

Law Establishing Investitionsbank Berlin as an Independent Legal Entity

Dated 25 May 2004 (Official Gazette, 226 et seqq.),
last amended by sections 3 and 17 as amended by Article 3 of the
Law of 11 February 2020 (Official Gazette page 50)

The Berlin Parliament has adopted the following law:

Article I

Law on the Separation of Investitionsbank Berlin –
Anstalt der Landesbank Berlin – Girozentrale –
from Landesbank Berlin – Girozentrale –
(Separation Law)

Section 1

Separation

(1) On the expiration of the 31st day of August 2004 (separation date), Investitionsbank Berlin – Anstalt der Landesbank Berlin – Girozentrale – (IBB) shall be separated from the assets of Landesbank Berlin – Girozentrale – (Landesbank) and, pursuant to the provisions of this law, transferred to Investitionsbank Berlin (Investitionsbank) established pursuant to section 1 of the Investitionsbank Law dated 25 May 2004 (GVBl. [Official Gazette], page 226). As a consequence thereof, the subsidy bank of the Federal Land of Berlin regains its legal independence after it had been previously integrated into the Landesbank as a result of the integration of the formerly independent Wohnungsbau-Kreditanstalt Berlin into the Landesbank.

(2) Investitionsbank shall assume the tasks and business of IBB subject to the provisions of the Investitionsbank Law.

Section 2

Transfer of assets to Investitionsbank

(1) Effective as of the separation day, the assets of IBB, including all rights and obligations and all items of its assets and liabilities, including IBB's special-purpose provisions shall pass to Investitionsbank by way of universal succession pursuant to section 9 of the Law Establishing Investitionsbank Berlin dated 25 November 1992 (Official Gazette, page 345), as last revised by number 72 of the Exhibit to the Law dated 30 July 2001 (Official Gazette, page 313). The part of the assets defined in section 4 (1) shall be exempt from the transfer of assets.

(2) The transfer of assets shall be based on a balance sheet of Landesbank as per 31 December 2003 as the closing balance sheet. For the purposes of the relationship between the parties involved, the assets transferred shall be taken over effective on the expiration of the 31st day of December 2003 at midnight. Effective as of January 2004, 0 hours, any acts, measures and transactions related to the assets transferred to Investitionsbank shall be deemed to be effected on Investitionsbank's account. Investitionsbank shall assume the legal position of IBB with regard to the accounting for the assets transferred, and shall continue the independent calculations thereof.

Section 3

Capital stock and special-purpose provisions of Investitionsbank

The capital stock of Investitionsbank shall be formed out of the assets of €300 million transferred pursuant to section 2 (1) hereof. Investitionsbank shall carry a special-purpose provision in its books.

Section 4

Assets exempt from the transfer of assets

(1) Part of the assets carried as a special-purpose provision formed pursuant to section 9 of the Law Establishing Investitionsbank Berlin shall not be transferred to Investitionsbank. This part shall be used to secure the liable equity of Landesbank subject to the provisions of subsection (2) hereof. Such part shall consist of an amount which ensures that a minimum core capital rate of 6 percent is maintained in the Bankgesellschaft group as per 1 January 2004, however, with a maximum of €1.1 billion remaining with Landesbank. Any revenue and expenditure related to the part of the assets as contemplated in sentence 1 hereof which may arise between the 1st day of January 2004 and the separation day shall be assigned to the assets of IBB transferred pursuant to section 2 (1), sentence 1, unless the agreements on the dormant partnerships as contemplated in subsection (2) hereof are made and entered into with economic effect as of a day prior to the separation day. Effective as of such day, any revenues and expenditure shall be assigned to the assets remaining with Landesbank. The Senate department responsible for the banking industry shall, in agreement with the Senate Department of Finance and by way of an official notice with immediate effect, determine in detail the assets remaining with Landesbank pursuant to sentence 1 hereof as well as the revenues and expenditure assigned to Landesbank pursuant to sentence 5 hereof. Such official notice shall be disclosed to the public in the Official Gazette for Berlin and shall be deemed to be published two weeks after its printing.

(2) The Federal Land shall be entitled to claim the transfer of the assets contemplated in subsection 1 hereof. In its capacity as dormant partner, the Federal Land shall contribute this claim to Landesbank as per the separation date in the form of a contribution in order to secure the liable equity. Details shall be laid down in an agreement which shall be contingent upon approval by the Berlin Parliament.

