

Information on mandatory provisions in Austria
(in accordance with Article 11(7) of Directive 2016/2341/EU
on the activities and supervision of institutions
for occupational retirement provision (IORPs))

Pursuant to Article 11b of the *Pensionskassen Act* (PKG; *Pensionskassengesetz*), institutions for occupational retirement provision from another EEA Member State must adhere to the following provisions of Austrian law when carrying out cross-border activities in Austria:

- a. General legal basis
- b. Relevant labour and social law provisions
- c. Information requirements

Institutions from Member States in Austria

Article 11b. PKG

- (1) Pensionskasse business may be carried out in accordance with paras. 2 to 8 and following prior approval by the competent authority of the home member state by an institution pursuant to Article 5 no. 4 in Austria under the freedom to provide services or through a branch.
- (2) If an institution intends to manage an employer's Pensionskasse commitment in Austria, the competent authority of the home member state shall notify the FMA of the details pursuant to Article 11a para. 2 nos. 2 and 3.
- (3) If a branch is established in Austria, the FMA may ask the competent authority of the home member state to submit all details on the establishment pursuant to Article 11a para. 3 nos. 2 and 3.
- (4) After submission of the details pursuant to para. 2, the FMA shall inform the competent authority of the home Member State within six weeks that the institution is obliged to comply with the following relevant labour and social law provisions, in particular:
 - 1. Article 1, Article 2 no. 1, Article 3, Article 4, Article 5, Article 5a, Article 6, Article 6e, Article 16, Article 16a, Article 17, Article 18 and Article 19 BPG; and
 - 2. Article 1 paras. 2 and 2a, Article 12 paras. 6 and 7, Article 12a, Article 15, Article 15a, Article 16, Article 16a, Article 17, Article 18, Article 28, Article 43 and Article 48 including FMA Regulations issued based thereupon; as well as
 - 3. Article 11b, Article 19, Article 19b, Article 25a para. 4 and Article 30a para. 2 including the respective accompanying Regulations issued by the FMA being applicable.



- (5) Following notification pursuant to para. 4, however, no later than after expiry of a six week deadline after notification pursuant to para. 2, the institution pursuant to para. 1 shall be entitled to perform the activity pertaining to the notified pension company business in Austria. In the event of disputes between beneficiaries as well as between employers paying contributions and the institution pursuant to Article 5 no. 4 arising from such cross-border pension company businesses, that court shall be locally competent in whose district the court of first instance has its seat which is competent for disputes arising from the employment relationship on which the pension company commitment is based. The agreement on another domestic place of jurisdiction shall be admissible, unless otherwise stipulated. The pension company contract and all relevant documents shall be provided by the institution pursuant to Article 5 no. 4 in the German language, unless otherwise explicitly agreed in the collective agreement, the shop agreement or the agreement according to the contract samples pursuant to the Company Pension Act (BPG; *Betriebspensionsgesetz*), as well as in the declaration pursuant to Article 3 para. 2 of the Pension Fund Provision Act (PKVG; *Pensionskassenvorsorgesetz*) or a similar provision under the law of a federal province.
- (6) The institution pursuant to para. 1 shall notify the FMA in writing of any change to the details pursuant to Article 11a para. 2 at least one month prior to the execution of said change. The FMA may make a comment pursuant to para. 4.
- (7) Institutions pursuant to para. 1 that perform activities in Austria under the freedom to provide services or through a branch shall comply with the provisions set out in para. 4 as well as with the regulations and administrative decisions (*Bescheide*) issued based on the aforementioned provisions.
- (8) The FMA shall inform the competent authorities of the home Member State about any significant changes to the provisions pursuant to para. 4, provided that they effect the institution's activity in Austria.
- (9) Where an institution pursuant to para. 1 manages a pension company commitment, in which the beneficiaries (recipients and entitled) bear the full risk arising from the investment of the assets, then it shall appoint one or several depositories for the safekeeping of the assets and the conducting of oversight duties pursuant to Articles 34 and 35 of Directive (EU) 2016/2341.

Article 5. PKG

4. Institution shall mean an foreign institution for occupational retirement provision (IORP) which operates, irrespective of its legal form, on a funded basis and which has been established separately from the employer for the purpose of providing Pensionskasse business subject to adherence to relevant labour and social law provisions and carrying out activities directly arising therefrom, and which has been licensed by the competent supervisory authority of the home member state pursuant to the provisions of Directive (EU) 2016/2341, and which has been entered into a national register or authorised by the competent supervisory authority of the home member state;

**Extract from the Company Pension Act (BPG; *Betriebspensionsgesetz*) as amended
by Federal Law Gazette I 2018/100**

Scope

Article 1.

- (1) This federal act regulates the safeguarding of benefits and pension expectancies arising from commitments to the old-age, invalidity and survivors' pensions (guarantees) that supplement the statutory pension insurance, which are made by the employer for the benefit of the employee within the scope of an employment relationship under private law.
- (2) This federal act shall also apply to commitments as specified in Section 2 or 2a to members of representative bodies of legal persons under private law, provided that:
 1. they have income from employment (Article 25 of the 1988 Income Tax Law (EStG 1988; *Einkommensteuergesetz*) for this activity; and
 2. the employer maintains a single-employer *Pensionskasse*, or has joined a multi-employer *Pensionskasse* for the benefit of the employees or has entered into a contract for occupational group insurance for the benefit of the employees.
- (3) This federal act shall not apply to guarantees and benefits:
 1. within the scope of employment relationships of agricultural and forestry workers, as defined in the 1984 Act on Employment in Agriculture (LAG; *Landarbeitsgesetz*), Federal Law Gazette No. 287;
 2. based on the 1986 Official Regulations of the Austrian Federal Forestry Company (*Bundesforste-Dienstordnung*), Federal Law Gazette No. 298, which are to be fulfilled by the employer directly, which can be revoked at any time without giving reasons and which do not provide a legal claim to benefits.
- (4) In the case of claims as defined in para. 1 that arise from benefit and other assistance funds, only Sections 5 and 6 shall apply.
- (5) In the case of benefits and pension expectancies of employees who are excluded from the statutory pension insurance obligation pursuant to Article 5 para. 1 no. 3 of the General Social Insurance Act (ASVG; *Allgemeines Sozialversicherungsgesetz*), Federal Law Gazette No. 189/1955, or pursuant to Article 38 para. 3 of the Nationalbank Act (NBG; *Nationalbankgesetz*), Federal Law Gazette No. 50, or pursuant to any other comparable statutory provisions and who are employed with natural persons or legal persons under private law, this federal act shall apply to those benefits and pension expectancies that exceed comparable claims pursuant to the ASVG as based on periods of insurance coverage and assessment bases.

Types of guarantees

Article 2.

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

1. to make contributions to a *Pensionskasse* or an institution as defined in Article 5 no. 4 PKG, Federal Law Gazette No. 281/1990, for the benefit of the employee and their survivors; to pay premiums for an occupational group insurance scheme to an insurance undertaking licensed to operate the life assurance business within the domestic territory (Article 93 of the Insurance Supervision Act 2016 (VAG 2016; *Versicherungsaufsichtsgesetz 2016*), Federal Law Gazette I No. 34/2015) for the

benefit of the employee and their survivors; pension company commitments or occupational group insurance must always include an old-age and survivors' pension; old-age pensions shall be for life, survivors' pensions shall be paid for the period stipulated in the pension company contract or the insurance contract;

***Pensionskasse* – Conditions for establishment, membership and dissolution**

Article 3.

