

Am Hauptbahnhof 2  
70173 Stuttgart, Germany  
Tel. +49 711 127-0  
Fax +49 711 127-3000

To whom it may concern

15 May 2002

## Position Paper on the Future Guarantee Mechanisms of Landesbank Baden-Württemberg

### Understanding on Maintenance Obligation (Anstaltslast) and Guarantee Obligation (Gewährträgerhaftung) between Germany and the EU Commission

In the debate concerning European Commission demands to restructure the guarantee mechanisms of German public banks, the European Commission and the Koch-Weser delegation (representing the German federal government and the German states) agreed, on 17 July 2001 and on 28 February 2002, on a restructuring of the current liability principles as well as on the transitional arrangements to implement this. In this regard please refer to the documents attached hereto ("Understanding on Anstaltslast and Gewährträgerhaftung" of 17 July 2001; "Press Release on the Implementation of the Understanding of 17 July 2001" that was jointly issued by DSGV and BMF and agreed by the European Commission; "EU Agree Plan Ending State Aid of Public Banks" (Press Release of the European Commission of 28 February 2002)). Thereupon the European Commission proposed on 27 March 2002 appropriate measures pursuant to the above mentioned agreements. These measures were accepted by the German federal government without any reservation on 11 April 2002. Thus the proceeding is completed and legal certainty and planning stability for Landesbank Baden-Württemberg are ensured.

On the basis of the "platform model" stipulated in the "Understanding on Anstaltslast and Gewährträgerhaftung" of 17 July 2001 (hereinafter referred to as the "Understanding"), the guarantee obligation will be abolished after a four year transitional period lasting from 19 July 2001 to 18 July 2005. Anstaltslast will be replaced by a relationship between the owners and Landesbank Baden-Württemberg that will be no different from a normal commercial relationship in the private sector.

The State of Baden-Württemberg will amend the Landesbank Baden-Württemberg Act by 31 December 2002 so that it complies with these changes to guarantee mechanisms. The appropriate legislative measures have been initiated on the basis of a draft bill resolved by the cabinet on 19 March 2002.

Investorenbrief-Mai-2002-engl.doc

kontakt@LBBW.de  
www.LBBW.de  
Banking Code 600 501 01  
SWIFT-Address SOLA DE ST

Headquarters:  
Stuttgart, Karlsruhe, Mannheim

Board of Managing Directors:  
Hans Dietmar Sauer, Chairman  
Reinhold Schreiner, Vice Chairman

Thomas Fischer, Dr. Karl Heidenreich,  
Dr. Siegfried Jaschinski,  
Joachim Schielke,  
Prof. Dr. Hans Waschkowski,  
Gerd Wolf, Hermann Zondler, Stv.

Legal protection of bona fide acts and the prohibition of ex post facto laws for existing liabilities and those created during the transitional period ("Grandfathering")

The Federal Republic of Germany's constitutional principles on the prohibition of ex post facto laws ensure that the legislator cannot interfere with existing legal positions in a way that would put investors of Landesbank Baden-Württemberg at a disadvantage ("grandfathering"). The Understanding meets the requirements of these principles.

Liabilities from unadjusted activities which have been contracted before 18 July 2001 (inclusive) are "existing liabilities" in view of the principle of legal protection of bona fide acts, even if the date of the signature of the contract document and the value date fall after 18 July 2001.

For liabilities created during the four year transitional period, from 19 July 2001 to 18 July 2005, the guarantee obligation applies (as of 19 July 2005, due to grandfathering) on condition that its date of maturity does not fall after 31 December 2015. The maintenance obligation applies in this case until 18 July 2005.

Liabilities created from 19 July 2001 whose maturity does not go beyond 18 July 2005 come completely under the maintenance obligation and the guarantee obligation.

Liabilities that are created after 18 July 2005 will come under the modified guarantee mechanisms that apply at that time. Landesbank Baden-Württemberg intends to use the transitional period in order to create alternative creditor protection mechanisms.

#### Implementation of the Understanding in the Landesbank Baden-Württemberg Act

In order to observe the liabilities under the guarantee obligation (Gewährträgerhaftung) and in the interest of the capital markets the following procedure is contemplated which will be implemented in the Landesbank Baden-Württemberg Act:

*"The owners of the Landesbank as of July 18, 2005 are liable for the satisfaction of all liabilities of Landesbank existing at that point in time. This applies without a time limit for liabilities agreed until July 18, 2001; it applies to liabilities agreed thereafter until July 18, 2005 only if their maturity does not extend beyond December 31, 2015. The owners will immediately honor their liability from the guarantee obligation towards creditors of the liabilities agreed until July 18, 2005, as soon as they have stated in due manner and in writing on their maturity that the creditors of such obligations cannot be satisfied out of the assets of the institution. The owners are jointly and severally liable; among themselves, each such owner is liable pro rata in accordance with its respective capital share."*

This procedure does not require a notification in accordance with state aid law. It provides the opportunity to honor liabilities immediately upon their maturity. The internationally recognized rating agencies basically confirmed the good rating of the Landesbanken.

The continuous information of the owners by the Landesbank Baden-Württemberg and their participation in various committees of the Landesbank ensures that the owners are always informed with regard to the liquidity and credit standing situation. This "early warning system" of the Landesbank warrants that the owner is able to react immediately.

#### Result

It is thus ensured that irrespective of the maturity period the creditors of liabilities of Landesbank Baden-Württemberg that already existed on 18 July 2001 (inclusive) are fully protected by the maintenance obligation until 18 July 2005 and by the guarantee obligation for an unlimited period of time.

Creditors of liabilities that come into existence between 19 July 2001 and 18 July 2005 and whose term of maturity does not go beyond 31 December 2015, are fully protected by the "grandfathering" of the guarantee obligation.

For creditors of liabilities created as of 19 July 2001 with a term of maturity which does not go beyond 18 July 2005, the maintenance obligation and the guarantee obligation apply in full.

A notification in accordance with state aid law is not required.

Please do not hesitate to contact us for any further information.

Landesbank Baden-Württemberg

#### Enclosures:

- "Understanding on Anstaltslast and Gewährträgerhaftung" of 17 July 2001
- "Press Release on the Implementation of the Understanding of 17 July 2001" jointly issued by DSGV and BMF (unofficial non-binding translation)
- "EU Agree Plan Ending State Aid of Public Banks" (Press Release of the European Commission of 28 February 2002)