

## FEDERAL BANKING ACT (Bankwesengesetz – BWG)

Federal Law Gazette No.	
532/1993	original version
<b>as amended by Federal Law Gazette No.</b>	
639/1993	
917/1993	
505/1994	
730/1994	
22/1995	
50/1995	
383/1995	
255/1996	
304/1996	
445/1996	
446/1996	
680/1996	
742/1996	
753/1996	
757/1996	
<b>as amended by Federal Law Gazette I No.</b>	
58/1997	
63/1997	
106/1997	
114/1997	
11/1998	
126/1998	
153/1998	
49/1999	
63/1999	
76/1999	
123/1999	
25/2000	
33/2000	
135/2000	
2/2001	

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).



97/2001	Federal Act on the Institution and Organisation of the Financial Market Authority (Financial Market Authority Act)
45/2002	E-Money Act
100/2002	Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons
131/2002	
163/2002	
33/2003	Amendment 2003 to the Insurance Supervision Act
35/2003	Amendment to the Banking Act, the Capital Market Act, the Insurance Supervision Act and the Financial Market Authority Act (Money Laundering and Terrorist Financing - Implementation of the Special Recommendations of the FATF)
36/2003	
80/2003	Real Estate Investment Fund Act
98/2003	
13/2004	
<b>as amended by Federal Law Gazette II No.</b>	
94/2004	
<b>as amended by Federal Law Gazette I No.</b>	
70/2004	Financial Conglomerates Act
131/2004	Implementation of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on Insurance Mediation into national Austrian legislation
161/2004	Act on the Application of International Accounting Standards 2004
32/2005	
33/2005	
59/2005	Act amending Austrian company law
124/2005	Addendum to the Law amending the Commercial Code
48/2006	Financial Market Authority Amendment Act 2005
104/2006	Cooperative Law Amendment Act 2006
141/2006	Implementation of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions as well as Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions into national Austrian legislation ( <b>Basel II</b> )

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19/2007	
60/2007	Securities Supervision Act 2007 – Implementation of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments into national Austrian legislation (Markets in Financial Instruments Directive – <b>MiFID</b> )
108/2007	Financial Market Supervision Reform Implementation of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing into national Austrian legislation (3rd Money Laundering Directive)
2/2008	
70/2008	
136/2008	
22/2009	
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## I. General provisions

### Credit Institutions and Financial Institutions

**Article 1.** (1) The term "credit institution" refers to an institution authorised to carry out banking transactions on the basis of Article 4 or Article 103 no. 5 of this federal act, or on the basis of special provisions under Austrian federal law. Banking transactions include the following activities if carried out for commercial purposes:

1. The acceptance of funds from other parties for the purpose of administration or as deposits (deposit business);
2. The provision of non-cash payment transactions, clearing services and current-account services for other parties (current account business);
3. The conclusion of money-lending agreements and the extension of monetary loans (lending business);
4. The purchase of cheques and bills of exchange, and in particular the discounting of bills of exchange (discounting business);
5. The safekeeping and administration of securities for other parties (custody business);
6. The issuance and administration of payment instruments such as credit cards, bankers' drafts and traveller's cheques, with no limitation applicable to the term of crediting in the case of credit cards;
7. Trading for one's own account or on behalf of others in:
  - a) Foreign means of payment (foreign exchange and foreign currency business);
  - b) Money-market instruments;
  - c) Financial futures contracts, including equivalent instruments settled in cash as well as call and put options on the instruments listed in lit. a and d to f, including equivalent instruments settled in cash (futures and options business);
  - d) Interest-rate futures contracts, forward rate agreements (FRAs), interest-rate and currency swaps as well as equity swaps;
  - e) Transferable securities (securities business);
  - f) Derivative instruments based on lit. b to e;  
unless these instruments are traded for private assets;
- 7a. trading in financial instruments pursuant to Article 1 para. 1 no. 6 lit. e to g and j Securities Supervision Act 2007 (*Wertpapieraufsichtsgesetz 2007 – WAG 2007*, Federal Law Gazette I No. 60/2007), for the credit institution's own account or on behalf of others, except in the case of trading conducted by persons pursuant to Article 2 para. 1 nos. 11 and 13 Securities Supervision Act 2007;
8. The assumption of suretyships, guarantees and other forms of liability for other parties where the obligation assumed is monetary in nature (guarantee business);
9. The issuance of mortgage bonds, municipal bonds and covered bank bonds as well as the investment of proceeds from such instruments in accordance with the applicable legal provisions (securities underwriting business);

10. The issuance of other fixed-income securities for the purpose of investing the proceeds in other banking transactions (miscellaneous securities underwriting business);
11. Participation in underwriting third-party issues of one or more of the instruments listed under no. 7 lit. b to f as well as related services (third-party securities underwriting business);
12. The acceptance of building savings deposits and the extension of building loans in accordance with the Building Society Act (*Bausparkassengesetz – BSpG*) (building savings and loan business);
13. The management of investment funds in accordance with the Investment Fund Act 1993 (*Investmentfondsgesetz – InvFG 1993*), Federal Law Gazette No. 532/1993 Article II (investment fund business);
- 13a. The management of real estate investment funds in accordance with the Real Estate Investment Fund Act (*Immobilien-Investmentfondsgesetz – ImmoInvFG*), Federal Law Gazette I No. 80/2003 (real estate investment fund business);
14. The establishment or management of participation funds in accordance with the Participation Fund Act (*Beteiligungsfondsgesetz*, Federal Law Gazette No. 111/1982 (participation fund business);
15. The business of financing through the acquisition and resale of equity shares (capital financing business);
16. The purchase of trade receivables, assumption of the risk of non-payment associated with such receivables – with the exception of credit insurance – and the related collection of trade receivables (factoring business);
17. The conduct of money brokering transactions on the interbank market;
18. The brokering of transactions as specified in
  - a) No. 1, except for transactions conducted by contract insurance undertakings;
  - b) No. 3, except for the brokering of mortgage loans and personal loans by real estate agents, personal loan and mortgage loan brokers, and investment advisors;
  - c) No. 7 lit. a where this applies to foreign exchange transactions;
  - d) No. 8.
19. removed (*Federal Law Gazette I No. 60/2007*)
20. The issuance of electronic money (e-money business);
21. The acceptance and investment of severance payment contributions from salaried employees and self-employed persons (severance and retirement fund business);
22. The purchase of foreign means of payment (e.g. notes and coins, cheques, traveller's letters of credit and payment orders) over the counter and the sale of foreign notes and coins as well as traveller's cheques over the counter (exchange bureau business);
23. removed

(2) The term "financial institution" refers to an institution which is not a credit institution as defined under para. 1 and which is authorised to conduct one or more of the following activities for commercial purposes if they are conducted as the institution's main activities:

1. The conclusion of lease agreements (leasing business);

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2. *removed*;
3. The provision of advice to undertakings on capital structure, industrial strategy and related questions, as well as advice and services related to mergers and the purchase of undertakings;
4. *removed*;
5. The provision of credit reporting services;
6. The provision of safe deposit services;
7. The provision of payment services pursuant to Article 1 para. 2 of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*), Federal Law Gazette I No. 66/2009.

(3) Credit institutions are also authorised to carry out the activities listed in para. 1 no. 22 (exchange bureau business) as well as para. 2 nos. 1 to 6, and to provide the remittance services described in Article 1 para. 2 no. 5 of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*) as well as the activities described in Article 5 para. 2 no. 2 of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*), and to carry out all other activities which are directly related to banking activities in accordance with the scope of the respective licence or which constitute ancillary services to such banking activities; specific examples include the brokering of building savings plans, of undertakings and businesses, of investment fund shares and of equity shares, the provision of services in the field of automated data processing as well as the sale of credit cards. In addition, credit institutions are authorised to trade in coins and medals as well as gold bars within the limits of legal provisions applying to foreign exchange, and to rent out safe deposit boxes under joint access agreements. Credit institutions are also authorised to carry out the activities indicated in Article 3 para. 2 nos. 1 to 3 Securities Supervision Act 2007 (*Wertpapieraufsichtsgesetz 2007 – WAG 2007*). Credit institutions that hold a licence in accordance with para. 1 no. 1 and no. 3 or in accordance with para. 1 no. 2, are authorised to perform the payment services described in Article 1 para. 2 nos. 1 to 4 and 6 of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*) and credit institutions that hold a licence in accordance with para. 1 no. 6 are authorised to perform the payment services described in Article 1 para. 2 nos. 4 and 6. In all other respects, the provision of professional payment services in accordance with Article 1 para. 2 of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*) requires an FMA licence in accordance with the licence requirements set forth in the Austrian Banking Act (BWG).

(4) The Federal Minister of Finance may issue regulations which amend or expand the list of activities under paras. 1 and 2 where necessary due to sufficiently defined obligations arising from the Republic of Austria's accession to the European Union. In cases where the list of activities under para. 2 is amended or expanded, the Federal Minister of Finance must issue such regulations in consultation with the Federal Minister of Economics and Labour.

(5) In decisions on legal disputes arising from banking transactions, a defence stating that a claim is based on a speculation on differences which can be classified as gambling or betting will not be

admissible if at least one of the parties to the agreement is authorised to conduct such banking transactions for commercial purposes.

(6) Article 1346 para. 2 of the General Civil Code (*Allgemeines Bürgerliches Gesetzbuch – ABGB*) does not apply to liabilities assumed by credit institutions in the course of their business activities.

## Definitions

**Article 2.** For the purposes of this federal act, the terms listed below are defined as follows:

1. Directors:

- a) Those natural persons authorised by law or the articles of association to manage the business of and legally represent the credit institution or financial institution;
- b) In the case of credit cooperatives: those natural persons entrusted with managing the business and appointed as directors by the management board, supervisory board or the general meeting; full powers of commercial representation (Article 48 Commercial Code; *Handelsgesetzbuch – HGB*) and commercial powers of attorney (Article 54 Commercial Code) notwithstanding, only directors are authorised to represent the credit cooperative; the appointment of directors is to be entered in the Commercial Register;
- c) In the case of branches of foreign credit institutions or financial institutions, those natural persons authorised to manage the business of and represent the branch;

2. Participation: the direct or indirect ownership of at least 20% of the voting rights or capital of another undertaking; in this context, it is irrelevant whether or not shares are evidenced in the form of securities; if less than 20% of the voting rights or capital of another undertaking is held, then a participation is still considered to exist if the shares are held for the purpose of supporting one's own business operations by means of a permanent connection with that undertaking; personally liable partners in a commercial-law partnership are always considered to own a participation in the partnership;

3. Qualifying participation: a direct or indirect participation in an undertaking which represents 10% or more of the capital or voting rights in an undertaking, or which makes it possible to exercise significant influence over the management of that undertaking; Article 91 paras. 1a to 2a in conjunction with Articles 92 and 92a paras. 2 and 3 of the Stock Exchange Act 1989 (*Börsegesetz 1989*) applies to the calculation of voting rights with regard to Article 4 para. 3 no. 5 and Article 5 para. 1 no. 3 and to the calculation of voting rights with regard to Articles 20 to 20b and Article 21 para. 1 no. 2; in the cases of Articles 20 to 20b and Article 21 para. 1 no. 2 of this federal act, the voting rights or capital shares held by investment firms or credit institutions as a result of the underwriting of financial instruments or placing of financial instruments on a firm commitment basis under Article 1 no. 2 lit. f Securities Supervision Act (*Wertpapieraufsichtsgesetz, WAG 2007*) shall not be taken into consideration, provided that these rights are not exercised nor otherwise used to intervene in the management of the issuer and are sold within one year of the date of acquisition;

4. Articles of association: the articles of association or cooperative society's charter, depending on the legal form of the undertaking;
5. Member State: any state which belongs to the European Economic Area;
- 5a. Central government: the Austrian federal government as well as the central governments of Member States and of third countries;
- 5b. Regional governments and local authorities: the provinces/states, municipalities, regional governments and local authorities of Member States and third countries;
6. Home Member State:
  - a) In the case of credit institutions: the Member State in which a credit institution as defined in Article 4 (1) of Directive 2006/48/EC is authorised and established;
  - b) In the case of investment firms:
    - aa) If they are natural persons: the Member State in which their head office is located;
    - bb) If they are legal persons: the Member State in which the firm's registered office is located, or, if it does not have a registered office under applicable national law, the Member State in which its head office is located;
  - c) In the case of markets: the Member State in which the registered office of the entity responsible for trading is located, or, if the entity does not have a registered office under applicable national law, the Member State in which its head office is located;
7. Host Member State: The Member State in which
  - a) a credit institution or
  - b) a credit institution as defined in Article 4 (1) of Directive 2006/48/EC or an investment firm as defined in Article 4 (1) (1) of Directive 2004/39/EC which is authorised in another Member State has a branch or provides services;
8. Third country: any state which does not belong to the European Economic Area;
9. Competent authorities: those national authorities in Member States which are empowered by law, regulations or administrative provisions to supervise credit institutions or investment firms;
- 9a. Central bank:
  - a) the Oesterreichische Nationalbank;
  - b) any central bank in a Member State;
  - c) the European Central Bank;
  - d) any central bank in a third country;
- 9b. Public-sector entities: non-commercial administrative bodies responsible to the Austrian federal government, provinces and municipalities or other central governments, regional governments, local authorities or other authorities which exercise the same responsibilities, and non-commercial undertakings owned by the Austrian federal government or central governments that have explicit guarantee arrangements, as well as self-administered bodies governed by law that are under public supervision;
- 9c. Consolidating supervisor: the competent authority responsible for the exercise of supervision on a consolidated basis of EEA parent credit institutions (no. 11b) and credit institutions controlled by EEA parent financial holding companies (no. 25b);

10. Initial capital: capital pursuant to Article 23 para. 1 nos. 1 and 2, less accumulated loss and material losses in the current financial year;
11. Parent undertaking: A parent undertaking as defined in Article 244 paras. 1 and 2 Commercial Code, subject to the following provisions:
  - a) The legal form of the undertaking and its place of establishment must not be taken into account;
  - b) The provisions of Article 244 paras. 4 and 5 Commercial Code must be applied;
  - c) The definition of participations under Article 2 no. 2 must be applied.
- 11a. Parent credit institution in a Member State: a credit institution which is established in a Member State, is superordinate to a credit institution or financial institution pursuant to Article 30 para. 1 and is not simultaneously subordinate to another credit institution authorized in the same Member State or to a financial holding company set up in the same Member State pursuant to Article 30 para. 1 nos. 1 to 6;
- 11b. EEA parent credit institution: a parent credit institution in a Member State which is not subordinate to another credit institution authorised in a Member State or to a financial holding company set up in a Member State pursuant to Article 30 para. 1 nos. 1 to 6;
12. Subsidiary: a subsidiary undertaking as defined in Article 244 paras. 1 and 2 Commercial Code, subject to the following provisions:
  - a) The legal form of the undertaking and its place of establishment must not be taken into account;
  - b) The provisions of Article 244 paras. 4 and 5 Commercial Code must be applied;
  - c) The definition of participations under Article 2 no. 2 must be applied;
13. Foreign credit institution: an institution authorised in accordance with the legal provisions of its country of establishment to conduct business as defined in Article 1 para. 1 outside of the Member States;
14. Foreign financial institution: an institution authorised in accordance with the legal provisions of its country of establishment to conduct business as defined in Article 1 para. 2 outside of the Member States;
15. Authorisation: an instrument which is issued by the authorities in any form and by which the right to conduct the business of a credit institution as defined in Article 4 (1) of Directive 2006/48/EC is granted;
16. Branch: a place of business which forms a legally dependent part of a credit institution, financial institution or investment firm and which carries out directly all or some of the transactions inherent in the business of credit institutions, financial institutions or investment firms;
17. Representative office: a place of business which forms a legally dependent part of a credit institution not authorised in Austria and which does not carry out transactions pursuant to Article 1 para. 1;
18. *removed (Federal Law Gazette I No. 141/2006)*
19. *removed (Federal Law Gazette I No. 141/2006)*



20. *removed (Federal Law Gazette I No. 141/2006)*
21. *removed (Federal Law Gazette I No. 141/2006)*
22. Non-bank: any undertaking, including its branches, which is neither a credit institution established in Austria nor a credit institution (as defined in Article 4 (1) of Directive 2006/48/EC) authorised in another Member State or third country.
23. By way of derogation from Article 1 para. 1, the term "credit institution" in the provisions listed below refers to all credit institutions established in Austria as well as all credit institutions authorised in another Member State or third country as defined in Article 4 (1) of Directive 2006/48/EC, including their branches:
  - a) Nos. 9, 16, 17, 25 and 26;
  - b) Article 21 para. 1 no. 1 if at least one of the credit institutions involved is a credit institution as defined in Article 1 para. 1;
  - c) Article 21 para. 1 no. 2 if the credit institution acquiring the voting rights or capital is a credit institution as defined in Article 1 para. 1;
  - d) Article 22b para. 9 no. 4;
  - e) Article 23 para. 13 for those credit institutions in which a participation is held;
  - f) Article 24 para. 1, para. 3 nos. 2 and 3, and para. 4;
  - g) Article 25 paras. 4, 8 and 10 no. 5 (first half sentence);
  - h) Article 27 para. 6 no. 1 lit. f, g and k, no. 4 and para. 17 nos. 2 and 3 and para. 22;
  - i) Article 30 with regard to subordinate credit institutions;
  - j) Articles 51 to 54;
  - k) Article 59;
  - l) Article 77a para. 2 nos. 2 and 3;
  - m) Article 93 para. 5;
  - n) Annex 2 to Article 43;
- 23a. Institutions: credit institutions, investment firms and all credit institutions as defined in Article 4 (1) of Directive 2006/48/EC which are authorised in a Member State or third country; Article 30 is to remain unaffected by this definition;
24. By way of derogation from Article 1 para. 2, the term "financial institution" in the provisions listed below also refers to all financial institutions as defined in Article 4 (5) of Directive 2006/48/EC which are established outside Austria:
  - a) Article 25;
  - b) Article 22b para. 9 no. 4;
  - c) Article 23 para. 13 for those financial institutions in which a participation is held;
  - d) Article 24 para. 1, para. 3 nos. 2 and 3, and para. 4;
  - e) Article 30 with regard to subordinate financial institutions;
  - f) Article 77a para. 2 nos. 2 and 3;
  - g) Article 93 para. 5 no. 1;
25. Financial holding company: a legal person or an undertaking
  - a) which is not a credit institution;

- b) the principal activity of which is to acquire participations or to carry out one or more of the activities listed in points 2 to 12 of Annex I to Directive 2006/48/EC;
  - c) the subordinate institutions (Article 30) of which are exclusively or predominantly credit institutions, investment firms or financial institutions; this is to be based not on the number of subordinate institutions but on economic criteria, especially total assets, the amount of equity capital and the book value of the participation;
  - d) the subordinate institutions of which include at least one credit institution or one investment firm; and
  - e) which is not a mixed financial holding company as defined in Article 2 para. 15 Financial Conglomerates Act (*Finanzkonglomeratengesetz - FKG*), Federal Law Gazette I No. 70/2004;
- 25a. Parent financial holding company in a Member State: a financial holding company which is not subordinate to another credit institution authorised in the same Member State or to a financial holding company set up in the same Member State pursuant to Article 30 para. 1 nos. 1 to 6;
- 25b. EEA parent financial holding company: a parent financial holding company in a Member State which is not subordinate to a credit institution authorised in a Member State or to another financial holding company set up in a Member State pursuant to Article 30 para. 1 nos. 1 to 6;
26. Mixed-activity holding company: a legal person or undertaking (which includes any legal person) which is not a credit institution, an investment firm, a mixed financial holding company as defined in Article 2 para. 15 Financial Conglomerates Act, or a financial holding company, and the subsidiaries of which include at least one credit institution or one investment firm;
27. Ancillary services undertaking: an undertaking
- a) the activities of which form a direct extension of banking activities; or
  - b) the principal activity of which consists in owning or managing property, managing or operating data processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;
28. Close links: a situation in which two or more natural or legal persons are linked in any of the following ways:
- a) The direct ownership of a participation;
  - b) The existence of a parent-subsidiary relationship; in this context, all subsidiaries of subsidiary undertakings are also considered subsidiaries of the undertaking that is their original parent; or
  - c) A relationship between natural or legal persons in which each of those persons is linked (as defined in no. 2) to the same third person;
29. Investment service: An investment service or investment activities pursuant to Article 1 no. 2 Securities Supervision Act 2007;
30. Investment firm:



- a) An investment firm pursuant to Article 3 Securities Supervision Act 2007;
  - b) a recognised investment firm;
  - c) an undertaking which is established in a foreign country, which is not a recognized investment firm, and which conducts transactions as defined in Article 1 para. 1 no. 7 lit. b to f, no. 11 or Article 3 para. 2 nos. 1 to 3 Securities Supervision Act 2007;
31. Recognised investment firm:
- a) An undertaking which is established in a Member State, conducts transactions as defined in Article 1 para. 1 no. 7 lit. b to f or no. 11 and is subject to the provisions of Directive 2004/39/EC;
  - b) An undertaking which is established in a third country and
    - aa) conducts transactions as defined in Article 1 para. 1 no. 7 lit. b to f or no. 11;
    - bb) is authorised in a third country that is represented in the Basel Committee on Banking Supervision, and
    - cc) is subject to supervisory rules which are at least equivalent to the European Union's minimum standards for investment firms; an undertaking which only receives and transmits investors' orders without holding money or securities belonging to its clients and which for that reason may not at any time place itself in debt with those clients is not considered a recognised investment firm;
32. Recognised exchange: a regulated market as defined in Article 1 para. 2 of the Stock Exchange Act 1989 (Federal Law Gazette No. 555/1989) and equivalent markets in third countries which are regulated and supervised by a government authority or a government recognized authority, function regularly and are accessible to the public directly or indirectly via a clearing member; a market in a third country is considered equivalent to a regulated market if it is subject to rules equivalent to those set forth under Title III of Directive 2004/39/EC;
33. Recognised clearing house: an organisation which
- a) is regulated and supervised by a government authority or a government-recognised authority;
  - b) is directly accessible to members or indirectly accessible to non-members via a clearing member;
  - c) executes financial service transactions and itself acts as a counterparty in those transactions; and
  - d) requires its settlement partners to contribute reasonable margins to cover risks;
34. Financial instruments: instruments of the capital market or money market which give rise to a financial asset for one party and a financial liability or equity instrument for another party, in particular
- a) Money-market instruments;
  - b) Derivative instruments pursuant to nos. 1 to 4 of Annex 2 to Article 22, also including all options sold;
  - c) Securities;

- d) Shares in foreign investment funds as defined in Article 24 para. 1 of the Investment Fund Act 1993 as long as these do not constitute securities;
- 35. Investment fund shares:
  - a) Shares in an investment fund of a domestic investment fund management company as defined in Article 1 para. 1 of the Investment Fund Act 1993;
  - b) Shares in an investment fund which is subject to the provisions of Directive 85/611/EEC;
  - c) Shares in other securities investment funds;
- 36. Over-the-counter (OTC) derivative instruments: over-the-counter derivative instruments as defined in Annex 2 to Article 22 and options written on the financial transactions listed in nos. 1 to 4 of that Annex which are not traded on a recognised exchange with daily remargining or settled via a recognised clearing house;
- 37. Regulated market: a market pursuant to Article 1 para. 2 Stock Exchange Act;
- 38. *removed (Federal Law Gazette I No. 141/2006)*
- 39. *removed (Federal Law Gazette I No. 141/2006)*
- 40. Debt instruments: securities which evidence debt claims as well as the financial instruments derived from them;
- 41. Equity instruments: shares of stock, participation certificates and other securities which evidence an equity interest as well as financial instruments derived from them; equity indices refer to indices which consist of equity instruments;
- 42. Warrant: a security which gives the holder the right to purchase or sell a certain number of debt instruments or equity instruments at a stipulated price until the expiry date of the warrant and in which it is irrelevant whether the transaction is settled by the delivery of the underlying asset or by cash settlement;
- 43. Stock financing: positions where physical stock has been sold forward and the cost of funding has been locked in until the date of the forward sale;
- 44. Repurchase agreements and reverse repurchase agreements: agreements in which an institution or its counterparty transfers securities, commodities or guaranteed rights relating to title to securities or commodities where that guarantee is issued by a recognised exchange which holds the rights to the securities or commodities and the agreement does not allow an institution to transfer or pledge a particular security or commodity to more than one counterparty at one time. The transfer is subject to a commitment to repurchase these assets– or substituted assets of the same description – at a specified price on a future date specified, or to be specified, by the transferor; if the time of repurchase is defined by the transferee, then the transaction is referred to as a sale with an option to repurchase. This is a repurchase agreement for the institution selling the securities or commodities, and a reverse repurchase agreement for the institution buying the securities or commodities.
- 45. Securities or commodities lending or borrowing: agreements under which an institution or its counterparty transfers securities or commodities. This transfer is subject to a commitment that the borrower will return equivalent securities or commodities at some future date or when requested to do so by the transferor. The transaction is securities or commodities

lending for the institution transferring the securities or commodities, and securities or commodities borrowing for the institution to which they are transferred.

46. *removed (Federal Law Gazette I No. 141/2006)*
47. *removed (Federal Law Gazette I No. 141/2006)*
48. Clearing member: a member of a recognised exchange or a recognised clearing house which has a direct contractual relationship with the central counterparty (market guarantor); nonmembers of the exchange or clearing house are obliged to settle their transactions through a clearing member;
49. Delta: the factor indicating the expected change in an option price as a proportion of a small change in the price of the instrument underlying the option, each expressed in monetary units;
50. *removed (Federal Law Gazette I No. 141/2006)*
51. *removed (Federal Law Gazette I No. 141/2006)*
52. *removed (Federal Law Gazette I No. 141/2006)*
53. Interest-based financial instruments: financial instruments whose market value or present value depends on market interest rates;
54. Gamma risk: the sensitivity of the delta to changes in the price of the underlying instrument;
55. Vega risk: the sensitivity of the option price to fluctuations in the volatility of the underlying instrument;
56. Scenario matrix method: the calculation of option risks by revaluing these risks on the basis of different scenarios;
57. Credit risk: the risk of a partial or complete default on contractually agreed payment obligations; Article 51 para. 14 is to remain unaffected by this definition;
- 57a. Residual risk from credit risk mitigation techniques: the risk that the recognised credit risk mitigation techniques employed by the credit institution will be less effective than expected;
- 57b. Concentration risk: the potential adverse consequences which may arise from concentrations or interactions between similar and different risk factors or risk types, such as the risk arising from loans to the same client, to a group of connected clients, to clients from the same geographic region or industry, or to clients who offer the same goods and services, as well as the risk arising from the use of credit risk mitigation techniques and in particular from large indirect credit exposures;
- 57c. Securitisation risk: the risk arising from securitisation transactions in which the credit institution acts as investor, originator or sponsor; including reputational risks such as arise in relation to complex structures or products;
- 57d. Operational risk: the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk;
- 57e. Market risk:
  - a) the specific and general position risk arising from interest-based instruments;
  - b) the specific and general position risk arising from equity instruments;
  - c) the risk arising from equity index futures;

- d) the risk arising from investment fund shares;
  - e) the other risks associated with options;
  - f) commodities risk; and
  - g) the risk arising from positions in foreign currencies and gold;
58. Electronic money (e-money): a monetary value which is stored on an electronic device in exchange for "small" monetary amounts and which is accepted as a means of payment by undertakings other than the issuer. The value of e-money stored on electronic devices must not exceed EUR 2,000.00 per client and e-money institution (Article 1 E-Money Act; *EGeldgesetz*). The exchange price must not be lower than the amount of e-money issued. The acceptance of the monetary amount does not constitute the acceptance of deposits or other repayable funds pursuant to Article 5 of Directive 2006/48/EC or deposit business as defined in Article 1 para. 1 no. 1 if the amount accepted is exchanged directly for e-money. E-money is not subject to Article 1 para. 1 no. 6; e-money does not constitute a deposit, nor is it subject to Article 93 paras. 2 and 2a.
59. Severance payment contributions: contributions pursuant to Articles 6 and 7 of the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (*Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz – BMSVG*; Federal Law Gazette I No. 100/2002) which were actually paid into the severance and retirement fund, including any interest charged for late payments;
- 59a. Severance fund contributions from self-employed persons: contributions pursuant to Articles 52 and 64 of the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (*Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz - BMSVG*), which have actually been paid into the severance and retirement fund (BV-Kasse), including any interest charged for late payments;
60. Special purpose vehicle: a company whose sole purpose of business is to carry out securitisation transactions and which is structured in such a way as to separate the company's own obligations from those of the originator, and whose legal and economic owners can pledge or sell the associated rights without restriction; if the sole business activity of the special purpose vehicle consists in issuing debt securities, in taking out loans, in entering into hedges and ancillary transactions based on this business activity in order to purchase an originator's receivables pursuant to Article 22 para. 2 or to assume the risk associated with such receivables, this business activity does not constitute banking business; however, with regard to exposures pursuant to Article 22 para. 2 where the originator is a credit institution, the special purpose vehicle is obliged to comply with Article 38 in the same way as the credit institution which acts as originator and the credit institution which is assigned responsibility for administering the exposures;
61. Securitisation: any documented and coherent transaction or structure in which the credit risk associated with an exposure or a portfolio of exposures is transferred to investors in a securitisation deal, and in which the payments effected in this transaction or structure depend on the satisfaction of the claim or the claims contained in the pool and the seniority

of securitisation tranches determines the distribution of losses during the term of the securitisation;

62. Traditional securitisation: a securitisation in which the originator transfers credit risk by transferring ownership of the receivables;
63. Synthetic securitisation: a securitisation in which the originator transfers credit risk without transferring ownership of the receivables;
64. Securitisation tranche: a contractually delimited part of the credit risk associated with a securitised exposure or a securitised portfolio where a position in this part is subject to a higher or lower risk of loss than a position of the same amount in each of the other parts; the collateral provided directly by third parties for the holders of securitisation positions is not taken into account in this context;
65. Securitisation position: an exposure to a securitisation;
66. Credit enhancement: any contractual agreement intended to improve the credit quality of a securitisation position; this includes credit enhancement by means of subordinate securitisation tranches as well as other forms of credit risk mitigation;
67. Originator: an undertaking which transfers its own exposures pursuant to Article 22 para. 2, potential exposures pursuant to Article 22 para. 2, or the risks arising from those exposures in a securitisation deal; the exposures of closely linked undertakings are considered equivalent to that undertaking's own exposures and potential exposures;
68. Sponsor: a credit institution which establishes and manages a securitisation programme but is not the originator of the securitisation programme;
69. Securitisation investor: any party who assumes or bears the risk associated with a securitisation deal and is neither the originator nor the sponsor of the securitisation; providers of protection for securitisation positions are considered to be investors in those securitization positions;
70. Cash-assimilated instrument: a certificate of deposit or other similar instrument issued by the lending credit institution;
71. Contractual netting agreements: bilateral contracts for novation and other bilateral netting agreements; a bilateral contract for novation is considered to exist where mutual claims and obligations are automatically amalgamated in such a way that this novation fixes one single net amount each time novation applies and thus creates a legally binding, single new contract extinguishing former contracts;
72. Politically exposed persons: natural persons who are entrusted with prominent public functions and their immediate family members or persons known to be close associates of such persons; without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function for a period of at least one year, credit and financial institutions shall not be obliged to consider such a person politically exposed.

a) In this context, "prominent public functions" refer to the following:

aa) heads of state, heads of government, ministers and deputy or assistant ministers;

- bb) members of parliaments;
  - cc) members of supreme courts, constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
  - dd) members of courts of auditors or of the boards of central banks;
  - ee) ambassadors, chargés d'affaires or high-ranking officers in the armed forces;
  - ff) members of the administrative, management or supervisory bodies of state-owned enterprises. Sublit. aa to ee also apply to positions at the Community level and to positions in international organisations.
- b) The following are considered to be "immediate family members":
- aa) spouses;
  - bb) partners who are considered equivalent to spouses under national law;
  - cc) children and their spouses or partners considered equivalent to spouses under national law;
  - dd) parents.
- c) The following are considered to be "persons known to be close associates":
- aa) any natural person who is known to have joint beneficial ownership of a legal entity (such as a foundation) or of a trust with a person entrusted with a prominent public function, or who has other close business relations with a person entrusted with a prominent public function;
  - bb) any natural person who has sole beneficial ownership of a legal entity (such as a foundation) or of a trust which is known to have been set up de facto for the benefit of a person entrusted with a prominent public function;
73. Business relationship for the purposes of Articles 40 et seq.: any business, professional or commercial relationship which is connected with the professional activities of the institutions and persons covered by this federal act and which is expected, at the time when the contact is established, to have an element of duration;
74. Shell bank: a credit institution pursuant to no. 23 or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group.
75. Beneficial owner for the purposes of Articles 40 et seq.: the natural persons who ultimately own or control the customer. In particular, the term "beneficial owner" includes the following:
- a) in the case of corporate entities:
    - aa) the natural persons who ultimately own or control a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including ownership or control through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25% plus one share is considered sufficient to meet this criterion;



- bb) the natural persons who otherwise exercise control over the management of a legal entity;
- b) in the case of legal entities such as foundations, and in the case of trusts which administer and distribute funds:
  - aa) where the future beneficiaries have already been determined, the natural persons who are the beneficiaries of 25% or more of the property of a trust or legal entity;
  - bb) where the individuals who benefit from the trust or legal entity have yet to be determined, the class of persons in whose main interest the trust or legal entity is set up or operates;
  - cc) the natural persons who exercise control over 25% or more of the property of a trust or legal entity.

### **Exceptions**

**Article 3.** (1) The provisions of this federal act do not apply to:

1. the Oesterreichische Nationalbank, notwithstanding the duties assigned under this federal act;
2. *removed*;
3. the Austrian postal service with regard to its money transactions, with the exception of those covered by Articles 40 to 41 and Article 99 no. 19; Article 98 no. 5 shall apply to the Austrian postal service with regard to its monetary transactions;
4. Regional governments or local authorities which grant credit facilities or loans for the purpose of promotion on the basis of authorisations under federal or provincial law;
5. Official brokers in the conduct of transactions permitted in accordance with Article 35 Stock Exchange Act;
6. Undertakings which are promotion companies, do not receive deposits from the public and at least 51% of which is owned by public bodies, with regard to their capital financing business;
7. the Oesterreichische Kontrollbank Aktiengesellschaft with regard to legal transactions in the context of export promotion pursuant to the Export Promotion Act 1981 (*Ausfuhrförderungsgesetz 1981*) and the Export Finance Promotion Act 1981 (*Ausfuhrfinanzierungsförderungsgesetz 1981*) with regard to Articles 22 to 22q and 25 to 27;
8. the Austrian Science Fund (*Fonds zur Förderung der wissenschaftlichen Forschung – FWF*) pursuant to Article 2 Research and Technology Promotion Act (*Forschungs- und Technologieförderungsgesetz – FTFG*), Federal Law Gazette No. 434/1982, and the Austrian Research Promotion Agency (*Österreichische Forschungsförderungsgesellschaft mbH – FFG*) with regard to the subsidised loans extended by these organisations;
9. the conduct of exchange bureau business (Article 1 para. 1 no. 22) and remittance services (Article 103j para. 2 in conjunction with Article 1 para. 2 no. 5 Federal Act on the Provision of Payment Services, *Zahlungsdienstegesetz - ZaDiG*) with regard to Article 1 para. 3, Article 5 para. 1 nos. 5, 12, and 13, Articles 22 to 23, Article 24, where it would be a superordinate credit institution, Articles 25 to 29, Article 30, where it would be a superordinate credit

institution, Articles 31 and 32, Article 34, Articles 36, 37 and 39a, Articles 42 to 65, unless cooperation in the preparation of consolidated financial statements of the superordinate credit institution is required, Articles 66 to 68, Article 73 para. 1 no. 1, Articles 74 to 76, Article 78 paras. 1 to 7 and Section XIX; the exception for the conduct of remittance services in accordance with Article 103j para. 2 in conjunction with Article 1, para. 2 no. 5 Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*) being limited to 30 April 2011 and only applicable to credit institutions which were granted a licence prior to 25 December 2009; these credit institutions shall apply Article 17 Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*);

10. Credit institutions pursuant to Article 5 no. 3 Corporate Tax Act 1988 (*Körperschaftsteuergesetz 1988 – KStG 1988*) with regard to Articles 22i, 26, 26a, 39a and 74.

(2) The provisions of Article 25 paras. 3 to 14 and Article 74 para. 3 no. 3 are not applicable to:

1. Credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly conduct money-market, syndicated lending, fiduciary or commission business, especially for the federal government or other regional governments or local authorities, and for export finance business;
2. Credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly conduct guarantee business or capital finance business;
3. Credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly grant medium-term or long-term loans for investment purposes and do not grant revolving credit facilities;
4. Credit institutions which are authorised to conduct investment fund business, real estate investment fund business or participation fund business;
5. Existing credit institutions whose annual total balance sheet assets do not exceed EUR 73 million, which do not have a licence to conduct savings deposit business, and whose exclusive purpose of business is to grant medium-term or long-term loans for investment purposes, and for which funds are predominantly raised by issuing debt securities;
6. Credit institutions which do not have a licence to conduct savings deposit business (Article 1 para. 1 no. 1) and, on the basis of their articles of association, exclusively or predominantly issue debt securities the proceeds of which are made available to credit institutions in the same sector if those credit institutions bear joint and several liability;
7. Credit institutions which, on the basis of their articles of association, predominantly conduct factoring business;
8. Credit institutions which exclusively issue and administer credit cards, including the directly associated extension of credit and provision of guarantees;
9. Credit institutions which do not have a licence to accept deposits subject to guarantee obligations pursuant to Article 93 para. 1 and which, on the basis of their articles of



association, refinance themselves exclusively with matching maturities on the interbank market.

(3) The provisions of this federal act do not apply to the following undertakings if they conduct the transactions listed in Article 1 para. 1 as ancillary transactions to their core transactions:

1. Contract insurance undertakings, with the exception of Article 31 para. 2, Article 38 para. 4, Article 39 para. 3, Article 41 paras. 1 to 4, 6 and 7, and Article 75;
2. Pension funds pursuant to the *Pensionskassen Act (Pensionskassengesetz – PKG)*;
3. Undertakings recognised as non-profit housing associations;
4. Social insurance institutions;
5. Undertakings which engage in the pawnbroking business;
6. Recognised investment firms pursuant to Article 2 no. 31 lit. b, local firms which conduct transactions as specified in Article 3 (1) lit. p of Directive 2006/49/EC, and undertakings established in a third country pursuant to Article 15 para. 1 no. 4 Stock Exchange Act, each with regard to the transactions named in Article 1 para. 1 no. 7 lit. b to f, which those undertakings conduct commercially in connection with their membership in a securities exchange as long as they limit their activities in Austria exclusively to the commercial execution of transactions covered by their licences as exchange members; this applies in the same way to such transactions carried out by members of a cooperation exchange (Article 15 para. 5 Stock Exchange Act) as well as the transactions of recognised clearing houses to be conducted in the settlement of exchange transactions. This exceptional provision does not apply to Articles 39 para. 3, 40 and 41; the undertakings mentioned above are also exempt from the provisions of the Trade Act (*Gewerbeordnung – GewO*) with regard to the activities mentioned above.

(4) Article 5 para. 1 no. 5 applies to credit institutions which are authorised to conduct investment fund business, subject to the condition that:

1. EUR 2.5 million in initial capital is applied instead of EUR 5 million. If the value of the fund assets belonging to the investment fund management company exceeds EUR 250 million, the company must have additional own funds at its disposal (Article 23 para. 1 nos. 1 and 2). These additional own funds must be equal to at least 0.02% of the amount by which the value of the investment fund management company's portfolios exceed EUR 250 million. However, if the additional own funds calculated in this way do not exceed the amount of EUR 2,375,000, it is not necessary to allocate additional capital. The maximum amount of additional own funds to be held is EUR 7.5 million. For the purposes of this provision, portfolios include investment funds managed by the investment fund management company, including investment funds for which management has been outsourced to third parties, but not including investment funds which the fund management company itself manages on behalf of third parties; Articles 22 to 22q, 23 para. 6, 26, 26a, 39a and Article 103 no. 9 lit. b are not applicable to credit institutions which hold a licence pursuant to Article 1 para. 1 no. 13;

2. regardless of the capital requirement pursuant to no. 1, the own funds of the investment fund management company must not fall below the amount to be calculated in accordance with Article 9 para. 2 Securities Supervision Act 2007.

(4a) For credit institutions authorised to conduct real estate investment fund business pursuant to Article 1 para. 1 no. 13a, the following applies:

1. Articles 22 to 22q, 23 para. 6, 26, 26a and 39a are not applicable;
2. regardless of the own funds requirement, the credit institution's own funds must not fall below the amount to be calculated in accordance with Article 9 para. 2 Securities Supervision Act 2007.

(5) *removed (Federal Law Gazette I No. 60/2007)*

(6) Article 5 para. 1 no. 5 applies to credit institutions which apply for a licence to conduct e-money transactions exclusively, subject to the condition that EUR 1 million in initial capital is applied instead of EUR 5 million; Article 1 para. 3, Article 25 paras. 3 to 14, Article 29 and Article 74 para. 3 no. 3 do not apply to credit institutions which are exclusively authorised to conduct e-money transactions; Article 69a para. 2 applies to credit institutions which are exclusively authorised to conduct e-money transactions, subject to the condition that the overall minimum capital requirement calculated on the basis of the minimum capital requirement pursuant to Article 4 E-Money Act as shown in the quarterly report pursuant to Article 5 E-Money Act for the fourth quarter of the last calendar year in conjunction with the minimum capital requirement in that paragraph must be used in the calculation of the cost figure.

(7) Credit institutions authorised to conduct severance and retirement fund business

- a) are subject to Article 5 para. 1 no. 5 on the condition that EUR 1.5 million in initial capital is applied instead of EUR 5 million;
- b) are subject to Article 69a para. 2 on the condition that the own funds requirement pursuant to Article 20 Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons for the fourth quarter of the last calendar year as shown in the quarterly report pursuant to Article 39 Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons must also be used in the calculation of the cost figure;
- c) are not subject to Article 1 para. 3, Articles 22 to 22q, Article 23 para. 6, Article 25 paras. 3 to 14, Articles 26, 26a, 29, 39a and Article 74 para. 3 no. 3. Article 27 does not apply to the assets of the fund;
- d) must not allow the capital of the severance and retirement fund to fall below the amount calculated in accordance with Article 9 para. 2 Securities Supervision Act at any time, regardless of the capital requirements pursuant to no. 1 and Article 20 Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons; Annex 1 to Article 40 Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons, Form B, Item B.2. must be used for the calculation of operating expenses.

(8) For credit institutions, which are authorised to conduct investment fund business, real estate investment fund business or severance and retirement fund business, Article 70 para. 1 no. 3 shall apply in that on-site inspections shall be performed by the FMA; such on-site inspections shall also include the respective custodian banks with regard to compliance with the provisions of the Investment Fund Act (*Investmentfondsgesetz - InvFG 1993*), the Real Estate Investment Fund Act (*Immobilien-Investmentfondsgesetz - ImmoInvFG*) or the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons (*Betriebliches Mitarbeiter- und Selbständigenvorsorgegesetz - BMSVG*). Article 70 para. 1a and 1b and Article 79 para. 4 shall not apply to these credit institutions. Article 79 para. 4a are applicable, on the understanding that only clauses one to three and the final clause shall apply.

## II. Licensing

### Granting of Licences

**Article 4.** (1) In order to conduct the transactions named in Article 1 para. 1, institutions must be granted a licence by the Financial Market Authority (FMA).

(2) Valid licences must be issued in writing, otherwise they will be considered void; licences may be issued subject to the appropriate conditions and requirements and limited to one or more of the types of transactions listed under Article 1 para. 1, and the scope of the licence may exclude parts of individual banking transactions.

(3) The applicant must enclose the following information and documents with the application for a licence:

1. the applicant's place of establishment and legal form of business organisation;
2. the applicant's articles of association;
3. the applicant's business plan, which must indicate the nature of the planned business, the organisational structure of the credit institution, the planned strategies and procedures for monitoring, controlling and limiting business risks and operational risks in banking pursuant to Article 39 as well as the procedures and plans under Article 39a; moreover, the applicant's business plan must include budget calculations for the first three business years;
4. the amount of initial capital freely available to the directors without limitations or charges in Austria;
5. the identity of and the amount contributed by owners who possess a qualifying participation in the credit institution, an indication of the group structure if those owners belong to a group of companies, as well as the information required for the purpose of assessing the reliability of the owners, the legal representatives and any of the owners' personally liable members;
6. the names of the designated directors and their qualifications for operating the undertaking;
7. The identity and address or place of establishment of all those natural or legal persons used by the credit institution outside of its place of establishment in the provision of remittance services (agents).

(4) A foreign credit institution (Article 2 no. 13) which applies for a licence to operate a branch in Austria must enclose the following information and documents in addition to the information indicated in para. 3 nos. 1 to 3, 5 and 6:

1. the last three annual financial statements of the undertaking;
2. the transactions conducted by the foreign undertaking pursuant to Article 1 para. 1 as well as the locations at which those transactions are conducted;
3. the amount in euro of the initial endowment freely available to the directors without limitations or charges in Austria;
4. the decision-making powers granted to the management of the branch as well as those of the head office whose consent is required for certain internal decisions;
5. a written declaration from the supervisory authority responsible for the undertaking's head office stating that it has no objections to the establishment of a branch of this undertaking in Austria.

(5) Before issuing a licence to a credit institution, the FMA is required to inform the competent authority in the undertaking's home Member State about the application if:

1. the application pursuant to para. 3 was submitted by a subsidiary of a credit institution authorised in another Member State as defined in Article 4 (1) of Directive 2006/48/EC, of an asset management company as defined in Article 1a (2) of Directive 85/611/EEC in the version of Directive 2001/107/EC, or of an investment firm or insurance undertaking;
2. the application pursuant to para. 3 was submitted by a subsidiary of a subsidiary of a credit institution authorised in another Member State as defined in Article 4 (1) of Directive 2006/48/EC, of an asset management company as defined in Article 1a (2) of Directive 85/611/EEC in the version of Directive 2001/107/EC, or of an investment firm or insurance undertaking;
3. the application pursuant to para. 3 was submitted by a credit institution controlled by the same natural or legal person as a credit institution as defined in Article 4 (1) of Directive 2006/48/EC which is authorised in another Member State, an asset management company as defined in Article 1a (2) of Directive 85/611/EEC in the version of Directive 2001/107/EC, or an investment firm or insurance undertaking;

The FMA may be required to obtain comments from the authority mentioned above in reviewing the suitability of the persons who possess qualifying participations pursuant to Article 5 para. 1 no. 3 as well as the reputation and experience of the directors pursuant to Article 5 para. 1 nos. 6 to 9 involved in the management of another undertaking in the same group.

(6) Before issuing a licence to a credit institution, the FMA is to consult the Oesterreichische Nationalbank and at the same time notify the Federal Minister of Finance; the notification to the Federal Minister of Finance must also include the licence application as well as any enclosures to the application and any supplementary documents received at a later point in time. If the licence application includes the authorisation to accept deposits subject to guarantee obligations (Article 93 para. 2) or to provide investment services subject to guarantee obligations (Article 93 para. 2a), the FMA must also consult the protection schemes before issuing the licence.

(7) The FMA is authorised to inform the public that a specifically named natural or legal person (person) is not authorised to perform certain bank transactions, where this person has given cause to such action and this is necessary and proportionate in terms of possible disadvantages to the concerned party, by means of an announcement in the internet, in the Official Gazette of Wiener Zeitung (*Amtsblatt zur Wiener Zeitung*) or in a newspaper distributed throughout Austria. The above-indicated publication measures may be taken in full or in part. The person must be clearly identifiable in the publication; for this purpose the FMA may also indicate, if known, the business address or residential address, company register number, internet address, telephone number and fax number. The party concerned by the publication can file a request to the FMA to verify the lawfulness of such publication by way of a procedure concluded with an administrative ruling [*bescheidmäßig*]. In this case, the FMA shall notify the public of the initiation of such a procedure in the same way. If the investigation concludes that the publication was unlawful, the FMA shall correct the publication, or, at the request of the concerned party, revoke it or remove it from the internet.

(8) Upon individual request, the FMA must provide information within a reasonable period of time on the scope of licences issued to credit institutions. The FMA shall maintain a database containing information on the scope of the existing licences issued to credit institutions and to enable queries of these data via the internet.

**Article 5.** (1) The licence is to be issued if:

1. the undertaking is to be established as a credit institution in the legal form of a joint-stock company, a cooperative society or a savings bank;
2. the articles of association do not contain any provisions which would not ensure the security of the assets with which the credit institution is entrusted and the proper execution of transactions pursuant to Article 1 para. 1;
3. the persons who hold qualifying participations in the credit institution meet the requirements stipulated in the interest of sound and prudent management of the credit institution, and no facts are known which would raise doubts as to the personal reliability of those persons; if such facts are known, then the licence may only be issued if the doubts are proven to be unfounded;
4. the FMA is not prevented from fulfilling its supervisory duties by the credit institution's close links to other natural or legal persons;
- 4a. the FMA is not prevented from fulfilling its monitoring duties by the laws, regulations or administrative provisions of a third country governing a natural or legal person with close links to the credit institution, or by difficulties involved in the enforcement of those laws, regulations or administrative provisions;
5. the initial capital or initial endowment amounts to at least EUR 5 million and is freely available to the directors without restrictions or charges in Austria;
6. no reasons for exclusion as specified in Article 13 paras. 1 to 3, 5 and 6 Trade Act 1994, Federal Law Gazette No. 194/1994 in the applicable version, are identified with regard to any of the directors, and bankruptcy proceedings have not been initiated for the assets of any of the directors or any entity other than a natural person on whose business a director has or has

had a decisive influence, unless a reorganisation plan was agreed upon and fulfilled in the bankruptcy proceedings; this also applies to comparable situations which have arisen in a foreign country.

7. the directors find themselves in an orderly economic situation and no facts are known which would raise doubts as to their personal reliability as required for conducting transactions pursuant to Article 1 para. 1; if such facts are known, then the licence may only be issued if the doubts are proven to be unfounded;
8. on the basis of their prior education, the directors possess the professional qualifications and experience necessary for operating the credit institution. The professional qualifications of the directors require that they possess sufficient theoretical and practical knowledge of the transactions applied for pursuant to Article 1 para. 1 as well as management experience; professional qualification for the management of a credit institution is to be assumed if the directors have carried out management activities in a company of comparable size and business type for at least three years;
9. with regard to a director of a credit institution who is not an Austrian citizen, no reasons for exclusion as specified in nos. 6, 7, 8 or 13 exist in the director's country of citizenship; this must be confirmed by the banking supervisor in the director's home country; however, if such a confirmation cannot be obtained, the director in question must provide credible evidence of this, certify the absence of the named reasons for exclusion and submit a declaration stating whether any of the named reasons for exclusion exist;
10. the centre of at least one director's vital interests lies in Austria;
11. at least one director has a command of the German language;
12. the credit institution has at least two directors and the articles of association rule out individual powers of representation, individual powers of commercial representation and individual commercial powers of attorney for the entire business operation, or, in the case of credit cooperatives, the management of the business is restricted to the directors;
13. none of the directors have another main profession outside of the banking industry or outside of insurance undertakings or pension funds;
14. the place of establishment and head office are located in Austria.

(2) A credit institution and any designation protected in accordance with Article 94 may only be entered in the Commercial Register as a company or branch if the corresponding legally effective administrative rulings (*Bescheide*) are presented as originals or certified copies. These administrative rulings (*Bescheide*) need not be presented if the conduct of banking transactions is permitted pursuant to Article 9, Article 11, Article 13 or Article 103 no. 5. The competent court is to deliver rulings on such entries in the Commercial Register to the FMA and the Oesterreichische Nationalbank. The FMA must convey the information received in accordance with Article 9 paras. 2 and 5, Article 11 para. 3 and Article 13 para. 3 to the competent court.

(3) In cases where a licence is issued for the operation of a branch of a foreign credit institution in Austria, the FMA must convey a copy of the administrative ruling (*Bescheid*) to the supervisory authority responsible for the credit institution's head office.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).



(4) A licence under Article 1 para. 1 no. 20 must not be issued to an applicant in cases where the applicant also has a licence pursuant to Article 1 para. 1. This provision does not apply in cases where the licence applicant already has a licence under Article 1 para. 1 nos. 1 and 3 or is issued a licence pursuant to Article 1 para. 1 nos. 1 and 3 along with a licence pursuant to Article 1 para. 1 no. 20.

## **Revocation of Licences**

**Article 6.** (1) The FMA may revoke licences in cases where:

1. the business operations stipulated in the licence do not commence within twelve months of the date on which the licence was issued; or
2. the business operations stipulated in the licence have not been conducted for six consecutive months.

(2) The FMA must revoke licences in cases where:

1. the licence was obtained by providing false information or taking deceptive action, or by other fraudulent means;
2. the credit institution fails to fulfil its obligations to its creditors;
3. the requirements specified in Article 70 para. 4 no. 3 are fulfilled;
4. bankruptcy proceedings are initiated for the assets of the credit institution;
5. the credit institution has adopted a corporate resolution to dissolve the undertaking and all banking transactions have been settled.

(3) Paras. 1 and 2 notwithstanding, the FMA must revoke the licence of a branch of a foreign credit institution if the licence issued to its head office is revoked.

(4) An administrative ruling (*Bescheid*) revoking a licence will have the effect of a resolution to dissolve the credit institution unless the undertaking ceases to conduct the transactions pursuant to Article 1 para. 1 as its purpose of business and changes the undertaking's name pursuant to Article 94 within three months of the date on which the administrative ruling (*Bescheid*) goes into effect. The FMA is to convey a copy of this administrative ruling (*Bescheid*) to the Commercial Register Court and to the competent authority in the case of branches of foreign credit institutions; the revocation of the licence is to be entered in the Commercial Register.

(5) At the FMA's request, the court must appoint liquidators if the other persons appointed for the purpose of bankruptcy administration are unable to ensure orderly bankruptcy settlement. If the FMA is of the opinion that the persons appointed for the purpose of bankruptcy administration are unable to ensure orderly bankruptcy settlement, the FMA must request suitable liquidators at the competent first instance commercial court responsible for the credit institution's place of establishment; this court is to rule on the case in the process of alternative dispute resolution.

## **Lapse of licences**

**Article 7.** (1) The licence is considered to lapse:

1. upon expiration of its term;

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2. if one of the conditions for dissolution is met (Article 4 para. 2);
3. if the licence is relinquished;
4. *removed*;
5. *removed*;
6. upon the entry of a merger or demerger of credit institutions in the Commercial Register for the transferring credit institution(s), or upon the entry of a universal successor in the Commercial Register on the basis of a request in accordance with Article 92 due to the existence of double or multiple licences at one institution;
7. upon the entry of a European company (*Societas Europaea*; SE) or a European cooperative society (*Societas Cooperativa Europaea*; SCE) in the register of the new country of establishment.

(2) The lapse of a licence is to be declared by the FMA by way of an administrative ruling (*Bescheid*). Article 6 paras. 4 and 5 are applicable in this context.

(3) The relinquishment of a licence (para. 1 no. 3) is only permissible in writing and only in cases where all banking transactions have previously been settled.

**Article 7a.** (1) At least three weeks prior to a corporate meeting of a credit institution in which the shareholders vote on the dissolution of the credit institution, the FMA is to be informed in writing of the purpose of the meeting; any comments delivered to the credit institution by the FMA are to be read prior to taking the resolution at the corporate meeting, otherwise the resolution to dissolve the credit institution will be rendered void in accordance with Article 199 para. 1 no 3 Stock Corporation Act 1965 (*Aktiengesetz 1965*). The resolution to dissolve the credit institution in accordance with Article 199 para. 1 no. 3 Stock Corporation Act 1965 will also be rendered void if the FMA is not informed as specified in the first sentence of this provision. Except in the cases indicated under Article 200 para. 2 Stock Corporation Act 1965, the invalidation of a resolution to dissolve a credit institution is reversed if the FMA later declares its consent in writing. The entry of the dissolution in the Commercial Register in accordance with Article 204 Stock Corporation Act 1965 must be accompanied by a confirmation from the FMA regarding compliance with the information obligations set forth in this paragraph. The FMA is also authorised to file suit to render such resolutions void within a period of three years after the entry of the resolution of revocation in the Commercial Register. The provisions of this paragraph also apply *mutatis mutandis* to credit institutions which are not organized as stock corporations.

(2) Where a resolution to dissolve a credit institution is notified to the FMA in accordance with Article 73 para. 1 no. 1, the FMA must immediately inform the competent supervisory authority in any host Member State in which a credit institution operates a branch and inform that authority of the concrete effects of the resolution to dissolve the credit institution.

(3) The liquidators must publish the dissolution in the Official Journal of the European Communities and in at least two supraregional newspapers in each host Member State. This announcement must contain in particular the names of the liquidators and an indication that the dissolution is subject to Austrian law.

(4) The liquidators must immediately inform each individual known creditor whose usual place of residence, domicile or place of establishment is in a Member State other than Austria of the

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dissolution. For this notification, the FMA must use a form with the heading "Invitation to lodge a claim. Time limits to be observed" in all official languages of the Member States. In this notification, the FMA must indicate the addressee with whom claims are to be lodged; where the credit institution is a stock corporation, the provisions of Article 213 Stock Corporation Act 1965, or otherwise the analogous provisions in the other relevant company laws, must be included in this invitation.

(5) Any creditor whose domicile, usual place of residence or place of establishment is in a Member State other than Austria can lodge claims and submit observations relating to claims in the official language of that Member State. In such cases, the lodgement of a claim must bear the heading "*Anmeldung einer Forderung*" (Lodgement of claim) or "*Erläuterung einer Forderung*" (Submission of observations relating to claims) in the German language. The liquidators may request a German translation of the lodgement or observations.

(6) The liquidators must inform creditors of the status of the liquidation process on a yearly basis by way of announcement in the publication media indicated in para. 3. Known creditors whose usual place of residence, domicile or place of establishment is in a Member State other than Austria must be informed individually.

**Article 8.** *removed (Federal Law Gazette I No. 141/2006)*

### **III. Freedom of Establishment and Freedom to Provide Services**

#### **Credit Institutions from Member States in Austria**

**Article 9.** (1) Subject to the provisions of paras. 2 to 8, credit institutions as defined in Article 4 (1) of Directive 2006/48/EC which are authorised and established in a Member State may carry out the activities listed in Annex I to Directive 2006/48/EC in Austria by the establishment of a branch or under the freedom to provide services, provided that the credit institution's authorization covers such activities. The first sentence does not apply to electronic money institutions as defined in Article 4 (1) lit. b of Directive 2006/48/EC which are exempt in accordance with Article 8 of Directive 2000/46/EC. The first sentence applies to electronic money institutions which are not credit institutions as defined in Article 4 (1) lit. a of Directive 2006/48/EC, subject to the condition that their activities in Austria do not include those described in Article 1 para. 2 E-Money Act.

(2) The establishment of a branch in Austria is permissible if the competent authority in the home Member State has provided the FMA with all information on the credit institution pursuant to Article 10 para. 2 nos. 2 to 4 and para. 4.

(3) Once the information pursuant to para. 2 has been provided, the FMA may notify the credit institution under para. 1 of the following:

1. the reports under Article 74 on transactions conducted in Austria which the FMA requires due to its interest in maintaining a functioning banking system in Austria;
2. the provisions with which the credit institution must comply pursuant to para. 7.

(4) After the notification pursuant to para. 3, but at the latest after the expiration of a period of two months, the credit institution under para. 1 may establish the branch and commence business operations.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).

(5) The credit institution under para. 1 must notify the FMA in writing of any changes in the information pursuant to Article 10 para. 2 nos. 2 to 4 and para. 4 no. 2 at least one month before such changes are carried out. The FMA may submit comments pursuant to para. 3 no. 1 or 2.

(6) The initial commencement of activities in Austria under the freedom to provide services requires a notification from the competent authority in the home Member State to the FMA indicating which of the activities listed in Annex I to Directive 2006/48/EC are to be carried out.

(7) Credit institutions under para. 1 which carry out activities in Austria through a branch must comply with Articles 25, 31 to 41, 44 paras. 3 to 6, 60 to 63, 65 para. 3a, 66 to 68, 74, 75, 93 paras. 8 and 8a, 94 and 95 paras. 3 and 4, as well as Articles 36, 38 to 59, 61 to 66 and 69 to 71 Securities Supervision Act 2007, Articles §§ 4 and 26 to 48 Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*) (depending on their purpose of business), the other federal acts listed in Article 69, and any regulations and administrative rulings (*Bescheide*) issued on the basis of the laws and provisions mentioned above.

(8) Credit institutions under para. 1 which carry out activities in Austria under the freedom to provide services must comply with Articles 31 to 41, 66 to 68, 93 paras. 8 and 8a, 94 and 95 paras. 3 and 4, and, depending on their purpose of business, the other federal acts listed in Article 69, Articles 4 and 26 to 48 Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*) and any regulations and administrative rulings (*Bescheide*) issued on the basis of the laws and provisions mentioned above.

**Article 9a.** *removed (Federal Law Gazette I No. 60/2007)*

### **Austrian Credit Institutions in Member States**

**Article 10.** (1) A credit institution may carry out its activities in Member States by the establishment of a branch or under the freedom to provide services, provided that the credit institution's licence covers such activities.

(2) Any credit institution wishing to establish a branch in the territory of another Member State must notify the FMA accordingly. This notification must be accompanied by the following information:

1. the member state within the territory of which the branch is to be established;
2. a programme of operations setting out the types of business envisaged and the structural organisation of the branch;
3. the address in the host Member State from which documents of the credit institution can be obtained;
4. the names of the directors of the branch.

(3) Unless the FMA has reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution in light of the activities envisaged, the FMA must, within three months of receipt of the information referred to in para. 2, convey that information to the competent authority in the host Member State and inform the credit institution accordingly by means of an administrative ruling (*Bescheid*) within the same period.

(4) The FMA must also convey the following information to the competent authority in the host Member State:

1. the amount of own funds and the solvency ratio of the credit institution; and
2. specific information on the protection schemes by which the protection of the branch's depositors (investors) is to be ensured.

(5) The credit institution must notify the FMA in writing of any changes in the information pursuant to para. 2 nos. 2 to 4 and para. 4 no. 2 at least one month before such changes are carried out. The FMA must convey this information to the competent authority in the host Member State within three months.

(6) Any credit institution wishing to carry out its activities in the territory of another Member State for the first time by exercising the freedom to provide services must notify the FMA of those activities listed in Annex I to Directive 2006/48/EC which the credit institution wishes to carry out in that Member State.

(7) Within one month of receiving the notification provided for in para. 6, the FMA must convey that notification to the competent authority in the host Member State.

(8) The FMA must inform the European Commission of the number and nature of cases in which it has refused to convey the information in para. 3 to the competent authority in the host Member State.

### **Financial Institutions from Member States in Austria**

**Article 11.** (1) Financial institutions as defined in Article 4 (5) of Directive 2006/48/EC which are established in a Member State may carry out the activities listed in Numbers 2 to 14 of Annex I to Directive 2006/48/EC in Austria by the establishment of a branch or under the freedom to provide services, provided that the financial institution is authorised to provide such services under the legal provisions of its country of establishment and the following requirements are fulfilled:

1. the parent undertaking is authorised as a credit institution as defined in Article 4 (1) of Directive 2006/48/EC in that Member State by the law of which the subsidiary undertaking is governed, and the parent undertaking is established in that Member State;
2. the activities in question are actually carried out within the territory of the same Member State;
3. the parent undertaking holds at least 90% of the voting rights associated with shares in the subsidiary undertaking;
4. the parent undertaking must satisfy the FMA regarding the prudent management of the subsidiary undertaking and must have declared, with the consent of the competent authorities in the home Member State, that it jointly and severally guarantees the commitments entered into by the subsidiary undertaking;
5. the subsidiary undertaking is subject to supervision by the competent authorities in the home Member State pursuant to Article 24 (1) third subparagraph of Directive 2006/48/EC and is included in the consolidated supervision of the parent undertaking in accordance with the rules set forth in Directive 2006/48/EC, in particular for the purpose of calculating minimum capital

requirements in accordance with Article 22 para. 1, for the control of large exposures and for the limitation of participations.

(2) Para. 1 also applies in cases where

1. the financial institution is a subsidiary undertaking of two or more parent undertakings which are authorised as credit institutions as defined in Article 4 (1) of Directive 2006/48/EC in one or more Member States and have their places of establishment in the Member States in question; and
2. the other requirements set forth in para. 1 are fulfilled.

(3) The competent authority in the home Member State must provide the FMA with the following notifications from the competent authorities in the home Member State:

1. compliance with the requirements set forth in para. 1 or para. 2;
2. the amount of own funds of the financial institution pursuant to para. 1 or 2; and
3. the consolidated solvency ratio of the financial institution's parent credit institution(s);
4. a programme of operations setting out the types of business envisaged and the structural organisation of the branch;
5. the address from which documents of the financial institution can be obtained under para. 1 or 2 in Austria;
6. the names of those to be responsible for the management of the branch.

The financial institution must notify the FMA in writing of any changes in the information specified in nos. 4 to 6; the provisions governing procedure in Article 9 para. 5 apply in this context.

(4) The initial commencement of activities in Austria under the freedom to provide services requires a notification from the competent authority in the home Member State to the FMA indicating which of the activities listed in Numbers 2 to 14 of Annex I to Directive 2006/48/EC are to be carried out.

(5) Financial institutions under para. 1 or 2 which, through a branch in Austria,

1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 must comply with Articles 34 to 41, 44 paras. 3 to 6, 60 to 63, 74, 75 and 94;
2. carry out activities pursuant to Article 1 para. 2 must comply with Articles 39 para. 3, 40 and 41;
3. carry out activities pursuant to Article 1 para. 2 no. 1 must also comply with Article 75, no. 2 notwithstanding.
4. Depending on the business activities carried out, the other federal acts listed in Article 69 as well as the regulations and administrative rulings (*Bescheide*) issued on the basis of the provisions mentioned above must also be observed.

(6) Financial institutions pursuant to para. 1 which, under the freedom to provide services,

1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 in Austria must comply with Articles 34 to 41 and 94;
2. carry out activities pursuant to Article 1 para. 2 in Austria must comply with Articles 39 para. 3,

40 and 41; Depending on the business activities carried out, the other federal acts listed in Article 69 as well as the regulations and administrative rulings (*Bescheide*) issued on the basis of the provisions mentioned above must also be observed.

**Article 12.** *removed;*

### **Subsidiaries of Financial Institutions from Member States in Austria**

**Article 13.** (1) A financial institution as defined in Article 4 (5) of Directive 2006/48/EC which is a subsidiary undertaking of financial institutions which fulfil the requirements set forth in Article 11 para. 1 nos. 1 to 5 or Article 11 para. 2 may carry out the activities listed in Numbers 2 to 14 of Annex I to Directive 2006/48/EC by the establishment of a branch or under the freedom to provide services. The financial institution (secondary subsidiary undertaking) commencing activities in Austria must be authorised to carry out those activities in its country of establishment under the legal provisions of that country of establishment.

(2) In addition, the following requirements must be fulfilled:

1. the parent financial institution must be authorised to carry out its activities as a financial institution on the basis of the relevant provisions in the Member State by the law of which the subsidiary undertaking is governed;
2. the activities in question must actually be carried out by the secondary subsidiary undertaking within the territory of the same Member State;
3. the superordinate credit institution must be authorised as a credit institution as defined in Article 4 (1) of Directive 2006/48/EC, be established in the Member State in question, and hold a total of at least 90% of the voting rights associated with the shares in the financial institution in question;
4. the superordinate credit institution and the financial institution which is its immediate subsidiary undertaking must satisfy the FMA regarding the prudent management of the financial institution (secondary subsidiary undertaking) which is to commence activities in Austria and must have declared, with the consent of the competent authorities in the home Member State, that they jointly and severally guarantee the commitments entered into by the secondary subsidiary undertaking;
5. the secondary subsidiary undertaking must be included in the consolidated supervision of the superordinate credit institution in accordance with the rules set forth in Directive 2006/48/EC, in particular for the purpose of calculating the solvency ratio, for the control of large exposures and for the limitation of participations.

(3) The competent authority in the home Member State must convey the information indicated in Article 11 paras. 3 and 4 to the FMA. The financial institution must notify the FMA in writing of any changes in the information in Article 11 para. 3 nos. 4 to 6; the provisions governing procedure in Article 9 para. 5 apply in this context.

(4) Financial institutions under para. 1 which, through a branch in Austria,

1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 must comply with Articles 34 to 41, 44 paras. 3 to 6, 60 to 63, 74, 75 and 94;
  2. carry out activities pursuant to Article 1 para. 2 must comply with Articles 39 para. 3, 40 and 41;
  3. carry out activities pursuant to Article 1 para. 2 no. 1 must also comply with Article 75, no. 2 notwithstanding. Depending on the business activities carried out, the other federal acts listed in Article 69 as well as the regulations and administrative rulings (*Bescheide*) issued on the basis of the provisions mentioned above must also be observed.
- (5) Financial institutions pursuant to para. 1 which, under the freedom to provide services,
1. carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 or 15 to 17 in Austria must comply with Articles 34 to 41 and 94;
  2. carry out activities pursuant to Article 1 para. 2 in Austria must comply with Articles 39 para. 3, 40 and 41; Depending on the business activities carried out, the other federal acts listed in Article 69 as well as the regulations and administrative rulings (*Bescheide*) issued on the basis of the provisions mentioned above must also be observed.

**Article 14.** *removed;*

### **Supervision in the Context of the Freedom of Establishment and the Freedom to Provide Services**

**Article 15.** (1) Should a credit institution which carries out its activities in Austria through a branch or under the freedom to provide services violate the provisions of Articles 25, 31 to 41, 44 paras. 3 to 6, 60 to 63, 65 para. 3a, 66 to 68, 74, 75, 93 paras. 8 and 8a, 94 and 95 paras. 3 and 4 or the other federal acts listed in Article 69, or any regulations or administrative rulings (*Bescheide*) issued on the basis of the laws or provisions mentioned above, then the FMA is to instruct the credit institution to restore legal compliance within three months, notwithstanding the application of Articles 96 to 98 and 99 no. 7. Should the credit institution fail to comply with that instruction, the FMA is to inform the competent authorities in the home Member State accordingly.

(2) Should the credit institution pursuant to para. 1 continue to violate the provisions listed in para. 1 despite the measures taken or to be taken by the home Member State, the FMA must do the following and simultaneously notify the competent authorities in the home Member State and the European Commission:

1. prohibit those responsible for the management of the credit institution's branch partly or entirely from managing the branch, and/or
2. prohibit the commencement of new business activities in Austria in the case of additional violations.

(3) In cases of imminent danger to the fulfilment of the obligations of the credit institution pursuant to para. 1 vis-à-vis its creditors, in particular to the security of assets entrusted to the credit institution, the FMA may issue an administrative ruling (*Bescheid*) ordering measures under para. 2 nos. 1 and 2 for a limited period of time in order to avert that danger and simultaneously inform the competent



authorities in the home Member State and the European Commission; such measures must be abrogated at the latest 18 months after going into effect.

(4) Should a credit institution's licence be revoked pursuant to para. 1, the FMA must prohibit the credit institution from commencing new business activities immediately. Article 6 paras. 4 and 5 are applicable in this context.

(5) After first informing the FMA, the competent authorities in the home Member State may themselves or through persons appointed for that purpose carry out audits at the branch as required for the supervisory monitoring of the branch as specified in Article 43 of Directive 2006/48/EC. At the request of the competent authorities, the FMA may also carry out such audits itself under one of the procedures indicated in Article 70 para. 1 nos. 1 to 3.

**Article 16.** (1) Should an Austrian credit institution which carries out its activities in a Member State through a branch or under the freedom to provide services continue to violate the national legal provisions of that host Member State despite being instructed to restore legal compliance by the competent authorities, the FMA must take suitable measures in accordance with Article 70 para. 4 after being notified by the competent authorities in the host Member State in order to restore legal compliance in the host Member State. The competent authority in the host Member State is to be informed in writing immediately about the measures taken.

(2) Should the licence of an Austrian credit institution be revoked, the FMA must immediately inform in writing the competent authorities in the Member States in which the credit institution carries out its activities.

**Article 17.** (1) Should a financial institution which carries out its activities in Austria through a branch or under the freedom to provide services violate the provisions of Articles 34 to 41, 44 paras. 3 to 6, 60 to 63, 74, 75 and 94, the other federal acts listed in Article 69 or any regulations or administrative rulings (*Bescheide*) issued on the basis of the laws or provisions mentioned above, the FMA must instruct the financial institution, notwithstanding the application of Articles 96 and 99, to restore legal compliance within a period of three months on pain of a compulsory penalty. Should the financial institution fail to comply with this instruction, the FMA is to inform the competent authorities in the home Member State accordingly.

(2) Should the financial institution in para. 1 continue to violate the provisions listed in para. 1 despite the measures taken or to be taken by the home Member State, the FMA must do the following, in addition to simultaneously imposing a compulsory penalty and informing the competent authorities in the home Member State and the European Commission:

1. prohibit those responsible for the management of the financial institution's branch partly or entirely from managing the branch, and/or
2. prohibit the commencement of new business activities in Austria in the case of additional violations.

(3) Should a financial institution pursuant to para. 1 lose the authorisation to carry out its activities, the FMA must prohibit the financial institution from commencing new business activities immediately. Article 6 paras. 4 and 5 are applicable in this context.

(4) After first informing the FMA, the competent authorities in the home Member State may themselves or through persons appointed for that purpose carry out audits at the branch as required for the monitoring of the branch as specified in Article 24 (1) third subparagraph of Directive 2006/48/EC. At the request of the competent authorities, the FMA may also carry out such audits itself under one of the procedures indicated in Article 70 para. 1 nos. 1 to 3.

### **Significant Branches**

**Article 18.** (1) As the competent authority of the host Member State, the FMA may make a request to the consolidating supervisor, or, if there is no consolidating supervisor, to the competent authority of the home Member State, for a branch of a credit institution in a Member State (Article 9) to be considered significant. In that request, the FMA shall provide reasons for considering the branch to be significant. For the assessment of branch significance, the FMA shall consider in particular:

1. whether the market share of the branch in question in terms of deposits exceeds 2% in Austria,
2. the likely impact of a suspension or closure of the operations of the credit institution on market liquidity and the payment and clearing and settlement systems in Austria; and
3. the size and the importance of the branch in terms of number of clients within the context of the banking or financial system in Austria.

(2) The FMA, the consolidating supervisor, provided there is such a supervisor, and the other competent authorities concerned shall reach a joint decision, within two months of receipt of the request, on the designation of a branch as significant.

(3) If no decision is reached within the time period set forth in para. 2, the FMA as competent authority of the host member country shall take its own decision on whether the branch is significant within a further period of two months, and take into account any views and reservations expressed within this period by the consolidating supervisor, if there is one, and by the competent authority of the home Member State. The FMA shall transmit its fully reasoned decision to the competent authorities concerned in writing.

(4) For the FMA as consolidating supervisor or competent authority in the home Member State, para. 2 applies as appropriate. A decision taken by the competent authority of the host Member State in accordance with para. 3 shall be recognised as determinative and applied by the FMA accordingly.

(5) The FMA as consolidating supervisor or competent authority of the home Member State shall communicate to the competent authorities of a host Member State where a significant branch is established the information referred to in Article 132 para. 1 lit. c and d of Directive 2006/48/EC and carry out the tasks referred to in Article 129 para. 1 lit. c of Directive 2006/48/EC in cooperation with the competent authorities of the host Member State.

(6) If an Austrian credit institution performs its activities in a Member State through the intermediary of a significant branch and if this credit institute is not part of a group of credit institutions, for which a college of supervisors has been established by the consolidating supervisor in another Member State in accordance with Article 131a of Directive 2006/48/EC, the FMA as competent



authority of the home Member State shall establish and chair a separate college of supervisors for this credit institution, to facilitate cooperation between the competent authorities concerned under para. 5 and to facilitate the transmission of information. The establishment and functioning of the college shall be based on written agreements determined by the FMA after consultation with competent authorities concerned and transmitted to them by the FMA. The FMA shall decide which competent authorities participate in a meeting or in an activity of the respective college. The decision of the FMA shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 69 para. 4 and the obligations referred to in para. 5 and Article 77 para. 8. Article 77 b para. 2 third clause shall apply.

