



## **Capital Market Act 2019**

**(KMG 2019 – Kapitalmarktgesetz 2019)**

### **Full title**

Federal act on the public offering of securities and other capital investments  
 (KMG 2019; Kapitalmarktgesetz 2019)

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**Text**

**Chapter 1**  
**Public Offering of Investments**

**Definition of terms**

**Article 1** (1) The following definitions shall apply for the purpose of this chapter

1. public offering: a communication to the general public in any form whatsoever and in whatsoever means, which contents sufficient information about the conditions relating to an offer (or an invitation to subscribe) of investments and about the investments to be offered, in order to place an investor in a position, to decide to purchase or subscribe to such investments. This definition also applies to the placing of investments by financial intermediaries;
2. issuer: a legal entity which issues or plans to issue investments;
3. investments: property rights for which no securities are issued, arising from the direct or indirect investment of capital of several investors for their collective account and collective risk or for the collective account or risk together with the issuer if the management of the capital invested is not overseen by investors themselves; All transferable, securitised rights that are not mentioned in no. 4 are to be understood as investments as defined in this Federal Act;
4. securities: transferable securities as defined in Article 2 (e) of Regulation (EU) 2017/1129;
5. Investor: the person who purchases an investment that was the subject matter of an offering subject to the obligation to publish a prospectus;
6. qualified investor: a professional client pursuant to Article 66 or Article 67 of the Securities Supervision Act 2018 (WAG 2018; Wertpapieraufsichtsgesetz 2018), published in Federal Law Gazette I No. 107/2017, or an eligible counterparty pursuant to Article 68 provided that it has not applied to be treated as a professional client; investment firms and credit institutions shall communicate their classification upon request to the issuer without prejudice to the relevant data protection rules;
7. persons making a public offering (“offeror”): a legal entity or natural person that publicly offers investments;

(2) The regulations contained in this chapter that are addressed to the offeror shall also apply to the issuer provided that the issuer makes a public offering subject to the obligation to publish a prospectus within Austria itself.

**Offerings Subject to the Obligation to Publish a Prospectus**

**Article 2** (1) An public offering shall be permissible within Austria on the condition that a prospectus is drawn up and audited in accordance with the provisions of this Federal Act and published at latest one banking day prior to the offering.

(2) Chapter 1 of this Federal Act covers public offerings of investments.

(3) Money-market instruments with a term of less than twelve months are not subject to the obligation pursuant to Article 2 to publish a prospectus.

**Exemptions from the Obligation to Publish a Prospectus**

**Article 3** (1) The obligation to publish a prospectus pursuant to Article 2 shall not apply to:

1. unit certificates of investment funds pursuant to Article 3 para. 2 no. 30 of the Investment Funds Act 2011 (InvFG 2011; Investmentfondsgesetz 2011) published in Federal Law Gazette I No. 77/2011 and unit certificates pursuant to Article 1 of the Real Estate Investment Fund Act (ImmoInvFG; Immobilien-Investmentfondsgesetz), published in Federal Law Gazette I No. 80/2003, as well as open alternative investment funds (AIFs) that fulfil the requirements of Delegated Regulation (EU) No. 694/2014 supplementing Directive 2011/61/EU with regard to regulatory technical standards determining types of alternative investment fund managers, OJ L 183, 24.06.2014, p. 18;
2. an offering of investments addressed to investors, who acquire investments for a total consideration of at least EUR 100 000 for each separate offer as well as an offering of investments with a minimum denomination per unit of EUR 100 000;
3. an offering of investments with a respective total consideration in the European Economic Area (EEA) of less than EUR 2 million; this ceiling must include all receipts from offerings for investments exempted from the obligation to produce a prospectus in accordance with this item from the last twelve months;



4. an offering of investments that exclusively addresses qualified investors;
5. Offerings of investments addressed to less than 150 natural or legal persons per EEA signatory state that are not qualified investors;

(2) Any subsequent resale of investments, which had previously been exempt from the obligation to publish a prospectus pursuant to para. 1 nos. 2 to 5 is to be considered as a separate offer, and the definition set out in Article 1 para. 1 no. 1 shall apply for the purpose of deciding whether this subsequent resale is considered to be a public offering. When placing securities or investments through financial intermediaries a prospectus shall be required to be published when none of the conditions listed pursuant to para. 1 nos. 2 to 5 are met for the final placement and a public offering exists.

