



## Federal Act on the Establishment, Administration and Supervision of *Pensionskassen*

(*Pensionskassengesetz – PKG; Pensionskassen Act*)

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Abbreviations and references to legislation used in this text:

Aktiengesetz (AktG)	Stock Corporation Act
Allgemeines Sozialversicherungsgesetz (ASVG)	General Social Insurance Act
Arbeitsverfassungsgesetz (ArbVG)	Law Governing the Employment System
Arbeitsvertragsrechtsanpassungsgesetz (AVRAG)	Employment Contract Adaptation Act
Bankwesengesetz (BWG)	Banking Act
Betriebspensionsgesetz (BPG)	Company Pension Act
Bundesbezügegesetz (BBG)	Federal Salary Act
Bundes-Verfassungsgesetz (B-VG)	Federal Constitution Act
Einkommenssteuergesetz (EStG)	Income Tax Act
Exekutionsordnung (EO)	Execution Act
Finanzmarktaufsichtsänderungsgesetz 2005 (FMA-ÄG 2005)	Financial Market Authority Amendment Act
Finanzmarktaufsichtsbehördengesetz (FMABG)	Financial Market Authority Act
Genossenschaftsrechtsänderungsgesetz 2006 (GenRÄG 2006)	Cooperative Law Amendment Act 2006
Gesetz über Gesellschaften mit beschränkter Haftung (GmbHG)	Act on Limited Liability Companies
Gewerbeordnung (GewO)	Trade Code
Handelsgesetzbuch (HGB)	Commercial Code
Investmentfondsgesetz (InvFG)	Investment Fund Act
Immobilien-Investmentfondsgesetz (ImmoInvFG)	Real Estate Investment Fund Act
Konkursordnung (KO)	Bankruptcy Code
Pensionskassengesetz (PKG)	<i>Pensionskassen Act</i>
Pensionskassenvorsorgegesetz (PKVG)	Pension Fund Provision Act
Versicherungsaufsichtsgesetz (VAG)	Insurance Supervision Act
Vertragsbedienstetengesetz (VBG)	Contractual Employees Act
Verwaltungsstrafgesetz (VStG)	Administrative Penalty Act
Verwaltungsvollstreckungsgesetz (VVG)	Administrative Enforcement Act
Zustellgesetz (ZustellG)	Process of Service Act

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## General provisions

**Article 1.** (1) A *Pensionskasse* is an enterprise which is entitled to carry out *Pensionskasse* business in accordance with the present Federal Act.

(2) *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* 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;
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 consumer price index 1996 issued by the federal agency "Statistik Österreich" 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 consumer price index 1996 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.

(3) *Pensionskassen* must not operate any business that is not connected with the administration of *Pensionskassen*.

(4) The provisions of the present Federal Act shall not apply to companies operating in the contractual insurance business with the exception of Article 43, provided that they carry out business similar to the *Pensionskasse* business as part of their characteristic business.

(5) For pension commitments made to persons who are subject to the *Bundesbezügegesetz* (BBG; Federal Salary Act) or similar provisions under the law of a federal province, the PKG shall be applied with the following deviations:

1. the persons named under Article 1 BBG or a similar provision under the law of a federal province shall supersede the employee;
2. the federal government or another territorial authority shall supersede the employer;
3. the end of the claim to a salary in accordance with the BBG or a similar provision under the law of a federal province shall supersede the termination of the employment relationship;
4. Article 7 *Pensionskassenvorsorgengesetz* (PKVG; Pension Fund Provision Act) or a similar provision under the law of a federal province shall supersede Article 5 of the *Betriebspensionengesetz* (BPG; Company Pension Act);

(6) With regard to *Pensionskasse* commitments pursuant to Article 78a of the *Vertragsbedienstetengesetz* (VBG; Contractual Employees Act) 1948, Federal Law Gazette no. 86, the Austrian Federation of Trade Unions – Trade Union Public Service shall supersede the works council in Article 27 para. 5 and Article 29 para. 3, and in Article 27 para. 5 no. 3 the

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collective agreement shall supersede the shop agreement pursuant to Article 3 para. 1 BPG.

(7) For beneficiaries (entitled) pursuant to Article 5 no. 1 lit. a sublit. cc, the federal government shall supersede the employer.

(8) For pension commitments made to employees under public law, the PKG shall be applied with the following deviations:

1. the beneficiary (entitled) pursuant to Article 5 no. 1 lit. a sublit. dd shall supersede the employee;
2. the territorial authority with which the employment contract under public law exists shall supersede the employer;
3. the dissolution of the public employment contract shall supersede the termination of the employment relationship;
4. in Article 15 para. 3a the term “public employment” shall supersede the term “employment relationship”;
5. in Article 21 para. 8 and Article 30a para. 2 the right of the works council to obtain information shall be devolved to the staff representation.

**Article 2.** (1) The *Pensionskasse* shall operate the *Pensionskasse* business in the interests of the beneficiaries and shall, in this respect, in particular take the security, profitability and the need for liquid funds as well as an appropriate mix and diversification of the assets into account. The *Pensionskasse* shall guarantee a minimum yield pursuant to paras 2 to 4 for every investment and risk sharing group (*Pensionskasse* commitment with minimum yield guarantee). The *Pensionskasse*'s guarantee of a minimum yield may be excluded in the *Pensionskasse* contract (*Pensionskasse* commitment without minimum yield guarantee). The exclusion of the minimum yield must be agreed in the collective agreement, the shop agreement or the agreement according to the contract samples pursuant to the BPG as well as in the declaration pursuant to Article 3 para. 2 PKVG or a similar provision under the law of a federal province. In the case of *Pensionskasse* commitments based on performance with the employer's unlimited obligation to make an additional contribution, the agreement on the exclusion of the minimum yield in the collective agreement, the shop agreement or the agreement according to the contract samples pursuant to the BPG shall not be required; if an employer does not meet his obligation to make an additional contribution, the *Pensionskasse* must again guarantee a minimum yield from that time onwards. *Pensionskasse* commitments with minimum yield guarantee and *Pensionskasse* commitments without minimum yield guarantee may only be managed jointly in one investment and risk sharing group if management in separate investment and risk sharing groups pursuant to the provisions set forth in Article 12 paras 2 to 5 is not possible, or if it is proven to the FMA that the interests of the beneficiaries are not impaired and the continued compliance with the obligations under the *Pensionskasse* contracts can be expected in the future too.

(2) If the annual investment income less the interest earnings pursuant to Article 48 (the investment surplus shown in the income statement of an investment and risk sharing group less interest earnings pursuant to Article 48) based on the assets relevant to the calculation of the minimum yield of an investment and risk sharing group (total amount of the invested assets shown in the statement of net assets of an investment and risk sharing group less liabilities from the purchase of assets), on the average of the past 60 months, does not reach at least 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, the difference has to be determined. Upon the initial assessment of the deficit, the beneficiary's (recipient's) pension shall be credited with the superannuation of the deficit in the following year from the



*Pensionskasse's own funds.*

(3) After the initial determination of a deficit a reference value shall be determined in addition to the calculation pursuant to para. 2 in the following years and compared to the deficit, with the calculation having to be made pursuant to para. 2. In this context, the calculation period for the determination of the reference value shall be extended from 60 months by 12 months for each following year. The pension resulting from the superannuation of the higher of the two values shall be credited to the beneficiary (recipient) in the following year, paid out of the *Pensionskasse's* own funds. This additional calculation shall be continued annually until no positive reference value results there from for the first time. If a deficit pursuant to para. 2 is determined again in the following years, para. 3 shall be applied correspondingly.

(4) For the determination of the minimum yield, the assets allocated to the beneficiary on the respective balance-sheet date shall be used. The FMA may determine by regulation the necessary modalities of calculation for the enforcement of paras 2 and 3, in particular also with respect to target value and the actual value, the calculation of the difference pursuant to para. 2, the comparative calculation pursuant to para. 3 as well as the credit to the accounts of beneficiaries (recipients), while having to take recognised actuarial principles, the national economic interest in properly functioning *Pensionskassen* as well as the interests of the beneficiaries into account.

### **Single-employer *Pensionskassen***

**Article 3.** (1) Single-employer *Pensionskassen* shall be entitled to carry out *Pensionskasse* business for the beneficiaries of one employer.

(2) Only the employer paying contributions and employees who are employed with him and are beneficiaries (entitled) may hold an interest in the share capital of single-employer *Pensionskassen*. The articles of association of the single-employer *Pensionskasse* shall provide provisions concerning the transfer of shares.

(3) Several employers who are part of a group pursuant to Article 15 of the *Aktiengesetz* (AktG; Stock Corporation Act) or pursuant to Article 115 of the *Gesetz über Gesellschaften mit beschränkter Haftung* (GmbHG; Act on Limited Liability Companies) shall be equivalent to an employer as defined in para. 1.

(4) The following shall also be equivalent to a group as defined in para. 3:

1. The federal government including:
  - a) those companies in which the federal government holds a direct or indirect majority capital interest established after 1 January 1990; however, in the case of an indirect majority capital interest of the federal government in a company, this shall only apply if the federal government's indirect majority interest in the company concerned amounts to 100 per cent; as well as
  - b) those foundations, institutions and funds which are subject to the control of the Austrian Court of Audit pursuant to Article 126b para. 1 of the *Bundes-Verfassungsgesetz* (B-VG; Federal Constitution Act);
2. the bodies under public law established either by a Federal Act or by virtue of a Federal Act in order to represent the interests of its members.



## Multi-employer Pensionskassen

**Article 4.** Multi-employer *Pensionskassen* shall be entitled to carry out *Pensionskasse* business for the beneficiaries of several employers.

### Definition of terms

**Article 5.** As defined in the present Federal Act:

1. Beneficiaries (entitled) shall mean those natural persons who:

a) based on

aa) an existing or earlier employment relationship, or

bb) Article 1 para. 2 BPG, or

cc) Article 78a para. 1 no. 2 VBG 1948, or

dd) an employment contract under public law for which the applicability of the provisions of the BPG relevant to *Pensionskassen* has been regulated by law

are entitled to future benefits in accordance with the *Pensionskasse* contract due to contributions having been paid by the employer and possibly even own contributions, or

b) as employers rendered a participation in the *Pensionskasse* system possible for the employees of their companies and are paying or paid *Pensionskasse* contributions for themselves, or

c) as members of representative bodies of legal persons under private law have income from this activity other than from employment pursuant to Article 25 of the *Einkommenssteuergesetz* (EStG; Income Tax Law) 1988 if the employer is the corporate body of a single-employer *Pensionskasse* or has joined a multi-employer *Pensionskasse* for the benefit of his employees;

d) based on the BBG or similar provisions under the law of a federal province are entitled to future benefits in accordance with the PKVG or similar provisions under the law of a federal province;

e) based on an existing employment relationship or as members of representative bodies of legal persons under private law have income from employment pursuant to Article 25 *Einkommenssteuergesetz* (EStG; Income Tax Act) 1988 from this activity if in the course of the termination of the employment relationship or public employment a direct guarantee pursuant to Article 48 is transferred to a *Pensionskasse*;

2. Beneficiaries (recipients) shall mean those natural persons whom the *Pensionskasse* in accordance with the *Pensionskasse* contract is already obliged to pay the following pensions:

a) own pensions (in particular old-age and invalidity pensions), or

b) survivors' pensions (widower's, widow's and orphan's pensions) following the demise of a beneficiary (entitled) or beneficiary of an own pension;

2a. Potential beneficiaries (entitled) shall mean those natural persons who are authorised to enrol for a pension company commitment;

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3. Obligation to make an additional contribution: the obligation of the employer
  - a) to make up for unforeseen shortfalls which arose due to incorrect assumptions in the bases of calculation (Article 20 para. 2 no. 3) no later than within ten years; the remittance of the contributions shall be made annually and amount to at least one tenth of the original shortfall;
  - b) to immediately make up for other shortfalls by making one-time contributions.

The unlimited obligation to make an additional contribution is fulfilled if each shortfall pursuant to lit. a und b is made up for.

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;

4a. Member state shall mean every state belonging to the European Economic Area;

5. Home Member State shall mean the Member State in which the institution is entered a national register or is authorised, and in which it has its central headquarters;

6. Host member state shall mean the member state whose social and labour law relevant to the field of occupational retirement provision is applicable to the relationship between the employer and the employees;

7. Location of the central headquarters shall mean the location at which the most important strategic decisions;

8. durable medium: any medium enabling a beneficiary (entitled or recipient) to store information addressed personally provided to them in such a way that they can subsequently access such information for a period of time adequate for its purpose and which allows the unchanged reproduction of the information.

### Legal form

**Article 6.** (1) A *Pensionskasse* shall only be allowed to be operated in the legal form of an *Aktiengesellschaft* (joint stock company) with the location of the central headquarters located in Austria. The shares must be registered shares. If the management board of the *Pensionskasse* learns about the transfer of shares, it shall inform the supervisory board thereof in the next meeting.

(2) The statutory provisions applicable to joint stock companies shall be applied to *Pensionskassen*, unless the present Federal Act stipulates otherwise.

### Provisions on ownership

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**Article 6a.** (1) Whoever intends to directly or indirectly hold at least 10 per cent of the share capital of a *Pensionskasse* shall notify the FMA thereof in advance in writing stating the amount of this interest.

(2) Whoever intends to increase his interest of at least 10 per cent of a *Pensionskasse* in such a way that the limits of 20 per cent, 33 per cent or 50 per cent of the capital are reached or exceeded, or whoever intends to turn the *Pensionskasse* into his subsidiary, shall notify the FMA thereof in advance in writing.

(3) The FMA shall prohibit the intended acquisition of an interest within three months after the notification pursuant to paras 1 or 2 if the conditions stipulated under Article 9 nos. 2 and 3 are not fulfilled. If the acquisition of an interest is not prohibited, the FMA shall be entitled to prescribe a deadline within which the intentions mentioned under paras 1 and 2 may be realised.

(4) The reporting obligations pursuant to paras 1 and 2 shall apply in the same way to the intended renunciation of an interest as defined in para. 1 and for the intended reduction of the interests in a *Pensionskasse* to a percentage below the respective limits stipulated under para. 2.

(5) If there is a danger that the influence exerted by owners holding a direct or indirect interest in the *Pensionskasse* amounting to more than 10 per cent does not fulfil the requirements that are in the interest of a sound and prudent management of the *Pensionskasse*, the FMA shall take any measures necessary to avert said danger or end such a situation. Such measures shall in particular be:

1. measures pursuant to Article 33 para. 4, or
2. sanctions against the members of the management board pursuant to Article 33 para. 6 no. 2, or
3. the filing of an application for an order to suspend the voting rights for those shares which are held by the shareholders concerned at the court of first instance which exercises jurisdiction in commercial matters and is competent for the head office of the *Pensionskasse*;
  - a) for the duration of said danger, with its end having to be determined by the court, or
  - b) until the acquisition of said shares by third parties following the decision not to prohibit it pursuant to para. 3;

with the court ruling in non-litigious civil proceedings.

(6) The FMA shall take appropriate measures, in particular pursuant to para. 5 nos. 1 and 2, against the shareholders named under paras 1 and 2 if they do not meet their notification obligations or if they acquire an interest contrary to a prohibition pursuant to para. 3 or outside a deadline fixed pursuant to this provision.

The voting rights for those shares held by the shareholders concerned shall be suspended:



1. until the FMA determines that the acquisition of the interest pursuant to para. 3 will not be prohibited, or
2. until the FMA determines that the reason for the prohibition decreed no longer exists.

(7) If a court orders the suspension of voting rights pursuant to para. 5, it shall simultaneously appoint a *Treuhänder* (trustee) who shall meet the requirements pursuant to Article 9 no. 2 and transfer the voting rights to him. In the case of para. 6, the FMA shall immediately apply for the appointment of a *Treuhänder* at the competent court pursuant to para. 5 as soon as it learns that the voting rights have been suspended. The *Treuhänder* shall be entitled to reimbursement for his expenses as well as to remuneration for his activity, the amount of which shall be determined by the court. The *Pensionskasse* and the shareholders concerned shall be jointly and severally liable for it. The obligors shall be entitled to appeal against decisions determining the amount of the *Treuhänder's* remuneration as well as the expenses he shall be reimbursed for by means of a *Rekurs* (appeal against decisions of a court of first or second instance). No further appeal shall be possible against the decision of the *Oberlandesgericht* (regional court of appeal).

(8) Article 133 of the *Börsegesetz 2018* (BörseG 2018; Stock Exchange Act 2018), published in Federal Law Gazette I No. 107/2017 shall be applied to the determination of the voting rights pursuant to paras 1, 2 and 4.

### Own funds

**Article 7.** (1) To ensure that it continues to function properly, every *Pensionskasse* must at any time hold such own funds as correspond to its risk. They shall at all times amount to at least 1 per cent of the total value of the premium reserve of all investment and risk sharing groups shown in the *Pensionskasse's* balance sheet as of the balance-sheet date less those parts of the liability covered by insurance pursuant to Article 20 para. 1.

(2) Own funds as defined in para. 1 shall mean:

1. the paid-up share capital;
2. the capital reserves;
3. the revenue reserves;
4. the net profit for the year not dedicated to distribution;
5. the untaxed reserves, and
6. supplementary capital pursuant to para. 5.

A net loss for the year shall be deducted from the own funds.

(2a) Every *Pensionskasse* shall hold own funds amounting to at least 3.3 per cent of the total value of the premium reserve allocated to the beneficiaries (recipients) of the security-oriented investment and risk sharing group as shown in the *Pensionskasse's* balance sheet as of the balance-sheet date, in addition to the own funds mentioned under para. 1 for the fulfilment of the obligation pursuant to Article 12a para. 1 nos. 2 to 4.



(3) To cover the obligations arising from the minimum yield pursuant to Article 2 paras 2 and 3, every *Pensionskasse* shall set aside a reserve (minimum yield reserve), in addition to the own funds mentioned under para. 1, to which at least 0.45 per cent of the total value of the premium reserve with minimum yield guarantee of all investment and risk sharing groups shown in the *Pensionskasse's* balance sheet as of the balance-sheet date shall be allocated every year until 3 per cent of the total value of the premium reserve with minimum yield guarantee of all investment and risk sharing groups shown in the *Pensionskasse's* balance sheet as of the balance-sheet date are reached. Those parts of a reserve to which funds from the minimum yield reserve have been transferred and which are not used for obligations arising from the minimum yield shall be re-allocated to the minimum yield reserve. Inasmuch as the minimum yield reserve does not exceed the legal requirement, it may only be used for obligations arising from the minimum yield pursuant to Article 2 paras 2 and 3.

(4) The paid-up share capital of a multi-employer *Pensionskasse* shall amount to at least EUR 5 million.

(5) Supplementary capital shall mean those paid-up own funds:

1. which, as agreed upon, are made available to the *Pensionskasse* for at least eight years and which cannot be called in by the creditor prior to the expiration of said deadline; a preliminary call-in by the *Pensionskasse* shall only be admissible in accordance with no. 5;
2. for which interest may be paid if covered by the annual surplus (prior to changes in reserves);
3. which may be repaid prior to liquidation only by deducting the net losses accrued during its term on a pro-rata basis;
4. which are subordinated pursuant to Article 45 para. 4 of the *Bankwesengesetz* (BWG; Banking Act);
5. whose residual maturity amounts to at least three years; the *Pensionskasse* shall be entitled to call it in effective prior to the expiration of the residual maturity of three years without a call-in period if this is contractually admissible and the *Pensionskasse* procures own funds in the same amount and of at least the same quality prior thereto;
6. which is creditable by up to 100 per cent of the own funds pursuant to para. 2 nos. 1 to 5.

(6) Para. 1 shall not be applied to that part of the premium reserve without minimum yield guarantee of all investment and risk sharing groups shown in the *Pensionskasse's* balance sheet as of the balance-sheet date that were set aside for *Pensionskasse* commitments with the employer's unlimited obligation to make an additional contribution. If an employer does not fulfil his obligation to make an additional contribution, the *Pensionskasse* shall again be obliged to comply with the provisions of para. 1 from that time onwards.

(7) Paras. 1, 3 and 9 shall not apply to those parts of the premium reserve with minimum yield guarantee of all investment and risk sharing groups shown in the *Pensionskasse's* balance



sheet as of the balance-sheet date that were set aside for *Pensionskasse* commitments with the employer's unlimited obligation to make an additional contribution, provided that the obligation to make an additional contribution also includes the obligation pursuant to Article 2 paras 2 and 3 and the *Pensionskasse* concerned notifies the FMA of the existence of such an obligation to make an additional contribution and provides substantiating documents. If an employer does not fulfil his obligation to make an additional contribution, the *Pensionskasse* shall again be obliged to comply with the provisions of paras 1, 3 and 9 from that time onwards.

(8) If the own funds pursuant to para. 2 exceed the requirement pursuant to para. 1, the part exceeding the own funds may be credited to the minimum yield reserve required pursuant to paras 3 and 9.

(9) Notwithstanding Article 7 para. 3, every *Pensionskasse* shall immediately set aside a reserve (minimum yield reserve) for *Pensionskasse* commitments with minimum yield guarantee managed as part of an activity pursuant to Article 11a para. 1 to cover the obligations arising from the minimum yield pursuant to Article 2 paras 2 and 3 in addition to the own funds mentioned under para. 1 to the extent of 3 per cent of the total value of the premium reserve with minimum yield guarantee of all *Pensionskasse* commitments managed as part of an activity pursuant to Article 11a para. 1.

### Licence

**Article 8.** (1) The operation of a *Pensionskasse* shall require a licence issued by the FMA. The licence shall be issued in writing, otherwise being null and void; it can be granted on conditions and with stipulations.