### **Service of Documents**

**Article 19.** In connection with the service of documents containing instructions as defined in Articles 16 para. 1 and 18 para. 1 from the competent authority in a host Member State, the recipient may only refuse to accept documents pursuant to Article 12 para. 2 Process of Service Act (*Zustellgesetz – ZustellG*) in cases where such documents are not written in the official language of a Member State.

## **IV. Ownership Provisions and Approvals**

### **Qualifying Participations in Credit Institutions**

**Article 20.** (1) Any party who has taken a decision to hold a qualifying participation in a credit institution directly or indirectly, or to increase such a qualifying participation directly or indirectly (proposed acquirer), in such a way that the limits of 20%, 30% or 50% of the voting rights or capital are reached or exceeded, or in such a way that the credit institution becomes a subsidiary undertaking of that party, must first notify the FMA in writing accordingly with an indication of the amount of the participation and the information required under Article 20b para 3. The notification requirements also apply to persons acting jointly who would acquire or reach a qualifying participation together. Notification may be carried out jointly by all or several of the acting persons together, or by each acting person separately.

(2) The notification requirements under paragraph 1 apply in the same way to the decided disposal of a directly or indirectly held qualifying participation or any underrun of the limits indicated in para. 1 regarding participations in credit institutions.

(3) Credit institutions must notify the FMA of any acquisition or disposal of qualifying participations as well as any cases in which the participation limits defined in paras. 1 and 2 are reached, exceeded or underrun in writing immediately as soon as the credit institutions become aware of such transactions. Moreover, credit institutions must notify the FMA in writing at least once per year of the names and addresses of shareholders and other members holding qualifying participations as well as the sizes of such participations as shown in particular by the information received at the annual

general meetings of shareholders or other members, or as a result of the information received on the basis of Articles 91 to 93 Stock Exchange Act 1989 (*Börsegesetz 1989*).

(4) The FMA must take suitable measures, in particular pursuant to para. 5 nos. 1 and 2 against the parties indicated in paras. 1 and 2 if they fail to fulfil their obligations of prior notification or if they acquire a participation despite an objection pursuant to Article 20a para. 2 or without approval pursuant to Article 21 para. 2. The voting rights associated with the shares held by the shareholders or other members will be suspended:

1. until the FMA determines that the acquisition of the participation pursuant to Article 20a para. 2 would not have been prohibited, or
2. until the FMA determines that the reason for previously prohibiting the acquisition no longer exists.

(5) Where the danger exists that the influence exercised by the persons possessing qualifying participations will not meet the requirements for the sound and prudent management of the credit institution, the FMA must take the measures necessary to avert the danger or to put an end to such a situation. In particular, such measures may include:

1. measures in accordance with Article 70 para. 2; or
2. sanctions against the directors in accordance with Article 70 para. 4 no. 2; or
3. the submission of a motion to a first-instance commercial court at the credit institution's place of establishment for the suspension of voting rights associated with those shares held by the shareholders or members in question,
  - a) for the duration of this danger, with its end being determined by the court; or
  - b) until those shares are purchased by third parties after not being prohibited pursuant to Article 20a para. 2;
 this court is to rule in the process of alternative dispute resolution.

(7) If a court orders the suspension of voting rights in accordance with para. 5, then the court must simultaneously appoint and transfer the exercise of voting rights to a trustee who fulfils the requirements of Article 5 para. 1 no. 3. In cases where measures are taken pursuant to para. 4, the FMA must request the appointment of a trustee at the competent court pursuant to para. 5 immediately upon becoming aware that the voting rights have been suspended. The trustee has a right to reimbursement of his/her expenses and to remuneration for his/her activities in an amount to be determined by the court. The credit institution as well as the shareholders or members in question are to bear joint and several liability for such expenses and remuneration. The obliged parties will have recourse against decisions determining the amount of remuneration for the trustee and of the expenses to be reimbursed to the trustee. Appeals beyond rulings of the provincial superior court will not be permitted.

### **Assessment Procedure**

**Article 20a.** (1) The FMA shall promptly and in any event within two working days following receipt of the notification required under Article 20 para. 1 as well as following the possible

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subsequent receipt of the information referred to in paragraph 3, acknowledge receipt thereof in writing to the proposed acquirer and shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt. If the FMA points out to the proposed acquirer that certain documents or information are obviously missing in the notification, Article 13 para. 3, last clause General Law on Administrative Procedure (AVG) shall not apply.

(2) The FMA shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all the documents required in Article 20b para. 3 to prohibit the proposed acquisition in writing following assessment according to the assessment criteria set forth in 20b, provided there are reasonable grounds therefore or the information submitted by the proposed acquirer is incomplete. The prohibition notice shall be dispatched within two working days of the date of the prohibition decision made by the FMA. If the FMA does not oppose the proposed acquisition in writing within the assessment period, it shall be deemed approved. If the proposed acquisition is not prohibited, the FMA can stipulate a date by which the proposed acquisition in Article 20 para. 1 must be complete. This period can be extended where appropriate. At the request of the proposed acquirer, the FMA shall also provide a notification in the event that the acquisition has not been prohibited. The FMA shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer in the reasons for the decision underlying each written prohibition notice or assessment. Conditions and obligations may be attached to the notice, in order to warrant compliance with the criteria set forth in Article 20b. The FMA may make the decision and underlying reasons accessible to the public at the request of the proposed acquirer, provided it complies with the requirements set forth in Article 22c no. 3 lit. a to c Financial Market Authority Act (*Finanzmarktaufsichtsbehördengesetz - FMABG*).

(3) The FMA may, during the assessment period, if necessary, and no later than on the fiftieth working day of the assessment period (para. 2), request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional necessary information. The request for information shall interrupt the assessment period for the period between the date of request for information and the receipt of a response thereto by the proposed acquirer. The interruption shall not exceed 20 working days. Any further requests by the FMA for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

(4) The FMA may extend the interruption period of 20 working days to a maximum of 30 working days if the proposed acquirer is

1. situated or regulated outside the EEA; or
2. is not subject to supervision under Directives 2006/48/EC, 85/611/EEC, 2002/83/EC, 92/49/EEC, 2004/39/EC or 2005/68/EC.

(5) For the assessment of a proposed acquisition or the increase of a qualifying participation under Articles 20 to 20b, the FMA shall cooperate closely with the responsible authority of any other Member State or sector and shall, without undue delay, exchange with them any information which is essential or relevant for the assessment, if the proposed acquirer is one of the following:

1. a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 1a, point 2 of Directive 85/611/EEC authorised in another Member State or in a sector other than that in which the acquisition is proposed;
2. the parent undertaking of a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 1a no. 2 of Directive 85/611/EEC authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
3. a natural or legal person controlling a credit institution, assurance undertaking, insurance undertaking, reinsurance undertaking, investment firm or management company within the meaning of Article 1a no. 2 of Directive 85/611/EEC authorised in another Member State or in a sector other than that in which the acquisition is proposed.

(6) In the event of a procedure as described in para. 5, the FMA shall provide upon request all relevant information and communicate on its own initiative all essential information to the competent authorities, in particular information regarding assessment and/or prohibition of the acquisition. The FMA shall obtain the opinions of the responsible authorities under Article 20b para. 1 nos. 1 to 5.

### **Assessment Criteria**

**Article 20b.** (1) In assessing the notification provided for in Article 20 para. 1, the FMA shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the credit institution, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

1. the reputation of the proposed acquirer;
2. the reputation and experience of any person who will direct the business of the credit institution as a result of the proposed acquisition;
3. the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;
4. whether the credit institution will be able to comply and continue to comply with the prudential requirements based on Directives 2000/46/EC, 2002/87/EC, 2006/48/EC and 2006/49/EC and, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities (Article 5 para. 1 nos. 4 and 4a);
5. whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(2) The assessment of the proposed acquisition shall not be geared to the economic needs of the market.

(3) In compliance with the provisions of Article 19a para. 4 of Directive 2006/48/EC as amended by Directive 2007/44/EC, the FMA shall establish by regulation a list of information to submit to the FMA, taking the European practices in this area into account. This information must be suitable and necessary for the prudential assessment of compliance with the criteria in para. 1 nos. 1 to 5. The information to be provided shall be proportionate and adjusted to the nature of the proposed acquirer and the proposed acquisition. This shall take into account the size and type of the participation as well as the size and activities of the proposed acquirer and the credit institution in which the acquisition is proposed. In the regulation, the FMA shall also specify the nature and form of the transmission of information, in order to enable rapid and accurate identification of the request content.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the FMA, the latter shall treat the proposed acquirers in a non-discriminatory manner.

### Approvals

**Article 21.** (1) Special FMA approval is required for the following:

1. any merger or amalgamation of credit institutions;
2. any case in which the limits of 10% (qualifying participation), 20%, 33% or 50% of the voting rights or capital of a credit institution based in a third country are reached, exceeded or underrun if another credit institution indirectly or directly holds, acquires or disposes of those voting rights;
3. any change in the legal form of a credit institution;
4. *removed (Federal Law Gazette I No. 124/2005)*
5. the establishment of branches in a third country;
6. demergers of credit institutions pursuant to Article 1 of the Federal Act on Joint-Stock Company Demergers (*Bundesgesetz über die Spaltung von Kapitalgesellschaften – SpaltG*), Federal Law Gazette No. 304/1996;
7. any merger or amalgamation of credit institutions with non-banks, except for subsidiary undertakings pursuant to Article 59 para. 3;
8. any expansion of the purpose of business to include activities related to insurance mediation pursuant to Article 137 Trade Act.

(1a) Before issuing approvals pursuant to para. 1 nos. 1, 6 and 7, the FMA must consult the Oesterreichische Nationalbank.

(2) Articles 4 to 6 apply *mutatis mutandis* to approvals pursuant to para. 1; however, only Article 4 para. 2 and Article 5 para. 2 apply to demergers if approval pursuant to para. 1 no. 6 was issued on the condition that the demerged part must be assimilated by or merged with an existing credit institution. In the case of demergers for the formation of new companies, Article 92 para. 7 applies with regard to networks, irrespective of the legal form of business organisation.

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(3) Approvals pursuant to para. 1 nos. 1, 6 and 7 may only be entered in the Commercial Register if the corresponding legally effective administrative rulings (*Bescheide*) are presented as originals or certified copies. The competent court is to deliver orders and rulings on such entries in the Commercial Register to the FMA and the Oesterreichische Nationalbank.

(4) In granting approvals pursuant to para. 1 no. 8, the FMA must apply the provisions of the Trade Act 1994 unless otherwise specified in nos. 1 to 3 or paras. 5 and 6:

1. no insurance and guarantee obligation pursuant to Article 137c Trade Act 1994 exists; in cases of damage pursuant to Article 137c Trade Act 1994, credit institutions are liable with their own funds (Article 23);
2. Article 137b Trade Act 1994 is not applicable to the directors of credit institutions;
3. the decentralised Business Register pursuant to Article 365 Trade Act 1994 for the activities of credit institutions as insurance intermediaries must be maintained by the FMA. The FMA must immediately convey all data required for entering the credit institutions in the Central Business Register and the Insurance Intermediaries Register (Article 365c Trade Act 1994) to the Federal Ministry of Economics and Labour by automated means. In addition, the credit institutions are required to comply with the exercise provisions pertaining to insurance mediation in the Trade Act 1994;
4. Article 137 para. 2a Trade Act 1994 (Gewerbeordnung - GewO 1994) shall not apply to credit institutions.

(5) Credit institutions which carried out insurance mediation activities solely on the basis of Article 1 para. 3 BWG prior to the entry into effect of Federal Law Gazette I No. 131/2004 must notify the FMA accordingly within six months after the federal act's entry into effect for the purpose of enabling entries in the Business Register and the Insurance Intermediaries Register. In this context, credit institutions must indicate the form in which insurance mediation activities will be carried out, whether such activities are carried out as an ancillary business, and whether an authorisation to receive premiums or amounts designated for customers exists. If this notification is not submitted in time, then insurance mediation activities may only be carried out on the basis of an approval pursuant to para. 1 no. 8 after the expiration of this period.

(6) Employees who regularly worked directly in insurance mediation activities for a credit institution subject to para. 5 before Federal Law Gazette I No. 131/2004 went into effect are considered to possess suitable professional qualifications for these activities.

### **Approval Procedure for the Internal Ratings Based Approach**

**Article 21a.** (1) The calculation of the assessment base for credit risk pursuant to Article 22 para. 2 using the Internal Ratings Based Approach pursuant to Article 22b by a credit institution or a superordinate credit institution acting on behalf of a group of credit institutions is subject to approval by the FMA. This approval is to be granted if

1. the systems used to control and assess credit risks as well as the resulting parameter estimates are sound, integrated properly and play an essential role in risk management,

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decision-making processes, the credit approval process and internal capital adequacy assessment processes under Article 39a, as well as internal control systems and reporting.

2. the rating systems used deliver meaningful results for the assessment of obligor and transaction characteristics and enable a meaningful differentiation of risk as well as accurate and consistent quantitative estimates of risk;
3. the rating systems used have been in use for at least three years, and these systems sufficiently fulfil the requirements of Article 22b para. 11 for internal risk measurement and internal risk management at the time the application is submitted;
4. where own estimates of loss given default and conversion factors under Article 22b para. 8 are used, the estimates have been in use for at least three years and sufficiently fulfil the requirements of Article 22b para. 11 for the use of own estimates;
5. the credit institution has an appropriately independent organisational unit which is responsible for the internal rating systems used;
6. the data required for proper credit risk measurement and proper credit risk management are collected;
7. the rating systems, their design and validation are documented properly;
8. the requirements of Article 22b para. 11 are fulfilled; and
9. the fulfilment of disclosure requirements concerning information pursuant to Article 26 para. 7 no. 2 lit. a is ensured and these requirements are fulfilled on an ongoing basis.

(2) In the procedure pursuant to para. 1, the FMA must obtain an expert opinion from the Oesterreichische Nationalbank on the fulfilment of the requirements pursuant to para. 1 nos. 1 to 8.

(3) Credit institutions and superordinate credit institutions acting on behalf of a group of credit institutions must

1. notify the FMA and Oesterreichische Nationalbank in writing immediately if the credit institution no longer fulfils one or more of the requirements indicated in para. 1 nos. 1 to 9 or if it does not comply with requirements and conditions imposed by administrative ruling (*Bescheid*), and present a plan for a return to compliance within a reasonable period of time or demonstrate that the effect of non-compliance is immaterial;
2. notify the FMA and Oesterreichische Nationalbank in writing immediately of intended changes in the Internal Ratings Based Approach approved under para. 1 or its application in writing immediately, and demonstrate that the changes are immaterial; and
3. submit to the FMA and Oesterreichische Nationalbank on a yearly basis a description of the validation of the models used, including the results and measures taken, as well as the results of stress tests performed.

(4) Credit institutions and superordinate credit institutions may only make material changes to an approved Internal Ratings Based Approach or its application with the approval of the FMA. The procedure pursuant to para. 1 is to be applied to decisions regarding material changes.

(5) The FMA must monitor the application of the Internal Ratings Based Approach pursuant to Article 22b on an ongoing basis. The FMA must revoke its approval in cases where risk no longer appears to be captured properly. In cases pursuant to para. 3 no. 1, the FMA must decide, with due



attention to the plan presented, whether supervisory measures are required in order to ensure that risk is captured properly.

(6) Subject to approval by the FMA, a credit institution may, for important reasons, especially in the case of a change in the credit institution's structure or business activities,

1. discontinue the use of own estimates of loss given default and conversion factors pursuant to Article 22b para. 8; or
2. switch from the Internal Ratings Based Approach pursuant to Article 22b to the Standardised Approach to Credit Risk pursuant to Article 22a.

(7) Subject to approval by the FMA, a credit institution may make the transition to the Internal Ratings Based Approach pursuant to Article 22b sequentially, meaning that the credit institution switches to that approach sequentially within a reasonable period

1. across business lines;
2. across exposure classes;
3. within an exposure class in accordance with Article 22b para. 2 no. 4 for the categories of
  - a) retail exposures secured by real estate property,
  - b) qualifying revolving retail exposures, and
  - c) other retail exposures;
4. across subordinate institutions;
5. by applying own estimates to the exposure classes pursuant to Article 22b para. 2 nos. 1 to 3 in cases where own estimates of loss given default and conversion factors pursuant to

Article 22b para. 8 are used. The application for approval must demonstrate that a sequential transition will not be misused for the purpose of reducing the assessment base pursuant to Article 22 para. 2 for the exposure classes and business lines still subject to the Standardised Approach to Credit Risk pursuant to Article 22a. To this end, the time schedule for the transition and its effects on the assessment base as well as the proper capture of risks during the transition period must be described.

(8) Given approval by the FMA, superordinate credit institutions and subordinate institutions within a group of credit institutions may apply the Internal Ratings Based Approach uniformly. The requirements of para. 1 may be fulfilled jointly by the institutions in the group of credit institutions.

### **Approval Procedure for External Credit Assessment Institutions**

**Article 21b.** (1) The recognition of external credit assessment institutions for the purpose of mapping exposure amounts to credit quality steps in the Standardised Approach to Credit Risk pursuant to Article 22a para. 4 or for the purpose of calculating exposure amounts for securitizations pursuant to Article 22c para. 1 is subject to approval by the FMA. This approval is to be granted if the methodology used to assign credit assessments fulfils the requirements pursuant to nos. 1 to 6 and the credit assessments are recognised by users as reliable pursuant to no. 7:

1. the assignment of credit assessments is well-founded, systematic and continuous;
2. the methodology is assessed and reviewed regularly on the basis of historical experience;

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3. the assigned credit assessments are subjected to regular review and adapted to changes in the financial situation of the entities rated; such reviews must take place after all significant events and at least annually;
4. the assignment of credit assessments is transparent; in particular, the eligible external credit assessment institution must ensure that the internal principles of the methodology employed are publicly available in order to allow potential users to decide whether the credit assessments are derived in a reasonable way;
5. the assigned credit assessments are subject to objective and factual criteria; in particular, these criteria concerning the external credit assessment institution include
  - a) ownership and organisational structure,
  - b) financial resources,
  - c) staffing and expertise,
  - d) corporate culture,
  - e) internal control mechanisms;
6. the credit assessments are available to credit institutions on conditions comparable to those offered to other market participants;
7. the credit assessments are recognised by users as reliable; in the assessment of reliability, the following criteria in particular are to be taken into account:
  - a) the market share of the eligible external credit assessment institution,
  - b) the revenues generated by the external credit assessment institution, and in a broader sense the financial resources of the external credit assessment institution,
  - c) the use of the credit assessments for determining terms and conditions, and
  - d) the use of credit assessments for issuing bonds and/or assessing credit risks by at least two credit institutions.

(2) In the procedure pursuant to para. 1, the FMA may obtain an expert opinion from the Oesterreichische Nationalbank on the fulfilment of the requirements pursuant to para. 1.

(3) Eligible external credit assessment institutions must

1. provide the FMA with all information required to assess the fulfilment of requirements pursuant to para. 1 nos. 1 to 7 in the recognition procedure pursuant to para. 1; upon request, external credit assessment institutions must also provide the FMA with information on all circumstances concerning the fulfilment of these requirements; external credit assessment institutions must inform the FMA immediately without being requested to do so as soon as they become aware of non-compliance with one of the requirements pursuant to para. 1 nos. 1 to 7;
2. inform the FMA immediately of the results of the annual and event-triggered reviews of their credit assessments;
3. at the FMA's request, present at any time all documents and provide information on the contacts between the eligible external credit assessment institution and the senior management of the entities which it rates;

4. inform the FMA immediately of any material changes in the methodology used for assigning credit assessments.
  5. for the calculation of exposure values in accordance with Article 22c para. 1 with regard to credit assessments relating to structured finance instruments, publish and regularly update on the internet the explanation of how the performance of pool assets affects its credit assessments.
- (4) If an external credit assessment institution has already been recognised by the competent authorities in another Member State for the purposes of para. 1, the FMA may recognise that external credit assessment institution without further review.
- (4a) Where an external credit assessment institution is already registered as an external credit assessment institution in accordance with Regulation (EC) No. 1060/2009, the criteria in the approval procedure under para. 1 shall be considered fulfilled in accordance with para. 1 nos. 1 to 5.
- (5) In cases where a credit institution does not fulfil (or no longer fulfils) a requirement pursuant to para. 1, the FMA must revoke its approval and inform the competent authorities in Member States about the revocation of the approval.
- (6) The FMA must survey how the relative degrees of risk deviate from various eligible external credit assessment institutions and issue a regulation mapping the credit assessments assigned by external credit assessment institutions to credit quality steps within the exposure classes pursuant to Article 22a para. 4 or Article 22c para. 1. In order to differentiate between the relative degrees of risk expressed by the credit assessments of different eligible external credit assessment institutions, the FMA must consider the following factors:
1. the long-term default rate of all exposures assigned the same credit assessment; for newly recognised external credit assessment institutions and eligible external credit assessment institutions which have compiled only a short record of default data, the FMA must ask the external credit assessment institution what it believes to be the long-term default rate associated with all exposures assigned the same credit assessment;
  2. the pool of issuers covered by the external credit assessment institution;
  3. the range of credit assessments assigned by the eligible external credit assessment institution;
  4. the meaning of each credit assessment;
  5. the definition of default used by the eligible external credit assessment institution;
  6. significant deviations in the degree of risk calculated by an eligible external credit assessment institution from a meaningful benchmark. If the competent authorities in a Member State have carried out a mapping process comparable to the one in this paragraph, the FMA may assume the results of that mapping process.

## **Approval Procedure for the Use of Own Volatility Estimates (Comprehensive Method) for Credit Risk Mitigation Techniques**

**Article 21c.** (1) In order to use their own volatility estimates in the Comprehensive Method pursuant to Article 22g para. 3 no. 2 lit. b, credit institutions require approval from the FMA. This approval is to be granted if

1. the procedures are integrated properly into the day-to-day risk management system;
2. the predictive power of the model is confirmed by back-testing;
3. the credit institution employs persons who possess a sufficient understanding of the model and its application;
4. the requirements pursuant to Article 22g para. 9 no. 2 are fulfilled; and
5. the fulfilment of disclosure requirements concerning the information pursuant to Article 26 para. 7 no. 2 lit. b is ensured and these requirements are fulfilled on an ongoing basis.

The FMA must obtain an expert opinion from the Oesterreichische Nationalbank on the fulfilment of the requirements pursuant to nos. 1 to 4.

(2) In the case of master netting agreements covering repurchase transactions, securities or commodities lending or borrowing transactions, or other capital market-driven transactions which do not involve derivative instruments in accordance with Annex 2 to Article 22, or margin lending transactions, the calculation of the exposure value adjusted for the effect of collateral using an internal model is subject to approval by the FMA. In the approval procedure, the FMA must obtain an expert opinion from the Oesterreichische Nationalbank on the fulfilment of the requirements pursuant to nos. 1 to 3. This approval is to be granted if

1. the model is properly integrated into the credit institution's day-to-day risk management system;
2. the model ensures reasonable accuracy in measuring risks as well as calculations of the effect of collateral; and
3. the requirements of Article 22g para. 9 no. 3 are consistently fulfilled.

If a credit institution uses an internal model pursuant to Article 21e which has already been approved by the FMA, then the internal model may also be used for the purposes of this paragraph without separate approval by the FMA. In such a case, the credit institution must immediately notify the FMA and the Oesterreichische Nationalbank of its intention to use its own volatility estimates.

(3) With regard to the models pursuant to paras. 1 and 2, credit institutions must

1. notify the FMA and the Oesterreichische Nationalbank in writing immediately of any changes in the model, in the model assumptions or in the transactions included in the model, and demonstrate that the changes are immaterial;
2. notify the FMA and the Oesterreichische Nationalbank in writing immediately if the credit institution no longer fulfils one or more of the criteria indicated in para. 1 or 2 or if it does not comply with requirements and conditions imposed by administrative ruling (*Bescheid*), and present a plan for a return to compliance within a reasonable period of time or demonstrate that the effect of non-compliance is immaterial;

3. submit a system description of the model to the FMA and the Oesterreichische Nationalbank every three years.
- (4) Credit institutions may only make material changes to the models approved pursuant to para. 1 or 2 with the approval of the FMA. The procedure pursuant to para. 1 or 2 is to be applied to decisions regarding material changes.
- (5) The FMA is to monitor the application of models pursuant to paras. 1 and 2 and to revoke its approval of such models if the FMA's own investigations or the results of audits carried out by the Oesterreichische Nationalbank on behalf of the FMA indicate that risk no longer appears to be captured properly or the effect of credit risk mitigation techniques no longer appears to be calculated properly. In cases pursuant to para. 3 no. 2, the FMA must decide, with due attention to the plan presented, whether supervisory measures are required in order to ensure that risk is captured and the effect of credit risk mitigation techniques is calculated properly.

### **Approval Procedure for the Advanced Measurement Approach for Operational Risk**

**Article 21d.** (1) The calculation of minimum capital requirements for operational risk using the Advanced Measurement Approach pursuant to Article 221 by a credit institution or by a superordinate credit institution for its group of credit institutions is subject to approval by the FMA. This approval is to be granted if

1. the qualitative requirements pursuant to para. 2 are fulfilled; and
2. the quantitative requirements pursuant to para. 6 are fulfilled; and
3. the fulfilment of disclosure requirements concerning information pursuant to Article 26 para. 7 no. 2 lit. c is ensured, and these requirements are fulfilled on an ongoing basis.

(1a) In the procedure pursuant to para. 1, the FMA must obtain an expert opinion from the Oesterreichische Nationalbank on the fulfilment of the requirements pursuant to para. 1 nos. 1 and 2.

(2) The qualitative requirements include the following:

1. an internal operational risk measurement system which is closely integrated into the credit institution's day-to-day risk management processes;
2. an independent risk management function for operational risk;
3. regular reporting of operational risk exposures and loss experience; the credit institution must also have adequate procedures for taking appropriate corrective action;
4. a risk management system which is documented in a transparent manner; the credit institution must also have procedures in place for ensuring compliance and policies for the treatment of non-compliance;
5. at least annual reviews of processes for the directors and of the operational risk measurement systems, to be performed by the internal audit unit or external auditors.

(3) Credit institutions and superordinate credit institutions acting on behalf of a group of credit institutions must

1. notify the FMA and the Oesterreichische Nationalbank in writing immediately if the credit institution no longer fulfils one or more of the requirements indicated in paras. 1 and 2 or if it

does not comply with requirements and conditions imposed by administrative ruling (*Bescheid*), and present a plan for a return to compliance within a reasonable period of time or demonstrate that the effect of non-compliance is immaterial;

2. notify the FMA and the Oesterreichische Nationalbank in writing immediately of any intended changes in the Advanced Measurement Approach approved under para. 1 or in its application, and demonstrate that the changes are immaterial; and
3. submit a system description to the FMA and the Oesterreichische Nationalbank every three years.

(4) Credit institutions and superordinate credit institutions acting on behalf of a group of credit institutions may only make material changes to the Advanced Measurement Approach approved pursuant to para. 1 with the approval of the FMA. The procedure pursuant to para. 1 is to be applied to decisions regarding material changes.

(5) The FMA is to monitor the application of the Advanced Measurement Approach on an ongoing basis. The FMA must revoke its approval in cases where risk no longer appears to be captured properly. In cases pursuant to para. 3 no. 1, the FMA must decide, with due attention to the plan presented, whether supervisory measures are required in order to ensure that risk is captured properly.

(6) The FMA must issue a regulation defining the quantitative criteria which ensure that operational risk is captured properly in the Advanced Measurement Approach by a model chosen by a credit institution or group of credit institutions, and which are required for approval pursuant to para. 1. These criteria must comply with the provisions set forth in Annex X, Part 3, Numbers 8 to 24 of Directive 2006/48/EC and must in any case include:

1. statistical adequacy;
2. the consideration of correlations between individual losses and operational risks;
3. the capture of the major risk drivers by the risk measurement system;
4. the historical observation period for data series;
5. the entry and treatment of internal and external data;
6. the use of scenario analyses;
7. the consideration of the business environment and internal control factors.

(7) Given approval by the FMA, superordinate credit institutions and subordinate institutions within a group of credit institutions may apply the Advanced Measurement Approach uniformly. The approval requirements of para. 1 may be fulfilled jointly by the institutions within the group of credit institutions. The applicant must enclose the following documents and information with the application for the permit for the uniform application of the advanced measurement approach:

1. a description of the methodology used for allocating operational risk capital, between the different entities of the groups of credit institutions;
2. indication of whether and how diversification effects are intended to be factored in the risk measurement system.



## Approval Procedure for Internal Market Risk Models for the Trading Book

**Article 21e.** (1) The calculation of minimum capital requirements using an internal model ("value at risk" model) pursuant to Article 22p by a credit institution or by a superordinate credit institution acting on behalf of a group of credit institutions is subject to approval by the FMA. This approval is to be granted if

1. the model is properly integrated into the credit institution's system for capturing risk;
2. the requirements of Article 22p para. 5 nos. 1 to 3 are fulfilled;
3. the credit institution employs persons in the trading, risk control, internal audit and back-office organisational units who possess a sufficient understanding of the model and its application;
4. the predictive power of the model is confirmed by back-testing;
5. the internal model is used consistently;
6. minimum capital requirements are calculated on a daily basis; and
7. the credit institution obtains an opinion from an independent expert regarding market requirements, their depiction in the model structure and the fulfilment of requirements pursuant to Article 22p para. 5 nos. 2 and 3.

(2) In the procedure pursuant to para. 1, the FMA must obtain an expert opinion from the Oesterreichische Nationalbank on the fulfilment of the requirements pursuant to para. 1, on the independence of the expert appointed by the credit institution, and on the amount of the factor pursuant to Article 22p para. 2 no. 2.

(3) If the credit institution operates to a substantial extent in multiple countries through branches or group institutions, the FMA must inform the competent authorities in those countries about the intended use of the model chosen by the credit institution and cooperate with those authorities as necessary. If institutions within the group of credit institutions use internal models pursuant to Article 22p for the consolidation of positions pursuant to Article 24a and those internal models have been approved by a competent authority or an authority in a third country which is represented on the Basel Committee on Banking Supervision, the FMA may restrict the review of these internal models to their integration into the group of credit institutions. For this purpose, the FMA must obtain an expert opinion from the Oesterreichische Nationalbank. If doubts exist as to the fulfilment of requirements pursuant to para. 1, the credit institution or the superordinate credit institution acting on behalf of a group of credit institutions must apply for approval pursuant to para. 1.

(4) Credit institutions and superordinate credit institutions acting on behalf of a group of credit institutions must

1. notify the FMA and the Oesterreichische Nationalbank immediately of any changes in the model, in the model assumptions or in the transactions included in the model, and demonstrate that the changes are immaterial;
2. notify the FMA and the Oesterreichische Nationalbank immediately if the credit institution no longer fulfils one or more of the criteria pursuant to Article 22p para. 5 nos. 1 to 3 or if it does not comply with requirements and conditions imposed by administrative ruling (*Bescheid*), and



present a plan for a return to compliance within a reasonable period of time or demonstrate that the effect of non-compliance is immaterial;

3. submit a system description of the model to the FMA and the Oesterreichische Nationalbank every three years.

(5) Credit institutions and superordinate credit institutions acting on behalf of a group of credit institutions may only make material changes to the internal market risk model approved pursuant to para. 1 with the approval of the FMA. The procedure pursuant to para. 1 is to be applied to decisions regarding material changes.

(6) The FMA must monitor the application of the internal model and revoke its approval of the model pursuant to para. 1 if

1. the results of the stress tests and back-testing performed by the credit institution (despite the definition of the multiplier),
2. the FMA's own investigations, or
3. the results of reviews conducted by the Oesterreichische Nationalbank on behalf of the FMA indicate that risk no longer appears to be captured properly. In cases pursuant to para. 4 no. 2, the FMA must decide, with due attention to the plan presented, whether supervisory measures are required in order to ensure that risk is captured properly. The FMA may define a reasonable period for the fulfilment of the qualitative criteria.

### **Approval Procedure for Internal Models for Calculating Exposure Values for Derivative Contracts, Repurchase Agreements, Securities or Commodities Lending or Borrowing Transactions, Margin Lending Transactions and Long Settlement Transactions**

**Article 21f.** (1) Credit institutions or a superordinate credit institution acting on behalf of a group of credit institutions may use an internal model to calculate the exposure value for the following transactions:

1. the derivative instruments listed in Annex 2 to Article 22;
2. repurchase transactions;
3. securities or commodities lending or borrowing transactions;
4. margin lending transactions; and
5. long settlement transactions.

(2) If the internal model is not applied to all transactions pursuant to para. 1, then it may be applied in the following combinations:

1. only for transactions pursuant to para. 1 no. 1;
2. for transactions pursuant to para. 1 nos. 2 to 4;
3. for transactions pursuant to para. 1 nos. 1 to 4.

Long settlement transactions may also be added to the combinations under nos. 1 and 2.

(3) The use of an internal model pursuant to para. 1 is subject to approval by the FMA. If a credit institution or a superordinate credit institution acting on behalf of a group of credit institutions plans to

use such an internal model, then it must obtain an opinion from an independent expert regarding the fulfilment of the requirements under nos. 1 to 9. This approval is to be granted if

1. the credit institution has been using a model to calculate exposure values which fulfils the minimum requirements pursuant to para. 4 for at least one year;
2. the model used to calculate exposure values is sound;
3. the model used takes appropriate account of correlation risks;
4. the predictive power of the model is confirmed by back-testing;
5. the credit institution has an appropriately independent organisational unit which is responsible for controlling counterparty credit risk;
6. the model is properly integrated into the credit institution's day-to-day risk management;
7. the credit institution employs persons who possess a sufficient understanding of the model and its application;
8. the credit institution has sound stress testing procedures in place; and
9. the requirements pursuant to para. 4 are fulfilled.

(4) The FMA must issue a regulation defining those criteria which enable the proper calculation of exposure values. The criteria must comply with the provisions of Annex III, Part 6, Numbers 5 to 27, Number 28 (first sentence) and Numbers 29 to 42 of Directive 2006/48/EC and must in any case include:

1. Qualitative standards, in particular:
  - a) the organisation and definition of duties for an independent control unit;
  - b) the integration of the model into the credit institution's risk control;
  - c) the involvement of senior management in risk control,
  - d) reviews of the model;
  - e) stress testing;
  - f) documentation of the model;
2. Quantitative standards, in particular:
  - a) the calculation of the exposure value;
  - b) the scaling factor and the requirements for allowing the credit institution to use its own estimates of the scaling factor;
  - c) the consideration of margin agreements;
  - d) the stability and validation of the model.

Insofar as a discretion is provided for in Annex III, Part 6, Numbers 5 to 27 and 29 to 42 of Directive 2006/48/EC, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

(5) In the procedure pursuant to para. 3, the FMA must obtain an expert opinion from the Oesterreichische Nationalbank on the fulfilment of the requirements pursuant to para. 3 nos. 1 to 9 and on the independence of the expert appointed by the credit institution pursuant to para. 3.

(6) The FMA's approval may also be granted for the application of an internal model to one or more of the transaction types listed in para. 1. For transactions not subject to the model, exposure values must be calculated consistently using either the Mark-to-Market Method or the Standardised

Method. If a model is used within a group of credit institutions on the basis of an approval pursuant to Article 21g, individual credit institutions may use the various methods pursuant to Article 22 para. 5.

(7) Credit institutions and superordinate credit institutions acting on behalf of a group of credit institutions must

1. notify the FMA and the Oesterreichische Nationalbank in writing immediately if the credit institution no longer fulfils one or more of the requirements pursuant to para. 3 or if it does not comply with requirements and conditions imposed by administrative ruling (*Bescheid*), and present a plan for a return to compliance within a reasonable period of time or demonstrate that the effect of non-compliance is immaterial;
2. notify the FMA and the Oesterreichische Nationalbank in writing immediately of any intended changes in the internal model approved under para. 1 or in its application, and demonstrate that the changes are immaterial; and
3. submit a system description of the model to the FMA and the Oesterreichische Nationalbank every three years.

(8) Credit institutions and superordinate credit institutions may only make material changes to an approved internal model or its application with the approval of the FMA. The procedure pursuant to para. 3 is to be applied to decisions regarding material changes.

(9) The FMA is to monitor the application of the model on an ongoing basis. The FMA must revoke its approval in cases where

1. the results of the stress tests and back-testing performed by the credit institution,
2. the FMA's own investigations, or
3. the results of reviews conducted by the Oesterreichische Nationalbank on behalf of the FMA indicate that proper model output is no longer ensured. In cases pursuant to para. 7 no. 1, the FMA must decide, with due attention to the plan presented, whether supervisory measures are required in order to ensure proper model output.

(10) The use of the internal model may only be discontinued with the approval of the FMA. This approval is to be granted in the case of important reasons such as changes in the credit institution's structure or business activities.

### **Cross-Border Approval Procedures**

**Article 21g.** (1) If a superordinate credit institution established in Austria and its subordinate institutions established in Austria and in another Member State apply jointly for approvals pursuant to Article 21a and Article 21d to Article 21f, then this joint application is to be submitted to the FMA (as consolidating supervisory authority) by the superordinate credit institution on behalf of the entire group of credit institutions.

(2) The FMA must immediately forward the complete application to the other competent authorities and decide on the application after consultation with those authorities in accordance with Article 129 (2) of Directive 2006/48/EC within a period of six months.

(3) In the absence of a joint decision between the competent authorities within the period indicated in para. 2, the FMA must make a decision on the application, taking into account the views and reservations of the other competent authorities expressed during the period indicated in para. 2. The FMA must convey a copy of the administrative ruling (*Bescheid*) to the other competent authorities.

(4) The administrative ruling (*Bescheid*) on the application must be delivered to the superordinate credit institution established in Austria. With its delivery to the superordinate credit institution, the administrative ruling (*Bescheid*) will be considered delivered to all members of the group of credit institutions. The superordinate credit institution established in Austria must immediately inform all of its subordinate institutions of the administrative ruling (*Bescheid*). The decision pursuant to para. 3 is immediately applicable to all subordinate institutions established in Austria.

(5) A decision on the application of a model issued under the laws of another Member State pursuant to Article 129 (2) of Directive 2006/48/EC is to be considered effective for subordinate institutions in Austria as soon as the decision of the consolidating authority of another Member State has been delivered to the applicant and the applicant has informed its subordinate institutions, but not before the administrative ruling (*Bescheid*) becomes effective in the applicant's country of establishment.

**Article 21h.** If a superordinate credit institution and its subordinate institutions established in Austria apply internal approaches or models uniformly in accordance with Articles 21a, 21d and 21f and if they are collectively in compliance with the respective approval requirements, the FMA shall establish the scope of inspection, taking into account the type and nature of the requirements for approval and the scope of the approach or model to be approved. In this context, the FMA can limit inspection of the internal approach or model to the superordinate credit institution if this is appropriate in view of the type and nature of the requirements for approval and in relation to the scope of the approach or model to be approved. The FMA shall monitor the uniform application of internal approaches or models and joint compliance with the respective requirements for approval by the superordinate credit institution and the subordinate credit institutions established in Austria.

## V. Regulatory Standards

### Subsection 1: Minimum Capital Requirements

#### Minimum Capital Requirements

**Article 22.** (1) Credit institutions and groups of credit institutions must have at their disposal eligible capital equal to the sum of the amounts under nos. 1 to 5 at all times:

1. 8% of the assessment base for credit risk calculated in accordance with para. 2;
2. the minimum capital requirement for all types of risk in the trading book in accordance with Article 22o para. 2;
3. the minimum capital requirement for commodities risk and foreign-exchange risk, including the risk arising from gold positions, each for positions outside the trading book;
4. the minimum capital requirement for operational risk in accordance with Article 22i;

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).

5. additional capital requirements as necessary in accordance with Article 29 para. 4 and Article 70 para. 4a. The net position in a foreign currency may be calculated by offsetting positions within and outside of the trading book.

Notwithstanding adherence to the minimum capital requirements pursuant to nos. 1 to 5, credit institutions must hold the initial capital or initial endowment required as minimum capital when their license was issued.

(2) The assessment base for credit risk equals the sum of risk-weighted exposure values and includes exposures in the form of asset items, off-balance-sheet transactions pursuant to Annex 1 to Article 22, and derivative instruments pursuant to Annex 2 to Article 22. Those positions for which minimum capital requirements are calculated pursuant to Article 22o para. 2 nos. 1 to 10 are excepted. The assessment base must be calculated using the Standardised Approach to Credit Risk (Article 22a) or the Internal Ratings Based Approach (Article 22b). In addition, the valuation rules defined in the paragraphs below must also be applied.

(3) Exposures pursuant to para. 2, with the exception of derivative instruments pursuant to Annex 2 to Article 22 and over-the-counter (OTC) derivative instruments in the trading book, must be valued in accordance with Articles 55 to 58 and Articles 201 to 211 Commercial Code for the calculation of the assessment base, unless the discretion pursuant to Article 29a regarding the calculation of regulatory standards according to international accounting standards is exercised.

(4) The minimum capital requirement for positions in the trading book pursuant to Article 22n para. 1 must be calculated in accordance with the regulation issued pursuant to Article 22o para. 5 for the risk types listed in Article 22o para. 2 nos. 1 to 12.

(5) Credit institutions must calculate the exposure values of derivative instruments pursuant to Annex 2 to Article 22 and over-the-counter derivative instruments in the trading book using one of the following methods for the calculation of all minimum capital requirements pursuant to para. 1:

1. the Original Exposure Method, in which exposure values are calculated by multiplying nominal values by certain percentages;
2. the Mark-to-Market Method, in which exposure values are calculated as market values plus an add-on calculated by multiplying nominal values by certain percentages;
3. the Standardised Method, in which exposure values are calculated by comparing net market values with net risk positions multiplied by certain percentages;
4. an internal model pursuant to Article 21f, in which exposure values are calculated on the basis of own estimates of net market values; Para. 6 is to be applied in this context. Subsequently, the respective assessment base specific to each type of risk pursuant to para. 2 or the minimum capital requirement pursuant to para. 4 is to be calculated.

(6) In calculating exposure values pursuant to para. 5, credit institutions must apply the following principles:

1. the method chosen must be applied in a consistent and uniform manner;
2. for long settlement transactions, the exposure value may also be calculated using a method other than the one chosen in accordance with no. 1;
3. Changing methods is only permissible

- a) from the Original Exposure Method to the Mark-to-Market Method or to the Standardised Method;
- b) from the Mark-to-Market Method to the Standardised Method; Article 21f notwithstanding, changes in method other than those indicated in lit. a and b may only be carried out with the approval of the FMA; this approval is to be granted in the case of important reasons such as changes in the credit institution's structure or business activities;
- 4. Credit institutions which apply Article 22o may not use the Original Exposure Method to calculate exposure values pursuant to para. 5;
- 5. the exposure value for the transactions listed in nos. 3 to 6 of Annex 2 to Article 22 may not be calculated using the Original Exposure Method; and
- 6. if a contract provides for multiple payment streams, then the nominal value must be adjusted in accordance with the risk structure of the contract.

(7) For the purpose of calculating the exposure values of derivative instruments pursuant the Annex 2 to Article 22 and of over-the-counter derivative instruments in the trading book, contractual netting agreements may be taken into account. For the methods listed in para. 5, the FMA must issue a regulation defining how exposure values are to be calculated for derivative instruments pursuant to Annex 2 to Article 22 and over-the-counter derivative instruments in the trading book as well as how and under what conditions contractual netting agreements may be taken into account so that these exposure amounts are covered with adequate own funds. The calculation of exposure values and the application of netting agreements must comply with the provisions of Annex III to Directive 2006/48/EC. Insofar as a discretion is provided for in Annex III to Directive 2006/48/EC, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

(8) The bank auditor must review and explain in the prudential report the eligibility and accuracy of netting agreements as well as the fulfilment of the conditions defined by the FMA by way of regulation for the application of contractual netting agreements. The Oesterreichische Nationalbank must provide the FMA with expert opinions on the eligibility and accuracy of the netting agreements upon request. The Oesterreichische Nationalbank is authorised to obtain information and documents required for this purpose from the competent authorities abroad. If the FMA has doubts as to the legal effectiveness of a netting agreement on the basis of the expert opinions, the information obtained from abroad or other circumstances, the FMA must notify the credit institution accordingly. The credit institution must make a copy of this notification available to the counterparty.

## **Subsection 2: Credit Risk**

### **Standardised Approach to Credit Risk**

**Article 22a.** (1) Credit institutions and groups of credit institutions which apply the Standardised Approach to Credit Risk must multiply the exposure amounts calculated in accordance with paras. 2 and 3 and assigned to an exposure class in accordance with para. 4 by their respective assigned weights in order to calculate the assessment base for credit risk pursuant to Article 22 no. 2.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).



(2) The exposure value is to be calculated as follows:

1. The exposure value of an asset item is the book value reduced by value adjustments;
2. The exposure value of an off-balance-sheet transaction listed in Annex 1 to Article 22 is equal to a percentage of its value which depends on the level of credit risk assigned. The relevant percentages are as follows:
  - a) full-risk items: 100%;
  - b) medium-risk items: 50%;
  - c) medium/low-risk items: 20%;
  - d) low-risk items: 0%;
3. The exposure value of a derivative instrument listed in Annex 2 to Article 22 is to be calculated in accordance with Article 22 para. 5, with the effects of contracts for novation and other netting agreements pursuant to Article 22 para. 7 taken into account;
4. The exposure value of repurchase transactions, reverse repurchase transactions, securities or commodities lending or borrowing transactions, margin lending transactions and long settlement transactions may be determined pursuant to either Article 22 para. 5 or Article 22g para. 8.

(3) Where an exposure is secured, the credit institution may modify the exposure value or the weight assigned to an exposure in accordance with the provisions for credit risk mitigation set forth in Articles 22g and 22h. Where a credit institution applies the Financial Collateral Comprehensive Method pursuant to Article 22g para. 3 no. 2, the credit institution must increase by the volatility adjustment determined pursuant to Article 22g the exposure value for exposures taking the form of securities or commodities sold or lent under a repurchase transaction or a reverse repurchase transaction (Article 2 no. 44), or a securities or commodities borrowing or lending transaction (Article 2 no. 45), or the assessment base pursuant to Article 22 para. 2 for exposures taking the form of margin lending transactions.

(4) The weight used to calculate the assessment base pursuant to Article 22 para. 2 is based on the relevant class to which the exposure is assigned and, with the exception of no. 13, is defined by the FMA regulation pursuant to para. 7. The exposure classes are as follows:

1. claims on central governments or central banks;
2. claims on regional governments or local authorities;
3. claims on administrative bodies and non-commercial undertakings owned by regional governments or local authorities;
4. claims on multilateral development banks;
5. claims on international organisations;
6. claims on institutions;
7. claims on corporates;
8. retail claims;
9. claims secured by real estate property;
10. past due claims;
11. claims belonging to regulatory high-risk categories;



- 12. claims in the form of covered bonds;
- 13. securitisation positions;
- 14. short-term claims on institutions and corporates;
- 15. claims in the form of shares in investment funds;
- 16. other items.

(5) For the purposes of para. 4 and the FMA regulation issued pursuant to para. 7:

1. International organisations:
  - a) the European Communities;
  - b) the International Monetary Fund;
  - c) the Bank for International Settlements;
2. Retail exposures: exposures that do not involve securities and fulfil the following requirements:
  - a) the exposure is either to a natural person or to a group of natural persons, or to a small or medium-sized entity;
  - b) the exposure is one of a significant number of exposures with similar characteristics such that the risks associated with such lending are substantially reduced;
  - c) the total amount owed to the credit institution or the group of credit institutions, including any past due exposure, by the obligor client or the group of connected clients does not exceed EUR 1 million; exposures that are secured by residential real estate collateral are excluded from this threshold; in the event that this threshold is increased by the European Commission pursuant to Article 150 para. 1 lit j of Directive 2006/48/EC, the FMA must immediately announce the relevant threshold in the Federal Law Gazette; the present value of retail lease payments is eligible for this exposure class;
3. past due claims: banking claims that are more than 90 days past due;
4. claims belonging to regulatory high-risk categories: investments in venture capital or private equity, or claims belonging to equivalent risk categories;
5. covered bonds: bonds pursuant to Article 20 para. 3 no. 7 Investment Fund Act 1993 or bonds issued by credit institutions in the European Economic Area with specific arrangements to secure the claims of bond creditors; the exact characteristics of these bonds are to be defined by the FMA by way of a regulation and must comply with the criteria set forth in Annex VI, Part 1, Number 68 of Directive 2006/48/EC.

(6) The risk-weighted exposure amounts for securitisation positions pursuant to para. 4 no. 13 are to be calculated in accordance with Article 22c para. 1.

(7) In order to ensure that credit risk is captured properly for the purpose of calculating the assessment base pursuant to para. 1, the FMA must issue a regulation defining:

1. the risk weights assigned to the exposure classes listed in para. 4, with the exception of no. 13, and their assignment criteria;
2. the manner in which claims are treated within the relevant exposure classes;
3. the manner and the extent to which the credit assessments of export credit agencies are used to calculate weights;

4. the manner and the extent to which the credit assessments of eligible external credit assessment institutions are used to calculate weights;

As regards nos. 1 to 3, the regulation must comply with Annex VI, Part 1 and Article 153 of Directive/2006/48/EC and, as regards no. 4, must comply with Annex VI, Part 3 of Directive 2006/48/EC; insofar as Annex VI, Parts 1 and 3, and Article 153 provide for a discretion in the treatment of claims or the definition of risk weights, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

(8) A credit institution's exposures to a counterparty within the same group of credit institutions pursuant to Article 30 paras. 1 and 2 may be assigned a weight of 0% if the following requirements are fulfilled:

1. they are not own funds components pursuant to Article 23 para. 1;
2. the credit institution's counterparty is subject to appropriate prudential requirements and is
  - a) a credit institution;
  - b) a financial holding company;
  - c) a financial institution;
  - d) an ancillary services undertaking, or
  - e) an investment firm pursuant to Article 3 para. 2 nos. 2 and 4 Securities Supervision Act 2007;
3. the counterparty is included in consolidation on a full basis pursuant to Article 24 para. 1;
4. the counterparty is subject to the same risk evaluation, measurement and control procedures as the credit institution;
5. the counterparty and the credit institution are established in Austria;
6. there is no current or foreseen material or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the credit institution.

(9) Exposures to counterparties which are associated with a central institution pursuant to Article 23 para. 13 no. 6 and are members of the same institutional protection scheme as the lending credit institution, as well as exposures between associated institutions and the central institution may be assigned a weight of 0% if the following requirements are fulfilled:

1. the exposures do not give rise to liabilities in the form of the items listed in Article 23 para. 1;
2. the requirements pursuant to para. 8 nos. 2, 5 and 6 are fulfilled;
3. the credit institution and its counterparties are subject to a contractual or statutory liability arrangement which protects these associated institutions and in particular ensures their liquidity and solvency to avoid bankruptcy if necessary (institutional protection scheme);
4. the arrangements made ensure that the institutional protection scheme will be able to grant immediate support as necessary under its commitment pursuant to no. 3.
5. the institutional protection scheme has in place a suitable early warning system in the form of uniformly stipulated systems for the monitoring and classification of risk which gives a complete overview of the risk situations of all the individual members and the protection scheme as a whole, with corresponding possibilities to take influence; these systems must

suitably monitor defaulted exposures (defaulted and past due exposures pursuant to para. 5 no. 3);

6. the institutional protection scheme conducts its own risk review which is communicated to the individual members;
7. the institutional protection scheme draws up and publishes at least once per year
  - a) consolidated annual financial statements comprising the balance sheet, the profit and loss account, the annual report and the risk report concerning the institutional protection scheme as a whole, or
  - b) a report comprising the aggregated balance sheet, the aggregated profit and loss account, the annual report and the risk report concerning the institutional protection scheme as a whole; for the purpose of this report, assets and liabilities as well as equity shares are to be consolidated, and transactions between members that flow through income and expenses are to be eliminated; the central institution's bank auditor is to review the report, and the audit results are to be presented to the FMA at the same time as the report on the audit of the central institution's annual financial statements;
8. members of the institutional protection scheme are obliged to give advance notice of at least two years if they wish to end the arrangement;
9. the multiple use of capital components between the members of the institutional protection scheme as well as the inappropriate creation of own funds between members of the scheme is to be eliminated;
10. the institutional protection scheme is based on a broad membership of credit institutions which have committed to a predominantly homogenous business profile;
11. the central institution's bank auditor is to review the adequacy of the systems pursuant to no. 5, and the audit report is to be presented to the FMA at the latest within six months following the balance sheet date; the FMA must monitor and approve the adequacy of the systems pursuant to no. 5 on an annual basis. The central institution and the bodies of the institutional protection scheme are obliged to provide the FMA with all necessary information relating to the institutional protection scheme and the associated institutions.

(10) Where the risk-weighted exposure amounts cannot be calculated in accordance with paras. 2 to 9, a weight of 100% is to be assigned to the exposures.

(11) Insofar as this is provided for in the regulation pursuant to para. 7 in respect of exposures, the assignment of risk weights in the Standardised Approach to Credit Risk may also be carried out on the basis of credit quality determined by external credit assessments. The following external credit assessments may be used for this purpose:

1. solicited credit assessments assigned by eligible external credit assessment institutions pursuant to Article 21b para. 1 with due regard to the provisions of para. 13; credit institutions may nominate one or more external credit assessment institutions for the purpose of determining the risk weights to be applied to exposures; credit assessments of central governments, regional governments or local authorities, and central banks need not be solicited; or

2. credit assessments assigned by export credit agencies for the purposes of para. 4 no. 1 pursuant to para. 12.

(12) Credit assessments assigned by export credit agencies are to be recognised by the FMA if either of the following requirements is fulfilled:

1. it is a consensus risk score from export credit agencies participating in the OECD Arrangement on Guidelines for Officially Supported Export Credits, or
2. the export credit agency publishes its credit assessments, subscribes to the OECD agreed methodology and the credit assessment is associated with one of the eight minimum export insurance premiums (MEIPs) established by the OECD agreed methodology.

(13) Where credit assessments assigned by eligible external credit assessment institutions are used to calculate a credit institution's risk-weighted exposure amounts, the credit assessments must be used consistently. Credit assessments are not to be used selectively.

(14) Exposures pursuant to para. 4 no. 6 are assigned a weight in accordance with the credit quality of the central government in whose jurisdiction the institution is established.

### **Internal Ratings Based Approach**

**Article 22b.** (1) Subject to approval by the FMA, credit institutions and groups of credit institutions may use the Internal Ratings Based Approach to calculate the assessment base for credit risk pursuant to Article 22 para. 2.

(2) In the application of the Internal Ratings Based Approach, all exposures pursuant to Article 22 para. 2 are to be assigned to one of the exposure classes listed in nos. 1 to 7 using an appropriate and transparent methodology that is consistent over time. The exposure classes are as follows:

1. exposures to central governments and central banks; including exposures to
  - a) regional governments or local authorities which would be treated as exposures to central governments under the Standardised Approach to Credit Risk pursuant to Article 22a;
  - b) public-sector entities which would be treated as exposures to central governments under the Standardised Approach to Credit Risk pursuant to Article 22a;
  - c) multilateral development banks which would attract a weight of 0% under the Standardised Approach to Credit Risk pursuant to Article 22a;
2. exposures to institutions; including exposures to
  - a) regional governments or local authorities which do not come under no. 1 lit. a;
  - b) public-sector entities which would be treated as exposures to institutions under the Standardised Approach to Credit Risk pursuant to Article 22a;
  - c) multilateral development banks and international organisations which do not come under no. 1 lit. c;
3. corporate exposures, including exposures that are not classifiable pursuant to nos. 1, 2 and 4 to 6; within this exposure class, credit institutions must separately identify those exposures which possess the characteristics indicated in lit. a to c as specialised lending exposures:

- a) the exposure is to an entity which was created specifically to finance or operate physical assets
- b) the contractual arrangements give the lender a substantial degree of control over the assets and the income that they generate;
- c) the primary source of repayment of the obligation is the income generated by the assets being financed, rather than the independent capacity of a broader commercial enterprise;
- 4. retail exposures, provided securities are not involved and the following requirements are fulfilled:
  - a) the exposures are either to a natural person or a group of natural persons, or to a small or medium-sized entity, provided in the latter case that the total amount owed to the credit institution or the group of credit institutions, including any past due exposure, by the obligor client or the group of connected clients does not exceed EUR 1 million; exposures that are secured by residential real estate collateral are excluded from this threshold; in the event that this threshold is increased by the European Commission pursuant to Article 150 para. 1 lit j of Directive 2006/48/EC, the FMA must immediately announce the relevant threshold in the Federal Law Gazette;
  - b) the exposures are treated consistently and in a comparable manner in risk management;
  - c) the exposures are not treated in the same way as exposures pursuant to no. 3;
  - d) the exposures are part of a larger number of similarly treated exposures; the present value of retail lease payments is eligible for this exposure class;
- 5. equity exposures; by way of derogation from Article 2 no. 2, these include all
  - a) non-debt exposures conveying a subordinated claim on the assets or income of the issuer, and
  - b) debt exposures of which the economic substance is similar to the exposures indicated in lit. a;
- 6. securitisation positions pursuant to Article 2 no. 65;
- 7. other non-credit-obligation assets, including the residual value of leased properties if not included in the exposure value of discounted minimum lease payments.

(3) Where credit institutions use the Internal Ratings Based Approach, the assessment base is calculated as follows:

- 1. the exposures assigned to the exposure classes pursuant to para. 2 nos. 1 to 5 and 7 are weighted on the basis of the calculation methods pursuant to para. 10 nos. 2 and 3, the exposure value and the parameters associated with each exposure, unless these exposures are deducted from eligible capital pursuant to Article 23 para. 13;
- 2. the exposures assigned to the exposure class pursuant to para. 2 no. 6 are weighted pursuant to Articles 22c to 22f unless they are deducted from eligible capital pursuant to Article 23 para. 13 no. 4d.

(4) The parameters pursuant to para. 3 no. 1 are as follows:

- 1. the probability of default (PD) for measuring the probability of default of a counterparty over a one-year period;

2. the loss given default (LGD) for measuring the ratio of the economic loss on an exposure due to the default of the counterparty to the amount outstanding at default;
  3. the maturity (M) of an outstanding exposure;
  4. the conversion factor (CF) for measuring the ratio of the portion of the currently undrawn amount of a committed credit line that will be drawn and outstanding at default to the entire currently undrawn amount of this credit line, with the extent of the credit line determined by the advised limit.
  5. expected loss (EL) for measuring the ratio of the amount of economic loss expected from a potential default of the counterparty or dilution over a one-year period to the amount outstanding at default pursuant to Article 22 para. 2.
- (5) For the purposes of para. 1 and the FMA regulation issued pursuant to paras. 10 and 11,
1. dilution risk is the risk that a purchased receivable is worth less than its balance sheet value;
  2. default is a quality of an exposure in which
    - a) the obligor is past due more than 90 days on any material credit obligation to a credit institution within the group, or
    - b) the obligor is considered unlikely to pay its credit obligations in full to the credit institution within the group.
- (6) Where credit institutions use the Internal Ratings Based Approach, the following applies:
1. the expected loss amounts for exposures assigned to the exposure classes pursuant to para. 2 nos. 1 to 5 are calculated using the calculation methods pursuant to para. 10 no. 4, where
    - a) the calculation is based on the same input figures for the exposure value, probability of default, loss given default and conversion factor for each exposure as those used for the calculation of risk-weighted exposure amounts pursuant to para. 3, and
    - b) for defaulted exposures where credit institutions use own estimates for loss given default, the expected loss amounts correspond to the credit institution's best estimates for the defaulted exposure pursuant to para. 10 no. 4;
  2. the expected loss amounts for exposures assigned to the exposure class pursuant to para. 2 no. 6 are calculated pursuant to Articles 22c to 22f;
  3. the expected loss amount for exposures assigned to the exposure class pursuant to para. 2 no. 7 is zero.
- (7) When applying the Internal Ratings Based Approach, credit institutions and groups of credit institutions must provide
1. own estimates of probability of default for exposures belonging to the exposure classes pursuant to para. 2 nos. 1 to 4;
  2. additional own estimates of loss given default and conversion factors for exposures belonging to the exposure class pursuant to para. 2 no. 4;
  3. the loss given default and the conversion factors for exposures belonging to the exposure classes pursuant to para. 2 nos. 1 to 3 on the basis of para. 10.



(8) Notwithstanding para. 7, credit institutions and groups of credit institutions may, subject to approval by the FMA, perform their own estimates of loss given default and conversion factors for exposures belonging to the exposure classes pursuant to para. 2 nos. 1 to 3.

(9) Credit institutions and groups of credit institutions which calculate credit risk pursuant to the Internal Ratings Based Approach may, subject to approval by the FMA, determine the assessment base for credit risk for the following exposures under the Standardised Approach to Credit Risk pursuant to Article 22a:

1. exposures belonging to the exposure class pursuant to para. 2 nos. 1 and 2 if the number of exposures is limited and it would be unduly burdensome for the credit institution to implement a rating system for these exposures;
2. exposures with an immaterial risk profile in non-significant business units as well as exposure classes of an immaterial size, with the size of these exposures in the equity exposure class pursuant to para. 2. no. 5 being considered material in any case if their aggregate value, excluding the equity exposures indicated in no. 5, exceeds, on average over the preceding year, 10% of the credit institution's eligible capital; if the credit institution or group of credit institutions has less than ten equity exposures pursuant to para. 2 no. 5, this threshold amounts to 5% of the credit institution's eligible capital;
3. exposures belonging to the classes of exposures to the Austrian federal government, provincial governments, municipal governments and public sector entities if a weight of 0% is assigned to exposures to the federal government under the Standardised Approach to Credit Risk pursuant to Article 22a, as well as exposures belonging to the classes of exposures to the Member States and their regional governments, local authorities and public sector entities whose credit obligations qualify for a 0% risk weight under the Standardised Approach to Credit Risk pursuant to Article 22a and there is no difference in risk between them because of specific public provisions;
4. exposures belonging to the exposure class pursuant to para. 2 no. 2 which a credit institution has to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking, provided that these undertakings are credit institutions, financial institutions, financial holding companies, asset management companies as defined in Article 2 Number 5 of Directive 2002/87/EC or, in the case of ancillary services undertakings, are part of a group of credit institutions pursuant to Article 30 para. 1; this also applies to exposures between institutions which are members of the same institutional protection scheme that meets the requirements pursuant to Article 22a para. 9;
5. equity exposures belonging to the exposure class pursuant to para. 2 no. 5 incurred under legislative programmes of Member States to promote specific sectors of the economy that provide significant subsidies for the investment to the credit institution and involve government oversight and restrictions on the equity investments; the aggregate sum of the investment must not exceed 10% of eligible capital;



6. exposures to institutions pursuant to Article 22 para. 4 no. 6 in the form of required minimum reserves if the requirements set forth in the FMA regulation pursuant to Article 22a para. 7 are met;
7. guarantees and counter-guarantees of central governments;
8. exposures arising from long settlement transactions;
9. equity exposures to entities whose credit obligations qualify for a 0% risk weight under the Standardised Approach to Credit Risk pursuant to Article 22a.

The assessment base for cash in hand denominated in euro and in freely convertible foreign currencies, coined precious metals insofar as they are Austrian or foreign legal tender, as well as trust assets provided the credit institution bears only the management risk may be calculated using the Standardised Approach to Credit Risk in any case.

(10) The FMA must issue a regulation defining how to calculate the assessment base pursuant to para. 1 for exposures that are assigned to the exposure classes pursuant to para. 2 nos. 1 to 7 in order to ensure that credit risk is captured properly. The calculation of the assessment base must comply with the provisions of Annex VII, Parts 1 to 3, Article 87 paras. 11 and 12 and Article 154 of Directive 2006/48/EC and include the following aspects:

1. the calculation of parameters as well as exposure values pursuant to para. 3 no. 1 and para. 4;
2. the calculation of risk-weighted exposure amounts for exposures assigned to the exposure classes listed in para. 2 nos. 1 to 5 and 7 pursuant to para. 3 no. 1;
3. the calculation of risk-weighted exposure amounts for the dilution risk of purchased receivables pursuant to para. 3 no. 1, including exposures with and without the right of recourse to the seller;
4. the calculation of expected loss amounts (EL) pursuant to para. 6 for exposures assigned to the exposure classes listed in para. 2 nos. 1 to 5 and 7; Insofar as Annex VII, Parts 1 to 3 and Article 154 of Directive 2006/48/EC provide for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

(11) The FMA must issue a regulation defining the criteria which ensure that credit risk is captured properly for credit institutions and groups of credit institutions that calculate the assessment base pursuant to para. 1, and which meet the requirements specified in Annex VII, Part 4 of Directive 2006/48/EC. These criteria must comprise:

1. proof of the use and validation of appropriate strategies, policies and procedures by credit institutions and groups of credit institutions which apply the Internal Ratings Based Approach pursuant to para. 1, and
2. requirements for systems and controls to be provided by the credit institution which are used for the meaningful calculation of risk-weighted exposure amounts pursuant to para. 1 and which ensure the integrity of the assignment and calculation processes. Insofar as Annex VII, Part 4 of Directive 2006/48/EC provides for a discretion with regard to the aspects pursuant to nos. 1 and 2, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

## Method of Calculating Risk-Weighted Exposure Amounts for Securitisation Positions

**Article 22c.** (1) For the calculation of risk-weighted exposure amounts for exposures assigned to the exposure class pursuant to Article 22a para. 4 no. 13 or Article 22b para. 2 no. 6, credit institutions and groups of credit institutions must apply the method of calculating risk-weighted exposure amounts which they would be required to use for the exposures underlying the securitisation.

(2) Where the credit assessments of eligible external credit assessment institutions are used to calculate risk-weighted exposure amounts within the exposure class pursuant to Article 22a para. 4 no. 13, these credit assessments must be used consistently and in accordance with the FMA regulation pursuant to Article 22d para. 5 no. 5 or Article 22f para. 2 no. 3; individual credit assessments are not to be used selectively.

(3) Where a securitisation position is secured, the risk weight applied to this position pursuant to Article 22d to 22f may be modified pursuant to Article 22g and 22h.

(4) Where there is an exposure to different tranches in a securitisation, the exposure to each tranche is to be considered a separate securitisation position; securitisation positions also include exposures to a securitisation arising from interest rate or currency derivative contracts.

(5) The risk-weighted exposure amounts calculated in accordance with Articles 22d to 22f are to be included in the calculation of the assessment base pursuant to Article 22a para. 1 or Article 22b para. 1 unless these exposure amounts are to be deducted from eligible capital pursuant to Article 23 para. 13 no. 4d.

### Treatment of Securitisation Positions at Originator and Sponsor Credit Institutions

**Article 22d.** (1) An originator credit institution must, subject to para. 10, exclude exposures effectively transferred under a traditional securitisation from the calculation of risk-weighted exposure amounts pursuant to Article 22a para. 1 or Article 22b para. 1 and of expected loss amounts pursuant to Article 22b para. 4 no. 5.

(2) With regard to the credit risk associated with exposures that was effectively transferred under a synthetic securitisation, an originator credit institution must, subject to para. 10, calculate risk-weighted exposure amounts in accordance with the criteria stipulated by the FMA regulation.

(3) In calculating the assessment base pursuant to Article 22a para. 1 or Article 22b para. 1, an originator credit institution must include exposures whose credit risk was not effectively transferred in such a way as if those exposures or their credit risk had not been securitised.

(4) An originator or sponsor credit institution must calculate risk-weighted exposure amounts for securitisation positions held by the institution itself; a weight based on the credit quality of the securitisation position is to be assigned to the exposure value of each securitisation position.

(5) In order to ensure that credit risk is captured properly, the FMA must issue a regulation defining:

1. the requirements for the effective transfer of exposures pursuant to para. 1;

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2. the requirements for the effective transfer of credit risk associated with exposures pursuant to para. 2;
3. criteria for calculating the risk-weighted exposure amount for securitisation positions pursuant to para. 2;
4. criteria for calculating the risk-weighted exposure amount for securitisation positions pursuant to para. 4;
5. the manner and the extent to which the credit assessments of eligible external credit assessment institutions are used to calculate the risk-weighted exposure amounts of securitisation positions; The requirements pursuant to nos. 1 to 5 must comply with the provisions of Annex IX, Part 2, Numbers 1 to 7, Part 3, Numbers 1 to 7, Part 4 and Annex VI, Part 3 of Directive 2006/48/EC; insofar as those Annexes provide for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

(6) An originator or sponsor credit institution which, in respect of a securitisation, calculates riskweighted exposure amounts pursuant to paras. 1 to 4 may not provide non-contractual support.

(7) Non-contractual support refers to any measure which a group credit institution is not bound to take on the basis of agreements underlying the securitisation and which

1. mitigates the potential or actual losses incurred by investors or
2. leads to an increase in risk or to an assumption of losses from the exposures in the securitized portfolio for the group credit institution, and which this credit institution does not carry out on prevailing market terms.

(8) Where an originator or sponsor credit institution provides non-contractual support pursuant to para. 7, the FMA is to issue an administrative ruling (*Bescheid*) requiring the credit institution or group of credit institutions to hold additional own funds in the amount that would be required for the exposure if it had not been securitised.

(9) A credit institution which provides non-contractual support in violation of para. 6 must disclose on its website that it has provided non-contractual support as well as the resulting impact on minimum capital requirements.

(10) An originator or sponsor credit institution shall apply

1. the same sound and well-defined criteria for credit-granting in accordance with Article 39 para. 2 to exposures to be securitised as they apply to exposures to be held on their book; to this end, the same processes for approving and, where relevant, amending, renewing and re-financing credits shall be applied;
2. the same standards of analysis to participations or underwritings in securitisation issues purchased from third parties regardless of whether such participations or underwritings are to be held on their trading or non-trading book.

Where the requirements referred to in lit. 1 and 2 of this paragraph are not met, Article 22d para. 1 and 2 shall not be applied by the originator credit institution and the securitised exposure shall be included in the calculation of the weighted exposure or expected loss values.

(11) Originator or sponsor credit institutions shall disclose to investors the level of their commitment under Article 22f para. 3 to maintain a net economic interest in the securitisation. Originator and sponsor credit institutions shall ensure that prospective investors have readily available access

1. to all materially relevant data on the credit quality and performance of the individual underlying exposures, cash flows and collateral supporting a securitisation exposure; and
2. information that is necessary to conduct comprehensive and well informed stress tests on the cash flows and collateral values supporting the underlying exposures.

Materially relevant data shall be determined as at the date of the securitisation and where appropriate due to the nature of the securitisation thereafter.

### **Securitisation of Revolving Exposures**

**Article 22e.** (1) An originator credit institution must calculate an additional risk-weighted exposure amount pursuant to paras. 4 and 5 for securitisations if

1. exposures whereby clients' balances are permitted to fluctuate based on their decisions to borrow and repay, up to a limit established by the credit institution, underlie the securitization (revolving exposures), and
2. on the occurrence of specific events, the contracts underlying the securitisation provide for the redemption of investors' securitisation positions before the originally agreed maturity (early amortisation provision).

(2) Para. 1 does not apply if

1. the credit risk associated with the revolving exposures which
  - a) are established after the early amortisation provision is triggered and
  - b) arise from the exposure portfolio underlying the securitisation at the time the early amortisation provision is triggered can be assigned unconditionally and completely to the investors in the securitisations or
2. the performance of the securitised exposures or the credit quality of the originator credit institution is excluded as an admissible reason for the triggering of the early amortization provision.

(3) Where both revolving and non-revolving exposures underlie a securitisation, the originator credit institution must calculate an additional risk-weighted exposure amount only for the portion of the securitised portfolio which contains revolving exposures.

(4) The additional risk-weighted exposure amount pursuant to para. 1 is the product of

1. the amount of the investors' interest in the securitisation,
2. the appropriate conversion factor and
3. the weighted average risk weight that would apply to the securitised exposures if they had not been securitised.

(5) The criteria for calculating the additional risk-weighted exposure amount pursuant to para. 1 and its upper limit are to be defined by the FMA by way of a regulation and must comply with the provisions of Annex IX, Part 4, Numbers 16 to 33 of Directive 2006/48/EC. In defining the conversion factor pursuant to Article 22b para. 4 no. 4, the FMA must consider in particular whether

1. the early amortisation clause is 'controlled' or 'uncontrolled', and
2. the securitised exposures are retail credit lines which are uncommitted and unconditionally cancellable by the credit institution without prior notice, or other credit lines.

(6) For the purpose of calculating the conversion factor for securitisations consisting of retail credit lines which are uncommitted and unconditionally cancellable without prior notice by the credit institution and for which an early amortisation is triggered by a quantitative value together with a factor other than the three-month average excess spread level, the FMA may issue a regulation defining a parameter based on the criteria in Annex IX, Part 4, Numbers 26 to 29 of Directive 2006/48/EC; the FMA must consult the competent authorities in all Member States prior to issuing the regulation and take account of their opinions; the FMA must also publish the opinions expressed by the competent authorities involved on its website.

### **Treatment of Securitisation Positions at Investor Credit Institutions**

**Article 22f.** (1) A credit institution investing in a securitisation must calculate risk-weighted exposure amounts for securitisation positions held by the institution itself; in this context, a weight based on the credit quality of the securitisation position is to be assigned to the exposure value of each securitisation position.

(2) In order to ensure that credit risk is captured properly, the FMA must issue a regulation defining:

1. the criteria for calculating the risk-weighted exposure amounts of securitisation positions pursuant to para. 1;
2. the risk weights to be assigned to the exposure amounts and
3. the manner and the extent to which the credit assessments of eligible external credit assessment institutions are used to calculate the risk-weighted exposure amounts of securitisation positions;

The regulation must comply with the provisions of Annex IX, Part 4 in respect of nos. 1 and 2 and, in respect of no. 3, Annex IX, Part 3, Numbers 1 to 7 and Annex VI, Part 3 of Directive 2006/48/EC. Insofar as these Annexes provide for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

(3) A credit institution, other than when acting as an originator, a sponsor or original lender, shall be exposed to the credit risk of a securitisation position in its trading book or non-trading book only if the originator, sponsor or original lender has explicitly disclosed to the credit institution that it will retain, on an ongoing basis, a material net economic interest, which, in any event, shall not be less than 5%. Retention of net economic interest means:

1. retention of no less than 5% of the nominal value of each of the tranches sold or transferred to the investors;
2. in the case of securitisations of revolving exposures, retention of an originator's interest of no less than 5% of the nominal value of the securitised exposures;
3. retention of randomly selected exposures, equivalent to no less than 5% of the nominal amount of the securitised exposures, where such exposures would otherwise have been securitised in the securitisation, provided that the number of potentially securitised exposures is no less than 100 at origination; or
4. retention of the first loss tranche and, if necessary, other securitisation tranches having the same or a more severe risk profile than those transferred or sold to investors and not maturing any earlier than those transferred or sold to investors, so that the retention equals in total no less than 5% of the nominal value of the securitised exposures.

Net economic interest shall be measured at origination and maintained on an ongoing basis. It shall not be subject to credit risk mitigation techniques or short positions or other safeguarding instruments. The net economic interest shall be determined by the notional value for off-balance sheet items. For the purposes of this paragraph and para. 6 no. 1, ongoing basis means that retained positions, interest or exposures are not hedged or sold.

(4) An EEA parent credit institution or an EEA parent financial holding company established in Austria shall comply with the obligations set forth in para. 3 on the basis of the consolidated financial situation, if the following requirements are met:

1. the EEA parent credit institution, the EEA parent financial holding company or one of its subsidiaries, as an originator or a sponsor, securitises exposures from at least two other institutions included in the scope of supervision on the basis of the consolidated financial situation,
2. the institutions, which created the securitised exposures, satisfy the requirements pursuant to Article 22d para. 10,
3. the information needed to satisfy the requirements referred to in Article 22d para. 11 is delivered, in a timely manner, to the originator or sponsor and to the EEA parent credit institution or EEA parent financial holding company.

Subordinate credit institutions pursuant to Article 30 para. 1 or 2, whose EEA parent credit institution or EEA parent financial holding company comply with the requirements under para. 3 on the basis of their consolidated financial situation are not required to comply with the obligations set out in para. 3.

(5) Para. 3 shall not apply to:

1. securitised exposures or contingent claims on or fully, unconditionally and irrevocably guaranteed by:
  - a) central governments and central banks,
  - b) provinces/states and municipalities, regional governments, local authorities and public sector entities of Member States,
  - c) institutions to which a risk weight of 50% or less is assigned under the Standardised Approach to Credit Risk pursuant to Article 22a,



d) multilateral development banks;

2. transactions based on a clear, transparent and publicly accessible index, where the underlying reference entities are identical to those that make up an index of entities that is widely traded, or are other tradable securities other than securitisation positions;
3. syndicated loans, purchased receivables or credit default swaps where these instruments are not used to package or hedge a securitisation that is covered by para. 3.

