

## Performing Banking Transactions and Providing Financial Services – Requirements of the Supervisory Statutes

### Option with wide ranging possibilities ...

For corporate groups in the industrial, energy, retail or service sector the acquisition or foundation of a bank is frequently a necessity or an imperative based on economic necessity. At the same time, such a move can open up new and attractive strategic opportunities. This relates both to gaining potential sources of new revenue as well as improving efficiency. Direct access to the money market offers interesting options for corporate financing and liquidity management. Sales and distribution of corporate products can be promoted through attendant leasing and financing offers. The diversification provided by an appropriately directed financial institution gives the corporation access to the investment, credit and financial services business and their associated value addition potentials. Customer and specialized market know-how from entrepreneurs within the group can be exploited to develop tailor-made financial products which can then be sold using existing contacts in the market.

The list of possibilities could be further amended. In order to be able to realistically assess the option of bank foundation the requirements arising as a result of the legal situation must also be considered at a central location.

### ... but with daunting legal requirements

Banks and banking licenses are offered for sale, and this not only in offshore financial centers. However, these forms are hardly suitable for the foundation of a corporate-own financial institution if it is to have any hope of sustainable economic and legal success. German banks and financial services are subject to German supervisory regulations. Business activities require the approval of the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht or BaFin). The primary prerequisite for approval is the provision of evidence that the institution possesses a long-term, sustainable business plan. Of nearly equal importance is compliance, that is, the observance of applicable legal statutes: Detailed evidence must be provided regarding how the institution intends to ensure that the comprehensive demands made on banks and financial service providers during the course of their business transactions will be met. Once approval has been given, the latter becomes the object of ongoing supervision which entails extensive reporting obligations on the part of the institution.

“Anyone wishing to carry out banking transactions in Germany needs our approval to do so. He will only receive such approval by meeting the legal requirements. Thus, for example, the funds necessary for the commercial operation must be available. These include primarily adequate start-up capital. And the institution must have at least two suitably professional and reliable managers. In addition, it must have a sustainable business plan and must be in a position to or be willing to implement the organizational measures necessary to carry out its banking transactions properly.”

**Jochen Sanio, President of the Federal Financial Supervisory Authority**

## Qualified Bank Foundation Process from Start to Finish

Due to developments at both the European and international level, regulations governing the money market have recently gained increasing significance. In view of these increased demands, a primary factor is the assurance that the approval process be concluded as smoothly as possible. To achieve this, it is vital that qualified, practically-oriented consulting services be employed so that what is possible can actually be attained.

### Strategic-economic analysis

The guidelines for the business model of the intended financial institution are primarily based on the corporation's economic-strategic objectives. Working together with our clients we perform a differentiated analysis of this goal system. Your specialized knowledge with regard to the target markets and their development potential flows into this examination as do the demands you intend to make on the product and service spectrum of the proposed financial institution and its functions within the corporation. The results are evaluated from business management, supervisory statute and commercial practice perspectives. Then, based on the information obtained from the supervisory statute analysis, the businesses for which approval applications must be submitted to the BaFin can be determined. A differentiation must be made between the following categories:

- Banking businesses requiring approval
- Financial services requiring approval

### Development of an economically and legally sustainable business model

The business plan forms the core document for the BaFin approval process. Aside from a description of the strategic objectives, the economic and legal sustainability of the business model represents a mandatory prerequisite. Particularly the aspect of risk and return represents an essential component of the BaFin examination.

Among the information to be provided is

- a detailed presentation of the intended business activities,
- the plan figures for the institution's development prepared under consideration of the applicable accounting rules,
- a comprehensive description of the planned business development,
- presentation of the essential organizational rules governing the company,
- information regarding the preparation of the description of proper business activities,
- and a presentation of the compliance concept.