(2) The application for the issue of a licence shall include all details necessary for the determination of the relevant facts, in particular concerning:

1. the location of the central headquarters;
2. the articles of association;
3. the shareholders;
4. the equity capital at the management board's discretionary disposal within the domestic territory;
5. the designated members of the management board and their qualifications to operate the *Pensionskasse*;
6. the number of beneficiaries for whom the *Pensionskasse* plans to carry out its activities;
7. *repealed*;
8. in the case of single-employer *Pensionskassen*, the shop agreement concerning the establishment of a single-employer *Pensionskasse* as well as any and all agreements pursuant to the contract samples.

(3) The business activities may only be commenced after the business plan (Article 20 para. 4) has been approved.



(4) The FMA shall maintain a register, in which all *Pensionskassen* are listed. If the *Pensionskasse* conducts cross-border activities in Member States by way of the freedom to provide services or by means of a branch, the Member States in which it is active must also be entered.

**Article 9.** The licence shall be granted if:

1. neither the articles of association nor the business plan contain provisions which do not guarantee the fulfilment of the *Pensionskasse's* obligations or the proper administration of the *Pensionskasse*;
2. the shareholders who hold at least 10 per cent of the share capital of the *Pensionskasse* fulfil the requirements that are in the interest of a sound and prudent management of the *Pensionskasse*;
3. the structure of a group to which shareholders belong who hold at least 10 per cent of the share capital of the *Pensionskasse* does not prevent effective supervision of the *Pensionskasse*;
4. the *Pensionskasse* is intended for a group of at least 1,000 beneficiaries;
5. the share capital
  - a) for single-employer *Pensionskassen* pursuant to Article 7 AktG and
  - b) for multi-employer *Pensionskassen* pursuant to Article 7 para. 4 PKG is not burdened and is at the management board's unlimited and discretionary disposal within the domestic territory;
6. the location of the central headquarters of the *Pensionskasse* is in Austria;
7. the *Pensionskasse* is operated in the legal form of a joint stock company;
8. *repealed*;
9. the requirements set forth in Article 11f are met;
10. bankruptcy proceedings were not opened against the assets of any of the members of the management board or any other legal entity than a natural person, upon the business activities of which a member of the management board holds or held significant influence, unless during the course of the bankruptcy proceedings a reorganisation plan was successfully concluded and that was fulfilled;
11. the members of the management board possess the professional qualifications, the qualities and the experience required for the operation of the *Pensionskasse*; the professional qualification of a member of the management board presupposes adequate theoretical and practical knowledge in the business applied for pursuant to Article 1 para. 2 as well as management experience; professional qualification to manage a:
  - a) multi-employer *Pensionskasse* shall be presumed if at least three years of experience in an executive position in the pension fund, banking or insurance



sector can be proven;

- b) single-employer *Pensionskasse* shall also be presumed if an executive position in the field of human resources or financing or in similar fields of the employer can be proven;

12. *repealed (Federal Law Gazette I no. 54/2012);*
13. at least one member of the management board has a good command of the German language;
14. the *Pensionskasse* consists of at least two management board members, and the articles of association rule out any power of sole representation, a general managing power of attorney conferred on a single person (Einzelprokura) or a limited commercial authority (Handungsvollmacht) for the entire business activities;
15. no management board member of a multi-employer *Pensionskasse* practices a different main (professional) occupation outside the *Pensionskasse*, banking or insurance sector as well as pension consultancy services.

**Article 10.** (1) The FMA shall revoke the licence:

1. if the business activities to which it refers were not taken up within two years after the issue of the licence;
2. if the *Pensionskasse* is not carrying out activities for at least 1,000 beneficiaries within two years after the issue of the licence;
3. if it has been obtained by making incorrect statements or effecting deceptive acts or has been otherwise obtained surreptitiously;
4. if the *Pensionskasse* does not fulfil its obligations vis-à-vis the beneficiaries;
5. if the conditions stipulated under Article 33 para. 6 no. 3 have been fulfilled.

(2) An administrative decision (*Bescheid*) revoking a licence shall have the same effect under company law as a dissolution resolution of the *Pensionskasse*, unless the *Pensionskasse* business has been given up as an activity of the company and the company has been changed in accordance with Article 42 within three months after legal validity of the administrative decision. One official copy of the administrative decision (*Bescheid*) shall be served by the FMA on the registration court; the administrative decision shall be entered in the commercial register.

(3) At the FMA's request, the court shall appoint liquidators if the persons otherwise appointed for the winding-up cannot guarantee that the winding-up will be duly carried out. If the FMA takes the view that the persons appointed for the winding-up cannot guarantee that the winding-up will be duly carried out, it shall apply for the appointment of suitable liquidators at the court of first instance which exercises jurisdiction in commercial matters and is competent for the head office of the *Pensionskasse*; the court shall rule in nonlitigious civil proceedings.

**Article 11.** (1) The licence shall expire:

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



1. upon its voluntary relinquishment;
2. upon the termination of the winding-up of the *Pensionskasse*;
3. upon the institution of bankruptcy proceedings against the *Pensionskasse's* assets;
4. upon the entry of the merger of the *Pensionskasse* or the entry of the transformation of a *Pensionskasse* into another *Pensionskasse* in the commercial register;
5. upon occurrence of a condition requiring dissolution (Article 8 para. 1);
6. upon the entry of the European Company (SE) in the register of the new registration country.

(2) The FMA shall state the expiry of the licence by means of an administrative decision (*Bescheid*). Article 10 paras 2 and 3 shall apply correspondingly.

(3) The voluntary relinquishment of the licence pursuant to para. 1 no. 1 shall only be effective if it is made in writing and all pension fund business has been wound up first.

#### **Austrian *Pensionskassen* in the member states**

**Article 11a.** (1) A *Pensionskasse* may perform its activities in the member states under the freedom to provide services or through a branch.

(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:

1. the member state in whose territory the activity is to be performed;
2. the name and location of the central headquarters of the employer;
3. 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:

1. the member state in whose territory the branch is to be established;
2. 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;
3. 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.

(4) If the FMA, given the project plan, has no reason to doubt the adequacy of the administrative structure and the financial situation of the *Pensionskasse* as well as the necessary reliability and professional qualification of the management staff in relation to the project planned in the host member state, it shall submit the details pursuant to paras 2 and 3 to the host member state's competent authority within three months at the latest after receipt of all details; the *Pensionskasse* shall be immediately notified of the submission of the details. If the conditions for the submission are not fulfilled, the FMA shall declare this vis-à-vis the



*Pensionskasse* by means of an administrative decision (*Bescheid*) within the time limit stipulated above.

(5) The *Pensionskasse* shall notify the FMA in writing of any change to the conditions of the details pursuant to paras 2 and 3 at least one month prior to the execution of said change. The FMA shall submit these details to the competent authority of the host member state within three months.

(6) The FMA shall notify the *Pensionskasse* of those relevant labour and social law provisions in the field of occupational retirement provision which the *Pensionskasse* has to comply with as well as of those provisions which must be applied pursuant to Article 11(6) of Directive (EU) 2016/2341 as soon as it has received said information from the competent authority of the host member state.

(7) A *Pensionskasse* may perform its activities in the member state concerned under the freedom to provide services or through a branch after receipt of the notification pursuant to para. 6. In the event that the competent authority of the member state in which activities are to be conducted does not respond, the *Pensionskasse* shall be allowed to commence its activities following the expiry of a period of six weeks after submission of the details by the FMA pursuant to paras. 3 or 4 subject to adherence to the relevant labour and social law provisions in the field of occupational retirement provision and all provisions which must be applied pursuant to Article 11 (6) of Directive (EU) 2016/2341.

(8) *Repealed*

### Institutions from member states in Austria

**Article 11b.** (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 *Pensionskasse* 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 *Pensionskasse* business, 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 *Pensionskasse* commitment is based. The agreement on another domestic place of jurisdiction shall be admissible, unless otherwise stipulated. The *Pensionskasse* 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 BPG, as well as in the declaration pursuant to Article 3 para. 2 PKVG 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.

### **Transfers to Austrian *Pensionskassen***

**Article 11c.** (1) If a *Pensionskasse* intends to partially or fully take over the administration of a commitment pursuant to Article 15 para. 1 no. 2 from an institution pursuant to Article 5 no. 4, then it shall notify the FMA prior to conclusion of the *Pensionskasse* contract about the following:

1. the written agreement between the *Pensionskasse* and the institution pursuant to



Article 5 no. 4 about the conditions of the transfer;

2. the company name and the location of the central headquarters of the institution pursuant to Article 5 para. 4 as well as the Member State in which the institution pursuant to Article 5 no. 4 is entered in the register or approved;
3. the company name and location of the central headquarters of the employer;
4. the main characteristics for the commitment to be administered for this employer pursuant to Article 15 para. 1 no. 2;
5. The description of the liabilities to be transferred or technical provisions and other rights and obligations as well as the corresponding assets or assets held in cash;
6. proof of prior approval pursuant to Article 12 (3) of Directive (EU) 2016/2341;
7. in the case of the *Pensionskasse* conducting cross-border activity those Member States, whose labour and social law provisions shall be relevant for the commitment pursuant to Article 15 para. 1 no. 2.

(2) Once all the information has been received pursuant to para. 1 the FMA shall check its completeness and thereafter shall submit it without delay to the competent authority of the home Member State of the institution pursuant to Article 5 no. 4.

(3) The FMA shall authorise the transfer of the commitment pursuant to Article 15 para. 1 no. 2 within three months once all information pursuant to para. 1 as well as following the approval of the competent authority in the home Member State of the institution pursuant to Article 5 no. 4, if

1. the administrative structure, the financial position and the personal reputation as well as the professional qualification and professional experience of the members of the management board with regard to the taking over of the commitment pursuant to Article 15 para. 1 no. 2;
2. the long-term interests of beneficiaries (entitled and recipients) of the *Pensionskasse* as well as beneficiaries (entitled and recipients) covered by the taking over of the commitment pursuant to Article 15 para. 1 no. 2 are appropriately safeguarded;
3. the technical provisions for the affected investment and risk-sharing group, with the exception of shortfalls pursuant to Article 5 no. 3, Article 20 para. 3d and Article 24a para. 8 as well as remittances still to be made pursuant to Article 48 para. 1 are covered in full, provided that a cross-border activity is associated with the taking over of the commitment pursuant to Article 15 para. 1 no. 2;
4. the assets to be transferred are sufficient and appropriate for covering the liabilities, technical provisions and other obligations and claims to be transferred in accordance with the provisions of the business plan, the investment rules as well as in accordance with the risk management guidelines.

(4) The FMA shall submit the approval or refusal pursuant to para. 3 from the competent authority of the home member state of the institutions pursuant to Article 5 no. 4 within two weeks of receiving it to the *Pensionskasse*.

(5) The FMA shall forward the information that it has received from the competent authority of the home member state pursuant to Article 12 (11) second subparagraph of Directive (EU) 2016/2341 to the *Pensionskasse* within one week of receipt.

(6) The *Pensionskasse* shall be allowed to perform the administration of the commitment



pursuant to Article 15 para. 1 no. 2:

1. following receipt of the approval pursuant to para. 3 or
2. provided that it has neither received the approval or refusal pursuant to para. 3 within three months and three weeks.

(7) Provided that a cross-border activity is associated with the transferring of the commitment pursuant to Article 15 para. 1 no. 2, then Article 11a paras. 6 and 7 shall apply.

(8) The assets allocated to the investment and risk-sharing group shall not be allowed to be encumbered with management costs that are associated with the transfer pursuant to para. 1.

### Transfers to Institutions in Member States

**Article 11d.** (1) Following receipt of a submission pursuant to Article 12 (6) of Regulation (EU) 2016/2341 from the competent authority of the home member state of an institution pursuant to Article 5 no. 4 about the intended transfer of a *Pensionskasse* commitment, the FMA shall approve the submission about the transfer within eight weeks of its receipt, if

1. Article 17 paras. 1 to 2 have been fulfilled;
2. the long-term interests of those beneficiaries (entitled and recipients) are appropriately safeguarded, who are in the investment and risk-sharing group affected by the transferring of the *Pensionskasse* commitment;
3. the individual claims of the beneficiaries (entitled and recipients) affected by the transfer in the receiving institution pursuant to Article 5 no. 4 are at least as high following the transfer;
4. the assets items to be transferred pursuant to Article 17 para. 4 are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and claims to be transferred in accordance with the provisions pursuant to the relevant provisions of the home Member State of the institution pursuant to Article 5 no. 4.

(2) The FMA shall inform the competent authority of the home Member State of the institution pursuant to Article 5 no. 4 about the outcome of the procedure pursuant to para. 1 within the deadline prescribed therein.

(3) Having received the approval as defined in Article 12 (11) of Directive (EU) 2016/2341 from the competent authority of the home member state of the institution pursuant to Article 5 no. 4 the FMA shall transmit the information pursuant to Article 11b para. 4 to this authority within four weeks.

(4) Article 11b paras. 6, 7 and 9 shall apply.

(5) The assets of the beneficiaries (entitled and recipients) remaining in the investment and risk-sharing group allocated to the investment and risk-sharing group shall not be allowed to be encumbered with management costs, that are associated with the transfer pursuant to para. 1.

### Governance requirements

**Article 11e.** (1) The *Pensionskasse* must have in place an effective system of governance which provides for sound and prudent management of the *Pensionskasse* and proportionate to the size, nature, scale and complexity of the activities of the *Pensionskasse*.

(2) The governance system shall include an adequate and transparent organisational structure



with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information.

(3) The *Pensionskasse* shall draw up and implement written guidelines for:

1. risk management,
2. the internal audit function,
3. the actuarial function and
4. as applicable outsourcing to third parties.

Such guidelines shall be required to be adapted where there are material changes, and are to be reviewed at least every three years.

(4) The *Pensionskasse* must have an effective internal control system in place which shall include administrative and accounting procedures, as well as an internal control framework and guarantee appropriate reporting arrangements.

(5) The *Pensionskasse* shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. Appropriate and proportionate systems, resources and procedures are to be applied for that purpose, and shall in particular establish and manage network and information systems pursuant to Regulation (EU) 2022/2254..

### **Fitness and propriety of the management**

**Article 11f.** (1) The *Pensionskasse* shall ensure that the management board, as well as those persons that carry out key functions (Article 21) or to whom key functions are outsourced, have the necessary fitness and propriety.

(2) The requirements set forth in para. 1 shall be assumed to be met, when

1. no reasons for exclusion defined in Article 13 paras. 1 to 3, 5 and 6 of the Trade Code of 1994 (GewO 1994; Gewerbeordnung 1994), published in Federal Law Gazette No. 194/1994;
2. their personal finances are in order and no facts exist giving rise to doubt of their reliability, honesty and independence of mind both in personal terms as well as necessary for performing their function;
3. the members of the management board collectively have the requisite qualifications, knowledge and experience that are necessary for the sound and prudent management of the *Pensionskasse*;
4. persons conducting a key function pursuant to Article 21 para. 1 no. 1 have the requisite qualifications, knowledge and experience necessary for the key function;
5. persons conducting a key function pursuant to Article 21 para. 1 nos. 2 or 3, hold the necessary vocational qualifications, expertise and experience that are necessary for the respective key function.

(3) The *Pensionskasse* shall notify the FMA about the appointment of

1. members of the management board promptly prior to the appointment becoming effective and
2. other persons listed in para. 1 without delay following their appointment

Including all documents that are necessary for checking fitness and propriety. In the case of a



reappointment of a person listed in para. 1 the submission of the documentation pursuant to para.2 nos. 2 to 5 may be omitted.

(4) Where justified reasons exist regarding the fitness or propriety of persons listed in para. 1 at the time of appointment, or where the persons listed in para. 1 do not fulfil their obligations or where subsequently reasons for exclusion emerge, then the FMA shall order the *Pensionskasse* to appoint another suitable person within two months under threat of a coercive penalty. Where the *Pensionskasse* does not comply with this order, then Article 33 para. 6 no. 3 shall apply.

(5) The FMA shall in the case of nationals from other Member States recognize:

1. the submission of an extract of a judicial record or
2. in the absence of a judicial record in the other Member State, an equivalent document, showing that those requirements have been met, issued by a competent judicial or administrative authority either in the Member State of which the concerned person is a national or in the home Member State,

as sufficient evidence of the requirements of para. 2 no. 1 being satisfied.

(6) If in the home Member State of which the respective concerned person is a national the certificate listed in para. 5 no. 2 is not issued, then it may be replaced

1. by a declaration on oath or
2. in the absence of a declaration on oath pursuant to no. 1 by a solemn declaration that the respective concerned national has made before a competent judicial or administrative authority or as applicable before a notary in the home Member State.

The certificate issued by the competent judicial or administrative authority or a notary shall be recognised by the FMA. This shall also apply to a declaration that no insolvency has occurred, which shall be given before a trade association authorised to do so in the Member State in question.

(7) The certificates and declarations listed in paras. 5 and 6 shall not be allowed to be more than three months old at the time of submission.

### Principles for the Remuneration Policy

**Article 11g.** (1) The *Pensionskasse* shall establish and apply written guidelines for

1. the management board,
2. the persons conducting key functions, and
3. other staff members of the *Pensionskasse*, whose activities have a material impact on the risk profile of the *Pensionskasse* or the investment and risk-sharing groups,

introducing and implementing a remuneration policy, which is appropriate for the size and internal organisation of the *Pensionskasse* and the size, nature, scale and complexity of its business activities.

(2) *Pensionskassen* shall apply the following principles when establishing and applying the remuneration policy:

1. The remuneration policy shall be drawn up, applied and pursued in accordance with the activities, risk profile, the objectives and the long-term interest, the financial stability and performance of the *Pensionskasse* and contributes towards a sound, prudent and efficient management of the *Pensionskasse*;



2. The remuneration policy shall be harmonious with the long-term interests of the beneficiaries (entitled and recipients);
3. The remuneration policy shall contain measures for the prevention of conflicts of interest;
4. The remuneration policy is consistent with a sound and effective risk management and shall not encourage risks being taken that are not consistent with the risk profiles and regulations of the *Pensionskasse*;
5. The remuneration shall apply for the *Pensionskasse* itself as well as the services providers pursuant to Article 11h, provided that they do not fall within the scope of application of Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36 EU or 2014/65/EU.

(3) The *Pensionskasse* shall establish the general principles for the remuneration policy and shall review and update them at least every three years. The remuneration policy and its oversight shall be subject to clear, transparent and effective rules. Where Regulation (EU) 2016/679 does not stipulate otherwise, the *Pensionskasse* shall make information disclosures about its remuneration policy at regular intervals.

### Transferring of tasks to third parties

**Article 11h.** (1) The *Pensionskasse* shall be authorised to transfer one or several activities to third parties (service providers) that are active on behalf of the *Pensionskasse*. The complete transferring of all activities shall only be permissible where transferred to another *Pensionskasse* or an institution pursuant to Article 5 no. 4.

(2) The obligations of the *Pensionskasse* pursuant to this Federal Act or pursuant to Regulations issued in accordance with this Federal Act, and the compliance with the obligations pursuant to Directive (EU) 2016/2341 shall not be affected by such a transferring of tasks. The *Pensionskasse* shall be equally liable for the conduct of the service provider as well as for its own conduct pursuant to Article 1313a of the General Civil Code (ABGB; Allgemeines Bürgerliches Gesetzbuch), published in the Collection of Juridical Texts (JGS; Justizgesetzsammlung) no. 946/1811.

(3) The transferring of activities pursuant to para. 1 shall be subject to a written agreement. This agreement must be legally binding and must determine the rights and obligations of the *Pensionskasse* and the service provider precisely.

(4) The transferring of activities to service providers must be notified in writing to the FMA without delay. The transferring of key functions to service providers must be notified in writing to the FMA without delay, prior to the agreement pursuant to para. 3 becoming effective. The *Pensionskasse* shall notify the FMA without delay about all material changes in conjunction with the transferring of activities to service providers.

(5) The *Pensionskasse* shall appropriately monitor the services provided by the service provider.

(6) The transferring of activities to service providers shall not be permissible, where

1. the quality of the governance system of the *Pensionskasse* is undermined,
2. the operational risk is excessively increased,
3. the FMA is unable to adequately monitor compliance with the obligations of the *Pensionskasse*, or



4. the performance of *Pensionskasse* business for recipients (entitled and recipients) is endangered.

(7) The *Pensionskasse* shall ensure in the agreement pursuant to para. 3 that it itself and the FMA receives information about the outsourced activities at all times.

### **Investment and risk sharing group**

**Article 12.** (1) With respect to the actuarial risks and the investment risks, the beneficiaries of a *Pensionskasse* principally constitute a community (investment and risk sharing group - IRG). Where relevant, the *Pensionskasse* takes into account the aim of having an equitable spread of risks and benefits between generations.

(2) Notwithstanding para. 1, the operation of several investment and risk sharing groups within one *Pensionskasse* shall be admissible, provided that they are operated for at least 1,000 beneficiaries each.

(3) The number of beneficiaries may only fall below the minimum number of beneficiaries per investment and risk sharing group as stipulated under para. 2 for the duration of five years after the establishment of the investment and risk sharing group or the last time the minimum number had not been reached. However, the number of a *Pensionskasse's* investment and risk sharing groups falling below the limit stipulated under para. 2 must at no time exceed three.

(4) The continuance of an investment and risk sharing group which does not reach the minimum number of beneficiaries as stipulated under para. 2 shall notwithstanding para. 3 also be admissible if:

1. the investment and risk sharing group is operated exclusively only for the beneficiaries of one employer;
2. no new beneficiaries as defined in Article 5 no. 2 lit. a join, and
3. it is proven to the FMA that the interests of the beneficiaries (recipients) of this investment and risk sharing group are sufficiently safeguarded and the continued compliance with the obligations under the *Pensionskasse* contracts can be expected.