(6) Before investing and on an ongoing basis thereafter, credit institutions acting as investors shall have a comprehensive and thorough understanding of the features pursuant to nos. 1 to 7 of each of their individual securitisation positions. Therefore, credit institutions shall implement separate policies and procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions for analysing and recording them. The characteristics are:

1. information disclosed under Article 22d para. 11, by originators or sponsors to specify the net economic interest that they maintain, on an ongoing basis, in the securitisation;
2. the risk characteristics of the individual securitisation position;
3. the risk characteristics of the exposures underlying the securitisation position;
4. the reputation and loss experience in earlier securitisations of the originators or sponsors in the relevant exposure classes underlying the securitisation position;
5. the statements and disclosures made by the originators or sponsors or their agents or advisors about their due diligence on the securitised exposures and, where applicable, on the quality of their supporting collateral;
6. where applicable, the methodologies and concepts on which the valuation of collateral supporting the securitised exposures is based and the policies adopted by the originator or sponsor to ensure the independence of the valuer;
7. all the structural features of the securitisation that can materially impact the performance of the credit institution's securitisation position.

(7) Credit institutions acting as investors shall regularly perform their own stress tests appropriate to their securitisation positions. To this end, credit institutions may rely on financial models developed by an external credit assessment institution provided that credit institutions can demonstrate, when requested, that they took due care prior to investing to validate the relevant assumptions in and structuring of the models and to understand methodology, assumptions and results.

(8) Credit institutions acting as investors shall establish formal procedures appropriate to their trading book and non-trading book and commensurate with the risk profile of their investments in securitised positions to monitor on an ongoing basis and in a timely manner performance information on the exposures underlying their securitisation positions. To the extent applicable, this information shall include in particular:

1. the exposure type,
2. the percentage of loans, more than 30, 60 and 90 days past due,
3. default rates,
4. prepayment rates,

5. loans in foreclosure,
6. collateral type and occupancy,
7. frequency distribution of credit scores or other measures of credit worthiness across underlying exposures,
8. industry and geographical diversification,
9. frequency distribution of loan to value ratios with band widths that facilitate adequate sensitivity analysis.

Where the underlying exposures are themselves securitisation positions, credit institutions shall have the information set out in this paragraph not only on the underlying securitisation tranches, such as the issuer name and credit quality, but also information on the characteristics and performance of the pools underlying those securitisation tranches.

(9) Credit institutions acting as investors shall have a thorough understanding of all the structural features of a securitisation transaction that would materially impact the performance of their exposures related to the transaction such as the

1. contractual waterfall and waterfall-related triggers,
2. credit and liquidity enhancements,
3. market value triggers,
4. deal-specific definition of default.

### **Credit Risk Mitigation Techniques**

**Article 22g.** (1) In calculating the assessment base for credit risks, credit institutions or groups of credit institutions may, for the purpose of calculating risk-weighted exposure amounts or, where appropriate, expected loss amounts, apply credit risk mitigation techniques in order to reduce the credit risk associated with one or more exposures by means of real or personal collateral. This does not apply to exposure classes for which credit institutions use their own estimates of loss given default and conversion factors pursuant to Article 22b para. 8; however, these credit institutions must meet the requirements set forth in para. 4 nos. 1 to 3.

(2) The following definitions apply to the provisions governing credit risk mitigation techniques:

1. "lending credit institution" means the credit institution which has the exposure in question, whether or not it is derived from a loan;
2. "secured lending transaction" means any transaction giving rise to an exposure secured by collateral and for which the credit institution has not been conferred the right to receive margin.
3. "capital market-driven transaction" means any transaction giving rise to an exposure secured by collateral and for which the credit institution has been conferred the right to receive margin on a frequent basis.

(3) Credit risk mitigation techniques for the recognition of financial collateral include the following methods:

1. the Financial Collateral Simple Method where the Standardised Approach to Credit Risk pursuant to Article 22a is used; in this method, eligible financial collateral is assigned a value equal to its market value;
2. the Financial Collateral Comprehensive Method where the Standardised Approach to Credit Risk pursuant to Article 22a or the Internal Ratings Based Approach pursuant to Article 22b is used; in this method, the market value of eligible financial collateral and, where appropriate, the market value of an exposure secured by collateral are subject to volatility adjustments; these volatility adjustments may
  - a) be prescribed by the FMA or
  - b) be based on the credit institution's own estimates, subject to approval by the FMA pursuant to Article 21c para. 1.

The method selected is to be used consistently.

(4) The method for calculating risk-weighted exposure amounts and, where appropriate, expected loss amounts may only be modified if the following requirements are fulfilled:

1. the disclosure obligations pursuant to Article 26 or Article 26a are complied with in a timely manner,
2. credit protection was not already included in the calculation of the assessment base for credit risk pursuant to Article 22 para. 2,
3. the credit institution has adequate risk management processes to control those risks to which the credit institution may be exposed as a result of carrying out credit risk mitigation practices.

(5) Where credit risk mitigation techniques are applied, they must not produce higher risk-weighted exposure amounts or higher expected loss amounts than if credit risk mitigation techniques were not applied.

(6) The application of credit risk mitigation techniques as well as their inclusion in the calculation of risk-weighted exposure amounts and, as relevant, expected loss amounts does not relieve credit institutions of the obligation to undertake a full credit risk assessment of the underlying exposure and to be in a position to demonstrate this to the FMA at all times.

(7) In respect of repurchase transactions and/or securities or commodities lending or borrowing transactions, the underlying exposure is considered the net amount of the exposure only for the purposes of para. 6.

(8) Credit institutions may apply master netting agreements only under the Financial Collateral Comprehensive Method pursuant to para. 3 no. 2, taking into account the distinctive features of this credit protection arrangement. Subject to approval by the FMA, the credit institution may calculate the exposure amount adjusted for the effect of collateral using an internal model in respect of master netting agreements covering repurchase transactions, securities or commodities lending or borrowing transactions, other capital market-driven transactions which do not involve derivative instruments pursuant to Annex 2 to Article 22, or margin lending transactions.

(9) The FMA must issue a regulation defining how and under what conditions the calculation of the adjusted exposure amount is to be carried out by credit risk mitigation techniques in order to ensure that credit risk is captured properly, taking account of the effects of collateral:

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1. the techniques to modify the calculation of risk-weighted exposures and, as relevant, expected loss amounts;
2. criteria which ensure reasonably accurate risk measurement for the purpose of calculating fully adjusted exposure amounts for financial collateral in line with the credit institution's own volatility estimates pursuant to Article 21c para. 1 and which in any case include compliance with the following requirements:
  - a) qualitative standards, such as in particular
    - aa) the use of volatility estimates for day-to-day risk management and
    - bb) reviews of volatility estimation procedures;
  - b) Quantitative standards, such as in particular
    - aa) the statistical probability level,
    - bb) the consideration of liquidation periods,
    - cc) the consideration of assets lacking liquidity,
    - dd) the minimum duration of the required historical observation periods and
    - ee) the updating of data series;
3. criteria which ensure reasonably accurate risk measurement pursuant to Article 21c para. 2 for the purpose of calculating the fully adjusted exposure amount for master netting agreements covering repurchase transactions and/or securities or commodities lending or borrowing transactions or other capital market-driven transactions which do not involve derivative instruments pursuant to Annex 2 to Article 22, and margin lending transactions and which include compliance with the requirements set forth in lit. a and b in any case:
  - a) qualitative standards, such as in particular
    - aa) the organisation and definition of duties for a risk control unit which is independent of trading,
    - bb) the performance of regular back-testing and stress testing,
    - cc) the involvement of senior management in risk control pursuant to sublit. aa and
    - dd) reviews of the internal model;
  - b) Quantitative standards, such as in particular
    - aa) the statistical probability level,
    - bb) the consideration of liquidation periods,
    - cc) the minimum duration of the required historical observation periods,
    - dd) the updating of data series, and
    - ee) the correlations within and between risk categories;
4. the consequences of maturity mismatches between protected exposures and credit protection;
5. the consequences of currency mismatches between protected exposures and credit protection; The techniques pursuant to no. 1, the criteria pursuant to nos. 2 and 3 as well as the definition of maturity mismatches pursuant to no. 4 must comply with the provisions of Annex VIII, Parts 3 to 6 of Directive 2006/48/EC; insofar as this Annex provides for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

## Eligible Collateral

**Article 22h.** (1) For the purpose of credit risk mitigation, the following may be used as credit protection:

1. on-balance sheet netting,
2. master netting agreements covering repurchase transactions, securities or commodities lending and borrowing transactions, or other capital market-driven transactions
3. financial collateral,
4. real estate collateral,
5. collateral from receivables,
6. other physical collateral,
7. cash on deposit with, or cash-assimilated instruments held by, a third party institution,
8. life insurance policies pledged or assigned to the lending credit institution,
9. securities issued by third party institutions which must be repurchased on demand,
10. personal collateral.

(2) In respect of financial collateral, credit institutions and groups of credit institutions must consistently use the Financial Collateral Simple Method or the Financial Collateral Comprehensive Method to calculate the effect of collateral. Credit institutions and groups of credit institutions which use the Internal Ratings Based Approach pursuant to Article 22b may only use the Financial Collateral Comprehensive Method. This paragraph is applicable subject to the exemption clause in Article 22g para. 3.

(3) For master netting agreements covering repurchase transactions, securities or commodities lending or borrowing transactions, or other capital market-driven transactions, only the Financial Collateral Comprehensive Method may be used, with the distinctive features of the collateral taken into account accordingly.

(4) Where the requirements to be specified in the regulation issued pursuant to para. 7 are fulfilled, exposures arising from leasing transactions under which the credit institution is the lessor are treated the same as loans collateralised by physical items corresponding to the type of property leased. In the regulation to be issued pursuant to Article 22g para. 9, the FMA may define special provisions for leasing transactions.

(5) In the case of real collateral, the following requirements apply in addition to para. 7:

1. the collateral is sufficiently liquid and its value over time sufficiently stable to provide appropriate certainty as to the credit protection achieved with regard to the degree of recognition;
2. the credit institution takes all necessary measures to ensure the legal effectiveness of the collateral in all relevant jurisdictions;
3. in the event of the default of the obligor or, where applicable, of the custodian holding the collateral, a timely realisation of the collateral is ensured;
4. the degree of correlation between the value of the assets relied upon for protection and the credit quality of the obligor is not undue.

(6) In the case of personal collateral, the following requirements apply in addition to para. 7:

1. the collateral was provided by a sufficiently reliable collateral provider;
2. the credit institution takes all necessary measures to ensure the legal effectiveness of the collateral in all relevant jurisdictions.

(7) The FMA must specify the following in a regulation governing the proper capture of credit risk, taking account of the effects of collateral:

1. the types of collateral within the categories listed in para. 1 which are recognised in credit risk mitigation techniques depending on the approach used to calculate the assessment base pursuant to Article 22 para. 2;
2. the minimum requirements applying to the recognition of these types of credit protection. The types of credit protection as well as the minimum requirements must comply with the provisions of Annex VIII, Parts 1 and 2 of Directive 2006/48/EC; insofar as this Annex provides for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

### **Subsection 3: Operational Risk**

#### **Minimum Capital Requirements for Operational Risk**

**Article 22i.** (1) For the purpose of calculating their minimum capital requirement for operational risk pursuant to Article 22 para. 1 no. 4, credit institutions and groups of credit institutions must use the Basic Indicator Approach pursuant to Article 22j, the Standardised Approach pursuant to Article 22k or the Advanced Measurement Approach pursuant to Article 22l.

(2) Credit institutions and groups of credit institutions which apply the Standardised Approach pursuant to Article 22k require approval by the FMA in order to return to the Basic Indicator Approach.

(3) Credit institution and groups of credit institutions which apply the Advanced Measurement Approach pursuant to Article 22l require approval by the FMA in order to return to one of the methods described in Article 22j and Article 22k.

(4) The approval pursuant to paras. 2 and 3 is to be granted if the adequacy of the treatment of operational risk is ensured and the amount of the minimum capital requirements adequately represents the operational risks of the credit institution and the group of credit institutions.

#### **Basic Indicator Approach**

**Article 22j.** (1) Under the Basic Indicator Approach, the minimum capital requirements set forth in Article 22i para. 1 must be equal to a certain percentage of the relevant indicator defined in para. 2.

(2) The FMA is to issue a regulation defining the percentage and calculation of the relevant indicator. The percentage amount and the requirements for the calculation of this percentage must comply with the provisions of Annex X, Part 1, Numbers 1 to 9 of Directive 2006/48/EC.



## Standardised Approach

**Article 22k.** (1) Under the Standardised Approach, credit institutions and groups of credit institutions must divide their activities into the business lines specified in para. 3. The minimum capital requirement for operational risk is calculated as the sum of the minimum capital requirements for the individual business lines pursuant to para. 2.

(2) For each individual business line, the minimum capital requirements amount to a certain percentage of a relevant indicator. The percentage amount and the calculation of the relevant indicator under the Standardised Approach are defined by an FMA regulation pursuant to para. 4.

(3) Credit institutions and groups of credit institutions must map their activities to one of the following business lines:

1. corporate finance,
2. trading and sales,
3. retail brokerage,
4. commercial banking,
5. retail banking,
6. payment and settlement,
7. agency services,
8. asset management.

(4) For the purposes of paras. 1 to 3, the FMA must issue a regulation to define principles for mapping activities to business lines and for calculating the relevant indicators, and to define the percentages for the relevant business lines. The regulation must comply with the provisions of Annex X, Part 2, Numbers 1 to 2 and 4, and with Article 155 of Directive 2006/48/EC; insofar as these regulations provide for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

(5) Credit institutions and groups of credit institutions which apply the Standardised Approach pursuant to para. 1 must have in place a well documented and effective assessment and management system for operational risk, with clear responsibilities assigned for this system. They must identify their exposures to operational risk and collect the necessary data, including material loss data. This system is to be reviewed by a bank auditor at least once per year.

(6) The system pursuant to para. 5 must be integrated into the risk management processes of the credit institution and the group of credit institutions. Its output must be an integral part of the process of monitoring and controlling operational risk.

(7) Credit institutions and groups of credit institutions must have in place a reporting system that provides operational risk reports to the directors. Credit institutions must also establish procedures for taking appropriate action according to the information within these reports.

(8) For the retail banking and commercial banking business lines, credit institutions and groups of credit institutions may use an alternative indicator for calculating the minimum capital requirements defined in para. 1, subject to approval by the FMA. This approval is to be granted if

1. the requirements pursuant to paras. 5 to 7 are fulfilled,

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2. credit institutions and groups of credit institutions are predominantly active in retail banking or commercial banking, with both business units taken together historically accounting for at least 90% of average income and
3. a significant portion of retail banking and commercial banking business comprises loans with a high probability of default, and an alternative indicator provides a more meaningful basis for the assessment of operational risk.

(9) The FMA must issue a regulation defining the alternative indicator pursuant to para. 8 as well as the retail banking and commercial banking business lines. The regulation must comply with the provisions of Annex X, Part 2, Numbers 5 to 9 of Directive 2006/48/EC.

### **Advanced Measurement Approach**

**Article 22i.** (1) Credit institutions and groups of credit institutions may calculate the minimum capital requirements for operational risk pursuant to Article 22i para. 1 using an internal model (Advanced Measurement Approach) subject to approval by the FMA pursuant to Article 21d. Approval may also be granted for suitable risk mitigation techniques other than insurance policies, with paras. 2 to 4 to be applied correspondingly.

(2) Credit institutions and groups of credit institutions which use an internal model pursuant to para. 1 may consider as risk-mitigating insurance policies they have concluded with a company which is authorised to conduct policy-based insurance business pursuant to Article 2 no. 2 Financial Conglomerates Act and which, as regards its ability to pay insurance claims, has a credit assessment awarded by an eligible external credit assessment institution that has been assigned at least to credit quality step 3 by the FMA pursuant to Article 21b para. 6; insurance policies may be recognised only if the requirements set forth in para. 4 are met and a noticeable risk mitigating effect can be demonstrated to the FMA.

(3) The capital relief arising from the recognition of insurance and other risk transfer mechanisms must not exceed 20% of the total capital requirements for operational risk prior to the recognition of these risk mitigation techniques.

(4) The FMA must issue a regulation specifying the following eligibility requirements for insurance policies:

1. the minimum term of the insurance policy, including the residual term;
2. the structuring of certain components of the insurance policy such as the minimum notice period and the exclusions and limitations triggered by the credit institution's bankruptcy;
3. the consistency of the ratio of insurance coverage to the probability of loss and the calculation of the minimum capital requirement;
4. the independence of insurance undertakings from credit institutions within the group and
5. the methodology and documentation for recognising insurance policies.

These requirements must comply with the provisions of Annex X, Part 3, Numbers 27 to 28 of Directive 2006/48/EC.

## Combined Approaches

**Article 22m.** (1) Credit institutions and groups of credit institutions may combine the Advanced Measurement Approach pursuant to Article 22i with the Basic Indicator Approach pursuant to Article 22j or with the Standardised Approach pursuant to Article 22k if

1. all operational risks are captured;
2. the requirements pursuant to Article 22k paras. 5 to 9 and Article 21d para. 1 are met for the activities covered by the Standardised Approach and the Advanced Measurement Approach;
3. a significant part of the operational risks are captured by the Advanced Measurement Approach; and
4. the Advanced Measurement Approach is rolled out across all business activities, with the exception of insignificant parts of the credit institution's operations, within a reasonable period of time.

(2) In exceptional cases, especially in the acquisition of a new business or in the event of restructuring, credit institutions and groups of credit institutions may use a combination consisting of the Basic Indicator Approach pursuant to Article 22j and the Standardised Approach pursuant to Article 22k for a limited period of time. The minimum capital requirements arising from operational risk pursuant to Article 22 para. 1 no. 4 must be calculated completely under the Standardised Approach within a reasonable period of time.

## Subsection 4: Trading Book Positions in the Trading Book

**Article 22n.** (1) All positions (proprietary positions, positions arising from client servicing and market making pursuant to Article 56 para. 1 Stock Exchange Act) in financial instruments and commodities that are held with trading intent are to be assigned to the trading book of the credit institution. Financial instruments and commodities which are used to hedge or refinance specific risks in the trading book must also be assigned to the trading book. These positions must be either free of any restrictions on their tradability or able to be hedged.

(2) Trading intent exists if positions in the trading book are held for the purpose of short-term resale or with the intention of benefiting from current or expected price differences between the buying and selling prices, or from other price or interest rate variations.

(3) Positions pursuant to para. 1 must be included in the trading book in accordance with internal criteria defined by the institution. The transfer of positions to or from the trading book must be documented and justified in a manner transparent to expert third parties.

(4) Credit institutions must value positions in the trading book pursuant to para. 1 on a daily basis for reporting purposes and for calculating the minimum capital requirements at the close of business and at current market prices. The following are considered to be market prices:

1. current exchange prices or
2. calculated values (present values) based on current market conditions following a prudent

approach.

(5) The FMA must issue a regulation defining the criteria to be fulfilled in respect of positions in the trading book in order to ensure that risk types are captured properly. The criteria stipulated in nos. 1 to 4 must comply with the provisions of Annex VII to Directive 2006/48/EC:

1. strategies, policies and procedures of the credit institution for the purpose of evidencing trading intent;
2. criteria for systems and controls which the credit institution must provide and which are used to manage the trading book and in particular marking to market;
3. criteria for including internal hedges in the trading book, and
4. criteria for prudent valuation pursuant to para. 4.

Insofar as this Annex provides for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

### **Risk Types in the Trading Book**

**Article 22o.** (1) For positions in the trading book pursuant to Article 22n para. 1, credit institutions and groups of credit institutions must have sufficient own funds equal to the total minimum capital requirement pursuant to para. 2 at all times. The minimum capital requirement must be calculable on a daily basis.

(2) At any time, the minimum capital requirement for trading book positions is equal to the sum of the minimum capital requirements for

1. the specific position risk associated with interest rate instruments,
2. the general position risk associated with interest rate instruments,
3. the specific position risk associated with equity instruments,
4. the general position risk associated with equity instruments,
5. the risk associated with equity index futures,
6. the risk associated with shares in investment funds,
7. other option-related risks
8. options treated according to the scenario matrix method,
9. settlement risk,
10. counterparty credit risk,
11. commodities risk and
12. foreign exchange risk, including the risk arising from gold positions.

(3) Credit institutions must apply generally accepted methods when calculating the sensitivities (delta, gamma and vega factors) of options in order to calculate the minimum capital requirements for risk types pursuant to para. 2 nos. 1 to 4, 7, 11 and 12. For similar option transactions, suitable models are to be used uniformly in line with empirical mathematical methods and common market practices.

(4) The application of models under para. 3 is to be reported to the FMA immediately pursuant to Article 73 para. 4 no. 2, together with a detailed and comprehensive description; this report must be

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submitted upon the initial application of an option valuation model and thereafter for all material changes in previously applied valuation models and the introduction of new option valuation models.

(5) The FMA must issue a regulation defining how the minimum capital requirements for the risk types listed in para. 2 are to be calculated in order to ensure that these risk types are captured properly. This regulation must comply with the provisions of Annexes I to IV to Directive 2006/49/EC, whereby simplified procedures can be defined for calculating other option-related risks pursuant to para. 2 no. 7, or detailed procedures can be defined for options treated according to the scenario matrix method pursuant to para. 2 no. 8. As regards the minimum capital requirements for commodities risk and foreign exchange risk, the regulation must also cover positions pursuant to Article 22 para. 1 no. 3. Insofar as Annexes I to IV provide for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

### **Internal Model for the Trading Book**

**Article 22p.** (1) Subject to approval by the FMA pursuant to Article 21e para. 1, credit institutions may apply an internal model (value at risk) for calculating the minimum capital requirements pursuant to Article 22o para. 2 nos. 1 to 7 and nos. 11 and 12.

(2) The minimum capital requirement pursuant to para. 1 is equal to the higher of the amounts pursuant to no. 1 and no. 2:

1. the value-at-risk measure from the previous day;
2. the arithmetic mean of daily value-at-risk measures of the last 60 business days, multiplied by a factor which must not exceed the value of five and which the FMA must set to at least three for every credit institution; in determining the factor, the FMA must take into account the results of the back-testing of the internal model chosen by the credit institution pursuant to para. 1 as well the degree of compliance with the requirements pursuant to Article 21e para. 1 nos. 1 to 7.

(3) When applying an internal model pursuant to para. 1 for calculating the minimum capital requirements for foreign exchange risk and commodities risk pursuant to Article 22o para. 2 nos. 11 and 12, credit institutions may, in addition to the positions in the trading book pursuant to Article 22n, also include the positions stipulated in Article 22 para. 1 no. 3.

(4) Where a combination of internal models pursuant to para. 1 and the calculation of the minimum capital requirement pursuant to Article 22o para. 1 in conjunction with the regulation issued pursuant to Article 22o para. 5 is used, the minimum capital requirements calculated in each case are to be added together.

(5) The FMA must issue a regulation specifying the criteria which ensure that risk is captured properly by an internal model chosen by a credit institution. The proper capture of risk is to be considered ensured in any case if these criteria meet the following requirements and comply with Annex V to Directive 2006/49/EC:

1. qualitative standards, such as in particular

- a) the organisation and definition of duties for a risk control unit which is independent of trading,
  - b) the performance of stress testing and back-testing as well the reporting of their results to the FMA and the Oesterreichische Nationalbank,
  - c) the involvement of senior management in risk control,
  - d) the harmonisation of limits for persons and organisational units active in trading,
  - e) the integration of the model into the credit institution's risk control,
  - f) documentation of the model,
  - g) reviews of the model;
2. the specific market risk factors for positions pursuant to para. 1 that are covered by the models;
  3. quantitative standards, such as in particular
    - a) the statistical probability level,
    - b) the holding period of individual instruments taken into account in the case of price changes,
    - c) the historical observation period for data series;
    - d) the updating of data series,
    - e) the correlations within and between the risk categories in para. 1;
    - f) the capture of risks associated with options and option-like positions;
  4. methods of determining the multiplier pursuant to para. 2;
  5. methods of performing stress testing and back-testing;
  6. methods of combining models and standardised procedures if the model does not take into account all positions pursuant to para. 1;
  7. criteria for approving the model used to calculate the minimum capital requirements for specific position risk and additional default risk.

Insofar as Annex V to Directive 2006/49/EC provides for a discretion, the FMA must obtain the consent of the Federal Minister of Finance prior to issuing a regulation exercising this discretion.

### **Simplified Calculation Method for the Trading Book**

**Article 22q.** (1) By way of derogation from Article 22o, credit institutions may calculate the minimum capital requirements for the risk types indicated in Article 22o para. 2 nos. 1 to 10 by applying Article 22 para. 1 no. 1 if the following conditions are fulfilled:

1. the share of the trading book is generally less than 5% of the total business volume,
2. the sum of positions in the trading book is generally less than EUR 15 million,
3. the share of the trading book does not exceed 6% of the total business volume at any time and
4. the sum of positions in the trading book does not exceed EUR 20 million at any time.

(2) The sum of the unweighted exposure values of the asset items, off-balance sheet transactions and derivative instruments indicated in Article 22 para. 2, including all options sold, is considered the total business volume within the meaning of para. 1 no. 1. For the purposes of para. 1, debt

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instruments are to be assigned a value equal to their market price or nominal value, and equity instruments are to be assigned a value equal to their market price. Off-balance sheet transactions pursuant to Annex 1 to Article 22 are to be included at their nominal value, and derivative instruments pursuant to Annex 2 to Article 22 at the nominal value or market price of their underlying instruments. Long and short positions are to be added up without regard to plus/minus signs.

(3) If a credit institution exceeds one of the limits indicated in para. 1 no. 1 or 2 on twelve successive reporting dates or one of the limits indicated in para. 1 no. 3 or 4 on a single reporting date in its report pursuant to Article 74 para. 2, then minimum capital requirements for the trading book pursuant to Article 22o para. 1 must be calculated from the next financial year onward and this must be reported to the FMA and the Oesterreichische Nationalbank without delay. After two financial years have elapsed, a credit institution may cease to calculate these minimum capital requirements if the limits pursuant to para. 1 nos. 1 and 2 were never exceeded within that period.

### Subsection 5: Own Funds

#### Own Funds

**Article 23.** (1) The following items are to be counted towards own funds:

1. paid-up capital pursuant to para. 3,
2. disclosed reserves, including the liability reserve pursuant to para. 6; interim profit or annual profit calculated prior to the final decision shall only be counted towards disclosed reserves if
  - a) it was calculated net of any foreseeable taxes, charges or dividends in accordance with the provisions of Section XII,
  - b) the bank auditor has verified the accuracy of the calculation pursuant to lit. a, and
  - c) the credit institution has demonstrated to the FMA the accuracy of the calculation pursuant to lit. a;

where a credit institution is the originator of a securitisation, net gains arising from the capitalisation of future income from the securitised assets and providing credit enhancement may not be included;

3. funds for general banking risks pursuant to Article 57 paras. 3 and 4;
- 3a. hybrid capital pursuant to para. 4a;
4. hidden reserves according to Article 57 para. 1;
5. supplementary capital pursuant to para. 7 and participation capital (paras. 4 and 5) with the obligation to pay dividends in arrears;
6. subordinated capital pursuant to para. 8;
7. revaluation reserves pursuant to para. 9;
8. liability sum surcharge pursuant to para. 10;
9. short-term subordinated capital pursuant to para. 8,
10. the excess of value adjustments and provisions over expected losses of up to 0.6% of the assessment base pursuant to Article 22 para. 2 where the expected losses are calculated using the Internal Ratings Based Approach pursuant to Article 22b for the calculation pursuant

to Article 22b para. 6 no. 1; securitisation exposures that are subject to a risk weight of 1250% are not to be included in this item.

(2) The own funds components pursuant to para. 1 are to be reduced first by the book values of asset items arising from direct issuance or which the credit institution has acquired from a controlling company.

(3) Paid-up capital is:

1. *removed (Federal Law Gazette I no. 124/2005);*
2. in the case of joint-stock companies, paid-up share capital or nominal capital;
3. in the case of cooperative societies, money deposits paid on shares;
4. in the case of savings banks, paid-up initial capital;
5. in the case of state mortgage banks and the Mortgage Bond Division of the Austrian State Mortgage Banks, paid-up capital;
6. in the case of branches of foreign credit institutions, endowment capital made available in freely convertible currency;
7. *removed;*
8. in the case of all credit institutions, the participation capital (paras. 4 and 5) with no obligation to pay dividends in arrears.

(4) Participation capital refers to capital

1. which is paid up and placed at the institution's lifetime disposal with a waiver of ordinary and extraordinary call privileges,
2. which may be reduced only by the analogous application of provisions governing the reduction of capital stock pursuant to the Stock Corporation Act or called in pursuant to the provisions stipulated in Article 102a,
3. whose income is profit-related, with the financial year's result (net income for the year) after allocation to reserves considered to be profit,
4. which participates in losses up to their full amount, as is the case with share capital,
5. which is associated with the right to a share of liquidation proceeds at least in the amount of the face value and which may not be repaid until after all creditors have been satisfied or their claims have been secured.
6. *removed*

(4a) Hybrid capital, as contractually agreed, includes the paid-up own funds items,

1. which are subordinated to deposits, other liabilities and other subordinated liabilities;
2. the principal, unpaid interest and dividends of which shall share in the full amount of a loss and shall not impede the recapitalisation of the credit institution;
3. which are made available to the credit institution indefinitely or for at least 30 years and which may not be called by the creditor before this period has lapsed; hybrid capital may include one or more call options at the sole discretion of the credit institution, but shall not be redeemed before five years after the date of issue;
4. which, for undated instruments, provide for only a moderate incentive to redeem, such incentive shall not occur within ten years after the instrument's date of issue; the provisions

governing dated instruments shall not permit an incentive to redeem on a date prior to the maturity date; the credit institution may redeem dated or undated instruments early, provided this is not inappropriate due to a material change in the applicable tax treatment which was unforeseen at the date of issue resulting in an additional payment to the creditor or if statutory eligibility of the hybrid capital changes in a way which was unforeseen at the date of issue; which shall require suspension of redemptions where an emergency arises that jeopardises the adequate financial and own funds base; if there is danger of falling below the minimum capital requirements (Article 22 para. 1), the credit institution shall cancel redemption payments;

5. that exclude the payment of interest and dividends where the adequate financial and own funds base is jeopardised; if there is danger of falling below the minimum capital requirement (Article 22 para. 1), the credit institution shall cancel redemption payments;
6. that may be organised in such a way as to require their conversion to paid capital in at least an equal amount at any time (para. 3), where the adequate financial and own funds base is jeopardised under the conditions set out in Article 23 para. 17 no. 5, within a pre-determined range.

(4b) the termination or early redemption of hybrid capital requires FMA authorisation. The following requirements apply to the granting of authorisation:

1. the fulfilment of the requirements set forth in para. 4a nos. 3 and 4, and
2. the fulfilment of the requirements set forth in para. 17 nos. 2 and 3, and
3. an adequate financial and own funds base even after termination or early redemption of the hybrid capital, the FMA being authorised to demand the demonstrable procurement of core capital of at least the same amount and quality; the replacement purchase shall be documented; the replacement purchase requirement shall not apply if it can be demonstrated to the FMA that the credit institution and the group of credit institutions still have an adequate financial and own funds base, even after termination or early redemption of the hybrid capital.

(5) Where a measure changes the existing relationship between the property rights of holders of participation certificates and the property rights related to own funds as defined in para. 1, this must be offset appropriately. This also applies to the issuance of equities, debt securities listed in Article 174 Stock Corporation Act, and profit-sharing rights. The shareholders' subscription rights pursuant to Article 174 para. 4 Stock Corporation Act may be excluded for these purposes. Holders of participation certificates may participate in the general meeting and request information within the meaning of Article 112 Stock Corporation Act. In addition, savings banks, state mortgage banks, the Mortgage Bond Division of the Austrian State Mortgage Banks and the Austrian Postal Savings Bank (PSK) are to give holders of participation certificates the opportunity to request information from the directors of these credit institutions once per year during a meeting at which the annual financial statements are presented. The provisions of the Stock Corporation Act on the convening of the annual general meeting also apply to this meeting.

(6) Credit institutions are to allocate a liability reserve amounting to 1% of the assessment base pursuant to Article 22 para. 2; credit institutions which apply Article 22o must add to the assessment

base the capital requirement for positions in the trading book pursuant to Article 220 para. 2 nos. 1, 3 and 6 multiplied by 12.5. The liability reserve may be reversed only insofar as this is required to meet obligations pursuant to Article 93 or to cover other losses to be reported in the annual financial statements. The liability reserve is to be replenished by the amount reversed within the following five financial years at the latest. Allocations and reversals of reserves are to be shown separately in the profit and loss account.

(7) Supplementary capital refers to paid-up capital

1. which is made available to the credit institution for at least eight years in accordance with contractual agreements and which may not be called by the creditor before this period has elapsed; the credit institution may repay the capital early only in accordance with no. 5;
2. for which interest may be paid out insofar as it is covered by distributable profits;
3. which may be repaid before liquidation only with a proportional deduction of the net losses incurred during its lifetime,
4. which is subordinated pursuant to Article 45 para. 4,
5. whose residual maturity is equal to at least three years; the credit institution may repay the capital with effect before the residual maturity of three years has elapsed without giving notice, provided this is permitted pursuant to the terms of the agreement and that the credit institution can demonstrate that it has previously procured capital in the same amount and of at least the same quality; the credit institution is to document this replacement of capital.

(8) Subordinated capital refers to paid-up capital which is subordinated pursuant to Article 45 para. 4 and fulfils the following conditions:

1. the overall maturity must be at least five years; where a maturity has not been fixed, or the credit institution or creditor can repay or call the capital, a period of at least five years' notice is to be stipulated; the credit institution may, however, repay the capital after a term of five years without notice if it has previously procured capital in the same amount and of at least the same quality; furthermore, the period of five years need not be observed if bonds are redeemed early due to a change in taxation resulting in an additional payment to the creditor, and if the credit institution has previously procured capital in the same amount and of at least the same quality; if the subordinated capital is repaid, the credit institution must document this replacement of capital;
2. these conditions may not contain any provisions whereby the debt is repayable before the agreed repayment date in circumstances other than the liquidation of the credit institution or pursuant to no. 1, or whereby changes in the debt relationship relating to subordination are possible;
3. Certificates evidencing subordinated deposits, bonds or collective certificates as well as subscription and purchasing orders must explicitly comply with the conditions of subordination (Article 864a General Civil Code);
4. the netting of the repayment claim against the credit institution's assets/receivables must be excluded, and contractual collateral for the liabilities may not be provided by the credit institution or by third parties;

5. the designation used in business with clients is to be chosen in such a way that any danger of confusion with other deposits or bonds is precluded.

(8a) Short-term subordinated capital is paid-up capital which is subordinated pursuant to Article 45 para. 4 and fulfils the following conditions:

1. the overall maturity must be at least two years; where a maturity has not been fixed or the repayment of the capital by the credit institution or its calling in by the creditor is possible, a period of at least two years' notice is to be stipulated; the credit institution may, however, repay the capital after a term of two years without notice if it has previously procured capital in the same amount and of at least the same quality; furthermore, the period of two years need not be observed if bonds are redeemed early due to a change in taxation resulting in an additional payment to the creditor, and if the credit institution can demonstrate that it has previously procured capital in the same amount and of at least the same quality; the credit institution is to document this replacement of capital;
2. the conditions stipulated in para. 8 nos. 2 to 5;
3. it is contractually stipulated that neither redemption nor interest payments may be made which would result in a credit institution's eligible capital falling below the minimum capital requirements pursuant to Article 22 para. 1 nos. 1 to 5.

(9) Revaluation reserves are unrealised reserves amounting to 45% of the following differences:

1. the difference between the book value and the expert-certified market value in the case of real property, rights equivalent to real property and buildings; Article 12 paras. 1 and 2 Mortgage Bank Act (*Hypothekbankgesetz – HypBG*) apply to the determination of the expert-certified market value; these values must be calculated by expert evaluations at least every three years, for which the credit institution must appoint a panel of experts consisting of at least three members; where the expert-certified market value is less than the book value, revaluation reserves are to be reduced by this negative value;
2. the difference between the book value and the market price of securities admitted to listing on a regulated market or another recognised exchange; in special circumstances, a value lower than the exchange price is to be applied; where securities are valued in accordance with the principles applied to fixed assets, revaluation reserves are to be reduced by the difference between the relevant value and the higher book value; in the calculation of this difference, hidden reserves as defined in Article 57 para. 1 are to be added to the book value of the securities;
3. the difference between the book value and the repurchase price of shares in investment funds
  - a) which were established pursuant to Directives 85/611/EEC and 88/220/EEC, and
  - b) whose provisions include an obligation on the part of the investment fund management company to repurchase shares at the quoted repurchase price. Revaluation reserves may be taken into account only if the calculation of the differences includes all asset items indicated in nos. 1 to 3 in each case.

(10) Cooperative societies may count towards own funds the additional funding obligation of members as liability sum surcharges. The liability sum surcharge amounts to 75% of the total amount

of the statutory additional funding obligation for cooperative societies with limited liability, and double the total amount of the subscribed shares for cooperative societies with unlimited liability. The liability sums and shares of members who depart at the end of the financial year are not to be included in the calculation of the liability sum surcharge.

(11) Own funds denominated in foreign currency are to be translated into euro. For currencies officially quoted on the Vienna Stock Exchange, these calculations are to be based on the middle rates of exchange from the previous trading day; for other currencies, the buying rates on the Austrian open market are to be used.

(12) Own funds pursuant to para. 1 nos. 1 to 4 must be at a credit institution's unrestricted and immediate disposal to cover risks or losses as soon as these arise. Own funds must be net of any foreseeable tax charge at the time of their calculation or be adjusted appropriately in cases where taxes on earnings reduce the amount up to which these own funds components may be used to cover risks or losses.

(13) The following items are to be deducted from own funds pursuant to para. 14:

1. intangible assets pursuant to Item 9 (Assets) in Annex 2 to Article 43, Part 1; or long-term intangible assets including goodwill if the discretion pursuant to Article 29a for determining regulatory standards in accordance with international accounting standards was exercised;
2. net loss for the year as well as material losses in the current financial year;
3. directly and indirectly held equity shares, subordinated claims, participation capital, supplementary capital or other forms of capital recognised as own funds items in the relevant foreign jurisdiction and held by the credit institution or payment institutions (Article 3 no. 4 *Zahlungsdienstegesetz - ZaDiG*) in other credit or financial institutions in which it directly or indirectly holds more than 10% of capital.
4. directly and indirectly held equity shares in other credit or financial institutions up to a maximum of 10% of the capital of those institutions as well as subordinated claims, participation capital, supplementary capital or other forms of capital recognised as own funds items in the relevant foreign jurisdiction and held by a credit institution or payment institution in credit or financial institutions other than those indicated in no. 3, in the total amount of such equity interests, subordinated claims, participation capital, supplementary capital and other instruments which exceeds 10% of the credit institution's own funds calculated before deduction of the items indicated in nos. 3 and 4;
- 4a. participations and instruments related to such participations pursuant to Article 73b Insurance Supervision Act (*Versicherungsaufsichtsgesetz – VAG*) held by a credit institution in insurance undertakings, reinsurance undertakings and insurance holding companies;
- 4b. subject to the FMA's consent, a credit institution may implement one of the methods listed in Article 6 para. 2 Financial Conglomerates Act instead of the deduction pursuant to para. 4a; permission to implement the methods indicated in Article 6 para. 2 no. 1 Financial Conglomerates Act may be granted only if the scope and level of integrated management and internal controls regarding the entities which would be included in the scope of consolidation are satisfactory; the method chosen must be applied on a permanent basis;



- 4c. in the case of credit institutions which apply the Internal Ratings Based Approach pursuant to Article 22b, the excess of expected loss amounts pursuant to Article 22b para. 6 over value adjustments and provisions;
  - 4d.a calculated exposure amount for securitisation positions which is applied at a weight of 1250%;
  - 5. in the case of supplementary supervision at the level of financial conglomerates pursuant to Article 6 para. 1 Financial Conglomerates Act, the performance of consolidation on a full basis pursuant to Article 24 para. 1, proportional consolidation pursuant to Article 24 para. 4 and the deduction obligation pursuant to para. 2 Financial Conglomerates Act, the deductions pursuant to nos. 3, 4 and 4a are not be carried out in the case of credit institutions, financial institutions, insurance undertakings, reinsurance undertakings or insurance holding companies if such undertakings are included in the scope of consolidation or are subject to supplementary supervision pursuant to Article 6 para. 1 Financial Conglomerates Act;
  - 6. credit institutions affiliated to a central institution are not to perform the deduction pursuant to nos. 3 and 4 in respect of their equity interests held directly or indirectly in the central institution if
    - a) the central institution demonstrates compliance with capital requirements in a consolidated own funds calculation for the sector in the report pursuant to Article 74 para. 2,
    - b) all credit institutions affiliated to the central institution for the relevant sector provide this central institution with the information necessary to carry out the consolidation.
    - c) the central institution notifies the affiliated credit institutions of the result of the consolidated own funds calculation.
- (14) Own funds can be recognised as follows:
- 1. own funds pursuant to para. 1 nos. 1 to 3 are fully eligible and constitute core capital after addition of hybrid capital pursuant to para. 1 no. 3a and deduction of amounts pursuant to para. 13 nos. 1 and 2;
  - 2. the sum of own funds pursuant to para. 1 nos. 4 to 8 and 10 can be recognised up to a maximum of 100% of core capital.
  - 3. own funds pursuant to para. 1 nos. 6 and 8 can be recognised up to a maximum of 50% of core capital;
- 3a. Hybrid capital may constitute up to 50% of core capital. Within the limits of this ceiling
- a) undated instruments that are convertible pursuant to para. 4a no. 6, may constitute up to 100%;
  - b) undated instruments that are not convertible pursuant to para. 4a no. 6, may constitute up to 70%;
  - c) undated instruments with a moderate redemption incentive and dated instruments, may constitute up to 30% of hybrid capital.
- 4. revaluation reserves can be recognised as own funds up to a maximum of 1.5% of the assessment base pursuant to Article 22 para. 2, provided that core capital amounts to at least

4.5% of the assessment base; credit institutions which apply Article 22o must increase the assessment base by the capital requirement multiplied by 12.5 in the case of positions in the trading book pursuant to Article 22o para. 2 nos. 1, 3 and 6.

5. subordinated capital can be recognised from a point in time five years prior to the repayment date in five equal annual instalments before accounting for other restrictions on eligibility;
6. the liability sum surcharge can be recognised up to a maximum of 25% of core capital;
7. short-term subordinated capital exclusively for compliance with the minimum capital requirements pursuant to Article 22 para. 1 no. 3 and Article 22o para. 2 nos. 1 to 8 and nos. 11 and 12 and only up to an amount which, together with the eligible capital pursuant to para. 1 nos. 4 to 8 which the credit institution does not require in order to meet the minimum capital requirements pursuant to Article 22 para. 1 nos. 1, 4 and 5, does not exceed 200% of the core capital that the credit institution does not require in order to meet the minimum capital requirements pursuant to Article 22 para. 1 nos. 1, 4 and 5; insofar as the credit institution does not exhaust the eligibility of short-term subordinated capital, it may supplement this capital with own funds items that are no longer eligible pursuant to nos. 2 to 6 due to volume limits;
8. the sum of the amounts pursuant to para. 13 nos. 3 to 4d is to be deducted half from the sum of core capital pursuant to no. 1 and half from the sum of the amounts pursuant to nos. 2 to 7; where half of the sum of the amounts pursuant to para. 13 nos. 3 to 4d exceeds the sum of the capital components pursuant to nos. 2 to 7, the excess amount is to be deducted from core capital pursuant to no. 1; the amount calculated pursuant to para. 13 no. 4d is not to be deducted if this amount was included in the calculation of risk-weighted exposure amounts pursuant to Article 22 a para. 6 or Article 22b para. 3 no. 2 for the purposes of Article 22 para. 1.

(15) Shares and other equity, participation capital and supplementary capital as well as subordinated capital and short-term subordinated capital from direct issuance are to be shown separately in the notes to the accounts; this also applies to equity interests and other own funds issued by a controlling company.

(16) Own participation capital, participation capital in a dependent undertaking or of a controlling company may not exceed 10% of the participation capital issued. Articles 65 to 66a Stock Corporation Act, which govern the acquisition, sale, retirement and pledging of the company's own shares as security, the acquisition of the company's own shares by third parties and the financing of the acquisition of the company's shares, are applicable. Supplementary capital, subordinated capital and short-term subordinated capital from direct issuance and the corresponding capital components of a controlling company may each not exceed 10% of the supplementary capital, subordinated capital and short-term subordinated capital issued by the credit institution.

(17) The FMA may determine by regulation to safeguard financial market stability by means of an adequate financial and own funds situation of credit institutions for hybrid capital, in conformity with Article 63a of Directive 2006/48/EC and taking the European practice in this area into account the following:

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1. scope of documentation requirements in the context of a replacement purchase;
2. termination;
3. early repayment and establishment of criteria for redemption incentives deemed moderate;
4. cancellation or replacement of interest and dividend payments;
5. conversion in accordance with para. 4a no. 6.

### **Subsection 6: Consolidation**

#### **Consolidated Own Funds**

**Article 24.** (1) The superordinate credit institution must consolidate the assessment base for credit risk pursuant to Article 22 para. 2, the positions in the trading book in accordance with the rules stipulated in Article 24a, the open foreign exchange positions and gold positions pursuant to Article 24b, and the own funds (Article 23) of the group of credit institutions using the method of consolidation on a full basis. As an exception, the proportional consolidation method is to be applied to superordinate institutions pursuant to Article 30 para. 1 no. 7. Where institutions are associated by a relationship within the meaning of Article 12 (1) of Directive 83/349/EEC, the FMA must stipulate the form in which the consolidation should be performed. The superordinate institution's own funds which belong to a subordinate institution within the group are recognised as own shares pursuant to Article 23 para. 2.

(2) The following items are to be allocated to consolidated disclosed reserves as liability items and reduce those reserves in cases where they are asset items:

1. any minority interests pursuant to Article 259 para. 1 Company Code (*Unternehmensgesetzbuch – UGB*) which give rise to minority interests;
2. any difference resulting from the consolidation of equity and participating interests within the meaning of Article 254 para. 3 Company Code (*Unternehmensgesetzbuch – UGB*; capital consolidation);
3. any foreign currency translation differences resulting from consolidation when a subordinate institution's equity available at the start of the financial year is translated;
4. any difference resulting from equity valuation within the meaning of Article 264 para. 2 Company Code (*Unternehmensgesetzbuch – UGB*).
5. Hybrid capital refers to capital which
  - a) is fully paid up,
  - b) is not subject to the obligation to pay dividends in arrears,
  - c) can absorb losses incurred by the superordinate credit institution even before insolvency proceedings are initiated,
  - d) is subordinate to deposits, other liabilities and other subordinated liabilities,
  - e) is placed at the institution's lifetime disposal,
  - f) is not secured, is not guaranteed by a third party or an undertaking associated with the issuer, and is not subject to conditions or connected with financial instruments which, from

- a legal or economic perspective, give rise to an equal or senior ranking compared to other creditors of the credit institution or group of credit institutions,
  - g) may be repaid under an extraordinary call privilege only if replaced by capital of equal or better quality and if either its repayment is not inappropriate due to material changes in tax treatment or its legal eligibility for recognition as own funds is changed; the condition of replacement does not apply if the FMA determines that the credit institution and the group of credit institutions have sufficient own funds for adequate risk coverage even after the capital is repaid,
  - h) may be repaid by the issuer only after five years on condition that it is replaced by capital of equal or better quality; this condition does not apply if the FMA determines that the credit institution or the group of credit institutions has sufficient capital required for adequate risk coverage even after the capital is repaid.
6. furthermore, the following is applicable to hybrid capital:
- a) the determinant components of hybrid capital must be published in an easily understandable form in a printed publication medium distributed throughout Austria or on the websites of the issuer and the superordinate credit institution,
  - b) where the proceeds from the issue of hybrid capital are available to the superordinate credit institution only via an undertaking in the group of credit institutions, they must be made available to the former either immediately as core capital or as capital pursuant to Article 23 para. 1 no. 5, or when a predetermined triggering event occurs; these events include, for example, falling below a specific capital ratio or below an amount of eligible capital,
  - c) the superordinate credit institution must have the power to control the amount and timing of profit distributions,
  - d) dividends may be paid only out of distributable profits; where the amount of the dividend is guaranteed, a change in the dividend must not be linked to the credit quality of an institution belonging to the group of credit institutions,
  - e) an increase in the minimum dividend in conjunction with the issuer's call privilege may be agreed only if
    - aa) the agreement to increase the minimum dividend takes effect after a ten-year term at the earliest,
    - bb) only one agreement to increase the minimum dividend is stipulated and
    - cc) the agreement to increase the minimum dividend does not exceed the following thresholds: 100 basis points compared with the original minimum dividend or 50% of the original yield gap between the minimum dividend and a comparable reference value.
- (3) Paras. 1 and 2 are applicable in accordance with the following provisions:
- 1. paras. 1 and 2 nos. 1 to 3 for undertakings belonging to the group of credit institutions;

2. para. 2 no. 4 for participations in credit institutions, financial institutions, investment firms and undertakings providing ancillary banking services as long as they do not belong to the group of credit institutions or are not voluntarily included in proportional consolidation (para. 4);
3. para. 2 no. 4 may also be applied uniformly to all participations in undertakings that are not credit institutions, financial institutions, investment firms or undertakings providing ancillary banking services; the definition of participations pursuant to Article 228 paras. 1 and 2 Commercial Code may be used, and recourse to Article 263 para. 2 Commercial Code (exemption of participations) may be taken;
4. the amounts pursuant to para. 2 may be derived from the latest consolidated financial statement, provided any changes in the interim are only of minor importance.

(3a) Paras. 1 and 2 need not be applied to subordinate financial institutions and ancillary service providers if

1. their total assets amount to either less than EUR 10 million or less than 1% of the superordinate credit institution's total assets, with the lower of the two amounts taken as a basis in each case, or
2. their total assets amount to less than 1% of the superordinate credit institution's total assets and the relevant undertaking is only of minor importance for regulatory purposes. Where several subordinate institutions meet the requirements set forth in no. 1 or 2 and such institutions together are not insignificant for regulatory purposes, paras. 1 and 2 are applicable.

(4) Where a credit institution holds equity interests either directly or indirectly in other credit or financial institutions in the amount of more than 10% of the capital of those institutions and where such institutions are not part of the group of credit institutions, proportional consolidation within the meaning of Article 262 Commercial Code may be carried out. Exceptions to proportional consolidation are permissible only in justified cases. Para. 2 nos. 2 and 3 are applicable in this context.

(5) The superordinate credit institution's bank auditor must include a statement on the consolidation of own funds in the prudential report.

### **Consolidation of the Trading Book**

**Article 24a.** (1) The superordinate credit institution must calculate the minimum capital requirements for the trading book of the group of credit institutions pursuant to Article 220 if at least one institution within this group is required to perform this calculation or, in the case of group institutions established abroad, would be required to do so in accordance with the provisions of this federal act.

(2) The scope of consolidation must include those group institutions to which Article 220 applies or, in the case of group institutions established abroad, would apply in accordance with the provisions of this federal act.

(3) Long and short positions in the same instruments held by group institutions established in a Member State may be added up with due attention to plus/minus signs.

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(4) Long and short positions in the same instruments held by group institutions established in a third country may be added up with due attention to plus/minus signs if

1. the institution is authorised in a third country,
2. the own funds in the group of credit institutions are distributed appropriately and
3. there are no legal provisions in the third country which could severely hamper the transfer of funds within the group. The superordinate credit institution must maintain evidence of compliance with the requirements at all times and present this evidence to the FMA on request.

(5) The superordinate credit institution must set up systems for monitoring and controlling market risks within the group, including institutions whose market risks are not consolidated.

### **Consolidation of Open Foreign Exchange and Gold Positions**

**Article 24b.** Open foreign exchange and gold positions are to be consolidated as follows:

1. the scope of consolidation is to include those institutions belonging to the group of credit institutions whose overall foreign exchange position (sum of the net total amount of foreign exchange positions and the net gold position) exceeds 2% of eligible capital (immateriality threshold), calculated on an individual basis; in the case of group institutions established abroad, this applies *mutatis mutandis* in accordance with the provisions of this federal act;
2. group institutions not covered by no. 1 may be included in the consolidation if this procedure is applied consistently;
3. the foreign exchange and gold positions of group institutions established in a Member State may be added up for each currency with due attention to plus/minus signs;
4. subject to the requirements set forth in Article 24a para. 4, also the foreign exchange and gold positions of group institutions established in a third country may be added up with due attention to plus/minus signs;
5. the immateriality threshold as defined in no. 1 is to be recognised only in connection with the consolidated assessment base.
6. The superordinate credit institution must set up systems for monitoring and controlling foreign exchange and gold positions within the group; institutions whose foreign exchange and gold positions are not consolidated must also be included in those systems.

### **Subsection 7: Liquidity**

#### **Liquidity**

**Article 25.** (1) Credit institutions must ensure that they can honour their payment obligations at all times. They must

1. establish company-specific financial and liquidity planning based on banking experience;
2. sufficiently ensure their ability to compensate for any future imbalances of incoming and outgoing payments by constantly maintaining sufficient liquid funds;

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3. have in place systems for monitoring and controlling the interest rate risk of all transactions;
4. structure their interest rate reset and call privileges in particular according to the maturity structure of their assets and liabilities in such a way that potential changes in market conditions are taken into account; and
5. have in place documentation on the basis of which the credit institution's financial situation can be calculated with reasonable accuracy at all times; these documents are to be presented to the FMA with appropriate comments on request.

(2) The FMA shall issue a regulation specifying the minimum requirements for the requirements referred to in para. 1. These minimum requirements shall be consistent with Annex V, Numbers 14 to 22 of Directive 2006/48/EC.

(3) Notwithstanding these obligations, credit institutions must hold Liquidity 1 and 2 funds pursuant to paras. 4 to 14 as a minimum requirement. Unless otherwise stipulated in this federal act, the maturities indicated must be residual maturities. In the calculation of residual maturities, the expected residual period may be used for categories of assets and liabilities where differing effective material maturities exist, provided they are calculated according to generally accepted statistical rules.

(4) The following euro-denominated obligations are relevant to the measurement of Liquidity 1 funds:

1. demand deposits of credit institutions as well as deposits with the relevant central institution with notice periods or terms of less than 30 days, insofar as the latter serve to comply with para. 7,
2. Deposits of natural or legal persons who are not credit institutions, with notice periods or terms of less than six months,
3. overnight funds, time deposits and funds borrowed from credit institutions with notice periods or terms of less than six months insofar as they are not offset by claims on credit institutions with notice periods or terms of less than six months, except those funds which constitute Liquidity 1 funds at the relevant central institution; purchase obligations arising from repurchase transactions with credit institutions with terms of less than six months as well as obligations arising from the issuance of money market certificates which fall due within six months are subject to the same treatment as time deposits; obligations to sell arising from repurchase transactions and claims arising from money market certificates which fall due within six months are subject to the same treatment as claims; money market certificates are debt instruments issued by credit institutions which may be traded only between credit institutions that have undertaken to sell such certificates exclusively to credit institutions.
4. obligations arising from repurchase transactions with natural or legal persons who are not credit institutions, with notice periods or terms of less than six months,
5. obligations arising from the acceptance of drawn bills and the issue of own bills.

(5) The following are excluded from euro-denominated obligations pursuant to para. 4:

1. obligations arising from the refinancing of transmitted loans insofar as the loans are refinanced within the period stipulated;

2. obligations arising from the refinancing of loans pursuant to the Export Promotion Act insofar as the loans are refinanced within the period stipulated;
3. obligations to the Oesterreichische Nationalbank and the European Central Bank;
4. obligations arising from trustee savings deposits;
5. building savings deposits;
6. obligations arising from direct issues for which special cover assets are created.

(6) Liquidity 1 funds are as follows:

1. cash in hand;
2. freely convertible foreign currencies;
3. coined precious metal and bullion;
4. credit balances with the Oesterreichische Nationalbank;
- 4a. credit balances with the European Central Bank and other national central banks of Member States participating in Stage Three of Economic and Monetary Union insofar as these balances serve the purpose of complying with the minimum reserve requirement;
5. *removed*;
6. euro-denominated demand deposits with the relevant central institution as well as eurodenominated credit balances with the relevant central institution with notice periods or terms of less than 30 days;
7. the minimum reserve held by a credit institution directly or via the superordinate institution of a group of credit institutions (Article 30).

(7) Liquidity 1 funds are to be held on an average basis. The average amount is calculated as the arithmetic mean of the daily levels of obligations pursuant to no. 1 on the last day of the penultimate month as well as on the seventh, fifteenth and twenty-third day of the previous month and pursuant to no. 2 on the last day of the previous month as well as on the seventh, fifteenth and twenty-third day of the current month, or the last business day preceding those dates. The following percentages are to be applied:

1. 50% of deposits with central institutions insofar as these deposits are required for compliance with another credit institution's Liquidity 1 requirements; the FMA may amend this percentage by way of a regulation to the extent necessary to maintain creditor protection;
2. 10% of other obligations pursuant to para. 4; the FMA may amend this percentage by way of a regulation within a range of 0% to 20% to the extent necessary to maintain creditor protection and solvency;
3. the national economic interest in maintaining a functioning banking system and sector-specific conditions are to be taken into account in the enactment of regulations pursuant to nos. 1 and 2.

(8) The following euro-denominated obligations are relevant to the measurement of Liquidity 2 funds:

1. obligations pursuant to para. 4;
2. Time deposits and funds borrowed from credit institutions with notice periods or terms from six months to less than 36 months insofar as they are not offset by claims on credit institutions

with notice periods or terms from six months to less than 36 months; para. 4 no. 3 applies *mutatis mutandis*;

3. Deposits of natural or legal persons that are not credit institutions, with notice periods or terms from six months to less than 36 months,
4. euro-denominated direct issues with notice periods or terms of less than 36 months;
5. obligations arising from repurchase transactions with natural or legal persons that are not credit institutions, with notice periods or terms from six months to less than 36 months,

(9) The following are excluded from euro-denominated obligations pursuant to para. 8:

1. obligations arising from direct issues for which special cover assets are created;
2. obligations arising from the refinancing of transmitted loans insofar as the loans are refinanced within the period stipulated;
3. obligations arising from the refinancing of loans pursuant to the Export Promotion Act;
4. obligations to the Oesterreichische Nationalbank and the European Central Bank;
5. obligations arising from trustee savings deposits;
6. building savings deposits.

(10) Liquidity 2 funds are the following euro-denominated asset items:

1. cheques;
2. mature bonds;
3. due interest coupons, profit participation certificates and dividend coupons;
4. fixed income securities of issuers established in Austria or another Member State which are admitted to listing on a regulated market (Article 1 para. 2 Stock Exchange Act) and bills re-discountable with the Oesterreichische Nationalbank;
5. overnight funds and time deposits with credit institutions with notice periods or terms of less than six months insofar as they are not offset by claims on credit institutions with terms of less than six months and provided they do not count as Liquidity 1 funds; for credit institutions affiliated to a central institution which are not entitled to terminate such an affiliation pursuant to para. 13, time deposits with notice periods or terms from 30 days to less than six months are considered to be Liquidity 2 funds only if they are held at the relevant central institution; para. 4 no. 3 applies *mutatis mutandis*;
6. bonds issued by banks in the European System of Central Banks;
7. the amount by which average Liquidity 1 funds exceed the required liquidity pursuant to para. 7;
8. federal treasury bills or notes issued by the Federal Minister of Finance as authorised by the relevant Federal Finance Act (*Bundes-Finanzgesetz*) which are not Liquidity 1 funds pursuant to para. 4 and whose term ranges from six to 36 months;
9. joint ownership shares as defined in the Investment Fund Act in the amount of the repurchase price if
  - a) the investment fund is composed of only liquid funds pursuant to para. 6 and nos. 1 to 8, and derivative instruments (Article 21 Investment Fund Act 1993) are used exclusively to hedge the fund's assets;

- b) at the shareholder's request, his/her share in the investment fund must be disbursed to him/her within 30 days on return of the share certificate, the dividend coupons and the renewal coupon;
- c) the composition of the investment fund pursuant to lit. a and the obligation to repurchase the share certificate pursuant to lit. b were published in the Official Gazette of the *Wiener Zeitung* and notified to the FMA and the Oesterreichische Nationalbank, and
- d) publication pursuant to lit. e has not taken place;
- e) any intended deviation from the requirements indicated in lit. a and b is to be notified by the investment fund management company to the FMA and the Oesterreichische Nationalbank at least six months in advance and published in the Official Gazette of the *Wiener Zeitung*.

(11) Liquidity 2 funds pursuant to para. 10 do not include:

1. securities arising from direct issuance;
2. securities which are used as cover or substitute cover;
3. asset items pledged as security to third parties with the exception of the Oesterreichische Nationalbank and the European Central Bank;
4. asset items pledged as security to the Oesterreichische Nationalbank and the European Central Bank insofar as an obligatory right to recovery does not exist;
5. securities which are sold under repurchase agreements and remain on the balance sheet of the transferor pursuant to Article 50 paras. 1 and 2;
6. securities which are purchased under repurchase agreements in accordance with Article 50 paras. 1 and 2;
7. deposits used to refinance loans insofar as these are excluded from the obligations pursuant to para. 4 for the refinanced bank.

(12) As of the last day of each month, Liquidity 2 funds are to be held at a minimum level of 25% of obligations pursuant to para. 10 as of the fifteenth of the same calendar month or the last business day preceding that date. The FMA may issue a regulation amending this percentage within a range of 10% to 30% if this is necessary to maintain solvency in accordance with monetary and credit policy conditions. For obligations pursuant to para. 4, this percentage is reduced by the rate stipulated in para. 7 no. 2 for Liquidity 1 funds.

(13) In order to ensure financial stability, credit institutions which are associated with a central institution must participate in a joint cash-clearing operation system. For this purpose, they must hold liquidity reserves in the amount of 10% of savings deposits and 20% of other euro-denominated deposits, but no more than 14% of total euro-denominated deposits, at their central institution or at another credit institution stipulated by contractual or statutory means and established in a Member State. The credit institution must be authorised to accept deposits and, on the basis of its business structure, be capable of fulfilling the requirements arising from guaranteeing a liquidity association. In particular, the credit institution must be of sufficient credit quality, and liquid funds as well as refinancing possibilities must be available on an ongoing basis in order to be able to provide liquidity quickly when necessary. The arrangements regarding the actual provision of liquidity between the central institution or other credit institution with which the liquidity reserve is held and the other credit

institutions participating in the liquidity association must be governed by contractual or statutory means with due attention to Article 39 para. 1. The contractual or statutory arrangements must include the following in particular:

1. the requirements for the provision of liquidity to associated credit institutions when necessary;
2. a specific description of the obligation to provide liquidity when necessary on the part of the central institution or other credit institution with which the liquid funds are held;
3. the relevant decision-making process, in particular the requirements for resolutions;
4. a notice period which must be at least one year in duration.

The amount of the liquidity reserve is to be calculated on the basis of the volume of deposits at the end of March, June, September and December and adjusted for the ensuing quarter in each case. If deposits fall more than 20% below the level of the latest relevant assessment base, the credit institution may request an adjustment as of the last day of the following month. These liquidity reserves are counted as Liquidity 1 funds. Other deposits are payment funds repayable on demand (demand deposits), all deposits redeemable at notice and deposits with agreed maturity, as well as deposits for which cash certificates are issued.

(14) The FMA may issue a regulation to supplement the Liquidity 1 and 2 funds defined in paras. 6 and 10 with other assets of equal liquidity. In this regulation, the national economic interest in maintaining an efficient banking system must be taken into account.

### **Subsection 8: Disclosure Obligations**

#### **Disclosure Obligations**

**Article 26.** (1) Credit institutions must disclose information relating to their organizational structure, risk management and risk capital position at least once per year. They must also publish the information required pursuant to para. 6 with regard to the Internal Ratings Based Approach, credit risk mitigation techniques and the Advanced Measurement Approach for operational risk. Credit institutions must define the medium in which they make such disclosures and publish all such information in the same medium. This medium must be generally accessible; disclosure in the annual financial statements is considered to fulfil the requirement of general accessibility, notwithstanding para. 8 no. 3.

(2) Where the same information is already disclosed by credit institutions on the basis of accounting, exchange listing or other requirements, the requirements stipulated in para. 1 may be considered to be met. In cases where information is not provided in the annual financial statements, these statements must indicate where the information can be found.

(3) Credit institutions must publish part or all of the information pursuant to para. 1 more frequently than once per year if this is necessary due to

1. the scope of their activities;
2. the nature of their activities;
3. their presence in different countries;
4. their involvement in various areas of the financial markets;

5. their activities on international financial markets; or
6. their participation in payment, settlement and clearing systems.

In this regard, special consideration must also be given to a potential requirement to disclose information regarding the structure of own funds (Article 23) and minimum capital requirements as well as information relating to high-risk exposures and other items which are subject to rapid change. The FMA is authorised to issue regulations specifying requirements for more frequent disclosure (para. 8).

(4) Credit institutions must ensure the adequacy of disclosed information by means of binding internal policies, including verification of the information itself well as the frequency of its publication.

(5) A credit institution is not obliged to disclose information if

1. omissions or inaccurate indications of the information listed in para. 7 no. 1 would not alter or influence the assessment or decision of users who rely on this information for business decisions, or
2. the information is confidential and its disclosure would weaken the competitive position of the credit institution. In particular, such information includes
  - a) information about products or systems whose publication would diminish the value of the credit institution's investments;
  - b) information whose publication may weaken the credit institution's competitive position due to specific circumstances such as the credit institution's size, business volume and areas of activity by providing disproportionately detailed information on the structure of its business in terms of geography, industries, exposure classes or credit quality compared to other credit institutions applying the same standards of disclosure. If, however, insider information pursuant to Article 48a para. 1 Stock Exchange Act is involved, only Article 48d Stock Exchange Act is applicable with regard to disclosure obligations.

(6) A credit institution must not disclose information regarding which the credit institution is obliged to maintain confidentiality vis-à-vis its clients or other counterparties; in particular, banking secrecy must be maintained in accordance with Article 38. In such cases or in the cases set forth in para. 4 no. 2, disclosures of other information pursuant to para. 7 must indicate and justify the fact that specific information was not disclosed, and more general, non-confidential information relating to required disclosures is to be published.

(7) The FMA must issue a regulation defining which information credit institutions must disclose

1. with regard to their organisational structure, own funds structure, minimum capital requirements, risk management, risk capital position, securitisations and
2. with regard to the use of the following instruments and methods:
  - a) the Internal Ratings Based Approach pursuant to Article 22b,
  - b) the credit risk mitigation techniques applied pursuant to Article 22g,
  - c) the Advanced Measurement Approach pursuant to Article 22l.

As regards nos. 1 and 2, this information must cover the areas listed in Annex XII, Parts 2 and 3 of Directive 2006/48/EC, respectively, as well as the data indicated in those Annexes. In issuing this regulation, the FMA regulation must also observe the principle of proportionality pursuant to para. 5 no. 2 lit. b.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).



(8) Notwithstanding paras. 1 to 6, if necessary for the sake of adequate market information based on the relevant characteristics of credit institutions' activities pursuant to para. 3 nos. 1 to 6, the FMA may issue a regulation requiring credit institutions

1. to disclose in full or in part one or more items of information stipulated in para. 7 nos. 1 and 2;
2. to disclose one or more items of information more frequently than once per year and to set periods for these disclosures;
3. to disclose information in other specific media and other specific places instead of the annual financial statements;
4. to use special procedures to verify information not covered by the audit of the annual financial statements.

**Article 26a.** (1) EEA parent credit institutions established in Austria must comply with the disclosure obligations pursuant to Article 26 on the basis of their consolidated financial situation.

(2) EEA parent credit institutions established in Austria which are controlled by an EEA parent financial holding company established in Austria must comply with the disclosure obligations pursuant to Article 26 on the basis of the consolidated financial situation of the parent financial holding company.

(3) Subordinate credit institutions pursuant to Article 30 para. 1 or 2 whose superordinate institution complies with the disclosure obligations on the basis of its consolidated financial situation are not required to comply with the disclosure obligations pursuant to Article 26.

(4) Significant subsidiaries of EEA parent credit institutions or EEA parent financial holding companies established in Austria must disclose information relating to their own funds structure and their minimum capital requirements on an individual or a subconsolidated basis.

(5) The classification of a credit institution as a significant subsidiary pursuant to para. 4 is to be determined by the FMA by means of an administrative ruling (*Bescheid*). A significant subsidiary is one whose total assets amount to at least 5% of those of the group of credit institutions to which it belongs and is to be classified as significant on the basis of size, business structure, types of clients, business type, geographical area of activity, subordinate institutions and the subsidiary's importance for the Austrian financial sector in light of financial stability considerations. Where a credit institution is classified as a significant subsidiary, the FMA must convey a copy of the administrative ruling (*Bescheid*) to the competent authorities responsible for either the EEA parent credit institution or the superordinate credit institution of the EEA parent financial holding company.

**Article 26b.** removed (*Federal Law Gazette I No. 141/2006*)

## Subsection 9: Other Regulatory Standards

### Large Exposures

**Article 27.** (1) Credit institutions and groups of credit institutions must limit the specific banking risk of large exposures appropriately at all times. In addition, credit institutions which apply Article 22o must give special consideration to the potential exposure associated with securities underwriting.

(2) A large exposure is considered to exist if the items calculated pursuant to nos. 1 and 2 for a client or a group of connected clients equal or exceed 10% of the eligible capital of a credit institution or the eligible consolidated capital of a group of credit institutions and amount to a minimum of EUR 500,000. The following items are to be included in the calculation of large exposures:

1. asset items, off-balance sheet transactions pursuant to Annex 1 to Article 22 and derivative instruments pursuant to Annex 2 to Article 22 weighted at 100%, each after the deduction of value adjustments; derivative instruments pursuant to Annex 2 to Article 22 are calculated according to a method stipulated in Article 22 para. 5 without accounting for the counterparty weight;
2. the sum of trading book positions with the following values in cases where the credit institution applies Article 22o:
  - a) the excess of a credit institution's long positions over its short positions in all financial instruments issued by the client in question, with the net position in each of the different instruments calculated according to the method specified by the FMA in its regulation pursuant to Article 22o para. 5;
  - b) in the case of underwriting for debt instruments or equity instruments, the exposure of the institution is its net exposure; this is calculated by deducting underwriting positions subscribed by third parties or sub-underwritten by third parties on the basis of a formal agreement; the weighting factors specified by the FMA in the regulation pursuant to Article 22o para. 5 are to be applied to this value; credit institutions must set up systems to monitor and control their underwriting exposures in light of the nature of the risks incurred in the markets in question;
  - c) the exposure amounts for covering settlement risk pursuant to Article 22o para. 2 no. 9 and counterparty credit risk pursuant to Article 22o para. 2 no. 10, which are to be calculated according to the procedure specified by the FMA by way of a regulation pursuant to Article 22o para. 5.

(3) The following are not to be included in the calculation of large exposures:

1. off-balance sheet transactions and derivative instruments pursuant to para. 2 no. 1, provided provisions are allocated for them;
2. asset items, off-balance sheet transactions and derivative instruments pursuant to para. 2 no. 1, provided these are included in para. 2 no. 2;
3. in the case of foreign exchange transactions, exposures that are incurred in the ordinary course of settlement for the period of 2 working days following payment;
4. in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement for the five working days following payment or delivery of the securities, whichever is earlier;
5. delayed receipts in funding and other exposures arising from client activity which do not last longer than the following business day
  - a) in the case of the provision of money transmission services, including the execution of payment services, clearing and settlement in any currency and correspondent banking or;

- b) the financial instruments clearing, settlement and custody services to clients, as well as
6. intra-day exposures in the case of the provision of services according to no. 5 lit. a to institutions providing those services."
- (4) Exposures to a group of connected clients (para. 11) are to be determined by adding the values calculated pursuant to paras. 2 and 3 for the individual clients in the group.
- (5) Eligible capital pursuant to Article 23 para. 1 no. 10 and the deduction items pursuant to Article 23 para. 13 nos. 4c and 4d are not to be taken into account for the purpose of calculating large exposures pursuant to paras. 2 to 4 and the limitation referred to in paras. 15 and 16.
- (6) With regard to the application of para. 15, the values calculated pursuant to para. 2 shall be assigned a weight of 100% unless they require separate weighting according to nos. 1 to 4:
1. 0% weight:
    - a) exposures to the Austrian federal government, provincial governments or municipal governments, central banks, central governments, regional governments or public sector entities, international organisations (Article 22a para. 5 no. 1) or multilateral development banks (Article 22a para. 4 no. 4) which, if unsecured, would be assigned a risk weight of 0% pursuant to Article 22a;
    - b) exposures which are fully secured by an explicit guarantee provided by the Austrian federal government, provincial governments or municipal governments, central banks, central governments, regional governments or local authorities, public sector entities, international organisations or multilateral development banks (Article 22a para. 4 no. 4), and unsecured positions with the guarantor in question which would be assigned a risk weight of 0% pursuant to Article 22a;
    - c) exposures to central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies, provided that the credit assessment of those central governments assigned by a nominated external credit assessment institution is investment grade;
    - d) exposures, including financial holdings and other participating shares, in the EEA parent credit institution, its subsidiaries and own subsidiaries or other undertakings which belong to the same group of credit institutions, insofar as all the aforementioned are included within the scope of supervision on a consolidated basis or are subject to supplementary supervision under Article 6 para. 1 Financial Conglomerates Act (*Finanzkonglomeratengesetz - FKG*);
    - e) exposures to a relevant central institution; equity interests in this institution and off-balance sheet transactions as well as derivative instruments, which give rise to a claim on the relevant central institution;
    - f) exposures which are adequately secured by collateral in the form of cash deposits with the lending credit institution or at a credit institution which is the parent undertaking or subsidiary of the lending credit institution;
    - g) exposures which are adequately secured by certificates of deposit where these are issued by the lending credit institution, its parent credit institution or a subsidiary and lodged with one of these credit institutions;

- h) exposures in the form of low-risk off-balance sheet items pursuant to no. 4 lit. a of Annex 1 to Article 22 provided an agreement has been concluded with the client in question that the obligation is issued or drawn down only if this does not lead to the limits set forth in paras. 15 and 16 being exceeded;
- i) exposures to the counterparties referred to in Article 22a paras. 8 and 9, if they would be assigned a risk weight of 0%;
- j) exposures to institutions, provided that those exposures do not constitute such institution's own funds, do not last longer than the following business day and are not denominated in a major trading currency;
- k) exposures to credit institutions if the lending credit institution operates on a non-competitive basis, providing loans under legislative programmes or its statutes to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via other credit institutions;
- l) covered bonds pursuant to Article 22a para. 5 no. 5;
- m) legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided the guarantee is not used to reduce the risk in calculating the risk weighted assets; in this case, guarantees also include the credit derivatives recognised pursuant to Article 22h, except for the credit-linked note (CLN);
- n) exposures which are fully secured by collateral in the form of cash which the lending credit institution has received under a credit-linked note (CLN) issued by the credit institution for the credit risk of a specific client or a specific group of connected clients;
- o) exposures, which are subject to a netting agreement recognised pursuant to Article 22h and are fully secured by a counterparty's loans to or deposits with the lending credit institution;
- p) fiduciary loans and transmitted loans where the credit institution bears only the management risk;
- q) subject to the approval of the FMA, exposures to the extent that they are deducted from own funds, pursuant to Article 23 para. 13 nos. 3 to 4a and 4d.

2. 20% weight:

- a) exposures attributable to, or guaranteed by Member States' regional governments or local authorities insofar as these would be assigned a risk weight of 20% pursuant to Article 22a;
- b) exposures to central banks in the form of required minimum reserves held at those central banks which are denominated and funded in the national currency of the Member State in question and which would be assigned a weight ranging from 20% to 100% pursuant to Article 22a;
- c) subject to the approval of the FMA, guarantees other than loan guarantees which have a legal or regulatory basis and are provided for their members by mutual guarantee schemes possessing the status of credit institutions.

