



## Company Pension Act

*(Bundesgesetz mit dem betriebliche Leistungszusagen gesichert werden –  
Betriebspensionsgesetz – BPG)*

### Full title

Federal act of 17 May 1990 securing company guarantees (BPG; *Bundesgesetz mit dem betriebliche Leistungszusagen gesichert werden – Betriebspensionsgesetz*)

Original version: Federal Law Gazette No. 282/1990

### Amendments

Federal Law Gazette No. 335/1993; 532/1993; 754/1996; Federal Law Gazette I No. 139/1997; 51/2002; 8/2005; 82/2008; 22/2009; 29/2010; 58/2010; 54/2012; 67/2013; 138/2013; 34/2015; 152/2015; 44/2016; 54/2018; 100/2018

### Text

## SECTION 1

### Scope

**Article 1.** (1) This federal act regulates the securing of benefits and pension expectancies arising from commitments to old-age, invalidity and survivors' pensions (guarantees) that supplement statutory pension insurance and that are made by the employer for the benefit of the employee within the scope of an employment relationship under private law.

(2) This federal act shall also apply to commitments as referred to in Subsection 2 or 2a to members of representative bodies of legal persons under private law, provided that:

1. they draw an income from employment (Article 25 of the 1988 Income Tax Law – EStG 1988; *Einkommensteuergesetz*) for this activity; and
2. the employer maintains a single-employer *Pensionskasse*, or has joined a multi-employer *Pensionskasse* for the benefit of their employees or has entered into a contract for occupational group insurance for the benefit of their employees.

(3) This federal act shall not apply to guarantees and benefits:

1. within the scope of employment relationships of agricultural and forestry workers, as defined in the Act on Employment in Agriculture (LAG; *Landarbeitsgesetz*), Federal Law Gazette No. 287/1984;
2. based on the Official Regulations of the Austrian Federal Forests (*Bundesforst-Dienstordnung*), Federal Law Gazette No. 298/1986;
3. which are to be fulfilled by the employer directly, which can be revoked at any time without giving reasons and which do not provide a legal claim to benefits.

(4) In the case of claims as referred to in para. 1 that arise from relief and other assistance funds, only Subsections 5 and 6 shall apply.

(5) In the case of benefits and pension expectancies of employees who are exempted from the statutory pension insurance obligation pursuant to Article 5 para. 1 no. 3 of the General Social Insurance Act (ASVG; *Allgemeines Sozialversicherungsgesetz*), Federal Law Gazette No.



189/1955, or pursuant to Article 38 para. 3 of the National Bank Act (NBG; *Nationalbankgesetz*), Federal Law Gazette No. 50/1984, or pursuant to any other comparable statutory provisions and who are employed with natural or legal persons under private law, this federal act shall apply to those benefits and pension expectancies that exceed comparable claims pursuant to the ASVG as based on insurance periods and assessment bases.

### Types of guarantees

**Article 2.** Guarantees as referred to in Article 1 para. 1 shall mean obligations of the employer arising from unilateral declarations, individual agreements or from standards of collective law:

1. to pay contributions to a *Pensionskasse* (pension company) or an institution referred to in Article 5 no. 4 of the *Pensionskassen Act* (PKG; *Pensionskassengesetz*), Federal Law Gazette No. 281/1990, for the benefit of the employee and their survivors; to pay premiums for an occupational group insurance to an insurance undertaking authorised to pursue life assurance activities in Austria (Article 18f of the Insurance Supervision Act – VAG; *Versicherungsaufsichtsgesetz*, Federal Law Gazette No. 569/1978) for the benefit of the employee and their survivors; pension company commitments or occupational group insurance must always include an old-age and survivors' pension;

old-age pensions shall be for life, survivors' pensions shall be paid for the period stipulated in the pension company contract or insurance contract;

2. to pay benefits directly to the employee and their survivors (direct guarantee);

3. to pay premiums for life assurance for the benefit of the employee and their survivors.

## SECTION 2

### *Pensionskasse*

#### Conditions for establishment, membership and dissolution

**Article 3.** (1) With the exception of the cases mentioned under para. 2, and in accordance with Article 15 para. 4 PKG, the establishment of a single-employer *Pensionskasse* or membership of a single-employer or multi-employer *Pensionskasse* requires the conclusion of a shop agreement or, in the cases of para. 1a, a collective agreement in order to become effective. The collective agreement or shop agreement must regulate in any case:

1. the involvement of the beneficiaries in the administration of the *Pensionskasse* or institution as defined in Article 5 no. 4 PKG;

2. the entitlement to benefits, which includes in particular the claims of the beneficiaries; the amount of the contributions to be paid by the employer, which shall be determined, in the case of defined contribution agreements, with the *Pensionskasse* as an amount or in a fixed relation to the regular remuneration or remuneration components; in addition, in the case of defined contribution agreements, variable contributions may be provided up to the amount of the obligatory contributions to be paid by the employer or, where the employer undertakes to make a contribution for employees amounting to at least 2% of the regular remuneration, variable contributions in a fixed relation to one or several business indicators as referred to in para. 1 no. 2a up to the amount resulting from Article 4 para. 4 no. 2 lit. a EStG 1988; the possible obligation of the employer to adjust the contributions in the event of additional cover requirements; any possible agreement on options pursuant to Article 12 para. 7 PKG;



2a. the business indicator underlying the variable remuneration: a business indicator is a clear and generally accessible indicator, determined in terms of business management, tax law or company law and according to objective criteria, which reflects the respective sector, specific scope, size and extent of the business, as well as the general operational risk that this business entails; stipulating several indicators per business or stipulating an indicator that is composed of a number of indicators proportional to one another shall be permissible;

3. the conditions and legal effects of the dissolution of a single-employer *Pensionskasse*, with the securing of the beneficiaries' claims being given priority over other pension company benefits; the conditions for the termination of the pension company contract on the part of the employer pursuant to Article 17 PKG and the legal effects of such termination with regard to the beneficiaries' claims.

(1a) A pension company regulation may be provided for in a collective agreement where:

1. a collective agreement as of 1 January 1997 provides for a company old-age (survivors') pension; or
2. such a regulation is to be provided for a business (or an undertaking) that is not subject to Part II of the Labour Constitution Act (ArbVG; *Arbeitsverfassungsgesetz*), Federal Law Gazette No. 22/1974.

(1b) In the case of:

1. the expiry of the pension company commitment under the collective agreement as a consequence of a change of affiliation to a collective agreement; or
2. the expiry of the collective agreement by termination,

the regulations of the collective agreement pertaining to a pension company commitment shall become part of the employment contract of the beneficiary (entitled).

(1c) Where the collective agreement expires, the beneficiary (entitled) shall retain the pension expectancy arising from the pension company commitment that had been acquired by the date on which the collective agreement ceased to apply (Article 13 ArbVG), with the beneficiary (entitled) having the same rights (Article 6 para. 3) on the date on which the agreement ceased to apply as at revocation of the payment of contributions by the employer.

(2) Before joining a *Pensionskasse*, employees who are not represented by a works council or to whom no collective agreement (as referred to in paras. 1 and 1a) applies must first conclude an agreement with the employer, which is to be drawn up according to a sample contract taking Article 18 into account. That sample contract shall regulate the matters specified under para. 1.