(3) If a proposed issuance may lead to the outstanding amount of all funds received as a result of the place of investments issued pursuant to para. 1 no. 3 without the need for a prospectus exceeds the amount of EUR 5 million across a seven year observation period, then by way of derogation from para. 1 no. 3 the obligation to publish a prospectus pursuant to Article 2 shall apply.

### Advertising

**Article 4 (1)** Every type of advertising that refers to a public offering of investments, must observe the principles stipulated in paras. 2 to 5. Paras. 2 to 4 shall only apply to those cases in which the issuer or the offeror is subject to the obligation to publish a prospectus.

(2) All advertisements shall be required to indicate that a prospectus has been published including any details to be amended or supplemented or is awaiting publication, and where investors may obtain the prospectus.

(3) Advertisements shall be required to be clearly recognisable as such. The information contained in advertisements shall not be allowed to be either inaccurate or misleading. Furthermore, this information shall also not be allowed to contradict the information contained in the prospectus or any amendments or supplementary information in the case that such information has already been published, or the information required to be contained in the prospectus, in the case that the prospectus is only to be published at a later date.

(4) In any case, all information concerning the public offering that is disclosed in an oral or written form, even where it is not for advertising purposes, must be consistent with the details contained in the prospectus including any amendments or supplementary information.

(5) When no obligation to publish a prospectus exists pursuant to this Federal Act, then material information provided by an issuer or an offeror and addressed to qualified investors or special groups of investors shall be disclosed to all qualified investors or special groups of investors to whom the offer is exclusively addressed. Where a prospectus is required to be published, then such information must be included in the prospectus or in a supplement (amendments or supplementary information) to the prospectus pursuant to Article 6 para. 1.

(6) The Austrian Financial Market Authority (FMA) may check whether the principles listed paras. 2 to 5 have been observed when advertising a public offering. It shall perform such checks, in particular where there is a founded suspicion of a violation of the provisions of paras. 1 to 5.

### Content of the Prospectus

**Article 5 (1)** The prospectus must contain all information which, according to the particular nature of the issuer and of the investments being publicly offered, is necessary to enable investors to make an informed judgement about the assets and liabilities, financial situation, profit and losses, and the future prospects of the issuer and of any guarantor, as well as all rights which may be associated with such investments. This information is to be presented in a form that is easy to analyse and easily comprehensible.

(2) The investment prospectus shall be drawn up pursuant to **Annex A** in either German or English.

(3) Provided that the public offering of investments has a total consideration in the EEA of less than EUR 5 million during a twelve month period, a simplified prospectus pursuant to **Annex D** may be drawn up rather than the prospectus pursuant to **Annex A**. Where a planned issuance may lead to the total consideration within the EEA reaching or exceeding the amount of EUR 5 million within twelve months as a result of the issuance of securities or investments, then the simplified prospectus is no longer sufficient and the first sentence shall therefore not apply. The simplified prospectus must be drawn up in German or English. Issuances under the Alternative Financing Act (AltFG; Alternativfinanzierungsgesetz) published in Federal Law Gazette I No. 114/2015 must be included.



(4) The prospectus must be signed with the suffix “als Emittent” (“as issuer”). This signature shall justify the absolute presumption that the prospectus has been drawn up by the issuer or by someone on their behalf.

(5) Where the offeror is not the same as the issuer, then the offeror, prior to using the prospectus for the purposes of a public offering, shall obtain written approval from the issuer for using the prospectus.

