

## Federal Act on Pfandbriefe (PfandBG; Pfandbriefgesetz)

### Pfandbriefe Act (PfandBG)

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## CHAPTER 1: SCOPE AND DEFINITIONS

### Subject matter

**Article 1.** This Federal Act determines the following product and investor protection regulations for covered bonds:

1. requirements for issuing them;
2. structural features;
3. public supervision;
4. publication requirements.

### Scope of Application

**Article 2.** This Federal Act applies to covered bonds issued by credit institutions established in the European Union.

### Definition of terms

**Article 3.** For the purposes of this Federal Act, the following definitions apply:

1. covered bond: a debt obligation that is issued by a credit institution in accordance with the provisions of the Federal Act and that is secured by cover assets to which covered bond investors have direct recourse as preferred creditors;
2. covered bond programme: the structural features of a covered bonds issue that are determined by statutory rules and by contractual terms and conditions, in accordance with the approval granted to the credit institution issuing the covered bonds;
3. cover pool: a clearly defined set of assets securing the payment obligations attached to covered bonds that are segregated from other assets held by the credit institution issuing the covered bonds;
4. cover assets: assets included in a cover pool;
5. collateral assets: physical assets and assets in the form of exposures that secure cover assets;
6. segregation: the actions performed by a credit institution issuing covered bonds to identify cover assets and put them legally beyond the reach of creditors other than covered bond investors and counterparties of derivative contracts;
7. credit institution: a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 as well as a credit institution that holds a licence pursuant to Article 1 para. 1 no. 9 of the Austrian Banking Act (BWG; *Bankwesengesetz*) published in Federal Law Gazette No. 532/1993;
8. specialised mortgage credit institution: a credit institution which funds loans solely or mainly through the issue of covered bonds, which is permitted by law only to carry out mortgage and

- public sector lending and which is not permitted to take deposits, but which takes other repayable funds from the public;
9. automatic acceleration: a situation in which a covered bond automatically becomes immediately due and payable upon the insolvency or resolution of the issuer and in respect of which the covered bond investors have an enforceable claim for repayment at a time earlier than the original maturity date;
  10. market value: market value as defined in point (76) of Article 4(1) of Regulation (EU) No 575/2013;
  11. mortgage lending value: the mortgage lending value as defined in point (74) of Article 4(1) of Regulation (EU) No 575/2013;
  12. primary assets: dominant cover assets that determine the nature of the cover pool;
  13. substitution assets: cover assets that contribute to the coverage requirements, other than primary assets;
  14. overcollateralisation: the entirety of the statutory, contractual or voluntary level of collateral that exceeds the coverage requirement set out in Article 9;
  15. match funding requirements: rules requiring that the cash flows between liabilities and assets falling due be matched by ensuring in contractual terms and conditions that payments from borrowers and counterparties of derivative contracts fall due before payments are made to covered bond investors and to the counterparties of derivative contracts, and that the amounts received are at least equal in value to the payments to be made to covered bond investors and to counterparties of derivative contracts, and that the amounts received from borrowers and counterparties of derivative contracts are included in the cover pool in accordance with Article 21 para. 2 until the payments become due to the covered bond investors and counterparties of derivative contracts;
  16. net liquidity outflow: all payment outflows falling due on one day, including principal and interest payments and payments under derivative contracts of the covered bond programme, net of all payment inflows falling due on the same day for claims related to the cover assets;
  17. extendable maturity structure: a mechanism which provides for the possibility of extending the scheduled maturity of covered bonds for a pre-determined period of time and in the event that a specific trigger occurs;
  18. covered bond supervision: the supervision of covered bond programmes ensuring compliance with, and the enforcement of, the requirements applicable to the issue of covered bonds;
  19. special administrator: the person or entity appointed to administrate a covered bond programme in the event of the insolvency of a credit institution issuing covered bonds under a covered bond programme;
  20. resolution: resolution pursuant to Article 2 no. 1 BaSAG;
  21. Group: a group pursuant to point (138) of Article 4(1) of Regulation (EU) No 575/2013, a group of credit institutions pursuant to Article 30 BWG or an affiliation of credit institutions pursuant to Article 30a BWG;

22. resolution authority: the resolution authority pursuant to Article 2 no. 18 BaSAG.

## CHAPTER 2: STRUCTURAL FEATURES

### SECTION 1: DUAL RECOURSE AND BANKRUPTCY REMOTENESS

#### Dual recourse

**Article 4.** (1) Covered bond investors and counterparties of derivative contracts that comply with Article 16 shall be entitled to the following claims:

1. a claim against the credit institution issuing the covered bonds;
2. in the case of the insolvency or resolution of the credit institution issuing the covered bonds, a priority claim against the principal amount and any accrued and future interest on cover assets pursuant to Article 26 no. 1, and
3. in the case of the insolvency of the credit institution issuing the covered bonds and in the event that the priority claim as referred to in no. 2 cannot be fully satisfied, a claim pursuant to Article 26 no. 2.

(2) The claims listed in para. 1 shall be limited to the full payment obligations attached to the covered bonds.

#### Bankruptcy remoteness

**Article 5.** Payment obligations of the credit institution attached to covered bonds are not subject to automatic acceleration upon the insolvency or resolution of the credit institution issuing the covered bonds.

### SECTION 2: REGULATIONS ON ELIGIBLE COVER ASSETS

#### Eligible cover assets

**Article 6.** (1) The following cover assets shall be suitable for securing covered bonds:

1. cover assets that are eligible pursuant to Article 129(1) of Regulation (EU) No 575/2013, provided that the credit institution issuing the covered bonds meets the requirements of Article 129 (1a) to (3) of Regulation (EU) No 575/2013, or
2. other high-quality cover assets that ensure that the credit institution issuing the covered bonds has a claim for payment as set out in para. 2 and are secured by collateral assets as set out in para. 3.

In the case of cover assets pursuant to para. 1 no. 2, the credit institution that issues the covered bond, must assess the enforceability of claims for payment and the ability to realise collateral assets before including them in the cover pool.

(2) The claim for payment that the credit institution has from the cover assets pursuant to para. 1 no. 2, shall be subject to the following legal requirements:

1. the cover asset is a claim for payment that has a minimum value that is determinable at all times and which is legally valid and enforceable. The claim for payment shall not be subject to any other condition other than the condition that it shall become due at a future point in time, and that it is secured by a mortgage or another security interest pursuant to Article 7 that offers comparable security;
2. the mortgage or the other comparable security interest for collateralising the claim for payment is enforceable;
3. all legal conditions for establishing the mortgage or other comparable security interest for collateralising the claim for payment have been fulfilled; and
4. the mortgage or other comparable security interest for collateralising the claim for payment enables the credit institution issuing the covered bonds to recover the value of the claim without undue delay.

(3) The collateral assets that secure a claim for payment pursuant to para. 1 no. 2 shall be entered in a cover register pursuant to Article 10, in which the ownership relationships and the claims on these physical collateral assets are recorded. The assets pursuant to para. 1 no. 2 shall contribute up to the lesser of the principal amount of the mortgage or other comparable security rights including priority security rights, or 70 percent of the value of the assets pledged as collateral for covering the claims arising from the covered bond.

(4) The valuation of the physical collateral assets pursuant to Article 6 para. 1 nos. 1 and 2 shall be conducted in accordance with generally accepted valuation standards and at the moment of inclusion of the cover assets in the cover pool a current valuation must exist for the market value or the mortgage lending value, depending on the requirement of the respective cover assets item. The valuation is to be conducted by an expert who is not involved in the process for the granting of credit and who possesses the necessary qualifications, ability and experience. No speculative elements shall be taken into account for the valuation and the value of the cover assets serving as collateral must be documented in a transparent and clear manner. The credit institution shall store the documentation relating to the valuation on a durable medium.

(5) The credit institution shall have in place an effective procedure to monitor that the physical collateral assets pursuant to para. 1 nos. 1 and 2 are adequately insured against the risk of damage and that the insurance claim is segregated pursuant to Article 17.