3. 50% weight:

a) exposures in the form of off-balance sheet items pursuant to no. 3 lit. a first case and lit. c of Annex 1 to Article 22, provided these exposures are not weighted at 0% pursuant to no. 1 lit. h;

b) exposures in the form of off-balance sheet items pursuant to no. 4 of Annex 1 to Article 22, provided these exposures are not weighted at 0% pursuant to no. 1 lit. h;

(7) The application of credit risk mitigation techniques requires fulfilment of the conditions and minimum requirements specified in Article 22g and Article 22h. Exposures pursuant to Article 22h para. 4 and the securities provided for by FMA regulation pursuant to Article 22h para. 7, corresponding to Annex VIII, Part 1, (20) and (21) of Directive 2006/48/EC, may only be taken into account in the context of para. 10 no. 1 or 2.

(8) Where a credit institution applies the Financial Collateral Comprehensive Method pursuant to Article 22g para. 3 no. 2 lit. b for credit risk mitigation purposes, it may, subject to paras. 19 and 20, apply the fully adjusted exposure value of the corresponding exposures for calculating the value of these exposures, taking into account the credit risk mitigation techniques, volatility adjustments and any maturity mismatch (E\*), provided this is done consistently for all large exposures.

(9) Credit institutions which apply the Internal Ratings Based Approach pursuant to Article 22b para. 8 may

1. account for the effects of financial collateral on their credit risk according the Internal Ratings Based Approach instead of the risk weights to be applied pursuant to para. 6 in calculating the value of exposures if the following requirements are fulfilled:
  - a) this method is applied consistently to an entire exposure class in each case and
  - b) the credit institution performs a separate estimate of the effects of the credit institution's financial collateral on its credit risk for the expected default or
2. apply the method defined in para. 13 no. 2.

(10) For the reduction of credit risks, the value of the following exposures can be reduced by up to 50% of the market value of the relevant real-estate:

1. exposures which are adequately secured by mortgages on residential property; this applies in the same way to property leasing transactions in which the lessor retains full ownership of the residential property leased as long as the lessee has not exercised his/her option to purchase the asset; real-estate properties that are used or let by the proprietor shall be considered residential properties;
2. exposures which are fully secured by mortgages on office or other commercial premises (commercial property), provided such exposures would be assigned a risk weight of 50% in the Member State in which the commercial property is located pursuant to the Standardised Approach to Credit Risk; this applies in the same way to real estate collateral relating to commercial property as long as the lessee has not exercised his/her option to purchase and the lessor still retains ownership of the property in question; the commercial property must be fully constructed, leased and generate appropriate rental income.

The requirements defined in Article 22h para. 7 no. 2 on the recognition and valuation of real estate collateral shall apply to residential property under no. 1.

(11) The term "group of connected clients" is defined as:

1. natural or legal persons as well as other entities, of which one may exercise control insofar insofar as one of the relationships indicated in Article 244 para. 2 nos. 1 through 4 Company Code (*Unternehmensgesetzbuch – UGB*) exists; where the lending credit institution is the group's parent undertaking, each subsidiary and each subsidiary group is considered a distinct group of connected clients, provided a legal relationship does not exist between the respective subsidiaries and subsidiary groups. A legal relationship is considered to exist in particular if
  - a) a subsidiary holds more than 25% in an undertaking which is an undertaking of another subsidiary group or a direct subsidiary of the lending credit institution; or
  - b) a subsidiary holds more than 25% in an undertaking in which an undertaking of another subsidiary group or a direct subsidiary of the lending credit institution also holds a participation; or
  - c) one of the relationships pursuant to Article 30 para. 1 nos. 2 to 7 exists between a subsidiary and an undertaking in another subsidiary group or a direct subsidiary of the lending credit institution,  
and if the overall acquisition costs of the participation exceed 5% of the consolidated disclosed equity capital (or of disclosed equity capital) in the case of one of the two subsidiary groups in question (subsidiaries which are not members of a subsidiary group belonging to the superordinate credit institution);
2. Two or more natural or legal persons or other entities between whom there is no relationship of control as defined in no. 1 but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular financial or repayment problems, one or several of the others would also be likely to encounter financial or repayment difficulties;
3. commercial-law partnerships and their personally liable partners;
4. trustor and trustee, where the latter acts for the account of the former;
5. the obligor and his/her next of kin pursuant to Article 80 para. 3 Stock Corporation Act (*Aktiengesetz - AktG*).

In respect of exposures referred to in Article 22a para. 4 nos. 13 and 15 to 16, where there is an exposure to underlying assets, the credit institution shall assess the scheme, its underlying exposures, or both. For that purpose, the credit institution shall evaluate the economic substance and the risks inherent in the structure of the transaction.

(12) A group of connected clients must also include all entities which are connected to a member of the group (para. 11 nos. 1 to 3) by one of the relationships indicated in para. 11 nos. 1 to 3. This applies in the same way to all other legal entities which are indirectly connected to a member of the group by one of the relationships pursuant to Article 11 no. 1 or 3. Para. 11 does not apply to large exposures to the Austrian federal government, provincial and municipal governments or to central governments to which a maximum weight of 100% would be assigned pursuant to Article 22a para. 4 nos. 1 and 2 in conjunction with Article 22a para. 7.



(13) Notwithstanding paras. 8, 9 no. 2, 11 and 12, an exposure may be assigned to a third party if and to the extent that

1. the exposure is explicitly, unconditionally and directly guaranteed by that third party and the following requirements are fulfilled:
  - a) the unsecured exposure incurred to the third party would be assigned the same or a lower risk weight under the Standardised Approach to Credit Risk pursuant to Article 22a than the unsecured exposure of the primary obliged parties;
  - b) where the guarantee is denominated in a currency other than that of the exposure, the amount of the exposure covered by that guarantee and specified in the FMA regulation on the basis of Article 22g para. 9 no. 5 in accordance with the provisions governing the treatment of currency mismatches in unfunded credit protection is calculated;
  - c) a mismatch between the maturity of the exposure and that of the collateral is treated in accordance with the provisions on the treatment of maturity mismatches as specified in the FMA regulation on the basis of Article 22g para. 9 no. 4;
  - d) partial protection may be recognised where credit risk mitigation techniques pursuant to Article 22g para. 3 are applied;
2. the exposure is collateralised by securities issued by this third party and the following requirements are fulfilled:
  - a) the recognised securities are valued at market price;
  - b) the maturity of the collateral at least equals the maturity of the exposure;
  - c) the unsecured exposure incurred to the third party would be assigned an equal or lower risk weight under the Standardised Approach to Credit Risk according to Article 22a than the unsecured exposure of the primary obliged parties.

Simultaneous use of the method pursuant to no. 2 and the Financial Collateral Comprehensive Method for the consideration of financial collateral pursuant to Article 22g para. 3 no. 2 shall be allowed only where it is permitted to use both the Financial Collateral Comprehensive Method and the Financial Collateral Simple Method pursuant to Article 22g para. 3 no. 1 to determine the minimum regulatory capital requirements for credit risk (Article 22 para. 1 no. 1). For the purposes of para. 6 and no. 1 of this paragraph, the term "guarantee" also includes the credit derivatives recognised pursuant to Article 22h, except for the credit-linked note (CLN).

(14) Notwithstanding the effectiveness of the legal transaction, every large exposure determined pursuant to para. 2 requires the explicit prior consent of the supervisory board or the credit institution's other supervisory body competent according to applicable law or the articles of association. Blank authorisations given before they are actually required are not permissible in this context. The credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association must receive a report on every large exposure at least once per year.

(15) Taking into account the effects of risk mitigation techniques pursuant to paras. 6 to 10 and 13 and notwithstanding the effectiveness of the legal transaction, an individual large exposure to a client or a group of connected clients must not exceed 25% of the credit institution's eligible capital and the eligible consolidated capital of a group of credit institutions. Where that client is an institution

or where a group of connected clients includes one or more institutions, the value of the exposure may not exceed 25% of the credit institution's own funds and of the eligible consolidated capital of a group of credit institutions or the amount of EUR 150 million, whichever is higher, provided that the sum of exposure values to all connected clients that are not institutions does not exceed 25% of the credit institution's eligible capital and the eligible consolidated capital of a group of credit institutions. For the purposes set forth in the second clause, exposures to a recognised clearing house or stock exchange shall be treated like exposures to institutions.

(16) If in para. 15 the amount of EUR 150 million is higher than 25% of the credit institution's eligible own funds and the eligible consolidated capital of a group of credit institutions, the value of the exposure, after taking into account the effect of risk mitigation techniques pursuant to paras. 6 to 10 and 13, shall not exceed a reasonable limit in terms of the credit institution's eligible own funds and the eligible consolidated capital of a group of credit institutions. Credit institutions and groups of credit institutions shall determine this limit consistently with the policies and procedures to address and control concentration risk pursuant to Article 39 para. 2, such limit shall not be higher than 100% of the credit institution's eligible own funds and the eligible capital of a group of credit institutions.

(17) Where the exposure calculated pursuant to para. 2 exceeds 10% of the credit institution's eligible capital or amounts to at least EUR 750,000, the directors of the credit institution must have the economic circumstances of the obligors and guarantors disclosed before incurring such an exposure to a client or a group of connected clients and, for the duration of the exposure, remain sufficiently informed about the economic development of the obligors and guarantors as well as the value and enforceability of the collateral, and require the regular presentation of annual financial statements. In cases where annual financial statements are not presented, the directors of the credit institution must obtain sufficient information on the obligors and guarantors from other sources. The first and second sentences do not apply to

1. exposures pursuant to para. 6 no. 1 lit. a,
2. balances held with credit institutions,
3. fiduciary loans and transmitted loans where the credit institution bears only the management risk,
4. asset items vis-à-vis the EEA parent credit institution, its subsidiaries and own subsidiaries that are included in the consolidated supervision.

(18) Credit institutions must set up the management, accounting and control procedures required to capture large exposures and any changes in them, and to monitor these exposures in terms of compliance with the credit institution's lending policy. The adequacy of these procedures and their enforcement must be reviewed by the internal audit unit at least once per year.

(19) Where a credit institution intends to apply paras. 8 or 9, it must report to the FMA on the effectiveness of the following procedures:

1. the policies and procedures for managing risks arising from maturity mismatches between exposures and credit protection arrangements for large exposures of a credit institution or a group of credit institutions;

2. the policies and procedures for managing the concentration risk arising from the application of credit risk mitigation techniques, particularly from major indirect credit risks associated with the large exposures of a credit institution or a group of credit institutions;
3. the policies and procedures in the event that a stress test indicates that a collateral item has a smaller realisable value than recognised in paras. 8 or 9;
4. the suitability of the credit institution's estimates for the purpose of reducing exposure amounts pursuant to para. 9, unless an approval pursuant to Article 21a has already been issued for those estimates.

(20) Where a credit institution applies paras. 8 or 9, it must also recognise risks associated with the realisation of collateral in stressed situations. The FMA must issue a regulation defining criteria for the adequacy of stress tests with due attention to whether a credit institution applies the Standardised Approach to Credit Risk or the Internal Ratings Based Approach. Where such stress testing reveals a realisable value lower than that applied in paras. 8 or 9 for a collateral type, the eligible collateral value used in the monitoring of large exposure limits is to be reduced accordingly without delay.

(21) Credit institutions shall analyse, to the extent possible, their exposures to issuers of financial collateral and providers of personal collateral and underlying assets pursuant to Article 22a para. 4 nos. 13 and 15 to 16 for possible concentrations and to take action where appropriate. Significant findings of the inspection shall be reported to the FMA in writing.

(22) Paras. 14 and 15 are not applicable to branch offices of foreign credit institutions whose positions pursuant to Article 22a would, if unsecured, be assigned a weight of 20% if the following requirements are fulfilled:

1. the large exposures of the branch office in Austria are monitored by the supervisory authority responsible for the credit institution's head office,
2. the provisions governing the limiting and monitoring of large exposures in the head office's country of establishment are at least equivalent to those of Directive 2006/48/EC, and
3. a branch office of an Austrian credit institution would be given comparable treatment in the relevant country of establishment.

(23) If a credit institution exceeds the reasonable limit determined in paras. 15 and 16, it shall report the overall value of the exposure to the FMA without delay, identifying the reasons for such overexposure. Notwithstanding other measures in accordance with this federal act, the FMA may, where this is appropriate in view of the circumstances and according to the reasons reported for the exceptional overexposure, allow the credit institution a limited period of time in which to comply with the relevant limit.

### **Transactions with Management and Related Parties**

**Article 28.** (1) A credit institution may, either directly or indirectly, conclude legal transactions with

1. its directors,
2. its management board members insofar as the credit institution is organised as a cooperative society,

3. the members of its supervisory board or other supervisory bodies competent according to applicable law or the articles of association,
4. its legal representatives and senior executives in its subordinate and superordinate undertakings
5. spouses, common-law spouses as defined in Article 72 para. 2 Penal Code (*Strafgesetzbuch – StGB*), children, adopted and foster children of the persons indicated in nos. 1 to 4, but only legal representatives in the case of no. 4, or 6. third parties acting for the account of a person indicated in nos. 1 to 5, only on the basis of a unanimous resolution taken all directors and subject to the consent of the supervisory board or other supervisory body competent according to applicable law or the articles of association. The party involved is not entitled to vote on resolutions regarding transactions with management and related parties. In the case of loans, the resolutions must also govern the interest rate and repayment. For the credit institution's employees, their spouses and minor children, the consent of the supervisory board or other supervisory body competent according to applicable law or the articles of association is required for loans and advances only; no. 6 is applicable in this context.

(2) The provisions of para. 1 do not cover the following:

1. loans and advances whose total volume does not exceed 25% of annual remuneration;
2. other legal transactions in which the appropriate consideration does not exceed 25% of annual remuneration or is less than EUR 5,000;
3. Continuing obligations in which the adequate consideration, capitalised on an annual basis, does not exceed 25% of annual remuneration;
4. everyday banking transactions concluded on standard market terms.

(3) Where a director, a beneficial owner (Article 24 Federal Tax Code; *Bundesabgabenordnung – BAO*) or a member of an executive body of the credit institution, or one of these persons' relatives indicated in para. 1 no. 5, is a director, economic owner or member of an executive body of an undertaking at the same time, legal transactions may be concluded with that undertaking only with the consent of the supervisory board or other supervisory body of the credit institution competent according to applicable law or the articles of association. Para. 2 is applicable in this context.

(4) For specific legal transactions or types of legal transactions, consent pursuant to paras. 1 and 3 may be granted for one year in advance. The supervisory board or other supervisory body competent according to applicable law or the articles of association must receive a report on each of these legal transactions and each of these loans and advances at least once per year. Legal transactions concluded with executives pursuant to para. 1 no. 4, their relatives pursuant to para. 1 no. 5, and loans and advances to employees may also be reported in aggregate form; however, information on specific legal transactions, loans and advances is to be provided at the request of a member of the supervisory body.

(5) Where legal transactions with management and related parties are concluded in violation of paras. 1, 3 and 4, the loans and advances granted are to be repaid without delay regardless of any agreements to the contrary unless a unanimous resolution by the directors and consent by the supervisory board or other supervisory body competent according to applicable law or the articles of

association are issued subsequently. The directors and members of the supervisory board or other supervisory body competent according to applicable law or the articles of association are to bear joint and several personal liability for the repayment of loans and advances if these are granted to their knowledge and without their objection in violation of the provisions of paras. 1, 3 and 4. In the event that the credit institution is damaged by other legal transactions concluded to their knowledge and without their objection in violation of the provisions of paras. 1, 3 and 4, the persons indicated above are also jointly and severally liable if a unanimous resolution by the directors and consent by the supervisory board or other supervisory body competent according to applicable law or the articles of association are not issued subsequently.

### **Special Requirements for Bodies of Credit Institutions**

**Article 28a.** (1) Directors (Article 2 no. 1) may not take up activities as the chairperson of the supervisory board within the same undertaking in which they previously served as directors until a period of at least two years has passed since the termination of their function as directors.

(2) Should a director take on the function of chairperson of the supervisory board in violation of para. 1, that director will not be considered elected to the position of chairperson.

(3) Without prejudice to other provisions of federal law, only those persons who fulfil the following requirements on a continuing basis may perform the functions of a supervisory board chairperson at a credit institution:

1. no reasons for exclusion as specified in Article 13 paras. 1 to 3, 5 and 6 Trade Act 1994 are identified, and bankruptcy proceedings have not been initiated for the assets of the chairperson of the supervisory board or any entity other than a natural person on whose business the chairperson of the supervisory board has or has had a decisive influence, unless a reorganisation plan was agreed upon and fulfilled in the bankruptcy proceedings; this also applies to comparable situations which have arisen in a foreign country;
2. the chairperson of the supervisory board finds himself/herself in an orderly economic situation and no facts are known which would raise doubts as to his/her personal reliability as required for exercising the function of chairperson of the supervisory board;
3. the chairperson of the supervisory board possesses the professional qualifications and experience necessary for performing his/her function; such professional qualifications require expertise in the fields of bank finance and accounting as appropriate to the credit institution in question;
4. with regard to a supervisory board chairperson who is not an Austrian citizen, no reasons for exclusion for this function as specified in nos. 1 to 3 exist in the chairperson's country of citizenship; this must be confirmed by the banking supervisor in the chairperson's home country; however, if such a confirmation cannot be obtained, the chairperson in question must provide credible evidence of this, certify the absence of the named reasons for exclusion and submit a declaration stating whether any of the named reasons for exclusion exist;

(4) The FMA must be informed in writing of the result of the election to the position of chairperson of the supervisory board along with certification of the fulfilment of the requirements pursuant to para. 3 within two weeks. At the FMA's request, the competent first-instance commercial court is to overturn the election of the chairperson in the process of alternative dispute resolution if the chairperson does not fulfil the requirements set forth in para. 3. This request must be submitted within four weeks after the result of the election is conveyed to the FMA. The function of the chairperson of the supervisory board is to be suspended until a legally effective ruling has been handed down by the court. Where the chairperson of the supervisory board is a director of a credit institution established in a Member State, the FMA may assume that the requirements pursuant to para. 3 nos. 1 to 4 are fulfilled if no indications to the contrary become known.

(5) Paras. 1 to 4 apply only to credit institutions with total assets exceeding EUR 750 million at the time of the election.

### **Participations**

**Article 29.** (1) A credit institution must not hold qualifying participations in other undertakings which neither

1. conduct one or more of the transactions listed in para. 1 or 2 for commercial purposes, nor
2. are undertakings whose activities are a direct extension of banking or concern services ancillary to banking,
3. nor are contractual insurance or reinsurance undertakings,  
where the book value of the qualifying participation exceeds 15% of the credit institution's eligible capital.

(2) The total book value of qualifying participations in undertakings other than those indicated in para. 1 nos. 1 to 3 may not exceed 60% of the credit institution's eligible capital.

(3) The calculation of limits defined in paras. 1 and 2 is not to include equities or shares which are held by the credit institution and:

1. used only temporarily during a financial reconstruction or rescue operation,
2. held during the normal course of underwriting,
3. held in an institution's own name on behalf of others, or
4. not intended for permanent use in business operations.

(4) Where the limits defined in paras. 1 and 2 are exceeded, the credit institution is to hold eligible capital covering the amounts by which the qualifying participations exceed these limits. Where the limits defined in para. 1 and para. 2 are both exceeded, the amount to be covered by eligible capital is to be the greater of the two excess amounts.

(5) The superordinate credit institution must fulfil the obligations pursuant to paras. 1 to 4 on a consolidated basis. The fulfilment of these obligations is to be based on the consolidated financial position. Where a financial holding company established in Austria is superordinate to a group of credit institutions, the consolidated financial situation of the financial holding company is to be used as the basis.



(6) Subordinate credit institutions as defined in Article 30 paras. 1 and 2 whose superordinate credit institution complies with the requirements pursuant to paras. 1 to 4 on the basis of its consolidated financial position are not required to fulfil the obligations pursuant to paras. 1 to 4.

(7) By way of derogation from paras. 5 and 6, subordinate credit institutions as defined in Article 30 paras. 1 and 2 must comply on a subconsolidated basis if they are superordinate within the meaning of Article 30 paras. 1 and 2 to credit institutions, financial institutions or asset management companies established in a third country pursuant to Article 2 Number 5 of Directive 2002/87/EC.

(8) Eligible capital pursuant to Article 23 para. 1 no. 10 and the deduction items pursuant to Article 23 para. 13 nos. 4c and 4d are not to be included in the calculation of book values of qualifying participations pursuant to paras. 1 and 2 or of eligible capital where the limits applicable to such participations pursuant to para. 4 are exceeded.

### **Discretion to Calculate Regulatory Standards on the Basis of International Accounting Standards**

**Article 29a.** (1) For the purposes of Articles 24 to 24b, superordinate credit institutions may apply the regulatory standards of Section V, with the exception of Article 28, to book values instead of using the accounting standards pursuant to Article 43 to 59, with such book values being determined according to the international accounting standards adopted pursuant to Article 3 of Regulation (EC) No. 1606/2002 on the implementation of international accounting standards (OJ No. L243 of 11 September 2002, p. 1), provided that these superordinate credit institutions prepare such financial statements pursuant to Article 245a Commercial Code.

(2) The superordinate credit institution must notify the FMA of the exercise of the discretion pursuant to para. 1 no later than three months before the start of the financial year in question. The discretion pursuant to para. 1 may only be exercised uniformly for the purposes of Article 24 to 24b and for all Austrian credit institutions consolidated on a full basis. The exercise of the discretion pursuant to para. 1 is to remain binding for three successive financial years.

(3) Own funds items pursuant to Article 23 para. 1 are also recognised according to the provisions of Article 23 paras. 13 and 14 if reported as liabilities under international accounting standards. Own funds items pursuant to Article 23 para. 1 no. 4 (hidden reserves as defined in Article 57 para. 1) and no. 7 (revaluation reserves as defined in Article 23 para. 9) are not to be recognised. Article 23 para. 11 (exchange rate translation) is not applicable in this context. The euro is to be considered the reporting currency within the meaning of the international accounting standards. Unless otherwise stipulated in para. 4, reserves from the direct entry of profits and losses in equity capital shall be treated as disclosed reserves pursuant to Article 23 para. 1 no. 2.

(4) Own funds as specified in Article 23 para. 1 no. 2 are recognised if the following conditions are fulfilled:

1. profits and losses stated in accordance with the optional fair value method are not to be recognised where such profits and losses are attributable to changes in the credit institution's own credit quality and the underlying liability has not been eliminated.

2. Where the reserve from "available-for-sale" financial instruments shows an overall gain, up to 70% of this gain may be recognised as an own funds component pursuant to Article 23 para. 14 no. 2. Eligible capital pursuant to Article 23 para. 1 no. 10 is reduced by the amount of value recoveries which do not flow through income.
  3. Reserves from the direct entry of changes in the value of collateral instruments in equity capital do not count towards own funds; reserves are not reduced where the balance of these changes in value is negative. Where the direct entry in equity capital is associated with securing payment streams from "available-for-sale" financial instruments, the reserves for collateral instruments are to be treated as reserves from "available-for-sale" financial instruments.
  4. Insofar as real estate properties held as financial investments in accordance with international accounting standards show an overall value recovery stated in accordance with the optional fair value method, up to 70% of this gain can be recognised as an own funds component pursuant to Article 23 para. 14 no. 2 after the deduction of deferred taxes.
  5. Where reserves show an overall value recovery in tangible fixed assets stated in accordance with the optional fair value method, up to 70% of this gain can be recognised as an own funds component pursuant to Article 23 para. 14 no. 2.
- (5) The superordinate credit institution's bank auditor must review the compliance of the balance sheet and profit and loss account with the applicable international accounting standards.
- (6) The FMA is to issue a regulation specifying provisions for the application of paras. 3 to 4 after consulting the Oesterreichische Nationalbank and with the consent of the Federal Minister of Finance insofar as such provisions
1. are necessary to ensure the comparability of calculations based on international accounting standards, and
  2. are related to the entry of assets and liabilities at fair value or to other fundamental changes in realisation and entry rules, to accounting for collateral relations or to mergers of undertakings, to the fundamental structure of the profit and loss account or to simplifications in accounting rules for certain types of undertakings.

## **VI. Groups of Credit Institutions**

**Article 30.** (1) A group of credit institutions is deemed to exist in cases where a superordinate institution (credit institution or financial holding company) incorporated in Austria, in relation to one or more credit institutions, financial institutions, investment firms or ancillary services undertaking (subordinate institutions) incorporated in Austria or abroad,

1. holds a majority share directly or indirectly;
2. holds a majority of the voting rights in the company;
3. has the right to appoint or dismiss a majority of the members of the administrative, management or supervisory body;
4. has the right to exercise a controlling influence;

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5. actually exercises a controlling influence;
6. on the basis of a contract with one or more members, has the right to make decisions as to how members' voting rights are to be exercised in the appointment or dismissal of the majority of members of the management or supervisory body where necessary in order to attain a majority of all votes; or
7. directly or indirectly holds at least 20% of the voting rights or capital in the subordinate institution and this participation is managed by a group undertaking jointly with one or more undertakings which do not belong to the group of credit institutions. For the purposes of this provision, financial institutions also include undertakings which are recognised as non-profit housing associations as well as undertakings which are permanently exempted from the application of directives applicable to credit institutions as provided for in Article 2 of Directive 2006/48/EC. The central banks of Member States are not considered to be financial institutions.

(2) In addition to para. 1, a group of credit institutions is considered to exist when a parent financial holding company or an EEA parent financial holding company is incorporated in another Member State and

1. at least one credit institution incorporated in Austria is subordinate to that parent financial holding company or EEA parent financial holding company (para. 1 nos. 1 to 7);
2. no credit institution as defined in Article 4 (1) of Directive 2006/48/EC which is authorised in a Member State and which is incorporated in the parent financial holding company's or EEA parent financial holding company's country of incorporation belongs to the group as a subordinate institution; and
3. the total assets of the credit institution incorporated in Austria are higher than those of every other group credit institution as defined in Article 4 (1) of Directive 2006/48/EC which is authorised in a Member State; in cases where the total assets are equal, then the institution which was issued its authorisation first shall be considered the parent.

(2a) In addition to paras. 1 and 2, a group of credit institutions is considered to exist when a central institution and institutions associated with the central institution as defined in Article 23 para. 13 no. 6 have entered into a contractual agreement

1. to set up an early warning system for adverse economic developments in analogous application of Article 61 para. 1,
2. to support one another by way of financial or other measures in the case of economic distress,
3. to harmonise their business and market policies, especially through joint planning and development and by offering standardised banking services, by coordinating their market presence and advertising line by means of coordinated marketing planning, harmonized business plans and programmes as well as the bundling of essential execution functions; and
4. to exercise the right to end the arrangement granted to the individual member institutions only after a notice period of at least two years. The establishment of the early warning system and provision of support in the case of economic distress are to be carried out exclusively through a protection scheme which is established as a jointstock company or cooperative society

specifically for this purpose and in which only the central institution (with a majority share) and the affiliated institutions (in the case of cooperative societies also the members of the governing bodies of the guarantee cooperative) hold a participation and in which the central institution is able to exercise a significant influence over the guarantee organisation. The function of the guarantee organisation may also be fulfilled by an association as long as the central institution is accorded significant influence in the management of the association.

(3) Indirectly held participations are only to be included if they are held through an undertaking in which the superordinate institution holds a participation of at least 20%. This applies *mutatis mutandis* to indirectly held participations which are controlled or held through more than one undertaking. In this context, Article 244 paras. 4 and 5 Commercial Code must be applied subject to the condition that a consolidation requirement would exist in the cases indicated under para. 1 nos. 2 to 6 even without the existence of a participation.

(4) A group of credit institutions is not considered to exist in the case of the following superordinate institutions:

1. the credit institution incorporated in Austria is at the same time subordinate to another credit institution incorporated in Austria;
2. the parent financial holding company incorporated in Austria is at the same time subordinate to a credit institution authorised in another Member State as defined in Article 4 (1) of Directive 2006/48/EC.

(5) The superordinate credit institution of a group of credit institutions is that credit institution incorporated in Austria which itself is not subordinate to any other group credit institution incorporated in Austria. If more than one credit institution fulfils this requirement, then the credit institution with the highest total assets is to be considered the superordinate credit institution. The superordinate credit institution of a group of credit institutions pursuant to para. 2a is the central institution.

(6) The superordinate credit institution is responsible for compliance with the provisions of this federal act which are applicable to the group of credit institutions.

(7) The institutions in the group of credit institutions must set up adequate internal control mechanisms and provide the superordinate credit institution with all documents and information required for consolidation. The institutions must also provide each other with all information which appears necessary in order to ensure the adequate capture, assessment, limitation, management and monitoring of risks as specified in Articles 39 and 39a as well as the capture, identification and evaluation of credit risks necessary for banking operations in the group of credit institutions and the institutions belonging to the group. In addition, undertakings in which a credit institution holds a participation must provide information on any participations that may have to be accounted for by the superordinate credit institution under the consolidation requirements for indirect participations.

(7a) Persons who effectively direct the business of a financial holding company must be of sufficiently good repute and have sufficient experience to perform those duties. For this purpose, the professional and personal qualifications pursuant to Article 5 para. 1 nos. 6, 7, 8 and 9 must be fulfilled.

(8) The superordinate credit institution must ensure that information is provided by the subordinate institutions and a superordinate financial holding company. Should the superordinate financial holding company fail to fulfil its obligation to provide information pursuant to para. 7, the superordinate credit institution must report this to the FMA. If the provision of information required for consolidation is not ensured in cases where a participation subject to consolidation requirements is acquired, the superordinate institution will not be allowed to acquire that participation.

(8a) Upon request, affiliated undertakings incorporated outside of Austria and subject to supervision on a consolidated basis must provide the FMA with all documents and information required for consolidated supervision where this is necessary for the fulfilment of the FMA's duties under this federal act and permissible under the law of the other country.

(9) Subsidiary undertakings which are incorporated in Austria and are subject to a consolidation requirement vis-à-vis financial holding companies, credit institutions, investment firms, financial institutions or mixed-activity holding companies as parent undertakings incorporated outside of Austria must provide the parent undertaking with all documents and information required for consolidation; such subsidiary undertakings must also provide the parent undertaking and other institutions subordinate to that undertaking with all documents and information required for the capture, determination and evaluation of credit risks necessary for banking operations.

(9a) Where a credit institution has as its parent undertaking a credit institution as defined in Article 4 (1) of Directive 2006/48/EC or a financial holding company incorporated outside of the Community and is not subject to supervision on a consolidated basis pursuant to Article 24 para. 1 or 4, then:

1. the FMA must review whether this credit institution is subject to supervision on a consolidated basis by the competent authorities in a third country and whether that supervision fulfils the principles set forth in Article 24;
2. the FMA must apply the provisions of Article 24 to the credit institution if equivalent supervision is not exercised. In such cases, the FMA must, after consultation with the competent authorities in a third country, carry out this review at the request of the parent undertaking or an undertaking authorised in the Community, or on its own initiative;
3. where the application of this supervisory technique is adequate and the competent authorities in the third country grant their consent, the FMA may require the establishment of a financial holding company incorporated in the European Community in order to attain the objectives of supervision on a consolidated basis, and apply the provisions regarding supervision on a consolidated basis to the consolidated financial statements of that holding company. The FMA must inform the competent authorities in the third country, the European Commission and the competent authorities in other Member States of the application of this supervisory technique.

(10) The documents and information pursuant to paras. 7 and 9 comprise the following areas of consolidation and the capture, determination and evaluation of credit risks necessary for banking operations, both on a consolidated basis and in individual institutions:

1. asset and liability items as well as income statement items;
2. off-balance-sheet transactions;

3. derivatives;
4. own funds;
5. large exposures and major loans;
6. qualifying participations pursuant to Article 29;
7. annual financial statements, including the notes to the financial statements and the annual report,
8. Major Loans Register and comparable registers abroad;
9. foreign exchange positions;
10. positions included in the consolidation of price risk, liquidity risk, interest rate risk or securities risk;
11. governance arrangements (Article 39);
12. credit institutions' internal mechanisms for assessing capital adequacy; and
13. disclosure obligations.

## **VII. Savings Deposits**

### **Savings Documents**

**Article 31.** (1) Savings deposits refer to funds which are deposited with credit institutions and are not intended for payment transactions, but for investment, and as such can only be accepted against the delivery of certain documents (savings documents). Savings documents can be issued with a certain designation, in particular in the name of the customer identified pursuant to Article 40 para. 1; the use of names other than that of the customer identified pursuant to Article 40 para. 1 is not permitted under any circumstances.

(2) Savings documents may only be issued by credit institutions which are authorised to conduct savings deposit business. The designations *Sparbuch* (savings passbook), *Sparbrief* (savings certificate) or any other combination of words containing the fragment *spar* (savings) may be used only for these documents. The designation *Sparkassenbuch* (savings bank passbook) is reserved exclusively for the savings documents issued by credit institutions which are full members of the Austrian Association of Savings Banks (*Fachverband der Sparkassen*). The issuance of savings documents with a designation containing the elements *spar* (savings) or Sparkasse (savings bank) in combination with the word *Post* (post office / postal) is reserved exclusively for the Austrian Postal Savings Bank (*Österreichische Postsparkasse*).

(3) Savings deposits which amount to less than EUR 15,000 or an equivalent value and which are not registered in the name of the customer identified pursuant to Article 40 para. 1 must be subject to the restriction that the customer may only access the savings deposit upon provision of a password defined by the customer. This restriction must be recorded in the savings document and in the credit institution's records. Where the restriction is subject to the provision of a password, the party presenting the savings document must indicate the password when accessing the savings deposit. If this party is not able to do so, then he/she must present evidence of his/her right of disposal over the savings deposit. Article 40 para. 1 no. 4 is to remain unaffected by this provision. Savings deposits

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acquired by way of succession upon the death of a customer may be accessed without the provision of the password; the same applies to cases where a savings document is presented in the course of judicial or administrative enforcement proceedings.

(4) A credit institution which receives a report on the loss of a savings document along with an indication of the name, address and birth date of the party incurring the loss must enter the alleged loss in the records for the savings deposit in question and must not pay out any funds from the savings deposit within four weeks of receiving such a report.

(5) After 30 June 2002, savings documents for which the customer's identity has not been ascertained pursuant to Article 40 para. 1 must not be transferred or acquired in legal transactions.

### **Deposits, Withdrawals and Interest**

**Article 32.** (1) Every deposit credited to a savings deposit and every withdrawal from a savings deposit must be recorded in the savings document.

(2) Withdrawals from a savings deposit may only be made upon presentation of the savings document itself. Deposits into a savings deposit may also be accepted in cases where the savings document is not presented simultaneously. Such deposits are to be recorded in the savings document upon the next presentation of the savings document.

(3) Savings deposits must not be accessed by means of funds transfers, except in cases where the person entitled to the savings deposit is deceased, is a minor or otherwise under tutelage, and the competent court for probate, guardianship or tutelage matters orders such a transfer, nor by means of cheques. In contrast, funds transfers to a savings deposit are permissible.

(4) Notwithstanding a restriction on the right of disposal pursuant to Article 31 para. 3 and notwithstanding Article 40 para. 1 no. 4, the credit institution is entitled to pay out funds against presentation of the savings document and subject to the requirements indicated under nos. 1 to 3 as follows:

1. In the case of savings deposits which amount to less than EUR 15,000 or an equivalent value and which are not registered in the name of a customer identified pursuant to Article 40 para. 1, withdrawals may be paid out upon provision of the password to the identified party presenting the savings document pursuant to Article 40 para. 1;
2. In the case of savings deposits which amount to at least EUR 15,000 or an equivalent value and which are registered in the name of the customer identified pursuant to Article 40 para. 1, withdrawals may only be paid out to the customer identified pursuant to Article 40 para. 1;
3. In the case of savings deposits which are not registered in the name of the customer identified pursuant to Article 40 para. 1 and whose balance has reached or exceeded EUR 15,000 or an equivalent value since the last presentation of the savings document exclusively as a result of interest credits, withdrawals may be paid out upon provision of the password to the identified party presenting the savings document pursuant to Article 40 para. 1 at the first presentation of the savings document after the limit is reached or exceeded; in this context, the limit is considered to be reached or exceeded exclusively due to interest credits in cases where no

credits from funds transfers have been recorded since the last presentation of the savings document which, in total, cause the above-mentioned limit to be reached or exceeded. Withdrawals may be made subject to the provisions indicated above unless the savings document has been reported lost, withdrawal has been officially prohibited or the accounts have been frozen.

(5) Unless a savings deposit is paid out in full within a calendar year, savings deposits must be balanced at the end of each calendar year (closing date). This does not apply to savings certificates.

(6) The annual interest rate applicable to a savings deposit and any fees charged for services in connection with savings deposits must be indicated in a conspicuous place in the savings document. Each change in the annual interest rate must be recorded in the savings document upon the next presentation of the savings document along with an indication of the date on which the interest rate takes effect. The amended annual interest rate applies from the date on which it goes into effect without requiring cancellation by the credit institution.

(7) Interest on deposits into savings deposits is to begin accruing as of the value date (Article 37), with a month counted as 30 days and a year counted as 360 days. Amounts which are withdrawn within 14 days after being deposited are not to accrue interest; in this context, withdrawals from savings deposits must always be debited against the amounts most recently deposited. In the case of withdrawals from savings deposits, the interest on the amount withdrawn must be calculated up to and including the calendar day preceding the date of the withdrawal.

(8) Savings deposits may be committed for a certain term. Payments made prior to the end of the term are to be treated as advances, and interest is to be calculated accordingly. For these advances, 0.1% is to be charged for each full month by which the commitment period is not observed. However, interest on advances must not exceed the total credit interest accrued on the amount accepted; to the extent necessary, charges may be applied retroactively to credit interest paid out in the preceding year in cases where the credit interest for the current year is not sufficient. After 30 June 2002, term commitments may only be agreed upon in cases where the customer's identity has been ascertained pursuant to Article 40 para. 1.

(9) The general provisions of the statute of limitations apply to limitations on claims arising from savings deposits. Interest on savings deposits is subject to the same limitations as deposits. Limitation periods are interrupted by every interest credit recorded in the savings document and by every deposit or withdrawal.

**Article 33.** *removed*

### **Consumer Current Account Agreements**

**Article 34.** (1) Consumer current accounts refer to accounts held by consumers as defined in Article 1 para. 1 no. 2 Consumer Protection Act (*Konsumentenschutzgesetz - KSchG*).

(2) In addition to the information required under the Federal Act on the Provision of Payment Services (*Zahlungsdiensteengesetz - ZaDiG*), consumer current account agreements must at least contain the annual interest rate applicable to credit balances, provided this information was not

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already provided under Article 28 Federal Act on the Provision of Payment Services (*Zahlungsdiensteengesetz – ZaDiG*).

(3) The credit institution must notify the consumer of his/her account balance by means of an account statement at least on a quarterly basis.

### **Display of Prices**

**Article 35.** (1) Credit institutions must post the following in their lobby:

1. Information on:
  - a) the interest paid on savings deposits,
  - b) any fees charged for services in connection with savings deposits and for other services provided for the retail segment,
 as well as
2. the credit institution's general terms and conditions of business;
3. information on the protection scheme in accordance with Article 93 paras. 8 and 8a.

(2) *removed*

(3) Credit institutions which carry out exchange bureau business must display the prices of typical services of this type in such a way that they are clearly legible from both inside and outside the business premises.

### **Business Relations with Youths**

**Article 36.** In their business relations with youths (persons who have not yet reached the age of 18), credit institutions must observe the following due diligence obligations:

1. Debit cards and cheque cards must not be issued to persons who have not reached the age of 18 without the express consent of the youth's legal representative; in cases where the youth has a regular income, such cards must not be issued to persons who have not reached the age of 17 without the express consent of the youth's legal representative;
2. Withdrawals from cash dispensers by youths must be limited to EUR 400 per week;
3. Nos. 1 and 2 do not apply to cards which only allow withdrawals at the issuing credit institution itself as long as that credit institution is able to authorise withdrawals on a case-by-case basis if such withdrawals would lead to an overdraft;
4. Before issuing cheques to youths, the credit institution must review the regularity of the youth's handling of the account to date and in particular the current balance in the account.

### **Value Dates**

**Article 37.** (1) In money transactions with consumers as defined in Article 1 para. 1 no. 2 Consumer Protection Act (*Konsumentenschutzgesetz - KSchG*), in connection with savings deposits, credit accounts or current accounts, provided they do not fall within the scope of Articles 42 and 43

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Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*), credit institutions must,

1. include amounts in the beneficiary's account at the latest on the same day
  - a) they become available on the beneficiary's account at the receiving credit institution or
  - b) upon receipt of cash deposits to the consumer account
 if the amount is received in the same currency as the consumer account is held and
2. forward the amounts on the same day, in compliance with Article 38 Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*).

The amount shall be credited to the consumer account and made available immediately upon receipt at the receiving credit institution.

(2) In all other money transactions with consumers which are not provided for under para. 1 or which do not fall within the scope of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*), credit institutions must credit amounts to the recipient's account on the next business day following availability or forward them on the next banking day following their availability at the latest. The amount shall become available immediately upon receipt or upon receipt of the payment instruction, with due consideration of any instructions regarding value dates.

## IX. Banking Secrecy

**Article 38.** (1) Credit institutions, their members, members of their governing bodies, their employees as well as any other persons acting on behalf of credit institutions must not divulge or exploit secrets which are revealed or made accessible to them exclusively on the basis of business relations with customers, or on the basis of Article 75 para. 3 (banking secrecy). If the functionaries of authorities as well as the Oesterreichische Nationalbank acquire knowledge subject to banking secrecy requirements in the course of performing their duties, then they must maintain banking secrecy as official secrecy; these functionaries may only be relieved of this obligation in the cases indicated under para. 2. The obligation to maintain secrecy applies for an indefinite period of time.

(2) The obligation to maintain banking secrecy does not apply

1. vis-à-vis public prosecutors and criminal courts in connection with criminal court proceedings on the basis of a court approval (Article 116 Criminal Procedure Code; *Strafprozeßordnung – StPO*), and vis-à-vis the fiscal authorities in connection with initiated criminal proceedings due to wilful fiscal offences, except in the case of financial misdemeanours;
2. in the case of obligations to provide information pursuant to Article 41 paras. 1 and 2, Article 61 para. 1, Article 93 and Article 93a;
3. vis-à-vis the probate court and the court commissioner in the event of the death of a customer;
4. vis-à-vis the competent court for guardianship or tutelage matters if the customer is a minor or otherwise under tutelage;
5. if the customer grants his/her express written consent to the disclosure of secrets;
6. for general information commonly provided in the banking business on the economic situation of an undertaking, unless the undertaking expressly objects to the provision of such

information;

7. where disclosure is necessary in order to resolve legal matters arising from the relationship between the credit institution and customer;
8. with regard to the reporting requirements pursuant to Article 25 para. 1 of the Inheritance and Gift Tax Act (*Erbschafts- und Schenkungssteuergesetz*);
9. in the case of obligations to provide information to the FMA pursuant to the Securities Supervision Act and the Stock Exchange Act.

(3) A credit institution may not invoke its banking secrecy obligations in cases where the disclosure of secrets is necessary in order to determine the credit institution's own tax liabilities.

(4) The provisions of paras. 1 to 3 also apply to financial institutions and contract insurance undertakings with regard to Article 75 para. 3 and to protection schemes, with the exception of cooperation with other protection schemes, deposit guarantee schemes and investor compensation schemes as required by Articles 93 to 93b.

(5) **(constitutional law provision)** Paras. 1 to 4 may only be amended by the National Council with at least one-half of the representatives present and with a two-thirds majority of the votes cast.

## **X. Due Diligence Obligations, Suppression of Money Laundering and of Terrorist Financing**

### **General Due Diligence Obligations**

**Article 39.** (1) In their management activities, the directors of a credit institution must exercise the diligence of a prudent and conscientious director as defined in Article 84 para. 1 of the Stock Corporation Act. In particular, they must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms, and have in place plans and procedures pursuant to Article 39a. Moreover, they must consider the overall earnings situation of the credit institution.

(2) Credit institutions must have in place administrative, accounting and control mechanisms for the capture, assessment, management and monitoring of risks arising from banking transactions and banking operations. These mechanisms must be appropriate to the type, scope and complexity of the banking transactions conducted. Wherever possible, the administrative, accounting and control procedures must also capture risks arising from banking transactions and banking operations which might possibly arise. The organisational structure must prevent conflicts of interest and of competences by establishing delineations in structural and process organisation which are appropriate to the credit institution's business operations. The adequacy of these procedures and their enforcement must be reviewed by the internal audit unit at least once per year.

(2a) Credit institutions may make use of joint risk classification organisations as service providers for the development and ongoing maintenance of rating methods if the credit institutions report this to the FMA in advance. The participating credit institutions may convey all information necessary for the capture and assessment of risks to the joint risk classification organisation for the exclusive purpose of developing and maintaining risk assessment and mitigation methods and making these methods

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available to the participating credit institutions by processing the data; the risk classification organisation shall only be permitted to transfer personal data to the credit institution which originally provided the underlying borrower data. The joint risk classification organisation, its governing bodies, employees and other persons working for the organisation shall be subject to the banking secrecy requirements pursuant to Article 38. With regard to the risk classification organisation, the FMA shall have all information, presentation and auditing powers set forth in Article 70 para. 1; Article 71 is applicable in this context.

(2b) In particular, the procedures pursuant to para. 2 must include the following:

1. credit risk (Article 2 no. 57),
2. concentration risk (Article 2 no. 57b),
3. risk types in the trading book (Article 22o para. 2),
4. commodities risk and foreign exchange risk, including the risk arising from gold positions, where these are not covered by no. 3,
5. operational risk (Article 2 no. 57d),
6. securitisation risk (Article 2 no. 57c),
7. liquidity risk (Article 25),
8. interest rate risk arising from any transactions not already covered by no. 3,
9. the residual risk from credit risk mitigation techniques (Article 2 no. 57a),
10. risks arising from the macroeconomic environment and
11. das Risiko von Geldwäscherei und Terrorismusfinanzierung.

(2c) In the case of new transactions with which the credit institution has no experience regarding the risks involved, due consideration must be given to the security of third-party funds entrusted to the credit institution and to the preservation of the credit institution's own funds. The procedures pursuant to para. 2 must ensure that the risks arising from new transactions as well as concentration risks are captured and assessed to the fullest possible extent.

(3) *removed (Federal Law Gazette I No. 108/2007)*

(4) Credit institutions which apply Article 22o must ensure that

1. the risk positions in the trading book can be calculated at any time;
2. where internal models are applied, the documentation is prepared in a transparent manner and enables trials using test cases; and
3. the bank auditor and auditors pursuant to Article 70 para. 1 no. 3 can review the calculation of risk positions in the trading book at any time.

### **Internal Capital Adequacy Assessment Process**

**Article 39a.** (1) Credit institutions must have in place effective plans and procedures in order to determine on a regular basis the amount, the composition and the distribution of capital available for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations and to hold capital in the amount necessary. These plans and procedures must be based on the nature, scope and complexity of the banking transactions conducted.

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(2) Credit institutions must review the suitability and enforcement of the strategies and procedures pursuant to para. 1 at regular intervals, in any case on an annual basis, and to adapt those strategies and procedures as necessary.

(3) The superordinate credit institution is to fulfil the obligations under para. 1 exclusively on a consolidated basis. Where a financial holding company established in Austria is superordinate to a group of credit institutions, the consolidated financial situation of the financial holding company is to be used as the basis.

(4) Subordinate credit institutions as defined in Article 30 paras. 1 and 2 whose superordinate credit institution complies with the requirements pursuant to paras. 1 to 2 on the basis of its consolidated financial position are not required to comply with paras. 1 and 2.

(5) By way of derogation from paras. 3 and 4, subordinate credit institutions must comply with paras. 1 and 2 exclusively on a subconsolidated basis if they have as subsidiary undertakings credit institutions, financial institutions or asset management companies incorporated in third countries as defined in Article 2 (5) of Directive 2002/87/EC.

## **X. Due Diligence Obligations for the Suppression of Money Laundering and of Terrorist Financing**

**Article 40.** (1) Credit institutions and financial institutions must ascertain and verify the identity of a customer:

1. before initiating a permanent business relationship; savings deposit transactions pursuant to Article 31 para. 1 of this federal act and transactions pursuant to Article 12 of the Depository Act (*Depotgesetz – DepotG*) are always considered to be permanent business relationships;
2. before executing any transactions which are not conducted in connection within a permanent business relationship and which involve an amount of at least EUR 15,000 or an equivalent value, regardless of whether the transaction is carried out in a single operation or in multiple operations between which there is an obvious connection; in cases where the amount is unknown at the beginning of a transaction, the identity of the customer must be ascertained as soon as the amount is known and it is determined that it will come to at least EUR 15,000 or an equivalent value;
3. if the institution suspects or has reasonable grounds to suspect that the customer belongs to a terrorist organisation (Article 278b Penal Code) or the customer objectively participates in transactions which serve the purpose of money laundering (Article 165 Penal Code – including asset components which stem directly from a criminal act on the part of the perpetrator) or terrorist financing (Article 278d Penal Code).
4. after 31 October 2000 for each deposit into savings deposits, and after 30 June 2002 also for each withdrawal of savings deposits if the amount deposited or withdrawn comes to at least EUR 15,000 or an equivalent value;
5. when there are doubts as to the veracity or adequacy of previously obtained customer identification data.

The identity of a customer is to be ascertained by the personal presentation of an official photo identification document by the customer. For the purposes of this provision, documents which are issued by a government authority and which bear a non-replaceable, recognisable photograph of the head of the person in question and include the name, date of birth and signature of the person as well as the authority which issued the document are considered to be official photo identification documents; in the case of foreign passports, the passport need not contain the person's complete date of birth if this complies with the law of the country which issued the passport. In the case of legal persons and natural persons who are not legally competent, the identity of the natural person authorised to represent the former is to be verified by presentation of the latter's official photo identification document and the power of representation is to be verified by means of suitable documents. The identity of the legal person must be ascertained on the basis of meaningful supporting documentation which is available under the usual legal standards of the country in which the legal person is incorporated. Exceptions to the provisions above may only be made in the cases pursuant to para. 8 and Article 40a. Individual criteria with regard to the official photo identification may be waived where technical advances, such as biometric data, give rise to other criteria which are at least equivalent to the waived criteria in terms of their identification effects. However, the criterion stipulating that the identification must be issued by a government authority must always be fulfilled.

(2) Credit institutions and financial institutions must request from the customer to indicate whether he/she intends to conduct the business relationship (para. 1 no. 1) or the transaction (para. 1 no. 2) for his/her own account, or for the account of or on behalf of a third party; the customer must comply with this request and, for as long as the business relationship remains valid, report relevant changes immediately on his/her own initiative. If the customer indicates that he/she intends to conduct the business relationship (para. 1 no. 1) or the transaction (para. 1 no. 2) for the account of or on behalf of a third party, the customer must provide the credit institution or financial institution with evidence of the trustor's identity. The identity of the trustee must be ascertained in accordance with para. 1 and exclusively in the physical presence of the trustee. The identity of the trustee may not be ascertained by third parties. The identity of the trustor is to be evidenced by the presentation of the original or a copy of the trustor's official photo identification document (para. 1) in the case of natural persons and by the presentation of meaningful supporting documentation pursuant to para. 1 in the case of legal persons. The trustee must also submit a written declaration to the credit institution or financial institution stating that the trustee has ascertained the identity of the trustor personally or through reliable sources. In this context, reliable sources refer to courts and other government authorities, notaries, attorneys at law, and third parties as specified in para. 8. In the case of special fiduciary accounts of authorised real estate administrators acting on behalf of joint ownership associations for real estate properties, the presentation of an excerpt from the property register is considered valid evidence of the trustors' identity in the case of joint owners who are natural persons.

(2a) Credit institutions and financial institutions must also:

1. call upon the customer to reveal the identity of the customer's beneficial owner; the customer must comply with this request, and credit institutions and financial institutions must take riskbased and appropriate measures to verify the beneficial owner's identity so that the credit

institution or financial institution is satisfied that it knows who the beneficial owner is; in the case of legal persons or trusts, this also includes taking risk-based and appropriate measures in order to understand the ownership and control structure of the customer;

2. take risk-based and appropriate measures to obtain information on the purpose and nature of the intended business relationship;
3. take risk-based and appropriate measures to conduct ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship, to ensure that the transactions conducted are consistent with the institutions' knowledge of the customer, the customer's business and risk profile, including, where necessary, the source of funds, and to ensure that the documents, data or information held are kept up to date.

(2b) Credit institutions and financial institutions must subject their business to risk analysis using suitable criteria (in particular products, customers, the complexity of transactions, customer business and geography) with regard to the risk of misuse for the purposes of money laundering and terrorist financing. Credit institutions and financial institutions must be able to demonstrate to the FMA that the extent of the measures taken on the basis of the analysis is appropriate in view of the risks of money laundering and terrorist financing.

(2c) By way of derogation from paras. 1, 2 and 2a, the opening of a bank account is permissible provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on the customer's behalf until full compliance with paras. 1, 2 and 2a regarding customer identification and the other required information on the business relationship has been attained.

(2d) In cases where credit institutions and financial institutions are not in a position to comply with paras. 1, 2 and 2a regarding customer identification and the other required information on the business relationship, they must not carry out any transaction or establish a business relationship, or they must terminate the business relationship; moreover, the credit institution or financial institution must consider reporting the customer to the relevant authorities (Financial Intelligence Unit (Article 4 para. 2 of the Federal Office of Criminal Investigation Act (*Bundeskriminalamt-Gesetz*), Federal Law Gazette I No. 22/2002) in accordance with Article 41 para. 1.

(2e) Credit institutions and financial institutions must apply the due diligence obligations regarding the ascertainment and verification of the customer's identity pursuant to Articles 40 et seq. not only to all new customers, but also to existing customers on a risk-sensitive basis at the appropriate times.

(3) Credit institutions and financial institutions must retain the following:

1. documents serving the purpose of identification pursuant to paras. 1, 2, 2a and 2e for at least five years after the termination of the business relationship with that customer;
2. documentation and records of all transactions for a period of at least five years after their execution,

the deadlines given being extendable by FMA regulation to a period of up to fifteen years, provided this is deemed necessary to suppress money laundering or terrorist financing.

(4) Credit institutions and financial institutions must

1. ensure that the measures applied at their branches and subsidiaries located in third countries are at least equivalent to those set forth in this federal act with regard to customer due diligence, reporting, strategies and procedures, the provisions on anti-money laundering officers, internal auditing and record-keeping; however, only to the extent related to the suppression of money laundering and terrorist financing.
2. inform the FMA in cases where the legislation of the third country does not permit application of the measures required under no. 1, and take additional measures to handle the risk of money laundering or terrorist financing effectively. The FMA must inform the competent authorities of the other Member States and the European Commission of cases where the legislation of a third country does not permit application of the measures required under no. 1 and coordinated action could be taken to pursue a solution.

(5) The acceptance and acquisition of securities for

1. securities accounts (Article 11 Depository Act) and
2. business relationships pursuant to Article 12 Depository Act

which were initiated or entered into before 1 August 1996, are only permissible if the identity of the customer has first been ascertained and the requirements of para. 2 and 2a have been fulfilled. The sale of securities and the withdrawal of balances and income from securities accounts (Article 11 Depository Act) and from business relationships pursuant to Article 12 Depository Act may only be carried out after 30 June 2002 if the identity of the customer has first been ascertained and the requirements of para. 2 and 2a have been fulfilled.

(6) Deposits into existing savings accounts pursuant to Article 31 may not be effected or accepted if the customer's identity has not been ascertained in accordance with para. 1. Likewise, funds transfers must not be credited to such savings accounts if the customer's identity has not been ascertained in accordance with para. 1.

(7) After 30 June 2002, savings accounts for which the customer's identity has not been ascertained pursuant to para. 1 must be maintained as specially labelled accounts. Deposits into and withdrawals from those accounts may not be made, and funds transfers may not be credited to those accounts until the customer's identity has been ascertained pursuant to para. 1.

(8) Credit institutions and financial institutions may rely on third parties in order to fulfil the obligations set forth in Article 40 paras. 1, 2 and 2a nos. 1 and 2, provided there are no indications that make it seem unlikely that the obligations mentioned will be fulfilled equally well. However, the ultimate responsibility for fulfilling those obligations remains with the credit institutions or financial institutions which rely on third parties. For the purposes of this paragraph, third parties are considered to be the following unless they are authorised exclusively to carry out exchange bureau business (Article 1 para. 1 no. 22):

1. the credit institutions and financial institutions indicated in Article 3 nos. 1 and 2 of Directive 2005/60/EC and the payment institutions indicated in Article 3 no. 4 of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*),

2. the credit institutions and financial institutions indicated in Article 3 nos. 1 and 2 of Directive 2005/60/EC and the payment institutions located in a third country indicated in article 3 no. 4 of the Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*) and

3. the persons indicated in Article 2 (1) (3) (a) and (b) of Directive 2005/60/EC,

in each case subject to the requirement that they are subject to mandatory professional registration recognised by law and must apply customer due diligence requirements and record-keeping requirements as set forth in or equivalent to those set forth in Articles 40 et seq. or Directive 2005/60/EC, and their compliance with those requirements is supervised in accordance with Section 2 of Chapter V of that Directive, or they are situated in a third country which imposes equivalent requirements to those laid down in that Directive. The FMA must inform the competent authorities of the other Member States and the European Commission of cases in which the FMA considers that a third country fulfils the conditions set forth above. Where the European Commission adopts a decision pursuant to Article 40 (4) of Directive 2005/60/EC, the Austrian federal government will, in agreement with the Main Committee of the National Council, issue a regulation prohibiting credit institutions and financial institutions from relying on third parties from the third country in question for the purpose of fulfilling the obligations set forth in paras. 1, 2 and 2a nos. 1 and 2. Credit institutions and financial institutions must ensure that the third parties make the information required to fulfil the obligations set forth in paras. 1, 2, para. 2a nos. 1 and 2, and in Article 8 (1) (a) to (c) of Directive 2005/60/EC available to them without delay. Moreover, credit institutions and financial institutions must ensure that the relevant copies of identification and verification data and other relevant documentation on the identity of the customer or the beneficial owner is forwarded immediately at the credit institution's or financial institution's request. This paragraph does not apply to outsourcing or agency relationships where, on the basis of a contractual arrangement, the outsourcing service provider or agent is to be regarded as part of the credit institution or financial institution obliged to fulfil the obligations set forth in paras. 1, 2 and 2a nos. 1 and 2.

(9) removed (*Federal Law Gazette I No. 108/2007*)

### **Simplified Customer Due Diligence Obligations**

**Article 40a.** (1) The credit and financial institutions may apply lesser measures than those established in Article 40 para. 1 nos. 1, 2 and 5 and paras. 2 and 2a in the following cases, provided that the risk of money laundering and terrorist financing is considered low, where the customer is

1. a credit institution or financial institution pursuant to Article 1 paras. 1 and 2 or pursuant to Article 3 of Directive 2005/60/EC, or a credit institution or financial institution situated in a third country which imposes obligations equivalent to those set forth in Directive 2005/60/EC and supervised for compliance with such obligations.
2. an exchange-listed company whose securities are admitted to listing on a regulated market in one or more Member States, or exchange-listed companies from third countries which are subject to disclosure obligations pursuant to a regulation to be issued by the FMA on the basis

of Article 85 para. 10 Stock Exchange Act (BörseG) and such disclosure obligations are equivalent or comparable to those set forth in Community legislation,

3. domestic authorities; or
4. authorities or public bodies,
  - a) if they are entrusted with public functions pursuant to the Treaty on the Functioning of the European Union, the Treaties on the Communities or Community secondary legislation;
  - b) the identity of which is publicly available and transparent and certain,
  - c) the activities and accounting practices of which are transparent, and
  - d) if they are accountable either to a Community institution or to the authorities of a Member State, or appropriate check and balance procedures exist ensuring control of the customer's activity.

(2) Para. 1 also applies to

1. customers with regard to electronic money (Article 2 no. 58) where, if the device cannot be recharged, the amount stored in the device is no more than EUR 150, or where, if the data medium can be recharged – a limit of EUR 2,500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1,000 or more is redeemed in the same calendar year by the bearer pursuant to Article 6 E-Money Act or pursuant to Article 3 of Directive 2000/46/EC;
2. savings activities for classes of school pupils, subject to the condition that the cooperation of the legal representative is not required in the identification of the school pupil and that, unless Article 40 paras. 1, 2 or 2a is applied in its entirety
  - a) in the case of savings passbook accounts which are opened for individual minors, identification can be performed by the school pupil himself/herself in the presence of a teacher or through a teacher as a trustee; the identification data of the school pupils can be ascertained by the credit institution on the basis of their school identification cards, copies of their school identification cards or a list containing the names, dates of birth and addresses of the pupils in question;
  - b) in the case of collective savings passbooks for school classes, the identification of the minor school pupils entitled to the savings deposit can be performed by a teacher as a trustee using a list containing the names, dates of birth and addresses of the pupils in question.

(3) In assessing whether the customers or products and transactions indicated in paras. 1, 2 and 4 represent a low risk of money laundering or terrorist financing, credit institutions and financial institutions must pay special attention to the activities of such customers and to the types of products and transaction which may be regarded as particularly likely, by nature, to be used or abused for money laundering or terrorist financing purposes. Credit institutions and financial institutions must not consider that the customers or products and transactions indicated in paras. 1, 2 and 4 represent a low risk of money laundering or terrorist financing if there is information available to suggest that the risk of money laundering or terrorist financing may not be low. If this is the case, the easements provided in this paragraph shall not apply.

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(4) Under the following circumstances, para. 1 shall also apply to fiduciary accounts held by attorneys at law or notaries, including those from Member States or third countries as long as they are subject to requirements equivalent to international standards with regard to the suppression of money laundering or terrorist financing and are supervised for compliance with such requirements:

1. individual verification of the identity of each individual trustor is infeasible due to the representation of large co-ownership communities of varying composition;
2. the trustee submits a written declaration to the credit institution stating that he/she has identified his/her clients in accordance with Article 40 paras. 1, 2 and para. 2a nos. 1 and 2 or the provisions of Directive 2005/60/EC, that he/she has stored the relevant documents and will present them to the credit institution upon request; this does not apply to clients for whom the respective individual transaction conducted or whose share of the claim on the respective trustee arising from fiduciary accounts does not amount to a total of EUR 15,000;
3. the trustee provides the credit institution or financial institution with complete lists of the clients assigned to each fiduciary account within two months after the end of each calendar year; this does not apply to clients for whom the respective individual transaction conducted or whose share of the claim on the respective trustee arising from fiduciary accounts does not amount to a total of EUR 15,000;
4. the trustor does not have his/her place of incorporation or place of residence in a non-cooperative country and
5. no suspicion pursuant to Article 40 para. 1 no. 3 exists.

(5) Credit institutions and financial institutions must retain sufficient information in order to demonstrate that the requirements for the application of simplified due diligence have been complied with.

(6) In agreement with the Main Committee of the Austrian National Council, the Austrian federal government must issue a regulation stating that the exemptions pursuant to paras. 1, 2 or 4 are no longer applicable if the European Commission adopts a decision pursuant to Article 40 para. 4 of Directive 2005/60/EC.

(7) The FMA must inform the competent authorities of the other Member States and the European Commission of cases where the FMA considers that a third country fulfils the conditions set forth in paras. 1, 2 or 4.

### **Enhanced Customer Due Diligence Obligations**

**Article 40b.** (1) In situations which by their nature can present a higher risk of money laundering or terrorist financing, credit institutions and financial institutions must apply additional due diligence measures in addition to the obligations pursuant to Article 40 paras. 1, 2, 2a and 2e on a risk-sensitive basis as well as conduct enhanced ongoing monitoring of the business relationship. In any event, credit institutions and financial institutions must take the following additional measures:

1. in cases where the customer or the natural person authorised to represent the person pursuant to Article 40 para. 1 is not physically present for identification purposes and thus the

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presentation of an official photo identification in person is not possible, credit institutions and financial institutions must take specific and adequate measures to compensate for the increased risk; except in cases of suspicion or reasonable grounds for suspicion pursuant to Article 40 para. 1 no. 3, as in such cases business relations must be avoided in any event, credit institutions and financial institutions must at least ensure that: either

- a) the contractual declaration of the customer is either submitted electronically using a secure electronic signature pursuant to Article 2 no. 3 Signatures Act (*Signaturgesetz – SigG*; Federal Law Gazette I No. 190/1999); or, if this is not the case, the contractual declaration of the credit institution or financial institution is delivered in writing by registered mail to that customer address which is indicated as the customer's place of residence or place of incorporation;
- b) the customer's name, date of birth and address in the case of natural persons, or the company name and place of incorporation in the case of legal persons, are known to the credit institution or financial institution; in the case of legal persons, the place of incorporation must also be the seat of the undertaking's central administration, which must be confirmed by the customer in a written declaration; a copy of the official photo identification document of the customer or of the customer's legal representative, or of the authorised representative in the case of legal persons, is also submitted to the credit institution or financial institution before the time of conclusion of the agreement, unless the legal transaction is concluded electronically using a secure electronic signature; and
- c) if the customer's place of incorporation or place of residence is outside the EEA, then a written declaration is required from another credit institution with which the customer has a permanent business relationship, stating that the customer has been identified in accordance with Article 40 paras. 1, 2 and 2a nos. 1 and 2, or Article 8 (1) (a) to (c) of Directive 2005/60/EC, and that the permanent business relationship is still maintained. If the credit institution providing the confirmation is incorporated in a third country, then this third country must impose requirements which are equivalent to those indicated in Articles 16 to 18 of the directive mentioned above. In lieu of identification and confirmation by a credit institution, identification and written confirmation by the Austrian representation in the third country in question or by a recognised certification authority is also permissible;

or

- d) the first payment of the operations is carried out through an account opened in the customer's name with a credit institution as specified in Article 40 para. 8; in such cases, however, the customer's name, date of birth and address in the case of natural persons, or the company name and place of incorporation in the case of legal persons must be known to the credit institution or financial institution, and the credit institution or financial institution must have at its disposal copies of customer documents on the basis of which the information provided by the customer or the natural person authorised to represent the customer can be verified in a credible manner. In lieu of such copies, a written declaration stating that the customer has been identified in accordance with Article 40 paras. 1, 2, 2a

and 2e, or Article 8 (1) (a) to (c) of Directive 2005/60/EC from the credit institution through which the first payment is to be carried out will be considered sufficient.

2. with regard to cross-border correspondent banking relationships with correspondent banks from third countries, and subject to the assessment of a higher level of risk, to EEA correspondent banks:
  - a) credit institutions and financial institutions must gather sufficient information about a correspondent bank to understand fully the nature of its business and be able to ascertain the reputation of the institution and the quality of supervision on the basis of publicly available information;
  - b) credit institutions and financial institutions must satisfy themselves of the correspondent bank's anti-money laundering and anti-terrorist financing controls;
  - c) credit institutions and financial institutions must obtain approval from senior management before establishing new correspondent banking relationships;
  - d) credit institutions and financial institutions must document the respective responsibilities of each institution;
  - e) with respect to payable-through accounts, credit institutions and financial institutions must be satisfied that the correspondent bank has verified the identity of and performed ongoing due diligence on the customers having direct access to accounts of the correspondent, and that it is able to provide relevant customer due diligence data to the correspondent bank upon request;
3. with regard to transactions or business relationships to politically exposed persons from other Member States or from third countries; persons who become politically exposed only during the business relationship shall be treated equivalently,
  - a) credit institutions and financial institutions must have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
  - b) credit institutions and financial institutions must obtain senior management approval before establishing business relationships with such customers;
  - c) credit institutions and financial institutions must take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction; and
  - d) credit institutions and financial institutions must conduct enhanced ongoing monitoring of the business relationship.

For further cases, which, due to their nature, involve an increased money laundering or terrorist financing risk, in particular in connection with states in which, according to reliable sources, there is an increased money laundering or terrorist financing risk, the FMA may, with the consent of the Federal Minister of Finance, impose by regulation an obligation on the credit and financial institutions, to apply additional appropriate diligence, beyond the obligations set forth in Article 40 paras. 1, 2, 2a and 2e, and to conduct enhanced ongoing monitoring of the business relationship.

(2) Credit institutions and financial institutions must review with particular care each transaction which they regard as particularly likely, by its nature, to be related to money laundering (Article 165

Penal Code – including asset components which stem from a criminal act on the part of the perpetrator himself/herself) or terrorist financing (Article 278d Penal Code) and take measures, if needed, to prevent their use for money laundering or terrorist financing purposes.

### **Relief for Certain Transfers of Funds**

**Article 40c.** (1) Regulation (EC) No. 1781/2006 on information on the payer accompanying transfers of funds does not apply to domestic transfers of funds to a payee account permitting payments for the provision of goods or services if:

1. the payment service provider of the payee is subject to the obligations set forth in Directive 2005/60/EC;
2. the payment service provider of the payee is able by means of a unique reference number to trace back, through the payee, the transfer of funds from the natural or legal person who has an agreement with the payee for the provision of goods and services;
3. the amount transacted is EUR 1,000 or less.

(2) Article 5 of Regulation (EC) No. 1781/2006 on information on the payer accompanying transfers of funds does not apply to transfers of funds indicated in Article 18 of Regulation (EC) No. 1781/2006 which are transmitted within Austria by payment service providers established in Austria to organisations carrying out activities for non-profit charitable, religious, cultural, educational, social, scientific or fraternal purposes, provided those transfers of funds are limited to a maximum amount of EUR 150 per transfer. The payees in these funds transfers may only be associations or other organisations which publish annual accounts due to legal requirements or on a voluntary basis, and which were granted an unqualified auditor's certificate by an external auditor confirming the due fulfilment of the financial reporting requirements set out in the Associations Act 2002 (*Vereinsgesetz 2002*) or other applicable statutory provisions; in the case of cooperative societies, this certification shall be granted by an auditor pursuant to Article 1 of the Act on Audits of Co-operative Societies 1997 (*Genossenschaftsrevisionsgesetz 1997 – GenRevG 1997*), Federal Law Gazette I No. 127/1997. The Chamber of Professional Accountants and Tax Advisors (Kammer der Wirtschaftstreuhänder) shall confirm the fulfilment of these requirements.

(3) The FMA must publish on a quarterly basis a list of those payees to which funds transfers pursuant to para. 2 are exempt from the application of Article 5 of Regulation (EC) No. 1781/2006 on information on the payer accompanying transfers of funds. This list is to be compiled and updated on the basis of the corresponding quarterly notification from the Chamber of Professional Accountants and Tax Advisors to the FMA on the organisations which fulfil the requirements pursuant to para. 2 (second sentence). In addition to the names of the organisations themselves, this notification from the Chamber of Professional Accountants and Tax Advisors must also include the names of the natural persons who ultimately control the organisations and associations as well as explanatory notes on updates. The FMA must also inform the European Commission in accordance with Article 18 (2) of Regulation (EC) No. 1781/2006.

## Inadmissible Business Relationships

**Article 40d.** (1) Credit institutions must not enter into or continue a correspondent banking relationship with a shell bank pursuant to Article 2 no. 74 and must take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a credit institution which is known to permit its accounts to be used by a shell bank.

(2) In any case, credit institutions and financial institutions are prohibited from maintaining anonymous accounts and from accepting anonymous savings deposits; Article 40 paras. 5 to 7 are applicable in this context.

## Reporting Requirements

**Article 41.** (1) In cases where a credit institution or financial institution suspects or has reasonable grounds to suspect,

1. that an attempted, upcoming, ongoing or previously conducted transaction is related to asset components originating from one of the criminal activities listed in Article 165 Penal Code (*Strafgesetzbuch - StGB*, including asset components which stem directly from a criminal act on the part of the perpetrator) or
2. that an asset component originates from one of the criminal activities listed in Article 165 Penal Code (*Strafgesetzbuch - StGB*, including asset components which stem directly from a criminal act on the part of the perpetrator) or
3. that a customer has violated the obligation to disclose fiduciary relationships pursuant to Article 40 para. 2; or
4. that the attempted, upcoming, ongoing or previously conducted transaction or the assets component is related to a criminal organisation pursuant to Article 278 Penal Code (*Strafgesetzbuch - StGB*), a terrorist organisation pursuant to Article 278b Penal Code (*Strafgesetzbuch - StGB*), a terrorist crime pursuant to Article 278c Penal Code (*Strafgesetzbuch - StGB*) or terrorist financing pursuant to Article 278d Penal Code (*Strafgesetzbuch - StGB*),

then the credit and financial institutions must report such suspicions to the relevant authorities immediately (Financial Intelligence Unit (Article 4 para. 2 of the Federal Office of Criminal Investigation Act (*Bundeskriminalamt-Gesetz*), Federal Law Gazette I No. 22/2002) and to refrain from any further execution of the transaction until the matter is resolved, unless the danger exists that a delay in the transaction may complicate or prevent the investigation of the case. In cases of doubt, orders involving incoming funds may be executed, while orders involving outgoing funds are not to be executed. Credit institutions and financial institutions are entitled to request that the authority decide whether concerns exist about the immediate execution of a transaction; if the authority fails to respond by the end of the ensuing banking day, the transaction may be executed immediately. Credit institutions and financial institutions must pay special attention to any activity which they regard as particularly likely, by its nature, to be related to money laundering or terrorist financing, in particular complex or unusually large

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transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose; likewise they shall, where possible, check the background and purpose of these activities and transactions, in particular if these, according to reliable sources, are in connection with states, in which there is an increased risk of money laundering and terrorist financing (Article 40b para. 1). They shall keep suitable written records of such activities and keep them for a period of at least five years following their audit.

(1a) Credit institutions must immediately inform the authority (para. 1) of all requests to withdraw savings deposits if

1. the requests are submitted after 30 June 2002, and
2. the customer's identity has not been ascertained pursuant to Article 40 para. 1 for the savings deposit and
3. the payment is from a savings deposit which shows a balance of at least EUR 15,000 or an equivalent value.

Such savings deposits may not be paid out until seven calendar days after the date of the request unless the authority (para. 1) orders a longer period pursuant to para. 3.

(2) Upon request, and irrespective of a report pursuant to para. 1, credit institutions and financial institutions must immediately provide the authority (para. 1) with all information it deems necessary to prevent or pursue cases of money laundering or terrorist financing.

(3) The authority (para. 1) is empowered to order that an ongoing or upcoming transaction with respect to which there is suspicion or reason to suspect that the transaction serves the purpose of money laundering (Article 165 Penal Code – including asset components which stem directly from a criminal act on the part of the perpetrator) or terrorist financing (Article 278d Penal Code) be omitted or delayed temporarily and that customer instructions involving outgoing funds only be executed with the consent of the authority. The authority must inform the customer and the public prosecutor's office of this instruction without unnecessary delay. The notification to the customer must include an indication that the customer or another party concerned is entitled to lodge a complaint with the Independent Administrative Tribunal regarding violations of his/her rights; in this context, the notification must also refer to the provisions regarding such complaints contained in Article 67c of the General Law on Administrative Procedure (*Allgemeines Verwaltungsverfahrensgesetz – AVG*).

(3a) The authority must reverse the instruction pursuant to para. 3 as soon as the conditions for its issue are no longer fulfilled or the public prosecutor declares that the conditions for confiscation pursuant to Article 109 no. 2 and Article 115 para. 1 no. 3 Criminal Procedure Code are not fulfilled. Otherwise, the instruction is to be abrogated

1. once six months have elapsed since it was issued;
2. as soon as the court has issued a legally effective decision on a request for confiscation pursuant to Article 109 no. 2 and Article 115 para. 1 no. 3 Criminal Procedure Code.

(3b) Vis-à-vis customers and third parties, credit institutions and financial institutions must maintain the confidentiality of all operations which serve the purpose of compliance with paras. 1 to 3. As soon as an instruction pursuant to para. 3 has been issued, however, credit institutions and financial institutions are empowered to refer the customer to the authority (para. 1) - but only upon



such customer's request; with the consent of the authority, those institutions are also empowered to inform the customer of the instruction themselves. The prohibition pursuant to this paragraph

1. does not refer to disclosures to the FMA or the Oesterreichische Nationalbank, or to disclosures for law enforcement purposes;
2. is not to prevent disclosures between institutions from Member States, or from third countries provided that they fulfil the requirements set forth in Article 40a para. 1, belonging to the same group as defined in Article 2 (12) of Directive 2002/87/EC;
3. is not, in cases related to the same customer and the same transaction involving two or more institutions, to prevent disclosures between the relevant institutions provided that they are situated in a Member State, or in a third country which imposes requirements equivalent to those laid down in Directive 2005/60/EC, and that they are from the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. The information exchanged is to be used exclusively for the purposes of the prevention of money laundering and terrorist financing.