- (1) With the exception of the cases mentioned under para. 2, and in accordance with Article 15 para. 4 PKG, the establishment of a single-employer *Pensionskasse* or the joining of a single-employer or multi-employer *Pensionskasse* requires the conclusion of a shop agreement or, in the cases of para. 1a, a collective agreement in order to become effective. A collective agreement or shop agreement must always regulate:
1. the involvement of the beneficiaries in the administration of the *Pensionskasse* or institution as defined in Article 5 no. 4 PKG;
 2. the entitlement to benefits, which includes in particular the claims of the beneficiaries; the amount of the contributions to be paid by the employer, which shall be determined, in the case of defined contribution agreements with the *Pensionskasse*, as an amount or in a fixed relation to the regular remunerations or components of remunerations; in addition, in the case of defined contribution agreements, variable contributions may be provided up to the amount of the obligatory contributions to be paid by the employer or, if the employer undertakes to make a contribution for employees amounting to at least 2% of regular remunerations, variable contributions in a fixed relation to one or several business indicators as defined in Article 1 no. 2a up to the amount resulting from Article 4 para. 4 no. 2 lit. a EStG 1988; the possible obligation of the employer to adjust the contributions in the event of additional cover requirements; any possible agreement on options pursuant to Article 12 para. 7 PKG;
 - 2a. the business indicator underlying the variable remuneration: a business indicator is a clear and generally accessible indicator defined in terms of business management, tax law or company law and determined according to objective criteria, which reflects the specific scope, size and extent of the business as well as the general operational risk the business entails; the agreement on several indicators per business or the agreement on an indicator that is composed of a number of indicators in proportion to one another shall be admissible;
 3. the conditions and legal effects of the dissolution of a single-employer *Pensionskasse*, with the safeguarding of the beneficiaries' claims being given priority over other pension company benefits; the conditions for the termination of the pension company contract on the part of the employer pursuant to Article 17 PKG and the legal effects of such termination with regard to the beneficiaries' claims.
- (1a) A pension company regulation may be provided for in a collective agreement where:
1. a collective agreement as of 1 January 1997 provides for a company old-age (survivors') pension; or
 2. such a regulation is provided for a business (or a company) that is not subject to Part II of the Labour Constitution Act (ArbVG; *Arbeitsverfassungsgesetz*), Federal Law Gazette No. 22/1974.
- (1b) In the case of:



1. the discontinuation of the pension company commitment under the collective agreement as a consequence of a change of affiliation to a collective agreement, or
 2. the expiry of the collective agreement by termination, the regulations of the collective agreement pertaining to a pension company commitment shall become part of the employment contract of the beneficiary (entitled).
- (1c) In the case of any other expiry of the collective agreement, the beneficiary (entitled) shall retain the pension expectancy arising from the pension company commitment that was acquired by the end of applicability of said collective agreement (Article 13 ArbVG), with the beneficiary (entitled) having the same rights (Article 6 para. 3) at the time of the end of the applicability as at revocation of the payment of contributions by the employer.
- (2) Before joining a *Pensionskasse*, employees who are not represented by a works council or to whom no collective agreement (within the meaning of paras. 1 and 1a) applies must first conclude an agreement with the employer, which is to be drawn up according to a contract sample that takes Article 18 into account. That contract sample shall regulate the matters specified under para. 1.
- (3) If claims held by former employees based on direct guarantees are transferred to a *Pensionskasse*, para. 2 shall apply.
- (4) If the employee has undertaken to make his own contributions, he may discontinue his payment of contributions at any time or suspend or limit them for a period of at least two years. The employee may also discontinue, suspend or limit his payment of contributions if the employer admissibly changes his payment of contributions (Article 6). The employee's contributions must not exceed the total of the employer's annual contributions, with the exception of:
1. the cases mentioned under Article 6; or
 2. in those cases in which the employee makes his own contributions (defined contributions) in addition to the employer's defined benefit commitment and the employer's contributions admissibly decrease without the commitment being changed; or
 3. the case where the employee makes his own contributions up to the amount stipulated under Article 108a EStG, Federal Law Gazette No. 400/1988, and the amount refunded pursuant to Article 108a EStG, which may be credited to the account for employee contributions, shall not be added to said amount.

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

assume payment of the employer's contributions for the duration of the reduced working hours as well.

Restraints on disposal and execution

Article 4.

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

Vesting

Article 5.

- (1) If the employment relationship is terminated prior to the occurrence of the benefit event, the pension expectancy for an old-age and survivors' pension that has been previously acquired through the employee's own contributions and the employer's contributions to a *Pensionskasse* shall become vested. The agreement pursuant to Article 3 may stipulate that the pension expectancy acquired by employer contributions shall only become vested after expiry of a period of no more than three years from when the employer begins making contributions to the *Pensionskasse*. That limited period shall not apply if a legal claim to a pension expectancy already exists at the time of a possible transfer of that pension expectancy to the *Pensionskasse*, or if the employment relationship is terminated due to the employer's insolvency or due to a plant closure, or if, in the course of the transfer of a business, company or operating unit, the new employer refuses to continue making contributions.
- (1a) A vested amount shall be calculated from the vested pension expectancy (para. 1). This vested amount corresponds to the premium reserve to be established in accordance with the business plan based on the risk of old age and death (the premium reserve on which said calculation is to be based shall only consider any changes in the remuneration introduced by the date when the employment relationship is terminated) and, after entry into force of Federal Law Gazette No. 754/1996, must not be less:
 1. if the volatility reserve is managed individually (Articles 24 and 24a PKG), than the maximum from the premium reserve less the administrative expenses for the payment of the vested amount and 95% of the premium reserve allocated to the beneficiary (entitled) plus 95% of the share in the volatility reserve; or
 2. if the volatility reserve is managed jointly (Articles 24 and 24a PKG):
 - a) than 100% of the premium reserve allocated to the beneficiary (entitled) or
 - b) than the maximum from the premium reserve less the administrative expenses for the payment of the vested amount and 95% of the premium reserve allocated to the beneficiary (entitled) plus 95% of the share in the volatility reserve.
- (1b) Any change in the calculation of the vested amount always requires an amendment to the collective agreement, the shop agreement or the agreement according to the contract samples.
- (2) After termination of the employment relationship, the employee may:
 1. request the conversion of the vested amount pursuant to para. 1a into a non-contributory pension expectancy; on occurrence of the benefit event, the



- beneficiary (recipient) shall have a claim against the *Pensionskasse* arising from the non-contributory pension expectancy; in the case of a defined contribution commitment, the pro-rata investment income and the pro-rata technical profits or losses accrued before the benefit event shall be additionally considered;
2. request the transfer of the vested amount pursuant to para. 1a to the *Pensionskasse*, or an institution as defined in Article 5 no. 4 PKG, or an occupational group insurance, or a new employer's pension insurance for groups, or to a pension insurance without right of repurchase, to an institution providing supplementary pensions pursuant to Article 479 ASVG, or an institution for retirement provision organised on a funded basis pursuant to Article 173 para. 2 of the Auditing, Tax Advising and Related Professions Act (WTBG; *Wirtschaftstreuhandberufsgesetz*), Federal Law Gazette I No. 58/1999, pursuant to Article 50 para. 3 of the Code of Professional Conduct for Lawyers (RAO; *Rechtsanwaltsordnung*), Reich Law Gazette No. 96/1868, or pursuant to Article 41 para. 4 of the 2002 Salary Fund Act (GKaG; *Gehaltskassengesetz*), Federal Law Gazette I No. 154/2001 if the employee is a beneficiary at the time of transfer;
 - 2a. request the transfer of the vested amount pursuant to para. 1a to a *Pensionskasse*, or an institution as defined in Article 5 no. 4 PKG or an occupational group insurance in which a vested pension expectancy or paid-up insurance has already been invested for the employee if the new employer does not intend to make a pension company commitment to or conclude an occupational group insurance for the employee;
 3. request the transfer of the vested amount pursuant to para. 1a to a new employer's direct guarantee if a change of employers takes place within a group and the pension claims from the former employment relationship are maintained;
 4. request the transfer of the vested amount pursuant to para. 1a to a foreign institution for retirement provision if the employee permanently relocates their place of work abroad;
 5. request continuation only with the employee's own contributions if, based on a guarantee, contributions were made for a period of at least five years, or if a change of employers takes place within a group.
 - (3) If the employee does not submit a statement specifying the use of their vested amount pursuant to para. 1a within six months, it shall be converted into a non-contributory pension expectancy (para. 2 no. 1). If the employee demands the transfer of this pension expectancy to the *Pensionskasse*, or an institution as defined in Article 5 no. 4 PKG, or an occupational group insurance, or a new employer's pension insurance for groups, or to a pension insurance without right of repurchase, to an institution providing supplementary pensions pursuant to Article 479 ASVG, or an institution for retirement provision organised on a funded basis pursuant to Article 173 para. 2 WTBG, pursuant to Article 50 para. 3 RAO, pursuant to Article 41 para. 4 GKaG 2002, or to a foreign institution for retirement provision (para. 2 no. 4) at a later time, then the expectancy must again be converted into a vested amount. In the case of a defined contribution commitment, the vested amount shall be calculated according to the same calculation rules as those on which the calculation of the vested amount was required to be based at the time of termination of the employment



relationship, while taking into account the pro-rata investment income and the pro-rata technical profits or losses accrued by the date of the transfer.

