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FMA CIRCULAR

ON THE AUDITING
ACTUARY'S REPORT, AS
REFERRED TO IN
ARTICLE 20 PARA. 4 PKG
AND TO BE ATTACHED TO
APPLICATIONS FOR THE
APPROVAL OF BUSINESS
PLANS

I. GENERAL INFORMATION

This Circular Letter is directed at all *Pensionskassen* (pension companies) as defined in Article 1 of the Pensionskassen Act (PKG; *Pensionskassengesetz*) and supervised by the Financial Market Authority (FMA) and at all auditing actuaries of *Pensionskassen* as referred to in Article 21 PKG. It sets out the FMA's legal opinion on supervisory rules, particularly Article 20 para. 4 PKG. Other relevant legal areas (such as labour, civil and tax law in particular) are not covered by this Circular Letter. However, adherence to such laws is assumed. This Circular Letter is not a regulation, and no rights or obligations beyond those defined in the statutory provisions may be deduced from it.

The Circular Letter deals with the content and structure of the auditing actuary's report pursuant to Article 20 para. 4 PKG, according to which every business plan and any amendment to a business plan must be audited by the auditing actuary, with the subsequent audit report being attached to the application for approval submitted to the FMA. What this means is that the purpose of the audit report is to demonstrate to the FMA that the conditions for approval have been met. This Circular Letter sets out the FMA's legal opinion on the resulting requirements regarding the content and structure of the audit report.

It does not contain an exhaustive breakdown of the report's minimum content, as this will depend on the content of the business plan. The Circular Letter therefore merely sets out basic principles to be fleshed out by the auditing actuary in each individual case in relation to the respective business plan content.

Similarly, the Circular Letter does not specify minimum content for the business plan itself, as this will depend on the content of the transactions that the *Pensionskasse* wishes to conclude. The minimum content in each case should be determined in more detail on the basis of Article 20 para. 2 PKG, as well as other provisions (e.g. Article 12a para. 1 no. 5 PKG).

The FMA points out that its approval pursuant to Article 20 para. 4 PKG can only encompass the new additions and/or amendments to the business plan submitted for approval. Consequently, the audit report may also as a general rule be limited to an audit of the new or amended business plan content. Given, however, that many amendments can only be assessed in the context of existing content, it may naturally be necessary to incorporate and/or take account of such content. This does not mean, however, that the existing content is itself the subject of the audit or of approval.

II. CONTENT REQUIREMENTS OF THE AUDITING ACTUARY'S REPORT

A. GENERAL REQUIREMENTS

The *Pensionskasse* submitting the application must, by means of the audit report, demonstrate to the FMA that it complies with the approval criteria in accordance with Article 20 para. 4 PKG. These criteria are: (1) adherence to recognised actuarial principles, (2) sufficient effort to uphold the interests of the beneficiaries and (3) the ongoing compliance with the obligations under the pension company contracts. Based on these approval criteria and the audit report's function as a means of demonstrating fulfilment of these criteria to the FMA, it is the FMA's opinion that the following general parameters apply to the auditing actuary's audit and audit report:

- a) Checks should be made to determine whether the business plan and/or the amendments to it include the required minimum content.
- b) The audit should encompass all of the approval criteria set out in Article 20 para. 4 PKG. Where specific content of the business plan is subject to more specialist rules compared with Article 20 para. 4 PKG (e.g. Article 24 et seq. PKG on the volatility reserve, Article 12 paras. 6 and 7 PKG on sub-IGs or Article 5 para. 1a of the Company Pension Act – BPG; *Betriebspensionsgesetz* on the calculation of the vested amount), these should also be taken into account.
- c) Compliance with the approval conditions should be justified separately and specifically for each part of the business plan, although related issues may be dealt with together. The required level of detail is based on the type and complexity of the amendment to the business plan. It is the FMA's opinion that referring to existing business plan content is not sufficient, as the factual and legal situation may have changed since the date on which that content was approved or it could be the case that the content is now being used in a different context. Equally, it is not sufficient to simply refer to any recommendations made by professional associations or interest groups. The obligation to set out reasons means that the documents used and auditing activities carried out must be listed and/or described.
- d) As any assessment always begins with the potential impact of the intended business plan content on the beneficiaries (and depending on content, also on the *Pensionskassen* or employer), all potential and material effects must be described. Reasons must be given for classing any effects as immaterial. With regard to presenting the effects, the group of beneficiaries affected, where available, and the future development of this group should be taken into account.