The FMA must inform the competent authorities of the other Member States and the European Commission of cases where the FMA considers that a third country fulfils the conditions set forth in no. 1 or 2. If the European Commission adopts a decision pursuant to Article 40 (4) of Directive 2005/60/EC, the Austrian federal government must, in agreement with the Main Committee of the National Council, issue a regulation prohibiting disclosures between credit/financial institutions and institutions/persons from the third country in question.

(4) Credit institutions and financial institutions must

1. establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication in order to forestall and prevent operations related to money laundering or terrorist financing and to develop appropriate strategies to prevent the abuse of new technologies for the purposes of money laundering and terrorist financing.
2. communicate the relevant policies and procedures to their branches and subsidiaries in third countries;
3. take suitable measures to familiarise the staff responsible for the execution of transactions with the provisions intended to prevent or combat money laundering or terrorist financing; these measures must also include the participation of the responsible employees in special training programmes in order to train the employees to recognise transactions which may be connected to money laundering or terrorist financing and to behave correctly in such cases and furthermore to pay attention to reliability and attachment to legal values when selecting staff members; likewise, to pay attention to the candidates' attachment to legal values prior to electing Supervisory Board members;
4. establish systems which enable them to respond fully and rapidly to enquiries from the authority (para. 1) or from the FMA as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and on the

nature of that relationship where those authorities consider such enquiries necessary in order to prevent or pursue cases of money laundering or terrorist financing;

5. allow the FMA to review the effectiveness of systems for the suppression of money laundering or terrorist financing at any time;
6. nominate within the undertaking a special officer to ensure compliance with Articles 40 et seq. for the suppression of money laundering and terrorist financing.

The authority (para. 1) must provide credit institutions and financial institutions with access to up-to-date information on the practices of money launderers and terrorist financiers and on indications leading to the recognition of suspicious transactions. Likewise, the authority must ensure that, wherever practicable, timely feedback on the effectiveness of and follow-up to reports of suspected money laundering or terrorist financing is provided. The position of the special officer shall be set up in such a way that such officer shall be responsible only to the directors and shall report to the directors directly, without any intermediate levels in between. Moreover, such officer shall have free access to all information, data, records and systems that may in any possible way be connected to money laundering and terrorist financing, as well as provide such officer with sufficient authorisations. By appropriate organisational and monitoring measures, credit institutions and financial institutions shall guarantee that all the duties of the special officer can be fulfilled on site and at all times.

(5) Should the FMA or the Oesterreichische Nationalbank, in performing their duties of banking supervision, find reason to suspect that a transaction serves the purpose of money laundering or terrorist financing, they must report this to the relevant authority (para. 1) without delay.

(6) The following must not be used to the detriment of the accused or suspected accessories, otherwise they shall be rendered null and void:

1. data collected by the authority pursuant to para. 1, 2 or 5 in proceedings carried out exclusively due to fiscal offences, with the exception of the fiscal offences of smuggling or evasion of import or export duties, which are subject to the competence of the courts;
2. data collected by the authority pursuant to para. 1a in proceedings carried out exclusively due to fiscal offences pursuant to no. 1 or due to another criminal act punishable with no more than one year of imprisonment. If the authority (para. 1) finds reason only to suspect a criminal act pursuant to no. 1 or 2, then it must refrain from reporting the act in accordance with Article 78 Criminal Procedure Code or Article 81 Fiscal Penalties Act (*Finanzstrafgesetz – FinStrG*).

(7) Damage claims may not be asserted due to the fact that a credit institution or financial institution or one of its employees has delayed or omitted the execution of a transaction in negligent ignorance of the fact that the suspicion of money laundering or terrorist financing or of violations pursuant to Article 40 para. 2 was incorrect.

(8) For the purposes of fulfilling the duties set forth in the present provision, the authority (para. 1) shall be authorised, without prejudice to para. 2, to establish and process the data required for this purpose from natural and legal persons, as well as from other legal entities. Moreover, the authority is authorised to use the personal data on the customer it has established when executing federal or state laws and to exchange such information with organisations in other countries that are responsible for the control of money laundering and terrorist financing.

## **XI. Internal Auditing**

**Article 42.** (1) Credit institutions and financial institutions are to set up an internal audit unit which reports directly to the directors and which serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, appropriateness and suitability of the entire undertaking. With due consideration of the scope of the institution's business, the internal audit unit must be equipped in such a way that it can perform its duties as intended. The duties of the internal audit unit must not be entrusted to persons with regard to whom reasons for exclusion exist.

(2) Circumstances which make the proper performance of the duties of the internal audit unit appear improbable are to be regarded as reasons for exclusion. In particular, reasons for exclusion are considered to exist if

1. the persons in question lack the required expertise and experience in banking and
2. the objective performance of this function may be compromised, especially if the persons in question have been appointed as bank auditors at the same credit institution or if one of the reasons for exclusion as bank auditors indicated in Article 62 no. 6, 12 or 13 would apply to these persons due to their activities in the internal audit unit.

(3) Instructions involving the internal audit unit must be made jointly by a minimum of two directors. The internal audit unit must report to all directors. This unit must also report on a quarterly basis on the audit areas and the material results of audits to the chairperson of the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association, and to the audit committee. In the next session of the supervisory body, the chairperson must report to the supervisory body on the audit areas and the material results of audits.

(4) The internal audit unit must also review the following:

1. the accuracy and completeness of the content of notifications and reports to the FMA and to the Oesterreichische Nationalbank;
2. the assignment of positions to the trading book as well as any transfers in accordance with internal criteria for inclusion in the trading book;
3. compliance with Articles 40, 40a, 40b, 40c, 40d, and 41;
4. in the case of credit institutions which apply Article 22o:
  - a) the criteria for the definition of qualifying assets;
  - b) the methods of determining the market price pursuant to Article 22n para. 4;
  - c) the option pricing model, especially the definition of volatilities and other parameters used to calculate the delta factor pursuant to Article 22o para. 3;
  - d) the determination of other risks associated with options pursuant to Article 22o para. 2 no. 7;
5. the suitability and enforcement of the procedures pursuant to Article 39 para. 2 and Article 39a;
6. at least once per year, the credit institution's rating systems and their functioning, including the operations of the credit function and the estimation of probabilities of default, loss given default, expected loss and conversion factors.

(5) The internal audit unit must draw up an annual auditing plan and carry out audits in accordance with that plan. In addition, the internal audit unit must also carry out unscheduled audits whenever necessary.

(6) The duties of the internal audit unit must be assigned to a separate organisational unit within the credit institution. However, this does not apply to credit institutions

1. whose total assets do not exceed EUR 150 million, or
2. whose annual average number of employees does not exceed 30 full-time employees, or
3. whose total assets do not exceed EUR 1 billion and which are associated with a central institution or belong to a group of credit institutions if a separate organisational unit for internal auditing exists within the network or group and is equipped and organised with due adherence to para. 2 at all times.

(7) In the case of groups of credit institutions, the parent institution's internal audit unit must also perform the duties of an internal audit unit for the group.

## **XII. Accounting**

### **General Provisions**

**Article 43.** (1) The directors must ensure the legal compliance of the credit institutions' annual financial statements and consolidated financial statements as well as annual reports and consolidated annual reports. The annual financial statements, consolidated financial statements, annual reports and consolidated annual reports as well as their audit and disclosure are subject to Volume 3 of the Commercial Code, with the exception of Articles 207 par. 2 (last sentence), 223 para. 6, 224, 226 para. 5, 227, 231, 232 para. 5, 237 nos. 1, 3, 4 and 9, 242, 244 para. 6, 246, 249 para. 1, 266 nos. 1 and 3, 275 para. 2, 278, 279 and 280a.

(2) The balance sheets and income statements of all credit institutions except for building societies are to be drawn up in accordance with the layout used in the forms provided in the Annex. Consolidated financial statements must also be prepared in accordance with the structure of those forms. Annual and consolidated financial statements must be prepared in a timely manner so that the submission deadline pursuant to Article 44 para. 1 is observed. Further subdivisions of the forms are only permissible where they necessary in order to avoid confusion or where provided for by other legal provisions. The FMA may issue a regulation amending the forms where this is necessary due to changing accounting standards.

(3) *removed (repealed by Federal Law Gazette I No. 33/2005)*

**Article 44.** (1) Credit institutions and the branches of foreign credit institutions must submit audited annual financial statements, annual reports, consolidated financial statements and consolidated annual reports pursuant to Article 59 and Article 59a, as well as the audit reports on the financial statements, annual reports, consolidated financial statements and consolidated annual reports pursuant to Article 59 and Article 59a, including the annex to the audit report on the annual financial statements (prudential report) indicated in Article 63 para. 5, to the FMA and the Oesterreichische Nationalbank at the latest within six months after the close of the business year. In

addition, credit institutions must submit the data from annual financial statements and consolidated financial statements pursuant to Article 59 and Article 59a, including the annex to the audit report on the annual financial statements (prudential report) mentioned in Article 63 para. 5 and disclosures regarding hidden reserves, to the FMA and the Oesterreichische Nationalbank electronically and in a standardised format at the latest within six months after the close of the business year.

(2) Branches of foreign credit institutions must also submit the annual financial statements of the foreign credit institution to the FMA and the Oesterreichische Nationalbank within six months after the close of the business year.

(3) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and 15 to 17 in Austria must submit the annual financial statements, the annual report and, where applicable, the consolidated annual financial statements and annual report of the credit institution of financial institution to the FMA and the Oesterreichische Nationalbank at the latest within six months after the close of the business year.

(4) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and/or 15 to 17 in Austria must have the following information audited by bank auditors and submit the report on this audit, including the annex pursuant to Article 63 para. 7, to the FMA and the Oesterreichische Nationalbank at the latest within six months after the close of the business year.

1. Income and expenses of the branch from Items 1, 3, 4, 6, 7, 8 and 18 of Annex 2 to Article 43, Part 2;
2. the average number of employees of the branch;
3. *removed*;
4. the total assets attributable to the branch and the total amounts of asset items 2 to 6, liability items 1, 2 and 3 as well as the off-balance-sheet items 1 and 2 on the liabilities side of Annex 2 to Article 43, Part 1, as well as a breakdown of securities into financial assets and nonfinancial assets for asset items 2, 5 and 6 in the Annex mentioned above.

(5) In addition, branches of credit institutions and financial institutions from Member States in Austria must submit the audited data pursuant to para. 4 to the FMA and the Oesterreichische Nationalbank electronically and in a standardised format at the latest within six months after the close of the business year.

(5a) *removed (Federal Law Gazette I No. 60/2007)*

(6) The information pursuant to paras. 2, 4 and 5 must be prepared in German language.

(7) After consultation with the Oesterreichische Nationalbank, the FMA may issue a regulation prescribing that electronic submissions pursuant to paras. 1 and 5 must use specific layouts and meet certain minimum technical requirements. The FMA is empowered to issue a regulation prescribing that electronic reports must be submitted exclusively to the Oesterreichische Nationalbank if this is appropriate for reasons of economy, if the availability of the data in electronic form to the FMA is ensured at all times, and if supervisory interests are not compromised.

## **General Balance Sheet Reporting Requirements**

**Article 45.** (1) The following are to be reported separately as sub-items to the relevant balance sheet items:

1. the securitised and non-securitised exposures to affiliated undertakings included in asset items 2 to 5;
2. the securitised and non-securitised exposures to undertakings with which a company is linked by virtue of participating interests included in asset items 2 to 5;
3. the securitised and non-securitised liabilities to affiliated undertakings included in liability items 1, 2, 3 and 7;
4. the securitised and non-securitised liabilities to undertakings with which a company is linked by virtue of participating interests included in liability items 1, 2, 3 and 7;

(2) Assets of a subordinate nature are to be reported separately as sub-items of the asset items and of the sub-items pursuant to para. 1.

(3) The information pursuant to paras. 1 and 2 may also be reported separately in the order to the items in question in the notes to the financial statements.

(4) Securitised and non-securitised assets are considered subordinate if these claims can only be satisfied after those of other non-subordinated creditors in the case of liquidation or bankruptcy.

**Article 46.** (1) Assets are to be reported under the corresponding balance sheet items even if the credit institution preparing the balance sheet has pledged or otherwise transferred the assets to third parties as collateral for its own liabilities or for the liabilities of third parties.

(2) Assets pledged or otherwise transferred as collateral to the credit institution preparing the balance sheet are to be reported on the balance sheet only in cases where the assets are cash deposits.

**Article 47.** (1) In the case of syndicated loans, each participating credit institution must disclose only that part of the total loan which it has itself funded. (2) If, in the case of syndicated loans, the amount guaranteed by the credit institution exceeds the amount provided by that credit institution, then this additional guarantee is to be reported as a contingent liability under item 1 lit. b, off-balance sheet items.

**Article 48.** (1) Trust assets held by the credit institution in its own name on behalf of others must be reported on the balance sheet by the trustee. The total amounts of such receivables and liabilities must be indicated separately or in the notes to the financial statements and subdivided according the various asset and liability items. Trustee assets may be disclosed off the balance sheet provided there are special rules whereby such funds can be excluded from the assets available for distribution in the event of the winding-up of a credit institution (or similar proceedings).

(2) Assets acquired in the name of and on behalf of others must not be accounted for on the balance sheet.

**Article 49.** Only those amounts which can be accessed at any time without prior notice, or for which a term/maturity or notice period of 24 hours or one business day has been agreed upon are considered to be repayable on demand.

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**Article 50.** (1) Repurchase agreements are agreements by which a credit institution or a customer of a credit institution (transferor) transfers its own assets to another credit institution or one of its customers (transferee) against payment of a certain amount, and in which it is simultaneously agreed that the assets will be retransferred to the transferor against payment of the amount received or of another amount agreed upon in advance.

(2) If the transferee assumes the obligation to retransfer the assets at a specified time or at a time to be specified by the transferor, then the repurchase agreement is referred to as a "genuine" repurchase agreement.

(3) If the transferee merely has the right to retransfer the assets at a previously specified time or at a time to be specified by the transferee, then the repurchase agreement is referred to as a sale with an option to repurchase.

(4) In the case of genuine repurchase agreements, the transferor must continue to report the assets transferred on the transferor's balance sheet. The transferor must also enter a liability to the transferee in the amount received for the transfer. If a higher or lower amount is agreed upon for the retransfer, then the difference must be distributed over the term of the repurchase agreement. In addition, the transferor must indicate the book value of the assets transferred under the repurchase agreement in the notes to the financial statements. The transferee must not report the assets received under the repurchase agreement on the balance sheet; the transferee must enter a claim on the transferor on his balance sheet in the amount paid for the transfer. If a higher or lower amount is agreed upon for the retransfer, then the difference must be distributed over the term of the repurchase agreement.

(5) In the case of sales with an option to repurchase, the assets transferred must be reported not on the transferor's balance sheet, but on the transferee's balance sheet. The transferor must report under off-balance-sheet items the amount agreed upon in case the assets are retransferred.

(6) Foreign exchange forward transactions, futures transactions and similar transactions as well as the issuance of own debt securities for an abbreviated period are not considered to be repurchase agreements.

### **Provisions regarding Individual Balance Sheet Items**

**Article 51.** (1) Cash in hand refers to domestic and foreign means of payment. Balances with central banks and post office banks in the countries in which the credit institution is established include balances held with those institutions and repayable on demand. Other loans and advances those institutions are to be reported as loans and advances to credit institutions (asset item 3) or as loans and advances to customers (asset item 4).

(2) Federal treasury bills, treasury notes and other similar debt instruments issued by public bodies must be reported under asset item 2, lit. a if they are eligible for refinancing with the central banks of the countries in which the credit institution is established. Debt instruments issued by public bodies which do not fulfil the requirement above must be reported under asset item 5 lit. a. Bills held in portfolio acquired from a credit institution or from a customer must be reported under asset item 2, lit.

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b if they are eligible for refinancing with the central banks of the countries in which the credit institution is established. Bills which do not meet these requirements are to be reported under asset item 3 or 4.

(3) Loans and advances to credit institutions include all types of receivables arising from banking transactions with domestic and foreign credit institutions, regardless of their individual designation. In this context, only receivables securitised in the form of debt securities or another form are excepted; such receivables are to be reported under asset item 5.

(4) Loans and advances to customers include all types of loans and advances to domestic and foreign non-banks, regardless of their individual designation. In this context, only receivables securitised in the form of debt securities or another form are excepted; such receivables are to be reported under asset item 5.

(5) Debt securities including fixed-income securities only include securities admitted to listing on a recognised exchange. However, debt securities issued by public-sector entities are only to be included where they are not reported under asset item 2. Floating-rate securities are also considered to be fixed-income securities as long as their interest rate is linked to a certain reference value, for example an interbank interest rate or a euro money market rate. Only own debt securities which have been repurchased and are admitted to listing on a recognised exchange may be reported in the sub-item under asset item 5 lit. b.

(6) Liabilities to credit institutions include all types of liabilities arising from banking transactions with domestic and foreign credit institutions, regardless of their individual designation. In this context, only liabilities securitised in the form of debt securities or another form are excepted; such liabilities are to be reported under liability item 3.

(7) Liabilities to customers include all amounts owed to creditors which are not credit institutions pursuant to para. 6, regardless of their individual designation. In this context, only liabilities securitized in the form of debt securities or another form are excepted; such liabilities are to be reported under liability item 3.

(8) Securitised liabilities refer to debt securities as well as liabilities for which transferable documents/certificates have been issued; in particular, these include certificates of deposit, *bons de caisse* and liabilities from the credit institution's own acceptances and promissory notes. Own acceptances include only those acceptance facilities which are issued by the credit institution for its own refinancing and in which the credit institution is the first party liable ('drawee').

(9) Subordinated liabilities refer to securitised and non-securitised liabilities which, according to a contractual agreement, are only to be satisfied after the claims of other non-subordinated creditors in the case of liquidation or bankruptcy.

(10) Subscribed capital includes all amounts made available as capital contributions by the members or other owners, depending on the legal form of the credit institution. Subscribed capital must be reported using the nominal amount; in the case of no-par-value shares, the amount of share capital attributable to those shares is to be reported. Unpaid capital which has not been called is to be deducted from this item openly; subscribed capital which has been called but not paid is to be reported under asset item 13.

(11) Capital reserves refer to those amounts which have been allocated to the credit institution by its members or other owners or third parties as equity but are not subscribed capital.

(12) Retained earnings are reserves allocated from annual profits in the current business year or in previous business years.

(13) Contingent liabilities comprise all transactions in which the credit institution has underwritten the obligations of a third party. The notes to the financial statements must indicate the nature and amount of any type of contingent liability which is material in relation to an institution's activities. Liabilities from sureties and assets pledged as collateral security include all guarantee obligations incurred and assets pledged as collateral security on behalf of third parties, especially sureties and irrevocable letters of credit.

(14) Commitments include all irrevocable obligations which could give rise to a risk. The notes the financial statements must indicate the nature and amount of any type of commitment which is material in relation to an institution's activities. Commitments arising from repurchase agreements include repurchase commitments entered into by a credit institution as the transferor in sales with an option to repurchase.

### **Special Provisions relating to Certain Items in the Profit and Loss Account**

**Article 52.** (1) The following values in particular are to be reported under interest receivable and similar income as well as interest payable and similar charges:

1. income from the assets accounted for under asset items 1 to 5 of Annex 2 to Article 43 Part 1, regardless of the form of calculation, as well as the income and reductions of income arising from the temporal distribution of the difference amount pursuant to Article 56 paras. 2 and 3;
2. expenses from the liabilities accounted for under liability items 1, 2, 3, 7 and 8 of Annex 2 to Article 43 Part 1, regardless of the form of calculation, as well as the expenses and reductions of expenses arising from the temporal distribution of the difference amount pursuant to Article 56 paras. 2 and 3;
3. Income and expenses resulting from covered forward contracts, spread over the actual duration of each contract and similar in nature to interest;
4. Fees and commission similar in nature to interest and calculated on a time basis or by reference to the amount of the claim or liability.

(2) Income from shares in investment funds must also be reported under income from securities and participations.

(3) Commission income and commission expenses refer to income and expenses arising in connection with the provision of services, in particular:

1. Commissions for sureties, for loan administration on behalf of other lenders, and for securities transactions;
2. Commissions and other income and expenses in connection with payment transactions, account management fees and commissions for the safekeeping and administration of securities;

3. Commissions for foreign currency transactions and for the sale and purchase of coins and precious metals;
4. Commissions for brokerage services in connection with loans, savings contracts and insurance contracts.

(4) The following values are to be reported as the net profit or net loss on financial operations:

1. the net profit or loss on transactions in securities which are not held as financial assets and are included in the trading portfolio, together with value adjustments and value re-adjustments on such securities;
2. the net profit or loss on foreign exchange transactions;
3. the net profit or loss on trading activities involving other assets, especially precious metals, and involving financial instruments.

**Article 53.** (1) Items 11 and 12 include, on the one hand, expenses for value adjustments in respect of loans and advances to be shown under asset items 3 and 4 and provisions for contingent liabilities and for commitments to be shown under off-balance-sheet items 1 and 2, and on the other hand, credits from the recovery of written-off loans and advances and amounts written back following earlier value adjustments and provisions.

(2) These items also include the net profit or loss on transactions in securities included in asset items 5 and 6 which are neither held as financial assets as defined in Article 55 para. 2 nor included in a trading portfolio, together with value adjustments and value re-adjustments on such securities, taking into account, where Article 56 para. 5 has been applied, the difference resulting from the application of Article 56 para. 5. The designations of the items are to be changed accordingly if the income and expenses in question are included.

(3) Income and expenses pursuant to paras. 1 and 2 may be netted out.

**Article 54.** (1) Items 13 and 14 include, on the one hand, expenses for value adjustments in respect of assets shown in asset items 5 to 8 and, on the other hand, all the amounts written back following earlier value adjustments, insofar as the charges and income relate to transferable securities held as financial assets as defined in Article 55 para. 2, to participating interests and to shares in affiliated undertakings.

(2) Expenses and income pursuant to para. 1 may be netted out.

### **Valuation Rules**

**Article 55.** (1) Asset items 9 and 10 must be valued as fixed assets. The assets included in other balance sheet items must be valued as fixed assets where they are intended for use on a continuing basis in the normal course of an undertaking's activities.

(2) Credit institutions must consider participating interests, shares in affiliated undertakings and securities intended for use on a continuing basis in the normal course of an undertaking's activities to be fixed assets.

**Article 56.** (1) Debt securities including fixed-income securities which are held as financial assets must be reported as fixed assets. (2) In cases where the acquisition costs of such debt securities

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exceed the amount repayable at maturity, the difference amount must be charged to the profit and loss account. The difference amount may also be written off pro rata temporis. The difference must be reported separately in the balance sheet or in the notes to the financial statements.

(3) In cases where the acquisition costs of such debt securities are lower than the amount repayable at maturity, the difference amount may be released to income in instalments over the period remaining until repayment. The difference must be reported separately in the balance sheet or in the notes to the financial statements.

(4) Where securities admitted to listing on a recognised exchange which are not held as financial assets are reported on the balance sheet at acquisition cost, credit institutions must disclose in the notes to their financial statements the difference between the acquisition cost and the higher market value as of the balance sheet date.

(5) Securities admitted to listing on a recognised exchange which are not held as financial assets may be recognised at the higher market value as of the balance sheet date. The difference between the acquisition costs and the higher market value must be disclosed in the notes to the financial statements.

**Article 57.** (1) Claims of credit institutions, securities except for those held as fixed assets or included in the trading portfolio, loans and advances to credit institutions as well as exposures to nonbanks may be recognised at a lower value than that which would result from the application of the provisions of Articles 203, 206 and 207 Commercial Code where necessary for reasons of prudence in light of the particular banking risks. The difference from the values which would be applied in accordance with Articles 203, 206, and 207 Commercial Code must not exceed 4% of the total amount of the assets indicated. Article 201 para. 1 no. 4 Commercial Code is to be applied with due consideration of the particular characteristics of banking transactions.

(2) The value applied pursuant to para. 1 may be maintained until the credit institution decides to adjust this value;

(3) On the liabilities side of their balance sheets, credit institutions may create a special item under 6A entitled "Fund for general banking risks" for the purpose of protection against general banking risks. This fund may include those amounts which the credit institution considers necessary to cover special banking risks for reasons of prudence. Additions to and disposals from this fund must be reported separately on the credit institution's balance sheet. The credit institution must have unrestricted and immediate access to this fund for the purpose of offsetting losses.

(4) The net balance of increases and decreases in the fund for general banking risks must be reported separately in the profit and loss account.

**Article 58.** (1) Assets and liabilities denominated in foreign currency must be translated at the middle rate of exchange prevailing on the balance sheet date.

(2) Forward transactions must be translated at the forward rate of exchange prevailing on the balance sheet date.

(3) The difference between the book values of the assets, liabilities and forward transactions and the amounts resulting from translation pursuant to paras. 1 and 2 must be reported in the profit and loss account.

## Consolidated Financial Statements

**Article 59.** (1) The superordinate credit institution must prepare consolidated financial statements and a consolidated annual report for its group of credit institutions. Article 30 as well as paras. 2 to 5 determine the scope of consolidation.

(2) A subordinate credit institution need not be included in the scope of consolidation if the shares in the undertaking are held temporarily for the purpose of a financial reconstruction or rescue operation for that undertaking. In cases where such a credit institution is not included in the consolidated financial statements, the annual financial statements of that credit institution must be attached to the consolidated financial statements. Additional information on the nature and terms of the financial reconstruction must be included in the notes to the financial statements.

(3) Article 249 paras. 2 and 3 Commercial Code are applicable to subordinate institutions which are not credit institutions.

(4) A participating interest need not be included in the group of credit institutions if such inclusion would result only from the application of Article 30 para. 1 no. 7.

(5) Article 30 para. 4 is not to be applied in cases where the supervisory body or a minority of owners whose shares account for no less than 10% of the share capital or nominal capital or the nominal amount of EUR 1.4 million request otherwise.

(6) The fixed assets of leasing undertakings held for the purpose of leasing must be assigned to the individual receivables categories in the consolidated balance sheet at the present value of the discounted leasing receivables.

(7) Where undertakings which provide ancillary banking services pursuant to Article 2 no. 27 and are maintained on a cost recovery basis are included in the scope of consolidation, the resulting income may be netted out against the proportionate expenses if the income stems from revenues with undertakings which are not included in full consolidation and the reimbursement of the expenses by these companies is contractually agreed.

**Article 59a.** Superordinate credit institutions which prepare consolidated financial statements in accordance with internationally recognised accounting principles pursuant to Article 245a para. 1 or 2 Commercial Code must fulfil the requirements of Article 245a paras. 1 and 3 Commercial Code and include the disclosures pursuant to Article 64 para. 1 nos. 1 to 15 and para. 2 in the notes to the consolidated financial statements.

## Bank Auditors

**Article 60.** (1) The annual financial statements of each credit institution and the consolidated financial statements of each group of credit institutions pursuant to Article 59 para. 1 and Article 59a para. 1 must be audited by bank auditors, including bookkeeping, the annual report and the consolidated annual report pursuant to Article 59 and Article 59a para. 1.

(2) In the case of a credit institution organised as a cooperative society, the legal audit organisation's auditor appointed according to the cooperative society rules must perform the duties of

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the bank auditor pursuant to Article 60. This also applies to stock corporations into which the banking operations or part of the banking operations of a cooperative society have been integrated pursuant to Article 92 para. 7.

(3) The rights to information, presentation and inspection (Article 272 Commercial Code) of the bank auditor extend to all documents and data media, even in cases where they are maintained or stored by a third party, or where they are maintained or stored outside of Austria. In cases where the documents to be audited, especially bookkeeping, are maintained or stored outside of Austria, the credit institution must, notwithstanding the bank auditor's rights of inspection mentioned above, ensure that documents for the current business year as well as the three preceding business years are available in Austria at all times. The credit institution must also provide the bank auditor with the auditing plans as well as the audit reports drawn up by the internal audit unit.

**Article 61.** (1) Bank auditors are certified external auditors or external auditing companies appointed as external auditors of financial statements as well as auditors (auditors, auditing unit of the Savings Bank Auditing Association) from legally competent auditing organisations. In connection with the protection scheme pursuant to Article 93, cooperative auditing associations and the auditing unit of the Savings Bank Auditing Association must perform duties within the framework of an early warning system for the affiliated credit institutions. For credit institutions belonging to the Austrian Association of Banks and Bankers or the Association of State Mortgage Banks, the duties associated with the early warning system must be performed by those associations' protection schemes; the bank auditors of these credit institutions must cooperate with the relevant protection scheme for the purposes of the early warning system. The Oesterreichische Nationalbank is empowered to forward data reports from credit institutions to the relevant protection schemes as required by the protection schemes mentioned above for the purposes of the early warning system.

(2) Persons in respect of which reasons for exclusion pursuant to Article 62 of this federal act or bias or disqualification pursuant to Articles 271, 271a or 271b Company Code (*Unternehmensgesetzbuch – UGB*) exist must not be appointed as bank auditors; in the case of external auditors and external auditing companies, reasons for exclusion pursuant to other provisions of federal law also must not exist; in the case of credit cooperatives and stock companies pursuant to Article 92 para. 7, Article 268 para. 4 Company Code (*Unternehmensgesetzbuch – UGB*) is not applicable. Article 271a Company Code (*Unternehmensgesetzbuch – UGB*) is to be applied to the Savings Bank Auditing Association with the restriction that the reasons for exclusion indicated under that provision apply to those employees who perform leading functions in the audit team.

**Article 62.** Circumstances which make proper auditing appear improbable are regarded as reasons for exclusion. In particular, reasons for exclusion are considered to exist if:

1. The bank auditor is not professionally qualified due to a lack of prior education and does not possess the qualities or experience necessary for bank audits. Theoretical and practical qualifications for bank audits must be evidenced by an examination of professional competence of university, final examination level organised or recognised by the State pursuant to Article 4 of Directive 84/253/EEC. The subject examination pursuant to Article 13 Act on Audits of Cooperative Societies 1997 (*Genossenschaftsrevisionsgesetz 1997 –*

*GenRevG 1997*; Federal Law Gazette I No. 127/1997) is considered to be such an examination of professional competence. Auditors are considered to fulfil the requirement of practical experience after working for a recognised auditing association, for the Savings Bank Auditing Association, or for an external auditor or external auditing company for at least three years if these activities specifically include auditing annual financial statements or consolidated financial statements as well as auditing the business activities of cooperative societies, savings banks or joint-stock companies;

- 1a. the bank auditor does not ensure that his/her knowledge and experience pursuant to no. 1 are up to date through ongoing continuing education and training; to this end, annual confirmations of up-to-date quality assurance must be obtained from a qualified agency within the same external auditing company, legally responsible auditing organisation or another external auditor; in this context, the bank auditor must specifically provide evidence of the required knowledge of the relevant provisions applicable to credit institutions regarding the legal compliance of annual financial statements as well as the other provisions set forth in Article 63 paras. 4 to 6a;fn
2. *removed (Federal Law Gazette I No. 59/2005)*
3. the bank auditor owns shares in the credit institution to be audited which equal or exceed 5% of the paid-up capital or the nominal amount of EUR 70,000;
4. the bank auditor, with the exception of legally responsible auditing organisations, has earned at least 15% of his/her total revenues from professional activities in the last five years by auditing and advising the credit institution to be audited and undertakings in which the credit institution to be audited holds at least 20% of shares, and this is also to be expected in the current business year;
5. the bank auditor's economic independence from the credit institution to be audited is not ensured specifically because the credit institution contributes substantially to financing the auditor by means of a capital investment or loan;
6. the bank auditor's personnel-related independence from the credit institution to be audited is not ensured specifically because he/she performs activities other than advising for the credit institution to be audited or cooperates in the entry of transactions in accounting or in the preparation of financial statements in areas which he/she is meant to audit himself/herself;
- 6a.a reason for exclusion pursuant to Article 271a Commercial Code exists; in this context, however, only Article 271a para. 3 is to be applied to the auditing unit of the Savings Bank Auditing Association, with the restriction that merely signing the auditor's certificate does not constitute a reason for exclusion;
7. the cooperative auditing association appointing the bank auditor conducts banking transactions itself (mixed-activity association) unless the auditors and the auditing organisations are independent and autonomous of the management of the credit institution;
8. the bank auditor is – or was at any time in the last three years prior to being appointed – a legal representative, member of the supervisory board or employee of the credit institution to be audited;

9. the bank auditor is a legal representative or member of the supervisory board of a legal person, a member of a partnership or owner of a sole proprietorship, and that legal person, partnership or sole proprietorship is affiliated with and owns at least 5% of the shares in the credit institution to be audited;
10. the bank auditor is an employee of an undertaking which is associated with or owns at least 5% of the shares in the credit institution to be audited, or is an employee of a natural person who owns at least 5% of the shares in the credit institution to be audited; if the bank auditor is an employee of a cooperative auditing association which also owns shares in the credit institution to be audited, then this share must not exceed 20% if the independence of the bank auditor is ensured in another suitable manner;
11. the bank auditor is a legal representative, member of the supervisory board or member of a legal or natural person or a partnership, an owner or employee of an undertaking if that legal or natural person, partnership or one of its members, or sole proprietorship may not act as the bank auditor for the credit institution to be audited pursuant to no. 6;
12. in carrying out the audit, the bank auditor employs a person who must not act as the bank auditor pursuant to no. 3 to 6, 8 to 11, 14, 15 and 17;
13. the bank auditor carries out his/her profession together with a person excluded pursuant to nos. 3 to 12 and 14 to 17 or fulfils the criteria under no. 3 or 4 together with that person;
14. the good repute of the bank auditor is not ensured specifically because reasons for exclusion pursuant to Article 13 Trade Act 1994 or circumstances pursuant to Articles 9 and 10 Professional Code for Certified Public Accountants and Tax Advisors (*Wirtschaftstreuhandberufsgesetz – WTBG*; Federal Law Gazette I No. 58/1999) exist;
15. the bank auditor does not carry out his/her activities with the required professional prudence, especially if his/her auditing activities have exhibited severe defects in the last five years;
16. the bank auditor does not possess a certification pursuant to Article 15 of the Act on Quality Assurance for External Audits of Financial Statements (*Abschlussprüfungs-Qualitätssicherungsgesetzes – A-QSG*; Federal Law Gazette I No. 84/2005) or substantial defects in quality assurance measures are identified by the quality auditor which have led to limitations on the final assessment pursuant to Article 13 para. 3 Act on Quality Assurance for External Audits of Financial Statements and those defects have not been demonstrably remedied;
17. the auditor has violated his/her reporting requirements pursuant to Article 63 para. 3 of this federal act or pursuant to Article 273 para. 2 Company Code (*Unternehmensgesetzbuch – UGB*) in the last five years; this applies to the natural persons named for the audit engagement pursuant to Article 88 para. 7 Professional Code of Conduct for Certified Public Accountants and Tax Advisors in cases where the audit is carried out by an external auditing company as the bank auditor.

**Article 62a.** The liability of bank auditors is limited to the following amounts for credit institutions with total assets of

1. up to EUR 200 million .....EUR 2 million;

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).

- 2. up to EUR 400 million .....EUR 3 million;
- 3. up to EUR 1 billion .....EUR 4 million;
- 4. up to EUR 2 billion .....EUR 6 million;
- 5. up to EUR 5 billion .....EUR 9 million;
- 6. up to EUR 15 billion .....EUR 12 million;
- 7. over EUR 15 billion .....EUR 18 million

per credit institution audited. In cases of intent, the liability obligation is unlimited. Otherwise, Article 275 para. 2 Commercial Code applies to the liability of bank auditors.

**Article 63.** (1) The appointment of bank auditors, with the exception of those which are auditors for legally competent auditing organisations, must be carried out before the start of the business year to be audited and must be reported to the FMA immediately in writing; in cases where an external auditing company has been appointed as the bank auditor, then the natural persons named for the audit engagement pursuant to Article 88 para. 7 Professional Code of Conduct for Certified Public Accountants and Tax Advisors must be indicated in this report. Any changes in the persons named must be reported to the FMA immediately. The FMA may raise an objection pursuant to Article 270 para. 3 Company Code to the appointment of a bank auditor or to a certain natural person named pursuant to Article 88 para. 7 Professional Code of Conduct for Certified Public Accountants and Tax Advisors if the FMA has a substantiated reason to suspect that a reason for exclusion pursuant to Article 61 para. 2 or another reservation exists; where the appointment is subject to a reporting requirement, this objection must be raised within one month. The court must rule on the objection with due consideration of reasons for exclusion; until a legally effective ruling has been handed down by the court, the bank auditor or the natural person named in accordance with Article 88 para. 7 Professional Code of Conduct for Certified Public Accountants and Tax Advisors may neither perform audit activities nor be provided with information subject to banking secrecy requirements by the credit institution.

(1a) *removed (repealed by Federal Law Gazette I No. 33/2005)*

(1b) *removed (repealed by Federal Law Gazette I No. 33/2005)*

(1c) Within two weeks of being appointed, the bank auditor must provide the FMA with certification that none of the reasons for exclusion exist. At the FMA's request, the bank auditor must also provide all additional certifications and evidence necessary for the purpose of assessment. If such a request is not fulfilled, the FMA may proceed in accordance with para. 1.

(2) The provisions of Articles 268 to 270 Commercial Code regarding audits of annual financial statements (consolidated financial statements) are to be applied to credit institutions with the restriction that the appointment of the bank auditor pursuant to para. 1 must be carried out prior to the start of the business year to be audited. Bank auditors must participate as informed experts in the deliberations of the supervisory bodies competent under applicable law and the articles of association with regard to the annual financial statements.

(3) If, in the course of his/her auditing activities, the bank auditor identifies facts which

- 1. give rise to a reporting obligation pursuant to Article 273 para. 2 Company Code; or
- 2. indicate that the fulfilment of the obligations of the credit institution may be endangered; or

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3. indicate a substantial deterioration of the risk situation; or
4. indicate violations of this federal act or of other legal or other provisions or administrative rulings (*Bescheide*) of the Federal Minister of Finance or the FMA which govern banking supervision; or
5. indicate that material balance sheet items or off-balance-sheet items are worthless,

or if the bank auditor finds reason to doubt the accuracy of documents or the declaration of completeness provided by the management board, then the bank auditor must report these facts to the FMA and the Oesterreichische Nationalbank in writing immediately along with explanations, Article 273 para. 2 Company Code notwithstanding. If the bank auditor identifies other defects, changes in the risk situation or economic situation which are not a cause for concern, or only minor violations of provisions, and if these defects and violations can be remedied in the short term, then the bank auditor is only required to report to the FMA and the Oesterreichische Nationalbank if the credit institution fails to remedy the defects and to provide the bank auditor with evidence of such remedies within a reasonable period of time, at the latest, however, within three months. The reporting requirement also applies in cases where the directors fail to provide information properly as requested by the bank auditor within a reasonable period of time. Bank auditors appointed by an auditing association must submit reports pursuant to this paragraph through the auditing association, which must pass on such reports without delay. In cases where an external auditing company is appointed as the bank auditor, the reporting requirement also applies to the natural persons named pursuant to Article 88 para. 7 Professional Code of Conduct for Certified Public Accountants and Tax Advisors.

(3a) Para. 3 is also applicable in cases where the bank auditor acts as the auditor of the financial statements of an affiliated undertaking (Article 228 para. 3 Commercial Code) of the credit institution.

(3b) If the bank auditor files a report pursuant to para. 3 or 3a in good faith, this is not considered a violation of a disclosure restriction governed by a contract or by law, regulations or administrative provisions and will not bring about a liability on the bank auditor's part.

(4) The bank auditor must review the legal compliance of the annual financial statements. The audit must also comprise the following:

1. The factual accuracy of valuation, including the necessary depreciation, value adjustments and provisions;
2. compliance with Articles 21 to 27, 29 as well as Article 73 para. 1 and Article 75;  
2a.compliance with Chapters 2 and 3 Securities Supervision Act 2007;  
2b.compliance with Article 39a;
3. compliance with the other provisions of this federal act as well as other legal provisions relevant to credit institutions;
4. compliance with Article 230a General Civil Code, Articles 66 and 67, as well as the regulation issued pursuant to Article 68 para. 2;
5. the assignment of positions to the trading book as well as any transfers in accordance with internal criteria for inclusion in the trading book;
6. in the case of credit institutions which apply Article 22o:  
a) the criteria for the definition of qualifying assets;

- b) the methods of determining the market price pursuant to Article 22n para. 4;
- c) the option pricing model, especially the definition of volatilities and other parameters used to calculate the delta factor pursuant to Article 22o para. 3;
- d) the determination of other risks associated with options pursuant to Article 22o para. 2 no. 7;

7. compliance with Articles 26 and 26a;

8. conspicuous loans, in particular:

- a) loans to natural or legal persons who hold a qualifying participation in the credit institution,
- b) loans to undertakings in which the credit institution holds a qualifying participation,
- c) loans to management and related parties,
- d) loans which exhibit special characteristics with regard to the amount, the nature of collateral, the processing or a deviation from the credit institution's usual focus areas of business.

(5) The result of the audit pursuant to para. 4 must be presented in an annex to the audit report on the annual financial statements (prudential report). This annex must be submitted along with the audit report on the financial reports to the directors, the credit institutions' supervisory bodies competent according to applicable law or the articles of association in such a timely manner that the submission deadline pursuant to Article 44 para. 1 can be observed. The FMA is to issue a regulation defining the form and layout of this annex and of the annexes indicated in para. 7.

(6) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and 15 to 17 in Austria must also have the information pursuant to Article 44 para. 4 audited. The audit must comprise the following:

- 1. accuracy and consistency with the annual financial statements (Article 44 para. 3);
- 2. compliance with the provisions set forth in Article 9 para. 7, Article 11 para. 5 as well as Article 13 para. 4, and compliance with Articles 36, 38 to 59, 61 to 66 and 69 to 71 Securities Supervision Act 2007.

(6a) *removed (Federal Law Gazette I No. 60/2007)*

(7) The result of the audit pursuant to para. 6 must be presented in an annex to the audit report on the annual financial statements (prudential report) pursuant to Article 44 para. 4. This audit report including the annex must be submitted to the directors of the branches of credit institutions and financial institutions from Member States in Austria in such a timely manner that the submission deadlines pursuant to Article 44 paras. 3 to 5 can be observed.

(8) *removed (Federal Law Gazette I No. 59/2005)*

**Article 63a.** (1) The supervisory board or other supervisory body of the credit institution competent according to applicable law or the articles of association may instruct external auditors or external auditing companies to carry out audits of the legal compliance and appropriate execution of the undertaking's business or request that legally competent auditing organisations appoint an auditor for this purpose. They must be provided with the corresponding audit engagement. Article 61 para. 2 is applicable to auditors acting on behalf of the supervisory body. The auditor acting on behalf of the



supervisory body must report this to the chairperson of the supervisory body in accordance with para. 3. The auditor must inform the chairperson of the supervisory body immediately if the audit reveals severe defects with regard to the appropriateness or legal compliance of the undertaking. Otherwise, auditors appointed by the supervisory body are subject to the obligation to maintain banking secrecy pursuant to Article 38.

(2) Credit institutions are obliged to enable the auditors appointed by the supervisory body to carry out audit activities in accordance with Article 71 para. 2 and para. 3 nos. 1 to 3.

(3) In the course of performing his/her duties, the bank auditor appointed in accordance with Article 61 is also obliged to inform the chairperson of the supervisory body even without an audit engagement from the supervisory body if, due to the nature and circumstances of the violations, reporting to the directors would not achieve the purpose of remedying the defects and such defects are severe.

(4) At credit institutions of any legal form whose total assets exceed EUR 1 billion or which have issued transferable securities that are admitted to listing on a regulated market pursuant to Article 1 para. 2 Stock Exchange Act 1989 (*Börsegesetz 1989*), the credit institution's supervisory board or other supervisory body competent according to applicable law or the articles of association must appoint an audit committee consisting of at least three members of the supervisory body. The audit committee shall convene at least twice in a business year. The bank auditor shall attend the meetings of the audit committee and shall report in writing on the main findings gained from the annual audit at least once a year and explain the report orally upon request of any committee member. This committee must include one person who possesses expertise and practical experience in the fields of bank finance, accounting and reporting as appropriate for the credit institution in question (financial expert). Persons who have acted as directors, executives (Article 80 Stock Corporation Act, *Aktiengesetz, AktG*) or bank auditors in the last three years, or who have signed the credit institution's audit certificate in the last three years may not serve as the chairperson of the audit committee or as the financial expert. The duties of the audit committee include the following:

1. monitoring accounting;
2. monitoring the effectiveness of the internal control system, the internal revision system and the company's risk management system;
3. monitoring external audits of financial statements and of group financial statements;
4. reviewing and monitoring the independence of the bank auditor, especially with regard to additional services rendered for the credit institution audited;
5. auditing the accounts and preparing their approval, the proposed appropriation of profits, the annual report and, where applicable, the corporate governance report, as well as submitting the report on audit results to the supervisory body;
6. where applicable, auditing the group financial statements and group annual report as well as submitting the report on audit results to the supervisory body of the parent institution;
7. preparing the supervisory body's proposal for the selection of a bank auditor.

Nos. 4 and 7 shall not apply to institutions whose bank auditors are legally responsible auditing organisations.“

## Temporary Disqualification from the Practice of an Activity

**Article 63b.** (1) In companies pursuant to Article 60 para. 1, the bank auditor, the statutory auditor of a significant affiliated company and the chartered accountant who signed the relevant audit certificate may not serve in a corporate body or in an executive function (Article 80 Stock Corporation Act, *Aktiengesetz*) for a period of two years following the signing of the audit certificate.

(2) If a person described in para. 1 serves in a corporate body, such person shall be considered not appointed. Such person shall not be entitled to any compensation for services nevertheless performed; the same applies in the case of engagement in an executive function.

## Notes to the Financial Statements

**Article 64.** (1) In addition to the information required pursuant to Articles 236 to 240 Commercial Code, credit institutions must include the following information in the notes to their financial statements:

1. the amounts with which the credit institutions participated in leasing transactions;
2. the total amount of asset items and liability items denominated in foreign currency;
3. a statement of forward transactions not yet settled as of the balance sheet date;
4. a breakdown of loans and advances as well as balances which are not repayable on demand and of liabilities to credit institutions and nonbanks by residual maturity as follows:
  - a) no more than three months;
  - b) more than three months but not more than one year;
  - c) more than one year but not more than five years;
  - d) more than five years;
5. For each subordinated borrowing which exceeds 10% of the total amount of subordinated liabilities:
  - a) the amount of the borrowing, the currency in which it is denominated, the interest rate and the maturity date or an indication that it is a perpetual issue;
  - b) where applicable, whether there are any circumstances in which early repayment is required;
  - c) the terms of the subordination, the existence of any provisions to convert the subordinated liability into capital or some other form of liability, and the terms of any such provisions.
6. an overall indication of the rules governing other subordinated borrowings;
7. for debt securities including fixed-income securities as well as debt securities in issue, the amount of assets and liabilities which will become due within one year of the balance sheet date.
8. a statement of the assets which credit institutions have pledged as collateral security for their own liabilities or for those of third parties (including contingent liabilities) in sufficient detail to indicate the total amount of the assets pledged as collateral security for each liability item and for each off-balance-sheet item;

9. a breakdown of interest income, income from securities and participations, commission income, net profit/loss on financial operations and other operating income by geographical market where such markets differ substantially from one another in light of the organisation of the credit institution;
  - 10.a breakdown of the securities admitted to listing on an exchange included in the asset items Debt securities including fixed-income securities, Shares and other variable-yield securities, participating interests as well as Shares in affiliated undertakings into listed and unlisted securities;
  - 11.a breakdown of the transferable securities shown under the asset items Debt securities including fixed-income securities as well as Shares and other variable-yield securities into securities which are and are not held as financial fixed assets pursuant to Article 56 para. 1 and the criterion used to distinguish these two categories of securities;
  - 12.a breakdown of Other assets, Other liabilities, Other operating expenses, Extraordinary expenses, Other operating income and Extraordinary income into their main component amounts where such amounts are important for the purpose of assessing the annual financial statements, as well as explanations of their nature and amount.
  - 13.the total amount of expenses paid for subordinated liabilities by a credit institution in the year under review;
  - 14.the total amount of income from the credit institution's management and agency services to third parties where the scale of such business is material in relation to the institution's activities as a whole;
  - 15.an indication of whether the credit institution maintains a trading book and, if so, the volume of the securities and other financial instruments included in the trading book.
- (2) Credit institutions which have issued participation capital must disclose information on this capital pursuant to Article 240 no. 3 Commercial Code in the notes to the financial statements.
- (3) The disclosure of interest pursuant to Article 239 para. 1 no. 2 Commercial Code may be omitted in the notes to the financial statements.
- (4) In addition to the information required pursuant to Articles 265 and 266 Commercial Code, groups of credit institutions must also include the disclosures pursuant to paras. 1 and 2 in the notes to the consolidated financial statements (Article 59 para. 1).
- (5) The disclosure of interest pursuant to Article 266 no. 5 Commercial Code may be omitted in the notes to the consolidated financial statements.
- (6) In the case of credit cooperatives, Article 239 para. 1 no. 4 Commercial Code is to be applied with the restriction that, in addition to the joint remuneration of the members of the management board and the supervisory board, the total remuneration paid to directors pursuant to Article 2 no. 1 lit. b must also be indicated in the notes to the financial statements. In cases where a member of the management board is simultaneously named as a director pursuant to Article 2 no. 1 lit. b, that person's remuneration as a management board member must be reported in the category of directors' remuneration. If the breakdown pursuant to Article 239 para. 1 no. 4 Commercial Code concerns fewer than three persons, then it can be omitted.

## Publication

**Article 65.** (1) Credit institutions must publish their annual financial statements and consolidated financial statements pursuant to Articles 59 and Article 59a immediately after their approval in the Official Gazette of the *Wiener Zeitung* or in a generally available publication medium. This does not apply to the annex to the audit report on the annual financial statements (prudential report) pursuant to Article 63 para. 5. The annual financial statements and annual report as well as the consolidated financial statements and the consolidated annual report pursuant to Articles 59 and 59a must be made available for public inspection at the credit institution's registered office until the end of the third calendar year following the business year in question.

(2) The following information from the notes to the financial statements must be published:

1. the information pursuant to Articles 236 and 239 Commercial Code;
2. the information pursuant to Article 64 para. 1;
3. the information pursuant to Article 222 para. 2, Article 223 paras. 1 and 2 as well as Article 226 para. 1 Commercial Code;

(2a) The following information from the notes to the consolidated financial statements (Article 59 para. 1 and Article 59a para. 1) must be published:

1. the information pursuant to Articles 265 and 266 Commercial Code;
2. the information pursuant to Article 64 para. 1.

(3) Branches of foreign credit institutions must also publish the annual financial statements and consolidated financial statements of the foreign credit institution in the Official Gazette of the *Wiener Zeitung* or in a generally available publication medium. The annual report and the consolidated annual report of the foreign credit institution must be made available for public inspection at the branch.

(3a) Branches of credit institutions pursuant to Article 9 para. 1 and of financial institutions pursuant to Article 11 para. 1 and Article 13 para. 1 which carry out activities pursuant to Article 1 para. 1 nos. 2 to 8, 11 and 15 to 17 in Austria are to publish the audited information pursuant to Article 44 para. 4 as well as the annual financial statements and consolidated financial statements of the relevant credit institution (financial institution) in the Official Gazette of the *Wiener Zeitung* or in a generally available publication medium, and to make these documents available for public inspection at the branch. This does not apply to the annex to the audit report on the annual financial statements (prudential report) pursuant to Article 63 para. 7

(4) The Federal Minister of Finance is empowered, after consultation with the FMA, to conclude agreements on the basis of reciprocity with countries outside of the European Economic Area to relieve the branches of foreign credit institutions of the obligation to publish annual financial statements referring to their own activities.

### **XIII. Provisions regarding Cover Reserves pursuant to Article 230a General Civil Code**

**Article 66.** A credit institution which creates cover reserves as defined in Article 230a General Civil Code must:

1. hold unencumbered cover reserves in the amount of trustee savings deposits; and
2. enter the values belonging to cover reserves in a separate listing (cover reserves register) which is to be maintained on an ongoing basis.
3. Cash is to be held in separate custody.

**Article 67.** (1) Cover reserves as defined in Article 230a General Civil Code are exempt from collection, except in the case of claims arising from trustee savings deposits.

(2) In the event of bankruptcy, cover reserves are regarded as special funds for the satisfaction of claims arising from trustee savings deposits (Articles 11 and 48 Bankruptcy Code [*Konkursordnung – KO*]). If cover reserves are not sufficient to satisfy claims arising from trustee savings deposits, then such claims are to be satisfied proportionately.

**Article 68.** (1) The bank auditor must also review whether cover reserves are administered appropriately.

(2) In consultation with the Federal Minister of Justice, the Federal Minister of Finance must issue a regulation defining the following:

1. For credit institutions which accept savings deposits for the investment of trustee funds with the allocation of cover reserves:
  - a) the specific form of
    - aa) acceptance of trustee savings deposits;
    - bb) allocation of cover reserves, especially with regard to their separation from other assets; and
    - cc) termination of this provision upon attainment of full legal capacity; and
  - b) the dates, the form and the layout of the reports to be provided by credit institutions;
2. For credit institutions which accept savings deposits for the investment of trustee funds without the allocation of cover reserves:
  - a) the specific form of acceptance of trustee savings deposits and
  - b) the form of reporting on trustee savings deposits taken.

### **XIV. Supervision**

**Article 69.** (1) Notwithstanding the duties assigned in other federal acts, the FMA must monitor compliance with the provisions of this federal act, the Savings Banks Act (*Sparkassengesetz – SpG*), the Building Society Act, the Regulation Implementing the Mortgage Bank Act and the Mortgage Bond Act (*Einführungsverordnung zum Hypothekenbank- und zum Pfandbriefgesetz*), the Mortgage Bank Act, the Mortgage Bond Act (*Pfandbriefgesetz*), the Act on Funded Bank Bonds (*Bankschuldverschreibungsgesetz – FBSchVG*), the Investment Fund Act, the Depository Act, the Participation Fund Act, the E-Money Act, the Act on Severance and Retirement Funds for Salaried

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Employees and Self-Employed Persons, the Real Estate Investment Fund Act and the Financial Conglomerates Act on the part of:

1. credit institutions pursuant to Article 1 para. 1;
2. credit institutions pursuant to Article 1 para. 1 which take up activities in other Member States on the basis of the freedom of establishment or of cross-border service provision, subject to Article 16 para. 1;
3. credit institutions authorised in a Member State as defined in Article 4 (1) of Directive 2006/48/EC which are incorporated in the Member State in question and take up activities in Austria on the basis of the freedom of establishment or of cross-border service provision, subject to Article 15;
4. financial institutions authorised in a Member State as defined in Article 4 (5) of Directive 2006/48/EC which take up activities in Austria on the basis of the freedom of establishment or of cross-border service provision, subject to Article 17; and
5. representative offices of credit institutions incorporated in a Member State or a third country, subject to Article 73.

In this context, the FMA must consider the national economic interest in maintaining an efficient banking system and financial market stability.

(2) The FMA must, in consideration of the nature, scope and complexity of the banking transactions conducted by credit institutions and groups of credit institutions, monitor the adequacy of the capital available for the quantitative and qualitative coverage of all material risks from banking transactions and banking operations as well as the adequacy of procedures pursuant to Article 39 paras. 1 and 2 and Article 39a, with special regard to the risks indicated in Article 39 para. 2b.

(3) The supervisory activities of the FMA must include limiting the exposure of credit institutions to the interest rate risk arising from non-trading activities. The FMA must take measures in the case of credit institutions whose economic value declines by more than 20% of their own funds as a result of a sudden and unexpected change in interest rates, the size of which is to be prescribed by the FMA and must not differ between credit institutions.

(4) In the exercise of its duties, the FMA shall duly consider the potential impact of its decisions on the stability of the financial system in all other Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time. The general objective of considering the stability of the financial system across the European Union shall not establish a legal obligation of the FMA to achieve a specific result; as a result, no claims can be established based on the achievement of or failure to achieve specific results. In particular, such results shall not be considered damages within the meaning of the Public Liability Act (*Amtshaftungsgesetz - AHG*), Federal Law Gazette No. 20/1949.

(5) In the enforcement of the provisions of the present federal act, including the issuing and enforcement of regulations passed on the basis thereof, the FMA shall take into account European convergence in respect of supervisory tools and supervisory practices. For this purpose, the FMA shall participate in the activities of the Committee of European Banking Supervisors (CEBS) and shall follow the guidelines, recommendations, standards and other measures agreed by the Committee of



European Banking Supervisors, provided there are no valid reasons to deviate from these guidelines, recommendations, standards or measures; in which case the FMA shall state its reasons to the Committee of European Banking Supervisors for non-compliance with or deviation from the guidelines, recommendations, standards or measures concerned.

**Article 69a.** (1) The costs of banking supervision within Accounting Group 1 pursuant to Article 19 para. 1 no. 1 Financial Market Authority Act (*Finanzmarktbehördenaufsichtsgesetz – FMAGB*) must be allocated to the credit institutions subject to contribution requirements in accordance with paras. 2 and 3. The following institutions are subject to contribution requirements:

1. credit institutions pursuant to Article 1 para. 1;
2. credit institutions under Article 9 para. 1 which carry out activities in Austria through a branch.

(2) For each institution subject to contribution requirements under para. 1, is it first necessary to determine the cost figure. The cost figure for institutions subject to contribution requirements pursuant to para. 1 no. 1 is the minimum capital requirement shown in the report pursuant to Article 74 para. 2 for the previous December. For institutions subject to contribution requirements pursuant to para. 1 no. 2, the cost figure is the result of the following calculation steps:

1. the total of the asset items to be reported in accordance with Article 44 para. 4 no. 4 is assigned a weight of 50%;
2. the notional minimum capital requirement of 8% is calculated for the weighted amount pursuant to no. 1;
3. the cost figure is equal to 5% of the notional minimum capital requirement pursuant to no. 2.

(3) For each credit institution, a ratio is to be calculated for each credit institution on the basis of the ratio of its cost figure in accordance with para. 1 nos. 1 and 2 to the total of all cost figures. The costs to be reimbursed in Accounting Group 1 after the deduction of any income pursuant to para. 5 are to be distributed among the individual institutions subject to contribution requirements according to their respective contribution ratios.

(4) If the calculation carried out in accordance with para. 3 results in an amount of less than EUR 1,000 for a credit institution, then that credit institution is to be charged supervisory costs in the amount of EUR 1,000 (minimum amount); the FMA must allocate the difference between the calculated cost share/contribution and the minimum amount to a provision which must be reported in the next annual financial statements.

(5) The provision allocated pursuant to para. 4 in a business year must be reversed in the next financial statements of the FMA; by way of derogation from Article 19 para. 4 Financial Market Authority Act, the income arising from this reversal must be deducted only from the costs of Accounting Group 1.

(6) If the calculation pursuant to para. 3 results in an amount which is greater than 0.08% of its cost figure (para. 2), then the credit institution is to be charged supervisory costs equalling 0.08% of its cost figure.

(7) Where the provisions of para. 4 as well as para. 6 apply to a credit institution, only para. 4 is to be applied.

(8) Credit institutions which are only authorised to conduct one or both of the types of business indicated in Article 1 para. 1 no. 22 and Article 103j para. 2 of the present federal act in conjunction with Article 1 para. 2 no. 5 Federal Act on the Provision of Payment Services (*Zahlungsdiensteugesetz - ZaDiG*) as well as the representative offices of credit institutions (Article 73) shall be charged the minimum amount indicated in para. 4. Paras. 1 to 7 are not applicable to the cost calculations of those institutions themselves; however, the FMA is to account for the costs charged to those institutions accordingly in the calculation of costs for the other institutions in Accounting Group 1 in accordance with para. 3. Article 19 paras. 5 and 6 Financial Market Authority Act is to be applied in issuing the administrative rulings regarding costs with the restriction that:

1. each prepayment is to be measured at 100% of the lump sum; and
2. only the determination of the lump sum in accordance with this paragraph is to be defined by the administrative ruling (*Bescheid*) regarding costs, unless positive or negative differences are to be taken into account due to delayed payments or excess payments on the part of the institutions subject to contribution requirements.

**Article 69b.** The FMA must publish and regularly update the following information on the Internet:

1. The texts of the laws and regulations applicable to the field of banking supervision;
2. the minimum standards and circulars published by the FMA in the field of banking supervision;
3. the exercise of the discretions permitted under Directives 2006/48/EC and 2006/49/EC;
4. the general criteria and methods applied in the review and assessment of a credit institution's risk management and risk coverage pursuant to Article 39a;
5. aggregate statistical data on central aspects of Directives 2006/48/EC and 2006/49/EC, with due adherence to banking secrecy requirements pursuant to Article 38;
6. a list of authorised external credit assessment institutions;
7. a list of countries and municipalities the liabilities of which are assigned a risk weight of 0%;
8. general criteria and methods for the verification of compliance with Article 22d paras. 10 and 11 and Article 22f paras. 3 to 9;
9. in compliance with official secrecy a summary description of the results of the supervisory review and a description of the measures imposed in the event of violations of Article 22d paras. 10 and 11 and Article 22f paras. 3 to 9 by way of an annual report until 31 March of the following year at the latest; regular updates during the year shall not be permitted.

**Article 70.** (1) In its area of responsibility as the banking supervisory authority (Article 69 para. 1 nos. 1 and 2), the FMA may, notwithstanding the powers conferred on the basis of other provisions of this federal act, do the following at any time for the purpose of supervising credit institutions and groups of credit institutions:

1. demand that credit institutions and superordinate credit institutions on behalf of undertakings in the group of credit institutions present interim financial statements, reports in specified forms and using specified layouts, and audit reports; require credit institutions and superordinate credit institutions on behalf of undertakings in the group of credit institutions as well as their governing bodies to provide information on all business matters; inspect bookkeeping records, documents and data media; Article 60 para. 3 is applicable to the scope

of the FMA's information, presentation and inspection rights as well as the obligation to make documents available in Austria;

2. obtain audit reports and information from the bank auditors of credit institutions and groups of credit institutions as well as the competent auditing associations; in addition, the FMA may obtain all necessary information from, and provide all necessary information to, the protection schemes and the government commissioner appointed pursuant to para. 2 no. 2; 2a. have the bank auditors of credit institutions and groups of credit institutions, other external auditors and external auditing companies, the competent auditing associations and other experts conduct all necessary audits; the reasons for exclusion indicated in Article 62 are applicable in this context; the FMA is permitted to provide information to the auditors it engages where this serves the purpose of fulfilling the audit engagement;
3. instruct the Oesterreichische Nationalbank to conduct audits of credit institutions, their branches and representative offices outside of Austria, of credit institutions which are subject to supplementary supervision pursuant to Article 5 para. 1 Financial Conglomerates Act and of undertakings within the group of credit institutions. The competence of the Oesterreichische Nationalbank to conduct on-site inspections in the field of Banking Supervision and in credit institutions or groups of credit institutions in financial conglomerates applies to inspections of all lines of business and all risk types. The Oesterreichische Nationalbank must ensure that it has sufficient personnel and organisational resources at its disposal to conduct the audits indicated. The FMA is authorised to have its own employees participate in audits conducted by the Oesterreichische Nationalbank;
4. also request that the competent authorities in the host Member State conduct audits of undertakings in a group of credit institutions and of branches and representative offices in Member States and in third countries pursuant to Article 77 para. 5 nos. 2 and 3 where this simplifies or expedites the process compared to an audit pursuant to no. 3 or where this is in the interest of expedience, simplicity, speed or cost-effectiveness; under these circumstances, the Oesterreichische Nationalbank may also be obliged to participate in such audits, and FMA employees may participate in such audits.

(1a) Where the Oesterreichische Nationalbank determines in the course of an on-site inspection that the audit engagement issued in accordance with para. 1 no. 3 or 4 is not sufficient to attain the objective of the audit, the Oesterreichische Nationalbank must request the necessary extensions from the FMA. The FMA must either extend the audit engagement or reject the extension with an indication of the reasons for the rejection without delay, at the latest, however, within one week.

(1b) The FMA and the Oesterreichische Nationalbank must jointly define an audit plan for each upcoming calendar year. The audit plan must take the following into account:

1. audits of system-relevant credit institutions;
2. an appropriate frequency of audits of non-system-relevant institutions;
3. resources for ad-hoc audits;
4. thematic focuses of audits;
5. the review of measures taken to remedy the defects identified.

The audit plan must define the focuses of audits and audit start dates for each specific institution. Where the Oesterreichische Nationalbank determines that an on-site inspection is necessary in order to fulfil the criteria pursuant to nos. 1 to 5 and such an on-site inspection is not defined in the joint audit plan, the Oesterreichische Nationalbank is authorised and obliged to request that the FMA issue an additional audit engagement. This request must include a proposal for the content of the audit engagement and indicate the reasons justifying an unscheduled inspection for the purposes of nos. 1 to 5. The FMA must either issue the audit engagement or reject the request with an indication of the reasons for the rejection without delay, at the latest, however, within one week. The FMA's right to issue audit engagements pursuant to para. 1 nos. 3 and 4 is to remain unaffected by this provision.

(1c) The Oesterreichische Nationalbank is authorised to carry out on-site inspections pursuant to para. 1 no. 3 for macroeconomic reasons without an audit engagement from the FMA if the audits defined in the audit plan pursuant to para. 1b or other FMA audit engagements are not affected. The Oesterreichische Nationalbank must inform the FMA of such inspections and indicate the reasons for the inspections by the time they begin.

(1d) The Oesterreichische Nationalbank must define the intended scope of the inspection pursuant to para. 1c in writing. The examiners must deliver a copy of this document to the credit institution upon starting the inspection. In cases where the credit institution audited refuses to grant access or to cooperate as necessary for the purpose of carrying out the inspection, the FMA must ensure that the scope of the inspection as defined in writing is enforced in accordance with Article 22 Financial Market Authority Act at the Oesterreichische Nationalbank's request.

(2) In cases of danger to the fulfilment of the credit institution's obligations to its creditors, in particular to the security of assets entrusted to the credit institution, the FMA may issue an administrative ruling (*Bescheid*) ordering measures for a limited period of time in order to avert that danger; such measures must be abrogated at the latest 18 months after going into effect. In particular, the FMA may issue administrative rulings (*Bescheide*) which

1. completely or partly prohibit withdrawals of capital and earnings as well as distributions of capital and earnings;
- 1a. authorise exceeding the eligibility limits of Article 23 para. 14 nos. 1 to 3;
2. appoint an expert supervisor (government commissioner) who is an attorney at law or external auditor; in the case of credit cooperatives, it is also possible to appoint auditors from cooperative auditing associations; the supervisor, who has all of the rights pursuant to para. 1 nos. 1 and 2, must
  - a) prohibit the credit institution from any transactions which might serve to exacerbate the danger mentioned above, and/or
  - b) in cases where the credit institution is completely or partly prohibited from continuing business/transactions, allow individual transactions which do not exacerbate the danger mentioned above;
3. completely or partly prohibit directors of the credit institution from managing the credit institution, with simultaneous notification of the body responsible for appointing the directors; the responsible body must re-appoint the corresponding number of directors within one month;

in order to be legally effective, such appointments require the consent of the FMA, which must refuse to grant consent if the newly appointed directors do not appear suitable for the purpose of averting the danger mentioned above;

4. completely or partly prohibit the continuation of business operations.

(2a) At the request of the supervisor appointed pursuant to para. 2 no. 2 or para. 3 (government commissioner), the FMA may appoint a deputy if and as long as this is necessary for important reasons, especially in cases where the supervisor is temporarily prevented from performing his/her duties. The provisions applicable to the supervisor also apply to the appointment of the supervisor as well as his/her rights and duties. Given the approval of the FMA, the supervisor (government commissioner) may employ persons with suitable professional qualifications where necessary in light of the scope and difficulty of the duties to be performed. The FMA's approval must name these persons specifically and must also be delivered to the relevant credit institution. These persons are to act upon the instructions of and on behalf of the supervisor (government commissioner) or his/her deputy.

(2b) The procedure pursuant to para. 2 is a reorganisation measure as defined in Article 2 of Directive 2001/24/EC. Articles 81 to 81m are applicable; in this context, the receivership procedure is considered a procedure pursuant to para. 2, and the FMA must issue a decree of appointment to the government commissioner. Article 83 paras. 4 to 9 are applicable; in this context, the receivership procedure is considered a procedure pursuant to para. 2, and the FMA is to act in lieu of the court.

(3) The FMA must obtain reports on suitable government commissioners from the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag*), from the Chamber of Professional Accountants and Tax Advisors (*Kammer der Wirtschaftstreuhänder*), from the cooperative auditing associations. Where a government commissioner pursuant to para. 2 no. 2 or a deputy pursuant to para. 2a is to be appointed and such an appointment not possible on the basis of those reports, the FMA must notify the bar association or chamber of professional accountants and tax advisors which is responsible for the credit institution's place of incorporation or the relevant cooperative auditing association so that the relevant organisation may name an attorney or external auditor with suitable professional qualifications for the position of government commissioner. In cases of imminent danger, the FMA may appoint

1. an attorney or
2. an external auditor

as a temporary government commissioner. This appointment will be abrogated once an attorney or external auditor has been appointed in accordance with the first sentence.

(4) In cases where a licensing requirement pursuant to Article 5 *para. 1 nos. 1 to 14* or pursuant to Article 5 para. 4 after the licence is issued, or where a credit institution violates the provisions of this federal act, the Savings Bank Act, the Building Society Act, the Regulation Implementing the Mortgage Bank Act and Mortgage Bond Act, the Mortgage Bank Act, the Mortgage Bond Act, the Act on Funded Bank Bonds, the Investment Fund Act, the Depository Act, the Participation Fund Act, the E-Money Act, the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons,

the Real Estate Investment Fund Act, the Financial Conglomerates Act, regulations issued on the basis of these federal acts, or an administrative ruling (*Bescheid*), the FMA must

1. instruct the credit institution on pain of penalties to restore legal compliance within a period of time which is appropriate in light of the circumstances;
2. in cases of repeated or continued violations, completely or partly prohibit the directors from managing the credit institution, unless this would be inappropriate based on the nature and severity of the violation and the restoration of legal compliance can be expected through repetition of the procedure pursuant to no. 1; in such cases, the initial penalty imposed must be enforced and the instruction repeated on pain of a higher penalty;
3. revoke the licence in cases where other measures pursuant to this federal act cannot ensure the functioning of the credit institution.

(4a) The FMA must, notwithstanding para. 4, impose a minimum capital requirement on the credit institution or group of credit institutions that is higher than the minimum capital requirement pursuant to Article 22 para. 1 to an extent appropriate and necessary for the limitation of risks arising from the banking transactions and banking operations if limitation of the risks arising from the banking transactions and banking operations of the credit institution or the group of credit institutions is inadequate (Articles 39 and 39a) and the proper capture and limitation of risks cannot be expected in the short term. The FMA must impose additional capital requirements in accordance with this paragraph immediately in cases where other measures pursuant to this federal act, with regard to the circumstances of this case, are not sufficient to ensure the proper capture and limitation of risks nor compliance with the legal regulations in the short term; in such case the FMA shall not be required to first proceed according to para. 4 no. 1.

(4b) Where a credit institution violates a material provision set forth in Article 22d para. 11 and Article 22f paras. 6 to 8 and 9, the FMA must, without prejudice to para. 4 and 4a, impose on the credit institution an adequate additional risk weight of at least 250% of the risk weight applicable to the securitisation positions concerned as set forth in Article 22f, and, if this is not inappropriate in view of the nature and severity of the violation, without prejudice to paras. 4 and 4a, the FMA must impose an additional risk weight, the aggregate risk weight of the securitisation position resulting from the imposition of additional risk weight not exceeding a maximum of 1,250%. When establishing the risk weight resulting from the imposition of the additional risk weight, the FMA must deduct the risk weight for securitisations pursuant to Article 22f para. 5 that would apply to these securitisations. In cases where the FMA first proceeds in accordance with para. 4 no. 1, it may impose additional risk weight in accordance with this paragraph immediately if the instruction is unsuccessful. In cases of continued violations, the FMA must impose an appropriate increase of the already imposed additional risk weight, taking into account the maximum permissible risk weight established in the first clause; the third and fourth clauses shall apply by analogy.

(4c) Without prejudice to para. 4, in the event of jeopardy to the financial and solvency conditions of the credit institution in the case of hybrid capital, the FMA must decree:

1. suspension of redemption for hybrid instruments;



2. cancellation of the payment of interest or dividends; the credit institution can substitute the payment of interest or dividends by core capital of at least the same amount and quality, according to the requirements of Article 23 para. 17 no. 4;

3. conversion of hybrid capital.

(5) Any and all measures ordered by the FMA pursuant to paras. 2 and 2a are to be suspended for the duration of a receivership procedure (Section XVII).

(6) The government commissioner is to be remunerated by the FMA with a fee (function fee) which is commensurate to the work involved in supervision and the expenses incurred for this purpose. The government commissioner is entitled to submit invoices for each previous quarter and after the termination of his/her activities. The FMA must effect remuneration immediately after reviewing the invoice.

(7) The FMA is entitled to inform the public of measures taken by the FMA pursuant to paras. 2, 3 and 4 by placing an announcement in the Official Gazette of *Wiener Zeitung* (Amtsblatt zur Wiener Zeitung), in a newspaper distributed throughout Austria, on the Internet, or by posting a bulletin at a suitable location on the business premises of the credit institution. However, measures pursuant to para. 4 no. 1 are only to be published where this is necessary for the purpose of informing the public in light of the nature and severity of the violation. These publication measures may be taken in full or in part. The party concerned by the publication can file a request to the FMA to verify the lawfulness of such publication by way of a procedure concluded with an administrative ruling (*bescheidmäßig*). In this case, the FMA shall notify the public of the initiation of such a procedure in the same way. If the investigation concludes that the publication was unlawful, the FMA shall correct the publication, or, at the request of the concerned party, revoke it or remove it from the internet. If a complaint against an administrative ruling pursuant to paras. 2, 3 or 4 is granted suspensive effect in a supreme court procedure, the FMA shall make this known in the same way. The publication shall be corrected, or, upon request of the concerned party, revoked or removed from the internet if the ruling is reversed.

(8) Credit institutions must inform the chairperson of the supervisory body immediately of all administrative rulings (*Bescheide*) issued by the FMA on the basis of the provisions set forth in Article 69.

(9) The FMA must convey administrative rulings (*Bescheide*) with which directors are completely or partly prohibited from managing the credit institution (para. 2 no. 3 and para. 4 no. 2) as well as any reversals of such measures to the Commercial Register Court for entry in the Commercial Register.

(10) In the case of representative offices of credit institutions incorporated in a Member State or in a third country, the FMA may obtain the information indicated in para. 1 nos. 1 to 3 as well as other information and have audit activities conducted in order to monitor compliance with Article 1 para. 1 and Article 73; para. 7 is applicable in this context. In cases where these provisions are violated, the FMA must, Article 98 para. 1 notwithstanding,

1. take the measures indicated in Article 15 in the case of credit institutions pursuant to Article 9;
2. take the measures indicated in Article 70 para. 4 nos. 1 and 2 in the case of credit institutions from third countries and inform the competent authority in the relevant credit institution's country of incorporation accordingly.

(11) In times of market liquidity stress and after consultation with the Oesterreichische Nationalbank, the FMA is authorised to temporarily suspend the requirements set forth in Article 22f paras. 3 and 4 by regulation, if this is in the national economic interest of a properly functioning banking industry and appears necessary and appropriate for the prevention of major disadvantages to the financial market. The validity of the temporary regulation shall be limited to a maximum of six months after its entry into force; if the danger of major disadvantages to the financial market persists after expiry of this time period, the FMA can renew the measure referred to in this paragraph for up to another six months respectively.

**Article 70a.** (1) In cases where the parent undertaking of a credit institution is a mixed-activity holding company, then the FMA is entitled, notwithstanding the powers conferred to the FMA on the basis of other provisions of this federal act, to request from the credit institution all information necessary for the purpose of supervision on the mixed-activity holding company as the parent undertaking and on its subsidiary undertakings at any time for the sake of ongoing supervision of credit institutions. Those undertakings must make all documents available to the credit institution and provide all information necessary in order for the credit institution to fulfil its obligation to provide information to the FMA.