(3) Where claims held by former employees based on direct guarantees are transferred to a *Pensionskasse*, para. 2 shall apply.

(4) Where the employee has undertaken to make their own contributions, they may discontinue their payment of contributions at any time or suspend or restrict them for a period of at least two years. The employee may also discontinue, suspend or restrict their payment of contributions where the employer permissibly changes their payment of contributions (Article 6). The employee contributions must not exceed the total of the employer's annual contributions, with the exception of:

1. the cases referred to in Article 6; or



2. those cases in which the employee makes own (defined) contributions in addition to the employer's defined benefit commitment, and the employer contributions permissibly decrease without the commitment being changed; or
3. the case where the employee makes own contributions up to the amount stipulated under Article 108a EStG, Federal Law Gazette No. 400/1988, and the amount refunded pursuant to Article 108a EStG, which may be credited to the account for employee contributions, is not added to this amount.

For the duration of a period of leave as defined in the 1979 Maternity Protection Act (MSchG; *Mutterschutzgesetz*), Federal Law Gazette No. 221/1979, or in the Parental Leave for Fathers Act (VKG; *Väter-Karenzgesetz*), Federal Law Gazette No. 651/1989, or for the duration of educational leave pursuant to Article 11 of the Employment Contract Law Adaptation Act (AVRAG; *Arbeitsvertragsrechts-Anpassungsgesetz*), Federal Law Gazette No. 459/1993, as well as for the duration of a release from duties in exchange for salary non-payment pursuant to Articles 12, 14a or 14b, 14c AVRAG, the employee may continue to pay contributions in the same amount as before or also assume the employer contributions. Where the employer contributions are reduced due to a reduction in normal working hours pursuant to Articles 11a, 13, 14, 14a or 14b, 14d AVRAG or due to part-time employment as defined in the MSchG or the VKG, the employee may continue to pay contributions in the same amount as before or also assume payment of those employer contributions that were reduced for the duration of the reduced working hours.

### Restraints on disposal and execution

**Article 4.** The assignment or pledging of pension expectancies as defined in Articles 5 and 6 shall be legally ineffective. The Enforcement Act (EO; *Exekutionsordnung*), Reich Law Gazette No. 79/1896, shall apply to the attachment.

#### Note for the provision below

The second sentence of para. 1 shall only apply to employment relationships which commence after 31 December 2012 as contractually agreed (cf. Section VI para. 1 no. 11).

### Vesting

**Article 5.** (1) Where the employment relationship is terminated prior to the occurrence of the benefit event, the entitlement to an old-age and survivors' pension that has been acquired so far through the employee's own contributions and the employer contributions to a *Pensionskasse* shall become vested. The agreement pursuant to Article 3 may stipulate that the pension expectancy acquired by employer contributions shall only become vested after expiry of a period of no more than three years from when the employer began making contributions to the *Pensionskasse*. That period shall not apply where a legal claim to the pension expectancy already exists at the time of any transfer of that pension expectancy to the *Pensionskasse*, or where the employment relationship is terminated due to employer insolvency or plant closure, or where, in the course of the transfer of a business, company or operating unit, the new employer refuses to continue making contributions.

(1a) A vested amount shall be calculated from the vested pension expectancy (para. 1). This vested amount corresponds to the premium reserve to be established in accordance with the business plan based on the risk of old age and death (the premium reserve on which such calculation is to be based shall only consider changes in the remuneration introduced by the time



of the termination of the employment relationship) and, after entry into force of the federal act in Federal Law Gazette No. 754/1996, must:

1. where the volatility reserve is managed individually (Articles 24 and 24a PKG), not be less than the maximum from the premium reserve minus administrative expenses for the payment of the vested amount and 95% of the premium reserve allocated to the beneficiary (entitled) plus 95% of the share in the volatility reserve; or
2. where the volatility reserve is managed jointly (Articles 24 and 24a PKG), not be less than:
  - a) 100% of the premium reserve allocated to the beneficiary (entitled), or
  - b) the maximum from the premium reserve minus administrative expenses for the payment of the vested amount and 95% of the premium reserve allocated to the beneficiary (entitled) plus 95% of the share in the volatility reserve.

(1b) Any change in the calculation of the vested amount shall always require an amendment to the collective agreement, the shop agreement or the agreement according to sample contract.

(2) After termination of the employment relationship, the employee may:

1. request the conversion of the vested amount pursuant to para. 1a into a non-contributory pension expectancy; on occurrence of the benefit event, the beneficiary (recipient) shall have a claim against the *Pensionskasse* based on the non-contributory pension expectancy; in the case of a defined contribution commitment, the pro-rata investment income and the pro-rata technical profits or losses accrued by the date of the benefit event shall be additionally considered;
2. request the transfer of the vested amount pursuant to para. 1a to the *Pensionskasse*, or to an institution as defined in Article 5 no. 4 PKG, or to an occupational group insurance scheme, or to a new employer's pension insurance for groups, or to a pension insurance without right of repurchase, to an institution providing supplementary pensions pursuant to Article 479 ASVG, or to an institution for retirement provision organised on a funded basis pursuant to Article 173 para. 2 of the Auditing, Tax Advising and Related Professions Act (WTBG; *Wirtschaftstreuhandberufsgesetz*), Federal Law Gazette I No. 58/1999, pursuant to Article 50 para. 3 of the Code of Professional Conduct for Lawyers (RAO; *Rechtsanwaltsordnung*), Reich Law Gazette No. 96/1868, or pursuant to Article 41 para. 4 of the 2002 Salary Fund Act (GKaG 2002; *Gehaltskassengesetz*), Federal Law Gazette I No. 154/2001, where the employee is a beneficiary at the time of the transfer;
- 2a. request the transfer of the vested amount pursuant to para. 1a to a *Pensionskasse*, or to an institution as defined in Article 5 no. 4 PKG or to an occupational group insurance scheme in which a vested pension expectancy or paid-up insurance has already been invested for the employee, provided the new employer does not intend to make a pension company commitment to or conclude an occupational group insurance for the employee;
3. request the transfer of the vested amount pursuant to para. 1a to a new employer's direct guarantee, where a change of employer takes place within a group and the pension claims from the previous employment relationship are maintained;
4. request the transfer of the vested amount pursuant to para. 1a to a foreign institution for retirement provision, where the employee permanently relocates their place of work abroad;





5. request continuation with the employee's own contributions only where, based on a guarantee, contributions were paid for a period of at least five years or where a change of employer takes place within a group.

(3) Where the employee does not make a statement specifying the use of the vested amount pursuant to para. 1a within six months, it shall be converted into a non-contributory pension expectancy (para. 2 no. 1). Where the employee requests the transfer of this pension expectancy to the *Pensionskasse*, or to an institution as defined in Article 5 no. 4 PKG, or to an occupational group insurance scheme, or to a new employer's pension insurance for groups, or to a pension insurance without right of repurchase, to an institution providing supplementary pensions pursuant to Article 479 ASVG, or to an institution for retirement provision organised on a funded basis pursuant to Article 173 para. 2 WTBG, pursuant to Article 50 para. 3 RAO, pursuant to Article 41 para. 4 GKaG 2002, or to a foreign institution for retirement provision (para. 2 no. 4) at a later time, the expectancy must again be converted into a vested amount. In the case of a defined contribution commitment the vested amount shall be calculated according to the same calculation rules as those on which the calculation of the vested amount had to be based at the time of the termination of the employment relationship, while taking into account the pro-rata investment income and the pro-rata technical profits or losses accrued by the date of the transfer.