(6) The credit institution must determine and document lending principles for cover assets listed in para. 1.

(7) Credit institutions may voluntarily set lower determined lending limits for cover assets pursuant to Article 129 Regulation (EU) No 575/2013 by means of their statutes.

## Other security interests and special rules regarding mortgage claims

**Article 7.** (1) Mortgages shall be treated equally to other security interests that offer a comparable level of physical security and which authorise the creditor to satisfy its claim by means of disposal by sale of the encumbered plot of land, right or movable assets.

(2) Lending on temporary rights shall only be permissible if the scheduled repayment of the loan ends as latest ten years prior to the expiry of the right and does not last longer than is necessary for writing down the building in the books in accordance with economic principles.

(3) The mortgage claims used as cover on building sites as well as unfinished new buildings shall not be allowed to exceed 10 % in total of the mortgage cover assets in the cover pool. Mortgage claims on plots of land and other entitlements that are unable to grant a permanent return, especially on excavations, quarries and mines as excluded as eligible cover assets.

## Consumer loans

**Article 8.** In the case of consumer loans pursuant to Article 2 para. 3 of the Mortgage and Immovable Property Credit Act (HJKrG; *Hypothekar- und Immobilienkreditgesetz*), published in Federal Law Gazette I No. 135/2015, and pursuant to Article 2 para. 3 of the Consumer Credit Act (VKrG; *Verbraucherkreditgesetz*) published in Federal Law Gazette I No. 28/2010, which are used for covering covered bonds, in accordance with Article 20 HJKrG and Article 16 VKrG the right afforded to the consumer to repay the loan early may not be restricted or excluded. The credit institution issuing covered bonds shall be required to hold sufficient reserves in eligible cover assets to compensate individual early repayments of consumer loans temporarily.

## SECTION 3: GENERAL RULES ON COVERAGE

### Coverage requirements

**Article 9.** (1) The total amount of outstanding covered bonds must be always covered by cover assets of at least an equal amount.

(2) Covered bond programmes shall at least be required to fulfil the coverage requirements stated in paras. 3 to 8.

(3) All liabilities of the covered bonds shall be covered by claims for payment that are linked to the covered assets.

(4) The liabilities listed in para. 3 shall include:

1. obligations for the payment of the principal amount of outstanding covered bonds;
2. obligations for the payment of any interest on outstanding covered bonds;
3. payment obligations attached to derivative contracts held in accordance with Article 16; and
4. the expected costs related to maintenance and administration for the ending and liquidation of the covered bond programme.

In addition, overcollateralisation of at least 2 percent of the par amount of the outstanding covered bonds shall be held at all times. Overcollateralisation shall be in the form of cover assets or in substitution assets. Liabilities pursuant to no. 4 may be measured as a lump sum for the calculation of the liabilities in this paragraph. A negative claim balance (termination value) from hedging transactions that belong to the cover pool (derivative contracts; Article 16) constitutes a payment obligation pursuant to no. 3.

(5) The following cover assets contribute towards the coverage requirement being met:

1. primary assets;
2. substitution assets;
3. liquid assets held pursuant to Article 21; and
4. claims on payments in conjunction with derivative contracts held pursuant to Article 16.

Uncollateralised claims where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 shall not be considered for the coverage.

(6) Article 16 shall apply for the purposes of para. 4 no. 3 and para. 5 no. 4.

(7) The calculation of the required coverage shall ensure that the aggregate principal amount of all cover assets is equal to or exceeds the aggregate principal amount of the liabilities of the covered bonds pursuant to para. 4 nos. 1 to 4 (“nominal principle”). In the case of covered bonds issued in the form of zero coupon bonds, and covered bonds with a redemption value that exceeds the par amount, then the surrender value of the covered bonds shall be used instead of the par amount for calculating the coverage level. This is to be calculated based on the interest rate arising from the amount of the difference between the issue price and the par amount of covered bonds, as well as their contractual term. The credit institution’s articles of association may stipulate that the coverage of the liabilities of the covered bonds pursuant to para. 4 nos. 1 to 4 must be ensured in accordance with the present value plus an overcollateralisation of at least 2 %, to be held in cover assets or in substitution assets. Present value coverage must simultaneously fulfil the conditions set out in paras. 2 to 6 and shall not be allowed to result in any higher ratio of coverage than that calculated under the nominal principle.

(8) The calculation of cover assets and liabilities shall be based on the same methodology pursuant to para. 7. Expected interest income from the cover assets may be applied following the deduction of any interest liabilities for covering interest pursuant to para. 4 no. 2. The calculation of interest payable and interest liabilities shall occur in accordance with accounting standards. Missing interest may be offset by capital claims.

(9) The credit institution may establish a level of coverage that exceeds the statutory minimum requirements stipulated in paras. 1 to 8 (overcollateralisation).

## Cover Register

**Article 10.** (1) The cover assets for covering covered bonds and the claims of the credit institution’s contractual party consisting of hedging transactions that belong to the cover pool (derivative

contracts), specific cover assets, substitution assets pursuant to Article 11 and hedging transactions pursuant to Article 16 shall be entered individually by the credit institution in a cover register. If third-party cover assets or parts thereof are provided as cover, then the other credit institution that holds such cover assets shall be noted in the cover register.

(2) Credit claims may only be entered in the cover register with the consent of the borrower; where made without the required consent, an entry shall be deemed as not having been made.

(3) The entry of hedging transactions into the cover register shall only be permitted with the consent of the cover pool monitor and the contractual party of the credit institution; where an entry is made without the necessary approval, it shall be considered as not having been made. The consent of the cover pool monitor to the entry into the register shall establish the irrefutable presumption in the relationship between the credit institution and the contractual party that the hedging transaction was concluded by the bank for reducing the risks listed pursuant to Article 16 para. 1. The approval of the contractual party of the credit institution may also be granted in advance for several hedging transactions. The credit institution shall inform the contractual party of the hedging transaction about the entry having been made without delay.

(4) The cover assets pursuant to para. 1 that are entered in the cover register for covering covered bonds shall be expunged from the cover register as soon as they are fully repaid. Cover assets that are not fully repaid may only be expunged from the cover register with the consent of the cover pool monitor. The expunging of a hedging transaction that is entered in the cover register prior to it being fully settled shall only be effective with the consent of the counterparty of the credit institution; where the necessary consent has not been obtained, such an expunging shall be treated as not having occurred. Where the conditions pursuant to Article 16 para. 1 no. 1 are met, the contractual party shall not be allowed to refuse the removal of the derivative from the cover pool. The expunging of the entry must be communicated to the contractual party without delay.

(5) The credit institution shall be required to keep backed up copies of the cover register. Copies from the cover register shall be submitted to the FMA upon its request.

(6) It shall be permitted to maintain separate cover registers, whose cover assets are each allocated to specific issuances of covered bonds. However, it shall not be permitted to form mixed cover registers compromising on the one hand of assets in accordance with Article 6 para. 1 no. 1 on the one hand, and in accordance with Article 6 para. 1 no. 2 on the other hand.

### **Composition and types of covered bonds**

**Article 11.** (1) The underlying primary assets of a covered bond must be equal to or exceed 85% of the coverage requirement in a cover pool. In addition to the primary assets provided for in each case, the topping-up to 100 % of the cover requirement may only occur using substitution assets pursuant to Article 129(1) of Regulation (EU) No 575/2013 within the limits determined therein.

(2) In particular, it is possible to differentiate between the following different types of covered bonds:

1. a Pfandbrief (*Hypothekendarpfandbrief*) is collateralised by a cover pool with primary assets from mortgage claims or comparable security interests;
2. a public Pfandbrief (*Kommunalbrief, Kommunalobligation, Kommunalschuldverschreibung*) is collateralised by means of a cover pool with primary assets from claims against the regional or local authorities and central banks listed in point a of Article 129 (1) of Regulation (EU) No 575/2013 as well as public sector entities pursuant to point 8 of Article 4(1) of Regulation (EU) No 575/2013 or with claims guaranteed by them;
3. a ship Pfandbrief is collateralised by a cover pool of primary assets from ship mortgage claims.  
(3) If, following the repayment of cover asset claims, or for another reason, the ratio of primary assets falls below 85 %, then it is not permissible to issue a new covered bond on the underlying basis of the affected cover pool.  
(4) Overcollateralisation shall not have any impact on the type of the covered bond.

