



## Small Insurance Undertaking Investment Regulation

(kVU-KAV; kleine Versicherungsunternehmen Kapitalanlageverordnung)

### Full title

Regulation of the Austrian Financial Market Authority (FMA) on investments by small insurance undertakings (Small Insurance Undertaking Investment Regulation – kVU-KAV; kleine Versicherungsunternehmen Kapitalanlageverordnung)

**Original version:** Federal Law Gazette II No. 97/2013.

### Amendment:

Federal Law Gazette II No. 356/2017.

### Preamble/Promulgation clause

Based on Article 90 para. 3 of the 2016 Insurance Supervision Act (VAG 2016; Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I No 34/2015, the following shall be determined by Regulation:

### Text

#### Scope of application

**Article 1** This Regulation shall apply to small insurance undertakings as defined in Article 5 no. 3 of the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz).

#### Principles of investment

**Article 2.** (1) Small insurance undertakings are required to take the aspects of security, profitability and the need for liquidity into account and to ensure an appropriate mix and diversification in their selection of assets pursuant to Article 90 para. 1 VAG 2016. In addition, any risk entailed with the assets must be considered, ensuring in particular that the issuer or contracting party has a sufficiently good credit quality. Risk assessment must be appropriate, guaranteed and documented.

(2) Non-recurring loans, credit balances and receivables may only be used if the borrower, guarantor or trustee in the case of trusteeships has waived any rights of set-off and retention in writing.

(3) Securities may only be used if the custodian has waived any rights of set-off and retention in writing, and the liability of the custodian or intermediary custodian for third-party custodians' negligence is neither contractually limited nor excluded. Securities shall be deposited with a credit or financial institution that is authorised pursuant to Article 5 no. 11 VAG 2016 to pursue custody business (custodian) in an OECD Member State, while ensuring that the respective securities deposited with the custodian constitute special funds that would not form part of the bankrupt's estate in the event of bankruptcy proceedings against the custodian.

(4) Assets pursuant to para. 1 may only be used if redemptions and repayments will definitely be credited to a bank account for which the bank has waived in writing any rights of set-off and retention vis-à-vis the small insurance undertaking.

(5) Assets must be held in sufficiently safe custody, provided they are not subject to a deposit obligation.

### Note for the following provision

See Article 5 para. 2 about the time frame for applicability

#### Eligible assets

**Article 3.** (1) The following assets pursuant to para. 2 are considered eligible for investment by small insurance undertakings:

1. euro-denominated, non-subordinated debt securities with an investment grade rating issued by a credit rating agency in accordance with Regulation (EC) No 1060/2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 1, last amended by Directive 2014/51/EU, OJ L 153,



22.05.2014, p. 1, as amended by the corrigendum, OJ L 267, 06.09.2014, p. 30. or which, while lacking a credit rating, have internal ratios that demonstrate a stable earnings and financial situation:

- a) debt securities of an OECD Member State or a regional or local authority of an OECD Member State as well as debt securities, for which an OECD Member State or a regional or local authority of an OECD Member State guarantees repayment and interest payments;
- b) debt securities of companies with their registered office in an OECD Member State and debt securities of supranational organisations admitted to trading on a regulated market pursuant to Article 1 no. 2 of the Stock Exchange Act 2018 (BörseG 2018; Börsegesetz 2018) published in Federal Law Gazette I No. 107/2017, or which are authorised on an equivalent market pursuant to Article 107 para. 5 no. 2 BörseG 2018 in an OECD Member State;
- c) other debt securities of companies with their registered office in an OECD Member State and debt securities of supranational organisations that can be sold within an appropriate period of time.

The following are not eligible for investments: structured debt securities in which a derivative instrument is embedded, or which contain a structure, which makes it difficult for the small insurance undertaking to understand the risk involved;

2. shares and other units with variable return:

- a) of companies that are listed for trading on a regulated market pursuant to Article 1 no. 2 BörseG 2018 or on an equivalent market pursuant to Article 107 para. 5 no. 2 BörseG 2018 in an OECD Member State;
- b) of joint stock companies with their registered office in an OECD Member State;
- c) equity interests and securitised participation rights in corporations with head offices in an OECD Member State whose principal purpose of business is the acquisition of real estate and immovable property rights entered in a public register, which yield a profit or are expected to yield a profit, the construction of buildings on such real estate and the management of such real estate, provided that the value of the real estate or immovable property rights has been proven by means of an appraisal carried out by a certified court expert at the time of the acquisition;

3. euro-denominated units in investment funds falling under one of the following categories:

- a) units in undertaking for collective investment in transferable securities (UCITS) pursuant to Article 2 para. 1 of the Investment Funds Act 2011 (InvFG 2011; Investmentfondsgesetz 2011), as amended by Federal Act in Federal Law Gazette I No. 150/2017;
- b) units in real estate funds pursuant to Article 1 para. 1 of the Real Estate Investment Fund Act (ImmoInvFG; Immobilien-Investmentfondsgesetz), published in Federal Law Gazette I No. 80/2003 in the version amended by Federal Act in Federal Law Gazette I No. 107/2017, as well as units in real estate funds managed by an investment fund management company with its registered office in another OECD Member State and subject to public supervision;