(4) Where the vested amount pursuant to para. 1a does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of the employment relationship being terminated, the employee may be compensated with a lump sum; employees shall be compensated at their request. Where there is no payment of a lump sum pursuant to the first sentence, the employee and the *Pensionskasse* may within twelve months of the employment relationship being terminated agree that the pension expectancy made non-contributory pursuant to the first sentence of Article 5 para. 3 again be converted into a vested amount and compensated. The last sentence of Article 5 para. 3 shall apply accordingly to the calculation of the vested amount.

(5) After receiving documented notification as referred to in Article 19b PKG and Article 18k VAG, on occurrence of the benefit event the employee may request the transfer of the vested amount pursuant to para. 1a from the *Pensionskasse* to an occupational group insurance scheme, provided that the employer has already concluded an occupational group insurance pursuant to Article 6a.

### **Change to occupational group insurance during continued employment relationship**

**Article 5a.** (1) As of the year in which employees reach the age of 55, they may, where this is provided for in the collective agreement, the shop agreement or the sample contract and where the employer has already concluded an occupational group insurance pursuant to Article 6a, after receiving documented notification as referred to in Article 19b PKG and Article 18k VAG, submit a written declaration to the *Pensionskasse* and to the employer stating that, from 1 January of the following calendar year onwards and in lieu of contributions to the *Pensionskasse*, the employer should pay premiums in the same amount to the occupational group insurance scheme. As of 1 January of the calendar year following the employee's declaration, the *Pensionskasse* must transfer the notional vested amount due at that time to the occupational group insurance. The notional vested amount shall be determined according to the same calculation rules as those on which the calculation of the vested amount at the time of the termination of the employment relationship must be based.

(2) The employee's declaration pursuant to the first sentence of para. 1 must be received by the employer and the *Pensionskasse* by 31 October of a calendar year in order for the premium



payment to the occupational group insurance and the transfer of the vested amount to become effective as of 1 January of the following calendar year.

(3) Where the employee made contributions of their own, and made an order pursuant to para. 1, they shall pay premiums in the same amount to the occupational group insurance as of 1 January of the following calendar year.

(4) The employee may demand a change to the occupational group insurance scheme pursuant to para. 1 as well as a change to the *Pensionskasse* pursuant to Article 6e para. 1 only once in each case. On occurrence of the benefit event, the change to the occupational group insurance scheme is irrevocable in any case.

### **Discontinuation, suspension or restriction of payment of contributions**

**Article 6.** (1) The employer may discontinue the current payments of contributions (revocation) only where:

1. this is stipulated in the collective agreement, the shop agreement or the sample contract;
2. the economic situation of the undertaking has permanently deteriorated to such a significant extent that sustaining the guaranteed benefit would result in a threat to the continued existence of the undertaking; and
3. in businesses that have a competent works council, the works council was consulted at least three months prior to the payment of contributions being discontinued. The works council may enlist the services of an expert to assist it during this consultation. This expert shall treat any business and trade secrets that are disclosed during the consultation as confidential.

(2) Where the employer revokes payment, the employee will retain the pension expectancy acquired so far. At the time of revocation, any vested amount shall be determined according to the same calculation rules as those stipulated under Article 5 para. 1a, with any vesting deadline being considered immaterial.

(3) After revocation, the employee may:

1. request the conversion of the vested amount pursuant to para. 2 into a non-contributory pension expectancy; on occurrence of the benefit event, the beneficiary (recipient) shall have a claim against the *Pensionskasse* resulting from the non-contributory pension expectancy and which in the case of a defined contribution commitment shall take into account the pro-rata investment income and the pro-rata technical profits or losses accrued by the date of the benefit event;
2. request the transfer of the vested amount pursuant to para. 2 to a pension insurance without right of repurchase;
3. request continuation only with their own contributions.

(4) Where the employee does not make a statement specifying the use of the vested amount pursuant to para. 2 within six months, Article 5 para. 3 shall apply.

(5) Where the vested amount pursuant to para. 2 does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of revocation, the employee may be compensated with a lump sum; employees shall be compensated at their request.

(6) The employer may suspend or restrict the current payments of contributions only where and for as long as:

1. this is stipulated in the collective agreement, the shop agreement or the sample contract;
2. compelling economic reasons exist; and
3. in businesses that have a competent works council, the works council was consulted at least three months prior to the contributions being suspended or restricted. The works council may enlist the services of an expert to assist it during this consultation. This expert shall treat any business and trade secrets that are disclosed during the consultation as confidential.

(7) Where the employer's contributions are suspended or restricted, the employee may, for the same period of time:

1. suspend or restrict their contributions to the same extent;



2. continue to pay contributions in the same amount as before; or
3. also assume payment of the employer contributions.

(8) Suspension or restriction of the employer's or employee's contributions shall not affect the expiry of the vesting deadline (Article 5 para. 1 second sentence).

## SECTION 2a

### Occupational group insurance

#### Requirements for conclusion of occupational group insurance

**Article 6a.** (1) With the exception of the cases referred to in para. 2, and in accordance with Article 18f VAG, conclusion of an occupational group insurance shall require conclusion of a shop agreement or, in the cases of para. 1a, a collective agreement in order to become effective. The collective agreement or shop agreement must always regulate:

1. the involvement of the insured person pursuant to Article 18j VAG;
2. the entitlement to benefits, which includes in particular the claims of the insured persons; the amount of the premiums to be paid by the employer, which shall be determined, in the case of defined contribution agreements, with the insurance undertaking as an amount or in a fixed relation to the regular remuneration or remuneration components; in addition, in the case of defined contribution agreements, variable premiums may be provided up to the amount of the obligatory premiums to be paid by the employer or, where the employer undertakes to pay a premium for employees amounting to at least 2% of the regular remuneration, variable premiums in a fixed relation to one or several business indicators as defined in Article 1 no. 2a up to the amount resulting from Article 4 para. 4 no. 2 lit. a EStG 1988; any possible obligation on the part of the employer to adjust the premiums in the event of additional cover requirements;
- 2a. the business indicator underlying the variable premium: a business indicator is a clear and generally accessible indicator, determined in terms of business management, tax law or company law and according to objective criteria, which reflects the respective sector, specific scope, size and extent of the business, as well as the general operational risk that this business entails; stipulating several indicators per business or stipulating an indicator that is composed of a number of indicators proportional to one another shall be permissible;
3. the conditions for the termination of the insurance contract on the part of the employer pursuant to Article 18f VAG and the legal effects of such termination with regard to the beneficiaries' claims.

(1a) A regulation on an occupational group insurance may be provided in a collective agreement where:

1. a collective agreement as of 1 January 1997 provides for a company old-age (survivors') pension; or
2. such a regulation is to be provided for a business (or an undertaking) that is not subject to Part II of the ArbVG, Federal Law Gazette No. 22/1974.