### Location of cover assets

**Article 12.** (1) Credit institutions that issue covered bonds shall be allowed to include cover assets in the covered pool that are collateral assets, and which are located:

1. in Austria or
2. in the European Economic Area (EEA) or
3. in Switzerland or
4. in the United Kingdom.

(2) The credit institutions shall ensure that the cover assets listed in para. 1 correspond to all the requirements pursuant to Article 6.

### Intragroup structures

**Article 13.** (1) If covered bonds that are issued by a credit institution that belongs to a group, are used as pooled cover assets for the external issuance of covered bonds by another credit institution in the same group, then credit institutions shall be required as a minimum to observe the following requirements:

1. the internally issued covered bonds are sold to the credit institution issuing the externally issued covered bonds;
2. the internally issued covered bonds are used as cover assets in the cover pool for the externally issued covered bonds and are recorded on the balance sheet of the credit institution issuing the externally issued covered bonds;
3. the cover pool for the externally issued covered bonds contains only internally issued covered bonds issued by a single credit institution within the group;
4. the credit institution issuing the externally issued covered bonds intends to sell them to covered bond investors outside the group;

5. both the internally and externally issued covered bonds qualify for credit quality step 1 as referred to in Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and are secured by eligible cover assets as referred to in Article 6;
6. in the case of cross-border intragroup pooled covered bond structures, the cover assets of the internally issued covered bonds must comply with the eligibility and coverage requirements that apply for externally issued covered bonds.

(2) For the purposes of para. 1 no. 5, the FMA may, upon request, approve that covered bonds that have been downgraded to credit quality step 2 remain part of an intragroup pooled covered bond structure, provided that the FMA concludes that the change in credit quality step is not due to a breach of the requirements for the approval pursuant to Article 30 para. 1. The FMA shall subsequently notify the European Banking Authority (EBA) (Regulation (EU) No 1093/2010) of any decision in accordance with this paragraph.

### Joint funding

**Article 14.** (1) Cover assets and parts of cover assets of another credit institution shall be considered equivalent to cover assets whose creditor is the issuing credit institution, where the other credit institution has authorised the issuing credit institution by means of an agreement in writing (*Ermächtigungstreuhand*), and where it is ensured that the cover assets conform to the provisions of this Federal Act. It shall not depend on the financial allocation of the cover assets. Provided the other credit institution continues to hold these cover assets, then it shall be required to take into consideration the requirement of the cover pool and the interests of the creditors of the covered bond and the creditors of hedging transactions (derivative contracts) that form part of the cover pool. The cover assets must be entered in the issuing credit institution's cover register. Furthermore, allocation to the cover pool of the issuing credit institution must also be made apparent by means of a book entry in the books of the other credit institution. No further orders are required for the allocation to the cover pool to become effective.

(2) The other credit institution shall apply Articles 46 to 48 of the Austrian Banking Act (BWG; *Bankwesengesetz*) published in Federal Law Gazette No. 532/1993 with the proviso that the total of the cover assets in question are stated individually. The provisions of this Federal Act shall apply as appropriate for such cover assets.

(3) If the exposure to be included in cover is converted by the credit institution on behalf of the obligor pursuant to Article 1422 of the General Civil Code (ABGB; *Allgemeines Bürgerliches Gesetzbuch*), published in the Collection of Juridical Texts (JGS; *Justizgesetzsammlung*) no. 946/1811, then a granting of cover by the credit institution that is converting it is permissible without correcting the status of the land register (*Grundbuch*), provided it is ensured that the exposure corresponds to the provisions of this Federal Act.

(4) Credit institutions may arrange that eligible cover assets on a credit institution may be transferred to a credit institution issuing covered bonds by way of financial collateral pursuant to

the Financial Collateral Arrangements Act (FinSG; *Finanzsicherheiten-Gesetz*) published in Federal Law Gazette I No. 117/2003, or Directive 2002/47/EC and shall be allowed to be used by the credit institution as cover assets for issuing covered bonds. The financial collateral arrangement may take the form of a transfer of full rights or the granting of a limited right in rem.

(5) Claims to regional or local authorities or public sector entities pursuant to point 8 of Article 4 (1) of Regulation (EU) No 575/2013 of non-credit institutions may be used as cover assets, provided that the credit institution that issues covered bonds, either assesses the credit granting standards of the non-credit institution that originated the cover assets, or conducts a thorough assessment of the borrower's creditworthiness itself.

### **Composition of the cover pool**

**Article 15.** (1) Within the scope of this Federal Act covered bonds may be issued based on

1. cover assets pursuant to Article 6 para. 1 no. 1, as well as
2. other high-quality cover assets pursuant to Article 6 para. 1 no. 2.

Respective separate cover pools must be formed for the cover assets pursuant to nos. 1 and 2.

(2) The inclusion of a cover asset in the cover pool shall in the case of doubt include all collateral and other ancillary rights provided for this asset as well as insurance claims for insuring physical collateral.

(3) Credit institutions issuing covered bonds may hold several separate cover pools within the categories listed in para. 1.

### **Granting of cover for hedging transactions**

**Article 16.** (1) Hedging transactions (derivative contracts) may be included in the cover pool, provided that they

1. are exclusively included in the cover pool for risk hedging purposes, for mitigating the threat of future interest rate, exchange rate or obligor risks or a combination thereof, their volume is adjusted in the case of a reduction of the hedged risk and removed if the hedged risk no longer exists;
2. are documented in the cover register pursuant to Article 10;
3. are segregated pursuant to Article 17;
4. cannot be terminated in the event of the insolvency or resolution of the credit institution that issues covered bonds; and
5. correspond to the requirements pursuant to Article 9 para. 9 and Article 10 paras. 2 to 4.

(2) The counterparty to derivative contracts shall be treated equally as the credits of the covered bond with respect to the liabilities of the credit institution under that hedging transaction regarding the titles that are entered in the cover register.

(3) Derivative contracts shall be permitted to be concluded with:

1. the Federal Government,

2. a provincial government, or
3. a credit institution pursuant to para. 4.

(4) Credit institutions pursuant to para. 3 shall be those that provide overcollateralisation pursuant to Article 9 para. 4 in credit balances with the European Central Bank, with central banks of European Union Member States or with suitable credit institutions established in one of the countries listed in Article 12 to which, pursuant to Article 119 (1) of Regulation (EU) No 575/2013, a risk weight corresponding to credit quality step 1, or, in the case of original maturities of up to 100 days and a registered office in a Member State of the European Union, a risk weight corresponding to credit quality step 1 or 2 in accordance with Table 3 of Article 120 (1) or Table 5 of Article 121 (1) of Regulation (EU) No 575/2013 has been allocated, the observance of which is not conditional, of a temporary nature, subordinate to other claims or restricted in any other way, however only provided that the amount of the Pfandbrief bank's claims is already known at the time of acquisition; ratings of recognised international rating agencies shall be authoritative for the allocation to the credit quality steps.

### **Segregation of cover assets**

**Article 17.** (1) Cover assets shall fulfil the following requirements:

1. all cover assets are identifiable at all times by the credit institution issuing the covered bonds;
2. the entry of fungible securities into the cover register pursuant to Article 10 shall be labelled using the International Securities Identification Number (ISIN);
3. the cash serving as replacement cover shall be kept separately;
4. where mortgages or parts of mortgages are held in trust for the credit institution, the credit institution acting as trustee in each case shall be noted in the cover register;
5. all cover assets are subject to legally binding and enforceable segregation by the credit institution issuing the covered bonds;
6. all cover assets are protected from any third party claims and no cover asset forms part of the insolvency estate of the credit institution issuing the covered bonds until the priority claim referred to in Article 4 para. 1 no. 2 has been satisfied.