- (4) If the vested amount pursuant to para. 1a does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of termination of the employment relationship, the employee may be paid off with a lump sum; employees shall be paid off at their request. If there is no payment of a lump sum pursuant to the first sentence, the employer and the *Pensionskasse* may within twelve months of termination of the employment relationship agree that the non-contributory pension expectancy pursuant to the first sentence of Article 5 para. 3 again be converted into a vested amount and paid off. The last sentence of Article 5 para. 3 shall apply correspondingly to the calculation of the vested amount.
- (5) After receiving documented notification as specified in Article 19b PKG and Article 98 VAG 2016, on occurrence of the benefit event the employee may request the transfer of the vested amount pursuant to para. 1a from the *Pensionskasse* to an occupational group insurance scheme, provided that the employer has already concluded an occupational group insurance pursuant to Article 6a.

Change to occupational group insurance during continued employment relationship

Article 5a.

- (1) Starting with the year in which employees reach the age of 55, they may, where this is provided for in the collective agreement, the shop agreement or the contract samples and where the employer has already concluded an occupational group insurance pursuant to Article 6a, after receiving documented notification as specified in Article 19b PKG and Article 98 VAG 2016, submit a written declaration to the *Pensionskassa* and to the employer that the employer should from 1 January of the following calendar year onwards pay premiums, in lieu of contributions to the *Pensionskasse*, in the same amount to the occupational group insurance scheme. As of 1 January of the calendar year following the employee's declaration, the *Pensionskasse* must transfer the notional vested amount due at that time to the occupational group insurance. The notional vested amount shall be determined according to the same calculation rules as those on which the calculation of the vested amount at the time of termination of the employment relationship is required to be based.
- (2) The employee's declaration pursuant to the first sentence of para. 1 must be received by the *Pensionskasse* by 31 October of a calendar year in order for the premium payment to the occupational group insurance and the transfer of the vested amount to become effective as of 1 January of the following calendar year.
- (3) If the employee has made his own contributions, he shall pay premiums in the same amount to the occupational group insurance as of 1 January of the following calendar year in the event of an instruction pursuant to para. 1.
- (4) The employee may demand a change to the occupational group insurance scheme pursuant to para. 1 as well as a change to the *Pensionskasse* pursuant to Article 6e para. 1 only once in each case. On occurrence of the benefit event, the change to the occupational group insurance is irrevocable in any case.

Discontinuance, suspension or limitation of payment of contributions

Article 6.

- (1) The employer may discontinue their current payments of contributions (revocation) only if:
 1. this is stipulated in the collective agreement, the shop agreement or the contract sample;
 2. the economic situation of the company has permanently deteriorated to such a significant extent that sustaining the benefit guaranteed would result in a threat to the continued existence of the company; and
 3. in businesses that have a competent works council, a consultation with said works council was held at least three months prior to the discontinuance of the payment of contributions. The works council may call in an expert to this consultation who shall treat any business and trade secrets that are revealed to them as confidential.
- (2) If the employer revokes payment, the employee shall retain the previously acquired pension expectancy. At the time of revocation, any vested amount shall be determined according to the same calculation rules as those stipulated under Article 5 para. 1a, with any possible vesting deadline, however, being considered immaterial.
- (3) After revocation, the employee may:
 1. request the conversion of the vested amount pursuant to para. 2 into a non-contributory pension expectancy; on occurrence of the benefit event, the beneficiary (recipient) shall have a claim against the *Pensionskasse*, which results from the non-contributory pension expectancy and which in the case of a defined contribution commitment shall take into account the pro-rata investment income and the pro-rata technical profits or losses accrued by the date of the benefit event;
 2. request the transfer of the vested amount pursuant to para. 2 to a pension insurance without right of repurchase;
 3. request continuation only with his own contributions.
- (4) If the employee does not make a statement specifying the use of their vested amount pursuant to para. 2 within six months, Article 5 para. 3 shall apply.
- (5) If the vested amount pursuant to para. 2 does not exceed the respective amount resulting from Article 1 paras. 2 and 2a PKG at the time of revocation, the employee may be paid off with a lump sum; employees shall be paid off at their request.
- (6) The employer may suspend or limit his current payments of contributions only if and for as long as:
 1. this is stipulated in the collective agreement, the shop agreement or the contract sample;
 2. compelling economic reasons exist; and
 3. in businesses that have a competent works council, a consultation with said works council was held at least three months prior to the suspension or limitation of the contributions. The works council may call in an expert to this consultation who shall treat any business and trade secrets that are revealed to them as confidential.
- (7) If the employer's contributions are suspended or limited, the employee may, for the same period of time:
 1. suspend or limit his contributions to the same extent;

2. continue to pay his contributions in the same amount as before; or
 3. assume payment of the employer's contributions as well.
- (8) Suspension or limitation of the employer's or employee's contributions shall not affect the expiry of the vesting deadline (second sentence of Article 5 para. 1).

Change to a Pensionskasse during continued employment relationship Article

Article 6e

- (1) As of the year in which employees reach the age of 55, they may, where this is provided for in the collective agreement, the shop agreement or the sample contract and where the employer has already concluded a pension company contract pursuant to Article 15 PKG, after receiving documented notification as referred to in Article 98 VAG 2016 and Article 19b PKG, submit a written declaration to the insurance undertaking and to the employer stating that, from 1 January of the following calendar year onwards and in lieu of premium payments to the occupational group insurance scheme, the employer should pay contributions in the same amount to the Pensionskasse. As of 1 January of the calendar year following the employee's declaration, the insurance undertaking must transfer the vested amount pursuant to Article 6c para. 1 to the Pensionskasse.
- (2) The employee's declaration pursuant to the first sentence of para. 1 must be received by the employer and the insurance undertaking by 31 October of a calendar year in order for the payment of contributions to the Pensionskasse and the transfer of the vested amount to become effective as of 1 January of the following calendar year.
- (3) Where the employee paid premiums of their own, and made an order pursuant to para. 1, they shall pay contributions in the same amount to the Pensionskasse as of 1 January of the following calendar year.
- (4) The employee may demand a change to the Pensionskasse pursuant to para. 1 as well as a change to an occupational group insurance scheme pursuant to Article 5e para. 1 only once in each case. On occurrence of the benefit event, the change to the Pensionskasse is irrevocable in any case.

No-offsetting rule

Article 16.

- (1) The pension payments regulated by this federal act must not be reduced by the amount of pension payments that are based on the beneficiaries' contributions. This shall not apply to benefits from statutory pension insurance where they are based on mandatory contributions, or to pension payments where at least half of such payments are based on contributions or subsidies made by the employer.
- (2) The value of the part of the overall pension to be paid by the employer that results at the time of the benefit event must not be reduced by the amount of any later increase of attributable pension payments.

Article 16a.

- (1) Where company pension commitments stipulate a benefit claim for the case of the drawing of a temporary invalidity pension or an occupational disability pension, this claim shall also be granted where invalidity or occupational disability is determined for the insurance policyholder for a period of at least six months, pursuant to Article 367 para. 4 ASVG for the duration of the period of receiving a rehabilitation allowance in



accordance with Article 143a ASVG or a retraining allowance in accordance with Article 39b of the Unemployment Insurance Act 1977 (AIVG; Arbeitslosenversicherungsgesetz 1977), published in Federal Law Gazette no. 609/1977.

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

Duty of disclosure

Article 17.

- (1) At the request of the beneficiary (entitled), the former employee or the survivor's request, the employer shall disclose information annually about the extent of the pension expectancy as of the balance sheet date, as well as the extent of the benefits that may be claimed where the benefit event occurs.
- (2) The duty of disclosure as defined in para. 1 shall apply to the *Pensionskasse* in the case of pension company benefits guaranteed and to the insurance undertaking in the case of life assurance contracts or occupational group insurance.

Non-discrimination clause

Article 18.

- (1) The employer shall undertake to uphold the principle of equal treatment in accordance with labour legislation and, in the case of limitation or revocation of rights pursuant to this federal act, is obliged to treat beneficiaries according to balanced principles that rule out any arbitrary or irrelevant distinctions between employees or groups of employees.
- (2) In the case of guarantees pursuant to Sections 2 or 2a, the business's employees or groups of employees must be offered a balanced participation in the pension company system or system of occupational group insurance that rules out any arbitrary or irrelevant distinctions.
- (3) Violations against the non-discrimination clause pursuant to paras. 1 and 2 shall result in an adjustment claim of the person whose rights have been curtailed.

Prohibition to change legal provisions by agreement

Article 19.

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

Extract from the PKG as amended by Federal Law Gazette I 2018/100

Article 1.