4. euro-denominated, non-subordinated loans:

- a) non-recurring loans to a regional or local authority of an OECD Member State, as well as loans and other receivables where liability for repayment and interest payments lies with a regional or local authority of an OECD Member State,
- b) non-recurring loans and other receivables from municipal governments or loans guaranteed by a municipal authority, with the exception of the federal capital of Vienna, provided that the income from statutory duties is pledged,
- c) mortgage loans on real estate entered in a public register or immovable property rights entered in a public register which are located in an OECD Member State, up to an encumbrance of 60% of the current market value of the real estate or the immovable property right, provided that the current market value has been documented by means of an appraisal carried out by a certified court expert at the time of the acquisition and that the real estate has been sufficiently insured against the risk of fire for the term of the loan;

5. real estate and immovable property rights entered in a public register in an OECD Member State that yield a profit or are expected to yield a profit, provided that the purchase price has been documented by means of an appraisal carried out by a certified court expert or by other suitable means and that the real estate, if still under development, has been sufficiently insured against the risk of fire;



6. euro-denominated cash at bank and in hand:
  - a) credit balances with credit institutions authorised to carry out banking transactions in an OECD Member State ("bank balances"),
  - b) cash balances.

(2) The use of derivative instruments in accordance with Article 90 para. 2 VAG 2016 is only permitted under the following conditions:

1. In the event that derivative instruments are used in order to reduce the investment risk, small insurance undertakings must be capable at all times of providing evidence of the connection between the derivative instrument and the relevant asset at the corresponding volumes over the entire holding period.
2. In the event that derivative instruments are used in order to facilitate proper management of the investment portfolio, small insurance undertakings must be capable at all times of providing evidence that derivative instruments are being used for one of the following purposes:
  - a) in preparation for purchase and sale transactions;
  - b) for cost reduction;
  - c) for income enhancement if the existing investment portfolio is being used in order to generate additional income.
3. Furthermore, small insurance undertakings must be capable at all times of providing evidence of the connection between the derivative instrument and the relevant asset at the corresponding volumes over the entire holding period.

#### Investment thresholds

**Article 4.** (1) The following individual investments may only be made up to the percentages stated below, based on the carrying amount of the total investment ("individual threshold"):

1. up to 2% each: shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lit. a and b of the same company;
2. up to 10% each:
  - a) debt securities pursuant to Article 3 para. 1 no. 1 lits. a to c of the same issuer,
  - b) shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lit. c of the same company,
  - c) units in real estate funds pursuant to Article 3 para. 1 no. 3 lit. b of the same fund,
  - d) loans pursuant to Article 3 para. 1 no. 4 lits. a to c of the same obligor;
  - e) real estate and immovable property rights pursuant to Article 3 para. 1 no. 5,
3. up to 25% each:
  - a) debt securities pursuant to Article 3 para. 1 no. 1 lits. a to c of the same issuer,
  - b) units in investment funds pursuant to Article 3 para. 1 no. 3 lit. a of the same fund;
4. up to 30% each: credit balances held at banks pursuant to Article 3 para. 1 no. 6 lit. a.

(2) The following total investments may only be made up to the percentages stated below, based on the carrying amount of the total investment ("total threshold"):

1. up to 10% in total: debt securities pursuant to Article 3 para. 1 no. 1 lit. c;
2. up to 25% in total: shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lits. a and b including any shares held indirectly via investment funds pursuant to Article 3 para. 1 no. 3 lit. a;
3. up to 30% in total:
  - a) real estate and immovable property rights pursuant to Article 3 para. 1 no. 5,
  - b) shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lit. c,
  - c) units in real estate funds pursuant to Article 3 para. 1 no. 3 lit. b,
  - d) loans and immovable property rights pursuant to Article 3 para. 1 no. 4 lit. c;
4. up to 50% in total: debt securities pursuant to Article 3 para. 1 no. 1 lit. b and loans pursuant to Article 3 para. 1 no. 4 lits. a and b,

(3) If the investment thresholds stipulated in paras. 1 to 2 are temporarily exceeded by up to 10% of the threshold value due to market fluctuations, claims or income from premiums, no immediate measures are required in cases where renewed compliance with the investment thresholds will be restored within a short period of time.



### Entry into force

**Article 5** (1) This Regulation shall enter into force on 1 January 2016.

(2) Article 2 para. 3, Article 3 para. 1 and Article 4 in the version of the Regulation amended in Federal Law Gazette II No. 356/2017 shall enter into force on the day after publication. The references contained in Article 3 para. 1 no. 1 lit. b and Article 3 para. 1 no. 2 lit. a to Article 1 no. 2 and Article 107 para. 5 no. 2 BörseG 2018 shall prior to the expiry of 2 January 2018 be read as a reference to Article 1 para. 2 of the Stock Exchange Act 1989 (BörseG; Börsegesetz), published in Federal Law Gazette no. 555/1989.