

Document Number: 01 / 2006
Publication Date: 12.12.2006

FMA CIRCULAR

CONCERNING THE DIFFERENTIATION OF PARTICIPATION IN PROFITS AMONG SHARES IN THE PENSION INSURANCE PORTFOLIO AND SPECIFICALLY FOR SO-CALLED “BONUS ANNUITIES” AND BENEFITS IN THE EVENT OF DEATH FOR UNIT-LINKED AND INDEX-LINKED LIFE ASSURANCE

DISCLAIMER: This circular does not constitute a legal regulation. It is intended to serve as guidance and reflects the FMA's legal interpretation. No rights and obligations extending over and above the provisions of the law can be derived from circulars.

I.

1. In response to recent events, this circular addresses the issue of differentiated participation in profits within a pension insurance portfolio. Persons insured in pension insurance schemes have no economically reasonable means of responding to any disadvantage (assuming they even become aware of it), so that the FMA considers it necessary to ensure that no share in the pension insurance portfolio is disadvantaged through a reduced participation in profits (cf. Article 104 of the *Versicherungsaufsichtsgesetz* (VAG; Insurance Supervision Act)).

2. In general, total interest payments for a pension insurance portfolio should be the same. Where shares of a pension insurance portfolio receive higher total interest payments than the remainder of the portfolio, the FMA assumes that a part of those insured in the pension insurance are being unlawfully favoured as defined in Article 104 VAG. Varying treatment of comparable insurance contracts for pension schemes can only be justified based on relevant material reasons (refer to the FMA circular of 7 December 2005, Reference Code 9 000 110/7-FMA-II/1/05); differing biometric bases represent such justification.

3. Merely the fact that customer groups concluded their insurance contracts at various times does not justify any differentiation. Similarly, differentiation cannot be argued on the basis that a share of the portfolio was invested using certain assets that resulted in higher interest payments, since no direct correspondence exists in classic life assurance between assets and individual insurance contracts.

4. Any more far-reaching differentiation can be accepted only for a short period and for a limited scope.

5. The principle of equal treatment specified in Article 33 para. 3 VAG additionally applies to mutual associations. According to this principle, benefits paid out on the basis of the membership relationship may, with the same preconditions being applicable, only be determined according to the same principles.

II.

The FMA points out that a significant technical risk must exist during the entire term for unit-linked and index-linked life assurance policies that provide for a capital payment in the case of the policyholder's survival. For the case of the policyholder's death, the insurance scheme must include risk capital amounting to at least 5% of the life/health insurance provision; this condition would be met when, for example, 105% of the current value of the assets serving as the basis of the unit-linked or index-linked life assurance is paid out.