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FMA CIRCULAR

REGARDING THE CONCLUSION OF LIABILITY INSURANCE FOR STATUTORY AUDITORS PURSUANT TO ARTICLE 82 PARA. 1 NO. 2 VAG

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Pursuant to Article 82 para. 1 no. 2 of the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*), in order for a statutory auditor to be appointed with insurance undertakings, appropriate liability insurance cover must be in place for that auditor. This insurance contract must cover the maximum amounts of the liability for damages in accordance with Article 82 para. 8a VAG. Moreover, the insurance must not be taken out with the audited insurance undertaking or with an insurance undertaking that belongs to the same group as the audited insurance undertaking.

These insurance contracts are designed as insurance for the account of a third party (cf. Articles 74 et seq. of the Insurance Policy Act – VersVG; *Versicherungsvertragsgesetz*, Federal Ministry of Finance, AStN 2003/91). In these cases, the policyholder is the audited undertaking and the insured person is the statutory auditor.

Article 11 para. 4 of the Auditing, Tax Advising and Related Professions Act (WTBGG; *Wirtschaftstreuhandberufsgesetz*) stipulates that where the person obliged to have insurance is an insured person in an insurance policy for the account of a third party, the obligation to be insured shall only be deemed to be met if the person obliged to have insurance is the sole person to dispose of the rights with respect to the insurance cover arising from the insurance contract and if that person has access to at least the statutory minimum insured sum for every insured event. Reasons for exclusion of cover that are not associated with their person may not be put forward in this case.

Furthermore, it is laid down in Article 75 para. 2 VersVG that in the case of insurance for the account of a third party, the insured person shall be required to be in possession of the policy in order for the insured person to assert claims without the policyholder's consent.

To provide evidence of the conclusion of appropriate liability insurance, the following shall be required:

- the rights arising from the liability insurance contract may only be asserted by the insured person, i.e. the statutory auditor;
- the premium payments must be made in advance;

- the insurance policy must be irrevocably in the possession of the statutory auditor; and
- no exclusion of benefits may be caused by potential breaches of obligation by the policyholder (the audited undertaking).

Where the liability insurance is designed as insurance for the account of a third party, in addition to providing evidence of the insurance

- in the form of a certificate of insurance including confirmation of premium payment, the following must be additionally presented to the FMA:
- a copy of the insurance policy;
- confirmation of irrevocable possession of the original policy; and
- a statement by the insurer to the effect that breaches of obligation by the policyholder will not result in an exclusion of benefits.