### **Supplement to the Prospectus**

**Article 6** (1) Every significant new circumstance, or every material mistake or inaccuracy relating to the information included in the prospectus which might influence the assessment of the investments and which occurs or is noticed between the time of the prospectus being checked and the final closing of the public offering shall be required to be listed in a supplement (amended or supplementary information) to the prospectus. Such a supplement shall be required to be published and filed by the offeror in accordance with the same arrangements as were applied when the original prospectus was published and filed. As the same time as being published, the supplement must be submitted by the offeror to the prospectus auditor for scrutinising and the audit certificate must be attached to the supplement within seven bank working days of submission where the conditions pursuant to Article 7 para. 1 are satisfied. When the prospectus auditor needs to perform further scrutiny activities to clear up any outstanding inaccuracies and incomplete information, then the deadline is interrupted until the respective necessary documents are provided; the offeror must submit a copy of the supplement with the audit certificate attached to the Notification Office without delay. In the event that the outcome of the scrutiny procedure leads to the text of the supplement being amended, then this shall also be published along with a corrigendum to the publication that has already been made.

(2) In any case, investors who have already committed themselves to the purchasing of or subscription to investments, once the circumstance for the supplement pursuant to para. 1 has happened, but has not yet been published, may withdraw their commitment within two working days following the publication of the supplement. The final date for the right of withdrawal must be stated in the supplement. Where on the other hand the investors are consumers as defined in Article 1 para. 1 no. 2 of the Consumer Protection Act (KSChG; Konsumentenschutzgesetz) published in Federal Law Gazette No. 140/1979, the right of withdrawal exists for seven working days following the publication of the supplement. Article 21 paras. 3, 5 and 6 shall apply accordingly.

### **Scrutiny of the Prospectus**

**Article 7** (1) The prospectus shall be scrutinised

1. by a cooperative auditing association for credit cooperatives under the Schulze-Delitsch system or the Raiffeisen system, or
2. by the auditing unit of the Sparkassen-Prüfungsverband, or
3. by a certified external auditor or an external auditing company, or
4. by
  - a) a credit institution as defined in Article 1 para. 1 of the Banking Act (BWG; Bankwesengesetz) published in Federal Law Gazette no. 532/1993 that is authorised to perform transactions pursuant to Article 1 para. 1 nos. 9, 10 or 11 BWG and with eligible own funds of more than EUR 18.2 million; or
  - b) a credit or financial institution which conducts its business activity in Austrian on the basis of Articles 9, 11 or 13 BWG via a branch or under freedom to provide services, provided that it is authorised to conduct comparable transactions in its home Member State (Article 4 (1) (43) of Regulation (EU) no. 575/2013), as listed in Article 1 para. 1 nos. 9, 10 or 11 BWG and has eligible own funds available of more than EUR 18.2 million;

for its correctness and completeness, and where this exists to be signed by the prospectus auditor included the place and date and with the suffix “als Prospektkontrollor” (“as prospectus auditor”). This signature shall justify the absolute presumption that the signatory has scrutinised the prospectus and has found it to be correct and complete. The issuer shall provide the auditor with all documents that he/she might need to enable an audit of the information contained in the prospectus with regard to its indisputable correctness and completeness. The prospectus auditor shall on the basis of the most recent report by the auditor about the issuer pursuant to Article 273 of the Austrian Company Code (UGB; Unternehmensgesetzbuch) published in the German Imperial Law Gazette, p. 219/1897, where the issuer is subject to a statutory audit requirement, and shall examine with due professional care all the documents that are to be supplied by the issuer to determine whether the prospectus contains the details required pursuant to Article 5 and whether it correctly depicts the prevailing legal and economic status. The documents to be provided by the issuer shall be subjected to an audit on the basis of a sample regarding their correctness and completeness. Where the suspicion arises that the documents or the





details contained in the prospectus are not fully correct or complete, then the prospectus auditor shall perform further audit measures to clarify such a suspicion; in the event that the suspicion turns out to be well-founded, the prospectus auditor shall request that the required corrections and supplements are made in the prospectus. Auditors as defined in no. 3 shall be required to conclude acquire a liability insurance policy with a insurance undertaking that is licensed to perform insurance business in Austria, which covers the risk arising out of the prospectus auditing activity, with the coverage being at least EUR 3.65 million per yearly insurance period, and for which the insurance premium is required to have been paid up in full prior to the publication of the prospectus; the insurer shall inform the Notification Office in writing pursuant to **Annex E** about the existence of such insurance as well as that the premium has been received.