(2) All collateral received in conjunction with positions of a hedging transaction belong to the cover assets.

(3) The requirements pursuant to para. 1 shall also apply in the case of insolvency or resolution of the credit institution issuing covered bonds.

## **SECTION 4: RISK MANAGEMENT, COVER POOL MONITOR**

### **Risk management, Cover pool monitor**

**Article 18.** (1) Every credit institution that issues covered bonds shall be required to establish a risk management department that is independent from its operative business with a direct reporting

line to the board of management as well as to the chairperson of the supervisory board or the otherwise competent supervisory body under law or its statutes, the competences and resources of which have the duty of capturing and monitoring risks pursuant to para. 2. The credit institution must ensure that the risk management division has adequate personnel and organisational resources as well as the necessary skills and experience available for conducting its duties. Credit institutions that have already established a risk management division pursuant to Article 39 para. 5 BWG that is separate from its operative business, shall not be required to meet this requirement separately, provided that the existing risk management division is able to carry out these duties.

(2) The credit institution must have a risk management system for its covered bonds business in place that is appropriate for the nature and scope of its business. The system must ensure the identification, assessment, management, and monitoring of all risks associated with covered bonds business, especially market risks, interest rate and currency risks, credit and liquidity risks. The risk management function's operational activity must be documented in a comprehensive and comprehensible manner.

(3) Every credit institution issuing covered bonds shall be required to appoint an internal or external cover pool monitor for monitoring the cover pool. The function of the internal cover pool monitor shall be performed by the independent risk management department pursuant to para. 1. A natural person, who is specifically responsible for this function, shall head the internal cover pool monitor. In the case of an external cover pool monitor, the credit institution shall appoint an attorney, a law company, a certified external auditor or an external auditing company for a term of five years; reappointment is permissible. An appointment as an external cover pool monitor is excluded where reasons exist that suggest bias, in particular none of the circumstances listed in Article 62 nos. 3 to 6 and 8 to 13 BWG shall be allowed to exist that call into question their financial or personal independence into question. The external cover pool monitor shall certify to the FMA within two weeks of their appointment that no reasons exist that suggest bias. If an external cover pool monitor has been appointed, then they shall only be liable towards the credit institution and investors in covered bonds in relation to their activities under this Federal Act, in the event of intentional damage or gross negligence. In the event of gross negligence, the obligation to pay compensation is limited to one million Euro, irrespective of several acts having been committed for which an obligation to pay compensation exists. Furthermore, the obligation to pay compensation may neither be restricted nor excluded by way of a contract. The credit institution shall not be authorised to issue instructions to the head of internal cover pool monitoring function or the external cover pool monitor in the performance of their function.

(4) The head of the internal cover pool monitoring function shall be required to hold suitable professional qualifications for performing their function and must fulfil the requirements set out in Article 5 para. 1 nos. 6 and 7 BWG. The credit institution shall be required to notify the FMA in writing without delay about the head of the internal cover pool monitoring function or the external cover pool monitor, stating that they fulfil the conditions set out in this paragraph, as well as of any change in their person and of any change in the conditions of existing heads of the internal cover pool

monitoring function or of the external cover pool monitor. All documentation should be submitted with the notifications to the FMA that are necessary to be able to review professional qualification and personal suitability.

(5) The function of the head of the internal cover pool monitoring function or the external cover pool monitor shall end:

1. upon expiry of their term of office;
2. upon their resignation from this function; or
3. upon dismissal pursuant to para. 6.

(6) The credit institution shall dismiss the head of internal cover pool monitoring function or the external cover pool monitor, where:

1. a condition for the appointment is no longer fulfilled;
2. it subsequently emerges that an appointment condition had not been fulfilled;
3. the member becomes permanently incapacitated from performing the function; or
4. in the case of a gross breach of duty existing.

The head of the internal cover pool monitoring function may not be dismissed from their function without first informing the supervisory board or the competent supervisory body of the credit institution in accordance with the law or articles of association.

### **Duties and obligations of the cover pool monitor**

**Article 19.** (1) The internal or external cover pool monitor shall ensure that the prescribed cover for covered bonds pursuant to Article 9 and the counterparty claims from hedging (derivative contracts) pursuant to the rules set out in Article 16 are available at all times.

(2) The internal or external cover pool monitor shall ensure that the eligible cover assets or substitution assets for coverage purposes and the claims from hedging transactions (derivative contracts) are entered in the cover register in accordance with the rules set out in Article 10.

(3) Prior to issuing covered bonds the internal or external cover pool monitor shall issue a confirmation of the availability of the prescribed cover pursuant to Article 9 and the about the entry in the cover register pursuant to Article 10.

### **Information and disclosure obligations**

**Article 20.** (1) The internal or external cover pool monitor shall have the right to inspect the books, documents and data carriers of the credit institution to the extent that they relate to covered bonds as well as to the cover assets entered in the cover register and where doing so is necessary for the fulfilment of the duties specified in Article 19.

(2) The credit institution shall be obliged to notify the internal or external cover pool monitor on an ongoing basis about the repayments on the principal on the cover assets entered in the cover register as well as other significant changes for the creditors of covered bonds and the counterparties of claims arising from derivative contracts relating to these titles.

(3) The internal or external cover pool monitor shall be required to report facts to the FMA without delay about which they have been made aware, on the basis of which the credit institution's fulfilment of its obligations towards its investors in covered bonds and especially the security of the assets entrusted to it appear to no longer be ensured.

## SECTION 5: LIQUIDITY REQUIREMENTS

### Liquidity buffer

**Article 21.** (1) In the interest of investor protection, the credit institution shall ensure that the cover pool includes a liquidity buffer composed of assets pursuant to para. 2 at all times, that are available to cover the net liquidity outflow of the covered bond programme. The liquidity buffer shall be required to cover the maximum total net liquidity outflows for the next 180 days.

(2) The following assets shall be suitable for the liquidity buffer, provided they fulfil the requirements for the segregation of cover assets pursuant to Article 17:

1. assets that are allocatable to Level 1 assets pursuant to Article 10, Level 2A assets pursuant to Article 11 and Level 2B assets pursuant to Article 12 of Delegated Regulation (EU) 2015/61, and
2. exposures to credit institutions pursuant to point (c) of Article 129 (1) of Regulation (EU) No 575/2013.

The assets pursuant to para. 2 no. 1 must correspond to the general provisions on the composition of the liquidity buffer, as well as the general and operational requirements for liquid assets pursuant to Articles 6 to 8 of Delegated Regulation (EU) 2015/61, with the valuation of these assets being conducted pursuant to Article 9 of delegated Regulation (EU) 2015/61, and the requirements for the liquidity buffer by asset level pursuant to Article 17 of the delegated Regulation (EU) 2015/61 must be fulfilled. Assets pursuant to para. 2 no. 2 shall not be allowed to exceed a total of 15 % of the liquidity buffer.

(3) At no time shall the liquidity buffer be allowed to contain an unsecured claim that is deemed to be in default pursuant to Article 178 (1) of Regulation (EU) No 575/2013.

(4) Credit institutions that are subject to the liquidity requirement pursuant to Article 412 of Regulation (EU) No 575/2013, shall not be required to fulfil the cover requirement for the liquidity buffer pursuant to para. 1 for the time frame stipulated in Article 412 (1) of Regulation (EU) No 575/2013.

(5) In the case of a covered bond with a triggered extension of maturity pursuant to Article 22, the capital amount of the liquidity buffer may be calculated for the period until the extended time of maturity.

(6) The credit institution shall not be required to maintain a liquidity buffer pursuant to para. 1 provided that the covered bonds meet the match funding requirements (Article 3 no. 15).

### Conditions for an extension of maturity

**Article 22.** (1) The maturity of a covered bond may be extended once, by up to twelve months, in the case that the objective trigger event pursuant to para. 2 occurs. It shall not be permitted to extend the maturity at the credit institution's discretion, and the structural features of the covered bond not permitted to be modified at any time with regard to dual recourse pursuant to Article 4 and bankruptcy remoteness pursuant to Article 5. The final maturity date of the covered bond shall be required to be determinable at all times.