Para. 3 last sentence shall not be applied to the cases mentioned under para. 4. The limitation of no. 2 shall not apply to single-employer *Pensionskassen* where the employer has an unlimited obligation to make an additional contribution as long as the number of beneficiaries does not fall below the minimum number stipulated under para. 2 by more than 30 per cent.

(5) Both the separation and the merger of investment and risk sharing groups may only be performed effective as of the balance-sheet date and only if:

1. in the case of a separation of an investment and risk sharing group, at least one of the investment and risk sharing groups concerned continues to operate for at least 1,000 beneficiaries, and
2. it is proven to the FMA that this does not impair the interests of the beneficiaries and the continued compliance with the obligations under the *Pensionskasse* contracts



can be expected in the future too.

The FMA shall be immediately notified of the separation or merger of investment and risk sharing groups by providing appropriate substantiation pursuant to no. 2.

(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).

(8) *Pensionskasse* commitments with as well as without opportunities to change pursuant to para. 7 may be managed in an IRG and in an IRG with sub-IG pursuant to para. 6.

### **Investment and risk sharing group with guarantee**

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



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

1. No *Pensionskasse* commitments
  - a) with minimum yield guarantee or
  - b) with the employer's obligation to make an additional contribution must be managed.
2. The *Pensionskasse* shall guarantee that the monthly pension due 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 *Pensionskasse* 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 investment and risk sharing group 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 per cent 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 per cent 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. *(repealed by the amendment in Federal Law Gazette I 36/2022).*

(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 *Pensionskasse* 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 *Pensionskasse* 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 from 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) Prior to claiming the *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* contract, the beneficiaries (recipients) of the security-oriented IRG shall remain with the *Pensionskasse*.



Article 15 para. 3a shall apply subject to the proviso that amendments to the *Pensionskasse* 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.

### Contingent liabilities

**Article 13.** (1) To secure or assert claims, which were effectively established by the *Pensionskasse* for the assets allocated to an investment and risk sharing group it administrates, only those assets may be subject to execution.

(2) To secure or assert claims, which were not established by the *Pensionskasse* for the assets allocated to an investment and risk sharing group it administrates, those assets cannot be subject to execution.

### Restraints on disposal

**Article 14.** (1) Assets combined in an investment group may neither be pledged nor otherwise encumbered nor transferred nor assigned as collateral in a legally effective way.

(2) By way of derogation from para. 1

1. loans shall only be allowed to be taken out for liquidity purposes and at a cautious level for a period of up to twelve months;
2. land and buildings shall be allowed to be temporarily encumbered for their improvement or renovation;
3. assets shall be allowed to be temporarily provided as collateral for derivatives permissible pursuant to Article 25 para. 1 no. 6, if the provision of collateral is prescribed by Regulation (EU) No. 648/2012 and the resulting risks have been adequately considered in risk management.



- (3) Claims on the *Pensionskasse* and claims belonging to an investment and risk sharing group cannot be offset against each other in a legally effective way.
- (4) In the case of entries of ownership in the land register, it shall be disclosed at the *Pensionskasse's* request to which investment and risk sharing group the asset is dedicated.

### ***Pensionskasse* contract**

**Article 15.** (1) The *Pensionskasse* contract shall be concluded between the *Pensionskasse* and the joining employer.

It shall regulate the claims of beneficiaries to *Pensionskasse* benefits:

1. for *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* commitment, thus guaranteeing constant financing of the cover requirement.
- (3) In accordance with the type of the guarantee, the *Pensionskasse* 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 *Pensionskasse* contract; this can also be done by appending the declaration on the principles of investment policy (Article 25a) as an annex to the *Pensionskasse*



contract;

9. the kind of risks connected with the *Pensionskasse* 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 his 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 his contributions or revokes his guarantee for compelling economic reasons;
15. the detailed conditions for the termination;
- 15a. the detailed procedure in the case that a *Pensionskasse* 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 *Pensionskasse* contract shall continue to apply. If the annex to the *Pensionskasse* 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;

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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 *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* 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 *Allgemeines Sozialversicherungsgesetz* (ASVG; General Social Insurance Act) and 150 per cent 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 *Pensionskasse* 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 *Pensionskasse* 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.

**Article 15b.** (1) For *Pensionskasse* contracts between the federal government or a territorial authority and a *Pensionskasse* as defined in Article 3 para. 1 PKVG or a similar provision under the law of a federal province, the declaration pursuant to Article 3 para. 2 PKVG or a similar provision under the law of a federal province shall supersede the agreements according to the BPG mentioned under Article 15 para. 1.

(2) *Pensionskasse* contracts pursuant to para. 1 must not contradict the PKVG or a similar provision under the law of a federal province. Article 3 BPG shall not be applied to such *Pensionskasse* contracts.

(3) Nos. 12, 14 and 18 of Article 15 para. 3 shall not be applied to *Pensionskasse* contracts pursuant to para. 1.

### **Pensionskasse contributions**

**Article 16.** (1) *Pensionskasse* 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 *Pensionskasse* contract shall be admissible.

(3) The *Pensionskasse* 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 of the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I No. 34/2015), an institution of supplementary pension insurance 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 of the *Wirtschaftstreuhandberufsgesetz* (WTBG; Auditing, Tax Advising and Related Professions Act), Federal Law Gazette I no. 58/1999, pursuant to Article 50 para. 3 of the *Rechtsanwaltsordnung* (RAO; Code of Professional Conduct for Lawyers), Reich Law Gazette



no. 96/1868, pursuant to Article 41 para. 4 of the *Gehaltskassengesetz* (GKaG; Salary Fund Act) 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 non-contributory 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 *Pensionskasse* contract by the employer or the *Pensionskasse* or a termination of the *Pensionskasse* 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 of supplementary pension insurance pursuant to Article 479 ASVG is guaranteed. The cancellation or termination by common consent of the *Pensionskasse* contract in a legally effective way may only be made jointly for all beneficiaries covered by said *Pensionskasse* contract, unless the collective agreement, the shop agreement or the agreement according to the contract samples stipulates that all beneficiaries (recipients) or all beneficiaries (entitled) with non-contributory expectancies remain with the *Pensionskasse* in the event of the cancellation of the *Pensionskasse* 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

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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 *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* contract and shall not fall below 100 per cent of the premium reserve to be established in accordance with the business plan plus 100 per cent 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 his 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 *Pensionskasse* contract.

### Pension accounts

**Article 18.** (1) 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

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**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 the changes thereto to the extent as stipulated in the *Pensionskasse* 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 *Pensionskasse* 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,
- 2a. the information provided by the *Pensionskasse* to the employer about sustainability pursuant to Article 6 (1) of Regulation (EU) 2019/2088, 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 *Pensionskasse* commitment is managed, the *Pensionskasse* shall provide to the beneficiaries at their request, within an adequate period,

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 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.

(7) *Repealed.*

**Article 19a.** The district health insurance funds (*Gebietskrankenkassen*) shall be obliged to forward death reports pursuant to Article 360 para. 5 ASVG to the *Pensionskassen* electronically by way of the Main Association of Austrian Social Security Institutions against reimbursement of the costs.

**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 *Pensionskasse* 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 *Pensionskasse* 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 *Pensionskasse* sector as well as the interest of the beneficiaries (entitled) in adequate, comparable and clearly intelligible information.

### **Business plan**

**Article 20.** (1) The *Pensionskasse* shall draw up a business plan. Where the *Pensionskasse* manages several IRGs, then the business plan shall be split into a general part and a specific part. In the specific part, the respective details and parameters pursuant to para. 2 that apply exclusively for this IRG are to be listed separately for each IRG. Underwriting risks that the *Pensionskasse* is unable to bear itself on the basis of the business plan, shall be covered through insurance undertakings..

(2) The business plan shall contain any and all details and parameters required for the operation of the *Pensionskasse* business, in particular:

1. the types of benefits offered;
2. the presentation of the circumstances which are significant for the safeguarding of the interests of the beneficiaries and for the assessment of the continued compliance with the *Pensionskasse*'s obligations;
3. the bases of calculation (probability tables, assumed interest rate, targeted technical surplus);
4. the type and management of the volatility reserve;
5. the calculation of the average assets of the investment and risk sharing group as well as the apportionment of the allocated assets and the allocated average assets to the groups of beneficiaries (entitled) and/or beneficiaries (recipients);
6. the principles of and formulas for calculating the *Pensionskasse* contributions and the benefits; these shall be illustrated by numerical examples;
7. the formulas for calculating the minimum yield pursuant to Article 2 paras 2 and 3 or in case a reference to the regulation issued by the FMA pursuant to Article 2 para. 4;



8. the formulas for calculating the allocated parts of the assets pursuant to Article 17 para. 4;
9. the principle admissibility of an evaluation pursuant to Article 23 para. 1 no. 3a and the mode which is required for calculating an amount paid out.

(2a) The assumed interest rate and the technical surplus shall be chosen on a sufficiently prudent basis. In this context:

1. the return on investments, which, taking the future return on investments into account, are comparable to investments held by the *Pensionskasse* for the assets of the investment and risk sharing group, or
2. the market yields of government debt securities, other high-grade debt securities, debt securities issued by the European Stability Mechanism, debt securities issued by the European Investment Bank or debt securities issued by the European Financial Stability Facility;

or a mixed rate of both less appropriate haircuts for each of them shall be fixed. The FMA shall determine by regulation one or several maximum percentage rates for the assumed interest rate and the technical surplus for new *Pensionskasse* contracts to be concluded and for new beneficiaries (entitled) who join existing *Pensionskasse* contracts. For the security-oriented IRG, a maximum percentage rate for the assumed interest rate and the technical surplus shall be determined that must not be higher than the maximum percentage rate for the assumed interest rate and the technical surplus determined as specified in the previous sentence for an investment and risk sharing group without guarantee. The FMA shall verify the adequacy of the interest rates at least every three years.

(3) The technical provisions shall be calculated in accordance with the recognised actuarial principles by an accordingly qualified expert. The probability tables used to calculate the technical provisions shall be based on the prudent person principle, taking into consideration the most important characteristics of the beneficiaries (entitled) and the *Pensionskasse* commitments and in particular the expected changes in the relevant risks.

(3a) Unless otherwise provided by law, the gender factor may only lead to different contributions or benefits for women and men if gender is a decisive factor in a risk assessment that is based on relevant and accurate actuarial and statistical data. The risk assessment and the actuarial and statistical data collated shall be included in the business plan. The *Pensionskasse* shall update this risk assessment on a regular basis.

(3b) The *Pensionskasse* shall publish the actuarial and statistical data which serves as a basis for the different contributions or benefits for women and men, as well as any update of this data. If the data has already been published by other institutions, a reference to this publication shall suffice. If the data is made available on the Internet, a copy which can be read without technical aids shall be provided to anyone at their request.

(3c) The method to calculate the technical provisions and the assessment basis must not change from one financial year to the other. However, deviations may be admissible if the legal, demographic or economic framework conditions on which the assumptions are based



change.

(3d) Any shortfall which arises due to a conversion of the bases of calculation shall be made up no later than within ten years and at least by one tenth annually. If the shortfall was made up by more than one tenth in one financial year, it shall be possible to make up for the shortfall less that extent at the most in a later financial year. In the event of a cancellation or termination by common consent of the *Pensionskasse* contract, the shortfall not yet made up for shall be deducted in the calculation of the assets to be transferred pursuant to Article 17 para. 4.

(4) The business plan as well as any amendment to the business plan shall require the approval of the FMA; the latter may also stipulate relevant conditions and time limits. The business plan as well as any amendment to the business plan shall have to be audited by the auditing actuary; the report of the auditing actuary on the result of the audit shall be attached to the application for approval. The approval shall be granted if the business plan complies with recognised actuarial principles, if the interests of the beneficiaries are sufficiently safeguarded and, in particular, if the continued compliance with the obligations under the *Pensionskasse* contracts can be expected. The *Pensionskasse* shall furnish proof of the existence of said circumstances to the FMA.

(5) Taking recognised actuarial principles into account, the FMA may determine by regulation criteria for the management of the provision for administrative expenses incurring after the beginning of retirement according to the business plan. When issuing said regulation, the FMA shall take into consideration:

1. the need for a sufficient allocation of this provision, which will guarantee that the benefits are paid out free of charge,
2. the national economic interest in properly functioning *Pensionskassen*, and
3. the interests of the beneficiaries.

### Key functions

**Article 21.** (1) The *Pensionskasse* shall establish the following key functions:

1. a risk management function,
2. an internal audit function, and
3. an actuarial function.

A key function may be performed by a single person or an organisational unit. If a key function is performed by an organisational unit, then the requirements set forth in Article 11f shall be fulfilled by the head of this organisational unit.

(2) The outsourcing of a key function to an employee paying in contributions shall be permissible, if the *Pensionskasse* is able to proof that no conflicts of interest arise as a result.

(3) The key function holder shall inform the management board of the *Pensionskasse* about all material findings and recommendations within their scope of responsibility and the



management board shall decide what measures are to be taken.

(4) In the event that the management board of the *Pensionskasse* fails to take appropriate corrective measures within an appropriate period of time following information pursuant to para. 3, then the key function holder shall report in writing to the management board and the chairperson of the supervisory board and the FMA, in the event that the *Pensionskasse* is exposed to a significant risk, of breaching provisions

1. of this Federal Act, or
2. of a Regulation issued on the basis of this Federal Act or an administrative decision issued on the basis of this Federal Act, or
3. of Article 5 BPG

and where this might have material effects on the interests of the beneficiaries (entitled and recipients), or where in the opinion of the key function holder the provisions listed in nos. 1 to 3 are breached. Article 159 para. 4 of the Stock Exchange Act 2018 (BörseG 2018; Börsegesetz 2018) published in Federal Law Gazette I No. 107/2017 shall apply in the case of notification to the FMA.

### **Risk management and the risk management function**

**Article 21a.** (1) *Pensionskassen* shall establish an effective risk management function commensurate with the size, nature, scope and complexity of their activities, and which simplifies the functioning of the risk management.

(2) The *Pensionskasse* shall be required to have in place the necessary strategies, procedures and reporting processes that are necessary to detect, measure, monitor and control the risks which the *Pensionskasse* and the investment and risk sharing groups may be exposed to as well as their interdependencies. The risk management must be effective and well integrated into the *Pensionskasse's* organisational structure and decision-making processes.

(3) The risk management must cover the risks that the investment and risk sharing groups of the *Pensionskasse* may be exposed to in an appropriate manner commensurate to the size, nature, scope and complexity of the *Pensionskasse's* activities. The risks from other areas within the *Pensionskasse* and of third parties pursuant to Article 11h must also be taken into account appropriately. The risk management shall cover, where applicable, the following areas:

1. risk analysis and risk assessment;
2. risk controlling and risk monitoring;
3. asset-liability management;
4. the assets of the *Pensionskasse* as well as the assets allocated to the investment and risk-sharing group, in particular derivatives, securitisations and



- similar commitments;
5. liquidity and concentration risk management;
  6. operational risk management;
  7. insurance and other risk-mitigation techniques;
  8. underwriting and reserving;
  9. environmental, social and governance risks relating to the investment of assets allocated to the investment and risk-sharing group.

(4) Where the beneficiaries (entitled and recipients) bear risks in accordance with the provisions set out in the *Pensionskasse* contract or the business plan, then the risk management shall also take such risks into account from the perspective of the beneficiaries (entitled and recipients).

(5) The Guidelines on Risk Management (Article 11e para. 3) shall be drawn up in accordance with the standards pursuant to paras. 1 to 4. The FMA may further clarify the standards pursuant to paras. 1 to 4 by means of a Regulation.

(6) Reports are to be given both on an individual basis as well as on an aggregated basis to the management board of the *Pensionskasse* by the risk management function at regular intervals.

### Internal Audit Function

**Article 21b.** (1) Every *Pensionskasse* shall appoint an internal audit function, which reports directly to the management board, and which is exclusively active in

1. the ongoing and comprehensive auditing of the legality, orderliness and expedience of the business and operation of the *Pensionskasse*; as well as
2. the assessment of whether the internal control system and other components of the governance system, are appropriate and effective, as necessary also with regard to outsourced activities.

(2) The internal audit function must be established in consideration of the scope of business, to allow it to be able to perform its duties in an adequate way, and must be run separately from the other key functions.

(3) Instructions made regarding the internal audit unit must be made jointly by both members of the management board. The internal audit function shall report to all members of the management board. It shall report on a quarterly basis to the chairperson of the supervisory board about significant audit findings on the basis of the audits that have been conducted.

### Actuarial function



**Article 21c.** The actuarial function will be performed by the actuary and the auditing actuary for their respective area of responsibility.

### Actuary

**Article 21d.** (1) *Pensionskassen* shall appoint at least one actuarial expert (actuary). The actuary shall:

1. draw up or coordinate the drawing up of the business plan and monitor that it is being duly observed;
2. coordinate and monitor the calculation of technical provisions;
3. assess the sufficiency of the quality of the data that is the basis for the calculation of technical provisions, and
4. contribute to the effective implementation of the risk management system.

If a member of the management board of the *Pensionskasse* is to be appointed as the actuarial expert, then this appointment shall be conducted by the supervisory board. In the case of multi-employer *Pensionskassen*, at least one deputy actuary must also be appointed.

(2) The actuary shall perform their activity under consideration of the relevant legal regulations and all expert principles in accordance with recognised actuarial principles.

### Auditing actuary

**Article 21e.** (1) The *Pensionskasse* shall appoint an independent actuarial expert (auditing actuary) to perform actuarial audits. The appointment shall be conducted by the supervisory board. The *Pensionskasse* shall ensure the availability of the auditing actuary.

(2) The auditing actuary shall perform their activity with due care under consideration of the relevant legal regulations and all expert principles in accordance with recognised actuarial principles.

(3) The auditing actuary shall in particular check:

1. whether the business plan is being duly observed,
2. whether changes to the existing regulations for contributions and benefits are necessary,
3. whether and to what extent and within which time frame the employer shall be required to make up any coverage gaps that have arisen,
4. whether the insurance requirements (Article 20 para. 1) have been taken into account to an adequate extent,
5. whether the *Pensionskasse's* underwriting policy, provided that it has such a policy, is appropriate, and



6. whether when calculating technical provisions
  - a) appropriate methods, base model and underlying assumptions for this purpose were duly used, as well as
  - b) the assumptions were able to withstand a comparison with empirical values.

The auditing actuary shall report to the management board about the reliability and adequacy of the calculation of technical provisions.

(4) The management board and the actuary shall present all necessary books, documents and data carriers to the auditing actuary that are needed for the performance of their duties set out under law. The auditing actuary may request for explanations and proof required from the management board and the actuary, that are required for them to fulfil their auditing obligations with due care.

(5) In addition to the reporting obligations pursuant to Article 21 para. 4, the auditing actuary shall document the results of audits once a year in a report of auditing activities and shall submit this report to the management board and the supervisory board of the *Pensionskasse* as well as to the statutory auditor at latest within five months following the end of the financial year; the *Pensionskasse* shall submit the report on auditing activities to the FMA at latest within six months of the end of the financial year. The FMA shall determine by means of a Regulation the minimum structure and content of the audit report; in issuing this Regulation it shall take into consideration the national interest of having a functioning *Pensionskasse* sector, as well as the interests of the beneficiaries. The management board of the *Pensionskasse* shall submit upon request the audit report or a summary report drawn up by the auditing actuary containing the necessary information and conclusions without delay to the employers paying in contributions or the competent members of the work council.

**Article 22.** (1) The auditing actuary shall be bound to conscientious and impartial auditing and secrecy. He must not make unauthorised use of business and trade secrets which he has gained knowledge of during his activity. Whoever violates his obligations intentionally or negligently shall be obliged to pay compensation to the *Pensionskasse* for the resulting damage.

(2) The liability for damages of an auditing actuary who has acted negligently shall be limited to EUR 350,000 for one audit.

(3) The liability for damages in accordance with these provisions may neither be excluded nor limited by contract.

(4) The claims based on these provisions shall become statute-barred after five years.

### Own Risk Assessment

**Article 22a.** (1) The *Pensionskasse* shall undertake and document its Own Risk Assessment in an appropriate manner for its size, internal organisational structure as well as the magnitude, nature scope and complexity of its activities. The Own Risk Assessment must be fed into the



*Pensionskasse's* strategic decisions.

(2) The *Pensionskasse* shall conduct the Own Risk Assessment at least every three years or without delay following there being a significant change in the *Pensionskasse's* risk profile. Where the *Pensionskasse* bears a risk, and provided that it is necessary to do so for its assessment, the relevant investment and risk-sharing group shall also be included in the Own Risk Assessment.

(3) The Own Risk Assessment shall cover with regard to the size and the internal organisation of the *Pensionskasse* as well as the size, nature, scope and complexity of the *Pensionskasse's* activities:

1. the description of the Own Risk Assessment that is included in the *Pensionskasse's* management process and decision making processes;
2. the assessment of the effectiveness of the risk management system;
3. the description about how the *Pensionskasse* prevents conflicts of interest with the employee where it outsources a key function to the employer;
4. the assessment of the entire financing requirement of the *Pensionskasse*, including as applicable a description of the recovery plan;
5. the assessment of the risks for the beneficiaries in regard to the paying-out of *Pensionskasse* benefits and the effectiveness of corrective measures where applicable taking into consideration
  - a) indexing mechanisms,
  - b) mechanisms for mitigating benefit entitlements, including the scope and under which conditions and by whom the acquired contingent rights may be mitigated;
6. the qualitative assessment of the mechanisms for safeguarding accrued entitlements, including where applicable guarantees, binding obligations or any other type of financial support measures by the employer;
7. the qualitative assessment of operational risks;
8. where ecological, social and governance-related factors are taken into account in investment decisions, an assessment of risks that have recently arisen or that are to be expected, including inter alia risks in relation to climate change, the use of natural resources and the environment as well as social risks and risks in conjunction with a reduction of the value of assets as a result of a regulation being amended.