(2) Pension company business shall comprise the legally binding pension commitment to beneficiaries (entitled) as well as the provision of pensions to beneficiaries (recipients) and surviving dependents as well as the related taking in and investment of pension company contributions (Article 16). Every *Pensionskasse* shall be obliged to make commitments to old-age and survivors' pensions; commitments to invalidity pensions can also be made. Old-age pensions shall be paid for life, invalidity pensions for the duration of invalidity and survivors' pensions according to the pension company contract. The pensions to be paid out by a *Pensionskasse* may only be settled against payment of a lump sum if:

1. on occurrence of the benefit event the cash value of the amount paid out does not exceed EUR 9,300; or
2. a person who is entitled to a survivors' pension as defined in the present federal act has remarried. In this case, the limit stipulated under no. 1 shall not apply.

(2a) The limit of EUR 9,300 mentioned under para. 2 as sum in full settlement of all benefits shall decrease or increase in stages of EUR 300 if, due to valorisation with the 1996 consumer price index issued by the federal agency "Statistics Austria" for the month of July of a calendar year, or with the respective index superseding it, its change exceeds or falls below the amount of EUR 300 compared with the 1996 consumer price index issued for the month of January 2002. The new sum in full settlement of all benefits shall be effective from 1 January of the calendar year following the adjustment. The Financial Market Authority (FMA) shall publish the new sum in full settlement of all benefits as well as the date from which it becomes effective on the Internet.

Article 11a.

(2) If a *Pensionskasse* intends to conclude a *Pensionskasse* contract with an employer in the territory of another member state, prior to conclusion of the contract, it shall notify the FMA of the following:

- a. the member state in whose territory the activity is to be performed;
- b. the name and location of the central headquarters of the employer;
- c. the main features of the old-age provision system to be run for said employer.

(3) If a *Pensionskasse* intends to establish a branch in the territory of another member state, it shall notify the FMA thereof, providing the following details:

- a. the member state in whose territory the branch is to be established;
- b. the address in the host member state from which the documents of the *Pensionskasse* can be requested and to which notifications intended for the responsible managers can be addressed;
- c. the name of the branch's responsible managers who must be vested with a sufficient power of attorney to commit the *Pensionskasse* vis-à-vis third parties and to represent it before authorities and the courts of the host member state.

Investment and risk sharing group (IRG)

Article 12.

(6) A maximum of five sub-investment groups (sub-IG) may be established for various investment strategies within a maximum of three IRG. The limits defined in Article 23 para. 1 no. 3a and in Article 25 shall apply separately to each sub-IG.

(7) If the Pensionskasse offers more than one IRG or sub-IG, with the exception of the security-oriented IRG, which have various investment strategies, and this has been stipulated in the Pensionskasse contract (Article 15 para. 3 no. 7a) in accordance with the collective agreement, the shop agreement or the agreement according to the contract samples, the following shall apply in cases where the employer does not have an unlimited obligation to make an additional contribution:

1. Upon inclusion in the Pensionskasse commitment, the beneficiary (entitled) or the beneficiary (recipient) shall be managed within the IRG or sub-IG stipulated in the Pensionskasse contract.
2. Prior to the date on which the Pensionskasse benefit is claimed, the beneficiary (entitled) may declare the change to another IRG or sub-IG a maximum of three times, in each case after receiving documented notification as specified in Article 19b, by submitting a written declaration to the Pensionskasse. This declaration must be received by the Pensionskasse by 31 October of a calendar year in order for the change to become effective as of 1 January of the following calendar year; notwithstanding the foregoing, the declaration can be submitted no later than when the Pensionskasse benefit is claimed, in which case the change shall become effective with the first pension benefit. The declaration can also be submitted when a survivors' pension is claimed following the demise of a beneficiary (entitled), in which case the change shall become effective with the first pension benefit.
3. Notwithstanding no. 2, the change to another IRG or sub-IG shall become effective as of stipulated dates if agreed in the Pensionskasse contract in accordance with the collective agreement, the shop agreement or the agreement according to the contract samples. The beneficiary (entitled) can revise this change through a declaration pursuant to no. 2. The number of opportunities to change and the dates specified in no. 2 shall apply.

The amount transferred shall be calculated based on the premium reserve and the volatility reserve that has been established for the beneficiary (entitled) or survivor as of the date of transfer. A change shall not be admissible for beneficiaries (recipients).

Investment and risk sharing group with guarantee

Article 12a.

(1) If para. 6 is not applied, notwithstanding Article 12 paras. 2 and 4, the *Pensionskasse* shall operate an investment and risk sharing group (IRG) that is aligned with the goals of investment security and pension stability (security-oriented IRG), which must meet the following conditions:

1. No pension company commitments
 - a) with minimum yield guarantee or

- b) with the employer's unlimited obligation to make an additional contribution must be managed.
2. The *Pensionskasse* shall guarantee that the monthly pension due to the beneficiary (recipient) is at no time less than the first monthly pension resulting from the superannuation of the premium reserve established for the beneficiary (recipient) at the time when the pension company benefit is claimed for the first time.
 3. The value of the guaranteed first monthly pension pursuant to no. 2 shall be subject to interest that shall be compounded after every five years as of the next balance sheet date; the interest rate shall be calculated for the previous financial year based on half of the average monthly secondary market yield on federal government bonds or an index of the past 60 months superseding it less 0.75 percentage points. This interest rate must not be a negative value.
 4. If the remaining result of the IRG as of the balance sheet date leads to a withdrawal from the premium reserve and the amount of the re-calculated pension falls below the monthly pension guaranteed pursuant to nos. 2 and 3, the difference relative to the monthly pension guaranteed pursuant to nos. 2 and 3 shall be credited monthly to the beneficiary (recipient) from the own funds of the *Pensionskasse* during the following year.
 5. Apart from the details specified in Article 20 para. 2, the business plan shall contain the following divergent information and additions:
 - a) the principles and formulas for calculating the guaranteed first monthly pension for the old-age pension and the survivors' pension;
 - b) the procedure for adjusting any bases of calculation;
 - c) the volatility reserve shall be managed jointly for all beneficiaries.

By way of derogation from Article 20 para. 2a in relation to the respective maximum permissible percentage of the assumed interest rate and the technical surplus prescribed by the FMA the same percentage for the assumed interest rate and technical surplus shall be determined for all beneficiaries (entitled and recipients).
 6. Notwithstanding Article 23 para. 1 no. 3a, no more than 40% of the assets allocated to the security-oriented IRG must be dedicated as specified in Article 23 para. 1 no. 3a lit. c, and no more than 80% overall. The *Pensionskasse* shall demonstrate to the FMA by providing appropriate substantiation by 30 November of every financial year that it has sufficient liquidity reserves in order to be able to meet the pension benefit obligations for the following financial years.
 7. The establishment of a negative volatility reserve pursuant to Article 24a para. 8 shall not be admissible.
 8. The limit defined in Article 25 para. 3 no. 2 shall apply.
- (2) The beneficiary (entitled) can, after receiving documented notification as specified in Article 19b, declare to the *Pensionskasse* in writing their change to the security-oriented IRG, at the time when the pension company benefit is claimed, but in any case as of the year when they reach the age of 55 and by no later than the time when the pension company benefit is claimed. The declaration must be received by the *Pensionskasse* by 31 October of a calendar year in order for the change to become effective as of 1 January of the following calendar year; notwithstanding the foregoing, the declaration can be submitted no later than when the pension company



benefit is claimed, in which case the change shall become effective with the first pension benefit. The declaration can also be submitted when a survivors' pension is claimed following the demise of a beneficiary (entitled), in which case the change shall become effective with the first pension benefit.