(2) The FMA shall maintain a list of suitably qualified external auditors and external auditing companies, from which the prospectus auditor may be selected, provided that he/is is required to be a member of this professional group. The Chamber of Professional Accountants and Tax Advisors may provide the FMA with suitable candidates for the list.

(3) Where the nominal value of the entire issue or the selling price of the entire issue or the total of the capital invested exceeds EUR 3 million or its corresponding Euro value in a foreign currency or in an accounting unit, the prospectus audit shall be allowed

1. to be conducted by a prospectus auditor in accordance with para. 1 no. 1 first case, in the case that the issuer
  - a) belongs to the trade association of credit cooperatives according to the Schulze-Delitsch System as a member, or
  - b) is a credit or financial institution in which one or more members of the trade association pursuant to lit. a, directly or indirectly holds a participation of at least 25%;
2. to be conducted by a prospectus auditor in accordance with para. 2 no. 1 second case, in the case that the issuer
  - a) belongs to the trade association of credit cooperatives according to the Raiffeisen System as a member, or
  - b) is a credit or financial institution in which one or more members of the trade association pursuant to lit. a, directly or indirectly holds a participation of at least 25%;
3. to be conducted by a prospectus auditor in accordance with para. 2 no. 2, in the case that the issuer
  - a) belongs to the trade association of Sparkassen (savings banks) as a member, or
  - b) is a credit or financial institution in which one or more members of the trade association pursuant to lit. a, directly or indirectly holds a participation of at least 25%.

Investments of the same issuer that were the subject of a public offering within the preceding twelve months shall be included when calculating the total amount.

(4) No reasons for exclusion shall be allowed to exist for prospectus auditors. The circumstances listed in Article 271 and Article 271a of the Austrian Commercial Code (UGB; Unternehmensgesetzbuch) shall applying accordingly as reasons for exclusion.

(5) The auditing of the prospectus by a credit or financial institution as defined in para. 2 no. 4, for whom a reason for exclusion as defined in para. 4 exists, shall be permissible despite the provisions of para. 4 when the prospectus is also audited by an additional prospectus auditor as defined in para. 2 nos. 1 to 4 against whom no reason for exclusion exists. Where grounds for exclusion exist on the part of the prospectus auditor as defined in Article 271 and Article 271a UGB, the prospectus as well as any amendments or supplements to it, shall only then be considered to have been audited when in addition to the partial prospectus auditor another impartial prospectus auditor as defined in para. 1 nos. 1 to 4 has also duly signed the audit opinion. The reversal of the burden of proof pursuant to Article 22 para. 1 shall be borne by the credit or financial institution against whom reasons for exclusion are given. The restriction stipulated in para. 3 for prospectus auditors shall not apply in the case that they are performing the audit as additional auditors as defined in this paragraph.

(6) Where the prospectus auditor is a credit institution, regardless of the reasons for exclusion that might exist pursuant to para. 4, the issuer shall not be allowed, either directly or indirectly, to hold shares in the credit institution that reach or exceed 10 percent of its nominal capital.

(7) The existence of a reason for exclusion may not be used as argument against anyone who quotes incorrect or incomplete information from the prospectus.



(8) The prospectus for investments must be submitted with the necessary signatures including the signature of the prospectus auditor, by the offeror to the Notification Office in a timely manner to ensure that it is available at latest on the banking day of the publication.

#### **Publication of the prospectus**

**Article 8** (1) A prospectus shall not be allowed to be published before the prospectus has been scrutinised pursuant to Article 7.

(2) Once it has been scrutinised the prospectus must be published by the issuer or the offer as soon as is practically possible, or in any case at latest one bank working day prior to the commencement of the public offering.