The *Pensionskasse* shall in doing so use methodologies for the detection and assessment of the risk, to which it is exposed or may be exposed to either on a temporary or long-term basis that may have an effect on the ability of a *Pensionskasse* to meet its obligations. These methodologies shall be appropriate with regard to the size, nature, scope and complexity of the *Pensionskasse's* activities. The *Pensionskasse* shall describe these methodologies in its Own Risk Assessment.

(4) The Own Risk Assessment shall be submitted to the FMA every three years as well as following a material change.

### Valuation rules

**Article 23.** (1) The assets allocated to the investment and risk sharing groups shall be

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



estimated at the following values:

1. Claims for a fixed amount of money may be estimated at their nominal value at most, unless no. 3 states otherwise;
  2. assets denominated in foreign currency shall be estimated at the mean exchange rate;
  3. Securities shall be
    - a) estimated at the respective stock exchange price or the respective price on the recognised securities market; or
    - b) estimated at market value; if no liquid market exists for an asset, the accounting value derived from using the market conditions as a basis may serve as market value.
- 3a. Notwithstanding no. 3,
- a) debt securities issued by the federal government, a federal province, another member state, a constituent state of another member state, another full member of the Organisation for Economic Co-operation and Development (OECD) or an international organisation under public law of which one or more member states are members, as well as securities, the repayment and interest payment of which is guaranteed by the federal government, a federal province, another member state, a constituent state of another member state, another full member of the OECD or an international organisation under public law of which one or more member states are members, and the investment of which pursuant to Part 3 Title II Chapter 2 of Regulation (EU) No 575/2013 would have to be assigned a risk weight of no more than 20 per cent;
  - b) debt securities of credit institutions which, pursuant to Part 3 Title II Chapter 2 of Regulation (EU) No 575/2013, would have to be assigned a risk weight of no more than 20 per cent and securities, the repayment and interest payment of which is guaranteed by a credit institution which, pursuant to Part 3 Title II Chapter 2 of Regulation (EU) No 575/2013, would have to be assigned a risk weight of no more than 20 per cent;
  - c) corporate bonds, the credit quality of which, taking into consideration the conditions set out in Article 25 para. 3 with regard to the reference to external ratings, is comparable to investment grade;

with a fixed maturity, if they are designated to be held to final maturity due to a separate dedication, shall be valued at their net book value or their net current value at the time of the dedication using the effective yield method, provided that this has been declared admissible in the business plan. For the securities dedicated directly or indirectly via special funds, their suitability as a permanent investment shall be outlined based on a conservative liquidity plan; however, no more than 25 per cent of the assets allocated to an investment and risk sharing group must be dedicated as specified in lit. c and no more than 60 per cent in total. The FMA shall be furnished proof on request that the fund rules of special funds contain regulations on the separate dedication of certain debt securities



as well as on regularly providing the statement of another calculated value taking account of the special valuation. A security dedicated as a permanent investment by the *Pensionskasse* may only be disposed of before its final maturity in the case of special circumstances and with the approval of the FMA. In the guidelines regarding investment (Article 25 para. 4) taking into consideration the requirements set forth in Article 25 para. 3 criteria shall be determined with regard to the reference to external ratings, under which in the case of a security its dedication as a permanent investment is to be lifted, and the security is to then be valued pursuant to no. 3; such a lifting of the dedication conducted in accordance with these criteria shall not require FMA approval, but must be notified to the FMA without delay. A sale of debt securities separately dedicated via special funds shall only be admissible in the case of special circumstances and with the approval of the FMA. The FMA shall prescribe in the regulation issued pursuant to Article 36 para. 2 that the unrealised losses and hidden reserves incurred by the valuation of the held-to-maturity securities shall be stated.

4. Unit certificates of investment funds shall be estimated at the redemption price as defined in Article 10 para. 2 of the *Investmentfondsgesetz* (InvFG; Investment Fund Act) 1993 or any comparable regulations in the OECD member countries.
- 4a. Unit certificates of real estate funds pursuant to Article 1 para. 1 and special real estate funds pursuant to Article 1 para. 3 of the *Immobilien- Investmentfondsgesetz* (ImmInvFG; Real Estate Investment Fund Act), Federal Law Gazette I no. 80/2003 as well as of real estate funds managed by an investment company with its head office situated within the EEA shall be estimated at the redemption price as defined in Article 11 para. 1 ImmInvFG;
- 4b. Unit certificates in an alternative investment fund (AIF) shall be valued at the net asset value per unit pursuant to Article 17 of the *Alternative Investment Fund Managers Act* (AIFMG - *Alternative Investmentfonds Manager-Gesetz*), published in Federal Law Gazette I No. 135/2013;
5. other real assets, in particular real property, shall be estimated at their current market value; the current market values shall be examined by suitable examiners at least every three years; in particular, reasons for any revaluations and devaluations shall be given.
6. the value of investments in derivative products pursuant to Article 21 InvFG 2011 shall be estimated on a sufficiently prudent basis taking account of the underlying security and shall be considered for the valuation of the assets allocated to the investment and risk sharing group.

(2) When it comes to the determination of the total value of the assets allocated to the investment and risk sharing groups as of the balance-sheet date, recognisable risks and impending losses having arisen during the financial year or an earlier financial year shall be taken into account, even if said circumstances have only become known between the balance-sheet date and the date of the drawing up of the financial statements. Necessary value adjustments shall be taken into account in the valuation of the individual assets themselves.



### Volatility reserve - general provisions

**Article 24.** (1) To equalize profits and losses from the investment of the assets and from the technical account balance, a volatility reserve shall be established at each investment and risk sharing group. The transfer to the volatility reserve or the release of the same shall be based on the value of the volatility reserve as of the balance-sheet date of the last financial year and shall be effected in the order stipulated under Article 24a.

(2) Principally, the volatility reserve may be managed either separately for single beneficiaries (individually) or jointly for groups of beneficiaries (jointly). The following possible combinations shall be admissible:

1. For an entire investment and risk sharing group:
  - a) individually for all beneficiaries,
  - b) individually for all beneficiaries (entitled) and jointly for all beneficiaries (recipients),
  - c) jointly for all beneficiaries (entitled) and jointly for all beneficiaries (recipients), or
  - d) jointly for all beneficiaries; however, this shall only be admissible for an investment and risk sharing group where the employer has an unlimited obligation to make an additional contribution for all beneficiaries.
2. Notwithstanding no. 1 lit. a, b and c, the volatility reserve may be managed within an IRG jointly for one group of beneficiaries (entitled) or one group of beneficiaries (recipients), in which case the following criteria may be used individually or in combination for establishing the group:
  - a) sub-IG,
  - b) probability tables,
  - c) assumed interest rate,
  - d) technical surplus,
  - e) employer or group of employers.
3. Notwithstanding no. 1 lit. d, within an IRG where the employer has an unlimited obligation to make an additional contribution, the volatility reserve may be managed jointly for all beneficiaries of that employer or jointly for all beneficiaries (entitled) of that employer and jointly for all beneficiaries (recipients) of that employer; a group of employers may be substituted for the employer in each case.

If *Pensionskasse* commitments with minimum yield guarantee and *Pensionskasse* commitments without minimum yield guarantee are managed jointly in one investment and risk sharing group, where the volatility reserve is managed pursuant to no. 1 lit. a to c, notwithstanding no. 2 the volatility reserve shall be managed separately according to *Pensionskasse* commitments with minimum yield guarantee and *Pensionskasse* commitments without minimum yield guarantee.

(3) The assets relevant to the management of the volatility reserve shall correspond to the



total amount of the invested assets shown in the statement of net assets of an investment and risk sharing group less liabilities from the purchase of assets, valued in accordance with Article 23 as of the respective reporting date.

(4) The target value of the volatility reserve shall be determined by the management board and indicated in the business plan; it must not be less than 10 per cent and not more than 20 per cent of the assets pursuant to para. 3 as of the respective balance-sheet date.

(5) If the vested amount in an investment and risk sharing group is calculated both pursuant to Article 5 para. 1a no. 1 BPG and Article 5 para. 1a no. 2 BPG, the technical account balance resulting from the termination of the employment relationship prior to the occurrence of the benefit event (Article 24a para. 4) shall be calculated separately for the two groups of beneficiaries (entitled) and allocated accordingly.

(6) If the vesting of the employer's contribution has not taken effect when an employment relationship is terminated (Article 5 para. 1 BPG), these employer's contributions may be offset against future employer's contributions in the case of commitments where the employer has an unlimited obligation to make an additional contribution, otherwise they shall be added to the technical account balance.

### Set-up of the volatility reserve

**Article 24a.** (1) If the employer's contributions include amounts which are dedicated to the volatility reserve, they shall be transferred to the volatility reserve. If the volatility reserve is managed separately for beneficiaries and jointly for beneficiaries (recipients), the pro-rata volatility reserve of a beneficiary (entitled) changing over to the group of beneficiaries (recipients) shall be reposted to the volatility reserve of the beneficiaries (recipients) retroactively as of 1 January of the year in which the change becomes effective.

(2) If the investment surplus shown in the income statement of an investment and risk sharing group less the assumed interest pursuant to Article 48, based on the allocated average assets (Article 20 para. 2 no. 5), exceeds the technical surplus, the difference shall be allocated to the volatility reserve. If the investment surplus shown in the income statement of an investment and risk sharing group less the assumed interest pursuant to Article 48, based on the allocated average assets (Article 20 para. 2 no. 5), falls below the technical surplus, the difference shall be withdrawn from the volatility reserve.

(3) For an additional allocation to the volatility reserve by the management board of the *Pensionskasse*, the FMA shall determine by regulation the framework conditions for the group of persons affected as well as criteria for the extent of the allocation. In this context, it shall consider the following:

1. the pensions for beneficiaries (recipients) are adjusted as steadily as possible;
2. any earnings are allocated for beneficiaries (entitled) as steadily as possible;
3. the assumed interest rate and the amount of the technical surplus;
4. the special features of the security-oriented IRG;



5. the level of the volatility reserve; and
6. the capital market situation.

(4) Technical profits shall be allocated to the volatility reserve, technical losses shall be covered by the volatility reserve.

(5) If the volatility reserve established exceeds 25 per cent of the allocated assets (Article 20 para. 2 no. 5), it shall be immediately released to the extent of the difference. Upon the resolution of the management board, the release for beneficiaries (entitled) and/or beneficiaries (recipients) of one or several employers may be entirely or partly omitted as long as the volatility reserve established does not exceed 25 per cent of the allocated assets (Article 20 para. 2 no. 5) plus the claims pursuant to Article 48 as of the balance-sheet date.

(6) If the volatility reserve established exceeds the target value determined upon the resolution of the management board, 10 per cent of the volatility reserve shall be immediately released. Upon the resolution of the management board, the release for beneficiaries (entitled) and/or beneficiaries (recipients) of one or several employers may be entirely or partly omitted as long as the volatility reserve established does not exceed 25 per cent of the allocated assets (Article 20 para. 2 no. 5) plus the claims pursuant to Article 48 as of the balance-sheet date.

(7) If the application of paras 1 to 4 results in a negative volatility reserve, the negative volatility reserve shall be immediately released.

(8) The FMA may upon request by the *Pensionskasse* approve by way of derogation from para. 7 the formation in an investment and risk-sharing group of a negative volatility reserve of up to 5 per cent of the allocated assets. A financing plan is to be attached to the *Pensionskasse's* application, from which it emerges how and in which time frame the negative volatility reserve may again be dissolved. When drawing up the financing plan, particular consideration shall be taken about the calculation bases pursuant to Article 20 para. 2 no. 3, any obligation by the employer to make an additional contribution pursuant to Article 5 no. 3, the risk structure, the structure of assets and liabilities, the structure of the beneficiaries and the structure of *Pensionskasse* commitments. The *Pensionskasse* shall make the financing plan available to the beneficiaries upon their request, or shall permit inspection of the financing plan.

(9) The establishment of a negative volatility reserve pursuant to para. 8 shall not be admissible:

1. for beneficiaries (entitled) without obligation by the employer to make an additional contribution pursuant to Article 5 no. 3; and
2. in investment and risk sharing groups which manage *Pensionskasse* commitments arising from an activity pursuant to Article 11a para. 1.

### Investment rules

**Article 25.** (1) The management board of the *Pensionskasse* shall ensure that the investment of assets allocated to an investment and risk-sharing group is performed by persons who hold



suitable professional qualifications to do so, and who in particular are able to prove their corresponding professional experience in the fields of portfolio management, risk management as well as asset liability management and that appropriate technical resources are available for investment. The investment of the asset allocated to an investment and risk-sharing group must be conducted in accordance with the prudent person rule and taking into consideration the other provisions in this Federal Act, and in so doing shall in particular observe the following:

1. the assets are to be invested in the best long-term interests of beneficiaries (entitled and recipients) as a whole;
2. in the case of a potential conflict of interest, the investment decisions are to be made in the sole interest of beneficiaries (entitled and recipients);
3. the assets are to be invested in such a manner as to ensure the security, quality, liquidity and profitability of the assets allocated to an investment and risk-sharing group as a whole;
4. the assets are to be invested by type and duration in a manner that corresponds to the expected future pension provision benefits;
5. securities and money-market instruments must predominantly be
  - a) listed or traded on a regulated market pursuant to Article 1 no. 2 BörseG 2018; or
  - b) traded through a multilateral trading facility (MTF) pursuant to Article 1 no. 24 of the Securities Supervision Act of 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018) published in Federal Law Gazette I No. 107/2017, or an organised trading facility (OTF) pursuant to Article 1 no. 25 WAG 2018; or
  - c) officially listed on a securities exchange in a third country (Article 2 no. 8 BWG) or on another securities exchange in a third country that is recognised, regulated, open to the public and functioning in an orderly manner;

Investments in assets, that are not admitted to trading on regulated markets, must be included in the declaration regarding the investment policy rules and must in any event be kept to prudent levels;

6. derivative products pursuant to Article 73 of the Investment Funds Act of 2011 (InvFG 2011), which have not been acquired for the purpose of hedging of price risks, shall only be allowed to be acquired, where they contribute to the reduction of investment risks or for the purpose of simplifying an efficient management of the assets allocated to an investment and risk-sharing group; the concentration of risks in relation to a single counterparty or other risk concentrations in derivative products are to be avoided;
7. the assets are to be properly diversified and a concentration of risks avoided;



8. The acquisition of assets from one and the same issuer or issuers belonging to the same group of undertakings, shall not be allowed to lead to an excessive concentration of risks;
9. under the prudent person rule the potential long-term effects of the investment of an asset allocated to an investment and risk-sharing group may take into account the relevant environmental, social and governance factors.

(2) Investments made back into employers making contributions to the investment and risk-sharing group is to be restricted, with the exception of investments in government debt securities issued by the Federal Government (Bund), a Province (Bundesland), another Member State or constituent state of another Member State to a maximum of 5 % of the assets allocated with investment and risk-sharing group.

(3) Taking into consideration the nature, scope and complexity of the activities of *Pensionskassen*, the FMA shall monitor the adequacy of procedures of *Pensionskassen* for the assessment of creditworthiness, shall assess the application of references to ratings that have been issued by credit ratings agencies as defined in lit. b of Article 3(1) of Regulation (EC) No. 1060/2009 on Credit Rating Agencies, OJ L 302, 17.11.2009, p. 1, with regard to the investment policy of the investment and risk-sharing group and shall if notified encourage the mitigation of the effects of such references, in order to counteract the exclusive and automatic recourse to such ratings."

(4) To ensure that the conditions stipulated pursuant to paras. 1 to 3 are fulfilled, the *Pensionskasse* shall draw up and implement guidance in writing about the investment of assets allocated to an investment and risk-sharing group, which where applicable must at least cover the following areas:

1. investment objectives taking into account the commitments arising from *Pensionskasse* contracts;
2. criteria for the security, quality, liquidity, profitability and availability of the entire assets allocated to the investment and risk-sharing group;
3. strategic asset allocation, suitable parameters for deviation from such an allocation and the respective rules for determining such parameters;
4. Definition of the investment universe in according with the following investment categories:
  - a) cash at banks,
  - b) loans and credits,
  - c) securities representing money claims,
    - aa) from regional or local authorities,
    - bb) from credit institutions,



- cc) from other undertakings,
- d) shares and other equity securities,
- e) real estate,
- f) other assets,

Investments in unit certificates in investment funds, real estate funds and AIFs are to be split up according to the investment categories;

5. Investment procedures with regard to the selection, mixture and diversification of assets;
6. Determination of an appropriate limit system with quantitative investment thresholds with regard to para. 1 no. 7, at least with regard to the investment categories pursuant to no. 4 for both issuers and counterparties;
7. Criteria for the computations of investments in unit certificates of investment funds, real estate funds and AIFs for thresholds for issuers and counterparties pursuant to no. 6 including the general defining of materiality thresholds;
8. Conditions for the investment in
  - a) assets pursuant to para. 1 no. 5,
  - b) derivative products pursuant to para. 1 no. 6, as well as
  - c) securities lending and securities repurchasing transactions;
9. description of the escalation processes in the event that the determined thresholds are exceeded;
10. criteria for the cancelling of the dedication of securities as permanent investments (Article 23 para. 1 no. 3a).

### **Declaration on the investment policy principles**

**Article 25a.** (1) The *Pensionskasse* shall draw up a written declaration on the investment policy principles for every investment and risk sharing group. At any rate, said declaration shall include:

1. the procedures for assessing the investment risk;
2. the risk management;
3. the strategies with regard to the selection of assets as well as in relation to the mix and diversification of assets depending on kind and length of the liabilities undertaken;
4. the admissibility and the strategies of investments in derivative products;
5. the admissibility and the strategies of investments in assets which are not admitted



to trading on a regulated market and/or are traded on venture capital markets; as well as

6. the potential selection of assets according to ethical, ecological and/or social criteria.

(1a) If the *Pensionskasse* offers more than one IRG or sub-IG having various investment strategies (Article 12 paras. 6 and 7), it shall define the various investment strategies according to qualitative and quantitative criteria and present the differences in the form of an overview that is easy to understand

(2) The declaration on the investment policy principles shall be immediately updated following a significant change in the investment policy, however, it shall be revised at least every three years.

(3) The declaration on the investment policy principles for the respective investment and risk-sharing group shall be made publicly available in their respective current version.

(4) *Repealed.*

### Custodian bank

**Article 26.** (1) The *Pensionskasse* shall entrust one or several custodian banks with the custody of the securities and unit certificates of investment funds belonging to an investment and risk-sharing group. Only a credit institution that is properly admitted pursuant to Directive 2013/36/EU or 2014/65/EU to carry out such an activity or which is recognised as a depository as defined in Directive 2009/65/EC or 2011/61/EU maybe appointed to do so. An agreement in writing shall be required for the appointment of the custodian bank, in which it must particularly be defined which information the *Pensionskasse* must submit to the custodian bank for the performance of its duties. The *Pensionskasse* shall submit to the FMA, together with the notification of the appointment of the custodian bank, a declaration from the credit institution or the depository, in which the rights and obligations set forth in para. 2 are acknowledged and any rights of set-off and retention are waived.

(1a) A respective separate securities account shall be managed for each IRG, each sub-IG and security-oriented IRG, for all financial instruments which may be posted in the securities account in an account for financial instruments. The *Pensionskasse* and a designation for the IRG, the sub-IG or security-oriented IRG shall be mentioned in the securities account name.

(1b) For all other assets, other than those listed in para. 1a, the custodian bank shall review whether the *Pensionskasse* holds the ownership rights for such assets, and shall keep constantly updated records about such assets. The review shall be based on documentation and information, which are submitted by the *Pensionskasse* and where available also upon external proof.

(1c) The custodian bank shall in particular observe the following principles for the custody of the assets allocated to the investment and risk-sharing group:

1. the custodian bank shall comply with the instructions given by the *Pensionskasse*,



unless such instructions breach the provisions of this Federal Act;

2. the custodian bank must ensure in transactions that the consideration is remitted to the investment and risk-sharing group within the usual time limits, and
3. the depositary bank must use the yields in accordance with the rules set by the *Pensionskasse*.

(2) The custodian bank shall be authorised and obliged to object in its own name pursuant to Article 37 of the *Exekutionsordnung* (EO; Execution Act) by way of action if an execution is carried out against an asset belonging to an investment and risk sharing group, unless this concerns a justified claim against an investment and risk sharing group pursuant to Article 13. The *Pensionskasse* administrating the investment and risk sharing group concerned shall immediately be informed by the custodian bank of all necessary steps.

(3) If the competent authority of the home member state prohibits the discretionary disposal of an institution's assets, the FMA shall on request of this competent authority prohibit the domestic custodian bank commissioned with the custody of said institution's assets pursuant to para. 1 from having discretionary disposal of said assets.

(4) The custodian bank shall not be allowed to perform any activity, which could lead to conflicts of interest with the *Pensionskasse* or the beneficiaries (entitled and recipients), unless a functional and hierarchical separation for the conducting of its duties as custodian bank from its duties that stand in conflict, as well as communicating, handling and examining the potential conflicts of interest in an orderly manner and disclosed to the management board of the *Pensionskasse* as well as, provided that it is not a commitment pursuant to Article 5 para. 3, the beneficiaries (entitled and recipients).