### Implementation of a compliance concept

When corporations whose primary activities are not concentrated in the financial sector wish to found an in-house financial institution, both German and European supervisory statutes present the corporation with challenging tasks. Decisive in this regard is not only the complexity of the rules and regulations, but also the speed with which the legal statutes change and develop. Know-how in this regard is indispensable in order to be able to evaluate future developments and their effects well in advance so that they can be taken into consideration during planning. We provide both specialized as well as organizational support

- in the description of the information, reporting and supervisory obligations in accordance with the banking law, the stock corporate law and the securities trading law
- during the implementation of the minimum requirements for risk management (MaRisk)
  - the solvency regulation
  - the EU Guideline governing the markets for financial instruments (MiFiD)
- and during the preparation of the comprehensive compliance documentation

### Approval obligation

Providers of financial services requiring approval may only enter the market with the approval of the Federal Financial Supervisory Authority. The requirements necessary to obtain such approval are based on § 32 of the German banking law (KWG). They depend on the type of proposed business. Separate approval is required for each type of business.

### Banking businesses requiring approval which include, among others

#### Financial transactions subject to commissions:

The purchase and sale of financial instruments under one's own name for third-party accounts (hidden proxy)

#### Securities custody transactions:

The retention and management of securities for investors

#### Investment transactions:

The procurement of assets through the disbursement of investment shares for joint investor accounts opened in one's own name on the basis of the principle of risk spreading

#### Investment banking:

The acceptance of financial instruments at one's own risk for placement or the acceptance of equivalent guarantees

#### Credit transactions:

The granting of cash loans or acceptance credits. Exceptions rules exists for, among others, companies whose sole purpose is the provision of banking services together with their parent company or with affiliate or subsidiary firms.

### Financial services requiring approval which include, among others

#### Assets brokerage:

The acceptance and transfer of investment orders related to the procurement of financial instruments in the sense of the credit services law (securities, money market instruments, foreign currency, units of account and derivatives)

#### Acquisition brokerage:

The purchase and sale of financial instruments in the name of third parties for third party accounts;

#### Independent trading:

The trading in financial instruments in one's own name and on one's own account

#### Financial portfolio administration:

The management of assets invested in financial instruments with the freedom to make independent decisions



### Requirements for minimum capitalization

The legally mandated minimum equity capitalization to operate businesses subject to approval or to provide services subject to approval depends on the **type of proposed business activities** and evidence in the form of a **deposit in the company or an assets liability insurance policy** of an adequate level is to be provided. The start-up capital must consist of core capital. It must be readily available and may not come from a loan.

The minimum capital lies between €0,000 (simple financial services) up to €5,000,000 (savings and loan bank).

### Approval application for the operation of banking businesses or the provision of financial services in accordance with § 32, Para. 1, KWG: Requirements for the business management:

The necessary degree of specialized qualification and the required number of executive managers depend on the proposed type of business. The minimum requirements include documented evidence of an at least three-year employment history in the proposed area of business activity together with a familiarity with the supervisory requirements.

- Banking business always mandates **two managing directors**.
- Evidence of the **professional suitability and personal reliability** of the managing directors must be provided in the submitted documentation as must any financial crimes (fraud/betrayal of confidence) and violations of legal procedural rules and guidelines for the operation of a company.
- In addition, a **comprehensive biography** containing all personal information, a **comprehensively documented description** of all **professional education** including information concerning previous activities along with the names and addresses of former employers are also required. Any secondary employment (with the exception of honorary or voluntary offices) must be indicated. The description of previous positions must include information concerning the decision-making powers exercised, subordinate **business areas** and **powers of attorney/representation granted**.

