



## Regulation on Due Diligence for Fiduciary Accounts

(Anderkonten-Sorgfaltspflichtenverordnung – AndKo-SoV)

### Full title

Regulation of the Financial Market Authority (FMA) on the applicability of simplified due diligence in relation to fiduciary accounts of attorneys, notaries or real estate managers (Regulation on Due Diligence for Fiduciary Accounts (AndKo-SoV – Anderkonten-Sorgfaltspflichtenverordnung))

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### Preamble/Promulgation clause

On the basis of Article 8 para. 5 of the Financial Markets Anti-Money Laundering Act (FM-GwG - Finanzmarkt-Geldwäschegesetz), published in Federal Law Gazette I no. 118/2016, the following shall be determined by regulation with the consent of the Federal Minister of Finance:

### Text

#### **Determination of a low risk of money laundering and terrorist financing in relation to fiduciary accounts held by attorneys, notaries or real estate managers**

**Article 1.** (1) In relation to deposit-taking business pursuant to Article 1 para. 1 no. 1 of the Banking Act (BWG - Bankwesengesetz), published in Federal Law Gazette no. 532/1993, in the federal act published in Federal Law Gazette I no. 118/2016, and in relation to current account business pursuant to Article 1 para. 1 no. 2 BWG a low risk of money laundering or terrorist financing exists for the types of fiduciary accounts listed in para. 2.

(2) By way of derogation from Article 6 para. 3 FM-GwG credit institutions (Article 2 no. 1 FM-GwG) may with regard to:

1. Fiduciary omnibus accounts held by attorneys or notaries;
2. Fiduciary accounts for the distribution of inheritances held by attorneys or notaries;
3. Fiduciary accounts for guardianships held by attorneys or notaries;
4. Fiduciary accounts in insolvency proceedings held by attorneys or notaries;
5. Fiduciary accounts held by authorised real estate managers for real estate communities of owners pursuant to Article 20 para. 6 of the Property Ownership Act 2002 (WEG 2002 - Wohnungseigentumsgesetz 2002), published in Federal Law Gazette I no. 70/2002, in the version of the federal act in Federal Law Gazette I No. 87/2015,

apply the simplified due diligence measures set out in Articles 2 and 3.

(3) The credit institutions shall also, in applying simplified due diligence measures pursuant to this regulation, carry out sufficient monitoring of transactions and business relationships to enable the detection of unusual or suspicious transactions.

(4) In the case of the fiduciary accounts listed in para. 2, the credit institutions shall not assume a low risk of money laundering or terrorist financing if there is information available to suggest that the risk of money laundering or terrorist financing is not in fact low. In this case, the simplified due diligence measures set out in this regulation shall not apply.

(5) The determination of a low risk of money laundering or terrorist financing, the applicability of the simplified due diligence measures set out in Articles 2 and 3 towards customers in relation to the fiduciary accounts listed in para. 2 as well as paras. 3 and 4 shall also apply for CRR-credit institutions, that perform the activities set out in nos. 1 and 4 of Annex I of Directive 2013/36/EU on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, OJ L 176, 27.06.2013, p. 338, as amended by the corrigendum OJ L 208,

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.



02.08.2013, p. 73, most recently amended by Directive 2014/59/EU, OJ L 173, 12.06.2014 p. 190, in Austria by means of a branch pursuant to Article 9 BWG.

**Simplified due diligence in relation to the determination and verification of the identity of the trustor for fiduciary accounts held by attorneys or notaries in relation to omnibus accounts, inheritances, guardianships or insolvencies**

**Article 2.** (1) In the case of the fiduciary accounts listed in Article 1 para. 2 nos. 1 to 4 the determination and verification of the identity of the trustor or the trustors may be omitted by the credit institutions.

(2) In the event that the credit institutions determine that they need further information about the identity of the trustor or trustors in order to fulfil the due diligence and reporting obligations pursuant to the FM-GwG with regard to the fiduciary accounts listed in Article 1 para. 2 nos. 1 to 4, they shall request the necessary information from the authorised attorney or notary, for whom the respective fiduciary account is managed.

**Simplified due diligence in relation to the identification and verification of the trustor for fiduciary accounts held by attorneys and authorised real estate managers for communities of owners**

**Article 3.** (1) In the case of the fiduciary accounts listed in Article 1 para. 2 no. 5 the determination and verification of the identity of fellow owners as trustors may be conducted by the credit institutions using an excerpt from the land register. This excerpt of the land register may only be applied to those fellow owners as a proof of identity as trustor, who are natural persons.

(2) In the event that the credit institutions determine that they need further information about the identity of the trustors in order to fulfil the due diligence and reporting obligations pursuant to the FM-GwG which regard to the fiduciary accounts listed in Article 1 para. 2 no. 5, then they shall request the required information from the authorised real estate manager, for whom the respective fiduciary account is managed.