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FMA CIRCULAR

CONCERNING THE CHANGES IN THE REGULATIONS FOR AUDITING INSURANCE UNDERTAKINGS (VAG 1978)

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The 2005 amendments to the *Versicherungsaufsichtsgesetz* (VAG; Insurance Supervision Act), Federal Law Gazette I no. 33/2005 and Federal Law Gazette I no. 59/2005, resulted, among other things, in a change to the regulations on the statutory auditing of insurance undertakings. A brief overview of the major changes is provided below.

I. Appointment of the statutory auditor

Pursuant to Article 82 para. 1 VAG the statutory auditor is to be elected by the annual general meeting or, in the case of mutual associations, by the supreme body. The election of the statutory auditor must take place before the end of the financial year. Reference is made in this regard to the transitional provision of Article 129i VAG.

II. Grounds for exclusion

The special grounds for exclusion of Article 82 VAG in relation to the appointment of the statutory auditor have been abolished. The general grounds for exclusion of Article 271a of the *Handelsgesetzbuch* (HGB; Commercial Code) now also apply to the statutory auditors of insurance undertakings, regardless of the size of the undertaking.

III. Rotation of statutory auditors

Article 271a HGB now applies to the rotation of statutory auditors. It stipulates a mandatory rotation once a statutory auditor has issued the audit opinion five times in succession. This does not apply if the statutory auditor has not issued an audit opinion for two successive years. Moreover, according to the provisions of the HGB, the rotation requirement relates to persons and not companies.

IV. Placement of audit engagements

The audit engagements are no longer placed by the company's management board but by the supervisory board. This provision results from the abolition of the special regulation laid down in Article 82 para. 4 VAG, which is why the general rules of the HGB (Article 270 para. 1 HGB) enter into force.

V. Liability insurance

The following should be noted with regard to the regulation of liability insurance:

- a. The previous ground for exclusion because of a lack of liability coverage is abolished. In addition, the provisions of the VAG no longer contain a regulation concerning mandatory liability coverage. For this reason the general provisions of Article 275 HGB are now applicable.
- b. With respect to the liability for damages of the statutory auditor, Article 82 VAG stipulates the amount of the total liability insurance, which depends on the amount of the companies' total assets.
- c. The distinction between gross and slight negligence is abolished.

VI. Dismissal of statutory auditors

The statutory auditor may be dismissed (Article 82 para. 3 VAG) if the conditions of Article 270 para. 3 HGB are met.

VII. Article 82 paras. 6a, 7 and Article 8 VAG

The provisions of Article 82 paras. 7 and 8 VAG are repealed. The former Article 82 para. 6a VAG is renamed Article 82 para. 7.

VIII. Commissioning of a statutory auditor by the supervisory board

The possibility of statutory auditors or chartered accountants being commissioned by the supervisory board or the administrative board is regulated by law (Article 82b VAG). The intention of this provision is to strengthen the position of the supervisory bodies within the insurance undertakings.

IX. Entry into force

The regulations are due to enter into force at various times. Mention is therefore made of the provisions on entry into force specified in Article 119i VAG and the transitional provisions specified in Article 129i VAG.