(3) The prospectus shall be deemed to be published as defined in this Federal Act, if it

1. has been published in at least one newspaper with nationwide circulation, or
2. has been made available to the public in printed form free of charge at the registered office of the issuer and at the financial intermediaries including the paying agents, who are placing or selling the investments, or
3. has been published the website of the issuer or the website of the financial intermediaries placing or selling the investments including any paying agents in Austria, or
4. has been published on the website of the FMA or on the website of an entity that has been charged with such a task by the FMA for an adequate fee, if the FMA has decided to provide this service.

If the prospectus is published pursuant to nos. 1 or 2, then the issuer, or the offeror shall additionally be required to publish the prospectus on a website pursuant to nos. 3 or 4. The FMA must be notified in advance of how the prospectus will be published and where it may be obtained; the criteria for the publication pursuant to no. 1 may be defined by the FMA by means of a Regulation. All approved prospectuses must remain publicly accessible following their publication for at least ten years on the websites listed in no. 3 or 4.

#### **Special Provisions for Investments in Real Estate**

**Article 9** collective investment undertakings in real estate exist where investments are issued or offered by issuers who make predominantly make profits either directly or indirectly from the capital invested either for the purpose of, or in actual practice, from the rental or transference of real estate to third parties. The following additional provisions shall also apply for such undertakings for collective investments in real estate:

1. The prospectus (Article 5) must be supplemented by the information contained in **Annex B**;
2. The scrutiny of the prospectus must be conducted by a prospectus auditor pursuant to Article 7 para. 1 no. 3 or 4; Article 7 para. 1 final sentence shall apply subject to the proviso that with regard to the insurance contract the coverage sum per one year insurance period shall be at least EUR 18.2 million;
3. The acquisition of the investment is to be confirmed to the investor in written form at the time the contract is concluded; the confirmation shall contain the main characteristics of the investment, in particular its equivalent value and the legal status of the investor as well as a the publication medium and date of publication of the prospectus as well as any other information required in accordance with this Federal Act; the confirmation is to be issued by the issuer;
4. the issuer shall draw up a statement of accounts for every investment group for the entire duration of the investment pursuant to **Annex C**; the method within every collective investment undertaking in real estate for the valuation of the real estate must be the same; the statement of accounts must be scrutinised by a statutory auditor for correctness and completeness with Articles 268 to 276 UGB applying accordingly; where no objections exist following the conclusion of this scrutiny, then the auditor shall confirm this by means of the following audit opinion: "Following my/our dutiful auditing of the accounting and the statement of accounts they duly conform to legal regulations. The valuation of real estate properties corresponds to the principles stated in the prospectus and in the statement of accounts. The statement of accounts present a true and fair view of the financial position of the undertakings for collective investments in accordance with generally accepted accounting principles."
5. The issuer shall publish the audited statement of accounts complete with the audit opinion within six months of the end of the financial year, or where there is no financial year by 30 June of each calendar year, in accordance with the regulations about the publication of the prospectus in accordance with Article 8;



6. The auditor of the statement of accounts shall be liable towards investors as defined in Article 275 UGB.

### Penal provisions

**Article 10** (1) Anyone who in connection with a public offering of investments that are subject to the obligation to publish a prospectus pursuant to this Federal Act:

