



Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016)

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Annex A**Annex B**

CHAPTER 1: GENERAL PROVISIONS

SECTION 1: SCOPE OF APPLICATION

Scope of application

Article 1. (1) The following undertakings shall be subject to supervision in accordance with the provisions of this federal act:

1. insurance undertakings (Article 5 no. 1) and reinsurance undertakings (Article 5 no. 2), with head offices in Austria;
2. small insurance undertakings (Article 5 no. 3) pursuant to the provisions of Chapter 3;
3. small associations (Article 5 no. 4) pursuant to the provisions of Section 2 of Chapter 2;
4. third-country insurance undertakings (Article 5 no. 5) and third-country reinsurance undertakings (Article 5 no. 6) pursuant to the provisions of Section 4;
5. EEA insurance undertakings (Article 5 no. 7) and EEA reinsurance undertakings (Article 5 no. 8) pursuant to the provisions of Section 5;
6. insurance holding companies (Article 195 para. 1 no. 6) and mixed financial holding companies (Article 195 para. 1 no. 8), each with head offices in Austria, pursuant to the provisions of Chapter 9;
7. insurance associations whose object is limited to asset management (Article 63 para. 3) pursuant to Articles 63 to 65;
8. private foundations (Article 66 para. 1) pursuant to Articles 66 and 67; and
9. special purpose vehicles (Article 5 no. 33) with head offices in Austria, pursuant to Article 105 and the implementing regulation (EU).

Sections 1 and 2, Sections 1 and 3 of Chapter 11, Chapters 13 and 14 as well as Articles 288, 292 and 293 shall apply to the undertakings listed in nos. 2 to 9 in addition to the provisions listed under those numbers. The remaining provisions of this federal act shall only be applied to those undertakings if this is explicitly stipulated.

(2) Where this federal act includes special provisions for branches of third-country insurance undertakings with head offices in the Swiss Confederation and for branches in the Swiss Confederation of insurance undertakings with head offices in Austria, they shall apply to the pursuit

of all insurance classes with the exception of life insurance as referred to in nos. 19 to 22 of Annex A pursuant to Council Decision 91/370/EEC on the conclusion of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance, OJ L 205, 27.7.1991, p. 2. Those provisions shall no longer be applied if the 91/370/EEC Agreement is rendered invalid pursuant to its Article 39(8).

(3) EEA insurance undertakings that only participate in insurance contracts concluded in Austria by way of co-insurance at Union level shall only be subject to Article 17 para. 4, Article 30 paras. 1, 2 and 4 and Article 31. Article 23 shall not apply to insurance undertakings that participate in insurance contracts concluded within the EEA by way of co-insurance at Union level. Insurance undertakings shall keep statistical data showing the extent of these co-insurance operations in which they participate and the Member States concerned.

(4) The Austrian Financial Market Authority (FMA) shall determine whether an undertaking is subject to the provisions of this federal act.

Exceptions in personal insurance

Article 2. (1) *Pensionskassen* (pension companies) pursuant to the *Pensionskassen Act* (PKG; *Pensionskassengesetz*) shall not be subject to the provisions of this federal act.

(2) The pursuit of activities in insurance classes belonging to personal insurance by corporations under public law whose policyholders are only their members shall not be subject to the provisions of this federal act. This shall not apply where such insurance activities are primarily pursued in the field of reinsurance.

(3) Undertakings which only engage in funeral costs insurance shall only be subject to the provisions of Chapter 3 where the amount of their benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind.

Exceptions in non-life insurance

Article 3. (1) Assistance activity which fulfils the following conditions shall not be considered contractual insurance activity:

1. the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the Member State of the undertaking providing cover;
2. the liability for the assistance is limited to the following operations:
 - a. an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment,
 - b. the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means, and

- c. the conveyance of the vehicle concerned, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same Member State; and
3. the assistance is not carried out by an undertaking subject to this federal act.

(2) In the cases referred to in para. 1 no. 2 lit. a and b, the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover shall not apply where the beneficiary is a member of the body providing cover and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement.

Exceptions in reinsurance

Article 4. This federal act shall not apply to the activity of reinsurance conducted or fully guaranteed by the Republic of Austria when it is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not possible to obtain adequate commercial cover.

SECTION 2: DEFINITIONS

Definitions

Article 5. For the purposes of this federal act, the following definitions shall apply:

1. Insurance undertaking: an undertaking that pursues contractual insurance activities and has received a licence pursuant to Article 6 para. 1 or an authorisation in accordance with Article 14 of Directive 2009/138/EC.
2. Reinsurance undertaking: an undertaking that exclusively pursues reinsurance activities within the scope of contractual insurance and has received a licence pursuant to Article 6 para. 1 or an authorisation in accordance with Article 14 of Directive 2009/138/EC to pursue reinsurance activities.
3. Small insurance undertaking: an undertaking with its head office in Austria that pursues contractual insurance activities and has received a licence pursuant to Article 83 para. 1.
4. Small mutual association: a mutual insurance association with its head office in Austria which fulfils the conditions pursuant to Article 68 para. 1 or para. 1a, which pursues contractual insurance activities, and which has been granted a licence pursuant to Article 68 para. 3.
5. Third-country insurance undertaking: an undertaking whose head office is not situated in a Member State, which pursues contractual insurance activities and which would require a licence as an insurance undertaking if its head office were situated in Austria.
6. Third-country reinsurance undertaking: an undertaking whose head office is not situated in a Member State, which exclusively pursues reinsurance activities within the scope of

- contractual insurance and which would require a licence as a reinsurance undertaking if its head office were situated in Austria.
7. EEA insurance undertaking: an insurance undertaking whose head office is not situated in Austria but in another Member State.
 8. EEA reinsurance undertaking: a reinsurance undertaking whose head office is not situated in Austria but in another Member State.
 9. Reinsurance: means one of the following activities:
 - a. accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking; or
 - b. in the case of the association of underwriters known as Lloyd's, accepting risks ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's; or
 - c. the provision of insurance coverage by a reinsurance undertaking for an entity that falls within the scope of application of Directive (EU) 2016/2341
 10. Composite undertaking: an undertaking with its head office in Austria that has received a licence to pursue life insurance activities and at least one other insurance class, with the exception of reinsurance.
 11. Member State: a Member State of the European Union or another signatory country to the Agreement on the European Economic Area, Federal Law Gazette no. 909/1993 as amended by the amendment record in Federal Law Gazette no. 910/1993 (EEA).
 12. Third country: a country that is not a Member State.
 13. Freedom to provide services: the conclusion of insurance contracts by an insurance or reinsurance undertaking for risks situated in another Member State unless the contract is concluded by a branch established in that Member State.
 14. Home Member State:
 - a. for non-life insurance, the Member State in which the head office of the insurance undertaking covering the risk is situated;
 - b. for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated; or
 - c. for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated.
 15. Host Member State: the Member State, other than the home Member State, in which an insurance or a reinsurance undertaking has a branch or provides services; for life insurance and non-life insurance, the Member State of the provision of services means the Member State of the commitment or the Member State in which the risk is situated, where that commitment or risk is covered by an insurance undertaking or a branch situated in another Member State.
 16. Supervisory authority: the national authority or the national authorities of Member States empowered by law or regulation to supervise insurance or reinsurance undertakings.

17. Branch of an insurance or reinsurance undertaking: an agency or a branch of an insurance or reinsurance undertaking in a Member State in which the insurance or reinsurance undertaking does not have its head office. Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.
18. Branch of a third-country insurance or third-country reinsurance undertaking: any permanent presence of a third-country insurance or third-country reinsurance undertaking in the territory of a Member State that has received a licence in that Member State and pursues insurance business.
19. Establishment of an undertaking: its head office or any of its branches.
20. Member State in which the risk is situated means any of the following Member States:
 - a. with regard to non-life insurance:
 - aa) the Member State in which the property is situated, where the insurance of risks relates to immovable property and non-permanent buildings, as well as any movable property at the same site and insured by the same contract,
 - bb) the Member State in which the vehicle is registered, where the insurance of risks relates to vehicles of any type; irrespective of this, the risk is deemed to be situated in the country of destination in the case of vehicles that are imported from one Member State to another, in accordance with the choice of the person responsible for the liability insurance may be either the Member State of registration or the Member State of destination for a period of 30 days or less from the time of the vehicle's delivery, supply or shipment to the buyer, even if the vehicle was not officially registered in the Member State of destination;
 - cc) the Member State where the policyholder performed the legal acts required to conclude the contract in the case of policies of a duration of four months or less covering travel or holiday risks;
 - b. in all other cases of non-life insurance and life insurance not explicitly covered by lit. a, the Member State in which either of the following is situated:
 - aa) if the policyholder is a natural person, that policyholder's habitual residence,
 - bb) if the policyholder is a legal person, that policyholder's establishment to which the contract relates.
21. Parent undertaking: a parent undertaking within the meaning of Article 22(1) and (2) of Directive 2013/34/EU.
22. Subsidiary undertaking: any subsidiary undertaking within the meaning of Article 22(1) and (2) of Directive 2013/34/EU, including subsidiaries thereof.

23. Close ties: a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship.
24. Control: the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 22(1) and (2) of Directive 2013/34/EU, or a similar relationship between any natural or legal person and an undertaking.
25. Intra-group transaction: any transaction by which an insurance or reinsurance undertaking relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment.
26. Participation: the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking.
27. Qualifying holding: a direct or indirect holding in an undertaking which represents 10% or more of the voting rights or of the capital or another possibility of exercising a significant influence over the management of that undertaking.
28. Financial undertaking: means any of the following entities:
 - a. credit institutions, ancillary banking services undertakings or financial institutions within the meaning of Article 3(1), (17) and (22) of Directive 2013/36/EU;
 - b. an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 195 para. 1 no. 6;
 - c. an investment firm or a financial institution within the meaning of Article 4(1)(1) of Directive 2014/65/EU; or
 - d. a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC.
29. Captive insurance undertaking: an insurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 195 para. 1 no. 3 or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member.
30. Captive reinsurance undertaking: a reinsurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 195 para. 1 no. 3 or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member.
31. UCITS: an undertaking for collective investment in transferable securities within the meaning of Article 2 para. 1 of the 2011 Investment Fund Act (InvFG 2011; *Investmentfondsgesetz*).

32. Finite reinsurance: reinsurance under which the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:
- a. explicit and material consideration of the time value of money; or
 - b. contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.
33. Special purpose vehicle: any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking.
34. Large risks:
- a. transport and transport liability risks pursuant to nos. 4 to 7, 11 and 12 of Annex A;
 - b. credit and suretyship risks pursuant to nos. 14 and 15 of Annex A, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;
 - c. risks pursuant to nos. 3, 8, 9, 10, 13 and 16 of Annex A, in so far as the policyholder exceeds the limits of at least two of the following criteria:
 - aa) a balance sheet total of EUR 6.6 million,
 - bb) a net turnover of EUR 13.6 million,
 - cc) an average number of 250 employees during the financial year.
- If the policyholder belongs to a group of undertakings for which consolidated financial statements within the meaning of Directive 2013/34/EU are drawn up, the criteria set out in lit. c shall be applied to the consolidated financial statements.
35. Assistance: benefits provided for persons who get into difficulties while travelling, while away from their home or their permanent residence and that consist of entering into an obligation, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract. The aid may comprise the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them. The assistance activity shall not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.
36. Outsourcing: an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself.

37. Function: within a system of governance, an internal capacity to undertake practical tasks; a system of governance includes the risk management function, the compliance function, the internal audit function and the actuarial function.
38. Underwriting risk: the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions.
39. Market risk: the risk of loss or of adverse changes in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments.
40. Credit risk: the risk of loss or of adverse changes in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, spread risk or market risk concentrations.
41. Operational risk: the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events.
42. Liquidity risk: the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due.
43. Concentration risk: all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance or reinsurance undertakings.
44. Risk mitigation techniques: all techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party.
45. Diversification effects: the reduction in the risk exposure of insurance and reinsurance undertakings and groups through the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated.
46. Probability distribution forecast: a mathematical function that assigns a probability of realisation to an exhaustive set of mutually exclusive future events.
47. Risk measure: a mathematical function that assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast.
48. Co-insurance at Union level: co-insurance operations which relate to one or more risks classified under nos. 3 to 6 of Annex A and which fulfil the following conditions:
 - a. the risk is a large risk;
 - b. the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings, each for its own part as co-insurer, one of them being the leading insurance undertaking and without them being jointly and severally liable;
 - c. the risk is situated within the EEA;
 - d. for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;

- e. at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;
 - f. the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.
49. Qualifying central counterparty: a central counterparty that has been either authorised in accordance with Article 14 of Regulation (EU) No 648/2012 or recognised in accordance with Article 25 of that Regulation.
 50. External credit assessment institution or ECAI: a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 or a central bank issuing credit ratings which are exempt from the application of that Regulation.
 51. EIOPA: the European Insurance and Occupational Pensions Authority as defined in Regulation (EU) No 1094/2010.
 52. EBA: the European Banking Authority as defined in Regulation (EU) No 1093/2010.
 53. ESMA: the European Securities and Markets Authority as defined in Regulation (EU) No 1095/2010.
 54. Implementing regulation (EU): Commission Delegated Regulation (EU) 2015/35.
 55. ESRB: the European Systemic Risk Board as defined in Regulation (EU) No 1092/2010.
 56. Technical standards (EU): regulatory technical standards as defined in Articles 10 to 14 of Regulation (EU) No 1094/2010 and implementing technical standards as defined in Article 15 of Regulation (EU) No 1094/2010.
 57. Guidelines (EIOPA): guidelines as defined in Article 16 of Regulation (EU) No 1094/2010.
 58. Recommendations (EIOPA): recommendations as defined in Article 16 of Regulation (EU) No 1094/2010.
 59. Insurance distribution: the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.
 60. reinsurance distribution: the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary.

61. remuneration for distribution: any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.
62. advice: the provision of a personal recommendation to a policyholder, either upon their request or at the initiative of the insurance undertaking pursuant to Article 1 para. 1 nos. 1 to 5, in respect of one or more insurance contracts.
63. insurance-based investment product: an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:
 - a. non-life insurance products as listed in Annex I to Directive 2009/138/EC (classes of non-life insurance);
 - b. life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
 - c. pension products which are recognised in a Federal Act that refers to this provision as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
 - d. officially recognised occupational pension schemes falling under the scope of Directive (EU) 2016/2341 or Directive 2009/138/EC; and
 - e. individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.
64. durable medium: any instrument that:
 - a. enables a policyholder to store information addressed personally to that policyholder in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
 - b. allows the unchanged reproduction of the information stored.
65. insurance distributor: any insurance intermediary, ancillary insurance intermediary pursuant to Article 2 (1) (4) of Directive (EU) 2016/97 or insurance undertaking.
66. ESAP: the European Single Access Point established pursuant to Regulation (EU) 2023/2859;
67. ESAP collection body: a collection body as defined in Article 2 point 2 of Regulation (EU) 2023/2859.

SECTION 3: LICENCE

General provisions

Article 6. (1) The pursuit of contractual insurance activities in Austria requires a licence granted by the FMA, unless explicitly stated otherwise.

(2) Prior to granting a licence to an undertaking, the FMA must notify the Federal Minister of Finance.

(3) Apart from contractual insurance, insurance or reinsurance undertakings may only pursue such activities as are directly related to contractual insurance. This may specifically include the mediation of insurance and reinsurance contracts of other undertakings pursuant to Article 1 para. 1 nos. 1 to 5, of home-purchase savings plans, leasing agreements, UCITS and the provision of services in the field of automated data processing as well as the distribution of credit cards. Where reinsurance undertakings hold and manage participations in a subordinate undertaking of the financial sector as referred to in Article 2(8) of Directive 2002/87/EC, such activity may be directly related to contractual insurance activities.

(4) *(Repealed in amendment published in Federal Law Gazette I 112/2018)*

Scope of the licence

Article 7. (1) The licence of an insurance or reinsurance undertaking shall be valid for the territory of all Member States.

(2) The licence granted to insurance or reinsurance undertakings which are subsidiaries of undertakings with head offices in a third country shall, by way of derogation from para. 1, only apply to the territory of the European Union's Member States as long as a declaration has been made to the effect that the parent undertaking's country of establishment has limited the number of branches of insurance undertakings with head offices in a signatory country of the Agreement on the European Economic Area which is not a Member State of the European Union, or that restrictions have been imposed on those insurance undertakings which it does not apply to insurance undertakings with head offices in a Member State of the European Union.

(3) The licence for the insurance classes of life insurance and the licence for other insurance classes, except for accident insurance, health insurance and reinsurance, are mutually exclusive. The licence for reinsurance may be granted for non-life reinsurance activity, life reinsurance activity or all types of reinsurance activity.

(4) The licence shall be granted for a particular class of insurance. The licence granted to insurance and reinsurance undertakings shall cover the entire insurance class, unless the insurance or reinsurance undertaking applied for a licence covering only some of the risks pertaining to that insurance class. In the aforementioned case, an additional licence would be required in order to cover additional risks within the insurance class. The classification of the insurance classes is given in Annex A.

(5) An insurance undertaking which holds one or several licences for the insurance classes listed in nos. 1 to 18 of Annex A may also insure ancillary risks that are not covered by the licence, provided that the risks fulfil all the following conditions:

1. the risk is connected with a risk within the scope of a licence (principal risk), it concerns the same object as the principal risk and is covered by the same contract.
2. the risk is of subordinate significance compared to the principal risk.

3. it is not a risk that is covered by nos. 14, 15 and 17 of Annex A. By way of derogation from the aforementioned, a risk as set out in no. 17 of Annex A may be regarded as a risk ancillary to no. 18 of Annex A if the principal risk:
 - a. relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence; or
 - b. concerns disputes or claims arising out of, or in connection with, the use of sea-going vessels.

Licensing requirements

Article 8. (1) Insurance or reinsurance undertakings shall only be operated with the legal form of a joint stock company (*Aktiengesellschaft*), a European Company (SE) or a mutual association.

(2) The licence shall be refused where:

1. the head offices are not situated in Austria;
2. based on the business plan, the interests of the policyholders and beneficiaries are not sufficiently safeguarded, specifically where ongoing compliance with the obligations under the insurance contracts cannot be expected;
3. the undertaking does not hold eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement referred to in Article 193 para. 2 nos. 1, 2 or 3;
4. the undertaking cannot show evidence that it will be in a position to hold eligible own funds to consistently cover the Solvency Capital Requirement, as provided for in Article 174;
5. the undertaking cannot show evidence that it will be in a position to hold eligible basic own funds to consistently cover the Minimum Capital Requirement, as provided for in Article 193 para. 1;
6. the undertaking cannot show evidence that it will be in a position to comply with the provisions of Chapter 5 on the system of governance;
7. the management board does not consist of at least two persons, or not at least two executive directors have been appointed, or the articles of association do not rule out any power of sole representation, general managing power of attorney or commercial power of attorney for a single person which covers the entirety of business activities.
8. persons with qualifying holdings in the undertaking do not possess the qualifications required to ensure the sound and prudent management of the insurance undertaking or the reinsurance undertaking;
9. it must be expected that:
 - a. close links between the undertaking and other natural or legal persons, or
 - b. difficulties involved in the enforcement of the laws, regulations or administrative provisions of a third country governing a natural or legal person with which the undertaking has close linksshall prevent the FMA from effectively exercising its supervisory obligation;

10. due to the lacking transparency of the group structure, the interests of the policyholders and beneficiaries are impaired or the FMA is prevented from effectively exercising its supervisory obligation; or
11. the undertaking does not communicate the name and address of all claims representatives appointed pursuant to Article 100 para. 1 upon applying for a licence to pursue third party motor vehicle liability insurance activities (no. 10 of Annex A), other than carrier's liability.

(3) For the determination of the voting rights, Article 130 paras. 2 to 4 of the Stock Exchange Act 2018 (BörseG 2018; *Börsegesetz 2018*) in conjunction with Article 133 and Article 134 paras. 2 and 3 BörseG 2018 shall be applied, whereas voting rights or shares which investment firms or credit institutions hold as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis pursuant to Article 1 no. 3 lit. f of the Securities Supervision Act 2018 (WAG 2018; *Wertpapieraufsichtsgesetz 2018*) shall not be taken into account, provided that those rights are not exercised or otherwise used to intervene in the management of the issuer and disposed of within one year of the acquisition.

(4) In the case of para. 2 nos. 8 and 9, the FMA may grant the licence on conditions which enable it to effectively exercise its supervisory obligation.

(5) An insurance undertaking already pursuing life activities (classes 19 to 22 as defined in Annex A) and applying for a licence to pursue accident insurance and/or health insurance activities (classes 1 and 2 as defined in Annex A), or already pursuing accident and/or health insurance activities and applying for a licence to pursue life activities (classes 19 to 22 as defined in Annex A) must additionally demonstrate:

1. that it possesses the eligible own funds to cover the absolute floor of the Minimum Capital Requirement for composite undertakings referred to in Article 193 para. 2 no. 4; and
2. that it will be in a position to consistently cover the notional life Minimum Capital Requirement referred to in Article 194 para. 1 no. 1 and the notional non-life Minimum Capital Requirement referred to in Article 194 para. 1 no. 2.

(6) An insurance or reinsurance undertaking, or a change in its business activity, which requires a licence may only be entered in the company register after the administrative decision (*Bescheid*) granting the licence has been made available in the original or as a publicly certified copy. The court with jurisdiction over the company register shall submit any orders and decisions concerning such entries to the FMA as well.

Prior consultation of the supervisory authorities of other Member States

Article 9. Before granting a licence to an undertaking that is:

1. a subsidiary of an EEA insurance undertaking, an EEA reinsurance undertaking, a credit institution or an investment firm authorised in another Member State;

2. a subsidiary of an undertaking that is also the parent undertaking of an EEA insurance undertaking, an EEA reinsurance undertaking, a credit institution or an investment firm authorised in another Member State;
3. controlled by the same person, whether natural or legal, which controls an EEA insurance undertaking, an EEA reinsurance undertaking, a credit institution or an investment firm authorised in another Member State,

the FMA shall consult the supervisory authority of that other Member State. Such consultation may relate in particular to the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions in the undertaking or in another entity of the same group.

Notifying EIOPA and the supervisory authorities of other Member States

Article 9a. (1) If the FMA intends to grant a licence as an insurance or reinsurance undertaking to an undertaking, the business plan of which refers to the fact that part of the undertakings' activities are intended to take place in another Member State under the freedom to provide services or the freedom of establishment, and where this business plan moreover states that such activities will be significant for the market of the host Member State, then the FMA shall notify EIOPA and the supervisory authority of the host Member State in question about this. The notification must be sufficiently detailed in order to permit an orderly assessment.

(2) The notification by the FMA pursuant to para. 1 of this Article or the FMA pursuant to Article 152a (1) of Directive 2009/138/EC shall not affect the FMA's supervisory mandate.

Business plan

Article 10. (1) A business plan shall be submitted with the application for the licence.

(2) The business plan shall include:

1. the nature of the risks which the insurance undertaking proposes to cover; in the case of reinsurance acceptances, also the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
2. the guiding principles as to reinsurance and to retrocession;
3. the basic own-fund items to cover the absolute floor of the Minimum Capital Requirement referred to in Article 193 para. 2;
4. estimates of the costs of setting up the administrative services and sales, and evidence that the financial resources to meet those costs are available; and
5. when pursuing activities of the insurance class referred to in no. 18 of Annex A, details about the resources available to the undertaking that allow it to provide the agreed assistance.

(3) In addition to the details set out in para. 2, for the first three financial years the business plan shall include the following:

1. a forecast solvency balance sheet;

2. estimates of the future Solvency Capital Requirement, on the basis of the forecast solvency balance sheet referred to in no. 1, as well as the calculation method used to derive those estimates;
 3. estimates of the future Minimum Capital Requirement, on the basis of the forecast solvency balance sheet referred to in no. 1, as well as the calculation method used to derive those estimates;
 4. estimates of the financial resources intended to cover technical provisions set out in Section 1 of Chapter 8, the Minimum Capital Requirement and the Solvency Capital Requirement;
 5. with regard to non-life insurance and reinsurance, also the following:
 - a. estimates of commissions payable and other operating expenses (other than installation costs), and
 - b. estimates of premiums and insurance benefits; and
 6. with regard to life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.
- (4) The articles of association shall form part of the business plan where the insurance undertaking does not yet hold a licence to pursue contractual insurance activities.

Changes in business activities

Article 11. (1) Any amendments to the articles of association require the FMA's approval. Approval shall be withheld where, as a result of the amendment to the articles of association, the interests of the policyholders and beneficiaries are no longer sufficiently safeguarded, specifically where ongoing compliance with the obligations under the insurance contracts cannot be expected.

(2) The FMA shall be notified of any changes in the nature of the risks which an insurance or reinsurance undertaking proposes to cover or the kind of reinsurance arrangements which an insurance undertaking proposes to make with ceding undertakings. Where insurance undertakings change the coverage of additional risks within an insurance class, such change may only be effected after the aforementioned notification. Where a significant number of additional risks are to be covered, the FMA shall be entitled to request the details pursuant to Article 10 para. 2 nos. 2 and 4 and para. 3.

(3) The FMA must be notified of an intention to establish a branch in a third country; Article 21 para. 1 shall apply accordingly to the notification. Where the insurance undertaking requires a certificate pursuant to Article 16 para. 3 no. 1 for this purpose, the FMA shall be obliged to issue such a certificate. A refusal to issue the certificate shall be communicated by means of an administrative decision. The intended commencement of business operations in a third country shall be required to be notified to the FMA three months prior to the planned commencement of operations.

(4) If an insurance undertaking applies for a licence for a branch in the Swiss Confederation, the FMA shall state its position on the business plan submitted together with an expert opinion by the Swiss

supervisory authority within three months' time. A refusal to issue the certificate referred to in Article 19 para. 1 shall be communicated by means of an administrative decision.

(5) The FMA shall oppose a change of registered office of a European Company (SE) as referred to in the second subparagraph of Article 8(14) of Regulation (EC) No 2157/2001 where the interests of the policyholders and beneficiaries are not sufficiently safeguarded.

Expiry of the licence

Article 12. (1) The licence shall expire for insurance classes:

1. for which activities have not commenced within one year of granting or extending the licence, or for which activities have been terminated for more than six months;
2. for which the insurance or reinsurance undertaking has waived the pursuit of activities;
3. for which the entire related insurance portfolio has been transferred to other insurance or reinsurance undertakings.

(2) The licence of a European Company (SE) expires upon entry in the register of the new country of establishment.

(3) The licence of a third-country insurance or third-country reinsurance undertaking shall also expire if the undertaking loses the right to pursue contractual insurance activities in its country of establishment.

(4) Insurance and reinsurance undertakings shall immediately notify the FMA in the event of any of the circumstances set out in para. 1. The FMA shall communicate expiry of the licence by means of an administrative decision.

(5) Within one year of expiry of the licence pursuant to para. 1 nos. 1 and 2, no new licence may be granted unless there is substantial public interest in the licence being granted.

(6) On expiry of the licence insurance contracts may no longer be concluded and existing insurance contracts must be terminated as soon as possible.

(7) After expiry of the licence, the FMA shall take all appropriate measures to ensure that the interests of the policyholders and beneficiaries are safeguarded. To this end, the FMA may in particular restrict or prohibit the free disposal of the undertaking's assets. Article 283 shall apply.

SECTION 4: RULES PERTAINING TO THIRD COUNTRIES

Business activities of third-country insurance and third-country reinsurance undertakings in Austria

Article 13. (1) A third-country insurance or third-country reinsurance undertaking may pursue contractual insurance activities in Austria only by way of an Austrian branch and requires a licence from the FMA. The licence of third-country insurance or third-country reinsurance undertakings is valid for Austria only. The conclusion of insurance contracts in Austria or any advertising for them in

Austria shall constitute insurance activities pursued in Austria. Article 6 paras. 2 and 3 and Article 7 paras. 2 to 5 shall apply accordingly.

(2) An insurance contract shall be considered concluded in Austria where the declaration of intent that is decisive for the conclusion of the insurance contract is made within Austria. Where the insurance contract is related to natural persons who have their habitual residence in Austria or to legal persons who have their branch in Austria, the contract shall in any event be considered concluded in Austria where the contract was concluded with the involvement of a professional intermediary or consultant, irrespective of the form of involvement. This shall not apply to reinsurance contracts or where the risk is not situated within Austria pursuant to Article 5 no. 20.

(3) With regard to activities of branches, Sections 7 and 8 of Chapter 1, Chapters 4 to 8, Chapter 10, Chapter 12 and Articles 272 to 286, Article 291 and Article 316 shall be applied accordingly to third-country insurance and third-country reinsurance undertakings, unless explicitly stated otherwise. The branch's management shall have the same rights and obligations as those applying to the legal representatives of an Austrian undertaking as specified in this federal act.

(4) Where the European Commission has determined the solvency regime of a third country to be equivalent in accordance with Article 172(2) or (4) of Directive 2009/138/EC, the provisions of this Section shall not be applied to third-country reinsurance undertakings having their head office in that third country. Reinsurance contracts concluded with such undertakings shall be treated in the same manner as reinsurance contracts concluded with reinsurance undertakings.

Special licensing requirements

Article 14. (1) In addition to Article 8 para. 2 nos. 2, 9 and 11, para. 3 and para. 5, the licence shall not be granted to a third-country insurance or third-country reinsurance undertaking where:

1. it does not have a legal form that corresponds to or is comparable to those listed under Article 8 para. 1;
2. it is not entitled to pursue contractual insurance business in the respective insurance class under the law of the country of establishment;
3. it does not establish a branch in Austria under separate management consisting of at least two natural persons who have their main residence in Austria;
4. it does not undertake to set up at the place of management of the branch accounts specific to the business which it pursues there, pursuant to Chapter 7, and to keep there all the records relating to the business transacted, and to prepare a solvency balance sheet pursuant to Section 1 of Chapter 8;
5. it does not undertake to hold the own funds to cover the Solvency Capital Requirement and the basic own funds to consistently cover the Minimum Capital Requirement;
6. it does not possess assets situated in Austria to the extent of the absolute floor of the Minimum Capital Requirement pursuant to Article 193 para. 2, and it does not undertake to deposit half of this as security for the duration of the branch's activities. The administrative decision

- granting the licence shall define the eligible assets as well as the type and content of the deposit obligation so as not to allow the third-country insurance or third-country reinsurance undertaking to dispose of the assets without the FMA's approval;
7. it cannot prove that it will be in a position to comply with the provisions of Chapter 5 on the governance system with regard to the activities pursued by the branch; or
 8. the country of establishment does not offer the same competitive opportunities to insurance and reinsurance undertakings with head offices in Austria as to third-country insurance and third-country reinsurance undertakings with head offices in that third country, and where it does not grant insurance and reinsurance undertakings with head offices in Austria an effective market access comparable to that granted by Austria to third-country insurance and third-country reinsurance undertakings with head offices in that third country, unless there is substantial public interest in the licence being granted; the aforementioned shall not apply to signatory countries of the World Trade Organisation.
- (2) In the case of third-country insurance undertakings, a licence for life insurance classes and a licence for other classes of insurance shall be mutually exclusive.
- (3) Own funds and basic own funds as referred to in para. 1 no. 5 shall be deemed such own funds and basic own funds as are allocated to the branch.
- (4) Article 8 paras. 4 and 6 and Article 9 shall apply accordingly.

Advantages when licences are granted for more than one Member State

Article 15. (1) A third-country insurance undertaking which already holds a licence from at least one other Member State or which has applied for a licence there may apply to the FMA:

1. to have the Solvency Capital Requirement calculated in relation to the entire business of its branches in the EEA;
2. to allow it to lodge the deposit in only one of the Member States in which it pursues activities; and
3. to allow the total assets representing the Minimum Capital Requirement to be localised in any of the Member States in which the undertaking pursues its activities.

(2) Application to extend the advantages provided for in para. 1 shall be made to the supervisory authorities of all Member States where the third-country insurance undertaking holds a licence or has applied for one. The application shall state the choice of supervisory authority which in future is to supervise the solvency of the entire business of the branches established within the EEA. The undertaking shall give reasons for the choice of supervisory authority.

(3) If the FMA has been chosen as supervisory authority pursuant to the second sentence of para. 2, it may approve the application only where objective grounds exist, where approval would not threaten the interests of the policyholders and beneficiaries and where the supervisory authorities of all Member States in which an application has been made agree. The deposit referred to in Article 14 para. 1 no. 6 shall in this case be lodged in Austria. The advantages shall take effect from

the time when the FMA informs the supervisory authorities in the other Member States concerned that it has given approval. From that time, the FMA shall supervise the state of solvency of the entire business of the branches within the EEA. This includes any order prohibiting the free disposal of the assets pursuant to Article 283 para. 1 nos. 1 to 3. Article 295 shall apply accordingly. At the request of the supervisory authority of one or more of the Member States concerned, the FMA shall withdraw its approval and inform the supervisory authorities of the other Member States concerned.

(4) Where the FMA is not the supervisory authority selected pursuant to the second sentence of para. 2, the FMA may grant the advantages only where objective grounds for the choice of supervisory authority are given in the application and approval would not threaten the interests of the policyholders and beneficiaries. The advantages shall take effect from the date when the selected supervisory authority informs the FMA that it has given approval in accordance with Article 167(3) of Directive 2009/138/EC. The FMA shall provide that supervisory authority with the information necessary for the supervision of the overall solvency of the branches established in Austria. Where the supervisory authority issues an order as referred to in Article 137, Article 138(5) or Article 139(3) of Directive 2009/138/EC, Article 295 para. 4 shall be applied accordingly. At the request of the supervisory authority of one or more of the Member States concerned, the advantages shall no longer be applied simultaneously by all supervisory authorities.

Business plan of the branch

Article 16. (1) The articles of association of a third-country insurance or third-country reinsurance undertaking shall not form part of the business plan. However, where the undertaking does not yet have a licence for contractual insurance activities in Austria, it shall submit the articles of association together with the business plan and inform the FMA of the names of the members of the body authorised to legally represent it and of the undertaking's supervisory bodies. The FMA shall be informed of any amendments to the articles of association as well as any changes in membership in the aforementioned bodies.

(2) Article 10 paras. 1 to 3 shall apply accordingly. In addition, the business plan shall also include:

1. a description of the state of the eligible own funds and eligible basic own funds with respect to the Solvency Capital Requirement and Minimum Capital Requirement, and
2. information on the structure of the system of governance.

(3) The following documents shall be submitted together with the business plan:

1. a certificate issued by the competent authority of the country of establishment, stating the insurance classes the undertaking is authorised to pursue in the country of establishment and the insurance classes it actually pursues, and
2. the balance sheet as well as the income statement for each of the last three financial years, where the undertaking does not yet have a licence for contractual insurance activities in Austria. If the undertaking has not existed for the period stipulated, such documents shall be submitted for the financial years already completed.

Requirements for taking up business activities

Article 17. (1) A third-country insurance or third-country reinsurance undertaking may not take up business activities in Austria until the Austrian branch and its management have been entered in the company register. Article 8 para. 6 shall be applied to the entry of the undertaking and of any change in the activities of its branch.

(2) Two members of the management shall be authorised to represent the Austrian branch jointly or one of them together with a person holding a general managing power of attorney (*Prokurist*). Any power of sole representation which covers the entirety of business activities in Austria shall be ruled out. Articles 73 and 76 of the Stock Corporation Act (AktG; *Aktiengesetz*) shall apply accordingly.

(3) After having been granted their licence, third-country insurance and third-country reinsurance undertakings shall be entitled to conclude insurance contracts on risks situated in Austria only through their Austrian branch. This shall not apply to risks that are classified under the insurance classes listed under nos. 4 to 7, 11 and 12 of Annex A.

(4) The place of jurisdiction referred to in Article 99 para. 3 of the Code of Judicial Jurisdiction (JN; *Jurisdiktionsnorm*) may not be excluded for legal proceedings resulting from business activities pursued in Austria.

Provisions pertaining to ongoing business activities

Article 18. (1) Branches of third-country insurance and third-country reinsurance undertakings shall possess eligible own funds to cover the Solvency Capital Requirement as well as eligible basic own funds to cover the Minimum Capital Requirement. The deposit lodged in accordance with Article 14 para. 1 no. 6 shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

(2) For the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement account shall be taken only of the activities pursued by the branch concerned.

(3) Any assets dedicated to the *Deckungsstock* must be situated within Austria. The assets representing the Solvency Capital Requirement must be kept within Austria up to the amount of the Minimum Capital Requirement and the excess within a Member State.

(4) Articles 11 and 12 shall apply accordingly.

Special provisions applying to the Swiss Confederation

Article 19. (1) Third-country insurance undertakings with head offices in the Swiss Confederation shall additionally together with the business plan submit a certificate of the Swiss supervisory authority stating:

1. that the undertaking has the required own funds as well as the required resources referred to in Article 10 para. 2 nos. 4 and 5;
2. the nature of the risks actually covered;
3. that the undertaking has adopted an admissible legal form;

4. that, apart from contractual insurance activities, the undertaking pursues only activities that are directly connected with such.

(2) Prior to granting a licence to a third-country insurance undertaking with head offices in the Swiss Confederation, the FMA shall submit the business plan including an expert opinion to the Swiss supervisory authority for comment. Where the latter does not express its opinion within three months after receipt of the documents, it shall be assumed that the authority does not have any objections to a licence being granted.

(3) Prior to the revocation of the licence of a third-country insurance undertaking with head offices in the Swiss Confederation, the Swiss supervisory authority shall be heard. Where, prior to receiving an opinion from that authority, the FMA takes a measure pursuant to Article 284 para. 1 no. 3, it shall immediately inform the Swiss supervisory authority thereof.

(4) Austrian branches of third-country insurance undertakings with head offices in the Swiss Confederation shall not be subject to any special own funds requirements. Article 10 para. 2 no. 3 and para. 3, Article 14 para. 1 nos. 1, 5, 6 and 8 and Article 16 para. 2 no. 1 shall not apply. The requirement referred to in Article 14 para. 1 no. 4 to prepare a solvency balance sheet pursuant to Section 1 of Chapter 8 shall not apply.

Specific provisions for the United States of America

Article 19a. Articles 13 to 18 shall not apply to reinsurance operations in Austria by a third-country insurance undertaking or third-country reinsurance undertaking with its registered office in the United States of America, if

1. the provision of reinsurance is not performed by an Austrian branch and
2. the conditions pursuant to Article 3 paras. 4 and 8 of the Bilateral Agreement between the European Union and the United States of America between the European Union and the United States of America on prudential measures regarding insurance and reinsurance, OJ L 258, 06.10.2017, p. 4 (hereinafter “the Bilateral Agreement”), are observed.

In this case the FMA is the host supervisory authority pursuant to Article 2 (i) of the Bilateral Agreement. Where the Republic of Austria is the home party pursuant to Article 2 (f) of the Bilateral Agreement, then the FMA is the home supervisory authority pursuant to Article 2 (g) of the Bilateral Agreement. As the host supervisory authority or as the home supervisory authority the FMA shall apply the provisions of the Bilateral Agreement. In so doing supervisory powers and means shall be afforded to the FMA in the same way and scope as in this Federal Act that it may also make use of in the enforcement of other obligations in accordance with this Federal Act.

SECTION 5: PROVISIONS FOR THE EEA

Freedom of establishment: branches in Austria

Article 20. (1) Branches of EEA insurance undertakings and EEA reinsurance undertakings in Austria shall not require a licence in accordance with this federal act. EEA insurance undertakings may pursue contractual insurance activities through a branch, provided that the supervisory authority of the home Member State has submitted to the FMA:

1. that information on the branch which the EEA insurance undertaking has provided to that authority pursuant to Article 145(2) of Directive 2009/138/EC, and
2. a certificate attesting that the EEA insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129 of Directive 2009/138/EC. If the branch's business activities extend to motor vehicle liability insurance (no. 10 of Annex A), other than carrier's liability, the EEA insurance undertaking must submit to the FMA a certificate attesting that it holds a participation in an institution as set out in Article 30 of the 1994 Motor Insurance Act (KHVG 1994; *Kraftfahrzeug-Haftpflichtversicherungsgesetz*).

(2) The contractual insurance activities may be taken up two months after the FMA receives the information referred to in para. 1. Where, prior to the end of the aforementioned period, the FMA informs the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, the contractual insurance business must be pursued in Austria, the activities may be taken up on receipt of that information by the supervisory authority of the home Member State.

(3) In the event of any changes to the branch's activities that relate to the information pursuant to para. 1 no. 1, para. 2 shall be applied accordingly. The activities shall no longer be allowed as soon as the supervisory authority of the home Member State reaches a final decision stating that, on the basis of the changes in the information provided pursuant to para 1 no. 1, there are reservations about the branch continuing its activities.

(4) In the case of risks situated in Austria that do not qualify as large risks, prior to conclusion of the insurance contract the policyholder shall be informed of the Member State in which the EEA insurance undertaking has its head office. Where documents are provided to the policyholder, such information must be included.

(5) With regard to the branch's activities, apart from the provisions of this Article, Article 17 para. 4, Article 30 paras. 1 and 2, Article 31, Article 91, Articles 93 to 96, Article 98, Article 101, Articles 127d to 135e, Article 246 para. 1 second and third sentence and paras. 2 and 4, Article 289 and Article 290 paras. 2 and 3 shall be applied accordingly to EEA insurance and EEA reinsurance undertakings with head offices in a Member State and a branch in Austria. Insofar as these provisions apply to activities in Austria or to risks situated in Austria, they shall be applied to EEA insurance and EEA reinsurance undertakings only to this extent. The name, date of birth, commencement of power of

representation and appropriate business address in Austria of the authorised agent for deliveries shall be entered in the company register.

Freedom of establishment: branches in Member States

Article 21. (1) Where an insurance undertaking proposes to establish a branch in another Member State, it shall provide the following information to the FMA:

1. the Member State in which the branch is to be established;
2. a business plan for the branch, which sets out in particular the structural organisation and the components listed under Article 10 para. 2 nos. 1, 4 and 5 and para. 3;
3. the address in the Member State of the branch from which documents about the branch's business activities may be obtained and to which all communications to the authorised agent may be delivered; and
4. the name of the branch's authorised agent who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking and to represent it in relations with the authorities and courts of the host Member State.

(2) If the branch's activities are to extend to motor vehicle liability insurance (no. 10 of Annex A), not including carrier's liability, the insurance undertaking shall produce a declaration that it has become or is a member of the national bureau referred to in point (3) of Article 1 of Directive 2009/103/EC and the national guarantee fund referred to in point (1) of Article 10 of Directive 2009/103/EC.

(3) If there are no objections to the establishment of the branch with regard to the adequacy of the system of governance or the financial situation of the insurance undertaking and the authorised agent fulfils all the fit and proper requirements to run the branch, the FMA shall, within three months of receiving all the information and evidence referred to in paras. 1 and 2, communicate that information to the supervisory authority of the Member State in which the branch is to be established. At the same time, the FMA shall attest that the insurance undertaking possesses the necessary own funds to cover the Solvency Capital Requirement as well as the necessary basic own funds to cover the Minimum Capital Requirement. The FMA must not attest the above where the insurance undertaking has informed the FMA of not complying with the Solvency and Minimum Capital Requirements or the FMA has initiated a procedure as referred to in Articles 279 and 280 and the grounds for the procedure continue to exist. The FMA shall immediately notify the insurance undertaking of the submission of any information and evidence pursuant to paras. 1 and 2 to the supervisory authority of the host Member State.

(4) The branch may take up business within two months of submitting the information and evidence referred to in para. 3 to the supervisory authority of the host Member State. If the supervisory authority of the host Member State submits the conditions which, in the interest of the general good apply in accordance with Article 146(3) of Directive 2009/138/EC, the FMA shall communicate them without delay to the insurance undertaking concerned. In this case, the insurance undertaking may take up business from the date it received such a communication. Where the conditions for a

submission pursuant to para. 3 are not met, the FMA shall inform the insurance undertaking accordingly by means of an administrative decision. The FMA is obliged to issue such administrative decision no later than three months after having received all information and evidence pursuant to paras. 1 and 2.

(5) The FMA shall be informed of any changes in the information pursuant to para. 1 no later than one month prior to implementation of the measure concerned. Where, due to these changes, the conditions for running the branch as set out in para. 3 are no longer fulfilled, the FMA shall inform the insurance undertaking by means of an administrative decision. As soon as this administrative decision becomes legally effective, the supervisory authority of the home Member State shall be immediately notified thereof.

Freedom to provide services: activities in Austria

Article 22. (1) EEA insurance and EEA reinsurance undertakings do not require a licence in accordance with this federal act to provide services. EEA insurance undertakings shall be allowed to provide services if the supervisory authority of the home Member State has:

1. informed the FMA of the classes of insurance which the insurance undertaking has been licensed to offer as well as of the nature of the risks which it proposes to cover under the freedom to provide services; and
2. submitted a certificate to the FMA, attesting that the insurance undertaking possesses the necessary own funds. Where the activities pursued under the freedom to provide services extend to motor vehicle liability insurance (no. 10 of Annex A), other than carrier's liability, the EEA insurance undertaking shall submit a certificate to the FMA attesting that it holds a participation in an institution referred to in Article 30 KHVG and it shall provide the name and address of the claims officer (Article 31 KHVG) in Austria.

(2) EEA insurance undertakings must not take up business under the freedom to provide services until they have been informed by the supervisory authority of the home Member State of the communication pursuant to para. 1.

(3) Where the nature of the risks which the insurance undertaking proposes to cover under the freedom to provide services changes, the provision of services shall only be admissible if the supervisory authority of the home Member State has informed the FMA thereof. The provision of services may be taken up as soon as the supervisory authority of the home Member State has submitted this communication to the EEA insurance undertaking.

(4) In the case of risks that do not qualify as large risks, prior to conclusion of the insurance contract the EEA insurance undertaking shall inform the policyholder of the Member State from which the contract is being concluded under the freedom to provide services. Where documents are provided to the policyholder, this information must be included.

(5) With regard to activities pursued under the freedom to provide services, apart from the provisions of this Article, Article 17 para. 4, Article 30 paras. 1 and 2, Article 31, Article 91, Articles 93 to 96,

Article 98, Article 101, Article 127d, Articles 128 to 135e, Article 246 para. 1 second and third sentence and paras. 2 and 4, Article 289, Article 290 paras. 2 and 3 shall be applied accordingly to EEA insurance and EEA reinsurance undertakings with head offices in a Member State which by way of provision of services cover risks that are situated within Austria. Insofar as these provisions apply to activities in Austria or to risks situated in Austria, they shall be applied to EEA insurance and EEA reinsurance undertakings only to this extent.

Freedom to provide services: activities in Member States

Article 23. (1) Where an insurance undertaking intends to take up the provision of services in one or more Member States, it shall notify the FMA thereof and specify the nature of the risks it proposes to cover.

(2) Where the provision of services is to extend to motor vehicle liability insurance (no. 10 of Annex A), not including carrier's liability, the insurance undertaking shall:

1. produce a declaration that it has become or is a member of the national bureau referred to in point (3) of Article 1 of Directive 2009/103/EC and the national guarantee fund referred to in point (1) of Article 10 of Directive 2009/103/EC by the Member State in which the service is being provided; and
2. state the name and address of an officer for claims arising from insurance contracts concluded under the freedom to provide services (claims officer).

(3) Where there are no objections to the taking up of the provision of services, within one month after receiving the notification pursuant to para. 1 along with the documents pursuant to para 2, the FMA shall notify the supervisory authorities of the Member States in which the provision of services is to be taken up, indicating the insurance classes which the undertaking is authorised to pursue as well as the nature of the risks which it proposes to cover under the freedom to provide services. At the same time, the FMA shall attest that the insurance undertaking possesses the necessary own funds to cover the Solvency Capital Requirement as well as the necessary basic own funds to cover the Minimum Capital Requirement. The FMA must not attest the above where the insurance undertaking has informed the FMA of not complying with the Solvency and Minimum Capital Requirements or the FMA has initiated a procedure as referred to in Articles 279 and 280 and the grounds for the procedure continue to exist. The FMA shall immediately inform the insurance undertaking of that notification.

(4) Insurance undertakings may take up the provision of services as soon as the FMA informs the insurance undertaking that the information and evidence referred to in para. 3 have been submitted to the supervisory authority of the host Member State. Where the conditions for the notification pursuant to para. 3 are not met, the FMA shall inform the insurance undertaking thereof by means of an administrative decision. The FMA is obliged to issue such an administrative decision by no later than one month after having received the notification pursuant to para. 1.

(5) Where the nature of the risks which the insurance undertaking proposes to cover under the freedom to provide services, or the name or address of the claims officer changes, the insurance undertaking shall notify the FMA thereof. Where there are no objections to the change, within one month of having received the notification by the insurance undertaking, the FMA shall notify the supervisory authorities of the Member States concerned of the change and inform the insurance undertaking thereof without delay. Where the conditions for that notification are not met, the FMA shall inform the insurance undertaking thereof by means of an administrative decision. The FMA is obliged to issue such an administrative decision by no later than one month after having received the notification of the insurance undertaking.

(6) The following conditions shall apply to the claims officer (para. 2 no. 2):

1. they shall be fit and proper to perform their duties and they shall in particular be able to handle the claims in the official language(s) of the state in which the insurance undertaking provides services.
2. they shall have their residence or head office or a branch in the state in which the insurance undertaking provides services.
3. they shall be authorised to collect all necessary information in relation to claims which the insurance undertaking is required to settle under the freedom to provide services and to take the necessary measures to settle such claims.
4. they shall possess sufficient powers to represent the insurance undertaking, in and out of court, in handling and satisfying any claims arising from insurance contracts concluded under the freedom to provide services in relation to persons suffering damage, and to settle such claims.

SECTION 6: SHAREHOLDER CONTROL

Shareholders

Article 24. (1) Persons (proposed acquirers) who, acting alone or in concert with others:

1. intend to acquire, directly or indirectly, a qualifying holding in an insurance or reinsurance undertaking with head offices in Austria; or
2. already have such a qualifying holding and intend to increase their holding, directly or indirectly, in such a way that they would reach or exceed the limit of 20%, 30% or 50% of the share capital or voting rights, or in such a way that the insurance or reinsurance undertaking would become its subsidiary shall first notify the FMA in writing, indicating the size of the intended holding and the information as referred to in Article 26 para. 3. The notification may be made jointly by all of the persons, by more than one person or by each of the jointly acting persons separately. For the determination of the voting rights, Article 8 para. 3 shall apply.

(2) The notification requirements under para. 1 apply in the same way to the decided disposal of a directly or indirectly held qualifying holding or any underrun of the limits indicated in para. 1

regarding participations in an insurance undertaking or a reinsurance undertaking or when the insurance undertaking or reinsurance undertaking is no longer a subsidiary.

(3) Insurance or reinsurance undertakings shall immediately inform the FMA of any acquisition and disposal of equity interests, which must be notified pursuant to paras. 1 and 2, as soon as they become aware thereof. Moreover, they shall also, at least once a year, inform the FMA of the names and addresses of shareholders who have notifiable qualifying holdings and the sizes of such qualifying holdings, as shown in particular by the information received at annual general meetings or by the information obtained pursuant to Articles 130 to 135 BörseG 2018.

Procedures for assessing the acquisition

Article 25. (1) The FMA shall, promptly and in any event within two working days following receipt of the complete notification required under Article 24 para. 1 as well as following the possible subsequent receipt of the information referred to in para. 2, acknowledge receipt thereof in writing to the proposed acquirer and at the same time inform the proposed acquirer of the date of the expiry of the assessment period. Where the FMA indicates to the proposed acquirer any documents or information obviously omitted from the notification, the last sentence of Article 13 para. 3 of the Code of Administrative Procedure (AVG; *Allgemeines Verwaltungsverfahrensgesetz*) shall not apply.

(2) The FMA may, no later than on the fiftieth working day of the assessment period, request in writing any further information that is necessary to complete the assessment. The assessment deadline pursuant to Article 5 shall be postponed from the date of that request until receipt of a response by the proposed acquirer, but no longer than for 20 working days.

(3) The FMA may extend that deadline from 20 working days to 30 working days where the proposed acquirer:

1. has their head office outside the EEA or is regulated outside the EEA; or
2. is not subject to supervision under Directives 2009/65/EC, 2009/138/EC, 2004/39/EC or 2013/36/EU.

(4) Any further requests for completion or clarification of the information shall not result in any further postponement of the assessment deadline.

(5) The FMA shall prohibit the acquisition of equity interests notified pursuant to Article 24 para. 1, subject to paras. 2 and 3, within an assessment period of 60 working days as from the date of the written acknowledgement of receipt of the notification pursuant to para. 1 and any information to be submitted pursuant to Article 26 para. 3, where there are reasonable grounds for doing so on the basis of the criteria set out in Article 26 para. 1 or where the information provided by the proposed acquirer is incomplete. Where the FMA does not prohibit the acquisition in writing within the assessment period, it shall be considered approved. If the acquisition is not prohibited, the FMA may fix a maximum period within which the acquisition must be made. This maximum period may be extended, where appropriate.

(6) The FMA shall send the administrative decision prohibiting the proposed acquisition within two working days after reaching the decision. The FMA shall issue an administrative decision at the proposed acquirer's request also where the acquisition is not prohibited. Where the proposed acquirer is a regulated undertaking as referred to in para. 7, the FMA shall state among the reasons given in the administrative decision any views or reservations expressed by the supervisory authority responsible for the proposed acquirer. The administrative decision may include conditions and requirements for ensuring fulfilment of the criteria set forth in Article 26. At the proposed acquirer's request, the FMA may make the decision and underlying reasons accessible to the public, provided it complies with the requirements set forth in Article 22c no. 3 lits. a to c of the Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*).

(7) The FMA shall work in full consultation with the competent authorities of the other Member States when carrying out the assessment of a proposed acquisition or of an increase of a qualifying holding pursuant to Article 24 para. 1 and shall promptly exchange information that is essential or relevant to the assessment where the proposed acquirer:

1. is a credit institution, insurance or reinsurance undertaking, investment firm or management company within the meaning of Article 3 para. 2 no. 1 InvFG 2011;
2. is the parent undertaking of a credit institution, insurance or reinsurance undertaking, investment firm or management company within the meaning of Article 3 para. 2 no. 1 InvFG 2011; or
3. controls a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company

which is authorised in a Member State other than that in which the acquisition is proposed or by an authority competent for another sector.

(8) In the event of a procedure pursuant to para. 7, the FMA shall communicate all essential or relevant information at a competent authority's request and shall communicate on their own initiative all essential information to the competent authorities, particularly information regarding the assessment of the acquisition and a possible prohibition of the acquisition. The FMA shall obtain the competent authorities' assessments, in particular against the criteria set out in Article 26 para. 1 nos. 1, 2 and 5.

Criteria for assessing the acquisition

Article 26. (1) In assessing the notification and information referred to in Article 24 para. 1 the FMA shall, in order to ensure the sound and prudent management of the insurance or reinsurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance or reinsurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

1. the reputation of the proposed acquirer;

2. the reputation and experience of any person who will direct the business of the insurance or reinsurance undertaking as a result of the proposed acquisition, in accordance with Article 120 paras. 1 and 2;
 3. the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance or reinsurance undertaking in which the acquisition is proposed;
 4. whether the insurance or reinsurance undertaking will be able to comply and continue to comply with the requirements pertaining to contractual insurance activities and with the provisions of the Financial Conglomerates Act (FKG; *Finanzkonglomeratengesetz*), and in particular, whether the group of which the insurance or reinsurance undertaking will become part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent supervisory authorities and determine the allocation of responsibilities among the competent supervisory authorities;
 5. whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering (Article 165 of the Criminal Code (StGB; *Strafgesetzbuch*) – while taking into account asset components derived from a criminal offence committed by the perpetrator) or terrorist financing (Article 278d StGB) is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.
- (2) The proposed acquisition must not be examined in terms of the economic needs of the market.
- (3) The FMA shall determine by regulation a list specifying the information that must be submitted pursuant to Article 24 para. 1, considering European practice in this area. The information must be suitable and necessary for the prudential assessment of compliance with the criteria as referred to in para. 1. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. This shall take into account the size and nature of the qualifying holding as well as the size and business activities of the proposed acquirer and the insurance or reinsurance undertaking in which the acquisition is proposed. The FMA shall also specify in the regulation the nature and form of the transmission of information, in order to enable rapid and accurate identification of the application's content.
- (4) Where two or more proposals to acquire or increase qualifying holdings pursuant to Article 24 para. 1 in the same insurance or reinsurance undertaking have been notified to the FMA, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Measures in the case of unsuitable shareholders

Article 27. (1) Where there is a risk that persons who have a qualifying holding pursuant to Article 24 para. 1 exercise an influence which is likely to operate against the sound and prudent management of an insurance or reinsurance undertaking, the FMA shall take appropriate measures to eliminate such risk, in particular measures pursuant to Article 284. The court of first instance with jurisdiction over commercial matters responsible for the insurance or reinsurance undertaking's head office

shall, upon application by the FMA, order the suspension of voting rights for those shares which are held by the persons concerned. The suspension of voting rights shall be lifted when the court, upon application by the FMA or the persons concerned, establishes that the risk no longer exists or when the equity interests are acquired by third parties and, where a notification obligation pursuant to Article 24 para. 1 applies, the deadline for the prohibition of the acquisition pursuant to Article 25 para. 5 has expired for that acquisition. The court shall rule in accordance with the above provisions in non-litigious civil proceedings.

(2) Paragraph 1 shall also be applied where a notification pursuant to Article 24 para. 1 has been omitted. Where equity interests have been acquired despite a prohibition pursuant to Article 25 para. 5, any connected voting rights shall be suspended until the FMA determines that the reason for the prohibition no longer exists.

(3) Where the court orders the suspension of voting rights pursuant to the second sentence of para. 1, it shall simultaneously appoint a trustee (*Treuhänder*) who fulfils the requirements in line with sound and prudent management of the insurance or reinsurance undertaking and transfer the voting rights to that party. In the case of the second sentence of para. 2, the FMA shall immediately apply for the appointment of a trustee at the court competent pursuant to the second sentence of para. 1 when it learns that the voting rights have been suspended. The trustee shall be entitled to reimbursement of their expenses as well as to remuneration for their activity, the amount of which shall be determined by the court. The insurance or reinsurance undertaking and the shareholders whose voting rights have been suspended shall be jointly and severally liable to bear such expense. The obligors shall be entitled to appeal (by way of a *Rekurs*) against decisions determining the amount of the trustee's remuneration as well as the expenses to be reimbursed. No further appeal shall be possible against the decision of the Higher Regional Court (*Oberlandesgericht*).

SECTION 7: TRANSFER OF PORTFOLIO

General provisions for transfers of portfolio

Article 28. (1) All or part of the portfolio of insurance and reinsurance contracts concluded under a licence granted pursuant to this federal act may be transferred within the meaning of the following provisions without the policyholder's consent.

(2) An insurance or reinsurance undertaking with head offices in Austria may transfer its portfolio to another insurance or reinsurance undertaking. The portfolio may also be transferred to a third-country insurance or third-country reinsurance undertaking's branch that is established in Austria or another Member State, provided that it contains only risks that are situated in the Member State in which the branch is established. Article 5 para. 20 shall apply when determining where the risk is situated.

(3) The Austrian branch of a third-country insurance or third-country reinsurance undertaking may transfer its portfolio to an insurance or reinsurance undertaking.

Approval by the FMA

Article 29. (1) Transfers of portfolio pursuant to Article 28 paras. 2 and 3 shall require the FMA's approval. An approval shall also be required for any legal transactions that entail universal succession. Approval shall be withheld where the interests of the policyholders and beneficiaries are not sufficiently safeguarded.

(2) Where the entire insurance activities of an insurance undertaking with head offices in Austria and established with the legal form of a joint stock company (Aktiengesellschaft) are transferred by means of a demerger to a joint stock company with head offices in Austria that has been founded for that purpose, the licence for contractual insurance activities and any approvals given to the demerged insurance business shall be transferred from the transferring to the accepting joint stock company. The FMA may only give its approval as referred to in para. 1 where compliance with the regulations applicable to contractual insurance activities is guaranteed by the accepting joint stock company.

(3) If the accepting undertaking is an insurance or reinsurance undertaking with head offices in Austria or the Austrian branch of a third-country insurance or third-country reinsurance undertaking, the approval referred to in para. 1 shall be withheld where:

1. it must be assumed that the transfer will have a negative impact on the entire business of the accepting undertaking or the accepting branch;
2. after taking the transfer of portfolio into account the accepting undertaking or the accepting branch does not possess the necessary own funds to cover the Solvency Capital Requirement;
3. the accepting undertaking or the accepting branch has informed the FMA of not complying with the Solvency and Minimum Capital Requirements or the FMA has initiated a procedure as referred to in Articles 279 and 280 and the grounds for the procedure continue to exist.

Where the branch's solvency is supervised by the supervisory authority of another Member State due to an approval pursuant to Article 15, the approval referred to in para. 1 may only be given where the supervisory authority certifies that after taking the transfer of portfolio into account the branch possesses the necessary own funds to cover the Solvency Capital Requirement.

(4) Where the accepting undertaking is an EEA insurance or EEA reinsurance undertaking, the approval referred to in para. 1 may only be given where the supervisory authority of that Member State certifies that after taking the transfer of portfolio into account the accepting undertaking possesses the necessary own funds to cover the Solvency Capital Requirement

(5) Where an insurance undertaking with head offices in Austria transfers the portfolio of one of its branches in a Member State or where the transferred portfolio includes risks that are situated in another Member State, the approval referred to in para. 1 may only be given where the supervisory authorities of those Member States consent to the transfer. Where such a supervisory authority has not responded within three months of receiving the notification of the transfer of portfolio, consent shall be considered given.

(6) Where there is a transfer of personal data into a third country in connection with the transfer of a portfolio, then the approval in accordance with para. 1 shall only be allowed to be granted, if the transmission is permissible in accordance with Chapter V of Regulation (EU) 2016/679.

FMA assistance

Article 30. (1) Where an EEA insurance undertaking transfers the portfolio of one of its Austrian branches or where the transferred portfolio includes risks that are situated in Austria, within three months of receiving the notification of the transfer of portfolio the FMA shall respond to the supervisory authority of the Member State concerned. The FMA shall deny approval of the transfer where the interests of the policyholders and beneficiaries are not sufficiently safeguarded.

(2) Where an EEA insurance or EEA reinsurance undertaking transfers a portfolio to an insurance or reinsurance undertaking with head offices in Austria or an Austrian branch of a third-country insurance or third-country reinsurance undertaking, the FMA shall certify to the supervisory authority of the transferring undertaking that after taking the transfer of portfolio into account the accepting undertaking or the accepting branch possesses the necessary own funds to cover the Solvency Capital Requirement. The FMA must not certify the above where the accepting undertaking or the accepting branch has informed the FMA of not complying with the Solvency and Minimum Capital Requirements or the FMA has initiated a procedure as referred to in Articles 279 and 280 and the grounds for the procedure continue to exist.

(3) Where a third-country insurance or third-country reinsurance undertaking transfers the portfolio of a branch in another Member State to an insurance or reinsurance undertaking with head offices in Austria, the FMA shall certify to the supervisory authority of the transferring undertaking that after taking the transfer of portfolio into account the accepting undertaking possesses the necessary own funds to cover the Solvency Capital Requirement. The FMA must not certify the above where the accepting undertaking has informed the FMA of not complying with the Solvency and Minimum Capital Requirements or the FMA has initiated a procedure as defined in Articles 279 and 280 and the grounds for the procedure continue to exist.

(4) Where the conditions for submitting the certificate pursuant to paras. 2 and 3 are not met, the FMA shall inform the undertaking concerned thereof by means of an administrative decision.

Legal effects of a transfer of portfolio

Article 31. (1) The rights and obligations arising from the insurance contracts included in the transferred portfolio shall be transferred to the accepting undertaking on entry in the company register or, where such entry is not required, on approval of the transfer of portfolio.

(2) Where the insurance contracts cover risks situated in Austria, the accepting undertaking or the accepting branch shall immediately following the FMA's approval inform the policyholders concerned of the transfer of portfolio. They shall be entitled to terminate the insurance contract as per the end of the insurance period during which they were informed of the transfer of portfolio and

to reclaim that part of the premium due for the period following the insurance relationship's termination less the costs incurred for that period of time. The insurance undertaking shall inform the policyholders concerned of that right. The insurer shall not be entitled to invoke any agreement deviating from this provision.

(3) Where in the case of a transfer of the insurance portfolio for the purpose of reorganisation there is a risk that the interests of the other policyholders and beneficiaries are violated by terminations pursuant to para. 2, or where a transfer of portfolio only serves to change the structure within a group without affecting the interests of the policyholders and beneficiaries, the FMA shall rule out terminations upon request.

(4) The second and third sentence of para. 2 shall not apply to any legal transactions that entail a transfer of portfolio by way of universal succession.

Provisions for the Swiss Confederation

Article 32. (1) Where the accepting undertaking is the Austrian branch of a third-country insurance undertaking with head offices in the Swiss Confederation, evidence that after taking the transfer of portfolio into account the undertaking possesses the necessary own funds to cover the Solvency Capital Requirement shall be produced through a certificate by the Swiss supervisory authority.

(2) Where the branch in the Swiss Confederation of an insurance undertaking with head offices in Austria requires a certificate attesting the necessary own funds as referred to in para. 1 in order to accept a portfolio, the FMA shall issue such a certificate to the competent Swiss authority. The FMA shall refuse to issue the certificate where the insurance undertaking has informed the FMA of not complying with the Solvency and Minimum Capital Requirements or the FMA has initiated a procedure as referred to in Articles 279 and 280 and the grounds for the procedure continue to exist.

(3) Where the conditions pursuant to para. 2 are not met, the FMA shall inform the insurance undertaking thereof by means of an administrative decision.

SECTION 8: COMPLAINTS

Complaints body

Article 33. (1) The Federal Minister of Labour, Social Affairs, Health and Consumer Protection shall accept complaints from consumers pursuant to Article 1 para. 1 no. 1 of the Consumer Protection Act (KSchG; *Konsumentenschutzgesetz*) and consumer protection facilities about insurance undertakings, small insurance undertakings as well as third country and EEA insurance undertakings free of charge. Such complaints must in any case be handled and responded to. Where possible mediation should be strived for.

(2) For the purposes of the public interest listed in Article 267 paras. 1 and 2, the Federal Minister of Labour, Social Affairs, Health and Consumer Protection pursuant to para. 1 shall transfer cases to the FMA.

(3) The Federal Ministry of Labour, Social Affairs, Health and Consumer Protection shall cooperate with comparable organisations in other Member States to settle cross-border disputes, and to promote cross-border cooperation with other complaints bodies and ombudsmen.

CHAPTER 2: MUTUAL ASSOCIATIONS

SECTION 1: GENERAL PROVISIONS

Term

Article 35. An association that pursues insurance activities for its members based on the principle of mutuality (mutual association) requires a licence pursuant to Article 6 para. 1 in order to commence business activities.

Name

Article 36. The name of the association shall express the fact that mutual insurance activities are being pursued.

Articles of association

Article 37. (1) The articles of association must be issued in the form of a notarial deed.

(2) The articles of association shall specify:

1. the name and head office of the association;
2. the object of the undertaking;
3. the form of the association's disclosures;
4. the beginning of the membership;
5. the initial fund;
6. the manner of funding by the members;
7. the contingency reserve;
8. the appropriation of net income;
9. the bodies of the association and their composition; and
10. the number of members of the supreme body required for exercising minority rights.

(3) The licence or the approval of an amendment to the articles of association shall be withheld from a mutual association if the members' interests as arise from the membership relationship are not sufficiently safeguarded by the provisions of the articles of association.

Disclosures

Article 38. Article 18 AktG shall apply accordingly to the association's disclosures.

Establishment

Article 39. Upon the issue of the licence pursuant to Article 6 para. 1, the association shall be considered established.

Membership

Article 40. (1) The membership in a mutual association shall be subject to the existence of an insurance contract with it.

(2) The association may also conclude insurance contracts without establishing a membership, provided that this is expressly specified in the articles of association. In such a case the articles of association must specify in which insurance classes and to what extent insurance contracts are permitted to be concluded without establishing a membership, while considering that insurance contracts without a membership must not make up the majority.

(3) The members shall not be liable towards the association's creditors.

(4) A member shall not be entitled to set off a claim held against the association against a claim held by the association for payment of contributions and supplementary contributions.

(5) The members' contributions and supplementary contributions as well as the association's benefits paid out on the basis of the membership relationship may, where the same conditions apply, only be determined according to the same principles.