### Consultation with the BaFin during the planning phase

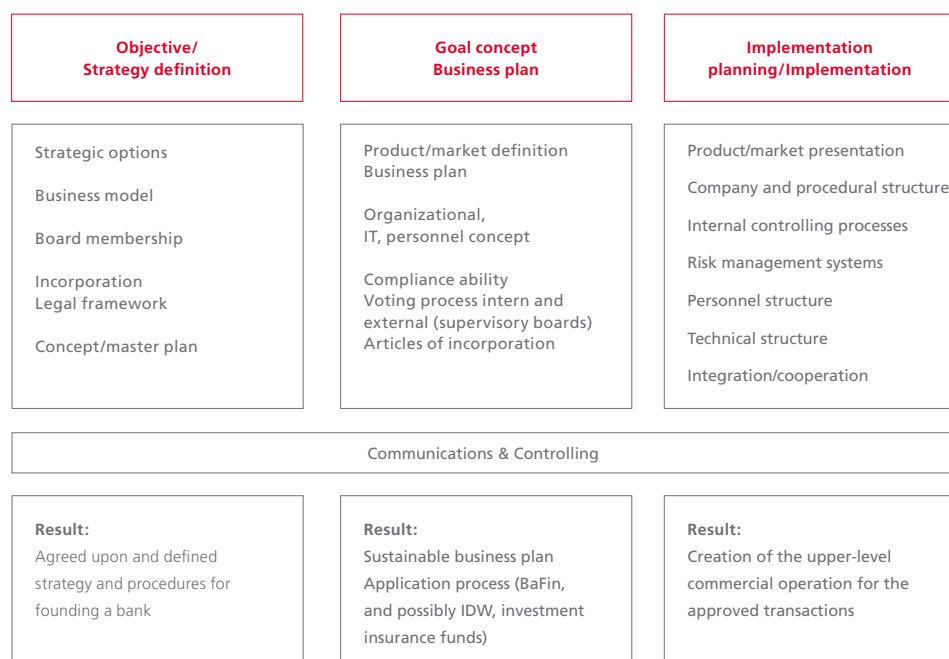
The specialists in the ifb group possess extensive experience with projects related to the founding and realignment of financial institutions. At the same time, our long-established consultation practice in the financial sector gives us unequalled specialized knowledge with regard to bank management, risk management, accounting, organizational structures with respect to tasks, personnel and information technology and supervisory practices. We utilize this know-how in order to

- provide advance identification of matters requiring further clarification with the Federal Financial Supervisory Authority, where necessary,
- to obtain assessments from the BaFin at the outset of the application process
- and to ensure that the business model and the approval application documents meet the requirements of the BaFin.

### Application and approval process

Approval for banking operations or the provision of financial services must be requested from the BaFin in writing and will only be granted once it has been shown that all requirements of the German Banking Act have been met. Aside from the business plan, the central aspects in this regard include evidence of compliance:

- company name, legal form of the company, location of the company's head offices, purpose of the company and strategy
- information regarding the banking transactions or financial services whose approval is being sought
- information regarding the founders (company profile, corporate structure/association, key figures, possibly consideration of a consolidation subject to supervisory statutes)
- articles of incorporation, corporate agreement, bylaws, etc.
- evidence of the availability of the financial assets required for the founding
- samples of essential contracts related to business operations
- organizational structure, internal controlling procedures/revisions, risk policies, possibly outsourcings in accordance with § 25a, KWG
- evidence of the reliability and professional suitability of the managing directors



Procedural model for the founding of a bank

**We are happy  
to support you**

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#### **The path to full operation**

The preparation for and completion of the approval process represent merely the first steps. Professional implementation planning and implementation, optimal information and communications policies as well as effective and efficient project controlling all represent success factors which lead up to full productive operation of the corporate-own financial institution.

#### **We can support you:**

- in the establishment of the company and procedural structure based on the requirements of effective control and efficient sales and distribution
- with practical aspects related to management and sales and distribution in compliance with the statutes of the capital market code
- with the development and implementation of professional commercial concepts the creation of your IT strategy
- project management and controlling
- the definition of both qualitative and quantitative personnel requirements
- and operational implementation

The business model of a corporate-own financial institution must, in particular, realize the economic-strategic objectives of its initiators and must ensure that the extensive, mandated supervisory tasks are systematically carried out. We have specialized in bringing both these tasks into harmony in a commercially convincing manner.

#### **ifb group – Leaders in Financial, Corporate and Risk Management**

Integrated procedures are our trademark. As a consulting and software provider we make leading commercial expertise available to industry, trade and financial services firms. At the same time we possess many years of implementation experience in sophisticated IT environments. We develop modern concepts for company, financial and risk management. And we transfer these concepts into application oriented, practical software solutions.

In the case of your project this means qualified support from a single source – from the initial idea through to quality assurance during productive operation.

Through the open and partnership-like operation of its interdisciplinary teams, the ifb group has gained an outstanding reputation as a solution-oriented partner. Exploit this knowledge held by more than 390 experts in both Germany as well as foreign locations. We look forward to meeting you!