(1b) In the case of:

1. the expiry of the occupational group insurance under the collective agreement as a consequence of a change of affiliation to a collective agreement; or
2. the expiry of the collective agreement by termination,

the regulations of the collective agreement pertaining to an occupational group insurance shall become part of the employment contract of the beneficiary (entitled).

(1c) In the case of any other expiry of the collective agreement, the insured person shall retain the pension expectancy arising from the occupational group insurance that had been acquired by the date on which the collective agreement ceased to apply (Article 13 ArbVG), with the insured person having the same rights (Article 6d para. 3) on the date on which the agreement ceased to apply as at revocation of the payment of contributions by the employer.





(2) Before joining an occupational group insurance scheme, employees who are not represented by a works council or to whom no collective agreement (as referred to in para. 1) applies must first conclude an agreement with the employer, which is to be drawn up according to a sample contract taking Article 18 into account. That sample contract shall regulate the matters specified under para. 1.

(3) Where claims held by former employees based on direct guarantees are transferred to an insurance undertaking, para. 2 shall apply.

(4) Where the employee has undertaken to pay their own premiums, they may discontinue their payment of premiums at any time or suspend or restrict payment for a period of at least two years. The employee may also discontinue, suspend or restrict payment of premiums where the employer permissibly changes their payment of premiums (Article 6d). The employee premiums must not exceed the total of the employer's annual premiums, with the exception of:

1. the cases referred to in Article 6d; or
2. those cases in which the employee pays own (defined contribution) premiums in addition to the employer's defined benefit commitment and the employer premiums permissibly decrease without the commitment being changed; or
3. the case where the employee pays own premiums up to the amount stipulated under Article 108a EStG, Federal Law Gazette No. 400/1988, and the amount refunded pursuant to Article 108a EStG, which may be credited to the account for employee premiums, is not added to this amount.

For the duration of a period of leave as defined in the MSchG or the VKG, for the duration of educational leave pursuant to Article 11 of the AVRAG, as well as for the duration of a release from duties in exchange for salary non-payment pursuant to Articles 12, 14a or 14b, 14c AVRAG, the employee may continue to pay premiums in the same amount as before or also assume the employer premiums. Where the employer premiums are reduced due to a reduction in normal working hours pursuant to Articles 11a, 13, 14, 14a or 14b, 14d AVRAG or due to part-time employment as defined in the MSchG or the VKG, the employee may continue to pay premiums in the same amount as before or also assume payment of the employer premiums that were reduced for the duration of the reduced working hours.

### Restraints on disposal and execution

**Article 6b.** The assignment or pledging of pension expectancies as defined in Articles 6c and 6d shall be legally ineffective. The EO, Reich Law Gazette No. 79/1896, shall apply to the attachment.

### Vesting

**Article 6c.** (1) Where the employment relationship is terminated prior to the occurrence of the benefit event, the insurance claim arising from the insurance contract (old-age and survivors' pension) that has been acquired so far through the employee's own contributions and the employer contributions to an insurance undertaking shall become vested. The vested amount shall correspond to the premium reserve attributable to the individual insured person. The premium reserve shall be calculated according to the insurance undertaking's actuarial bases.

(2) After termination of the employment relationship, the employee may:

1. request the conversion of the insurance into a paid-up insurance; on occurrence of the benefit event, the insured person shall have a claim against the insurance undertaking, which arises from premiums to be paid, based on the insurance contract, up until the termination of the employment relationship, taking account of the interest and bonuses accruing up until the occurrence of the benefit event;
2. request the transfer of the vested amount pursuant to para. 1 to the *Pensionskasse*, or to an institution as defined in Article 5 no. 4 PKG, or to an occupational group insurance scheme, or to a new employer's pension insurance for groups, or to a pension insurance without right of repurchase, to an institution providing supplementary pensions pursuant to Article 479 ASVG, or to an institution for retirement provision organised on a funded basis pursuant to Article 173 para. 2 WTBG, pursuant to Article 50 para. 3 RAO or pursuant



to Article 41 para. 4 GKaG 2002, where the employee is a beneficiary at the time of the transfer;

- 2a. request the transfer of the vested amount pursuant to para. 1 to an occupational group insurance scheme, or to a *Pensionskasse* or to an institution as defined in Article 5 no. 4 PKG in which a paid-up insurance or vested pension expectancy has already been invested for the employee, provided that the new employer does not intend to conclude an occupational group insurance or to make a pension company commitment for the employee;
3. request the transfer of the vested amount pursuant to para. 1 to a new employer's direct guarantee, where a change of employer takes place within a group and the pension claims from the previous employment relationship are maintained;
4. request the transfer of the vested amount pursuant to para. 1 to a foreign institution for retirement provision, where the employee permanently relocates their place of work abroad;
5. request continuation with the employee's own contributions only where, based on a guarantee, contributions were paid for a period of at least five years or where a change of employer takes place within a group.

(3) Where the employee does not make a statement specifying the use of the claim within six months, the insurance shall be converted into a paid-up insurance (para. 2 no. 1). Where the employee requests the transfer of their claim to the *Pensionskasse*, or to an institution as defined in Article 5 no. 4 PKG, or to an occupational group insurance scheme, or to a new employer's pension insurance for groups, or to a pension insurance without right of repurchase, to an institution providing supplementary pensions pursuant to Article 479 ASVG, or to an institution for retirement provision organised on a funded basis pursuant to Article 173 para. 2 WTBG, pursuant to Article 50 para. 3 RAO or pursuant to Article 41 para. 4 GKaG 2002, or to a foreign institution for retirement provision (para. 2 no. 4) at a later time, the premium reserve shall be transferred.

(4) Where the vested amount pursuant to para. 1 does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of the employment relationship being terminated, the employee may be compensated with a lump sum; employees shall be compensated at their request. Where there is no payment of a lump sum pursuant to the first sentence, the insurance undertaking and the employee may within twelve months of the employment relationship being terminated agree that the paid-up insurance pursuant to the first sentence of Article 6c para. 3 again be converted into a vested amount pursuant to Article 6c para. 1 and compensated.

(5) After receiving documented notification as referred to in Article 19b PKG and Article 18k VAG, on occurrence of the benefit event employees may request the transfer of the vested amount pursuant to para. 1 from the occupational group insurance scheme to a *Pensionskasse* in which they already are beneficiaries as defined in Article 5 PKG.

### **Discontinuance, suspension or restriction of premium payment**

**Article 6d.** (1) The employer may discontinue current premium payments (revocation) only where:

1. this is stipulated in the collective agreement, the shop agreement or the sample contract;
2. the economic situation of the undertaking has permanently deteriorated to such a significant extent that sustaining the benefit guaranteed would result in a threat to the continued existence of the undertaking; and
3. in businesses that have a competent works council, the works council was consulted at least three months prior to the discontinuance of premium payments. The works council may enlist the services of an expert to assist it during this consultation. This expert shall treat any business and trade secrets that are disclosed during the consultation as confidential.

(2) Where the employer revokes payment, the employee will retain the claim to insurance benefits based on any own premiums and any employer premiums due until revocation.

