association of Investitionsbank Berlin as of 2 September 2004 (GVBl. (Official Gazette) 2004, p. 372), which was amended by the Ordinance of 7 September 2010 (GVBl. 2010, p. 438), expires.