Initial fund

Article 41. (1) An initial fund shall be established to cover the costs of establishing and setting up the association, the organisation costs as well as the other expenses incurred through taking up the business activities. Unless the articles of association determine otherwise, the fund may also be used to cover losses.

(2) The articles of association shall contain provisions concerning the repayment of the initial fund and, if it is not repaid, provisions concerning its use.

(3) The business activities may only be taken up once the initial fund has been fully deposited in cash.

(4) The FMA shall make the issue of the licence for additional insurance classes conditional on an appropriate increase in the initial fund, where the fund has not been repaid and the expense incurred by taking up activities in those insurance classes does not appear secured by other means.

(5) The initial fund may only be repaid out of the net income. The repayment made in one year must not exceed the amount allocated to the contingency reserve (Article 45) in that year. Repayment of the initial fund is not permissible where distribution would result in falling below the last reported level of the Solvency Capital Requirement.

(6) Those persons who have made the initial fund available must not be entitled to premature repayment. The articles of association may stipulate that and the extent to which those persons shall be entitled to participate in the management of the association, or that they are entitled to an

interest payment from the annual income and to a participation in the net income as shown by the financial statements.

Entry in the company register

Article 42. (1) Mutual associations shall be entered in the company register.

(2) The application for the entry of the association in the company register shall be made by all members of the management board and supervisory board. The application may only be made once the licence for contractual insurance activities has been issued and the initial fund has been deposited in full. When applying, evidence is to be presented that the management board is not restricted in disposing of the deposited funds, specifically not through counterclaims. The registration shall also include the dates of birth and the power of representation of the management board members.

(3) The articles of association, the administrative decision through which the FMA issued the licence for contractual insurance activities, the appointment certificates of the management board and supervisory board as well as a list of the supervisory board members specifying their names and dates of birth shall be appended to the association's registration.

(4) The management board members shall deposit their signatures at court.

(5) The documents, in the form of originals, copies or publicly certified copies, shall be taken into the collection of documents (Article 12 of the Company Register Act (FBG; *Firmenbuchgesetz*)).

(6) The court shall verify that the association has been duly established and registered. Where that is not the case, it shall refuse the entry.

(7) When entering the association in the company register, the company name, the head office as well as the business address for serving documents, the insurance classes that activities will cover, the names and dates of birth of the chairperson, the chairperson's deputies and the other members of the supervisory board, the amount of the initial fund, the date on which the licence was issued, as well as the names and dates of birth of the management board members shall be provided. The type of power of representation with which the management board members are vested shall also be entered. If the articles of association contain provisions concerning the duration of the association, such provisions shall also be entered.

(8) The disclosure of the entry shall include the form of the association's disclosures as well as the names and the dates of birth of the members of the initial supervisory board.

Commencement of existence

Article 43. The association shall come into existence on entry in the company register. Article 34 para. 1 second sentence and para. 2 AktG shall apply accordingly.

Contributions and supplementary contributions

Article 44. (1) The articles of association shall contain provisions concerning funding by the members. The amount required annually shall be defrayed by the members' contributions determined in advance.

(2) The articles of association shall stipulate whether and to what extent the members shall be obliged to make supplementary contributions in the event that other funds do not suffice to cover losses. The articles of association may also stipulate the reduction of insurance benefits instead of or in addition to the obligation to make supplementary contributions.

(3) Where supplementary contributions are stipulated, those members who joined or withdrew during a financial year shall also contribute in proportion to the length of their membership in the respective financial year. Where the contributions or the sums insured that serve as the basis for determining the supplementary contributions are changed during the financial year, the supplementary contributions shall be determined based on the higher amount.

Contingency reserve

Article 45. The articles of association shall stipulate a reserve (contingency reserve) to cover any losses resulting from the business activities and shall determine the amounts required to be allocated to it annually as well as the minimum amount it must reach.

Subordinated liabilities

Article 46. Mutual associations may, with the supreme body's consent, enter into subordinated liabilities pursuant to Article 170 para. 1 no. 2 and issue securities for such.

Appropriation of net income

Article 47. (1) The net income for the year as shown by the financial statements shall be distributed to the members, unless it is allocated to the contingency reserve or other reserves stipulated in the articles of association, or used for the repayment of the initial fund or the payment of remunerations in accordance with the articles of association, or carried forward to the next financial year.

(2) The articles of association shall define the principles for distributing the net income and specify in particular whether the net income is also to be distributed to members who withdraw during the financial year. A participation in the net income of a financial year must not be denied solely because membership expired after the end of the financial year.

(3) Any distribution of the net income shall be excluded in the event that such distribution would result in falling below the last reported level of the Solvency Capital Requirement.

Bodies

Article 48. (1) The association must have a management board, a supervisory board and, as its supreme body, a general meeting of members (council of members).

(2) In cases where provinces or provincial bodies are entitled to perform certain functions at existing mutual associations as specified in the articles of association, the articles of association may continue to stipulate the performance of functions by those provincial bodies, provided the bodies otherwise necessary for the mutual associations are established.

Management board

Article 49. (1) The management board shall manage the association on its own responsibility as required for the good of the association, taking into consideration the interests of the members and employees as well as the public interest.

(2) Only a natural person with full legal capacity can be a member of the management board.

(3) The association shall be represented by the management board in and out of court. The management board shall be obliged towards the association to comply with the limitations to the extent of its power of representation as specified in the articles of association or by the supervisory board, or that result from a resolution by the supreme body pursuant to Article 51 para. 3. Any limitation of the management board's power of representation shall be invalid with regard to third parties.

(4) Moreover, Article 70 para. 2, Article 71 paras. 2 and 3, Articles 72 and 73 AktG shall apply accordingly to the management and representation of the association by the management board, to the signature of the management board, as well as to the change of the management board and the power of representation of its members.

(5) Article 75 paras. 1, 3 and 4 and Article 76 AktG shall apply accordingly to the appointment and dismissal of the management board.

(6) Articles 77 to 82 and Article 84 paras. 1, 2 and 4 to 6 AktG shall apply accordingly to the rights and obligations of the management board members. The management board members shall be obliged to pay damages to the association in the event that, contrary to this federal act or the articles of association:

1. interest is paid on the initial fund or the initial fund is repaid in full;
2. the association's assets are distributed;
3. payments are made after the association has become insolvent or excessively indebted; this shall not apply to payments after the aforementioned point in time which are compatible with the due care and diligence of a prudent and conscientious directors; or
4. credit is granted.

(7) Articles 100 and 101 AktG shall apply accordingly in the event of actions taken to the detriment of the association for the purpose of gaining advantages not in the interests of the association.

(8) The regulations concerning the management board members shall also apply to their deputies.

Supervisory board

Article 50. (1) The supervisory board members shall be elected by the supreme body. Article 86 paras. 1 to 3, and 5 to 9 AktG, Article 87 para. 1 second sentence and paras. 2 to 5 and 7 to 10 AktG and Articles 89 to 91 AktG shall apply accordingly to the election, dismissal and appointment of supervisory board members, to the incompatibility of management board membership with membership in the supervisory board, as well as to disclosures of changes to the supervisory board. The aforementioned shall be without prejudice to Article 110 paras. 2 and 3 of the Labour Constitution Act (ArbVG; *Arbeitsverfassungsgesetz*).

(2) Mutual associations shall be considered equal to corporations with regard to the application of Article 86 paras. 2, 3 and 6 AktG and Article 30a paras. 2, 3 and 5 of the Act on Limited Liability Companies (GmbHG; *Gesetz über Gesellschaften mit beschränkter Haftung*).

(3) Article 92 paras. 1 to 4 and 5, Articles 93 and 94 AktG shall apply accordingly to the supervisory board's rules of internal order, the participation in its meetings and those of its committees, as well as the convening of the supervisory board. The aforementioned shall be without prejudice to Article 110 para. 4 ArbVG.

(4) The supervisory board shall supervise the management. The supervisory board shall convene the supreme body when required by the good of the association. Moreover, Article 95 paras. 2, 3, 5, 6 and 7, Articles 96 and 97 AktG shall apply accordingly to the supervisory board's duties and rights. The aforementioned shall be without prejudice to Article 110 para. 3 ArbVG.

Article 98 AktG shall apply accordingly to the remuneration of supervisory board members. The aforementioned shall be without prejudice to Article 110 para. 3 ArbVG.

(5) Article 84 paras. 1, 2 and 4 to 6 AktG as well as Article 49 para. 6 second sentence shall apply accordingly to the due diligence required from supervisory board members and to their scope of responsibility. The aforementioned shall be without prejudice to Article 110 para. 3 ArbVG.

(6) Articles 100 and 101 AktG shall apply accordingly in the event of actions taken to the detriment of the association for the purpose of gaining advantages not in the interests of the association.

Supreme body

Article 51. (1) The members shall exercise their rights in matters of the association within the supreme body, unless otherwise specified by law.

(2) The supreme body shall either be the meeting of all members (general meeting of members) or the meeting of the members' representatives (council of members), who themselves must be members of the association. If a council of members is provided for, the articles of association shall specify rules for its composition and for the appointment of its representatives; such rules shall also specify the possibility of allowing a qualified minority of members to nominate members for election.

(3) The supreme body shall decide in those cases expressly specified by law or in the articles of association. The supreme body may decide on management issues only where requested by the

management board or, in the case of a business transaction requiring the consent of the supervisory board as referred to in Article 95 para. 5 AktG, by the supervisory board.

(4) Where the provisions of the AktG that are applicable in accordance with this federal act grant rights to a minority of shareholders whose shares make up a specified portion of the share capital, the articles of association shall specify the required minority of members of the supreme body.

(5) Article 102 paras. 2 to 6, Article 104, Article 105, Article 106 nos. 1 to 4 and 7 lit. b first half-sentence, Article 107 paras. 1, 2 and 4, Article 108 paras. 1 to 3 and 5, Article 109 paras. 1 and 2 first and second sentence, Article 116, Article 118, Article 119 paras. 1 and 3, Article 120, Article 121 para. 1, Article 122, Article 126 paras. 1, 3 and 4, Article 127 paras. 1, 3 and 4, Article 128 paras. 1 and 3 AktG shall apply accordingly to the convening of, participation in and conducting of the meeting of the supreme body, as well as to the meeting minutes and to the right of the members of the supreme body to obtain information. Where these provisions refer to shareholders, such shall be substituted with the members of the supreme body.

(7) At the meeting of the supreme body, a list of the attending members as well as the representatives of members shall be compiled, specifying their names and places of residence. The list shall be made available for examination prior to the first vote; it shall be signed by the chairperson.

(8) The resolutions of the supreme body require a majority of the votes cast (simple majority of votes), unless the law or the articles of association specify a larger majority. For elections, the articles of association may specify other provisions.

(9) If the supreme body is a general meeting of members, the voting right may be exercised by a proxy. The power of attorney must be in writing; it shall remain in the safekeeping of the association. A member of the supreme body who is to be discharged or released from an obligation by resolution cannot exercise voting rights either for himself or for another member. The same shall apply where the association adopts a resolution on whether to assert a claim against the member. The articles of association shall otherwise determine the conditions and the form for exercising voting rights.

Special audit

Article 52. (1) For the purpose of auditing transactions during the establishment or in the management of the association, the supreme body can appoint auditors with a simple majority of votes. When adopting such a resolution, members who are also members of the management board or the supervisory board cannot vote either for themselves or for others where the audit is to cover transactions which are related to the discharge of the management board or the supervisory board or to the initiation of a lawsuit between the association and the members of the management board or the supervisory board.

(2) Moreover, Article 130 paras. 2 to 4 and Articles 131 to 133 AktG shall apply accordingly to special audits.

Assertion of claims for damages

Article 53. (1) The claims of the association on the members of the management board or the supervisory board arising from the management must be asserted where the supreme body adopts such a resolution.

(2) Moreover, Article 134 para. 1 second sentence and para. 2 and Article 135 AktG shall apply accordingly to the assertion of claims for damages.

Amendments to the articles of association

Article 54. (1) Any amendment to the articles of association shall require a resolution by the supreme body. The supreme body may transfer to the supervisory board the power to make amendments that concern only the wording.

(2) The resolution can be adopted only where timely notice has been given of the planned amendment to the articles of association, expressly indicating the major contents (Article 119 para. 1 second sentence AktG).

(3) The management board shall apply for the entry of the amendment to the articles of association in the company register. The full text of the articles of association shall be appended to the application; the text shall bear authentication by a notary public, recording that the amended provisions of the articles of association correspond to the resolution on the amendment to the articles of association and that the unamended provisions correspond to the full text of the articles of association as last entered in the company register. The FMA's administrative decision approving the amendment to the articles of association shall be appended to the application.

(4) Unless the amendment concerns information pursuant to Article 42 para. 7, it shall suffice for the entry to refer to the documents submitted to the courts. Where an amendment concerns provisions whose contents are subject to disclosure requirements, the contents of the amendment shall also be disclosed.

(5) The amendment shall be valid only once it has been entered in the company register at the association's head office.

Voidability

Article 55. (1) An action may be brought, on grounds of breach of law or the articles of association, to contest a resolution adopted by the supreme body (action to set aside a resolution). Such an action can also be on grounds that a member of the supreme body has intentionally attempted through exercising voting rights to gain, for himself or a third party and to the detriment of the association or its members, special advantages not in the interests of the association, where the resolution is suited to this purpose. Article 100 para. 3 AktG shall apply.

(2) Moreover, Article 195 paras. 1a, 3 and first sentence of para. 4, as well as Articles 196, 197 and 198 AktG shall apply accordingly to the grounds for contesting a resolution, to the power to contest a resolution and to the action to set aside a resolution. Where the aforementioned provisions refer to

shareholders, in the case of Article 198 para. 1 AktG shareholders shall be substituted with the members of the association and in all other cases with the members of the supreme body.

Nullity

Article 56. (1) A resolution by the supreme body shall be considered null and void where:

1. the supreme body was not convened pursuant to Article 105 para. 1, Article 106 no. 1 or Article 107 para. 2 AktG, unless all members of the supreme body were present or represented and no member objected to the resolution;
2. the resolution was not authenticated pursuant to Article 120 paras. 1 and 2 AktG;
3. the resolution conflicts with the nature of a mutual association or its contents violate regulations which are solely or predominantly intended to protect the association's creditors or which are otherwise in the public interest; or
4. the contents of the resolution violate accepted principles of morality.

(2) Financial statements adopted by the supreme body shall be null and void where no statutory audit pursuant to Article 268 of the Corporate Code (UGB; *Unternehmensgesetzbuch*) was performed.

(3) Financial statements adopted by the management board with the supervisory board's approval shall be null and void where:

1. the management board or the supervisory board has not properly participated in adopting the financial statements;
2. the conditions referred to in para. 1 nos. 3 or 4 apply; or
3. no statutory audit pursuant to Article 268 UGB was performed.

(4) Moreover, Article 199 para. 2, Article 200, Article 201 and Article 202 paras. 2 and 3 AktG shall apply accordingly to the grounds for nullity, the curing of nullity and the action for declaration of nullity.

Dissolution

Article 57. (1) The mutual association shall be dissolved:

1. through resolution by the supreme body;
2. one year after all licences have expired;
3. on the institution of bankruptcy proceedings over the association's assets; or
4. when a decision against the institution of bankruptcy proceedings on grounds of inadequate cost recovery becomes legally effective.

(2) Dissolution through a resolution by the supreme body requires a majority of at least three quarters of the votes cast.

(3) Any resolution by the supreme body to dissolve the association requires the approval of the FMA. Approval shall only be withheld where the members' interests as arise from the membership relationship are not sufficiently safeguarded.

(4) In the event that the association is dissolved through a resolution by the supreme body, the insurance relationships between the association and its members shall be terminated as of the date specified in the resolution, but no sooner than four weeks after the resolution to dissolve the association becomes effective.

(5) Article 204 AktG shall apply accordingly to the application and entry of the dissolution. The FMA's administrative decision approving the dissolution shall be appended to the application.

Winding-up

Article 58. (1) On dissolution the association shall be wound up unless bankruptcy proceedings have been instituted over the association's assets.

(2) The same regulations shall apply during the winding-up process as prior to dissolution unless others arise from the provisions of this federal act and from the purpose of the winding-up.

(3) New insurance contracts must not be accepted during the winding-up process, and existing ones must not be increased or extended.

(4) The initial fund may only be repaid if the claims of other creditors, including those held by members arising based on insurance relationships, have been satisfied or secured. Supplementary contributions must not be collected for the repayment.

(5) Unless otherwise specified in the articles of association, the assets remaining after all debts have been defrayed or secured shall be distributed to those persons who were members at the time of the dissolution. Distribution shall take place in accordance with the principles governing distribution of the net income.

(6) Moreover, Article 206 para. 1 and the first, third and fourth sentences of para. 2, Articles 207 to 211, 213 and 214 AktG shall apply accordingly to the winding-up process.

Transfer of portfolio

Article 59. (1) Agreements by means of which the insurance portfolio of an association is entirely or partially transferred to another undertaking require the supreme body's consent, Article 29 notwithstanding. The resolution on the transfer of the entire portfolio requires a majority of at least three quarters of the votes cast.

(2) The FMA shall also withhold approval of the transfer of portfolio where the members' interests arising from the membership relationship are not sufficiently safeguarded.

Merger

Article 60. (1) Associations may be merged (consolidated) while avoiding winding-up procedures. The merger can take place:

1. through a transfer of the entirety of an association's (transferor association's) assets to another association (transferee association), with the members of the transferor association becoming members of the transferee association (merger by absorption); or

2. by establishing a new association to which the entirety of the assets of each of the merging associations is transferred, with the members of the merging associations becoming members of the new association (merger by consolidation).
- (2) The merger requires the consent of the participating associations' supreme bodies in order to become valid. The resolutions by the supreme bodies require a majority of at least three quarters of the votes cast.
- (3) The FMA's administrative decision approving the merger shall be submitted to the company register.
- (4) Article 220 para. 3, Article 222, Article 225 para. 1, para. 2 first and second sentence and para. 3, Article 225a para. 1 and para. 3 nos. 1, 2 and 4 as well as Articles 226 to 230 AktG shall apply accordingly to any merger by absorption.
- (5) Article 220 para. 3, Article 222, Article 225 para. 2 first and second sentence, Article 225a para. 1 and para. 3 nos. 1, 2 and 4, Articles 226 to 228, Article 230 as well as Article 233 para. 1 second sentence, paras. 2, 4 and 5 AktG shall apply accordingly to any merger by consolidation.

Transformation into a joint stock company

- Article 61.** (1) An association can be transformed into a joint stock company through a resolution by the supreme body. Such a resolution requires a majority of at least three quarters of the votes cast.
- (2) Every member is entitled to object to the transformation by submitting a registered letter by no later than the end of the third day before the resolution is to be adopted.
- (3) In the manner of disclosure specified in the articles of association, the management board shall inform all the association's members of the contents of the intended resolution authorising the transformation (paras. 5 and 6) no later than when the supreme body is convened. Such disclosure shall indicate the option of raising an objection (para. 2) and the rights ensuing from such action.
- (4) The resolution authorising the transformation requires the approval of the FMA. Approval shall be withheld where the transformation would pose a threat to the members' interests.
- (5) The share capital, the par value in the case of par value shares, and the number of shares in the case of no-par value shares shall be specified in the resolution authorising the transformation. The par value of the share capital must not exceed the value of those assets of the association which remain after deduction of debt. The par value of the shares issued on the occasion of the transformation or the amount of the share capital attributable to the individual no-par value share must not exceed EUR 100.
- (6) Unless the resolution authorising the transformation states otherwise, the association's members shall participate in the share capital. Unless all members hold an equal share in the share capital, the amount of participation may only be determined in accordance with one or more of the following criteria:
1. the amount of the sum insured;
 2. the amount of the contributions;

3. the amount of the life/health insurance provision;
4. the principles governing distribution of the net income; or
5. the duration of membership.

(7) Where after applying the distribution criteria the value of a member's share is lower than the lowest par value of the shares or than the pro-rata amount of the share capital that is attributable to the single no-par value share, that member shall not be taken into account when determining the share in the share capital, unless several such members were to agree to be regarded as a collective holding joint ownership in one share as referred to in Article 63 AktG. Furthermore, the shares shall be rounded so as to be divisible by the lowest par value of the shares or the lowest pro-rata amount of the share capital attributable to the single no-par value share and so as to fully account for the share capital.

(8) If the par value of the share is higher than the proportional share as determined according to the distribution criteria, the difference shall be paid to the joint stock company. If it is lower or the member is not given a participation, the joint stock company shall render payment to compensate for the difference or the share.

(9) Articles 19, 20, 24 to 27, 31, 39 to 47, Article 245 para. 3, Article 246 paras. 2 and 3, Article 247 paras. 2 to 4, Articles 248, 249 and 251 AktG shall apply accordingly.

(10) The FMA's administrative decision approving the resolution authorising the transformation shall be appended to the application for the entry of the transformation in the company register.

(11) The association shall continue to exist in the form of a joint stock company as of the date when the transformation is registered. From that time on the members of the association shall be deemed shareholders in accordance with the resolution authorising the transformation.

(12) Any member of the association objecting to the transformation as referred to in para. 2 is entitled to an appropriate cash settlement from the company or a third party offering such cash settlement. The second and third sentences of Article 253 AktG shall apply accordingly.

(13) After the entry of the transformation in the company register, the shareholders shall be requested in writing to collect the shares due to them, setting a time limit of at least six months. Article 179 para. 3 AktG shall apply accordingly to shares not collected within the time limit.

Transfer of insurance activities to a joint stock company

Article 62. (1) A mutual association may transfer its entire insurance activities to one or several joint stock companies by means of universal legal succession in accordance with the following provisions.

(2) The transfer shall take place as a contribution in kind at book values as per the end of the financial year. Several transfer transactions made as per the same effective date shall be deemed uniformly made. A transfer balance sheet, which has been audited and approved by the association's statutory auditor, shall be submitted together with the application for the entry of the joint stock company's head office in the company register. The transferred insurance activities shall be detailed in the articles of association, in the agreement on the contributions in kind or in an annex thereto in such

a way as to allow the transferred creditor and debtor positions to be identified. The balance sheet on which the transfer is based must be drawn up no later than nine months prior to the application for entry in the company register. The own funds ensuing from the transfer shall be allocated to the share capital or the committed capital reserves (Article 229 para. 5 UGB), with the exception of subordinated liabilities.

(3) The transfer shall only be admissible:

1. to one or more joint stock companies established for this purpose as their sole shareholder;
2. to one or more joint stock companies established for this purpose together with other associations; or
3. to one or more existing insurance joint stock companies, individually or jointly with other associations.

(4) The transfer requires the consent of the supreme body. The resolution of the supreme body requires a majority of at least three quarters of the votes cast. The FMA shall withhold approval of the transfer as referred to in Article 29 where the members' interests arising from the membership relationship are not sufficiently safeguarded.

(5) The transfer shall be considered as establishment by means of contributions in kind (Article 20 para. 1 AktG). Article 226 AktG shall apply with regard to the protection of creditors.

Effects of the transfer

Article 63. (1) The universal legal succession connected to the transfer pursuant to Article 62 shall take effect upon the entry of the joint stock company or the capital increase in the company register. The transmission by means of universal succession shall be entered in the company register. The FMA's administrative decision approving the transfer shall be appended to the application for entry.

(2) The transmission of title by means of universal legal succession shall include the entirety of the assets belonging to the insurance activities transferred as well as all rights and obligations connected to the insurance activities transferred. In particular, the licence for contractual insurance activities and the approvals granted for the insurance activities transferred shall be transmitted with the transfer.

(3) The transferring mutual association shall continue to exist. Its object shall be limited to asset management. Amendments to the articles of association require the approval of the FMA. The activities of the management board members shall not be considered full-time activities as referred to in Article 120 para. 2 no. 4. The management board shall consist of at least two persons and the articles of association shall rule out any power of sole representation, general managing power of attorney or commercial power of attorney for a single person which covers the entirety of business activities. Article 37, Article 38, Article 40 para. 3, Article 42, Articles 47 to 56, Article 57 para. 1 nos. 1, 3 and 4, paras. 2, 3 and 5, Article 58 paras. 1, 2, 5 and 6, Article 60, Article 85 paras. 3 to 6, Article 122 para. 1 no. 1 first sentence, Article 123 para. 3, Articles 136 to 139, Article 140 paras. 5 and 6, Articles 144 to 148, Article 149 paras. 1 to 3, Article 155, Article 246, Article 248 paras. 2, 3 and 7 to 9,

Article 260, Article 263, Article 264, Article 272 paras. 1, 4 and 5, Article 274 paras. 1 to 7, Article 275 paras. 1 and 3, Article 276 and Article 309 shall apply accordingly. Article 287 shall not apply.

(4) The membership in a mutual association shall be tied to the existence of an insurance relationship with a joint stock company to which the insurance activities have been transferred. The conclusion of an insurance contract with the joint stock company shall establish membership in the mutual association and, in the event that more than one association hold shares, membership in all associations. The membership may also be established by the joint stock company through taking over the insurance portfolio belonging to another mutual association or a joint stock company to which a mutual association's insurance activities have been transferred pursuant to Article 62. The joint stock company may also conclude insurance contracts without establishing a membership, provided this is expressly specified in the articles of association.

(5) Where the association's share in a joint stock company to which its insurance activities have been transferred falls below 26% of the voting shares, the FMA shall be notified immediately. The FMA shall:

1. order the association to restore compliance with statutory provisions within an appropriate period of time;
2. dissolve the association in the event of repetition or continuation. Following dissolution by the FMA, the supreme body of the association shall carry out the winding-up process in accordance with Article 58 and adopt a winding-up plan. The winding-up plan requires the approval of the FMA. Approval shall be withheld where the members' interests are not sufficiently safeguarded.

The association shall not be required to be dissolved in the event that the association's supreme body adopts a resolution to transform it into a private foundation as referred to in Article 66 within the specified period. In this case, the FMA shall set a period within which the transformation must take place. Where several associations have transferred their insurance activities to a joint stock company, the procedures specified under this paragraph shall be applied to all of those associations in the event that the total of their shares falls below 26%.

(6) Para. 5 shall not be applied in the event that the members insured with a joint stock company are fully compensated for their rights pursuant to Article 58 para. 5 and other participations constituted pursuant to Article 62 amounting to at least 26% continue to exist. The determination of the total compensation amount requires the approval of the FMA. Approval shall be withheld where the members' interests arising from the membership relationship are not sufficiently safeguarded.

Rights of the supreme body

Article 64. (1) Following a transfer pursuant to Article 62, in addition to Article 51, the following provisions shall apply to the association's supreme body:

1. The management board of the association shall additionally request a resolution of the supreme body in all matters falling within the scope of responsibility of the annual general

meeting of a joint stock company. The members' right to demand information shall also extend to the matters of the joint stock company related to the subject matter of the resolution.

2. For the purpose of auditing transactions occurring during the joint stock company's establishment or management, the supreme body may appoint auditors with a simple majority of votes. Article 52 shall otherwise apply.
3. The claims of the joint stock company on the management board or supervisory board members arising from the management must be asserted where the supreme body adopts such a resolution. Article 53 shall otherwise apply.

(2) Article 51 para. 8 shall be applied to the adoption of a resolution pursuant to para 1.

Effects of restructuring

Article 65. (1) If, as a result of a legal transaction requiring approval pursuant to Article 29, the entire insurance activities or insurance portfolio or integral parts thereof belonging to one of the joint stock companies mentioned under Article 62 para. 3 are transferred to another company, Article 63 para. 5 shall not apply:

1. where the management board of the association provides evidence of having informed the supreme body of the effects of the legal transaction and the supreme body has granted its approval to that legal transaction by a majority of at least three quarters of the votes cast; and
2. where and as long as the association:
 - a. directly holds at least 26% of the voting shares in that other company,
 - b. holds at least 26% of the voting shares in the joint stock company and the latter in turn holds more than 50% of the voting shares in the other company, and provisions in the articles of association or another legal basis guarantee that the association has significant influence on that other company, or
 - c. directly holds voting shares in that other company or in the joint stock company and provisions in the articles of association or another legal basis guarantee that the association has significant influence comparable to that referred to in lit. a on that other company or that the association has significant influence comparable to that referred to in lit. b on the joint stock company and on the other company.

Evidence of the possible avenues of influence as specified in lit. b and lit. c is to be presented to the FMA.

(2) Article 63 para. 4 shall be applied to the scope of restructuring pursuant to para. 1 under the proviso that membership in the association is tied to the existence or conclusion of an insurance contract with the other company as referred to in para. 1; the rights of the supreme body pursuant to Article 64 shall apply accordingly to the other company mentioned in para. 1 as well.

(3) The FMA shall be notified immediately of any breach of the provisions of para. 1 no. 2. The FMA shall:

1. order the association to restore compliance with statutory provisions within an appropriate period of time;
 2. dissolve the association in the event of repetition or continuation. Following dissolution by the FMA, the supreme body of the association shall carry out the winding-up process in accordance with Article 58 and adopt a winding-up plan. The winding-up plan requires the approval of the FMA. Approval shall be withheld where the members' interests are not sufficiently safeguarded.
- (4) In the event that more than one mutual association is transferred to a joint stock company pursuant to Article 62 as of the same date, and those associations:
1. in the case of para. 1 no. 2 lit. a concurrently hold shares in the other company; or
 2. in the case of para. 1 no. 2 lit. b concurrently hold shares in the joint stock company,
- those associations' share are to be totalled. In the case of para. 1 no. 2 lit. c, the decisive criterion is the joint influence able to be exercised by those associations.

Transformation of legal form into a private foundation

Article 66. (1) Mutual associations that have transferred their entire insurance activities to one or several joint stock companies may, by resolution of the supreme body, be transformed into a private foundation pursuant to the Private Foundation Act (PSG; *Privatstiftungsgesetz*) subject to the following provisions (transformation of legal form). The resolution requires a majority of at least three quarters of the votes cast. The foundation deed and the closing balance sheet of the mutual association (para. 5) shall be made available at the association's head office for the members' examination for at least one month prior to the day of the meeting of the supreme body at which the resolution on the transformation is to be adopted. Prior to making the documents available, the association's members shall be informed thereof in the manner specified for the association's disclosures in the articles of association.

(2) The resolution authorising the transformation requires the approval of the FMA. Approval shall be withheld where the foundation deed does not comply with the provisions of this federal act or where the transformation in conjunction with the contents of the foundation deed would pose a threat to the interests of the members as future beneficiaries of the private foundation.

(3) The following provisions shall apply to the private foundation resulting from the association's transformation:

1. The association shall be deemed the donor; it may not reserve the right to amend the foundation deed, to establish an appendix to the deed, to revoke the private foundation or to exercise other rights to influence legal relationships.
2. The private foundation shall be established for an indefinite period. Article 35 para. 2 no. 3 PSG shall not be applied.
3. The private foundation shall invest more than half of its total assets, based on the foundation's most recently audited balance sheet, in companies belonging to the same group (Article 195

para. 1 no. 3 lit. a) as the joint stock company to which the transformed association transferred the insurance activities as specified in Article 62. Only shares in share capital and subordinated liabilities pursuant to Article 170 para. 1 no. 2 that are eligible to cover the group's Solvency Capital Requirement shall be considered investments within the meaning of this paragraph. In addition, the companies belonging to the group shall continue to jointly hold more than 50% of the voting shares in the joint stock company to which the transformed association transferred the insurance activities as specified in the Article 62. Where the private foundation holds shares in a subsidiary of the group, all assets belonging to the subsidiary may, to an extent proportional to the private foundation's participation in the subsidiary, additionally be included in the calculation of total assets; in this case, the private foundation's share in the subsidiary is to be deducted. When auditing the financial statements, the statutory auditor shall verify and report on compliance with this provision. In the interests of the beneficiaries, the foundation's management board shall ensure ongoing compliance with this provision.

4. The FMA shall be immediately notified of any breach of the provisions in no. 3. The FMA shall:
 - a. order the private foundation to restore compliance with statutory provisions within an appropriate period of time;
 - b. dissolve the private foundation in the event of repetition or continuation. Following dissolution by the FMA, the private foundation's management board shall carry out the winding-up process in accordance with Article 58, in which case the association shall be substituted with the private foundation and the members with the beneficiaries, and adopt a winding-up plan. The winding-up plan requires the approval of the FMA. Approval shall be withheld where the beneficiaries' interests are not sufficiently safeguarded.

The provisions in no. 3 shall not be considered breached as long as the private foundation's share in the joint stock company to which the transformed association transferred its insurance activities does not fall below 26% of the voting shares. If the private foundation holds shares in a joint stock company to which several associations transferred their insurance activities, the provisions in no. 3 shall only be considered breached in the event that the private foundation's share in the joint stock company together with the share of the associations concerned or, if they have been transformed into a private foundation, of the private foundations concerned falls below 26%. Neither shall the provisions in no. 3 be considered breached in the event of a restructuring as defined in Article 65. In this case, Article 65 para. 1 no. 2 and para. 2 shall be applied such that the association shall be substituted with the private foundation, the members' interests shall be substituted with the beneficiaries' interests and membership in the association shall be substituted with beneficiary status in the private foundation.

5. Any later amendments to the foundation deed shall be adopted by the bodies of the foundation. The adopted amendment requires the approval of the FMA. Approval shall be withheld where the amended foundation deed does not comply with the provisions of this

- federal act or where the amended foundation deed would pose a threat to the beneficiaries' interests. The foundation's management board shall apply for entry of the amendment to the foundation deed in the company register. The resolution adopting the amendment, authenticated by a notary public, and the FMA's administrative decision approving the resolution shall be appended to the application. The court (Article 40 PSG) shall serve on the FMA the decision concerning entry of the amendment to the foundation deed.
6. Beneficiary status in the private foundation shall be tied to the existence of an insurance relationship with the joint stock company to which the transformed association transferred its insurance activities or branches of insurance activity. The conclusion of an insurance contract with that joint stock company establishes beneficiary status in the private foundation, and in the case of the participation of several private foundations beneficiary status in all of those private foundations. The joint stock company may, provided that this is expressly specified in the articles of association, also conclude insurance contracts without establishing beneficiary status in the private foundation. The detailed conditions may be stipulated by contract between the private foundation and the joint stock company. Even without such a contractual arrangement, the joint stock company shall be obliged to disclose to the private foundation, at its written request, the names and addresses of those persons who acquired beneficiary status by concluding an insurance contract. The end of the insurance relationship results in the end of the beneficiary status.
 7. The association's assets as shown by the closing balance sheet (para. 5) shall be permanently dedicated to the private foundation and shall be maintained; any net income as shown by the financial statements shall be distributed to the beneficiaries unless it is allocated to the profit reserves or other reserves provided for in the foundation deed, or used for remunerations stipulated in the PSG or is carried forward to new account. The amounts required to maintain the participation of the private foundation in the joint stock company to which the transformed association transferred its insurance activities may always be allocated to the reserves. Article 47 para. 2 shall be applied, with the foundation deed replacing the articles of association. In the case specified in no. 3, amounts equal to the shares in the share capital and in the subordinated liabilities as referred to in Article 170 para. 1 no. 2 of companies belonging to the same group may also be allocated to the reserves.
 8. Those persons who were beneficiaries pursuant to no. 6 at the time of dissolution shall be deemed ultimate beneficiaries. Unless the foundation deed stipulates otherwise, the assets remaining after the winding-up shall be distributed to those beneficiaries in accordance with the principles for the distribution of the net income.
 9. The private foundation may also use the designation "*Versicherungsverein auf Gegenseitigkeit*" or another designation containing the word "*Versicherungsverein*" (both meaning mutual association) as part of its name (Article 2 PSG).
- (4) The following provisions shall apply to the bodies of a private foundation arising from the transformation of an association:

1. The private foundation shall have a supervisory board.
 2. Article 15 paras. 2 and 3 and Article 23 para. 2 last sentence PSG shall not be applied to the private foundation.
 3. The previous members of the association's management board shall become members of the first management board of the private foundation, and the members of the association's supervisory board shall become members of the first supervisory board.
 4. Succeeding or additional members of the private foundation's management board shall be appointed by the supervisory board. The supervisory board shall also be responsible for the premature dismissal of a management board member for good cause if this is provided for in the foundation deed.
 5. The appointment of succeeding or additional members of the supervisory board shall be by majority vote of the remaining supervisory board members. Each intended appointment shall be announced in advance at the private foundation's expense in the official gazette "*Amtsblatt zur Wiener Zeitung*". The beneficiaries shall be entitled to submit a written appointment proposal for the attention of the private foundation's management board within three weeks from the announcement. The foundation deed shall specify the number of beneficiaries required to support the appointment proposal in order for it to be discussed. If more than one nomination meets this condition, only the appointment proposal supported by the majority of the beneficiaries must be discussed. The appointment proposal shall not be binding. If the supervisory board does not yet include a member nominated by the beneficiaries, a deviation from the appointment proposal shall require a majority of two thirds of the remaining supervisory board members.
 6. The activities of the members of the foundation's management board shall not be considered full-time activities as referred to in Article 120 para. 2 no. 4. The foundation's management board shall consist of at least two persons and the foundation deed shall rule out any power of sole representation, general managing power of attorney or commercial power of attorney for a single person which covers the entirety of business activities.
- (5) The management board of the mutual association shall prepare a closing balance sheet that complies with the provisions of Chapter 7 on accounting and consolidated accounting while taking into account Article 63 para 3. Article 220 para. 3 AktG shall apply accordingly. The management board shall submit the closing balance sheet together with the foundation deed to the FMA in the course of obtaining its approval.
- (6) The management board shall apply for the entry of the association's transformation in the company register. The application shall always include:
1. the resolution authorising the transformation authenticated by a notary public;
 2. evidence of having announced that the foundation deed and the closing balance sheet have been made available for examination;
 3. the FMA's administrative decision approving the resolution authorising the transformation;
 4. the association's closing balance sheet as referred to in para. 5; and

5. the audit report pursuant to Article 11 para. 3 PSG.

(7) On entry of the transformation in the company register, the association continues to exist as a private foundation. The court (Article 40 PSG) shall serve on the FMA the decision concerning entry of the private foundation.

(8) Article 38, Article 85 paras. 3 to 6, Article 122 para. 1 no. 1 first sentence, Article 123 para. 3, Articles 136 to 139, Article 140 paras. 5 and 6, Articles 144 to 148, Article 149 paras. 1 to 3, Article 155, Article 246, Article 248 paras. 2, 3 and 7 to 9, Article 260, Article 263, Article 264, Article 272 paras. 1, 4 and 5, Article 274 paras. 1 to 7, Article 275 paras. 1 and 3, Articles 276 and 309 shall be applied accordingly. Article 287 shall not apply.

Merger of private foundations

Article 67. (1) Private foundations pursuant to Article 66 may be merged by absorption thereby avoiding winding-up procedures.

(2) The merger agreement shall be concluded in writing.

(3) The merger requires the consent of each of the private foundations' supervisory boards. In order for the resolution to be valid, at least two thirds of the supervisory board members must be present and the resolution must be approved by a majority of at least three quarters of the votes cast.

(4) The merger requires the approval of the FMA. Approval shall be withheld where the merger appears suited to pose a threat to the beneficiaries' interests.

(5) The management board of each of the private foundations shall apply for entry of the merger in the company register with the court in whose district the private foundation has its head offices. The merger agreement as well as the resolutions of the supervisory boards of the private foundations involved in the merger shall be appended to the application of the transferee private foundation in the original or as a certified copy.

(6) The court in whose district the transferee private foundation has its head offices shall enter the merger for all the involved private foundations at the same time. On entry of the merger for the transferee private foundation, the assets of the transferor private foundation including its debts shall pass to the transferee private foundation. The beneficiaries of the transferor private foundation shall become beneficiaries of the transferee private foundation. As soon as the merger is entered, the transferor private foundation shall expire. Article 226 AktG shall apply accordingly.

SECTION 2: SMALL MUTUAL ASSOCIATIONS

General provisions

Article 68. (1) The scope of activities of a small mutual association must be limited with regard to territory, type of business and group of persons. The scope of activities shall be deemed limited with regard to territory where, in accordance with the articles of association, it extends to the federal province in which the association has its head offices as well as to certain immediately neighbouring

regions. The scope of activities shall be deemed limited with regard to the type of business where only the risks specified under no. 3, restricted to the risks of fire, storm, hail and other natural forces other than storm, nos. 8 and 9 of Annex A are covered, with the exception of damage caused by nuclear energy. The scope of activities shall be deemed limited with regard to group of persons where the association does not comprise more than 20 000 members. Article 83 para. 2 and the second sentence of para. 7 shall be applied accordingly.

(1a) Mutual associations whose activity exclusively consist of the assumption of risks that have been released by small mutual associations, shall also be considered as small mutual associations. Article 83 para. 2 nos. 1 to 3 and the second sentence of para. 7 shall be applied accordingly.

(2) The FMA shall decide whether a mutual association is to be considered a small mutual association.

(3) The licence of a small mutual association shall only be valid within Austria. Any coverage of risks situated in another country is excluded.

(4) *(repealed in the amendment published in BGBl. I 16/2018).*

Applicability of the general provisions

Article 69. (1) The provisions of Section 1 shall apply accordingly to small mutual associations, with the exception of Article 37 para. 1, Article 38, Article 39, Article 40 para. 2, Article 42, Article 43, Article 46, Article 47 para. 3, Article 48 para. 1, Article 49 paras. 3 to 6, Article 50 paras. 1 to 3, para. 4 third sentence, paras. 5 and 6, Article 51 paras. 5 and 6, Article 52 para. 2, Article 53 para. 2, Article 54 paras. 3 to 5, Article 55, Article 56 para. 1 nos. 1 and 2, para. 2 and para. 3 no. 3, Article 57 para. 5, Article 58 para. 6, Article 60 paras. 3 to 5 and Articles 61 to 67.

(2) A small mutual association shall be established and shall be deemed to exist upon granting of the licence. Article 6, Article 7 para. 4, Article 8 para. 2 nos. 1, 2 and 4 and para. 6, Article 12 paras. 1 and 4 to 7 and Article 84 shall be applied accordingly. Article 8 para. 2 no. 4 shall apply under the proviso that coverage of the Solvency Capital Requirement shall be substituted with coverage of the own funds requirements pursuant to Article 70 para. 2.

(3) Amendments to the articles of association shall become effective with the approval of the FMA.

(4) Small associations may apply for entry in the company register on a voluntary basis. In this case, Article 42 paras. 2 to 8 and Article 54 paras. 3 to 5 shall be applied accordingly. Where a small mutual association is not entered in the company register, the FMA shall ensure that the small mutual association is entered in the supplementary register for other concerned parties, and that changes that it becomes aware of are also entered.

(5) Article 28, Article 29 paras. 1 to 3 and para. 6, Article 31, Article 33, Article 34, Article 86, Article 87 paras. 1 to 4, Article 91, Article 246 paras. 1 and 2, Article 247 para. 2, Article 248 para. 2 and para. 3 no. 1, paras. 7 and 9, Article 252, Article 272, Article 274 paras. 1 to 8, Article 275, Article 276, Article 278, Article 279 paras. 1 and 2, Article 281, Article 283 para. 1 first case in no. 1, nos. 2 and 4, paras. 2 to 4, Article 284 and Article 285 paras. 1, 2 and 4, Article 286, Article 306 and Articles 308 to

311, Articles 313 to 316 shall apply accordingly to small mutual associations. Article 278 and Article 279 paras. 1 and 2 shall apply under the proviso that coverage of the Solvency Capital Requirement shall be substituted with coverage of the own funds requirements pursuant to Article 70 para. 2.

(6) The dissolution by resolution of the supreme body (Article 57 para. 1 no. 1) shall become effective no earlier than as of the FMA's approval of the resolution.

Own funds requirements

Article 70. (1) The own funds requirements of small insurance undertakings shall be determined on the basis of the retained earned premiums and the retained total sum insured. The FMA shall define by regulation the detailed provisions for determining the own funds requirements, giving consideration to the special circumstances of small mutual associations and in particular to their limited scope of activities.

(2) Small mutual associations must at all times cover the own funds requirements by means of own funds as defined in Article 71.

(3) A distribution of the annual surplus to the members shall be excluded, where such a distribution would lead to a shortfall of the most recently reported own funds requirement.

Own funds

Article 71. (1) The own funds of small mutual associations consist of the initial fund, provided that it may be used for the coverage of losses, the contingency reserve, the risk reserve and the other reserves.

(2) At the time of their calculation, the own funds shall be free from any foreseeable tax liability or shall be adapted in the event that taxes on income reduce the amount up to which the own funds components can be used to cover risks or losses.

Investments

Article 72. (1) Assets belonging to the following categories are eligible to be invested by small mutual associations:

1. debt securities;
2. shares and other variable yield participations;
3. units in UCITS and other collective investment schemes;
4. loans;
5. land and immovable property rights;
6. cash at bank and in hand.

(2) The FMA shall determine by regulation the details for investments, in particular the localisation of assets as well as the maximum amounts for the categories and for individual assets, where this is necessary to ensure ongoing compliance with the obligations under the insurance contracts.

Exceeding the scope of activities

Article 73. (1) Where the activities pursued by a small mutual association exceed the scope defined in Article 68 para. 1, the FMA shall order the association to choose whether to once again restrict business activities to that scope or to apply for a licence pursuant to Article 6 para. 1 or Article 83 para. 1, setting an appropriate period of time to do so. Where the business activities of a small mutual association exceed the amounts specified in Article 83 para. 2, Article 83 para. 5 shall be applied accordingly.

(2) Where the small mutual association does not restrict its activities to the scope defined in Article 68 para. 1 or where the FMA does not grant a licence pursuant to Article 6 para. 1 or Article 83 para. 1, the FMA shall prohibit business activities. The prohibition shall have the same effect as a resolution to dissolve the association.

Maximum amount of liability

Article 74. (1) The articles of association of a small mutual association shall define a retention amount up to which the association may bear any accepted risks (maximum amount of liability).

(2) Approval of this amendment to the articles of association shall be withheld where the interests of the policyholders and beneficiaries are not sufficiently safeguarded, specifically where ongoing compliance with the obligations under the insurance contracts cannot be expected.

Bodies

Article 75. (1) Small mutual associations must have a management board and, as its supreme body, a general meeting of members or a council of members.

(2) The articles of association may stipulate the appointment of a supervisory board. Small mutual associations with more than 2 000 members must have a supervisory board.

Management board

Article 76. (1) The association shall be represented by the management board in and out of court. The management board may consist of only one person where the business activities do not require a greater number of management board members.

(2) The management board members must be fit and proper to perform their duties. Whether they are of good repute (proper) shall be evaluated based on Article 120 para. 2 no. 2.

(2a) The appointment and resignation of management board members shall be notified to the FMA without delay. All documents are to be attached to the notification of appointment that are necessary to permit the checking of their fitness and propriety pursuant to para. 2. Article 122 para. 2 shall apply accordingly.

(3) The management board shall be obliged towards the association to comply with the limitations to the extent of its power of representation as specified in the articles of association or by the supervisory board, or that result from a resolution by the supreme body. Any limitation of the power

of representation shall be invalid with regard to third parties. Moreover, Article 70 para. 2, Article 71 para. 2 and Article 72 AktG shall apply accordingly to the management and representation of the association by the management board and to the signature of the management board.

(4) The management board members shall be appointed by the supervisory board for a maximum period of five years, provided this is expressly specified in the articles of association, or by the supreme body for no longer than until the end of that meeting of the supreme body at which the decision is taken over the discharge for the fourth financial year after the financial year when the appointment was made. A recurrent appointment shall be admissible. The body responsible for the appointment shall be entitled to revoke the appointment where there is good cause. Such cause shall be in particular gross breach of duty or incapacity of due business management.

(5) If the management board lacks the required members, in urgent cases they shall be appointed by the FMA at the request of a party involved for a period until the deficiency has been remedied.

(6) The management board members may be granted appropriate remuneration for their expenditure of time and work. The remuneration amount shall be determined as a fixed sum by the supreme body, or if a supervisory board has been appointed, by that supervisory board, taking the financial situation of the association and the workload of the management board into account.

(7) The association may grant a loan to the management board members and employees of the association, their spouses and minor children as well as to third parties acting on account of one of those persons, only with the consent of the FMA. Consent shall be refused where this would otherwise pose a threat to the interests of the policyholders and beneficiaries.

(8) Article 84 para. 1 AktG shall apply accordingly to the management board members' due diligence obligation. Management board members who culpably violate their obligations shall be obliged to compensate the association for the resulting damage as joint and several debtors. Claims of the association arising from this obligation must be asserted where the supreme body adopts such a resolution or at the request of one tenth of the members of the supreme body.

(9) In the event of a lawsuit against management board members, the association shall be represented by the supervisory board or, where such has not been appointed, by authorised parties elected by the supreme body.

Supervisory board

Article 77. (1) The supervisory board members shall be elected by the supreme body for no longer than until the end of that meeting of the supreme body at which the decision is taken over the discharge for the fourth financial year after the financial year when the board was elected. Re-election shall be admissible. The supreme body shall be entitled to revoke the appointment of a supervisory board member prior to the expiry of the term of office. Otherwise Article 86 para. 1 AktG shall apply accordingly.

(2) The members of the supervisory board must be members of the association. They cannot simultaneously be management board members and permanently represent management board members; they also must not manage the affairs of the association in the capacity of employees.

(2a) The appointment and resignation of management board members as well as the election and termination of the function as chairperson of the supervisory board shall be notified to the FMA without delay.

(3) Article 94 shall apply accordingly to the convening of the supervisory board.

(4) Article 95 para. 2 first sentence, paras. 3, 4 and 5, Article 96 para. 1 and Article 97 para. 1 AktG shall apply accordingly to the duties and rights of the supervisory board.

(5) Article 84 para. 1 AktG shall apply accordingly to the supervisory board members' due diligence obligation. Supervisory board members who culpably violate their obligations shall be responsible for compensating the association for any resulting damage. Claims of the association arising from this obligation must be asserted where the supreme body adopts such a resolution or at the request of at least one tenth of the members of the supreme body.

Supreme body

Article 78. (1) Within the first five months of every financial year, the supreme body shall decide on the discharge of the management board members and, if appointed, of the supervisory board members.

(2) The supreme body shall be convened in the cases expressly specified by law or in the articles of association. The supreme body shall also be convened at the written request of at least one tenth of its members stating the purpose and the reasons. The members of the supreme body shall be entitled to request, in the same manner, the supreme body to announce in advance matters to be decided by resolution. If the management board does not comply with the request, the FMA may authorise the members of the supreme body who stated the request to convene the supreme body or to announce the matter.

(3) Where the supreme body consists of a general meeting of members, its convening shall be made known by publication or by notifying the members in writing, with the detailed provisions having to be specified in the articles of association. Where the supreme body consists of a council of members, the individual representatives shall in any case be notified in writing. Moreover, Article 105 paras. 1 and 2, Article 106 nos. 1 and 3, Article 107 paras. 1 and 4, Article 108 paras. 1 to 3 as well as the first half-sentence of the first sentence and the second sentence of para. 5, Article 116 para. 2, Article 118, Article 119 paras. 1 and 3, Article 121 para. 1, Article 122 and Article 128 paras. 1 and 3 AktG shall apply accordingly to the convening of the supreme body and participation in its meetings. Where these provisions refer to shareholders, such shall be substituted with the members of the supreme body.

(4) The chairperson of the management board or the deputy shall chair the meeting of the supreme body; in the absence of such persons, the most senior member of the supreme body by age shall chair the meeting to elect a chairperson.

(5) Minutes shall be taken of the meeting of the supreme body, with the minutes signed by the chairperson.

(6) The management board shall provide all members of the supreme body at their request with information on matters of the association.

Accounting

Article 79. (1) Within the first three months of the financial year, the management board of a small mutual association shall prepare the financial statements and a management report for the preceding financial year. Within the first five months of the financial year, the supreme body shall decide on the adoption of the financial statements. Article 137 para. 1, Article 140 paras. 5 and 6, Article 143 para. 1, Article 147 para. 1 nos. 1 to 3, 6 and 7 and para. 2, Article 149 paras. 1 to 3, Articles 151 and 153 shall apply accordingly to the accounting of small mutual associations. 10% of the profit for the year shall be allocated to the risk reserve until the reserve reaches 25% of the amount of the contingency reserve specified in the articles of association. The risk reserve shall take precedence over the contingency reserve with respect to the coverage of losses.

(2) The articles of association shall specify an audit of the financial statements by one or more auditors. The articles of association shall also include detailed provisions specifying the scope of the audit, the appointment of the auditor as well as the audit report made to the supreme body. Members of the management board or of the supervisory board must not be appointed as auditors.

(3) The FMA is entitled to request any details necessary for the ongoing supervision of the insurance undertakings' business activities and for the keeping of insurance statistics. In this context, the FMA shall, with the consent of the Federal Minister of Finance, impose by regulation such special orders as are necessary for the accounting of small mutual associations with regard to the special nature of contractual insurance activities, the appropriate scope of information concerning the business activities that are provided to the policyholders and the general public, and the requirements for supervision of business activities by the FMA. The regulation shall take into account the special circumstances of small mutual associations and specify advantages. Taking these requirements into account, the orders of the FMA may include the following in particular:

1. regulations on the determination and calculation of the technical provisions;
2. regulations on the special valuation of assets;
3. regulations on the report to the FMA as well as on submission deadlines;
4. regulations on the structuring of the balance sheet and the income statement;
5. regulations on the details to be included in the notes to the financial statements and the management report;

6. regulations on requirements for the financial statements and the management report to be personally signed;
7. regulations on electronic transmission of the information to the FMA, which can comprise definitions of data attributes including the data record format; and
8. regulations on the disclosure of the financial statements.

Winding-up

Article 80. (1) Unless other persons are appointed in the articles of association or by a decision of the supreme body, the management board members shall in the capacity of liquidators be responsible for the winding-up.

(2) At the request of at least one tenth of the members of the supreme body or of the supervisory board, the FMA shall appoint or dismiss the liquidators where there is good cause. The supreme body may dismiss at any time liquidators who have not been appointed by the FMA.

(3) While making reference to the dissolution of the association, the liquidators shall invite the association's creditors to file their claims. The invitation shall be published in the official gazette "*Amtsblatt zur Wiener Zeitung*" and in a local newspaper or in a manner otherwise customary in the area.

(4) The liquidators shall render accounts at the beginning of the winding-up process and continue to prepare financial statements at the end of each year. The previous financial year of the association may be retained.

(5) The supreme body shall decide on the rendering of accounts at the beginning of the winding-up process, on the financial statements and on the discharge of the liquidators and the supervisory board.

(6) The assets may be distributed only after the passage of one year from the day when the invitation to the creditors pursuant to para. 3 was published. Moreover, Article 209 paras. 1 and 2, Article 210 paras. 1 to 4 and Article 213 paras. 2 to 3 AktG shall apply accordingly to the winding-up process.

(7) On completion of the winding-up process and after rendering the final accounts, the liquidators shall notify the FMA of the completion of the winding-up.

Merger

Article 81. (1) It shall not be admissible to merge by absorption an association that is not a small mutual association with a small mutual association or to newly form an association through a merger by consolidation of associations that are not small mutual associations with small mutual associations.

(2) Article 222, Article 225a para. 3 nos. 1, 2 and 4, as well as Articles 226 to 228 AktG shall apply accordingly to any merger by absorption.

(3) Article 222, Article 225a para. 3 nos. 1, 2 and 4, Articles 226 to 228 and Article 233 para. 1 second sentence and para. 2 AktG shall apply accordingly to any merger by consolidation.

(4) Where a small mutual association merges by absorption with an association that is not a small mutual association, the management board of the transferee association shall apply for the entry in the company register. Article 225 para. 1 second sentence nos. 1 to 3 AktG shall apply accordingly. Article 229 AktG shall apply accordingly to the liability for damages of the management board and supervisory board members of the transferee association.

(5) Where a small mutual association merges by absorption with another small mutual association, Article 76 para. 8 and Article 77 para. 5 shall apply to the liability for damages of the management board and supervisory board members of the transferee association. The period of limitation for asserting claims for damages as referred to in Article 76 para. 8 and Article 77 para. 5 shall commence with the FMA's approval of the merger.

(6) Where the merger by consolidation of small mutual associations results in an association that is not a small mutual association, Article 229 and Article 233 para. 4 second and third sentence and para. 5 AktG shall apply accordingly. The court competent for the company register in whose district the new association is established shall enter the merger.

(7) In the cases where the aforementioned provisions do not require entry of the merger in the company register, approval by the FMA shall be substituted for the entry of the merger in the company register or for its public announcement.

CHAPTER 3: SMALL INSURANCE UNDERTAKINGS

SECTION 1: GENERAL PROVISIONS

Applicability of the general provisions

Article 82. Article 28, Article 29 paras. 1 to 3 and 6, Article 31, Articles 91 to 99, Articles 101 to 103, Article 123 paras. 7 to 9, Article 123a, Article 127c, Article 127d, Articles 128 to 135e, Articles 142 to 156, Article 246, Article 247 para. 2, Article 248 paras. 2 to 3 and paras. 7 to 9, Article 249, Article 260 paras. 1, 3 and 4, Article 261, Article 263 para. 1 nos. 2, 3, 6 to 8 and para. 2, Articles 264 to 266, Article 272, Article 274 paras. 1 to 8, Article 275, Article 276, Article 278, Article 279 paras. 1 and 2, Article 281, Article 283 para. 1 no. 1 first case, no. 2 and no. 4 and paras. 2 to 4, Article 284, Article 285 paras. 1, 2 and 4, Article 286, Article 300 to Article 302 para. 1 first sentence and paras. 2 to 6 and Articles 303 to 316 shall apply accordingly to small insurance undertakings. Article 278 and Article 279 paras. 1 and 2 shall apply under the proviso that coverage of the Solvency Capital Requirement shall be substituted with coverage of the own funds requirements pursuant to Article 90.

Licence

Article 83. (1) The licence of a small insurance undertaking shall be valid only within Austria. Small insurance undertakings may only be operated in the legal form of a joint stock company or a mutual

association. In the case of small insurance undertakings, a licence for life insurance classes and a licence for other classes of insurance shall be mutually exclusive. Article 6, Article 7 paras. 4 and 5, Article 8 para. 6 and Article 12 paras. 1 and 4 to 7 shall apply accordingly.

(2) The application for a licence in accordance with para. 1 must demonstrate that, according to the business plan submitted for the next five financial years, the insurance undertaking's business activities fulfil the following conditions:

1. the direct gross amount of annual premiums written and earned does not exceed EUR 5.4 million;
2. the total technical provisions pursuant to Section 1 of Chapter 8, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed EUR 26.6 million;
3. where the undertaking belongs to a group, the total technical provisions pursuant to Section 1 of Chapter 8 of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles do not exceed EUR 26.6 million; and
4. the indirect gross amount of premiums written and earned does not exceed EUR 0.6 million or 10% of the direct gross amount of premiums written and earned, or the technical provisions pursuant to Section 1 of Chapter 8 for reinsurance acceptances gross of the amounts recoverable from reinsurance contracts and special purpose vehicles do not exceed EUR 2.7 million or 10% of the technical provisions pursuant to Section 1 of Chapter 8 for direct business gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.

(3) The granting of a licence for one of the insurance classes listed in Annex A nos. 10, 11, 12, 14 and 15 to small insurance undertakings shall be excluded. Small insurance undertakings may not cover risks attributed to these classes of insurance as ancillary risks as referred to in Article 7 para. 5.

(4) In addition to Article 8 para. 2 nos. 1, 2 and 7 to 9, no licence shall be granted where:

1. the undertaking does not possess own funds to cover the minimum amount of the own funds requirements;
2. the undertaking cannot show evidence that it will be in a position to consistently hold own funds to cover the own funds requirements pursuant to Article 88 para. 1; or
3. the undertaking cannot show evidence that it will be in a position to establish a system of governance in accordance with the provisions of Section 2 or the articles of association do not rule out any power of sole representation, general managing power of attorney or commercial power of attorney for a single person which covers the entirety of business activities.

(5) Where the business activities of a small insurance undertaking have exceeded the amounts set out in para. 2 in a financial year, the undertaking shall submit a new business plan for the next three financial years to the FMA for approval. The undertaking shall demonstrate in the business plan that the business activities will no longer exceed the amounts set out in para. 2 in the second financial year at the latest or that it will be in a position to comply with the provisions applicable to insurance undertakings pursuant to Article 1 para. 1 no. 1 from the beginning of the fourth financial year at the

latest. If the business activities have exceeded the amounts set out in para. 2 for three consecutive years, the undertaking shall be subject to supervision as an insurance undertaking pursuant to Article 1 para. 1 no. 1 as from the fourth year. If the undertaking shows evidence that it fulfils the licensing requirements as set out in Articles 6 to 10, the FMA shall determine by administrative decision that the undertaking's licence is to be considered a licence pursuant to Article 6 para. 1 as from the fourth year. If evidence is not provided within a reasonable period of time, the FMA shall prohibit the business activities by means of an administrative decision.

(6) The FMA shall establish whether an insurance undertaking qualifies as a small insurance undertaking at the undertaking's request. This shall result in the licence being considered a licence pursuant to Article 83 para. 1 and the undertaking being subject to supervision pursuant to Article 1 para. 1 no. 2. To this end the insurance undertaking shall submit evidence to the effect that:

1. it does not pursue activities in accordance with Section 5 of Chapter 1 in other Member States;
2. it has met the conditions set out in para. 2 for the past three years and is expected to meet them during the next five years; and
3. it fulfils the conditions set out in para. 3.

(7) Small insurance undertakings shall calculate the amounts referred to in para. 2 by the balance sheet date and have them reviewed by the statutory auditor. Where this leads to an equivalent result, the technical provisions pursuant to Chapter 7 may be used in place of the technical provisions pursuant to Section 1 of Chapter 8 for calculating the amounts set out in para. 2.

Business plan

Article 84. (1) A business plan shall be submitted with the application for the licence.

(2) The business plan of a small insurance undertaking shall include:

1. the nature of the risks which the undertaking proposes to cover; in the case of reinsurance acceptances, also the kind of reinsurance arrangements which the insurance undertaking proposes to make with ceding undertakings;
2. the guiding principles as to reinsurance;
3. the composition of its own funds;
4. estimates of the costs of setting up the administrative services and sales, and evidence that the financial resources to meet those costs are available; and
5. for pursuing the insurance class referred to in no. 18 of Annex A, details about the resources available to the undertaking to provide the assistance promised.

(3) In addition to the details set out in para. 2, the business plan for the first three financial years shall include the following:

1. a forecast balance sheet and a forecast income statement;
2. estimates of the future own funds requirements on the basis of the forecasts referred to in no. 1;

3. estimates of the financial resources intended to cover the obligations and the own funds requirements;
 4. with regard to non-life insurance and reinsurance, also the following:
 - a. estimates of commissions payable and other operating expenses (other than installation costs), and
 - b. estimates of premiums and insurance benefits;and
 5. with regard to life assurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.
- (4) The articles of association shall form part of the business plan where the insurance undertaking does not yet hold a licence to pursue contractual insurance activities.
- (5) Article 11 paras. 1 and 2 shall apply accordingly.

SECTION 2: GOVERNANCE

General provisions

Article 85. (1) The management board of the small insurance undertaking shall be responsible for compliance with the provisions applicable to contractual insurance activities and the recognised principles of orderly pursuit of business. Article 120 para. 2, as well as Articles 121 and 122 shall apply accordingly to members of the management board.

(2) The FMA shall be immediately notified of the election or retirement of members of the small insurance undertaking's supervisory board.

(3) Small insurance undertakings shall, for all the activities pursued on the basis of a licence granted pursuant to Article 83 para. 1, set up an internal audit function which shall report directly to the management board and whose sole purpose shall be to continuously and comprehensively verify that the business and the activities of the small insurance undertaking are conducted in a lawful, proper and appropriate manner. Taking into consideration the scope of the business, this function shall be designed in such a way as to ensure that its duties can be appropriately performed.

(4) Decisions concerning the internal audit function must be made jointly by at least two management board members. The internal audit function shall report to all management board members. It shall also report to the chairperson of the supervisory board, informing them of the audit areas and significant audit findings based on the audits performed on a quarterly basis. The chairperson of the supervisory board shall report to the supervisory board on the audit areas and significant audit findings at the next supervisory board meeting.

(5) Small insurance undertakings shall provide for proper administration and accounting as well as for appropriate internal control mechanisms geared in particular towards the early recognition of developments which might threaten ongoing compliance with the obligations under the insurance contracts.

(6) Small insurance undertakings shall set up a risk management function to identify, assess and control the risks related to the insurance activities. This also covers the risk of money laundering and terrorist financing. Where required for the purposes of ongoing compliance with the obligations under the insurance contracts, appropriate processes and procedures shall be established for this purpose. This includes in particular the early recognition of risk potentials, the establishment of hedging and risk prevention mechanisms, as well as a comprehensive assessment of risks among the organisational units.

(7) Small insurance undertakings shall, in accordance with Article 114, appoint a responsible actuary as well as a deputy. Articles 115 and 116 shall apply accordingly.

Outsourcing

Article 86. (1) The FMA shall be notified in a timely manner of contracts concluded by small insurance undertakings through which parts of the business activities within the scope of the licence granted pursuant to Article 83 para.1 – sales, portfolio management, handling of claims, accounting, internal audit, risk management, asset investment or asset management in particular – are to be transferred wholly or to a significant extent to another undertaking (outsourcing contracts), prior to the outsourcing. Such contracts shall be subject to prior approval by the FMA.

(2) Approval shall be withheld where the outsourcing contract, due to its nature or its contents, or the overall extent of the outsourcing, poses a threat to the interests of the policyholders and beneficiaries.

(3) Where deemed appropriate to safeguard the interests of the policyholders and beneficiaries, the approval may be granted subject to conditions.

(4) The outsourcing small insurance undertaking shall immediately notify the FMA of any substantial subsequent changes related to the functions and activities outsourced pursuant to para. 1. Where the circumstances referred to in para. 2 occur after approval has been granted or where they apply in the case of an outsourcing contract that is not subject to approval, the FMA may call for the contractual relationship to be terminated.

(5) The FMA may call on the insurance undertaking to submit all necessary information on the undertaking with which the outsourcing contract is to be concluded or has been concluded, particularly the financial statements as well as other appropriate business records. Such information may not be refused on the grounds of a confidentiality obligation existing pursuant to other provisions.

Reinsurance

Article 87. (1) In the case of reinsurance cessions, small insurance undertakings shall ensure that their own obligations arising from the insurance contracts as well as the reinsurer's obligations can be fulfilled and that the risks are appropriately diversified.

(2) Prior to the conclusion of a reinsurance contract, the ceding small insurance undertaking shall provide documentary evidence confirming that the legal conditions for the conclusion of the reinsurance contract are met, and demonstrably obtain information on the net assets, financial position and results of operations as well as significant non-financial information on the reinsurer, in order to enable a sufficiently reliable assessment as to whether the reinsurer can be expected to pay its benefits according to the contract and without delay.

(3) The obligations of insurance and reinsurance undertakings arising from reinsurance acceptances shall be deemed as being able to be met as referred to in para. 1. Reinsurance contracts concluded with third-country insurance and reinsurance undertakings shall be treated in the same manner where the European Commission has determined that the third country's solvency regime is equivalent in accordance with Article 172(2) of Directive 2009/138/EC.

(4) The FMA shall be immediately notified of significant changes in the reinsurance relationships. The expected effects of the changed reinsurance relationships on the amount of the own funds requirements shall be set out in particular.

(5) In the case of reinsurance acceptances, the undertaking shall ensure that it can meet its own obligations arising from direct insurance.

SECTION 3: SOLVENCY MARGIN AND INVESTMENT

Own funds requirements

Article 88. (1) The own funds requirements of a small insurance undertaking shall be calculated in accordance with Annex B and shall amount to at least:

1. EUR 1.5 million for non-life and
2. EUR 1.8 million for life insurance.

(2) Small insurance undertakings shall at all times hold own funds pursuant to Article 89 to cover the own funds requirements.

Own funds

Article 89. (1) Own funds shall be:

1. in the case of joint stock companies the paid-up share capital, and in the case of mutual associations the initial fund where it may be used to cover any losses;
2. the capital reserves, the profit reserves and the risk reserve; and
3. the net profit for the year not allocated for distribution.

(2) The provisions for bonuses in health insurance and the provision for participation in profits in life insurance shall be added to the own funds, provided that they may be used to cover any losses.

(3) The following shall be deducted from the own funds:

1. the net loss;
2. the book value of own shares;

3. the book value of the intangible assets;
4. participations in insurance and reinsurance undertakings, third-country insurance and third-country reinsurance undertakings, in small insurance undertakings, credit institutions, financial institutions, investment firms, payment institutions and electronic money institutions; and
5. shares in participation capital, supplementary capital and other subordinated capital of undertakings referred to in no.4 in which the small insurance undertaking holds a participation.