(3) After revocation, the employee may:

1. request the conversion of the vested amount pursuant to para. 2 into a paid-up insurance; on occurrence of the benefit event, the beneficiary (recipient) shall have a claim against the insurance undertaking arising from premiums to be paid, based on the insurance



- contract, up until the termination of the employment relationship, taking account of the interest and bonuses accruing up until the occurrence of the benefit event;
2. request the transfer of the vested amount pursuant to para. 2 to a pension insurance without right of repurchase;
  3. request continuation only with their own contributions.
- (4) Where the employee does not make a statement specifying the use of the vested amount pursuant to para. 2 within six months, Article 6c para. 3 shall apply.
- (5) Where the vested amount pursuant to para. 2 does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of revocation, the employee may be compensated with a lump sum; employees shall be compensated at their request.
- (6) The employer may suspend or restrict current premium payments only where and for as long as:
1. this is stipulated in the collective agreement, the shop agreement or the sample contract;
  2. compelling economic reasons exist; and
  3. in businesses that have a competent works council, the works council was consulted at least three months prior to the suspension or restriction of the contributions. The works council may enlist the services of an expert to assist it during this consultation. This expert shall treat any business and trade secrets that are disclosed during the consultation as confidential.
- (7) Where the employer premiums are suspended or restricted, the employee may, for the same period of time:
1. suspend or restrict their premiums to the same extent;
  2. continue to pay premiums in the same amount as before; or
  3. also assume payment of the employer premiums.

### **Change to a *Pensionskasse* during continued employment relationship**

**Article 6e.** (1) As of the year in which employees reach the age of 55, they may, where this is provided for in the collective agreement, the shop agreement or the sample contract and where the employer has already concluded a pension company contract pursuant to Article 15 PKG, after receiving documented notification as referred to in Article 18k VAG and Article 19b PKG, submit a written declaration to the insurance undertaking and to the employer stating that, from 1 January of the following calendar year onwards and in lieu of premium payments to the occupational group insurance scheme, the employer should pay contributions in the same amount to the *Pensionskasse*. As of 1 January of the calendar year following the employee's declaration, the insurance undertaking must transfer the vested amount pursuant to Article 6c para. 1 to the *Pensionskasse*.

(2) The employee's declaration pursuant to the first sentence of para. 1 must be received by the employer and the insurance undertaking by 31 October of a calendar year in order for the payment of contributions to the *Pensionskasse* and the transfer of the vested amount to become effective as of 1 January of the following calendar year.

(3) Where the employee paid premiums of their own, and made an order pursuant to para. 1, they shall pay contributions in the same amount to the *Pensionskasse* as of 1 January of the following calendar year.

(4) The employee may demand a change to the *Pensionskasse* pursuant to para. 1 as well as a change to an occupational group insurance scheme pursuant to Article 5e para. 1 only once in each case. On occurrence of the benefit event, the change to the *Pensionskasse* is irrevocable in any case.



## SECTION 3

### Direct guarantee

#### Vesting

**Article 7.** (1) In the absence of an agreement that is more favourable to the employee, the entitlement to an old-age and survivors' pension acquired as a consequence of a direct guarantee shall become vested at the time of the employment relationship being terminated prior to the occurrence of the benefit event where three years have passed since the guarantee has been granted.

(2) *(Repealed in Amendment published in Federal Law Gazette I no. 54/2018)*

(2a) Unless otherwise specified in the following, the vested amount shall be calculated according to the entry age normal method and the actuarial bases applicable to the establishment of provisions; for the calculation, both the age at the time of the commitment being made and the retirement age shall be considered; the assumed interest rate shall amount to 7%; for this calculation, changes in the remuneration shall only be considered up until the date on which the employment relationship is terminated. Even where the guarantee provides for an occupational disability pension (invalidity pension), only the entitlement to an old-age pension or early old-age pension (irrespective of whether the beneficiary reaches the retirement age as an actively employed person, as an invalid or an old-age pensioner) and the entitlement to a survivors' pension (irrespective of whether the beneficiary dies as an actively employed person, as an invalid or an old-age pensioner) shall be considered for the calculation of the vested amount.

(2b) Up until 1 July 2000, a comparative calculation between the calculation provisions laid down in Article 7 para. 3 no. 1 BPG, as amended by Section I of the federal act in Federal Law Gazette No. 282/1990, and the entry age normal method pursuant to para. 2a shall be carried out for employees whose employment relationship ends no earlier than five years prior to reaching the retirement age stipulated in the guarantee. Those employees shall be entitled to the higher amount resulting from the comparative calculation.

(3) After termination of the employment relationship, the employee may:

1. request the transfer of the vested amount (pursuant to paras. 2a and 2b) to the *Pensionskasse*, to an occupational group insurance scheme, or to a new employer's pension insurance for groups or to a pension insurance without right of repurchase; where the employee is still a beneficiary (entitled) of the *Pensionskasse*, occupational group insurance or a former employer's pension insurance for groups, they may request the transfer of the vested amount to this *Pensionskasse*, occupational group insurance or pension insurance for groups;
2. request the transfer of the vested amount (pursuant to paras. 2a and 2b) to a new employer's direct guarantee, where a change of employer takes place and the pension claims from the previous employment relationship are maintained;
3. request the transfer of the vested amount (pursuant to paras. 2a and 2b) to a foreign institution for retirement provision, where the employee permanently relocates their place of work abroad;
4. request the fulfilment of the guarantee at the time of the benefit event, with the vested amount (pursuant to paras. 2a and 2b) having to be converted into a non-contributory pension expectancy (assumed rate of interest: 6%); on occurrence of the benefit event, the beneficiary (recipient) shall have a claim based on the non-contributory pension expectancy, with any contractually agreed valorisation only being carried out once the benefit event has occurred.

(3a) Where the guarantee provides for an occupational disability pension (invalidity pension), the former employee may request a benefit from the non-contributory pension expectancy (para. 3 no. 4) on occurrence of the occupational disability (invalidity). Such benefit results from the actuarial conversion of the provision for the non-contributory pension expectancy into an occupational disability pension (invalidity pension) with immediate effect and with survivors' claims being taken into consideration.





(4) Where the employee made own payments to acquire a pension expectancy, these payments including any interest accrued at the assumed rate of interest of 6% shall become vested at any rate and shall be returned to them at their request after termination of the employment relationship.

(5) Where the employee does not make a statement specifying the use of the vested amount within six months, the guarantee shall be fulfilled on occurrence of the benefit event (para. 3 no. 4).

(6) Where the vested amount, irrespective of any possible shares from the employee's own payments, does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of the employment relationship being terminated, the employee may be compensated with a lump sum; employees shall be compensated at their request.

(6a) The vested amount may be paid out, with no limit on the amount, where it constitutes a claim in insolvency proceedings.

(7) The assignment or pledging of pension expectancies as defined in Articles 7 and 8 shall be legally ineffective. The EO shall apply to the attachment.