- (3) Prior to claiming the pension company benefit, the beneficiary (entitled) of a security-oriented IRG may, after receiving documented notification as specified in Article 19b, declare to the *Pensionskasse* in writing their change to that IRG in which the pension company commitment was managed prior to the change to the security-oriented IRG. A change shall not be admissible for beneficiaries (recipients).
- (4) The premium reserve and volatility reserve established for the beneficiary (entitled) as of the date of transfer shall be transferred to the security-oriented IRG in the following manner:
 1. If the date of transfer coincides with a balance sheet date, the pro-rata amount corresponding to the percentage share of the volatility reserve, based on the allocated average assets (Article 20 para. 2 no. 5), established in the security-oriented IRG as of that balance sheet date shall be allocated to the volatility reserve of the security-oriented IRG.
 2. If the date of transfer does not coincide with a balance sheet date, the pro-rata amount corresponding to the percentage share of the volatility reserve, based on the allocated average assets (Article 20 para. 2 no. 5), established in the security-oriented IRG as of the last balance sheet date shall be allocated to the volatility reserve of the security-oriented IRG.
 3. If the volatility reserve allocated to the beneficiary (entitled) exceeds the amount to be transferred as specified in nos. 1 or 2, the exceeding amount shall be allocated to the premium reserve of the beneficiary (entitled).
 4. If the volatility reserve allocated to the beneficiary (entitled) is less than the amount to be transferred as specified in nos. 1 or 2, the deficit shall be taken from the premium reserve of the beneficiary (entitled).
- (5) Notwithstanding Article 17 para. 1, upon cancellation of the pension company contract, the beneficiaries (recipients) of the security-oriented IRG shall remain with the *Pensionskasse*. Article 15 para. 3a shall apply subject to the provision that amendments to the pension company contract pursuant to para. 1 no. 5 shall be admissible.
- (6) If a *Pensionskasse* does not establish a security-oriented IRG, it shall conclude a cooperative agreement with a multi-employer *Pensionskasse* in order that the transfer amount specified in para. 4 can be transferred to a security-oriented IRG of the multi-employer *Pensionskasse* for those beneficiaries (entitled) of the *Pensionskasse* who make use of the option specified in para. 2. The multi-employer *Pensionskasse* shall notify the beneficiary (entitled) pursuant to Article 19b. It may be stipulated in the shop agreement or in the collective agreement on the establishment of a single-employer *Pensionskasse* that neither a security-oriented IRG will be established nor a cooperative agreement with a multi-employer *Pensionskasse* concluded.
- (7) If the beneficiary (entitled) declares a change into the security-oriented IRG pursuant to para. 2 from a *Pensionskasse* commitment with minimum yield guarantee there is no need for an agreement regarding the exclusion of the minimum yield guarantee pursuant to Article 2 para. 1 in the *Pensionskasse* contract and in the collective

agreement, the shop agreement or the agreement according to the contract samples pursuant to the BPG and in the declaration pursuant to Article 3 para. 2 PKVG or similar provisions under the law of a federal province. A potential benefit from the minimum yield guarantee must not be considered for the calculation of the guaranteed first monthly pension pursuant to para. 1 no. 2 in case of a change at the time of claiming the Pensionskasse benefit. In case of a change pursuant to para. 3 the Pensionskasse shall guarantee again the minimum yield, whereby the calculation period pursuant to Article 2 para. 2 to 4 starts again.

Pension company contract

Article 15.

- (1) The pension company contract shall be concluded between the *Pensionskasse* and the joining employer. It shall regulate the claims of beneficiaries to pension company benefits:
 1. for pension company commitments which are based on the BPG, according to the collective agreement, the shop agreement or the agreement according to the contract samples pursuant to the BPG; or
 2. for commitments from another Member State, according to the relevant labour and social law provisions applicable in said Member State.
- (2) The determining of the pension company contributions and the benefits shall be made, at least on the balance sheet date, according to a sufficiently prudent actuarial procedure pursuant to recognised actuarial principles and shall consider all obligations concerning contributions and benefits according to the pension company commitment, thus guaranteeing constant financing of the cover requirement.
- (3) In accordance with the type of the guarantee, the pension company contract shall include in particular:
 1. the amount of the contributions the employer shall make;
 2. the amount of the agreed contributions of the employees;
 3. method of payment and due dates of the current contributions;
 4. the amount of the default interest pursuant to Article 16 para. 3;
 5. the type of adjustment of contributions and benefits on occurrence of additional cover requirements;
 6. provisions on the obligation of the employer and the beneficiaries to notify the *Pensionskasse* of any and all circumstances relevant to the contributions, the pension expectancies and the pension benefits, as well as any changes thereto;
 7. any potential exemption from payment of the minimum yield by the *Pensionskasse*;
 - 7a. any agreement on options pursuant to Article 12 para. 7 nos. 2 and 3, as well as a stipulation of that IRG or sub-IG in which newly joining beneficiaries (entitled) or beneficiaries (recipients) will be included pursuant to Article 12 para. 7 no. 1;
 8. the principles of investment policy applicable at the time of the conclusion of the pension company contract; this can also be done by appending the declaration on the principles of investment policy (Article 25a) as an annex to the pension company contract;
 9. the kind of risks connected with the pension company commitment arising from the investment and the actuarial risks as well as the apportionment of said risks between *Pensionskasse*, employer and beneficiaries;



10. the conditions for further payments of contributions by the employee following the termination of his employment relationship;
 11. the calculation of the vested pension expectancies if a beneficiary (entitled) withdraws during the year;
 12. the conditions upon which an employee can also pay the employer's contribution (Article 6 BPG);
 13. the conditions making the employee eligible for a period of non-contribution following the termination of their employment relationship, in particular the kind of cost calculation and the amount of the costs (administrative expense loading) the employee has to bear;
 14. the type of cost calculation and the amount of the costs (administrative expenses):
 - a) the employer,
 - b) the beneficiaries in the investment and risk sharing groups, as well as
 - c) the employee paying contributions have to bear in the event that the employer temporarily suspends or limits their contributions or revokes their guarantee for compelling economic reasons;
 15. the detailed conditions for the termination;
 - 15a. the detailed procedure in the event that a pension company contract exists with a single-employer *Pensionskasse* and the employer withdraws from the group;
 16. the type of transfer of assets allocated to the employer and the beneficiaries in the event of termination;
 17. the amount of the assets to be transferred pursuant to Article 17 para. 4 and of the vested amount pursuant to Article 17 para. 5;
 18. the declaration of the employer vis-à-vis the *Pensionskasse* confirming compliance with Article 3 BPG.
- (3a) If, pursuant to Article 5 para. 2 nos. 1 or 5 BPG or pursuant to Article 6 para. 3 nos. 1 or 3 BPG, an employee or, pursuant to Article 17 para. 1, a beneficiary (entitled) or, pursuant to Article 12a para. 5 or Article 17 para. 1, a beneficiary (recipient) remains with the *Pensionskasse*, the pension company contract shall continue to apply. If the annex to the pension company contract includes a respective sample agreement, an agreement can be concluded between the *Pensionskasse* and the employee on the following items:
1. information requirements of the employee vis-à-vis the *Pensionskasse*;
 2. information requirements of the *Pensionskasse* vis-à-vis the employee;
 3. a possible declaration of the employee pursuant to Article 5 para. 2 no. 5 or Article 6 para. 3 no. 3 BPG;
 4. method of payment and due dates of any possible contributions;
 5. method of payment and due dates of the benefits.
- Amendments to the pension company contract and the shop agreement in the sample agreement shall be inadmissible and legally ineffective. An agreement concluded between the *Pensionskasse* and the employee shall expire as soon as the employer resumes his payments and the employee is then still in an employment relationship with the employer.
- (4) If the pension company contract does not comply with the provisions of the present federal act or the provisions stipulated under Article 3 BPG, the FMA shall order the *Pensionskasse* to improve the contract; if the *Pensionskasse* does not fulfil said order

within six months at the latest, the pension company contract shall be deemed null and void.

Article 15a.

- (1) Persons pursuant to Article 5 no. 1 lit. b or c may only be included if, in connection with the design of the pension company commitment, Article 18 para. 2 BPG has been complied with and the entitlement to contributions and benefits in its entirety corresponds to that of the persons pursuant to Article 5 no. 1 lit. a, with:
 1. any and all deadlines regulated in the PKG and the BPG for all beneficiaries (entitled) having to be applied in the same way, and
 2. no differentiation with respect to qualifying dates for the inclusion in the *Pensionskasse* or the expulsion from the *Pensionskasse* being allowed.
- (2) If persons pursuant to Article 5 no. 1 lit. b or c are included,
 1. the pension company contract shall additionally contain the following provisions:
 - a) the amount of the assessment basis of the contribution for persons pursuant to Article 5 no. 1 lit. b or c, with the assessment basis not being allowed to exceed the maximum resulting from the double annual contribution assessment ceiling according to the ASVG and 150% of the assessment basis of the employee with the highest salary;
 - b) the retirement age; it shall correspond to the retirement age as stipulated for beneficiaries (entitled) pursuant to Article 5 no. 1 lit. a in the pension company contract;
 - c) the conditions for granting a disability provision, with a benefit only being allowed to be paid out if a legally effective administrative decision (*Bescheid*) has been issued by a statutory pension insurance institution or a professional pension institution granting an occupational invalidity pension;
 2. the following provisions shall be applied in addition:
 - a) Article 3 para. 4 BPG with respect to an additional own payment of contributions;
 - b) Article 4 BPG with respect to the restraints on disposal and execution of vested pension expectancies pursuant to no. 3 in conjunction with Article 5 BPG;
 - c) Article 5 BPG with respect to the vesting of the payment of contributions; the retirement from the function as defined in Article 5 no. 1 lit. b or c shall be equated to the termination of a public employment contract;
 - d) Article 6 BPG with respect to ceasing, suspending or limiting the payment of contributions.
- (3) If persons pursuant to Article 5 no. 1 lit. e are included, the pension company contract, based on an individual agreement to be concluded between said persons and the employer, shall in particular contain the amount of the cover requirement pursuant to Article 48, the entitlement to benefits as well as the applicability of Article 5 BPG with respect to the vesting of the payment of contributions.