(4) At the time of their calculation, the own funds shall be free from any foreseeable tax liability or shall be adapted in the event that taxes on income reduce the amount up to which the own funds components can be used to cover risks or losses.

(5) Where a change in the reinsurance relationships is expected to result in a significant increase in the own funds requirements, the FMA may issue an order pertaining to the deduction of reinsurance that derogates from Annex B, with the current calculation already being based on the changed reinsurance contracts.

(6) Upon request and on the production of proof, the FMA shall approve the inclusion of hidden reserves arising out of the undervaluation of assets in the own funds, insofar as those hidden reserves are not of an exceptional nature. This approval shall be granted for a fixed period. For the purpose of determining the extent to which hidden reserves may be included in the calculation of own funds, all valuation methods applied to assets and liabilities as well as the usability of the assets concerned shall be taken into account. The principles of Article 201 para. 2 nos. 2 and 4 UGB shall be adhered to. The inclusion of hidden reserves shall be limited to 50% of the own funds requirements. Where a small insurance undertaking does not meet the own funds requirements, this limit shall refer to the own funds.

(7) Without prejudice to para. 6, any inclusion of hidden reserves in the own funds shall be ruled out where those hidden reserves do not exceed the amount of write-downs not made pursuant to the second sentence of Article 149 para. 2.

(8) Where the hidden liabilities of the small insurance undertaking exceed the hidden reserves eligible pursuant to paras. 6 and 7, the FMA may demand that the difference be deducted from the own funds.

Investments

Article 90. (1) Assets belonging to the following categories are eligible to be invested by small insurance undertakings:

1. debt securities;
2. shares and other variable yield participations;
3. units in UCITS and other collective investment schemes;
4. loans;

5. land and immovable property rights;
6. cash at bank and in hand.

(2) Derivative instruments such as options, futures and swaps may be used only where related to assets and liabilities and only insofar as they contribute to a reduction of investment risk or facilitate the effective management of security portfolios.

(3) The FMA shall determine by regulation the details for investments, in particular the localisation of assets as well as the maximum amounts for the categories and for individual assets, where this is necessary to ensure ongoing compliance with the obligations under the insurance contracts.

CHAPTER 4: PROVISIONS FOR SPECIFIC TYPES OF INSURANCE

SECTION 1: GENERAL PROVISIONS

Content of the insurance contract

Article 91. (1) A direct insurance contract covering risks situated in Austria shall in particular contain provisions:

1. concerning the events on whose occurrence the insurer shall be obliged to pay out benefits, as well as concerning the cases for which this obligation shall be excluded or rescinded for special reasons;
2. concerning the type, extent and maturity of the benefits paid out by the insurer;
3. concerning the determination and payment of the premium which the policyholder must make to the insurer, as well as concerning the legal consequences ensuing in the event that the policyholder defaults on those payments;
4. concerning the term of the insurance contract, in particular whether and in what way it can be tacitly renewed and whether, in what way and at what time it can be terminated or otherwise rescinded in full or in part, as well as concerning the insurer's obligations in those cases;
5. concerning the loss of the claims arising from the insurance contract where deadlines are not met; and
6. in addition, with regard to life insurance, concerning the conditions for and the extent to which advance payments will be granted on policies.

(2) The gender factor must not result in premiums or benefits that differ between women and men.

SECTION 2 - LIFE INSURANCE

General provisions for life insurance

Article 92. (1) Insurance undertakings that pursue life insurance activities in Austria or in another Member State based on a licence granted in accordance with Article 6 para. 1 (nos. 19 to 22 of Annex A) must submit to the FMA the actuarial bases used for calculating scales of premiums and technical provisions:

1. prior to first using them; and
2. in the event of any change or addition to them, prior to their use.

In the cases of unit-linked, index-linked and investment-oriented life insurance and state-sponsored retirement provision pursuant to Articles 108g to 108i of the 1988 Income Tax Act (EStG 1988; *Einkommensteuergesetz*), the principles of investment shall also form part of the actuarial bases. The FMA may determine by regulation more detailed rules on the content, structure and manner of transmission of the actuarial bases.

(2) In the case of state-sponsored retirement provision pursuant to Article 108g to 108i EStG 1988, a detailed description of the model used to control and manage the investment risk, including the parameters used, shall be submitted to the FMA together with the actuarial bases. In addition, the insurance undertaking shall obtain an opinion from an independent expert on the quality of this model with regard to its suitability for controlling and managing the investment risk unless it covers the investment risk by means of a capital guarantee extended by a third party licensed to pursue guarantee activities. Based on that opinion, the responsible actuary shall examine the suitability of the model and the parameters used, taking the obligations arising from the insurance contracts into account. The result of that examination as well as the opinion by the independent expert shall be submitted to the FMA together with the actuarial bases. Any change or addition to the independent expert's opinion shall be examined by the responsible actuary. The result of that examination as well as the changed or supplemented opinion shall also be submitted to the FMA.

(3) The premiums for newly concluded insurance contracts must be sufficient, in accordance with actuarially based assumptions, to guarantee ongoing compliance with the obligations under the insurance contracts, and in particular to allow the establishment of appropriate technical provisions.

(4) In the case of insurance contracts that include participation in profits, policyholders shall receive an appropriate portion of the surplus. Where necessary to safeguard the interests of the policyholders and beneficiaries, the FMA may, taking the market conditions into account, determine more specifically by regulation the method for setting the amount of the participation in profits, with due regard to the respective bases for assessment, and the information required to be provided to policyholders. In particular, the FMA may request evidence of the ability to fund the participation in profits and specify detailed provisions for such evidence.

(5) The amounts allocated to the provision for bonuses and/or participation in profits may only be used for policyholders' profit sharing. As yet undeclared amounts of the provision for bonuses and/or participation in profits may be released in exceptional cases, in order to avoid in the interests of the policyholders and beneficiaries any emergency situation. The insurance undertaking shall immediately notify the FMA of such use and provide evidence of the reasons indicating that the emergency situation exists.

(6) The insurance undertaking shall make available for inspection, at the undertaking's head office, documents that show the bases and methods used for calculating the technical provisions, including the provision for bonuses. Written information on the above shall be provided to anyone on request and against reimbursement of expenses.

(7) The FMA may determine by regulation a maximum amount for customary funeral costs, in order to safeguard the interests of the policyholders and beneficiaries in the cases of Article 159 paras. 2 and 3 of the Insurance Policy Act (VersVG; *Versicherungsvertragsgesetz*).

(8) The district health insurance funds (*Gebietskrankenkassen*) shall forward notifications of death pursuant to Article 360 para. 5 of the General Social Insurance Act (ASVG; *Allgemeines Sozialversicherungsgesetz*) in electronic form to insurance undertakings that pursue life insurance activities, by way of the Main Association of Austrian Social Security Institutions (*Hauptverband*) and against reimbursement of expenses.

Occupational pension group insurance: general provisions

Article 93. (1) Occupational pension group insurance is pension insurance for groups that meets the following conditions:

1. The insurance contract is concluded by an employer for their employees on the basis of a shop agreement, a collective agreement or on the basis of agreements between the employer and the individual employees, which are to be structured according to a contract sample taking account of Article 18 of the Company Pension Act (BPG; *Betriebspensionsgesetz*).
2. The insurance contract grants only an old-age and a survivors' pension; an invalidity pension may be granted in addition. Old-age pensions are to be paid for life, invalidity pensions for the duration of invalidity and survivors' pensions for the period specified in the insurance contract. A lump sum payment shall only be admissible where, on occurrence of the benefit event, the cash value of the amount to be paid out does not exceed the amount set out in Article 1 paras. 2 and 2a PKG.
3. The acquisition costs are evenly distributed over the entire duration of premium payments.
4. In the case of insurance contracts that include participation in profits, the surpluses for the benefit of the insured person are credited to the life/health insurance provision of individual insured persons no later than by the end of the financial year following the financial year in which the surpluses were generated.

(2) Occupational pension group insurance must not be managed as unit-linked, index-linked or investment-oriented life insurance.

(3) Occupational pension group insurance may also be concluded for:

1. employers who concluded occupational pension group insurance for their employees;
2. persons who pursuant to Article 1 para. 2 BPG are entitled to future benefits as specified in the insurance contract as a result of premiums paid by the employer and, where applicable, which they themselves paid;
3. members of representative bodies of legal persons under private law who derive income from this activity other than such from employment pursuant to Article 25 EStG 1988 where the employer has concluded occupational pension group insurance for the benefit of their employees;
4. persons who, based on an existing employment relationship or as members of representative bodies of legal persons under private law, derive from this activity income from employment pursuant to Article 25 EStG 1988, where in the course of the termination of the employment relationship or public employment a direct guarantee pursuant to Article 96 is transferred to an occupational pension group insurance.

(4) For persons referred to in para. 3 nos. 1 and 3, occupational pension group insurance may only be concluded where Article 18 para. 2 BPG is taken into account when drafting the insurance contract and where the rights and obligations of such persons correspond entirely to those of the persons referred to in para. 1 no. 1, while in all cases:

1. any deadlines set forth in the VAG and the BPG shall be applied equally to all insured persons, and
2. no differentiation with respect to qualifying dates for the inclusion in occupational pension group insurance or the expulsion from occupational pension group insurance shall be allowed.

(5) Where persons as referred to in para. 3 nos. 1 and 3 are included:

1. the insurance contract shall additionally include the following provisions:
 - a. for persons referred to in para. 3 nos. 1 and 3, the amount of the assessment basis for the contribution, while the assessment basis must not exceed the higher amount of either two times the annual contribution ceiling pursuant to the ASVG or 150% of the assessment basis for the employee with the highest salary,
 - b. the retirement age; it shall correspond to the retirement age as stipulated for employees in the insurance contract,
 - c. the conditions for granting a disability provision, while a benefit must be paid out only where a legally effective administrative decision granting an occupational invalidity pension has been issued by a statutory pension insurance institution or a professional pension institution;
2. the following provisions shall be applied in addition:
 - a. Article 6a para. 4 BPG with respect to additional own premiums,

- b. Article 6b BPG with respect to the restraints on disposal and execution of vested pension expectancies pursuant to Article 6c BPG,
- c. Article 6c BPG with respect to the vesting of the payment of contributions; the retirement from the function as defined in para. 3 nos. 1 or 3 shall be equated to the termination of a public employment contract,
- d. Article 6d BPG with respect to the discontinuance, suspension or restriction of the payment of premiums.

(6) For persons as referred to in para. 3 no. 4, the insurance contract as based on an individual agreement to be concluded between such persons and the employer shall in particular contain the amount of the cover requirement pursuant to Article 96 and the entitlement to benefits.

(7) Article 91 para. 2 shall not apply to occupational pension group insurance.

Occupational pension group insurance: information requirements

Article 94. (1) The employer and the insured persons shall immediately inform the insurance undertaking in writing of any circumstances relevant to the calculation and modification of the premiums and insurance benefits. Where such information is not furnished at all or not in due time, the employer and the insured persons shall bear any resulting disadvantages. The details shall be stipulated in the insurance contract.

(2) The insurance undertaking shall keep an account for each insured person, divided according to employer's and employee's premiums.

(2a) The information pursuant to paras. 3 to 6 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 regarding the terminology used,
- 5. be designed in an easy-to-read format,
- 6. be written in German, unless the insured person has explicitly agreed to another language being used, and
- 7. be made available free of charge on a durable medium pursuant to Article 5 no. 8 PKG or a website or upon request free of charge on paper.

(3) The employer shall inform those natural persons who are authorised to enter into an insurance contract, prior to their inclusion in the insurance contract, about the following:

- 1. the name, address of the registered office of, and legal form of the insurance undertaking, where applicable also of the branch from where the policy is managed, as well as the fact that the undertaking is an insurance undertaking;
- 2. the designation and address of the competent supervisory authority for the insurance undertaking;

3. how operational group insurance works in general, its scope, as well as all relevant options that are made available to them;
4. the possibility to pay own premiums and the administrative processing of these premium payments;
5. how premiums and benefits are treated from a tax perspective as well as
6. where further information is available from.

Where they are affected by this, the employer shall inform the beneficiaries (entitled) and insurance undertaking shall inform the beneficiaries (recipients) about every subsequent amendment of the insurance contract. The insurance undertaking and the employer shall provide the insured person at the latter's request with a copy of the relevant parts of the insurance contract that apply to them in paper form.

(3a) The insurance undertaking shall make all relevant information available to the employer that the latter requires for providing information pursuant to para. 3.

(3b) The insurance undertaking shall make the following general information available to the insured person:

1. the name, address of the registered office of, and legal form of the insurance undertaking, where applicable also of the branch from where the policy is managed, as well as the fact that the undertaking is an insurance undertaking;
2. the designation and address of the competent supervisory authority for the insurance undertaking;
3. the rights and obligations of the insurance undertaking, the employer as well as the insured persons;
4. the principles regarding the investment policy;
5. the type of financial risks to be borne by the insured person;
6. a description about the type and scope of a guarantee made by the insurance undertaking;
7. the options that remain open as applicable in the occurrence of the benefit event;
8. the elective possibilities and modalities of a transfer pursuant to Article 6c para. 2 BPG;
9. the principles for calculating the participation in profits pursuant to Article 135c para. 1 no. 3;
10. a presentation of the development of the respective *Deckungsstock* pursuant to Article 300 para. 1 no. 2 over the course of the last five years and
11. the structure of the costs.

(4) The insurance undertaking 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 insurance contract,
2. the name, address of the registered office and legal form of the insurance undertaking, where applicable also of the branch from where the policy is managed, as well as the fact that the undertaking is an insurance undertaking,
3. a guarantee as well as details about where further information may be obtained,

4. the premiums paid in by the employer and the employee during this financial year,
5. retained costs,
6. change in the premium reserve during the course of this financial year as well as its amount at the end of this financial year,
7. a forecast about the likely amount of pension benefits including a disclaimer that this forecast may deviate from the final amount of pension benefits,
8. the investment and performance of the *Deckungsstock* pursuant to Article 300 para. 1 no. 2,
9. all additional information to be able to fulfil obligations arising from the insurance contract.

Material changes compared to the information provided for the previous year must be clearly highlighted. Furthermore, the beneficiaries (entitled) are also to be made aware of any options that may be exercised, of the Solvency and Financial Condition Report pursuant to Article 241 by means of a specific reference that makes it possible to access this information in a simple manner, as well as where applicable about the information pursuant to Article 98.

(5) The insurance undertaking shall inform the beneficiaries (recipients) annually about the state as of 31 December of the preceding financial year about the performance of the premium reserve during the course of the financial year and their amount at the end of this financial year as well as the retained costs. Furthermore, the insurance undertaking shall inform the beneficiaries (recipients) about the investment and performance of the *Deckungsstock* pursuant to Article 300 para. 1 no. 2 as well as all other relevant information to be able to fulfil obligations arising from the insurance contract. 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).

(6) The insurance undertaking must inform

1. the beneficiaries (entitled) when they reach the pensionable age stipulated in the insurance contract or upon request about the options for pay-out; and
2. the beneficiaries (recipients) when the benefit event occurs about the acquired claim to benefits for old-age, surviving dependants or invalidity as well as the method of payments and options for pay-out of the pension.

(7) The FMA shall, with the consent of the Federal Minister of Finance, determine the calculation method and scenarios for the forecast pursuant to para. 4 no. 7 as well as the content of the information pursuant to para. 3a and the content and the format of the information pursuant to paras. 3b, 4, 5 and 6 by means of a Regulation, where this is necessary in the interests of the insured persons and for better comparability and transparency.

(8) The insurance undertaking shall make available to an employee interest group that is eligible to enter into collective agreements, at their request, those parts of the actuarial bases relevant to benefits that are necessary for verifying the details pursuant to paras. 4 to 6 in an individual case and at the request of an insured person or beneficiary (recipient).

Occupational pension group insurance: cancellation

Article 95. (1) A cancellation of the insurance contract by the employer or by the insurance undertaking or a termination of the insurance contract by mutual consent shall only be admissible and legally effective where it is ensured that the assets to be transferred pursuant to para. 3 will be transferred to an occupational pension group insurance scheme of another insurance undertaking licensed to pursue business activities in Austria, a *Pensionskasse*, an institution within the meaning of Article 5 no. 4 PKG or an institution of supplementary pension insurance pursuant to Article 479 ASVG. The cancellation or termination by mutual consent shall be legally effective only where carried out jointly for all insured persons, unless the shop agreement, the collective agreement or the agreements according to the contract sample stipulate that all pensioners or all insured persons and pensioners with non-contributory expectancies will remain with the occupational pension group insurance scheme when the insurance contract is cancelled.

(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 PKG the termination of the insurance contract or its cancellation by mutual consent shall also require prior approval of the majority of affected beneficiaries (entitled) and the majority of the affected beneficiaries (recipients). The insurance undertaking shall inform the beneficiaries (entitled and recipients) in writing about:

1. the intended termination or cancellation by mutual consent of the insurance contract,
2. the written agreement between the insurance undertaking and the institution pursuant to Article 5 no. 4 PKG about the conditions of the transfer,
3. the company name and the location of the central headquarters of the institution pursuant to Article 5 para. 4 PKG as well as the Member State in which the institution pursuant to Article 5 no. 4 PKG is entered in the register or approved,
4. the company name and location of the central headquarters of the employer,
5. the main characteristics of the commitment to be managed by the institution pursuant to Article 5 no. 4 PKG for this employer,
6. the description of the liabilities to be transferred or premium reserves and other rights and obligations as well as the corresponding assets,
7. the right of approval as well as
8. the modalities of the voting procedure.

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 insurance undertaking that arise in relation to the voting procedure shall be borne by the employer.

(1b) The approval of termination or a cancellation by mutual consent shall be deemed to have been granted, provided respectively that more than half of the beneficiaries (entitled and recipients) addressed by the proposed termination or cancellation by mutual consent participate in the vote,

and more than half of these beneficiaries (entitled and recipients) approve the termination or cancellation by mutual consent.

(1c) In the event of the termination of the insurance contract by the insurance undertaking is and the intended transfer to an institution pursuant to Article 5 no. 4 PKG 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 insurance undertaking that arise in relation to the voting procedure shall be borne by the insurance undertaking.

(2) Where the insurance contract is cancelled by the employer or the insurance undertaking, the period of notice shall be one year. The cancellation may only be made with effect as of the insurance undertaking's balance sheet date. The termination of the insurance contract by mutual consent shall become effective no earlier than as of the insurance undertaking's balance sheet date that is at least six months after the agreement on the termination of the insurance contract by mutual consent.

(3) The value of the assets to be transferred in the event of a cancellation shall correspond to the life/health insurance provision attributed to the insurance contract.

Occupational pension group insurance: transfer of pension expectancies

Article 96. (1) The transfer of pension expectancies and benefit obligations from direct guarantees or claims arising from the Salary Act (*BezG; Bezügesetz*) to an occupational pension group insurance scheme shall be admissible under the following conditions:

1. The cover requirement plus the assumed interest shall be remitted to the insurance undertaking within ten years from the time of the transfer.
2. At least one tenth of the cover requirement plus the assumed interest shall be remitted annually; 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 93 para. 1 no. 2, Article 6c para. 4 BPG or Article 5 para. 2 of the Employment Contract Law Adaptation Act – AVRAG; *Arbeitsvertragsrechts-Anpassungsgesetz*) or a transfer (Article 6c para. 2 nos. 1 to 4 BPG) of a vested amount, the employer shall prematurely remit the outstanding part of the cover requirement to the insurance undertaking by no later time than the payment of the lump sum or the transfer.

(2) Where the employer does not comply with the obligation to remit the cover requirement pursuant to para. 1 because conditions exist:

1. as specified in Article 6d para. 1 no. 2 BPG; or

2. for the institution of insolvency proceedings (Articles 66 and 67 of the Insolvency Code – IO; *Insolvenzordnung*),

the insurance undertaking shall adapt the pension expectancies and benefit obligations concerned accordingly. The employer shall provide the insurance undertaking with plausible evidence of the conditions referred to in Article 6d para. 1 no. 2 BPG. In order for the employer to discontinue the remittance of the cover requirement, the employer must first revoke their ongoing premium payments to the insurance undertaking.

(3) Where the employer does not comply with their obligation to remit the cover requirement due to the occurrence of one of the conditions referred to in para 2 nos. 1 or 2, a claim from the employer's direct guarantee shall arise from the outstanding part of the cover requirement. The claim shall be calculated in accordance with the basis for calculation used by the insurance undertaking for occupational pension group insurance. Section 3 of the BPG shall be applied to that claim with regard to the employer. The other benefit conditions pertaining to that direct guarantee result from the agreements between the employer and the insured persons on which the insurance contract is based.

(4) The vested amount to which the insured person is entitled from the employer shall be calculated based on 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 resulting from the claim pursuant to para. 3;
2. the assumed rate of interest used for occupational pension group insurance shall form the basis for calculating the vested amount;
3. the risk of invalidity shall not be taken into account for calculating the vested amount;
4. the vested amount shall be limited to the amount of the outstanding part of the cover requirement.

(5) Where the vested amount for the direct guarantee pursuant to para. 3 when calculated in accordance with 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. 6 no. 6 EStG 1988), the higher value shall prevail.

(6) In the case of a transfer pursuant to para. 1, employee contributions paid can also be transferred, with:

1. the employee being allowed to demand such a transfer only prior to the transfer pursuant to para. 1; and
2. the remittance of the employee 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 that had been granted before 1 July 1990, the insurance undertaking shall not be required to grant a survivors' pension, Article 93 para. 1 no. 2 notwithstanding. However, this shall only extend to those insured persons to whom that 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. Once the transfer has taken place, such guarantees may only be changed where they subsequently comply with Article 93 para. 1 no. 2. Paragraphs 1 to 5 shall be applied to the remittance of the cover requirement.

Occupational pension group insurance: advisory committee

Article 97. (1) An advisory committee shall be set up for pursuing occupational pension group insurance activities.

(2) The advisory committee is entitled:

1. to make proposals for the investment policy;
2. to demand information about the occupational pension group insurance activities from the management board, the supervisory board or the administrative board and the managing directors;
3. to send representatives to the annual general meeting or the meeting of the supreme body who are entitled to pose questions about the occupational pension group insurance activities; and
4. to demand the inclusion of items of occupational pension group insurance in the agenda of the supervisory board or administrative board and to send a representative to the supervisory board or administrative board who participates in the discussion of those agenda items without a voting right.

(3) The advisory committee consists of four members, two of whom are to be appointed by the insurance undertaking's management board or managing directors and one each of whom is to be delegated by a voluntary employee interest group entitled to enter into collective bargaining agreements and a statutory employee interest group.

(4) The advisory committee draws up its own rules of procedure and elects one chairperson and one deputy from among its members. It reaches decisions with a simple majority of votes. In the event of an equal number of votes, the chairperson has the casting vote.

Occupational pension group insurance: information requirements in the case of transfers between an occupational pension group insurance scheme and a Pensionskasse

Article 98. (1) The insurance undertaking shall inform an insured person or a beneficiary (entitled (Article 5 no. 1 PKG), at their request, of a pending decision pursuant to Article 5 para. 5, Article 5a para. 1, Article 6c para. 5 or Article 6e para. 1 BPG, by means of durable data medium as referred to in Article 3(1) of Commission Delegated Regulation (EU) 2017/565. The insurance undertaking shall record details of the information and decision of the insured person and keep those records for at least seven years. The records shall be kept on a data medium in order to be immediately available to the FMA in future as well.

(2) The information pursuant to para. 1 shall include:

1. for the insured person, the vested amount pursuant to Article 6c para. 1 BPG;

2. the relevant parameters of the actuarial bases used for calculating scales of premiums and technical provisions;
3. prior to a decision pursuant to Article 5 para. 5 or Article 5a para. 1 BPG, a presentation of the differences between the occupational pension group insurance scheme and a pension company commitment; and
4. based on the life/health insurance provision or the vested amount pursuant to Article 5 para. 1 BPG and, on the assumption that the premiums or contributions previously paid by the employer and the employee will remain the same, forecasts of the future changes in the insurance benefit and in the old-age pension in each case, with the calculations being based on at least three different assumptions as to yield development in addition to the guaranteed rate.

(3) The FMA shall determine by regulation the content and structure of the information pursuant to para. 1 and requirements concerning the calculations pursuant to para. 2 no. 4. The FMA shall in this regard take account of the interest of the insured persons in adequate, comparable and clearly intelligible information.

SECTION 3: NON-LIFE

Legal expenses insurance

Article 99. (1) An insurance undertaking that pursues legal expenses insurance activities (no. 17 of Annex A) shall ensure that:

1. the persons concerned with claims settlement in that insurance class do not pursue the same or a similar activity in another insurance class of that undertaking or for another undertaking related to that undertaking pursuant to Article 189a no. 8 UGB, or
2. claims settlement in that insurance class is transferred to another undertaking.

(2) The undertaking's management to whom claims settlement is transferred pursuant to para. 1 no. 2 must be fit and proper in accordance with Article 120 para. 1 and para. 2 nos. 1 and 2. The persons involved in claims settlement in that undertaking must not pursue the same or a similar activity in an undertaking related to that undertaking pursuant to Article 189a no. 8 UGB.

(3) Para. 1 shall not apply to risks which refer to disputes or claims arising out of, or in connection with, the use of sea-going vessels.

Compulsory insurance on third party motor vehicle liability

Article 100. (1) The licence for motor vehicle liability insurance (no. 10 of Annex A), other than carrier's liability, may only be granted where the insurance undertaking appoints a claims representative in each of the other Member States.

(2) The claims representative has the task of settling such claims for the insurance undertaking as have been inflicted on persons who have their residence or head office in the state for which the

representative has been appointed, where such claims have been inflicted by a vehicle in another state whose national insurers' bureau has joined the green card system and where that vehicle is normally based in a Member State other than the country of residence or establishment of the injured person and that vehicle is insured at the head office of an insurance undertaking situated in Austria or a branch of an insurance undertaking situated in Austria with head offices in another Member State than the injured person's country of residence or establishment, or at the Austrian branch of a third- country insurance undertaking.

(3) The following conditions shall apply to the claims representative:

1. The representative shall be fit and proper to perform their duties and shall in particular be able to handle the claims in the official language(s) of the state for which they have been appointed.
2. The representative shall have their residence or head office or a branch in the state for which they have been appointed.
3. The representative shall be authorised to collect all necessary information in relation to claims falling under para. 2 and to take the necessary measures to settle such claims.
4. The representative shall possess sufficient powers to represent the insurance undertaking in handling and satisfying the claims falling under para. 2 in relation to injured persons and to settle such claims.

(4) The FMA shall be immediately notified of any change of persons or of the address of the claims representative.

Health insurance similar to life insurance: general provisions

Article 101. Where health insurance as referred to in no. 2 of Annex A is subject to an agreement pursuant to Article 178f para. 1 VersVG, it may be operated in Austria only in a manner similar to life insurance, with the following conditions applying:

1. the premiums paid shall be calculated on the basis of sickness tables and other relevant statistical data in accordance with actuarial bases;
2. a life/health insurance provision (reserve for increasing age) based on actuarial principles shall be established;
3. except in the case of group insurance, the policyholder shall be granted the contractual right to change to another scale of premiums of the same type of insurance (Article 178b VersVG) up to the previous level of cover, with the rights and the reserve for increasing age acquired during the contractual period being credited.

Health insurance similar to life insurance: special provisions

Article 102. (1) Insurance undertakings which in Austria or in another Member State operate health insurance in a manner similar to life insurance based on a licence granted in accordance with no. 2

of Annex A, shall submit to the FMA the actuarial bases used for calculating scales of premiums and technical provisions:

1. prior to first using them; and
2. in the event of any change or addition to them, prior to their use.

The FMA may determine by regulation detailed rules on the content, structure and manner of transmission of the actuarial bases.

(2) The premiums for newly concluded or changed insurance contracts must be sufficient, in accordance with actuarially based assumptions, to guarantee ongoing compliance with the obligations under the insurance contracts, and in particular to allow the establishment of appropriate technical provisions.

(3) Article 92 paras. 4 to 6 shall be applied to health insurance operated in a manner similar to life insurance.

Accident insurance similar to life insurance

Article 103. Where accident insurance is operated in a manner similar to life insurance (accident insurance with return of premiums), Article 92 shall apply.

SECTION 4: FINITE REINSURANCE AND SPECIAL PURPOSE VEHICLES

Finite reinsurance

Article 104. Insurance and reinsurance undertakings which pursue finite reinsurance activities shall ensure that they are able to properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

Special purpose vehicles

Article 105. (1) Special purpose vehicles with head offices in Austria require a licence granted by the FMA in accordance with the provisions set forth in the implementing regulation (EU).

(2) Where due to the special purpose vehicle's legal form an entry in the company register is required, it may only be made after the administrative decision granting the licence is presented in the original or as a publicly certified copy. The court with jurisdiction over the company register shall additionally submit to the FMA any orders and decisions about such entries.

CHAPTER 5: GOVERNANCE

SECTION 1: GENERAL REQUIREMENTS

Responsibility of the management board or administrative board

Article 106. The management board or administrative board of the insurance or reinsurance undertaking shall be responsible for compliance with the provisions applicable to contractual insurance activities and the recognised principles of orderly pursuit of business.

Governance system requirements

Article 107. (1) Insurance and reinsurance undertakings shall set up an effective system of governance which provides for sound and prudent management of the business and which is proportionate to the nature, scale and complexity of the business operations. The system of governance shall be subject to regular internal review.

(2) The governance system shall at least include:

1. an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;
2. an effective system for ensuring the transmission of information; and
3. compliance with the requirements laid down in Articles 108 to 113, Articles 117 to 119 and Articles 120 to 123.

(3) Insurance and reinsurance undertakings shall prepare and implement written policies in relation to at least the following areas:

1. risk management;
2. internal control;
3. internal audit;
4. remuneration; and
5. where relevant, outsourcing.

Those written policies shall be subject to prior approval by the management board or administrative board, be adapted without delay in view of any significant change in the area concerned and be reviewed at least annually.

(4) Insurance and reinsurance undertakings shall take reasonable steps and develop contingency plans to ensure continuity and regularity in the performance of their activities. To that end, undertakings shall employ appropriate and proportionate systems, procedures and resources, and shall in particular establish and manage network and information systems pursuant to Regulation (EU) 2022/2254.

Governance function

Article 108. (1) Insurance and reinsurance undertakings shall set up the following governance functions:

1. risk management function;
2. compliance function;
3. internal audit function; and
4. actuarial function.

(2) Significant rulings concerning persons that manage the governance functions shall be made jointly by at least two management or administrative board members.

Outsourcing

Article 109. (1) Insurance and reinsurance undertakings which outsource functions or business activities to service providers remain responsible for meeting all prudential requirements. The outsourcing insurance and reinsurance undertaking shall ensure that:

1. the service provider cooperates with the FMA;
2. the undertakings themselves, their statutory auditors and the FMA have effective access to data related to the outsourced functions or business activities;
3. the FMA has effective access to the business premises of the service provider; and
4. the service provider fulfils the conditions of Article 28 (1) of Regulation (EU) 2016/679 and complies with the provisions of Article 28 (3) of Regulation (EU) 2016/679.

(2) Contracts by which critical or important functions or activities are outsourced must be notified to the FMA in a timely manner prior to the outsourcing. They shall require the prior approval of the FMA where the service provider is not an insurance or reinsurance undertaking.

(3) Outsourcing of critical or important operational functions or activities shall not be undertaken if it will lead, to any of the following:

1. materially impairing the quality of the system of governance of the insurance or reinsurance undertaking concerned;
2. unduly increasing the operational risk;
3. impairing the ability of the FMA to monitor the compliance of the outsourcing insurance or reinsurance undertaking with the provisions applicable to contractual insurance activities;
4. undermining continuous service provision free from defects to policyholders and beneficiaries.

Where deemed appropriate to avoid occurrence of the cases referred to in nos. 1 to 4 or to avoid otherwise endangering the interests of the policyholders and beneficiaries, approval can be granted subject to conditions.

(4) The outsourcing insurance or reinsurance undertaking shall immediately notify the FMA of any substantial subsequent changes related to the functions and activities outsourced pursuant to para. 2. Where the circumstances referred to in paras. 1 and 3 occur after approval has been granted

or where these circumstances apply in the case of an outsourcing contract that is not subject to approval, the FMA may call for the contractual relationship to be terminated.

(5) The FMA may call on the outsourcing insurance or reinsurance undertaking to submit all necessary information on the service provider with which the outsourcing contract is to be concluded or has been concluded, particularly the financial statements as well as other appropriate business records.

Reporting of infringements

Article 109a. Insurance and reinsurance undertakings shall have appropriate procedures in place to enable their employees, whilst keeping their identity confidential, to report any internal breaches of the provisions contained in this federal act, in regulations or administrative decisions enacted on the basis of this federal act, against the provisions of the implementing Regulation (EU) or Delegated Regulations (EU) 2017/2358 and 2017/2359, of Regulation (EU) 2019/2088, of Articles 5, 6 and 7 of Regulation (EU) 2020/852, and the Technical Standards (EU), or any administrative decision issued on the basis of those Regulations to a suitable body. The procedure in relation to this paragraph must correspond with the requirements set out in Article 273a para. 2 nos. 2 and 3. Article 273a para. 3 shall apply accordingly.

SECTION 2: RISK MANAGEMENT

Risk management system

Article 110. (1) Insurance and reinsurance undertakings shall have in place an effective risk management system comprising all the required strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report the risks:

1. at an individual and at an aggregated level, to which they are or could be exposed; and
2. the interdependencies between those risks.

(2) The risk management system shall be required to be effective, integrated into the organisational structure and in the decision-making processes of the insurance or reinsurance undertaking and to properly consider the persons who effectively run the insurance or reinsurance undertaking or have other key functions. It shall cover the risks to be included in the calculation of the Solvency Capital Requirement as well as the risks which are not or not fully included in the calculation thereof, and at least the following areas:

1. underwriting and reserving;
2. asset-liability management;
3. investment, in particular derivatives and similar commitments;
4. liquidity and concentration risk management;
5. operational risk management;
6. reinsurance and other risk mitigation techniques.

The written policy on risk management referred to in Article 107 para. 3 no. 1 shall comprise strategies relating to the areas referred to in nos. 1 to 6. Where the volatility adjustment is applied, the written policy on risk management referred to in Article 107 para. 3 no. 1 shall comprise criteria for the application of the volatility adjustment.

(3) Where insurance or reinsurance undertakings apply the matching adjustment or the volatility adjustment, they shall set up a liquidity plan. The plan shall project the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

(4) As regards asset-liability management, insurance and reinsurance undertakings shall regularly assess:

1. the sensitivity of their technical provisions pursuant to Section 1 of Chapter 8 and eligible own funds in relation to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure;
2. where the matching adjustment is applied, the insurance and reinsurance undertakings shall additionally consider:
 - a. the sensitivity of their technical provisions pursuant to Section 1 of Chapter 8 and eligible own funds in relation to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in Article 166 para. 4 no. 2, and the possible effect of a forced sale of assets on their eligible own funds,
 - b. the sensitivity of their technical provisions pursuant to Section 1 of Chapter 8 and eligible own funds in relation to changes in the composition of the assigned portfolio of assets, and
 - c. the impact of a reduction of the matching adjustment to zero;
3. where the volatility adjustment is applied, the insurance and reinsurance undertakings shall additionally consider:
 - a. the sensitivity of their technical provisions pursuant to Section 1 of Chapter 8 and eligible own funds in relation to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds, and
 - b. the impact of a reduction of the volatility adjustment to zero.

Where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking shall submit to the FMA an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement.

(5) When using external credit rating assessment in the calculation of technical provisions pursuant to Section 1 of Chapter 8 and the Solvency Capital Requirement, insurance and reinsurance undertakings shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible.

(6) As regards investment risk, insurance and reinsurance undertakings shall clearly document that they comply with Articles 124 and 125.

(7) The risks referred to in para. 1 also cover the risks of money laundering and terrorist financing as well as risks in connection with insurance distribution.

Own risk and solvency assessment

Article 111. (1) As part of their risk management system, insurance and reinsurance undertakings shall conduct their own risk and solvency assessment. That assessment shall be an integral part of the business strategy, shall be taken into account on an ongoing basis in the strategic decisions and include at least the following:

1. the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy;
2. the compliance, on a continuous basis, with the Solvency and Minimum Capital Requirements, as laid down in the provisions of Chapter 8, Sections 3 to 6, and with the requirements regarding technical provisions, as laid down in Chapter 8, Section 1; and
3. the significance with which the risk profile deviates from the assumptions underlying the Solvency Capital Requirement, calculated with the standard formula or by using an internal model.

(2) For the purposes of para. 1 no. 1, the undertaking shall have in place processes which are proportionate to the nature, scale and complexity of the risks and which enable the insurance or reinsurance undertaking to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed. The undertaking shall demonstrate the methods used in the assessment of its overall solvency needs.

(3) Where the matching adjustment, the volatility adjustment or the transitional measures referred to in Articles 336 and 337 are used, coverage of the capital requirements referred to in para. 1 no. 2 shall be assessed with and without taking into account those adjustments and transitional measures.

(4) Where the Solvency Capital Requirement is calculated by using an internal model, the assessment pursuant to para. 1 no. 3 shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

(5) Insurance and reinsurance undertakings shall perform the own risk and solvency assessment regularly and without delay following any significant change in their risk profile.

(6) The own risk and solvency assessment shall not serve to calculate the Solvency Capital Requirement. The Solvency Capital Requirement shall be adjusted only in accordance with Articles 211 to 214, Article 217 and Article 277.

Risk management function

Article 112. (1) Insurance and reinsurance undertakings shall provide for a risk management function and structure it in such a way as to facilitate the implementation of the risk management system.

(2) Insurance and reinsurance undertakings using a partial or full internal model in accordance with Articles 182 and 183 shall entrust the risk management function with the following additional tasks:

1. to design and implement the internal model;
2. to test and validate the internal model;
3. to document the internal model and any subsequent changes made to it;
4. to analyse the performance of the internal model;
5. to produce summary reports; and
6. to inform the management board or administrative board and the managing directors about:
 - a. the performance of the internal model,
 - b. recommendations on areas needing improvement, and
 - c. updating them on the latest improvements made to address the identified weaknesses.

SECTION 3: ACTUARIAL FUNCTION AND RESPONSIBLE ACTUARY

Actuarial function

Article 113. (1) Insurance and reinsurance undertakings shall provide for an effective actuarial function:

1. to coordinate the calculation of technical provisions pursuant to Section 1 of Chapter 8;
2. to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions pursuant to Section 1 of Chapter 8;
3. to assess the sufficiency and quality of the data used in the calculation of technical provisions pursuant to Section 1 of Chapter 8;
4. to compare best estimates with empirical data;
5. to inform the management board or administrative board and the managing directors of the reliability and adequacy of the calculation of technical provisions pursuant to Section 1 of Chapter 8;
6. to oversee the calculation of technical provisions pursuant to Section 1 of Chapter 8 within the scope of Article 164;
7. to express an opinion on the overall underwriting policy and on the adequacy of reinsurance arrangements; and
8. to contribute to the effective implementation of the risk management system referred to in Article 110, in particular with respect to the risk modelling underlying the calculation of the

Solvency and Minimum Capital Requirements, and to the own risk and solvency assessment referred to in Article 111.

(2) The responsible actuary or deputy (Article 114 para. 1) may be in charge of the actuarial function provided they fulfil the relevant conditions and the nature, scale and complexity of the business activities of the insurance undertaking is taken account of.

Responsible actuary

Article 114. (1) Insurance undertakings which, within the scope of their licence granted pursuant to Article 6 para. 1, pursue activities in the classes of:

1. life insurance;
2. health insurance similar to life insurance; or
3. accident insurance similar to life insurance

shall appoint a responsible actuary and a deputy. One responsible actuary and deputy can be appointed for each of the insurance classes set out in nos. 1 to 3.

(2) Significant rulings concerning the responsible actuary and deputy shall be made jointly by at least two management or administrative board members.

Appointment as responsible actuary

Article 115. (1) Only natural persons with full legal capacity that are fit and proper may be appointed as responsible actuary or deputy. To fulfil the fit requirement, their professional qualifications must include at least three years' adequate professional experience as an actuary.

(2) The insurance undertaking shall inform the FMA of the intended appointment of a responsible actuary and deputy. If there is reasonable doubt that the conditions for the appointment are fulfilled, the FMA shall object to the appointment within three months and demand the appointment of another responsible actuary or deputy.

(3) If it turns out after the appointment of a responsible actuary or deputy that the conditions for their appointment are no longer fulfilled, or if it can be otherwise assumed that they will no longer be able to perform their duties in a proper manner, the FMA shall demand the appointment of another responsible actuary or deputy.

(4) The insurance undertaking shall immediately notify the FMA of any retirement of a responsible actuary or deputy, also providing the grounds for retirement.

(5) The FMA may determine by regulation more specific fit and proper requirements applying to the responsible actuary and their deputy. The regulation may in particular also detail any necessary documents to be submitted to the FMA as proof of compliance with the stipulated requirements.

Duties and powers of the responsible actuary

Article 116. (1) The responsible actuary shall:

1. ensure that scales of premiums and technical provisions in life insurance and in health insurance and accident insurance similar to life insurance are calculated according to the applicable regulations and actuarial bases;
 2. ensure that the participation in profits distributed to policyholders in life insurance (Article 92 para. 4) corresponds to the profit plan;
 3. assess, with due regard to the income from the investments, whether ongoing compliance with the obligations arising from the insurance contracts can be expected in accordance with the applicable regulations and actuarial bases used for calculating the technical provisions.
- (2) The management board or administrative board and the managing directors shall provide the responsible actuary with any information they require to perform their duties pursuant to para. 1.
- (3) The responsible actuary shall report to the management board or administrative board and the managing directors annually in writing regarding the performance of their activities pursuant to para. 1 in the preceding financial year. The insurance undertaking shall immediately but at least within five months of the financial year-end submit the report to the FMA; in justified cases, the FMA may extend this period. The FMA shall determine by regulation more detailed rules on the content, structure and method of transmission of the report.
- (4) If the responsible actuary finds during the performance of their activities pursuant to para. 1 that the scales of premiums and technical provisions are not calculated according to the applicable regulations and actuarial bases, or that ongoing compliance with the obligations arising from the insurance contracts cannot be guaranteed, they shall immediately notify the management board or administrative board and the managing directors thereof. If the management board or administrative board or the managing directors do not take account of the responsible actuary's representations, the responsible actuary shall immediately inform the FMA thereof.
- (5) The responsible actuary shall include an audit opinion in their report (para. 3). In this regard, it shall be expressly stated whether the audit opinion is issued as an unqualified or qualified opinion. The responsible actuary shall sign the audit opinion or note on refusing to issue such, stating the place and date. The audit opinion by the responsible actuary shall not have any bearing on the responsibility of the insurance undertaking's bodies.
- (6) Where an unqualified opinion is issued, the responsible actuary shall declare that:
1. the life/health insurance provision as referred to in Article 152 and the unearned premiums as referred to in Article 151 were calculated in accordance with the applicable regulations and actuarial bases, and the actuarial bases used for this calculation are appropriate and in line with the prudent person principle; and
 2. in life insurance:
 - a. the premiums for newly concluded insurance contracts will probably be sufficient to guarantee ongoing compliance with the obligations arising from the insurance contracts, in particular to enable the establishment of appropriate technical provisions pursuant to Chapter 7, and
 - b. the participation in profits distributed to policyholders corresponds to the profit plan.

(7) Where objections are to be raised, the responsible actuary shall qualify their audit opinion pursuant to para. 6 or refuse its issue. The refusal shall be included in a note, which must not be denoted as an audit opinion. Reasons shall be given for the qualification or refusal.

(8) The responsible auditor shall be called upon to attend the audit committee's meetings pursuant to Article 123 para. 9, which deal with preparing the adoption of the (consolidated) financial statements and their audit, and shall report on the material results of the report (para. 3) and the audit opinion (para. 6) as well as any objections and refusals (para. 7).

(9) The responsible actuary shall be required to submit a concluding report in writing to the management board or the administrative board and the managing directors following the end of their activity about their observations in the performance of their activities pursuant to para. 1 for the time period that has not been covered by a report pursuant to para. 3. The insurance undertaking shall submit the report to the FMA without delay. The FMA may issue more precise rules about the content, structure and submission method of the report by way of a Regulation.

SECTION 4: INTERNAL CONTROL, COMPLIANCE AND INTERNAL AUDIT FUNCTION

Internal control system

Article 117. Insurance and reinsurance undertakings shall have in place an effective internal control system, which shall at least include the following:

1. administrative and accounting procedures;
2. an internal control framework;
3. appropriate reporting arrangements at all levels of the undertaking; and
4. a compliance function.

Compliance function

Article 118. The compliance function shall include the following duties in particular:

1. advising the management board or administrative board and the managing directors on compliance with the provisions applicable to contractual insurance activities;
2. assessment of the possible impact of any changes in the legal environment on the operations of the insurance or reinsurance undertaking; and
3. identification and assessment of compliance risk.

Internal audit function

Article 119. (1) Insurance and reinsurance undertakings shall have in place an effective internal audit function. The internal audit function shall evaluate the lawfulness, regularity and usefulness of the insurance or reinsurance undertaking's operations, and also the adequacy and effectiveness of the internal control system and other elements of the system of governance.

(2) The internal audit function shall be objective and independent from the operational functions. Any findings and recommendations shall be reported to the management board or administrative board and the managing directors. The management board or administrative board shall determine what actions are to be taken with respect to the findings and shall ensure that those actions are carried out.

(3) In addition to para. 2 and the provisions contained in the implementing regulation (EU), the internal audit function shall also report the contents of the audit plan on a quarterly basis, including any major findings and recommendations resulting from performed audits, to the chairperson of the insurance or reinsurance undertaking's supervisory or administrative board and to the audit committee. The chairperson of the supervisory or administrative board shall report on the audit areas and significant audit findings to the supervisory or administrative board at its next meeting.

SECTION 5: FIT AND PROPER REQUIREMENTS

General provisions

Article 120. (1) Insurance and reinsurance undertakings shall ensure that all persons who effectively run the undertaking or have governance or other key functions at all times fulfil the following requirements:

1. their professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit); and
2. they are of good repute and integrity (proper).

(2) The following requirements apply to members of the management board or administrative board and managing directors in addition to those under para. 1:

1. at least two members of the management board or administrative board must have adequate knowledge and experience of the insurance business as well as management experience; as a rule this is assumed to be given if they can document that they held an executive position at an insurance or reinsurance undertaking of comparable size and business type for at least three years. If managing directors are not members of the administrative board, this condition must be fulfilled by at least one member of the administrative board and at least one managing director; with regard to the other persons, knowledge and experience in other fields that are of essential significance for the insurance activities as well as an executive position at relevant undertakings shall be considered adequate. At least one member of the management board or administrative board shall have a good command of the German language; if managing directors are not members of the administrative board, at least one member must speak German.
2. members of the management board or administrative board and managing directors shall not be deemed to fulfil the proper requirement when there are reasons for exclusion as specified in Article 13 GewO 1994, or if insolvency proceedings have been initiated on the assets of such

persons or of any legal entity other than a natural person over whose business these persons have or have had a decisive influence, unless a recovery plan under insolvency law has been agreed upon and fulfilled in the insolvency proceedings. This shall similarly apply where a comparable situation has occurred abroad.

3. members of the management board shall, on ceasing to hold their position, wait for a period of at least two years before taking up any activity as chairperson of the supervisory board of the same insurance or reinsurance undertaking in which they previously held an executive position. If a management board member accepts a position as chairperson of the supervisory board contrary to this provision, they shall be deemed not elected as chairperson.
4. members of the management board or administrative board and managing directors must not perform any activity that may interfere with the proper management of the insurance or reinsurance undertaking. They must also not have another full-time occupation outside the insurance, banking or pension company sector or outside payment institutions, e-money institutions, investment firms or investment service providers.

(3) Only natural persons with full legal capacity may be put in charge of the following functions:

1. risk management function;
2. compliance function;
3. internal audit function;
4. actuarial function; or
5. other key functions,

and these persons must hold adequate professional qualifications in the fields relevant to insurance and reinsurance undertakings to fulfil their duties, with such qualifications being proportionate to the nature, scale and complexity of the risks inherent in the business activities. As a rule this is assumed to be given if they have completed a degree in a relevant field and can document at least three years' relevant professional experience. The actuarial function may furthermore only be headed by persons who have adequate knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business activities, and who are able to demonstrate their relevant experience with applicable professional and other standards.

(4) *(Repealed in the amendment published in Federal Law Gazette I 46/2019)*

(5) Taking account of the implementing regulation (EU), the EIOPA guidelines and EIOPA recommendations, the FMA may determine by regulation more specific fit and proper requirements for the persons referred to in para. 3. The regulation may in particular also detail any necessary documents to be submitted to the FMA as proof of compliance with the stipulated requirements.

Proof of good repute

Article 121. (1) The FMA shall in respect of nationals of other Member States accept:

1. the production of an extract from the judicial record; or

2. failing such extract from the judicial record, the production of an equivalent document issued by a competent judicial or administrative authority in the home Member State or the Member State from which the foreign national concerned comes showing that those requirements have been met

as sufficient evidence that the requirements referred to in Article 120 para. 1 no. 2 and para. 2 no. 2 have been met.

(2) Where the home Member State or the Member State from which the foreign national concerned comes does not issue the document referred to in para. 1, it may be replaced by:

1. a declaration on oath; or
2. failing such declaration of oath pursuant to no. 1, by a solemn declaration made by the foreign national concerned before a competent judicial or administrative authority or, where appropriate, a notary in the home Member State or the Member State from which that foreign national comes.

The FMA shall recognise the certificate issued by the competent judicial or administrative authority or notary. This shall similarly apply to any declaration in respect of no previous bankruptcy made before a competent professional or trade body in the Member State concerned.

(3) The documents, declarations and certificates referred to in paras. 1 and 2 may not be presented more than three months after their date of issue.

(4) Paragraphs 1 to 3 shall be applied accordingly to third-country nationals.

Notification to the FMA

Article 122. (1) Insurance and reinsurance undertakings shall notify the FMA of:

1. any intended appointment of members of the management board or administrative board and of managing directors no later than one month prior to their appointment; and
2. the appointment of persons who effectively run the undertaking or are responsible for governance or other key functions immediately following the appointment.

The notification to the FMA shall include all documents needed to assess whether these persons are fit and proper. The appointment notification shall be submitted together with the application for the entry of the management or administrative board members and the managing directors in the company register.

(2) Where there is reasonable doubt that the fit and proper requirements are fulfilled by the persons appointed in accordance with para. 1, the FMA shall object to the appointment and request that the insurance or reinsurance undertaking appoint other more suitable persons. If, once the appointment has been made, reasonable doubts arise or the conditions for the appointment are no longer fulfilled, or if it can be deduced from other reasons that the persons referred to in para. 1 will no longer be able to perform their duties in a proper manner, the FMA shall request that the insurance or reinsurance undertaking appoint other more suitable persons.

(3) The FMA shall be immediately notified in respect of the persons referred to in para. 1 of:

1. changes in the requirements pursuant to Article 120 paras. 1 to 3;
2. their replacement because of non-compliance with the requirements pursuant to 120 para. 1;
or
3. their retirement.

Provisions for the supervisory board

Article 123. (1) The members of the supervisory board shall meet the requirements referred to in Article 120 para. 1.

(2) In addition to the requirements set forth under para. 1, the chairperson of the supervisory board shall also have adequate theoretical and practical knowledge for the operation and accounting of an insurance or reinsurance undertaking. Moreover, they shall also meet the proper requirements pursuant to Article 120 para. 2 no. 2 as well as the requirements stipulated in the first sentence of Article 120 para. 2 no. 4.

(3) The FMA shall be immediately notified of the election or appointment and the retirement of members of the supervisory board.

(4) The FMA shall be immediately notified of the election or retirement of the chairperson of the supervisory board. The notification of the election shall include all documents needed to assess whether these persons are fit and proper.

(5) Upon the FMA's application, the court of first instance with jurisdiction over commercial matters shall revoke the election of the chairperson of the supervisory board in non-litigious civil proceedings if the elected candidate does not meet the requirements referred to in paras. 1 and 2. The application shall be filed within four weeks of the election's notification. The function of chairperson of the supervisory board shall be suspended until such time as the court reaches a final decision. If the requirements are met at the time of the election and this subsequently changes, the FMA shall, within four weeks of determining that the requirements are not fulfilled, file an application for dismissal to the court of first instance with jurisdiction over commercial matters in non-litigious civil proceedings. Likewise, the function of chairperson of the supervisory board shall also be suspended until such time as the court reaches a final decision.

(6) Rights and obligations applicable to the administrative, management or supervisory body pursuant to the implementing regulation (EU) apply to the management board or administrative board and to the managing directors in insurance and reinsurance undertakings, and additionally also to the supervisory board where the fit requirements as set out in Article 273(3) and the remuneration policy as set out in Article 275(1)(c) of the implementing regulation (EU) are concerned.

(7) An audit committee shall be appointed in insurance undertakings and reinsurance undertakings, which shall consist of at least three members of the supervisory board or the administrative board. The audit committee must include one person, who possesses the necessary expertise and practical experience in the fields of finance and accounting, as well as in reporting (financial expert). The

members of the audit committee, especially the chairperson of the audit committee or the financial expert, must be an independent majority and must be impartial. They may not have served as members of the management board, executives (Article 80 AktG) or as auditors of the company in the last three years, nor may they have signed its audit opinion or the assurance statement. The members of the committee must collectively be familiar with the insurance sector.

(8) Insurance undertakings and reinsurance undertakings, whose premiums written for the entire activities pursued on the basis of the licence do not exceed EUR 750 million, and which have not issued transferable securities that are admitted to trading on a regulated market pursuant to Article 1 no. 2 BörseG 2018, must not appoint an audit committee, provided that the articles of association or the supervisory board instructs that the tasks pursuant to para. 9 may be performed by the supervisory board.

(9) The audit committee shall convene at least twice per financial year. The statutory auditor shall be consulted for the meetings that address the preparation of the drawing up of the financial statement (consolidated financial statement) and it being audited, and shall report about the statutory audit. The auditor of the sustainability reporting shall be consulted in meetings of the audit committee that deal with the audit of the (consolidated) sustainability reporting, and shall report about them. The following tasks shall be conferred upon the audit committee regardless of the competence of the management board and the supervisory board or the administrative board and the managing directors:

1. monitoring the accounting process including where applicable the process for sustainability reporting, the process for electronic reporting in accordance with Article 243b para. 10 or Article 267a para. 11 UGB and the process for submitting the information in accordance with Article 243b para. 2 second sentence or Article 267a para. 2 second sentence UGB, as well as issuing recommendations or suggestions to ensure its integrity;
2. monitoring the effectiveness of the internal control system, where applicable the internal revision function and the undertaking's risk management system also provided that it relates to sustainability reporting;
3. monitoring of the audit opinion and the consolidated audit opinion taking into consideration the findings and conclusions contained in reports, which have been disclosed by the Austrian Audit Oversight Authority (APAB; *Abschlussprüferaufsichtsbehörde*) in accordance with Article 4 para. 2 no. 12 of the Austrian Auditor Oversight Act (APAG; *Abschlussprüfer-Aufsichtsgesetz*);
4. reviewing and monitoring of the independence of the statutory auditor (group statutory auditor) and the (consolidated) sustainability reporting auditor, in particular with regard to the additional services performed for the undertaking that is the subject of the audit opinion; Article 5 of Regulation (EU) No 537/2014 and Article 271a para. 6 UGB shall apply;
5. reporting about the findings of the audit opinion and the auditing of the sustainability reporting to the supervisory board and a statement about how the audit opinion has contributed towards the reliability of the financial reporting and how the auditing of the

- sustainability reporting about the reliability of the sustainability reporting, as well as the role of the audit committee in that regard;
6. auditing the annual financial statement and preparing their approval, the proposed distribution of profits, the management report, the report on solvency and final condition and, where applicable, the corporate governance report, as well as reporting on the findings of the audit to the supervisory board or the administrative board;
 7. where applicable, auditing the consolidated financial statements and the consolidated management report, the group solvency and financial condition report and the corporate governance report on a consolidated basis as well as reporting on the findings of the audit to the supervisory board or the administrative board;
 8. the conducting of the procedure for selecting the statutory auditor (group statutory auditor) and the (consolidated) sustainability reporting auditor taking into consideration the appropriateness of the fee as well as the recommendations for the appointment of the statutory auditor (group statutory auditor) and the (consolidated) sustainability reporting auditor to the supervisory board. Article 16 of Regulation (EU) No 537/2014 shall apply in relation to the statutory auditor (group statutory auditor).

Provisions for insurance distribution

Article 123a. (1) Members of the management board or the administrative board and managing directors that are responsible for the distribution of insurance and reinsurance products to a substantial extent must demonstrably prove that they possess the necessary knowledge and competence with regard to the activity performed and the products that are distributed to perform the duties conferred to them in an orderly manner.

(2) Insurance and reinsurance undertakings shall ensure that all other persons involved directly or in a managerial position for the distribution of insurance and reinsurance shall demonstrably prove that they possess the necessary knowledge and competence with regard to the activity performed and the products that are distributed to perform the duties conferred to them in an orderly manner.

(3) Insurance and reinsurance undertakings shall be required to check whether the persons listed in para. 2 possess the necessary knowledge and competence, and where necessary to offer them training and continuing professional development opportunities that correspond to the requirements in conjunction with the activities that they perform and the products distributed. In so doing, Regulations that have been issued by the Federal Minister for Digital and Economic Affairs on the basis of Article 18 GewO 1994 in conjunction with Article 137b para. 2 GewO 1994 shall be taken into account.

(4) Insurance and reinsurance undertakings shall ensure that the persons listed in para. 2 successfully complete on an ongoing basis continuing professional training and development measures, based on at least 15 hours per year, in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.

(5) Insurance and reinsurance undertakings shall ensure that no reasons for exclusion as defined in Article 13 paras. 1 to 4 GewO 1994 exist for the persons listed in para. 2, or that the waiver conditions set out in Article 26 GewO 1994 are met in the case of such a reason for exclusion existing. If the insurance or reinsurance undertaking considers that the waiver conditions set out in Article 26 GewO 1994 are met, then it shall notification this to the FMA without delay. The FMA shall prohibit involvement in insurance and reinsurance distribution by means of an administrative decision as defined in para. 1, where it considers that the conditions for a waiver set out in Article 26 GewO 1994 are not met.

SECTION 6: INVESTMENTS

Prudent person principle

Article 124. (1) Insurance and reinsurance undertakings shall invest all their assets in accordance with the following principles:

1. With respect to the whole portfolio of assets, insurance and reinsurance undertakings shall only invest in assets and instruments if they can properly identify, measure, monitor, manage, control and report the associated risks, and appropriately take these risks into account in the assessment of their overall solvency needs in accordance with Article 111 para. 1 no. 1.
2. All assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. In addition, the localisation of those assets shall be such as to ensure their availability.
3. Assets held to cover the technical provisions pursuant to Section 1 of Chapter 8 shall additionally be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policyholders and beneficiaries taking into account any disclosed policy objective.
4. In the case of a conflict of interest, insurance and reinsurance undertakings, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policyholders and beneficiaries.
5. The use of derivative instruments shall be permitted insofar as they contribute to a reduction of risks or facilitate efficient portfolio management; this condition shall at any rate not be deemed to be fulfilled in the case of transactions where there are no underlying exposures (short selling).
6. Investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels.
7. Assets shall be properly diversified in such a way as to avoid excessive reliance on:
 - a. any particular asset;
 - b. the same issuer, or issuers belonging to the same group or group of undertakings; or
 - c. a geographical area,

and excessive accumulation of risk in the portfolio as a whole.

(2) Insurance and reinsurance undertakings shall ensure by appropriate means that coverage of the technical provisions pursuant to para. 1 no. 3 is adequately documented.

Special provisions for unit-linked and index-linked life insurance

Article 125. (1) Paragraphs 2 to 4 and Article 124 para. 1 nos. 1 to 4 and para. 2 shall apply to assets held for unit-linked and index-linked life insurance contracts.

(2) In the case of unit-linked life insurance contracts, insurance undertakings must ensure that the technical provisions pursuant to Section 1 of Chapter 8 are represented as closely as possible by those units in the investment fund.

(3) In the case of index-linked life insurance contracts, insurance undertakings must ensure that the technical provisions pursuant to Section 1 of Chapter 8 are represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible to those on which the particular reference value is based.

(4) Where the life insurance contracts referred to in paras. 2 and 3 include a guarantee and additional technical provisions must therefore be established, Article 124 para. 1 nos. 5 to 7 shall be applied to the assets held to cover these provisions.

Qualitative requirements for investments

Article 126. The FMA may, with the consent of the Federal Minister of Finance, determine by regulation more specific qualitative requirements regarding the prudent person principles defined in Article 124 para. 1 and Article 125.

Acquisition and sale of major holdings

Article 127. (1) The FMA shall be immediately notified of the acquisition and sale of shares in corporations by an insurance or reinsurance undertaking where:

1. the direct or indirect shares exceed 50% of the share capital or nominal capital of that company;
2. the purchase price exceeds 10% of the insurance or reinsurance undertaking's own funds;
3. the acquisition entails the establishment of related undertakings as defined in Article 189a no. 8 UGB; or
4. as a consequence of the sale, companies are no longer to be considered related undertakings as defined in Article 228 para. 3 UGB.

This shall also apply to the acquisition and sale of additional shares as well as the increase in the amount of the reported shares if the aforementioned limits have already been exceeded, or if the limits will be exceeded or fall short as a result. When computing the share in the share capital or nominal capital of the external company, the shares of related undertakings shall be added up.

(2) The FMA shall always be notified of contingent liabilities or profit and loss transfer agreements which are entered into or cancelled in connection with existing or acquired shares, as well as the acquisition and sale of a shareholding in a partnership under company law as a personally liable partner.

(3) The FMA shall be notified of the acquisition and sale of shares and holdings, unless this concerns holdings in corporations or the shareholding in a partnership under company law as a personally liable partner, where the purchase price exceeds 1% of the insurance undertaking's own funds. The same applies to the acquisition and sale of additional shares as well as the increase in the amount of the reported shares if the aforementioned limit has already been exceeded, or if the limit will be exceeded or fall short as a result.

(4) The FMA shall be entitled to demand from the insurance or reinsurance undertaking all necessary information on the company in which shares or holdings pursuant to paras. 1, 2 or 3 are held, in particular the submission of the financial statements as well as other appropriate business documents. Such information may not be refused on the grounds of a confidentiality obligation existing pursuant to other provisions.

SECTION 7: INSURANCE DISTRIBUTION

Internal policies and procedures

Article 127a. Insurance and reinsurance undertakings shall draw up or determine and implement appropriate internal policies and procedures to ensure compliance with the requirements pursuant to Article 123a. These policies shall be approved in writing by the management board or the administrative board, and to be amended without delay in the case of significant amendments, and to be reviewed at least once a year.

Distribution function

Article 127b. Insurance and reinsurance undertakings shall establish a distribution function, in order to ensure the orderly implementation of the approved internal policies and procedures pursuant to Article 127a as well as to ensure the fulfilling of the requirements pursuant to Article 127c. Article 120 para. 2 no. 2 shall apply accordingly.

Records

Article 127c. (1) Insurance and reinsurance undertakings shall keep, store and keep up-to-date records of all relevant documents regarding the fulfilment of the requirements pursuant to Article 123a.

(2) Insurance undertakings that distribute insurance-based investment products, shall be required to keep records that contain the document or documents containing the agreements with their policyholders, which determine the rights and obligations of the parties as well as other conditions,

in accordance with which they provide services for the policyholder. It shall be permissible to refer to other documents or legal texts.

Use of mediation services

Article 127d. (1) Insurance and reinsurance undertakings shall be allowed subject to para. 2 for providing insurance and reinsurance distribution activities by third parties in a Member State to only make use of registered insurance and reinsurance intermediaries or registered ancillary insurance intermediaries pursuant to Article 3 of Directive (EU) 2016/97 or authorised undertakings for this purpose pursuant to Article 1 para. 1 nos. 1 to 5.

(2) Undertakings pursuant to Article 1 para. 1 nos. 1 to 5 that perform distribution activities via an ancillary insurance intermediary pursuant to Article 1 (3) of Directive (EU) 2016/97, shall

1. take adequate and proportionate precautions to ensure that the requirements pursuant to Article 128 paras. 1 to 3 and Article 134 are fulfilled, and that consideration is taken for the needs and wishes of the policyholder, prior to a contract being proposed; and
2. to guarantee that the policyholder, prior to giving assent to conclude a contract has received the information pursuant to Article 130 para. 1 no. 1 first half-sentence, nos. 2 und 3 and the insurance product information document pursuant to Article 133 para. 3 has been handed out.

Complaints

Article 127e. Insurance and reinsurance undertakings shall establish units and define procedures that permit policyholders and other affected parties, in particular consumer protection associations that have a justified interest to submit complaints about the insurance and reinsurance undertaking as well as through insurance and reinsurance distributors that the insurance and reinsurance undertaking makes use of. Such complaints must in any case be handled and responded to.

CHAPTER 6: INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES FOR INSURANCE DISTRIBUTION

SECTION 1: GENERAL PROVISIONS

General Principles

Article 128. (1) Insurance undertakings shall always act in conducting their insurance distribution activity honestly, fairly and professionally towards their policyholders and persons entitled to a claim and in their best possible interest.

(2) All information including marketing communications that the insurance undertakings address to policyholders or disseminate so that such persons are likely to become aware of them, must be clear, and shall not be misleading and must be fair. Marketing communications shall be required to be clearly identifiable as such and shall not be allowed to be in contradiction to the information disclosed pursuant to Regulation (EU) 2019/2088. Furthermore, such information shall not be allowed to use the name of any competent authority in any way that indicates or suggests that the insurance undertaking's products or services have been approved by the competent authority.

(3) Insurance undertakings shall not be allowed to remunerate or reward the performance of their employees or insurance distributors in such a way, or themselves to be remunerated in any way that conflicts with their duty to act in the best possible interests of policyholders and persons entitled to a claim. In particular insurance undertakings shall not be allowed to make any arrangement by way of remuneration for distribution, sales targets or otherwise, that could provide an incentive for the insurance undertaking itself, its employees or insurance distributors, to recommend or offer a specific insurance product to a policyholder, although they could recommend or offer another insurance product that corresponds better to the needs of the policyholder.

(4) The FMA may with the consent of the Federal Minister of Finance defined by means of a regulation:

1. which business practices shall be deemed to be dishonest or which information shall be deemed to be unclear or missing leading within the meaning of para. 2 and
2. which distribution remuneration and valuation practices are impermissible due to their colliding within the meaning of para. 3 with the duty to act in the best possible interest of the policyholders and persons entitled to a claim.

(5) The permissibility of sending unsolicited messages to advertise to conclude an insurance contract shall be based on Article 107 of the Telecommunications Act of 2003 (TKG 2003; *Telekommunikationsgesetz 2003*).

Information conditions

Article 128a. (1) Insurance undertakings shall communicate the information to be provided to policyholders in accordance with this Chapter:

1. on paper,
2. in a clear and accurate manner that is comprehensible to the policyholder,
3. in German, unless the policyholder has specifically agreed to the use of another language, and
4. free of charge.

(2) Insurance undertakings may, unless determined otherwise within this federal act, and in the case of information following the conclusion of the contract provided that the standards of Article 5a para. 1 VersVG are complied with, may by way of derogation from para. 1 no. 1 communicate information by one of the following media:

1. on another durable medium other than paper, when

- a. the usage of the durable medium is appropriate in the context of the business conducted between the insurance undertaking and the policyholder, and
 - b. the policyholder had the choice between receiving information on paper or on another durable medium, and chose to receive it on the other durable medium.
2. a Website, where
- a. the access is personalised for the policyholder, or
 - b. the following conditions are met:
 - aa) the issuing of information via a website is appropriate in the context of the business conducted between the insurance distributor and the policyholder;
 - bb) the policyholder has agreed to receive such information via a website;
 - cc) the address of the website and the location on the website where the information may be accessed, has been electronically communicated to the policyholder;
 - dd) it is guaranteed that such information shall remain available on the website for as long as they must reasonably be consulted by the policyholder.

(3) The provision of information on another durable medium other than paper or via a website in the context of business conducted between the insurance undertaking and the policyholder shall be appropriate, if the policyholder demonstrably has regular Internet access. The communication of an e-mail address by the policyholder for the purposes of such business shall be deemed to be such proof.

(4) If the information is made available on a durable medium other than paper or via a website, then the insurance undertaking shall make a paper version of the information available free of charge to the policyholder at the policyholder's request.