### **Discontinuance, suspension or restriction of the acquisition of future pension expectancies**

**Article 8.** (1) Unless standards of collective law or individual agreements that were concluded prior to the entry into force of this federal act specify otherwise, the employer may only discontinue the acquisition of future pension expectancies (revocation) where:

1. this has been stipulated in the standards of collective law or agreed in writing;
2. the economic situation of the undertaking has permanently deteriorated to such a significant extent that sustaining the benefit guaranteed would result in a threat to the continued existence of the undertaking; and
3. in businesses that have a competent works council, the works council was consulted at least three months prior to the discontinuance of the acquisition of future pension expectancies. The works council may enlist the services of an expert to assist it during this consultation. This expert shall treat any business and trade secrets that are disclosed during the consultation as confidential.

(2) The employee shall retain the pension entitlement acquired since the guarantee was granted until its revocation where a period of three years has elapsed since the guarantee was granted.

(3) On occurrence of the benefit event, the beneficiary (recipient) shall have a claim arising from the pension expectancy made non-contributory at the time of revocation (pursuant to Article 7 paras. 2a and 2b), with any contractually agreed valorisation only being carried out once the benefit event has occurred.

(4) Where the employee made own payments to acquire a pension expectancy, these payments including interest accrued at the assumed rate of interest of 6% shall become vested at any rate and shall be returned to them at their request following revocation.

(5) Where the vested amount, irrespective of any possible shares from the employee's own payments, does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of revocation, the employee may be compensated with a lump sum; employees shall be compensated at their request.

(6) Unless standards of collective law or individual agreements that were concluded prior to the entry into force of this federal act specify otherwise, the employer may only suspend or restrict the acquisition of future pension expectancies where and for as long as:

1. this has been stipulated in the standards of collective law or agreed in writing;
2. compelling economic reasons exist; and
3. in businesses that have a competent works council, the works council was consulted at least three months prior to the suspension or restriction of the acquisition of future pension expectancies. The works council may enlist the services of an expert to assist it during this consultation. This expert shall treat any business and trade secrets that are disclosed during the consultation as confidential.





(7) Where the employer suspends or restricts the acquisition of future pension expectancies, the employee may suspend or restrict their contributions for the same period of time or to the same extent.

(8) Suspension or restriction of the acquisition of future pension expectancies shall not affect the expiry of the vesting deadline (para. 2).

### Suspension or restriction of benefits

**Article 9.** Unless standards of collective law or individual agreements that were concluded prior to the entry into force of this federal act specify otherwise, benefits may only be suspended or restricted where and for as long as the conditions of Article 8 para. 6 nos. 1 and 2 are met and where the employer used the right granted to them to discontinue, suspend or restrict the acquisition of future pension expectancies; where benefits are covered by securities (Article 11), they must not be suspended or restricted; these securities must neither be pledged nor sold.

### Value adjustment

**Article 10.** Where neither a value adjustment was excluded nor other agreements made, the employer shall annually appreciate benefits from direct guarantees by the adjustment factor pursuant to Article 108f ASVG, Federal Law Gazette No. 189/1955. Such adjustment may be omitted where the economic situation of the undertaking does not allow a value adjustment, and where in businesses that have a competent works council, the works council was consulted.

### Securities coverage and insolvency

**Article 11.** (1) Where provisions for pensions must be established for direct guarantees pursuant to Article 211 para. 2 of the Corporate Code (UGB; *Unternehmensgesetzbuch*), German Reich Law Gazette No. 219/1897, they shall be covered by securities to the extent laid down in the provisions of Article 14 para. 7 EStG 1988, Federal Law Gazette No. 400/1988, taking Article 116 para. 4 EStG 1988 into account. The securities constitute a special fund in insolvency proceedings (Article 48 para. 1 of the Insolvency Act – IO; *Insolvenzordnung*, Reich Law Gazette No. 337/1914) to be used to settle the claims of beneficiaries arising from a direct guarantee.

(1a) Claims arising from an employer's pension liability insurance in accordance with Article 14 para. 7 EStG 1988 may be eligible for the securities coverage required pursuant to para. 1 to the extent specified in this provision.

(2) The securities coverage may only be decreased to settle the claims of beneficiaries arising from the direct guarantee and must not fall below the extent required under para. 1. The securities as referred to in para. 1 shall not be used for execution except for the settlement of the beneficiaries' claims.

(3) Where the employer becomes insolvent, the insolvency compensation fund is entitled to the proceeds from the sale of the securities inasmuch as any claims against the employer pursuant to Article 11 of the Insolvency Remuneration Guarantee Act (IESG; *Insolvenz-Entgeltsicherungsgesetz*), Federal Law Gazette No. 324/1977, pass to the insolvency compensation fund. The beneficiaries are entitled to the remaining proceeds, inasmuch as their claims do not pass to the insolvency compensation fund pursuant to Article 11 IESG, in accordance with the extent of their vested amounts or benefit claims.

(4) The securities as referred to in para. 1 shall be deposited with a credit institution that has been properly authorised to pursue this activity in accordance with Directive 2006/48/EC for the purpose of covering provisions for pensions for direct guarantees. The securities as referred to in para. 1 shall at any rate be kept separate from any additional deposits of securities held by the employer at the same credit institution.



## SECTION 4

### Life assurance

#### General provisions

**Article 12.** (1) Where the guarantee consists of the conclusion of an insurance contract whose beneficiaries are the employee and their survivors, any change in the right to the insurance benefit shall be legally ineffective without the employee's approval. The employee's right to appoint survivors entitled to the insurance benefit shall remain unaffected.

(2) The assignment or pledging of claims to insurance benefits shall be legally ineffective. The EO shall apply to the attachment.

#### Vesting

**Article 13.** (1) Where the employment relationship is terminated prior to occurrence of the benefit event, the employee shall retain entitlement to the insurance benefit arising from the insurance contract. After termination of the employment relationship, the employee may:

1. request the conversion of the insurance into a paid-up insurance; on occurrence of the benefit event, the beneficiary (recipient) shall have a claim against the insurance undertaking arising from premiums to be paid, based on the insurance contract, up until the termination of the employment relationship, taking account of the interest and bonuses accruing up until the occurrence of the benefit event;
2. request the transfer of the surrender value on the date on which the employment relationship is terminated to the *Pensionskasse*, an occupational group insurance scheme or a new employer's pension insurance for groups;
3. request the transfer of the surrender value on the date on which the employment relationship is terminated to a foreign institution for retirement provision, where the employee permanently relocates their place of work abroad;
4. request continuation of the insurance with own premiums.

(2) Where the employee does not make a statement specifying the use of the claim within six months, the insurance shall be converted into a paid-up insurance (para. 1 no. 1).

(3) Where the surrender value does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of the employment relationship being terminated, the surrender value shall be paid out to the employee upon request.

#### Discontinuance, suspension or restriction of premium payment

**Article 14.** (1) The employer may only discontinue premium payments (revocation) subject to the conditions referred to in Article 8 para. 1 nos. 1 to 3. Where the employer revokes payment, the employee will retain the claim to insurance benefits based on any own premiums and employer premiums due until revocation. After revocation, the employee may:

1. request the conversion of the insurance into a paid-up insurance; on occurrence of the benefit event, the beneficiary (recipient) shall have a claim against the insurance undertaking arising from premiums to be paid, based on the insurance contract, up until the time of revocation, taking account of the interest and bonuses accruing up until the occurrence of the benefit event;
2. request continuation of the insurance with own premiums.