(2) In the insolvency proceedings of the credit institution, the special administrator pursuant to Article 26 para. 6 may trigger an extension of maturity pursuant to para. 1, provided that the special administrator is satisfied at the time of the postponement of maturity that the liabilities can be serviced in full at the extended maturity date. An extension of maturity shall not be allowed to alter the ranking of investors in covered bonds and the sequencing of the covered bond programme's original maturity schedule. In the case of an extension of maturity, the maturity of other covered bonds within a covered bond programme shall respectively be deferred for as long as is necessary to maintain the sequence of the original maturity schedule.

(3) A credit institution that issues a covered bond with a potential extension of maturity shall be required to clearly and comprehensibly set out the following information in the contractual terms and conditions of the covered bond in a clear and comprehensible way, so that the investor is in the position to understand the risks associated with their investment:

1. the objective trigger event for an extension of maturity;
2. the maximum extension of maturity for the covered bond;
3. the interest rate agreement for the potential extension period;
4. the potential effects of the insolvency of the credit institution that issues the covered bonds;  
and
5. the role of the FMA as well as the special administrator.

## SECTION 6: TRANSPARENCY PROVISIONS

### Transparency provisions

**Article 23.** (1) Credit institutions that issue covered bonds shall make detailed information pursuant to para. 2 available to investors about their covered bond programmes by publishing them on a quarterly basis on their Internet presence.

(2) Information pursuant to para. 1 shall cover the following information about the portfolio:

1. the value of the cover pool and outstanding covered bonds;
2. a list of the international securities identification numbers (ISINs) for all covered bonds issues under that programme, to which an ISIN has been attributed;
3. the geographical distribution and type of cover assets, their loan size and valuation method;

4. details in relation to market risk, including interest rate and currency risk, as well as credit and liquidity risks;
5. the maturity structure of cover assets and the covered bonds, including an overview of the maturity extension triggers if applicable;
6. the levels of required and available coverage, and the levels of statutory, contractual and voluntary overcollateralisation;
7. the percentage of loans where a default is considered to have occurred pursuant to Article 178 of Regulation (EU) No 575/2013 and in any case where the loans are more than 90 days past due;

(3) The FMA may determine the content and structure for the information pursuant to para. 2 by means of a Regulation. The FMA shall be guided by the principles of economy and expedience, taking into consideration European practices in this area.

(4) If covered bonds are issued externally under intragroup pooled covered bond structures pursuant to Article 13, then the information pursuant to paras. 1 and 2 or a link thereto, is provided to investors in respect of all internally issued covered bonds of the group. Credit institutions shall be required to make this information available to investors on at least an aggregated basis.

## SECTION 7: PROTECTION OF DESIGNATIONS

### Protection of designations

**Article 24.** (1) Only covered bonds that correspond to the rules contained in this Federal Act shall be allowed to be launched using the designations “European Covered Bond” (“*Europäische gedeckte Schuldverschreibung*”) and its official translation in all official languages of the European Union, “covered bonds” (“*gedeckte Schuldverschreibungen*”), “Pfandbrief” (“*Pfandbrief*”), “mortgage Pfandbrief” (“*Hypothekendarlehen*”), “municipal bond” (“*Kommunalschuldverschreibung*”), “municipal certificate” (“*Kommunalbrief*”), municipal debenture (“*Kommunalobligation*”), “public Pfandbrief” (“*öffentlicher Pfandbrief*”), “ship Pfandbrief” (“*Schiffspfandbrief*”), “ship mortgage” (“*Schiffshypothek*”) or under another designation which includes one of these words.

(2) Only covered bonds that correspond to the rules in the this Federal Act and Article 129 of Regulation (EU) No 575/2013 in the version amended by Regulation (EU) 2019/2160 amending Regulation (EU) No 575/2013 as regards exposures in the form of covered bonds, OJ L 328, 18.12.2019 p. 1, shall be allowed to be launched using the designation “European Covered Bond (Premium)” (“*Europäische gedeckte Schuldverschreibung (Premium)*”) and its official translation in all official languages of the European Union.

(3) Covered bonds issued by credit institutions established outside of Austria shall be allowed to launch them using the permitted designations of that country. Where such designations are being used in a German translation, then the designation must also be stated in the original language. Where one of the designations listed in para. 1 and 2 is used for the distribution of covered bonds

issued by credit institutions established outside of Austria, either on its own or in conjunction with another designation, then such debt instruments shall furthermore only be allowed to be launched provided they correspond to the definition in point 1 of Article 3 of Directive (EU) 2019/2162.

## CHAPTER 3: EXECUTION AND PROTECTION AGAINST OFFSETTING; PROVISIONS UNDER INSOLVENCY LAW

### Execution and protection against offsetting

**Article 25.** (1) Executing may only be levied on the assets entered in the cover register in favour of claims arising from the covered bonds and the hedging transactions (derivative contracts).

(2) Offsetting shall not take place against claims entered in the cover register shall take place unless the debtor is a consumer pursuant to Article 1 of the Consumer Protection Act (KSchG; *Konsumentenschutzgesetz*), published in Federal Law Gazette No. 140/1979. Claims shall only be allowed to be entered in the cover register of the bank once the bank has notified the debtor of its intention to include the claim in the cover pool, although reference shall be made to the resulting exclusion from offsetting. Offsetting by debtors who are consumers shall be ineffective against creditors from covered bonds and creditors from cover-related hedging transactions (derivative contracts). The exclusion of offsetting shall not apply to an offsetting of claims and liabilities from cover-related hedging transactions (derivative contracts) permitted under general civil law pursuant to Article 16.

### Provisions under Insolvency Law

**Article 26.** The following shall apply in bankruptcy proceedings against the assets of a credit institution issuing covered bonds:

1. The principal amount as well as any accrued and future interest on cover assets shall form a special estate in the event of bankruptcy proceedings for satisfying the claims of investors in covered bonds and counterparties of derivative contracts. Article 120 para. 2 of the Insolvency Code (IO; *Insolvenzordnung*) as published in Imperial Law Gazette No. 337/1914 shall not apply in the case of Article 105 paras. 3 and 5 IO shall apply for contesting the asserted claim for preferential satisfaction.
2. Investors in covered bonds and counterparties of derivative contracts shall have an insolvency claim to the extent that the preferential claim under no. 1 is unable to be satisfied fully. Article 132 para. 4 IO shall apply in the case of distributions that precede the distribution of the proceeds from the special estate.
3. Article 14 para. 2 IO shall not apply.
4. An extension of maturity pursuant to Article 22 shall not change the ranking of investors in covered bonds.

5. When initiating bankruptcy proceedings, the bankruptcy court shall appoint a trustee for asserting the claims in accordance with nos. 1 and 2.
6. The bankruptcy court shall appoint a special administrator without delay for the administration of the special estate (Article 86 IO). The FMA shall be consulted prior to their appointment. The rights and obligations of the cover pool monitor remain unaffected.
7. The special administrator shall satisfy claims that are due of the creditors of the covered bond from the special estate and take the necessary administrative measures to do so with effect on the special estate, such as by collection of mortgage claims that are due, the sale of individual cover assets or by bridging loans.

## CHAPTER 4: SUPERVISION OF COVERED BONDS, SANCTIONS UNDER ADMINISTRATIVE LAW AND OTHER MEASURES

### SECTION 1: SUPERVISION OF COVERED BONDS

#### Competent Authority

**Article 27.** (1) The Financial Market Authority (FMA) as competent authority, irrespective of the duties conferred upon it in other Federal Acts, shall monitor the issuance of covered bonds as well as observance of the regulations defined in this Federal Act, and in so doing shall take into account the national economic interest in a functioning financial market. In the course of the performance of the duties and powers conferred upon the FMA in accordance with this Federal Act, the rules stipulated in Articles 70 et seq. BWG on cooperation between the FMA and the *Oesterreichische Nationalbank* shall apply.