(2) Notwithstanding the powers existing on the basis of other provisions in this federal act, the FMA may, in accordance with Article 70 para. 1 no. 3, instruct the Oesterreichische Nationalbank to obtain all information to be provided by the credit institution pursuant to para. 1 on site and to review the information provided; Article 70 para. 1 no. 3 (third sentence) and Article 71 are applicable in this context. It is also possible to instruct the bank auditors, the competent auditing associations, external auditors or other experts independent of the mixed-activity holding company to conduct the audit.

(3) *removed*

(4) In cases where the mixed-activity holding company or one of its subsidiary undertakings is incorporated in another Member State, the FMA must request that the competent authorities in the other Member State conduct the audit pursuant to para. 2.

(5) In cases where the parent undertaking of a credit institution is a mixed-activity holding company, then the FMA is entitled, notwithstanding the powers conferred to the FMA on the basis of other provisions of this federal act, to supervise the transactions between the credit institution, the mixed-activity holding company and its subsidiary undertakings. For this purpose, the credit institution must have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, so that the credit institution's transactions with the parent undertaking and its subsidiaries can be identified, measured, monitored and controlled appropriately. In this context, the credit institution must – beyond reports to the Major Loans Register pursuant to Article 75 – report material intra-group transactions, especially loans, guarantees, off-balance-sheet transactions, cost-sharing agreements, reinsurance transactions, capital investment transactions and transactions concerning own funds, to the FMA on at least a quarterly basis. Where these intra-group transactions pose a threat to a credit institution's financial position, the FMA will take appropriate measures.

**Article 71.** (1) Credit institutions must be informed of audits pursuant to Article 70 para. 1 nos. 3 and 4 upon the commencement of auditing activities. Where advance notice is not expected to frustrate the objective of the audit and advance notice is conducive to the simpler and faster performance of the audit due to organisational preparations on the part of the credit institutions, then the audit may also be announced in advance. In cases where branches, representative offices and undertakings in a group of credit institutions outside of Austria are audited, the competent authority in the host country is to be informed simultaneously at the latest of the intended audit unless individual consent has already been granted pursuant to para. 7. The auditors are to be provided with a written audit engagement and must voluntarily present proof of their identity as well as the audit engagement before beginning the audit.

(2) Credit institutions are to make the documents required for the audit available to the auditors, to allow them to inspect the bookkeeping records, documents and data media, and to provide information as requested. Credit institutions must grant the auditors access to the business premises at any time during usual business and working times. Article 60 para. 3 is applicable to the scope of information, presentation and inspection rights of the auditors and the obligation to make documents available in Austria.

- (3) The auditors may request the information and business documents required for the audit from
1. the directors;
  2. employees named by the directors;
  3. any person employed by the undertaking if the circumstances to be audited fall into that person's assigned area of responsibility; and
  4. the bank auditors.

(4) The credit institution provide the auditors with suitable spaces and tools for the purpose of carrying out the audit. Where data is entered or stored using data media, the credit institution must at its own expense provide the tools necessary to render the documents readable within a reasonable period of time and, where necessary, provide the required number of lasting copies which can be read without auxiliary tools.

(5) In the case of audits pursuant to Article 70 para. 1 no. 3, the auditors must consider the fact that every disturbance or hindrance of operations which is not absolutely necessary is to be avoided.

(6) The determinations made in the course of the audit must be recorded in writing, and the credit institution must be given the opportunity to submit its opinion.

(7) Audits of branches, representative offices and undertakings in the group of credit institutions not situated in Member States (Article 70 para. 1 no. 3) may only be carried out with the consent of the government in question. In the case of audits within the framework of cooperation with third countries pursuant to Article 77 para. 5 nos. 2 and 3, the consent of the competent authority in the third country in question is sufficient; this consent may also be granted in the form of agreements on cooperation between supervisory authorities pursuant to Article 77a.

(8) The provisions of paras. 1 to 8 above regarding the performance of audits of credit institutions apply in the same way to audits of undertakings within a group of credit institutions.

**Article 72.** (1) All authorities must assist the Federal Minister of Finance as well as the Oesterreichische Nationalbank in fulfilling their legal obligations pursuant to this federal act.

(2) Bundesrechenzentrum GmbH must cooperate in the conduct of business for which the Federal Ministry of Finance is responsible pursuant to this federal act where such cooperation is in the interest of simplicity, expedience or cost-effectiveness.

(3) In cases where Bundesrechenzentrum GmbH cooperates pursuant to para. 2, the Federal Minister of Finance must issue a regulation defining which areas are covered by this cooperation.

### **Notifications**

**Article 73.** (1) Credit institutions must notify the FMA of the following immediately and in writing, without waiting, in the case of a resolution being taken, for the subject of the resolution to take effect:

1. any changes in the articles of association or resolutions to dissolve the undertaking;
2. any changes in the conditions pursuant to Article 5 para. 1 nos. 6, 7, 10 and 13 with regard to existing directors;
3. any changes in the persons appointed as directors as well as compliance with Article 5 para. 1 nos. 6 to 11 and 13;
4. the opening, relocation, closure or temporary discontinuation of the business operations of the head office;
5. circumstances which make it clear to a prudent director that the ability to fulfil obligations is endangered;
6. the occurrence of insolvency or overindebtedness;
7. any expansion of the institution's business purpose;
8. any decrease in paid-up capital (Article 23 para. 3) or of participation capital with the obligation to pay dividends in arrears (Article 23 paras. 4 and 5);
9. any failure to comply with standards prescribed by this federal act pursuant to Articles 22 to 27 and 29, any by regulations or administrative rulings (*Bescheide*) issued on the basis of those provisions, for a duration of more than one month;
10. any withdrawal from the protection scheme;
11. the person(s) responsible for internal auditing as well as any changes in that (those) person(s);
12. the reduction of eligible capital due to principal and interest payments on short-term subordinated capital to less than 120% of the minimum capital requirement pursuant to Article 22 para. 1;
13. its withdrawal from the auditing association pursuant to Section 3 of the Act amending the Law on Cooperative Auditing Associations 1997 (*Genossenschaftsrevisionsrechtsänderungsgesetzes 1997 – GenRevRÄG 1997*; Federal Law Gazette I No. 127/1997) in cases where the credit institution is organised as a cooperative society or belongs to a cooperative auditing association on the basis of a submission pursuant to Article 92 (Article 8a Credit Act [*Kreditwesengesetz – KWG*], Federal Law Gazette No. 63/1979);

14. Any change in the identity, address or place of incorporation of the agents indicated in Article 4 para. 3 no. 7;
  15. the intention to use a risk classification organisation; this notification must include the participating credit institutions and the risk classification organisation's company name, place of incorporation, legal form, qualifying owners and directors as well as the methods to be developed by the organisation; likewise, the FMA must be notified immediately of any changes in this information; this notification may also be submitted by the risk classification organization itself on behalf of the participating credit institutions;
  16. the intention to use the Standardised Approach pursuant to Article 22 para. 5 no. 3;
  17. the intention to combine the Basic Indicator Approach with the Standardised Approach pursuant to Article 22m para. 2, including an indication of the reasons for the combined use of the two approaches and the schedule according to which the credit institution or group of credit institutions intends to calculate minimum capital requirements for operational risk pursuant to Article 22 para. 1 no. 4 entirely using the Standardised Approach;
  - 17a. the intention to use a Standardised Approach pursuant to Article 22k;
  18. the intention to combine the Advanced Measurement Approach with another approach pursuant to Article 22m para. 1, including an indication of the reasons for the combined use of the two approaches and the schedule according to which the credit institution or group of credit institutions intends to calculate minimum capital requirements for operational risk pursuant to Article 22 para. 1 no. 4 using the Advanced Measurement Approach for all transactions with the exception of an immaterial part of its business activities;
  19. the notifications pursuant to Article 27 para. 19 with the enclosure of the relevant documents.
- (2) Representative offices must report the following to the FMA:
1. the planned time of opening;
  2. the actual opening;
  3. the head of the representative office;
  4. the location;
  5. any changes in the information pursuant to nos. 1 to 4; and
  6. the closure of the representative office.

Before opening, representative offices of credit institutions from third countries must also provide the FMA with a notification from the competent authority in the relevant country of incorporation stating that the authority has no objections to the establishment or operation of the representative office. In addition, representative offices of credit institutions from third countries must notify the FMA of what banking transactions the credit institution conducts in its country of incorporation, who holds a qualifying participation in the credit institution and what activities are planned in Austria. Notwithstanding Article 98 para. 1 and Article 99 no. 11, the FMA must prohibit the operation of the representative office in cases where the declaration of no objection from the competent authority in the credit institution's country of incorporation is not presented, or where a declaration stating the contrary is issued at a later point in time, or where there is a substantiated reason to suspect that activities subject to licensing requirements are carried out in contravention of Article 1 para. 1, or where justified

objections exist that a danger pursuant to Article 20 para. 4 arises from the owners or that the credit institution objectively participates in transactions which serve the purpose of money laundering or terrorist financing. In cases where the FMA prohibits the operation of the representative office, the competent authority in the credit institution's country of incorporation must be informed simultaneously at the latest.

(3) The superordinate credit institution must notify the FMA immediately in writing of the name, legal form, place of incorporation and country of incorporation of a parent financial holding company or superordinate mixed-activity financial holding company as well as any changes in this information. The FMA must convey a list of financial holding companies to the European Commission and the competent authorities in Member States.

(4) Credit institutions must notify the FMA of the following immediately and in writing:

1. the criteria for including positions in the trading book as well as any changes in those criteria;
2. the model or models used to price options and to determine sensitivities (delta, gamma and vega factors) for the calculation of minimum capital requirements for commodities risk and foreign exchange risk pursuant to Article 22o para. 4; in particular, the procedures used to determine volatilities and other parameters must be notified.

(4a) Credit institutions must notify the FMA of the following immediately and in writing:

1. the criteria applied in the determination of qualifying assets; the FMA must report regularly to the Council of the European Union and the European Commission on the methods of valuing qualifying assets, in particular on the methods of assessing the liquidity of issues and the credit quality of issuers;
2. the methods of determining market prices;
3. the model or models used to price options and to determine sensitivities (delta, gamma and vega factors) for the calculation of general and specific position risks pursuant to Article 22o para. 2 nos. 1 to 4 and the other risks associated with options pursuant to Article 22o para. 2 no. 7; in particular, the procedures used to determine volatilities and other parameters must be notified.

(5) Credit institutions must notify the FMA immediately in writing of any case in which a counterparty does not fulfil its obligations in repurchase agreements, reverse repurchase agreements, or securities lending or borrowing transactions in the trading book; the FMA must process these notifications by automated means, entering at least the reporting credit institution, nature of the transaction, counterparty, reporting date and reason for the report; the FMA may submit a report in anonymised form on these notifications to the European Commission.

(6) *removed (Federal Law Gazette I No. 141/2006)*

(7) The superordinate credit institution pursuant to Article 30 para. 5 must notify the FMA immediately in writing of the contractual agreement establishing the obligation, the articles of association of the guarantee organisation or association, the subordinate credit institutions as well as any changes in the information subject to notification requirements.



## Electronic transmission

**Article 73a.** After consultation with the Oesterreichische Nationalbank, the FMA can stipulate by regulation that any notification, communication, information, apprising of and submittal pursuant to Article 9, para. 5, Article 10 paras. 2, 5 and 6, Article 11 para. 3 last clause, Article 13, para. 3, Article 20 para. 3, Article 21a para. 3, Article 21b para. 3 no. 4, Article 21c para. 3, Article 21d para. 3, Article 21e para. 4, Article 21f para. 7, Article 22o para. 4, Article 22q para. 3, Article 25 para. 10 no. 9, Article 28a para. 4, Article 63 para. 1, Article 70a para. 5, Article 73 para. 1 nos. 1 to 19, para. 2, para. 3, para. 4, para. 4a, para. 5 and para. 7, Article 93a para. 8 and Article 103e no. 8 in conjunction with no. 15 and pursuant to Article 2 para. 2 of the Regulation on the Protection of Money Held in Trust (*Mündelsicherheitsverordnung*), Federal Law Gazette No. 650/1993 as last amended by the regulation Federal Law Gazette II No. 219/2003, shall be made or provided only electronically and in compliance with specific formats, technical minimum requirements and procedures for transmission. In this context, the FMA shall be guided by the principles of economic viability and appropriateness and shall ensure availability of the data in electronic form to the FMA and the OeNB at all times and that supervisory interests are not compromised. Moreover, in this regulation, the FMA can enable bank auditors for certificates and reports to participate in the electronic data transmission system in accordance with the first clause of Article 63 para. 1c and Article 63 para. 3. The FMA shall take the appropriate measures to ensure that the parties with reporting responsibilities or, if appropriate, their representatives with reporting responsibilities can verify the accuracy and completeness of the data submitted by them or their responsible representatives in the system, for an appropriate period of time.

## Reports

**Article 74.** (1) Credit institutions and superordinate credit institutions must submit an Asset, Income and Risk Statement according to the layout set forth in the regulation issued pursuant to para. 7 to the FMA immediately after the end of each calendar quarter. In this context,

1. the asset and income statement must contain in particular information on the balance sheet, on off-balance-sheet items, on the income statement and on obligatory disclosures in the notes to the financial statements; superordinate credit institutions must prepare this information for their groups pursuant to Article 59 or Article 59a;
2. the risk statement must contain information which enables the assessment and monitoring of compliance with risk-specific due diligence obligations pursuant to Articles 39 and 39a; this information must be prepared by the superordinate credit institution. Superordinate credit institutions must prepare the reports set forth in this paragraph for the fully consolidated foreign credit institutions in the audited consolidated financial statements pursuant to Article 59 and Article 59a.

(2) Credit institutions must submit reports to the FMA on compliance with the regulatory standards pursuant to Articles 22 to 22q, 23 to 25, 27 and 29 immediately after the end of each calendar month. These reports must comprise information on monitoring compliance with these

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regulatory standards as well as the information relevant to their derivation. Superordinate credit institutions must prepare these reports on behalf of their groups of credit institutions.

(3) In the reports pursuant to para. 2, credit institutions must also indicate the following:

1. with respect to large exposures pursuant to Article 27
  - a) the amount and exposure value of each large exposure, calculated in accordance with Article 27 para. 2,
  - b) the type of collateral and personal securities used, if applicable,
  - c) the permits according to lit. a after consideration of the effects of risk mitigation techniques pursuant to Article 27 paras. 6, 10, and 13,
  - d) the client or the group of connected clients, with which the exposure is taken, and the names of the legal entities to be included in the group of connected clients,
  - e) provided the assessment basis for the credit risk is calculated by means of an internal rating-based approach, the twenty largest exposures pursuant to paras. 2 and 3 on a consolidated basis, regardless of the exposures excluded from the implementation of Article 27 paras. 15 and 16,
  - f) for groups of connected clients and when implementing the allocation options of Article 27 para. 13 the individual parties subject to obligations (third parties, securities debtors) separately.
2. the amount of open positions with foreign exchange risk pursuant to Article 22o para. 2 no. 12 in accordance with the layout defined for these positions in Article 22o para. 5 on the basis of the power to issue regulations;
3. the determination of compliance with provisions pertaining to liquidity based on residual maturities;
4. information on the trading book pursuant to Article 22n. Superordinate credit institutions must prepare the reports pursuant to nos. 1, 2 and 4 on behalf of their groups of credit institutions.

(4) In cases where they calculate the minimum capital requirement for operational risks using the Standardised Approach pursuant to Article 22k or using the Advanced Measurement Approach pursuant to Article 22l, superordinate credit institutions and credit institutions which are not subordinate institutions as defined in Article 30 must submit a report on the loss data collected in the course of the preceding year to the FMA immediately after the end of each calendar year. These credit institutions must comprise the threshold for loss entries which is used in each case and is to be defined internally by the institution.

(5) Credit institutions must submit reports to the FMA on company-related master data as well as the master data of the fully consolidated foreign credit institutions in the audited consolidated financial statements pursuant to Article 59 and Article 59a immediately after the end of each calendar half-year. Regardless of this requirement, credit institutions must report any changes in master data immediately. The institution's number of employees need only be reported as of the end of each year, at the latest by January 31st of the following year.

(6) The Oesterreichische Nationalbank is to provide expert opinions on the reports pursuant to para. 2 and the regulations issued in this regard by the FMA.

(7) The FMA must issue a regulation defining the layout of the reports pursuant to paras. 1 to 5. In this context, the FMA must consider the need for meaningful reporting for the purpose of ongoing monitoring of credit institutions and groups of credit institutions. The FMA may issue a regulation stipulating that individual items in para. 2 need only be reported on a quarterly basis. In issuing this regulation, the FMA must consider the national economic interest in maintaining an efficient banking system. As long as this does not hinder the FMA in the performance of its duties pursuant to this or other federal acts, the FMA may issue a regulation stipulating that the reports pursuant to paras. 1 to 5 are to be submitted exclusively to the Oesterreichische Nationalbank. Regulations issued by the FMA in accordance with this paragraph require the consent of the Federal Minister of Finance.

(8) The reports pursuant to paras. 1 to 5 must be submitted electronically and in a standardized format. These submissions must meet certain minimum requirements to be defined by FMA after consultation with the Oesterreichische Nationalbank.

### Reports to the Major Loans Register

**Article 75.** (1) Every credit institution whose exposures to a single obligor under no. 1 after deduction of short-term interbank exposures exceed the total amount of EUR 350,000 or the equivalent in foreign currency must report the following to the Oesterreichische Nationalbank on a monthly basis:

1. the amount of unweighted exposures in the form of asset items, off-balance-sheet transactions pursuant to Annex 1 to Article 22 and derivatives pursuant to Annex 2 to Article 22 as well as their exposure value vis-à-vis the obligor from transactions pursuant to Article 1 para. 1 nos. 3, 4, 8 and 12 and Article 1 para. 2 no. 1, as well as any securitised exposures to that obligor;
2. the name, address and other information necessary to identify the obligor with certainty;
3. the amount and exposure value of other exposures to the obligor in the form of asset items, off-balance-sheet transactions pursuant to Annex 1 to Article 22, derivative instruments pursuant to Annex 2 to Article 22, and the equity shares in the obligor to be reported;
4. the approach chosen for the calculation of capital requirements for credit risk and, depending on the approach chosen, the rating system, credit rating, the weighted exposure amounts calculated by the credit institution, the expected loss from the exposures pursuant to nos. 1 and 3, the value of the collateral, the amount of the specific value adjustment, the probability of default and past due exposures;
5. the group of connected customers pursuant to Article 27 para. 11 nos. 1 to 3 and para. 12 to which the obligor belongs; in this context, groups of connected customers pursuant to Article 27 para. 11 no. 1 of which the lending credit institution is the group parent as well as relationships pursuant to Article 27 para. 11 no. 2 may be disregarded; the scope of the group for the purposes of the Major Loans Register is to be defined in an FMA regulation pursuant to para. 6 and may in particular be confined to customers who are borrowers of the reporting institution; moreover, it is possible to differentiate according to the country of incorporation of each member of a group of connected customers.

(2) Para. 1 is applicable to financial institutions with the restriction that the reporting obligation pursuant to no. 3, with regard to derivatives pursuant to Annex 2 to Article 22, and pursuant to no. 5 is omitted and the report pursuant to no. 4 need only contain the value of the collateral, the amount of the specific value adjustment, the credit rating and the rating system.

(3) Para. 1 is applicable to contract insurance undertakings with the restriction that such undertakings need only indicate one-off loans, credit lines, lending commitments and securitized exposures in the reports pursuant to no. 1 and that such undertakings are exempt from the reporting obligations pursuant to no. 3, no. 4 and no. 5.

(4) The internal principles and rules applying to the data to be reported pursuant to para. 1 no. 4 must be reported to the Oesterreichische Nationalbank in the initial report and upon any later changes in those principles or rules. Changes in the identification data of the obligor (para. 1 no. 2) or the composition of the group of connected customers (para. 1 no. 5) must be reported to the Oesterreichische Nationalbank immediately; where necessary for the purposes of the Major Loans Register, the Oesterreichische Nationalbank is to be provided with additional information upon request.

(5) The Oesterreichische Nationalbank must ensure that the FMA has access at any time to the data reported pursuant to para. 1 and to comparable registers in the Member States in the context of the reciprocal application of para. 8 for the Major Loans Register. At the request of

1. a credit institution or financial institution;
2. a contract insurance undertaking;
3. the auditing unit of the Savings Bank Auditing Association;
4. the cooperative auditing associations;
5. the appointed bank auditors; and
6. the protection schemes,

the Oesterreichische Nationalbank must provide the above-mentioned parties with the information on an obligor pursuant to para. 1 no. 2, on the amount of the exposures to an obligor reported pursuant to para. 1 no. 1 and no. 3 not including the derivative instruments pursuant to Annex 2 to Article 22 as well as the number of creditors which have submitted reports to the Major Loans Register regarding that obligor. Upon request, the Oesterreichische Nationalbank must also communicate these data to the parties entitled to submit queries pursuant to nos. 1 to 6 with regard to obligor groups which constitute groups of connected customers in accordance with para. 1 no. 5. Queries from parties entitled to submit queries pursuant to nos. 1 and 2 must be submitted exclusively by electronic means, and responses to such queries must be communicated by means of secure electronic data transmission.

(6) The FMA must issue a regulation defining the layout prescribed for reports pursuant to para. 1 with regard to the exposure types, time, scope and form of the reports as well as the information to be made available by the Oesterreichische Nationalbank for such reports; in issuing this regulation, the FMA must consider the national economic interest in maintaining an efficient banking system.

(7) The FMA may provide the competent authority in a Member State with information as defined in para. 5 if the following requirements are fulfilled:

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1. a comparable major loans register is also maintained in the Member State in question;
2. it is ensured that the Member State in question will provide the FMA with information to the same extent;
3. the data is only used for the purposes of banking supervision; and
4. the information provided is subject to professional secrecy pursuant to Article 44 of Directive 2006/48/EC.

These reports may also be passed on via the European Central Bank. The FMA may instruct the Oesterreichische Nationalbank to provide such reports.

(8) In the case of reciprocity, the FMA may issue a regulation instructing the Oesterreichische Nationalbank to make the data contained in the Major Loans Register available to comparable registers in the Member States to the extent that such data are available to the parties entitled to submit queries pursuant to para. 5 nos. 1 to 6. A register is to be considered comparable if the information system is limited to data on large-scale customers, if access to the information system is restricted to supervisory authorities and institutions comparable to the parties entitled to submit queries pursuant to para. 5, and if the purpose of the information system is restricted to the exercise of financial market supervision or the determination of an obligor's degree of indebtedness. In the FMA regulation, the registers to which data may be transmitted must be indicated by name; moreover, the regulation must also specify the technical and organisational procedures to be used for communication.

(9) The reports pursuant to para. 1 and the notifications pursuant to para. 4 (first sentence) must be transmitted by electronic means and in a standardised format. This transmission must meet certain minimum requirements to be defined by FMA after consultation with the Oesterreichische Nationalbank.

### **State Commissioner**

**Article 76.** (1) Unless otherwise specified by law, the Federal Minister of Finance must appoint a state commissioner and a deputy state commissioner for a maximum term of five years in the case of credit institutions whose total assets exceed EUR 1 billion; re-appointments are permissible in this context. The state commissioners and their deputies are to act as functionaries of the FMA and, in this capacity, are exclusively subject to the instructions of the FMA.

(2) The persons appointed to the position of state commissioner and deputy state commissioner must be legally competent natural persons with their principal place of residence in the EEA who

1. neither belong to a governing body of the credit institution or an undertaking in the group of credit institutions in question, nor have a relationship of dependence on or competition with the credit institution or one of those undertakings;
2. possess the required expertise at all times on the basis of their education, their professional background and the professional or commercial activities carried out during their term of office; and

3. who have not yet reached the respective pensionable age as defined by federal law and actively carry out professional or commercial activities insofar as they do not receive pension benefits from other activities previously carried out as their main profession.

(3) The state commissioner or deputy state commissioner must be dismissed from these positions by the Federal Minister of Finance in cases where the requirements for appointment pursuant to para. 2 are no longer met or it can be assumed that they will no longer fulfil their duties properly. The FMA must communicate facts relevant to the appointment and dismissal of state commissioners, especially information pursuant to para. 1 and pursuant to Articles 6, 7, 21 and 92 to the Federal Minister of Finance immediately.

(4) The state commissioner and deputy state commissioner must be invited by the credit institution in a timely manner to the general meetings and any other meetings of the members, to the meetings of the supervisory board, of the audit committees and of executive committees of the supervisory board. Upon request, they must be allowed to speak at any time. All written records of the meetings of the bodies indicated above must be conveyed to the state commissioner and deputy state commissioner.

(5) The state commissioner, or in cases where the state commissioner cannot do so, the deputy state commissioner, must immediately raise objections to resolutions of the bodies indicated in para. 4 which they consider to violate legal or other provisions or administrative rulings (*Bescheide*) of the Federal Minister of Finance or the FMA, and report to the FMA accordingly. In such objections, they must indicate the provisions which, in their opinion, are violated by the resolution. Such objections postpone the effectiveness of the resolution until a decision is issued by the supervisory authority. Within one week from the time at which the objection is raised, the credit institution may request a decision on the part of the FMA. If no decision is made within one week of receipt of this request, the objection is to be rendered ineffective. If the objection is confirmed, then the execution of the resolution is not permissible.

(6) Resolutions of a body indicated in para. 4 which are made outside of a meeting or outside of Austria must be communicated to the state commissioner and the deputy state commissioner immediately. In such cases, the state commissioner, or in cases where the state commissioner cannot do so, the deputy state commissioner, may only raise an objection in writing within two banking days after the delivery of the resolution.

(7) The state commissioner and deputy state commissioner have the right to inspect the documents and data media of the credit institution to the extent necessary in order to fulfil the duties set forth in para. 5. Documents made available to participants in meetings of the bodies indicated in para. 4 must be conveyed to the participants at the latest two banking days before the meeting.

(8) The state commissioner and deputy state commissioner must report facts which become known to them and on the basis of which the credit institution's fulfilment of its obligations to creditors and especially the security of the assets entrusted to the credit institution are no longer ensured to the FMA immediately and submit a written report on their activities on an annual basis.

(9) The state commissioner and deputy state commissioner are to be remunerated by the Federal Minister of Finance with a fee (function fee) which is commensurate to the work involved in



supervision and the expenses incurred for this purpose. An annual lump sum (supervision fee) to be determined by and paid to the Federal Ministry of Finance must be charged to each credit institution in which a state commissioner and deputy state commissioner have been appointed. The supervision fee must be in reasonable proportion to the expenses associated with supervision.

## International Cooperation and Data Processing

**Article 77.** (1) The FMA may provide competent authorities outside of Austria with official information if

1. public order, other essential interests of the Republic of Austria, banking secrecy or confidentiality obligations under tax law (Article 48 Federal Tax Code) are not violated by such provision of information;
2. it is ensured that the government requesting information would fulfil a request of the same nature from Austria; and
3. an FMA request for information of a similar nature would be in line with the objectives of this federal act.

(2) The FMA may obtain information on the activities of Austrian credit institutions outside of Austria and the situation of foreign credit institutions whose activities may have an effect on the Austrian banking system at any time if this is necessary in the national economic interest in maintaining an efficient banking system or in the interest of creditor protection.

(3) The provisions of paras. 1 and 2 are only applicable where not stipulated otherwise in paras. 5 to 7 or in intergovernmental agreements.

(4) The FMA is entitled to the conventional and automated collection and processing of data as specified in the Federal Act Concerning the Protection of Personal Data 2000 (*Datenschutzgesetz 2000 – DSG 2000*; Federal Law Gazette I No. 165/1999) where this is within the FMA's area of responsibility pursuant to this federal act; this includes:

1. Licences and the information/circumstances relevant to the issuance of licences;
2. management, administrative and accounting-related organisation as well as internal controls and audits;
3. Branches and the exercise of the freedom to provide services;
4. Asset and liability items as well as income statement items;
5. Off-balance-sheet transactions;
6. Derivatives;
7. Positions included in the consolidation of price risk, liquidity risk, interest rate risk or securities risk;
8. Solvency and own funds;
9. Liquidity;
10. foreign exchange positions;
11. Large exposures;
12. qualifying participations pursuant to Article 29;

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13. Consolidation;
14. annual financial statements, including the notes to the financial statements and the annual report;
15. reports pursuant to Article 74 para. 1, 2 and 4;
16. Major Loans Register and comparable registers abroad;
17. deposit guarantee and investor compensation;
18. measures pursuant to Article 70 para. 2, the occurrence of overindebtedness or insolvency, receivership, bankruptcy and composition;
19. reports received from competent authorities in Member States and from those third countries with which the Council of the European Union has concluded an agreement in application of Article 39 of Directive 2006/48/EC within the framework of cooperation according to the provisions of directives or the agreements indicated in para. 5;
20. information provided pursuant to para. 2 or in accordance with an intergovernmental agreement pursuant to Article 77a.

(5) The provision of information and documents, including the communication of data pursuant to para. 4, is permissible in the context of administrative assistance and to

1. competent authorities in Member States (Article 2 no. 5);
2. competent authorities in third countries with which the Council of the European Union has concluded an agreement in application of Article 39 of Directive 2006/48/EC;
3. competent authorities in other third countries where cooperation is also necessary in the interest of Austrian banking supervision and is in line with international standards.
4. central banks of the European System of Central Banks and other bodies in the Member States with a similar function in their capacity as monetary authorities when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payment, clearing and settlement systems, and the safeguarding of stability of the financial system;
5. finance ministries of the Member States;
6. Committee of the European Banking Supervisors (CEBS).

The exchange of information with the competent authorities pursuant to nos. 1 to 3 must serve the purpose of fulfilling the duties of the competent authorities in accordance with Article 44 para. 2 and Article 129 and Articles 139 to 142 of Directive 2006/48/EC or Article 11 para. 1 of Directive 2002/87/EC. The exchange of information with the competent authorities pursuant to nos. 4 and 5 is only permissible if this is necessary in situations of crisis pursuant to Article 130 of Directive 2006/48/EC, and pursuant to no. 5 only to the extent the information is relevant for the purposes of Article 130. The exchange of information with the competent authorities pursuant to nos. 2 and 3 must serve the purpose of fulfilling the supervisory duties of the competent authorities in accordance with Article 46 of Directive 2006/48/EC, subject to requirements of professional secrecy equivalent to those defined in Article 44 para. 1 of Directive 2006/48/EC. The exchange of information pursuant to no. 6 may take place only subject to Articles 44 and 45 of Directive 2006/48/EC and for the purpose of fulfilling supervisory duties pursuant to Article 77b para. 5. The FMA may only pass on information

pursuant to para. 4 no. 19 with the express permission of the competent authority which communicated the information in question.

(6) If the FMA is requested by a competent authority in a Member State of a third country pursuant to para. 5 no. 2 or 3 to verify information available to that authority on

1. a credit institution;
2. a financial holding company;
3. a financial institution;
4. an investment firm;
5. an ancillary banking services undertaking;
6. a mixed-activity holding company;
7. a subsidiary of one of the undertakings listed in nos. 1 to 6; or
8. a mixed-activity financial holding company;

incorporated in Austria, then the FMA is empowered to have the verification conducted by the competent authority in the Member State or the third country, to request that other authorities conduct the verification in the context of administrative assistance in application of Article 72 para. 1, or to delegate the review to the Oesterreichische Nationalbank if the requirements pursuant to Article 70 para. 1 no. 3 are fulfilled. Article 71 is applicable in this context. It is also possible to instruct external auditors, the bank auditor, the competent auditing associations or other experts who are independent of the undertaking in question to carry out the verification. The performance of the verification by the competent authority in a third country may only be permitted for the purpose of fulfilling the supervisory duties indicated in para. 5 and with due adherence to professional secrecy requirements. If the authority which made the request does not carry out the verification itself, it may participate in the verification if it so wishes.

(6a) In crisis situations which have an effect on financial stability or the stability of a credit institution or group of credit institutions, and in cases of imminent danger, the FMA may omit consultation with the other competent authorities; in such cases, the FMA must immediately inform the other competent authorities of the decision made.

(7) If the competent authorities

1. of the Member State or
2. of the third country pursuant to para. 5 no. 2 or 3

in which the parent undertaking is incorporated do not exercise supervision on a consolidated basis themselves, official information may still be provided and agreements pursuant to Article 77a concluded if information is passed on to the authorities which exercise supervision on a consolidated basis. However, the communication of such information and information pursuant to Article 77a para. 3 no. 2 is only permissible if this serves the exclusive purposes of consolidated supervision and professional secrecy requirements equivalent to those defined in Article 44 (1) of Directive 2006/48/EC apply.

(8) Where an emergency situation, including adverse developments in financial markets, arises, which may endanger market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or significant branches (Article 18) are

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established, the FMA shall, as consolidating supervisor, immediately alert the authorities referred to in para. 5 nos. 1, 4 and 5, and shall communicate all information that is essential for the pursuance of their tasks.

(9) If the Oesterreichische Nationalbank becomes aware of an emergency situation or a threatening economic development pursuant to Article 77 para. 8, it shall inform the FMA thereof immediately.

**Article 77a.** (1) Upon the joint suggestion of the FMA and the Oesterreichische Nationalbank, the Federal Minister of Finance may conclude the following agreements with competent authorities with regard to the procedure applied in the cooperation with the FMA and the Oesterreichische Nationalbank in the performance of their duties of monitoring and supervising credit institutions pursuant to Articles 69 to 71, 77, and 77b if the Federal Minister of Finance is empowered to conclude agreements pursuant to Article 66 para. 2 Federal Constitution Act (*Bundes-Verfassungsgesetz – BVG*):

1. agreements with the competent authorities of other Member States; in particular, these agreements may govern the delegation of additional duties pursuant to Article 131 of Directive 2006/48/EC to the central competent supervisory authority as well as cooperation procedures, especially pursuant to Article 21g and Article 77c.
2. agreements with the competent authorities of third countries pursuant to Article 77 para. 5 nos. 2 and 3 where the exchange of information with these competent authorities serves the purpose of fulfilling the supervisory duties of the competent authorities in accordance with Article 46 of Directive 2006/48/EC, subject to requirements of professional secrecy equivalent to those defined in Article 44 para. 1 of Directive 2006/48/EC.

(2) The agreements pursuant to para. 1 no. 1 must in particular govern the FMA's cooperation with the competent authorities of the Member States with regard to the exchange of information pursuant to Articles 42, 44 para. 2, 131a and 139 to 142 of Directive 2006/48/EC or Article 11 para. 1 of Directive 2002/87/EC.

(3) The agreements pursuant to para. 1 no. 2 are to govern the following in particular:

1. the receipt by the FMA of the information which is necessary for the supervision, on the basis of their consolidated financial situations, of credit institutions or financial holding companies which are situated in Austria and which have as a subsidiary a credit institution or financial institution situated in a third country or hold participations in such institutions;
2. the information from the competent authorities of third countries which is necessary for the supervision of parent undertakings which are incorporated in those third countries and which have as a subsidiary a credit institution or subsidiary financial institution situated in Austria or hold participations in such institutions; and
3. the requirements and the permissibility of audits of undertakings supervised on a consolidated basis in a signatory country which are affiliated with a credit institution or a financial holding company incorporated in another signatory country by the competent authority of the latter signatory country.

(4) Where the Council of the European Union has concluded a framework agreement with third countries in application of Article 39 of Directive 2006/48/EC, the principles contained in such an agreement must be taken into account in the conclusion of agreements pursuant to para. 3.

**Article 77b.** (1) As the consolidating supervisory authority (Article 2 no. 9c), the FMA shall establish Colleges of Supervisors under its presidency for the purpose of fulfilling the duties set forth in Articles 129 and 130 para. 1 of Directive 2006/48/EC. In this context, the FMA shall ensure the appropriate coordination and cooperation of the respective competent authorities of third countries, where required. The modalities for the establishment and the operating principles of the Colleges of Supervisors shall be established after consultation with the competent authorities concerned pursuant to Article 77a.

(2) As the consolidating supervisory authority, the FMA shall decide which other competent authorities and institutions pursuant to para. 3 shall participate in a meeting or an activity of the College of Supervisors. In this decision, the FMA must take into account the relevance of the supervisory activity to be planned or coordinated for the authorities concerned, in particular the possible effects on the financial stability of the Member States concerned pursuant to Article 69 para. 4 and the duties pursuant to Article 42a para. 2 of Directive 2006/48/EC. The FMA shall provide all the members of the College of Supervisors with timely, constant and full information on the following:

1. the organisation of the meetings of the College of Supervisors,
2. the main issues to be discussed and the intended activities,
3. the procedure determined in these meetings and the measures implemented.

(3) The following parties may participate in a College of Supervisors, subject to the FMA's decision as the consolidating supervisory authority:

1. competent authorities of the Member States that are responsible for the supervision of credit institutions subordinate to an EEA parent credit institution or an EEA parent financial holding company;
2. competent authorities of a hosting Member State, in which significant subsidiaries have been established;
3. the Oesterreichische Nationalbank and other central banks of the Member States pursuant to nos. 1 and 2;
4. competent authorities of third countries provided they are subject to requirements of professional secrecy equivalent to those defined in Article 44 para. 1 of Directive 2006/48/EC and that such cooperation serves the fulfilment of their supervisory duties.

(4) The FMA shall cooperate with the competent authorities present in the Colleges of Supervisors. In the Colleges of Supervisors, the structure of the following duties shall be determined in cooperation with the other competent authorities:

1. exchanging information;
2. agreeing on the voluntary entrustment of tasks and voluntary delegation of responsibilities, where appropriate;
3. determining supervisory examination programmes based on the risk assessment of the group of credit institutions in accordance with Article 124 of Directive 2006/48/EC;

4. avoiding unnecessary duplication of supervisory requirements, in particular in relation to the information requests referred to in Article 130 para. 2 and Article 132 para. 2 of Directive 2006/48/EC in order to increase the efficiency of supervision;
5. consistently applying the prudential requirements under Directive 2006/48/EC across all companies in a group of credit institutions without prejudice to the options and discretions available in this Directive and Directive 2006/49/EC;
6. applying Article 129 para. 1 lit. c of Directive 2006/48/EC taking into account international standards in the area of cooperation with the competent authorities and the preparation for situations of crisis.

(5) The FMA shall keep the Committee of European Banking Supervisors (CEBS) informed on the activities of the Colleges of Supervisors, over which it presides, both in normal situations and in situations of crisis and communicate all information to the Committee that is of particular relevance for the convergence of supervisory activities, subject to Article 77 para. 5.

### **Cross-Border Decision-Making Procedure**

**Article 77c.** (1) The FMA shall assess the appropriateness of the capital requirement of a group of credit institutions annually in cooperation with the other competent authorities responsible for supervising subordinate credit institutions incorporated in other Member States and to decide, in coordination with these authorities, on the application of measures based on the assessment pursuant to Article 69 paras. 2 and 3 at the consolidated level and pursuant to Article 70 para. 4a.

(2) The FMA as consolidating supervisory authority shall provide a report to the other competent authorities with a risk assessment of the group of credit institutions based on its supervisory activity pursuant to Article 69 paras. 2 and 3 and to decide on the measures mentioned in para. 1 within a period of four months and in coordination with these authorities. The joint decision shall adequately take into account the risk assessment of the subordinate institutions incorporated in other Member States carried out by the other competent authorities pursuant to Article 123 and Article 124 of Directive 2006/48/EC. The joint decision shall be presented in a document with a full statement of the underlying reasons and the administrative ruling (*bescheidmäßig*) taken by the FMA as consolidating supervisory authority shall be served on the superordinate credit institution.

(3) A joint decision sent to the EEA parent credit institution pursuant to para. 2 by a consolidating supervisory authority of another Member State is to be considered effective for subordinate institutions in Austria as soon as the joint decision has been delivered to the EEA parent credit institution and the latter has informed its subordinate institutions, but not before the administrative ruling (*Bescheid*) becomes effective in the country of establishment of the EEA parent credit institution.

(4) In case of disagreement between the competent authorities within the time period set out in para. 2, the FMA as consolidating supervisory authority can consult the Committee of European Banking Supervisors (CEBS). At the request of one of the other competent authorities during the same time period, the FMA as consolidating supervisory authority shall consult the Committee. If the Committee was consulted, the FMA shall accommodate its opinion in its decisions in the cases



pursuant to paras. 2, 5, and 6 and to provide reasons for any significant deviation therefrom in the decision.

(5) If no joint decision is arrived at within the time period given in para. 2, the FMA as consolidating supervisory authority shall decide on the application of measures to the group of credit institutions at the consolidated level pursuant to Article 69 paras. 2 and 3 and Article 70 para. 4a taking into account the views and reservations expressed by the competent authorities and the risk assessments with regard to the subordinate institutions incorporated in other Member States performed during the time of the coordination process pursuant to para. 2; where necessary the opinion pursuant to para. 4 shall be taken account of. The decisions of the FMA as consolidating supervisory authority and the decisions of the other competent authorities shall be presented in a document containing a full justification and shall take into account the risk assessments, views and reservations performed and expressed by the other competent authorities during the time period referred to in para. 2. The FMA shall transmit this document to all the competent authorities concerned and shall serve the administrative ruling on the superordinate credit institution. With its delivery to the superordinate credit institution incorporated in Austria, the administrative ruling (*bescheidmäßig*) shall be considered delivered to all members of the group of credit institutions concerned. The superordinate credit institution incorporated in Austria shall notify all its subordinate institutions of the ruling immediately. The decision shall apply directly to subordinated institutions based in Austria.

(6) When a decision pursuant to Article 129 para. 3 fourth subparagraph of Directive 2006/48/EC is taken by another competent authority (consolidating supervisory authority), the FMA shall decide on the application of measures pursuant to Article 69 paras. 2 and 3 and Article 70 para. 4a to the institutions subordinate to the EEA parent credit institution incorporated in Austria at an individual or partially consolidated level, appropriately taking into account the views and reservations of the consolidating supervisory authority. The FMA shall send a copy of the administrative ruling (*Bescheid*) to the consolidating supervisory authority for the purposes of Article 129 para. 3 sixth subparagraph of Directive 2006/48/EC.

(7) A decision taken by a consolidating supervisory authority under the laws of another Member State pursuant to Article 129 para. 3 fourth subparagraph of Directive 2006/48/EC is to be considered effective for subordinate institutions incorporated in Austria as soon as the decision of the consolidating supervisory authority incorporated in another Member State has been delivered to the EEA parent credit institution and it has informed its subordinate institutions thereof, but not before the administrative ruling (*Bescheid*) takes effect in the country of establishment of the EEA parent credit institution.

(8) A new decision pursuant to para. 2 regarding the application of Article 136 para. 2 of Directive 2006/48/EC shall be required, in any case if, in exceptional circumstances, another competent authority has submitted a written and fully reasoned request for a new decision to the FMA as consolidating supervisory authority; in such case the FMA can carry out the procedure with the participation of the requesting competent authorities only.

## **XV. Moratorium and International Sanctions**

**Article 78.** (1) In cases where multiple credit institutions experience distress due to events which can be attributed to general political or economic developments, and where this endangers the overall economy, especially with regard to Article 69 para. 1 (last half sentence) or the maintenance of a functioning payments system, the federal government may issue a regulation stipulating that all credit institutions

1. throughout Austria or
2. in a certain region of Austria

must be closed temporarily for payment transactions with their customers and must not carry out or accept any payments or funds transfers.

(2) Restrictions pursuant to para. 1 may also be decreed for banking transactions of a specific type or of a certain scope.

(3) Regulations pursuant to para. 1 are to expire no later than six months after going into effect.

(4) Where the federal government has resolved to issue a regulation pursuant to para. 1, in cases of imminent danger the FMA may order the credit institutions concerned not to carry out or accept payments or funds transfers until the regulation goes into effect. This order must be published immediately in the Official Gazette of the *Wiener Zeitung* and will expire at the latest on the third banking day after its publication.

(5) During the validity period of regulations pursuant to para. 1 and of orders pursuant to para. 4, Articles 86 paras. 1, 3, 4 and 5 as well as Article 87 para. 1 are applicable to the credit institutions concerned.

(6) The provisions of paras. 1 to 5 do not affect the applicability of the Bankruptcy Code and of the provisions governing receivership set forth in this federal act.

(7) Where necessary for the purpose of fulfilling United Nations decisions which are compulsory under public international law, the federal government is empowered, with the consent of the Main Committee of the National Council, to issue a regulation prohibiting disposals over accounts which are held with credit institutions and

1. are the property of government authorities or other government bodies in a certain country, or of undertakings incorporated in a certain country; or
2. are the property of undertakings which are financially, organisationally or otherwise economically controlled by the authorities, bodies or undertakings indicated in no. 1. Where disputes regarding these conditions arise between the credit institution and the account holder, the regulation may stipulate that the account holder is to furnish evidence indicating that these conditions are not met in cases where circumstances in the account holder's sphere are concerned and thus the credit institution cannot be expected to carry out the corresponding investigations.

(8) In cooperation with the Main Committee of the National Council, the federal government must issue a regulation designating as non-cooperative countries and territories those countries which do not take the measures against money laundering necessary according to international standards in

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their territories or jurisdictions. In particular, a violation of international standards is to be assumed in cases where the Council of the European Union or the Financial Action Task Force on Money Laundering have adopted resolutions to this effect.

(9) In connection with non-cooperative countries and territories, the following provisions apply:

1. Unless proven otherwise, persons with their place of incorporation or residence in a noncooperative country or territory are considered in any case not to meet the requirements for the sound and prudent management of a credit institution.
2. A license pursuant to Article 4 must not be issued in cases where one or more persons who hold a qualifying participation in the undertaking submitting the application have their place of incorporation or residence in a non-cooperative country or territory, unless the undertaking submitting the application demonstrates that the credit institution will not be used for the purpose of money laundering and will not conduct transactions in violation of United Nations decisions which are compulsory under public international law.
3. The FMA must prohibit the acquisition of a qualifying participation in a credit institution pursuant to Article 20 para. 2 by persons whose place of incorporation or residence is in a non-cooperative country or territory.
4. The identity of a customer whose place of incorporation or residence is in a non-cooperative country or territory may be ascertained pursuant to Article 40 only by the customer appearing in person at the credit institution or financial institution and presenting an original official photo identification document; for transactions carried out on behalf of others, these requirements apply to both the trustee and the trustor; credit institutions and financial institutions must make copies of the official photo identification documents and store those copies in accordance with Article 40 para. 3.
5. All transactions
  - a) in which the originator or beneficiary is a person whose place of incorporation or residence is in a non-cooperative country or territory, or
  - b) which are executed to or from an account with a foreign credit institution or financial institution incorporated in a non-cooperative country or territory must be reported to the authority (Geldwäschemeldestelle (§ 4 Abs. 2 des *Bundeskriminalamt-Gesetzes*, Federal Law Gazette I No. 22/2002)) by the Austrian credit institution or financial institution immediately if the transaction amount exceeds EUR 100,000 or an equivalent value; Article 41 is applicable in this context. This reporting obligation applies regardless of whether the transaction is carried out in a single operation or in multiple operations between which there is an obvious connection; in cases where the amount is unknown at the beginning of a transaction, the report must be submitted as soon as the amount is known and it is established that it will come to at least EUR 100,000 or an equivalent value.

## XVI. Oesterreichische Nationalbank

**Article 79.** (1) The Oesterreichische Nationalbank is required to report observations and findings of a fundamental nature or of special significance in the field of banking to the Federal Minister of Finance and to the FMA, and to provide upon request any factual explanations, documents and opinions which appear necessary.

(2) Unless delivered pursuant to Article 73a, all notifications pursuant to Article 20 and Article 73, documents pursuant to Article 44 paras. 1 to 5 and reports pursuant to Article 74 must also be submitted to the Oesterreichische Nationalbank within the time periods set forth in the relevant provisions.

(3) The Oesterreichische Nationalbank must maintain a joint database of banking supervision analyses and provide the FMA with automated access to the following data at all times:

1. data pursuant to para. 2;
2. data relevant to banking supervision on the basis of reports pursuant to Articles 44 and 44a Act on the Oesterreichische Nationalbank (*Nationalbankgesetz – NBG*; Federal Law Gazette No. 50/1984);
3. data relevant to banking supervision in anonymised form on the basis of reports pursuant to the Foreign Exchange Act (*Devisengesetz*);
4. analysis data and results pursuant to para. 4a.

With regard to this database, which constitutes a joint information system as defined in Article 4 no. 13 Federal Act Concerning the Protection of Personal Data 2000, the Oesterreichische Nationalbank and the FMA are considered controllers as defined in Article 4 no. 4 Federal Act Concerning the Protection of Personal Data 2000; in addition, the Oesterreichische Nationalbank has the status of operator of this joint information system pursuant to Article 50 Federal Act Concerning the Protection of Personal Data 2000.

(4) The Oesterreichische Nationalbank must conduct inspections commissioned pursuant to Article 70 para. 1 no. 3 and Article 70a para. 2, prepare opinions in the context of banking supervision, and conduct analyses pursuant to para. 4a on its own responsibility and on its own behalf. The FMA must rely to the greatest possible extent on the inspections, opinions and analyses of the Oesterreichische Nationalbank as well as the data stored in the database pursuant to para. 3, and may rely on the accuracy and completeness of such data unless the FMA has reason to doubt their accuracy or completeness. The Oesterreichische Nationalbank must communicate the results of these inspections to the FMA immediately; in addition, the Oesterreichische Nationalbank must forward to the FMA the comments of the credit institutions concerned immediately. In procedures, the inspection findings of the Oesterreichische Nationalbank are to be regarded as expert opinions; however, instructions to the Oesterreichische Nationalbank pursuant to Article 70 para. 1 no. 3 and Article 70a para. 2 do not preclude any necessary collection of supplementary evidence through inspections conducted by the FMA, by external auditors or by other experts. The Oesterreichische Nationalbank is empowered to provide the bank auditor of the credit institution concerned with necessary information on the results of inspections conducted by the Oesterreichische Nationalbank.

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(4a) The FMA must store all relevant information arising from its banking supervision activities in the joint database. For the purposes of this provision, relevant information includes data pursuant to Article 77 para. 4, banking supervision data pursuant to Article 14 Financial Conglomerates Act, reports from State Commissioners, the results of investigations and other observations regarding specific institutions which are within the FMA's area of responsibility. Information which is available to both institutions is to be stored in the joint database by the Oesterreichische Nationalbank. The Oesterreichische Nationalbank must subject the data pursuant to para. 3 and the other supervisory information stored in the database by the Oesterreichische Nationalbank or the FMA to ongoing comprehensive evaluation for the purposes of banking supervision and for the purpose of preparing supervisory investigations (individual bank analysis). The Oesterreichische Nationalbank must make all analysis results and relevant information available to the FMA; these analysis results and relevant information must contain clear statements on whether the risk situation has changed materially or whether a violation of supervisory provisions is suspected. Cases in which the risk situation has changed materially or a violation of supervisory provisions is suspected must be communicated to the FMA immediately. At the FMA's request, the Oesterreichische Nationalbank must also prepare and submit specified individual bank analyses and provide additional explanations on the results of analyses. The Oesterreichische Nationalbank is authorised to evaluate individual bank analysis data in light of the individual and overall economic situation, especially for the purpose of performing its duties in connection with financial stability. In any case, all of the individual bank analyses conducted by the Oesterreichische Nationalbank are to be made available to the FMA. The Oesterreichische Nationalbank is permitted to perform statistical evaluations of these data with the objective of generating results which are not related to specific persons.

(4b) The Oesterreichische Nationalbank must

1. compile a statement of the direct costs arising from on-site inspections and individual bank analyses as incurred by the Oesterreichische Nationalbank each business year and have this statement reviewed by the auditor pursuant to Article 37 Act on the Oesterreichische Nationalbank;
2. convey the audited statement to the FMA by 30 April of the ensuing business year;
3. inform the FMA of the estimated direct costs arising from on-site inspections and individual bank analyses for the upcoming business year by September 30 of each year;
4. inform the Federal Minister of Finance and the FMA once per year of the number of employees occupied with the tasks of on-site inspections and individual bank analyses on an annual average; this information may also be provided by means of a publication.

(5) **(constitutional law provision)** In carrying out inspections pursuant to Article 70 para. 1c and exercising payment systems oversight pursuant to Article 44a Act on the Oesterreichische Nationalbank 1984, the Oesterreichische Nationalbank is not bound by any instructions.

**Article 80.** (1) The FMA must communicate observations of a fundamental nature or of special significance in the field of banking to the Federal Minister of Finance and the Oesterreichische Nationalbank. Moreover, the FMA must communicate administrative rulings (*Bescheide*) to the

Oesterreichische Nationalbank where knowledge of such administrative rulings is necessary for the Oesterreichische Nationalbank to fulfil its duties under law.

(2) Before issuing regulations on the basis of this federal act, the FMA and the Federal Minister of Finance must first consult the Oesterreichische Nationalbank.

## **XVII. Receivership and Insolvency Provisions**

**Article 81.** (1) Unless specified otherwise in the paragraphs below or in Articles 81a to 81m, receivership procedures initiated in Austria, the conditions for their initiation, and their effects are subject to Austrian law throughout the European Economic Area. The effects of such procedures also extend to the assets of the credit institution throughout the European Economic Area, especially those of the credit institution's branches.

(2) The receivership procedure pursuant to Article 82 para. 2 is a reorganisation measure as defined in Article 2 of Directive 2001/24/EC. The receiver pursuant to Article 82 para. 3 must be issued a decree of appointment by the court.

(3) A decision issued in a Member State other than Austria to carry out a measure to reorganise a credit institution which is authorised in that Member State pursuant to Article 4 et seq. of Directive 2000/12/EC or Article 6 et seq. of Directive 2006/48/EC is to be considered effective in Austria without further formalities as soon as the decision becomes effective in the Member State in which the proceedings were initiated. The same applies to measures taken due to receivership proceedings pursuant to Article 82 para. 2 within the EEA and outside of Austria.

(4) The administrators as defined in Article 2 of Directive 2001/24/EC who are named in the original or certified copy of the decree of appointment from the competent authority in the home Member State as well as their representatives and the receiver pursuant to Article 82 para. 3 may, without further formalities in the respective host Member States, exercise the powers vested in them for the execution of reorganisation measures pursuant to para. 3 in the territory of the home Member State. Where the text of a decree of appointment for an administrator performing duties in Austria is not in German or English language, then a translation into German must be attached to the decree of appointment. In exercising their powers, receivers pursuant to Article 82 para. 3 must observe the laws of the Member States in which they plan to carry out their activities, especially with regard to the manner in which assets are realised and in which employees are notified. These powers do not include the application of coercive measures or the right to rule on legal disputes or other disagreements. In exercising their powers in Austria, the administrators must comply with Austrian law; the reorganisation measures of the competent authorities in the home Member States constitute writs of execution as defined in the Enforcement Act (*Exekutionsordnung – EO*). Where reorganization measures of the competent authority in the home Member State involve matters related to employees and an Austrian authority would be required to inform employees of such a measure under Austrian law, the administrator must inform the employees in the same way.

(5) At the request of the administrator or of any authority or court in the home Member State, the initiation of reorganisation measures must be entered in the Property Register and the Commercial

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Register. The costs of such entries are to be counted as costs and expenses related to the reorganisation measure.

(6) In the case of receivership proceedings initiated in Austria against the Austrian branches of a foreign credit institution, the effects pursuant to para. 1 do not extend to assets located outside of Austria, Article 83 para. 5 notwithstanding.

**Article 81a.** The effects of a reorganisation measure as defined in Article 2 of Directive 2001/24/EC on employment contracts and employment relationships are governed exclusively by the law of the Member State applicable to the contract of employment (contract of employment).

**Article 81b.** (1) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC is not to affect the rights in rem of creditors or third parties to tangible or intangible, moveable or immoveable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the credit institution which are situated within the territory of another Member State at the time when reorganisation measures as defined in Article 2 of Directive 2001/24/EC are initiated (third parties' rights in rem).

(2) The rights referred to in para. 1 are, in particular:

1. the right to dispose of the assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
2. the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
3. the right to demand the assets from, and/or require restitution by, anyone having possession or use of them contrary to the wishes of the entitled party;
4. the right in rem to the beneficial use of assets.

(3) A right which is recorded in a public register and enforceable against third parties and under which a right in rem within the meaning of paragraph 1 may be obtained is considered equivalent to a right in rem as indicated in para. 1.

(4) Para. 1 does not preclude actions for voidness, voidability or unenforceability pursuant to Article 10 (2)(l) of Directive 2001/24/EC.

**Article 81c.** (1) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC does not affect the right of creditors to offset their claims against those of the credit institution in cases where such offsetting is permitted by the law applicable to the credit institution's claims (set-off).

(2) Para. 1 does not preclude actions for voidness, voidability or unenforceability pursuant to Article 10 (2)(l) of Directive 2001/24/EC.

**Article 81d.** (1) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC against a credit institution does not affect the rights of the seller of an asset based on a reservation of title where, at the time when reorganisation measures as defined in Article 2 of Directive 2001/24/EC are initiated, the asset is situated in the territory of a Member State other than the one in which such measures are initiated (reservation of title).

(2) The initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC against a credit institution does not constitute grounds for rescinding or terminating the contract of sale

after the delivery of an asset sold by the credit institution and does not prevent the purchaser from acquiring title where, at the time when reorganisation measures are initiated, the asset is situated in the territory of a Member State other than the one in which such measures are initiated.

(3) Paras. 1 and 2 do not preclude actions for voidness, voidability or unenforceability pursuant to Article 10 (2)(l) of Directive 2001/24/EC.

**Article 81e.** The effects of reorganisation measures as defined in Article 2 of Directive 2001/24/EC on a contract conferring the right to acquire or make use of immovable property are governed exclusively by the law of the Member State within the territory of which the immovable property is situated. The law of that Member State will also determine whether the asset is considered moveable or immovable property (contracts relating to immovable property).

**Article 81f.** Notwithstanding Article 81k (*lex rei sitae*), transactions conducted within the framework of a regulated market are governed exclusively by the law applicable to such transactions (regulated markets).

**Article 81g.** The effects of reorganisation measures as defined in Article 2 of Directive 2001/24/EC on the rights of the debtor to immovable property, a ship or an aircraft subject to registration in a public register are determined by the law of the Member State under the authority of which the register is kept (effects on rights subject to registration).

**Article 81h.** Where a court-ordered reorganisation measure as defined in Article 2 of Directive 2001/24/EC provides for rules regarding the voidness, voidability or unenforceability of legal acts which are detrimental to all creditors and were performed before the measure was initiated, Article 81 paras. 1 and 3 do not apply where the person who benefited from an act detrimental to all creditors provides evidence that

1. that act is subject to the law of a Member State other than the home Member State, and
2. that law does not allow any means of challenging that act in the relevant case (detrimental acts).

**Article 81i.** If, by an act concluded after the initiation of reorganisation measures as defined in Article 2 of Directive 2001/24/EC, the credit institution disposes of

1. an immovable asset, or
2. a ship or an aircraft subject to registration in a public register, or
3. instruments or rights to instruments whose existence or transfer presupposes registration in a register or account maintained in a Member State, or with a central custodian of a Member State, for a consideration,

then the validity of that act will be governed by the law of the Member State within the territory of which the immovable object is situated or under the authority of which the register, account or custodian is maintained (protection of third-party purchasers).

**Article 81j.** The effects of a reorganisation measure as defined in Article 2 of Directive 2001/24/EC on a pending lawsuit concerning an asset are governed exclusively by the law of the Member State in which the lawsuit is pending (effects on pending lawsuits).

**Article 81k.** The exercise of property rights or other rights to instruments whose existence or transfer presupposes registration in a register or account maintained in a Member State or with a central custodian of a Member State is governed by the law of the Member State in which the register, account or custodian recording the rights in question is located (*lex rei sitae*).

**Article 81l.** Netting agreements are governed exclusively by the law applicable to such agreements (netting agreements).

**Article 81m.** Article 81k notwithstanding, repurchase agreements are governed exclusively by the law applicable to such agreements (repurchase agreements).

**Article 82.** (1) Recapitalisation proceedings cannot be initiated over the assets of a credit institution. In the case of the bankruptcy of a credit institution, no petition to institute a reorganisation plan shall be filed.

(2) In receivership and bankruptcy proceedings concerning credit institutions, the FMA is to have the status of a party to the proceedings.

(3) In general, only the FMA may submit a petition for the initiation of bankruptcy proceedings; during active receivership, only the receiver may file such a petition. Otherwise, Article 70 Bankruptcy Code is applicable.

(4) A legal person may also be appointed to the position of receiver.

(5) The court must consult the FMA before appointing or dismissing a receiver or a bankruptcy trustee.

(6) The court must immediately inform the FMA and the Oesterreichische Nationalbank of orders of receivership proceedings by forwarding the respective decree.

**Article 83.** (1) In cases where it appears likely that their overindebtedness or insolvency can be remedied, credit institutions which are overindebted or insolvent may request an order for receivership from the court competent for initiating bankruptcy proceedings. This request may also be submitted by the FMA.

(2) Along with the request, the credit institution must submit a structured list of its claims and liabilities as well as its annual financial statements, including the notes to the financial statements, and annual reports from the last three years.

(3) In preparing its decision, the court may hear informants and expert witnesses, as well as conducting other investigations.

(4) By way of the FMA, the court must immediately communicate its decision to order receivership as well as the specific effects of receivership to the authorities responsible for carrying out reorganisation measures pursuant to Article 2 of Directive 2001/24/EC in any host Member States.

(5) Likewise, in cases where the court imposes receivership on an Austrian branch of a foreign credit institution, the court must immediately communicate by way of the FMA its decision to order receivership as well as the specific effects of receivership to the authorities responsible for carrying out reorganisation measures pursuant to Article 2 of Directive 2001/24/EC in any other Member States in which those branches conduct business transactions included in the list published annually in the Official Journal of the European Communities pursuant to Article 14 of Directive 2006/48/EC. In order

to avoid redundant decisions, the competent authorities in the other Member States must be informed of the intended decision in advance and the procedure must be coordinated wherever possible.

(6) Should the FMA consider one or more reorganisation measures as defined in Article 2 of Directive 2001/24/EC to be necessary in the case of credit institutions which operate through a branch in Austria in accordance with Article 9, then the FMA must inform the competent authorities in the credit institution's home Member State accordingly.

(7) Where receivership is liable to affect the rights of third parties in a host Member State or in a Member State pursuant to para. 5, the court must immediately publish the decision to order receivership proceedings in the Official Journal of the European Communities and in two supranational newspapers in each of those Member States in order to enable those parties to seek legal remedies in a timely manner. For the purposes of publication, the decision mentioned above must be communicated immediately and by the most suitable means to the Office for Official Publications of the European Communities and to the two supranational newspapers in each of the Member States concerned.

(8) In addition to the decision to be published, the court must indicate in particular the object and legal basis of the decision and the deadlines for appeals, including in particular an easily understandable indication of the time at which these periods end, as well as the precise address of the court to which appeals are to be submitted and of the court which is to rule on the appeals. These indications are to be made in the official language or official languages of the Member States concerned.

(9) Any appeals against the imposition of receivership do not have suspensory effect.

**Article 84.** (1) In cases where receivership is ordered, the court must appoint a physical or legal person as receiver. This person is responsible for supervising the management of the credit institution and is liable to all parties involved for any damage caused by the negligent performance of his/her function.

(2) The receiver has the right to inspect the business documents of the credit institution; the receiver must be invited to meetings of the executive and supervisory bodies and may also convene such meetings. The receiver has the right to prohibit the execution of resolutions taken by the bodies of the credit institution.

(3) The court may revoke the appointment of the receiver at any time.

(4) The receiver has the right to remuneration for his/her activities; the amount of this remuneration is to be determined by the court.

(5) The imposition of receivership and the name of the appointed receiver must be announced publicly. The court must arrange for the entry of the receivership order and the appointed receiver in the Commercial Register.

**Article 85.** Receivership is to take effect at the beginning of the day following the public announcement of the decree imposing receivership.

**Article 86.** (1) Once receivership takes effect, all claims on the credit institution which were incurred previously, including claims arising from bills of exchange and cheques which would have to

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be satisfied in bankruptcy proceedings by means of the joint bankruptcy estate (Article 50 Bankruptcy Code) as well as their interest and other ancillary fees, are to be deferred, even in cases where they only became due or accrued during the period of receivership.

(2) After ordering receivership, the court must have the credit institution's financial situation assessed by experts at the credit institution's expense. The receiver must report to the court in writing on the result of this assessment. The report must also indicate whether the credit institution is able to pay a certain fraction of the liabilities it incurred before receivership took legal effect. Based on the report, the court may order that only a fraction of the prior claims be subject to cancellation; the court may also allow the receiver to satisfy in their entirety prior claims to be determined according to their type or amount.

(3) During receivership, prior claims must not be secured nor, unless partial payment is permitted (para. 2) paid out or satisfied in any way.

(4) During receivership, it is not possible to initiate bankruptcy proceedings over the assets of the credit institution or to obtain a court-ordered lien or right to satisfaction on assets belonging to the credit institution due to prior claims where a deferment of payment has been granted for such claims.

(5) The period of time by which payment is delayed as a result of deferment is not to be included in the calculation of the limitation period or statutory periods for the filing of suits.

(6) In the case of bankruptcy on the part of the credit institution, depositors are entitled to offset their claims against those of the credit institution.

**Article 87.** (1) In cases where the credit institution on which receivership is imposed is a cooperative society, then shares in the undertaking may not be legally cancelled, nor may the shares and the balances otherwise due to the retired shareholder on the basis of the cooperative relationship be paid out; notice and liability periods which are already in progress are to be suspended.

(2) Unless the court orders otherwise at the receiver's request, the credit institution may continue its business activities. However, the credit institution must obtain the consent of the receiver in order to conduct transactions which are not part of normal business operations. The credit institution must also refrain from activities which are part of normal business operations where the receiver objects to such activities. Legal acts carried out without the consent or against the objection of the receiver are ineffective vis-à-vis the creditors if the third party involved knew or should have known that such acts were beyond the scope of normal business operations and the receiver did not grant his/her consent or objected to those acts.

(3) Funds received by the credit institution from transactions concluded after receivership takes effect (new claims) are to be accounted for and administered separately; even after the expiration of receivership, these funds constitute special funds which serve the preferential satisfaction of new claims.

**Article 88.** Once two years have elapsed after the termination of receivership, the credit institution may request exemption from the obligation to account for and administer the funds received on the basis of new claims unless bankruptcy proceedings have been initiated over the assets of the credit institution during that period of time. In cases where such a request is submitted, the court must review the applicant's financial situation. In cases where this review reveals that the security of the

new claims will not be jeopardised by such an exemption, the request is to be approved; from that point in time onward, the special funds are to be considered dissolved.

**Article 89.** In cases of dispute arising from the orders of the receiver, the court is to decide by means of a ruling. The court may also obtain the required information without the involvement of the parties and, by virtue of office, carry out all suitable investigations in order to make the necessary determinations.

**Article 90.** (1) Receivership is to be terminated by way of a court ruling and upon the initiation of bankruptcy proceedings.

(2) The court must terminate receivership in cases where:

1. the conditions which prompted the receivership order have been remedied, or
2. one year has elapsed since receivership was ordered.

(3) The termination of receivership must be announced publicly once the termination ruling takes legal effect. The court must also arrange for the termination of receivership to be entered in and the receiver deleted from the Commercial Register.

(4) In cases where receivership is terminated due to the initiation of bankruptcy proceedings, or where bankruptcy proceedings are initiated on the basis of a petition submitted within 14 days after the termination of receivership, then the periods to be calculated retroactively from the date of the petition for the initiation of such proceedings or from the date of initiation of such proceedings according to the Bankruptcy Code are to be calculated from the date on which receivership went into effect.

(5) The credit institution as well as the FMA may take recourse against the rejection of a request for the imposition of receivership and against the termination of receivership; however, only the credit institution may take recourse against decisions which define the amount of remuneration and the cash expenses to be reimbursed to the receiver. Other decisions may not be contested. Appeals beyond rulings of the provincial superior court will not be permitted.

**Article 91.** (1) Public announcements are subject to the provisions of the Bankruptcy Code.

(2) Inspection of the insolvency database is to be denied once three years have elapsed since the termination of receivership. In cases where receivership was terminated due to the initiation of bankruptcy proceedings, then inspection is to be permitted until the period for inspection in bankruptcy proceedings has also expired (Article 14 of the Law Implementing the Insolvency Act [*Insolvenzrechtseinführungsgesetz – IEG*]).

## **XVIII. Structural Provisions**

### **Transfer of Assets into Stock Corporations**

**Article 92.** (1) Credit institutions organised as partnerships under commercial law with total assets exceeding EUR 730 million must re-register the undertaking or its banking operations as a stock corporation in accordance with the provisions of the Reorganisation Tax Act (*Umgründungssteuergesetz*). Other credit institutions have the option to do so.



(2) Savings banks, state mortgage banks, the Mortgage Bond Division of the Austrian State Mortgage Banks, and cooperative societies may only re-register their undertaking or its banking operations as a stock corporation pursuant to the Reorganisation Tax Act only with due adherence to the provisions set forth below.

(3) According to these provisions, the transfer of assets is only permitted

1. into a newly established stock corporation where the transferring credit institution is the sole shareholder;
2. into a stock corporation which conducts banking transactions and belongs to the same trade association as the transferring credit institution;
3. into a newly established stock corporation into which multiple credit institutions belonging to the same trade association simultaneously transfer their undertakings or their banking operations.

(4) The transfer brings about a legal transition in the form of universal succession which encompasses the operations transferred and becomes effective upon the entry of the stock corporation or of the capital increase in the Commercial Register. The universal succession must also be entered in the Commercial Register. In addition, Article 226 Stock Corporation Act applies to creditor protection.

(5) The resolution on the transfer of assets must be taken

1. by the management board and supervisory board of the savings banks carrying out the transfer;
2. by the management board and supervisory board of the state mortgage banks;
3. by the management board and administrative board of the Mortgage Bond Division of the Austrian State Mortgage Banks;
4. by the general assembly of cooperative societies.

The resolution must be adopted with the majority vote required for mergers.

(6) Through the transfer, the licences and authorisations of the transferring credit institutions are transferred to the stock corporation. References to transferring credit institutions in laws or regulations are to be considered references to the corresponding stock corporation.

(7) The stock corporation is to belong to the sector network (in particular the trade association, legal auditing association, central institution, sectoral protection scheme) to which the transferring credit institution belongs.

(8) With regard to the banking operations transferred, the business object of the transferring institutions is restricted to management. The activities of their management bodies are not to be considered a full-time profession. The stock corporation's articles of association must be based on the articles of association of the transferring institutions. The corporate and organisational provisions continue to apply to the transferring credit institutions with due consideration of the spinoff of banking operations. Where laws or regulations make reference to savings banks, cooperative societies, state mortgage banks or the Mortgage Bond Division of the Austrian State Mortgage Banks, these references will continue to apply to the transferring credit institutions.

(9) Where they remain in existence, the transferring savings banks, state mortgage banks, the Mortgage Bond Division of the Austrian State Mortgage Banks and cooperative societies are liable with all of their assets for all present and future liabilities of the stock corporation in the case of its insolvency; multiple transferring credit institutions will bear joint and several liability.

(10) Where a State Commissioner and Deputy State Commissioner have been appointed for the transferring credit institution, those persons are to be appointed to the same positions in the stock corporation upon its entry in the Commercial Register. In the case of multiple transferring credit institutions in which a State Commissioner and Deputy State Commissioner have been appointed, the State Commissioner and Deputy State Commissioner of the acquiring company are to be appointed to the same positions in the stock corporation upon its entry in the Commercial Register. The State Commissioners and Deputy State Commissioners appointed at the other transferring credit institutions are to be discharged by the Federal Minister of Finance at the time of the entry of the transfer in the Commercial Register.

## **XIX. Deposit Guarantee and Investor Compensation**

**Article 93.** (1) Credit institutions which accept deposits subject to guarantee obligations pursuant to para. 2 or provide investment services subject to guarantee obligations pursuant to para. 2a must belong to the protection scheme of their trade association. If such a credit institution does not belong to the protection scheme, its authorisation (licence) to accept deposits subject to guarantee obligations pursuant to para. 2 and to provide investment services subject to guarantee obligations pursuant to para. 2a is to expire; Article 7 para. 2 is applicable in this context.

(2) Deposits subject to guarantee obligations are as follows:

1. Deposits pursuant to Article 1 para. 1 nos. 1 and 12;
2. Credit balances which result from funds left in an account or from temporary positions in the course of banking transactions and the credit institution must repay according to the applicable legal and contractual provisions, and
3. and any debt evidenced by a certificate issued by a credit institution, with the exception of mortgage bonds, municipal bonds and funded bank bonds.

(2a) Investment services subject to guarantee obligations are as follows:

1. custody business (Article 1 para. 1 no. 5);
2. trading for one's own account or on behalf of others in instruments pursuant to Article 1 para. 1 no. 7 lit. b to f;
3. third-party securities underwriting (Article 1 para. 1 no. 11);
4. severance and retirement fund business (Article 1 para. 1 no. 21).

In addition, all credit institutions in the trade association which avail themselves of the authorization indicated in Article 1 para. 3 to provide investment services pursuant to Article 3 para. 2 no. 2 Securities Supervision Act 2007 must belong to the protection scheme.

(3) Each trade association must maintain a protection scheme which must include all credit institutions belonging to the trade association and authorised to accept deposits subject to guarantee

obligations and to provide investment services subject to guarantee obligations. The protection schemes must be operated as legal persons in the form of liability companies. The protection schemes must include all credit institutions and branches of credit institutions pursuant to para. 7 which are authorised to accept deposits pursuant to para. 2 and to provide investment services subject to guarantee obligations pursuant to para. 2a. In cases where

1. bankruptcy proceedings are initiated with regard to a member institution;
2. receivership is ordered for a member institution (Article 83);
3. a payment stop is ordered by the competent authorities with regard to the guaranteed deposits of a member institution (Article 70 para. 2, Article 78); such order shall be issued at the latest five working days after the FMA first established that the credit institution concerned has failed to repay deposits which are due and payable; or
4. the competent authorities in the home Member State of a credit institution which has voluntarily joined a protection scheme for supplementary cover (para. 7) have issued a declaration as set forth in Annex II (b) to Directive 94/19/EC stating that the deposits are unavailable,

the protection schemes must generally ensure that the deposits are paid out at the depositor's request and after identity verification within twenty working days, in wholly exceptional circumstances and in special cases, however, subject to the approval of the FMA within a maximum of thirty days. Where deposits are held in a fiduciary account on behalf of other persons, such persons shall be required to provide proof of identity and evidence for the legitimacy of their claim.

Cases of social hardship as well as small deposits held in identified accounts up to an amount of EUR 2,000 must be given preferential treatment with regard to the time of the payout. In cases where criminal proceedings pursuant to para. 5 no. 3 are pending or the authority (Federal Intelligence Unit (Article 4 para. 2 of the Federal Office of Criminal Investigation Act (*Bundeskriminalamt-Gesetz*), Federal Law Gazette I No. 22/2002) has been informed pursuant to Article 41 para. 1, then payment is to be suspended until the legally effective resolution of the criminal proceedings or until the authority (Federal Intelligence Unit (Article 4 para. 2 of the Federal Office of Criminal Investigation Act (*Bundeskriminalamt-Gesetz*), Federal Law Gazette I No. 22/2002) declares that no reason for further prosecution exists; the authority (Federal Intelligence Unit (Article 4 para. 2 of the Federal Office of Criminal Investigation Act (*Bundeskriminalamt-Gesetz*), Federal Law Gazette I No. 22/2002) must communicate this declaration to the protection scheme concerned immediately upon resolution of the case. The protection scheme is to have recourse to claims against the credit institution concerned in the amount of the amounts paid and the demonstrable costs. Should one of the cases listed in nos. 2 to 4 arise, the credit institution is obliged to provide the protection scheme with all information necessary for its activities, to make documents and personnel available and to enable the necessary access to IT systems. In the case of no. 1, this obligation applies to the bankruptcy trustee. The protection scheme concerned must notify the FMA immediately in cases where a member credit institution fails to fulfil its obligations to the protection scheme under this federal act.

(3a) Likewise, protection schemes must ensure that, in the case of a guaranteed event pursuant to para. 3 or a notification from the competent authority pursuant to Annex II (b) of Directive 97/9/EC

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on a determination or ruling referred to in Article 2 (2) of that directive, the claims of an investor arising from investment services pursuant to para. 2a must be paid out up to a maximum amount of EUR 20,000 or the equivalent in foreign currency per investor at the investor's request and after identification within three months from the time at which the amount of and entitlement to the claim are verified. The provisions of para. 3 regarding joint accounts, fiduciary accounts, pending criminal proceedings as defined in para. 5 no. 3, as well as support and information obligations to the protection scheme are applicable in this context.