Pension company contributions

Article 16.

- (1) Pension company contributions shall mean the employer's and the employee's contributions to the *Pensionskasse*; they also include the administrative expense loading.
- (2) The employer shall transfer his contributions as well as the agreed employee's contributions, which have to be deducted from the wage or salary, to the *Pensionskasse* at the respective due dates for the payment of the wages and salaries in a timely manner. Divergent agreements in the pension company contract shall be admissible.
- (3) The pension company contract shall provide for default interest in an amount in line with market conditions.
- (4) Contributions can also be transferred to a *Pensionskasse* from another *Pensionskasse*, an institution (Article 5 no. 4), an occupational group insurance (Article 93 VAG 2016), an institution providing supplementary pensions pursuant to Article 479 ASVG, Federal Law Gazette No. 189/1955, an institution for retirement provision organised on a funded basis pursuant to Article 173 para. 2 WTBG, Federal Law Gazette I No. 58/1999, pursuant to Article 50 para. 3 RAO, Reich Law Gazette No. 96/1868, pursuant to Article 41 para. 4 GKaG 2002, Federal Law Gazette I No. 154/2001, or from a foreign institution for retirement provision, if the employee is a beneficiary at the time of transfer.

Administrative expenses

Article 16a.

- (1) The Pensionskasse shall be entitled to withhold a fee from the Pensionskasse contributions and the cover requirement pursuant to Article 48, which must be reasonable and customary.
- (2) The Pensionskasse shall be entitled to withhold a one-time expense loading not exceeding 1.0 per cent of the vested amount each in the case of calculation or transfer of a vested amount (Article 5 paras 1 and 1a BPG), with the expense loading not being allowed to exceed EUR 300 per vested amount.
- (3) The Pensionskasse shall be entitled to charge an annual expense loading not exceeding 0.5 per cent of the respective cover requirement for the administration of non-contributory expectancies, with the expense loading not being allowed to exceed EUR 100 per noncontributory expectancy.
- (4) For investing the assets of investment and risk sharing groups, the Pensionskasse shall be entitled to withhold a fee from the investment result, which must be reasonable and customary.
- (4a) For investing the assets of the security-oriented IRG, the Pensionskasse shall be entitled to withhold a fee from the investment result, which must not exceed 0.55 per cent of the assets allocated to the security-oriented IRG per financial year (Article 20 para. 2 no. 5). The percentage must be the same for all beneficiaries (recipients) of the security-oriented IRG.
- (4b) In the case of beneficiaries (recipients) having a commitment where the employer has no unlimited obligation to make an additional contribution or a commitment without minimum yield guarantee in the case of individual calculation, if the



investment results of a financial year are not sufficient to cover the fee specified in para. 4, the following shall apply:

1. The Pensionskasse must only withdraw from the assets allocated to those beneficiaries (recipients) a fee in the amount of 50 per cent relative to the premium reserve allocated to those beneficiaries (recipients). Where the Pensionskasse waives the additional 50% of the fee, then nos. 2 to 6 shall not apply with regard to these beneficiaries (recipients)
 2. A liability to the Pensionskasse shall be shown in the IRG for the remaining part of the fee.
 3. In the following financial year, an extra pension payment in the amount of the remaining part of the fee shall be paid out to those beneficiaries (recipients); an item under other assets shall be shown in the IRG for that extra payment.
 4. The liability amount shown in the balance sheet of the Pensionskasse for the remaining part of the fee must not be added to the profit able to be distributed for a financial year.
 5. The withdrawal of the part of the fee remaining in the IRG shall only be admissible in the following years if, after allocation of the assumed interest rate to the premium reserve of the beneficiaries (recipients), the remaining investment income is sufficient to cover any withdrawal.
 6. If the item under other assets cannot be released through withdrawal of the part of the fee remaining in the IRG by ten years from when the item was established, it shall be released by debiting the corresponding liability to the Pensionskasse shown in the IRG.
 7. The calculation pursuant to nos. 1 to 6 shall be conducted for every beneficiary (recipient) on an individual basis..
- (5) The absolute amounts pursuant to paras 2 and 3 will be valorised, according to the consumer price index 1996, special classification "services", issued by the federal agency "Statistik Österreich", at the value which results from the change of the value for the month of July of one calendar year compared with the value published for January 2006. The new amount shall be announced by the FMA and be effective from 1 January of the following year.
- (6) Any administrative expenses pursuant to paras 1 to 4 shall be agreed in the Pensionskasse contract (Article 15 para. 3 no. 14). The assets of the investment and risk sharing group must not be encumbered with expenses that are not listed under paras 2 to 4a.

Cancellation and withdrawal

Article 17.

- (1) A cancellation of the pension company contract by the employer or the *Pensionskasse* or a termination of the pension company contract by common consent shall only be admissible and legally effective if a transfer of the parts of the assets to be transferred pursuant to para. 4 to another *Pensionskasse*, an institution (Article 5 no. 4), an occupational group insurance (Article 93 VAG 2016) of an insurance undertaking licensed to operate the life assurance business within the domestic territory, or an institution providing supplementary pensions pursuant to Article 479 ASVG is guaranteed. The cancellation or termination by common consent of the pension company contract in a legally effective way may only be made jointly for all



beneficiaries covered by said pension company contract, unless the collective agreement, the shop agreement or the agreement according to the contract samples stipulates that all beneficiaries (recipients) or all beneficiaries with non-contributory expectancies remain with the *Pensionskasse* in the event of the cancellation of the pension company contract.

- (1a) By way of derogation from para. 1 final sentence, in the case of an intended transfer to an institution pursuant to Article 5 no. 4, the cancellation or termination by mutual consent of the *Pensionskasse* contract shall require prior approval of the majority of affected beneficiaries (entitled) and the majority of the affected beneficiaries (recipients). The *Pensionskasse* shall inform the beneficiaries (entitled and recipients) in writing about the intended cancellation or termination by mutual consent of the *Pensionskasse* contract, the information pursuant to Article 11c para. 1 nos. 1 to 5, the right of approval as well as the modalities of the voting procedures. The voting procedure must be conducted in such a way that it may not be possible to trace voting behaviour back to individual persons. An appropriate period of time shall be given to beneficiaries (entitled and recipients) for exercising their right of approval. Where not otherwise agreed, all costs of the *Pensionskasse* that arise in relation to the voting procedure shall be borne by the employer.
- (1b) The approval of termination or a cancellation by mutual consent shall be deemed to have been granted, provided respectively that more than half of the beneficiaries (entitled and recipients) addressed by the proposed termination or cancellation by mutual consent participate in the vote, and more than half of these beneficiaries (entitled and recipients) approve the termination or cancellation by mutual consent.
- (1c) In the event of the termination of the *Pensionskasse* contract by the *Pensionskasse* and the intended transfer to an institution pursuant to Article 5 no. 4 the termination shall require the approval of the employer in question. By way of derogation from para. 1a final sentence, provided not otherwise agreed, all costs of the *Pensionskasse* that arise in relation to the voting procedure shall be borne by the *Pensionskasse*.
- (2) The notice period for the cancellation of the pension company contract by the employer or the *Pensionskasse* shall be one year; notice may only be given effective as of the *Pensionskasse's* balance sheet date. The termination of the pension company contract by common consent shall become effective on the *Pensionskasse's* balance sheet date at the earliest, which must be at least six months after the agreement on the termination of the pension company contract by common consent.
- (3) Following an employer's withdrawal from a group pursuant to Article 3 para. 3, the parts of the assets to be transferred pursuant to para. 4 shall be transferred to another *Pensionskasse*, an institution (Article 5 no. 4) or an occupational group insurance (Article 93 VAG 2016) of an insurance undertaking licensed to operate the life assurance business within the domestic territory effective as of the next balance sheet date of the single-employer *Pensionskasse* concerned, provided that there is a need for transfer and a transfer is guaranteed.
- (4) The value of the parts of the assets to be transferred in the event of a cancellation shall be stipulated in the pension company contract and shall not fall below 100% of

the premium reserve to be established in accordance with the business plan plus 100% of the volatility reserve of the beneficiaries concerned.