(5) The custodian bank shall be liable towards the *Pensionskasse* and the beneficiaries (entitled and recipients) for any losses by the depositary bank or a third party to whom the custody of assets allocated to the investment and risk-sharing group has been transferred, that are the result of its unjustifiable failure to perform its obligations or its improper performance of them.

(6) The custodian bank, in the performance of duties in accordance with the provisions set forth in paras. 1 to 4, shall act honestly, fairly, professionally and independently as well as in the interest of the investment and risk-sharing group.

### Supervisory board

**Article 27.** (1) The supervisory board of multi-employer *Pensionskassen* shall consist of at least six and no more than twelve representatives of the share capital elected by the annual general meeting as well as representatives of the beneficiaries, whose number shall be that of the representatives of the share capital less two. The number of the members of the supervisory board shall be laid down in the articles of association. The articles of association may stipulate a higher number of representatives of the beneficiaries.

(1a) If, on the balance-sheet date prior to the election of the representatives of the



beneficiaries at the annual general meeting, the number of beneficiaries (recipients) having commitments without the employer's unlimited obligation to make an additional contribution exceeds the quotient obtained through dividing the total number of beneficiaries having commitments without the employer's unlimited obligation to make an additional contribution by the number of representatives of the beneficiaries as defined in the articles of association, at least one seat of the representatives of the beneficiaries on the supervisory board of the multi-employer *Pensionskasse* shall be reserved for the beneficiaries (recipients).

(2) In the supervisory board of single-employer *Pensionskassen*, the representatives of the beneficiaries shall have one representative less than the representatives of the share capital. In the event of an equal number of votes, the chairperson of the supervisory board shall have the casting vote, unless the shop agreement and any possible agreements pursuant to the contract samples pursuant to the BPG provide otherwise; the election of the chairperson of the supervisory board shall require both the majority of all members of the supervisory board and the majority of the representatives of the share capital. The shop agreement and any possible agreements according to the contract samples pursuant to the BPG may stipulate a higher number of representatives of the beneficiaries. The number of the members of the supervisory board shall be laid down in the articles of association.

(3) *Repealed*

(4) Article 110 of the *Arbeitsverfassungsgesetz* (ArbVG; Law Governing the Employment System) shall apply subject to the proviso that the works council (works committee, central works council) of the *Pensionskasse* is entitled to send a representative to the supervisory board in addition to the seats on the supervisory board stipulated under paras 1 and 2.

(5) The beneficiaries (entitled) pursuant to Article 5 no. 1 and the beneficiaries (recipients) pursuant to Article 5 no. 2 lit. a shall be entitled to elect the representatives of the beneficiaries in the supervisory board in accordance with the following principles:

1. the election shall take place within the scope of the *Pensionskasse's* annual general meeting; the date of the annual general meeting shall be the qualifying date for the right to vote. If the qualifying date for the right to vote differs from the date of the annual general meeting, it shall be stipulated in the articles of association. The qualifying date may date back no longer than six months; and must not be later than the last balance-sheet date. The articles of association may stipulate a postal vote instead of an election during the annual general meeting if this seems necessary due to the number of persons entitled to vote;
2. the representatives of the beneficiaries in the supervisory board shall be elected in accordance with the principles of proportional representation (d'Hondt system) on the basis of nominations which every person entitled to vote or a proxy may submit to the management board in writing no later than one week prior to the commencement of the election; the articles of association may fix the deadline for submitting nominations at two weeks prior to the commencement of the election at the latest;



- 2a. under the preconditions specified in para. 1a, at least one separate nomination may be submitted according to the procedures specified in no. 2 for the representatives of the beneficiaries (recipients) on the supervisory board;
- 2b. if nominations have been made pursuant to no. 2b, those entitled to vote shall vote on the nominations pursuant to no. 2 in a first ballot and on the nominations pursuant to no. 2a in a second ballot;
3. if the person entitled to vote is or was represented by the works council which is responsible for the shop agreement pursuant to Article 3 para. 1 BPG, said works council shall be deemed proxy for exercising the right to vote;
- 3a. the appointment as proxy pursuant to no. 3 shall not apply to beneficiaries (entitled) with non-contributory expectancies and beneficiaries (recipients) who, pursuant to Article 12a para. 5 or Article 17 para. 1, remain with the *Pensionskasse* upon cancellation of the *Pensionskasse* contract;
4. the person entitled to vote or the works council may revoke the agency without giving any reasons;
5. the granting of a power of attorney to proxies other than the works council shall be admissible;
6. the *Pensionskasse* shall be notified of the revocation pursuant to no. 4 and the granting of the power of attorney pursuant to no. 5 in writing until the commencement of the election at the latest;
7. every person who is not represented by a proxy with regard to the right to vote shall have one vote; every proxy has as many votes as the number of persons entitled to vote whom he represents;
8. those entitled to vote who are not represented by a proxy and do not make use of the right to vote at the annual general meeting or in the postal vote shall lose the same and will be considered neither with respect to possible requirements of attendance or number of votes in accordance with the articles of association nor with respect to the determination of the election result in accordance with proportional representation;
9. the election shall take place by open vote, unless the articles of association provide otherwise;
10. if no election in accordance with the articles of association takes place at the annual general meeting, the right of appointment until the next election shall be assigned to the chamber of labour competent for the head office of the *Pensionskasse* in the case of multi-employer *Pensionskassen*, and to the works council (works committee, central works council, group representative body) in the case of single-employer *Pensionskassen*.

(6) Apart from the business regulated under Article 95 para. 5 AktG, the following additional



business shall require the consent of the supervisory board:

1. the establishment of a branch office in another member state;
2. the establishment of investment and risk sharing groups in the *Pensionskasse*;
3. investments in real estates;
4. the solvency plan pursuant to Article 33b para. 2.

Moreover, the articles of association may stipulate that additional business is subject to the consent of the supervisory board.

(7) In addition to the reimbursement of their cash expenses, the supervisory board members of *Pensionskassen* may only be granted an appropriate remuneration for their activity. The amount of this possible remuneration shall be determined in the annual general meeting.

### **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.

### **Annual general meeting**

**Article 29.** (1) The employers paying contributions as well as the beneficiaries (entitled pursuant to Article 5 no. 1 and the beneficiaries (recipients) pursuant to Article 5 no. 2 shall also be invited to the *Pensionskasse*'s annual general meeting. The articles of association may stipulate the requirement to register for participation in the annual general meeting. In this



case, the right of the beneficiary entitled to participate shall expire if he does not inform the *Pensionskasse* by the date fixed in the articles of association prior to the annual general meeting in writing of his intended participation in the annual general meeting. The time period between the fixed date and the annual general meeting may not exceed three months.

(2) Every participant pursuant to para. 1 shall be entitled to obtain information as stipulated under Article 118 para. 1 AktG, in particular with regard to his own investment and risk sharing group. Article 118 paras. 2 to 4 AktG shall be applied.

(3) The invitations to the annual general meeting shall be published in the official gazette “Amtsblatt zur Wiener Zeitung” at least two weeks prior to the fixed date pursuant to para. 1, or two weeks prior to the annual general meeting at the latest. If an election of representatives of the beneficiaries to the supervisory board is stipulated, it shall be announced in the invitation to the annual general meeting. In addition, the respective competent works council (Article 27 para. 5 no. 3) shall be invited in writing no later than two weeks prior to the fixed date pursuant to para. 1, or two weeks prior to the annual general meeting at the latest.

### Financial statements and report on activities

**Article 30.** (1) The financial year of the *Pensionskassen* and the investment and risk sharing groups shall correspond to the calendar year.

(2) The provisions of the *Unternehmensgesetzbuch* (UGB; Corporate Code) shall apply to the accounting of *Pensionskassen*, unless the present Federal Act stipulates otherwise.

(3) Apart from the balance sheet and the income statement of the *Pensionskasse*, which contain the assets, debts, income and expenses of all investment and risk sharing groups of a *Pensionskasse* in a summarised form a report on activities shall be drawn up for every investment and risk-sharing group about the financial information and the non-financial information stipulated pursuant to Article 11 of Regulation (EU) 2019/2088. The report on activities shall be audited by the *Pensionskasse*'s statutory auditor.

(4) The FMA shall determine the formats to be used for the balance sheet and the income statement of the *Pensionskasse* as well as the report on the activities of the investment and risk-sharing group by means of a Regulation. It shall in doing so take into account the specificities of *Pensionskassen* business, the general balance sheet accounting principles in the UGB and the interests of the beneficiaries (entitled and recipients). The FMA may in so doing take into account the size, internal organisation as well as the magnitude, nature, scope and complexity of the activities of the *Pensionskassen* in an appropriate manner.

(5) The *Pensionskasse* shall be required to draw up the financial statements and the report on activities in accordance with the templates pursuant to para. 4 in a timely manner, to ensure that the deadline for submission stipulated in Article 30a para. 1 is duly adhered to.

(6) The statutory auditor shall explain those parts of the audit report on the financial statements which refer to the assets and liabilities of the statement of net assets of an investment and risk sharing group in the *Pensionskasse*'s balance sheet, as well as to the result of the investment and risk sharing group in the *Pensionskasse*'s income statement,

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separately and with allocation to the respective investment and risk sharing groups. A separate explanation of the items concerning the investment and risk sharing groups shall be omitted in the audit report on the balance sheet and the income statement.

(7) If, following the final result of the audit of the investment and risk sharing group's report on activities, no objections are to be raised, the statutory auditor shall confirm this by issuing the following opinion: "As the result of our due audit, we can certify that the accounting and the financial statements comply with the statutory provisions. In conformity with the principles of adequate and orderly accounting, the report on activities presents a picture as true and fair as possible of the investment and risk sharing group's situation.

**Article 30a.** (1) The audited financial statements of the *Pensionskasse*, the audited report on activities of the investment and risk sharing groups as well as the audit report on the financial statements and the reports on activities of the investment and risk sharing groups shall be submitted to the FMA and the *Oesterreichische Nationalbank* by the *Pensionskasse* no later than within six months after the closing of the financial year. Moreover, the *Pensionskassen* shall submit to the FMA no later than within six months after the closing of the financial year the data on their financial statements as well as the reports on activities of the investment and risk sharing groups on electronic media in a standardised form. As regards the electronic report, the FMA may stipulate by regulation a different layout than that defined under Annexes 1 and 2 to Article 30 para. 4 if this is necessary for supervisory reasons; to this end, it shall take account of the economic interest in functioning *Pensionskassen*.

(1a) The *Pensionskasse* shall submit the data to the FMA in accordance with the rules set out in Regulation (EU) 2018/231 at the latest within fourteen weeks following the end of the financial year by electronic means in a standardised format.

(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.

(3) The following shall apply to the disclosure with regard to *Pensionskassen*:

1. the balance sheet to be disclosed only needs to contain the items referenced with letters and Roman numerals, and
2. the annex to be disclosed only needs to contain the details pursuant to Article 222 para. 2, Article 223 paras 1, 2 and 5, Article 226 para. 1, Article 236 nos. 1 and 3 as well as Article 239 para. 1 no. 1 and para. 2 UGB.

(4) *Repealed.*

### Statutory auditor

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**Article 31.** (1) Persons for whom reasons for exclusion exist pursuant to Article 271 and Article 271a UGB must not be appointed as statutory auditors of *Pensionskassen*. The reasons for exclusion pursuant to Article 271a UGB shall be applicable without regard to characteristics of size.

(2) The appointment of the statutory auditor shall take place before the start of the financial year to be audited, and shall be notified to the FMA in writing without delay, in the event that an external auditing company is appointed as the auditor, then the natural persons named for the audit engagement pursuant to Article 77 para. 9 of the Tax Advising and Related Professions Act (WTBG; Wirtschaftstreuhänderberufsgesetz) published in Federal Law Gazette I No. 137/2017 must be indicated in this notification. Any changes in the persons named must be notified to the FMA without delay. The FMA may object to appointment of the statutory auditor as defined in Article 270 para. 3 UGB within one month where grounds for exclusion exist. The court shall rule upon the objection taking into consideration the reasons for exclusion..

(3) If the statutory auditor discovers facts during his auditing activities which reveal that the continued existence of the audited *Pensionskasse* or the compliance with its obligations is at risk or the statutory or other provisions or administrative decisions (*Bescheide*) of the Federal Minister of Finance or the FMA applicable to *Pensionskasse* supervision have been violated, he shall, notwithstanding Article 273 para. 2 UGB, immediately inform the FMA of these facts in writing and provide explanatory comments. If this concerns, however, slight deficiencies which can be remedied within a short time, the report shall only be made if the *Pensionskasse* has not remedied the detected deficiencies within a time limit of no more than three months. A report shall also be made if the members of the management board do not properly provide information requested by the statutory auditor within an appropriate period of time.

(4) The statutory auditor shall examine whether the financial statements and the reports on activities of the investment and risk sharing groups comply with the law. The audit shall also comprise:

1. the correctness of the valuation of the assets allocated to the investment and risk sharing group;
2. the adherence to Articles 7, 12 and 18;
3. the adherence to Article 25;
- 3a. in the case of investments in assets from issuers who are members of a group pursuant to Article 15 AktG or pursuant to Article 115 GmbHG and said group of companies is an owner within the meaning of Article 6a para. 1, the assessment as to whether the fees which have been settled are reasonable and customary;
4. the adherence to the other provisions of the present Federal Act.

**Article 31a.** The liability for damages of the statutory auditor is limited for *Pensionskassen* with a balance sheet total of

1. up to EUR 200 million to ..... EUR 2 million,



2. up to EUR 400 million to ..... EUR 3 million,
3. up to EUR one billion to ..... EUR 4 million,
4. up to EUR two billion to ..... EUR 6 million,
5. up to EUR 5 billion to ..... EUR 9 million,
6. up to EUR 15 billion to ..... EUR 12 million,
7. more than EUR 15 billion to ..... EUR 18 million

for each *Pensionskasse* audited. In the case of intent, the liability for damages is unlimited. Otherwise, Article 275 para. 2 UGB shall be applied to the liability for damages of the statutory auditor.

**Article 32. Repealed.**

### Supervision

**Article 33.** (1) The *Pensionskassen* shall be subject to the FMA's supervision.

(2) The FMA shall monitor compliance with provisions set forth in this Federal Act. In so doing it shall take into account the national economic interest in the ability of the *Pensionskassen* to function, the stability and soundness of the *Pensionskassen* and the interests of the beneficiaries.

(2a) Irrespective of the aims pursuant to para. 2, the FMA shall duly consider in the performance of its tasks the potential impact of its decisions on the stability of the financial system in all Member States concerned and, in particular, in emergency situations, based on the information available at the relevant time.

(2b) The FMA's supervisory activities shall be both risk-based and forward looking. The FMA shall exercise its supervisory powers in a timely manner and in such a way that is proportionate to the magnitude, nature, scope and complexity of the *Pensionskasse's* activities. In doing so an appropriate combination of location-independent activities and on-site inspections must be ensured.

(2c) The FMA shall monitor compliance with

1. the regulations contained in Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, and
2. the regulations contained in Articles 5, 6 and 7 of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment

by *Pensionskassen* on an ongoing basis. Without prejudice to the powers assigned to it in the aforementioned Regulations, for this purpose, the FMA shall in particular be conferred the powers pursuant to para. 3.

(2d) Within the scope of application of this Federal Act, a financial product pursuant to point iv of Article 2 (12) of Regulation (EU) 2019/2088 is to be understood as the investment and risk-sharing group pursuant to Article 12 para. 1, the sub-IG pursuant to Article 12 para. 6 and the



security-oriented IRG pursuant to Article 12a para. 1.

(3) In its scope of competence as the supervisory authority for the supervision of *Pensionskassen*, the FMA may, irrespective of the powers conferred upon on it on the basis of other provisions in this Federal Act:

1. request the submission of interim accounts, of statements in a certain form and with a certain layout, as well as asset-liabilities studies and audit reports from the *Pensionskassen*, and furthermore demand information about all business matters from the *Pensionskassen* and their bodies and inspect all books, documents and data carriers of the *Pensionskassen*;
2. gather information from the statutory auditors and from persons who perform a key function pursuant to Article 21 para. 1; furthermore it may also gather all necessary information from the government commissioner appointed pursuant to para. 4 no. 2 and provide them with it;
- 2a. allow all necessary audits to be undertaken by statutory auditors, auditing actuaries as well as other experts; the reasons for exclusion pursuant to Article 11f para. 2 shall apply; the providing of information by the GMA to the inspectors that it has appointed shall be permissible, provided that this is expedient for the performance of the audit mandate;
3. conduct on-site inspections, conducted by its own inspectors, external auditors or other experts;
- 3a. also request the competent authority of the Member State in which the activity is performed to undertake the inspection of branches in Member States, where doing so simplifies or accelerates the procedure compared against an on-site inspection pursuant to no. 3, or where this is in the interests of expedience, simplicity, rapidity or the saving of costs;
4. demand proof from the *Pensionskassen* about contributions to the *Pensionskassen* being paid in on a regular basis;
5. Request all information from the *Pensionskassen* about activities pursuant to Article 11h that are conferred to third parties.

(4) If there is a danger that the *Pensionskasse* cannot meet its obligations, the FMA may take temporary measures to avert said danger by issuing an administrative decision (*Bescheid*), which shall expire 18 months after having entered into force at the latest. By issuing an administrative decision (*Bescheid*), it may in particular:

1. fully or partly prohibit the members of the *Pensionskasse*'s management board from managing the business, while at the same time notifying the body in charge of the appointment of the management board thereof; the body in charge shall appoint the respective number of new management board members within one month; in order to be deemed legally effective the appointment requires the FMA's approval, which shall be denied if the newly appointed management board members do not seem



capable of averting the aforementioned danger;

2. appoint an competent supervisor (government commissioner), who is either a lawyer or professional accountant by profession, and who is entitled to all rights stipulated under para. 3 nos. 1 and 2; the supervisor shall:
  - a) prohibit the *Pensionskasse* from carrying out any business which is likely to increase the aforementioned danger, and
  - b) in the case that the *Pensionskasse* has been fully or partly prohibited from continuing its business, to allow individual business lines which do not increase the aforementioned danger;
3. fully or partly prohibit reductions of capital or distribution of profits;
4. fully or partly prohibit the continuation of business activities.

(4a) At the request of the supervisor (government commissioner) appointed pursuant to para. 4 no. 2 or para. 5, the FMA may appoint a deputy if and as long as this is necessary for important reasons, in particular because of a temporary unavailability of the supervisor. The provisions applicable to the supervisor shall apply to the appointment of the deputy as well as to his rights and obligations. For the performance of his duties, the supervisor (government commissioner) may use professionally qualified persons upon the FMA's approval, provided that this is necessary due to the extent and complexity of the duties. The approval of the FMA shall list these persons by name and shall also be served on the *Pensionskasse*. Said persons shall act on instruction and in the name of the supervisor (government commissioner) or his deputy.

(5) The FMA shall obtain reports from the *Österreichischer Rechtsanwaltskammertag* (Austrian Law Association) and the *Kammer der Wirtschaftstreuhänder* (Chamber of Professional Accountants and Tax Advisors) on suitable government commissioners. If a government commissioner pursuant to para. 4 no. 2 or a deputy pursuant to para. 4a has to be appointed and no appointment is possible based on said report, the FMA shall inform the Law Association or the Chamber of Professional Accountants and Tax Advisors competent for the *Pensionskasse's* head office and ask them to name a professionally qualified lawyer or business trustee as government commissioner. In case of imminent danger, the FMA may provisionally appoint:

1. a lawyer, or
2. a business trustee

as government commissioner. This appointment shall expire with the appointment of a lawyer or business trustee in accordance with the first sentence.

(6) If a licensing requirement pursuant to Article 9 is no longer fulfilled after the issue of the licence, or if a *Pensionskasse* violates provisions of the present Federal Act, of a regulation issued on the basis of the present Federal Act, of the *Pensionskasse* contract or an administrative decision (*Bescheid*) of the FMA, the FMA shall:

1. order the *Pensionskasse*, under threat of a coercive penalty, to restore compliance with the statutory provisions within a time limit which is reasonable with respect to the



fulfilment of its duties and the interest of the beneficiaries (recipients);

2. in the event of repetition or continuation, fully or partly prohibit members of the *Pensionskasse's* management board from managing the business;
3. revoke the licence if other measures in accordance with the present Federal Act cannot guarantee the proper functioning of the *Pensionskasse*.

(7) The FMA shall pay a remuneration (fee for performing the function) to the government commissioner which shall be in reasonable proportion to the efforts and expenses entailed with his activities. The government commissioner may render account for the last quarter of his activity, respectively, and after termination of his activity. The FMA shall pay the remuneration immediately after examination of the accounting.

(8) Experts appointed by the FMA shall be subject to the legal obligation of secrecy pursuant to Article 14 para. 2 FMABG.

(9) The *Pensionskassen* shall immediately notify the chairperson of the supervisory board of all administrative decisions of the FMA based on the provisions stated in Article 33 para. 2.

**Article 33a.** (1) The *Pensionskasse* concerned shall be informed of inspections pursuant to Article 33 para. 3 nos. 2a and 3 one week prior to the beginning of the inspection, or, if the purpose of the inspection would otherwise be thwarted, at the beginning of the inspection activities. The inspecting bodies shall be given a written assignment for inspection, and they shall identify themselves without being asked prior to the beginning of the inspection and present the assignment for inspection.

(2) The *Pensionskassen* shall make the documents required for the inspection available to the inspecting bodies and grant them access to the books, documents and data carriers as well as give them information. They shall grant the inspecting bodies access to the business and office premises at any time during regular business and working hours.