(5) In the case of telephone selling, the information that is required to be issued prior to the conclusion of the contract, including the insurance product information document, shall pursuant to the Union rules on the distance marketing of consumer financial services. In addition; the information is also to be issued immediately following the conclusion of the insurance contract pursuant to para. 1 or 2. This shall also apply if the policyholder has decided to receive the information to be issued prior to the conclusion of the contract pursuant to para. 2 no. 1 on another durable medium than paper.

Product governance

Article 129. (1) Insurance undertakings shall within the meaning of paras. 2 to 7 and Delegated Regulation (EU) 2017/2385 maintain internal procedures

1. for the manufacturing and releasing of every individual new insurance product as well as any significant adaptation of existing insurance products, and
2. for the orderly distribution and regular reviewing of the insurance products that it manufactures

and to operate, regularly review and as applicable adapt them. Such procedures must be proportionate and must in particular correspond to the type of the insurance product in question.

(2) Before insurance undertakings are allowed to market or distribute newly designed insurance products or insurance products that have been significantly adapted in a Member State, they shall be required to submit them to an internal product approval process, during which a specific target market must be determined for the insurance product in question. In so doing insurance undertakings shall assess all relevant risks for this specific target market and shall ensure that the intended distribution strategy corresponds to the target market.

(3) Insurance undertakings must understand the insurance products that they manufacture and market or distribute, and must take all reasonable steps within the context of an orderly business organisation to guarantee that the insurance products are marketed or distributed to the defined target market.

(4) Insurance undertakings that manufacture insurance products shall make available all appropriate information at the request of all insurance distributors about their insurance products and their product approval process, including the respective defined target market.

(5) Insurance undertakings shall regularly review the insurance product that they manufacture and market or distribute. In so doing that shall take into account any events that might have a significant influence on the potential risk for the defined target market, and shall at least assess whether the insurance product and the intending distribution strategy still corresponds to the needs of the defined target market.

(6) Insurance undertakings that offer or give advice about insurance products in a Member State that they themselves have not manufactured, must have appropriate provisions in place to be able to receive the information listed in para. 4 and must understand the features of every one of those insurance products as well as their respective determined target market.

(7) The obligations set out in paras. 1 to 6 shall not exist for the distribution of insurance for large risks and reinsurance products.

(8) Other information requirements and conduct rules for insurance distribution remain unaffected.

General information requirements

Article 130. (1) Prior to the conclusion of a direct insurance contract covering risks situated in Austria, the policyholder is to be issued the following information:

1. Name, address of the registered office and the legal form of the insurance undertaking, and as applicable of the branch through which the insurance contract is being concluded as well as
 - a. that the undertaking is an insurance undertaking, and
 - b. that the insurance undertaking provides advice to the policyholder prior to the conclusion of the contract;
2. the designation and address of the competent supervisory authority for the insurance undertaking;

3. the procedures pursuant to Article 33 and Article 127e, that permit the policyholders and other affected parties, in particular consumer protection organisations, to submit complaints about insurance undertakings including information about where complaints are to be submitted in any case irrespective of the right of the policyholder to take legal action;
4. the out-of-court complaints and redress procedures.

The information pursuant to no. 1 shall be issued prior to the identification of the wishes and needs of the policyholder pursuant to Article 131 para. 1, which the information pursuant to nos. 2 to 4 shall be issued prior to the policyholder submitting their contract declaration.

(1a) If the contract is distributed via a third party authorised to do so, then para. 1 no. 1 shall apply subject to the proviso that the obligation to state the circumstances pursuant to lits. a and b shall not apply, and the information is able to be given prior to the policyholder's submission of the contract declaration.

(2) The information pursuant to para. 1 no. 1 must also be apparent, with the exception of the circumstances pursuant to lits. a and b, in any case from the application for insurance as well as from the insurance certificate and all other documents granting coverage.

(3) For the duration of the insurance contract the policyholder must be informed about changes to the details pursuant to para. 1 no. 1 as well as changes to the place of business from which the contract is managed.

(4) The obligations pursuant to para. 1 no. 1 to communicate the circumstances pursuant to lits. a and b as well as the obligations pursuant to para. 1 nos. 2 and 4 shall not exist for the distribution of insurance for large risks. The obligations pursuant to para. 1 no. 3 shall not exist for the distribution of insurance for large risks, provided that the policyholder is a legal person.

(5) Undertakings with their registered office in the United Kingdom shall also inform policyholders prior to the conclusion of the contracts as well as during the term of the insurance contract about the effects of the United Kingdom leaving the European Union and shall update this information where applicable without delay.

General information requirements for the Mediation of Third-Party Products

Article 130a. (1) When mediating a direct insurance contract for another undertaking pursuant to Article 1 para. 1 nos. 1 to 5 in relation to a risk situated within Austria, the following information is to be provided to the policyholder:

1. Name, address of the registered office and the legal form of the mediating insurance undertaking, and as applicable of the branch through which the insurance contract is being mediated as well as the circumstance that
 - a. the mediating insurance undertaking is an insurance undertaking, which mediates insurance contracts for other undertakings pursuant to Article 1 para. 1 nos. 1 to 5 and in so doing acts on behalf of and on the account of these other undertakings, and

- b. that the mediating insurance undertaking provides advice to the policyholder prior to the conclusion of the contract;
2. information pursuant to Article 130 para 1 nos. 2 to 4;
3. whether the mediating insurance undertaking holds a direct or indirect participation of at least 10% of the voting rights or the capital of a certain insurance undertaking;
4. whether a certain insurance undertaking or the parent undertaking of a certain insurance undertaking holds a direct or indirect participation of at least 10% of the voting rights or the capital of the mediating insurance undertaking;
5. regarding the recommended or offered contract:
 - a. whether the mediating insurance undertaking is contractually obliged to exclusively conduct insurance distribution business with one or several insurance undertakings; in this case it must advise about the names of these insurance undertakings, or
 - b. whether the mediating insurance undertaking is not contractually obliged to exclusively conduct insurance distribution business with one or several insurance undertakings, and its advice is not based on a fair and personal analysis; in such a case it shall communicate the names of those insurance undertakings with which is allowed to conduct insurance business with and also does so;
6. the type of remuneration received in relation to the insurance contract and
7. whether the mediating insurance undertaking in relation to the insurance contract
 - a. works on the basis of a fee, with the remuneration being paid directly by the policyholder,
 - b. works on a commission basis, with the remuneration being contained in the insurance premium,
 - c. works on the basis of another type of remuneration, including any kind of financial advantage, which are offered or granted in conjunction with the insurance contract, or
 - d. works on the basis of a combination of types of remuneration listed in lits. a, b, and c.
8. If the fee is to be paid directly by the policyholder, then the mediating insurance undertaking must information the policyholder about the amount of the fee, or where that is not possible, about the methodology for the calculation of the fee.

(2) The information pursuant to para. 1 no. 1 shall be issued prior to the identification of the wishes and needs of the policyholder pursuant to Article 131 para. 1, which the information pursuant to para. 1 nos. 2 to 7 shall be issued prior to the policyholder submitting their contract declaration.

(3) Where in the scope of the insurance contract payments are made by the policyholder following the conclusion of the contract, which are neither ongoing premium payments nor regular payments, then the mediating insurance undertaking shall also disclose the information pursuant to para. 1 nos. 3 to 7 for every such payment.

Identification of the wishes and needs of policyholders

Article 131. (1) Prior to concluding a direct insurance contract covering risks situated in Austria, the insurance undertaking shall obtain the information it requires from the policyholder to identify their wishes and needs. In so doing the complexity of the insurance product and the defined category of customer shall be taken into account for the target market pursuant to Article 129 para. 2.

(2) Any contract offered by an insurance undertaking must correspond to the needs and wishes of the policyholders.

(3) The obligations pursuant to para. 1 shall not exist if the contract is distributed by an authorised third party, unless the insurance undertaking has reason to assume that the policyholder is not offered contracts that correspond to their wishes and needs.

Advice

Article 132. (1) Except in the case of the insurance of large risks, insurance undertakings shall address a personal recommendation to the policyholder prior to the policyholder submitting the contract declaration to conclude a direct insurance contract covering risks situated in Austria, in which it is explained, why the recommended contract best corresponds to the needs and wishes of the policyholder. In so doing the complexity of the insurance product and the defined category of customer shall be taken into account for the target market pursuant to Article 129 para. 2.

(2) The obligations pursuant to para. 1 shall not exist, if the policyholder wishes to conclude a specific contract and following a warning that the insurance undertaking will not assess, whether the envisaged contract corresponds to their needs and wishes, shall state in a separate declaration that it will not make use of advice. The insurance undertaking shall not be allowed to force the policyholder to forego receiving advice.

(3) The obligations pursuant to para. 1 as well as Article 130 para. 1 no. 1 lit. b shall not exist if the contract is distributed by an authorised third party, unless the insurance undertaking has reason to assume that the policyholder is not being provided advice in an orderly manner by the third party.

(4) When concluding contracts in relation to a direct insurance contract covering risks situated in Austria, in the case that the policyholder's habitual residence or establishment is not in Austria, then instead of communicating the information pursuant to Article 130 para. 1 no. 1 lit. b, it shall be communicated whether the insurance undertaking offers advice prior to the conclusion of the contract. The obligations pursuant to para. 1 shall only exist, if the policyholder makes use of advice.

Product information

Article 133. (1) Prior to submitting their contract declaration for concluding a direct insurance contract covering risks situated in Austria the policyholder shall be provided – regardless of whether advice has been given and whether the insurance product is part of a package pursuant to Article 134 – the objective information in a comprehensible form about every insurance product and the relevant information about every insurance contract offered to the policyholder that the

policyholder requires to be able to take a decision on an informed basis. In so doing the complexity of the insurance product and the defined category of customer shall be taken into account for the target market pursuant to Article 129 para. 2.

(2) The information pursuant to para. 1 shall in particular be required to contain the following details, except for the insurance of large risks:

1. the type of insurance;
2. a summary of the insurance coverage including the principal risks insured, the sum insured and where applicable the geographical scope of the coverage and a summary of the risks that are excluded from coverage;
3. the means of payment of premiums and duration of payments;
4. the most important circumstances under which claims are excluded;
5. duties and obligations at the time of concluding the contract and at the start of the contract;
6. duties and obligations during the term of the contract;
7. duties and obligations in the event of the insured event occurring and making a claim;
8. the term of the insurance contract including the start and end date of the contract;
9. details about terminating the contract;
10. the circumstances under which the policyholder may revoke or cancel the conclusion of the insurance contract, as well as the modalities for exercising the right of revocation or cancellation;
11. the law that applies to the insurance contract, in the case that the parties do not have the freedom of choice in this regard, or the fact that the parties may choose the applicable law, and the suggestion of the insurance undertaking in this regard; and
12. the type of remuneration that the employees of the insurance undertaking receive in connection to the distribution of the insurance contract. In the event that payments are made by the policyholder within the scope of the insurance contract following its conclusion, that are neither continuing premium payments or regular payments, the insurance undertaking shall also disclose the type of every such payment and the type of remuneration for distribution, that the employees of the insurance undertaking received in this regard.

(3) When distributing products in the insurance classes pursuant to nos. 1 to 18 of Annex A the information pursuant to para. 1 nos. 1 to 9 shall be made available to the policyholder by means of a standardised insurance product information document on paper or on another durable medium. The insurance product information document is to be designed by the same person that manufactured the product. It shall:

1. be a short and stand-alone document;
2. be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
3. be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
4. be accurate and not misleading;

5. contain the title "insurance product information document" at the top of the first page;
 6. include a statement that complete pre-contractual and contractual information on the product is provided in other documents.
- (4) The policyholder shall be information about changes to the details pursuant to para. 2 nos. 3 and 8 during the term of the insurance contract.
- (5) The information requirements pursuant to para. 2 no. 11 shall also exist for insurance for large risks, provided that the policyholder is a natural person.

Cross-selling

Article 134. (1) When an insurance product is offered together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the insurance undertaking shall inform the policyholder whether it is possible to buy the different components separately. In this case the insurance undertaking shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component.

(2) If the risk or the insurance coverage resulting from such a package or agreement offered to the policyholder pursuant to para. 1 is different from that associated with the components taken separately, the insurance undertaking shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or the insurance coverage.

(3) Where an insurance product is ancillary to a good or a service which is not insurance, as part of a package or the same agreement, the insurance distributor shall offer the policyholder the possibility of buying the good or service separately. This paragraph shall not apply where an insurance product is ancillary to an investment service or activity as defined in Article 4(1) (2) of Directive 2014/65/EU, a credit agreement as defined in Article 4 (3) of Directive 2014/17/EU, or a payment account as defined in Article 2 (3) of Directive 2014/92/EU.

(4) In the cases listed in paras. 1 and 3, insurance undertakings shall identify the needs and wishes of the policyholder in conjunction with the insurance products that are part of the package as a whole or the same agreement.

(5) The obligations pursuant to paras. 1 to 3 shall not apply for the distribution of insurance products that over coverage for different types of risks (multi-risk insurance policies).

SECTION 2: ADDITIONAL REQUIREMENTS FOR THE DISTRIBUTION OF LIFE INSURANCE POLICIES

Conflicts of interest and incentives for the distribution of insurance-based investment products

Article 135. (1) Insurance undertakings that distribute insurance-based investment products, shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps, to

1. detect,
2. prevent, and
3. manage

conflicts of interest pursuant to para. 2, in order to prevent such conflicts of interest from damaging the interests of the policyholders and persons entitled to a claim. Such provisions must be commensurate to the activities performed and the distributed insurance products. Article 128 paras. 1 to 4 shall remain unaffected by this provision.

(2) Conflicts of interest in accordance with para. 1 shall be those that arise in insurance distribution activities between the insurance undertaking among itself, including its management body and its employees or other persons directly or indirectly associated with it as a result of control, and its policyholders and persons entitled to a claim, or between policyholders and persons entitled to a claim among themselves.

(3) Where organisational or administrative arrangements made by the insurance undertaking to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of policyholders and persons entitled to a claim will be prevented, the insurance undertaking shall clearly disclose to the policyholder the general nature or the sources of the conflicts of interest prior to the policyholder submitting the contract declaration on paper or on another durable medium. Depending on the status of the policyholder the disclosure shall be required to be detailed enough to enable the policyholder to take an informed decision about the insurance distribution activities in the context of which the conflict of interest arises.

(4) Insurance undertakings shall only be allowed to pay or be paid any fee or commission, or to provide or be provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, when

1. the beneficiary or recipient is the policyholder or a person, who effects or receives the benefit on behalf of the policyholder, or
2. the fee, commission or the non-monetary benefit
 - a. shall not reasonably have a detrimental effect on the quality of the service in question for the policyholder, and

- b. does not impair the duty of the insurance undertaking or recipient of the benefit to act honestly, fairly and professionally in the best interests of the policyholders and persons entitled to a claim.

Information requirements pursuant to Article 133 para. 2 no. 12 shall remain unaffected.

(5) Insurance undertakings must not recommend to policyholders the choice of insurance-based investment product provided for in the insurance contract for the purpose of causing the issue prices of investment fund units to move in a certain direction in their own interest or in the interest of a related undertaking. This prohibition shall also apply to all employees and any other persons working for the insurance undertaking.

Advice for the distribution of insurance-based investment products

Article 135a. (1) Prior to providing advice about an insurance-based investment product the insurance undertaking, in addition to the information pursuant to Article 131 para. 1, shall also obtain information

1. regarding the policyholder's knowledge and experience in the investment field relevant to the specific type of product or service,
2. the policyholder's financial situation including their ability to bear losses, and
3. the policyholder's investment objectives, including their risk tolerance

that are required to recommend insurance-based investment products to the policyholder that are suitable for them and that, in particular, are in accordance with their risk tolerance and their ability to bear losses. Where a package of services or products are recommended to the policyholder, that are bundled pursuant to Article 134, the entire bundled package must be suitable for the policyholder.

(2) The insurance undertaking must address a personal recommendation pursuant to Article 132 para. 1 to the policyholder prior to the submission of the contract declaration of the policyholder, and shall make a suitability statement available to the policyholder in paper form or on another durable medium. The suitability statement shall contain the advisory capacity provided and the way and manner, in which this corresponds to the preferences, aims and other policyholder-specific features.

(3) Moreover the policyholder is to be informed whether the insurance undertaking will perform a regular assessment of the suitability of the recommended insurance-based investment product.

(4) If the contract is concluded by using a means of distance communication that does not permit the prior providing of the suitability statement, the insurance undertaking may make the written suitability statement available to the policyholder on paper or on another durable medium immediately after the policyholder has contractually bound itself, where

1. the policyholder has agreed to receive the suitability statement without delay following the conclusion of the contract, and

2. the insurance undertaking has offered the policyholder with the possibility to postpone the conclusion of the contract, in order to receive the suitability statement in advance.

(5) The FMA may with the consent of the Federal Minister of Finance further define the information requirements listed in para. 2 by means of a Regulation, provided that doing so is necessary in the interest of the policyholder, a greater level of comparability and transparency.

(6) If the policyholder does not wish to provide the information listed in para. 1, or provides insufficient details, they may, following a warning pursuant to Article 132 para. 2, demonstrably waive the right to make use of advice. The insurance undertaking shall not be allowed to force the policyholder to forego receiving advice.

Distribution of insurance-based investment products without advice

Article 135b. (1) Prior to waiving advice pursuant to Article 132 para. 2 the insurance undertaking shall also warn the policyholder that it does not assess whether the envisaged contract is suitable for the policyholder with regard to their financial situation and investment objectives.

(2) In the case of insurance distribution activities in relation to insurance-based investment products where no advice is given, the insurance undertaking shall ask the policyholder – where applicable in addition to the information pursuant to Article 131 para. 1 – to provide information regarding the policyholder's knowledge and experience in the investment field relevant to the specific type of products or services offered or demanded that are required to assess whether the insurance service or product envisaged is appropriate for the policyholder. Where a package of services or products are recommended that are bundled pursuant to Article 134, the entire bundled package must be suitable for the policyholder.

(3) Where the insurance undertaking is of the opinion on the basis of the information received that the product or service is inappropriate for the policyholder, then it shall also warn the policyholder of this. Where the insurance policy holder does not supply the information listed in para. 2 about their knowledge and experience, or supplies insufficient information, then the insurance undertaking shall warn the policyholder that it is unable to assess whether the envisaged product or service is appropriate for the policyholder.

(4) The warnings pursuant to paras. 1 and 3 may be made in a standardised format.

Additional requirements for life insurance product information

Article 135c. (1) The information to be supplied pursuant to Article 133 para. 1 prior to the submission of the contract declaration by the policyholder shall be required to also contain the following details when concluding a life insurance contract covering risks situated in Austria in addition to the details pursuant to Article 133 para. 2:

1. the benefits paid out by the insurance undertaking, the extent to which they are guaranteed, the legal bases applicable and the options to which the policyholder is entitled with respect to these benefits;

2. the details of any guarantee granted by a third party and, where appropriate, any contingent liability accepted by the insurance undertaking;
3. the principles for calculating the distribution of bonuses;
4. the surrender values and paid-up insurance benefits and the extent to which they are guaranteed;
5. the premiums for the main benefit and supplementary benefits;
6. in the case of endowment life insurance, by using the values in the specimen calculation referred in para. 2,
 - a. all charges and fees, in particular
 - aa) those in relation to the distribution of the insurance product including costs of advice,
 - bb) the charges for the insurance product recommended to the policyholder, as well as
 - cc) all payments to third parties;
 - b. the total effective interest rate of premium payments over the entire term of the contract and, where appropriate, any guaranteed effective interest rate; and
 - c. estimates of the percentage of insurance tax, of the premiums to cover underwriting risks (risk premiums), broken down according to individual risks, of the costs accounted for in the premium and the amounts invested (savings premium) in the expected premium sum over the entire term of the contract, in the form of a table also listing details on the expected costs and fees, which are determined on the basis of the invested assets.

The information about all costs and charges, including costs and charges in connection with the distribution of the insurance product that are not caused by the underlying market risk are to be provided in aggregated form to allow the borrower to understand the overall cost as well as the cumulative effect on return of the investment. Moreover, the policyholder shall also be informed about the modalities of the payment obligations that apply to it. If requested by the policyholder, in addition an itemised breakdown of the costs and charges must be made available to the policyholder for insurance-based investment product. The policyholder shall be informed about this right.

7. in the case of unit-linked life insurance, the investment funds in which equity interests are held and the nature of the underlying assets;
8. in the case of index-linked life insurance, the nature of the investment, the reference value and the underlying factors which are used for the purpose of calculating the insurance benefits;
9. in the case of investment-oriented life insurance, the nature of the investment, the agreed investment strategy and the conditions for changing the investment strategy;
10. the risks underlying the contract which are assumed by the policyholder. The information about insurance-based investment products and proposed investment strategies must also

- include instructions and warnings about the risks associated with the insurance-based investment products or specific proposed investment strategies;
- 10a. as applicable the pre-contractual disclosures pursuant to Article 6 (1) and (2), Article 7 (1) and (2), Article 8 (1) to (2a) and Article 9 (1) to (4a) of Regulation (EU) 2019/2088 and Articles 5, 6 and 7 of Regulation (EU) 2020/852;
 11. the tax arrangements applicable to the insurance, while clearly pointing out that the respective tax treatment depends on the customer's personal circumstances and may be subject to future changes;
 12. any existing guarantee schemes and the means of accessing them;
 13. a concrete reference to the solvency and financial condition report as laid down in Article 241, allowing the policyholder easy access to this information.

In the case of the distribution of insurance-based investment products information must be issued in such a way that allows the policyholder to reasonably be able to understand the nature and risks of the offered insurance-based investment product and to be make investment decisions on an informed basis.

(2) In the case of endowment life insurance the insurance undertaking shall submit a sample calculation to the policyholder, in which the benefits paid out by the insurance undertaking, the surrender values and the paid-up insurance benefits on the basis of the calculation bases for the calculation of premiums and all costs and charges using at least three different interest rates and compared against the premium, the premium sum and, where applicable, any guaranteed value broken down into annual steps. The specimen calculations shall be explained in a clear and comprehensible manner. The policyholder shall be informed that the specimen calculation is only a model of computation based on notional assumptions, and that the policyholder shall not be able to derive any contractual claims against the insurance undertaking from the specimen calculation.

(3) When distributing life insurance contracts pursuant to Article 5 no. 63 lit. b the information pursuant to Article 133 para. 2 nos. 1 to 9 shall be made available to the policyholder by means of a standardised life insurance product information document on paper or on another durable medium. Article 133 para. 3 second and third sentence shall apply.

(4) The FMA may with the consent of the Federal Minister of Finance defined by means of a Regulation:

1. to more specifically define the information requirements listed in paras. 1 and 2; and
2. to prescribe a standardised format for the presentation of the information document pursuant to para. 3 for life insurance products,

provided that doing so is necessary in the interest of the policyholder, a greater level of comparability and transparency.

Additional requirements for continuing information

Article 135d. (1) Throughout the term of the insurance contract, the policyholder shall be informed in writing of the following:

1. changes in the policy conditions, both general and specific;
2. changes in the information pursuant to Article 133 para. 2 no. 10 and Article 135c para. 1 nos. 3 to 5 and 7 to 9 in the event of a contractual amendment or an amendment of the law specifically applicable to the contract;
3. in the case of unit-linked life insurance plans, a substantial change in the risk classification of an investment fund by the insurance undertaking;
4. annually, information on the state of bonuses and the composition of the investments by category, in the case of unit-linked life insurance the value of the units allocated to the policyholder, and in the case of index-linked life insurance the performance of the insurance contract's reference value;
5. in the case of endowment life insurance, annually, the effects of deviations of the current values from the values forecast upon conclusion of the contract in the specimen calculation, in the form of newly calculated estimates of maturity payments and stating the current surrender value;
6. in the case of an insurance-based investment product where applicable regularly, in any case at least annually, about all costs and charges pursuant to Article 135c para. 1 no. 6 lit. a;
- 6a. as applicable the disclosures to be made in regular reporting pursuant to Article 11 (1) of Regulation (EU) 2019/2088 and Articles 5, 6 and 7 of Regulation (EU) 2020/852;
7. the use of the provision for bonuses and/or participation in profits to cover losses in accordance with Article 92 para. 5.

(2) Insurance undertakings shall provide policyholders with appropriate reports about the provided services in relation to insurance-based investment products on paper or on another durable medium. Those reports shall take into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the policyholder. Where applicable, it shall contain the costs associated with the transactions and services undertaken on behalf of the policyholder.

(3) Where the insurance undertaking has informed the policyholder that it will carry out a periodic assessment of suitability of the recommended insurance-based investment product, the periodic report pursuant to para. 2 shall contain an updated statement of how the insurance-based investment product meets the preferences, objectives and other policyholder-specific characteristics.

(4) The FMA may with the consent of the Federal Minister of Finance further define the information requirements listed in para. 1 by means of a Regulation, provided that doing so is necessary in the interest of the policyholder, a greater level of comparability and transparency.

SECTION 3: ADDITIONAL REQUIREMENTS FOR THE DISTRIBUTION OF HEALTH AND ACCIDENT INSURANCE SIMILAR TO LIFE INSURANCE

Additional requirements for product information and continuing information

Article 135e. (1) The information to be supplied pursuant to Article 133 para. 1 prior to the submission of the contract declaration by the policyholder shall be required to also contain the following details when concluding a health or accident insurance contract operated in a manner similar to life insurance covering a risk situated in Austria in addition to the details pursuant to Article 133 para. 2:

1. the benefits paid out by the insurance undertaking;
2. the conditions under which the insurance undertaking may unilaterally adjust the amount of the premium or the insurance cover, and the modalities to be observed in this respect;
3. the principles for calculating the distribution of bonuses;
4. the legal and financial consequences of a termination of the contract for the policyholder;
5. the tax arrangements applicable to the insurance, while clearly pointing out that the respective tax treatment depends on the customer's personal circumstances and may be subject to future changes;
6. a specific reference to the solvency and financial condition report as laid down in Article 241, allowing the policyholder easy access to this information.

(2) Throughout the term of the insurance contract, the policyholder shall be informed in writing of the following:

1. changes in the policy conditions, both general and specific;
2. changes in the information pursuant to para. 1 and Article 133 para. 2 no. 10 in the event of a contractual amendment or an amendment of the law specifically applicable to the contract;
3. the extent and reasons for a premium adjustment having been made and
4. the use of the provision for bonuses to cover losses in accordance with Article 92 para. 5.

(3) The FMA shall with the consent of the Federal Minister of Finance further define the information requirements listed in paras. 1 and 2 by means of a Regulation, provided that doing so is necessary in the interest of the policyholder, a greater level of comparability and transparency.

CHAPTER 7: ACCOUNTING AND CONSOLIDATED ACCOUNTING

SECTION 1: GENERAL PROVISIONS

Applicability of the UGB, AktG and SEG

Article 136. (1) The following provisions shall apply for accounting (consolidated accounting), including the (consolidated) corporate reporting, as well as auditing and consolidated auditing and the auditing of the (consolidated) sustainability reporting:

1. with regard to insurance and reinsurance undertakings as well as small insurance undertakings with the legal form of a joint stock company, the provisions of the UGB applicable to public-interest entities, unless this federal act stipulates otherwise;
2. with regard to insurance and reinsurance undertakings with the legal form of a European Company (SE), the provisions of the UGB applicable to large joint stock companies and public-interest companies and the provisions of the European Company Act (SEG; *Societas-Europaea-Gesetz*), unless this federal act stipulates otherwise;
3. with regard to insurance undertakings and reinsurance undertakings as well as small insurance undertakings in the legal form of a mutual insurance association, that is not a small mutual association, the provisions of the UGB for large stock companies and public-interest entities (PIEs), provided that this Federal Act does not state otherwise. The listed companies shall be classified as public-interest entities (PIEs) pursuant to Article 189a no. 1 lit. c UGB. Articles 96, 104 and 108 AktG shall be applied accordingly in consideration for Article 137 para. 2 and Article 138 para. 3;
4. with regard to insurance associations whose object is limited to asset management (Article 63 para. 3), the provisions of the UGB applicable to large undertakings, excluding Article 243b and Article 267a UGB unless this federal act stipulates otherwise.
5. for private foundations (Article 66 para. 1) the provisions of the UGB applicable to large undertakings, where such provisions are applicable pursuant to Article 18, Article 20 and Article 21 PSG, unless this federal act stipulates otherwise.

(2) With regard to the accounting and auditing of branches of third-country insurance and third-country reinsurance undertakings, the provisions of the UGB shall apply accordingly to public-interest companies, unless this federal act stipulates otherwise. Regulation (EU) No 537/2014 shall be applied accordingly.

General provisions for the annual financial statement, the management report, as well as the corporate governance report

Article 137. (1) The management board or the managing directors shall ensure that the financial statements comply with the legal requirements.

(2) Notwithstanding Article 222 para. 1 UGB and Article 96 para. 1 and Article 104 paras. 1 and 2 no. 2 AktG, the financial statements and the management report as well as , where appropriate, the corporate governance report shall be prepared in time and the financial statements adopted in time for compliance with the submission deadlines referred to in Article 248.

(3) For Austrian branches of third-country insurance and third-country reinsurance undertakings, the management shall prepare financial statements and a management report on the preceding financial year during the first five months of the current financial year.

(4) The financial year of insurance and reinsurance undertakings shall correspond to the calendar year.

(5) For the purposes of sustainability reporting, insurance and reinsurance undertakings that are part of a group pursuant to Article 195 para. 1 no. 3 lit. b and are subject to group supervision pursuant to Article 213 (2) lits. a to c of Directive 2009/138/EC, are treated like subsidiaries of the parent undertaking of the group pursuant to Article 243b para. 7 UGB and Article 267a para. 8 UGB.

Special provisions for consolidated financial statements

Article 138. (1) Article 246 UGB shall not be applied to the consolidated financial statements of insurance and reinsurance undertakings, or to parent undertakings of insurance and reinsurance undertakings or third-country insurance and third-country reinsurance undertakings.

(2) Parent undertakings of insurance and reinsurance undertakings shall be obliged, without prejudice to their legal form, to prepare consolidated financial statements where the sole or predominant purpose of the undertaking is the acquisition or management of holdings, provided that the undertakings to be consolidated are exclusively or predominantly insurance and reinsurance undertakings or third-country insurance and third-country reinsurance undertakings.

(3) Article 137 paras. 1 and 2 shall apply accordingly to consolidated financial statements.

(4) The consolidated financial statements shall be prepared for the reporting date of 31 December; this shall also apply to the consolidated financial statements and the consolidated management report with a discharging effect. Article 252 para. 1 UGB shall not apply.

(5) The uniform valuation stipulated in Article 260 UGB shall apply separately to undertakings with sector-specific valuation rules. The principle of uniform valuation shall not apply to technical provisions; it shall also not apply to assets whose changes in value also affect the rights of policyholders or constitute rights for them.

(6) Interim profits need not be eliminated where the transaction has been entered into under ordinary market conditions and legal claims of policyholders have thus been established.

(7) Article 251 para. 3 UGB shall not apply.

(8) An insurance or reinsurance undertakings or a parent undertaking of insurance and reinsurance undertakings or third-country insurance and third-country reinsurance undertakings drawing up consolidated financial statements as referred to in Article 245a paras. 1 or 2 UGB in accordance with

the international accounting standards shall comply with the requirements set forth in Article 245a paras. 1 and 3 UGB.

(9) Notwithstanding Article 245a para. 3 UGB, where consolidated financial statements as referred to in para. 8 are disclosed, express mention must be made that the consolidated financial statements have not been prepared in accordance with the provisions of this federal act.

Special accounting standards

Article 139. (1) The FMA may, with the consent of the Federal Minister of Finance, impose by regulation such special orders on the accounting and consolidated accounting of insurance and reinsurance undertakings as are necessary with regard to the special nature of contractual insurance activities, the appropriate scope of information concerning the business activities that are provided to the policyholders and the general public, the requirements for supervision of business activities by the FMA, as well as the enforcement of the provisions of this Chapter for the purposes of insurance supervision.

(2) Taking these requirements into account, the orders of the FMA may include the following:

1. regulations on obligatory forms for the financial statements and the details referred to in Article 145 para. 1 and Article 155 paras. 8 to 17;
2. regulations on the determination and calculation of the technical provisions;
3. determination of a maximum interest rate for the calculation of the technical provisions in life insurance based on the interest rate applicable to bonds by the Republic of Austria minus a safety margin of 40%;
4. regulations on the preparation of a separate income statement for individual insurance classes of direct and indirect business;
5. more detailed regulations on the single items of the financial statements as well as on the information provided in the notes and in the management report;
6. more detailed regulations on compliance with the presentation obligations referred to in Article 248 para. 2 no. 5, para. 3 no. 2 and para. 5 no. 2; and
7. regulations on requirements for the financial statements and the management report to be personally signed.

(3) Paragraph 2 shall apply accordingly to consolidated accounting.

SECTION 2: STRUCTURE AND DISCLOSURE

General principles for the structure of financial statements and consolidated financial statements

Article 140. (1) Life insurance, health insurance as well as non-life and accident insurance shall each constitute one balance sheet group. General insurance activities shall comprise health insurance as well as non-life and accident insurance.

- (2) The balance sheet items in the consolidated balance sheet shall be structured according to their allocation to the individual balance sheet groups.
- (3) A separate technical account shall be prepared for each balance sheet group. The non-technical account referred to in Article 146 para. 5 shall be prepared separately for each balance sheet group up to and including item 7; from item 8 onwards only the total amounts of all balance sheet groups shall be given.
- (4) Indirect life insurance business shall be allocated to the balance sheet group of life insurance, indirect health insurance business to the balance sheet group of health insurance, and other indirect business to the balance sheet group of non-life and accident insurance. Reinsurance undertakings or insurance undertakings which, in addition to indirect business, also pursue direct business limited to non-life and accident insurance may allocate the entire business to the balance sheet group of non-life and accident insurance.
- (5) Article 223 paras. 6 and 8 UGB shall not apply.
- (6) Expenses and income shall, unless they must be entered as separate items in the income statement given their nature, be apportioned to the respective items of the income statement according to cause.
- (7) The first sentence of para. 1 and para. 2 shall not apply to consolidated financial statements. The balance sheet items of the individual groups may be summarised in the consolidated balance sheet.
- (8) Para. 3 shall not apply to consolidated financial statements. A separate technical account shall be prepared in the consolidated income statement both for general insurance and life insurance activities. The non-technical account referred to in Article 146 para. 5 shall be prepared separately for general insurance and life insurance activities up to and including item 7; from item 8 onwards only the total amounts shall be given.
- (9) The items “Extraordinary income” (Article 146 para. 5 no. 8) and “Extraordinary expenses” (Article 146 para. 5 no. 9) shall show income and expenses incurred outside the undertaking’s ordinary business activities.
- (10) With regard to the balance sheet and the consolidated balance sheet, Article 223 para. 2 UGB shall only apply to the total amounts and not to the amounts of the individual balance sheet groups.
- (11) Article 225 para. 3 first sentence and para. 6 first sentence, Article 227 second sentence, Article 237 para. 1 no. 5 and Article 266 no. 3 UGB shall not apply.

Special provisions for composite undertakings and other undertakings with more than one balance sheet group

Article 141. (1) Composite undertakings and other undertakings with more than one balance sheet group shall allocate expenses and income, unless they belong to a single balance sheet group given their nature, to the individual balance sheet groups by means of allocation methods. The allocation methods must be technically correct and transparent and ensure that expenses and income are apportioned according to cause. It must be guaranteed that the interests of the policyholders and beneficiaries in a balance sheet group are neither impaired nor put at risk. They shall in particular

benefit from the profits generated by life insurance activities as if the undertaking exclusively pursued life activities. The allocation methods must be approved by the FMA.

(2) Where assets are transferred from the life insurance or health insurance balance sheet group to another balance sheet group and are then sold within a year, any gains shall be allocated to the original balance sheet group.

(3) Liabilities pursuant to items A. and B. as referred to in Article 144 para. 3 shall be allocated to the balance sheet groups pursued. The annual result arising in a certain balance sheet group from the apportionment of expenses and income according to cause and the allocation methods referred to in para. 1 affects the liabilities pursuant to items A., B. and C. in this balance sheet group and may not be transferred to another balance sheet group, para. 4 notwithstanding.

(4) As long as, in accordance with Article 194, the notional life Minimum Capital Requirement and the notional non-life Minimum Capital Requirement are complied with, liabilities pursuant to items A. and B. may be transferred to another balance sheet group.

Reinsurance with limited risk transfer

Article 142. Contracts by means of which the underwriting risks are not transferred at all or only transferred to a very limited extent shall not be regarded as reinsurance contracts for the purposes of accounting.

Risk reserve

Article 143. (1) Insurance and reinsurance undertakings shall establish a risk reserve, which shall be shown separately in the balance sheet.

(2) 0.6% of the earned premiums of domestic business net of reinsurance shall be allocated to the risk reserve annually. However, the reserve may not exceed 4% of these premiums. It may only be used to cover losses and only after all other reserves stipulated in the articles of association and any other free reserves have been released. Following its release the reserve shall be re-established.

(3) *Repealed by Federal Law Gazette I no. 68/2015*

Structure of the balance sheet and consolidated balance sheet

Article 144. (1) The items listed under paras. 2 and 3 shall be shown separately and in the prescribed order in the balance sheet and the consolidated balance sheet.

(2) Assets:

A) Intangible assets

I) Goodwill acquired for valuable consideration

II) Expenses for the acquisition of an insurance portfolio

III) Other intangible assets

IV) Difference pursuant to Article 254 para. 3 UGB (applies to consolidated balance sheet only)

B) Investments

- I) Land and buildings
- II) Investments in related undertakings and participating interests
 - 1) Shares in related undertakings
 - 2) Debt securities and other securities by related undertakings and loans to related undertakings
 - 3) Participating interests
 - 4) Debt securities and other securities by and loans to undertakings with which the undertaking is linked by virtue of participating interests
- III) Other investments
 - 1) Shares and other variable-yield securities
 - 2) Debt securities and other fixed-income securities
 - 3) Units in collective investment schemes
 - 4) Loans guaranteed by mortgages
 - 5) Advance payments on policies
 - 6) Other loans
 - 7) Cash at bank
 - 8) Other investments
- IV) Deposits with ceding undertakings
- C) Investments of unit-linked and index-linked life insurance
- D) Receivables
 - I) Receivables from direct insurance business
 - 1) Policyholders
 - 2) Insurance intermediaries
 - 3) Insurance undertakings
 - II) Settlement receivables from reinsurance business
 - III) Unpaid called-up capital
 - IV) Other receivables
- E) Accrued interest and rent
- F) Other assets
 - I) Tangible assets (except for land and buildings) and stocks
 - II) Cash at bank and in hand
 - III) Other
 - IV) *Repealed by Federal Law Gazette I no. 68/2015*
- G) Offsetting items with head office
- H) Prepaid expenses
- I) Deferred tax assets
- J) Offsetting items between balance sheet groups
- K) Assets from credit institutions (when applying Article 145)

- L) Assets from other undertakings with sector-specific balance sheet regulations (when applying Article 145)
- M) Assets from additional other undertakings (when applying Article 145)
- (3) Liabilities:
 - A) Equity capital
 - I) Share capital
 - 1) Nominal value
 - of which own shares
 - 2) Unpaid capital not called up
 - II) Endowment capital
 - III) Capital reserves
 - 1) Committed
 - 2) Not committed
 - IV) Profit reserves
 - 1) Contingency reserve
 - 2) Statutory reserve pursuant to Article 229 para. 6 UGB
 - 3) Other reserves provided for by the articles of association
 - 4) Free reserves
 - V) Risk reserve
 - VI) Profit/loss for the year, of which profit/loss brought forward
 - VII) Minority interest (applies to consolidated balance sheet only)
 - B) Subordinated liabilities
 - I to III) Repealed by Federal Law Gazette I no. 68/2015*
 - C) Difference pursuant to Article 254 para. 3 UGB (applies to consolidated balance sheet only)
 - D) Technical provisions retained
 - I) Unearned premiums
 - 1) Gross amount
 - 2) Reinsurers' share
 - II) Life/health insurance provision
 - 1) Gross amount
 - 2) Reinsurers' share
 - III) Provision for claims outstanding
 - 1) Gross amount
 - 2) Reinsurers' share
 - IV) Provision for rebates
 - 1) Gross amount
 - 2) Reinsurers' share
 - V) Provision for bonuses and/or policyholders' participation in profits
 - 1) Gross amount

- 2) Reinsurers' share
- VI) Volatility reserve
- VII) Other technical provisions
 - 1) Gross amount
 - 2) Reinsurers' share
- E) Technical provisions of unit-linked and index-linked life insurance
 - I) Gross amount
 - II) Reinsurers' share
- F) Non-technical provisions
 - I) Provisions for severance pay
 - II) Provisions for pensions
 - III) Provisions for taxes
 - IV) Provisions for deferred tax liabilities
 - V) Other provisions
- G) Deposits received from reinsurers
- H) Other liabilities
 - I) Liabilities from direct insurance business
 - 1) Policyholders
 - 2) Insurance intermediaries
 - 3) Insurance undertakings
 - II) Settlement liabilities from reinsurance business
 - III) Debenture loans (with the exception of supplementary capital)
 - IV) Liabilities to credit institutions
 - V) Other liabilities
- I) Offsetting items with head office
- J) Deferred income
- K) Provisions, liabilities and deferred income from credit institutions (when applying Article 145)
- L) Provisions, liabilities and deferred income from other undertakings with sector-specific balance sheet regulations (when applying Article 145)
- M) Provisions, liabilities and deferred income from additional other undertakings (when applying Article 145)

(4) Article 224 UGB shall not apply.

(5) to (9) Repealed by Federal Law Gazette I no. 68/2015

Special provisions for the consolidated balance sheet

Article 145. Where undertakings that are not to be included in the group's calculation of solvency are included in the consolidated financial statements, the assets and liabilities of such undertakings are to be shown separately (items K. to M. of Article 144 paras. 2 and 3).

Structure of the income statement

Article 146. (1) The income statement shall be presented in report form. The items listed under paras. 2 to 5 shall be shown separately in the given order.

(2) I. Technical account – General insurance, non-life and accident insurance

1. Earned premiums
 - a. Premiums written
 - aa. Gross amount
 - ab. Outward reinsurance premiums
 - b. Change in the provision for unearned premiums
 - ba. Gross amount
 - bb. Reinsurers' share
2. Investment income from technical business
3. Other technical income
4. Claims incurred
 - a. Claims paid
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Change in the provision for claims outstanding
 - ba. Gross amount
 - bb. Reinsurers' share
5. Increase in technical provisions
 - a. Life/health insurance provision
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Other technical provisions
 - ba. Gross amount
 - bb. Reinsurers' share
6. Decrease in technical provisions
 - a. Life/health insurance provision
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Other technical provisions
 - ba. Gross amount
 - bb. Reinsurers' share
7. Rebates
 - a. Gross amount
 - b. Reinsurers' share
8. Bonuses

- a. Gross amount
- b. Reinsurers' share
- 9. Operating expenses
 - a. Insurance acquisition costs
 - b. Other operating expenses
 - c. Reinsurance commissions and profit shares from reinsurance cessions
- 10. Other technical expenses
- 11. Change in the volatility reserve
- 12. Technical account balance
- (3) II. Technical account – General insurance, health insurance
 - 1. Earned premiums
 - a. Premiums written
 - aa. Gross amount
 - ab. Outward reinsurance premiums
 - b. Change in the provision for unearned premiums
 - ba. Gross amount
 - bb. Reinsurers' share
 - 2. Investment income from technical business
 - 3. Other technical income
 - 4. Claims incurred
 - a. Claims paid
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Change in the provision for claims outstanding
 - ba. Gross amount
 - bb. Reinsurers' share
 - 5. Increase in technical provisions
 - a. Life/health insurance provision
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Other technical provisions
 - ba. Gross amount
 - bb. Reinsurers' share
 - 6. Decrease in technical provisions
 - a. Life/health insurance provision
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Other technical provisions
 - ba. Gross amount

bb. Reinsurers' share

7. Rebates
 - a. Gross amount
 - b. Reinsurers' share
 8. Bonuses
 - a. Gross amount
 - b. Reinsurers' share
 9. Operating expenses
 - a. Insurance acquisition costs
 - b. Other operating expenses
 - c. Reinsurance commissions and profit shares from reinsurance cessions
 10. Other technical expenses
 11. Change in the volatility reserve
 12. Technical account balance
- (4) III. Technical account – Life insurance
1. Earned premiums
 - a. Premiums written
 - aa. Gross amount
 - ab. Outward reinsurance premiums
 - b. Change in the provision for unearned premiums
 - ba. Gross amount
 - bb. Reinsurers' share
 2. Investment income from technical business
 3. Unrealised gains on investments pursuant to asset item C.
 4. Other technical income
 5. Claims incurred
 - a. Claims paid
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Change in the provision for claims outstanding
 - ba. Gross amount
 - bb. Reinsurers' share
 6. Increase in technical provisions
 - a. Life/health insurance provision
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Other technical provisions
 - ba. Gross amount
 - bb. Reinsurers' share

7. Decrease in technical provisions
 - a. Life/health insurance provision
 - aa. Gross amount
 - ab. Reinsurers' share
 - b. Other technical provisions
 - ba. Gross amount
 - bb. Reinsurers' share
 8. Bonuses and policyholders' participation in profits
 - a. Gross amount
 - b. Reinsurers' share
 9. Operating expenses
 - a. Insurance acquisition costs
 - b. Other operating expenses
 - c. Reinsurance commissions and profit shares from reinsurance cessions
 10. Unrealised losses on investments pursuant to asset item C.
 11. Other technical expenses
 12. Technical account balance
- (5) IV. Non-technical account
1. Technical account balance
 2. Investment income and investment return
 - a. Income from participating interests, with a separate indication of that derived from related undertakings
 - b. Income from land and buildings, with a separate indication of that derived from related undertakings
 - c. Income from other investments, with a separate indication of that derived from related undertakings
 - d. Value re-adjustments on investments
 - e. Gains on the realisation of investments
 - f. Other investment income and investment return
 3. Investment expenses and interest paid
 - a. Asset management expenses
 - b. Value adjustments on investments
 - c. Interest paid
 - d. Losses on the realisation of investments
 - e. Other investment expenses
 4. Investment income transferred to the technical account
 5. Other non-technical income
 6. Other non-technical expenses
 7. Profit or loss on ordinary activities

8. Extraordinary income
9. Extraordinary expenses
10. Extraordinary profit or loss
11. Taxes on income
12. Net income/loss for the year
13. Release of reserves
 - a. Release of capital reserves
 - b. Release of the contingency reserve
 - c. Release of the statutory reserve pursuant to Article 229 para. 6 UGB
 - d. Release of other reserves in accordance with the articles of association
 - e. Release of free reserves
 - f. Release of the risk reserve
14. Allocation to reserves
 - a. Allocation to the contingency reserve
 - b. Allocation to the statutory reserve pursuant to Article 229 para. 6 UGB
 - c. Allocation to other reserves in accordance with the articles of association
 - d. Allocation to free reserves
 - e. Allocation to the risk reserve
15. Annual profit/loss
16. Profit/loss brought forward
17. Profit/loss for the year

(6) Article 231 UGB shall not apply.

(7) Where Article 259 para. 2 UGB is applied, items 13 to 17 of para. 5 shall be numbered 14 to 18.

(8) Where undertakings that are not to be included in the group's calculation of solvency are included in the consolidated financial statements, item 7 shall be broken down as follows in the non-technical account (profit or loss on ordinary activities):

- a. profit or loss on ordinary activities of insurance and reinsurance undertakings;
- b. profit or loss on ordinary activities of credit institutions;
- c. profit or loss on ordinary activities of other undertakings with sector-specific balance sheet regulations; and
- d. profit or loss on ordinary activities of additional other undertakings.

The composition of the results mentioned under lit. b to d shall be shown separately in the notes to the financial statements in accordance with the sectoral rules, with a breakdown that as a minimum is in accordance with the items designated with Arabic numerals in the income statement classification pursuant to Article 231 UGB. This provision shall be applied accordingly to undertakings with sector-specific balance sheet regulations. The items shall be explained, where necessary. The FMA may determine by regulation more detailed provisions relating to these details in the notes.

(9) Paragraphs 1 to 5 shall be applied accordingly to the consolidated income statement.

Recognition of expenses and income

Article 147. (1) The set-off of expenses against income shall be effected for:

1. the fire protection tax charged to policyholders against the fire protection tax expenditure;
2. the remunerations received from co-insurance against the commissions paid for co-insurance;
3. expense allowances against those expenses for whose cover they are intended;
4. the income against the current land and buildings expenses, except for the write-downs;
5. the income against expenses relating to participating interests, except for the write-downs;
6. proceeds from asset sales against the book values of the sold assets;
7. currency exchange gains against exchange losses from one and the same currency;
8. claims paid against subrogation income and other costs of claims.

(2) For institutions which are not directly connected to contractual insurance activities, the difference between the expenses and income shall be allocated to the appropriate income statement items.

(3) The profit generated from indirect business may be deferred by no more than one year. Incoming statements shall be entered in the books on a regular basis. The statements of an accounting year shall basically be recognised in income during one financial year. For losses incurred up to the balance sheet date and for losses having become known up to the date of balance sheet preparation, appropriate provisions shall be established. A derogation of the chosen extent of any deferred booking of the results from the individual reinsurance contracts shall only be admissible under special circumstances.

(4) Reinsurance acceptances from undertakings included in the consolidated financial statements shall be recognised simultaneously for the purpose of preparing the consolidated financial statements; in this respect, para. 3 shall not be applied to the consolidated financial statements.

SECTION 3: VALUATION

General valuation rules

Article 148. (1) The prudent person principle shall be applied taking the special nature of insurance activities into consideration.

(2) Non-securitised claims and liabilities which are denominated in a foreign currency shall be shown at the mean rate on the balance sheet date where the currency risk is not hedged.

Valuation of assets

Article 149. (1) Investments pursuant to item B. of Article 144 para. 2 shall be valued like fixed assets with the exception of those listed under para. 2 (Articles 203 and 204 UGB, considering Article 208 UGB). The last sentence of Article 204 para. 2 UGB shall only be applied to these investments where they fall under items B. II., B. III. or B. IV. of Article 144 para. 2.

(2) Shares, securities on participation and supplementary capital, other variable-yield securities, loan stock rights and shares in investment funds pursuant to item B. of Article 144 para. 2, as well as shares in related undertakings to the extent that these are not intended to be held permanently for business activities pursuant to item B. II of Article 144 para. 2, shall be valued like current assets (Articles 206 and 207 UGB, considering Article 208 UGB). By way of derogation, the mentioned investments may be valued in accordance with the provisions of the UGB; however, write-downs to the lower fair value in the case of a loss of value which presumably is not permanent shall not be required where the total amount of these write-downs not effected does not exceed 50% of the entire, otherwise existing hidden net reserves of the undertaking in the balance sheet group in question. Profits may only be distributed in the case of omitted write-downs inasmuch as reserves that can be released at any time plus profit brought forward and minus any loss brought forward at least correspond to the amount of the omitted write-down's impact on net income.

(3) In the case of units in UCITS and special funds pursuant to Article 163 InvFG 2011 or comparable foreign funds which exclusively or predominantly contain debt securities or other fixed-income securities pursuant to item B. III. of Article 144 para. 2, over which the insurance or reinsurance undertaking can prove a direct or indirect controlling influence and which are managed by an investment fund management company with its head office in a Member State, the securities contained within them may be valued in the same manner as securities that are directly owned by the undertaking. Exercise of this discretion shall be reported on in the notes.

(4) Investments of unit-linked and index-linked life insurance pursuant to item C. of Article 144 para. 2 shall be valued at stock exchange or market prices, irrespective of their purchase price or production cost.

(5) Article 209 para. 1 UGB shall be applied to tangible assets and stocks pursuant to item F. I. of Article 144 para. 2.

General rules for technical provisions

Article 150. (1) Technical provisions shall be established as far as necessary in accordance with sound business judgement in order to guarantee ongoing compliance with the obligations arising from the insurance contracts. The valuation shall be effected taking account of the prudent person principle.

(2) Technical provisions shall constitute in particular the unearned premiums, the life/health insurance provision, the provision for claims outstanding, the provisions for bonuses and rebates, the volatility reserve, the technical provisions similar to the volatility reserve, the provision for cancellations, the provision for unexpired risks from the insurance portfolio as well as the provision for losses from reinsurance acceptances, the booking of which is deferred.

(3) Where actuarial bases exist for calculating the technical provisions, they shall be applied accordingly.

(4) Article 198 para. 8 no. 3 and Article 211 UGB shall not apply to technical provisions.

Unearned premiums

Article 151. (1) Unearned premiums are those parts of the premiums written which refer to a period of time after the financial year-end. They shall in principle be computed separately for each insurance contract using an individual calculation on a pro-rata basis.

(2) The unearned premiums may also be determined by approximation provided that the results approximate those of a pro-rata individual calculation for each insurance contract.

(3) In classes of insurance where the assumption of a temporal correlation between risk experience and premium is not appropriate, calculation methods shall be applied that take account of the differing pattern of risk over time.

Life/health insurance provision

Article 152. (1) The life/health insurance provision shall in principle be computed separately for each contract in life insurance, in health insurance and in all other insurance classes, provided that they are operated in a manner similar to life insurance. The use of recognised statistical or mathematical methods shall be permitted where they may be expected to give approximately the same results as individual calculations.

(2) In life insurance and health insurance operated in a manner similar to life insurance, the life/health insurance provision shall comprise the actuarially estimated value of an insurance undertaking's obligations including profit shares already allocated and promised as well as a provision for administrative expenses and after deducting the actuarial value of future premiums. In the case of the state-sponsored retirement provision pursuant to Article 108g to 108i EstG 1988, the life/health insurance provision shall also comprise provisions for investment risks, provided that they exceed the investment risks of life insurance whose technical provisions are covered by the *Deckungsstock* pursuant to Article 300 para. 1 no. 1. The FMA may determine by regulation the conditions under which such additional provisions must be established as well as the required amount of these provisions; in this context, particularly the minimum commitment period, the amount of the assumed rate of interest, the expected income from the investments, the volatility of the assets and the type of profit allocation can be used.

(3) Negative technical mathematical reserves shall be set to zero.

(4) The life/health insurance provision shall be calculated on the basis of recognised actuarial methods.

Provision for claims outstanding

Article 153. (1) Provisions for claims outstanding shall be established for benefit obligations as yet uncertain in terms of reason or amount for claims incurred by the balance sheet date as well as for all claims settlement costs still expected to arise in connection with these claims after the balance sheet date.

- (2) The provision for claims outstanding shall be computed separately for each case. The computation may be carried out in a different manner where the nature of the insurance class means that an individual calculation is not appropriate. A flat-rate valuation shall be permitted where the number of similar risks suggests that it will give approximately the same results as the individual calculation. In the case of co-insurance, the provision shall proportionately at least correspond to the amount determined by the leading insurer.
- (3) For claims incurred by the balance sheet date and not known at the date of balance sheet preparation, the provision shall be established on the basis of empirical values (provision for claims incurred but not reported).
- (4) The provision for claims outstanding shall also include the benefit obligations known at the balance sheet date but not yet paid.
- (5) Recoverable amounts arising out of recourse taken on the basis of insurance claims paid (subrogation) or of the legal ownership of insured property shall be deducted from the provision for claims outstanding. The recoverability and usability of the receivables shall be taken into account and the prudent person principle adhered to.
- (6) Where in an insurance class not covered by Article 92 benefits must be paid in the form of an annuity, the corresponding provision shall be calculated in accordance with recognised actuarial methods.

Volatility reserve

Article 154. (1) To balance fluctuations in annual retained claims expenditure, a volatility reserve shall be established in accordance with para. 2 for the insurance classes of non-life and accident insurance and for the reinsurance of these insurance classes.

(2) The obligation to establish a volatility reserve shall be applicable where considerable fluctuations of retained claims have been observed during an extended observation period and the total retained claims paid and the operating expenses have exceeded the retained earned premiums at least once during the observation period. The establishment of a volatility reserve shall not be required for insurance classes where the amount of earned premiums is not material.

(3) The FMA may demand the establishment of technical provisions similar to the volatility reserve for special risks where, due to the special nature of the risks, the computation of the average claim on the basis of an observation period is not an appropriate method to determine the reserve.

(4) The volatility reserve and provisions pursuant to para. 3 cannot be established in parallel for the same type of risk.

(5) Upon determining the computation rules for the volatility reserve and the provisions pursuant to para. 3, the FMA may give orders that derogate from the general disclosure requirements. Under special circumstances, the FMA may order a derogation from the general computation rules on a case-by-case basis.

SECTION 4: NOTES AND MANAGEMENT REPORT

Notes to the (consolidated) financial statements

Article 155. (1) Notwithstanding the provisions laid down in the UGB, the notes to the (consolidated) financial statements shall include the following details:

1. details on the share capital called up during the financial year as well as the amounts allocated to the share capital on the basis of this called-up capital and the amounts not yet paid;
2. details on the amounts allocated to the share capital from the profit for the previous year on account of the capital not yet paid;
3. details on the shareholders' shares in the profit for the year where the share capital has not yet been fully paid;
4. details on the amount of the share in a controlling undertaking, specifying the undertaking, possible obligations to make supplementary contributions and the change in the amount of the share during the financial year;
5. details on bonuses to policyholders and the distribution of the remaining net income to members of a mutual association, as well as on the development of the provisions established for that purpose;
6. details on the occurrence of an obligation to make supplementary contributions to be met by the members of a mutual association or on the reduction of insurance benefits payable to members of a mutual association as referred to in Article 44 para. 2.

(2) The notes to the financial statements shall also specify:

1. the development of items A., B. I. and B. II. of Article 144 para. 2 in the consolidated balance sheet; to this end, starting with the balance sheet values at the end of the preceding financial year, the additions, the transfers of entries, the disposals, the write-downs during the financial year, as well as the balance sheet values at the end of the financial year shall be listed separately; Article 226 para. 1 UGB shall not apply;
 - 1a. the balance sheet value of land used for own activities;
 2. the UCITS serving as investment in unit-linked life insurance;
 3. the amount of the policy loans contained in items B. III.6. of Article 144 para. 2;
 4. a breakdown of those other loans not secured by an insurance contract where the amount is material;
 5. the share in the items D. I., D. II., D. III. and D. IV. of Article 144 para. 2 as well as H. I., H. II., H. III., H. IV. and H. V. of Article 144 para. 3 attributable to related undertakings and to undertakings linked by virtue of participating interests;
 6. the share in securities, receivables or deposits with credit institutions attributable to related undertakings and to undertakings linked by virtue of participating interests and which is shown under investments except item B. II. of Article 144 para. 2;

7. amounts which are included in items A. III., B. III. 8., D. IV. and F. III. of Article 144 para. 2 as well as D. VII., F. V. and H. V. of Article 144 para. 3 and are of considerable significance; details on these amounts shall be required in all cases where they exceed 5% of the balance sheet total;
8. amounts which are included under “Other technical income”, “Other technical expenses”, “Other investment income and investment return”, “Other investment expenses”, “Other non-technical income” and “Other non-technical expenses” and are of considerable significance; details on these amounts shall be required in all cases where they exceed 5% of the earned premiums;
9. the amount of convertible debenture loans contained in item H. III. of Article 144 para. 3;
10. the amount contained in item H. V. of Article 144 para. 3 attributable to liabilities relating to taxes and social security;
11. the share of the indirect business in the earned premiums, the booking of which is deferred, broken down by the length of the deferral; changes shall be explained setting forth their effect on the net assets, financial position and the results of operations;
12. the amounts of the following contained in the items “Claims incurred”, “Operating expenses”, “Other technical expenses”, “Investment expenses” and “Other non-technical expenses”:
 - a. salaries and wages,
 - b. expenses for severance pay and contributions to corporate provision funds,
 - c. expenses for old-age pensions,
 - d. cost of statutory social security, payroll-related taxes and mandatory contributions,
 - e. other employee benefit costs; these details replace the details referred to in Article 238 para. 1 no. 13 and Article 239 para. 1 no. 2 UGB;
13. the commissions attributable to direct insurance business during the financial year;
14. receivables to be deducted from the provision for claims outstanding pursuant to Article 153 para. 5, where the amount is material;
15. a summary of the principal assumptions made when calculating the life/health insurance provision;
16. the amount of the cost deductions made when determining the unearned premiums;
17. the principles according to which the capital income transferred from the non-technical part to the technical part of the income statement is determined;
18. considerable differences in a balance sheet group between the claims paid and the provision for claims outstanding for previous years at the end of the financial year on the one hand, and the provision for claims outstanding at the beginning of the financial year on the other hand; the differences shall be explained with regard to their type and amount; and
19. the participation in profits in life insurance.

(3) Paragraph 2 with the exception of nos. 5, 6, 11, 15 and 19 shall be applied to the notes to the consolidated financial statements.

(3a) Where the amounts of items 8. and 9. of Article 146 para. 5 are essential for the assessment of the results of operations, they shall be explained with regard to their amount and type in the notes

to the (consolidated) financial statements. This shall also apply to income and expenses attributable to another financial year, unless they concern claims incurred.

(4) The details referred to in Article 237 para. 1 no. 2 UGB shall not pertain to contingent liabilities resulting from insurance contracts.

(5) The individual investments referred to in item B. of Article 144 para. 2 shall be shown in the notes to the (consolidated) financial statements at their current values. Moreover, with regard to the mentioned investments, the valuation methods applied to their determination shall be specified, as well as, with respect to land and buildings, the allocation according to the year of their valuation, and with respect to all other investments, the reasons for the use of the valuation methods.

(6) Current value shall mean:

1. in the case of land and buildings the price at which they could be sold under private contract between a willing seller and an arm's length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale. The current value shall be determined through valuation. The valuation shall be carried out at least every five years for each land and buildings item. Where the value of any land and buildings item has diminished since the preceding valuation, an appropriate value adjustment shall be made, which shall be retained until the next determination of current value (valuation). Where on the date of balance sheet preparation land and buildings have been sold or are to be sold, the current value shall be reduced by the estimated realisation costs.
2. for investments with a market or stock exchange price, the value at the balance sheet date or the last day preceding the day for which a market or stock exchange price could be determined. Where on the date of balance sheet preparation an investment has been sold or is to be sold, the current value shall be reduced by the estimated realisation costs. All investments shall be valued on a basis which has prudent regard to the likely realisable value.

(7) The notes to the consolidated financial statements shall specify:

1. application of Article 138 para. 5;
2. application of Article 138 para. 6; where the effect on the net assets, financial position and the results of operations of all undertakings included in the consolidation is substantial, explanations shall be added; and
3. the amount of deferred taxation.

(7a) Items A. IV. of Article 144 para. 2 and item C. of Article 144 para. 3 as well as any material changes in these items compared with the previous year shall be explained in the notes to the consolidated financial statements. Where differences on the asset side are set off against those on the liability side, these offset amounts shall be mentioned in the notes to the consolidated financial statements.

(7b) The composition of the items referred to in Article 145 shall be shown in the notes to the consolidated financial statements in accordance with the sectoral rules. In this context, items shall be broken down as a minimum in accordance with the items designated with capital letters and

Roman numerals in the balance sheet classification pursuant to Article 224 UGB. This provision shall be applied accordingly to undertakings with sector-specific balance sheet regulations. The items shall be explained, where necessary. The FMA may determine by regulation more detailed provisions relating to these details in the notes.

(8) In addition, the notes to the financial statements shall disclose:

1. with regard to non-life and accident insurance, the gross premiums written, the gross premiums earned, the gross claims incurred and the gross operating expenses, as well as the reinsurance balance, broken down into lines of business; and
2. with regard to health insurance and life insurance, the gross premiums written, broken down into lines of business, as well as the reinsurance balance.

(9) For the breakdown into lines of business in non-life and accident insurance, the amounts pursuant to para. 8 no. 1 shall be disclosed for fire and consequential loss, household, other damage to property, motor, third-party liability and other classes, accident, third-party liability, legal expenses, marine, aviation and transport, credit and suretyship, assistance and miscellaneous, each for the direct business, for the marine, aviation and transport reinsurance acceptances as well as for other indirect insurance.

(10) For the breakdown into lines of business in health insurance, the premiums written shall be disclosed in the notes to the financial statements for direct individual insurance and group contract insurance and for indirect business.

(11) For the breakdown into lines of business in health insurance, the premiums written shall be disclosed in the notes to the financial statements for individual insurance, for group contract insurance, for single premium contracts, for periodic premium contracts, for bonus contracts, for non-bonus contracts, for unit-linked life insurance contracts, for index-linked life insurance contracts and for investment-oriented life insurance contracts, as well as for indirect business.

(12) In the notes to the consolidated financial statements:

1. with regard to non-life and accident, the gross premiums written pursuant to para. 9; and
2. with regard to life and health, the gross written premiums shall be broken down into direct and indirect business.

(13) Where reinsurance acceptances are not shown in that balance sheet group to which they would have to be allocated as direct business, for non-life and accident insurance acceptances the amounts pursuant to para. 8 no. 1, and for life insurance and health insurance acceptances the amounts pursuant to para. 8 no. 2 shall be disclosed in the notes to the financial statements, and the balance sheet group that they are shown in shall be stated.

(14) For each balance sheet group, the premiums written of the entire business as well as the technical account balance, broken down into direct and indirect business for each of the individual states in which the insurance undertaking concludes insurance contracts through a branch or under the freedom to provide services, shall be disclosed separately in the notes to the (consolidated) financial statements, provided that the share of the respective state exceeds 3% of the premiums written of the entire business of the respective balance sheet group. The details shall not be required

where, in accordance with sound business judgement, they could cause a significant disadvantage to the undertaking or to an undertaking in which the undertaking owns at least one fifth of the shares; the application of this exception shall be stated in the notes to the (consolidated) financial statements.

(15) The average number of employees during the financial year as well as the staff costs incurred during the financial year shall be indicated separately in the notes to the (consolidated) financial statements according to business creation (sale) and operation; the average number of employees of only proportionally included undertakings pursuant to Article 262 UGB shall be disclosed separately in the notes to the consolidated financial statements.

(16) The amounts pursuant to paras. 1, 2 and 5 to 15 can be rounded to the nearest thousand euro.

(17) Article 237 para. 1 no. 6, Article 239 para. 1 no. 1 and Article 240 UGB shall not apply.

Management report and consolidated management report

Article 156. (1) The management report shall also report on:

1. those parts of the business activities that have been outsourced to another undertaking pursuant to Article 109, providing the name and head office of the undertaking; and
2. the development of the undertaking's business in the individual insurance classes of direct business and the effect of the result of indirect business on the profit or loss for the financial year.

(2) Article 267 para. 4 UGB shall not apply.

CHAPTER 8: SOLVENCY

SECTION 1: SOLVENCY BALANCE SHEET

Valuation of assets and liabilities

Article 157. (1) Insurance and reinsurance undertakings shall prepare a solvency balance sheet in accordance with the provisions of this Section and of the implementing regulation (EU). The provisions governing the solvency balance sheet shall not affect the accounting rules specified in the UGB and in this federal act. The terms used in this Section shall be interpreted solely based on the provisions specified in this Section.

(2) Insurance and reinsurance undertakings shall value their assets and liabilities as follows:

1. assets shall be valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;
2. liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

When valuing liabilities under no. 2, no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking shall be made.

General rules for technical provisions

Article 158. (1) Insurance and reinsurance undertakings shall establish technical provisions with respect to all insurance and reinsurance obligations towards policyholders and beneficiaries of insurance or reinsurance contracts. Technical provisions shall be calculated in a prudent, reliable and objective manner. When calculating, the principle laid down in Article 157 para. 2 shall be followed.

(2) The value of technical provisions shall correspond to the current amount insurance and reinsurance undertakings would have to pay if they were to transfer their insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.

(3) The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on underwriting risks (market consistency).

Calculation of technical provisions

Article 159. (1) The value of technical provisions shall be equal to the sum of:

1. a best estimate as set out in Article 160; and
2. a risk margin as set out in Article 161.

The best estimate and the risk margin shall be calculated separately.

(2) Insurance and reinsurance undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating their technical provisions.

(3) However, where future cash flows associated with insurance or reinsurance obligations can be replicated reliably using financial instruments for which a reliable market value is observable, notwithstanding the second sentence of para. 1, the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments.

(4) Other additional factors shall be taken into account when calculating technical provisions:

1. all expenses that will be incurred in servicing insurance and reinsurance obligations;
2. inflation, including expenses and claims inflation;
3. all payments to policyholders and beneficiaries, including future discretionary bonuses, which insurance and reinsurance undertakings expect to make, whether or not those payments are contractually guaranteed. Only such future discretionary bonuses paid to policyholders and beneficiaries are to be deducted as result from undeclared amounts, as of the calculation date, of provisions for bonuses in health insurance and of the provision for participation in profits and/or bonuses in life insurance.