(2) Where the employee does not make a statement specifying the use of the claim within six months, the insurance shall be converted into a paid-up insurance (para. 1 no. 1).

(3) Where the surrender value does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of revocation, the surrender value shall be paid out to the employee upon request.

(4) The employer may only suspend or restrict premium payments (revocation) subject to the conditions referred to in Article 8 para. 6 nos. 1 to 3.



(5) Where the employer premium payments are suspended or restricted, the employee may, for the same period of time:

1. continue to pay premiums in the same amount as before;
2. suspend or restrict their premium payments to the same extent; or
3. also assume payment of the employer premiums.

(6) Where the employee has undertaken to pay their own premiums, they may discontinue their payment of premiums at any time or suspend or restrict them for a period of at least two years.

## SECTION 5

### Relief and other assistance funds

**Article 15.** Where, at the time of the employment relationship being terminated, the employee has been a beneficiary of a relief or other assistance fund for at least five years, they shall, on occurrence of the benefit event, be treated like the employees having remained in the company, with their claim being based on the proportional relationship between the period of time worked for the company and the period of time between their joining the company and the occurrence of the benefit event.

## SECTION 6

### General provisions

#### No-offsetting rule

**Article 16.** (1) The pension payments regulated by this federal act must not be reduced by the amount of pension payments that are based on contributions made by the beneficiaries (recipients). This shall not apply to benefits from statutory pension insurance where they are based on mandatory contributions, or to pension payments where at least half of such payments are based on contributions or subsidies made by the employer.

(2) The value of the part of the overall pension to be paid by the employer at the time of the benefit event must not be reduced by any subsequent increase of offsettable pension payments.

**Article 16a.** (1) Where company pension commitments stipulate a benefit claim for the case of the drawing of a temporary invalidity pension or an occupational disability pension, this claim shall also be granted where invalidity or occupational disability is determined for the insurance policyholder for a period of at least six months, pursuant to Article 367 para. 4 ASVG for the duration of the period of receiving a rehabilitation allowance in accordance with Article 143a ASVG or a retraining allowance in accordance with Article 39b of the Unemployment Insurance Act 1977 (AIVG; Arbeitslosenversicherungsgesetz 1977), published in Federal Law Gazette no. 609/1977.

(2) Para. 1 shall also apply for commitments and benefits as defined in Article 1 para. 3 no. 2.

#### Duty of disclosure

**Article 17.** (1) At the request of the beneficiary (entitled), the former employee or the survivor's request, the employer shall disclose information annually about the extent of the pension expectancy as of the balance sheet date, as well as the extent of the benefits that may be claimed where the benefit event occurs.

(2) The duty of disclosure as referred to in para. 1 shall apply to the *Pensionskasse* in the case of guaranteed pension company benefits, and to the insurance undertaking in the case of life assurance contracts or occupational group insurance schemes.



### Non-discrimination clause

**Article 18.** (1) The employer shall uphold the principle of equal treatment in accordance with labour legislation and, in the case of any restriction or revocation of rights pursuant to this federal act, shall be obliged to treat beneficiaries according to balanced principles that rule out any arbitrary or inappropriate distinctions between employees or groups of employees.

(2) In the case of guarantees pursuant to Subsections 2 or 2a, the business's employees or groups of employees must be offered a balanced form of participation in the pension company system or system of occupational group insurance that rules out any arbitrary or inappropriate distinctions.

(3) Infringements of the non-discrimination clause pursuant to paras. 1 and 2 shall result in an adjustment claim for any person whose rights have been curtailed.

### Prohibition to change legal provisions by agreement

**Article 19.** Unless otherwise specified in this federal act, those rights to which the employee is entitled to pursuant to Articles 2 to 18 must be neither rescinded nor restricted by an employment contract or standards of collective law.

**Article 20.** (1) Any administrative proceedings pursuant to Article 3 paras. 2 or 3 as amended by Section I of the federal act in Federal Law Gazette I No. 282/1990 pending at the time of this federal act entering into force shall be continued according to existing law.

(2) Any references to other federal acts included in this federal act shall refer to the version as amended unless reference to a certain version is made in the individual references.

(3) Where designations relating to persons are not yet given in a gender-neutral form in this federal act, they shall refer equally to both sexes.

(4) Any regulations in works agreements or individual agreements that are more favourable to the employees with regard to the transfer of a vested amount pursuant to Article 5 para. 2 and that exist at the time of the federal act in Federal Law Gazette No. 754/1996 entering into force shall not be affected by the provisions of the federal act in Federal Law Gazette I No. 754/1996, provided that these works agreements (this individual agreement) applied to the employee at the time of the federal act in Federal Law Gazette I No. 754/1996 entering into force.

## Section V

### Transitional and final provisions

(1) This federal act shall not be applied to guarantees which were granted prior to 1 January 1989 and which are to be fulfilled by *Pensionskassen* that had already been established at that time.

(2) Agreements pursuant to Article 3 BPG (Section I) may determine the effective date for the transfer of pension expectancies and benefits to *Pensionskassen* retroactively, but to no earlier than the beginning of the employer's current business year.

(3) With regard to guarantees that were granted prior to this federal act entering into force, this federal act shall only apply to pension expectancies acquired after its entry into force. For compliance with the waiting period and the five-year period pursuant to Section I Article 7 para. 1 no. 2 and Article 8 para. 2, qualifying periods that precede the entry into force of this federal act shall also be taken into account. Regulations derogating from Section I Article 15 pertaining to pension expectancies that had already been acquired at the time of this federal act entering into force shall not affect relief and other assistance funds that already existed prior to the entry into force of this federal act.

(4) Regulations pertaining to direct guarantees that existed prior to 1 January 1990 and, Section I of this federal act notwithstanding, provide for:

1. a longer waiting period;
2. the loss of acquired pension expectancies in the case of the employment relationship being terminated by common consent or in the case of termination on the part of the



employer due to negligent conduct of the employee determined in disciplinary proceedings;

3. the revocation of benefits due to conduct on the part of the beneficiary (recipient) that makes them appear untrustworthy to the former employer (in particular due to an infringement of existing non-competition clauses)

shall remain unaffected.

(5) In the case of direct guarantees that were granted prior to the entry into force of the federal act in Federal Law Gazette No. 282/1990 (1 July 1990), the vested amount as referred to in Section I Article 7 shall be calculated in accordance with the provisions of Article 7 paras. 2a and 2b BPG, as amended by the federal act in Federal Law Gazette No. 754/1996, for the period from 1 July 1990 to the termination of the employment relationship.

(6) Section I Article 10 shall not apply to benefits from direct guarantees that were granted prior to the entry into force of this federal act.

(7) Section IV of this federal act shall not apply to insolvencies as defined in Article 1 para. 1 IESG that occurred prior to the entry into force of this federal act. The deadline pursuant to Article 6 para. 1 IESG for claims pursuant to Section IV no. 2 lit. a shall end no earlier than four months after publication of this federal act.

(8) Where references to other federal acts are made in this federal act, those acts shall apply as most recently amended.

(9) Section V para. 5 as amended by the federal act in Federal Law Gazette No. 754/1996 shall enter into force on 1 January 1997.