(3b) In accordance with the provisions of this section, protection schemes must compensate investors for claims arising from investment services pursuant to para. 2a which result from the inability of a credit institution or an investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007 to do the following in accordance with legal or contractual regulations:

1. repay funds which are owed to or belong to investors and are held for their account in connection with investment services; or
2. return to investors those instruments which belong to them and are held, kept in custody or administered for their account in connection with securities transactions.

(3c) Parties entitled to claims arising from investment services may lodge such claims with the protection scheme during a period of one year from the time at which a guaranteed event is announced pursuant to para. 3 or at which a notification is conveyed by the competent authority pursuant to Annex II (b) to Directive 97/9/EC on the determination or ruling pursuant to Article 2 (2) of that directive. However, the fact that the period has expired may not be invoked by the scheme in order to deny cover to an investor who has been unable to assert his right to compensation in time.

(3d) In the case of claims arising from balances in accounts which are eligible for compensation both as guaranteed deposits and as claims arising from securities transactions subject to guarantee obligations according to the provisions of this section, the protection scheme must classify these claims in accordance with nos. 1 and 2; creditors have no claim to double compensation as a result of compensation being paid out under both systems for the same claim.

1. Funds entrusted to the credit institution or investment firm for the purpose of acquiring instruments are to be classified under guaranteed deposits;
2. Balances which result directly from the crediting of income, disposals or other settlement activities in connection with securities transactions are to be classified under investor compensation, provided they haven't already been credited to an interest-bearing account of a credit institution that is authorised to provide deposit services.
3. Assets assigned to the investments of a severance and retirement fund are to be classified as investor compensation regardless of the type of investment; in the case of severance and retirement fund business, the maximum amount of EUR 20,000 pursuant to para. 3a refers to the severance pay or retirement fund entitlement of each individual party entitled to benefits from the severance and retirement fund.

(4) For the deposits of creditors pursuant to para. 2 which are not natural persons, the protection scheme's cover obligation is limited to a maximum amount of EUR 50,000 per depositor in deviation from para. 3; for securities services pursuant to para. 2a of creditors which are not natural persons,

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the protection scheme's cover obligation is limited to 90% of the claim from securities transactions per depositor, without prejudice to the maximum amount referred to in para. 3a. Deposits in an account over which two or more persons may dispose as partners in an ordinary partnership (*offene Gesellschaft*), a limited partnership (*Kommanditgesellschaft*), a civil-law partnership (*Gesellschaft bürgerlichen Rechts*) or a business organisation of a similar nature under the law of a Member State or a third country are to be aggregated in the calculation of the upper limit pursuant to this para. and treated as if made by a single depositor; the same applies to credit balances and other claims arising from securities transactions. The protection scheme is entitled to offset compensation claims against claims of the credit institution. Article 19 para. 2 Bankruptcy Code (KO) is applicable to all cases in which guaranteed deposits or claims arising from securities transactions are paid out.

(4a) Multiple payouts are permissible only if there are secured deposits on legitimised joint accounts or if the depositors with a claim to deposits on a legitimised account provide evidence for the legitimacy of their claim.

(5) The following deposits and claims arising from securities transactions are excluded from cover by the protection scheme:

1. Deposits made by other credit institutions, financial institutions or investment firms in their own name and for their own account;
  - 1a. Claims arising from the securities transactions of other credit institutions, financial institutions or investment firms;
2. Own funds components pursuant to Article 23, regardless of their eligibility;
3. Deposits and claims related to transactions in connection with which persons have been convicted of money laundering in criminal proceedings (Articles 165 and 278a para. 2 Penal Code);
4. The deposits and claims of governments and central administrations as well as the deposits and claims of regional and local authorities;
5. The deposits and claims of undertakings for collective investments in transferable securities (Directive 85/611/EWG), investment fund management companies and investment funds, as well as deposits and claims of contract insurance undertakings, *Pensionskassen*, pension funds and fixed-income funds,
6. The deposits and claims of
  - a) The directors of the credit institution or investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007 and members of its supervisory bodies competent according to applicable law or the articles of association, and management board members in the case of credit cooperatives;
  - b) Personally liable members of credit institutions or investment firms organised as commercial-law partnerships;
  - c) Depositors and parties entitled to claims who hold at least 5% of the capital of the credit institution or investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007;

- d) Depositors and parties entitled to claims who are responsible for carrying out statutory audits of the accounting documents of the credit institution or investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007;
- e) Depositors and parties entitled to claims who perform one of the functions indicated in lit. a to d in affiliated undertakings (Article 244 Company Code, *Unternehmensgesetzbuch – UGB*) of the credit institution or the investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007 (*Wertpapieraufsichtsgesetz 2007 – WAG 2007*); participations that fall below the thresholds referred to in Article 24 para. 3a do not trigger application of the exception referred to in the present lit.,
- 7. Deposits and claims belonging to close relatives (Article 72 Penal Code, *Strafgesetzbuch – StGB*) of the depositors and parties entitled to claims named under no. 6 acting on behalf of the depositors and parties entitled to claims named under no. 6 as well as third parties acting on behalf of the depositors and parties entitled to claims named under no. 6,
- 8. Deposits and claims of other companies which are affiliated undertakings (Article 244 Commercial Code) of the relevant credit institution or investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007;
- 9. Deposits and claims for which the credit institution or investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007 granted the depositor or party entitled to a claim was granted interest rates or other financial benefits/advantages on an individual basis which contributed to the deterioration of the financial situation of the credit institution or investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007;
- 10. Debt securities of the credit institution or investment firm pursuant to Article 12 para. 1 Securities Supervision Act 2007 and liabilities arising from own acceptances and promissory notes;
- 11. Deposits and claims not denominated in euros, schillings, the national currency of a Member State or ECU, with this restriction only applying to financial instruments pursuant to Article 1 no. 6 Securities Supervision Act 2007; and
- 12. Deposits and claims belonging to companies which qualify as large corporations as defined in Article 221 para. 3 Commercial Code.

(6) According to paras. 1 to 5, deposits accepted by a credit institution in a Member State pursuant to Article 10 or at a branch in a third country. This also applies to claims arising from investment services which are subject to guarantee obligations and are provided in a Member State pursuant to Article 10 or at a branch in a third country. In cases where the deposit guarantee scheme or investor compensation scheme in that Member State ensures higher or more extensive cover for deposits or claims than provided for in paras. 1 to 5, only the rules stipulated in this federal act will apply to the compensation to be paid by the Austrian protection scheme.

(7) In addition to the deposit guarantee scheme or investor compensation scheme in their home Member States, credit institutions pursuant to Article 9 para. 1 which accept deposits subject to guarantee obligations or provide investment services subject to guarantee obligations pursuant to para. 2a through a branch in Austria and which belong to a deposit guarantee scheme as defined in



Directive 94/19/EC or an investor compensation scheme as defined in Directive 97/9/EC in their home country are entitled to join the protection scheme of that trade association to which they would belong based on their institution type if they were an Austrian credit institution; if they cannot be assigned to a trade association on this basis, they may join the trade association whose members are most similar to the relevant credit institution in terms of institution type. The supplementary membership only applies to deposits accepted and investment services provided in Austria, and only to the extent that paras. 1 to 5 ensure higher or more extensive cover for deposits or claims arising from investment services than the deposit guarantee scheme or investor compensation scheme in the credit institution's home Member State. The protection scheme must require the credit institutions (Article 9 para. 1) which have voluntarily joined the scheme for supplementary cover to pay proportionate contributions immediately in cases where guaranteed deposits or claims arising from investment services are paid out. Article 93a is to be applied to the calculation of proportionate contributions. In this context, credit institutions which voluntarily join a scheme for supplementary cover must not be accorded worse treatment than Austrian credit institutions. If a credit institution which has voluntarily joined a scheme for supplementary cover has several branches in Austria, they are to be regarded as a single branch in the calculation of deposits pursuant to para. 2 and claims pursuant to para. 2a, and in the calculation of contribution payments pursuant to Article 93a.

(7a) In addition to the investor compensation scheme in their home Member State, investment firms pursuant to Article 12 para. 1 Securities Supervision Act 2007 which provide investment services subject to guarantee obligations pursuant to para. 2a nos. 1 to 3 through a branch in Austria and which belong to an investor compensation scheme as defined in Directive 97/9/EC in their home country are entitled to join the protection scheme of that trade association to which they would belong based on their institution type if they were an Austrian credit institution; if they cannot be assigned to a trade association on this basis, they may join the trade association whose members are most similar to the relevant investment firm in terms of institution type. In contrast, Article 78 Securities Supervision Act 2007 applies to investment firms pursuant to Article 12 Securities Supervision Act 2007 which provide investment services pursuant to Article 3 para. 2 no. 2 Securities Supervision Act 2007 in Austria where these services do not involve holding money, securities or other instruments, meaning that the providers of such services may not at any time place themselves in debt with their clients. The supplementary membership only applies to investment services subject to guarantee obligations provided in Austria pursuant to para. 2 nos. 1 to 3, and only to the extent that paras. 1 to 5 ensure higher or more extensive cover for claims arising from investment services than the investor compensation scheme in the investment firm's home Member State. The protection scheme must require investment firms which have voluntarily joined the scheme for supplementary cover to pay proportionate contributions immediately in cases where guaranteed claims arising from investment services are paid out. Article 93b is to be applied analogously to the calculation of proportionate contributions. In this context, investment firms which voluntarily join a scheme for supplementary cover must not be accorded worse treatment than Austrian credit institutions which are comparable in terms of institution type and business purpose. If an investment firm which has voluntarily joined a scheme for supplementary cover has several branches in Austria, they are to be regarded as a single branch

in the calculation of claims pursuant to para. 2a and in the calculation of contribution payments pursuant to Article 93b.

(8) Credit institutions pursuant to paras. 1 and 7 which accept deposits subject to guarantee obligations in Austria must post a bulletin in the credit institution's lobby to inform the investment seeking public about the provisions of this federal act which govern deposit guarantees and, where necessary, about the regulations of the home Member State or third country in cases where the deposits accepted by a branch of a foreign credit institution are guaranteed according to the regulations of that third country. Upon initiation of a business relationship involving deposits subject to guarantee obligations, and at the latest at the time a contract is signed, every depositor must be provided with free written information in German which describes in an easily understandable manner the protection scheme to which the credit institution belongs as well as the amount and scope of coverage, including the exceptions to the deposit guarantee system referred to in para. 5.

This information must be provided in German language and free of charge at the latest when the contract is concluded. At the depositor's request, the credit institution must provide detailed written information regarding the deposit guarantee free of charge. The obligation to provide depositors with the information indicated above also applies to credit institutions which accept deposits subject to guarantee obligations under the freedom to provide services.

(8a) Credit institutions pursuant to paras. 1 and 7 which provide investment services subject to guarantee obligations in Austria and investment firms pursuant to para. 7a must post a bulletin in their lobby to inform the investment-seeking public about the provisions of this federal act which govern investor compensation and, where necessary, about the regulations of the home Member State or third country in cases where the investment services provided by a branch of a foreign credit institution or of a foreign investment firm are subject to a compensation scheme according to the regulations of that third country. Upon initiation of a business relationship involving investment services subject to guarantee obligations, every investor must be provided with written information which describes in an easily understandable manner the compensation scheme to which the credit institution or investment firm belongs as well as the amount and scope of coverage. This information must be provided in German language and free of charge at the latest when the contract is concluded. At the investor's request, the credit institution must provide detailed written information regarding investor compensation free of charge. The obligation to provide investors with the information indicated above also applies to credit institutions and investment firms which provide investment services subject to guarantee obligations under the freedom to provide services.

(9) The protection schemes must cooperate with the deposit guarantee schemes and investor compensation schemes in other Member States in accordance with Annex II to Directive 94/19/EC and in accordance with Annex II to Directive 97/9/EC. Credit institutions pursuant to Article 9 para. 1 and investment firms pursuant to Article 12 para. 1 Securities Supervision Act 2007 which accept deposits or provide investment services subject to guarantee obligations through a branch in Austria must provide the competent protection scheme in their home Member State with all information the scheme requires in order to ensure that depositors (investors) receive compensation promptly and in the correct amounts.

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(10) Credit institutions which set up branches in other Member States under the freedom of establishment are entitled in the same way to join the local deposit guarantee and investor compensation scheme for supplementary cover with regard to deposits accepted pursuant to para. 7 and investment services provided pursuant to para. 7a in that Member State. Should a guaranteed event pursuant to para. 3 nos. 1 to 3 occur, the FMA must convey the declaration provided for in Annex II (b) of Directive 94/19/EC stating that deposits are unavailable and (or) the notification provided for in Annex II (b) of Directive 97/9/EC to the competent authority in the host Member State.

(11) Advertising an institution's membership in a deposit guarantee or investor compensation scheme is only permissible if such advertising is limited to naming the protection scheme to which the relevant credit institution or investment firm belongs.

**Article 93a.** (1) Protection schemes must require their member institutions to pay proportionate contributions immediately in cases where guaranteed deposits are or compensation for guaranteed investment services is paid out; the maximum contribution to be recruited for deposits secured in accordance with Articles 93 to 93c is limited to the maximum amount of EUR 50,000 per depositor. Protection schemes must make organizational arrangements in order to enable the immediate calculation and payment of the guaranteed claims. Unless para. 4 is applicable, the obligation to pay contributions at first only applies to institutions belonging to the protection scheme of the relevant trade association, para. 2 notwithstanding. In cases where guaranteed deposits are paid out, the contributions of the member institutions are to be calculated according to their respective shares of guaranteed deposits (Article 93 paras. 2 to 5) in relation to the total of all guaranteed deposits (based on the corresponding provisions pursuant to Article 93 paras. 2 to 5) as of the preceding balance sheet date. In cases where compensation for guaranteed investment services is paid out, the calculation is to be performed in accordance with Article 93b. However, member institutions are obliged to pay a maximum total contribution of 1.5% of the assessment base pursuant to Article 22 para. 2 as of the preceding balance sheet date per business year, plus 12.5 times the capital requirement for positions in the trading book pursuant to Article 22o para. 2 nos. 1, 3 and 6 in the case of credit institutions which apply Article 22o; in cases where repeated payment obligations arise within a period of five business years, the assessment base pursuant to Article 22 para. 2 is to be reduced by the amounts already paid multiplied by 40; this applies analogously to credit institutions and investment firms which have voluntarily joined a protection scheme for supplementary cover pursuant to Article 93 paras. 7 and 7a. The member institutions are liable to the same extent for court-adjudicated damage claims on the protection scheme; this applies analogously to credit institutions and investment firms which have voluntarily joined a protection scheme for supplementary cover pursuant to Article 93 paras. 7 and 7a.

(2) In cases where the protection scheme in question is unable to pay out the guaranteed deposits or claims in full, the protection schemes of the other trade associations are obliged to make proportionate contributions immediately in order to cover the shortfall. Para. 1 and Article 93b are to be applied analogously to the calculation of those proportionate contributions. Those protection schemes are to have recourse to claims against the relevant original protection scheme in the amount

of the contributions made to a protection sum of up to EUR 20,000 per secured claim and the demonstrated costs.

(3) The protection schemes shall immediately notify the Federal Minister of Finance of any amount resulting from the sum total of the amounts forming the difference between EUR 50,000 and the respective deposit. The Federal Minister of Finance must provide the balance to the protection scheme in time to comply with the payout deadline established in Article 93 para. 3. In cases where the protection schemes as a whole are unable to pay out guaranteed deposits (claims) up to the amount of EUR 50,000 or compensation for guaranteed investment services up to the amount of EUR 20,000, the original protection scheme concerned must take up loans or issue debt securities in order to meet the remaining payment obligations. By special legal authorisation, the Federal Minister of Finance may assume liability for these obligations on behalf of the federal government. In the event of claims against these guarantees, the Austrian federal government may take recourse against the same protection scheme only twice in a five-year period. This recourse is limited to the amount resulting from the concerned original protection scheme's claim to the annual contribution of the member institutions pursuant to para. 1 at the time of recourse.

(4) In cases where guaranteed deposits or claims are paid out

1. for a credit institution which voluntarily joined the protection scheme for supplementary cover pursuant to Article 93 para. 7,
- 1a. for an investment firm which voluntarily joined the protection scheme for supplementary cover pursuant to Article 93 para. 7a,
2. for a credit institution which was issued a licence after 30 June 1996, or
3. for a credit institution which changed trade associations after 30 June 1996,

all protection schemes must pay proportionate contributions immediately. Para. 1 and Article 93b are to be applied analogously to the calculation of those proportionate contributions. The institutions are obliged to provide their trade association's protection scheme with all of the information it requires in order to fulfil this obligation. The protection schemes are empowered to exchange information as necessary for the purpose of fulfilling their obligations. Institutions pursuant to nos. 1 to 3 must be assigned to a separate accounting group within their protection schemes for a period of ten years starting from the time at which they join voluntarily for supplementary cover pursuant to para. 7 or 7a, from the time at which their licence is issued, or from the time at which they change trade associations. Once ten years have elapsed, their assignment to a separate accounting group is to expire; from that time onward, guaranteed events are no longer subject to the provisions of this paragraph, but to those of para. 1.

(5) Para. 4 is not applicable in cases where the competent protection scheme decides to exempt the institution pursuant to para. 4 nos. 1 to 3 from the application of the ten-year period indicated in para. 4. Given a majority of the owners' votes, credit institutions pursuant to para. 4 no. 2 may also be accepted into the protection scheme of that trade association to which a majority of the owners themselves belong; in such cases, the consent of the protection scheme of the trade association to which these owners belong is required.

(6) In addition to paying out deposits (claims) subject to guarantee obligations, protection schemes may also contribute to the reorganisation of financially distressed institutions in accordance with the provisions indicated above and with the consent of their member institutions. Such consent is subject to the majority vote requirements of Article 147 para. 1 Insolvency Act (*Insolvenzordnung – IO*); in this context, the claims are to be replaced by the contributions to be made in the case of a guaranteed event. In the reorganisation of institutions pursuant to para. 4 nos. 1 to 3, the consent of all protection schemes is required as long as the institution belongs to the separate accounting group; the second sentence applies to the adoption of resolutions within the individual protection schemes.

(7) All protection schemes must cooperate within the framework of an early warning system and exchange the information necessary for this purpose; para. 4 applies analogously to the provision and exchange of information. All institutions associated with a protection scheme must provide the scheme with the information required for the purpose of operating the early warning system.

(8) The protection scheme must

1. submit its annual financial statements to the FMA and the Oesterreichische Nationalbank within six months of the close of the business year and
2. report to the FMA immediately if an institution withdraws from the protection scheme.

(9) Protection schemes must cooperate with the deposit guarantee schemes and investor compensation schemes in other Member States in accordance with Annex II to Directive 94/19/EC and in accordance with Annex II to Directive 97/9/EC and in the cases referred to in Article 93 paras. 7, 8, 9, and 10. Credit institutions pursuant to Article 9 para. 1 and investment firms pursuant to Article 9a para. 1 which accept deposits or provide investment services subject to guarantee obligations through a branch in Austria must provide the competent protection scheme in their home Member State with all information the scheme requires in order to ensure that depositors (investors) receive compensation promptly and in the correct amounts.

(10) The protection schemes shall test their systems regularly and, where appropriate, the FMA shall inform the protection schemes if the FMA gains knowledge of problems in a credit institution which are likely to trigger the exercise of the deposit guarantee.

**Article 93b.** (1) Paras. 2 to 5 below apply to the calculation of claims pursuant to Article 93 para. 3b which are lodged in accordance with Article 93 para. 3c, to the calculation of contributions to be made by member institutions and to the payout of compensation amounts.

(2) The amount of the claim is to be determined on the basis of the market value of the instruments at the time when the guaranteed event pursuant to Article 93 paras. 3 and 3a occurred. The claim must also include interest and dividends accrued during the period between the occurrence of the guaranteed event (Article 93 paras. 3 and 3a) and the payout of the compensation.

(3) The trustee appointed pursuant to Article 23 para. 7 Depository Act is to provide the protection scheme with all information required for the purpose of calculating the amounts of compensation claims and to cooperate with the protection scheme. In particular, the trustee must inform the protection scheme as early as possible about the composition and amount of the special bankruptcy estate pursuant to Article 23 para. 6 Depository Act.

(4) Immediately after the end of the period for lodging claims, the protection scheme must collect contributions from the member institutions for the purpose of covering the compensation claims. The contributions to be paid by member institutions for the purpose of paying out compensation for claims arising from investment services are to be calculated according to their respective shares of commission income from investment services subject to guarantee obligations as indicated in Annex 2 to Article 43, Part 2, Item 4 in relation to the total amount of such commission income for all member institutions as of the preceding balance sheet date. In the case of credit institutions which conduct severance and retirement fund business, the total remuneration for asset management pursuant to Article 26 para. 3 no. 2 and Article 70 (second and third sentence) of the Act on Severance and Retirement Funds for Salaried Employees and Self-Employed Persons is to be used as a basis instead of the commission income mentioned above.

(5) If extraordinary hindrances impede the determination of claims or the collection of compensation amounts, or if the trustee appointed in accordance with Article 23 para. 7 Depository Act communicates that unusual difficulties have arisen in the process of calculating the amount of the special bankruptcy estate pursuant to Article 23 para. 6 Depository Act, and if for this reason the deadline pursuant to Article 93 para. 3a cannot be met, then the period is to be extended by an additional three months. Moreover, at the request of the protection scheme concerned, the Federal Minister of Finance is entitled to approve the extension of the period by three months after consulting the FMA and the Oesterreichische Nationalbank where this is warranted by special circumstances in order to avert economic hardship, in particular dangers to the stability of the financial system.

**Article 93c.** Articles 93 to 93b apply to credit institutions pursuant to Article 1 para. 1 and Article 9 as well as investment firms pursuant to Article 12 Securities Supervision Act 2007 whose licence or authorisation to accept deposits or provide investment services subject to guarantee obligations is revoked, or whose licence or authorisation for those activities has expired, for all deposits accepted and claims incurred up to the time when the license or authorisation was revoked or expired, even in cases where the guaranteed event pursuant to Article 93 para. 3 nos. 1 to 4 occurred after the revocation or expiration of the license or authorisation. Such institutions must fulfil their obligations to the protection scheme as indicated in Articles 93 to 93b regardless of whether the licence or authorisation is revoked or has expired.

## XX. Protection of Designations

**Article 94.** (1) Unless otherwise provided for by law, the designations "*Geldinstitut*" (money institution), "*Kreditinstitut*" (credit institution), "*Kreditunternehmung*", "*Kreditunternehmen*" (credit undertaking), "*Bank*" (bank), "*Bankier*" (banker) or any designation containing one of those words may only be used by undertakings which are authorised to conduct banking transactions. However, undertakings which are authorised exclusively to provide remittance services must not use the designations indicated in the first sentence. Undertakings which are authorised exclusively to conduct exchange bureau business may only refer to themselves as "*Wechselstuben*" (exchange bureaux).



(2) The designation "*Sparkasse*" (savings bank) or any designation containing the word "*Sparkasse*" is reserved exclusively for credit institutions which are subject to the Savings Bank Act and for the Österreichische Postsparkasse Aktiengesellschaft (Austrian Postal Savings Bank); savings banks which have transferred their undertakings or their banking operations into a stock corporation pursuant to Article 92 may use the designation "*Sparkasse*" only in combination with an additional indication of the spinoff of banking operations. Savings banks may also use the designation "*Sparkasse*" with an additional indication of the type of savings bank, its guarantee organisation, its place of incorporation or its business territory and in any case the time or special circumstances of their establishment.

(3) The designations "*Finanzinstitut*" (financial institution), "*Finanz-Holdinggesellschaft*" (financial holding company), "*Wertpapierfirma*" (investment firm) or any designation containing one of those words are reserved exclusively for financial institutions, financial holding companies and investment firms, respectively, as defined in this federal act.

(4) The designation "*Volksbank*" (people's bank) or any designation containing that word is reserved exclusively for institutions belonging to that sector.

(5) The designation "*Bausparkasse*" (building society) or any designation containing that word is reserved exclusively for credit institutions which are authorised to conduct building savings and loan business. Designations containing the root "*Bauspar*" may only be used by credit institutions which

1. are authorised to conduct building savings and loan business or
2. are authorised as trustees to accept building savings deposits for a building and loan association.

Credit institutions pursuant to no. 2 may use designations containing the root "*Bauspar*" only where this rules out the impression that they conduct building savings and loan business.

(6) The designation "*Raiffeisen*" or any designation containing that word is reserved exclusively for institutions belonging to that sector.

(7) The designation "*Landes-Hypothekenbank*" (state mortgage bank) or any designation containing that word is reserved exclusively for state mortgage banks and the Mortgage Bond Division of the Austrian State Mortgage Banks.

(8) The designations protected under paras. 1 to 7 may also be used by facilities of credit institutions and financial institutions, and by undertakings in cases where they were authorised to carry out such activities when this federal act entered into effect or where the designations are used in a way which rules out the impression that they conduct banking transactions or the transactions of a financial institution.

(9) Para. 2 is not applicable in cases where building societies use the word "*Bausparkasse*" (building society) or credit cooperatives use the designation "*Spar- und Vorschussskasse*" or "*Spar- und Darlehenskasse*" (savings and loan association) in their business names.

(10) Credit institutions and financial institutions pursuant to Articles 9 para. 1, 11 or 13 which operate in Austria through a branch or under the freedom to provide services may use their business names regardless of paras. 1 to 9; in cases where a German translation of the business name is used, the business name must be added in the original language.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).

## XXI. Savings Associations and Employee Savings Plans

**Article 95.** (1) Associations pursuant to the Associations Act 1951 (*Vereinsgesetz 1951*) and the Associations Code 1852 (*Vereinspatent 1852*) must not conduct banking transactions, the provisions of para. 2 notwithstanding. Savings associations may only accept funds from their members in cases where those funds are immediately deposited with a credit institution in the name of and on behalf of the individual members.

(2) By way of derogation from para. 1, associations which were founded on the basis of the Associations Code 1852 and which were already allowed to conduct banking transactions under the previous legal provisions and their articles of association upon this federal act's entry into effect may continue to conduct those transactions. The provisions governing credit cooperatives in this federal act are applicable to such associations.

(3) Special savings facilities created within an undertaking which accept deposits from the undertaking's own employees and from which the employer is obliged as such (employee savings plans) are prohibited. Employers may only accept funds from their employees if those funds are immediately deposited with a credit institution in the name of and on behalf of the individual employees.

(4) Conducting deposit business is prohibited in cases where a majority of depositors are legally entitled to receive loans or procure goods on credit using those deposits (special-purpose savings enterprises); this does not apply to building societies with regard to their building and loan business.

## XXII. Procedural and Penal Provisions

**Article 96.** In the enforcement of administrative rulings (*Bescheide*) pursuant to this federal act, the amount of EUR 30,000 is to replace the amount of ATS 10,000 provided for in Article 5 para. 3 Act on Administrative Enforcement (*Verwaltungsvollstreckungsgesetz – VVG*). The enforcement of such administrative rulings by way of monetary fines as coercive penalties is also permissible against public authorities.

**Article 97.** (1) The FMA must charge credit institutions the following rates of interest on the following amounts:

1. 2% on the amount by which the credit institution falls below the capital requirement pursuant to Article 22 para. 1 in conjunction with Article 103, calculated on an annual basis, for 30 days, except in the case of supervisory measures pursuant to Article 70 para. 2 or in cases where the credit institution is overindebted;
2. 5% over the applicable bank rate on the amount by which the credit institutions falls below Liquidity 1 funds pursuant to Article 25 para. 7, calculated on an annual basis, for 30 days; the amounts by which the credit institution falls short of its minimum reserve requirement (Article 5 of Regulation (EC) No. 2818/98 of the European Central Bank of 1 December 1998 on the application of minimum reserves, OJ L 356 of 30 December 1998) are to be deducted from the Liquidity 1 shortfall;

3. 2% on the amount by which the credit institutions falls below Liquidity 2 funds pursuant to Article 25 para. 12, calculated on an annual basis, for 30 days;
4. *removed*;
5. 0.5% on the amount by which the credit institution exceeds the limits on open term positions pursuant to Article 26a paras. 2 and 3, calculated on an annual basis, for 30 days, except in the case of supervisory measures pursuant to Article 70 para. 2 or in cases where the credit institution is overindebted;
6. 2% on the amount by which the credit institution exceeds large exposure limits pursuant to Article 27 para. 15, calculated on an annual basis, for 30 days, except in the case of supervisory measures pursuant to Article 70 para. 2 or in cases where the credit institution is overindebted; this shall also apply to cases in which large exposure limits are exceeded pursuant to Article 27 para. 16.
7. *removed*.

(2) The interest amounts required pursuant to para. 1 are to be paid to the federal government.

**Article 98.** (1) Parties who conduct banking transactions without the required authorization are guilty of an administrative offence and are to be punished by the FMA with a fine of up to EUR 50,000 unless the act constitutes a criminal offence falling into the jurisdiction of the courts.

(2) Parties who, as persons responsible (Article 9 Act on Administrative Penalty [*Verwaltungsstrafgesetz – VStG*]) for a credit institution,

1. fail to notify the FMA in writing in accordance with Article 10 para. 5 regarding changes in the information pursuant to Article 10 para. 2 nos. 2 to 4 and para. 4 no. 2;
2. fail to notify the FMA regarding the activities indicated in Numbers 1 to 14 of Annex I to Directive 2006/48/EC in accordance with Article 10 para. 6;
3. fail to notify the FMA in writing of any acquisition and any disposal pursuant to Article 20 paras. 1 and 2 in accordance with Article 20 para. 3;
4. fail to notify the FMA in writing in accordance with Article 20 para. 3 of the identity of shareholders and other members holding qualifying participations as well as the amounts of such participations as shown in particular in the information received for the annual general meeting of shareholders or other members, or in the information received on the basis of Articles 91 to 94 Stock Exchange Act.
- 4a. fail to notify the FMA in writing of the result of the election of the chairman of the supervisory board pursuant to Article 28a para. 4;
- 4b. fail to notify the FMA where the appropriate limits for large exposures are exceeded with respect to eligible capital pursuant to Article 27 para. 23;
5. fail to provide the superordinate credit institution with all information required for consolidation in accordance with Article 30 para. 7;
6. *removed*;
7. fail to notify the FMA immediately in writing of the circumstances indicated in Article 73 para. 1 nos. 1 to 15 and 19;

8. fail to submit the reports specified in Article 74 to the FMA or the Oesterreichische Nationalbank within the defined periods and in accordance with the form requirements set forth by law or regulation, or repeatedly submit inaccurate or incomplete reports;
9. fail to comply with the duty to report major loans pursuant to Article 75;
10. advertise their membership in a deposit guarantee or investor compensation scheme in an impermissible manner (Article 93 para. 11);
11. violate the notification obligations set forth in Articles 21a para. 3 nos. 1 and 2, 21c para. 3 nos. 1 and 2, 21d para. 3 nos. 1 and 2, 21e para. 4 nos. 1 and 2, 21f para. 7 nos. 1 and 2, 22o para. 4, 22q para. 3 as well as 73 paras. 4 and 4a, or the presentation and reporting requirements set forth in Article 44 paras. 1 to 6;

are guilty of an administrative offence and are to be punished by the FMA with a fine of up to EUR 30,000 unless the act constitutes a criminal offence falling into the jurisdiction of the courts.

(3) Parties who, as persons responsible (Article 9 Act on Administrative Penalty) for a credit institution,

1. fail to indicate the annual interest rate applicable to a savings deposit in a conspicuous place in the savings document in accordance with Article 32 para. 6;
2. fail to record changes in the annual interest rate in the savings document upon the next presentation of the document, including an indication of the date on which the interest rate takes effect;
3. fail to comply with the written form requirement when concluding consumer current account agreements (Article 34);
4. *removed*
5. *removed*
6. *removed*
7. *removed*
8. conclude consumer current account agreements which do not contain the information required pursuant to Article 34 para. 2;
9. fail to inform the customer of his/her account balance on a quarterly basis in accordance with Article 34 para. 3;
10. fail to post the information required pursuant to Article 35 para. 1 and Article 103 no. 32 in the lobby or fail to provide depositors with required information;
11. *removed*
- 11a. fail to comply with the price display requirement pursuant to Article 35 para. 3 in its entirety;
12. violate the due diligence obligations pursuant to Article 36,

are guilty of an administrative offence and are to be punished by the FMA with a fine of up to EUR 5,000 unless the act constitutes a criminal offence falling into the jurisdiction of the courts.

(4) Parties who, as the persons responsible (Article 9 Act on Administrative Penalty) for a credit institution, violate the regulation prohibiting disposals over accounts pursuant to Article 78 para. 7, even through mere negligence, are guilty of an administrative offence and are to be punished by the

FMA with a term of imprisonment of up to six weeks and a fine of up to EUR 50,000 unless the act constitutes a criminal offence falling into the jurisdiction of the courts.

(5) Parties who, as the persons responsible (Article 9 Act on Administrative Penalty, *Verwaltungsstrafgesetz - VStG*) for a credit institution, violate obligations pursuant to Articles 40, 40a, 40b, 40d, and 41 paras. 1 through 4, even through mere negligence, are guilty of an administrative offence and are to be punished by the FMA with a term of imprisonment of up to six weeks or a fine of up to EUR 75,000 unless the offence constitutes a punishable act falling into the jurisdiction of the courts.

**Article 99.** (1) Parties who

1. as the persons responsible (Article 9 Act on Administrative Penalty) for a financial institution, fail to provide the FMA with the information pursuant to Article 12 para. 3 or fail to notify the FMA in accordance with Article 12 para. 5;
2. as the persons responsible (Article 9 Act on Administrative Penalty) for a financial institution, fail to provide the FMA with the information pursuant to Article 14 para. 3 or fail to notify the FMA in accordance with Article 14 para. 5;
3. intend to hold a qualifying participation in a credit institution directly or indirectly and fail to notify the FMA accordingly in advance and in writing, including an indication of the amount of the participation, pursuant to Article 20 para. 1.
4. have taken the decision to increase a qualifying participation in a credit institution in such a way that the limits of 20%, 30% or 50% of the voting rights or capital are reached or exceeded, or in such a way that the credit institution becomes a subsidiary undertaking of that party, and fail to notify the FMA accordingly in advance and in writing pursuant to Article 20 para. 1;
5. have taken the decision to dispose of a qualifying participation in a credit institution or to fall below the limits for participations in credit institutions as indicated in Article 20 para. 1 and fail to notify the FMA accordingly in advance and in writing pursuant to Article 20 para. 2;
6. as the persons responsible (Article 9 Act on Administrative Penalty) for a subordinate institution or a superordinate financial holding company, fail to provide the superordinate credit institution with all of the information required for consolidation in accordance with Article 30 para. 7;
- 6a as the persons responsible (Article 9 Act on Administrative Penalty) for a mixed-activity undertaking or its subsidiary, fail to provide the credit institution with all of the information required pursuant to Article 70a para. 1;
7. use the designation "*Sparbuch*" (savings passbook), "*Sparbrief*" (savings certificate) or "*Sparkassenbuch*" (savings bank passbook) without authorisation in violation of Article 31 para. 2;
8. *removed*;
9. fail to comply with their disclosure obligations as trustees pursuant to Article 40 para. 2 or Article 103 no. 24;
10. as bank auditors, violate Article 63 para. 3 by failing to notify the FMA and the Oesterreichische Nationalbank in writing of facts or justified doubts identified by the bank

auditors pursuant to Article 63 para. 3 along with explanations immediately, or in the case of slight defects which can be remedied in the short term only once the bank fails to remedy the defects within a period of no more than three months as stipulated by the bank auditor, or fail to submit notification when the directors fail to provide information requested by the bank auditor within the period defined by the bank auditor; this also applies to the persons named in accordance with Article 88 para. 7 Professional Code of Conduct for Certified Public Accountants and Tax Advisors in cases where an external auditing company is appointed as the bank auditor;

- 11.as the persons responsible (Article 9 Act on Administrative Penalty) for a representative office, fail to comply with the reporting requirements set forth in Article 73 para. 2 within one month;
- 12.as the persons responsible (Article 9 Act on Administrative Penalty) for a financial institution or a contract insurance undertaking, fail to comply with the obligation to report major loans pursuant to Article 75;
- 13.as the persons responsible (Article 9 Act on Administrative Penalty) for a protection scheme, fail to submit the annual financial statements of the protection scheme to the FMA pursuant to Article 93a para. 8 within six months of the end of the business year;
- 14.as the persons responsible (Article 9 Act on Administrative Penalty) for a protection scheme, fail to report the withdrawal of a credit institution from the protection scheme to the FMA pursuant to Article 93a para. 8;
- 15.use the designation "*Geldinstitut*" (money institution), "*Kreditinstitut*" (credit institution), "*Finanzinstitut*" (financial institution), "*Finanz-Holdinggesellschaft*" (financial holding company), "*Wertpapierfirma*" (investment firm), "*Kreditunternehmung*", "*Kreditunternehmen*" (credit undertaking), "*Bank*" (bank), "*Bankier*" (banker), "*Sparkasse*" (savings bank), "*Bausparkasse*" (building society), "*Volksbank*" (people's bank), "*Landes-Hypothekenbank*" (state mortgage bank), "*Raiffeisen*" or any designation containing one of those words without authorisation in violation of Article 94;
- 16.as the persons responsible (Article 9 Act on Administrative Penalty) for a credit institution or as the auditor pursuant to Article 230a General Civil Code, violate the provisions governing cover reserves pursuant to Article 230a General Civil Code (Articles 66 to 68);
- 17.execute disposals over accounts or provides other financial services in violation of directly applicable provisions of EU law, without such disposals constituting an administrative offence pursuant to the Foreign Exchange Act;
- 18.contractually transfer or acquire savings documents for which the customer's identity has not been ascertained pursuant to Article 40 para. 1 in violation of Article 31 para. 5;
- 19.fail to collect, store, review or forward the necessary information, or carry out or accept funds transfers in violation of Articles 5 to 14 of Regulation (EC) No. 1781/2006 on information on the payer accompanying transfers of funds, or violate record-keeping or notification obligations,



are guilty of an administrative offence and are to be punished by the FMA with a fine of up to EUR 30,000, in the case of no. 10 up to EUR 50,000, unless the act constitutes a criminal offence falling into the jurisdiction of the courts.

(2) Parties who, as the persons responsible (Article 9 Act on Administrative Penalty) for a financial institution, violate obligations pursuant to Articles 40, 40a, 40b, 40d, and 41 para. 1 through 4, even through mere negligence, are guilty of an administrative offence and are to be punished by the FMA with a term of imprisonment of up to six weeks of prison or a fine of up to EUR 75,000 unless the act constitutes a criminal offence falling into the jurisdiction of the courts.

**Article 99a.** (1) If, as the superordinate institution, a financial holding company fails to provide the superordinate credit institution with all of the information required for consolidation pursuant to Article 30 paras. 7 and 8 despite measures pursuant to Article 99 no. 6 in conjunction with Article 96, and if this objective cannot be attained through other measures, then the FMA may request the suspension of voting rights for the shares held by group institutions in these subordinate institutions from the competent first-instance commercial courts at the domestic subordinate institutions' place of incorporation.

(2) If a court orders the suspension of voting rights in accordance with para. 1, then the court must simultaneously appoint and transfer the exercise of the voting rights to a trustee who fulfils the requirements of Article 5 para. 1 no. 3. The voting rights of the shareholders are to be suspended until the court has established that the conditions pursuant to para. 1 are no longer fulfilled. This must be communicated to the FMA.

(3) The trustee has the right to reimbursement of his/her expenses and to remuneration for his/her activities in an amount to be determined by the court. The financial holding company and the subordinate institution concerned are to bear joint and several liability for those expenses and remuneration. The obliged parties may appeal decisions determining the amount of remuneration for the trustee and the expenses to be reimbursed to him/her. Appeals beyond rulings of the provincial superior court will not be permitted.

**Article 99b.** In the case of administrative offences pursuant to Articles 98 and 99, a limitation period of 18 months applies instead of the limitation period of six months set forth in Article 31 para. 2 of the Act on Administrative Penalty.

**Article 100.** (1) Parties who conduct banking transactions without the required authorization are not entitled to any remuneration, especially interest and commissions, associated with those transactions. The legal invalidity of agreements associated with those transactions does not render the overall banking transaction legally invalid. Agreements to the contrary as well as suretyships and guarantees associated with those transactions are legally invalid.

(2) Parties who conduct banking transactions without the required authorisation cannot invoke Article 1 para. 5.

**Article 101.** (1) Parties who disclose or exploit facts subject to banking secrecy in order to create an economic advantage for themselves or others, or in order to place others at a disadvantage, are to be punished by the court with a term of imprisonment of up to one year or with a fine of up to 360 day-fines.

(2) In the case of para. 1, the offender is to be prosecuted only with the authorisation of the person whose interest in secrecy was violated.

### **XXIII. Conversion and Redemption of Participation Capital**

**Article 102.** (1) Holders of participation certificates (Article 23 para. 4) in a stock corporation may be granted the right to convert their participation capital into shares. Articles 146, 149 para. 2, 153 and 160 Stock Corporation Act as well as Articles 2 paras. 3 to 5 and 3 para. 1 of the Capital Adjustment Act (*Kapitalberichtigungsgesetz – KapBG*) are applicable in this context. The following must be defined in the resolution:

1. the conversion ratio; in this context, the nominal amounts in the case of conversion into par value shares or the ratio between overall capital and one share in the case of conversion into non par value shares must not be weighted differently;
2. any additional payments;
3. the maximum amount of the conditional capital increase arising from no. 1;
4. the period within which the conversion rights can be exercised; the conversion rights may also be granted for an indefinite period of time;
5. the type of shares; in the case of conversion into preference shares, Article 115 para. 2 Stock Corporation Act must be taken into account;
6. specific information on the exercise of and the procedures associated with the conversion rights.

(2) In cases where the time period for exercising the conversion right is limited pursuant to para. 1 no. 4, the management board may decide to extend the period in which the conversion right can be exercised pursuant to para. 1 with the consent of the supervisory board once that period has elapsed.

(3) Resolutions pursuant to para. 1 and para. 2 must be submitted for registration in the Commercial Register and published pursuant to Articles 162 and 163 Stock Corporation Act. Articles 164 and 168 Stock Corporation Act are applicable in this context.

(4) Article 23 para. 4 nos. 1 and 2 are not applicable to participation capital converted pursuant to paras. 1 and 2. The conversion right granted according to the provisions above is to be considered adequate compensation for holders of participation certificates pursuant to Article 23 para. 5 (first sentence).

(5) Article 3 para. 1 nos. 7 and 8 and para. 2 Capital Market Act (*Kapitalmarktgesetz – KMG*) as well as Article 75 para. 2 no. 2 Stock Exchange Act are applicable with regard to the obligation to publish a prospectus for the conversion shares.

(6) Resolutions to convert participation capital taken previously by the general meeting also retain their validity after the transition to non par value shares as long as the conversion ratio is not changed.

## Redemption of Participation Capital

**Article 102a.** (1) Participation capital may be redeemed by the credit institution in accordance with the provisions set forth in the paragraphs below. Redemption must include all participation capital or the participation capital of individual tranches already distinguished at the time of issue; participation capital pursuant to Article 23 para. 1 no. 5 may be treated separately from participation capital pursuant to Article 23 para. 3 no. 8. The partial redemption of participation capital from individual emissions or tranches is permissible as long as equal treatment of the holders of participation capital is ensured. The redemption of individual tranches of participation capital only, issued and acquired by the federal government on the basis of the provisions of the Financial Market Stability Act (*Finanzmarktstabilitätsgesetz - FinStaG*), Federal Law Gazette I No. 138/2008, requires the previous approval of the holder of participation capital. Approval by the federal government shall be granted by the Federal Minister of Finance in agreement with the Federal Chancellor.

(2) The resolution to redeem participation capital is to be taken by the bodies responsible for taking up participation capital with the required majority votes. The Articles of Association can authorise the Management Board to redeem participation capital pursuant to clause 1 for a maximum of five years.

(3) In cases where the credit institution is a stock corporation with exchange-listed shares and participation certificates, the redemption must be preceded by a conversion offer for shares (Article 102) within a period of six months prior to the announcement of the redemption. The announcement of the conversion offer must include a reference to the planned redemption. In this conversion offer, any additional payments must not be set higher than the difference between the average stock exchange price of the relevant share and the average stock exchange price of the participation certificates over the twenty exchange trading days preceding the resolution regarding the conversion offer.

(4) The credit institution must redeem the participation capital in cash. Holders of participation certificates must be granted an adequate cash payment. In this case, Article 2 para. 3 Transformation Act (*Umwandlungsgesetz – UmwG*) is to be applied analogously with regard to the reports to be prepared, audits and legal remedies available to the persons entitled to compensation, with the redemption plan substituting for the transformation plan.

(5) The participation capital is considered to be redeemed upon announcement of the resolution pursuant to para. 2. As a result, holders of participation certificates are exclusively entitled to a cash payment pursuant to para. 4. In the announcement, the holders of participation certificates are to be informed about their rights in connection with the compensation. Certificates issued for participation capital are to be retained by the credit institution.

(6) In cases where the compensation amount for the participation capital cannot be credited to an account or where the holder of participation certificates does not provide instructions concerning the compensation amount, the amount is to be surrendered to a trustee to be appointed in the resolution to redeem participation capital. The trustee is then responsible for further settlement and may avail himself/herself of the support of the credit institution in the process.

(7) Participation capital must be redeemed against the net profit or loss for the year resulting from the annual balance sheet or against an unappropriated reserve. Participation capital can also be redeemed if alternative capital of equal or better quality is procured. In the case of clause 1, participation capital pursuant to Article 23 para. 4 and the appropriated reserve arising from the premium arising from the issuance of participation capital are to be allocated to legal reserves, contingency reserves or statutory reserves, depending on the legal form of the credit institution.

(8) *removed (repealed by Federal Law Gazette I No. 33/2005)*

## **XXIV. Transitional and Final Provisions**

### **Transitional Provisions**

**Article 103.** The following transitional provisions will apply once this federal act enters into effect:

1. (regarding Article 1 para. 1 nos. 22 and 23)

Authorisations to conduct exchange bureau business and remittance services business on the basis of the Trade Act 1994 which existed at the time Article 1 para. 1 no. 22 as amended by Federal Law Gazette I No. 35/2003 entered into effect are to expire as of 30 June 2004.

2. *removed.*

3. *removed.*

4. *removed.*

5. (regarding Article 4 para. 1)

In cases where a credit institution was permitted to conduct banking transactions under the previous legal provisions prior to the entry into effect of this federal act, a licence pursuant to Article 4 para. 1 is not required.

6. (regarding Article 5 para. 1 no. 9) A confirmation from the home country is not required for directors who are not Austrian nationals and who have already been appointed at the time when this federal act enters into effect.

7. (regarding Article 9) Branches of credit institutions from Member States which are authorised to conduct banking transactions in Austria at the time when this federal act enters into effect are assumed to have undergone the procedure pursuant to Article 9 paras. 1 to 4. Article 9 paras. 5 and 7 as well as Article 15 are applicable in this context.

8. (regarding Articles 11 and 13) Branches of financial institutions from Member States which are authorised to carry out the activities listed in Numbers 2 to 14 of the Annex to Directive 89/646/EEC in Austria at the time when this federal act enters into effect are assumed to have undergone the procedure pursuant to Article 11 paras. 1 to 3 or Article 13 paras. 1 to 3. Article 11 para. 5, Article 13 para. 4 and Article 17 are applicable in this context.

9. (regarding Article 22 para. 1)

a) In cases where the own funds of a credit institution or group of credit institutions are below 8% of the assessment base on 1 January 1994, they must be increased to that level by 1 January 1995. As long as this target has not been attained, the following provisions apply:

- aa) during the year, the credit institution must not allow the coefficient to fall below the level attained;
  - bb) during the year, the superordinate credit institution must not allow the coefficient to fall below the level attained;
  - cc) the credit institution and institutions in the group of credit institutions may not make use of the freedom to provide services and the freedom of establishment pursuant to Articles 10, 12 and 14;
- b) Credit institutions which already existed as of 1 January 1994, and the own funds of which were lower than the required amount of ATS 70 million in initial capital as of that date must not allow their own funds to fall below the amounts reached as of 31 December 1997, and on the ensuing balance sheet dates until their own funds reach the level of EUR 5 million in initial capital. In cases where control over such a credit institution is assumed by a natural or legal person other than the one which previously exercised control over the credit institution, the credit institution's initial capital must amount to EUR 5 million from that point in time onward.
- c) In the case of statutory consolidation pursuant to the Cooperative Society Mergers Act (*Genossenschaftsverschmelzungsgesetz – GenVG*) or in the case of a merger of two or more credit institutions which have invoked lit. b (first sentence), the own funds of the credit institution resulting from the merger must always be at least equal to the consolidated amount of own funds of the merging credit institutions at the time of the merger; lit. b (last sentence) is also applicable to this credit institution.
- d) In cases where the own funds of a building society are below 8% of the assessment base on 1 January 1994, they must be increased from the percentage as of that date in equal annual percentage increments to 8% of the assessment base from 31 December 1994 to 1 January 1999. Lit. a sublit. aa to cc are to be applied analogously.
- 9a.(regarding Article 22 para. 1) In the case of credit institutions appointed as Independent Brokers by the Council of the Vienna Stock Exchange pursuant to Article 57 Stock Exchange Act as of 1 January 1997, the following applies for the duration of their appointment as Independent Brokers: If the own funds of these credit institutions are below the amount defined for initial capital, then the credit institutions must not fall below the maximum amount of own funds attained after 1 January 1997 until the amount required for initial capital is reached. The provisions of no. 9 lit. b and c regarding changes in control over the credit institution and regarding mergers of credit institutions are applicable in this context.
- 10.(regarding Article 22 para. 3)
- a) Monetary claims which are refinanced by mortgage bonds and municipal bonds pursuant to the provisions of the Mortgage Bond Act 1927, German Imperial Law Gazette I p. 492 and of the Mortgage Bank Act in the version of German Imperial Law Gazette I p. 1574/1938 and which serve the purpose of covering the securities may be assigned a weight of 50%.
  - b) Mortgage bonds, municipal bonds and funded bank bonds issued pursuant to the provisions of the Mortgage Bond Act 1927, German Imperial Law Gazette I p. 492, the

Mortgage Bank Act in the version of German Imperial Law Gazette I p. 1574/1938 and the Act of 27 December 1905 on Funded Bank Bonds (Imperial Law Gazette No. 213) are to be assigned a weight of 10%.

- c) Asset items arising from real estate leasing transactions are to be assigned a weight of 50% if the leased asset is located in Austria and used for commercial purposes, and if the lessor retains unrestricted ownership of the leased asset until the lessee exercises his/her option to purchase the asset.
- d) Credit institutions pursuant to Article 3 para. 1 no. 4 may assign a weight of 0% to exposures to legally recognised religious communities and closely related institutions where the exposures are refinanced by debt securities issued prior to 1 January 1993.
- e) Credit institutions pursuant to Article 3 para. 2 no. 6 may assign a weight of 0% to exposures to credit institutions belonging to the same sector where the exposures are refinanced by debt securities issued prior to 1 January 1993.
- f) Loans which are completely secured by mortgages on offices or multi-purpose commercial premises located in the territory of a Member State which permits the assignment of a weight of 50% may be assigned a weight of 50% subject to the provisions set forth below. In this context, a risk weight of 50% is assigned to that portion of the loan which does not exceed the upper limit calculated in accordance with sublit. aa or bb. The portion of the loan which exceeds that upper limit is assigned a risk weight of 100%. The real estate property must be either occupied or let by the owner.
  - aa) Upper limit: 50% of the market value of the property in question: The market value of the property must be calculated by two independent valuers who carry out independent assessments at the time when the loan is granted. The loan is to be based on the lower of the two valuations. The property must be revalued by one valuer at least once per year. In the case of loans which do not exceed EUR 1 million and 5% of the credit institution's own funds, the property must be revalued by one valuer at least once every three years.
  - bb) Upper limit: 50% of the market value of the property or 60% of the mortgage lending value, whichever is lower, in Member States whose laws, regulations and administrative provisions include rigorous criteria for the assessment of mortgage lending values: The mortgage lending value refers to the value of the property as determined by a valuer in a prudent assessment of the future marketability of the property, taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. No speculative elements may be taken into account in the assessment of the mortgage lending value. The mortgage lending value must be documented in a transparent and clear manner.

The mortgage lending value and in particular the underlying assumptions regarding the development of the relevant market must be reassessed at least every three years or whenever the market value decreases by more than 10%.



In the cases of sublit. aa and bb, the market value refers to the price at which the property could be sold under a private contract between a willing seller and an arm's-length buyer on the date of the valuation, based on the underlying assumptions that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period of time is available for the negotiation of the sale in light of the nature of the property. Loans outstanding as of 1 January 1999, may be assigned a weight of 50% if the requirements set forth in this paragraph are fulfilled. In such cases, the value of the property must be assessed according to the valuation criteria defined above at the latest three years after the time at which the directive is transposed.

11.(regarding Article 22 para. 4)

In the case of joint and several guarantees for instruments issued by credit institutions prior to 1 January 1993, the internal portion is to be considered an off-balance-sheet transaction involving high credit risk, while joint and several guarantees beyond that portion are considered to involve low risk.

11a.(regarding Article 22b para. 4)

Credit institutions which exceed one of the limits pursuant to Article 22b para. 2 no. 3 or 4 as of 31 December 1997, must calculate the capital requirement for the trading book in accordance with Article 22b para. 1 from 1 January 1998 onward and notify the Federal Minister of Finance and the Oesterreichische Nationalbank of these circumstances immediately.

11b.*removed.*

11c.(regarding Article 22g)

The following maturity-based percentage rates apply to the specific position risk of mortgage bonds, municipal bonds and funded bank bonds issued prior to 1 January 1998 pursuant to the provisions of the Mortgage Bond Act 1927, German Imperial Law Gazette I p. 492, the Mortgage Bank Act in the version of German Imperial Law Gazette I p. 1574/1938 and the Act of 27 December 1905 on Funded Bank Bonds (Imperial Law Gazette No. 213):

0 to 6 months	6 months to 24 months	Over 24 months
0.125%	0.5%	0.8%

11d.(regarding Article 22p paras. 8 and 12) Credit institutions may use the minimum spread, carry and outright rates set out in the table below instead of those indicated in Article 22p paras.8 and 12 provided that the institutions:

- a) undertake significant commodities business;
- b) have a diversified commodities portfolio; and
- c) are not yet in a position to use internal models for the purpose of calculating the capital requirement for commodities risk in accordance with Article 26b.

	Precious Metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
Spread rate (in %)	1.0	1.2	1.5	1.5
Carry rate (in %)	0.3	0.5	0.6	0.6
Outright rate (in %)	8	10	12	15

- 12.(regarding Article 23 para. 6) The liability reserve allocated in the annual financial statements up to 31 December 2000, pursuant to Article 23 para. 6 in the version of Federal Law Gazette I No. 123/1999 must be maintained as such in the books, and the provisions governing usage according to designation pursuant to Article 23 para. 6 in the version of Federal Law Gazette I No. 123/1999 are still applicable. The percentage indicated in Article 23 para. 6 in the version of Federal Law Gazette I No. 33/2000 is to be applied to the increase in the assessment base from 1 January 2001 onward.
- 13.(regarding Article 23 para. 8 no. 4) Article 23 para. 8 no. 4 is to be applied to subordinate capital issued after 31 December 1993.
- 14.(regarding Article 23 para. 13 no. 1) Goodwill entered as an asset item in the last annual financial statements prior to 1 January 1994 is to be deducted in ten equal annual increments starting on the first balance sheet date after 1 January 1994.
- 15.(regarding Article 23 para. 13 no. 6) As an alternative to the provisions of Article 23 para. 13 no. 6, credit institutions associated with a central institution may deduct their direct or indirect shares in the central institution pursuant to Article 23 para. 13 no. 3 or 4 according to the following schedule:
- a) January 1994 to 31 December 1994: 15%
  - b) January 1995 to 31 December 1995: 30%
  - c) January 1996 to 31 December 1996: 45%
  - d) January 1997 to 31 December 1997: 60%
  - e) January 1998 to 31 December 1998: 80%
  - f) from 1 January 1999: 100%
- 16.(regarding Article 24 para. 2 no. 2)
- The difference arising on the asset side from the aggregation of equity capital and participations as specified in Article 254 Commercial Code is to be treated as a participation in an institution external to the group in the case of credit institutions and financial institutions which were not part of the banking group pursuant to Article 12 a para. 1 Credit Act in the version of Federal Law Gazette No. 325/1986, for a maximum period of ten years starting with the first balance sheet date after 1 January 1994, with an amount which is reduced by one tenth each year; Article 23 para. 13 is not applicable in this context.
- 17.(regarding Article 25) Original maturities are to be applied until 31 December 1996.
- 18.(regarding Article 26 para. 1) In applying exchange rates pursuant to Article 26 para. 1 no. 2, fluctuations against the respective Austrian currency are to be used as a basis for a period of

three or five years from the time the schilling is replaced by the euro. In this context, the exchange rate irrevocably defined by the Council pursuant to Article 109 (1) (4) (first sentence) of the Treaty establishing the European Community is to be used for conversion from schillings to euros.

18a.(regarding Article 26 para. 1) Until 31 December 2004, credit institutions (groups of credit institutions) may calculate their own funds requirements by multiplying by 8% the amount by which the overall foreign exchange position exceeds 2% of their eligible capital (allowance).

19.(regarding Article 26 para. 5 and Article 26a) For credit institutions pursuant to no. 21 lit. a, the assessment base is to be increased by the funding deposits where these are eligible pursuant to no. 21 lit. a until 31 December 1998.

20.(regarding Article 26a para. 6) Approval is not required in cases where a credit institution has already obtained approval of a similar nature pursuant to Article 14a para. 7 Credit Act 1979, No. 63/1979, in the version of Federal Law Gazette No. 325/1986 or pursuant to Article 26 para. 7 of this federal act as amended by Federal Law Gazette No. 532/1993.

20a.(regarding Article 26b) Credit institutions which submit a request to the Federal Minister of Finance prior to 1 January 1998 for special approval to calculate capital requirements according to a model chosen by the credit institution may also employ this model with the consent of the Federal Minister of Finance without a special approval pursuant to Article 26b para. 3 until 31 December 1999 at the latest; consent is to be granted in cases where all of the following requirements are fulfilled:

- a) The model is in use at the credit institution at the time the request is submitted;
- b) The credit institution demonstrates that the model was created in accordance with the requirements of Article 26b para. 3 nos. 1 to 3;
- c) The credit institution has obtained an opinion from an independent expert regarding market requirements, their depiction in the model structure and the fulfilment of requirements pursuant to Article 26b para. 5 nos. 2 and 3;
- d) an affirmative short expert opinion has been obtained from the Oesterreichische Nationalbank; the Oesterreichische Nationalbank must review the fulfilment of individual requirements set forth in Article 26b para. 3 nos. 1 to 3 and in Article 26b para. 5 no. 1 by means of random samples and submit a statement on the likelihood that the model will be suitable on the basis of the review results; the Oesterreichische Nationalbank must also review whether any doubts exist regarding the independence of the expert appointed by the credit institution. The consent of the Federal Minister of Finance will expire once a decision has been made on the request for special approval pursuant to Article 26b para. 3 with a legally effective administrative ruling.

21.(regarding Article 27)

- a) *removed*.
- b) Until 31 December 1998, those asset items, off-balance sheet transactions and special offbalance-sheet financial transactions whose value as determined pursuant to Article 27 para. 2 in the version of Federal Law Gazette No. 445/1996 is equal to 15% of the eligible

capital of the credit institution or group of credit institution and amounts to at least ATS 7 million are considered to be large exposures.

- c) Until 31 December 1998, 40% and 30% are to be applied as the upper limits for individual large exposures pursuant to Article 27 para. 7 in the version of Federal Law Gazette No. 445/1996 instead of the 25% and 20% limits specified in that act, respectively.
- d) Large exposures which are contractually granted as of 1 January 1995, in an amount which exceeds the 40% limit may be maintained by the credit institution in order to fulfil the terms of the contract until the end of the agreed period subject to the conditions indicated under sublit. aa to dd below:
  - aa) Their amount must not be increased after 1 January 1997;
  - bb) The amount of the exposure as of 1 January 1997, must have already been agreed upon as of 1 January 1995;
  - cc) The term of the exposure must have already been agreed upon as of 1 January 1995;
  - dd) If no term is agreed upon or the exposure is incurred until further notice, then it must be terminated by 31 December 1998, at the latest.

Large exposures which exceeded the level of 30% as of 1 January 1995, and in which this limit is also exceeded as of 31 December 1998, may be maintained contractually subject to the conditions under sublit aa to dd.

- e) Large exposures which exceed the percentages of 25% or 20% as of 31 December 1998, must be reduced to those percentage levels by 31 December 2001, lit. d notwithstanding. However, an increase in the amount of the exposure is not permitted during the period between 1 January 1999 and 31 December 2001.
- f) The following applies to credit institutions whose eligible capital does not exceed the amount of ATS 95 million as of 31 December 1998: The periods pursuant to lit. c and e are to be extended to 31 December 2003 and 31 December 2006, respectively.
- g) Large exposures entered into prior to 1 January 2002, which are refinanced by mortgage bonds and municipal bonds pursuant to the provisions of the Mortgage Bond Act and of the Mortgage Bank Act and which serve the purpose of covering the securities may be assigned a weight of 50%.

22.(regarding Article 29 paras. 1 and 2) Participations which exist at the time when this federal act enters into effect and which exceed the specified limits must not be increased in size unless the increase is covered by own funds pursuant to Article 29 para. 4; these participations must be adjusted to the limits specified in Article 29 paras. 1 and 2 by 31 December 2002, at the latest.

22a.(regarding Article 30 para. 1) Only credit institutions will be considered superordinate institutions until 31 December 1999.

22b.(regarding Article 33 para. 6) The indication of the effective or notional annual interest rate and the amount of changes may be omitted in written consumer information if the credit agreement was concluded prior to 1 January 1994 and its term ends by 31 December 2002, at

the latest. If the written consumer information does not contain indications of the effective or notional interest rate, then the credit institution must

- aa) indicate that other interest rates shown do not enable an accurate comparison with cost indications on the basis of the effective or notional interest rate, and
- bb) communicate the effective or notional annual interest rate as well as the amount of any changes in writing at the express request of the consumer.

23.(regarding Article 33 para. 8) Article 33 para. 8 is not applicable to credit facilities granted prior to 1 January 1994.

24.(regarding Article 40 para. 2) Customers who maintain existing accounts on behalf of others must disclose this fact and provide evidence of the identity of the trustor to the credit institution or financial institution by 31 December 1994. Once this period has elapsed, credit institutions and financial institutions must proceed in accordance with Article 41 para. 1 (first sentence) in cases where they have reason to suspect that this disclosure obligation has been violated.

25.(regarding Article 42 para. 7) Article 42 para. 7 will enter into effect as of 1 January 1995.

25a.(regarding Article 43 para. 3) This provision will no longer be applicable from the business year which begins after 31 December 2001.

25b.(regarding Article 44 paras. 3 to 6) Article 44 paras. 3 to 6 are to be applied for the first time to business years starting after 31 December 1995.

26.*removed.*

27.(regarding Article 43 Annex 2) Annex 2 to Article 43 is to be applied for the first time to business years ending after 31 December 1994.

28.(regarding Articles 45 to 56, 58 and 59) Articles 45 to 56, 58 and 59 will enter into effect as of 1 January 1995.

28a.(regarding Article 59 para. 1) Until 31 December 1999, the superordinate credit institution must also prepare consolidated financial statements and a consolidated annual report for parent undertakings whose sole purpose is to acquire participations in subsidiary undertakings and to manage such subsidiaries and turn them to profit in cases where those subsidiaries are exclusively or mainly credit institutions.

28b.(regarding Article 62 no. 1) Auditors who were authorised to audit banks according to the regulations applicable prior to this provision's entry into effect and who actually performed those obligatory auditing activities are to be considered authorised auditors as specified in Article 13 Act on Audits of Cooperative Societies 1997. Auditors must report this authorisation as a bank auditor to the Federal Ministry of Justice along with evidence of their previous activities by 30 September 1999; the Federal Ministry of Justice must make this authorisation visible in the list of authorised auditors (Article 13 para. 2 Act on Audits of Cooperative Societies 1997). Auditors who are authorized to audit banks are to be registered in the list of authorised auditors along with an additional indication that they are authorised to audit banks on the basis of Article 61 Banking Act.

- 28c. Article 43 para. 1, Article 44 para. 1, Article 59a and Article 65 para. 1 of this federal act in the version of Federal Law Gazette I No. 161/2004 are to be applied for the first time to business years starting after 31 December 2004.
- 28d. Superordinate credit institutions which only have debt instruments admitted to listing on a regulated market as specified in Article 2 no. 37 or whose securities are admitted to public trading in a non Member State and which have applied internationally recognised standards for this purpose since a business year which began prior to 11 September 2002, need only apply Article 59a of this federal act in the version of Federal Law Gazette I No. 161/2004 to business years starting after 31 December 2006. In such cases, Article 59a of this federal act in the version of Federal Law Gazette I. No. 97/2001 is still applicable.
- 28e. (regarding Article 61 para. 2, Article 62 nos. 4 and 6a) Article 61 para. 2 as well as Article 62 nos. 4 and 6a of this federal act in the version of Federal Law Gazette I No. 59/2005 are to be applied to business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions.
- 28f. (regarding the removal of Article 62 no. 2) Article 62 no. 2 is no longer to be applied to audits of business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions.
- 28g. (regarding Article 62a and the removal of Article 63 para. 8) Article 62a of this federal act in the version of Federal Law Gazette I No. 59/2005 is to be applied to audits of business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions. Article 63 para. 8 is no longer to be applied to audits of business years starting after 31 December 2005, even in cases where the bank auditor was already appointed before that time in accordance with the previously applicable legal provisions.
29. (Article 63 para. 1) Article 63 para. 1 is to be applied for the first time to business years starting after 31 December 1994.
- 29a. Article 23 para. 13, Article 23 para. 14 no. 8, Article 24 para. 1, Article 30 para. 7a, Article 30 para. 9a, Article 63 para. 4 no. 2b, Article 69, Article 70 para. 4, Article 70a para. 5 and Article 73 para. 3 are to be applied for the first time to business years starting after 31 December 2004.
30. (regarding Article 64 para. 1 no. 4)  
Article 64 para. 1 no. 4 is to be applied for the first time to business years starting after 31 December 1995. The following applies to business years which end before 31 December 1996: The classification of claims and liabilities specified in Article 64 para. 1 no. 4 must be performed on the basis of the originally agreed maturity or notice period.
- 30a. (regarding Article 64 paras. 4 and 5) Article 64 paras. 4 and 5 are to be applied for the first time to business years starting after 31 December 1995.



- 30b.(regarding Article 64 para. 6) Article 64 para. 6 is to be applied for the first time to business years starting after 31 December 1998.
- 30c.(regarding Article 75 para. 3) Until 31 December 1996 the scope of the query will be based on Article 75 para. 3 in the version of Federal Law Gazette No. 383/1995.
- 30d.(regarding Article 77 paras. 4 and 5) The provision and communication of information pursuant to Article 77 paras. 4 and 5 in the version of Federal Law Gazette No. 445/1996 is permissible from 1 August 1996 onward
- 31.(regarding Article 74 para. 4 no. 3) Until 31 December 1996, calculations regarding adherence to liquidity requirements must (also) be based on original maturities.
- 31a.(regarding Articles 93 to 93b) Claims arising from investment services subject to guarantee obligations pursuant to Article 93 para. 3c in the version of Federal Law Gazette I No. 63/1999 may be lodged after the announcement of Federal Law Gazette I No. 63/1999 for all guaranteed events which occurred after 26 September 1998. For claims lodged prior to 1 May 1999, the period indicated in Article 93 para. 3c will begin on that date.
- 32.(regarding Article 93 para. 8) Credit institutions from Member States (Article 9 para. 1) which accept deposits subject to guarantee obligations in Austria and do not belong to a comparable deposit guarantee scheme must make that fact clearly visible in their advertising and in contract documents and, where applicable, post that information in the lobby of the branch.
- 32a.(regarding Article 93 paras. 8 and 8a) In the case of business relationships which already exist at the time when this federal act in the version of Federal Law Gazette I No. 63/1999 enters into effect, depositors and investors are to be informed about the possibility of receiving information on the protection scheme in the account statement regarding annual settlement following the entry into effect. In cases where communication with the depositor or investor is handled only by means of independent queries of account data, the depositor or investor is to be informed of the possibility of receiving information on the protection scheme according to the technical possibilities.
- 33.(regarding Article 94 para. 3) Companies which exist at the time when this federal act enters into effect and which use the designation "*Finanz-Holding*" (financial holding company) or any designation containing that word in their business names must change those names by 1 January 1998.

**Article 103a.** In cases where rounding differences remain after a funds transfer pursuant to Article 8 para. 3 of Council Regulation (EC) No. 974/98 of 3 May 1998 on the introduction of the euro, OJ No. L 139/1 of 11 May 1998 is credited, the liability underlying the funds transfer is still to be considered paid. In such cases, the beneficiary of the transfer is obliged to accept the payment. The originator of the funds transfer will have no claim to reimbursement of any amount exceeding the underlying liability.

**Article 103b.** (1) (regarding Article 31 paras. 1 and 3, Article 32 para. 4) The provisions of Article 31 paras. 1 and 3 as well as Article 32 para. 4 of this federal act in the version of Federal Law Gazette I No. 33/2000 apply to new savings agreements concluded from 1 November 2000 onward. In the case of savings passbooks which exist at that point in time and are not issued in the name of the

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).

customer, especially bearer savings passbooks, deposits and withdrawals may only be carried out after 30 June 2002 if the requirements set forth in Article 31 para. 1 in the version of Federal Law Gazette I No. 33/2000 are fulfilled, Article 40 para. 1 no. 4 in the version of Federal Law Gazette I No. 33/2000 notwithstanding.

(2) After Article 32 para. 4 nos. 1 and 3 as amended by Federal Law Gazette I No. 37/2010 enters into effect, the credit institutions shall immediately initiate all the organisational and technical precautionary measures required in order to achieve compliance with the requirements set out in nos. 1 and 3 of the relevant provision by 1 November 2010 at the latest.

**Article 103c.** The following transitional provisions will apply after the entry into effect of this federal act in the version of Federal Law Gazette I No. 97/2001:

1. The punishability of administrative offences pursuant to Articles 98 and 99 in the version of this federal act which was applicable until 31 March 2002 will remain unaffected by the entry into effect of Federal Law Gazette I No. 97/2001; such offences will remain punishable pursuant to Articles 98 and 99 in the version prior to Federal Law Gazette I No. 97/2001.
2. Administrative penal proceedings which are pending as of 31 March 2002 due to administrative offences indicated in no. 1 are to be continued by the authorities competent as of 31 March 2002.
3. Administrative penal proceedings which are initiated after 1 April 2002 due to administrative offences indicated in no. 1 are to be carried out by the FMA.
4. Proceedings which are pending as of 31 March 2002 for the enforcement of the federal acts listed in Article 69 are to be continued by the authorities competent as of 31 March 2002.
5. Administrative proceedings which are pending with the Federal Minister of Finance as of 31 March 2002, based on the federal acts listed in Article 69 are to be continued by the FMA after 1 April 2002.
6. Audits by the Oesterreichische Nationalbank pursuant to Article 79 para. 4 in the version of Federal Law Gazette I No. 2/2001 which are still pending as of 31 March 2002 are to be continued by the Oesterreichische Nationalbank in accordance with that provision and must be completed by 30 June 2002 at the latest. The Oesterreichische Nationalbank will also be entitled and obliged after 30 June 2002, to make the audit results available to the FMA and to provide the FMA with the necessary information. Where the FMA requires more specific information, the FMA may obtain information directly from the employees of the Oesterreichische Nationalbank who are responsible for carrying out audits and preparing reports without requiring an express release from official secrecy obligations for this purpose. The Oesterreichische Nationalbank is also empowered to provide the bank auditor of the credit institution concerned with necessary information on the result of audits conducted by the Oesterreichische Nationalbank.
7. The effectiveness of the administrative rulings (*Bescheide*) and regulations issued by the Federal Minister of Finance in enforcement of the federal acts indicated in Article 69 until 31 March 2002 will remain unaffected by the transition to banking supervision by the FMA as effected by Federal Law Gazette I No. 97/2001.

8. The costs incurred up to 31 March 2002 but not yet collected up to that date for the measures indicated in Article 70 para. 7 in the version of Federal Law Gazette I No. 2/2001 must be charged to the relevant legal entities for reimbursement and paid to the federal government.
9. Bundesrechenzentrum GmbH must also provide the services set forth in Article 72 para. 2 in support of the Federal Minister of Finance for the FMA at its request to the extent that and as long as this is necessary for the fulfilment of the FMA's duties in banking supervision; Bundesrechenzentrum GmbH is entitled to charge an appropriate fee for those services.
10. The report pursuant to Article 73 para. 6, including the annex, must be submitted for the first time for the accounting date of the last business year ending prior to 1 January 2001; in this context, the period indicated in Article 73 para. 6 is not applicable.
11. The reports pursuant to Article 74 paras. 7 and 8 must be submitted for the first time for the first calendar quarter in the year 2002.
12. The provisions of Article 75 para. 1 no. 4 are to be applied for the first time to business years ending after 31 December 2002.
13. The reason for exclusion pursuant to Article 62 no. 6a in the version of Federal Law Gazette I No. 13/2004 is not applicable to bank auditors who are appointed by 31 December 2005, for the first business year starting after 31 December 2005.
14. References to the FMA in the provisions set forth in Article 107 para. 25 are to be considered references to the Federal Minister of Finance instead of the FMA until 31 March 2002.

**Article 103d.** (1) Article 24 para. 2 no. 1 in the version of Federal Law Gazette I No. 97/2001 is applicable to hybrid capital issued up to 1 May 2001, the terms and conditions of which complied with the international standard prevailing at the time, and the issue and terms of which were communicated to the Federal Minister of Finance by that time; eligibility pursuant to Article 24 para. 2 no. 1 subject to these requirements is also fulfilled after the entry into effect of Federal Law Gazette I No. 97/2001 in cases where the terms and conditions indicated in Article 24 para. 2 nos. 5 and 6 in the version of Federal Law Gazette I No. 97/2001 are not completely fulfilled.

(2) Asset items pursuant to Article 25 para. 11 no. 4 may be included in the Liquidity 2 funds of a credit institution from 31 August to 31 December 2001, in cases where the credit institution deposited securities as collateral with the Oesterreichische Nationalbank to secure its euro bank notes position in that period.