(2) The FMA shall take into account European convergence in respect of supervisory tools and supervisory procedures in the enforcement of this Federal Act. For this purpose, the FMA shall apply the Guidelines, Recommendations and other measures decided upon by the EBA. The FMA may deviate from the guidelines and recommendations, provided justified grounds exist to do so, in particular where they are in conflict with provisions set out under national law.

#### Supervision of Covered Bonds

**Article 28.** (1) The FMA shall be authorised at all times in relation to the monitoring of the observance of the regulations contained in this Federal Act irrespective of the powers conferred upon it in other provisions set out under national law:

1. to request the submission of corresponding documentation and data, as well as to determine the way and manner in which such documentation is to be submitted;

2. to request information, as where applicable to issue a summons and question a person for the purpose of gaining such information; and
3. to permit the conducting of audits or investigations by external auditors and external auditing companies, the competent auditing associations or other experts.

(2) In exercising its competences pursuant to Article 27 para. 1, the FMA, regardless of the powers conferred upon it by other provisions under national law, shall have the following powers:

1. to grant approval for or decline covered bond programmes pursuant to Article 30;
2. to regularly review covered bond programmes for their compliance with this federal act;
3. to conduct pre-announced or unannounced investigations including on-site inspections;
4. to instruct the legal entity, under threat of a coercive penalty, to restore legal compliance within a period of time which is appropriate in light of the circumstances;
5. to prohibit the legal entity, under threat of a coercive penalty, from using a designation pursuant to Article 24;
6. to impose sanctions under administrative law and other measures pursuant to Articles 33 to 35;
7. to publicly disclose the name of a natural or legal person stating the committed breach pursuant to Article 37.

(3) In the event of the resolution of the credit institution, the resolution authority shall monitor the ongoing and robust management of the covered bond programme.

### **Ad hoc and regular reporting obligations of the issuing credit institution**

**Article 29.** (1) The credit institution issuing covered bonds shall submit the following information about covered bond programmes to the FMA at the end of every calendar quarter, unless a longer interval has been determined pursuant to para. 2, as well as where requested to by the FMA:

1. information about the underlying eligible cover assets pursuant to Article 6;
2. the cover assets included in the cover pool that are located outside the European Union pursuant to Article 12;
3. a depiction of the observance of the requirements about intragroup structures pursuant to Article 13;
4. a depiction of the observance of the requirements about joint funding pursuant to Article 14;
5. the composition of the cover pool pursuant to Article 15;
6. information about the use of hedging transactions as cover pursuant to Article 16;
7. information about the segregation of cover assets pursuant to Article 17;
8. the functioning of the cover pool monitor pursuant to Article 18;
9. the observance of the cover requirement pursuant to Article 9;
10. the observance of the liquidity buffer requirements for the cover pool pursuant to Article 21;
11. the conditions for extendable maturity structures pursuant to Article 22.

(2) The FMA may determine the content, structure, reporting dates and submission deadlines for ad hoc reports and regular reporting pursuant to para. 1 as well as a reporting frequency that deviates from that in para. 1 for the submission of individual areas. The reports pursuant to paras. 1 must be submitted in a standardised format by electronic means. The submissions shall be required to meet certain minimum requirements to be announced by the FMA. The FMA shall be guided by the principles of economy and expedience, taking into consideration European practices in this area. The Regulation may also stipulate that the electronic submission of individual or all reporting pursuant to para. 1 shall be made exclusively to the *Oesterreichische Nationalbank*, where doing so is expedient for reasons of economy, provided that data remains available in electronic form to the FMA at all times, and where doing so does not compromise supervisory interests. Where it is instructed, that reporting be submitted to the *Oesterreichische Nationalbank*, the submission shall be required to correspond to minimum requirements to be communicated by the FMA following consultation with the *Oesterreichische Nationalbank*.

### **Approval for covered bond programmes**

**Article 30.** (1) Prior to issuing covered bonds as part of a covered bond programmes, approval is required from the FMA for such a programme. The FMA shall grant the approval in written form, otherwise it shall be invalid, and it may be issued with corresponding conditions and obligations.

(2) The credit institution shall attach the following information and documentation to the application for granting of an approval for a covered bond programme:

1. an adequate programme of operations setting out the issue of covered bonds;
2. adequate policies, processes and methodologies for the approval, amendment, renewal and refinancing of cover assets included in the cover pool;
3. information about competent management and staff that have adequate qualifications and knowledge regarding the issue of covered bonds and the administration of the covered bond programme; and
4. the administrative structure of the cover pool and the monitoring thereof.

(3) Approval shall only be granted for a covered bond programme, where:

1. the programme is covered by the licence of the credit institution;
2. the programme of operations is appropriate for the issuance of covered bonds;
3. the programme stipulates adequate policies, processes and methodologies for the approval, amendment, renewal and refinancing of cover assets included in the cover pool; and
4. the information pursuant to para. 2 nos. 3 and 4 does not raise significant doubt regarding the ability of the credit institution to issue covered bonds in accordance with the legal requirements in the programme and to manage and monitor the cover pool in an orderly manner.

## Cooperation obligations

**Article 31.** (1) Die FMA is authorised and obliged to engage in broad and mutual cooperation with:

1. the competent authorities pursuant to Article 4 (1) of Directive 2013/36/EU as well as the European Central Bank within the scope of its duties and powers in the Single Supervisory Mechanism (SSM) pursuant to Regulation (EU) No 1024/2013;
2. the resolution authority;
3. the competent authorities of other Member States pursuant to Article 18 (2) of Regulation (EU) No. 2019/2162,
4. the European Banking Authority (EBA) (Regulation (EU) No 1093/2010) and
5. the European Securities and Markets Authority (ESMA) (Regulation (EU) No 1095/2010).

(2) For the purpose of para. 1 no. 3 the FMA shall, upon request, make all essential information available, especially when such information could materially influence the assessment of the issuance of covered bonds in another Member State that are necessary for the performance of supervisory tasks within the scope of this Federal Act as well as Directive (EU) 2019/2162. The FMA may make such information available upon its own initiative under the same conditions and for the same purposes.

## Supervisory Disclosure Obligations

**Article 32.** (1) The FMA shall publish and regularly update the following information on its Internet presence:

1. the wording of this Federal Act as well as any Regulations, minimum standards and circulars issued about the issuance of covered bonds;
2. a list of credit institutions with approval for issuing covered bonds pursuant to Article 30; and
3. a list of the covered bonds for which it shall be allowed to use the label ‘European Covered Bond’ (“*Europäische gedeckte Schuldverschreibung*”) and a further list of covered bonds for which it shall be allowed to use the label ‘European Covered Bond (Premium)’ (“*Europäische gedeckte Schuldverschreibung (Premium)*”).

(2) The FMA shall submit the list of credit institutions pursuant to para. 1 no. 2 and the lists of covered bonds pursuant to para. 1 no. 3 to the EBA on an annual basis.