(5) For the purpose of calculating the technical provisions, an emergency situation as referred to in Article 92 para. 5 shall be assumed to exist where:

1. the assessment basis referred to in Article 92 para. 4 has been non-positive for three consecutive years;
2. the additional interest provision has been completely released; and
3. the hidden net reserves in the balance sheet group concerned are no longer sufficient to ensure the contractually guaranteed benefits in that particular balance sheet group.

Best estimate

Article 160. (1) The best estimate shall correspond to the probability-weighted average of future cash-flows, taking account of the expected cash value (time value of money) and using the relevant risk-free interest rate term structure.

(2) The calculation of the best estimate shall be based upon up-to-date and credible information and realistic assumptions and be performed using adequate, suitable and relevant actuarial and statistical methods.

(3) The projection of future cash-flows that is used in the calculation of the best estimate shall take account of all the cash in-flows and out-flows required to settle the insurance and reinsurance obligations over their lifetime.

(4) The best estimate shall be calculated without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles. Those amounts shall be calculated separately as specified in Article 163.

Risk margin

Article 161. (1) The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount that insurance and reinsurance undertakings would be expected to require in order to take over and meet the insurance and reinsurance obligations.

(2) Where insurance and reinsurance undertakings value the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of capital needed to make available an amount of own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations until the settlement of those obligations.

(3) The Cost-of-Capital rate shall be determined in accordance with the implementing regulation (EU).

Financial guarantees and contractual options included in insurance and reinsurance contracts

Article 162. (1) When calculating technical provisions, the value of financial guarantees and any contractual options included in insurance and reinsurance policies shall be taken into account.

(2) Any assumptions made with respect to the likelihood that policyholders will exercise contractual options, including lapses and surrenders, shall be realistic and based on current and credible information. The assumptions shall take account, either explicitly or implicitly, of the impact that

future changes in financial and other framework conditions may have on the exercise of those options.

Recoverables from reinsurance contracts and special purpose vehicles

Article 163. Insurance and reinsurance undertakings shall comply with Articles 158 to 162 when calculating amounts recoverable from reinsurance contracts and special purpose vehicles. In this context, the difference between the dates when the amounts are received and when the payments are made to the beneficiaries shall be considered. The result from that calculation shall be adjusted to take account of expected losses due to default of the counterparty. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting from such default.

Data quality and application of approximations, including case-by-case approaches, for technical provisions

Article 164. (1) Insurance and reinsurance undertakings shall have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

(2) Where insurance and reinsurance undertakings have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their insurance and reinsurance obligations, or to amounts recoverable from reinsurance contracts and special purpose vehicles, appropriate approximations, including case-by-case approaches, may be used in the calculation of the best estimate.

Comparison with empirical data

Article 165. (1) Insurance and reinsurance undertakings shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared with empirical data.

(2) Where systematic deviation between empirical data and the best estimate calculations occurs, the insurance or reinsurance undertaking shall make appropriate adjustments to the actuarial methods being used or the assumptions being made.

Matching adjustment to the relevant risk-free interest rate term structure

Article 166. (1) Insurance and reinsurance undertakings may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts subject to approval by the FMA where the following conditions are met:

1. the insurance or reinsurance undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of

- the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except where a change is for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;
2. the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from the other activities of the undertakings, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertakings;
 3. the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;
 4. the contracts underlying the portfolio of insurance and reinsurance obligations do not give rise to future premium payments;
 5. the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;
 6. where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with Article 175 para. 3;
 7. the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the insured person or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with Article 157, covering the insurance or reinsurance obligations at the time the surrender option is exercised;
 8. the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties; and
 9. the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

Notwithstanding no. 8, insurance or reinsurance undertakings may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation. In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow them to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with no. 8.

(2) Insurance or reinsurance undertakings that apply the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment. Where an insurance or reinsurance undertaking that applies the matching

adjustment is no longer able to comply with the conditions set out in para. 1, it shall immediately inform the FMA and take the necessary measures to restore compliance with those conditions. Where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.

(3) The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment or transitional measure on the risk-free interest rates under Article 336.

(4) For each currency the matching adjustment shall be calculated in accordance with the following principles:

1. the matching adjustment must be equal to the difference of the following:
 - a. the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with Article 157 of the portfolio of assigned assets, and
 - b. the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;
2. the matching adjustment must not include the fundamental spread reflecting the risks retained by the insurance or reinsurance undertaking;
3. notwithstanding no. 1, the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class; and
4. the use of external credit assessments in the calculation of the matching adjustment must be in accordance with the implementing regulation (EU).

(5) For the purposes of para. 4 no. 2, the fundamental spread shall be:

1. equal to the sum of the following:
 - a. the credit spread corresponding to the probability of default of the assets, and
 - b. the credit spread corresponding to the expected loss resulting from downgrading of the assets;
2. for exposures to Member States' central governments and central banks, no lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets; and

3. for assets other than exposures to Member States' central governments and central banks, no lower than 35% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.

The probability of default referred to in no. 1 lit. a shall be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class. Where no reliable credit spread can be derived from the default statistics, the fundamental spread shall be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in nos. 2 and 3.

Volatility adjustment to the relevant risk-free interest rate term structure

Article 167. (1) Insurance and reinsurance undertakings may apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate.

(2) For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency. The reference portfolio for a currency shall be representative for the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

(3) The amount of the volatility adjustment to risk-free interest rates shall correspond to 65% of the risk-corrected currency spread. The risk-corrected currency spread shall be calculated as the difference between the spread referred to in para. 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets. The volatility adjustment shall apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation. The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

(4) For each relevant country, the volatility adjustment to the risk-free interest rates referred to in para. 3 for the currency of that country shall, before application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 85 basis points. The increased volatility adjustment shall be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country. The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in the currency of that country.

(5) The volatility adjustment shall not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment.

(6) By way of derogation from Article 175, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.

Use of the technical information produced by EIOPA

Article 168. (1) Insurance and reinsurance undertakings shall use the following technical information published by EIOPA to calculate the technical provisions:

1. a relevant risk-free interest rate term structure to calculate the best estimate, without any matching adjustment or volatility adjustment;
2. for each relevant duration, credit quality and asset class a fundamental spread for the calculation of the matching adjustment; and
3. the volatility adjustment to the relevant risk-free interest rate term structure.

Where implementing acts have been issued by the European Commission pursuant to Article 77e (2) of Directive 2009/138/EC containing the technical information listed in this paragraph, then the insurance undertakings and reinsurance undertakings shall use such technical information for the calculation of technical provisions pursuant to nos. 1 to 3.

(2) The determination of the relevant risk-free interest rate term structure shall make use of, and be consistent with, information derived from relevant financial instruments. That determination shall take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent. For maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent, the relevant risk-free interest rate term structure shall be extrapolated. The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

(3) With respect to currencies and countries for which no volatility adjustment is contained in the implementing acts pursuant to Article 77e (2) of Directive 2009/138/EC, no volatility adjustment shall be applied to the relevant risk-free interest rate term structure to calculate the best estimate.

SECTION 2: OWN FUNDS

General provisions

Article 169. Own funds shall comprise the sum of basic own funds referred to in Article 170 para. 1 and ancillary own funds referred to in Article 171.

Basic own funds

Article 170. (1) Basic own funds shall consist of:

1. the excess of assets over liabilities, valued in accordance with Section 1; and
2. subordinated liabilities.

(2) The annual general meeting shall exclude from distribution the total assets as defined in the second sentence of Article 104 para. 4 AktG and in the second sentence of Article 62 para. 2 no. 3 SEG, in the event that distribution would result in falling below the last reported level of the Solvency Capital Requirement. In accordance with the implementing regulation (EU), the FMA may approve a distribution of the total assets in exceptional cases.

Ancillary own funds

Article 171. (1) Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses. Ancillary own funds shall comprise in particular the following items:

1. unpaid share capital or initial fund that has not been called up;
2. letters of credit and guarantees; or
3. any other legally binding payment obligations of third parties towards insurance and reinsurance undertakings.

In the case of a mutual association which pursuant to Article 44 para. 2 has articles of association obliging the members to make supplementary contributions, ancillary own funds may also comprise any future claims which that mutual association may have against its members, where the association calls up supplementary contributions within the following twelve months.

(2) Where an ancillary own-fund item has been paid in or called up, it shall be recognised as a corresponding asset. Ancillary own-fund items become basic own-fund items when paid in or called up.

(3) Insurance and reinsurance undertakings may take ancillary own funds into account with the approval of the FMA. In accordance with the implementing regulation (EU), the FMA shall approve either of the following:

1. the maximum amount for each ancillary own fund-item; or
2. a method by which to determine the amount of each ancillary own-fund item.

The amount ascribed to each ancillary own-fund item shall reflect the loss-absorbency of the item and shall be based upon prudent and realistic assumptions. Where an ancillary own-fund item has a fixed nominal value, the amount of that item shall be equal to its nominal value, where it appropriately reflects its loss-absorbency.

(4) The FMA shall consider the following when giving approval:

1. the status of the counterparties concerned, in relation to their ability and willingness to pay;
2. the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up; and

3. any information on the outcome of past calls which insurance and reinsurance undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

Classification of own funds into tiers

Article 172. (1) Insurance and reinsurance undertakings shall classify the basic own-fund items that are specified in the list of own-fund items of the implementing regulation (EU) in Tier 1, Tier 2 or Tier 3, according to the criteria specified in the implementing regulation (EU). Where a basic own-fund item is not covered by that list, the insurance or reinsurance undertaking shall assess and classify that basic own-fund item according to the criteria specified in the implementing regulation (EU). Such classification shall require approval by the FMA in accordance with the implementing regulation (EU).

(2) Insurance and reinsurance undertakings shall classify the ancillary own-fund items that are specified in the list of own-fund items of the implementing regulation (EU) in Tier 2 or Tier 3, according to the criteria specified in the implementing regulation (EU). Where an ancillary own-fund item is not covered by that list, the insurance or reinsurance undertaking shall assess and classify that ancillary own-fund item according to the criteria specified in the implementing regulation (EU). Such classification shall require approval by the FMA in accordance with the implementing regulation (EU).

(3) Undeclared amounts of the provision for bonuses in health insurance and of the provision for participation in profits and/or bonuses in life insurance shall be considered surplus funds required to be classified in Tier 1 as referred to in Article 96(1) of Directive 2009/138/EC, where such amounts are not used to ensure the contractually guaranteed benefits.

Eligibility of own-fund items

Article 173. (1) The own-fund items classified in Tier 1, Tier 2 and Tier 3 in accordance with the implementing regulation (EU) shall be eligible to cover the Solvency Capital Requirement. The sum of the eligible own-fund items results in the own funds eligible pursuant to Article 174.

(2) The basic own-fund items classified in Tier 1 and Tier 2 in accordance with the implementing regulation (EU) shall be eligible to cover the Minimum Capital Requirement. The sum of the eligible basic own-fund items results in the own funds eligible pursuant to Article 193 para. 1.

SECTION 3: SOLVENCY CAPITAL REQUIREMENT

General provisions

Article 174. Insurance and reinsurance undertakings shall hold eligible own funds covering the Solvency Capital Requirement.

Calculation of the Solvency Capital Requirement

Article 175. (1) Insurance and reinsurance undertakings shall calculate the Solvency Capital Requirement either in accordance with the standard formula in Section 4 or using an internal model as set out in Section 5.

(2) The Solvency Capital Requirement shall be calculated on the presumption that the insurance or reinsurance undertaking will pursue its business as a going concern.

(3) The Solvency Capital Requirement shall be calibrated so as to ensure that all quantifiable risks to which an insurance or reinsurance undertaking is exposed are taken into account. It shall cover existing business, as well as the new business expected to be written over the following twelve months. With respect to existing business, it shall cover only unexpected losses. It shall correspond to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 99.5% over a one-year period.

(4) The Solvency Capital Requirement shall cover at least the following risks:

1. non-life underwriting risk;
2. life underwriting risk;
3. health underwriting risk;
4. market risk;
5. credit risk; and
6. operational risk.

Operational risk shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

(5) Insurance and reinsurance undertakings shall take account of the effect of risk mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

(6) When calculating the Solvency Capital Requirement, insurance and reinsurance undertakings shall use the harmonised inputs published by EIOPA as referred to in Article 109a of Directive 2009/138/EC.

Frequency of calculation

Article 176. (1) Insurance and reinsurance undertakings shall calculate the Solvency Capital Requirement at least once a year before submitting the information to the FMA as part of regular supervisory reporting and shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis. If the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, the insurance or reinsurance undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to the FMA in the form specified in the technical standards (EU) without delay.

(2) Where the FMA has evidence to suggest that the risk profile of an insurance or reinsurance undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the FMA may require the insurance or reinsurance undertaking concerned to recalculate the Solvency Capital Requirement.

SECTION 4: CALCULATION OF THE SOLVENCY CAPITAL REQUIREMENT USING THE STANDARD FORMULA

Structure of the standard formula

Article 177. (1) The Solvency Capital Requirement calculated on the basis of the standard formula shall be the sum of the following items:

1. the Basic Solvency Capital Requirement as laid down in Article 178;
2. the capital requirement for operational risk as laid down in para. 3; and
3. the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes as laid down in para. 4.

(2) Insurance and reinsurance undertakings shall calculate the Basic Solvency Capital Requirement in accordance with the implementing regulation (EU).

(3) The capital requirement for operational risk is calibrated as set out in Article 175 para. 3 and shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Article 178. With respect to life insurance contracts where the investment risk is borne by the policyholders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations. With respect to insurance and reinsurance operations other than those referred to in the second sentence, the calculation of the capital requirement for operational risk shall take account of the volume of those operations in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations. In this case, the capital requirement for operational risks shall not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

(4) The adjustment for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two. That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent insurance and reinsurance undertakings can establish that a reduction in such benefits may be used to cover unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits. For that purpose, the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

(5) The FMA may, with the consent of the Federal Minister of Finance, determine by regulation detailed rules for calculating the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent necessary in order to ensure that the insurance undertakings apply a uniform method of calculation.

Design of the Basic Solvency Capital Requirement

Article 178. (1) The Basic Solvency Capital Requirement shall comprise the following risk modules, which are aggregated in accordance with the implementing regulation (EU):

1. the non-life underwriting risk module;
2. the life underwriting risk module;
3. the health underwriting risk module;
4. the market risk module;
5. the counterparty default risk module; and
6. the intangible assets risk module.

(2) For the purposes of para. 1 nos. 1 to 3, insurance or reinsurance obligations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

(3) The correlation coefficients for the aggregation of the risk modules referred to in para. 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in Article 175.

(4) With the approval of the FMA, insurance and reinsurance undertakings may, within the design of the standard formula, replace a subset of the parameters by parameters specific to that undertaking as set out in the implementing regulation (EU) when calculating the life, non-life and health underwriting risk modules. Those parameters shall be calibrated on the basis of the internal data of the insurance or reinsurance undertaking concerned, or of data which is directly relevant for the operations of that undertaking using standardised methods. When granting approval, the FMA shall especially verify the completeness, accuracy and appropriateness of the data used.

(5) Insurance and reinsurance undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation. Calibration shall be performed as set out in Article 175 para. 3.

Risk modules of the Basic Solvency Capital Requirement

Article 179. (1) The non-life underwriting risk module shall reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business. It shall take account of the uncertainty in the results of insurance and reinsurance undertakings related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following twelve months. It shall be calculated as a combination of the capital requirements for at least the following sub-modules:

1. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk); and
2. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).

(2) The life underwriting risk module shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business. It shall be calculated as a combination of the capital requirements for at least the following sub-modules:

1. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);
2. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);
3. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability risk/morbidity risk);
4. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of the expenses incurred in servicing insurance or reinsurance contracts (life-expense risk);
5. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);
6. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk); and
7. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life-catastrophe risk).

(3) The health underwriting risk module shall reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business. It shall cover at least the following risks:

1. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of the expenses incurred in servicing insurance or reinsurance contracts;

2. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning; and
 3. the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.
- (4) The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. It shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to their duration. It shall be calculated as a combination of the capital requirements for at least the following sub-modules:
1. the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates or in the volatility of interest rates (interest rate risk);
 2. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);
 3. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);
 4. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);
 5. the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk); and
 6. additional risks to an insurance or reinsurance undertaking stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).
- (5) The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of insurance and reinsurance undertakings over the following twelve months. The counterparty default risk module shall cover risk mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module. It shall take appropriate account of collateral or other security held by or for the account of the insurance or reinsurance undertaking and the risks associated with such security. For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure of the insurance or reinsurance undertaking concerned to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.
- (6) The intangible assets risk module shall reflect the related risks.

Calculation of the sub-module equity risk: symmetric adjustment mechanism

Article 179a. (1) The equity risk sub-module calculated using the standard formula includes a symmetric adjustment of the capital requirement for the equity capital charge for covering the risk associated with changes to the level of the stock price.

(2) The symmetric adjustment of the standard equity capital charge for covering the risk associated with changes to the level of the stock price calibrated pursuant to Article 175 para. 3 shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time which shall be the same for all insurance and reinsurance undertakings.

(3) The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than the standard equity capital charge.

Duration-based equity risk sub-module

Article 180. (1) Insurance undertakings that offer retirement benefits as part of pursuing life activities may, with the approval of the FMA, calculate the equity risk sub-module for a group of insurance contracts, where:

1. the benefits are paid on reaching or in expectation of reaching retirement;
2. the policyholders are entitled to claim a tax deduction for the premiums;
3. the insurance contracts only concern risks situated in Austria; and
4. the average duration of the liabilities held by the undertaking corresponding to those insurance contracts exceeds an average of twelve years.

Where insurance undertakings calculate the sub-module based on the first sentence, they must establish a ring-fenced fund for all of the assets and liabilities corresponding to those insurance contracts and manage and organise those assets and liabilities separately from the other contracts while excluding the option of a transfer.

(2) The insurance undertaking shall ensure that the solvency and liquidity position as well as the strategies, processes and reporting procedures with respect to asset-liability management consistently guarantee that the insurance undertaking is in fact able to hold the recorded equity investments for the typical holding period assumed when the calculation was approved. The insurance undertaking shall demonstrate to the FMA that this condition is verified with the level of confidence which provides policyholders and beneficiaries with a level of protection equivalent to that set out in Article 175.

(3) Where sufficiently justified grounds exist, insurance undertakings may with the FMA's approval revert from calculation of the equity risk sub-module based on para. 1 to calculation based on Article 179 para. 4 no. 2.

FMA measures on significant deviations from the assumptions underlying the standard formula calculation

Article 181. (1) The FMA may order an insurance or reinsurance undertaking to apply the parameters specific to the undertaking as set out in Article 178 para. 4 when calculating the life underwriting risk module, the non-life underwriting risk module and the health underwriting risk module, where the risk profile of the insurance or reinsurance undertaking concerned would deviate significantly from the assumptions underlying the standard formula calculation when calculating the Solvency Capital Requirement in accordance with the standard formula.

(2) The FMA may order an insurance or reinsurance undertaking to use an internal model to calculate the Solvency Capital Requirement or the relevant risk modules, where the risk profile of the insurance or reinsurance undertaking concerned would deviate significantly from the assumptions underlying the standard formula calculation when calculating the Solvency Capital Requirement in accordance with the standard formula.

SECTION 5: CALCULATION OF THE SOLVENCY CAPITAL REQUIREMENT USING AN INTERNAL MODEL

General provisions for the approval of full and partial internal models

Article 182. (1) Insurance or reinsurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model. An internal module shall require approval as specified in para. 4.

(2) A partial internal model may be used for the calculation of one or more of the following:

1. one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement;
2. the capital requirement for operational risk; or
3. the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes.

In addition, partial modelling may be applied to the whole business of insurance and reinsurance undertakings, or only to one or more major business units.

(3) The management board or administrative board of the insurance or reinsurance undertaking shall adopt the application for approval of the internal model as referred to in para. 4 as well as the application for approval of any subsequent major changes made to that model.

(3a) The FMA shall inform EIOPA in accordance with Article 35 (1) of Regulation (EU) No 1094/2010 about every application to use or change an internal model. The FMA may request EIOPA to provide technical assistance pursuant to Article 8 (1) lit. b) of Regulation (EU) No 1094/2010 in deciding about applications.

(4) The FMA shall decide on the application within six months of receiving the complete application for approval of an internal model, presenting details of fulfilment of the requirements set out in Articles 186 to 191. Those requirements shall be applied accordingly to applications for approval of a partial internal model, taking account of the model's limited scope of application.

(5) Prior to approving internal or partial internal models as referred to in para. 4, and where those models comprise the market risk module or parts of the market risk module, the FMA shall obtain an expert opinion by the *Oesterreichische Nationalbank* (OeNB). The OeNB shall assess in such cases whether the market risk module or, where applicable, parts of the market risk module comply with the applicable specifications.

(6) The OeNB shall submit expert opinions pursuant to para. 5 under its own responsibility and in its own name. The FMA shall as far as possible base its approval on the expert opinions by the OeNB and may rely on their correctness and completeness, unless it has reasonable doubts as to their correctness or completeness. The OeNB shall forward to the FMA without delay any statements received from the insurance undertaking concerned.

(7) The OeNB shall:

1. prepare a list of the expenses directly incurred by expert opinions pursuant to para. 5 during the relevant financial year and have the list audited by the auditor referred to in Article 37 of the National Bank Act (NBG; *Nationalbankgesetz*);
2. forward the audited list to the FMA by 30 April of each following financial year;
3. by 30 September of each year provide the FMA with an estimate for each following financial year of the expenses directly incurred by expert opinions pursuant to para. 5; and
4. inform the Federal Minister of Finance and the FMA once a year of the average annual number of employees occupied with expert opinions pursuant to para. 5; such information may also be disclosed by publication.

(8) After approving the internal model, the FMA may order, stating the relevant reasons, insurance and reinsurance undertakings to present an estimate of the Solvency Capital Requirement determined in accordance with the standard formula as set out in Section 4.

(9) Insurance and reinsurance undertakings may change their internal model in accordance with the written policy for changing the internal model, which is to be approved by the FMA as part of the initial approval process. Major changes to the internal model, as well as changes to that written policy, shall always be subject to prior approval by the FMA as laid down in para. 4. Minor changes to the internal model that are in accordance with that written policy may be made without the FMA's approval.

(10) It shall lie within the responsibility of the management board or administrative board to ensure that systems are put in place which ensure that the internal model operates properly on a continuous basis.

Specific provisions for the approval of partial internal models

Article 183. (1) The FMA may approve partial internal models only where:

1. the reason for the limited scope of application of the model is properly justified by the insurance or reinsurance undertaking;

2. the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and in particular complies with the principles set out in Section 3; and
3. its design is consistent with the principles set out in Section 3 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula.

(2) When approving an application for the use of a partial internal model which only covers certain sub-modules, or some of the business units of an insurance or reinsurance undertaking with respect to a specific risk module, or parts of both, the FMA may require the insurance and reinsurance undertakings concerned to submit a realistic transitional plan to extend the scope of the model. The transitional plan shall set out the manner in which an insurance or reinsurance undertaking plans to extend the scope of the partial internal model to other sub-modules or business units, in order to ensure that it covers a predominant part of the insurance operations with respect to the specific risk module referred to in the first sentence.

Reversion to the standard formula

Article 184. After approval of the internal model, insurance and reinsurance undertakings may revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula as set out in Section 4 only in duly justified circumstances and with the FMA's approval.

Non-compliance of the internal model

Article 185. (1) Insurance and reinsurance undertakings shall consistently comply with the requirements underlying the approval of the internal model, in particular the requirements set out in Articles 186 to 191.

(2) Where an insurance or reinsurance undertaking no longer complies with the requirements underlying the approval of the internal model, it shall without delay either present to the FMA a plan suited to ensuring that the undertaking will restore compliance with the requirements within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.

(3) Where an insurance or reinsurance undertaking fails to implement the plan referred to in para. 2, the FMA may require the undertaking to revert to calculating the Solvency Capital Requirement in accordance with the standard formula as set out in Section 4.

Use test

Article 186. (1) Insurance and reinsurance undertakings shall demonstrate that the internal model is widely used and plays an important role in their system of governance, especially in:

1. their risk management system as laid down in Articles 110 and 112 and their decision-making processes; and
2. their economic and solvency capital assessment and allocation processes, including the own risk and solvency assessment referred to in Article 111.

(2) In addition, insurance and reinsurance undertakings shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by the first paragraph.

(3) The management board or administrative board shall be responsible for ensuring the ongoing appropriateness of the design and functioning of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance and reinsurance undertakings concerned.

Statistical quality standards

Article 187. (1) The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in paras. 2 to 9.

(2) The methods used to calculate the probability distribution forecast shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions. The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions. Insurance and reinsurance undertakings shall be able to justify the assumptions underlying their internal model to the FMA.

(3) Data used for the internal model shall be accurate, complete and appropriate. The data sets used in the calculation of the probability distribution forecast shall be updated at least annually.

(4) Regardless of the calculation method chosen, risk-ranking by the internal model must ensure that the internal model is widely used and plays an important role in the system of governance as set out in Article 186. The internal model shall cover all of the material risks to which insurance and reinsurance undertakings are exposed, including in the least the risks mentioned in Article 175 para. 4.

(5) As regards diversification effects, dependencies within and across risk categories may be taken account of in the internal model, provided that the insurance or reinsurance undertaking demonstrates to the FMA that the system used for measuring those diversification effects is adequate.

(6) The effect of risk mitigation techniques may be fully taken account of in the internal model, as long as credit risk and other risks arising from the use of risk mitigation techniques are properly reflected in the internal model.

(7) The particular risks associated with financial guarantees and any contractual options shall be accurately assessed in the internal model, where material. The risks associated with both policyholder options and contractual options for insurance and reinsurance undertakings shall also be assessed. For that purpose, the impact that future changes in financial and non-financial conditions may have on the exercise of those options shall be taken account of.

(8) In the internal model, future management actions may be taken account of to the extent that such actions can be reasonably expected to be taken in specific circumstances. In that case the time necessary to implement such actions shall be considered.

(9) All expected payments to policyholders and beneficiaries shall be taken account of in the internal model, whether or not those payments are contractually guaranteed.

Calibration standards

Article 188. (1) A different time period or risk measure than that set out in Article 175 para. 3 may be used in the internal model as long as the outputs of the internal model can be used to calculate the Solvency Capital Requirement in a manner that provides policyholders and beneficiaries with a level of protection equivalent to that set out in Article 175.

(2) Where practicable, the Solvency Capital Requirement shall be derived directly from the probability distribution forecast generated by the internal model. The Value-at-Risk measure set out in Article 175 para. 3 shall be used for that purpose.

(3) Where the Solvency Capital Requirement cannot be derived directly from the probability distribution forecast generated by the internal model, the FMA may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as the insurance or reinsurance undertaking can demonstrate to the FMA that policyholders and beneficiaries are provided with a level of protection equivalent to that provided for in Article 175.

(4) The FMA may require an insurance or reinsurance undertaking to run the internal model on relevant benchmark portfolios, using assumptions based on external rather than internal data, in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

Profit and loss attribution

Article 189. Insurance and reinsurance undertakings shall review, at least annually, the causes and sources of profits and losses for each major business unit. In that case it shall be demonstrated how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses. The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the insurance or reinsurance undertaking.

Validation standards

Article 190. (1) Insurance and reinsurance undertakings shall have a regular cycle of model validation which includes monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification and comparing its results with empirical data.

(2) The model validation process shall include an effective statistical process for validating the internal model which enables the insurance or reinsurance undertaking to demonstrate to the FMA that the resulting capital requirements are appropriate. The statistical methods applied shall test

the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating to the forecast.

(3) The model validation process shall include an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. It shall also include an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

Documentation standards

Article 191. (1) Insurance and reinsurance undertakings shall document the design and operational details of their internal model. The documentation shall demonstrate compliance with the requirements set out in Articles 186 to 190.

(2) The documentation shall provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model and shall describe any circumstances under which the internal model does not work effectively.

(3) Insurance and reinsurance undertakings shall document all major changes to their internal model as set out in Article 182 para. 9.

External models and data

Article 192. The use of a model obtained from a third party or data obtained from a third party shall not be considered a justification for exemption from any of the requirements for the internal model set out in Articles 186 to 191.

SECTION 6: MINIMUM CAPITAL REQUIREMENT

General provisions

Article 193. (1) Insurance and reinsurance undertakings shall hold eligible basic own funds, to cover the Minimum Capital Requirement.

(2) Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement in accordance with the implementing regulation (EU). It shall have an absolute floor as follows:

1. EUR 2.7 million for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks listed under nos. 10 to 15 of Annex A are covered; in which case it shall be no less than EUR 4 million;
2. EUR 4 million for life insurance undertakings, including captive insurance undertakings;
3. EUR 3.9 million for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case a Minimum Capital Requirement of EUR 1.3 million shall apply; and
4. the sum of the amounts set out in nos. 1 and 2 for composite undertakings.

(3) Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly before submitting the information to the FMA as part of regular supervisory reporting pursuant to the implementing regulation (EU). Calculation shall also be performed immediately after any recalculation of the Solvency Capital Requirement as referred to in the second sentence of Article 176 para. 1 and shall be reported to the FMA. Where the Minimum Capital Requirement is determined on the basis of the Solvency Capital Requirement by applying the percentage limits referred to in the first subparagraph of Article 129(3) of Directive 2009/138/EC, insurance and reinsurance undertakings shall provide the FMA with reasons for doing so. The limits shall be calculated based on the last reported Solvency Capital Requirement.

Special provisions for composite undertakings

Article 194. (1) Without prejudice to Article 193, composite undertakings shall hold eligible basic own funds, to cover:

1. the notional life Minimum Capital Requirement, in respect of the life activity; and
2. the notional non-life Minimum Capital Requirement in respect of the non-life activity, with the notional Minimum Capital Requirements not allowed to be borne by the other activity.

(2) Composite undertakings shall calculate the notional life Minimum Capital Requirement in respect of the life activity and the notional non-life Minimum Capital Requirement in respect of the non-life activity in accordance with the implementing regulation (EU) and report these figures to the FMA at the same time as the report of the Minimum Capital Requirement referred to in Article 193 para. 3.

(3) For the purposes of para. 1, composite undertakings shall prepare a statement in which the eligible basic own-fund items of life and non-life activity shall be assigned as follows:

1. the surplus funds shall be assigned to life activity where attributable to the provision for participation in profits in life insurance as shown by the financial statements and to non-life activity where attributable to the provision for bonuses in health insurance as shown by the financial statements.
2. the reconciliation reserve shall be assigned in accordance with the proportion used to calculate the notional Minimum Capital Requirement as specified in the implementing regulation (EU).
3. the remaining eligible basic own-fund items shall be assigned to life activity where attributable to items of the life insurance balance sheet group and to non-life activity where attributable to items of the health insurance and the non-life and accident insurance balance sheet groups.

Composite undertakings shall submit this statement to the FMA along with the report referred to in para. 2.

CHAPTER 9: GROUP SUPERVISION

SECTION 1: DEFINITIONS AND SCOPE

Definitions

Article 195. (1) For the purposes of this Chapter, the following definitions shall apply:

1. Participating undertaking: a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 22(7) of Directive 2013/34/EU.
2. Related undertaking: a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 22(7) of Directive 2013/34/EU.
3. Group: a group of undertakings that:
 - a. consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 22(7) of Directive 2013/34/EU; or
 - b. is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group, and the establishment and dissolution of such relationships for the purposes of this Chapter are subject to prior approval by the group supervisor; the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries.
4. Group supervisor: the supervisory authority responsible for group supervision pursuant to Article 226.
5. College of supervisors: a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group.
6. Insurance holding company: a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking.
7. Mixed-activity insurance holding company: a parent undertaking, other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding

company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings.

8. Mixed financial holding company: a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC.

(2) For the purposes of this Chapter, the FMA shall:

1. also consider as a parent undertaking any undertaking which, in the FMA's opinion, effectively exercises a dominant influence over another undertaking;
2. also consider as a subsidiary undertaking any undertaking over which, in the FMA's opinion, a parent undertaking effectively exercises a dominant influence; and
3. also consider as a participation the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the FMA's opinion, a significant influence is effectively exercised.

General provisions

Article 196. (1) Insurance and reinsurance undertakings in a group shall be subject to supervision by the FMA at group level in accordance with the provisions of this Chapter if the FMA is appointed as the authority responsible for group supervision in accordance with Article 226.

(2) In the absence of any provision to the contrary in this Chapter, the rules for the supervision of insurance and reinsurance undertakings taken individually shall continue to apply to such undertakings.

(3) Insurance and reinsurance undertakings must immediately notify the FMA if the circumstances justifying group supervision pursuant to Article 197 occur or cease to apply.

Cases of application of group supervision

Article 197. (1) In its capacity as group supervisor, the FMA must:

1. supervise insurance or reinsurance undertakings which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 202 to 236;
2. supervise insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company with its head office in a Member State in either case, in accordance with Articles 202 to 236;
3. supervise insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company with its head office in a third country, a mixed financial holding company with its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Section 7; and
4. supervise insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 201.

(2) Where the participating insurance or reinsurance undertaking referred to in para. 1 no. 1 or the insurance holding company or mixed financial holding company referred to in para. 1 no. 2, with its head office in a Member State in each case, is itself a related undertaking of a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the FMA in the capacity of group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company the supervision of risk concentration referred to in Article 220, the supervision of intra-group transactions referred to in Article 221, or both.

(3) Where the participating insurance or reinsurance undertaking referred to in para. 1 no. 1 or the insurance holding company or mixed financial holding company referred to in para. 1 no. 2 is itself a subsidiary undertaking of another insurance or reinsurance undertaking, another insurance holding company or a mixed financial holding company, with its head office in a Member State in each case, there shall be no supervision pursuant to para. 1. Supervision shall be carried out at the level of the insurance or reinsurance undertaking or insurance holding company or mixed financial holding company with its head office in a Member State that is the ultimate parent undertaking at the level of the Member States.

(4) Where the ultimate parent undertaking referred to in para. 3, with its head office in a Member State in each case, is either a subsidiary undertaking of a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, or is itself such an undertaking or company, the FMA in the capacity of group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company the supervision of risk concentration referred to in Article 220, the supervision of intra-group transactions referred to in Article 221, or both.

(5) Insofar as a mixed financial holding company referred to in para. 1 no. 2 is subject to equivalent rules of this federal act and the FKG, particularly with regard to risk-based supervision, the FMA as the competent authority may, after consulting the other authorities concerned, decide that only the corresponding provisions of the FKG shall apply at the level of that mixed financial holding company.

(6) Insofar as a mixed financial holding company as referred to in para. 1 no. 2 is subject to equivalent provisions of this federal act and the BWG, particularly with regard to risk-based supervision, the FMA as the competent authority may decide in agreement with the consolidating authority for the banking and investment services sector that only the provisions of the BWG or of this federal act shall apply at the level of that mixed financial holding company according to the financial sector to which the higher average share of activity can be allocated pursuant to Article 2 no. 7 FKG.

(7) The FMA, as the group supervisor, must inform the EBA and EIOPA of any decisions made pursuant to paras. 5 and 6.

Exclusion of undertakings from group supervision

Article 198. (1) The FMA, as the group supervisor, may decide on a case-by-case basis not to include an undertaking in group supervision where:

1. the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 210;
2. the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or
3. the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of group supervision.

However, where several undertakings of the same group, taken individually, may be excluded pursuant to no. 2, they must nevertheless be included where, collectively, they are of non-negligible interest.

(2) If the FMA in the capacity of group supervisor is of the opinion that an insurance or reinsurance undertaking should not be included in group supervision in accordance with para. 1 nos. 2 and 3, it shall consult the other supervisory authorities concerned before taking a decision.

(3) The ultimate parent undertaking must, upon request from the supervisory authorities of the Member State in which an insurance or reinsurance undertaking that is not included in group supervision pursuant to para. 1 nos. 2 and 3 is situated, supply such authorities with all of the information required by them to facilitate their supervision of the insurance or reinsurance undertaking concerned. For the purposes of supervising an insurance or reinsurance undertaking situated in Austria that is not included in group supervision pursuant to para. 1 nos. 2 and 3, the FMA may request all of the information needed to facilitate supervision from the ultimate undertaking with its head office in a Member State.

Subgroup supervision at the level of a national subgroup

Article 199. (1) The FMA may, where the participating insurance or reinsurance undertaking referred to in Article 197 para. 1 no. 1, or the insurance holding company or mixed financial holding company referred to in Article 197 para. 1 no. 2 is itself a subsidiary undertaking of another insurance or reinsurance undertaking, another insurance holding company or a mixed financial holding company, with its head office in a Member State in each case, and after consulting the group supervisor and that ultimate parent undertaking, order that the ultimate parent undertaking at national level, in the form of an insurance or reinsurance undertaking, insurance holding company or mixed financial holding company, with its head office in Austria in each case, be subject to subgroup supervision.

(2) The FMA shall explain its decision pursuant to para. 1 to both the group supervisor and the ultimate parent undertaking at the level of the Member States.

(3) Subject to paras. 4 to 7, Articles 202 to 214 and Articles 220 to 236 shall apply accordingly.

(4) Subject to paras. 5 to 7, the FMA may limit subgroup supervision in relation to the ultimate parent undertaking at national level to the following:

1. group solvency in accordance with Section 2;
2. risk concentration and intra-group transactions in accordance with Section 4; or
3. governance at group level in accordance with Articles 222 to 225.

(5) Where the FMA decides to apply Section 2 to the ultimate parent undertaking at national level, the FMA must recognise as binding and apply the method chosen by the group supervisor for the ultimate parent undertaking at the level of the Member States referred to in Article 197 para. 3.

(6) Where the FMA decides to apply Section 2 to the ultimate parent undertaking at national level, and where approval pursuant to Article 212 or Article 214 has been granted to the ultimate parent undertaking at the level of the Member States referred to in Article 197 para. 3 to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, the FMA must recognise this decision as binding and implement it accordingly. Where the FMA considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the assumptions underlying the internal model approved at Member State level, and as long as that undertaking has not properly addressed its concerns, the FMA may impose a capital add-on to the Solvency Capital Requirement of the subgroup resulting from the application of such internal model. In exceptional circumstances, where such capital add-on would not be appropriate, the FMA may require the undertaking concerned to calculate the Solvency Capital Requirement for the subgroup on the basis of the standard formula. The FMA shall explain such decisions to both the undertaking and the group supervisor.

(7) Any decision pursuant to para. 1 may not be made or upheld if the ultimate parent undertaking at national level is a subsidiary undertaking of the ultimate parent undertaking at the level of the Member States as referred to in Article 197 para. 3 and this undertaking has been given permission to apply the rules for groups with centralised risk management pursuant to Section 3 or Articles 237 or 239 of Directive 2009/138/EC.

(8) Where the FMA is the group supervisor and has made a decision in relation to this group pursuant to Article 216(1) or (4) of Directive 2009/138/EC, it must inform the college of supervisors accordingly.

Subgroup supervision at the level of a subgroup covering several Member States

Article 200. (1) Where the conditions pursuant to Article 199 para. 1 are met, the FMA may conclude an agreement with supervisory authorities in other Member States in which a related undertaking is located that is also the ultimate parent undertaking at national level, with a view to carrying out subgroup supervision at the level of a subgroup covering several Member States. The FMA shall impose subgroup supervision covering several Member States on this ultimate parent undertaking at national level.

(2) Where the conditions pursuant to Article 199 para. 1 are met, the FMA may agree with the supervisory authority of a Member State in which a participating undertaking is located that is also the ultimate parent undertaking at national level that this supervisory authority will carry out subgroup supervision at the level of a subgroup covering several Member States, provided that the Member State in question has exercised its right to choose pursuant to Article 216 of Directive 2009/138/EC. In such a case, the FMA must not carry out subgroup supervision at the level of an ultimate parent undertaking referred to in para. 1 with its head office in Austria that is a related undertaking of the ultimate parent undertaking with its head office in another Member State. During any such arrangement, the ultimate parent undertaking at national level must fulfil the obligations pursuant to Article 234 towards the supervisory authority of the other Member State.

(3) Article 199 paras. 2 to 7 shall apply accordingly. The FMA, together with the other supervisory authorities concerned, shall explain the arrangement to the group supervisor and the ultimate parent undertaking at the level of the Member States.

(4) Where the FMA is the group supervisor and has concluded an agreement in relation to this group pursuant to Article 217 of Directive 2009/138/EC, it must inform the college of supervisors accordingly.

Mixed-activity insurance holding companies

Article 201. (1) Where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company, the FMA as the supervisory authority responsible for the supervision of those insurance or reinsurance undertakings must supervise intra-group transactions between these insurance or reinsurance undertakings and the mixed-activity insurance holding company.

(2) Article 221 and Articles 229 to 236 shall apply accordingly.

SECTION 2: GROUP SOLVENCY

General provisions

Article 202. (1) In the case referred to in Article 197 para. 1 no. 1, the participating insurance or reinsurance undertaking shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Articles 204 to 214.

(2) In the case referred to in Article 197 para. 1 no. 2, insurance or reinsurance undertakings in a group shall ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated at the level of the insurance holding company or mixed financial holding company. Articles 204 to 214 shall apply accordingly for the purposes of this calculation, and this insurance holding company or mixed financial holding company shall be treated in the same way as an insurance or reinsurance undertaking for which the

provisions of Sections 3 to 5 of Chapter 8 apply accordingly in relation to the Solvency Capital Requirement and the provisions of Section 2 of Chapter 8 apply accordingly with regard to eligible own funds.

(3) The measures in the event of a deterioration in financial conditions pursuant to Article 278 and the measures in the event of non-compliance with the Solvency Capital Requirement pursuant to Article 279 shall apply accordingly.

(4) The participating insurance or reinsurance undertaking in the case referred to in Article 197 para. 1 no. 1 or the insurance holding company or mixed financial holding company in the case referred to in Article 197 para. 1 no. 2 must notify the FMA without delay as soon as they observe that the group Solvency Capital Requirement is no longer complied with or where there is a risk that this Solvency Capital Requirement for the group might cease to be met during the next three months. In its capacity as group supervisor, the FMA must inform the other supervisory authorities in the college of supervisors.

(5) Article 157 shall apply accordingly for the purposes of calculating group solvency.

Frequency of calculation

Article 203. (1) The participating insurance or reinsurance undertaking in the case referred to in Article 197 para. 1 no. 1 or the insurance holding company or mixed financial holding company in the case referred to in Article 197 para. 1 no. 2 must calculate group solvency at least annually before submitting the information to the FMA as part of regular supervisory reporting.

(2) The reporting to the FMA in the capacity of group supervisor must be carried out as follows:

1. in the case referred to in Article 197 para. 1 no. 1, by the participating insurance or reinsurance undertaking; and
2. in the case referred to in Article 197 para. 1 no. 2, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking identified by the FMA in the capacity of group supervisor after consulting the other supervisory authorities concerned and the group itself.

(3) The participating insurance and reinsurance undertaking in the case referred to in Article 197 para. 1 no. 1 or the insurance holding company or mixed financial holding company in the case referred to in Article 197 para. 1 no. 2 shall monitor the group Solvency Capital Requirement on an ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported without delay to the FMA in the capacity of group supervisor by the undertaking responsible pursuant to para. 2.

(4) Where the FMA has evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the FMA in the capacity of group supervisor may require a recalculation of the group Solvency Capital Requirement.

Choice of method

Article 204. (1) Group solvency shall be calculated using the consolidation method (method 1) as set out in Articles 211 and 212.

(2) As the group supervisor and after consulting the other supervisory authorities concerned and the group itself and taking into account the conditions of the implementing regulation (EU), the FMA may approve application of the deduction and aggregation method (method 2) in accordance with Articles 213 and 214, or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Inclusion of proportional share

Article 205. (1) The calculation of the group solvency shall take account of the proportional share held by the participating insurance or reinsurance undertaking in its related undertakings. The proportional share shall comprise:

1. where method 1 is used, the percentages used for the establishment of the consolidated financial statements; and
2. where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

(2) Where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account regardless of the method used to calculate group solvency. Where the responsibility of the parent undertaking owning a share of the capital can be proven to be strictly limited to that share of the capital, the FMA, as the group supervisor, may allow for the solvency deficit of the subsidiary undertaking to be taken into account only on a proportional basis.

(3) The FMA, as the group supervisor, shall determine, after consulting the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:

1. where there are no capital ties between some of the undertakings in a group;
2. where the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because a significant influence is effectively exercised over that undertaking;
3. where an undertaking is a parent undertaking of another because it effectively exercises a dominant influence over that other undertaking.

Elimination of double use of eligible own funds

Article 206. (1) The double use of eligible own funds among the different insurance or reinsurance undertakings taken into account in that calculation shall not be allowed.

(2) Where the methods pursuant to Articles 211 to 214 do not provide for it, the following amounts shall not be excluded in the calculation of group solvency:

1. the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;
2. the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;
3. the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

(3) Where the methods pursuant to Articles 211 to 214 do not provide for it, the following own-fund items shall not be included in the calculation:

1. subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;
2. subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking; and
3. subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

(4) Without prejudice to paras. 2 and 3, the following own-fund items may be included in the calculation only insofar as they are eligible for covering the Solvency Capital Requirement of the related insurance or reinsurance undertaking concerned:

1. surplus funds arising in a related insurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated; and
2. any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

(5) Where the FMA, as the group supervisor, considers that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paras. 2 to 4 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, the FMA may require that these own funds only be included in the calculation insofar as they are eligible for covering the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

(6) The sum of the own funds referred to in paras. 4 and 5 shall not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

(7) Any ancillary own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated may be included in the calculation only insofar as they have been authorised by the supervisory authority.

Elimination of the intra-group creation of capital

Article 207. (1) When calculating group solvency, no account shall be taken of any eligible own funds arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following undertakings:

1. a related undertaking;
2. a participating undertaking; and
3. another related undertaking of any of its participating undertakings.

(2) When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

(3) Reciprocal financing shall be deemed to exist at least where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Inclusion of certain companies

Article 208. (1) Group solvency shall be calculated by including all related insurance or reinsurance undertakings. Where a related insurance or reinsurance undertaking has its head office in another Member State, the Solvency Capital Requirement and own funds calculated on the basis of the applicable law in that Member State shall be taken into account.

(2) When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance or reinsurance undertaking, or in a related third-country insurance undertaking or third-country reinsurance undertaking, through an intermediate insurance holding company or an intermediate mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account, with the company being treated as an insurance or reinsurance undertaking. Sections 3 to 5 of Chapter 8 shall apply accordingly with regard to the Solvency Capital Requirement, with Section 2 of Chapter 8 applying accordingly to own funds eligible for the Solvency Capital Requirement.

(3) In cases where an intermediate insurance holding company or an intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 173, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 173 to the total eligible own funds

outstanding at group level as compared to the Solvency Capital Requirement at group level. Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company that are subject to prior authorisation from the supervisory authority in accordance with Article 171, if held by an insurance or reinsurance undertaking, may be included in the calculation of the group solvency only insofar as they have been authorised by the FMA in the capacity of group supervisor.

(4) A participating insurance or reinsurance undertaking that holds a participation in a credit institution, investment firm or financial institution may apply methods 1 and 2 as set out in Article 6 para. 2 nos. 1 and 2 FKG accordingly in order to calculate group solvency. However, method 1 as defined in the FKG shall be applied only where the FMA in the capacity of group supervisor is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time. The FMA in the capacity of group supervisor may, instead of applying methods 1 or 2 as set out in Annex I of Directive 2002/87/EC, of its own motion or at the request of the participating insurance or reinsurance undertaking, require the deduction of any participation as referred to in the first sentence from the own funds eligible for the group solvency of the participating undertaking.

Inclusion of related third-country insurance and reinsurance undertakings

Article 209. (1) When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking using method 2, the latter shall, solely for the purposes of that calculation, be treated as a related insurance or reinsurance undertaking.

(2) By way of derogation from para. 1, the Solvency Capital Requirement and own funds calculated according to the applicable law in the respective third country shall be taken into account where the related third-country insurance or reinsurance undertaking has its head office in the third country for which equivalence has been established pursuant to Article 227(4) or (5) of Directive 2009/138/EC or in accordance with para. 3.

(3) The FMA in the capacity of group supervisor may, upon request or of its own motion, and in accordance with the criteria set out in the implementing regulation (EU), conclude that the respective third country has equivalent rules, doing so with the assistance of EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010. The FMA, assisted by EIOPA, shall consult the other supervisory authorities concerned before taking such a decision. The FMA in the capacity of group supervisor may not take any decision in relation to a third country that contradicts any previous decision regarding that third country save where it is necessary to take account of significant changes to the supervisory regime laid down in Title I, Chapter VI of Directive 2009/138/EC and to the supervisory regime in the third country.

(4) Where the FMA in the capacity of supervisory authority concerned disagrees with a decision taken in accordance with the second subparagraph of Article 227(2) of Directive 2009/138/EC, it may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the group supervisor.

(5) Para. 3 shall no longer apply following a decision by the Commission pursuant to Article 227(4) of Directive 2009/138/EC on whether the solvency regime in a third country is deemed to be equivalent or not. Where a decision adopted by the Commission concludes that the solvency regime in a third country is not equivalent, any decision taken in accordance with para. 3 shall cease to be applicable and the third-country insurance or reinsurance undertaking shall be treated exclusively in accordance with para. 1.

Deduction of the book value of the participation due to non-availability of the necessary information

Article 210. Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking, concerning a related undertaking with its head office in a Member State or a third country, is not available to the FMA in the capacity of group supervisor, the book value of that undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency. In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

Default method: consolidation method (method 1)

Article 211. (1) The calculation of the group solvency of the participating insurance or reinsurance undertaking shall be carried out on the basis of the consolidated financial statements as defined in Section 2 of this Chapter (group solvency balance sheet), and is the difference between the following:

1. the own funds eligible to cover the Solvency Capital Requirement at group level, calculated on the basis of the group solvency balance sheet; and
2. the Solvency Capital Requirement at group level calculated on the basis of the group solvency balance sheet.

The Solvency Capital Requirement at group level based on the group solvency balance sheet shall be calculated on the basis of either the standard formula by analogy with Sections 3 and 4 of Chapter 8 or an internal model by analogy with Sections 3 and 5 of Chapter 8 and in accordance with the implementing regulation (EU). For the purposes of calculating the own funds eligible to cover the Solvency Capital Requirement at group level, Section 2 of Chapter 8 shall apply accordingly.

(2) The group Solvency Capital Requirement shall have as a minimum the sum of the following:

1. the Minimum Capital Requirement of the participating insurance or reinsurance undertaking; and

2. the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

(3) In determining whether the group Solvency Capital Requirement appropriately reflects the risk profile of the group, the FMA, as the group supervisor, shall pay particular attention to any case where the circumstances referred to in Article 277 para. 1 may arise at group level, in particular where:

1. a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify; or
2. a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is duly imposed by the supervisory authority.

Where the FMA in the capacity of group supervisor is of the view that the risk profile of the group is not adequately reflected, a capital add-on to the group Solvency Capital Requirement may be imposed. Article 277 shall apply accordingly.

Group internal model for method 1

Article 212. (1) The FMA in the capacity of group supervisor shall decide on applications for permission to calculate the group Solvency Capital Requirement on the basis of an internal model, applying Sections 3 and 5 of Chapter 8 accordingly and with due account for the implementing regulation (EU).

(2) An application for permission to use an internal model to calculate the group Solvency Capital Requirement and the Solvency Capital Requirement of insurance and reinsurance undertakings in the group shall be submitted as follows:

1. in the case referred to in Article 197 para. 1 no. 1, in the name of the participating insurance or reinsurance company and in the name of the related insurance or reinsurance undertaking; and
2. in the case referred to in Article 197 para. 1 no. 2, by an insurance or reinsurance undertaking in the name of the related insurance or reinsurance undertaking of an insurance holding company or mixed financial holding company

to the FMA in the capacity of group supervisor.

(3) The FMA as the competent authority for group supervision shall inform the other members of the supervisory college, including EIOPA, without delay about the application pursuant para. 2 being received, including forwarding the documentation submitted by the undertaking. The FMA may request EIOPA to provide technical assistance pursuant to Article 8 (1) lit. b) of Regulation (EU) No 1094/2010 in deciding about applications.

(4) The FMA, as the group supervisor, shall cooperate with the other supervisory authorities concerned in the college of supervisors in accordance with the implementing regulation (EU) to decide whether or not to grant permission for an internal model pursuant to para. 2 and to determine the terms and conditions, if any, to which such permission is subject. The FMA, as the

group supervisor, shall do everything within its power to ensure that the supervisory authorities concerned reach a joint decision on the application within six months from the date of receipt of the complete application by the FMA. This paragraph shall apply accordingly in cases where the FMA is the supervisory authority concerned.

(5) Where, prior to the expiry of the six-month period referred to in para. 4, any of the supervisory authorities concerned refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the FMA, as the group supervisor, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. In the case that EIOPA does not make a decision pursuant to Article 19 (3) of Regulation (EU) No 1094/2010, then the FMA shall take the final decision in its capacity as the competent authority for group supervision. The six-month period shall be deemed the conciliation period within the meaning of Article 19(2) of Regulation (EU) No 1094/2010. As the supervisory authority concerned, the FMA may refer the matter to EIOPA pursuant to Article 19 of Regulation (EU) No 1094/2010 before the expiry of the six-month period referred to in para. 4.

(6) In the absence of the adoption of a joint decision pursuant to para. 4 within six months from the date of receipt of the application being made by the group pursuant to para. 2, and if the matter has not been referred to EIOPA pursuant to para. 5, the FMA in the capacity of group supervisor shall make its own decision on the application, taking due account of any views and reservations of the other supervisory authorities concerned expressed during that six-month period.

(7) Joint decisions pursuant to para. 4 shall be set out in writing stating the full reasons by the FMA as the group supervisor. In accordance with this decision, the FMA, as the group supervisor, shall issue an administrative decision, to be submitted to the insurance or reinsurance undertakings referred to in para. 2 no. 1 or no. 2 together with a copy of the joint decision. The FMA shall provide a copy of this administrative decision together with a copy of the joint decision to the other supervisory authorities concerned. This administrative decision shall be deemed to have been served on all of the insurance and reinsurance undertakings in whose name the application was made upon its submission to the insurance or reinsurance undertaking referred to in para. 2 no. 1 or no. 2. This undertaking shall immediately notify all of the insurance and reinsurance undertakings in whose name it submitted the application of the administrative decision. The administrative decision shall be directly applicable to insurance and reinsurance undertakings with head offices in Austria.

(8) In the absence of a joint decision, the FMA in the capacity of group supervisor shall issue an administrative decision, stating full reasons, and taking due account of the views expressed by the other supervisory authorities concerned. The administrative decision shall be submitted to the insurance or reinsurance undertaking referred to in para. 2 no. 1 or no. 2. It shall be deemed to have been served on all of the insurance and reinsurance undertakings in whose name the application was made upon its submission to the insurance or reinsurance undertaking referred to in para. 2 no. 1 or no. 2. This undertaking shall immediately notify all of the insurance and reinsurance undertakings in whose name it submitted the application of the administrative decision. The

administrative decision shall be directly applicable to insurance and reinsurance undertakings with head offices in Austria. The FMA shall forward a copy of it to the other supervisory authorities concerned and to the supervisory authorities involved.

(9) The FMA, in the capacity of supervisory authority concerned, shall be required to recognise as binding and to apply any decision reached by the group supervisor in accordance with the law of another Member State in accordance with Article 231(2) to (6) of Directive 2009/138/EC. Such a decision shall be directly applicable to and effective in the case of affected insurance and reinsurance undertakings with head offices in Austria as soon as the decision is served on such undertakings but not until the corresponding administrative decision becomes effective in the applicant's country of establishment.

(10) The FMA, in the capacity of supervisory authority concerned, may in the case defined in para. 9 impose a capital add-on pursuant to Article 277 to the Solvency Capital Requirement resulting from the application of an internal model by an affected insurance or reinsurance undertaking with its head office in Austria where it considers that the risk profile of that insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as the undertaking has not properly addressed these concerns. In individual cases, where such capital add-on would not be appropriate, the FMA may require the insurance or reinsurance undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula. In accordance with the cases referred to in Article 277 para. 1 nos. 1 and 3, the FMA may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula. The FMA shall explain any decision taken to the other members of the college of supervisors.

Alternative method: deduction and aggregation method (method 2)

Article 213. (1) The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

1. the aggregated group eligible own funds, as provided for in para. 2; and
2. the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in para. 3.

(2) The aggregated group eligible own funds are the sum of the following:

1. the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and
2. the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(3) The aggregated group Solvency Capital Requirement is the sum of the following:

1. the Solvency Capital Requirement of the participating insurance or reinsurance undertaking; and
2. the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

(4) Where a participating insurance or reinsurance undertaking holds a participation in a related insurance or reinsurance undertaking that consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertaking shall incorporate the value of such indirect ownership, taking into account the relevant successive interests. In this case, the items referred to in para. 2 no. 2 and para. 3 no. 2 shall include the corresponding proportional shares of the Solvency Capital Requirement and of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

(5) In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in para. 3, appropriately reflects the risk profile of the group, the FMA as the supervisory authority concerned shall pay particular attention to any specific risks existing at group level which are not sufficiently covered, because they are difficult to quantify. Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, the FMA in the capacity of group supervisor may impose a capital add-on to the aggregated group Solvency Capital Requirement. Article 277 shall apply accordingly.

Group internal model for method 2

Article 214. (1) An application for permission to use an internal model to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group shall be submitted as follows:

1. in the case referred to in Article 197 para. 1 no. 1, in the name of the participating insurance or reinsurance company and in the name of the related insurance or reinsurance undertaking; and
2. in the case referred to in Article 197 para. 1 no. 2, by an insurance or reinsurance undertaking in its own name and in the name of the related insurance or reinsurance undertaking of an insurance holding company or mixed financial holding company to the FMA in the capacity of group supervisor.

(2) Article 212 shall apply accordingly.

SECTION 3: GROUPS WITH CENTRALISED RISK MANAGEMENT

Conditions

Article 215. (1) Articles 217 and 218 shall apply to insurance or reinsurance undertakings with head offices in Austria that are subsidiaries of an insurance or reinsurance undertaking where all of the following conditions are satisfied:

1. the subsidiary is included in the group supervision at the level of the parent undertaking;
2. the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary, and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;
3. the parent undertaking has received the agreements referred to in Article 224 para. 3 and Article 245 para. 2; and
4. an application for permission to be subject to the provisions governing groups with centralised risk management has been submitted by the parent undertaking and a favourable decision has been made on such application.

(2) Articles 215 to 219 shall apply accordingly to insurance and reinsurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company.

Decision on the application

Article 216. (1) Applications for permission to be subject to Articles 217 and 218 shall only be submitted to the FMA in its capacity as the supervisory authority responsible for the supervision of the subsidiary. The FMA shall inform the other members of the college of supervisors and forward the complete application to them without delay.

(2) The FMA shall work together with the other supervisory authorities concerned within the college of supervisors, in full consultation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

(3) The FMA and other supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors. This shall similarly apply where the FMA is the authority concerned in accordance with the law of another Member State during a procedure conducted in accordance with Article 237 of Directive 2009/138/EC.

(4) Where, prior to the expiry of the three-month period referred to in para. 3, any of the supervisory authorities concerned refers the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the FMA, as the group supervisor, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. In the case that EIOPA does not make a decision pursuant to Article 19 (3) of Regulation (EU) No 1094/2010, then the FMA shall take the final decision in its

capacity as the competent authority for group supervision. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of Regulation (EU) No 1094/2010.

(5) In the absence of a joint decision of the supervisory authorities concerned within the three-month period set out in para. 3, the FMA in the capacity of group supervisor shall decide on the application in the form of an administrative decision. During that period the FMA, as the group supervisor, shall duly consider the following:

1. any views and reservations of the supervisory authorities concerned expressed during the relevant period; and
2. any reservations of the other supervisory authorities within the college of supervisors.

The FMA's administrative decision shall state the full reasons and contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned. The FMA shall submit the administrative decision to the applicant and provide the other supervisory authorities concerned with a copy of it.

(6) The joint decision referred to in para. 3 shall be set out in writing stating the full reasons. In accordance with the joint decision, the FMA, as the supervisory authority responsible for the supervision of the subsidiary undertaking, shall issue an administrative decision and serve it on the applicant together with a copy of the joint decision. The FMA shall provide the other supervisory authorities concerned with a copy of the administrative decision.

(7) The FMA shall execute as binding any decision on an application for permission to use the supervisory regime for groups with centralised risk management reached in accordance with the law of another Member State in compliance with the joint decision referred to in Article 237(4) of Directive 2009/138/EC. A parent undertaking with its head office in Austria that has made an application pursuant to para. 1 must inform all subsidiaries concerned without delay of the decision referred to in the first sentence. This decision shall apply directly to subsidiary undertakings with head offices in Austria.

Determination of the Solvency Capital Requirement

Article 217. (1) Without prejudice to Articles 212 and 214, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paras. 2, 4 and 5.

(2) Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 212 or 214, the FMA as the supervisory authority responsible for the supervision of the subsidiary may propose the setting of a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model if it considers that the risk profile of that subsidiary deviates significantly from this internal model and that the conditions set out in Article 277 are not being met. Where such capital add-on would not be appropriate in individual cases, the FMA may require the subsidiary concerned to calculate its Solvency Capital Requirement on the basis of the standard formula. The FMA shall

communicate the grounds for its proposals to both the subsidiary and the college of supervisors, and consult the supervisory authorities in the college of supervisors.

(3) Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the FMA, as the supervisory authority responsible for the supervision of the subsidiary, considers that its risk profile deviates significantly from the assumptions underlying the standard formula, the FMA may, in exceptional circumstances, propose that the subsidiary replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 181 para. 1, or propose the setting of a capital add-on to the Solvency Capital Requirement of that subsidiary if the conditions defined in Article 277 are met. The FMA shall communicate the grounds for its proposals to both the subsidiary and the college of supervisors, and consult the supervisory authorities in the college of supervisors.

(4) The FMA, as the supervisory authority responsible for the supervision of the subsidiary, shall do everything within its power to ensure that the supervisory authorities concerned in the college of supervisors are able to reach a joint decision on the proposal pursuant to paras. 2 or 3 or on other possible measures. This shall similarly apply where the supervisory authorities in the college of supervisors are consulted in conjunction with a proposal from another competent supervisory authority. The FMA, as the supervisory authority responsible for the supervision of the subsidiary, shall set out the joint decision in writing stating the full reasons, issue an administrative decision in accordance with the joint decision and serve the former on the subsidiary together with a copy of the joint decision. The FMA shall provide the college of supervisors with a copy of the decision and the administrative decision.

(5) Where the FMA, as the supervisory authority responsible for the supervision of the subsidiary, and the group supervisor disagree, and where no agreement is reached within the college pursuant to para. 4, the FMA may refer the matter to EIOPA and request its assistance within one month of the supervisory authority's proposal and in accordance with Article 19 of Regulation (EU) No 1094/2010. This shall similarly apply where the FMA is the group supervisor. The one-month period shall be deemed the conciliation period within the meaning of Article 19(2) of Regulation (EU) No 1094/2010. The FMA, as the supervisory authority responsible for the supervision of the subsidiary, shall defer its decision and await any decision that EIOPA may take in accordance with Article 19 of Regulation (EU) No 1094/2010, and shall take its decision in conformity with EIOPA's decision. The FMA shall state full reasons for its decision, serve the administrative decision on the subsidiary and provide the college of supervisors with a copy of it.

Non-compliance with the Solvency and Minimum Capital Requirements

Article 218. (1) Without prejudice to Article 279, the FMA as the supervisory authority responsible for the supervision of the subsidiary shall, in the event of non-compliance with the Solvency Capital

Requirement, forward to the supervisory authorities in the college of supervisors the recovery plan submitted by the subsidiary without delay.

(2) The FMA shall do everything within its power to ensure that the supervisory authorities concerned in the college of supervisors can arrive at a joint decision regarding the FMA's proposal to approve the recovery plan within four months of the date on which non-compliance with the Solvency Capital Requirement was first observed. The FMA, as the supervisory authority responsible for the supervision of the subsidiary, shall set out the joint decision in writing stating the full reasons, issue an administrative decision in accordance with the joint decision and serve the former on the subsidiary together with a copy of the joint decision. The FMA shall provide the college of supervisors with a copy of the decision and the administrative decision. In the absence of such agreement, the FMA shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities in the college of supervisors, and shall forward a copy of the administrative decision to the college of supervisors. The first sentence shall similarly apply where the college of supervisors is consulted in conjunction with a proposal from another competent supervisory authority.

(3) Where the FMA, as the supervisory authority responsible for the supervision of the subsidiary, identifies deteriorating financial conditions as defined in Article 278, it shall notify the college of supervisors without delay of the proposed measures to be taken. Save in emergency situations, the measures to be taken shall be discussed within the college of supervisors.

(4) The FMA shall do everything within its power to ensure that the supervisory authorities in the college of supervisors reach a joint decision on the proposed measures to be taken within one month of notification. The FMA, as the supervisory authority responsible for the supervision of the subsidiary, shall issue an administrative decision in accordance with the joint decision and serve the former on the subsidiary together with a copy of the joint decision. The FMA shall provide the college of supervisors with a copy of the decision and the administrative decision. In the absence of such agreement, the FMA shall decide whether the proposed measures should be approved, taking account of the views and reservations of the other supervisory authorities in the college of supervisors, and forward a copy of the administrative decision to the college of supervisors. The first sentence shall apply where the college of supervisors is consulted in conjunction with a proposal from another competent supervisory authority.

(5) Without prejudice to Article 280, the FMA as the supervisory authority responsible for the supervision of the subsidiary shall, in the event of non-compliance with the Minimum Capital Requirement, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary without delay. The FMA shall also inform the college of supervisors of any measures taken to enforce the Minimum Capital Requirement.

(6) The FMA, as the group supervisor, may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 where they disagree with regard to a group subsidiary with its head office in another Member State:

1. on the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in para. 2; or

2. on approval of the proposed measures within the period of one month referred to in para. 4.

The matter may not be referred to EIOPA in the case of emergency situations as referred to in para. 2. The period of one or four months shall be deemed the conciliation period within the meaning of Article 19(2) of Regulation (EU) No 1094/2010. This paragraph shall apply accordingly where the FMA is the competent authority for the supervision of the subsidiary.

(7) If the matter is referred to EIOPA, the FMA as the supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of Regulation (EU) No 1094/2010, and take its final decision in conformity with EIOPA's decision. The FMA shall submit the administrative decision to the subsidiary and provide the college of supervisors with a copy of it.

End of derogations for a subsidiary

Article 219. (1) The provisions provided for in Articles 217 and 218 shall cease to apply where:

1. the condition referred to in Article 215 para. 1 no. 1 is no longer complied with;
2. the condition referred to in Article 215 para. 1 no. 2 is no longer complied with, and the group does not restore compliance with this condition in an appropriate period of time; or
3. the conditions referred to in Article 215 para. 1 no. 3 are no longer complied with.

(2) In the case referred to in para. 1 no. 1, where the FMA in the capacity of group supervisor decides, after consulting the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

(3) The parent undertaking shall be responsible for ensuring that the conditions referred to in Article 215 para. 1 nos. 2 and 3 are complied with on an ongoing basis. In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking with its head office in Austria shall present a plan to restore compliance within an appropriate period of time to the group supervisor.

(4) Without prejudice to para. 3, the FMA, as the group supervisor, shall verify at least annually that the conditions referred to in Article 215 para. 1 nos. 2 and 3 are complied with. The FMA, as the group supervisor, shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions. Where the verification performed identifies weaknesses, the FMA, as the group supervisor, shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

(5) Where, after consulting the college of supervisors, the FMA, as the group supervisor, determines that the plan referred to in para. 3 or para. 4 is insufficient or that it is not being implemented within the agreed period of time, the conditions referred to in Article 215 para. 1 nos. 2 and 3 shall be

deemed to no longer be complied with. The FMA shall immediately inform the supervisory authority concerned.

(6) Where, after consulting the college of supervisors, the FMA, as the group supervisor, determines that implementation of the plan referred to in para. 3 or para. 4 can be expected to result in the conditions referred to in Article 215 being complied with again, it shall approve this plan. The parent undertaking must satisfy the group supervisor no later than immediately after the deadline specified in this plan that all of the conditions referred to in Article 215 are complied with again. The FMA in the capacity of group supervisor, after consulting the college of supervisors, shall determine by means of administrative decision that the conditions referred to in Article 215 for the application of Articles 217 and 218 are complied with.