(3) The Federal Land's claim as contemplated in subsection 2 hereof shall arise at the time the dormant partnership agreements become legally effective. In the event that the dormant partnership agreements become legally effective after the separation day, Landesbank shall compensate the Federal Land for the assets contemplated in subsection 1 hereof for the period until the partnership agreements become legally effective at rates corresponding at least to the rates customary for dormant partnerships.

Section 5

Transfer of personnel

(1) Effective as of the separation day, the employment contracts of staff previously employed at IBB shall pass to Investitionsbank. Investitionsbank shall accept from Landesbank any rights and obligations as an employer.

(2) Staff shall be notified in writing of the transfer of their employment contracts pursuant to subsection 1 hereof immediately after the separation day.

Section 6

Transitional rules for the personnel committee, the gender mainstreaming representative and the representative for the severely handicapped

The personnel committee of IBB shall assume the responsibility of the personnel committee for Investitionsbank. The transitional mandate shall end with the constitutive meeting of the newly elected personnel committee for Investitionsbank, but in no case later than six months after the separation day. The same shall apply to the representative for the severely handicapped and the gender mainstreaming representative.

Section 7

Transitional rules for executive bodies

(1) Following the establishment of Investitionsbank, the Management Board and the Administrative Board shall be formed pursuant to sections 11 and 12 of the Investitionsbank Law and the memorandum and articles of association.

(2) Pending the establishment of the Management Board, the Management Board of Landesbank shall manage the business of Investitionsbank.

(3) Pending the establishment of the Administrative Board, the Investitionsbank Committee of the Supervisory Board of Landesbank shall assume the responsibilities of the Administrative Board. This

shall also apply to the function of the Supervisory body within the meaning of the German Banking Law.

(4) The first meeting of the Administrative Board shall be convened by the Senate member responsible for the banking industry.

Article II

Law Establishing Investitionsbank Berlin as an Incorporated Institution under Public Law (Investitionsbank Law – IBBG)

Section 1

Establishment and legal position

With the coming into effect of this law, an incorporated institution under public law is established as the structure and subsidy bank of the Land of Berlin. The name of the newly established bank shall be "Investitionsbank Berlin" (Investitionsbank). Its registered office is Berlin.

Section 2

Capital stock

(1) The capital stock of Investitionsbank shall total €300 million. It shall be formed from the assets transferred to Investitionsbank pursuant to section 2 of the Separation Law dated 25 May 2004 (Official Gazette, page 226).

(2) Investitionsbank shall carry a special-purpose provision in its books.

Such special-purpose provision shall be used to finance tasks of Investitionsbank.

Section 3

Administrative acts

(1) Investitionsbank shall be authorised to use a seal with the inscription "Investitionsbank Berlin".

(2) Investitionsbank shall also be authorised to act in a sovereign capacity in order to implement subsidy measures, in particular, to perform administrative acts and to make and enter into agreements under public law. Subject to the applicable legal provision, it can decide on appeals.

(3) Investitionsbank shall be a public authority within the meaning of section 43 of the Land Register Ordinance in the version of the publication dated 24 January 1995 (Federal Gazette I, page 114) as last amended by an Ordinance dated 18 March 1999 (Federal Gazette I, page 497). It shall be authorised to inspect the files of the land registers pursuant to section 12 a of the Land Register Ordinance in the version of the publication dated 26 May 1994 (Federal Gazette I, page 1114) as last amended by Article 7 of the Law dated 26 October 2001 (Federal Gazette I, page 2710)

(4) Investitionsbank shall perform regulatory functions in as far as such functions are

1. measures as contemplated in section 25 of the Controlled Tenancies Act [§ 25 Wohnungsbindungsgesetz] and section 33 of the Housing Assistance Act [§ 33 Wohnraumförderungsgesetz] due to violations of the provisions of section 8 (1) and (3), sections 8a, 8b, 9 and 21 of the Controlled Tenancies Act as well as section 28 (2) to (4) of the Housing Assistance Act,

2. measures designed to secure the structural condition necessary for the residential space to fulfil its purpose according to the Controlled Tenancies Act and the Housing Assistance Act and

3. measures as contemplated in sections 7 to 9 of the Law Capping Housing Rents in Berlin.

(5) Investitionsbank shall be responsible for the prosecution and punishment of administrative offences as contemplated in section 26 (1) number 4 of the Controlled Tenancies Act, section 52 (1) numbers 4 and 5 of the Housing Assistance Act and section 11 (2) numbers 1 and 5 of the Law Capping Housing Rents in Berlin.