(3) The inspecting bodies shall be entitled to request the information and business documents required for the inspection from:

1. the management board members;
2. employees who have been named by the management board members, and
3. any other person employed with the company, provided that the circumstances to be inspected fall within the scope of the duties assigned to them.

(4) Appropriate rooms and aids shall be made available by the *Pensionskasse* to the inspecting bodies in order to carry out the inspection. If entries have been made or documents stored using data carriers, the *Pensionskasse* shall, within an appropriate period of time and at its own cost, make those aids available that are necessary to make the documents readable and, if required, produce permanent reproductions readable without aids in the required number.

(5) The inspecting bodies shall endeavour to avoid any disturbance or obstruction of the



business operations not absolutely necessary in the course of its inspections pursuant to Article 33 para. 3 nos. 2a and 3.

(6) The findings of the inspection shall be documented in writing. The *Pensionskasse* shall be given the opportunity to make comments.

### Solvency and reorganisation plan

**Article 33b.** (1) If a *Pensionskasse* does not hold own funds in the amount required pursuant to Article 7, it shall submit to the FMA a plan on how to restore its sound financial position (solvency plan). If the FMA has legitimate reason to assume that a *Pensionskasse* will no longer have own funds in the amount required pursuant to Article 7 in the foreseeable future, the FMA shall demand the submission of a solvency plan from the *Pensionskasse*. In the solvency plan, the *Pensionskasse* shall outline how it will make sure that the own funds reach the required amount or do not drop below it. The solvency plan requires the authorisation of the FMA. The plan shall be authorised if its implementation is likely to result in the restoration of a sound financial position.

(2) If, due to a deterioration of the financial situation of the *Pensionskasse*, the FMA has legitimate reason to assume that the sufficient capital resource base of the *Pensionskasse* will presumably no longer be guaranteed in the long run, the FMA may request the submission of a reorganisation plan. If the reorganisation plan suggests the risk of an insufficient capital resource base, the FMA shall be entitled to require the provision of additional own funds. A reorganisation plan may also be required in addition to a solvency plan.

(3) The reorganisation plan pursuant to para. 2 shall in particular also include the following points for the next three financial years:

1. the expected income and expenses of the *Pensionskasse*;
2. the expected development of the provision for administrative expenses according to the business plan;
3. the expected development of the minimum yield reserve;
4. the expected obligations arising from the minimum yield pursuant to Article 2 paras 2 and 3;
5. the financial resources which will presumably be available to cover the liabilities and the solvency requirements.

(4) In order to safeguard compliance with the obligations arising from the minimum yield at any time, the FMA shall limit or prohibit the discretionary disposal of the *Pensionskasse*'s assets if:

1. no sufficient provision for obligations arising from the minimum yield has been established; or
2. the conditions under para. 1 first sentence are fulfilled and – due to extraordinary circumstances – the financial situation of the *Pensionskasse* can be expected to deteriorate further;



(5) If the discretionary disposal of assets has been limited or prohibited pursuant to para. 4, the *Pensionskasse* may dispose of the assets in a legally effective way only with the consent of the FMA. The consent shall be given if the disposal does not put at risk the compliance with the obligations arising from the minimum yield.

(6) In order to safeguard compliance with the *Pensionskasse* commitments at any time, the FMA shall limit or prohibit the discretionary disposal of an investment and risk sharing group's assets if:

1. no sufficient premium reserve was set aside for the entire *Pensionskasse* commitments managed in said investment and risk sharing group; or
2. no sufficient assets to cover the premium reserve of said investment and risk sharing group were created.

(7) If the discretionary disposal of assets of an investment and risk sharing group has been limited or prohibited pursuant to para. 6, the *Pensionskasse* may dispose of the assets of said investment and risk sharing group in a legally effective way only with the consent of the FMA. The consent shall be given if the disposal does not put at risk the compliance with the obligations arising from the entire *Pensionskasse* commitments managed in said investment and risk sharing group.

(8) The FMA shall announce decisions on the limitation or prohibition of the discretionary disposal of the assets in the official gazette "*Amtsblatt zur Wiener Zeitung*" and on the Internet.

### **Supervision within the scope of the freedom to provide services and the freedom of establishment**

**Article 33c.** (1) If an institution which performs its activities in Austria under the freedom to provide services or through a branch violates the provisions as set forth in Article 11b para. 4 or regulations and administrative decisions (*Bescheide*) issued on the basis of the aforementioned provisions, the FMA shall notify the competent authority of the home member state thereof and ask it to take appropriate measures, in co-ordination with the FMA, to prevent the violations identified.

(2) If the institution continues to violate the provisions stipulated under para. 1, despite the measures taken or to be taken by the competent authority of the home member state or because it did not take any appropriate measures, the FMA shall, while at the same time informing the competent authority of the home member state:

1. order to restore compliance with the statutory provisions within a time limit which is reasonable with respect to the fulfilment of its duties and in the interest of the beneficiaries (recipients);
2. partly or completely prohibit the responsible managers of the institution's branch from managing; and/or
3. prohibit the business activities in Austria in the case of further violations.

(3) If there is imminent danger that the institution cannot meet its obligations pursuant to



para. 1 vis-à-vis the beneficiaries, in particular with regard to the security of the assets entrusted to it, the FMA may take temporary measures pursuant to para. 2 nos. 1 and 2 to avert said danger by issuing an administrative decision (*Bescheid*), which shall expire 18 months after having entered into force at the latest, while at the same time informing the competent authorities of the home member state.

(4) If the institution's licence is revoked, the FMA shall immediately prohibit said institution to commence new business activities. Article 10 paras 2 and 3 shall be applied.

(5) After prior information of the FMA, the competent authorities of the home member state may, either themselves or through their agents, carry out the inspections necessary for the supervisory monitoring of the branch within the meaning of Article 48 and Article 50 c) of Directive (EU) 2016/2341 at the branch. At the request of the competent authorities of the home member state, the FMA itself may also perform such inspections in accordance with one of the procedures stipulated under Article 33 para. 3 nos. 1 to 3.

**Article 33d.** If a *Pensionskasse* which performs its activities in a member state through a branch or under the freedom to provide services, despite a request by the competent authorities of the host member state to restore compliance with the statutory provisions, continues to violate the national provisions of the host member state, the FMA shall, after having been informed by the competent authorities of the host member state, take appropriate measures pursuant to Article 33 para. 6 in order to restore compliance with the statutory provisions. The competent authorities of the host member state shall be immediately notified in writing of the measures taken.

### Services

**Article 33e.** With regard to the servicing of documents of the competent authorities of a host member state, which include requests within the meaning of Article 33d, the recipient shall only be entitled to refuse acceptance pursuant to Article 12 para. 2 of the *Zustellgesetz* (*ZustellG*; Process of Service Act) if said documents are not drawn up in the official language of a member state.



### Co-operation with supervisory authorities in the member states

**Article 33f.** (1) The FMA shall be entitled to provide such information and hand over those documents about the *Pensionskassen* subject to its supervision, at their request, to the authorities of the other member states competent for the supervision of the *Pensionskassen* or institutions, which they need in order to fulfil their duties and which pertain to the following subjects:

1. licences, branches and the exercise of freedom to provide services;
2. shareholders, members of the management board and the supervisory board of the *Pensionskasse*;
3. the business plan approved by the FMA concerning those investment and risk sharing groups which manage *Pensionskasse* commitments from the respective member state;
4. solvency requirements and own funds of the *Pensionskasse*;
5. the financial statements of the *Pensionskasse* as well as the report on activities of those investment and risk sharing groups which manage *Pensionskasse* commitments from the respective member state;
6. perceptions and measures based on the supervision of the business activities pursuant to Articles 33 and 33a;
7. criminal proceedings pursuant to Articles 46a para. 1.

(2) The FMA may at any time obtain information on the activities of *Pensionskassen* in member states and the situation of institutions active in Austria if this is necessary in the national economic interest of properly functioning *Pensionskassen* or in the interests of the beneficiaries.

(3) If the licence of a *Pensionskasse* is revoked, the FMA shall immediately inform the competent authorities of the member states in which it carries out its activities thereof in writing.

(4) The Federal Minister of Finance may, provided that he is authorised to do so pursuant to Art. 66 para. 2 B-VG, at the FMA's proposal within the scope of para. 1 as well as Articles 11a, 11b, 33c and 33d, conclude agreements with the competent supervisory authorities in other member states on how to cooperate with the FMA in monitoring and supervising the institutions and *Pensionskassen*.

(5) If the FMA receives confidential information from a supervisory authority of a Member State, it shall only be allowed to use this information for the purposes of oversight over and supervision of an institution pursuant to Article 5 no. 4. Any disclosure of such information shall only be permissible where the competent supervisory authority of the Member State has explicitly approved this, and only for the purpose listed in the approval.



### Co-operation with EIOPA

**Article 33g.** (1) The FMA shall cooperate with the European Insurance and Occupational Pensions Authority (EIOPA), provided that doing so is necessary for the performance of the duties determined in Directive (EU) 2016/2341 or in Regulation (EU) No. 1094/2010 or by way of administrative or legal assistance..

(2) The FMA shall notify EIOPA of the following:

1. every entry into the register pursuant to Article 8 para. 4;
2. each withdrawal of the license pursuant to Article 10 para. 1;
3. each prohibition of the continuation of business activities pursuant to Article 33 para. 4 no. 4.

(3) The FMA must inform EIOPA on the national supervisory provisions, which are relevant for the *Pensionskassen* but do not fall under the social and labour law provisions stated in Article 11b para. 4 no. 1 and 2 and update such information on a regular basis, at least every two years.

(4) The FMA shall inform the European Commission and EIOPA about material difficulties that arise in conjunction with its supervisory activities in relation to *Pensionskassen*, from the application of the provisions of Directive (EU) 2016/2341.

### Supervisory Review Process

**Article 33h.** (1) The FMA shall review the strategies, processes and reporting procedures that have been defined by the *Pensionskasse* to comply with the regulations contained in this Federal Act. In so doing, the FMA shall take into account the magnitude, nature, scope and complexity of the activities of the *Pensionskassen*.

(2) During the review pursuant to para. 1, the FMA shall take into consideration, under which framework conditions that *Pensionskasse* conducts its activities, and whether key functions or other activities pursuant to Article 11h are conferred on third parties. In particular, the FMA shall review the following:

1. The qualitative requirements for the governance system;
2. The risks that exist for the *Pensionskasse* or the investment and risk-sharing group;
3. The ability of the *Pensionskasse* to assess and handle such risks.

(3) The FMA shall make use of appropriate supervisory tools including stress tests, with which it is able to detect the deterioration of the financial situation of *Pensionskassen*, as well as to be able to monitor the necessary measures taken by a *Pensionskasse*.

(4) The FMA shall draw up an inspection plan for the review pursuant to para. 1.

### Transparency and Responsibility

**Article 33i.** The FMA shall disclose the following information on its website, and constantly update it as necessary:

1. The legal and administrative provisions and general guidance applicable in the



- field of the supervision of *Pensionskassen* as well as the non-applicability of Articles 4 and 5 of Directive (EU) 2016/2341;
2. information about the Supervisory Review Process pursuant to Article 33h;
  3. aggregated statistical data about key aspects for the application of the supervisory framework;
  4. aims of supervision and their main functions and activities;
  5. the regulations that shall apply in the case of breaches against the provisions of this Federal Act.

### State commissioner

**Article 34.** The Federal Minister of Finance shall appoint a state commissioner and a deputy at every *Pensionskasse* for a maximum term of office of five years; re-appointment shall be admissible. The state commissioners and their deputies act as bodies of the FMA and in this function they are subject solely to the FMA's instructions. Article 76 paras 2 to 11 BWG shall be applied.

### Costs

**Article 35.** (1) The *Pensionskasse* supervision costs shall be assigned to the licensed *Pensionskassen* (Article 8) within accounting group 4 pursuant to Article 19 para. 1 no. 4 of the *Finanzmarktaufsichtsbehördengesetz* (FMABG; Financial Market Authority Act) in accordance with the following criteria:

1. 10 per cent of the total costs of accounting group 4 pursuant to Article 19 para. 1 no. 4 FMABG shall be borne by the licensed *Pensionskassen* in equal parts;
2. 30 per cent of the total costs of accounting group 4 pursuant to Article 19 para. 1 no. 4 FMABG shall be borne by the licensed *Pensionskassen* in proportion of the number of investment and risk sharing groups managed by a *Pensionskasse* to the total number of investment and risk sharing groups of all *Pensionskassen*;
3. 30 per cent of the total costs of accounting group 4 pursuant to Article 19 para. 1 no. 4 FMABG shall be borne by the licensed *Pensionskassen* in proportion of the number of beneficiaries of a *Pensionskasse* to the total number of beneficiaries of all *Pensionskassen*;
4. 30 per cent of the total costs of accounting group 4 pursuant to Article 19 para. 1 no. 4 FMABG shall be borne by the licensed *Pensionskassen* in proportion of the reported premium reserve of a *Pensionskasse* to the total amount of reported premium reserves of all *Pensionskassen*.

(2) The total costs of accounting group 4 may, however, not exceed 1.5 thousandths of the amount resulting from the sum of the current contributions for beneficiaries (entitled) and the payment of old-age pensions, survivors' pensions and invalidity pensions for the respective financial year.



### Notification obligations

**Article 36.** (1) The *Pensionskasse* shall notify the FMA of the following immediately and in writing, without waiting, in the case of a resolution being taken, for the subject of the resolution to take effect:

1. changing of the location of the head office of the *Pensionskasse*;
  2. every amendment to the articles of association;
  3. every acquisition and disposal of units in the *Pensionskasse* as well as every exceeding and under-running of participation thresholds pursuant to Article 6a paras. 1 2 and 4, as soon as it obtains knowledge of such occurrences;
  4. every under-running of the limits pursuant to Articles 7, 9 no. 4 and 12;
  5. every supervisory board decision about the formation of a separate IRG in accordance with Article 12 para. 2 or a security-oriented IRG in accordance with Article 12a;
  6. every formation of a Sub-IG in accordance with Article 12 para. 7;
  7. every closure of an IRG, sub-IG or security-oriented IRG;
  8. every termination or cancellation by mutual consent of a *Pensionskasse* contract pursuant to Article 17 para. 1 as well as every switching of *Pensionskasse* pursuant to Article 17 para. 3;
  9. every commissioning of or every rescinding of the commissioning of a custodian bank;
  10. circumstances that may have an effect in endangering the fulfilment of benefits to be provided on the basis of *Pensionskasse* contracts, in particular sustained reductions in value of the assets apportioned to the investment and risk-sharing groups.
- (2) The *Pensionskassen* shall submit quarterly statements to the FMA within four weeks of the reporting dates of 31 March, 30 June, 30 September and 31 December broken down by IRG, sub-IG and security-oriented IRG, stating the invested assets and the number of beneficiaries, in accordance with the format prescribed in the Regulation pursuant to para. 3 in a standardised electronic form.
- (3) The FMA shall define the format of the quarterly statements by means of a Regulation; in issuing this Regulation the FMA shall take into consideration the national economic interest in a functioning *Pensionskassen* industry.

### Form of communication with the FMA – electronic submission

**Article 36a.** (1) The FMA may prescribe by means of a Regulation that the notifications and submissions pursuant to Article 6a paras. 1 and 2, Article 7 para. 7, Article 11f para. 3, Article 11h para. 4, Article 12 para. 5, Article 12a para. 1 no. 6, Article 21e para. 5, Article 22a para. 4, Article 26 para. 1, Article 30a paras. 1 and 1a, Article 31 para. 2, Article 33b paras. 1 and 2 and Article 36 paras. 1 and 2 shall be required to be submitted only in electronic form, and that submissions shall have to correspond to certain formats, technical minimum

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requirements and submission modalities. In so doing, the FMA shall observe the principles of economy and expediency, ensuring that the data is electronically available to the FMA at all times and supervisory interests are not compromised. The FMA shall adopt appropriate arrangements to allow individuals subject to reporting obligations or, where applicable, individuals they have charged with submitting the reports on their behalf, to verify over an appropriate period of time whether the reporting data submitted by them or by the person charged with submitting the reports is correct and complete.

### Insolvency

**Article 37.** (1) Neither a composition with creditors nor preliminary proceedings may be instituted against the assets of a *Pensionskasse*.

(2) A forced composition with creditors shall not be performed in the course of a *Pensionskasse*'s bankruptcy proceedings.

(3) Only the FMA may file the petition to institute bankruptcy proceedings. Article 70 of the *Konkursordnung* (KO; Bankruptcy Code) shall be applied.

(4) The assets allocated to an investment and risk sharing group shall constitute a special fund (*Sondermasse*) in the bankruptcy proceedings (Article 48 para. 1 KO).

(5) The institution of bankruptcy proceedings shall terminate the contractual relationships stemming from *Pensionskasse* contracts.

### Trustee in bankruptcy

**Article 38.** (1) The bankruptcy court shall, upon the institution of bankruptcy proceedings, appoint a trustee in bankruptcy to assert the claims arising from *Pensionskasse* contracts against the *Pensionskasse*. Claims arising from *Pensionskasse* contracts against the *Pensionskasse* may only be asserted by the trustee in bankruptcy. The trustee in bankruptcy shall undertake to hear the beneficiaries at their request prior to filing the claim. The claims ascertainable from the *Pensionskasse*'s books shall be deemed filed.

(2) The administrator of the bankrupt's estate shall, at the request of the beneficiaries, grant the trustee in bankruptcy access to the books and records of the company.

(3) The trustee in bankruptcy shall be entitled to reimbursement of his cash expenses as well as to an appropriate remuneration for his efforts from the bankrupt's assets. Article 125 KO shall apply correspondingly.

### Settlement of claims

**Article 39.** (1) The bankruptcy court shall arrange for a final list of pension accounts for the time of the institution of the bankruptcy proceedings.

(2) The beneficiaries shall be entitled to the assets allocated to their investment and risk sharing group in accordance with the current balance of their pension account determined pursuant to para. 1.

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(3) If the claims from the *Pensionskasse* contract to which the beneficiaries are entitled pursuant to para. 2 cannot be fully settled, they shall have priority over the remaining claims in bankruptcy.

### **Dissolution, merger and transformation of a *Pensionskasse***

**Article 40.** The resolution to dissolve, merger or transform a *Pensionskasse* shall require the FMA's approval to become effective. The FMA shall grant the approval if a transfer of the assets allocated to the investment and risk sharing groups pursuant to Article 41 can be effected, taking the national economic interest in properly functioning *Pensionskassen* as well as their safety in the interests of the beneficiaries into account.

### **Transfer of assets allocated to an investment and risk sharing group**

**Article 41.** (1) The FMA shall transfer the assets allocated to an investment and risk sharing group by means of an administrative decision (*Bescheid*) to another *Pensionskasse* after obtaining its approval if:

1. the licence of the *Pensionskasse* administrating the investment and risk sharing group is revoked or expires;
2. the petition to institute bankruptcy proceedings against the *Pensionskasse* administrating the investment and risk sharing group is filed pursuant to Article 37 para. 3, or
3. an application to dissolve the *Pensionskasse* pursuant to Article 40 is approved.

(2) The dissolution of the *Pensionskasse* and the transfer of the assets allocated to the investment and risk sharing group shall be published in the official gazette "Amtsblatt zur Wiener Zeitung".

(3) The transfer of the assets allocated to an investment and risk sharing group to another *Pensionskasse* shall cause its entering into all contracts concluded by the former *Pensionskasse* for the investment and risk sharing group by way of universal succession.

(4) Until the transfer of the assets allocated to an investment and risk sharing group has been effected, the FMA shall be entitled to order its provisional administration by another *Pensionskasse* after obtaining its approval if this is in the interests of the beneficiaries.

### **Entries in the commercial register**

**Article 42.** A *Pensionskasse* and any change requiring approval pursuant to Articles 40 and 41 may only be entered in the commercial register if the relevant, legally effective administrative decisions (*Bescheide*) are available in the original or as notarised copy. Any orders and decisions about such entries in the commercial register shall be served on the FMA.

### **Protection of designations**

**Article 43.** (1) Only *Pensionskassen* shall be allowed to use the designation *Pensionskasse*



or word combinations containing this designation in their company name, in business transactions and for advertising purposes. Only institutions or *Pensionskassen* shall be allowed to use the designation “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.

### Prohibition of acquisition

**Article 44.** Members of the management board or the supervisory board of a *Pensionskasse* must neither acquire assets allocated to an investment and risk sharing group and managed by said *Pensionskasse* nor sell them.

### Procedural and penal provisions

**Article 45.** *Repealed (Federal Law Gazette I no. 107/2017)*

**Article 46.** (1) Whoever contravenes the provisions stipulated under Articles 43 and 44 commits an administrative offence and shall be fined up to EUR 60,000 by the FMA in the case of intentional commission and up to EUR 30,000 in the case of negligent commission.

(2) The person contravening the provisions shall be ordered to immediately stop his unlawful acts.