SECTION 4: RISK CONCENTRATIONS AND INTRA-GROUP TRANSACTIONS

Risk concentrations

Article 220. (1) Any significant risk concentration at group level pursuant to para. 2 must be reported:

1. in the case referred to in Article 197 para. 1 no. 1, by the participating insurance or reinsurance undertaking; and
2. in the case referred to in Article 197 para. 1 no. 2, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking identified for this purpose by the FMA in the capacity of group supervisor after consulting the other supervisory authorities concerned and the group

to the FMA in the capacity of group supervisor.

(2) The FMA, as the group supervisor, shall determine, after consulting the other supervisory authorities concerned and the group, the following:

1. which type of risk concentrations are always to be reported, taking account of the specific group and risk-management structure of the group;
2. appropriate thresholds based on Solvency Capital Requirements, the technical provisions in accordance with Section 1 of Chapter 8, or both; or
3. at least annual reporting intervals.

(3) When reviewing the risk concentrations, the FMA, as the group supervisor, shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level and volume of risks.

Intra-group transactions

Article 221. (1) All significant intra-group transactions by insurance and reinsurance undertakings of the group pursuant to para. 2 must be reported:

1. in the case referred to in Article 197 para. 1 no. 1, by the participating insurance or reinsurance undertaking; and
2. in the case referred to in Article 197 para. 1 no. 2, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking identified for this purpose by the FMA in the capacity of group supervisor after consulting the other supervisory authorities concerned and the group

to the FMA in the capacity of group supervisor. This reporting obligation includes those intra-group transactions performed with a natural person with close links to an undertaking in the group.

(2) The FMA, as the group supervisor, shall determine, after consulting the other supervisory authorities concerned and the group, the following:

1. which type of intra-group transactions are always to be reported, taking account of the specific group and risk-management structure of the group;
2. appropriate thresholds based on Solvency Capital Requirements, the technical provisions in accordance with Section 1 of Chapter 8, or both; and
3. at least annual reporting intervals.

(3) All very significant intra-group transactions shall be reported to the FMA in the capacity of group supervisor by the undertakings specified in para. 1. without delay.

When reviewing the intra-group transactions, the FMA, as the group supervisor, shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

SECTION 5: GOVERNANCE AT GROUP LEVEL

General provisions

Article 222. (1) The requirements set out in Articles 107 to 113, Articles 117 to 119 and Articles 120 to 122 shall apply accordingly at the level of the group.

(2) Without prejudice to para. 1, the risk management, internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Article 197 para. 1 nos. 1 and 2 so that those systems and reporting procedures can be controlled at the level of the group.

(3) In the case referred to in Article 197 para. 1 no. 1, the participating insurance or reinsurance undertaking shall be responsible for compliance with the requirements at group level in accordance with this Article. In the case referred to in Article 197 para. 1 no. 2, the insurance holding company or the mixed financial holding company shall be responsible for compliance with the requirements unless it has appointed another insurance or reinsurance undertaking for this purpose and notified the FMA accordingly. This shall not apply to conducting the own risk and solvency assessment at group level in accordance with Article 224.

Internal control mechanisms at group level

Article 223. The internal control mechanisms shall include at least the following in addition to the provisions of Article 222:

1. adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks; and
2. sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

Own risk and solvency assessment at group level

Article 224. (1) The participating insurance or reinsurance undertaking in the case referred to in Article 197 para. 1 no. 1 or the insurance holding company or mixed financial holding company in the case referred to in Article 197 para. 1 no. 2 must conduct the own risk and solvency assessment at group level as specified in Article 111.

(2) Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, the participating insurance or reinsurance undertaking in the case referred to in Article 197 para. 1 no. 1 or the insurance holding company or mixed financial holding company in the case referred to in Article 197 para. 1 no. 2 shall, in addition to regular supervisory reporting, provide the FMA, as the group supervisor, with a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group Solvency Capital Requirement.

(3) Subject to the agreement of the FMA in the capacity of group supervisor, the participating insurance or reinsurance undertaking in the case referred to in Article 197 para. 1 no. 1 or the insurance holding company or mixed financial holding company in the case referred to in Article 197 para. 1 no. 2 may undertake the own risk and solvency assessment at the level of the group and at the level of the included subsidiaries at the same time, and may produce a single document covering all the assessments. This document shall be submitted to all of the supervisory authorities concerned at the same time.

(4) Before granting an agreement in accordance with para. 3, the FMA in the capacity of group supervisor shall consult the supervisory authorities in the college of supervisors and duly take into account their views and reservations.

(5) Exercising the option provided in para. 3 shall not affect the obligation of the included subsidiaries to ensure that the requirements of Article 111 are met.

Management of insurance holding companies and mixed financial holding companies

Article 225. (1) Insurance holding companies and mixed financial holding companies with head offices in Austria shall ensure that persons who effectively run an insurance holding company or mixed financial holding company are fit and proper to perform their duties. Articles 120 to 122 shall apply accordingly. The last sentence of Article 120 para. 2 no. 4 shall not apply.

(2) Insurance or reinsurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company with head offices in a third country shall, in accordance with the options provided by company law, ensure that persons who effectively run the parent undertaking are fit and proper to perform their duties. Where these insurance or reinsurance undertakings are of the opinion that the persons who effectively run the parent undertaking do not comply with the fit and proper requirements, and where all options provided by company law to prevent the appointment of such persons or to have them removed from their position have been exhausted without success, they shall notify the FMA of this situation immediately.

(3) Where the FMA has reasonable doubts about whether the persons effectively running an insurance holding company or mixed financial holding company referred to in para. 2 comply with the fit and proper requirements, and where such doubts cannot be eliminated by other means, or where there is a risk associated with any delay, the FMA shall be required on the basis of a notification pursuant to para. 2 or of its own motion to apply to the court of first instance with jurisdiction over commercial matters responsible for the insurance or reinsurance undertaking that is the subsidiary of an insurance holding company or a mixed financial holding company to have the voting rights suspended with regard to the shares held by the insurance holding company or a mixed financial holding company in the subsidiary concerned.

(4) The court shall order the suspension of the voting rights pursuant to para. 3 upon application by the FMA. The suspension of voting rights shall be lifted when the court, upon application by the FMA, or the insurance holding company or mixed financial holding company, establishes that the persons who effectively run an insurance holding company or mixed financial holding company are fit and proper to perform their duties. The FMA shall be notified thereof. The court shall rule in accordance with the above provisions in non-litigious civil proceedings.

(5) If a court orders the suspension of the voting rights pursuant to para. 4, it shall simultaneously appoint a trustee (*Treuhänder*) who meets the conditions set out in para. 2 and transfer the voting rights to that trustee. The trustee shall be entitled to reimbursement of any expenses as well as to remuneration, the amount of which shall be determined by the court. The insurance holding company or a mixed financial holding company, and insurance or reinsurance undertakings in the form of their subsidiaries shall be jointly and severally liable. The obligors shall be entitled to appeal (by way of a *Rekurs*) against decisions determining the amount of the trustee's remuneration as well as the expenses to be reimbursed. No further appeal shall be possible against the decision of the Higher Regional Court (*Oberlandesgericht*).

SECTION 6: MEASURES TO FACILITATE GROUP SUPERVISION

Designation of group supervisor

Article 226. (1) The authority responsible for coordination and exercise of group supervision, shall be designated pursuant to Article 247 of Directive 2009/138/EC.

(2) In the procedure pursuant to para. 1, the FMA in the capacity of supervisory authority concerned as defined in Article 247(1) of Directive 2009/138/EC may within the period referred to in the third subparagraph of Article 247(3) of Directive 2009/138/EC refer the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010. The joint decision shall be deferred and any decision that EIOPA may take in accordance with Article 19(3) of that Regulation shall be awaited, and the FMA shall act to ensure that the supervisory authorities concerned take their joint decision in conformity with EIOPA's decision.

(3) If the FMA is designated as group supervisor, it shall set out the joint decision as referred to in Article 247(3) of Directive 2009/138/EC in writing stating the full reasons. In accordance with the joint decision, the FMA shall issue an administrative decision in the capacity of group supervisor. This administrative decision and the decision pursuant to the first sentence shall be served, in the case referred to in Article 197 para. 1 no. 1, on the participating insurance or reinsurance undertaking, and in the case referred to in Article 197 para. 1 no. 2, on the insurance holding company or mixed financial holding company. The FMA shall also submit the joint decision to the college of supervisors.

Rights and duties of the group supervisor

Article 227. (1) The rights and duties assigned to the FMA as the group supervisor comprise the following:

1. implementing the supervisory review, focusing in particular on compliance with the following:
 - a. group solvency as referred to in Article 202 paras. 1 and 2,
 - b. risk concentrations as referred to in Article 220,
 - c. intra-group transactions as referred to in Article 221,
 - d. the governance system as referred to in Articles 222 and 223, and
 - e. the own risk and solvency assessment at group level as referred to in Article 224.

With regard to b) and c), the FMA, as the group supervisor, shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

2. assessing whether the members of the management board or administrative board and the managing directors of the participating undertaking subject to group supervision comply with the requirements of Article 120, Article 121 and Article 225 para. 1;
3. coordinating the exchange of information between the supervisory authorities concerned in the context of supervisory activities in going-concern as well as in emergency situations;
4. planning and coordinating, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group; and

5. other tasks, measures and decisions assigned to the FMA as the group supervisor by this federal act, the implementing regulation (EU) or technical standards (EU), in particular leading the process for validation of any internal model at group level as set out in Articles 212 and 214, and leading the process for the granting of permission in accordance with Articles 216 to 219.

(2) In order to facilitate the exercise of the group supervision tasks referred to in para. 1, a college of supervisors shall be established by the FMA in the capacity of group supervisor.

Colleges of supervisors

Article 228. (1) With regard to setting up colleges of supervisors, the FMA, as the group supervisor pursuant to Article 21 of Regulation (EU) No 1094/2010, shall involve the supervisory authorities of those Member States in which the head offices of all subsidiary undertakings are situated and EIOPA in the capacity of members. As the group supervisor, the FMA shall also be a member of the college of supervisors. In accordance with the terms of the implementing regulation (EU), the supervisory authorities of significant branches and related undertakings shall also be allowed to participate in the college of supervisors. Their participation shall be limited to achieving the objective of an efficient exchange of information. For the purposes of the effective functioning of the college of supervisors, the FMA, as the group supervisor, may, after consulting the supervisory authorities concerned, require that some activities be carried out by a reduced number of supervisory authorities in the college.

(2) The FMA, as the group supervisor, shall act to ensure that the college of supervisors effectively applies the cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors pursuant to Section 9, with a view to promoting the convergence of their respective decisions and activities. This shall similarly apply where another supervisory authority is the group supervisor and the FMA is a member of a college of supervisors.

(3) Where the group supervisor fails to carry out the tasks referred to in Article 248(1) of Directive 2009/138/EC or where the members of the college of supervisors do not cooperate to the extent required in this Article 248(1) of Directive 2009/138/EC, the FMA in the capacity of supervisory authority concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(4) The FMA, as the group supervisor, shall enter into coordination arrangements with the other supervisory authorities concerned, specifying the establishment and functioning of the college of supervisors, as well as rulings on the exchange of information within the college of supervisors. This shall similarly apply where another supervisory authority is the group supervisor and the FMA is a member of a college of supervisors. In the event of disagreements regarding the coordination arrangement, the FMA, as a member of the college of supervisors, may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. The FMA, as the

group supervisor, shall take its final decision in conformity with EIOPA's decision and shall inform the other supervisory authorities concerned of the decision.

(5) Based on the implementing regulation (EU), the coordination arrangements referred to in para. 4 shall specify the procedures for:

1. the decision-making process among the supervisory authorities concerned in accordance with Articles 212, 214 and 226; and
2. consultation under para. 4 and under Article 202 para. 4.

(6) The coordination arrangements may in accordance with the implementing regulation (EU) and in addition to para. 5 set out procedures for:

1. consultation among the supervisory authorities concerned, in particular as referred to in Articles 196 to 200, Articles 203 to 205, Article 209, Articles 220 to 224, Article 230, Article 237, Articles 239 and 245;
2. cooperation with other supervisory authorities; and
3. contingency plans for emergency situations.

(7) The coordination arrangements may entrust additional tasks to the FMA in the capacity of group supervisor, the other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities.

Cooperation and exchange of information between supervisory authorities

Article 229. (1) The FMA shall cooperate closely with the supervisory authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and, in the event that group supervision is carried out in another Member State, with the group supervisor. This shall particularly apply in cases where an insurance or reinsurance undertaking encounters financial difficulties.

(2) Within colleges of supervisors, the FMA may process and transmit all information needed to allow and facilitate the exercise of the supervisory tasks of the supervisory authorities responsible for supervision of the individual insurance and reinsurance undertakings of a group and of the group supervisor under Directive 2009/138/EC. Such information shall be communicated without delay as soon as it becomes available or upon request. The information referred to includes, but is not limited to, information about actions of the group and supervisory authorities, and information provided by the group.

(3) Where a supervisory authority has not communicated relevant information to the FMA in accordance with Article 249(1) of Directive 2009/138/EC or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the FMA may refer the matter to EIOPA.

(4) The submission of information to authorities of third countries shall only be permitted insofar as these authorities are subject to a confidentiality obligation that corresponds to professional secrecy

pursuant to Article 64 of Directive 2009/138/EC or have undertaken to adhere to such an obligation. Information that has been submitted to the FMA by the supervisory authority of another signatory country may only be disclosed by the FMA with the express agreement of that supervisory authority and only for the purposes agreed by that supervisory authority.

(5) The FMA, as the group supervisor, shall call immediately for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances:

1. where they become aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;
2. where they become aware of a significant breach of the Solvency Capital Requirement at group level; or
3. where other exceptional circumstances are occurring or have occurred.

The FMA, as the supervisory authority responsible for the supervision of the individual insurance and reinsurance undertakings in a group, shall call on the group supervisor in the above cases requesting that a meeting of all of the supervisory authorities involved in group supervision be convened immediately.

Consultation between supervisory authorities

Article 230. (1) Without prejudice to Articles 227 and 228, the FMA shall, where a decision is of importance for the supervisory tasks of other concerned supervisory authorities in the college of supervisors, consult those supervisory authorities in the college of supervisors with regard to the following:

1. the approval of changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group;
2. the decision on the extension of the recovery period under Article 279 para. 3 or 6; or
3. major sanctions or exceptional supervisory measures, such as a capital add-on under Article 277 or the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Section 5 of Chapter 8.

The group supervisor shall always be consulted before any decision pursuant to nos. 2 and 3 is taken.

(2) Where a decision is based on information that was submitted by other supervisory authorities, then the FMA shall also consult the other affected supervisory authorities prior to reaching this decision.

(3) Without prejudice to Article 227 and Article 228 the FMA may decide to refrain from a hearing of other supervisory authorities, where speed is of the essence, or where such a hearing might influence the effectiveness of the decision. In this case, the FMA shall inform the other affected supervisory authorities about its decision without delay.

Rights to information of the FMA in the capacity of group supervisor

Article 231. (1) In cases where the FMA is appointed as the group supervisor pursuant to Article 226 and not the supervisory authority of the Member State in which the parent undertaking referred to in Article 197 para. 3 has its head office at the level of the Member States, the FMA may request that this supervisory authority obtain from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Articles 227 and 228, and transmit that information to the FMA in the capacity of group supervisor.

(2) The FMA, as the group supervisor, shall, when it needs information referred to in Article 234 which has already been given to another supervisory authority in the college of supervisors, contact that supervisory authority whenever possible.

Cooperation with authorities responsible for credit institutions and investment firms

Article 232. (1) Where an insurance or reinsurance undertaking and either a credit institution as defined in Directive 2013/36/EU or an investment firm as defined in Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the FMA shall cooperate closely with the authorities responsible for the supervision of those other undertakings.

(2) Upon request from the responsible authorities referred to in para. 1, the FMA shall provide these authorities with any information they need for the performance of their duties.

Professional secrecy and confidentiality

Article 233. Information received in the framework of group supervision, and in particular any exchange of information as set out in this Chapter between the FMA and the supervisory authorities in the EEA or between supervisory authorities and other authorities, shall be subject to the provisions of Articles 294, 298 and 299.

Access to information

Article 234. (1) The natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, shall ensure that they have access to all information which could be relevant for the purposes of group supervision.

(2) The insurance and reinsurance undertakings included in the group supervision shall provide the FMA in the capacity of group supervisor with information on all matters and grant access to any information relevant for the purposes of that supervision at any time. The FMA may also directly demand the necessary information from those undertakings in the group that are not insurance or reinsurance undertakings, where such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time. Any FMA measures with regard to the insurance or reinsurance undertaking concerned shall remain unaffected by the above.

Verification of information

Article 235. (1) Subject to the general provisions of Article 272 para. 4 and Article 274, the FMA may carry out verification of the information referred to in Article 234 on the premises of any of the following:

1. an insurance or reinsurance undertaking subject to group supervision;
2. related undertakings of that insurance or reinsurance undertaking;
3. parent undertakings of that insurance or reinsurance undertaking; and
4. related undertakings of a parent undertaking of that insurance or reinsurance undertaking.

(2) Where the FMA, as the group supervisor, wishes to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another Member State, it shall ask the supervisory authority of that other Member State to have the verification carried out. Where this supervisory authority does not carry out the verification directly or arranges for inspection bodies appointed by it to carry it out, the FMA may, provided the supervisory authority of the Member State concerned authorises it, carry out the verification directly or arrange for the verification to be carried out by the inspection bodies appointed pursuant to Article 274 para. 2. The FMA may also participate in the verification when it does not carry out the verification directly.

(3) Where the supervisory authority of a Member State wishes to verify the information concerning an undertaking, whether regulated or not, which is part of a group and situated in Austria, the FMA shall carry out the verification itself or arrange for an inspection body appointed by it pursuant to Article 274 para. 2 to carry it out, or shall allow the supervisory authority of that Member State or a person appointed by it to carry it out. The FMA may participate in this verification. Article 274 para. 2 shall apply. Where the supervisory authority of the Member State concerned does not carry out the verification itself, the FMA shall allow that authority to participate in the process.

(4) The FMA shall inform the group supervisor of the action taken pursuant to paras. 2 and 3.

(5) Where the request by the FMA to another supervisory authority to have a verification carried out in accordance with para. 2 has not been acted upon within two weeks, or where the FMA is unable in practice to exercise its right to participate in accordance with para. 2, the FMA may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Enforcement measures

Article 236. (1) Where the insurance or reinsurance undertakings in a group do not comply with the requirements referred to in Articles 202 to 224, or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, the FMA shall implement the measures required to rectify the situation as soon as possible:

1. with regard to insurance holding companies or mixed financial holding companies where the FMA is the group supervisor; and

2. with regard to insurance and reinsurance undertakings in the group with their head office in Austria.

(2) The FMA shall impose any orders on insurance holding companies or mixed financial holding companies that are required and appropriate in order to ensure that the business activities comply with the provisions of this Chapter and the relevant provisions of the implementing regulation (EU) and the technical standards (EU).

(3) Where the concerned insurance or reinsurance undertaking in a group or the insurance holding company or mixed financial holding company has its head office in another Member State, the FMA in the capacity of group supervisor shall inform the supervisory authority in the other Member State of its findings with a view to enabling them to take the necessary measures.

(4) Where the FMA is not the group supervisor and where the group supervisor informs the FMA of its findings pursuant to Article 258(1) of Directive 2009/138/EC in relation to the insurance holding company or mixed financial holding at the head of the group or in relation to an insurance or reinsurance undertaking in the group with its head office in Austria, the FMA shall introduce the measures required under the terms of this federal act.

(5) The FMA shall coordinate its enforcement measures as referred to in this Article with the other supervisory authorities concerned and with the group supervisor, where appropriate. This shall particularly apply in cases where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located at its head office.

SECTION 7: PARENT UNDERTAKINGS WITH HEAD OFFICES IN THIRD COUNTRIES

Verification of equivalence

Article 237. (1) In the case referred to in Article 197 para. 1 no. 3, the FMA shall verify, at the request of the parent undertaking or of any of the insurance or reinsurance undertakings with its head office in a Member State or of its own motion, provided it would be the group supervisor if the criteria set out in Article 226 were to apply (the “acting group supervisor”), based on the criteria set out in the implementing regulation (EU) with the assistance of EIOPA pursuant to Article 33(2) of Regulation (EU) No 1094/2010, whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office in a third country, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Chapter at the level of the group in accordance with Article 215 para. 1 nos. 1 and 2. Before taking a decision on equivalence, the FMA shall, assisted by EIOPA, consult the other supervisory authorities concerned. The FMA in the capacity of acting group supervisor shall not take any decision in relation to a third country that is in opposition to any previous decision taken vis-à-vis that third country pursuant to Article 260(1) of Directive 2009/138/EC, save where it is necessary to take into account significant changes to the

supervisory regime laid down in Title I of Directive 2009/138/EC and to the supervisory regime in the third country.

(2) Where the FMA, in the capacity of supervisory authority concerned, disagrees with a decision taken in accordance with the third subparagraph of Article 260(1) of Directive 2009/138/EC, it may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the acting group supervisor.

(3) Para. 1 shall no longer apply following a decision by the Commission pursuant to Article 260(3) or (5) of Directive 2009/138/EC on whether the solvency regime in a third country is deemed to be equivalent or not. Where the Commission concludes that a third country's solvency regime is not equivalent, any decision taken pursuant to para. 1 shall cease to apply.

(4) If pursuant to Article 260 (5) of Directive 2009/138/EC a legal act delegated by the Commission is issued, which defined that the supervisory rules of a third country are temporarily classed as being equivalent, then Article 238 shall apply, unless an insurance or reinsurance undertaking with its registered office in a Member State has total assets that are higher than the total assets of the parent undertaking with its registered office in a third country. In this case, the FMA shall assume, provided that it would be competent in application of the criteria pursuant to Article 226 for group supervision (as the authority conducting group supervision), the duty of the competent authority for group supervision.

Equivalence

Article 238. (1) In the event of equivalent supervision referred to in Article 237, the FMA as the supervisory authority concerned shall rely on the group supervision exercised in a third country.

(2) Section 6 of Chapter 9 and Article 225 shall apply accordingly to cooperation between the FMA as the supervisory authority for insurance and reinsurance undertakings with head offices in Austria and third-country supervisory authorities.

Absence of equivalence

Article 239. (1) In the absence of equivalent supervision referred to in Article 237, the FMA, as the group supervisor, shall subject insurance and reinsurance undertakings either to the general principles and methods set out in Section 2 and in Sections 4 to 6 or to one of the methods stipulated in para. 3 at the level of the insurance holding company with its head office in a third country, mixed financial holding company with its head office in a third country, third-country insurance or third-country reinsurance undertaking.

(3) For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in Section 2 of Chapter 8 as regards the eligible own funds and to either of the following:

1. a Solvency Capital Requirement determined in accordance with the principles of Article 208 paras. 2 and 3, where it is an insurance holding company or mixed financial holding company;
or
 2. a Solvency Capital Requirement determined in accordance with the principles of Article 209, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.
- (3) The FMA, as the group supervisor, may, after consulting the other supervisory authorities concerned, apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group and guarantee the achievement of the objectives of the group supervision as defined in this Chapter. The FMA, as the group supervisor, may in particular require the establishment of an insurance holding company or mixed financial holding company which has its head office in a Member State, and apply this Chapter at the level of that undertaking. The FMA shall notify the other supervisory authorities concerned and the European Commission of the methods chosen.

Levels of supervision

Article 240. (1) Where the parent undertaking referred to in Article 237 is itself a subsidiary of an insurance holding company or a mixed financial holding company having its head office in a third country or of a third-country insurance or reinsurance undertaking, the FMA, as the group supervisor, shall apply the verification provided for in Article 237 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a mixed financial holding company with its head office in a third country, a third-country insurance undertaking or a third-country reinsurance undertaking.

(2) In the absence of equivalent supervision referred to in Article 237, the FMA may carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, either at the level of a third-country insurance holding company, a mixed financial holding company with its head office in a third country, a third-country insurance undertaking or a third-country reinsurance undertaking. In such a case, the FMA shall explain its decision to the group. Article 239 shall apply accordingly.

CHAPTER 10: INFORMATION

SECTION 1: PUBLIC DISCLOSURE REQUIREMENTS FOR INSURANCE AND REINSURANCE UNDERTAKINGS

Solvency and financial condition report: contents

Article 241. (1) When preparing and publishing the solvency and financial condition report in accordance with the implementing regulation (EU), insurance and reinsurance undertakings shall take the principles set out in Article 248 para. 1 into account.

(2) For the purposes of the report, insurance and reinsurance undertakings may make use of or, by a concrete reference, refer to public disclosures made in compliance with other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information to be disclosed under para. 1 in both their nature and scope.

(3) Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with para. 1.

Solvency and financial condition report: non-disclosure of certain information

Article 242. (1) Subject to the FMA's approval, an insurance or reinsurance undertaking shall not need to include certain information, except for the description of the capital management, in the solvency and financial condition report, where:

1. as a result of the disclosure, competitors of the undertaking would gain significant undue advantage; or
2. there are obligations to policyholders or third-party relationships binding an undertaking to secrecy or confidentiality to a customary extent.

(2) Where non-disclosure of information in accordance with para. 1 is permitted by the FMA, undertakings shall make a statement to this effect in their solvency and financial condition report and shall state the reasons.

Solvency and financial condition report: updates

Article 243. (1) Insurance and reinsurance undertakings shall disclose major developments that significantly affect the relevance of the information disclosed in their solvency and financial condition report. In this regard they shall disclose appropriate information on the nature and effects of such a major development. A major development exists in particular where:

1. non-compliance with the Minimum Capital Requirement is detected and the FMA either considers that the undertaking will not be able to submit a realistic short-term finance scheme or that such a scheme will not be submitted within one month of the date on which non-compliance was detected; or
2. significant non-compliance with the Solvency Capital Requirement is detected and the FMA is not presented with a realistic recovery plan within two months of the date on which non-compliance was detected.

(2) Where a major development exists as set out in para. 1, the insurance or reinsurance undertaking shall immediately disclose the amount of non-compliance and an explanation of its origin and consequences, including any remedial measures taken.

(3) Where, in spite of a short-term finance scheme considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after first being detected, the insurance or reinsurance undertaking shall immediately disclose it, together with an explanation

of its origin and consequences, including any remedial measures taken. Where, in spite of a recovery plan considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after first being detected, the insurance or reinsurance undertaking shall immediately disclose it, together with an explanation of its origin and consequences, including any remedial measures taken.

Solvency and financial condition report: written policy

Article 244. (1) Insurance and reinsurance undertakings shall have appropriate systems and structures in place to fulfil the requirements laid down in this Section. Moreover, a written policy ensuring the ongoing appropriateness of any information disclosed and to be disclosed in the solvency and financial condition report shall be prepared and implemented.

(2) The solvency and financial condition report shall be adopted by the management board or administrative board and may only be published after being adopted in this way.

Solvency and financial condition report: group level

Article 245. (1) Participating insurance and reinsurance undertakings subject to supervision in accordance with Article 197 para. 1 no. 1 or insurance holding companies and mixed financial holding companies subject to supervision in accordance with Article 197 para. 1 no. 2 shall, in accordance with the implementing regulation (EU), apply Articles 241 to 244 accordingly when preparing and publicly disclosing the report on the solvency and financial condition at the level of the group.

(2) Subject to the agreement of the FMA as the group supervisor, the undertakings referred to in para. 1 may provide a single group solvency and financial condition report. This shall comprise at least the following:

1. any information which must be disclosed at the level of the group in accordance with para. 1; and
2. the information for any of the subsidiaries within the group which must be disclosed in accordance with Articles 241 to 244. The information shall be individually identifiable for any of the subsidiaries within the group.

This shall have the effect of releasing the subsidiaries within the group from the obligation to publicly disclose a solvency and financial condition report in accordance with Article 241 para. 1.

(3) Before granting the agreement in accordance with para. 2, the FMA, as the group supervisor, shall consult the supervisory authorities in the college of supervisors and duly take into account their views and reservations.

(4) Where the report referred to in para. 2 fails to include essential information on a subsidiary which is an insurance or reinsurance undertaking with its head office in Austria, the FMA may require the subsidiary to disclose the necessary additional information.

Disclosure of certain information regarding accounting and consolidated accounting

Article 246. (1) The financial statements including the complete notes as well as the management report shall be available for inspection, at the head office of the insurance or reinsurance undertaking as well as in all permanent establishments, no later than six months after the financial year-end and until the end of the third calendar year following the financial year. The financial statements and the management report of the Austrian branch of a third-country insurance or third-country reinsurance undertaking as well as the financial statements and the management report of the undertaking as a whole shall be available for inspection at the head office of the Austrian branch. Where, pursuant to Article 280a UGB, these documents shall be submitted to the company register in German, the documents shall be made available in German.

(2) The documents set out in para.1 shall be provided to anyone on request and against reimbursement of expenses.

(3) Insurance undertakings shall publish those details in the notes referred to in Article 198 para. 9, Article 203 para. 5 last sentence, Article 222 para. 2, Article 223 para. 2, Article 237 para. 1 nos. 1, 2 and 7, Article 238 para. 1 nos. 7, 8, 14, 15, 16 and 19, Article 239 para. 2 and Article 241 no. 6 UGB, as well as the details pursuant to Article 140 para.9, Articles 145 and 155 in the official gazette “*Amtsblatt zur Wiener Zeitung*” or in any other newspaper with nationwide circulation.

(4) Article 280a UGB shall apply to Austrian branches of third-country insurance and third-country reinsurance undertakings, irrespective of their legal form.

(5) The publication of the financial statements shall include a note stating that, pursuant to para. 1, the financial statements and the management report are available for inspection at the head office of the insurance or reinsurance undertaking and in all its permanent establishments or at the head office of the Austrian branch of a third-country insurance or reinsurance undertaking. The publication of the Austrian branch of a third-country insurance or third-country reinsurance undertaking shall additionally include a note stating that the financial statements of the undertaking as a whole have been submitted, in accordance with Article 280a UGB, to the company register court. The company register court and the company register number shall be stated in the publication.

(6) The trustee’s audit opinion with regard to the monitoring of the *Deckungsstock* and the responsible actuary or the note on the refusal to issue such an audit opinion shall be submitted to the company register together with the financial statements and shall be published in the official gazette “*Amtsblatt zur Wiener Zeitung*” or in any other newspaper with nationwide circulation.

(7) Paras. 1 to 3 and 5 shall apply accordingly to the consolidated financial statements and the consolidated management report.

(8) Para. 3 shall not apply to the consolidated financial statements and the consolidated management report pursuant to Article 138 para. 8, which are prepared in accordance with the International Financial Reporting Standards. The information set out in Article 245a para. 3 UGB and

Article 138 para. 9 as well as the information that corresponds to that set out in para. 3 shall be published.

Submission of information for the purposes of the European Single Access Point (ESAP)

Article 246a. (1) Insurance and reinsurance undertakings shall submit the solvency and financial condition report pursuant to Article 241 para. 1 and the group solvency and financial condition report pursuant to Article 245 para. 1 to the FMA at the same time as publication for the purposes of making them accessible through the ESAP. The FMA is the ESAP collection body for such information.

(2) The information pursuant to para. 1 shall be submitted in a data extractable format pursuant to Article 2 point 3 of Regulation (EU) 2023/2859 or, where prescribed under EU law in particular Implementing Technical Standards issued pursuant to Article 304b (4) of Directive 2009/138/EC, in a machine-readable format pursuant to Article 2 point 4 of Regulation (EU) 2023/2859 and shall contain the following meta data:

1. all names of the insurance or reinsurance undertaking, to which the information relates;
2. the insurance or reinsurance undertaking's legal entity identifier (LEI) pursuant to Article 7(4) point b of Regulation (EU) 2023/2859;
3. the size category of the insurance or reinsurance undertaking pursuant to Article 7(4) point d of Regulation (EU) 2023/2859;
4. the types of information pursuant to the classification in Article 7(4) point c of Regulation (EU) 2023/2859;
5. a statement about whether the information contains personal data;
6. further details based on implementing technical standards issued pursuant to Article 304b (6) point a of Directive 2009/138/EC.

(3) for the purposes of para. 2 no. 2 insurance and reinsurance undertakings are obliged to obtain a legal entity identifier.

SECTION 2: REPORTING OBLIGATIONS OF THE INSURANCE AND REINSURANCE UNDERTAKINGS TO THE FMA

General provisions

Article 247. (1) Insurance and reinsurance undertakings shall have appropriate systems and structures in place to fulfil the requirements laid down in this Section, as well as preparing and implementing a written policy ensuring the ongoing appropriateness of any information to be reported to the FMA in accordance with Article 248 para. 1. This written policy shall be adopted by the management board or administrative board.

(2) Information in accordance with Article 248 paras. 1 and 8 as well as Articles 249 and 250 shall be transmitted in electronic form. In this respect, the officially determined data attributes including the data record format shall be adhered to.

(3) This Article as well as Article 248 para. 1 shall apply accordingly at group level to participating insurance and reinsurance undertakings subject to supervision in accordance with Article 197 para. 1 no. 1 and to insurance holding companies and mixed financial holding companies subject to supervision in accordance with Article 197 para. 1 no. 2.

Reports to the FMA

Article 248. (1) When compiling and reporting the information necessary for the purposes of supervision as part of regular supervisory reporting in accordance with the implementing regulation (EU) and the technical standards (EU), insurance and reinsurance undertakings shall take the following into account. The information shall:

1. reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in the business;
2. be accessible, complete in all material respects, comparable and consistent over time; and
3. be relevant, reliable and comprehensible.

(2) Insurance and reinsurance undertakings shall immediately, or no later than within five months of the financial year-end, submit to the FMA the following:

1. the financial statements;
2. the management report;
3. where appropriate, the corporate governance report;
4. the statutory auditor's report;
5. evidence of the adoption of the financial statements; and
6. regarding the consolidated financial statements, the parts of the report referred to in nos. 1, 2, 3 and 4.

(3) Insurance and reinsurance undertakings shall immediately, or no later than within six months of the financial year-end, submit to the FMA the following:

1. a certified complete copy of the minutes of the meeting that was concerned with the discharge of the members of the management board and the supervisory board or the administrative board and the managing directors;
2. evidence of the publication of the financial statements; and
3. evidence of the publication of the consolidated financial statements.

(4) By way of derogation from para. 2, Austrian branches of third-country insurance and third-country reinsurance undertakings shall immediately, or no later than within five months of the financial year-end, submit to the FMA the following:

1. the financial statements of the branch;
2. the management report of the branch;
3. the statutory auditor's report on the audit of the branch; and
4. the financial statements and the management report of the undertaking as a whole.

(5) By way of derogation from para. 3, Austrian branches of third-country insurance and third-country reinsurance undertakings shall immediately, or no later than within six months of the financial year-end, submit to the FMA the following:

1. a certified complete copy of the minutes of the meeting that was concerned with the adoption of the financial statements; and
2. evidence of the publication of the financial statements of the branch and of the undertaking as a whole in accordance with Article 246 para. 4.

(6) Where necessary for the supervision of the business activities, the FMA may also request submission of the documents referred to in para. 4 no. 4 and para. 5 no. 1 in the form of a certified German translation.

(7) In justified cases, the FMA may extend the deadlines referred to in paras. 2 to 5 upon request.

(8) The FMA may request any information necessary for the ongoing supervision of the business activities pursuant to Article 268, for group supervision and for the keeping of insurance statistics pursuant to Article 256. This information may include in particular a breakdown of the items in the financial statements, asset statements in accordance with Article 144 para. 2, as valued in accordance with the provisions relevant to accounting, statements of the financial performance by branches and services as well as by business areas and lines of business, information on the undertakings to be subject to group supervision, statistical data on the undertaking, allocation of reinsurance acceptances to specific balance sheet groups and, in the case of composite undertakings and other undertakings with more than one balance sheet group, information on balance sheet items with regard to their allocation to a balance sheet group and with regard to transfers between the balance sheet groups. The FMA shall determine by regulation more detailed rules on the content and structure of the information referred to in this paragraph and may stipulate that certain information be submitted to it more frequently than annually.

(9) Where it is stipulated in accordance with para. 8 that a report of assets is to be submitted at reporting dates during the year, the insurance and reinsurance undertakings shall also value the assets at these dates in accordance with the provisions relevant to accounting.

Lists and statements of assets dedicated to the Deckungsstock

Article 249. (1) Insurance undertakings shall keep *Deckungsstock* lists at their head offices on an ongoing basis. Insurance undertakings shall be obliged to submit to the FMA, within six weeks of the financial year-end, statements of any appropriate assets dedicated to the *Deckungsstock* at the end of the financial year, in the form of extracts from the lists. The assets shall also be valued at reporting dates during the year in accordance with the provisions relevant to accounting.

(2) The FMA shall determine by regulation the minimum information to be contained in the *Deckungsstock* lists and the statements, and may stipulate that the statements be submitted to it more frequently than annually.

(3) In justified cases, the FMA may extend the deadlines for the submission of statements upon request.

Statistical information on cross-border activities

Article 250. (1) Insurance undertakings shall inform the FMA, separately in respect of transactions carried out under the freedom of establishment and those carried out under the freedom to provide services, of the amount of the premiums written, of the claims and costs, without deduction of reinsurance, broken down by Member State and as follows:

1. for non-life insurance, by lines of business in accordance with the implementing regulation (EU); and
2. for life insurance, by lines of business in accordance with the implementing regulation (EU).

(2) As regards class 10 of Annex A, excluding carrier's liability, the insurance undertaking concerned shall also inform the FMA of the frequency and average cost of claims.

(3) After the information has been reported in accordance with paras. 1 and 2, the FMA shall submit it in aggregate form to the supervisory authorities of each of the Member States concerned upon request.

Limitation to regular supervisory reporting

Article 251. (1) Without prejudice to Article 193 para. 3, where the periods referred to in the implementing regulation (EU) and the technical standards (EU) are shorter than one year, the FMA may approve a limitation to regular supervisory reporting, where:

1. the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking; and
2. the information is reported at least annually.

Where an insurance and reinsurance undertaking is part of a group within the meaning of Article 195 para. 1 no. 3, the FMA may limit regular supervisory reporting in accordance with this paragraph only where the insurance and reinsurance undertaking concerned demonstrates to the FMA's satisfaction that regular supervisory reporting at intervals of less than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

(2) The FMA may exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where:

1. the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
2. the submission of that information is not necessary for the effective supervision of the undertaking;
3. the exemption does not undermine the stability of the financial systems concerned in the Union; and
4. the undertaking is able to provide the information on an ad-hoc basis.

Where an insurance and reinsurance undertaking is part of a group within the meaning of Article 195 para. 1 no. 3, the FMA may limit regular supervisory reporting in accordance with this paragraph only where the insurance and reinsurance undertaking concerned demonstrates to the FMA's satisfaction that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

(3) However, the FMA may grant limitation to regular supervisory reporting in accordance with paras. 1 and 2 only to undertakings that in total do not represent more than 20% of the life insurance and non-life insurance market respectively, where the non-life market share is based on premiums written and earned, and the life market share is based on technical provisions in accordance with Section 1 of Chapter 8. In this respect, the FMA shall give priority to the smallest undertakings.

(4) For the purposes of paras. 1 and 2, as part of the supervisory review process, the FMA shall assess whether the submission of information would be proportionate to the nature, scale and complexity of the risks of the insurance or reinsurance undertaking, taking into account at least:

1. the volume of premiums, technical provisions and assets of the undertaking;
2. the volatility of the claims and benefits covered by the undertaking;
3. the market risks that the investments of the undertaking give rise to;
4. the level of risk concentrations;
5. the total number of classes of life insurance and non-life insurance for which a licence has been granted;
6. possible effects of the management of the undertaking's assets on financial stability;
7. the systems and structures of the undertaking to provide information for supervisory purposes and the policy referred to in Article 247 para. 1;
8. the appropriateness of the undertaking's system of governance;
9. the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement; and
10. whether the undertaking is a captive insurance or reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

(5) Where information shall be submitted at the level of the group in accordance with Article 247 para. 3 and the periods referred to in the implementing regulation (EU) and the technical standards (EU) are shorter than one year, the FMA, as the group supervisor, may approve a limitation to regular supervisory reporting where all insurance or reinsurance undertakings within the group benefit from the limitation in accordance with para. 1, taking into account the nature, scale and complexity of the risks inherent in the business of the group.

(6) The FMA, as the group supervisor, may approve an exemption from reporting on an item-by-item basis at the level of the group where all insurance or reinsurance undertakings within the group benefit from the exemption in accordance with para. 2, taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.

ESAP collection body for information pursuant to the Disclosure Regulation

Article 252. The FMA is the ESAP collection body for insurance undertakings pursuant to Article 18a (3) of Regulation (EU) 2019/2088.

ESAP collection body information submitted on a voluntary basis

Article 253. The FMA is the ESAP collection body pursuant to Article 3 (2) of Regulation (EU) 2023/2859 for the collection of information stated in Directive 2009/138/EC and Directive (EU) 2016/97 submitted on a voluntary basis, as well as for the information stated in Regulation (EU) 2019/2088 submitted on a voluntary basis, provided that they are submitted by insurance undertakings.

SECTION 3: (REPEALED IN THE AMENDMENT PUBLISHED IN BGBl. I 16/2018)

Articles 254 to 255. *(repealed in the amendment published in BGBl. I 16/2018)*

SECTION 4: DISCLOSURE REQUIREMENTS OF THE FMA**Transparency and accountability**

Article 256. (1) The FMA shall, in accordance with the implementing regulation (EU), disclose and consistently update the following information on its website:

1. the laws, regulations, administrative rules and general guidance applicable to the field of insurance supervision;
2. the general criteria and methods, including the tools developed in accordance with Article 273 para. 3, used in the supervisory review process;
3. aggregate statistical data on key aspects of the application of the prudential framework in accordance with the implementing regulation (EU);
4. the manner of exercise of the options provided for in Directive 2009/138/EC;
5. the objectives of the supervision and its main functions and activities; and
6. the insurance statistics which shall include the essential data on the insurance portfolio and the financial circumstances of the insurance undertakings for one year in each case.

(2) The FMA shall publish the relevant national legislation for the protection of the general good, to which the performance of insurance and reinsurance distribution by insurance and reinsurance undertakings in Austria are subject, including the information, to what extent Austria has decided to apply stricter rules than in Chapter V as well as pursuant to Article 29 (3) of Directive (EU) 2016/97 on its official website.

(3) The FMA shall communicate the information pursuant to para. 2 to the Federal Minister for the Federal Ministry for Digital and Economic Affairs as the single point of contact pursuant to Article 11(4) of Directive (EU) 2016/97 responsible for providing information on ‘general good’ rules.

Publication of sanctions and measures

Article 256a. (1) The FMA shall publish all fines imposed on a legally final basis and legally taken measures for breaches against the obligations pursuant to Article 123a and Articles 127a to 135e including the identity of the person in question and the information about the type and character of the underlying breach without delay on its official website.

(2) Where the FMA arrives at the conclusion having reviewed the proportionality for the case in hand of publication of data pursuant to para. 1 that the publication of the identity of the persons in question or personal data of the affected natural persons would be disproportionate or would affect the stability of the financial markets of a Member State or several Member States or would jeopardise the conducting of on-going investigations, then the FMA has the decision to

1. only publish it, once the reasons for not publishing it cease to exist;
2. publish it anonymously, if such an anonymous publication ensures an effective protection of the relevant personal data; where the criteria exist to publish the information on an anonymous basis, then the FMA may postpone the publication of the relevant data for a reasonable period of time, if it is to be assumed that the reasons for an anonymised publication shall cease to exist within that period; or
3. not to publish it.

(3) The party affected by a publication may file a request to the FMA for verification of the lawfulness of such a publication in a procedure concluded by means of an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in the same way as the original publication. If, in the course of this review, it is found that the publication was unlawful, 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 official website.

(4) In the event that the administrative decision underlying the publication pursuant to paras. 1 to 2 is appealed against, then this as well as the outcome of this procedure shall be published in the same manner as the original publication. In the event that suspensory effect is granted for such an appeal in a procedure in a court of law, then the FMA shall also make this known. If the appeal is granted, then the FMA shall correct the publication pursuant to paras. 1 and 2 or shall at the request of the person subject to this publication, either revoke it or remove it from its official website.

(5) If a publication is not to be revoked or removed from the FMA's website on the basis of a decision pursuant to paras. 3 or 4, it shall remain published for a period of five years. Publication of the personal data shall however only be maintained for as long as none of the criteria for an anonymised publication are fulfilled.

(6) The FMA is the ESAP collection body for information pursuant to paras. 1 to 4 and shall make this information available in the ESAP. This information shall be made available in the ESAP in a data extractable format pursuant to Article 2 point 3 of Regulation (EU) 2023/2859 and shall contain the following metadata:

1. all names of the insurance or reinsurance undertaking, to which the information relates;
2. where available the institution's legal entity identifier (LEI) pursuant to Article 7(4) point b of Regulation (EU) 2023/2859;
3. the type of information pursuant to the classification in Article 7(4) point c of Regulation (EU) 2023/2859, and
4. a statement about whether the information contains personal data.

SECTION 5: COMMUNICATION REQUIREMENTS OF THE FMA

Communications to the European Commission and EIOPA

Article 257. (1) The FMA shall inform the European Commission and EIOPA of the following:

1. any licence granted to an insurance undertaking which is a subsidiary of an undertaking with its head office in a third country, while setting out the structure of the group concerned;
2. any acquisition of a holding in an insurance or reinsurance undertaking with its head office in Austria which would turn that insurance or reinsurance undertaking into a subsidiary of an undertaking with its head office in a third country;
3. any general difficulties encountered by insurance or reinsurance undertakings with their head office in Austria in establishing a branch in a state which is not a Member State, or in pursuing activities at such branches; and
4. the number and types of cases which led to refusals under Article 21 para. 4 and Article 23 para. 4 and in which measures have been taken under Article 289 para. 5.

(2) A communication in accordance with nos. 1 and 2 shall also be submitted to the supervisory authorities of the other Member States.

(3) The FMA must also inform the European Commission about general difficulties that occur in performing insurance or reinsurance distribution activities other than those listed in para. 1 no. 3 in a third country.

Communications to EIOPA

Article 258. (1) The FMA shall provide the following information to EIOPA on an annual basis:

1. the average capital add-on per undertaking and the distribution of capital add-ons imposed by the FMA during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows:
 - a. for insurance and reinsurance undertakings,
 - b. for life insurance undertakings,

- c. for non-life insurance undertakings,
 - d. for composite undertakings,
 - e. for reinsurance undertakings;
2. for each of the disclosures set out in no. 1, the proportion of capital add-ons imposed under Article 277 para. 1 nos. 1 to 4 respectively;
3. the number of insurance and reinsurance undertakings which were granted a limitation from regular supervisory reporting as referred to in Article 251 para. 1, and the number of insurance and reinsurance undertakings which were granted an exemption of reporting on an item-by-item basis as referred to in Article 251 para. 2, together with their volume of capital requirements, premiums written and earned, technical provisions as referred to in Section 1 of Chapter 8 and assets, each measured as percentages of the total volume of capital requirements, premiums written and earned, technical provisions as referred to in Section 1 of Chapter 8 and assets of the insurance and reinsurance undertakings of the Member State;
4. the number of groups which were granted a limitation from regular supervisory reporting as referred to in Article 251 para. 1, and the number of groups which were granted an exemption of reporting on an item-by-item basis as referred to in Article 251 para. 2 together with their volume of capital requirements, premiums written and earned, technical provisions as referred to in Section 1 of Chapter 8 and assets, each measured as percentages of the total volume of capital requirements, premiums written and earned, technical provisions as referred to in Section 1 of Chapter 8 and assets of all the groups;
5. the information on the functioning of the colleges of supervisors and on any difficulties encountered that are relevant for the reviews of EIOPA in accordance with Article 248(6) of Directive 2009/138/EC, with regard to those colleges of supervisors in which the FMA is the group supervisor; and
6. any granting of a licence and any revocation of a licence by the FMA.
7. information summarising all fines and measures imposed for breaches against the obligations pursuant to Article 123a and Articles 127a to Article 135e.

(2) (repealed at the end of 31.12.2020)

(3) If the FMA has published legally final imposed fines and measures pursuant to Article 256a for breaches against the obligations pursuant to Article 123a and Articles 127a to 135e, it shall inform EIOPA at the same time.

(4) Furthermore, the FMA shall also inform EIOPA about all fines and measures imposed for breaches against Article 123a and Articles 127a to 135e that were not published pursuant to Article 256a. If an appeal procedure was initiated, then the FMA shall also report this fact as well as the outcome of the appeal proceedings to the EIOPA.

Communications to the Association of Insurance Undertakings

Article 259. The FMA shall forward information it has received from the supervisory authorities of other Member States on branches or the provision of services of insurance undertakings with their head office in Austria to the Association of Austrian Insurance Undertakings (VVO; *Verband der Versicherungsunternehmen Österreichs*), to the extent that the latter needs such information to fulfil its duties set out in Article 22 para. 4 KHVG 1994 and in Article 2 of the Act on the Compensation of Road Accident Victims (VOEG; *Verkehrsofopfer-Entschädigungsgesetz*).

SECTION 6: STATUTORY AUDITOR

Election of the statutory auditor

Article 260. (1) The election of the statutory auditor shall take place prior to the beginning of the financial year to be audited. The management board or the executive directors shall inform the FMA without delay of:

1. the elected statutory auditor; and
2. the natural persons as referred to in the last sentence of Article 271a para. 3 UGB who shall perform the statutory audit on behalf of the elected statutory auditor.

The FMA shall be informed of any change in these persons without delay.

(1a) external auditors and external auditing companies shall be excluded as statutory auditors, where circumstances exist, that make an orderly audit appear unlikely. Reasons for exclusion particularly exist, if a person named pursuant to para. 1 no. 2

1. due to a lack of prior education does not have the necessary expertise or the necessary practical experience for auditing the insurance or reinsurance undertaking. Practical experience shall be considered to exist where they have at least three years activity at an external auditor or an external auditing firm, if the activity, depending on whether it is one as the statutory auditor signing the audit opinion pursuant to Article 274 UGB or the assurance statement pursuant to Article 274a UGB, especially where it extends to the auditing of the annual financial statement or the group financial statements of insurance or reinsurance undertakings or such undertakings' sustainability reporting;
2. fails to provably ensure by means of the necessary training that they have the necessary up-to-date knowledge required for auditing the insurance and reinsurance undertaking, or
3. fails to carry out their activities with the required professional prudence and care, especially if there auditing activities have exhibited severe defects in the last five years.

(2) The reasons for exclusion pursuant to Article 271a paras. 1 to 4 UGB shall be applied to statutory auditors of insurance associations, whose business is restricted to asset management (Article 63 para. 3), and to statutory auditors of private foundations (Article 66 para. 1) without consideration of characteristics relating to size.

(2a) Article 271a paras. 5 to 7 UGB shall be applied accordingly for insurance and reinsurance undertakings as defined in Article 2 (13) c) of Directive 2006/43/EC as well as branches of third-country insurance undertakings and third-party reinsurance undertakings.

(2b) The statutory auditor shall certify to the FMA, within two weeks of their appointment, that no reasons for exclusion exist. Where it is suspected that reasons for exclusion exist as well as in the scope of random reviews of statutory auditors, the FMA may request all necessary information and documents required to assess whether reasons for exclusion exist.

(3) Where the FMA has reasonable doubts that the person elected as statutory auditor fulfils the prerequisites for appointment as statutory auditor, it may file an application as referred to in Article 270 para. 3 UGB within one month of notification of the election. Where a reason for exclusion or lack of impartiality – especially after a procedure pursuant to para. 2b – is not known until after the election or only occurs after the election, the application shall be filed within one month of the day on which the FMA became aware of it or on which, without gross negligence, it should have become aware of it.

(4) Where the person elected as statutory auditor had already been commissioned as statutory auditor by the insurance or reinsurance undertaking for the financial year preceding the year of election, and where the statutory auditor's report pursuant to Article 248 para. 2 no. 4 or para. 4 no. 3 for this financial year is not yet available to the FMA upon receipt of the notification of the statutory auditor's election, the application pursuant to para. 3 may be filed by no later than one month after receipt of this report.

Commissioning of auditors

Article 261. (1) The supervisory board or the administrative board may commission auditors or accounting firms for whom or which no bias or exclusion pursuant to Article 271, Article 271a or Article 271b UGB or Article 4 or Article 17 of the Regulation (EU) No 537/2014 exists to perform the audit of the legality and propriety of the entire insurance or reinsurance undertaking. They must be provided with the corresponding audit engagement. Regulation (EU) No 537/2014 shall be applied accordingly.

(2) The auditor acting on behalf of the supervisory or administrative board shall report on the result of the audit to the chairperson of the supervisory or administrative board. The auditor shall immediately inform the chairperson of the supervisory or administrative board if they identify severe deficiencies with regard to the undertaking's legality and propriety.

(3) Insurance and reinsurance undertakings are obliged to facilitate any auditing activities pursuant to Article 274 paras. 4 to 6 which are undertaken by the auditors appointed by the supervisory board or the administrative board.

Temporary prohibition on taking up certain activities

Article 262. The temporary prohibition on taking up certain activities pursuant to Article 271c UGB shall apply in insurance associations, whose business is restricted to asset management (Article 63 para. 3), and private foundations (Article 66 para. 1) without consideration of characteristics relating to size.

Auditing duties of the statutory auditor

Article 263. (1) Apart from auditing the financial statements, the statutory auditor shall perform the following audits at insurance and reinsurance undertakings:

1. an audit of the solvency and financial condition report; this entails in particular audits of the solvency balance sheet, the framework conditions for calculating the Solvency Capital Requirement, the calculation of the Minimum Capital Requirement, as well as the determination, classification and eligibility of the own-fund items;
2. an audit of the effectiveness of the internal control system, of the risk management system and internal auditing on the basis of regulations that have been defined as conditions for an effective governance system;
3. checking of the functional capability of the policies, strategies and procedures for compliance with Articles 4 to Article 17, Article 19 para. 2, Article 20 to Article 24, Article 29 and Article 40 para. 1 FM-GwG;
4. the impact of intra-group transactions (Article 5 no. 25), provided they are significant, on solvency;
5. an audit of compliance with the FKG with respect to the following provisions:
 - a. the impact of intra-group transactions as referred to in Article 10 FKG on solvency,
 - b. the effectiveness of the internal control mechanisms set up pursuant to Article 11 para. 4 FKG with respect to the presentation of information and disclosures relevant to supplementary supervision;
6. fulfilment of the legal requirements pertaining to the valuation and particularly the amount of the hidden net reserves set aside by the undertaking should the second sentence of Article 149 para. 2 be applicable;
7. an audit of compliance with the administrative decisions and letters submitted pursuant to para. 3; and
8. in the case of small insurance undertakings, compliance with Articles 88 to 90 (solvency margin and investment).

(2) At the level of the group, the group statutory auditor, or where consolidated financial statements are not required pursuant to Article 245 UGB, the statutory auditor shall perform the following audits at group level:

1. an audit of the report on the group's solvency and financial condition; this entails in particular audits of the solvency balance sheet, the framework conditions for calculating the Solvency

- Capital Requirement and the determination, classification and eligibility of the own-fund items, each of which at group level;
2. an audit of the effectiveness of the internal control system, of the risk management system and internal auditing, each of which at group level, on the basis of regulations that have been defined as conditions for an effective governance system;
 3. an audit of compliance with Article 220 (risk concentration);
 4. an audit of compliance with the FKG with respect to the following provisions:
 - a. Articles 6 to 8 FKG (adjusted solvency margin),
 - b. Article 9 FKG (risk concentration), and
 - c. Article 11 FKG (internal control mechanisms and risk management).
- (3) Insurance and reinsurance undertakings shall present any administrative decisions issued by the FMA to them to the statutory auditor as part of their obligation of presentation pursuant to Article 272 UGB. In addition, the statutory auditor must be provided with any letters from and to the FMA, inasmuch as these are required for a careful audit.

Reporting obligations of the statutory auditor

Article 264. (1) The result of the audit pursuant to Article 263 paras. 1 and 2 shall be presented in an annex to the audit report on the financial statements (supervisory audit report).

(2) The audit pursuant to Article 263 para. 1 no. 1 and para. 2 no. 1 shall be performed by analogy with the provisions on the statutory audit of (consolidated) financial statements. The checking of the functional capability pursuant to Article 263 para. 1 nos. 2, 3, and 5 lit. b as well as Article 263 para. 2 no. 2 shall be extended to the organisational structure and the administrative, accounting and control mechanisms, that have been established and documented with regard to the observance of the respective provisions. The checking pursuant to Article 263 para. 1 no. 4 and para. 1 no. 5 lit. a shall extend to the qualitative impact of intra-group transactions, provided that they are significant, on solvency.

(3) The report on the result of the audit pursuant to Article 263 para. 1 nos. 1 and 8, para. 2 no. 1 and para. 2 no. 4 lit. a shall be combined with a high level of assurance, the report on the result of all further audits with a moderate level of assurance. The statutory auditor shall also report significant details encountered during auditing activities which indicate that ongoing compliance with the obligations arising from the insurance contracts cannot be guaranteed.

(4) The exclusion of undertakings from group supervision as referred to in Article 198 para. 1, performance of subgroup supervision at the level of a national subgroup as referred to in Article 199 and subgroup supervision at the level of a subgroup covering several Member States as referred to in Article 200 shall be stated in the report pursuant to paras. 1 and 3.

(5) The FMA may, with the consent of the Federal Minister of Finance, determine by regulation special instructions on the provisions concerning performance of the statutory audit and the auditing of the

sustainability reporting, the statutory auditor's supervisory audit report, and on the requirement for the statutory auditor's report to be personally signed.

(6) Statutory auditors and auditing companies shall keep the documents and information listed in Article 15 subparagraph 1 of Regulation (EU) No 537/2014 for at least seven years following their being created.

Notification obligation of the statutory auditor

Article 265. (1) The statutory auditor shall immediately notify the FMA in writing of any facts, and explain them, of which they have become aware while carrying out their tasks and which could bring about any of the following:

1. a breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which govern pursuit of the business activities of insurance and reinsurance undertakings;
2. the impairment of the continuous functioning of the insurance or reinsurance undertaking;
3. a refusal to certify the financial statements or the expression of reservations;
4. non-compliance with the Solvency Capital Requirement;
5. non-compliance with the Minimum Capital Requirement.

(2) The notification obligation pursuant to para. 1 also refers to those facts of which the statutory auditor has become aware in an undertaking which has close links resulting from a control relationship with the insurance or reinsurance undertaking for which they act as statutory auditor.

(3) The notification obligation towards the FMA also includes compliance with the reporting obligation pursuant to Article 273 para. 2 UGB.

(4) Notifications pursuant to paras. 1 and 2 made in good faith shall not constitute a breach of any statutory or contractual confidentiality obligation and shall not entail any kind of liability for the statutory auditor.

(5) Notifications pursuant to Article 7 subparagraph 2 of Regulation (EU) No 537/2014 shall be addressed to the FMA and shall list the facts known to the statutory auditor regarding the irregularities listed in Article 7 subparagraph 1 or Regulation (EU) No 537/2014.

(6) Notifications pursuant to paras. 1, 2 and 5 shall be forwarded to the management board and supervisory board and/or the administrative board and executive directors without delay.

Liability for damages of the statutory auditor

Article 266. The statutory auditor's liability for damages depends on the amount of the insurance and reinsurance undertaking's total assets and is limited to:

1. EUR 2 million where the total assets amount to up to EUR 200 million;
2. EUR 3 million where the total assets amount to up to EUR 400 million;
3. EUR 4 million where the total assets amount to up to EUR 1 billion;
4. EUR 6 million where the total assets amount to up to EUR 2 billion;

5. EUR 9 million where the total assets amount to up to EUR 5 billion;
6. EUR 12 million where the total assets amount to up to EUR 15 billion;
7. EUR 18 million where the total assets amount to more than EUR 15 billion

for each audited insurance or reinsurance undertaking. In cases of intent, liability for damages is unlimited. The limits of liability stated in the first sentence shall again apply for the liability objection due to breaches of duty during the auditing of sustainability reporting. Otherwise, Article 275 para. 2 UGB shall apply to the liability for damages of the statutory auditor.

Applicability of the provisions to independent providers of auditing services

Article 266a. The provisions in this section, with the exception of Articles 261, 263, 264 paras. 1 to 4 and para. 6 and Article 265 para. 1 nos. 2, 4 and 5 and Abs. 5, shall also apply to independent providers of auditing services pursuant to Article 189a no. 14 UGB.

CHAPTER 11: SUPERVISORY AUTHORITY AND PROCEDURES

SECTION 1: GENERAL PROVISIONS

Objectives of supervision

Article 267. (1) The main objective of the FMA, in the exercise of its supervisory powers, is the protection of policyholders' and beneficiaries' interests.

(2) Without prejudice to the main objective as set out in para. 1, the FMA, in the exercise of its duties, shall duly consider the potential impact of its decisions on the stability of the financial systems in all Member States concerned and in particular in emergency situations, taking into account the information available at the relevant time. In times of exceptional movements in the financial markets, the FMA shall take into account the potential pro-cyclical effects of its actions. This does not create a legal obligation for the FMA to achieve a certain result, and no damages may be claimed due to certain results being achieved or not achieved. In particular, such events do not constitute damage within the meaning of the Public Liability Act (AHG; *Amtshaftungsgesetz*).

(3) The FMA shall, in the enforcement of the provisions of this federal act, including the issue and enforcement of the regulations issued on the basis of this federal act, in the enforcement of the implementing regulation (EU), Delegated Regulations (EU) 2017/2358 and 2017/2359, of Regulation (EU) 2019/2088, of Articles 5, 6 and 7 of Regulation (EU) 2020/852 and the technical standards (EU), have regard to European convergence in respect of supervisory tools and supervisory procedures. For that purpose, the FMA shall participate in the activities of EIOPA, cooperate with the ESRB, take into account the guidelines (EIOPA) and recommendations (EIOPA) and other measures adopted by EIOPA, as well as comply with the warnings and recommendations issued by the ESRB under Article 16 of Regulation (EU) No 1092/2010. The FMA may deviate from the

guidelines (EIOPA) and recommendations (EIOPA) where there are justified reasons to do so, in particular in the event of a conflict with provisions of federal law.

(4) The FMA shall cooperate with EIOPA in accordance with Regulation (EU) No 1094/2010 and provide EIOPA, without delay, with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.

Principles of supervision

Article 268. (1) The FMA shall monitor all business activities of insurance and reinsurance undertakings to the extent of the licence granted pursuant to Article 6 para. 1.

The supervisory activities of the FMA shall be forward-looking and risk-based. The FMA shall monitor the proper operation of the insurance and reinsurance business as well as compliance by insurance and reinsurance undertakings with provisions applicable to contractual insurance activities, in particular this federal act, the implementing regulation (EU), Delegated Regulations (EU) 2017/2358 and 2017/2359 and the technical standards (EU). To this end, it shall ensure an appropriate combination of off-site activities and on-site inspections.

(2a) The FMA shall in particular monitor compliance by the insurance undertaking on an ongoing basis with the regulations contained in Regulation (EU) 2019/2088 and Articles 5, 6 and 7 of Regulation (EU) 2020/852.

(3) The FMA shall, in the exercise of its powers, appropriately consider the nature, scale and complexity of the risks inherent in the business activities of insurance and reinsurance undertakings.

(4) Where an insurance undertaking is authorised within the scope of the licence granted pursuant to Article 6 para. 1 to cover the risks classified in class 18 in Annex A, supervision shall extend to monitoring of the technical resources for the purpose of carrying out the assistance obligation.

(5) The FMA shall ensure the application of the provisions of Article 16 and Article 17 of Regulation (EU) no. 537/2014. The FMA may request information and the submission of documents by the statutory auditor at any time provided that doing so is necessary for this duty.

Market monitoring

Article 268a. The FMA shall monitor the market for insurance products, including the market for ancillary insurance products that are marketed, distributed or sold in Austria or from Austria in addition to other products or services exclusively observing the public interests listed in Article 267 paras. 1 and 2.

Authorisation for processing of personal data

Article 268b. The FMA is authorised to process personal data as defined in Regulation (EU) 2016/679, provided that this is necessary for the performance of its duties in accordance with this Federal Act.

Form of communication with the FMA – electronic submission

Article 269. The FMA may prescribe by means of a Regulation, that the notifications, submissions and reports pursuant to Article 11 para. 2, Article 21 paras. 1 and 5, Article 23 paras. 1 and 5, Article 24 paras. 1 to 3, Article 63 para. 5, Article 65 para. 3, Article 66 para. 3 no. 4, Article 79 para. 3, Article 85 para. 2, Article 86 paras. 1, 4 and 5, Article 87 para. 4, Article 92 paras. 1, 2 and 5, Article 100 para. 4, Article 102 para. 1, Article 109 para. 2 and 4, Article 115 para. 2 and 4, Article 116 para. 3, Article 122 para. 1 and 3, Article 123 paras. 3 and 4, Article 127 paras. 1 to 3, Article 176 para. 1, Article 185 para. 2, Article 193 para. 3, Article 194 paras. 2 and 3, Article 196 para. 3, Article 202 para. 4, Article 203 paras. 2 and 3, Article 220 para. 1, Article 221 para. 1 and 3, Article 224 para. 2, Article 225 paras. 1 and 2, Article 246a, Article 248 paras. 2 to 6 and 8, Article 249 paras. 1 and 2, Article 250 paras. 1 and 2, Article 253, Article 260 para. 1, Article 265 para. 1, Article 272 para. 2, Article 273 para. 4, Article 278 para. 1, Article 279 para. 1, Article 280 paras. 1 and 3, Article 300 para. 3, Article 305 para. 1 no. 3 and para. 6, Article 306 paras. 1 and 6, and Article 309 para. 1, pursuant to Article 304, Article 312, Article 362, Article 368, Article 373 of the Implementing Regulation (EU) shall be made exclusively in electronic form and shall have to correspond to specific formats, technical minimum requirements and procedures for transmission. In this context, the FMA shall be guided by 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 requirements 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.

Participation of the Federal Computing Centre

Article 270. The Austrian Federal Computing Centre (*Bundesrechenzentrum GmbH*) shall participate in the business transactions incumbent upon the FMA in accordance with this federal act, provided that such participation is in the interest of simplicity, expediency and economy.

Costs of insurance supervision

Article 271. (1) The costs of supervision attributable to insurance supervision, with the exception of the costs pursuant to the second sentence of Article 304 para. 3 shall be reimbursed to the FMA by the undertakings listed in Article 1 para. 1. EEA insurance and EEA reinsurance undertakings shall only have to reimburse costs if they have established a branch in Austria.

(2) The premiums written of all activities pursued on the basis of the licence shall constitute the assessment basis for the costs. For undertakings that do not write premiums, the FMA shall determine an appropriate lump sum based on the expected supervisory costs.

(3) The costs shall be based on the amount of the insurance supervision costs as a proportion of the sum total of the assessment basis pursuant to para 2. The lump sums charged pursuant to para. 2

shall be deducted from the costs of insurance supervision. The costs shall be determined by the FMA annually on the basis of the results of the preceding financial year. Rounding up to a thousandth and setting a minimum amount for the costs shall be permitted. The costs must not exceed 0.1% of the assessment basis pursuant to para. 2.

(4) The amounts to be reimbursed by the undertakings liable to pay costs pursuant to para. 1 shall be prescribed by the FMA by means of an administrative decision. The FMA shall determine more detailed rules for the reimbursement of costs and shall determine how they are prescribed by issuing a regulation. In particular the following shall be defined:

1. The assessment basis of the individual types of prescribed costs and
2. The timing for the prescribed costs and the timeframe for payments by those liable to pay costs.

The parties liable to pay costs shall provide the FMA with all necessary information regarding the basis for the calculation of costs. The FMA may determine a flat rate fee for the branches of EEA insurance undertakings and EEA reinsurance undertakings pursuant to para. 2, where this seems to be more expedient.

SECTION 2: SUPERVISION

Information, notification and presentation obligations

Article 272. (1) The FMA may request from insurance and reinsurance undertakings information about any business activity issues as well as the presentation of relevant documents at any time, and determine the manner in which these documents must be presented. This shall not include the insurance undertakings' obligation to systematically present the general policy conditions, the scales of premiums as well as the forms and other printed documents which they intend to use in dealings with policyholders or ceding or retro-ceding undertakings.

(2) Insurance and reinsurance undertakings shall immediately inform the FMA in writing of any facts that may directly or indirectly threaten ongoing compliance with the obligations arising from the insurance contracts.