(6) Within the scope of promoting housing as assigned to Investitionsbank Berlin under section 5 (2) No. 1, lit. d, Investitionsbank Berlin shall examine 20 percent of the homes promoted under the first promotion scheme (social housing) each year to check

a) for adherence to the rents permitted by law,

b) the last operating costs account, as well as

c) sufficient maintenance of the properties.

In addition to the foregoing, Investitionsbank Berlin shall advise the property owners, especially of older properties promoted under the first promotion scheme (social housing), about options for careful modernisation geared to save operating costs.

(7) Tenants living in homes which were built or modernised and refurbished with funding from Investitionsbank Berlin, shall be entitled to request from Investitionsbank Berlin information regarding promotion rules in as far as they affect the respective rent agreement.

Section 4

Public-sector responsibility, refinancing guarantee, guarantee authority's liability

(1) Investitionsbank is supported by the Federal Land of Berlin. The Federal Land of Berlin bears the public-sector responsibility for Investitionsbank. The public-sector responsibility includes the public-law obligation in relation to Investitionsbank to secure its economic basis at all times and to maintain it in a condition suitable for operation during the time of its existence.

(2) The Federal Land of Berlin shall be liable for any loans, debenture bonds, futures transactions, options and swaps subscribed to by Investitionsbank, as well as any other loans granted to Investitionsbank.

(3) The guarantee authority's liability of the Federal Land of Berlin for the liabilities of Investitionsbank Berlin – Anstalt der Landesbank Berlin – Girozentrale – (IBB) entered into until and including the 31st day of August 2004 shall remain in effect pursuant to the Law on Landesbank Berlin – Girozentrale – in the version dated 3 December 1993 (Official Gazette, page 626) as last amended by the Law dated 19 September 2002 (Official Gazette, page 286). No guarantee authority's liability shall be assumed for liabilities created on or after the 1st day of September 2004.

Section 5

Tasks

(1) Investitionsbank is the structure and subsidy bank of the Federal Land of Berlin. It supports the Federal Land of Berlin in the performance of its public tasks.

(2) Investitionsbank's tasks are:

1. On behalf of government and subject to the subsidy rules of the European Union, to perform subsidy measures in the following areas:

a) medium-sized businesses, in particular, existing small and medium-sized enterprises, as well as very small businesses and start-ups

b) promotion of business and foreign trade

c) technical progress and innovation

d) housing, promotion of housing construction, urban planning, rehabilitation and development

e) location marketing

f) labour market

g) venture capital

h) internationally agreed subsidy programmes, co-operation in the field of development policy

i) environmental protection, energy saving and renewable energies

j) infrastructure

k) health system and social affairs

l) art, culture and architecture

m) tourism

n) education, science and sports

o) subsidy areas precisely defined in other laws, ordinances or published guidelines on the government's economic and housing policy in as far as Investitionsbank is commissioned by the Federal Land of Berlin to handle such areas

For the purpose of implementation by Investitionsbank, the subsidy task in question as contemplated in lit. a to o must be defined in detail when commissioning Investitionsbank.

2. To provide loans and other forms of finance to German basic local

government units and special-purpose associations under public law

3. To finance measures with exclusively social aims
4. To take part in projects in the community's interest which are financed by the European Investment Bank or similar European finance institutes
5. To perform export financing measures outside the Member States of the European Union, the other contracting states of the Agreement on the European Economic Area and the states with an official status as accession candidates to the European Union, taking into consideration the preconditions specified in detail in the memorandum and articles of association dating from 2nd September 2004 (GVBI S. 372), in as far as such preconditions are compatible with international trade conventions, in particular, the WTO agreement, binding upon the European Community.

(3) Investitionsbank shall 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, it shall, in particular, be authorised:

1. to buy and sell receivables and securities and to enter into acceptance commitments
2. to do treasury management.

Investitionsbank shall 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 subsidy tasks.

Section 6 Business activities

(1) In order to perform its tasks as contemplated in section 5 hereof, Investitionsbank shall be authorised to

1. extend and manage loans, grants and other forms of finance
2. issue and manage guarantees and other forms of security
3. establish companies, take out participations in companies, manage participations in companies and to perform other transactions related to participations
4. perform consultancy and other services which are directly related to its subsidy tasks.

The public tasks of subsidiaries and affiliated companies pursued in the interest of the Federal Land of Berlin and the possibilities for the General Accounting and Audit Office to control and supervise such tasks shall be ensured under company law in each case.

(2) Investitionsbank shall be authorised to resort to banks or other finance institutes in conjunction with the granting of loans. It shall abide by the principle of not distorting competition.