(3) *Repealed (Federal Law Gazette I no. 8/2005)*

**Article 46a.** (1) Any person who, as the person responsible (Article 9 VStG) of a *Pensionskasse*,

1. omits to notify about the intended activity in the territory of another Member State in accordance with Article 11a paras. 2 and 3;
2. omits to notify in accordance with Article 11a para. 5 about the change of conditions regarding the details in accordance with Article 11a paras. 2 and 3;
3. does not fulfil the requirements for an effective governance system pursuant to Article 11e;
4. omits to notify about the appointment of as well as every change in the person named in Article 11f para. 1 in accordance with Article 11f para. 3;
5. does not observe the principles of remuneration policy pursuant to Article 11g;
6. omits to notify about the transferring of tasks to third parties in accordance with Article 11h para. 4;
7. fails to comply, even following a warning, with the request for information of a beneficiary pursuant to Article 19 para. 2 last sentence;
8. fails to observe the information obligations pursuant to Article 19 paras. 2a, 3, 4 and 5 towards beneficiaries;
9. fails to meet the requirements in relation to risk management pursuant to Article 21a;
10. fails to observe the obligation to submit the Own Risk Assessment pursuant to Article 22a para. 4 without delay;
11. fails to meet the requirements in relation to the Own Risk Assessment pursuant to Article 22a;



12. breaches the limits defined in Article 23 para. 1 no. 3a;
13. fails to submit the notification of the lifting of the dedication of a security pursuant to Article 23 para. 1 no. 3a;
14. acts in contravention of the investment regulations set forth in Article 25;
15. fails to observe the disclosure obligation pursuant to Article 25a para. 3;
16. fails to observe the request for information by an employer making contributions, a beneficiary or a competent member of the works council pursuant to Article 30a para. 2, even following a warning;
17. fails to notify the circumstances listed in Article 36 para. 1 to the FMA without delay;
18. conducts *Pensionskasse* transactions, that do not correspond to those listed in the approved business plan,
19. breaches the transparency requirements in pre-contractual disclosures and in periodic reports
  - a) regarding environmentally sustainable investments pursuant to Article 5 of Regulation (EU) 2020/852,
  - b) regarding financial products that promote environmental characteristics pursuant to Article 6 of Regulation (EU) 2020/852, or
  - c) regarding other financial investments pursuant to Article 7 of Regulation (EU) 2020/852,

commits an administrative offence and shall be punished by the FMA by a fine of up to EUR 6 000 in the case of nos. 1, 2, 4, 6 to 8, 10 12, 13, and 15 to 17 or a fine of up to EUR 30 000 in any of the cases listed in nos. 3, 5, 9, 11 and 14, or a fine of up to EUR 60 000 in the case of nos. 18 and 19.

(2) Anyone who omits to notify the FMA in writing about the circumstances listed in Article 21 para. 4 in the performance of a key function pursuant to Article 21 para. 1, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 30 000.

(3) Whoever as a person responsible (Article 9 VStG) for a custodian bank fails to take the necessary measures pursuant to Article 26 para. 2 commits an administrative offence, unless the offence constitutes a criminal offence falling under the jurisdiction of the courts, and shall be fined up to EUR 60,000 by the FMA.

(4) Whoever as employer or person responsible (Article 9 VStG) for the employer fails to answer the request for information of a beneficiary pursuant to Article 19 para. 2 even after having been reminded thereof commits an administrative offence, unless the offence constitutes a criminal offence falling under the jurisdiction of the courts, and shall be fined up to EUR 3,000 by the FMA.

**Article 47.** Anyone who establishes or operates a *Pensionskasse* without the necessary licence to do so, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 100 000.

### Usage of received fines

**Article 47a.** The fines imposed by the FMA pursuant to Article 46a para. 1 nos. 3 to 6, 9 to 11, 17 and 19 and para. 2 shall be received by the Federal Government.

### Publication of measures and sanctions

**Article 47b.** (1) The FMA shall publish on its website legally final instructed measures in



accordance with Article 33 paras. 4, 5 and 6 as well as legally final fines imposed for breaches pursuant to Article 46a including the identity of the relevant person stating the type and character of the underlying breach, after the person in question has been informed about the decision in which the measure or sanction was imposed (publication).. The publication shall also be amended accordingly to include every confirmatory decision by the court.

(2) If the FMA, following a case-by-case assessment of the proportionality of the relevant information, considers that the identification of the legal persons or the personal data of the natural persons would be disproportionate, or if such an announcement would jeopardise financial market stability or an on-going investigation, the FMA may either

1. only publish the decision to impose a sanction or other measure, once the reasons for not publishing it cease to exist; or
2. only publish the decision to impose a sanction or other measure in an anonymised form, where such an anonymised announcement ensures the effective protection of the personal data concerned; or
3. refrain from publishing the decision to impose a sanction or other measure, if it believes the options pursuant to no. 1 or 2 are insufficient to ensure that:
  - a) the stability of the financial markets is not endangered, or
  - b) with regard to measures or sanctions deemed to be of a minor nature, that proportionality is preserved in publishing such decisions.

If it is decided to publish a sanction or other measure on an anonymised basis, the announcement of the relevant data may be postponed for a reasonable period of time, in the case that it is expected that the reasons for anonymised publication will cease to exist during that period.

(3) Paras. 1 and 2 shall not apply to decisions imposing measures that are of an investigatory nature.

(4) The person affected by this publication may make an application to the FMA to review the lawfulness of the disclosure pursuant to para. 1 in a procedure that shall result in an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in a similar manner. If, in the course of this review, it is found that the publication was unlawful, 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) The FMA shall publish every publication issued pursuant to this provision on the FMA website for a period of five years. The publication of personal data shall however only be maintained while none of the criteria pursuant to para. 2 nos. 1 to 3 would be met.

## Transfer

**Article 48.** (1) The transfer of pension expectancies and benefit obligations from direct guarantees or claims arising from the *Bezügegesetz* (Salary Act), 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 of the *Arbeitsvertragsrechtsanpassungsgesetz* [AVRAG; Employment Contract Adaptation Act]) 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 his 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 KO) 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 his ongoing payment of contributions to the *Pensionskasse*.

(3) If the employer does not comply with his 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 *Pensionskasse* contract. Article 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 *Pensionskasse* 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 per cent;
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.

**Article 48a.** Beneficiaries whose direct guarantee was transferred to a *Pensionskasse* without agreeing on an obligation of the employer to make an additional contribution (Article 5 no. 3) pursuant to Article 48 may transfer the premium reserve of employer's contributions shown as of 31 December 2003 as premium reserve from employee's contributions to another investment and risk sharing group of said *Pensionskasse* on the following conditions:

1. The transfer pursuant to Article 48 must have been effected prior to 1 January 2003.



2. The beneficiary must apply in writing to the *Pensionskasse* for the transfer by 30 November 2003 at the latest, and the transfer shall be effected by the *Pensionskasse* by 30 June 2004 at the latest with effect from 1 January 2004.
3. The framework conditions for the transfer shall be regulated in a collective agreement or, if no collective agreement is effective in said matter, in a shop agreement or an agreement pursuant to the contract samples pursuant to the BPG and shall be laid down in an amendment to the *Pensionskasse* contract. Beneficiaries (recipients) who are not represented by a works council and to whom such a collective agreement is not applicable may make an agreement with the *Pensionskasse* by individual contract on an appropriate addendum to the *Pensionskasse* contract applicable to them, with the *Pensionskasse* having to use a contract sample designed for such agreements according to uniform principles. Such a contract sample shall be submitted to the FMA.
4. The *Pensionskasse* shall establish a separate investment and risk sharing group for said transfer, with the interest rates used (assumed interest rate and technical surplus) having to correspond to the requirements of Article 20 para. 2a, which are to be applied to new *Pensionskasse* contracts to be concluded and which at any rate have to be lower than those interest rates which are used in the investment and risk sharing group in which the claims were administered. If said investment and risk sharing group does not reach the number of 1,000 beneficiaries within the first year after its establishment, the auditing actuary shall have to confirm that the interests of the beneficiaries (recipients) of this investment and risk sharing group are sufficiently safeguarded and continued compliance with the obligations under the *Pensionskasse* contracts can be expected. If the auditing actuary refuses to issue said confirmation, the investment and risk sharing group shall be merged with another investment and risk sharing group as of the next balance-sheet date.
5. Upon the transfer, the former employer's contributions are transformed into employee's contributions (Article 25 para. 1 no. 2 lit. a EStG 1988). Transferred employer's contributions shall be subject to a flat income tax of 25 per cent. The *Pensionskasse* shall withhold the tax in the course of the transfer and pay it over to the Inland Revenue Office of the permanent establishment on the 15<sup>th</sup> day following the end of the calendar month in which the transfer was effected. This transformation of employer's contributions into employee's contributions shall be deemed an inflow of retirement pensions and other pensions.

#### **Advance tax payment**

**Article 48b.** (1) The premium reserve from employer's contributions shown as of 31 December 2011 for a beneficiary (recipient) on that date:

1. stemming from *Pensionskasse* commitments where the employer has no unlimited obligation to make an additional contribution (Article 5 no. 3); and



2. having a relevant assumed interest rate of at least 3.5% as of 31 December 2001 shall be subject to a flat income tax of 25%. The flat income tax shall be deemed as collected for the beneficiary (recipient). Prior to application of the flat income tax, the gross pension payments made during the 2012 calendar year shall be deducted from the premium reserve. The tax rate shall be reduced to 20% if the average monthly gross pension of the beneficiary (recipient) that results from this *Pensionskasse* commitment did not exceed EUR 300 during the 2011 calendar year. The first to third sentences shall be applied correspondingly to the premium reserve shown as of 31 December 2011 for a beneficiary (entitled) born before 1 January 1953.

(2) The *Pensionskasse* shall pay the tax to the Inland Revenue Office competent for the company on 30 November 2012. Through payment of the flat income tax, the premium reserve from employer's contributions shown as of 31 December 2011 is, after deduction of the flat income tax, transformed into a premium reserve from employee's contributions (Article 25 para. 1 no. 2 lit. a EStG 1988). This transformation of employer's contributions into employee's contributions shall be effected on 1 January 2013.

(3) Paras. 1 and 2 shall be applied if the beneficiary (entitled) or beneficiary (recipient) who fulfils the conditions specified in para. 1 has submitted to the *Pensionskasse* by 31 October 2012 a written application for collection of the flat income tax pursuant to para. 1. The *Pensionskassen* shall inform the affected beneficiaries of this option in writing.

(4) The income obtained in 2012 through advance tax payment shall, for income tax purposes, be deducted (without capital gains tax pursuant to Article 93 EStG 1988 in conjunction with Article 27 para. 2 no. 2 paras. 3 and 4 EStG 1988) prior to distribution to the territorial authorities. This deduction shall be deemed a deduction within the meaning of Article 8 para. 2 of the *Finanzausgleichsgesetz* (FAG 2008; Fiscal Equalisation Act) 2008, Federal Law Gazette I no. 103/2007 and shall reduce the net tax revenue. The income from the advance tax payment shall be paid into the *Fonds für Maßnahmen gemäß FinStaG* (Fund for Measures Pursuant to the Financial Market Stability Act; Article 7a para. 3 of the *Stabilitätsabgabegesetz* (StabAbgG; Stability Contribution Act), Federal Law Gazette I no. 111/2010) and as part of the Fund shall be earmarked for the purpose of measures as specified in the *Bundesgesetz über Maßnahmen zur Sicherung der Stabilität des Finanzmarktes* (Federal Act on Measures for Securing the Stability of the Financial Market), Federal Law Gazette I no. 136/2008.

### Transitional provisions

**Article 49.** (1) After the entry into force of the present Federal Act, the following transitional provisions shall apply:

1. (referring to Article 20)

If the approved business plan contains provisions which do not comply with the present Federal Act, the provisions of the present Federal Act shall be applied from the time of



the entry into force of the present Federal Act, and contrary provisions of the business plan shall become null and void. Upon the next modification of the business plan, it shall be adapted to the amended provisions.

2. (Article 24a)

If the financial statement of a *Pensionskasse's* investment and risk sharing group (Form A) shows a deficit pursuant to Article 24 para. 5 PKG (Form A, assets, item XV) as of 31 December 1996, it shall be released no later than within three years.

3. (referring to Article 25)

Investments existing at the effective date of the present Federal Act and exceeding the limits of Article 25 must not be increased further; they shall be adapted to the limits of Article 25 within one year after the entry into force of the present Federal Act.

4. (referring to Article 25 para. 4 no. 2)

In Article 25 para. 4 no. 2 the word "euro" shall be replaced with the words "Austrian Schilling" by 1 January 1999.

5. (referring to Article 25 para. 4-2 no. 2, para. 4 no. 2 and para. 7)

Investments in national currencies of those member states which participate in the third stage of the EMU shall be equated to euro-denominated investments.

6. The criminal liability of administrative offences pursuant to Articles 46 and 46a as amended by 31 March 2002 shall not be affected by the entry into force of the Federal Act in Federal Law Gazette I no. 97/2001; such violations shall remain punishable pursuant to Articles 46 and 46a as amended prior to Federal Law Gazette I no. 97/2001.

7. Administrative penal proceedings (*Verwaltungsstrafverfahren*) on the grounds of the administrative offences mentioned under no. 6 pending on 31 March 2002 shall be continued by the authority competent therefor on 31 March 2002.

8. Administrative penal proceedings on the grounds of the administrative offences mentioned under no. 6 which become pending from 1 April 2002 shall be carried out by the FMA.

9. Proceedings to enforce administrative decisions (*Bescheide*) based on Article 33 pending on 31 March 2002 shall be continued by the FMA from 1 April 2002.

10. The validity of the administrative decisions (*Bescheide*) issued by the Federal Minister of Finance by 31 March 2002 acting to enforce Article 33 shall not be affected by the transfer of the competence for exercising the *Pensionskasse* supervision to the FMA effected by Federal Law Gazette I no. 97/2001.

11. The costs of the measures mentioned under Article 33 para. 8 as amended by Federal Law Gazette I no. 142/2000 incurred by 31 March 2002 but not yet reimbursed by that date shall be prescribed by the FMA to the legal entities concerned and paid to the federal government.



12. As far as the provisions stipulated under Article 51 para. 1k refer to the FMA, the Federal Minister of Finance shall substitute for the FMA until 31 March 2002.

13. (referring to Article 31 para. 2)

For the audit of the financial statements for the first financial year beginning after the 31 December 2005, the statutory auditor shall be elected prior to the closing of this financial year.

14. Referring to Article 2 para. 1:

The exclusion of the minimum yield for five-year periods of time (Article 2 para. 2), which end prior to 1 January 2005, shall not be admissible.

15. Referring to Article 7:

The reference value for the minimum yield as of the balance-sheet date 31 December 2005 shall be the total value of the premium reserve of all investment and risk sharing groups as of the balance-sheet date 31 December 2004 less those parts of the premium reserve for which the guarantee of a minimum yield by the *Pensionskasse* was waived with effect from 1 January 2005.

If the guarantee of a minimum yield is excluded in the *Pensionskasse* contract with effect from 1 January 2005 (Article 2 para. 1) and this adaptation of the contract is agreed by 30 November 2005 at the latest, a minimum yield reserve established in the balance sheet of the *Pensionskasse* as of 31 December 2004 and not used for obligations arising from the minimum yield shall be released to that extent to which the minimum yield reserve was established with regard to said *Pensionskasse* contract. The released minimum yield reserve shall be credited to the beneficiaries and the employers inasmuch as they contributed to its establishment. If the waiver is effected until the approval of the balance sheet for the financial year 2004 and if the allocation of the minimum yield reserve for the financial year 2004 is not needed for the fulfilment of the minimum yield obligations for the beneficiaries affected by the waiver for the period of time until 31 December 2004 not covered by the waiver, the allocation of the minimum yield reserve for the financial year 2004 shall in these cases not be required.

Article 7 para. 6 in conjunction with Article 20 para. 2 no. 7 as amended by the Federal Act in Federal Law Gazette I no. 97/2003 can for the last time be applied to the balance sheet as of 31 December 2005. If a “difference pursuant to Article 7 para. 6 PKG” is posted in the balance sheet of the *Pensionskasse* as of 31 December 2005, it shall be released by 31 December 2009 at the latest.

16. Referring to the repeal of a word sequence in Article 20 para. 2 no. 3:

For *Pensionskasse* contracts which were concluded prior to 23 September 2005 and which do not comply with Article 16a, provided that they are not adapted to Article 16a, the provisions of the business plan as last amended and approved by the FMA before 23 September 2005 shall continue to be applied to the administrative expenses.

17. Referring to Article 24a para. 7:



If a negative volatility reserve is posted in the report on activities of an investment and risk sharing group as of 31 December 2004, it shall be released no later than within ten years and at least by one tenth annually; preliminary releases shall be admissible.

If an investment and risk sharing group manages *Pensionskasse* business arising from a cross-border membership, the negative volatility reserve established with regard to said investment and risk sharing group shall be immediately released.

The FMA may determine by regulation that the release of the negative volatility reserve shall not be required in a financial year if:

- a) the profit situation in the capital markets considerably deviates from the average of the previous years; and
- b) at least some of the beneficiaries (recipients) in this financial year are affected by a reduction in the benefits due to the low or negative income prior to the release of the negative volatility reserve.

18. Referring to Article 25 paras 9 and 10:

Until the issue of regulations pursuant to Article 25 paras 9 and 10 by the FMA, however by 30 September 2006 at the latest, the *Pensionskassen* shall adhere to the following additional investment rules with regard to the investment of the assets allocated to an investment and risk sharing group:

- a) investments pursuant to Article 25 para. 1 no. 6 shall altogether be limited to 10 per cent of the assets allocated to the investment and risk sharing group at most;
- b) investments pursuant to Article 25 para. 2 no. 5 shall altogether be limited to 20 per cent of the assets allocated to the investment and risk sharing group at most;
- c) investments pursuant to Article 25 para. 2 no. 6 shall altogether be limited to 10 per cent of the assets allocated to the investment and risk sharing group at most;
- d) investments in securities on option rights shall altogether be limited to a total of 3 per cent of the assets allocated to the investment and risk sharing group at most;
- e) for investment and risk sharing groups which manage *Pensionskasse* commitments with minimum yield guarantee, investments pursuant to Article 25 para. 3 no. 2 shall altogether be limited to 50 per cent of the assets allocated to the investment and risk sharing group at most;

19. (1) Referring to Article 36 paras 2 and 4:

The quarterly reports shall correspond to the layout determined by FMA regulation for the first time as of 31 December 2005.

(2) After the entry into force of the Federal Act in Federal Law Gazette I no. 54/2012, the following transitional provisions shall apply:

1. Referring to Article 12 para. 7 and Article 12a para. 2:

Notwithstanding Article 12 para. 7 and Article 12a para. 2, all beneficiaries (recipients)



as of 31 December 2012 having a *Pensionskasse* commitment where the employer has no unlimited obligation to make an additional contribution may, after receiving documented notification as specified in Article 19b, by 31 October 2013 declare to the *Pensionskasse* in writing their change to:

- a) an investment and risk sharing group or sub-IG with an assumed interest rate that is admissible pursuant to Article 20 para. 2a;
- b) a security-oriented IRG; or
- c) an occupational group insurance.

The change shall become effective as of 1 January 2014. The amount transferred shall be calculated based on the premium reserve and the volatility reserve that has been established for the beneficiary (recipient) as of the date of transfer. Article 12a para. 4 shall apply in the case of a transfer pursuant to lit. b; Article 12a para. 1 no. 2 shall be applied subject to the proviso that the guarantee shall be based on the monthly pension granted for January 2014. In the event of a transfer pursuant to lit. c, proof of information as specified in Article 18k VAG shall be provided. If the beneficiary (entitled) declares a change into the security-oriented IRG pursuant to lit. b 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.

2. Referring to Article 12a para. 4:

Upon establishing the security-oriented IRG, the percentage share of the volatility reserve to be established shall be 5 per cent of the assets that are allocated to the beneficiaries (Article 20 para. 2 no. 5) and are transferred to the security-oriented IRG at that time.

3. Referring to Article 15 para. 3 nos. 7a and 15a:

Any *Pensionskasse* contracts concluded as of the date when the Federal Act in Federal Law Gazette I no. 54/2012 enters into force shall be supplemented with the stipulated contents by 31 December 2015.

4. Referring to Article 24a:

Beneficiaries (recipients) having a *Pensionskasse* commitment where the employer has no unlimited obligation to make an additional contribution and the volatility reserve is managed individually may declare irrevocably in writing by 31 October 2014 that, from the financial year in which the declaration is submitted, no allocation or release of the volatility reserve pursuant to Article 24a paras. 2, 3 and 4 is to take place if the current monthly pension at the time of the waiver declaration is less than the first monthly pension resulting from the superannuation of the premium reserve established for the beneficiary (recipient) at the time when the *Pensionskasse* benefit is claimed for the first



time. The *Pensionskasse* shall inform the beneficiaries (recipients), in documented printed form and at their request, of the option to submit a waiver declaration and of the related effects.

5. Referring to Article 26 para. 1:

For custodian banks commissioned as of 1 January 2013, the declaration of the credit institution or the depositary which waives any right of set-off and retention shall be submitted to the FMA by 31 December 2013.

(3) The following transitional provisions shall apply following the entry into force of the amendment of this act by Federal Act in Federal Law Gazette I No. 81/2018:

1. Regarding Article 19 para. 1a no. 7:

The *Pensionskasse* may make the information available free of charge in paper form only until 31 December 2023 at the latest.

2. Regarding Article 19 paras. 3 to 5

Article 19 paras. 3 and 5 in the version of the Federal Act amended in Federal Law Gazette I No. 81/2018 shall apply for financial years beginning after 31 December 2018.

3. Regarding Article 20 para. 1:

The business plan is to be adapted to the prescribed format by 31 December 2022 at the latest.

4. Regarding Article 30a para. 1a:

The deadline for the submission of the data regarding the 2019 financial year shall be 20 weeks and shall decrease each year by two weeks respectively up until the submission of the data for the 2022 financial year.

5. Regarding Article 35 para. 1:

Article 35 para. 1 in the version of the Federal Act amended in Federal Law Gazette I No. 81/2018 shall apply to the FMA's financial years that begin after 31 December 2018.