(10) Former employees for whom a non-contributory pension expectancy is managed as at 31 December 2012 may request in writing by 30 June 2013 that their pension expectancy again be converted into a vested amount and compensated where:

1. the vested amount converted into a non-contributory pension expectancy pursuant to Article 5 para. 1a did not exceed, at the time of the termination of the employment relationship, the amount resulting from Article 1 paras. 2 and 2a PKG, as amended at the time of the termination of the employment relationship;
2. the amount relevant as at 31 December 2012 in accordance with Article 1 paras. 2 and 2a PKG does not exceed the re-calculated vested amount following conversion of this pension expectancy; and
3. the employee is not allowed to request transfer of this pension expectancy in accordance with the second sentence of Article 5 para. 3.

(11) Former employees for whom a paid-up insurance is managed as at 31 December 2012 may request in writing by 30 June 2013 that their pension expectancy again be converted into a vested amount and compensated where:

1. the vested amount converted into a paid-up insurance pursuant to Article 6c para. 1 did not exceed, at the time of the termination of the employment relationship, the amount resulting from Article 1 paras. 2 and 2a PKG, as amended at the time of the termination of the employment relationship;
2. the amount relevant as at 31 December 2012 in accordance with Article 1 paras. 2 and 2a PKG does not exceed the re-calculated vested amount following conversion of this pension expectancy; and
3. the employee is not allowed to request transfer of this insurance in accordance with the second sentence of Article 6c para. 3.

## Section VI

### Entry into force and enforcement

(1) 1. This federal act shall enter into force on 1 July 1990.

2. Article 16a as amended by the federal act in Federal Law Gazette No. 335/1993 shall enter into force on 1 July 1993.





3. Article 1 para. 3, Article 3, Article 4, Article 5, Article 6, Article 7, Article 8 paras. 2 to 5, Article 9 last half-sentence, Article 11, Article 12 para. 2, Article 13 para. 3, Article 14 para. 3 and Article 20 as amended by the federal act in Federal Law Gazette No. 754/1996 shall enter into force on 1 January 1997.
  4. For transfers pursuant to Article 48 PKG of pension expectancies and benefit obligations based on direct guarantees in collective agreements, Article 3 as amended by the federal act in Federal Law Gazette No. 754/1996 shall enter into force retroactively as of 1 July 1996, with the effective date for transfers that had commenced by 31 December 1996 being 1 January 1996 rather than the effective date of 1 January 1997 referred to in Article 3 para. 1a.
  5. Article 3 para. 4 penultimate and last sentence as amended by the federal act in Federal Law Gazette I No. 139/1997 shall enter into force on 1 January 1998.
  6. Article 3 para. 4 as amended by the federal act in Federal Law Gazette I No. 51/2002 shall enter into force on 1 January 2002.
  7. Article 2 no. 1, Article 3 para. 1 no. 1, Article 5 para. 2 no. 2 and para. 5 Subsection 2a, Article 7 para. 3 no. 1, Article 13 para. 1 no. 2, Article 17 para. 2 and Article 18 para. 2 as amended by the federal act in Federal Law Gazette I No. 8/2005 shall enter into force on 23 September 2005.
  8. Article 11 para. 3 as amended by the federal act in Federal Law Gazette I No. 82/2008 shall enter into force on 1 January 2008.
  9. Article 1 para. 2 as amended by the federal act in Federal Law Gazette I No. 22/2009 shall enter into force on 1 January 2009.
  10. Article 7 paras. 6a and Article 11 para. 1 as amended by the federal act in Federal Law Gazette I No. 58/2010 shall enter into force on 1 August 2010. Article 11 para. 1 as amended by the federal act in Federal Law Gazette I No. 58/2010 shall apply to insolvency proceedings initiated or resumed after 31 July 2010.
  11. Article 1 para. 5, Article 2 no. 1, Article 3 para. 1 first sentence and nos. 2 and 2a and para. 4 penultimate and last sentence, Article 5 para. 1 second sentence and para. 1a no. 2 and para. 2 nos. 2 and 2a and para. 3 and para. 4 penultimate and last sentence and para. 5, Article 5a including its heading, Article 6a para. 1 nos. 2 and 2a and para. 4 penultimate and last sentence, Article 6c para. 2 nos. 2 and 2a and paras. 3 to 5, Article 6e including its heading, Article 11 paras. 1a and 4, Article 20 para. 3, Section V paras. 10 and 11 as well as Section VI para. 2 no. 3 as amended by the federal act in Federal Law Gazette No. 54/2012 shall enter into force on 1 January 2013. Article 5 para. 1 second sentence shall only apply to employment relationships which commence after 31 December 2012 according to contract.
  12. Article 3 para. 4 and Article 6a para. 4 as amended by the federal act in Federal Law Gazette I No. 67/2013 shall enter into force on 1 July 2013.
  13. Article 3 para. 4 and Article 6a para. 4 as amended by the federal act in Federal Law Gazette I No. 138/2013 shall enter into force on 1 January 2014.
  14. Article 2 no. 1, Article 5 para. 5, Article 5a para. 1, Article 6a para. 1, Article 6c para. 5 and Article 6e para. 1 as amended by the federal act in Federal Law Gazette. I No. 34/2015 shall enter into force on 1 January 2016.
  15. Article 16a para. 3a in the version of the federal act in Federal Law Gazette I No. 152/2015 shall enter into force on 1 January 2016.
  16. Articles 7, 8 and 17 para. 1 in the version amended by the federal act in Federal Law Gazette I No. 54/2018 shall enter into force on 21 May 2018 and shall apply for periods of employment from direct guarantees that arise following the entry into force of this legal act. The provisions of Articles 7, 8 and 17 in the version amended by the federal act in Federal Law Gazette I no. 54/2018 shall continue to apply for periods of employment from direct guarantees that arise prior to the entry into force of this Federal Act.
- (2) The following persons shall be in charge of enforcing this federal act:
1. with respect to Section I Article 4, Article 11 para. 1 first and second sentence as well as para. 2 and Article 12 para. 2, the Federal Minister of Justice;
  2. with regard to Section I Article 2 para. 3, the Federal Minister of Finance;



3. with regard to all other provisions of the this federal act, the Federal Minister of Labour, Social Affairs and Consumer Protection.

### **Section 1**

***(Note: from Federal Law Gazette I No. 8/2005, with regard to Articles 2, 3, 5, 6a to 6d, 7 13, 17 and 18, Federal Law Gazette No. 282/1990)***

This federal act transposes Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10) into Austrian law.

### **Section 1**

***(Note: from Federal Law Gazette I No. 22/2009, with regard to Article 1, Federal Law Gazette No. 282/1990)***

This federal act serves to transpose Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.0.2007, p. 1).

### **Section 1 - Transposition of European Union Directives**

***(Note: from Federal Law Gazette I No. 34/2015, with regard to Articles 2, 5, 5a, 6a, 6c and 6e, Federal Law Gazette No. 282/1990)***

This federal act serves to transpose Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) (recast), (OJ L 335, 17.12.2009, p. 1), last amended by Directive 2014/51/EU (OJ L 153, 22.5.2014, p. 1).