## SECTION 2: PROCEDURAL AND PENAL PROVISIONS

### Penal provisions

**Article 33.** (1) Any person who, as the person responsible (Article 9 Administrative Penal Act (VStG; *Verwaltungsstrafgesetz 1991*), published in Federal Law Gazette No. 52/1991) of a credit institution:

1. obtains the approval for a covered bond programme by means of false statements or taking deceptive actions, or by other fraudulent means;

2. breaches the conditions or requirements under which the authorisation for a programme of covered bonds was granted;
3. issues covered bonds without the necessary approval pursuant to Article 30;
4. breaches the requirements in relation to
  - a. dual recourse pursuant to Article 4;
  - b. bankruptcy remoteness pursuant to Article 5;
  - c. eligible cover assets pursuant to Articles 6 to 8;
  - d. cover assets serving as collateral located outside the European Economic Area, pursuant to Article 12;
  - e. intragroup structures pursuant to Article 13;
  - f. joint funding pursuant to Article 14;
  - g. the composition of the cover pool pursuant to Article 15;
  - h. use of hedging transactions as cover pursuant to Article 16;
  - i. the segregation of cover assets pursuant to Article 17.
5. breaches the requirements in relation to transparency pursuant to Article 23;
6. breaches the obligation to hold a liquidity buffer pursuant to Article 21;
7. performs an extension of maturity without complying with the requirements pursuant to Article 22;
8. repeatedly fails to observe ad hoc and periodic reporting obligations set by the FMA and the *Oesterreichische Nationalbank* within the defined deadlines, or repeatedly makes submissions that do not conform to the formatting rules stipulated under law or by means of a Regulation, or repeatedly submits inaccurate or incomplete information;
9. knowingly disposes of a title entered in the cover register by means of disposal or encumbrance, even though the other titles entered in the cover register are not sufficient to adequately cover the covered bonds and the claims of the credit institution's contractual parties under hedging transactions (derivative contracts) associated with the cover in accordance with the regulations;
10. issues covered bonds without the necessary confirmation from the internal or external cover pool monitor pursuant to Article 19 para. 3; or
11. launches covered bonds using one of the designations pursuant to Article 24 paras. 1 and 2 without being authorised to do so;

commits an administrative offence and shall be punished by the FMA, depending on which amount is higher, with a fine of up to EUR 150 000 or up to double the amount of the gain arising from the breach, where this amount is able to be determined.

(2) Fines imposed by the FMA pursuant to para. 1 shall be passed on to the Federal Government.

## Penal provisions with regard to legal persons

**Article 34.** (1) The FMA may impose fines against legal persons, if natural persons who acted individually or as part of a body of a legal person and who have a managerial role within the legal person on the basis of:

1. the power of representation of the legal person,
2. the power, to take decisions on behalf of the legal person, or
3. the power to exercise control within the legal person

have breached the provisions listed in Article 33 para. 1.

(2) Legal persons may also be held responsible for breaches of the provisions listed in Article 33 para. 1, if such breaches by a natural person acting for the legal person were made possible by a lack of supervision or control by one of the persons referred to in para. 1.

(3) The fine pursuant to para. 1 or para. 2 shall be:

1. up to EUR 150 000,
  2. up to twice the amount of the benefit derived from the breach where that benefit can be determined, or
  3. up to 10 % of total annual net turnover pursuant to para. 4,
- depending on which amount is higher.

(4) The total annual net turnover pursuant to para. 3 no. 3 shall be determined on the basis of the most recently adopted annual financial statement. In the case of credit institutions the total annual net turnover is the total of the returns listed in nos. 1 to 7 of Annex 2 to Article 43 BWG less the expenses for these items. Where the legal person is a parent undertaking or subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual net turnover shall be the total annual net turnover or the corresponding type of income in accordance with the relevant accounting provisions according to the last available consolidated accounts that were approved by the competent management body of the ultimate parent undertaking. Where the FMA is unable to determine or calculate the bases for the total annual net turnover, then it shall estimate them. In so doing, all relevant circumstances shall be taken into account that are relevant for the estimate.

(5) Fines imposed by the FMA pursuant to paras. 1 to 3 shall be passed on to the Federal Government.

## Other measures under administrative procedural law

**Article 35.** In the case of one of the breaches listed in Article 33, the FMA may take the following measures under administrative procedural law irrespective of other powers that it has under other administrative law:

1. withdrawal of the approval for covered bonds programmes pursuant to Article 30;
2. an instruction requiring the natural or legal person to desist from such conduct and to refrain from repeating such conduct;

3. a temporary ban against any member of the management board of the credit institution who was responsible for the breach, or another natural person who was responsible for the breach that prevents them from managerial duties in such undertakings;
4. in the case of a breach listed in Article 33 para. 1 no. 7 the FMA may declare the extension of maturity invalid.

### **Exercising of supervisory powers to impose administrative sanctions and measures**

**Article 36.** Irrespective of other provisions under administrative procedural law, the FMA shall, when determining the type of administrative sanctions or measures to be enforced for breaches against the provisions of this Federal Act as well as in calculating the amount of a fine, where appropriate, in particular take into account the following circumstances:

1. the severity and duration of the breach;
2. the degree of responsibility of the natural or legal person responsible for the breach;
3. the financial strength of the natural or legal person responsible for the breach, in particular, as indicated by the total net revenues of the responsible legal person or the annual income of the responsible natural person;
4. the amount of the gains made or losses avoided by the responsible natural or legal person as a result of the breach, provided that these amounts can be determined;
5. the losses for third parties caused by the breach, provided that they can be determined;
6. the willingness of the responsible natural or legal persons to cooperate with the FMA;
7. all previous breaches by the responsible natural or legal person; and
8. actual or potentially systemically-relevant effects of the breach.

### **Publication of sanctions and measures under administrative law**

**Article 37.** (1) The FMA shall publish every sanction or measure imposed under administrative law for a breach against the provisions of this Federal Act on its website, including the identity of the natural or legal person and information about the type of the type and character of the underlying breach without delay, once the person affected by the sanction has been informed.

(2) The announcement pursuant to para. 1 shall be made anonymously, in the event that a public announcement:

1. of a sanctioned person would be disproportionate,
2. would endanger the stability of the financial markets of a Member State or several Member States of the European Union,
3. would jeopardise the conducting of ongoing criminal law investigations, or
4. would cause the parties, insofar as it can be determined, a disproportionately high level of damage.

(3) Where reasons exist for anonymous publication pursuant to para. 2, but it can be assumed that these grounds will cease to exist in the foreseeable future, the FMA may refrain from an anonymous

publication and publish the sanction also pursuant to para. 1 once the grounds pursuant to para. 2 have ceased to apply.

(4) The person subject to this publication may request that the FMA review the lawfulness of the publication pursuant to paras. 1 or 2 in a procedure resulting in an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in the same way as the original publication. If, in the course of this review, it is found that the publication was unlawful, then the FMA shall correct the publication or, at the request of the person subject to this publication, either revoke it or remove it from its website.

(5) In the event that the decision underlying the publication pursuant to para. 1 or 2 is appealed against, then this as well as the outcome of this procedure shall be published in the same manner as the original publication. If suspensory effect is granted for such an appeal in a procedure in a court of law, then the FMA shall also make this known. If an appeal is granted against a decision that is the subject of the publication pursuant to para. 1 or 2, the publication must be removed as the request of the affected party from the FMA's internet presence.

(6) If a publication pursuant to para. 1 or 2 is not revoked based on a decision pursuant to para. 4 or 5 to be removed from the FMA's Internet presence, then the FMA shall ensure that every publication as well as every update in this regard from the time of publication onwards shall remain accessible on its Internet presence for a period of five years. Publication of the personal data shall however only be maintained for as long as none of the criteria for anonymised publication pursuant to para. 2 nos. 1 to 4 are fulfilled.

### Reporting to EBA

**Article 38.** The FMA shall notify EBA about all sanctions and measures imposed under administrative law pursuant to Article 33 to 35 as well as all appeals in conjunction with sanctions and the outcomes of the appeal procedures.

## CHAPTER 5: TRANSITIONAL AND FINAL PROVISIONS

### Transitional provisions

**Article 39.** (1) Covered bonds, which prior to 08 July 2022

1. were issued by a credit institution that has its registered office in an EEA signatory state, and which fulfil the requirements set out in Article 52 (4) of Directive 2009/65/EC in the valid version on the day of issuance, or
2. were issued by a credit institution pursuant to the:
  - a. Mortgage Bank Act (HypBG; *Hypothekbankgesetz*), published in the Reich Law Gazette, p. 375/1899,

- b. Act on Mortgage Bonds (*Pfandbriefe*) and related debt instruments issued by public-law credit institutions (*öffentlich-rechtliche Kreditanstalten*) - the Mortgage Bond Act (PfandbriefG) published in the Reich Law Gazette I p. 492,/1927, or
- c. the Act on Funded Bank Bonds (FBSchVG; *Gesetz betreffend fundierte Bankschuldverschreibungen*), published in Reich Law Gazette No. 213/1905

shall not be subject to the requirements of the provisions pursuant to Articles 5, 6, 9, Article 10 para. 2, Articles 12 to 17, 21, 22 and 30. They shall continue to be allowed to use the designation as covered bonds pursuant to Article 24 until their maturity. The FMA shall monitor that covered bonds that were issued prior to 08 July 2022 satisfy the requirements stipulated in Article 74 para. 4 InvFG 2011, in the version applicable prior to the entry into force of the Federal Act published in Federal Law Gazette I No. 199/2021, as well as this Federal Act, provided they are applicable pursuant to the first sentence of this paragraph.