6. Regarding Article 36 paras. 2 and 3:

Article 36 paras. 2 to 4 in the version of the amendment of the Federal Act published in Federal Law Gazette I No. 107/2017 shall apply for the last time to the quarterly reporting for the reporting date of 31 December 2018. Article 36 paras. 2 and 3 in the version of the amendment of the Federal Act published in Federal Law Gazette I No. 81/2018 shall apply for the first time to the quarterly reporting for the reporting date of 31 March 2019.

### Gender-Neutral Use of Language

**Article 49a.** Insofar as expressions relating to persons in present Federal Act are given only in the male form, they shall apply to males and females equally. When the expressions are applied to specific persons, the form specific to the gender shall be used.



## References and Regulations

**Article 49b.** (1) Insofar as the present Federal Act refers to other Federal Acts, these acts shall be applicable as amended, unless otherwise stated.

(1a) Where references are made in this Federal Act to Directives issued by the European Union, unless instructed otherwise, the following listed versions thereof shall apply:

1. Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs), OJ L 354, 23.12.2016, p. 37;
2. 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, last amended by Directive 2014/91/EU, OJ L 257, 21.11.2014, p. 186;
3. Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 25.11.2009, p. 1, last amended by Directive (EU) 2016/2341, OJ L 354, 23.12.2016, p. 37;
4. Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174, 01.07.2011, p. 1, last amended by Directive 2014/65/EU, OJ L 173, 12.06.2014, p. 349;
5. 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, last amended by Directive 2014/59/EU, OJ L 173, 12.06.2014, p. 190, in the version of the corrigendum, OJ L 20, 15.01.2017, p. 1;
6. Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.06.2014, p. 349, last amended by Directive (EU) 2016/1034, OJ L 175, 23.06.2016, p. 8, in the version of the corrigendum, OJ L 64, 10.03.2017, p. 116;
7. Regulation (EU) No. 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC – OJ L 331, 15.12.2010, p. 48, last amended by Directive 2014/51/EU, OJ L 153, 22.05.2014, p. 1;
8. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 04.05.2016, p. 1;
9. Regulation (EU) 2018/231 on statistical reporting requirements for pension funds (ECB/2018/2), OJ L 45, 17.2.2018, p. 3:



10. Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, OJ L 17, 09.12.2019, p. 1, as amended by Regulation (EU) 2020/852, OJ L 198, 22.06.2020, p. 13;
11. Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.06.2020, p. 13.

(2) Regulations based on the present Federal Act may be issued from the day following its announcement.

### Transposition Note

**Article 49c.** (1) Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, OJ L 235, 23.09.03, p. 10, is transposed by means of the Federal Act published in Federal Law Gazette I no. 8/2005.

(2) Directive 2013/14/EU amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings, OJ L 145, 31.05.2013, p. 1, is transposed by the Federal Act published in Federal Law Gazette I No. 70/2014.

(3) Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs), OJ L 354, 23.12.2016, p. 37, is transposed by the Federal Act published in Federal Law Gazette I No. 81/2018.

(4) The amendment in the Federal Act published in Federal Law Gazette I No. 36/2022 serves to implement

1. Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, OJ L 17, 09.12.2019, p. 1, as amended by Regulation (EU) 2020/852, OJ L 198, 22.06.2020, p. 13, and
2. Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.06.2020, p. 13.

(5) Regulation (EU) 2022/2554 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011, OJ L 333, 27.12.2022 p. 1.



### Enforcement clause

**Article 50.** The following persons shall be in charge of enforcing the present Federal Act:

1. with regard to Article 13, Article 27 paras 1, 2 and 5 to 7, Article 37 paras. 1 and 2, Articles 38, 39 and 47, the Federal Minister of Justice;
2. with regard to Article 10 paras 2 and 3, Article 11 para. 2, Article 30 paras. 2, 4 and 6, Article 30a para. 3, Articles 42, 46 and 46a, the Federal Minister of Finance in agreement with the Federal Minister of Justice;
3. with regard to Articles 11b para. 4 and 27 para. 4, the Federal Minister of Finance in agreement with the Federal Minister of Economics and Labour;
4. with regard to all other provisions, the Federal Minister of Finance.

### Entry into force; repeal of provisions

**Article 51.** (1) The present Federal Act shall enter into force on 1 July 1990, Article 2 para. 1, Article 24 paras 1, 3, 4, 6 and 7 as well as Article 48 of the present Federal Act as amended by the Federal Act in Federal Law Gazette no. 20/1992 shall enter into force on 1 January 1991.

(2) Article 1 paras 2 and 2a, Article 2 para. 2, Article 5 including its heading, Article 6 para. 1, Article 6a including its heading, Article 7 para. 2, the abolition of Article 8 para. 2 no. 7, Article 8 para. 2 no. 8, Article 8 para. 3, Article 9, Article 10 para. 1 no. 5, Article 10 para. 3, Article 11 para. 1 no. 5, Article 11 para. 3, Article 12 paras 2 to 5, Article 15 para. 1, Article 15 para. 3 no. 9, Article 15 para. 3a, Article 15a, Article 17, Article 18 para. 1, Article 18 para. 2, Article 20 paras 2 and 4, the abolition of Article 20 para. 5, Article 20a including its heading, Article 21, Article 23, Article 24 including its heading, Article 24a including its heading, Article 25, Article 26, Article 27 paras 2 and 4 to 6, the abolition of Article 27 para. 3, Article 28 para. 3, Article 29 paras 1 and 3, Article 30, Article 30a, Article 31 paras 2 to 4, Article 32 including its heading, Article 33 paras 3 to 8, Article 33a, the abolition of Article 35, Article 36, Article 41 para. 1 no. 1, Article 46 para. 1, Article 46a, Article 48 para. 1, Article 48 paras 6 to 8, Article 49, Article 50 nos. 1 and 2, Article 51 paras 1a and 1b as well as the Annexes 1 and 2 to Article 30 of the present Federal Act as amended by the Federal Act in Federal Law Gazette no. 755/1996 shall enter into force on 1 January 1997.

(3) The regulation of the Federal Minister of Justice concerning the forms to be used by the *Pensionskassen* for the layout of the balance sheet and the income statement, Federal Law Gazette no. 198/1991, as well as the regulation of the Federal Minister of Finance concerning the modification of the forms for *Pensionskassen*, Federal Law Gazette no. 93/1991, shall expire at the end of 31 December 1996.

(4) Article 1 para. 5, Article 5 no. 1 lit. d, Article 15b, Article 25 para. 2 no. 10 as well as Article 48 para. 1 first sentence of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 64/1997 shall enter into force on 1 August 1997.



(5) The abolition of Article 9 no. 8, Article 25 para. 2 no. 1, Article 25 para. 2 no. 12, Article 25 para. 4, Article 25 para. 5 no. 2, Article 25 para. 5a as well as Article 49 no. 4 of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 126/1998 shall enter into force on 1 August 1998, Article 2 para. 2, Article 23 para. 1 no. 2, Article 25 para. 1 no. 1 lit. b sublit. aa and bb, Article 25 para. 2 no. 2 and Article 25 para. 2 no. 6, Article 25 para. 7 and Article 49 no. 5 of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 126/1998 shall enter into force on 1 January 1999.

(6) Article 1 paras 6 and 7, Article 3 para. 4, Article 5 no. 1 lit. a sublit bb and cc as well as Article 25 para. 5a of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 127/1999 shall enter into force on 1 August 1999.

(7) Article 1 para. 2a, Article 1 para. 8 as well as Article 5 no. 1 lit. a sublit cc and dd of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 73/2000 shall enter into force on 1 January 2000.

(8) Article 19a, Article 20 para. 5, Article 24a para. 7, Article 25 para. 1 no. 2, Article 25 para. 2 nos. 2, 3, 5, 6, 6a, 7, 12 and 13, Article 25 para. 5 no. 1 as well as Article 25 para. 5a of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 73/2000 shall enter into force on 1 September 2000.

(9) Article 5 no. 1 lit. e as well as Article 15a para. 3 of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 142/2000 shall enter into force on 1 January 2001.

(10) Article 24a para. 3 of the present Federal Act as amended by the Federal Act in Federal Law Gazette I no. 97/2001 shall for the first time be applied to financial years commencing after 31 December 2000.

(11) Article 23 para. 1 no. 6 as well as Article 25 para. 2 no. 12 as amended by the Federal Act in Federal Law Gazette I no. 97/2001 shall enter into force on 1 September 2001.

(12) Article 1 para. 2 no. 1 and para. 2a, Article 7 para. 2, Article 21 para. 8, Article 22 para. 2, Article 31 para. 1 as well as Article 45 as amended by the Federal Act in Federal Law Gazette I no. 97/2001 shall enter into force on 1 January 2002.

(13) Article 6a paras 1, 2, 3, 5, 6 and 7, Article 8 para. 1, Article 10 paras 1, 2 and 3, Article 11 para. 2, Article 12 para. 5, Article 15 para. 4, Article 20 paras 4 and 5, Article 20a paras 3 and 4, Article 21 paras 3, 4, 5, 9 and 10, Article 30 para. 4, Article 30a paras 1 and 4, Article 31 paras 2 and 3, Article 33 paras 1, 2, 3, 4, 4a, 5, 6, 7, 8 and 9, Article 35, Article 36 paras 1 and 2, Article 37 para. 3, Article 40, Article 41 paras 1 and 4, Article 42, Article 46 para. 1, Article 46a, Article 47 para. 2 as well as Article 49 nos. 6 to 11 as amended by the Federal Act in Federal Law Gazette I no. 97/2001 shall enter into force on 1 April 2002.

(14) Article 3 para. 4 no. 1 lit. a as amended by the Federal Act in Federal Law Gazette I no. 9/2002 shall enter into force on 1 December 2001.

(15) Article 6a para. 2, Article 8 para. 1 as well as Article 36 para. 2 as amended by the



Federal Act in Federal Law Gazette I no. 9/2002 shall enter into force on 1 April 2002.

(16) Article 2 paras 2, 3 and 4, the heading before Article 7, Article 7 paras 1, 1a and 4 to 7, Article 20 para. 2 no. 7, Article 35 para. 2 and Annex 1 to Article I, Article 30 as amended by the Federal Act in Federal Law Gazette I no. 71/2003 shall for the first time be applied to financial years commencing after 31 December 2002.

(17) Article 23 para. 1 no. 4a as well as Article 25 paras 5a and 6 as amended by the Federal Act in Federal Law Gazette I no. 80/2003 shall enter into force on 1 September 2003.

(18) Article 25 para. 5 no 1 lit. b and para. 5a as amended by the Federal Act in Federal Law Gazette I no. 135/2003 shall enter into force on 13 February 2004.

(19) Article 34 as amended by the Federal Act in Federal Law Gazette I no. 70/2004 shall enter into force on 1 August 2004.

(20) Article 2 para. 1, Article 5 no. 3, Article 7 paras 1 to 8, Article 24 para. 2, Article 24a paras 5 to 9, Article 49 nos. 14, 15 and 17, the item G. I. of Annex 1 to Article I, Article 30, Form A – balance sheet of the *Pensionskasse*, liabilities and item I. of Annex 2 to Artikel I, Article 30, Form A – financial statement of an investment and risk sharing group, liabilities as amended by the Federal Act in Federal Law Gazette I no. 8/2005 shall be applied for the first time to financial years ending after 31 December 2004.

(21) Article 1 para. 1, nos. 1 and 2, Article 5 nos. 4 to 6, Article 7 para. 9, Article 9 no. 5, Article 11a including its heading, Article 11b including its heading, Article 15 paras 1, 2 and 3 nos. 7 to 9 and 14, Article 16a including its heading, Article 17 paras 1 to 3, Article 18, Article 19, Article 20, para. 2 no. 7, paras 3, 3a, 3b and 4, Article 23 para. 1 no. 3 and 6, Article 24 para. 4, Article 25, Article 25a including its heading, Article 26 paras 1 and 3, Article 27 paras 2 and 6, Article 30a paras 1 and 2, Article 32 para. 3, Article 33b including its heading, Article 33c including its heading, Article 33d, Article 33e including its heading, Article 33f including its heading, Article 36 para. 1 nos. 8 and 9, paras 2 and 4, Article 43 paras 1 and 2, Article 46a paras 1 and 5, Article 47, Article 47a, Article 49 nos. 16, 18 and 19, Article 49a including its heading, Article 49b including its heading, Article 50 no. 3, item E of Annex 1 to Article I, Article 30 Form A – balance sheet of the *Pensionskasse*, assets, Annex 2 to Article I, Article 30 Form A – financial statement of an investment and risk sharing group, assets and item IIa. of Annex 2 to Article I, Article 30 Form A – financial statement of an investment and risk sharing group and item B. IIa. and C. IVa. of Annex 2 to Article I, Article 30 Form B – income statement of an investment and risk sharing group as amended by the Federal Act in Federal Law Gazette I No. 8/2005 shall enter into force on 23 September 2005.

(22) The word sequence in Article 20 para. 2 no. 3, Article 46 para. 3 and item A. II. of Annex 2 to Artikel I, Article 30 Form B – income statement of an investment and risk sharing group shall expire at the end of 22 September 2005.

(23) The *Quartalsmeldungsverordnung* (Regulation on quarterly reporting) Federal Law Gazette II No. 75/1997 as amended by Federal Act in Federal Law Gazette II No. 444/1998 shall expire at the end of 30 December 2005.



(24) Article 12 para. 4 no. 3 and para. 5, Article 20a para. 4, Article 21 para. 3, para. 5, para. 8 and para. 9, Article 31 para. 3 and para. 4 nos. 2 to 4 and Article 33 para. 3 as amended by the Federal Act in Federal Law Gazette I no. 37/2005 shall enter into force on 1 July 2005. Article 21 para. 10 expires on 1 July 2005.

(25) Article 7 para. 5 no. 5, Article 19 para. 4, Article 20 para. 4, Article 25a para. 1, no. 6, Article 30a para. 1, Article 36 para. 3 and Article 46a para. 1 nos. 5 and 5a and para. 2 as amended by the Federal Act in Federal Law Gazette I no. 37/2005 shall enter into force on 24 September 2005.

(26) Article 31 paras 1 and 2, Article 31a and Article 49 no. 13 as amended by the Federal Act in Federal Law Gazette I no. 59/2005 shall enter into force on 1 January 2006.

(27) Article 25 para. 3, Article 49 no. 18 lit. e and the items VII.3. and VIII.3. of Annex 2 to Article I, Article 30 Form A – Financial statement of an investment and risk sharing group, Assets, as amended by the Federal Act in Federal Law Gazette I no. 59/2005 shall enter into force on 24 September 2005.

(28) Article 23 para. 1 no. 3a lit. b as amended by the Federal Act in Federal Law Gazette I no. 141/2006 shall enter into force on 1 January 2007.

(29) Article 20 paras 3a to 3d as amended by the Federal Act in Federal Law Gazette I no. 107/2007 shall enter into force on 1 January 2008.

(30) Article 1 para. 6 and Article 3 para. 4 no. 1 as amended by the Federal Act in Federal Law Gazette I no. 73/2009 shall enter into force on 1 January 2009.

(31) Article 9 no. 9 and Article 37 paras. 1 and 2 as amended by the Federal Act in Federal Law Gazette I no. 58/2010 shall enter into force on 1 August 2010.

(32) Article 7 paras. 3 and 8 as amended by the Federal Act in Federal Law Gazette I no. 58/2010 shall enter into force on 23 September 2010. Article 7 para. 9 shall expire on 22 September 2010.

(33) Article 23 para. 1 no. 3a, 4 and 6 and Article 25 para. 1 no. 6 and para. 7 and 8 as amended by the Federal Act in Federal Law Gazette I no. 77/2011 shall enter into force on 1 September 2011.

(34) Article 33g as amended by the Federal Act in Federal Law Gazette I no. 77/2011 shall enter into force on 1 January 2012.

(35) Article 46 para. 1, Article 46a paras. 1 to 5, Article 47 and the heading of Article 51 as amended by the 2. Stabilitätsgesetz (StabG 2012; Second Stability Act) 2012, Federal Law Gazette I no. 35/2012, shall enter into force on 1 May 2012.

(36) Article 3 para. 3, Article 5 no. 4a, Article 7 para. 2a, Article 12 paras. 1, 6 and 7, Article 12a including its heading, Article 15 para. 3 nos. 7a and 15a and para. 3a, Article 16 para. 4, Article 16a paras. 4a, 4b and 6, Article 17 paras. 1, 3 and 4, Article 19 paras. 2, 5a to 5c and 7, Article 19b, Article 20 para. 2a, Article 20a para. 1, Article 23 paras. 1 no. 3a, Article 24 para. 2, Article 24a para. 3, Article 25 para. 1 no. 5 lit. b, para. 2 no. 1, paras. 5, 7 to



10, Article 25a paras. 1a and 3, Article 26 paras. 1 and 1a, Article 27 paras. 1a and 5 nos. 2a, 2b and 3a, Article 29 paras. 1 and 2, Article 31 para. 4 no. 3a, Article 36 para. 1 nos. 8 and 10a and para. 2, Article 36a including its heading, Article 46a para. 1 as well as Article 49 paras. 1 and 2 as amended by the Federal Act in Federal Law Gazette I no. 54/2012 shall enter into force on 1 January 2013. Article 9 no. 12, Article 25 para. 11 as well as the FMA Verordnung über die besonderen Veranlagungsvorschriften für *Pensionskassen* (BVV-PK; Regulation on Special Investment Provisions for *Pensionskassen*) of 22 September 2006, Federal Law Gazette II no. 361, shall expire at the end of 31 December 2012.

(37) Article 47a as amended by the Federal Act in Federal Law Gazette I no. 70/2013 shall enter into force on 1 January 2014.

(38) Article 23 para. 1 no. 3a, Article 25 para. 1 no. 5 lit. a, Article 27 para. 5 no. 2b and Article 33 paras. 8 to 8b as amended by the Federal Act in Federal Law Gazette I no. 184/2013 shall enter into force on 1 January 2014.

(39) Article 23 para. 1 no. 3a, Article 25 para. 3 no. 2 and para. 11 and Article 46a para. 1 no. 5a as amended by the Federal Act in Federal Law Gazette I no. 70/2014 shall enter into force on 21 December 2014.

(40) Article 16 para. 4, Article 17 paras. 1 and 3 and Article 19b para. 1 as amended by the Federal Act in Federal Law Gazette I no. 34/2015 shall enter into force on 1 January 2016.

(41) Article 23 para. 1 no. 3a, Article 25 para. 9, Article 30 para. 2 no. 2, Article 30a para. 3 no. 2, Article 31 paras. 1, 2 and 3 and Article 31a as amended by Federal Act in Federal Law Gazette I no. 68/2015 shall enter into force on 20 July 2015.

(42) Article 6a para. 8, Article 19 para. 1 and Article 46 para. 1 as amended by Federal Act in Federal Law Gazette I No. 107/2017 shall enter into force on 3 January 2018. Article 45 and Article 47a shall expire at the end of 2 January 2018.

(43) Article 5 nos. 2a and 4 to 8, Article 6 para. 1, Article 7 paras. 1, 2a, 6 and 7, Article 8 para. 2 no. 1 and para. 4, Article 9 nos. 6 and 9, Article 11a para. 2 no. 2, paras. 6 and 7, Article 11b paras. 1, 4, 5 and 9, Articles 11c to 11h including their headings, Article 12 para. 1, Article 12a para. 1 no. 5, Article 14 paras. 1 and 2, Article 16a para. 4b, Article 17, paras. 1a to 1c, Article 19 paras. 1a, 2, 2a, 3 to 5b and 6, Article 20 paras. 1, 2a no. 2 and para. 3, Article including heading, Articles 21a to 21e including headings, Article 22a including heading, Article 23 para. 1 no. 3, Article 24a para. 8, Article 25, Article 25a para. 3, Article 26 paras. 1, 1a to 1c and 4 to 6, Article 30 paras. 4 and 5, Article 30a para. 1, 1a and 2, Article 33 paras. 2 to 2b, 3 and 8, Article 33a paras. 1, 3 no. 1 and 1a and para. 5, Article 33c para. 5, Article 33f para. 5, Article 33g paras. 1, 2 no. 1 and para. 4, Articles 33h and 33i including headings, Article 34, Article 35 para. 1, Article 36, Article 36a, Article 46a paras. 1 and 2, Articles 47, Articles 47a and 47b including headings, Article 39 para. 3 and Article 49b para. 1a in the version of the Federal Act amended by Federal Act in Federal Law Gazette I No. 81/2018 shall enter into force on 1 January 2019. Article 9 no. 10, Article 11a para. 8, Article 19 para. 7, Article 20a including the heading, Article 25a para. 4, Article 30a para. 4, Article 32 including heading, Article 33 paras. 8a and 8b, Annexes 1 and 2 to Article I, Article 30, as well as the



Regulation of the Financial Market Authority (FMA) on Minimum Standards for Risk Management in *Pensionskassen*, published in Federal Law Gazette II No. 360/2006 most recently amended in Federal Law Gazette II no. 145/2015, shall expire at the end of 31 December 2018.

(44) Article 7 para. 2, no. 9 and no. 10, Article 19 para. 2 nos. 2 and 2a, Article 30 para. 3, Article 33 paras. 2c and 2d, Article 46a para. 1, Article 49b para. 1 nos. 9 to 11 and Article 49c including heading in the version amended by Federal Act in Federal Law Gazette I No. 36/2022 shall enter into force on the following day after publication. Article 12a para. 1 no. 8 shall expire at the end of the day of publication.

(45) Article 11e para. 5, Article 49b para. 1a nos. 11 and 12 and Article 49c para. 5 in the version amended by Federal Act in Federal Law Gazette I No. 112/2024 shall enter into force on 17 January 2025.