(3) In order to perform its tasks, Investitionsbank shall be authorised to co-operate with subsidy institutes and other organisations in the public administration.

(4) Decisions whether and to what extent Investitionsbank is to pursue tasks as contemplated in section 5 hereof shall be made by the Berlin Senate. In the event that such a decision is made, the Senate shall immediately notify the Berlin Parliament thereof. The performance of the tasks shall be governed by rules, in particular, by agreements or administrative procedures under public law, setting forth the details, in particular, concerning the subject matter and extent of the service to be performed as well as the remuneration to be paid therefor.

Section 7 Refinancing

(1) Investitionsbank shall usually obtain the required funds by taking up loans and other means of refinance unless funds can be made available from public budgets.

(2) Investitionsbank shall be authorised to issue mortgage bonds, municipal bonds and other bonds pursuant to the Law on Mortgage Bonds and Related Bonds of banking institutes under public law. It shall be authorised to take up profit participation capital and subordinated liable capital subject to the provisions of the German Banking Law on condition that this does not lead to any rights on the part of the investor or lender to take part in the executive

committees of Investitionsbank.

(3) Furthermore, Investitionsbank shall receive revenue from the dormant participation of the Federal Land of Berlin in Landesbank Berlin – Girozentrale – subject to the provisions of a public-law agreement between the Federal Land of Berlin and Investitionsbank, which shall also set forth the details concerning the procedure of providing funds as well as the related security therefor.

Section 8

Participation in competing businesses

Within the framework of its tasks and subject to agreement with the Federal Land of Berlin, Investitionsbank can establish legally independent companies or subscribe to shares therein in as far as this does not create any economic advantages for such companies or their subsidiaries which would favour them in relation to other, competing companies. Participations in companies which compete with competing companies shall be limited in terms of time. Furthermore, the Berlin Parliament shall be informed within the framework of the report about participations of the Federal Land of Berlin in civil-law companies; the term of such participation should be justified in each case and in detail. Refinancing funds, grants and other payments and services by Investitionsbank to the companies established by it for this purpose, as well as any payments and services by such companies to Investitionsbank shall be subject to customary remuneration.

Section 9

Memorandum and articles of association

The other legal relationships and tasks of Investitionsbank, as well as the rules governing its administration and organisation shall be set forth in a memorandum and articles of association. The Berlin Senate is authorised to enact the memorandum and articles of association by way of an ordinance.

Section 10

Executive committees

Investitionsbank shall have the following executive committees:

1. its Management Board and
2. its Administrative Board.

Section 11

Management Board

(1) The Management Board shall consist of a minimum of two members. The Administrative Board shall decide upon the appointment, removal from office and the terms of employment of the members of the Management Board. Details shall be laid down in the memorandum and articles of association.

(2) The Management Board shall manage the business of Investitionsbank. The Management Board shall represent Investitionsbank in and out of court.

Section 12

Administrative Board

(1) The Administrative Board shall consist of six members to be appointed by the Berlin Senate and three members to be appointed by the personnel representation committee. The Administrative Board shall decide upon its chairman and his or her deputy subject to the provisions of the memorandum and articles of association.

(2) The Berlin Senate and the personnel representation committee can remove the members appointed by them from office at any time.

(3) Resolutions shall be passed by the majority of the members of the Administrative Board. 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 shall additionally require the majority of votes of the members of the Administrative Board appointed by the Berlin Senate. Details shall be laid down in the memorandum and articles of association.

(4) The Administrative Board determines the guidelines and principles for Investitionsbank. The Administrative Board supervises the management of business by the Management Board and issues the required business rules. The Management Board is

obliged to keep the Administrative Board fully informed of any matters.

(5) The Administrative Board can issue general or special instructions to the Management Board. The Administrative Board can, in particular, make certain transactions or types of transactions contingent upon its approval. The Administrative Board issues guidelines for limiting risks in the treasury business (section 5 (3)).

(6) The Administrative Board can set up committees for certain tasks. Subsection 1 shall apply to the membership of the Administrative Board. More details shall be laid down in the memorandum and articles of association.

(7) The Administrative Board represents Investitionsbank in relation to the members of the Management Board.

Section 13

Rights and competence of the supporting organisation

(1) The tasks of the supporting organisation shall be performed by the Berlin Senate.