(3) The FMA may, in order to ensure insurance marketing activities are conducted in a lawful manner, at any time request from insurance intermediaries information and the presentation of documents, in particular any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties, and may inspect such information on site; Article 274 paras. 1 to 3 shall apply accordingly.

(4) Within the scope of the supervisory remit imposed on the FMA by this federal act, the authority may request information about any business activity issues of insurance and reinsurance undertakings from anyone. This shall not affect any confidentiality obligation existing under other legal provisions. However, the statutory auditor of the insurance or reinsurance undertaking shall not be allowed to invoke their confidentiality obligation.

(5) The obligation to provide information includes the obligation to present certificates and other written documents or to permit their inspection.

Supervisory review process

Article 273. (1) The FMA shall review and evaluate the strategies, processes and reporting procedures which have been introduced by the insurance and reinsurance undertakings to comply with the provisions applicable to contractual insurance activities. In this context, the FMA shall in particular assess the qualitative requirements relating to the system of governance, the risks which the insurance or reinsurance undertaking concerned faces or may face and the ability of the undertaking to evaluate those risks taking into account the environment in which the undertaking is operating. The FMA shall in particular review and evaluate compliance with the following:

1. the system of governance, including the own risk and solvency assessment and the investment rules as set out in Chapter 5, with the exception of Article 106 and Articles 114 to 116;
2. the technical provisions as set out in Section 1 of Chapter 8;
3. the Solvency Capital Requirement and the Minimum Capital Requirement;
4. the quality and quantity of own funds; and
5. where applicable, ongoing compliance with the requirements for an internal model.

In addition, the FMA shall assess the adequacy of the methods and practices of the insurance and reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned. Moreover, the FMA shall assess the ability of the insurance and reinsurance undertakings to withstand those possible events or future changes in economic conditions.

(2) The reviews, evaluations and assessments referred to in para. 1 shall be conducted regularly. Depending on the nature, scale and complexity of the business activities and the risks, the FMA shall establish the frequency and the scope for each insurance or reinsurance undertaking.

(3) The FMA shall employ appropriate supervisory tools with which it can recognise a deterioration of the financial position of insurance and reinsurance undertakings and monitor the countermeasures taken by an insurance or reinsurance undertaking.

(4) The FMA may develop, where appropriate and necessary, quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have adverse effects on their overall financial standing. The FMA may require that corresponding tests be performed by insurance and reinsurance undertakings. Insurance and reinsurance undertakings shall submit the results of such tests to the FMA.

Reporting breaches to the FMA

Article 273a. (1) The FMA shall establish effective mechanisms to encourage the reporting of breaches or suspected breaches of the provisions of this Federal Act, of the Regulations or administrative decisions issued on the basis of this Federal Act, of the provisions of Delegated Regulations (EU) no. 2017/2358 and 2017/2359, of Regulation (EU) 2019/2088, of Articles 5, 6 and 7 of Regulation (EU) 2020/852, and the Technical Standards (EU) or of an administrative decision issued on the basis of those Regulations.

(2) The mechanisms listed in para. 1 shall at least include:

1. specific procedures for receiving reports on breaches and their follow-up;
2. appropriate protection for the employees of legal entities pursuant to Article 1 para. 1 nos. 1 to 9 who report breaches committed within their legal entity, as a minimum against retaliation, discrimination or other forms of unfair treatment;
3. appropriate protection of identity pursuant to Regulation (EU) 2016/679 for both the person notifying the breach as well as for the natural person who is allegedly responsible for a breach, in all stages of the procedure, provided that the disclosure of identity is not compulsory within a procedure conducted by the Public Prosecutor's Office, a court of law, or under administrative procedural law.

(3) Employees who report such breaches with regard to this Federal Act by means of an internal procedure or by reporting them to the FMA, shall neither be allowed as a consequence

1. to be disadvantaged, in particular in relation to their salary, professional promotion, in relation to training and education programmes, by being moved internally or by having their employment terminated, nor
 2. to be held responsible in accordance with regulations under penal law,
- unless the report was intentionally falsely submitted. The legal entity or a third party shall only have a claim for compensation in the case of a report that was clearly incorrect, made by the employee had made with intention of causing damage. The authorisation to make such reports shall not be allowed to be contractually restricted. Agreements to the contrary shall not be effective.

On-site inspection

Article 274. (1) The FMA may at any time inspect the business activities of the insurance and reinsurance undertakings on site.

(2) Where necessary for the purpose of monitoring business activities, the FMA may appoint inspection bodies which are not part of the FMA. The FMA shall pay them a remuneration, the amount of which is reasonable based on the related efforts and expenses.

(3) The inspection shall be announced one week in advance, unless this defeats the purpose of the inspection. The inspection bodies shall be given a written inspection mandate, and they shall identify themselves without being asked to do so prior to the inspection and present the mandate. The inspection mandate shall define the object of the inspection.

- (4) The insurance and reinsurance undertakings shall provide the inspection bodies with the documents required for the inspection and grant them access to the books, supporting evidence and papers as well as furnishing them with information. In addition, they shall grant the inspection bodies access to the business and office premises at any time during regular business and working hours.
- (5) The inspection bodies shall be entitled to request the information and business documents required for the inspection directly from any person employed in the insurance or reinsurance undertaking in their fields of activity.
- (6) Suitable rooms and aids needed to perform the inspection shall be made available to the inspection bodies. Where entries have been made or documents stored using data media, the insurance and reinsurance undertakings shall, within an appropriate period of time and at their cost, make those aids available that are necessary to make the documents readable and, where appropriate, produce permanent reproductions readable without aids in the required number.
- (7) The findings of the inspection shall be documented in writing. The undertaking shall be given the opportunity to state its opinion.
- (8) Paras. 1 to 7 shall be applied accordingly to service providers to whom functions or business activities have been outsourced, irrespective of whether such outsourcing required prior approval. Where the service provider has its head office in another Member State, the FMA shall inform the authority of the Member State concerned prior to conducting the on-site inspection. In the case of a non-supervised entity the supervisory authority of the Member State in which the service provider has its head office shall be the competent authority. The FMA may delegate the task of conducting an on-site inspection to the supervisory authority of the Member State where the service provider has its head office. Where the FMA is unable to make use of its right to perform such inspections on site, the FMA may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.
- (9) A service provider with its head office in Austria to which functions or business activities have been outsourced by an EEA insurance or EEA reinsurance undertaking may be inspected on site by the supervisory authority of the Member State concerned or by persons authorised by that supervisory authority as soon as the FMA has been duly informed in writing. The FMA may participate in such an inspection itself or through inspection bodies that it has appointed pursuant to para 2. Paras 3 to 7 shall apply accordingly.

Orders by the FMA

Article 275. (1) The FMA shall give any orders:

1. which are necessary and appropriate to ensure compliance of the business activities with the regulations that apply for the provision of contractual insurance activities, in particular the provisions of this federal act, the Implementing Regulation (EU), Delegated Regulations (EU)

2017/2358 and 2017/2359, Regulation (EU) 2019/2088 and Articles 5, 6 and 7 of Regulation (EU) 2020/852 and the Technical Standards (EU);

2. which are necessary and appropriate to remedy weaknesses or deficiencies identified in the supervisory review process; or
3. which are necessary and appropriate to safeguard the interests of the policyholders and beneficiaries in order to ensure compliance with the recognised principles of orderly business activities of insurance and reinsurance undertakings.

(2) Recognised principles of orderly business activities as referred to in para. 1 no. 3 may be breached in particular where:

1. policyholders and beneficiaries receive direct or indirect benefits in addition to the benefits based on the insurance contract;
2. policyholders and beneficiaries are given preferential treatment due to the insurer's promise to pay benefits or the agreed insurance benefit for no objective reason; or
3. insurance-related benefits are paid out even though no insurance contract exists or no damage has occurred.

(3) Orders as referred to in para. 1 may, where appropriate, in addition to the insurance or reinsurance undertaking, also be addressed to:

1. the members of the management board or administrative board and the managing directors, as well as to persons controlling the undertaking;
2. to service providers to which functions or business activities have been outsourced, irrespective of whether the outsourcing required prior approval; or
3. the responsible natural person for a breach of obligations for insurance distribution.

(4) To prevent further breaches of obligations pursuant to Article 128 to Article 135d in the distribution of insurance-based investment products, the FMA may temporarily prohibit the member of the management board or the administrative board responsible for the breach of the obligation or the responsible executive directors of the insurance undertaking by means of an instruction from performing managerial duties at undertakings pursuant to Article 1 para. 1 nos. 1 to 5 and insurance distributors.

Convening the annual general meeting or the supervisory board

Article 276. Where it serves the enforcement of compliance with the provisions and orders of the FMA applicable to contractual insurance activities, the FMA shall request that the annual general meeting (general meeting of members or council of members) or the supervisory board or the administrative board of an insurance or reinsurance undertaking be convened and that certain items be included on the agenda as motions for discussion and resolution. If this request is not immediately met, the FMA may, where the interests of the policyholders and beneficiaries would otherwise be put at risk, itself convene the bodies or make the announcement at the insurance or reinsurance undertaking's cost.

Capital add-on

Article 277. (1) Following the supervisory review process, the FMA may set a capital add-on in the following cases only:

1. where the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula; and
 - a. the order to use an internal model pursuant to Article 181 para. 2 is inappropriate or has been ineffective, or
 - b. an internal model is being developed in accordance with an order pursuant to Article 181 para. 2;
2. where the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model because:
 - a. certain quantifiable risks are captured only insufficiently, and
 - b. the adaptation of the model within an appropriate timeframe to better reflect the given risk profile has failed;
3. where the system of governance of an insurance or reinsurance undertaking deviates significantly from the requirements laid down in Articles 107 to 113, Articles 117 to 122 and:
 - a. those deviations prevent the undertaking from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to, and
 - b. the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe; or
4. where an insurance or reinsurance undertaking applies the matching adjustment, the volatility adjustment or the transitional measures referred to in Articles 336 and 337 and the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

(2) In the circumstances set out in para. 1 nos. 1 and 2, the calculation shall be made by the FMA in such a way as to ensure that the Solvency Capital Requirement calibration referred to in Article 175 para. 3 is complied with. The amount of the capital add-on referred to in para. 1 no. 3 shall be in line with the material risks arising from the deficiencies which led to the FMA's imposition of the add-on. In the case set out in para. 1 no. 4 the capital add-on shall be proportionate to the material risks arising from the deviation.

(3) The FMA shall order appropriate measures to remedy the deficiencies that led to the imposition of the capital add-on referred to in para. 1 nos. 2 and 3.

(4) The capital add-on referred to in para. 1 shall be reviewed at least once a year by the FMA and be removed as soon as the undertaking proves that it has remedied the deficiencies which led to its imposition.

(5) The add-on imposed pursuant to para. 1 shall be added to the Solvency Capital Requirement calculated by the insurance or reinsurance undertaking and the resulting amount shall replace the inadequate Solvency Capital Requirement. Notwithstanding this, the capital add-on imposed in accordance with para. 1 no. 3 is not considered for the purposes of the calculation of the risk margin referred to in Article 161.

Measures in the event of deteriorating financial conditions: solvency plan

Article 278. (1) Insurance and reinsurance undertakings shall immediately inform the FMA where they observe that coverage of the Solvency Capital Requirement with eligible own funds can no longer be guaranteed due to a deterioration of the undertaking's financial conditions, while the conditions referred to in Article 279 are not yet fulfilled. Insurance and reinsurance undertakings shall have appropriate procedures in place to identify any deterioration of their financial conditions. (2) Within two months of the occurrence of the conditions referred to in para. 1, the insurance or reinsurance undertaking concerned shall submit a solvency plan to the FMA for approval. The solvency plan shall detail how any deteriorating financial conditions are to be remedied and coverage of the Solvency Capital Requirement with eligible own funds consistently guaranteed.

Measures in the event of non-compliance with the Solvency Capital Requirement: recovery plan

Article 279. (1) Insurance and reinsurance undertakings shall immediately inform the FMA where they observe that the Solvency Capital Requirement is no longer complied with or where there is a risk of non-compliance within the following three months.

(2) Within two months of the observation of non-compliance with the Solvency Capital Requirement, the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan to restore financial soundness to the FMA. The plan requires the FMA's approval and shall ensure that, within six months of the observation of non-compliance, the Solvency Capital Requirement is again complied with by way of:

1. restoring the eligible own funds, at least to the level of the Solvency Capital Requirement; or
2. reducing the risk profile accordingly.

The FMA may, where appropriate, extend that period by another three months.

(3) In the event of exceptional adverse situations established by EIOPA pursuant to para. 4, the FMA may extend the period set out in para. 2 by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions, at the request of an insurance or reinsurance undertaking concerned.

(4) The FMA shall request that EIOPA declare the existence of exceptional adverse situations where insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in para. 2. Exceptional adverse situations exist where the financial situation of insurance or reinsurance undertakings

representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions:

1. a fall in financial markets which is unforeseen, sharp and steep;
2. a persistent low interest rate environment; or
3. a high-impact catastrophic event.

EIOPA shall, in cooperation with the supervisory authority concerned, assess on a regular basis whether the conditions referred to in the previous paragraph still apply. EIOPA shall, in cooperation with the supervisory authority concerned, declare when an exceptional adverse situation has ceased to exist.

(5) Every three months the insurance or reinsurance undertaking concerned shall submit a progress report to the FMA setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure renewed compliance with the Solvency Capital Requirement.

(6) The FMA shall withdraw the extension referred to in para. 3 where the progress report shows that no significant progress has been made towards re-establishing the level of eligible own funds covering the Solvency Capital Requirement or reducing the risk profile to ensure renewed compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date on which the progress report was submitted.

Measures in the event of non-compliance with the Minimum Capital Requirement: finance scheme

Article 280. (1) Insurance and reinsurance undertakings shall immediately inform the FMA where they observe that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance within the following three months.

(2) Within one month of the observation of non-compliance with the Minimum Capital Requirement the insurance or reinsurance undertaking concerned shall submit a short-term, realistic finance scheme. The scheme requires the FMA's approval and shall ensure that, within three months of the observation of non-compliance, the Minimum Capital Requirement is again complied with by way of:

1. restoring the eligible basic own funds, at least to the level of the Minimum Capital Requirement; or
2. reducing the risk profile accordingly.

(3) Composite undertakings shall immediately inform the FMA where they establish that the notional life Minimum Capital Requirement or the notional non-life Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance within the following three months. The FMA shall apply the measure provided in para. 2 and in Article 283 para. 1 no. 3 to the activity concerned or approve the transfer of eligible basic own funds from the life activity to the non-life activity, or vice versa.

Common provisions relating to the solvency and recovery plan, and the finance scheme

Article 281. The solvency plan, the recovery plan and the finance scheme shall at least include the following contents:

1. estimates of commissions payable and other operating expenses;
2. estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
3. a forecast solvency balance sheet;
4. estimates of the financial resources intended to cover technical provisions set out in Section 1 of Chapter 8, the Minimum Capital Requirement and the Solvency Capital Requirement; and
5. comprehensive details on the reinsurance policy.

FMA measures relating to technical provisions

Article 282. (1) At the FMA's request, insurance and reinsurance undertakings shall demonstrate the following:

1. the appropriateness of the level of their technical provisions as referred to in Chapter 7 and the appropriateness of the level of their technical provisions as referred to in Section 1 of Chapter 8;
2. the applicability and relevance of the methods applied; and
3. the adequacy of the underlying statistical data used.

(2) Where the calculation of technical provisions does not comply with the provisions of Chapter 7 or Section 1 of Chapter 8, the FMA may order an increase in the technical provisions so that they correspond to the level determined by law.

Prohibition of free disposal of assets

Article 283. (1) The FMA may restrict or prohibit the free disposal of an insurance or reinsurance undertaking's assets to ensure ongoing compliance with the obligations arising from the insurance contracts where:

1. no sufficient technical provisions pursuant to Chapter 7 or Section 1 of Chapter 8 have been established;
2. the requirements set out in Article 279 para. 1 are met, and where there is reason to assume that the financial conditions of the insurance or reinsurance undertaking concerned will deteriorate further and exceptional situations require it;
3. the requirements set out in Article 280 para. 1 are met; or
4. the licence has expired.

(2) Where the free disposal of assets has been prohibited or restricted, the insurance or reinsurance undertaking may only dispose of them in a legally effective manner with the FMA's consent. Consent shall be given where disposal does not jeopardise compliance with the obligations arising from the insurance contracts.

(3) The prohibition or restriction of the free disposal of domestic land, immovable property rights and mortgage loans on domestic land or immovable property rights shall be entered in the land register.

(4) The FMA shall inform the general public of its decisions to restrict or prohibit the free disposal of assets by publication on the Internet, in the official gazette "*Amtsblatt zur Wiener Zeitung*" or in any other newspaper with nationwide circulation.

Measures in the event of a threat to the interests of the policyholders and beneficiaries

Article 284. (1) Where the solvency position of an insurance or reinsurance undertaking continues to deteriorate, the FMA may order temporary measures necessary to avert a threat to the interests of the policyholders and beneficiaries, in particular to ensure compliance with the obligations arising from insurance contracts or to safeguard compliance with the obligations arising from reinsurance contracts. Those measures shall be proportionate and reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned. They shall cease to apply by no later than 18 months after having entered into force. To this end, the FMA may in particular:

1. fully or partly prohibit the members of the management board or administrative board and the managing directors from managing the undertaking;
2. appoint a government commissioner; and
3. fully or partly prohibit the continuation of business activities.

(2) In order to avert a threat as referred to in para. 1, the FMA may restrict by regulation the extent of the insurance cover agreed by an insurance undertaking in existing insurance contracts, provided that all of the following requirements are met:

1. the agreed extent of the insurance cover is based on general policy conditions or generally used scales of premiums;
2. the agreed extent of the insurance cover deviates considerably from customary market conditions;
3. the premiums are not sufficient to provide the agreed insurance cover in the long term; and
4. the general policy conditions and the generally used scales of premiums for new insurance contracts include the same restrictions for the same premiums.

(3) Where a threat as referred to in para. 1 cannot otherwise be averted, the FMA may order an insurance or reinsurance undertaking to transfer its portfolio of insurance contracts pursuant to Article 28 to another insurance or reinsurance undertaking at appropriate conditions. The FMA may announce this decision, where conducive to the transfer of portfolio, on the Internet, in the official gazette "*Amtsblatt zur Wiener Zeitung*", or in any other newspaper with nationwide circulation, together with an invitation to interested parties to inform the insurance undertaking or the FMA of their willingness to accept the portfolio.

(4) Individuals who are appointed as government commissioner (para. 1 no. 2) shall meet the requirements set out in Article 120 para. 2 nos. 1 and 2. The FMA shall appoint an expert as government commissioner, particularly lawyers and auditors. The government commissioner shall be entitled to all supervisory rights referred to in Article 272. In order to avert a threat or to safeguard compliance in accordance with para. 1, the government commissioner may prohibit the insurance or reinsurance undertaking from carrying out certain transactions. The government commissioner and any deputy appointed pursuant to para. 5 shall be entitled to an appropriate fee.

(5) At the request of the government commissioner appointed pursuant to para. 1 no. 2, the FMA may appoint a deputy where and as long as this is necessary for material reasons, particularly in case of the government commissioner's temporary unavailability. The provisions applicable to the government commissioner shall also apply to the appointment of the deputy and with regard to the deputy's rights and obligations. The government commissioner may employ persons with suitable professional qualifications, provided this is necessary due to the extent and complexity of the duties, and subject to the FMA's approval. The FMA's approval shall specifically identify these persons and shall also be served on the insurance or reinsurance undertaking. These persons shall act on instruction and on behalf of the government commissioner or deputy.

(6) The FMA shall obtain reports on suitable government commissioners from the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag*) and the Chamber of Public Accountants (*Kammer der Wirtschaftstreuhänder*). Where a government commissioner pursuant to para. 4 or a deputy pursuant to para. 5 is to be appointed and such an appointment is not possible on the basis of these reports, the FMA shall notify the bar association competent for the insurance or reinsurance undertaking's head office or the Chamber of Public Accountants and ask them to name a lawyer or auditor with suitable professional qualifications for the position of government commissioner. In cases of an imminent risk, the FMA may provisionally appoint a lawyer or auditor as government commissioner. This appointment shall expire once a lawyer or auditor has been appointed in accordance with the first sentence.

(7) The insurance and reinsurance undertakings concerned shall reimburse the federal government for any costs incurred by the measures referred to in paras. 1 to 6.

Revocation of licence

Article 285. (1) The FMA shall revoke the licence where:

1. the conditions for granting the licence are no longer fulfilled;
2. the insurance or reinsurance undertaking fails seriously in its obligations under the provisions applicable to contractual insurance activities, the business plan or those based on orders by the FMA to which it is subject;
3. bankruptcy proceedings have been initiated against the assets of the insurance or reinsurance undertaking or the insurance undertaking has been dissolved in another manner; or

4. the insurance or reinsurance undertaking does not hold eligible basic own funds to cover the Minimum Capital Requirement and the FMA considers that the finance scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the finance scheme within three months of the observation of non-compliance with the Minimum Capital Requirement.
 - (2) Instead of revoking the licence pursuant to para. 1 no. 1 in conjunction with Article 8 para. 2 nos. 8 or 9, the FMA may, in accordance with Article 275 para. 1, give those orders to the insurance or reinsurance undertaking that are required for the proper performance of its supervisory obligation.
 - (3) Where the solvency of a third-country insurance or third-country reinsurance undertaking's branch is monitored by the supervisory authority of another Member State based on an approval as referred to in Article 15, the FMA shall revoke this branch's licence if the competent supervisory authority has revoked the licence due to non-compliance with the Solvency Capital Requirement.
 - (4) As a result of the revocation of the licence, insurance contracts may no longer be concluded and existing insurance contracts must be terminated as soon as possible.

Measures following the revocation, expiry or relinquishment of a licence

Article 286. (1) Following the expiry of the licence, the FMA shall monitor business activities until all insurance and reinsurance contracts have been settled in full. This shall not apply to the settlement of insurance contracts within the scope of bankruptcy proceedings.

(2) In order to guarantee compliance with the obligations arising from the insurance contracts after expiry of the licence, the FMA shall order any appropriate measures required to safeguard the interests of the policyholders and beneficiaries, and may request a deposit in the required amount in particular. The deposit must not exceed the amount of the technical provisions referred to in Chapter 7 in addition to half of the absolute floor of the Minimum Capital Requirement referred to in Article 193 para. 2. The FMA shall define the eligible assets as well as the type and content of the deposit obligation so as not to allow disposal of the assets without the FMA's approval.

(3) In the event of revocation, expiry or relinquishment of the licence, the FMA shall notify the supervisory authorities of the other Member States accordingly.

Protection of designations

Article 287. Only undertakings entitled to pursue contractual insurance activities, as well as their professional interest groups, may use the designations "*Versicherung*" (insurance), "*Versicherer*" (insurer), "*Assekuranz*" (old-fashioned for insurance or insurance undertaking) or any translation of those terms into another language or a designation containing one of these terms, unless permitted by other statutory provisions.

Announcement in the event of unauthorised business

Article 288. The FMA may disclose to the general public by publication on the Internet, in the official gazette “*Amtsblatt zur Wiener Zeitung*”, or in any other newspaper with nationwide circulation, that a particular natural or legal person (person) is not entitled to pursue contractual insurance activities or to provide certain insurance services, provided this person has given cause for such action and informing the general public is deemed necessary and reasonable in the light of possible disadvantages for the person concerned. These publications may also be made cumulatively. The person must be clearly identifiable in the publication; for this purpose, the FMA may also state the business or residential address, company register number, Internet address, telephone number and fax number, as far as known to it. The person concerned by the publication may apply to the FMA for the publication’s lawfulness to be reviewed in the form of an administrative decision procedure. In this case, the FMA shall publicly announce the initiation of such a procedure in the same manner. Where, in the course of the review, it is found that the publication has been unlawful, the FMA must correct the publication or, at the concerned person’s request, either revoke it or delete it from the website.

Supervision under the freedom of establishment and freedom to provide services

Article 289. (1) The FMA may request that EEA insurance or EEA reinsurance undertakings which pursue insurance activities in Austria submit all documents necessary to verify whether these business activities are in line with the provisions and the recognised principles of orderly business activities applicable to these undertakings when pursuing contractual insurance activities. This shall not include the EEA insurance undertakings’ obligation to systematically submit the general policy conditions, the scales of premiums as well as the forms and other printed documents which they intend to use in transactions with policyholders.

(2) Where an EEA insurance or EEA reinsurance undertaking which pursues insurance activities in Austria breaches the provisions and the recognised principles of orderly business activities applicable to these undertakings when pursuing contractual insurance activities, and where it thus jeopardises the interests of the policyholders and beneficiaries, the FMA shall require the undertaking concerned to remedy those deficiencies. This request shall not be made in the form of an administrative decision. At the same time, the FMA shall refer those findings to the supervisory authority of the home Member State.

(3) Where the EEA insurance or EEA reinsurance undertaking does not comply with the request referred to in para. 2, the FMA shall inform the supervisory authority of the home Member State accordingly and require it to take appropriate measures to remedy the deficiencies.

(4) Where the supervisory authority of the home Member State does not take any measures or where those measures prove to be inadequate or ineffective, the FMA may issue any necessary and appropriate orders against the EEA insurance or EEA reinsurance undertaking, in accordance with Article 275. Where necessary, the FMA may prohibit the branch or the service provider from

concluding any further insurance or reinsurance contracts. Prior to ordering a measure in accordance with this paragraph, the supervisory authority of the home Member State must be informed. In addition, the FMA may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(5) Where it is necessary to take an emergency measure to avert a threat to the interests of the policyholders and beneficiaries, the FMA shall issue any necessary and appropriate orders against the EEA insurance undertaking without resorting to any of the procedures referred to in paras. 2 to 4 and in accordance with Article 275. This shall also include the possibility of prohibiting the branch or the service provider from concluding any further insurance or reinsurance contracts. Following the ordering of a measure in accordance with this paragraph, the supervisory authority of the home Member State must be informed.

(6) Once it has informed the supervisory authorities of the home Member State, the FMA may take all suitable and necessary measures for protecting the rights of consumers against EEA insurance undertakings, that perform insurance distribution activities by means of a branch or by the freedom to provide services, where such activities

1. are entirely or predominantly conducted for the sole purpose in Austria to circumvent the legal regulations that apply when there is a registered office in Austria, and
2. endanger the frictionless functioning of the insurance and reinsurance markets in Austria with regard to consumer protection.

This also includes the prohibition from performing insurance distribution activities in Austria.

On-site inspection under the freedom of establishment

Article 290. (1) The FMA shall only perform an on-site inspection of branches situated in other Member States of insurance and reinsurance undertakings with head offices in Austria where necessary for the purpose of the inspection. The inspection shall be limited to:

1. the state of solvency;
2. the establishment of technical provisions pursuant to Section 1 of Chapter 8;
3. the assets; and
4. the eligible own funds.

The supervisory authority of the host Member State shall be informed in writing before the inspection is started.

(2) An Austrian branch of an EEA insurance or EEA reinsurance undertaking may be inspected on site by the supervisory authority of the home Member State or through the intermediary of persons appointed for that purpose to the extent stipulated in para. 1 as soon as the FMA has been informed in writing. The FMA may participate in such an inspection itself or through inspection bodies that it has appointed pursuant to Article 274 para. 2. Article 274 paras. 3 to 7 shall apply.

(3) Austrian branches of EEA insurance and EEA reinsurance undertakings may be inspected by the FMA in accordance with Article 274 paras. 3 to 7 on site with regard to whether their business

activities are in compliance with the provisions and the recognised principles of orderly business activities in Austria applicable to these undertakings when pursuing contractual insurance activities. The supervisory authority of the home Member State shall be informed before the inspection is started.

(4) Where the supervisory authority of the host Member State prohibits the FMA from exercising its right to carry out an on-site inspection as referred to in para. 1 or where the FMA is unable in practice to exercise its right to participate in an inspection as referred to in para. 2, the FMA may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Supervision of business activities in third countries

Article 291. (1) In order to avert a threat to the ongoing compliance with the obligations arising from the insurance contracts which are concluded on the basis of the licence granted pursuant to Article 6 para. 1, the FMA may prohibit an insurance or reinsurance undertaking from continuing business activities outside the territory of the Member States.

In order to determine the circumstances relevant to a decision pursuant to para. 1, the FMA may request that insurance and reinsurance undertakings submit all necessary information and any relevant documents, including within the scope of an on-site inspection pursuant to Article 274.

(2) The FMA may prohibit an insurance undertaking from concluding insurance contracts with persons whose habitual residence, home or head office is outside the territory of the Member States at the reasonable request of the competent authority of the third country in which these persons have their habitual residence, home or head office, insofar as the insurance undertaking is not entitled to conclude insurance contracts according to the laws of this country.

Article 292. (repealed by the amendment published in Federal Law Gazette I 16/2021)

International sanctions

Article 293. Where necessary to enforce decisions made by the United Nations which are mandatory with regard to international law, the Federal Minister of Finance shall prohibit by regulation the conclusion of new and the extension of existing insurance contracts or the payment of insurance benefits on the basis of existing insurance contracts.

SECTION 3: INTERNATIONAL COOPERATION

Cooperation within the EEA

Article 294. (1) The FMA may submit information on the undertakings subject to supervision in accordance with the provisions of this federal act (Article 1 para. 1) to the supervisory authorities of the Member States which are necessary for the purposes of para. 4. This shall also include

information on the shareholders, members of the management board, of the supervisory board and the administrative board, and the managing directors of these undertakings.

(2) The Federal Minister of Finance may, where authorised to do so pursuant to Article 66 para. 2 of the Federal Constitution Act (B-VG; *Bundes-Verfassungsgesetz*), by way of agreements with other Member States define more detailed rules on cooperation with the supervisory authorities of these states with respect to para. 1.

(3) The FMA may also submit the information referred to in para. 1 to the following entities:

1. central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, as well as, where appropriate, other national public authorities of Member States responsible for overseeing payment systems;
2. the ESRB, where that information is relevant to carrying out its tasks; and
3. the authorities responsible for the supervision of credit institutions, other financial institutions and financial markets of other Member States where that information is relevant to their respective tasks, provided these authorities are subject to a confidentiality obligation that corresponds to professional secrecy pursuant to Article 64 of Directive 2009/138/EC or have undertaken to adhere to such an obligation.

In an emergency situation, including an emergency situation as referred to in Article 18 of Regulation (EU) No 1094/2010, the FMA may submit, without delay, information to the central banks of the ESCB, including the ECB, where that information is relevant to their tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the ESRB. The same applies to information submitted to the ESRB, where such information is relevant to its tasks. The FMA may request any information from all the entities named under nos. 1 to 3 which it requires for the purposes of para. 4.

(4) Where the FMA receives confidential information from a Member State's supervisory authority, it may use it only in the course of its duties and for the following purposes:

1. to check that the licensing requirements governing insurance or reinsurance activities are met and to facilitate the monitoring of the conduct of such activities, especially with regard to the monitoring of the technical provisions referred to in Chapter 7 and Section 1 of Chapter 8, the Solvency Capital Requirement, the Minimum Capital Requirement and the system of governance;
2. to impose administrative penalties;
3. in administrative and court proceedings;
4. in administrative appeals against decisions of the FMA.

Cooperation in the supervision of insurance and reinsurance distribution activities

Article 294a. (1) The FMA shall cooperate with the competent authorities of other Member States and shall exchange relevant information about insurance and reinsurance distributors with them to guarantee the orderly application of Directive (EU) 2016/97.

(2) In particular the FMA may pass on information to the competent authorities in relation to registration procedures and relevant information on a continuous basis that relates to the good reputation and professional knowledge and skills of insurance and reinsurance distributors.

(3) The FMA may pass on information about fines and other measures due to breaches against obligations pursuant to Article 123a and Article 127a to Article 135e, provided that this information is suitable for the deletion of these insurance and reinsurance distributors from the register.

(4) For the purposes of Regulation (EU) 2019/2088 and Articles 5, 6, and 7 of Regulation (EU) 2020/852 the FMA shall cooperate with the other competent authorities pursuant to Article 14 (1) of Regulation (EU) 2019/2088 and Article 21 (1) of Regulation (EU) 2020/852 and forward the information without delay, that are significant for the performance of their duties in accordance with these Regulations.

Cooperation in the event of restriction or prohibition of disposal of assets

Article 295. (1) Before the FMA restricts or prohibits the free disposal of an insurance or reinsurance undertaking's assets in accordance with Article 283 para. 1 no. 1, it shall inform the supervisory authorities of the host Member States.

(2) Where the FMA restricted or prohibited the free disposal of an insurance or reinsurance undertaking's assets in accordance with Article 283 para. 1 nos. 2 to 4, it shall inform the supervisory authorities of the host Member States.

(3) Where the FMA issues an order as referred to in Article 283 para. 1, it may ask the supervisory authorities of Member States in whose territories an insurance or reinsurance undertaking's assets are located to issue the same order with regard to these assets. To this end, the assets to be covered by such an order shall be designated. Where the order issued in accordance with the legislation of the Member States in which these assets are located results in a situation in which these assets can only be disposed of with the consent of the FMA, consent shall be given provided that disposal does not jeopardise compliance with the obligations arising from the insurance contracts.

(4) Where the supervisory authority of another Member State issued an order against an EEA insurance or EEA reinsurance undertaking in accordance with Article 137, Article 138(5), Article 139(3) or the second subparagraph of Article 144(2) of Directive 2009/138/EC, the FMA shall, at the request of this supervisory authority, restrict or prohibit the free disposal of assets located in Austria and designated in the request, applying Article 283 para. 1 analogously. Where the free disposal of assets is subsequently restricted or prohibited, the EEA insurance or EEA reinsurance undertaking may dispose of the assets in a legally effective manner only with the FMA's consent. Consent may only be given in agreement with the supervisory authority of the home Member State. Article 283 paras. 3 and 4 shall apply.

Cooperation under the freedom to provide services and freedom of establishment

Article 296. (1) Where the FMA has reason to assume that an EEA insurance or EEA reinsurance undertaking's financial standing is under threat due to the operation of a branch or the provision of services in Austria, it shall immediately inform the supervisory authority of the home Member State accordingly.

(2) Where the supervisory authority of another Member State in which an insurance or reinsurance undertaking with its head office in Austria pursues insurance activities by way of a branch or under the freedom to provide services requests appropriate measures as referred to in Article 155(2) of Directive 2009/138/EC, the FMA shall order appropriate measures in accordance with Article 275 and inform the competent supervisory authority accordingly. In addition, the FMA may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(3) Where serving a document by the competent supervisory authority pursuant to para. 2 in accordance with Article 155 of Directive 2009/138/EC to an insurance or reinsurance undertaking with its head office in Austria is not possible or can only be achieved with disproportionate difficulties, the FMA shall serve it at the competent supervisory authority's request.

Notifying EIOPA and the supervisory authorities of other Member States

Article 296a. (1) The FMA as the home Member State supervisory authority shall notify EIOPA and the supervisory authority of the relevant host Member State, where it determines a deterioration of the financial situation or the occurrence of other risks emanating from an insurance or reinsurance undertaking, that performs activities under the freedom to provide services or the freedom of establishment, that may have a cross-border impact.

(2) The FMA as the supervisory authority of the host Member State shall notify the supervisory authority of the relevant home Member State, in the event that it has serious and justified concerns in relation to consumer protection.

(3) The notifications pursuant to paras. 1 and 2 must be sufficiently detailed in order to permit an orderly assessment.

(4) The FMA may refer the matter to EIOPA and request its assistance in the case that a bilateral solution is unable to be found.

(5) A notification by the FMA pursuant to para. 1 or 2 or by the FMA pursuant to Article 152a (2) of Directive 2009/138/EC shall not affect the FMA's supervisory mandate.

Collaboration platforms

Article 296b. (1) The FMA may request EIOPA, in the event of justified concerns regarding the negative effects on the interests of insurance policyholders and beneficiaries, to establish and coordinate a collaboration platform in order to strengthen the exchange of information between the affected supervisory authorities and to assist cooperation among them, in the case that an insurance

or reinsurance undertaking conducts or intends to conduct activities under the freedom to provide services or the freedom of establishment, and

1. where such activities are significant for the market of the host Member State,
2. where the FMA as the supervisory authority of the home Member State of an insurance undertaking or a reinsurance undertaking has notified a deterioration of the financial situation or other risks occurring pursuant to Article 296a para. 1,
3. where the FMA as the supervisory authority of the home Member State of an EEA insurance undertaking or an EEA reinsurance undertaking has made a notification pursuant to Article 152a (2) of Directive 2009/138/EC about a deterioration of the financial situation or other risks occurring, or
4. the matter was referred to EIOPA pursuant to Article 296a para. 4 or Article 152a (2) of Directive 2009/138/EC.

(2) The right of the FMA to establish a collaboration platform in agreement with the other affected supervisory authorities remains unaffected.

(3) The FMA's supervisory mandate as supervisory authority of the home Member State or as supervisory authority of the host Member State remains unaffected by a collaboration platform being established in accordance with para. 1 and 2.

(4) The FMA shall be required to participate in a collaboration platform established pursuant to Article 152b of Directive 2009/138/EC. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, the FMA shall, upon request of EIOPA, provide all necessary information in a timely manner to enable the proper functioning of the collaboration platform.

Cooperation in the event of dissolution of insurance undertakings or recovery measures within the EEA

Article 297. (1) The FMA shall immediately inform the supervisory authorities of the other Member States of:

1. the dissolution of an insurance undertaking pursuant to Article 203 para. 1 nos. 1 and 2 AktG or Article 57 para. 1 nos. 1 and 2 of this federal act;
2. taking any measures pursuant to Article 284 or Article 316.

(2) Notifications made pursuant to para. 1 no. 2 shall also include details of the general effects of the measures taken in accordance with Article 284 or Article 316.

(3) The authorities of other Member States shall at their request be provided with information on the course of winding-up procedures in the event of a dissolution pursuant to para. 1 no. 1.

(4) The FMA shall announce the decision regarding a recovery measure on the government's Electronic Announcements and Information Platform (EVI; *Elektronische Verlautbarungs- und Informationsplattform*) pursuant to Article 5 of the Wiener Zeitung GmbH and Government Electronic Announcements and Information Platform (*WZEVI-Gesetz*) published in Federal Law Gazette I No. 46/2023, as well as furthermore publishing an excerpt from the official communication instructing the recovery measure in the Official Journal of the European Union in German. The

competent authority of the home member state, the applicable law and as applicable an appointed administrator shall be stated in the announcement.

(5) The announcement pursuant to para. 4 may be omitted, in the event that the recovery measures exclusively affect the rights of the shareholders, members or employees of an insurance undertaking in one of these functions.

(6) The FMA is the ESAP collection body for information pursuant to para. 4 and shall make this information available in the ESAP. This information shall be submitted in a data extractable format pursuant to Article 2 point 3 of Regulation (EU) 2023/2859 and shall contain the following metadata:

1. all names of the insurance or reinsurance undertaking, to which the information relates;
2. where available, the insurance or reinsurance undertaking's legal entity identifier (LEI) pursuant to Article 7(4) point b of Regulation (EU) 2023/2859;
3. the type of information pursuant to the classification in Article 7(4) point c of Regulation (EU) 2023/2859, and
4. a statement about whether the information contains personal data.

Cooperation with third-country authorities

Article 298. (1) The FMA may submit information on the undertakings subject to supervision in accordance with the provisions of this federal act (Article 1 para. 1) to the authorities responsible for the supervision of third-country insurance or third-country reinsurance undertakings, credit institutions and other financial institutions with head offices in a third country, as well as of financial markets in third countries, which are necessary for the purposes of Article 294 para. 4. This shall also include information on the shareholders, members of the management board, of the supervisory board and the administrative board, and the managing directors of these undertakings.

(2) The submission of information shall only be permitted insofar as these authorities are subject to a confidentiality obligation that corresponds to professional secrecy pursuant to Article 64 of Directive 2009/138/EC or have undertaken to adhere to such an obligation and the transferring of personal data occurs in accordance with Chapter V of Regulation (EU) 2016/679. Information that has been submitted to the FMA by the supervisory authority of another Member State may only be disclosed by the FMA with the express agreement of that supervisory authority and only for the purposes agreed by that supervisory authority. Additionally, submission shall only be permitted on the basis of declarations of reciprocity or actually granted reciprocity.

(3) The Federal Minister of Finance may, where authorised to do so pursuant to Article 66 para. 2 B-VG, by way of agreements with other states that are not Member States define more detailed rules on cooperation with the supervisory authorities of these states with respect to paras. 1 and 2. In this context, it shall be agreed that information from another Member State may only be disclosed with the express agreement of the competent authorities that provided the information and only for the purposes agreed by those authorities.

Cooperation with the supervisory authority of the Swiss Confederation

Article 299. (1) The FMA may submit information on the undertakings subject to supervision in accordance with the provisions of this federal act (Article 1 para. 1) to the Swiss supervisory authority as required for the purposes of Article 294 para. 4.

(2) The FMA shall notify the Swiss supervisory authority of the expiry or revocation of the licence of an insurance or reinsurance undertaking with its head office in Austria that has a branch in the Swiss Confederation. That authority shall be heard before a measure pursuant to Article 283 para. 1 no. 4 is taken.

(3) The FMA shall notify the Swiss supervisory authority before it restricts or prohibits, pursuant to Article 283 para. 1 no. 1, the free disposal of assets of a third-country insurance or third-country reinsurance undertaking with its head office in the Swiss Confederation. Where, pursuant to Article 283 para. 1, the FMA has restricted or prohibited the free disposal of assets of an insurance or reinsurance undertaking with its head office in the Swiss Confederation, it shall notify the Swiss supervisory authority. It may request that this authority impose the same measure on the branch. Where the Swiss supervisory authority imposed an order pursuant to Article 283 para. 1. on a third-country insurance or third-country reinsurance undertaking with its head office in the Swiss Confederation, the FMA shall impose the same order pursuant to Article 283 para. 1, at the request of that authority, on an Austrian branch of that third-country insurance or third-country reinsurance undertaking.

CHAPTER 12: DECKUNGSSTOCK, DISSOLUTION OF AN INSURANCE OR REINSURANCE UNDERTAKING, EXECUTION AND INSOLVENCY RULES APPLICABLE TO INSURANCE UNDERTAKINGS

SECTION 1: DECKUNGSSTOCK

Establishment of the Deckungsstock

Article 300. (1) Insurance undertakings shall establish a *Deckungsstock* in the amount of the cover requirement pursuant to Article 301, with the exception of reinsurance acceptances, where the undertakings pursue:

1. life insurance, as far as it does not fall under nos. 2 to 6;
2. occupational pension group insurance;
3. unit-linked life insurance;
4. index-linked life insurance;
5. investment-oriented life insurance, where the policyholder is at least entitled to the invested premiums guaranteed by the insurance undertaking;

6. state-sponsored retirement provision pursuant to Articles 108g to 108i EStG 1988, unless allocated to a different *Deckungsstock* group;
7. health insurance, as far as this is operated in a manner similar to life insurance; or
8. accident insurance, as far as this is operated in a manner similar to life insurance.

(2) The *Deckungsstock* shall be managed separately from the other assets. Where an insurance undertaking pursues several of the types of insurance referred to in nos. 1 to 8, a separate *Deckungsstock* group shall be created for each, with the provisions of this federal act on the *Deckungsstock* applying separately in each case.

(3) The FMA shall be notified immediately of the establishment or release of a separate group of the *Deckungsstock*.

Cover requirement

Article 301. (1) The cover requirement corresponds to the total technical provisions established for the types of insurance referred to in Article 300 para. 1. Reinsurance shares shall not be deducted during the calculation process. With regard to unit-linked life insurance and index-linked life insurance, unearned premiums, the provision for claims outstanding and additional technical provisions for guaranteed benefits shall be excluded where they are recorded in the *Deckungsstock* group for the insurance type named in Article 300 para. 1 no. 1.

(2) The cover requirement relates to all activities pursued on the basis of a licence pursuant to Article 6 para.1 with regard to the insurance types referred to in Article 300 para. 1.

(3) Insurance undertakings must ensure that the cover requirement is always fully met by the assets dedicated to the *Deckungsstock* in accordance with Article 302. The assets shall be valued using the valuation methods applied for the purposes of the financial statements. Where the right to choose a valuation method as provided for in the second sentence of Article 149 para. 2 is applied, the requirement referred to in this provision shall be met separately by each *Deckungsstock* group. With the exception of at the financial year-end, a simple estimate of the cover requirement shall suffice.

(4) Insurance undertakings shall, as soon as it becomes necessary to do so, also allocate assets to the *Deckungsstock* during the course of the year.

(5) Where an increase in the premium reserve is needed for reasons other than a change in the scope of business, then the FMA may approve that this increase in premium reserve is staggered over several years, provided that the interests of the policyholders and beneficiaries are not put at risk as a result.

Dedication of assets

Article 302. (1) Assets are dedicated to the *Deckungsstock* as soon and as long as they are entered in the *Deckungsstock* list (Article 249). Assets may only be entered if they comply with the terms of Article 124 para. 1 no. 3.

- (2) The advance payments on policies dedicated to the *Deckungsstock* shall be allocated to that group of the *Deckungsstock* which serves to meet the cover requirement for the respective insurance contract.
- (3) The bank accounts and deposits of securities set up to manage the groups of the *Deckungsstock* pursuant to Article 300 para. 1 shall be kept separately for each group.
- (4) The dedication to the *Deckungsstock* of domestic land and immovable property rights, as well as mortgage loans on domestic land or immovable property rights, shall be entered in the land register.
- (5) Domestic land and immovable property rights, as well as mortgage loans on domestic land or immovable property rights, may be dedicated to the *Deckungsstock* as soon as this dedication has been entered in the land register. Where the dedication to the *Deckungsstock* of foreign land and immovable property rights, or of mortgage loans on foreign land or immovable property rights requires entry in a public register, the dedication to the *Deckungsstock* shall only be admissible once this entry has been made.
- (6) The assets dedicated to the *Deckungsstock* shall be recognised at the value calculated after deducting any debts and any other liability items from the balance sheet capable of reducing the assets used to cover the technical provisions and that are linked in economic terms to the asset concerned. Liabilities as referred to in Article 199 UGB which do not have to be reported on the liability side of the balance sheet shall be deducted on the basis of the highest amount possible as a result of the underlying contractual contingent liability. Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of that asset is not available for the purpose of covering commitments, this fact shall be recorded in the *Deckungsstock* list and the unavailable amount shall not be included in the calculation of compliance with the cover requirement.

Claims following the discontinuance of business activities

Article 303. (1) Where, due to the discontinuance of an insurance undertaking's business activities, the insurance relationships are terminated, the beneficiaries of the insurance classes operated in a manner similar to life insurance shall, provided their claims had to be included in the cover requirement, be entitled to the amount which is in the same proportion to the cover requirement for their insurance contracts as the total amount of the *Deckungsstock* assets expressed as a proportion of the total cover requirement, but may not exceed the amount of the cover requirement attributed to them.

(2) Other claims arising from the insurance contracts shall be settled proportionally out of an existing *Deckungsstock* established for the respective insurance.

(3) The time of the termination of the insurance relationship shall be decisive for the amount of the claims included in the cover requirement, the amount of the total cover requirement, as well as the amount of the *Deckungsstock* assets.

(4) Where the *Deckungsstock* is not sufficient to settle the claims referred to in para. 1, any such claims that have not been satisfied shall remain unaffected.

SECTION 2: TRUSTEE

Appointment and powers

Article 304. (1) For monitoring the *Deckungsstock*, the FMA shall appoint a trustee (*Treuhänder*) and a deputy trustee for a maximum term of three years. Re-appointment for further terms shall be permitted. Where the *Deckungsstock* consists of several groups, separate trustees and deputies may be appointed for each group where deemed appropriate with respect to the extent of the business. The insurance undertaking shall be heard in the appointment procedure.

(2) Only natural persons of full legal capacity who have their main residence in Austria or in another Member State and who fulfil the following conditions may be appointed as the trustee or deputy trustee:

1. they must be particularly trustworthy and their economic circumstances must be well-ordered as defined under Articles 9 and 10 of the Auditing, Tax Advising and Related Professions Act (WTBG; *Wirtschaftstreuhandberufsgesetz*);
2. they must not belong to a body of the insurance undertaking nor be an employee of that undertaking or be in any other state of dependence to it;
3. they must not be a trustee or deputy trustee responsible for monitoring the *Deckungsstock* at more than one other insurance undertaking;
4. they must have the necessary qualities based on their training and professional career.

(3) The FMA shall pay the trustee and the deputy trustee a remuneration (fee for performing the function), which shall be reasonably proportionate to the efforts and expenses entailed with their activities. The FMA shall be reimbursed by the insurance undertakings for any thus arising costs. The FMA shall, with the consent of the Federal Minister of Finance, determine the amount of the fee by regulation and may in this context, where necessary, also regulate the details of fee payment and reimbursement.

(4) The function of the trustee or deputy trustee shall expire where the *Deckungsstock* or the group of the *Deckungsstock* for which they have been appointed ceases to exist as a consequence of a portfolio transfer or a legal transaction that entails a universal succession. The FMA shall state expiry by means of an administrative decision.

(5) The FMA may dismiss the trustee or deputy trustee where the extent of the *Deckungsstock* or the group of the *Deckungsstock* for which they have been appointed significantly increases as a consequence of a portfolio transfer or a legal transaction that entails a universal succession. The insurance undertaking shall be heard in the dismissal procedure.

(6) The trustee or deputy trustee shall be dismissed by the FMA if the conditions for their appointment pursuant to para. 2 cease to exist or if it can be otherwise assumed that they will no

longer duly perform their duties. The insurance undertaking shall be heard in the dismissal procedure.

(7) Where the trustee or deputy trustee resign from their functions, the function shall expire no earlier than one month after the FMA has received notification of the resignation.

Responsibilities

Article 305. (1) Within the scope of monitoring the *Deckungsstock*, the trustee shall:

1. verify the insurance undertaking's compliance with Article 301 para. 3 on at least a quarterly basis;
2. review the proper management of the *Deckungsstock* list; and
3. inform the FMA immediately of any circumstances that may raise concerns regarding compliance with the cover requirement.

(2) Any disposals of assets dedicated to the *Deckungsstock*, with the exception of the separate groups of the *Deckungsstock* referred to in Article 300 para. 1 nos. 3 and 6, may only be made with the trustee's written consent. Any sale, cession or encumbrance shall be legally ineffective without the trustee's consent.

(3) This consent shall be withheld where the disposal results in the cover requirement no longer being met in full and in the absence of any evidence of other assets being used to remedy the shortfall, or where full compliance with the cover requirement is otherwise put at risk.

(4) Where there is sufficient surplus cover, the trustee may also consent to specific disposals in the form of a general approval. Such general approval shall be valid for a maximum term of one year and may only relate to disposals of *Deckungsstock* assets where assets of at least equivalent value are allocated to the *Deckungsstock* at the same time.

(5) Where both the trustee and deputy trustee are unavailable, the FMA's consent may be substituted for the trustee's consent in urgent cases. Where trustees refuse to give their consent, the insurance undertaking may apply for a decision to be taken by the FMA. The FMA shall reach its decision within two weeks of the application being received.

(6) Trustees shall report to the FMA in writing within six weeks of the end of each calendar quarter about their activities, and any audits conducted in particular, in the past quarter (quarterly report) and within three months of the financial year-end about their activities in the past financial year (annual report). The trustee shall also bring the annual report to the attention of the management board and supervisory board and/or administrative board and the managing directors. The FMA may determine by regulation more detailed rules on the content, structure and method of transmission of the quarterly report and the annual report.

(7) The trustee shall include an audit opinion in the annual report referred to in para. 6. In this regard, it shall be expressly stated whether the audit opinion is issued as an unqualified or qualified opinion. In the case of an unqualified opinion, the trustee shall declare that the cover requirement has been fully met by dedicating assets deemed appropriate for cover. Where objections are to be raised, the

trustee shall qualify their audit opinion or refuse its issue. The refusal shall be included in a note, which must not be denoted as an audit opinion. Reasons shall be given for the qualification or refusal. Where there are only slight deficiencies which can be remedied within a short time, the trustee may issue an unqualified opinion. The trustee shall sign the audit opinion or note on refusing to issue such, stating the place and date. The trustee's audit opinion shall not have any bearing on the responsibility of the insurance undertaking's bodies.

(8) The trustee shall be granted access to the insurance undertaking's books, supporting evidence and documents at any time. The insurance undertaking shall inform the trustee of any facts needed to perform their duties. A confidentiality obligation may not be asserted vis-à-vis the trustee.

(9) Where entries have been made or documents stored by using data media, the insurance undertaking shall, within an appropriate period of time and at its cost, make those aids available that are necessary to make the documents readable and, where appropriate, produce permanent reproductions readable without aids in the required number.

(10) Trustees shall at any time provide information to the FMA about the *Deckungsstock* monitored by them. Moreover, trustees shall be bound to secrecy concerning any facts that have only been revealed to them as a consequence of their activities.

(11) The trustee shall submit a report about their activities to the FMA without delay following the end of their activities, especially about the audits conducted during the time frame that was not already covered by a report pursuant to para. 6. The trustee shall also bring the report to the attend of the management board and the supervisory board or the administrative board and the executive directors. The FMA may issue more precise rules about the content, structure and submission method of the report by way of a Regulation.

SECTION 3: DISSOLUTION OF AN INSURANCE OR REINSURANCE UNDERTAKING

Dissolution of an insurance or reinsurance undertaking

Article 306. (1) The FMA shall be notified without delay of the dissolution of an insurance or reinsurance undertaking pursuant to Article 203 para. 1 nos. 1 and 2 AktG or Article 57 para. 1 nos. 1 to 2 of this federal act.

(1a) In the event of the dissolution of an insurance undertaking, authorised by way of a licence granted pursuant to Article 6 para. 1 for the provision of motor vehicle liability insurance (no. 10 in Annex A) and is a provider of motor vehicle liability insurance pursuant to Article 3 of Directive 2009/103/EC, the FMA shall notify the professional association of insurance undertakings pursuant to Article 2 VOEG about the said dissolution, as soon as the notification pursuant to para. 1 has been sent to the FMA.

(2) The liquidators shall announce the dissolution in the Official Journal of the European Union, and in the case of Article 203 para. 1 no. 2 AktG by publishing an extract from the dissolution resolution.

That announcement shall in particular include the names of the liquidators and indicate that Austrian law shall apply to the dissolution.

(3) The liquidators shall inform individually and without delay known creditors that have their habitual residence, home or head office in another Member State of the dissolution. For the purposes of this notification a form shall be used bearing the heading “Invitation to lodge a claim” in all official languages of the Member States. Where the creditor is a holder of an insurance claim, the notification shall be provided in one of the official languages of the state in which the creditor has their habitual residence, home or head office. The notification shall indicate to whom the lodgement of a claim may be addressed and make reference to the contents of the provisions of Article 213 AktG.

(4) Any creditor who has their home, habitual residence or head office in another Member State may lodge their claim and explain it in the official language of that state. In that event the lodgement of the claim shall bear the heading “Anmeldung einer Forderung” (lodgement of claim) in German.

(5) The liquidators shall inform creditors once a year regarding the status of the winding-up procedures by means of a publication in the information bulletins. Known creditors who have their habitual residence, home or head office in another Member State shall be informed individually.

(6) The FMA is the ESAP collection body for information pursuant to para. 2 and shall make this information available in the ESAP. This information shall be submitted in a data extractable format pursuant to Article 2 point 3 of Regulation (EU) 2023/2859 and shall contain the following metadata:

1. all names of the insurance or reinsurance undertaking, to which the information relates;
2. where available, the insurance or reinsurance undertaking’s legal entity identifier (LEI) pursuant to Article 7(4) point b of Regulation (EU) 2023/2859;
3. the type of information pursuant to the classification in Article 7(4) point c of Regulation (EU) 2023/2859, and
4. a statement about whether the information contains personal data.

SECTION 4: EXECUTION AND INSOLVENCY RULES APPLICABLE TO INSURANCE UNDERTAKINGS

Execution of Deckungsstock assets

Article 307. (1) *Deckungsstock* assets may only be subject to execution for the benefit of an insurance claim that had to be included in the cover requirement.

(2) In life insurance and accident insurance operated in a manner similar to life insurance, access shall be limited to the amount which is in the same proportion to the cover requirement for the individual insurance contract as the total amount of the *Deckungsstock* assets expressed as a proportion of the total cover requirement, but may not exceed the amount of the cover requirement attributable to the individual insurance contract.

(3) Where the *Deckungsstock* consists of several groups, the calculation of the amount subject to execution shall be carried out separately for each group.

(4) Paras. 1 to 3 shall not affect provisions regarding tenancy law.

Insurance claims

Article 308. Insurance claims within the meaning of this Chapter shall be all claims which policyholders, insured persons, beneficiaries or any injured third party having a direct right of action against the insurer duly hold against the insurance undertaking and which arise from an insurance contract (including tontines). This shall also include claims to the repayment of premiums as a result of the non-conclusion of an insurance contract prior to the institution of bankruptcy proceedings.

Institution of bankruptcy proceedings

Article 309. (1) The management board and/or the administrative board and the managing directors or liquidators shall notify the FMA immediately of the occurrence of insolvency or excessive indebtedness with regard to the insurance undertaking. Article 69 IO shall not apply.

(2) Only the FMA may file the petition to institute bankruptcy proceedings. The FMA is obliged to file the petition, subject to Article 316, where the conditions are met. Bankruptcy proceedings shall be immediately instituted at the FMA's request.

(2a) The FMA shall make the insolvency edict accessible in the ESAP as the collection body pursuant to Article 2 point 2 of Regulation (EU) 2023/2859. Article 306 para. 6 shall apply. (3) An application for a recovery plan under insolvency law shall not be permitted during insolvency proceedings at an insurance undertaking.

(4) If an insurance undertaking is authorised by way of a licence granted pursuant to Article 6 para. 1 for the provision of motor vehicle liability insurance (no. 10 in Annex A) and is a provider of motor vehicle liability insurance pursuant to Article 3 of Directive 2009/103/EC, then the FMA shall notify the professional association of insurance undertakings pursuant to Article 2 VOEG about the initiation of bankruptcy proceedings as well as the initiation of the bankruptcy proceedings has been publicly announced by means of an edict.

Trustee in bankruptcy

Article 310. (1) The bankruptcy court shall, upon the institution of bankruptcy proceedings, appoint a trustee in bankruptcy to assert the insurance claims which had to be included in the cover requirement. The trustee in bankruptcy shall ascertain and file these insurance claims. The trustee in bankruptcy shall hear the beneficiaries at their request prior to filing the claim and shall notify them of the claim being filed. The right of the beneficiaries to file claims themselves shall remain unaffected.

(2) The administrator of the bankrupt's estate shall grant the trustee in bankruptcy and, at their request, the beneficiaries of insurance claims pursuant to para. 1, access to the books and records of the insurance undertaking as well as to the list of *Deckungsstock* assets (Article 312 para. 1).

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

Expiry of insurance relationships

Article 311. In the case of the insurance classes listed in nos. 19 to 22 in Annex A, any insurance relationships shall expire upon the institution of bankruptcy proceedings.

Deckungsstock in bankruptcy proceedings

Article 312. (1) Where there is a *Deckungsstock* for insurance policies, the insurance undertaking shall immediately submit to the bankruptcy court a list of assets dedicated to the *Deckungsstock* at the time of the bankruptcy proceedings being instituted.

(2) The *Deckungsstock* constitutes a special fund (*Sondermasse*) in the bankruptcy proceedings (Article 48 para. 1 IO). Return flows of capital and income from assets and premiums (minus reinsurance) dedicated to the *Deckungsstock* for insurance contracts included in the cover requirement and received after the institution of bankruptcy proceedings shall be allocated to this special fund.

(3) The list submitted pursuant to para. 1 may not be amended once bankruptcy proceedings have been instituted. The administrator of the bankrupt's estate may, however, with the consent of the bankruptcy court, make technical corrections to the assets listed.

(4) Where the proceeds from the realisation of the assets are lower than the valuation included in the list submitted pursuant to para. 1, the administrator of the bankrupt's estate shall inform the bankruptcy court and the FMA thereof, stating the reasons for the deviation.

(5) Article 303 paras. 1 and 2 shall apply accordingly to insurance claims which had to be included in the cover requirement. The date of the institution of bankruptcy proceedings shall determine the amount of these insurance claims and the total cover requirements.

(6) Where insurance claims are not fully satisfied out of the *Deckungsstock*, such claims shall be treated like other insurance claims.

Filing

Article 313. Insurance claims which are ascertainable from the books of the insurance undertaking shall be deemed filed. The right of the beneficiaries and the duty of the trustee in bankruptcy (Article 310) also to file such claims shall remain unaffected.

Priorities

Article 314. (1) Insurance claims shall have priority over the remaining claims in bankruptcy. Article 312 para. 2 shall remain unaffected.

(2) Claims to the insurance benefit shall have priority over all other insurance claims. Claims having the same priority shall be satisfied according to the proportion of their amounts.

(3) Notwithstanding Article 103 para. 1 IO, no indication of a claim's priority need be given in the lodgement of a claim.

Mutual associations

Article 315. (1) With regard to the evaluation of a mutual association's excessive indebtedness, supplementary contributions which have been written out and not paid in within six months after becoming due shall no longer be considered assets of the association.

(2) For the purposes of calculating and collecting the supplementary contributions in bankruptcy proceedings, Article 2 and Articles 4 to 12 of the Cooperative Societies Insolvency Act (GenIG; *Genossenschaftsinsolvenzgesetz*) shall apply accordingly. The supplementary contributions must not exceed a maximum amount determined in the articles of association.

(3) Supplementary contributions which are admissible pursuant to para. 2 shall be taken into account when evaluating whether the association's assets are likely to be sufficient to cover the costs of the bankruptcy proceedings.

(4) The claims for redemption of the initial fund shall be ranked below all other claims in bankruptcy and subordinated claims as referred to in Article 57a IO.

Prohibition and reduction of benefits

Article 316. (1) Where the inspection of the management and the financial situation of an insurance undertaking shows that the condition for the institution of bankruptcy proceedings pursuant to Article 66 or Article 67 IO has been met, yet the avoidance of bankruptcy is in the interests of the policyholders and beneficiaries, the FMA shall, with respect to the activities for which a licence pursuant to Article 6 has been granted, and provided that this is in the interests of the policyholders and beneficiaries and compatible with the insurance contracts concluded within the context of these activities:

1. prohibit payments, especially insurance benefits, and in the case of life insurance also surrenders and advance payments on policies, to the extent required to overcome the payment difficulties; or
2. reduce the obligations of the insurance undertaking arising from life insurance in accordance with the existing assets.

(2) The measures taken pursuant to para. 1 no. 1 shall be revoked as soon as the financial situation of the insurance undertaking permits it.

(3) The duty of insurance policyholders to continue paying premiums (contributions) in the same amount as previously shall not be affected by any measures taken pursuant to para. 1.

(4) Any reorganisation measure introduced in accordance with the law of another Member State as referred to in point c of Article 268 (1) Directive 2009/138/EU shall be effective in Austria as soon as it becomes effective in the home Member State. Article 241 IO shall apply to administrators as defined in point e of Article 268 (1) of that Directive and their representatives. (5) At the request of the administrator or of any authority or court in the state in which the reorganisation measure was initiated, the initiation of reorganisation measures must be entered in the land register and the company register.

(5) Prior to adopting a measure pursuant to para. 1 with respect to the branch of an insurance undertaking that has its head office in a third country, the FMA shall hear the supervisory authorities of other Member States in which that insurance undertaking has also established a branch. Where this is not possible prior to adopting the measure, these supervisory authorities shall be informed thereof immediately thereafter.

(6) Articles 222 to 231 IO shall apply accordingly to measures referred to in para. 1.

CHAPTER 13: PENAL PROVISIONS

Breach of notification, reporting and presentation obligations

Article 317. (1) Whoever breaches the obligation:

1. to submit a notification of the acquisition or disposal of equity interests pursuant to Article 24;
2. to submit a notification pursuant to the first sentence of Article 63 para. 5 (effects of the transfer);
3. to submit a notification pursuant to the first sentence of Article 65 para. 3 (effects of restructuring);
4. to submit a notification pursuant to Article 66 para. 3 no. 4 first sentence and no. 6 sixth sentence (transformation of legal form into a private foundation);
5. to present the actuarial bases used prior to their initial use or in the event of any change or addition prior to their use pursuant to Article 92 para. 1 and Article 102 para. 1;
6. to submit a notification of an outsourcing contract pursuant to Article 86 paras. 1 and 4 or Article 109 paras. 2 and 4;
7. to submit a notification of the appointment of the responsible actuary or deputy pursuant to Article 115 para. 2 or a notification of retirement of the responsible actuary or deputy pursuant to Article 115 para. 4;
8. to present the annual written report by the responsible actuary pursuant to the second sentence of Article 116 para. 3;
9. to submit a notification pursuant to the second sentence of Article 116 para. 4 as responsible actuary;

10. to submit a notification pursuant to Article 122 paras. 1 and 3 with respect to members of the management board or administrative board and managing directors, as well as any other persons who effectively run the undertaking or are responsible for governance or other key functions;
11. to submit a notification of the election or retirement of members of the supervisory board pursuant to Article 123 para. 3;
12. to submit a notification of the election or retirement of the chairperson of the supervisory board pursuant to Article 123 para. 4;
13. to submit a notification of the acquisition or sale of a major holding in a corporation pursuant to Article 127 paras. 1 to 3;
14. to submit a notification of any restructuring of assets resulting in a change in liabilities pursuant to Article 141 para. 3;
15. to submit a notification regarding the statutory auditor pursuant to Article 260 para. 1;
16. to submit a notification pursuant to Article 265 paras. 1 and 2 as statutory auditor;
17. to submit a notification pursuant to Article 272 para. 2 (ongoing compliance with obligations arising from insurance contracts at risk), Article 279 para. 1 (non-compliance with the Solvency Capital Requirement) and Article 280 para. 1 (non-compliance with the Minimum Capital Requirement);
18. to submit a notification of the establishment or release of a separate group of the *Deckungsstock* pursuant to Article 300 para. 3;
19. to submit a notification pursuant to Article 305 para. 1 no. 3 as trustee; or
20. to submit a notification of the dissolution of an insurance or reinsurance undertaking pursuant to Article 306 para. 1; or
21. to submit the information listed in Article 3 (1) and (2) Article 4 (1), (3) and (4), Article 5 (1) and Article 10 (1) of Regulation (EU) 2019/2088 pursuant to Article 18a (1) of Regulation (EU) 2019/2088 to the FMA or the Legal Entity Identifiers pursuant to Article 18a (2) of Regulation (EU) 2019/2088;

shall be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA.

(2) Whoever repeatedly fails to comply with the presentation and reporting obligations referred to in Article 248 paras. 2 to 6 and 8 or Article 249 or the reporting obligations within the scope of regular supervisory reporting at the individual and group level pursuant to Article 248 para. 1 and in accordance with the implementing regulation (EU) and the technical standards (EU) in a timely manner, or complies with them only incorrectly or incompletely, shall be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA.

(3) In the event of a breach of an obligation as referred to in Article 122 paras. 1 and 3 with respect to any other persons who effectively run the undertaking or are responsible for governance or other key functions, in Article 123 para. 3 with respect to notification of the re-election of the same person as member of the supervisory board, in Article 123 para. 4 with respect to notification of the re-

election of the same person as chairperson, in Article 300 para. 3 with respect to notification of the establishment or release of a separate group of the *Deckungsstock*, the FMA shall refrain from initiating and conducting administrative penal proceedings, provided that the missing notification was subsequently duly made before the FMA became aware of the breach.

Breach of obligation to disclose the solvency and financial condition report

Article 318. Whoever breaches the disclosure obligation referred to in Articles 241, 243 or 245 or an obligation pursuant to Article 246a paras. 1 to 3 shall be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA.

Breach of information requirements

Article 319. Whoever:

1. violates the information requirements as referred to in Article 94 paras. 3a to 6, Article 98 para. 1 or Articles 252 to 255; or
2. as the person responsible (Article 9 of the Administrative Penal Act (VStG; *Verwaltungsstrafgesetz*) for an insurance undertaking, small insurance undertaking, third-country insurance undertaking or EEA insurance undertaking does not comply with an insured person's request for information in accordance with Article 94 para. 3 even after having received a reminder; or
3. As the employer or the person responsible (Article 9 VStG) for an employer fails to comply with an insured person's request for information in accordance with Article 94 para. 3 even after having received a reminder

shall be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA in the case of nos. 1 and 2 and up to EUR 6 000 in the case of no. 3.