- (5) The transfer of the vested amount (Article 5 paras. 1 and 1a BPG) of a beneficiary (entitled) following the termination of their employment relationship or after the employer's revocation shall be effected within six months after the request of the beneficiary (entitled) and include an adequate payment of interest. The amount of the vested amount shall be stipulated in the pension company contract.

Pension accounts

Article 18.

The *Pensionskasse* shall keep an account for each beneficiary, divided into employer's and employee's contributions. This account must contain all major data for each beneficiary and shall serve to calculate the premium reserve as well as the pension and vested amounts.

Information requirements

Article 19.

- (1) The employer and the beneficiaries shall immediately notify the *Pensionskasse* in writing of all circumstances relevant to the contributions, pension expectancies and pension benefits as well as any changes thereto to the extent as stipulated in the pension company contract. If this notification is not effected at all or not in due time, they shall bear any disadvantages resulting therefrom themselves. The details shall be stipulated in the pension company contract.

- (1a) The information pursuant to paras. 2 to 5b must

1. be regularly updated,
2. be formulated in a clear, concise and comprehensible manner,
3. avoid the use of jargon, where generally comprehensible language may be used,
4. be consistent and not misleading both substantively as well as with regard to the terminology used,
5. be designed in an easy-to-read format,
6. be written in the official language of the Member State, for which the social and employment law is decisive for the *Pensionskasse* commitment,
7. be made available free of charge on a durable medium or a website or upon request free of charge on paper.

- (2) The employer shall inform potential beneficiaries (entitled) prior to their inclusion in the *Pensionskasse* provision about

1. the designation of the *Pensionskasse* or institution pursuant to Article 5 no. 4, the Member State in which it is authorised or approved and the competent supervisory authority,
2. the content of the *Pensionskasse* contract in particular about the provisions of the *Pensionskasse* contract pursuant to Article 15 para. 3 nos. 1, 2, 3, 6, 7, 7a, 8 to 14 and 17, as well as
3. where further information is available from.

Provided that they are affected by this the employer shall inform the beneficiaries (entitled) and the *Pensionskasse* the beneficiaries (recipients) about every subsequent amendment of the *Pensionskasse* contract. The *Pensionskassen* and

the employer shall provide the beneficiaries (entitled and recipients) at the latter's request with a copy of the relevant parts of the Pensionskasse contract in relation to the respective commitment in paper form.

(2a) The Pensionskasse shall make the following general information to beneficiaries (entitled and recipients):

1. the company name of the Pensionskasse or institution pursuant to Article 5 no. 4, the Member State in which it is authorised or is registered and the competent supervisory authority;
2. the rights and obligations of the Pensionskasse, the employer as well as the beneficiaries (entitled and recipients);
3. the principles of the investment policy of the respective investment and risk-sharing group;
4. the type of financial risks to be borne by the beneficiaries (entitled and recipients);
5. a description of the type and extent of the guarantee by the Pensionskasse, or where there is no guarantee, a declaration to this effect;
6. the options which remain open as applicable in the occurrence of the benefit event;
7. the elective possibilities and modalities of a transfer pursuant to Article 5 para. 2 BPG;
8. the description of any options pursuant to Article 12 para 7 and Article 12a;
9. for commitments without an unlimited obligation of the employer to make an additional contribution pursuant to Article 5 no. 3
 - a. a description of the mechanisms that may be used to mitigate benefit entitlements,
 - b. a depiction of the performance of the respective Investment and risk-sharing group (IRG) or sub-IG or security-oriented IRG over the last five years,
 - c. the structure of the management costs.

(3) Pensionskassen shall inform the beneficiaries (entitled) annually with the reference date of 31 December of the preceding financial year about

1. The name of the beneficiary (entitled) as well as the pensionable age determined in the Pensionskasse contract,
2. Company and location of the head office of the Pensionskasse,
3. The IRG, sub-IG or security-oriented IRG, in which the Pensionskasse commitment is managed,
4. any guarantee that may exist as well as information about where further information may be obtained,
5. the performance of the contributions and capital,
6. administrative expenses withheld,
7. Acquired entitlements of its Pensionskasse commitment,
8. a forecast about the likely amount of pension benefits including a disclaimer that this forecast may deviate from the final amount of pension benefits,
9. the investment and performance of the investment and risk-sharing group,
10. All other relevant information for meeting the Pensionskasse commitment, provided that the underlying Pensionskasse commitment is not a performance-based commitment with an unlimited obligation of the employer to make an additional contribution.



Material changes compared to the information provided for the previous year must be clearly highlighted. The beneficiaries (entitled) are furthermore to be advised about other exercisable options, on which, information available upon request pursuant to Article 25a para. 3 and Article 30a para. 2 as well as where applicable information pursuant to Article 19b. The information shall be required to contain the designation “Leistungs-/Renteninformation” (“Performance/pension information”).

- (4) The Pensionskasse shall inform the beneficiaries (recipients) annually as at 31 December of the previous financial year about the capital performance and the administrative expenses withheld. Furthermore, the Pensionskasse shall inform the beneficiaries (recipients) about the investment and performance of the investment and risk-sharing group, as well as about all other information that is necessary to meet the Pensionskasse commitment, provided that the underlying Pensionskasse commitment is not a performance-based commitment with an unlimited obligation for the employer to make an additional contribution. Material changes compared to the information provided for the previous year must be clearly highlighted. In addition, the beneficiaries (recipients) must also be informed about any changes made to the pension benefits. The pension benefit shall only be allowed to be cut at the end of the third month after the month in which the information about a reduction in pension benefit was made available to the beneficiaries (recipients).
- (5) The Pensionskasse shall be required to inform:
1. the beneficiaries (entitled) when they reach the pensionable age stipulated in the Pensionskasse contract or upon request about the options for pay-out; and
 2. the beneficiaries (recipients) upon the occurrence of the benefit event about the acquired claim to benefits for old-age, surviving dependents or invalidity as well as the method of payments and options for pay-out of the pension.
- (5a) For that IRG, sub-IG or security-oriented IRG in which the pension company commitment is managed, the *Pensionskasse* shall provide to the beneficiaries at their request, within an adequate period and in printed form,
1. a figure for the proportion of total costs, which shall be based on a calculation of all costs with which the assets allocated to the IRG are debited by the *Pensionskasse* or third parties, as a percentage relative to the assets allocated to the IRG; and
 2. a representative performance comparison for no more than the last three financial years.
- (5b) Upon any change of the pension benefit, the *Pensionskasse* shall inform the beneficiaries (recipients) at their request, within an adequate period and in the form of a printed schematic diagram, of the individual causes and sources of results.
- (5c) The *Pensionskasse* shall make available to an employee interest group that is eligible to enter into collective agreements, at their request, those parts of the business plan that are relevant to benefits and that are necessary for verifying the details pursuant to paras. 3 to 5 and 5b in an individual case and at the request of a beneficiary.
- (6) The FMA shall determine by means of a Regulation the calculation method and scenarios for the forecast pursuant to para. 3 no. 8 as well as the content and the format of the information pursuant to paras. 2a, 3, 4 and 5, and in doing shall consider the interests of the beneficiaries (entitled and recipients), a good degree of

comparability and transparency as well as the economic interest in a function Pensionskasse sector.

Article 19b.