(2) The Berlin Senate shall decide on cases contemplated by law and the memorandum and articles of association, in particular, on:

1. the appropriation of the net profit for the year and the coverage of losses
2. the approval of the actions of the members of the Management Board and of the Administrative Board
3. the change in capital stock (subscribed capital)
4. the adoption of the memorandum and articles of association as well as any modifications thereof and amendments thereto.

(3) The Berlin Senate shall represent Investitionsbank in relation to the members of the Administrative Board subject to the provisions of the memorandum and articles of association.

Section 14

Management principles

(1) The business of Investitionsbank shall be managed according to commercial principles and economic aspects. Investitionsbank's activities are not orientated towards generating profit.

(2) The Management Board shall prepare and set up a budget in due time before the commencement of a financial year. It shall be ensured in this context that the expenditure resulting from Investitionsbank's business activities is generally covered by the expected revenue, so that the capital stock and the special-purpose provision as contemplated in section 2 (2) hereof remain unchanged (total cost recovery principle).

Section 15

Annual financial statement, approval of the acts of the Management Board

(1) The financial year shall be identical to the calendar year.

(2) After the end of the financial year, the Management Board shall prepare the balance sheet for the year, including profit and loss accounts, as well as the Directors' Report (annual accounts) and a year-end report.

(3) The annual accounts shall be audited by an auditor; such audit shall also cover the accounts, the Directors' Report and the year-end report.

(4) The Administrative Board shall approve the annual accounts and submit these to the Berlin Senate, together with the year-end report and the audit report, including the proposed resolutions concerning the appropriation of the net profit for the year or the coverage of losses, respectively, and the approval of the acts of the members of the Management Board and of the Administrative Board. Details concerning the appropriation of profits shall be laid down in the memorandum and articles of association.

Section 16 Advisory Board

An Advisory Board can be set up in order to provide Investitionsbank with competent advice in the pursuit of its tasks. More details shall be laid down in the memorandum and articles of association.

Section 17

Supervision

(1) The bank shall be subject to supervision by the Federal Land of Berlin. The Senate department in charge of the banking industry shall be in charge of state supervision.

(2) The technical supervision of the implementation of subsidy programmes, the performance of tasks under the Law Capping Housing Rents in Berlin and other measures by the Federal Land of Berlin shall be performed by the Senate department which is technically responsible for the respective tasks in question. This Senate department can issue guidelines for the performance of sovereign tasks. Section 8 (2) and (3) of the Law on General Responsibility in its applicable version shall apply to the performance of technical supervision.

Section 18

Continued validity of provisions

Unless anything to the contrary is laid down, any provisions in Federal-land law applicable to IBB shall be immediately applicable to Investitionsbank.

Section 19

Exemption from fees

Any legal acts necessitated by the separation of IBB and the establishment of Investitionsbank shall be exempt from fees. This shall also apply to notarisation and authentication acts.

Article III

Cancellation of the Law Establishing Investitionsbank Berlin

The Law Establishing Investitionsbank Berlin dated 25 November 1992 (Official Gazette, page 345), as last revised by number 72 of the Exhibit to the Law dated 30 July 2001 (Official Gazette, page 313), is hereby cancelled.

Article IV

Amendment to legal provisions

(1) The Law on Landesbank Berlin – Girozentrale – in the version dated 3 December 1993 (Official Gazette, page 626), as last revised by the Law dated 19 September 2002 (Official Gazette, page 286), is amended as follows:

1. Section 3 (8) is cancelled.
2. Section 6 is amended as follows:
 - a) In paragraph 3, sentence 1, the words "where the dormant partners are granted co-entrepreneurial rights" are replaced with the words "also granting co-entrepreneurial rights".
 - b) In paragraph 4, sentence 4, the words "and Investitionsbank Berlin" are deleted.

(2) Article IV of the Fourth Law Amending the Law Establishing Landesbank Berlin – Girozentrale – dated 19 September 2002 (Official Gazette, page 286) shall be amended as follows:

1. The following new sentence 2 is added: "Article I No. 7 shall come into effect on expiration of the 31st day of August 2004".
2. Former sentence 2 becomes sentence 3.

Article V

Agreements between the Federal Land of Berlin and Investitionsbank Berlin

Any agreements between the Federal Land of Berlin and Investitionsbank Berlin for the implementation of this law shall be subject to approval by the Berlin Parliament.

Article VI
Coming into effect

Articles II, III and IV shall come into effect on the expiration of the 31st day of August 2004. Otherwise the law shall come into effect on the day following publication in the Official Gazette for Berlin.

The foregoing law is herewith promulgated.

The Governing Mayor

Klaus W o w e r e i t