Life/health insurance provision; Deckungsstock

Article 320. Whoever:

1. contravenes the provisions and actuarial bases used for the calculation of the life/health insurance provision;
2. contravenes the provisions on replenishing the *Deckungsstock*, on the dedication, valuation and the list of the *Deckungsstock* assets;
3. disposes of the assets dedicated to the *Deckungsstock* without the trustee's written consent, Article 305 para. 2 notwithstanding;
4. provides incorrect information to the FMA on the cover requirement or the assets dedicated to the *Deckungsstock*;
5. as responsible actuary wrongly confirms at least grossly negligently that the circumstances given are correct, Article 116 para. 6 (unqualified opinion) notwithstanding;

6. as trustee agrees to the disposal of assets dedicated to the *Deckungsstock*, Article 305 para. 2 notwithstanding;
7. as trustee wrongly confirms at least grossly negligently that the cover requirement has been fully complied with through the dedication of assets, Article 305 para. 7 notwithstanding shall be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA in the case of nos. 1 to 5 and up to EUR 30 000 in the case of nos. 6 and 7.

Disclosure of secrets

Article 321. Whoever as a member of a body, as a trustee, as a responsible actuary, as an employee of an insurance undertaking, a reinsurance undertaking, a small insurance undertaking or a small mutual association, as a self-employed insurance agent, as an inspecting body pursuant to Article 274 para. 2 or as a government commissioner pursuant to Article 284 para. 1 no. 2 discloses or uses situations or circumstances which have only been revealed to them owing to their professional activities, and the confidentiality of which is in the legitimate interest of the affected persons, shall be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA, unless the disclosure or use is justified due to content and form by a public or legitimate private interest, or the person concerned expressly agreed to such disclosure or use.

Insurance and reinsurance distribution

Article 322. (1) Whoever acts as a person responsible (Article 9 VStG) of an undertaking pursuant to Article 1 para. 1 nos. 1 to 5, who breaches

1. the obligations to act honestly, fairly and professionally pursuant to Article 128 para. 1,
2. prohibitions regard the remuneration of distribution or the assessment of employees or insurance distributors pursuant to Article 128 para. 3 or pursuant to an FMA Regulation issued on the basis of Article 128 para. 4 no. 2,
3. obligations in relation to product governance pursuant to Article 129 and Delegated Regulation (EU) 2017/2358,
4. the obligation to offer a contract that corresponds to the needs and wishes of the policyholder pursuant to Article 131 or Article 134 para. 4,
5. information requirements pursuant to Article 128 para. 2, Article 128a, Article 130, Article 130a, Article 132 para. 4, Article 133, Article 134 paras. 1 and 2, Article 135c paras. 1 to 3, Article 135d paras. 1 nos. 1 to 5 and 7 or Article 135e paras. 1 and 2 or pursuant to an FMA Regulation issued on the basis of Article 128 para. 4 no. 1, Article 135c para. 4 Article 135d para. 4 or Article 135e para. 3,
- 5a. pre-contractual disclosure obligations pursuant to Article 6 (1) and (2), Article 8 (1) and (2) or Article 9 (1) to (4) of Regulation (EU) 2019/2088,
- 5b. pre-contractual disclosure obligations pursuant to Article 8 (2a) and Article 9 (4a) of Regulation (EU) 2019/2088 regarding environmental objectives pursuant to Article 9 points a

- and b of Regulation (EU) 2020/852, pre-contractual or regular disclosure obligations pursuant to Articles 5, 6 and 7 of Regulation (EU) 2020/852 regarding environmental objectives pursuant to Article 9 points a and b of this Regulation or regular disclosure obligations pursuant to Article 11 (1) of Regulation (EU) 2019/2088,
- 5c. pre-contractual disclosure obligations pursuant to Article 7 paras. 1 and 2 of Regulation (EU) 2019/2088,
 - 5d. pre-contractual disclosure obligations pursuant to Article 8 (2a) and Article 9 (4a) of Regulation (EU) 2019/2088 regarding environmental objectives pursuant to Article 9 points c to f of Regulation (EU) 2020/852, or pre-contractual or regular disclosure obligations pursuant to Articles 5, 6 and 7 of Regulation (EU) 2020/852 regarding environmental objectives pursuant to Article 9 points c to f of this Regulation,
 6. advice requirements pursuant to Article 132 para. 1 or the rules for waiving advice pursuant to Article 132 para. 2, or
 7. the prohibition of bundling of products pursuant to Article 134 para. 3,
- shall be deemed to be committing an administrative offence and shall be fined up to EUR 70 000 by the FMA - provided that the offence is not subject to a stricter penalty.
- (2) Whoever acts as a person responsible (Article 9 VStG) of an undertaking pursuant to Article 1 para. 1 nos. 1 to 5 in the distribution of insurance-based investment products, who breaches
1. obligations or prohibitions pursuant to para. 1 nos. 1 to 4 and 7,
 2. obligations for the detecting, prevention, addressing and disclosing of conflicts of interest pursuant to Article 135 paras. 1 to 3 and Articles 3 to 7 of Delegated Regulation (EU) 2017/2359,
 3. the prohibition of paying or receiving a fee or commission or the granting or receipt of a non-monetary benefit pursuant to Article 135 para. 4 and Article 8 of Delegated Regulation (EU) 2017/2359,
 4. Advice obligations pursuant to Article 132 para. 1 and Article 135a paras. 1, 2 and 4, the regulations for dispensing with advice pursuant to Article 132 para. 2, Article 135a para. 6 and Article 135b para. 1, obligations pursuant to Article 135b paras. 2 and 3 for distribution without advice or pursuant to an FMA Regulation issued on the basis of Article 135a para. 5 or obligations pursuant to Articles 9 to 15 and 17 of the Delegated Regulation (EU) 2017/2359,
 5. information requirements pursuant to Article 128 para. 2, Article 128a, Article 130 para. 1 nos. 1, 3 and 4, para. 1a and Article 130a, Article 133 paras. 1 and 2, Article 134 paras. 1 and 2, Article 135a para. 3, Article 135c para. 1 no. 6 lit. a and no. 10 as well as the concluding part of Article 135c para. 1, Article 135d para. 1 no. 6, paras. 2 and 3 as well as pursuant to an FMA Regulation issued on the basis of Article 128 para. 4 no. 1, an FMA Regulation issued pursuant to Article 135c para. 4 with regard to Article 135c para. 1 no. 6 lit. a and no. 10 as well as the concluding part of Article 135c para. 1 or an FMA Regulation issued pursuant to Article 135d para. 4 with regard to Article 135d para. 1 no. 6 and paras. 2 and 3 or requirements pursuant to Article 18 of Delegated Regulation (EU) 2017/2359, or

- 5a. pre-contractual disclosure obligations pursuant to Article 6 (1) and (2), Article 8 (1) and (2) or Article 9 (1) to (4) of Regulation (EU) 2019/2088,
- 5b. pre-contractual disclosure obligations pursuant to Article 8 (2a) and Article 9 (4a) of Regulation (EU) 2019/2088 regarding environmental objectives pursuant to Article 9 points a and b of Regulation (EU) 2020/852, pre-contractual disclosure obligations pursuant to Articles 5, 6 and 7 of Regulation (EU) 2020/852 regarding environmental objectives pursuant to Article 9 points a and b of this Regulation,
- 5c. pre-contractual disclosure obligations pursuant to Article 7 paras. 1 and 2 of Regulation (EU) 2019/2088,
- 5d. pre-contractual disclosure obligations pursuant to Article 8 (2a) and Article 9 (4a) of Regulation (EU) 2019/2088 regarding environmental objectives pursuant to Article 9 points c to f of Regulation (EU) 2020/852, or pre-contractual disclosure obligations pursuant to Articles 5, 6 and 7 of Regulation (EU) 2020/852 regarding environmental objectives pursuant to Article 9 points c to f of this Regulation, or
6. Recording and retention obligations pursuant to Article 127c para. 2 and Article 19 of Delegated Regulation (EU) 2017/2359

commits an administrative offence, and shall be fined up to EUR 700 000 by the FMA or up to double the amount of the gain arising from the breach or any loss avoided from the breach, where this amount is able to be determined.

(3) The punishability of administrative offences pursuant to Article 319 no. 1 and Article 328 in the version of the Federal Act applicable until 30 September 2018 shall not be affected by the entry into force of Federal Act in the version amended by Federal Law Gazette I no. 16/2018; such offences shall remain punishable in accordance with Article 319 no. 1 und Article 328 in the version preceding the version prior to that amended by Federal Act in Federal Law Gazette I no. 51/2018.

Penal provisions with regard to legal persons

Article 323. (1) The FMA may impose fines on legal persons if persons acting individually or as part of a body of a legal person and who have a managerial role within the legal person on the basis of:

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

have breached the obligations or prohibitions listed in Article 322 para. 2 nos. 1 to 6.

(2) Legal persons may also be held responsible for a breach of the obligations listed in Article 322 para. 2 nos. 1 to 6, if such breaches or prohibitions by a natural person acting for the legal person were made possible by a lack of supervision or control by one of the persons referred to in para. 1.

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

1. up to EUR 5 000 000; or
2. up to 5 % of total annual turnover; or

3. up to double the amount of the benefit derived from the breach or a loss avoided arising from the breach, where this amount is able to be determined.

(4) The total annual turnover pursuant to para. 3 no. 2 shall be determined on the basis of the most recently adopted annual financial statement. In the case of an insurance undertaking pursuant to Article 5 no. 1 or a small insurance undertaking pursuant to Article 5 no. 3, then the total annual turnover shall be the total of the income items listed in Article 146 para. 4 nos. 1 to 8 and 10 to 11 less the expenditures listed therein. Where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant accounting regime according to the last available consolidated accounts that were approved by the competent body of the ultimate parent undertaking. Where the FMA is unable to determine or calculate the bases for the total annual turnover, then it shall estimate them. In so doing, all relevant circumstances shall be taken into account that are relevant for the estimate.

Effective punishment of breaches

Article 323a. In particular, the FMA shall take the following circumstances into consideration when selecting the scale of the fine pursuant to Article 323 para. 3 and the calculation of the level of a fine pursuant to Article 322 and Article 323 as well as when issuing an order for a measure for breaches against obligations or prohibitions pursuant to Article 123a and Article 127a to Article 135e as well as Delegated Regulations (EU) 2017/2358 and 2017/2359, of the Regulation (EU) 2019/2088 and Articles 5, 6 and 7 of Regulation (EU) 2020/852 and Regulations or administrative decisions issued on the basis of these provisions, where appropriate:

1. the severity and duration of the breach;
2. the degree of culpability of the responsible natural or legal person;
3. the financial strength of the responsible natural or legal person as may be deduced, for example, from the annual income of the responsible natural person, from the total turnover of the responsible legal person;
4. the amount of the gains made or losses avoided by the responsible natural or legal person, provided that these amounts can be determined;
5. the losses caused to policyholders or third parties by the breach of obligations, provided that they can be determined;
6. the willingness of the responsible natural or legal person to cooperate with the FMA;
7. measures taken by the responsible natural or legal person, to prevent the reoccurrence of the breach of the obligation; and
8. any previous breaches of obligations committed by the responsible natural or legal person.

Small mutual associations

Article 324. Whoever:

1. grants a loan to the persons mentioned under Article 76 para. 7 without the consent of the FMA;
2. accepts risks exceeding the maximum amount approved by the FMA pursuant to the second sentence of Article 74 para. 1; or
3. as the liquidator of a small mutual association breaches the obligation referred to in Article 80 para. 4 (financial statements, management report)

shall be deemed to be committing an administrative offence and shall be fined up to EUR 20 000 by the FMA.

Group supervision

Article 325. Whoever:

1. breaches the obligation referred to in Article 196 para. 3 to submit a notification where circumstances justifying group supervision occur or cease to apply;
2. breaches the notification obligation referred to in Article 202 para. 4 (non-compliance with the Solvency Capital Requirement at group level);
3. breaches the obligation referred to in Article 220 para. 1 to report any significant risk concentration at group level to the FMA;
4. breaches the obligation referred to in Article 221 paras. 1 or 3 to report all significant or all very significant intra-group transactions to the FMA;
5. breaches the obligation to notify situations as referred to in Article 225 para. 2; or
6. fails to provide the information requested by the FMA pursuant to Article 234 para. 2 in a timely manner

shall be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA, or up to EUR 100 000 in the case of no. 2.

Breach of orders

Article 326. Whoever:

1. acts contrary to any order by the FMA based on Article 275 or Article 291 paras. 1 or 3;
2. as the person responsible (Article 9 VStG) for an insurance holding company or a mixed financial holding company acts contrary to an order issued by the FMA based on Article 236 para. 2;
3. acts contrary to a prohibition imposed by the government commissioner pursuant to the fourth sentence of Article 284 para. 4; or
4. notwithstanding a regulation issued by the Federal Minister of Finance pursuant to Article 293 or any binding EU legal act, concludes new insurance contracts, extends existing insurance contracts or pays benefits on the basis of existing insurance contracts

shall be deemed to be committing an administrative offence and shall be fined up to EUR 150 000 by the FMA in the case of nos. 1 to 3 and up to EUR 100 000 in the case of no. 4.

Freedom to provide services and freedom of establishment

Article 327. (1) Whoever:

1. commences contractual insurance activities through a branch without meeting the requirements referred to in Article 20 paras. 1 to 3;
2. continues pursuing contractual insurance activities through a branch even though the supervisory authority issued a legally binding decision in accordance with Article 20 para. 3; or
3. commences the provision of services without meeting the requirements referred to in Article 22 paras. 1 to 3

shall be deemed to be committing an administrative offence and shall be fined up to EUR 100 000 by the FMA.

(2) Whoever, notwithstanding an order by the FMA based on Article 289 paras. 4 and 5, concludes further insurance contracts shall be deemed to be committing an administrative offence and shall be fined up to EUR 100 000 by the FMA.

Other breaches of duty

Article 328. Whoever:

1. contrary to Article 11 para. 2, covers a different nature of risk, or in the event of reinsurance acceptances, enters into a different kind of reinsurance arrangements with ceding undertakings without notifying the FMA;
2. contrary to Article 127d para. 1 uses individuals not authorised in a Member State for the distribution of insurance contracts or who breaches the requirements pursuant to Article 127d para. 2;
3. contrary to Article 107 para. 3, does not prepare or implement the written policies mentioned;
- 3a. contrary to Article 127a does not draw up or determine or does not implement the internal policies and procedures,
- 3b. contrary to Article 127e does not establish a complaints handling unit or does not define the procedures,
4. contrary to Article 108 para. 1, does not set up one of the governance functions stipulated;
- 4a. contrary to Article 127b para. 1 does not set up a distribution function;
5. adopts a remuneration in violation of the requirements set forth in the implementing regulation (EU);
6. uses outsourcing without the FMA's approval pursuant to Article 109 para. 2 or Article 86 para. 1;

7. contrary to Article 14 para. 1 no. 6 or Article 286 para. 2, disposes of deposit assets without the FMA's approval;
8. fails to provide the information requested by the FMA pursuant to Article 272 para. 1 in a timely manner;
9. contrary to Article 283 para. 2, disposes of assets without the FMA's approval even though the FMA restricted or prohibited the free disposal of these assets in accordance with Article 283 para. 1; or
10. as an employee of an insurance undertaking, small insurance undertaking or third-country insurance undertaking or any other person working for any of the above-mentioned undertakings violates the prohibition referred to in Article 135 para. 5

shall be deemed to be committing an administrative offence and shall be fined up to EUR 100 000 by the FMA in the case of nos. 3 to 4a, 6, 7 and 9 and up to EUR 60 000 in the case of nos. 1, 2, 5 and 8 and up to EUR 30 000 in the case of no. 10.

Unauthorised business

Article 329. (1) Whoever:

1. pursues insurance activities without having the requisite authorisation in accordance with this federal act;
2. concludes an insurance contract for an undertaking or mediates a contract for an undertaking which does not have the requisite authorisation in accordance with this federal act to pursue these insurance activities, or whoever otherwise participates as professional intermediary or consultant in the conclusion of an insurance contract with such an undertaking in whatever form; or
3. knowingly furnishes false information to the FMA in order to obtain the licence for contractual insurance activities for an undertaking

shall be deemed to be committing an administrative offence and shall be fined up to EUR 100 000 by the FMA.

(2) Pursuing insurance activities that have been prohibited pursuant to Article 284 para. 1 no. 3 shall be deemed equivalent to their pursuit without the requisite authorisation in accordance with para. 1 nos. 1 and 2.

(3) The inclusion of insured persons in a group insurance contract by the policyholder shall be deemed equivalent to the mediation of insurance contracts pursuant to para. 1 no. 2 for the insurance undertaking with which the group insurance contract was concluded.

Violation of the protection of designations

Article 330. Whoever, contrary to Article 287, uses the designations "*Versicherung*" (insurance), "*Versicherer*" (insurer), "*Assekuranz*" (old-fashioned for insurance or insurance undertaking) or any translation of those terms into another language or a designation containing one of these terms

without being authorised to do so shall, where this creates a risk of confusion, be deemed to be committing an administrative offence and shall be fined up to EUR 60 000 by the FMA.

Statute of limitation

Article 331. A period of limitation of 18 months shall apply to administrative offences as defined in this federal act, replacing the period of limitation referred to in Article 31 para. 1 VStG. The time periods of any criminal proceedings shall not be added to this period of limitation and that referred to in Article 31 para. 3 VStG.

Insolvency

Article 332. Whoever fails to submit the notification as required pursuant to the first sentence of Article 309 para. 1, commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 100 000.

CHAPTER 14: TRANSITIONAL AND FINAL PROVISIONS

SECTION 1: TRANSITIONAL PROVISIONS

General transitional provisions

Article 333. (1) After the entry into force of this federal act, the following transitional provisions shall apply:

1. **(regarding Article 5 Definitions):** An insurance undertaking existing at the time of this federal act entering into force shall be deemed a small insurance undertaking in accordance with Article 5 no. 3 where the undertaking requests to be considered such three months prior to the entry into force, has not exceeded the amounts set out in Article 83 para. 2 on the last three balance sheet dates prior to the entry into force, the insurance undertaking concerned does not pursue any activities as referred to in Section 5 of Chapter 1, the requirements set out in Article 83 paras. 1 to 4 are met and the FMA establishes this by administrative decision. Article 83 para. 7 shall apply. This shall result in the licence of the undertaking being considered a licence as referred to in Article 83 para. 1.
2. **(regarding Article 5 Definitions):** A small mutual association existing at the time of this federal act entering into force shall be deemed a small mutual association in accordance with Article 5 no. 4 where the undertaking has not exceeded the amounts set out in Article 83 para. 2 on the last three balance sheet dates prior to the entry into force. By way of derogation from Article 83 para. 2, the amounts calculated on the basis of the financial statements shall be used for that purpose. This shall result in the licence of the undertaking being considered a licence as referred to in Article 68 para. 3.

3. **(regarding Article 13 Licence):** A licence of a third-country insurance or third-country reinsurance undertaking in accordance with Article 4 para. 1 of the VAG, Federal Law Gazette no. 569/1978, as amended by the federal act in Federal Law Gazette I no. 42/2014, existing at the time of this federal act entering into force shall be deemed a licence in accordance with Article 13 para. 1.
4. **(regarding Article 6 Licence):** Any other licences for contractual or reinsurance activities in accordance with Article 4 para. 1 of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, existing at the time of this federal act entering into force shall be deemed licences in accordance with Article 6 para. 1.
5. **(regarding Article 7 Scope of the licence):** Existing insurance undertakings that were entitled to pursue life insurance activities as well as other insurance classes on 2 May 1992 shall continue to be permitted to pursue all these insurance classes simultaneously.
6. **(regarding Article 72 Investments by small mutual associations):** Small mutual associations which, at the time of this federal act entering into force, hold investments not referred to in Article 72 may continue to hold such investments with the FMA's approval. The FMA shall withhold, restrict or limit approval where this would otherwise pose a threat to the interests of the policyholders and beneficiaries.
7. **(regarding Article 91 Content of the insurance contract):** Where insurance contracts concluded before 1 September 1994 contain provisions according to which the insurer is entitled to amend the contents of the insurance contract with the insurance supervisory authority's approval, the insurer may not invoke them. This shall not apply to insurance contracts to which Articles 172 or 178f VersVG apply. In the case of these contracts, approval by the insurance supervisory authority shall not be required. Article 91 para. 2 shall be applied to new insurance contracts concluded after 20 December 2012.
8. **(regarding Article 109 Outsourcing):** Any approvals to outsource contracts in accordance with Article 17a para. 1 and Article 17b para. 3 of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, existing at the time of this federal act entering into force, and any existing approvals by which internal auditing ceased to be required shall be transitioned insofar as they are consistent with this federal act. From the date of this federal act entering into force, insurance and reinsurance undertakings shall adapt any existing outsourcing contracts in line with the currently applicable rules on the outsourcing of functions and business activities, and the implementing regulation (EU) in particular.
9. **(regarding Article 141 Allocation methods):** Any approvals of allocation methods in accordance with Article 73e para. 1 of the VAG, Federal Law Gazette no. 569/1978, as amended by the federal act in Federal Law Gazette I no. 42/2014, existing at the time of this federal act entering into force shall expire upon this federal act entering into force.

(2) Where insurance contracts concluded before 1 September 1994 contain provisions according to which the insurer is entitled to amend the contents of the insurance contract with the insurance

supervisory authority's approval, the insurer may no longer invoke them from 1 September 1994 onwards. This shall not apply to insurance contracts to which Articles 172 or 178f VersVG apply. In the case of these contracts, approval by the insurance supervisory authority shall not be required.

(3) Premature repayment of participation capital in accordance with Article 73c para. 1 of the VAG, Federal Law Gazette no. 569/1978, as amended by the federal act in Federal Law Gazette I no. 42/2014, shall only be permitted with the FMA's approval. Termination of supplementary capital with no fixed maturity by the insurance or reinsurance undertaking and premature repayment of supplementary capital, the maturity of which is either fixed or not fixed, each in accordance with Article 73c para. 2 of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, shall only be permitted with the FMA's approval. The FMA may only give its approval where the Solvency Capital Requirement is complied with even without the participation or supplementary capital and where there is no risk that the Solvency Capital Requirement might cease to be complied with during the three months following the approval. Holders of participation certificates in accordance with Article 73c para. 7 of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, shall be entitled to attend the annual general meeting or the meeting of the supreme body and to request information in accordance with Article 118 para. 1 AktG.

(4) Any approvals of premature repayment of supplementary capital in accordance with Article 73c paras. 5 and 6 of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, shall remain valid.

(5) For participation capital in accordance with Article 73c para. 1 of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 68/2015, issued at the time of this federal act entering into force, item A. III Participation capital shall be added to the liability side of the balance sheet and consolidated balance sheet and the participation capital be posted there. In this case, items A. III to A. VI as set out in Article 144 para. 3 shall be denoted as A. IV to A. VII in the balance sheet and consolidated balance sheet, and item A. VII shall be denoted as A. VIII in the consolidated balance sheet. Where the insurance or reinsurance undertaking holds own participation certificates, for the undertaking's own participation certificates the management report and the consolidated management report shall contain the disclosures necessary for own shares in accordance with Article 243 para. 3 no. 3 UGB.

(6) Any administrative proceedings initiated at the time of this federal act entering into force shall be continued by the FMA pursuant to the provisions of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014.

(7) The criminal liability of any breach of provisions of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, which was committed before 1 January 2016 shall be assessed pursuant to the law applicable at the time of the breach. Where law enforcement has already been initiated at the time of this federal act entering into force, the proceedings shall be continued pursuant to the previous law.

(8) The previous provisions shall continue to apply to execution proceedings pending at the time of this federal act entering into force and to initiated bankruptcy proceedings.

(9) The provisions of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 68/2015, shall apply to financial statements and consolidated financial statements for financial years starting before 1 January 2016.

(10) Any untaxed risk reserves shown as at 31 December 2015 shall be directly allocated to the risk reserve (item A. V. of Article 144 para. 3) in the financial year beginning after 31 December 2015, provided the deferred tax liabilities contained in the reserves are not required to be allocated to the provisions.

(11) Until 31 December 2023 at the latest, the information pursuant to Article 94 paras. 3 to 6 in the version of the Federal Act amended in Federal Law Gazette I No. 16/2021 may also be made available free of charge on paper only.

(12) Article 260 para. 1 first sentence shall not apply for the election of the sustainability reporting auditor for the financial years 2024 to 2026.

(13) For financial years that start in the first seven years following the entry into force of Article 260 para. 1a no. 1 in the version of the amendment published in Federal Law Gazette I No. 6/2026, the legal presumption pursuant to Article 260 para. 1a no. 1 shall be considered to be satisfied provided that in relation to the assurance statement pursuant to Article 274a UGB where instead of at least three years' experience covering sustainability reporting by insurance or reinsurance undertakings proof is provided pursuant to Article 260 para. 1a no. 2 about relevant training through which the necessary knowledge regarding sustainability reporting has been acquired.

(14) Article 266 third sentence in the version amended by Federal Act published in Federal Law Gazette I No. 6/2026 shall apply to audits in relation to sustainability reporting that are based on assurance standards for sustainability reporting that was issued by the European Commission by means of a delegated act in accordance with Article 26a (3) subparagraph 2 of Directive 2006/43/EC, at latest from the date from which the opinion listed in Article 268 para. 1 no. 2 UGB in accordance with this delegated act is required to be based on a reasonable assurance engagement that is based on those reasonable assurance standards. For audits about sustainability reporting that are conducted up until this point in time, half the amount of the maximum liability amounts stated in Article 266 first sentence shall apply.

Phasing-in of Solvency II

Article 334. (1) From 1 April 2015, the FMA may decide on the approval of:

1. ancillary own funds in accordance with Article 171 para. 3;
2. the classification of own-fund items referred to in Article 172 paras. 1 and 2;
3. undertaking-specific parameters in accordance with Article 178 para. 4;
4. a full or partial internal model in accordance with Articles 182 and 183;
5. special purpose vehicles to be established in Austria in accordance with Article 105;

6. ancillary own funds of an intermediate insurance holding company in accordance with Article 208 para. 3;
7. a group internal model in accordance with Articles 212 and 214;
8. the use of the duration-based equity risk sub-module in accordance with Article 180;
9. the use of the matching adjustment to the relevant risk-free interest rate term structure in accordance with Article 166;
10. the use of the transitional measure on the risk-free interest rates in accordance with Article 336; and
11. the use of the transitional measure on technical provisions in accordance with Article 337.

(2) From 1 April 2015, the FMA shall have the power to:

1. determine the level and scope of group supervision in accordance with Articles 196 to 200;
2. identify the group supervisor in accordance with Article 226; and
3. establish a college of supervisors in accordance with Article 228.

(3) From 1 July 2015, the FMA shall have the power to:

1. decide to deduct any participation in accordance with Article 208 para. 4;
2. approve the choice of method to calculate group solvency in accordance with Article 204;
3. make the determination on equivalence, where appropriate, in accordance with Articles 209 and 237.
4. decide on an application in accordance with Article 216;
5. make the determinations referred to in Articles 239 and 240; and
6. determine, where appropriate, the application of transitional measures in accordance with Article 335.

(4) The FMA shall consider applications submitted by insurance and reinsurance undertakings in accordance with paras. 2 and 3. A decision taken by the FMA on applications for approval or permission shall not under any circumstances become applicable before 1 January 2016.

Transitional measures to facilitate the introduction of Solvency II

Article 335. (1) Insurance or reinsurance undertakings which, by 1 January 2016, cease to conclude new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to Chapters 1 to 5 and Chapters 8 to 11 until the dates set out in para. 2 where either:

1. the undertaking has satisfied the FMA that it will terminate its activity before 1 January 2019;
or
2. the undertaking is subject to reorganisation measures set out in Title IV, Chapter II of Directive 2009/138/EC and an administrator has been appointed.

(2) Insurance or reinsurance undertakings falling under:

1. para. 1 no. 1 shall be subject to the provisions of this federal act from 1 January 2019 or from an earlier date where the FMA establishes by administrative decision that the progress that has been made towards terminating the undertaking's activity is not sufficient; or
2. para. 1 no. 2 shall be subject to the provisions of this federal act from 1 January 2021 or from an earlier date where the FMA establishes by administrative decision that the progress that has been made towards terminating the undertaking's activity is not sufficient.

(3) Paras. 1 and 2 shall apply only if the following conditions are met:

1. the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conclude new insurance or reinsurance contracts;
2. the undertaking provides the FMA with an annual report setting out what progress has been made in terminating its activity; and
3. the undertaking has notified the FMA that it applies the transitional measures.

Paragraphs 1 and 2 shall not prevent any undertaking from operating in accordance with this federal act.

(4) The FMA shall draw up a list of the insurance and reinsurance undertakings concerned and communicate that list to the supervisory authorities of the other Member States.

(5) For a period of four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information as part of regular supervisory reporting in accordance with the implementing regulation (EU) and the technical standards (EU) on an annual or less frequent basis shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year-end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year-end in relation to its financial year ending on or after 30 June 2019 but before 1 January 2020.

(6) For a period of four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to prepare and publish the solvency and financial condition report in accordance with the implementing regulation (EU) and the technical standards (EU) shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year-end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year-end in relation to its financial year ending on or after 30 June 2019 but before 1 January 2020.

(7) For a period of four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information as part of regular supervisory reporting in accordance with the implementing regulation (EU) and the technical standards (EU) on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

(8) Paragraphs 5 to 7 shall apply accordingly to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies under the

proviso that at the level of the group, the deadlines referred to in paras. 5 to 7 shall be extended by six weeks each.

(9) Until 31 December 2025, basic own-fund items shall be included in Tier 1 basic own funds, provided that those items:

1. were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97 of Directive 2009/138/EC, whichever is the earlier;
2. on 31 December 2015 were considered in the amount of up to 50% of the own funds requirements in accordance with the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014; and
3. would not otherwise be classified in Tier 1 or Tier 2 in accordance with Article 172.

(10) Until 31 December 2025, basic own-fund items shall be included in Tier 2 basic own funds, provided that those items:

1. were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97 of Directive 2009/138/EC, whichever is the earlier; and
2. on 31 December 2015 were considered in the amount of up to 25% of the own funds requirements in accordance with the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014.

(11) (repealed by the Amendment published in Federal Law Gazette I No. 76/2018)

(12) Notwithstanding Article 174, Article 175 para. 3 and Article 178 paras. 1 to 4, the following shall apply:

1. until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their own domestic currency;
2. in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;
3. in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;
4. from 1 January 2020 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall not be reduced in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State.

(13) Notwithstanding Article 174, Article 175 para. 3 and Article 178 paras. 1 to 4, the standard parameters to be used for equities that an insurance or reinsurance undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 180, shall be calculated as the weighted averages of:

1. the standard parameter to be used when calculating the equity risk sub-module in accordance with Article 180; and
2. the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 180.

The weight for the parameter referred to in no. 2 shall increase at least linearly at the end of each year from 0% during the year starting on 1 January 2016 to 100% on 1 January 2023.

(14) Notwithstanding the second sentence of Article 279 para. 2 and without prejudice to Article 279 para. 3, where insurance and reinsurance undertakings on 31 December 2015 comply with the own funds requirements referred to in Article 73b of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, but do not comply with the Solvency Capital Requirement in the first year of application of this federal act, the FMA shall require them to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017. The insurance or reinsurance undertaking concerned shall submit a progress report to the FMA every three months. This report shall set out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement. The FMA shall withdraw the extension by administrative decision where the progress report shows that no significant progress has been made towards re-establishing the level of eligible own funds covering the Solvency Capital Requirement or reducing the risk profile to ensure renewed compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date on which the progress report was submitted.

(15) The FMA may allow the ultimate parent insurance or reinsurance undertaking, during a period until 31 March 2022, to apply an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same Member State and this part forms a distinct part having a significantly different risk profile from the rest of the group.

(16) Article 202 para. 1 and para. 2 first sentence notwithstanding, paras. 9 to 12 and Articles 336 to 338 shall apply accordingly at the level of the group. Article 202 para. 1, para. 2 first sentence and para. 3 notwithstanding, the transitional provisions as referred to in para. 14 shall apply accordingly at the level of the group where the participating insurance or reinsurance undertakings or the insurance and reinsurance undertakings in a group comply with the adjusted solvency referred to in Article 86e of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, but do not comply with the group Solvency Capital Requirement.

(17) The FMA may, until 31 December 2017, require an insurance or reinsurance undertaking to apply the percentage limits referred to in Article 193 para. 3 exclusively to a Solvency Capital Requirement calculated in accordance with the standard formula.

(18) The portion of a capital add-on and the impact of the specific parameters, which the insurance or reinsurance undertaking is required to use in accordance with Article 181 para. 1, on the level of the Solvency Capital Requirement by 31 December 2020, need not be separately disclosed in the solvency and financial condition report referred to in Article 241.

(19) By way of derogation from Article 280 paras. 2 and 3 as well as Article 285 para. 1 no. 4, where insurance and reinsurance undertakings on 31 December 2015 comply with the first sentence of Article 73b para. 1 of the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014, but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 193 or Article 194 from 31 December 2016 at the latest. Where the insurance or reinsurance undertaking concerned fails to comply with Article 193 or Article 194 within that period, the FMA shall withdraw the licence in accordance with Article 285.

Transitional measure on the risk-free interest rates

Article 336. (1) Insurance and reinsurance undertakings may, with the FMA's approval, apply a transitional adjustment to the relevant risk-free interest rate term structure taking into account the admissible insurance and reinsurance obligations.

(2) For each currency the adjustment shall be calculated as a portion of the difference between:

1. the interest rate, as determined by the insurance or reinsurance undertaking in accordance with the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I No. 42/2014; and
2. the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of admissible insurance and reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of admissible insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure.

The portion shall decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032. Where insurance and reinsurance undertakings apply the volatility adjustment, the relevant risk-free interest rate term structure referred to in no. 2 shall be the adjusted relevant risk-free interest rate term structure set out in Article 167.

(3) The admissible insurance and reinsurance obligations shall comprise only life insurance and life reinsurance obligations that meet the following requirements:

1. the contracts that give rise to the life insurance and life reinsurance obligations were concluded before 1 January 2016, excluding contract renewals on or after that date;

2. until 31 December 2015, technical provisions for the life insurance and life reinsurance obligations were determined in accordance with the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014; and
 3. Article 166 shall not apply to these life insurance and life reinsurance obligations.
- (4) Insurance and reinsurance undertakings applying para. 1 shall:
1. not apply Article 337; and
 2. as part of their report on their solvency and financial condition, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying that transitional measure on their financial position.

Transitional measure on technical provisions

Article 337. (1) Insurance and reinsurance undertakings may, subject to prior approval by the FMA, apply a transitional deduction to technical provisions. That deduction may only be applied at the level of homogeneous risk groups referred to in Article 159 para. 2.

(1) The transitional deduction shall correspond to a portion of the difference between the following two amounts:

1. the technical provisions referred to in Section 1 of Chapter 8 after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated on 1 January 2016; and
2. the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated on 31 December 2015 in accordance with the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014.

The maximum portion deductible shall decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032. Where an insurance or reinsurance undertaking applies the volatility adjustment on 1 January 2016, the amount referred to in no. 1 shall be calculated with the volatility adjustment at that date.

(3) Subject to prior approval by or on the initiative of the FMA, the amounts of technical provisions referred to in para. 2 nos. 1 and 2, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in para. 2 may be recalculated every 24 months, or more frequently, where the risk profile of the undertaking has materially changed.

(4) The deduction referred to in para. 2 may be limited by the FMA if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the VAG, Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 42/2014.

(5) Insurance and reinsurance undertakings applying para. 1 shall:

1. not apply Article 336;

2. when they would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to the FMA setting out measures taken and the progress made to re-establish a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement; and
3. as part of their report on their solvency and financial condition, publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

Phasing-in plan on the transitional measures on risk-free interest rates and on technical provisions

Article 338. (1) Insurance and reinsurance undertakings that apply the transitional measures set out in Articles 336 or 337 shall inform the FMA as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures. The FMA shall require the insurance or reinsurance undertaking to take the necessary measures to ensure renewed compliance with the Solvency Capital Requirement at the end of the transitional period.

(2) Within two months of observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance or reinsurance undertaking shall submit to the FMA a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure renewed compliance with the Solvency Capital Requirement at the end of the transitional period. The insurance or reinsurance undertaking may update the phasing-in plan during the transitional period.

(3) The insurance or reinsurance undertaking shall submit annually a report to the FMA setting out the measures taken and the progress made to ensure renewed compliance with the Solvency Capital Requirement at the end of the transitional period. The FMA shall revoke the approval for the application of the transitional measure where that progress report shows that renewed compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.

SECTION 2 - FINAL PROVISIONS

Entry into force

Article 339. (1) This federal act shall enter into force on 1 January 2016, with the exception of the provisions set out in para. 2.

(2) Article 334 paras. 1, 2 and 4 shall enter into force on 1 April 2015, and Article 334 para. 3 shall enter into force on 1 July 2015.

(3) The FMA may issue regulations based on the powers vested by this federal act as of the day following its proclamation. Such regulations may be brought into force no earlier than upon the relevant powers entering into force.

Entry into force of amendments based on government bills by the Federal Minister of Finance

Article 340. (1) Article 1 para. 1 no. 3, Article 5 no. 28 lit. a and no. 54 to 58, Article 12 para. 1 no. 2, Article 16 para. 2, Article 19 para. 4, Article 50 paras. 3 and 4, Article 54 para. 4, Article 55 para. 2, Article 62 para. 2, Article 69 para. 4, Article 71 para. 1, Article 74, Article 79 para. 1, Article 89 para. 1 no. 2 and para. 7, Article 91 para. 2, Article 98 para. 3, Article 109 para. 3, Article 116 para. 8, Article 127 para. 1 nos. 3 and 4, Article 133 paras. 3 and 8, Article 136, Article 137, Article 138 para. 8, Article 140 paras. 9 and 11, Article 141 paras. 1, 3 and 4, Article 144 paras. 2 and 3, Article 145, Article 146 para. 5 nos. 13 and 14, Article 148, Article 149 para. 2, Article 150 para. 4, Article 155 para. 1 nos. 2 and 3, para. 2 nos. 1, 1a, 7 and 12 lit. e, paras. 3a, 4 to 6, 7a, 7b and 17, Article 156 para. 1 no. 1, Article 246 para. 3, Article 248 para. 2 no. 3, Article 263 para. 1 no. 6, Article 264 para. 3, Article 267 para. 3, Article 271, Article 294 para. 3 no. 2, Article 333 para. 1 nos. 2 and 7, paras. 5, 9 and 10, Article 335 paras. 9 and 10, Article 336 para. 3 and Article 342 para. 3 nos. 7 and 8 as amended by the Federal Law Gazette I no. 68/2015 shall enter into force on 1 January 2016; at the same time, Article 143 para. 3 and Article 144 paras. 5 to 9 shall expire.

(2) Article 24 paras. 2 and 3, Article 69 para. 5, Article 116 para. 4, Article 154 para. 1, Article 159 para. 5 no. 1, Article 168 para. 1, Article 197 para. 2, Article 211 para. 2 no. 2, Article 253 para. 1 no. 7, Article 269, Article 273 para. 1 no. 2, Article 275 para. 2 no. 1 and Article 280 para. 2 as amended by the Federal Law Gazette I no. 159/2015 shall enter into force on 1 January 2016.

(3) Article 8 para. 2 no. 8, Article 20 para. 5, Article 68 para. 1 third sentence, Article 69 para. 4, Article 263 para. 1 no. 3, Article 269, Article 271 para. 1 first sentence and para. 4, Article 273 para. 4, Article 301 para. 5, Article 332, Article 342 para. 1 no. 34 and nos. 35 to 43 and para. 2 nos. 4 to 9 and Article 346 no. 1 as well as the changes to the table of contents as amended in Federal Law Gazette I no. 118/2016 shall enter into force on 1 January 2017. Article 69 paras. 3 and 4, the Heading "Chapter 6 Prevention of Money Laundering and Terrorist Financing" and Articles 128 to 135 including headings, Article 136 para. 1 no. 5 second sentence, Article 322 and Article 342 para. 1 no. 36 and para. 2 no. 4 shall expire at the end of 31 December 2016.

(4) Article 8 para. 3, Article 24 para. 3, Article 94 para. 8, Article 98 para. 1, Article 123 para. 7, Article 269, Article 342 para. 1 nos. 18 and 42 as well as Article 342 para. 3 no. 11 in the version amended by Federal Act in Federal Law Gazette I no. 107/2017 shall enter into force on 3 January 2018. Article 168 para. 1, Article 179a as well as the amendments to the table of contents amended by Federal Act in Federal Law Gazette I no. 107/2017 shall enter into force on the day after their publication.

(5) Article 182 para. 7 in the version of the Federal Act amended in Federal Law Gazette I no. 149/2017 shall enter into force on 3 January 2018.

(6) The table of contents, Article 5 nos. 59 to 65, Article 6 paras. 3 and 4, Article 20 para. 5, Article 22 para. 5, Article 33 including its heading, Article 69 para. 5, Article 82, Article 83 para. 1, Article 109a including its heading, Article 123a including its heading, Section 7 of Chapter 5, Chapter 6, Article 256, Article 256a including its heading, Article 257 para. 3, Article 258 para. 1 no. 7, paras. 3 and 4, Article 267 para. 3, Article 268 para. 2, Article 268a including its heading, Article 273a including its heading, Article 275 para. 1 no. 1, paras. 3 and 4, Article 289 para. 6, Article 294a including its heading, Article 317 para. 1, Article 319 no. 1, Articles 322 to 323a including headings, Article 328 nos. 2, 3a, 3b, 4a and 10, Article 342 para. 2 and Article 346 no. 4a in the version of the amendment published in Federal Law Gazette I no 16/2018 shall enter into force on 1 October 2018. Article 34 and the Section 3 of Chapter 10 shall be repealed at the end of 30 September 2018. Article 135d para. 1 no. 6 shall apply to insurance contracts that are concluded after 30 September 2018.

(7) Article 5 nos. 9 and 63 and Article 342 para. 2 nos. 13 and 14 in the version of the Federal Act amended in Federal Law Gazette I No. 76/2018 shall enter into force on 13 January 2019.

(8) Article 335 para. 11 shall expire at the end of 31 December 2018.

(9) Article 19a including its heading as well as the corresponding entry in the table of contents shall enter into force on 22 September 2019.

(10) Article 167 para. 4 in the version of the Federal Act amended in Federal Law Gazette I No. 38/2020 shall enter into force on 1 July 2020.

(11) Article 50 para. 1 in the version of Federal Law Gazette I No. 16/2021 shall enter into force on 1 January 2021 and shall be applicable to elections and appointments to the supervisory board that occur after 31 December 2020. Existing supervisory board member mandates remain unaffected; the minimum quota is to be taken into consideration with regard to the succession of replacement members elected or appointed prior to 1 January 2021. Article 94 paras. 2a to 8, Article 95 paras. 1a to 1c, Article 319 no. 1 and Article 333 para. 11 in the version of the Federal Act amended in Federal Law Gazette I No. 16/2021 shall enter into force on 1 January 2022. The previous version of Article 94 para. 8 shall expire at the end of 31 December 2021. The FMA may already issue Regulations based on the powers conferred upon it in Article 94 para. 7 in the version of the Federal Act amended in Federal Law Gazette I No. 16/2021 from the day following the promulgation of the Federal Act in Federal Law Gazette I No. 16/2021. Such Regulations shall be allowed to enter into force at the earliest with effect from 1 January 2022.

(12) The table of contents, Article 9a, Article 109a, Article 128 para. 2, Article 135c para. 1 no. 10a, Article 135d para. 1 no. 6a, Article 182 para. 3a, Article 212 para. 3 and para. 5, Article 216 para. 4, Article 267 para. 3, Article 268 para. 2, Article 273a para. 1, Article 275 para. 1 no. 1, Article 294a para. 4, Articles 296a and 296b, Article 322 para. 1 nos. 5a and 5b, Article 322 para. 2 nos. 5a and 5b, Article 323a and Article 342 para. 3 nos. 15 and 16 in the version of the amendment by Federal Act in Federal Law Gazette I No. 36/2022 shall enter into force on the day following publication. Article 322 para. 1 no. 5c and Article 322 para. 2 no. 5c in the version of the amendment by Federal Act in Federal Law Gazette I No. 36/2022 shall enter into force on 30 December 2022. Article 322 para. 1 no. 5d and

Article 322 para. 2 no. 5d in the version of Federal Law Gazette I No. 36/2022 shall enter into force on 1 January 2023.

(13) Article 5 no. 34 lit. c sublots. aa and bb, Article 83 para. 2 nos. 1 to 4 and Article 193 para. 2 nos. 1 to 3 in the version of the amendment by Federal Act in Federal Law Gazette I No. 74/2022 shall enter into force on 19 October 2022. Article 138 paras. 8 and 9 in the version of the amendment by Federal Act in Federal Law Gazette I No. 74/2022 shall enter into force on 1 January 2023 and shall apply for the first time on financial years that start after 31 December 2022.

(14) The table of contents, Article 07 para. 4, Article 341a including its heading, and Article 342 para. 3 nos. 16 and 17 in the version of the amendment by Federal Act in Federal Law Gazette I No. 112/2024 shall enter into force on 17 January 2025.

(15) The table of contents, Article 5 nos. 66 and 67, Article 246a including heading, Article 252 including heading, Article 253 including heading Article 256a para. 6, Article 269, Article 297 paras. 4 to 6, Article 306 para. 6, Article 309 para. 2a, Article 317 para. 1 nos. 20 and 21 and Article 318 in the version of the Federal Act amended in Federal Law Gazette I No. 5/2026 shall enter into force on the days following publication. Article 271 para. 3 in the version of Federal Law Gazette I No. 5/2026 shall enter into force shall enter into force at the end of the day of publication and shall be applicable to FMA financial years beginning after 31 December 2025. Article 246a, Article 256a para. 6, Article 297 para. 6, Article 306 para. 6 and Article 309 para. 2a in the version amended in Federal Law Gazette I No. 5/2026 shall apply from 10 January 2030. The FMA shall notify the European Securities and Markets Authority (ESMA) by 9 January 2028 that it is the ESAP collection body pursuant to Article 18a (3) of Regulation (EU) 2019/2088 for insurance undertakings, and by 9 January 2030, that it is the ESAP collection body for information pursuant to Article 304b (3) of Directive 2009/138/EC, and that it is the ESAP collection body pursuant to Article 3 (2) of Regulation (EU) 2023/2859 for the collection of information listed in Directive 2009/138/EC and Directive (EU) 2016/97 submitted on a voluntary basis, as well as for the collection of the information listed in Regulation (EU) 2019/2088 submitted on a voluntary basis, provided it is submitted by insurance undertakings.

(16) The entry in the table of contents regarding Article 141, the heading for Article 141 and Article 141 para. 1 and Article 248 para. 8 in the version amended in Federal Law Gazette I No. 6/2026 shall enter into force on 01 January 2026 and shall apply for the first time for financial years that begin after 31 December 2025. Article 77 para. 1 in the version amended in Federal Law Gazette I No. 6/2026 shall enter into force on 1 January 2021 and shall be applicable to elections and appointments to the supervisory board that occur after 30 June 2026. Existing supervisory board member mandates shall remain unaffected.

Entry into force of other provisions

Article 341. (1) Article 131 para. 1 no. 1 lit. a and Article 342 para. 3 nos. 8 and 9 as amended in Federal Law Gazette I no. 50/2016 shall enter into force on 1 July 2016; at the same time Article 342 para. 1 no. 34 shall expire.

(2) Article 82, Article 136 paras. 1 and 2, Article 260 paras. 2 and 2a, Article 261 para. 1, Article 262, Article 264 para. 6, Article 265 paras. 5 and 6 and Article 268 para. 5 as amended in Federal Law Gazette I no. 43/2016 shall enter into force on 17 June 2016 and with the exception of the reference to Article 123 paras. 7 to 9 in Article 82 shall first apply to the audit opinions for financial years that begin after 16 June 2016. Article 116 para. 8 and Article 123 paras. 7 to 9 as amended in Federal Law Gazette I no. 43/2016 shall enter into force on 17 June 2016.

(3) Article 322 para. 3 in the version of the Federal Act amended in Federal Law Gazette I No. 51/2018 shall enter into force on 1 October 2018.

(4) Article 338a in the version contained in the Brexit Supplementary Act 2019 (BreBeG; *Brexit-Begleitgesetz 2019*), published in Federal Law Gazette I No. 26/2019 shall enter into force at the time of the United Kingdom of Great Britain and Northern Ireland withdrawing from the European Union shall enter into force conditional upon the withdrawal taking place without a Withdrawal Agreement pursuant to Article 50 (2) of the Treaty on European Union (TEU).

(5) Article 5 no. 20 lit. a sublit. bb, Article 306 para. 1a, Article 309 para. 5, Article 342 para. 2 no. 3 and Article 346 no. 1 in the version amended in the amendment published in Federal Law Gazette I no. 129/2023 shall enter into force on 23 December 2023.

Transposition Note

Article 341a. (1) The Federal Act published in Federal Law Gazette I No. 112/2024 serves to transpose Directive (EU) 2022/2554 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 on Digital Operational Resilience in the Financial Sector (DORA), published in OJ L 333, 27.12.2022, p. 153.

(2) The Federal Act published in Federal Law Gazette I No. 5/2026 serves the purpose of transposing Directive (EU) 2023/2864 amending certain directives as regards the establishment and functioning of the European single access point, OJ L 2023/2864, 20.12.2023, in the version of the corrigendum published in OJ L 2004/90411, 15.07.2024, as well as the effective enforcement of Regulation (EU) 2023/2859.

(3) The Federal Act published in Federal Law Gazette I No. 6/2026 transposes Directive (EU) 2022/2464 amending Regulation (EU) 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU regarding the undertakings' sustainability reporting, OJ L 322, 16.12.2022, p. 15.

References

Article 342. (1) Where references to other federal acts are made in this federal act, those acts shall apply as most recently amended unless otherwise specified:

1. Code of Judicial Jurisdiction (JN; *Jurisdiktionsnorm*), Reich Law Gazette no. 111/1895;
2. Corporate Code (UGB; *Unternehmensgesetzbuch*), German Reich Law Gazette p. 219/1897;
3. Act on Limited Liability Companies (GmbHG; *GmbH-Gesetz*), Reich Law Gazette no. 58/1906;
4. Insolvency Code (IO; *Insolvenzordnung*), Reich Law Gazette no. 337/1914;

4. Cooperative Societies Insolvency Act (GenIG; *Genossenschaftsinsolvenzgesetz*), Reich Law Gazette no. 105/1918;
5. Federal Constitutional Act (B-VG; *Bundes-Verfassungsgesetz*), Federal Law Gazette no. 1/1930;
6. Public Liability Act (AHG; *Amtshaftungsgesetz*), Federal Law Gazette no. 20/1949;
7. General Social Insurance Act (ASVG; *Allgemeines Sozialversicherungsgesetz*), Federal Law Gazette no. 189/1955;
8. Fiscal Offences Act (FinStrG; *Finanzstrafgesetz*), Federal Law Gazette no. 129/1958;
9. Insurance Policy Act (VersVG; *Versicherungsvertragsgesetz*), Federal Law Gazette no. 2/1959;
10. Stock Corporation Act (AktG; *Aktiengesetz*), Federal Law Gazette no. 98/1965;
11. Capital Adjustment Act (KberG; *Kapitalberichtigungsgesetz*), Federal Law Gazette no. 171/1967;
12. Salary Act (BezG; *Bezügegesetz*), Federal Law Gazette no. 273/1972;
13. Labour Constitution Act (ArbVG; *Arbeitsverfassungsgesetz*), Federal Law Gazette no. 22/1974;
14. Criminal Code (StGB; *Strafgesetzbuch*), Federal Law Gazette no. 60/1974;
15. 1975 Code of Criminal Procedure (StPO; *Strafprozessordnung*), Federal Law Gazette no. 631/1975;
16. Endowment Insurance Promotion Act (*Kapitalversicherungsförderungsgesetz*), Federal Law Gazette no. 163/1982;
17. 1988 Income Tax Act (EStG 1988; *Einkommensteuergesetz*), Federal Law Gazette no. 400/1988;
18. Stock Exchange Act 2018 (BörseG 2018; *Börsegesetz 2018*), Federal Law Gazette no. I 107/2017;
19. Pensionskassen Act (PKG; *Pensionskassengesetz*), Federal Law Gazette no. 281/1990;
20. Company Pension Act (BPG; *Betriebspensionsgesetz*), Federal Law Gazette no. 282/1990;
21. Company Register Act (FBG; *Firmenbuchgesetz*), Federal Law Gazette no. 10/1991;
22. 1991 Code of Administrative Procedure (AVG; *Allgemeines Verwaltungsverfahrensgesetz*), Federal Law Gazette no. 51/1991;
23. 1991 Administrative Penal Act (VStG; *Verwaltungsstrafgesetz*), Federal Law Gazette no. 52/1991;
24. 1991 Administrative Enforcement Act (VVG; *Verwaltungsvollstreckungsgesetz*), Federal Law Gazette no. 53/1991;
25. Capital Market Act (KMG; *Kapitalmarktgesetz*), Federal Law Gazette no. 625/1991;
26. Employment Contract Law Adaptation Act (AVRAG; *Arbeitsvertragsrechts-Anpassungsgesetz*), Federal Law Gazette no. 459/1993;
27. Austrian Banking Act (BWG; *Bankwesengesetz*), Federal Law Gazette no. 532/1993;
28. Private Foundation Act (PSG; *Privatstiftungsgesetz*), Federal Law Gazette no. 694/1993;
29. 1994 Trade Act (GewO 1994; *Gewerbeordnung*), Federal Law Gazette no. 194/1994;
30. 1994 Motor Insurance Act (KHVG 1994; *Kraftfahrzeug-Haftpflichtversicherungsgesetz*), Federal Law Gazette no. 651/1994;
31. 1st Euro Changeover Accompanying Act (1. Euro-JuBeG; *1. Euro-Justiz-Begleitgesetz*), Federal Law Gazette I no. 125/1998;

32. Auditing, Tax Advising and Related Professions Act (WTBG; *Wirtschaftstreuhandberufsgesetz*), Federal Law Gazette I no. 58/1999;
33. *(Repealed in Federal Law Gazette I no. 37/2018)*
34. Financial Market Authority Act (FMABG; *Finanzmarktaufsichtsbehördengesetz*), Federal Law Gazette I no. 97/2001;
35. Telecommunications Act 2003 (TKG 2003; *Telekommunikationsgesetz 2003*), Federal Law Gazette I no. 70/2003;
36. Distance Financial Services Act (FernFinG; *Fern-Finanzdienstleistungs-Gesetz*), Federal Law Gazette I no. 62/2004;
37. European Company Act (SEG; *Societas-Europaea-Gesetz*), Federal Law Gazette I no. 67/2004;
38. Financial Conglomerates Act (FKG; *Finanzkonglomeratengesetz*), Federal Law Gazette I no. 70/2004;
39. Act on the Compensation of Road Accident Victims (VOEG; *Verkehrsoffer-Entschädigungsgesetz*), Federal Law Gazette I no. 37/2007;
40. Securities Supervision Act 2007 (WAG 2007; *Wertpapieraufsichtsgesetz*), Federal Law Gazette I no. 60/2007;
41. *Repealed (in Amendment published in Federal Law Gazette I 17/2018);*
42. Securities Supervision Act 2018 (WAG 2018; *Wertpapieraufsichtsgesetz 2018*), Federal Law Gazette I no. 107/2017;
43. Financial Markets Anti-Money Laundering Act (FM-GwG; *Finanzmarkt-Geldwäschegesetz*), Federal Law Gazette I no. 118/2016.

(2) Where references to directives of the European Union are made in this federal act, those directives shall apply as amended as follows unless otherwise specified:

1. Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC, OJ L 35, 11.02.2003, p. 1, most recently amended by Directive (EU) 2019/2034, OJ L 314, 05.12.2019, p. 64;
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, most recently amended by Directive (EU) 2019/2162, OJ L 328, 18.12.2019, p. 29;
3. Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, OJ L 263, 07.10.2009, p. 11, in the version of Directive (EU) 2021/2118, OJ L 420, 02.12.2021, p. 1;
4. Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.11.2009, p. 1, in the version of amended by Directive (EU) 2023/2864, OJ L 2023/2864, 20.12.2023;

5. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, p. 19, in the version of the corrigendum in OJ L 369, 24.12.2014, p. 79;
6. Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.06.2013, p. 338, most recently amended by Directive (EU) 2019/2034, OJ L 314, 05.12.2019 p. 64;
7. Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, OJ L 157, 09.06.2006, p. 87, most recently amended by Directive 2014/56/EU, OJ L 158, 27.05.2014, p. 196;
8. Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), O L 173, 12.06.2014, p. 349, most recently amended by Directive (EU) 2019/2177, OJ L 334, 27.12.2019, p. 155;
9. Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, OJ L 060, 28.02.2014, p. 34, most recently amended by Regulation (EU) 2016/1011, OJ L 171, 29.06.2016, p. 1;
10. Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, OJ L 257, 28.08.2014, p. 214;
11. Directive (EU) 2016/97 on insurance distribution, OJ L 26, 02.02.2016, p. 19, in the version of amended by Directive (EU) 2023/2864, OJ L 2023/2864, 20.12.2023;
12. Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs), OJ L 354, 23.12.2016, p. 37, in the version of amended by Directive (EU) 2023/2864, OJ L 2023/2864, 20.12.2023;
13. Directive (EU) 2023/2864 amending certain directives as regards the establishment and functioning of the European single access point, OJ L 2023/2864, 20.12.2023, in the version of the corrigendum published in OJ L 2004/90411, 15.07.2024.

(3) Where references are made in this federal act to EU Regulations, unless instructed otherwise, the following listed versions thereof shall apply:

1. Regulation (EC) No 2157/2001 on the Statute for a European company (SE), OJ L 294, 14.08.2009, p. 1, last amended by Regulation (EU) No 517/2013, OJ L 158, 10.06.2013, p. 1;
2. Regulation (EC) No 1060/2009 on credit rating agencies OJ L 302, 17.11.2009, p. 1, most recently amended by Regulation (EU) 2017/2402, OJ L 347, 28.12.2017, p. 35;

3. Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ L 331, 15.12.2010, p. 1, most recently amended by Regulation (EU) 2019/2176, OJ L 334, 27.12.2019, p. 146;
4. Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12, most recently amended by Regulation (EU) 2019/2175, OJ L 334, 27.12.2019, p. 1;
5. Regulation (EU) No 1094/2010 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, most recently amended by Regulation (EU) 2019/2175, OJ L 334, 27.12.2019, p. 1;
6. Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84, most recently amended by Regulation (EU) 2019/2175, OJ L 334, 27.12.2019, p. 1;
7. Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.07.2012, p. 1, most recently amended by Regulation (EU) 2019/2099, OJ L 322, 12.12.2019, p. 1;
8. Delegated Regulation (EU) No 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 12, 17.01.2015, p. 1, most recently amended by Delegated Regulation (EU) No 2020/442, OJ L 92, 26.03.2020, p. 1;
9. Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, published in OJ L 257, 28.08.2014, p. 73, in the version of the corrigendum OJ L 155, of 14.06.2016, p. 44;
10. Regulation (EU) No 537/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Commission Decision 2005/909/EC, published in OJ L 58, 27.05.2014 p. 77, in the version of the corrigendum OJ L 170, 11.06.2014, p. 66;
11. Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 87, p. 1, most recently amended by Delegated Regulation (EU) 2019/1011, OJ L 165, 21.06.2019, p. 1;
12. 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, in the version of the corrigendum OJ L 74, 04.03.2021, p. 35;
13. Delegated Regulation (EU) 2017/2358 supplementing Directive (EU) 2016/97 with regard to information requirements and conduct of business rules applicable to the distribution of

- insurance-based investment products, OJ L 341, 20.12.2017, p. 1, most recently amended by Delegated Regulation (EU) 2018/541, OJ L 90, 06.04.2018, p. 59;
14. Delegated Regulation (EU) 2017/2359 supplementing Directive (EU) 2016/97 with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products, OJ L 341, 20.12.2017, p. 8, most recently amended by Delegated Regulation (EU) 2018/541, OJ L 90, 06.04.2018, p. 59;
 15. Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, OJ L 317, 09.12.2019, p. 1, as amended by Regulation (EU) 2023/2869, OJ L 2023/2869, 20.12.2023;
 16. 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;
 17. 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;
 18. Regulation (EU) 2023/2859 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, OJ L 2023/2859, 20.12.2023, in the version of the Directive (EU) 2024/1760, OJ L 2024/1760, 05.07.2024.

Gender-neutral use of language

Article 343. Where expressions relating to persons are given in this federal act only in the male form, they shall refer equally to women and men. The gender-specific form shall be used where reference is made to specific persons.

Revision of amounts expressed in euro

Article 344. The amounts referred to in Article 5 no. 34, Article 83 para. 2, Article 88 para. 1 and Article 193 para. 2 shall increase to the same extent and based on the same principles as set out in Article 300 of Directive 2009/138/EC relating to the euro amounts referred to in that Directive. The Federal Minister of Finance shall announce the amounts resulting from that increase in the Federal Law Gazette in the year in which the amounts resulting from that increase have been published by the European Commission in the Official Journal of the European Union. These amounts shall apply as of 1 January of the following year.

Expiry

Article 345. (1) Upon this federal act entering into force, the VAG, published in Federal Law Gazette no. 569/1978 as amended by the federal act in Federal Law Gazette I no. 68/2015, and any regulations adopted on the basis of that federal law shall expire at the end of 31 December 2015.

(2) Where rules in other federal laws refer to provisions repealed by this federal act, they shall be replaced by the relevant provisions of this federal act.

(3) Article 258 para. 2 shall expire on 1 January 2021.

Enforcement clause

Article 346. The following persons shall be in charge of enforcing this federal act:

1. with respect to Article 8 para. 6, Article 17 para. 1 second sentence, paras. 2 and 4, Article 27 para. 1 second to fourth sentence and para. 3 first and third to sixth sentence, Article 28, Article 31, Article 36, Article 37 para. 1, Article 38, Article 40 paras. 1, 3 and 4, Article 42, Article 43, Article 48 to Article 57 paras. 1, 2, 4 and 5, Article 58 paras. 1, 2 and 4 to 6, Article 59 para. 1, Article 60, Article 61 paras. 1 to 3 and 5 to 13, Article 62 paras. 1 to 3, para. 4 first and second sentence and para. 5, Article 63 paras. 1 and 2, para. 3 first sentence, para. 4 first to third sentence, Article 64, Article 65 para. 1 no. 1, paras. 2 and 4, Article 66 para. 1, para. 3 nos. 1, 2, 5, 6, 8 and 9, para. 4 nos. 1 to 5, paras. 5 to 7, Article 67, Article 69 para. 4, Article 75, Article 76 para. 1 first sentence, paras. 3, 4, 8, and 9, Article 77, Article 78, Article 80, Article 81, Article 105 para. 2, Article 122 para. 1 last sentence, Article 123 para. 5, Article 225 paras. 3 to 5, Article 246 para. 6, Article 283 para. 2 first sentence and para. 3, Article 295 para. 4 second and third sentence, Article 302 para. 4, Article 303, Article 305 para. 2 second sentence, Article 306 paras. 2 to 5, Articles 307 to 309 para. 4, Articles 310 to 315, Article 316 paras. 4 and 6, the Federal Minister of Justice;
2. with respect to Article 63 paras. 5 and 6, Article 65 para. 1 no. 2 and Article 66 para. 3 nos. 3, 4 and 7, the Federal Minister of Finance in consultation with the Federal Minister of Justice;
3. with respect to Article 33 the Federal Minister of Social Affairs, Health, Care and Consumer Protection, with the agreement of the Federal Minister of Finance required with respect to para. 2;
4. with respect to the remaining provisions, the Federal Minister of Finance.

ANNEX A - REFERRING TO ARTICLE 7 PARA. 4:

Classification of insurance classes

1. Accident
 - a. fixed pecuniary benefits
 - b. benefits in the nature of indemnity
 - c. combinations of the two
 - d. injury to passengers
2. Sickness
 - a. daily benefits
 - b. medical expenses
 - c. combinations of the two
3. Land vehicles (other than railway rolling stock)
All damage to or loss of:
 - a. land motor vehicles
 - b. land vehicles other than motor vehicles
4. Railway rolling stock
All damage to or loss of railway rolling stock
5. Aircraft
All damage to or loss of aircraft
6. Ships (sea, lake and river and canal vessels)
All damage to or loss of:
 - a. river and canal vessels
 - b. lake vessels
 - c. sea vessels
7. Goods in transit
All damage to or loss of goods in transit or baggage, irrespective of the form of transport
8. Fire and natural forces
All damage to or loss of property (other than property included in nos. 3 to 7) due to
 - a. fire
 - b. explosion
 - c. storm
 - d. natural forces other than storm
 - e. nuclear energy
 - f. land subsidence
9. Other damage to property
All damage to or loss of property (other than property included in nos. 3 to 7) due to hail or frost, and any event such as theft, other than those mentioned under no. 8

10. Motor vehicle liability
All liability arising out of the use of motor vehicles operating on the land (including carrier's liability)
11. Aircraft liability
All liability arising out of the use of aircraft (including carrier's liability)
12. Liability for ships (sea, lake and river and canal vessels)
All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability)
13. General liability
All liability other than those forms mentioned under nos. 10 to 12
14. Credit
 - a. insolvency (general)
 - b. export credit
 - c. instalment credit
 - d. mortgages
 - e. agricultural credit
15. Suretyship
 - a. suretyship (direct)
 - b. suretyship (indirect)
16. Miscellaneous financial loss
 - a. employment risks
 - b. insufficiency of income (general)
 - c. bad weather
 - d. loss of benefits
 - e. continuing general expenses
 - f. unforeseen trading expenses
 - g. loss of market value
 - h. loss of rent or revenue
 - i. indirect trading losses other than those mentioned above
 - j. other financial loss (non-trading)
 - k. other forms of financial loss
17. Legal expenses
18. Assistance provided for persons who get into difficulties while travelling, while away from home or while away from their permanent residence
19. Life (unless mentioned under nos. 20 to 22)
20. Marriage insurance and birth insurance
21. Unit-linked and index-linked life insurance
22. Tontines
23. Reinsurance

- a. Non-life reinsurance
- b. Life reinsurance

ANNEX B: REFERRING TO ARTICLE 88:

Own funds requirements

A) Non-life insurance

For all insurance classes except for nos. 19 to 22 of Annex A:

Own funds must correspond to the higher of the following two results, however, at least equal to the own funds requirement for the financial year preceding the last financial year multiplied by the ratio between the amount of the technical provisions for claims outstanding less the portion attributable to reinsurers at the end of the last financial year and the amount of the technical provisions for claims outstanding less the portion attributable to reinsurers at the beginning of the last financial year; in any case this ratio is capped at a maximum of 100%.

a. Premium basis:

The higher amount of the premiums written and earned of the direct and indirect gross amount of annual premiums in the last financial year shall be used. A rate of 40% is applied to an amount calculated in this way. The premium index shall be obtained by multiplying this amount with the ratio, which for the previous three financial years corresponds to the ratio of the amount of claims incurred less the portion attributable to reinsurers to the ratio of the amount of claims incurred without deducting the portion attributable to reinsurers; this ratio may in no case be less than 50%.

b. Claims basis:

The average claims incurred for the total amount of direct and indirect business for the last three financial years is to be determined. A rate of 50% is applied to an amount calculated in this way. The claims basis shall be obtained by multiplying this amount with the ratio, which for the previous three financial years corresponds to the ratio of the amount of claims incurred less the portion attributable to reinsurers to the ratio of the amount of claims incurred without deducting the portion attributable to reinsurers; this ratio may in no case be less than 50%.

B) Life insurance

In life insurance pursuant to nos. 19 to 22 of Annex A the own funds must correspond to the total of the following two results:

- a. the amount, which is equivalent to 10% of the premium reserve and the unearned premiums without deducting the portion attributable to reinsurers, is multiplied by the ratio from the completed financial year, arising from the premium reserve and the unearned premiums less the respective portion attributable to reinsurers in relation to the premium reserve and the unearned premiums without deducting the portion attributable to reinsurers. In any case this ratio is to be applied as a minimum of 85%.

- b. for policies where the capital at risk is not negative, the amount that corresponds to 2% of the assumed capital at risk, is multiplied by the ratio for the last financial year, which is obtained from the capital at risk less the portion attributable to reinsurers to the ratio of the capital at risk without deducting the portion attributable to reinsurers. In any case this ratio is to be applied as a minimum of 50%.