(2) The Mortgage Bank Act (HypBG) will be repealed at the end of 07 July 2022. Cover assets, which at that point in time are used for covering mortgage bonds (*Pfandbriefe*) issued in accordance with the Mortgage Bank Act (HypBG), shall continue to be allowed to be used to the previously admissible extent for covering such mortgage bonds (*Pfandbriefe*), even where they fail to fulfil the rules of this Federal Act. The FMA shall monitor that Pfandbriefe issued prior to 08 July 2022 in accordance with the HypBG as well as the cover assets for covering them also continue to fulfil the requirements set forth in the HypBG.

(3) The Mortgage Bond Act (PfandbriefG) will be repealed at the end of 07 July 2022. Cover assets, which at that point in time are used for covering mortgage bonds (*Pfandbriefe*) issued in accordance with the Mortgage Bond Act (PfandbriefG), shall continue to be allowed to be used to the previously admissible extent for covering such mortgage bonds (*Pfandbriefe*), even where they fail to fulfil the rules of this Federal Act. The FMA shall monitor that *Pfandbriefe* issued prior to 08 July 2022 in accordance with the PfandbriefG as well as the cover assets for covering them also continue to fulfil the requirements set forth in the PfandbriefG.

(4) The Funded Bank Bond Act (FBSchVG) will be repealed at the end of 07 July 2022. Cover assets, which at that point in time are used for covering funded bank bonds issued in accordance with this law, shall continue to be allowed to be used to the previously admissible extent for covering such funded bank bonds, even where they fail to fulfil the rules of this Federal Act. The FMA shall monitor that funded bank bonds issued prior to 08 July 2022 in accordance with the FBSchVG as well as the cover assets for covering them also continue to fulfil the requirements set forth in the FBSchVG.

(5) The Regulation on the Introduction of the Mortgage Bank Act (*Hypothekbankgesetz*) and the Mortgage Bond Act (PfandbriefG) and related debt instruments by public-law credit institutions in the region of Austria, published in the Legal Gazette of the German Reich I p. 1574/1938 (Law Gazette for the Region of Austria no. 648/1938 in the version amended by Federal Act in Federal Law Gazette I No. 58/2010), will be repealed at the end of 07 July 2022.

(6) The second Regulation on the Introduction of the Mortgage Bond Act (PfandbriefG) and related debt instruments by public-law credit institutions in the region of Austria, published in the Legal Gazette of the German Reich I p.1904/1938, will be repealed at the end of 07 July 2022.

(7) Credit institutions that were authorised to issue mortgage bonds (*Pfandbriefe*), municipal bonds (*Kommunalschuldverschreibungen*) or funded bank bonds (*fundierte Bankschuldverschreibungen*) prior to 08 July 2022, shall be authorised to issue covered bonds in accordance with the rules of this Federal Act. Cover pool monitors appointed in accordance with the provisions of the HypBG and the PfandbriefG and government commissioners appointed in accordance with the FBSchVG shall be replaced pursuant to Article 18 para. 3 by an internal or external cover pool monitor within 12 months of the entry into force of this Federal Act.

(8) The consolidation of existing cover pools pursuant to the HypBG, PfandbriefG or FBSchVG with cover pools for the issuance of covered bonds in accordance of the Federal Act shall be permissible. Where existing cover pools cease to exist, then the Federal Minister of Finance shall decide as necessary which of the previous cover pool monitors or government commissioners shall monitor the remaining cover pool until an internal or external cover pool monitor is appointed in accordance with Article 18 para. 3. The rules of this Federal Act for the coverage of covered bonds issued in accordance with this Federal Act shall remain unaffected.

(9) Irrespective of this Federal Act covered bonds that were issued pursuant to para. 1 no. 3 prior to 08 July 2022 shall continue to bear the designation mortgage bond (*Pfandbrief*), municipal certificate (*Kommunalbrief*), municipal bond (*Kommunalschuldverschreibung*) or public mortgage bond (*öffentlicher Pfandbrief*) or another designation that contains one of these words until they mature.

(10) Where the assets and securities lodged as collateral (*Kautionsband*) have been recorded as a note in the property register (*Grundbuch*) for mortgages that are used for covering mortgage bonds (*Pfandbriefe*) and funded bank bonds (*Bankschuldverschreibungen*) in accordance with the HypBG, PfandbriefG and FBSchVG, then this note shall be expunged automatically 12 months after the entry into force of this Federal Act, upon the instruction of the Federal Minister for Justice. Orders in relation to rights of pledge where assets and securities lodged as collateral (*Kautionsband*) have been noted, especially in relation to their being expunged, shall not require any involvement of the government commissioner or the cover pool monitor. It shall also be permitted to omit to inform them.

(11) Loan receivables, that were contractually established prior to 08 July 2022, shall not be subject to the requirement of the provision pursuant to Article 10 para. 2.

### **Gender-neutral use of language**

**Article 40.** Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

## References and Regulations

**Article 41.** (1) Where references to other federal acts are made in this federal act, those acts are to be applied in their respective current versions.

(2) Where this Federal Act refers to EU Regulations, unless otherwise instructed, these shall apply in the following listed versions thereof:

1. Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 646/2012, OJ L 176, 27.6.2013, p. 1, as amended by the Regulation (EU) no. 2020/873, OJ L 204, 26.06.2020, p. 4;
2. Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12, in the version of Regulation (EU) 2019/2175, OJ L 334, 27.12.2019, p. 1;
3. Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84, in the version of Regulation (EU) No 2019/2175, OJ L 334, 27.12.2019, p. 1;
4. Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 with regard to liquidity coverage requirement for Credit Institutions, OJ L 11, 17.01.2015, p. 1, in the version of Delegated Regulation (EU) 2018/1620, OJ L 271, 30.10.2018, p. 10;
5. Regulation (EU) No 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions; OJ L 287, 29.10.2013, p. 63.

(3) Where this Federal Act refers to EU Directives, unless otherwise instructed, these shall apply in the following listed versions thereof:

1. Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.06.2013, p. 338, most recently amended by Directive (EU) 2018/843, OJ L 156, 19.06.2018 p. 43;
2. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.06.2013, p. 86. most recently amended by Directive 2014/102/EU, OJ L 334, 21.11.2014, p. 86;
3. Directive 2002/47/EC on Financial Collateral Arrangements, OJ L 168, 27.06.2002 p. 43, most recently amended by Directive 2014/59/EU, OJ L 173, 12.06.2014, p. 190;
4. Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302,

17.11.2009, p. 32, most recently amended by Directive (EU) 2019/2162, OJ L 328, 18.12.2019, p. 29;

(4) It shall already be permitted to issue Regulations based on this federal act from the following day after its publication; they shall however only enter into force on 08 July 2022.

### **Transposition Note**

**Article 42.** The Federal Act published in Federal Law Gazette I No. 199/2021 transposes Directive (EU) 2019/2162 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EU, OJ L 328, 18.12.2019 p. 29.

### **Enforcement**

**Article 43.** Responsible for the enforcement of this Federal Act are:

1. the Federal Minister for Justice with regard to Article 8, Article 25, Article 26 as well as Article 39 para. 10 and
2. the Federal Minister of Finance with regard to all other provisions.

### **Entry into force**

**Article 44.** This Federal Act shall enter into force on 08 July 2022. Applications for approval of covered bonds programmes pursuant to Article 30 may be made, and such approvals granted, from 01 January 2022.