- e) Where possible for a particular amendment to a business plan, representative forecast or sample calculations should be carried out to present the effects that the intended content would have. The result of such calculations should be discussed in qualitative terms.
- f) The audit report should also include a statement on the compatibility of the amendment with any contracts already being administered in the IRG concerned.

B. THE INDIVIDUAL APPROVAL CRITERIA

1. General provisions

The approval criteria in accordance with Article 20 para. 4 PKG should generally be audited separately for each individual amendment to the business plan. Given that the review of the approval criteria pursuant to Article 20 para. 4 PKG can differ according to the business plan content concerned, it is only possible to set out principles here. These principles apply in addition to the general rules on the content of the audit report (cf. Chapter II/A above).

2. Compliance with recognised actuarial principles

Recognised actuarial principles are expressed, in the FMA's opinion, in such documents as the standards of actuarial practice of the Actuarial Association of Austria (AVÖ)¹ and in the standards developed by the Actuarial Association of Europe (AAE)² and the International Actuarial Association (IAA)³. The following aspects should also be taken into account, depending on business plan content:

- a) Complete record and/or calculation of the benefits promised in the pension company contracts;
- b) Suitability of parameters used, particularly with regard to compatibility with the circumstances to be expected from the current perspective and the legal requirements;⁴
- c) Conclusiveness of the formulae used;
- d) Compliance with actuarial principle of equivalence;
- e) Consideration of the specific characteristics of the (concrete) pension company model.

¹ <http://www.avoe.at/pdf/BERUFSGRUNDSÄTZE-2010.pdf> (downloaded on 2 July 2014).

² http://actuary.eu/documents/ED_GCASP1_final_271013.pdf (downloaded on 2 July 2014).

³

http://www.actuaries.org/CTTEES_ASC/Documents/ReformattedISAP1FINALOCTOBER_correctedJan2014.pdf (downloaded on 2 July 2014).

⁴ Cf. Article 20 paras. 2 and 3 PKG in particular
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3. Ongoing compliance with obligations under pension company contracts

Checks should be made to determine whether the business plan content submitted for approval (but not the investment, for instance) is likely to ensure ongoing compliance with the obligations assumed by the *Pensionskasse* in the pension company contracts. If such a check is not possible due to the type of a specific business plan content, this should be stated and the reasons explained. However, it should still be shown that, at the very least, this new business plan content will not be contrary to the fulfilment of the obligations. The review of ongoing compliance relates in the first instance to the promised benefits. In the case of pension company commitments with a guarantee (defined benefit models, minimum yield guarantee, security-oriented IRG), the models and parameters should be applied such that, from an ex-ante perspective, no obligation for the guarantor (employer and/or *Pensionskasse*) to make additional contributions is expected. Where the business plan includes content that, as well as affecting the promised benefits also touches on other aspects of the pension company contracts, additional checks should be made to determine whether the business plan indicates that the pension company contracts will be fulfilled or at least is not contrary to such fulfilment.

4. Sufficient efforts to uphold the rights of beneficiaries

This criterion shall be deemed to be met if the interests of the beneficiaries or individual groups of beneficiaries (e.g. entitled beneficiaries and recipients), the *Pensionskasse* and the employer are appropriately balanced. It is a criterion that grows in significance whenever the law or the pension company contract opens up a certain degree of flexibility for the *Pensionskasse*, with this freedom being exercised in the *Pensionskasse's* business plan. Using the distribution of results as an example, this means that the volatility reserve groups should be formed in such a way that, from an ex-ante perspective, the technical account balance as a whole and over time is as balanced as possible. In particular, there should be no long-term, one-sided cross-subsidies between the different groups. In order to rationalise the review of whether beneficiaries' interests are being upheld, and to make the results easily comprehensible, the interests of the beneficiaries concerned (and where applicable of the *Pensionskasse* and the employer) should be presented, before being assessed and finally weighed up against each other.

III. STRUCTURE OF AUDIT REPORT

In the interests of an efficient approval process, the FMA suggests the following rough structure:

- a) Audit remit and object of audit;
- b) Brief verbal description of the business plan and the proposed amendment;
- c) Documents used;
- d) *Relevant provisions of law, regulations or other legal acts of the FMA;*
- e) *Description of the auditing procedures carried out (particularly sample calculations);*
- f) *Impact of business plan amendment (particularly with regard to beneficiaries);*
- g) *Justification of compliance with approval conditions;*
- h) Audit result.

As stated above, the individual amendments should generally be reviewed separately. The points in italics should be listed for each individual amendment, although areas that are directly related to each other may be tackled together.