**Article 103e.** The following transitional provisions will apply after the announcement of this federal act in the version of Federal Law Gazette I No. 141/2006:

1. (regarding Article 21a and Articles 21c to 21g) From the time at which this federal act in the version of Federal Law Gazette I No. 141/2006 is announced, applications for approval pursuant to Article 21a and Articles 21c to 21f may be submitted and approvals may be granted; the procedure pursuant to Article 21g may also be applied from that time onward.
2. (regarding Article 21a para. 1): In cases where a credit institution or a superordinate credit institution acting on behalf of its group of credit institutions submits an application for approval of the Internal Ratings Based Approach pursuant to Article 21a in the period between the announcement of this federal act in the version of Federal Law Gazette I No. 141/2006 and 31

December 2007, the model may be applied with the consent of the FMA even without the special approval pursuant to Article 21a if the following requirements are fulfilled:

- a) The credit institution confirms by means of a self-assessment that the requirements of Article 21a para. 1 nos. 1 to 9 are fulfilled;
  - b) An affirmative short opinion has been obtained from the Oesterreichische Nationalbank to confirm that the requirements pursuant to Article 21a para. 1 no. 2 are fulfilled;
  - c) Where necessary, an affirmative short opinion has been obtained from the Oesterreichische Nationalbank to confirm that the requirements pursuant to Article 21a para. 8 are fulfilled; Preliminary consent is to expire with the legally effective granting of an approval pursuant to Article 21a, at the latest after 31 December 2011.
3. (regarding Article 21a para. 1 no. 3): In the case of credit institutions or groups of credit institutions which use the Internal Ratings Based Approach and submit a request to apply this approach pursuant to Article 21a by 31 December 2009, evidence that the credit institutions have been using their own rating systems for one year will be considered sufficient. In this context, the essential requirements pursuant to Article 21a para. 1 must be fulfilled.
4. (regarding Article 21a para. 1 no. 4): In the case of credit institutions or groups of credit institutions which apply Article 22b para. 8 and submit a request to use their own estimates of loss given default and conversion factors by 31 December 2008, evidence that the credit institutions have been using their own estimates for two years will be considered sufficient. In this context, the essential requirements pursuant to Article 21a para. 1 must be fulfilled.
5. (regarding Article 21b): From the announcement of this federal act in the version of Federal Law Gazette I No. 141/2006, the FMA may carry out the approval procedure for external credit assessment institutions pursuant to Article 21b, issue regulations in this regard and recognise external credit assessment institutions which have already been recognised by the competent authorities of other Member States for these purposes without further review.
6. (regarding Article 22 para. 1):
- a) In cases where a credit institution or a group of credit institutions applies the Internal Ratings Based Approach pursuant to Article 22b, the minimum capital requirement pursuant to Article 22 para. 1 must equal the following percentages of the amount which the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 as amended by Federal Law Gazette I No. 48/2006:
    - aa) at least 95% from 1 January 2007 to 31 December 2007;
    - bb) at least 90% from 1 January 2008 to 31 December 2008;
    - cc) at least 80% from 1 January 2009 to 31 December 2011;in this context, the calculation must be performed using the assessment base pursuant to Article 22 para. 2 as amended by Federal Law Gazette I No. 48/2006 as of 31 December 2007, 31 December 2008, 31 December 2009, 31 December 2010 and 31 December 2011;

- b) In cases where a credit institution or a group of credit institutions applies the Advanced Measurement Approach pursuant to Article 22l, the minimum capital requirement pursuant to Article 22 para. 1 must equal the following percentages of the amount which the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 as amended by Federal Law Gazette I No. 48/2006:
    - aa) at least 90% from 1 January 2008 to 31 December 2008;
    - bb) at least 80% from 1 January 2009 to 31 December 2011;
 in this context, the calculation must be performed using the assessment base pursuant to Article 22 para. 2 as amended by Federal Law Gazette I No. 48/2006 as of 31 December 2007, 31 December 2008, 31 December 2009, 31 December 2010 and 31 December 2011;
  - c) For the purposes of lit. a, credit institutions or groups of credit institutions which first apply the approach referred to in Article 22b after 31 December 2009, may, until 31 December 2011 and subject to the approval of the FMA, apply the amount for the calculation of the minimum capital requirement pursuant to Article 22 para. 1 that equals at least 80% of the amount the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 without approval of the approach pursuant to Article 22b, in which case the calculation must be carried out using the assessment base pursuant to Article 22 para. 2 on 31 December 2010 and 31 December 2011;
  - d) For the purposes of lit. b, credit institutions or groups of credit institutions which first apply the approach referred to in Article 22l after 31 December 2009, may, until 31 December 2011 and subject to the approval of the FMA, apply the amount for the calculation of the minimum capital requirement pursuant to Article 22 para. 1 that equals at least 80% of the amount the credit institution or group of credit institutions would have to hold as a minimum capital requirement pursuant to Article 22 para. 1 without approval of the approach pursuant to Article 22l, in which case the calculation must be carried out using the assessment base pursuant to Article 22i on 31 December 2010 and 31 December 2011.
7. (regarding Article 22 para. 2) Credit institutions and groups of credit institutions may continue to apply Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006 until 31 December 2007, where
- a) the minimum capital requirement for operational risk pursuant to Article 22 para. 1 no. 4 of this federal act in the version of Federal Law Gazette I No. 141/2006 is to be reduced by that percentage which equals the ratio between the value of the exposures for which weighted exposure values are calculated pursuant to Article 22 paras. 2 to 6 of this federal act in the version of Federal Law Gazette I No. 48/2006 and the overall value of the exposures;

- b) Annexes 1 and 2 to Article 22 of this federal act in the version of Federal Law Gazette I No. 48/2006 are to be applied subject to the condition that credit derivatives are to be classified as high-risk off-balance-sheet transactions;
  - c) Article 22c to Article 22f of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;
  - d) Article 22g and Article 22h of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;
  - e) Articles 22n to 22q of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;
  - f) Article 26 and Article 26a of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;
  - g) Article 27 of this federal act in the version of Federal Law Gazette I No. 48/2006 is not applied;
  - h) Article 39 and Article 39a of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied;
  - i) References to Article 22a of this federal act in the version of Federal Law Gazette I No. 141/2006 are to be considered references to Article 22 paras. 2 to 6 of this federal act in the version of Federal Law Gazette I No. 48/2006;
  - j) Articles 23, 24, 69 para. 2 and 3, and Article 70 para. 4a of this federal act in the version of Federal Law Gazette I No. 141/2006 are not applied. Credit institutions which no longer apply Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006 in the period from 1 January 2007 to 31 December 2007 must first notify the FMA and the Oesterreichische Nationalbank accordingly in writing. For the purposes of applying Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006, the definitions of terms pursuant to Article 2 nos. 18 to 21 and Article 2 no. 35 of this federal act in the version of Federal Law Gazette I No. 48/2006 are still applicable. The references contained in Article 22 paras. 2 to 6 and Articles 22a to 22p of this federal act in the version of Federal Law Gazette I No. 48/2006 are to be considered references to the corresponding provisions of this federal act in the version of Federal Law Gazette I No. 48/2006.
8. (regarding Article 22 para. 3) Valuation may be performed according to international accounting standards for the calculation of regulatory standards from 1 January 2008 onward if the option pursuant to Article 29a is exercised and the FMA has been notified accordingly in due time pursuant to no. 15.
9. (regarding Article 22a para. 4 no. 10): Until 31 December 2010, the FMA may also recognise collateral which does not fulfil the requirements of Article 22 para. 7 as risk mitigation in the calculation of the collateralized portion of a past due exposure if the collateral is commonly used in banking, if it has value, and if its value can be determined.



- 10.(regarding Article 22b para. 8) From 1 January 2007, applications for approval pursuant to Article 22b para. 8 may be submitted and approvals may be granted; in this regard, the procedure pursuant to Article 21g may also be applied from that time onward.
- 11.(regarding Article 22b para. 9) Until 31 December 2017, credit institutions or groups of credit institutions which apply the Internal Ratings Based Approach pursuant to Article 22b may calculate the assessment base for credit risk using the Standardised Approach to Credit Risk pursuant to Article 22a for those participating interests which they held on 31 December 2007. The position is to be based on the number of shares held as of 31 December 2007 and any additional share arising directly as a result of owning those participations, as long as they do not increase the proportional share of ownership in a portfolio company. Participating interests are not included in cases where
  - a) the share of ownership in a certain undertaking has increased through the purchase of shares, or
  - b) the shares were held on 31 December 2007, but then sold and repurchased at a later point in time.
- 12.(regarding Article 22p) Credit institutions which use an internal model (value at risk model) pursuant to Article 22p which was approved prior to 1 January 2007 and which does not capture event risk and default risk in the modelling of specific position risk in interest rate-based financial instruments and equities may use an add-on to their minimum capital requirements for specific position risk pursuant to Article 22p para. 1 until 31 December 2010.
- 13.(regarding Article 23 para. 14 no. 8) Until 31 December 2012, participations in insurance undertakings, reinsurance undertakings and insurance holding companies are to be deducted from total own funds pursuant to Article 23 para. 14 nos. 1 to 7.
- 14.*removed*
- 15.(regarding Article 29a): The option of applying international accounting standards may be applied for the first time to business years starting after 31 December 2007 if the FMA is notified accordingly at least three months prior to the beginning of that business year.
- 15a.(regarding Article 62 no. 16): The lack of a certification pursuant to Article 15 Act on Quality Assurance for External Audits of Financial Statements as a reason for exclusion is to be applied for the first time to the appointment of bank auditors for business years starting after 31 December 2008. Article 62 no. 16 is to be applied for the first time to the appointment of bank auditors who must undergo an external quality review at six-year intervals pursuant to Article 4 para. 2 A-QSG for business years starting after 31 December 2011.
- 16.(regarding Article 74): Credit institutions which exercise the option pursuant to no. 7 must apply Article 74 para. 1 and para. 4 of this federal act in the version of Federal Law Gazette I Nr. 48/2006 instead of Article 74 para. 2 and para. 3 of this federal act in the version of Federal Law Gazette I No. 141/2006 for the duration of the period in which this option is exercised, subject to the condition that only reports pertaining to compliance with the provisions of Articles 22 to 27 and 29 of this federal act in the version of Federal Law Gazette I No. 48/2006 and any regulations issued in that regard are to be conveyed. In these cases,

Article 74 para. 3 of this federal act in the version of Federal Law Gazette I No. 48/2006 is to be applied in lieu of Article 74 para. 6 of this federal act in the version of Federal Law Gazette I No. 141/2006;

- 17.(regarding Article 74 paras. 3 and 4): Reports pursuant to Article 74 para. 4 are to be submitted for the first time for the 2007 calendar year. The separate reporting of individual obliged parties pursuant to Article 74 para. 3 no. 1 is to be applied for the first time to reports to be submitted after 31 December 2007.

**Article 103f.** The following transitional provisions will apply after the announcement of this federal act in the version of Federal Law Gazette I No. 60/2007:

1. (regarding Article 1 para. 1 no. 7a): Authorisations issued on the basis of the Trade Act 1994 to trade in financial instruments for one's own account or on behalf of others pursuant to Article 1 para. 1 no. 6 lit. e to g and j Securities Supervision Act 2007 existing at the time this federal act goes into effect will lapse as of 30 June 2008. In cases where an application for a licence pursuant to Article 1 para. 1 no. 7a is submitted to the FMA by that date, the institution may continue to carry out these activities until 31 December 2008. However, authorisations for trading by persons pursuant to Article 2 para. 1 nos. 11 and 13 Securities Supervision Act 2007 will not lapse on the basis of this transitional provision.
2. (regarding Article 1 para. 1 no. 7a): Credit institutions whose exclusive main activity is the conduct of banking transactions pursuant to Article 1 para. 1 no. 7a and which are not authorised to conduct other banking transactions and do not belong to a group of credit institutions whose main activities also include transactions other than those indicated in Article 1 para. 1 no. 7a are exempt from Articles 22 to 26 until 31 December 2014. In addition, Articles 27 and 75 will not be applied, and Article 74 will only be applied with regard to para. 1 no. 1 to those credit institutions until 31 December 2014 in cases where those credit institutions
  - a) do not trade in financial instruments pursuant to Article 1 para. 1 no. 6 lit. e to g and j Securities Supervision Act 2007 on behalf of retail customers;
  - b) have a documented strategy for managing and, in particular, for controlling and limiting risks arising from the concentration of asset items and off-balance-sheet transactions;
  - c) notify the FMA immediately of that strategy as well as any essential changes in the strategy;
  - d) make the necessary arrangements in order to ensure continuous monitoring of the credit quality of borrowers according to their significance with regard to concentration risk and are able to respond appropriately and in a timely manner to a deterioration in credit quality on the basis of those arrangements; and
  - e) notify the FMA as well as the counterparty immediately of the nature and degree of the overrun in cases where the internal upper limits defined in the strategy indicated in lit. b are exceeded.
3. (regarding Article 10): After this federal act in the version of Federal Law Gazette I No. 60/2007 enters into effect, notification and the forwarding of such notification will only be

required for those investment services pursuant to Article 1 no. 2 Securities Supervision Act 2007 which were not already notified to the FMA prior to the entry into effect of this federal act in the version of Federal Law Gazette I No. 60/2007.

**Article 103g.** The following transitional provisions will apply after the announcement of this federal act in the version of Federal Law Gazette I No. 108/2007:

1. (regarding Article 3 para. 4 no. 1, para. 4a no. 1 and para. 7 lit. c) Article 3 para. 4 no. 1, para. 4a no. 1 und para. 7 lit. c of this federal act in the version of Federal Law Gazette I No. 108/2007 are to be applied for the first time to the business year starting after 31 December 2007.
2. (regarding Article 25 para. 13) Where necessary, credit institutions and central institutions must adapt their statutory arrangements to Article 25 para. 13 of this federal act in the version of Federal Law Gazette I No. 108/2007 by 30 June 2008.
3. (regarding Article 28a para. 3) Article 28a para. 3 of this federal act in the version of Federal Law Gazette I No. 108/2007 will not apply to supervisory board chairpersons who were already appointed when this federal act in the version of Federal Law Gazette I No. 108/2007 went into effect until the expiration of their term of office, at the latest, however, until 31 December 2010.
4. (regarding Article 70 para. 1 no. 3) Audits by the FMA pursuant to Article 70 para. 1 no. 3 of this federal act in the version of Federal Law Gazette I No. 60/2007 which are still pending as of 1 January 2008 are to be continued by the FMA and completed by 31 March 2008 at the latest. After 31 December 2007, the FMA will also be entitled and obliged at all times to make the audit results available to the Oesterreichische Nationalbank and to provide the Oesterreichische Nationalbank with the necessary information. Where the Oesterreichische Nationalbank requires more specific information, it may obtain information directly from the employees of the FMA who are responsible for carrying out audits and preparing reports without requiring an express release from official secrecy obligations for this purpose.
5. (regarding Article 76 para. 1) State commissioners and deputy state commissioners appointed at credit institutions whose total assets do not exceed EUR 1 billion at the time when this federal act in the version of Federal Law Gazette I No. 108/2007 goes into effect, must be dismissed from their offices by 31 December 2010 if the total assets of the credit institution concerned in the Asset, Income and Risk Statement pursuant to Article 74 para. 1 do not exceed EUR 1 billion as of 30 September 2010. Where a state commissioner's or deputy state commissioner's term of office as defined by way of an administrative ruling (*Bescheid*) ends before that time, the term of office is to be extended to 31 December 2010.

**Article 103h.** From 1 January 2010, Article 93 para. 3 shall apply with the proviso that deposits made by natural persons are guaranteed up to an amount of EUR 100,000. Moreover, as of 1 January 2010, Article 93 para. 3 shall apply with the proviso that the protection schemes shall communicate the sum total of the amounts forming the difference between EUR 50,000 and EUR 100,000 and the Federal Minister of Finance shall provide for the balance. The budget funds necessary for Article 93a para. 3 shall be made available by means of exceedance authorisations (Article VII para. 1 no. 14 and

no. 15 Federal Finance Act 2008 (*Bundesfinanzgesetz 2008*)) and may also be covered by additional income from loan transactions; in such case Article 41 para. 6 Federal Budget Accounting Act (*Bundeshaushaltsgesetz - BHG*), Federal Law Gazette No. 213/1986 as amended by Federal Law Gazette No. 20/2008 shall not apply

**Article 103i.** Articles 20 to 20b as amended by Federal Law Gazette I No. 22/2009 shall first be applicable to reports on participating interests pursuant to Article 20 that were communicated to the FMA on 1 April 2009, pursuant to Article 20 para. 1 of the present federal act.

**Article 103j.** (1) Authorisations for the provision of the services of issuing and managing means of payment such as credit cards and traveller's cheques pursuant to Article 1 para. 1 no. 6 Austrian Banking Act (BWG), Federal Law Gazette No. 532/1993 as amended by Federal Law Gazette I No. 136/2008, which were already in place at the time when the federal act of Federal Law Gazette I No. 66/2009 [amendment] entered into effect, shall remain valid and include authorisation for the provision of the payment services referred to in Article 1 para. 2 nos. 4 and 6 Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*).

(2) At the time of entry into effect of Federal Law Gazette I No. 66/2009 (amendment) pursuant to Austrian Banking Act (BWG), Federal Law Gazette No. 532/1993, as amended by Federal Law Gazette I No. 136/2008, existing authorisations for the provision of money transmission services shall be carried over so that Article 1 para. 1 no. 23 as amended by Federal Law Gazette I No. 136/2008 shall correspond to the authorisation pursuant to Article 1 para. 2 no. 5 Federal Act on the Provision of Payment Services (*Zahlungsdienstegesetz - ZaDiG*).

**Article 103k.** As of 1 January 2011, Article 93 para. 4 shall apply, subject to the guarantee of deposits of non-natural persons up to an amount of EUR 100,000.

**Article 103l.** Article 23 para. 7 no. 2 as amended by Federal Law Gazette I No. 152/2009 shall apply to the supplementary capital issued as of 1 January 2010 or contractually adapted to this provision. Supplementary capital that was issued and not contractually adapted in compliance with the requirements of Article 23 para. 7 no. 2 as amended by Federal Law Gazette I No. 66/2009 shall be eligible until 31 December 2024 at the latest. Reporting duties pursuant to Article 73a as amended by Federal Law Gazette I No. 152/2009 can be legally complied with until 30 June 2010 also pursuant to Austrian Banking Act (BWG) as amended by Federal Law Gazette I No. 66/2009.

**Article 103m.** Article 33 in the version prior to Federal Law Gazette I No. 28/2010 shall continue to apply to credit agreements and credit transactions concluded and/or granted before 11 June 2010, unless Article 29 para. 3 first clause Consumer Finance Act (*Verbraucher kreditgesetz – VKrG*), Federal Law Gazette I No. 28/2010 prescribes the application of relevant provisions of the Consumer Finance Act for such credit agreements and credit transactions.

**Article 103n.** After entry into effect of the federal act in the version of Federal Law Gazette I No. 72/2010, the following transitional provisions shall apply:

1. (regarding Article 22d paras. 10 and 11):

Article 22d paras. 10 and 11 shall apply to securitisations issued after 30 December 2010.

After 31 December 2014, Article 22d paras. 10 and 11 shall also apply to securitisations that

existed prior to 31 December 2010 and to which new underlying exposures shall be added or with which existing underlying exposures shall be substituted after 31 December 2014.

2. (regarding Article 22f paras. 3 to 9):

Article 22f paras. 3 to 9 shall apply to securitisations issued after 30 December 2010. After 31 December 2014, Article 22f paras. 3 to 9 shall apply to securitisations issued before 31 December 2010 and to which new underlying exposures shall be added or with which existing underlying exposures shall be substituted after 31 December 2014.

3. (regarding Article 23 para. 14 no. 3a):

For hybrid capital that is recognised on 31 December 2010 at a consolidated level pursuant to Article 24 para. 2 no. 1 or Article 103d as amended by Federal Law Gazette I No. 152/2009 but that does not fulfil the requirements of Article 23 para. 4a, the following eligibility limits shall apply within the eligibility limits for hybrid capital pursuant to Article 23 para. 1 no. 3a:

- a) from 31 December 2010 to 31 December 2020: 50% of the core capital,
- b) from 1 January 2021 to 31 December 2030: 20% of the core capital,
- c) from 1 January 2031 to 31 December 2040: 10% of the core capital.

If this temporary provision is made avail of, the credit institutions shall develop appropriate strategies and procedures to ensure that the capital components concerned comply with Article 23 para. 4a as soon as possible. Article 24 para. 2 no. 5 lit. g and h as amended by Federal Law Gazette I No. 152/2009 shall continue to apply until 31 December 2040; replacement capital shall at least comply with the requirements pursuant to Article 23 para. 4a.

4. (regarding Article 27 para. 6):

For the purposes of Article 27 para. 6, the same weighting provided in Article 27 para. 3 no. 2 lit. b and no. 3 as amended by Federal Law Gazette I No. 152/2009 applicable until the end of the contractually agreed maturity can continue to apply for exposures to institutions pursuant to Article 27 para. 3 no. 2 lit. b and no. 3 as amended by Federal Law Gazette I No. 152/2009, to the extent that they were already granted or existed prior to 31 December 2010, at the longest however until the end of 31 December 2012.

5. (regarding Article 27 para. 10 no. 2):

After entry into effect of Article 27 para. 10 no. 2 as amended by Federal Law Gazette I No. 72/2010, credit institutions shall, for exposures contractually agreed by 30 June 2010, immediately initiate all the organisational and technical precautionary measures required in order to achieve compliance with this provision by 31 December 2011 at the latest.

6. (regarding Article 69b no. 9):

Article 69b no. 9 shall first apply to business years beginning after 30 December 2010.

7. (regarding Article 79 para. 4b no. 3):

The Oesterreichische Nationalbank shall communicate the cost assessment pursuant to Article 79 para. 4b no. 3 for the FMA business year 2011 taking into account Article 3 para. 8 as amended by Federal Law Gazette I No. 72/2010 by 30 November 2010.



## Changes in Designations

**Article 104.** The words "*Bank*" (bank) and "*öffentlich-rechtliche Kreditanstalt*" (public-law credit institution) shall be replaced with the words "*Kreditinstitut*" (credit institution) and "*öffentlich-rechtliches Kreditinstitut*" (public-law credit institution) in all federal legal regulations.

## References and Regulations

**Article 105.** (1) Where references to other federal acts are made in this federal act, those acts are to be applied in their respective current versions unless specified otherwise.

(2) Where references are made to provisions of the Credit Act in other federal acts, such references are to be replaced by the corresponding provisions of the Banking Act.

(3) Any regulation based on this federal act as amended may be issued from the day following announcement of the federal act to be implemented; however, they may not take effect before the statutory provisions to be implemented have themselves taken effect.

(4) In issuing regulations in which options pursuant to Directives 2006/48/EC and 2006/49/EC are exercised, the FMA must take into account the national economic interest in maintaining a stable banking system.

(5) Where references are made to Directive 2006/48/EC or Directive 2006/49/EC in this federal act, the following version is to be applied in each case, unless otherwise specified:

1. Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (OJ L 177, 30.06.2006, p. 1) as amended by Directive 2009/111/EC amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management (OJ L 302, 17.11.2009, p. 97) and Directive 2009/83/EC amending specific annexes to Directive 2006/48/EC with technical requirements with regard to risk management (OJ L 196, 28.7.2009, p. 14) and
2. Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions as amended by Directive 2009/111/EC amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements and crisis management (OJ L 302, 17.11.2009, p. 97) and Directive 2009/27/EC amending certain annexes to Directive 2006/49/EC as regards technical provisions concerning risk management (OJ L 94, 8.4.2009, p. 97).“

(6) Where references are made to Directive 2004/39/EC in this federal act, Directive 2004/39/EC on markets in financial instruments, amending Directives 85/611/EEC and 93/6/EEC, and Directive 2000/12/EC and repealing Directive 93/22/EEC (OJ L 145, 30.04.2004, p. 1) as amended by Directive 2007/44/EC amending Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC, and 2006/48/EC with regard to procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9. 2007, p. 1) shall apply unless otherwise specified.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).



(7) Where references are made to Directive 2005/60/EC in this federal act, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, p. 15, as amended by Directive 2007/64/EC on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC, and 2006/48/EC and repealing Directive 97/5/EC, OJ L 319, 5.12. 2007, p. 1, shall apply unless otherwise specified.

## Repeals

**Article 106.** (1) The following will be repealed once this federal act enters into effect:

1. Credit Act as last amended by Federal Law Gazette No. 407/1993, with the exception of Article 35 a;
2. *removed*
3. Articles II and III of Federal Law Gazette No. 325/1986;
4. Bank Agents Act (*Bankagentengesetz*), Federal Law Gazette No. 251/1932;
5. Central Monetary Institutions Act (*Geldinstitutezentralegesetz*) as last amended by Federal Law Gazette No. 10/1991;
6. Receivership Act (*Bundesgesetz über die Geschäftsaufsicht*), Federal Law Gazette No. 204/1934;
7. Reconstruction Act (*Rekonstruktionsgesetz*) as last amended by Federal Law Gazette No. 325/1986;
8. Federal Act on the Sale of Shares in Nationalised Banks (*Bundesgesetz betreffend den Verkauf von Aktien verstaatlichter Banken*) as last amended by Federal Law Gazette No. 323/1987, with the exception of Article 3;
9. *removed*
10. Article XVII and Article XVIII, Article 1 para. 1, Article 6 and Article 9 para. 2 no. 6 of the Federal Act on the Reorganisation of Pupils' Law (*Bundesgesetz über die Neuordnung des Kindschaftsrechts*), Federal Law Gazette No. 403/1977.
11. Regulation on Contingent Liabilities (*Eventualverpflichtungsverordnung*), Federal Law Gazette No. 676/1986;
12. Liquidity Regulation (*Liquiditätsverordnung*), Federal Law Gazette No. 677/1986;
13. Second Liquidity Regulation (2. *Liquiditätsverordnung*), Federal Law Gazette No. 450/1988;
14. Large Exposures Regulation (*Großveranlagungsverordnung*), No. 676/1986;
15. Quarterly Reporting Regulation (*Quartalsberichtsverordnung*), Federal Law Gazette No. 451/1988;
16. Major Loan Reporting Regulation (*Großkreditmeldungs-Verordnung*) as last amended by Federal Law Gazette No. 652/1990;
17. Monthly Reporting Regulation (*Monatsausweisverordnung*) as last amended by Federal Law Gazette No. 707/1988;

18. Reserves Reporting Regulation (*Reservenmeldungsverordnung*), Federal Law Gazette No. 449/1989;
  19. Regulation on Prudential Reports (*Verordnung über den bankaufsichtlichen Prüfungsbericht*) as last amended by Federal Law Gazette No. 450/1989;
  20. Regulation on Contributions to Reconstruction (*Rekonstruktionsbeitragsverordnung*), Federal Law Gazette No. 254/1955;
  21. Regulation on Cumulative Value Adjustments (*Sammelwertberichtigungsverordnung*), Federal Law Gazette No. 565/1986;
  22. Regulation on the Protection of Money Held in Trust (*Mündelsicherheitsverordnung*), Federal Law Gazette No. 685/1977;
- (2) Annex 1 to Article 43 of this federal act in the version of Federal Law Gazette No. 532/1993, Article I, will expire as of 31 December 1996.

### **Entry into Effect and Enforcement**

#### **Article 107.**

- (1) Unless specified otherwise below, this federal act will enter into effect as of 1 January 1994.
  - (2) Article 1 para. 4, Article 2 nos. 6, 7 and 9, Article 8 paras. 1 to 4, 6 and 7, Article 9 to Article 19, Article 20 para. 8, Article 22 para. 3 no. 1 lit. b (last half sentence), no. 2 lit. g (last half sentence), no. 6 (second and third half sentences), no. 7 (last half sentence), paras. 9 and 10, Article 23 para. 9 no. 3 lit. a and b, Article 77 para. 4, Article 93 para. 7, Article 94 para. 10, Article 98 para. 2 nos. 1 and 2, Article 99 nos. 1 and 2, and Article 103 nos. 7, 8 and 9 lit. a sublit. cc will enter into effect once the EEA Agreement enters into effect, at the earliest on 1 January 1994.
  - (3) *removed*
  - (3a) Article 97 para. 1 no. 1 of this federal act in the version of Federal Law Gazette 445/1996 will enter into effect as of 1 January 1994.
  - (4) Article 76 para. 2 no. 1 of this federal act in the version of Federal Law Gazette No. 22/1995 will enter into effect as of 31 December 1994.
  - (5) Article 2 no. 5, Article 8, Article 10 para. 8, Article 12 para. 7, Article 14 para. 7, Article 15 paras. 2 and 3, Article 17 para. 2, Article 22 para. 3 no. 1 lit. b, no. 2 lit. g, nos. 6 and 7, para. 9 no. 2 and para. 10 of this federal act in the version of Federal Law Gazette No. 22/1995 will enter into effect once Austria's accession to the European Union enters into effect.
  - (5a) The table of contents will enter into effect as of 23 August 1996, with regard to the following provisions: Article 1 para. 1 no. 4, Article 2 nos. 2 and 3, 12, no. 23 lit. a and d as well as lit. i to lit. m, no. 24, Article 3 para. 1 nos. 4 to 7, Article 3 para. 3 no. 1, Article 4 para. 6, Article 5 para. 1 no. 9 and para. 2, Article 6 para. 1, Article 9 para. 7 and para. 8, Article 11 para. 1 no. 5 and para. 5 and para. 6, the removal of Article 12, Article 13 para. 2 no. 5 and paras. 4 and 5, the removal of Article 14, Article 15 para. 1 and para. 5, Article 17 para. 1 and para. 4, the removal of Article 18, Article 20 para. 5 and para. 7a, Article 21 para. 1 no. 2, Article 22 para. 3 no. 2 lit. i and lit. k, Article 23 para. 1 no. 2, para. 4 no. 5, the removal of para. 4 no. 6, para. 7 no. 1 and no. 5, the removal of para. 7 no. 6, para. 8 no. 1,
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para. 13 no. 3 and the removal of para. 17, Article 25 para. 6 no. 6 and no. 7, Article 29 para. 4, Article 33 para. 7 no. 1, Article 35 para. 1 no. 2 and no. 3, Article 38 para. 2 no. 2 and para. 4, Article 39, Article 43 para. 1, Article 44 para. 3 to para. 6, Article 61, Article 63 para. 6 and para. 7, Article 64 para. 1 no. 13 and no. 14, Article 64 para. 4 and para. 5, Article 65 para. 2a and para. 3a, Article 70 para. 1, para. 5 and para. 7, Article 71 para. 1 and para. 7, Article 75 para. 3 and para. 5, Article 77 para. 4 to para. 8, Article 77a, Article 79 para. 2, Article 82 para. 1, Article 86 para. 6, Article 93, Article 93a, Article 98 para. 2 no. 8 and no. 10, and para. 3 no. 10, Article 99 no. 13, no. 14 and no. 17, Article 99b, Article 103 no. 10 lit. a, no. 22b, no. 25a, no. 30, no. 30a, no. 30b, no. 30c and no. 32 and Annex 1 to Article 22 no. 1 lit. c and no. 2 lit. a and b in the version of Federal Law Gazette No. 445/1996.

(5b) The table of contents, Article 2 nos. 25 to 27, Article 24 para. 1 and para. 3 no. 2, Article 28, Article 30, Article 33 para. 2 nos. 5 and 6 and para. 9, Article 37, Article 59, Article 70a, Article 73 para. 3, Article 94 para. 3, Article 98 para. 2 nos. 5 and 7, Article 99 nos. 6 and 15, Article 99a, Article 103 nos. 19, 22a, 28a and 33 in the version of Federal Law Gazette No. 445/1996 will enter into effect as of 1 January 1997.

(5c) Article 2 no. 23 lit. g, Article 27, Article 74 para. 4 no. 1, Article 75 para. 1, Article 97 para. 1 no. 6 and Article 103 no. 21 in the version of Federal Law Gazette No. 445/1996 will enter into effect as of 1 July 1997.

(6) Article 40 para. 1 no. 1 and no. 3, paras. 2 and 5 in the version of Federal Law Gazette 446/1996 will enter into effect as of 1 August 1996. However, where the credit institution or financial institution has existing asset management and/or reinvestment obligations under civil law, Article 40 para. 5 will not enter into effect until 1 November 1996.

(6a) Article 3 para. 1 no. 2 will expire once the transfer of the Österreichische Postsparkasse as an undertaking is entered in the Commercial Register pursuant to Article I Section 1 of Federal Law Gazette No. 742/1996. This point in time is to be announced in the Federal Law Gazette by the Federal Minister of Finance.

(7) The table of contents will enter into effect on 1 January 1997 with regard to the following provisions: Article 1 para. 1 no. 7, no. 11, no. 13, no. 14 and no. 19, the removal of Article 1 para. 2 no. 4, Article 1 para. 3 (first sentence), Article 2 no. 6, no. 7, no. 9, no. 16, no. 18, no. 23 lit. a, no. 25, no. 26 and no. 28 to no. 52, Article 3 para. 5, Article 4 para. 5, Article 5 para. 1 no. 4, no. 4a and no. 14, Article 5 para. 2, Article 8 para. 2, para. 3, para. 4 and para. 5, Article 9a, Article 20 para. 8, Article 22 para. 3 no. 1 lit. d, no. 2 lit. h and j, Article 38 para. 2 no. 9, Article 44 para. 1, Article 63 para. 3a and para. 3b as well as para. 4 no. 2a, Article 93 para. 5 no. 12, Article 94 para. 3, Article 99 no. 15, Article 103 no. 9a, no. 11b and no. 20a, Article 105 para. 1, Article 106, Article 108 and Annex 2 to Article 43, Part 2, no. 15 and 16 in the version of Federal Law Gazette No. 753/1996.

(8) The table of contents will enter into effect on 1 July 1997 with regard to the following provisions: Article 27 para. 3 no. 2 and para. 8, Article 75 para. 1 nos. 1 and 2, Article 77 para. 5 and para. 6 nos. 4 to 7, the removal of Article 103 no. 26 in the version of Federal Law Gazette No. 753/1996.

(9) The table of contents will enter into effect on 1 January 1998 with regard to the following provisions: Article 22 para. 1 and para. 2 (first sentence), para. 5, paras. 6 to 6f and para. 10 no. 1, Articles 22a to 22o including the headings, Article 23 para. 1 no. 9, para. 6 (second sentence), para. 8a, para. 14 no. 4, no. 7 and no. 8, paras. 15 and 16, Article 24 para. 1, Article 25 para. 1, Articles 26 to 26b including the headings, Article 27 para. 1, para. 2, para. 2a, para. 2b, Article 29 para. 4, Article 30 para. 1 and para. 9, Article 39 para. 4, Article 42 para. 4, Article 63 para. 4 no. 5 and no. 6, Article 64 para. 1 no. 15, Article 73 para. 1 no. 12 as well as para. 4 and para. 5, Article 97 para. 1 nos. 4 to 6, the removal of Article 97 para. 1 no. 7, Article 98 para. 2 no. 7, Article 103 no. 11a, no. 11c, no. 18, no. 19 and no. 20, Annex 1 to Article 22 no. 1 lit. h to j, no. 2 lit. e and no. 4 lit. a, the heading in Annex 2 to Article 22 no. 2, Annex 2 to Article 22 no. 2 lit. e and nos. 3 to 6, Annex 2 to Article 43, Part 1, Liabilities, off-balance-sheet items nos. 4 and 5 in the version of Federal Law Gazette No. 753/1996.

(10) Article 3 para. 3 no. 6, Article 22l para. 1 no. 2, Article 40 para. 1 no. 3, Article 41 paras. 3, 3a and para. 4, Article 44 para. 1 (last sentence), para. 3 and para. 6, Article 61 para. 1, Article 75 para. 1 no. 1 and para. 5, and Article 103 no. 9 lit. b in the version of Federal Law Gazette I No. 11/1998 will enter into effect as of 1 January 1998. Article 97 para. 1 no. 1 and no. 4 to no. 6 in the version of Federal Law Gazette I No. 11/1998 will enter into effect as of 1 January 1994.

(11) Article 1 para. 5 and Article 100 para. 2 in the version of Federal Law Gazette I No. 126/1998 will enter into effect as of 1 August 1998.

(12) Article 40 para. 1 no. 3 and Article 41 para. 6 in the version of Federal Law Gazette I No. 153/1998 will enter into effect as of 1 October 1998.

(13) Article 1 para. 1 no. 18 lit. c, Article 1 para. 2 no. 2, Article 2 no. 10, Article 2 no. 23 lit. a, Article 3 para. 1 no. 8, Article 3 para. 4, Article 4 para. 4 no. 3, Article 5 para. 1 no. 5, Article 9 para. 3 no. 2, Article 9 para. 7 and para. 8, Article 15 para. 1, Article 22 para. 3 no. 3 lit. c, Article 22d para. 3, Article 23 para. 1 no. 9, Article 23 para. 3 no. 2, Article 23 para. 11, Article 24 para. 3 nos. 2 to 4, Article 25 para. 4, Article 25 para. 5, Article 25 para. 6 nos. 4a to 6, Article 25 para. 7 no. 2, Article 25 para. 8, Article 25 para. 9, Article 25 para. 10, Article 25 para. 11 nos. 3 and 4, Article 25 para. 12, Article 25 para. 13, Article 26 para. 1, Article 26 para. 2, Article 26 para. 3, Article 26 para. 5, Article 27 para. 3, Article 27 para. 4a, Article 43 para. 3, the removal of Article 44 para. 4 no. 3, Article 44 para. 4 no. 4, Article 51 para. 10, Article 59 para. 5, Article 62 no. 3, Article 63 para. 6 no. 2, Article 63 para. 6a, Article 63 para. 7, Article 70 para. 1 no. 4, Article 70 para. 4 no. 2, Article 70a para. 1, Article 71 para. 3 no. 4, Article 73 para. 1 no. 13, Article 75 para. 1 no. 3, Article 77 para. 4 no. 19, Article 77 para. 5, Article 77 para. 6 and para. 7, Article 77a para. 2, Article 79 para. 4, Article 93 para. 3, Article 93 para. 5 no. 11, Article 99 no. 6a, Article 102 para. 1 no. 1 and para. 6, Article 103 no. 10 lit. a to c and lit. f, Article 103 no. 18, Article 103 nos. 25a and 25b and Annex 2 to Article 43, Part 2, Item 20 in the version of Federal Law Gazette I No. 126/1998 will enter into effect as of 1 January 1999.

(14) The table of contents with regard to Article 103a1 and Article 103a in the version of Federal Law Gazette I No. 63/1999 will enter into effect as of 1 January 1999.

(15) The table of contents with regard to Section XIX, Article 4 para. 6, Article 10 para. 4 no. 2, Article 25 para. 6 no. 7, Article 35 para. 1 no. 3, Article 38 para. 4, Article 61 para. 1, Article 62 nos. 1, 14 and 15, Article 64 para. 6, Article 73 para. 1 no. 10, Article 75 para. 3 no. 6, Article 77 para. 4 no.

17, Article 92 para. 7, Section XIX including the heading, Article 98 para. 2 no. 10 and Article 99 nos. 13 and 14, Article 103 no. 28b, nos. 30b to 30d and no. 32a as well as Annex 2 to Article 43, Part 1, Liabilities, off-balance-sheet items nos. 4 and 5 in the version of Federal Law Gazette I No. 63/1999 will enter into effect on 1 May 1999.

(16) The table of contents with regard to Section XXIII, Article 3 para. 3 no. 6, Article 23 para. 4 no. 2, Article 30 para. 7, Article 82 paras. 1 and 6 and Article 102a in the version of Federal Law Gazette I No. 123/1999 will enter into effect on 1 July 1999. 1 Editorial error; correct version: "Article 103 and Article 103a".

(17) Article 21 para. 1 no. 6 and para. 2, Article 30 para. 8a, Article 33 para. 4, Article 63 para. 4 no. 2, Article 70 para. 1 no. 4, Article 71 paras. 1, 7 and 8, Article 77 paras. 3 and 5 to 7, Article 77a and Article 93 para. 6 in the version of Federal Law Gazette I No. 33/2000 will enter into effect as of 21 April 2000.

(18) The table of contents with regard to Section V, Article 2 no. 26, no. 34 lit. a and b, the removal of no. 34 lit. c, no. 35 lit. a, b and e, nos. 42 to 45, no. 46 (first sentence), no. 46 lit. b, no. 47 and nos. 53 to 56, Article 5 para. 1 no. 7, Article 22 para. 1 no. 2, Article 22a, Article 22b paras. 1 to 3, Article 22d paras. 1, 3 and 4, Article 22e including the heading, Article 22f, Article 22g including the heading, Article 22h including the heading, Article 22i, Article 22l para. 1 (first sentence) and para. 1 no. 1 (first half-sentence), Article 22m para. 1, Article 22n including the heading, Article 22p including the heading, Article 23 para. 6, Article 24 para. 1, Article 26 including the heading, Article 26b paras. 1 to 5, Article 26b para. 7 no. 3, Article 42 para. 4 no. 4 lit. b to d, Article 60, Article 63 para. 4 no. 6 lit. b to d, Article 73 para. 4 no. 2 lit. b and c, Article 93a para. 1, the removal of Article 97 para. 1 no. 4 and of Article 103 no. 11b, Article 103 no. 11d, no. 12 and no. 18a as well as Annex 2 to Article 22, no. 1 lit. e in the version of Federal Law Gazette I No. 33/2000 will enter into effect as of 23 July 2000.

(19) Article 31 paras. 1 and 3, Article 32 paras. 4 and 8, Article 40 para. 1 nos. 1 and 4, paras. 2, 6 and 7 and Article 103b in the version of Federal Law Gazette I No. 33/2000 will enter into effect as of 1 November 2000.

(20) Article 31 para. 5, Article 40 para. 5, Article 41 paras. 1a and 6, and Article 99 no. 18 in the version of Federal Law Gazette I No. 33/2000 will enter into effect as of 1 July 2002.

(21) Article 25 para. 10 no. 9 lit. a and Article 103 no. 9 lit. b in the version of Federal Law Gazette I No. 2/2001 will enter into effect as of 1 January 2001.

(22) Article 3 para. 2 no. 5, Article 22 para. 3 no. 1 lit. a, Article 25 para. 10 no. 4, Article 27 paras. 2 and 8, Article 28 para. 2 no. 2, Article 31 para. 3, Article 32 para. 4 nos. 1 to 3, Article 35 para. 1 no. 1 lit. d, Article 36 no. 2, Article 40 para. 1 nos. 2 and 4, Article 42 para. 6, Article 59 para. 5, Article 62 no. 3, Article 75 para. 1 no. 1, Article 76 para. 1, Article 92 para. 1, Article 96, Article 98 paras. 1 to 4 and Article 99 in the version of Federal Law Gazette I No. 2/2001 will enter into effect as of 1 January 2002.

(23) Article 41 para. 1a no. 3 in the version of Federal Law Gazette I No. 2/2001 will enter into effect on 1 July 2002.

(24) Article 36 (first sentence) in the version of Federal Law Gazette I No. 135/2000, Article 25 para. 10 no. 4, Article 43 para. 1 in the version of Federal Law Gazette I No. 97/2001 will enter into effect as of 1 July 2001.

(25) Article 24 para. 2 nos. 1, 5 and 6 in the version of Federal Law Gazette I No. 97/2001 will enter into effect as of 1 August 2001.

(26) The table of contents will enter into effect on 1 January 2002 with regard to the following provisions: Article 62 nos. 1a, 1b, 2, 4, 6a, 9, 10, 14 and 15, Article 62a, Article 63 paras. 1 to 1c, paras. 3, 6a, 7 and 8, Article 103c no. 13 and 14 in the version of Federal Law Gazette I No. 97/2001.

(27) The table of contents will enter into effect as of 1 April 2002, with regard to the following provisions: Article 2 no. 57, Article 4 paras. 1, 3 and 5 to 7, Article 5, Article 6, Article 7 paras. 1 and 2, Article 8 paras. 1, 2, 3 and 5, Article 9 paras. 2, 3 and 5 to 8, Article 9a paras. 3 and 4, Article 10 paras. 2 to 8, Article 11 paras. 1, 3 and 4, Article 13 paras. 2 and 3, Article 15, Article 16, Article 17, Article 20 paras. 1 to 3 and 5 to 8, Article 21 paras. 1 and 3, Article 22 paras. 3, 6b, 6c, 7, 9 and 10, Article 22b para. 4, Article 22e paras. 3 to 5, Article 25 para. 1 no. 5, para. 7 nos. 1 and 2, para. 10 no. 9, paras. 12 and 14, Article 26 para. 3 nos. 1 and 5, Article 26a paras. 4 and 6, Article 26b para. 2 no. 2 and paras. 3 to 7, Article 27 para. 3 no. 1, paras. 10 and 11, Article 30 paras. 8 and 8a, Article 41 paras. 5 and 8, Article 42 para. 3 and para. 4 no. 1, Article 43 para. 2, Article 44, Article 59a para. 2, Article 60 para. 3, Article 61 para. 2, Article 63a, Article 65 para. 4, Article 69, Article 69a, Article 70, Article 70a, Article 71 paras. 1 and 2, Article 73, Article 74 paras. 1 to 3 and 5 to 8, Article 75 paras. 1 and 3 to 6, Article 76, Article 77 paras. 1, 2, 4 to 6 and the removal of para. 8, Article 77a paras. 1, 2 and para. 3 no. 1, Article 78 para. 4, Article 79, Article 80, the removal of Article 81, Article 82 paras. 2, 3, 5 and 6, Article 83 para. 1, Article 90 para. 2 no. 2 and para. 5, Article 91, Article 92 para. 10, Article 93 paras. 3, 9 and 10, Article 93a para. 8, Article 93b para. 5, Article 93c, Article 94 paras. 1 and 2, Article 97 para. 1, Article 98, Article 99, Article 99a paras. 1 and 2, and Article 103c nos. 1 to 12, Annex 2 to Article 43 Part 1 no. 7 of off-balance-sheet liability items as well as the Annex to Article 73 para. 6 in the version of Federal Law Gazette I No. 97/2001.

(28) Article 26b para. 3 and para. 4, Article 70 para. 1 no. 3 and no. 4 (last half-sentence), Article 70a para. 2, Article 77a para. 1 (first sentence) and Article 79 para. 4 in the version of Federal Law Gazette I No. 97/2001 will not enter into effect.

(29) Article 26b para. 3 and para. 4, Article 70 para. 1 no. 3 and no. 4 (last half-sentence), Article 70a para. 2, Article 77a para. 1 (first sentence), Article 78 paras. 8 and 9, and Article 79 para. 4 in the version of Federal Law Gazette I No. 45/2002 will enter into effect as of 1 April 2002.

(30) (constitutional law provision) Article 79 para. 5 in the version of Federal Law Gazette I No. 45/2002 will enter into effect as of 1 April 2002.

(31) Article 1 para. 1 no. 20, Article 2 no. 58, Article 3 para. 6, Article 5 para. 4, Article 9 para. 1, Article 69 and Article 70 para. 4 in the version of Federal Law Gazette I No. 45/2002 will enter into effect as of 1 April 2002, and Article 103 no. 21 lit. a in the version of Federal Law Gazette I No. 45/2002 will expire as of 2 April 2002.



(32) Article 1 para. 1 no. 21, Article 2 no. 59, Article 3 paras. 6 and 7, Article 5 para. 5, Article 69, Article 70 para. 4, Article 93 para. 2a nos. 3 and 4, and Article 93 para. 3d nos. 2 and 3 in the version of Federal Law Gazette I No. 100/2002 will enter into effect as of 1 July 2002.

(33) The provisions of Article 30 paras. 2a and 5 as well as Article 73 para. 7 in the version of Federal Law Gazette I No. 131/2002 will enter into effect as of 1 September 2002.

(35) The table of contents will enter into effect on 15 June 2003 with regard to the following provisions: Article 4 para. 6, the heading of Section X, the heading of Article 39, Article 39 para. 3, the heading of Article 40, Article 40 paras. 1, 8 and 9, Article 41 para. 1 nos. 2 and 3, Article 44 para. 1 and Article 99 no. 17 in the version of Federal Law Gazette I No. 35/2003.

(36) Article 40 paras. 2 and 2a in the version of Federal Law Gazette I No. 35/2003 will enter into effect as of 1 October 2003.

(37) The table of contents will enter into effect as of 1 January 2004, with regard to the following provisions: Article 1 para. 1 nos. 22 and 23, the removal of Article 1 para. 2 no. 2, Article 1 para. 3, Article 3 para. 1 nos. 8 and 9 and para. 5 no. 2, Article 4 para. 3 nos. 6 and 7, Article 35 para. 3, Article 69 nos. 3 to 5, Article 69a para. 8, Article 70 para. 10, Article 73 para. 1 nos. 13 and 14 and para. 2, Article 94 para. 1, Article 98 para. 3 no. 11a, Article 103 no. 1 and the removal of Article 103 nos. 2 to 4 in the version of Federal Law Gazette I No. 35/2003.

(38) The designations of Sections XVI and XVII as well as the provisions of Article 6 para. 2, Article 7a, Article 70 para. 2b, Article 73 para. 1 no. 1, Articles 81, 81a to 81m and Article 83 para. 4 to para. 9 in the version of Federal Law Gazette I No. 36/2003 will enter into effect as of 5 May 2004; Article 7 para. 1 nos. 4 and 5, and the heading of Section before Article 82 expire on 5 May 2004.

(39) Article 1 para. 1 no. 13a, Article 3 para. 2 no. 4, Article 69 and Article 70 para. 4 in the version of Federal Law Gazette I No. 80/2003 will enter into effect as of 1 September 2003.

(40) Article 3 para. 4 in the version of Federal Law Gazette I No. 80/2003 will enter into effect as of 13 February 2004.

(41) Article 76 para. 2 nos. 1 to 3 in the version of Federal Law Gazette I No. 70/2004 will enter into effect as of 1 August 2004. 2 Editorial error: No para. 34 was passed.

(42) Article 3 para. 1 no. 8 in the version of Federal Law Gazette I No. 70/2004 will enter into effect as of 1 September 2004.

(43) Article 2 no. 25 lit. c to e, Article 2 no. 26, Article 4 para. 5, Article 20 para. 2a, Article 23 para. 13, Article 23 para. 14, Article 24 para. 1, Article 30 para. 7a, Article 30 para. 9a, Article 63

para. 4 no. 2b, Article 69, Article 70 para. 1 no. 3, Article 70 para. 4, Article 70a para. 5, Article 73 para. 3, Article 74 para. 3 and Article 77 para. 1 in the version of Federal Law Gazette I No. 70/2004 will enter into effect as of 1 January 2005.

(44) Article 43 para. 1, 44 para. 1, 59a and 65 para. 1 in the version of Federal Law Gazette I No. 161/2004 will enter into effect as of 1 January 2005.

(45) Article 1 para. 3, Article 21 para. 1 no. 8 and paras. 4 to 6 in the version of Federal Law Gazette I No. 131/2004 will enter into effect as of 15 January 2005.

(46) Article 2 nos. 59 and 60, Article 66, Article 69 and Article 70 para. 4 in the version of Federal Law Gazette I No. 32/2005 will enter into effect as of 1 June 2005.

(47) Article 22 para. 6c, Article 22c para. 4, Article 23 para. 1 no. 2, para. 7 no. 5, para. 8 no. 1 and para. 8a no. 1, Article 30 para. 7, para. 8, para. 9 and para. 10, Article 39 para. 2a, Article 42 para. 2 no. 2 and para. 6, the removal of Article 43 para. 3, Article 44 paras. 1, 4 and 5a, the removal of Article 63 para. 1a and para. 1b, Article 63 para. 1c, para. 2, para. 3, para. 4 nos. 2 to 4, para. 5, para. 6, para. 6a and para. 7, Article 65 para. 1 and para. 3a, Article 68 para. 1, Article 70 para. 1, Article 73 para. 1 no. 15, Article 75 para. 3 and para. 5a, Article 93a paras. 4 and 5, Article 98 para. 2 no. 7 in the version of Federal Law Gazette I No. 33/2005 will enter into effect as of 1 July 2005. Article 102a para. 8 will expire as of 1 July 2005.

(48) Article 61 para. 2, Article 62 nos. 4 and 6a, and Article 62a in the version of Federal Law Gazette I No. 59/2005 will enter into effect as of 1 January 2006. Article 62 no. 2 and Article 63 para. 8 will expire as of 1 January 2006.

(49) Article 21 para. 1 no. 3 and Article 23 para. 5 (fifth sentence) in the version of Federal Law Gazette I No. 124/2005 will enter into effect as of 1 January 2007. Article 21 para. 1 no. 4 and Article 23 para. 3 no. 1 will expire as of 1 January 2007.

(50) Article 1 para. 6 in the version of Federal Law Gazette I No. 48/2006 will enter into effect as of 1 January 2007.

(51) The outline, Article 2 no. 3, Article 2 nos. 5, 5a and 5b, Article 2 no. 6 lit. a, Article 2 no. 7 lit. b, Article 2 nos. 9a and 9b, Article 2 nos. 11a and 11b, Article 2 nos. 15 and 16, Article 2 nos. 22 to 24, Article 2 no. 25 lit. b, Article 2 nos. 25a and 25b, Article 2 no. 27, Article 2 no. 34 and 35, Article 2 no. 36, Article 2 no. 37, Article 2 no. 44 and 45, Article 2 no. 57a to 57e, Article 2 no. 58, Article 2 no. 60 to 71, Article 3 para. 1 nos. 7, 9 and 10, Article 3 para. 2, Article 3 para. 3 no. 6, Article 3 para. 4 nos. 1 and 2, Article 3 para. 4a, Article 3 para. 6, Article 3 para. 7 lit. c and d, Article 4 para. 3 no. 3, Article 4 para. 5 nos. 1 to 3, Article 9 paras. 1 and 6, Article 10 para. 2 no. 4, Article 10 para. 6, Article 11 para. 1 and para. 2 no. 1, Article 11 para. 4, Article 13 para. 1, Article 13 para. 2 nos. 3 and 5, Article 15 para. 5, Article 17 para. 4, Article 20 para. 2a, Article 20 para. 8 nos. 1, 3 and 5, Article 21 para. 2, Article 21a to Article 21g, Article 22, Article 22a, Article 22b paras. 1 to 7 and 9 to 11, Article 22c to Article 22k, Article 22m to Article 22q, Article 23 para. 1, Article 23 para. 3 no. 6, Article 23 para. 6, Article 23 para. 7 no. 5, Article 23 para. 8 no. 1, Article 23 para. 8a nos. 1 and 3, Article 23 para. 13 no. 1, nos. 4a to 4d and no. 6 lit. a, Article 23 para. 14 nos. 2, 4, 7 and 8, Article 24 paras. 1 and 3a, Article 24a and Article 24b, Article 26 and Article 26a, Article 27 paras. 1, 2 and 2a, Article 27 para. 2c, Article 27 paras. 3 to 3d, Article 27 para. 4a, Article 27 para. 5, Article 27 para. 8, Article 27 paras. 9a and 9b, Article 27 para. 11, Article 29 paras. 1 to 3, Article 29 paras. 5 to 8, Article 30 paras. 1 and 2, Article 30 para. 4, Article 30 para. 7, Article 30 para. 9a, Article 30 para. 10, Article 39 paras. 1 to 2c and para. 4, Article 39a, Article 42 para. 4 no. 2, Article 42 para. 4 nos. 4 to 6, Article 44 paras. 1, 2, 4, 5 and 7, Article 60 para. 3, Article 61 para. 2, Article 62 nos. 12, 13, 16 and 17, Article 63 para. 1, Article 63 para. 3, Article 63 para. 4, Article 63a para. 3, Article 64 para. 1 no. 15, Article 65 para. 3 and 4, Article 69, Article 69a para. 2, Article 69b, Article 70 para. 1, Article 70 para. 4a, Article 73 para. 1 no. 12, Article 73 para. 1 nos. 16 to 19, Article 73 paras. 4, 4a and 5, Article 74, Article 77 para. 4, Article 77 para. 5, Article 77 para. 6a, Article 77 para. 7, Article 77 para. 8, Article 77a para. 1 nos. 1 and 2, Article 77a paras. 2 and 4, Article 78 para. 1, Article 79 para. 2, Article 81 para. 3, Article 83

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).

para. 5, Article 93a para. 1, Article 98 para. 2 no. 2 and no. 11, Article 99 no. 10 and the final part, Article 105 paras. 4 and 5, the headings of each of the provisions mentioned above, Annex 1 to Article 22 no. 1 lit. j to l, Annex 1 to Article 22 no. 3 lit. b and c and no. 4 lit. a, the heading of Annex 2 to Article 22 and Annex 2 to Article 22 nos. 1, 2 and 6 in the version of Federal Law Gazette I No. 141/2006 will enter into effect as of 1 January 2007.

(52) Article 2 nos. 18 to 21, Article 2 nos. 38 and 39, Article 2 nos. 46 and 47, Article 2 nos. 50 to 52, Article 8, the headings of the former Articles 12 and 14, Article 25 para. 2, Article 26b, Article 27 para. 10, Article 73 para. 6, Article 103 no. 9 lit. a and d, 11a, 11d, 14, 15, 16, 17, 18, 18a, 19, 20a, 22, 22a, 25a, 28a, 30c, 31, 33, Annex 1 to Article 22 no. 2 lit. c, Annex 3 to Article 22 and the Annex to Article 73 para. 6 will expire as of 31 December 2006.

(53) Article 22b para. 8, Article 22l, Article 29a, Article 75 and the headings of the provisions mentioned above in the version of Federal Law Gazette I No. 141/2006 will enter into effect as of 1 January 2008.

(54) Article 1 para. 1 nos. 7 and 7a and para. 3, Article 2 nos. 7, 29 to 32 and 37, Article 3 para. 1 no. 9, para. 4 no. 2, para. 4a no. 2 and para. 7 lit. d, Article 9 paras. 1, 6, 7 and 8, Article 10 para. 6, Article 23 para. 9 no. 2, Article 25 para. 10 no. 4, Article 44 para. 6, Article 51 para. 5, Article 56 paras. 4 and 5, Article 63 para. 4 no. 2a, paras. 6 and 7, Article 93 paras. 2a and 3b, para. 5 nos. 6 and 8 to 11, and para. 7a, Article 93a para. 9, Article 93c, Article 94 para. 1 and Article 105 para. 6 in the version of Federal Law Gazette I No. 60/2007 will enter into effect as of 1 November 2007. Article 101 para. 2 of this federal act in the version of Federal Law Gazette I No. 60/2007 will enter into effect as of 1 January 2008. Article 1 para. 1 no. 19, Article 3 para. 5, Article 9a including the heading, Article 44 para. 5a and Article 63 para. 6a will expire as of 31 October 2007.

(55) The table of contents with regard to Articles 28a and 40 to 41, Article 1 para. 1 no. 21, Article 2 nos. 59, 59a and 71 to 75, Article 3 para. 1 no. 3, para. 4 no. 1, para. 4a no. 1 and para. 7, Article 21 para. 1a, Article 21d para. 1a and 3, Article 23 para. 4 no. 5, Article 25 para. 13, Article 28a including the headings, the heading preceding Article 40, Article 40 paras. 1 to 6 and 8, Article 40a, Article 40b, Article 40c, Article 40d including the headings, the heading preceding Article 41, Article 41 paras. 1 to 7, Article 42 para. 3 and para. 4 no. 3, Article 63a para. 4, Article 69 paras. 1, 2 and 3, Article 70 paras. 1 to 1d, 4 and 10, Article 70a paras. 1 and 2, Article 73 para. 1 no. 17a, Article 76 para. 1, Article 77 para. 6, Article 77a para. 1, Article 79 paras. 2, 3, 4, 4a and 4b, Article 93 para. 2a no. 4 and para. 3d no. 3, Article 93b para. 1, Article 98 para. 2 nos. 4a and 6, Article 99 no. 8 and nos. 17 to 19, Article 103g and Article 108 no. 3a of this federal act in the version of Federal Law Gazette I No. 108/2007 will enter into effect as of 1 January 2008.

(56) Article 38 para. 2 no. 1 of this federal act in the version of Federal Law Gazette I No. 108/2007 will enter into effect as of 1 January 2008.

(57) (**constitutional law provision**) Article 79 para. 5 of this federal act in the version of Federal Law Gazette I No. 108/2007 will enter into effect as of 1 January 2008.

(58) Article 39 para. 3, Article 40 para. 9 and Article 41 para. 8 will expire as of 31 December 2007.

(59) Articles 61 paras. 2 and 63b as amended by Federal Law Gazette I No. 70/2008 shall enter into effect on 1 June 2008. Article 63b shall apply to contracts finalised after 31 May 2008. The provisions previously in effect shall apply to contracts finalised before this date.

(60) Article 93 paras. 3 and 4 and Article 93a paras. 1, 2 and 3 as amended by Federal Law Gazette I No. 136/2008 shall enter into effect on 1 October 2008.

(61) The changes to the index, Article 2 no. 3, Article 2 no. 59 and no. 59a, Article 20 including the heading, Article 20a including the heading, Article 20b including the heading, Article 21 para. 1 no. 2, Article 21 para. 4 no. 3, Article 22b para. 2 no. 2 lit. c, Article 23 para. 14 no. 7, Article 40c, Article 61 para. 2, Article 63a para. 4, Article 73 paras. 1 and 2, Article 76 para. 4, Article 78 para. 9 no. 3, Article 93b, Article 98 para. 2 no. 3, Article 98 para. 2 no. 4, Article 99 nos. 4 and 5, Article 103h, Article 105 paras. 3, 5, and 6, and Article 108 no. 4 as amended by Federal Law Gazette I No. 22/2009 shall enter into effect on 1 April 2009.

(62) Annex 2 I Article 43, Section 2 as amended by Federal Law Gazette I No. 39/2009 shall enter into effect on 1 May 2009.

(63) Article 93 para. 3d, Article 93 paras. 4, 4a, 5, and 8 and Article 93a para. 9 as amended by Federal Law Gazette I No. 66/2009 shall enter into effect on 1 July 2009. Article 93 para. 3, Article 93a para. 10 and Article 103k as amended by Federal Law Gazette I No. 66/2009 shall enter into effect on 1 January 2011.

(64) Article 1 para. 1 no. 6, Article 1 para. 2 no. 7, Article 1 para. 3, Article 3 para. 1 no. 9, Article 9 paras. 7 and 8, Article 23 para. 13 nos. 3 and 4, Article 34, Article 37 para. 3, Article 40 para. 8 (introductory part), Article 40 para. 8 nos. 1 and 2, Article 69a para. 8, Article 94 para. 1, Article 98 para. 3, Article 103e, Article 103j, Article 105 para. 5 no. 1 and para. 7 as amended by Federal Law Gazette I No. 66/2009 shall enter into effect on 1 November 2009; Article 1 para. 1 no. 23 shall expire at the end of 31 October 2009. Article 2 no. 3, Article 4 paras. 7 and 8, Article 70 para. 7 and Article 73 paras. 1 no. 4 as amended by Federal Law Gazette I No. 66/2009 shall enter into effect on the day following their announcement.

(65) Article 21h including its heading, Article 23 para. 7 no. 2, Article 25 para. 11 no. 6, Article 73a, Article 79 para. 2, Article 102a para. 1, Article 102a para. 2, Article 102a para. 7, Article 103e no. 6 and Article 103l as amended by Federal Law Gazette I No. 152/2009 shall enter into effect on 1 January 2010. **Annex 2 I Article 43, Part 2, Position III.** as amended by Federal Law Gazette I No. 152/2009 shall enter into effect on 31 December 2009."

(66) Article 3 para. 1 no. 9 as amended by Federal Law Gazette I No. 28/2010 with regard to the change of date, shall enter into effect one day after its announcement. Article 3 para. 1 no. 9 with regard to the change of reference, Article 3 para. 3 no. 1, Article 11 para. 5 no. 1, Article 13 para. 4 no. 1 and para. 5 no. 1, Article 17 para. 1, Article 34 paras. 2 and 3, the heading over Article 35, Article 98 para. 3 nos. 3 and 9 and Article 103m as amended by Federal Law Gazette I No. 28/2010 shall enter into effect on 11 June 2010. Article 37 as amended by Federal Law Gazette I No. 28/2010 shall enter into effect on 1 January 2011. Article 33, Article 35 para. 1 no. 1 lit. c and d and para. 2, Article 98 para. 3 nos. 4 to 7 and 11 shall enter into effect at the end of 10 June 2010.

(67) Article 2 no. 72, Article 3 para. 1 no. 3, Article 32 para. 4 nos. 1 and 3, Article 39 para. 2b, Article 40 para. 2, Article 40 para. 2d and para. 3, para. 4 no. 1 and para. 8, the heading over Article 40a and Article 40a, Article 40b para. 1, Article 41 para. 1, para. 2, para. 3b, para. 4 and para. 8, Article 42 para. 1 and para. 4 no. 3, Article 77 para. 5, Article 78 para. 9, Article 93 para. 3 no. 4, Article 98 para. 5, Article 99 paras. 1 and 2 and Article 108 Z3 as amended by Federal Law Gazette I No. 37/2010 shall enter into effect on 1 July 2010. Article 98 para. 2 no. 6 and Article 99 no. 8 shall expire at the end of 30 June 2010.

(68) Article 5 para. 1 no. 6, Article 28a para. 3 no. 1, Article 82 para. 1 and Article 93a para. 6 as amended by Federal Law Gazette I No. 58/2010 shall enter into effect on 1 August 2010.

(69) Sections III, XIV and XXIV, Article 2 no. 9c, no. 23 lit. h and no. 57c, Article 3 para. 8, Article 18 including the heading, Article 21b para. 3 no. 5, Article 21b para. 4a, Article 21g paras. 1 and 5, Article 22b para. 9 no. 3 and para. 10, Article 22d paras. 1, 2, 10, and 11, Article 22f paras. 3 to 9, Article 22l para. 3, Article 23 para. 1 nos. 2 and 3a, paras. 4a and 4b, 14 and 17, Article 24 para. 2, Article 25 para. 2, Article 27, Article 29a para. 3, Annex 2 regarding Article 43, Article 69 paras. 4 and 5, Article 69b nos. 7 to 9, Article 70 paras. 2, 4b, 4c, and 11, Article 73 para. 1 no. 19, Article 74 para. 3 no. 1, Article 75 para. 1 no. 5, Article 77 paras. 5, 8, and 9, Article 77a, Articles 77b and 77c including headings, Article 97 para. 1 no. 6, Article 98 para. 2 nos. 4b and 7, Article 103e no. 12, Article 103f no. 2, Article 103n nos. 1 to 6, and Article 105 para. 5 as amended by Federal Law Gazette I No. 72/2010 shall enter into effect on 31 December 2010. Article 103e no. 14 shall expire at the end of 30 December 2010.

**Article 108.** The following bodies are responsible for the enforcement of this federal act:

1. the federal government with regard to Article 78 paras. 1 to 3;
2. the Federal Minister of Justice with regard to Article 41 para. 7, Article 82 paras. 1 and 4, Article 83 to Article 91 as well as Article 100 and Article 101;
3. The Federal Minister of the Interior with regard to Article 41 paras. 1, 2, 3, 6 (second clause), and 8;
- 3a. the Federal Minister of Finance in coordination with the Federal Minister of the Interior with regard to Article 41 para. 4;
4. the Federal Minister of Finance in coordination with the Federal Minister of Justice with regard to Article 2 nos. 1 to 4 as well as nos. 11 and 12, Article 5 para. 2, Article 6 paras. 4 and 5, Article 7 para. 2, Article 20 para. 4 no. 3, Article 21 paras. 2 and 3, Article 38 paras. 1 and 2, Article 43, Article 44 para. 1, Article 63 para. 2 (last sentence) and para. 3, Article 66 to Article 68, Article 92 paras. 4 and 9, Article 94, Article 102 and Article 103 no. 20;
5. the Federal Minister of Finance in coordination with the Federal Minister of Economics and Labour with regard to Article 1 para. 4;
6. the Federal Minister of Finance with regard to all other provisions.

**Annex 1**  
to Article 22

**CLASSIFICATION OF OFF-BALANCE-SHEET ITEMS**

1. Full risk:

- a) Acceptances having the character of credit substitutes and draft obligations in the form of own drafts in circulation;
- b) Endorsements;
- c) Suretyships and guarantees for such asset items (including standby letters of credit serving as financial guarantees for loans and securities, and draft and cheque acceptance guarantees);
- d) Collateral provided for third-party liabilities;
- e) Assets purchased under outright forward purchase agreements;
- f) Forward-forward deposits;
- g) Sales of asset items with recourse where the credit risk remains with the selling credit institution;
- h) Securities underwriting obligations;
- i) The unpaid portion of partly paid shares and other securities;
- j) Put options sold on assets; where the strike price exceeds the market price of the asset on underlying the put option, the strike price is to be recognised, otherwise the market price of the asset multiplied by the delta of the option;
- k) Credit derivatives;
- l) Repurchase agreements pursuant to Article 50 paras. 3 and 5.

2. Medium risk:

- a) Letters of credit issued and confirmed unless they are classified as low-risk items;
- b) Warranties and indemnities (including tender, down payment, payment and purchase price guarantees as well as customs and tax bonds) and guarantees other than those indicated in no. 1 lit. c, even if issued in the form of a standby letter of credit;
- c) *removed (Federal Law Gazette I No. 141/2006)*
- d) Obligations to issue and obligations arising from the revolving offering of money-market securities by third parties, especially in note issuance facilities (NIFs), revolving underwriting facilities (RUFs) and similar instruments;
- e) Undrawn credit commitments (credit lines, lending commitments; obligations to provide guarantees or acceptances) which have an original maturity of more than one year and cannot be cancelled unconditionally and without notice by the credit institution.

3. Medium/low-risk items:

- a) Opening and confirmation of documentary credits secured by documents of title, or other easily liquidated transactions;
- b) Liability sums for members of a cooperative society; in the case of cooperative societies with unlimited liability, thirty times the par value of the shares is to be applied;



- c) Undrawn credit commitments (credit lines, lending commitments; obligations to provide guarantees or acceptances) which have an original maturity of no more than one year and cannot be cancelled unconditionally and without notice by the credit institution, or in which a deterioration in the obligor's credit quality does not automatically lead to revocation.
- 4. Low risk:
  - a) Undrawn credit commitments (credit lines, lending commitments; obligations to provide guarantees or acceptances) which can be cancelled unconditionally and without notice at any time by the credit institution, or in which a deterioration in the obligor's credit quality automatically leads to revocation; credit lines assigned to the exposure class pursuant to Article 22a para. 4 no. 8 or Article 22b para. 2 no. 4 can be considered unconditionally cancellable if the terms permit the credit institution to cancel them to the full extent allowable under consumer protection legislation.
  - b) Draft obligations in the form of endorsements in which the Oesterreichische Nationalbank has undertaken not to enforce its rights from those bills vis-à-vis the authorising banks and not to circulate those bills under the agreement of 16 November 1966 with the ERP Fund implementing the ERP Fund Act (*ERP-Fondsgesetz*);
  - c) Any other transactions not listed above.

## **Annex 2**

### to Article 22

## **DERIVATIVES**

1. Interest-rate contracts
  - a) Single-currency interest rate swaps;
  - b) Basis swaps;
  - c) Forward rate agreements, including purchases of forward-forward deposits;
  - d) Interest rate futures and interest-based index contracts;
  - e) Options purchased on interest-based instruments;
  - f) Other contracts of a similar nature.
2. Foreign-exchange contracts and contracts concerning gold:
  - a) Cross-currency interest rate swaps;
  - b) Forward foreign-exchange contracts;
  - c) Currency futures and currency-based index contracts;
  - d) Currency options purchased;
  - e) Contracts concerning gold and contracts of a similar nature to those listed in lit. a to d.
3. Equity contracts and other securities-based transactions (unless already included in no. 1)
  - a) Forward equity contracts and other securities-based forward contracts;
  - b) Equity index contracts and other securities-based index futures;
  - c) Equity options and other securities index options purchased;
  - d) Other contracts of a similar nature based on equities or other securities.

4. Precious metal contracts except for contracts concerning gold pursuant to no. 2 lit. e
  - a) Forward precious metal contracts;
  - b) Precious metal futures;
  - c) Precious metal options purchased;
  - d) Other precious metal contracts of a similar nature.
5. Commodity contracts, except for precious metal contracts
  - a) Forward commodity contracts;
  - b) Commodity futures;
  - c) Commodity options purchased;
  - d) Other commodity contracts of a similar nature.
6. Other forward contracts, futures, options purchased and contracts of a similar nature which cannot be classified under nos. 1 to 5; these also include instruments pursuant to Annex I, Section C, Number 10 of Directive 2004/39/EC (OJ No. L 145/1 of 21 April 2004).

### **Annex 3**

to Article 22

*Removed (Federal Law Gazette I No. 141/2006)*

### **Annex 2**

to Article 43, Part 1

## **LAYOUT OF THE BALANCE SHEET**

### **Assets**

1. Cash in hand, balances with central banks and post office banks
2. Treasury bills and other bills eligible for refinancing with central banks:
  - a) Treasury bills and similar securities
  - b) Other bills eligible for refinancing with central banks
3. Loans and advances to credit institutions:
  - a) Repayable on demand
  - b) Other loans and advances
4. Loans and advances to customers
5. Debt securities including fixed-income securities
  - a) issued by public bodies
  - b) issued by other borrowers

showing separately:

own debt securities
6. Shares and other variable-yield securities
7. Participating interests

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (*Bundesgesetzblatt – BGBl.*).

showing separately:

Participating interests in credit institutions

8. Shares in affiliated undertakings

showing separately:

Shares in credit institutions

9. Intangible fixed assets

10. Tangible assets

showing separately:

Land and buildings occupied by a credit institution for its own activities

11. Own shares as well as shares in a controlling company or in a company holding a majority of shares showing separately: Nominal value

12. Other assets

13. Subscribed capital called but not paid

14. Prepayments and accrued income

**Total assets**

Off-balance-sheet items

1. Foreign assets

Liabilities

1. Liabilities to credit institutions

a) Repayable on demand

b) With agreed maturity dates or periods of notice

2. Liabilities to customers (non-banks)

a) Savings deposits

showing separately:

aa) Repayable on demand

bb) With agreed maturity dates or periods of notice

b) Other liabilities

showing separately:

aa) Repayable on demand

bb) With agreed maturity dates or periods of notice

3. Securitised liabilities

a) Debt securities issued

b) Other securitised liabilities

4. Other liabilities

5. Accruals and deferred income

6. Provisions

a) Provisions for severance payments

- b) Provisions for pensions
  - c) Provisions for taxation
  - d) Other provisions
- 6. A Fund for general banking risks
- 7. Subordinated liabilities
- 8. Supplementary capital
- 9. Subscribed capital
- 10. Capital reserves
  - a) Committed
  - b) Uncommitted
- 11. Retained earnings
  - a) Legal reserve
  - b) Statutory reserves
  - c) Other reserves
- 12. Liability reserve pursuant to Article 23 para. 6 BWG
- 13. Net profit or loss for the year
- 14. Untaxed reserves
  - a) Valuation reserve due to special depreciation
  - b) Other untaxed reserves
    - showing separately:
      - aa) Investment reserve pursuant to Article 9 Income Tax Act 1988
      - bb) Investment allowance pursuant to Article 10 Income Tax Act 1988
      - cc) Rent reserve pursuant to Article 11 Income Tax Act 1988
      - dd) Transfer reserve pursuant to Article 12 Income Tax Act 1988

## **Total liabilities**

### Off-balance-sheet items

- 1. Contingent liabilities
  - showing separately:
    - a) Acceptances and endorsements
    - b) Guarantees and assets pledged as collateral security
- 2. Commitments
  - showing separately:
    - Commitments arising from repurchase transactions
- 3. Commitments arising from agency services
- 4. Eligible capital pursuant to Article 23 para. 14, showing separately: Own funds pursuant to Article 23 para. 14 no. 7;
- 5. Capital requirement pursuant to Article 22 para. 1, showing separately: Capital requirement pursuant to Article 22 para. 1 nos. 1 and 4

6. Foreign liabilities
7. Hybrid capital pursuant to Article 24 para. 2 nos. 5 and 6

**Annex 2**  
to Article 43, Part 2

**Layout of the Profit and Loss Account**

1. Interest receivable and similar income  
showing separately:  
From fixed-income securities
2. Interest payable and similar expenses

**I. NET INTEREST INCOME**

3. Income from securities and participating interests
  - a) Income from shares and other variable-yield securities
  - b) Income from participating interests
  - c) Income from shares in affiliated undertakings
4. Commissions receivable
5. Commissions payable
6. Net profit or net loss on financial operations
7. Other operating income

**II. OPERATING INCOME**

8. General administrative expenses
  - a) Staff costs  
showing separately:
    - aa) Wages and salaries
    - bb) Expenses for statutory social contributions and compulsory contributions related to wages and salaries
    - cc) Other social expenses
    - dd) Expenses for pensions and assistance
    - ee) Allocation to provision for pensions
    - ff) Expenses for severance payments and contributions to severance and retirement funds
  - b) Other administrative expenses
9. Value adjustments in respect of asset items 9 and 10
10. Other operating expenses

**III. OPERATING EXPENSES**

#### IV. OPERATING RESULT

- 11.Value adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
- 12.Value re-adjustments in respect of loans and advances and provisions for contingent liabilities and for commitments
- 13.Value adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings
- 14.Value re-adjustments in respect of transferable securities held as financial fixed assets, participating interests and shares in affiliated undertakings.

#### V. PROFIT OR LOSS ON ORDINARY ACTIVITIES

- 15.Extraordinary income showing separately:
  - Withdrawals from the fund for general banking risks
- 16.Extraordinary expenses showing separately:
  - Allocations to the fund for general banking risks
- 17.Extraordinary result (subtotal of items 15 and 16)
- 18.Tax on profit or loss
- 19.Other taxes not reported under Item 18

#### VI. PROFIT OR LOSS FOR THE YEAR AFTER TAX

- 20.Changes in reserves showing separately:
  - Allocation to liability reserve
  - Reversal of liability reserve

#### VII. NET INCOME FOR THE YEAR

- 21.Profit or loss brought forward

#### VIII. NET PROFIT OR LOSS FOR THE YEAR

### **Annex**

to Article 73 para. 6

*Removed (Federal Law Gazette I No. 141/2006)*