- (1) The *Pensionskasse* shall inform a beneficiary (entitled), survivor or insured person (Article 93 VAG 2016), at their request and on a durable data carrier as specified in Article 3(1) of Commission Delegated Regulation (EU) 2017/565, prior to a decision pursuant to Article 12 para. 7 or Article 12a para. 2 of this federal act or Article 5 para. 5, Article 5a para. 1, Article 6c para. 5 or Article 6e para. 1 BPG. The *Pensionskasse* shall record details of the information and decision of the beneficiary (entitled) and keep these records for at least seven years. The records shall be kept on a data carrier in order to be made immediately available to the FMA in the future as well.
- (2) Depending on the intended decision, the information pursuant to para. 1 shall include:
 1. for the beneficiary (entitled), the vested amount pursuant to Article 5 para. 1 BPG;
 2. the relevant parameters, which are defined in the business plan, of that IRG, sub-IG or security-oriented IRG to which the beneficiary (entitled) is assigned;
 3. the relevant parameters, which are defined in the business plan, of that IRG, sub-IG or security-oriented IRG in which the beneficiary (entitled) or insured person is to be included or to which they wish to change;
 4. when changing to a security-oriented IRG (Article 12a para. 2):
 - a) the expected amount of the guaranteed first monthly pension,
 - b) the modalities for valorising the guaranteed first monthly pension,
 - c) the investment strategy, as well as the opportunities and risks entailed in achieving yields,
 - d) the effects of a change from a Pensionskasse commitment with minimum yield guarantee into the security-oriented IRG,
 - e) the amount of the fee pursuant to Article 16a para. 4a for investing the assets of the security-oriented IRG, and
 - f) a particularly highlighted mention of the fact that beneficiaries (recipients) will remain in the security-oriented IRG on cancellation of the pension company contract;
 5. with regard to the option of choosing an IRG or sub-IG (Article 12 para. 7), the investment strategy, as well as the opportunities and risks entailed in achieving yields;
 6. prior to a decision pursuant to Article 6c para. 5 or Article 6e para. 1 BPG, a presentation of the differences between the occupational group insurance and a pension company commitment;
 7. based on the previously acquired pension expectancy or the vested amount pursuant to Article 6c para. 1 BPG and, on the assumption that the contributions or premiums previously paid by the employer and employee will remain the same, forecasts of the future development of the pension expectancy and the pension benefit in each case, and the calculations shall be based on at least three different assumptions as to yield development in addition to the assumed interest rate specified in the business plan.
- (3) The FMA shall determine by regulation the content and the structure of the information pursuant to paras. 1 and 2, as well as details concerning the calculations pursuant to para. 2 no. 7. The FMA shall in this regard take into consideration the

interest in a functioning pension company sector as well as the interest of the beneficiaries (entitled) in adequate, comparable and clearly intelligible information.

Regulation concerning Articles 19, 19b (Information Requirements Regulation for *Pensionskassen* – InfoV-PK; *Informationspflichtenverordnung Pensionskassen*; in German): <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008110>

Article 25a.

(4) repealed.

Advisory committee

Article 28.

- (1) The *Pensionskasse* may set up an advisory committee for each investment and risk sharing group.
- (2) The advisory committee shall have the following duties and rights:
 1. making proposals concerning the investment policy of the respective investment and risk sharing group;
 2. examining the financial statements and the report on activities of the respective investment and risk sharing group;
 3. rights to obtain information vis-à-vis the management board and the supervisory board concerning the business related to the investment and risk sharing group;
 4. the right to reporting and tabling a motion at the annual general meeting of the *Pensionskasse*;
 5. making proposals to the supervisory board to deal with certain items on the agenda and the right to appoint a representative with an advisory vote to the supervisory board meeting, in which said item on the agenda is dealt with.
- (3) The advisory committee shall consist of a number of persons to be determined by the supervisory board, who are to be appointed in equal parts by the management board of the *Pensionskasse* and the representatives of the beneficiaries in the supervisory board.
- (4) The advisory committee shall adopt its own rules of procedure. Recommendations and applications shall be resolved by a simple majority of the votes cast.

Article 30a.

- (2) The reports on activities of the investment and risk sharing groups as well as the audit reports on the reports on activities of the investment and risk sharing groups shall be immediately submitted to the members of the *Pensionskasse*'s supervisory board. The annual financial statement and the management report of the *Pensionskasse* as well as the statement of accounts for the respective investment and risk-sharing group shall be made available without delay upon request to the employers making contributions, the beneficiaries (entitled and recipients) or the competent members of the works council. There are no additional requirements to disclose or publish the reports on activities.

Protection of terms

Article 43.

- (1) Only *Pensionskassen* shall be allowed to use the term “*Pensionskasse*” or word combinations containing this term in their company name, in business transactions and for advertising purposes. Only institutions or *Pensionskassen* shall be allowed to use the term “*Einrichtung*” (institution) or “*Einrichtung der betrieblichen Altersversorgung*” (institution for occupational retirement provision) or word combinations containing this term in their company name, in business transactions and for advertising purposes.
- (2) Misleading advertisements that create the impression of the operation of a *Pensionskasse* or institution shall be prohibited.

Transfer

Article 48.

- (1) The transfer of pension expectancies and benefit obligations from direct guarantees or claims arising from the Salary Act (*Bezügegesetz*), Federal Law Gazette No. 273/1972, as amended by the federal act in Federal Law Gazette I No. 64/1997 or similar provisions under the law of a federal province, to a *Pensionskasse* as defined by the present federal act shall be subject to the following conditions:
 1. the remittance of the cover requirement plus the assumed interest to the *Pensionskasse* shall be effected no later than within ten years from the time of the transfer;
 2. the remittance of the cover requirement plus the assumed interest shall be effected annually at one tenth each at least; advance remittances shall be admissible;
 3. the obligation accepted by the employer to remit the cover requirement in instalments shall remain unaffected by:
 - a) the occurrence of the benefit event,
 - b) the loss of the claim, or
 - c) the termination of the employment relationship during the period of the transfer.

In the case of payment of a lump sum (Article 1 para. 2 PKG, Article 5 para. 4 BPG or Article 5 para. 2 AVRAG) or a transfer (Article 5 para. 2 nos. 1 to 4 BPG) of a vested amount, the employer shall remit the outstanding part of the cover requirement prematurely to the *Pensionskasse* by the time of the payment of the lump sum or the transfer at the latest.

- (2) If the employer does not comply with their obligation to remit the cover requirement pursuant to para. 1 because the conditions:
 1. of Article 6 para. 1 no. 2 BPG, or
 2. those for the institution of bankruptcy proceedings (Articles 66 and 67 of the Insolvency Act – IO; *Insolvenzordnung*) are fulfilled,
 the *Pensionskasse* shall adapt the pension expectancies and benefit obligations concerned accordingly. The adaptation shall be made in accordance with the formulas to be provided in the business plan. The employer shall prove the existence of the conditions as defined in Article 6 para. 1 no. 2 BPG vis-à-vis the *Pensionskasse*. Moreover, the discontinuance of the remittance of the cover



requirement by the employer presupposes that the employer has revoked their ongoing payment of contributions to the *Pensionskasse*.

- (3) If the employer does not comply with their obligation to remit the cover requirement due to the occurrence of one of the conditions mentioned under para. 2 no. 1 or 2, a claim from an employer's direct guarantee shall arise from the outstanding part of the cover requirement. The calculation of the claim shall be made in accordance with the bases for calculation which are employed by the *Pensionskasse* for this pension company contract. Section 3 BPG shall be applied to this claim vis-à-vis the employer. The other conditions appertaining to this direct guarantee shall result from the agreements between the employer and the beneficiaries on which the pension company contract is based.
- (4) The vested amount to which the beneficiary (entitled) is entitled vis-à-vis the employer shall be calculated from the claim pursuant to para. 3 in accordance with the following provisions:
 1. the vested amount shall correspond to the cash value of the pension expectancies which result from the claim pursuant to para. 3;
 2. the assumed rate of interest employed by the *Pensionskasse* shall form the basis for the calculation of the vested amount; however, it must not fall below 6%;
 3. the risk of invalidity shall not be taken into account for the calculation of the vested amount;
 4. the vested amount shall be limited to the amount of the outstanding part of the cover requirement.
- (5) If the vested amount for the direct guarantee calculated pursuant to para. 3 according to the provisions of Article 7 para. 3 no. 1 BPG exceeds the vested amount calculated pursuant to para. 4, interest having been paid at the assumed rate of interest (Article 14 para. 7 no. 6 EStG 1988), the higher value shall be valid.
- (6) In the case of a transfer pursuant to para. 1, employee's contributions paid can also be transferred, with:
 1. the employee only being allowed to demand said transfer prior to the transfer pursuant to para. 1, and
 2. the remittance of the employee's contributions having to be made in full at the time of the transfer pursuant to para. 1.
- (7) In the case of the transfer of pension expectancies and benefit obligations from a direct guarantee without a survivors' pension pursuant to para. 1, which had been granted before 1 July 1990, the *Pensionskasse* shall not be required to guarantee a survivors' pension, notwithstanding Article 1 para. 2. However, this shall only extend to those beneficiaries to whom said benefit had been guaranteed before 1 July 1990, and to those direct guarantees to which no major changes have been made since 1 July 1990 as well as in the course of the transfer. Such guarantees may only be changed after the transfer has been effected if they then comply with Article 1 para. 2. Paras. 1 to 5 shall be applied to the remittance of the cover requirement.
- (8) The transfer of the claims arising from life assurance or pension insurance for groups shall be admissible in accordance with para. 1, with the remittance having to be made in full at the time of the transfer.