1. fails to publish a prospectus or fails to publish the amended or supplementary information pursuant to Article 6, or offers or commercial brokers investments, where the prospectus or the amended or supplementary information in accordance with Article 6 or when their publications contravene the regulations set out in this Federal Act, or, even if the public offering has already ended, draws up or publishes a statement of accounts that contravenes this Federal Act, or fails to publish any statement of accounts;
2. as an issuer, who in a prospectus or in amending or supplementary information in accordance with Article 6, or as an issuer or statutory auditor in a statement of accounts provides incorrect information or as the prospectus auditor pursuant to Article 7 para. 1 no. 3 or para. 5 or Article 9 no. 2 signs a prospectus, without having concluded the respective prescribed insurance policy;
3. engages in solicitation in violation of the provisions of Article 4;
4. fails to inform the notification office as an offeror or issuer pursuant to Article 23 para. 2 or as a party subject to reporting requirements pursuant to Article 24, also in the case where there is no public offering or otherwise even when an exemption from the obligation to produce a prospectus exists ;
5. fails to promptly send the prospectus with the audit certificate of the prospectus auditor attached or the amended information or supplementary information in accordance with Article 6 in accordance with this Federal Act to the notification office;
6. signs a prospectus or amending or supplementary information in accordance with Article 6 despite the existence of reasons for exclusion as a prospectus auditor (except in the case of also being simultaneously signed by an independent auditor), or audits a statement of accounts as an auditor or initiates such an audit or review by an auditor or prospectus auditor against whom such reasons for exclusion exist, or offers investments without having submitted the confirmation of insurance to the Notification Office in a timely manner in accordance with Annex E;
7. as offeror fails to promptly send the supplement to the prospectus pursuant to Article 6 para. 1 that bears the prospectus auditor's auditor certificate to the Notification Office;
8. as the prospectus auditor issues an audit certificate for a prospectus or a supplement, in which there is incorrect information, even though the incorrectness of the information was apparent, or ought to have been apparent, in the application of professional care, and where the prospectus or the supplement has been used for distribution by way of a public offering

commits an administrative offence and shall be punished by the FMA with a fine of up to EUR 100 000.

(2) Where a reporting obligation pursuant to Article 24 is breached the FMA shall refrain from initiating and conducting administrative penal proceedings pursuant to no. 4, in the case that that report that was not submitted in an orderly manner, was subsequently made, prior to the FMA gaining knowledge of this breach.

### Information and publication of decisions

**Article 11** (1) The FMA shall only be allowed to provide information about or publicly announce measures or sanctions imposed for breaches against the provisions of this Federal Act in relation to the public offering of investments, in accordance with nos. 1 to 3.

1. In the event of an official act being performed during pending proceedings, the FMA shall not mention the names of the parties involved, unless they are already publicly known or the general public has a predominant interest in learning these names.
2. In the event of sanctions being imposed, the FMA may provide information on or make public the names of the persons or companies upon which the sanctions have been imposed, the names of those companies for which persons are responsible upon whom sanctions have been imposed as well as the nature of the sanctions imposed. Sanctions is defined in this provision shall be understood to be all legal acts of the FMA taken after proceedings have been concluded by means of an administrative decision being issued.
3. The FMA shall not provide information about official acts or shall refrain from a publication in relation to such acts, when:



- a) providing the information or making it public would pose a serious threat to the stability of financial markets; or
- b) providing the information or making it public would lead to disproportionately large damage being incurred by an involved party affected by the information or the act of making it public; or
- c) the conducting of proceedings or taking of measures which are in the interest of the public may be thwarted, hampered, delayed or jeopardised by providing this information.

(2) Any person about whom information has been made public or provided may file a request for review with the FMA of the legality of making the information public or providing it pursuant to para. 1, which shall be carried out in proceedings culminating in an administrative decision. In this case, the FMA shall announce the initiation of such proceedings in a similar manner. If within a review being conducted, it is found that information has been made public or provided unlawfully, the FMA shall correct the information made public or provided or, upon request of the person concerned, retract it or remove it from its website. If an appeal against an administrative decision, which has been announced pursuant to para. 1, is granted suspensory effect in proceedings conducted in front of a court of law, then the FMA shall make this known in the same manner. The publication or disclosure of information shall be corrected, upon request of the concerned party revoked, or removed from the Internet when the administrative decision has been repealed.

## Chapter 2

### Public Offering of Securities

#### Application of Regulation (EU) 2017/1129

##### Purpose of this Chapter

**Article 12** (1) This Chapter serves for the implementation of Regulation (EU) 2017/1129.

(2) The obligation to publish a prospectus in accordance with Regulation (EU) 2017/1129 shall not apply for an offering of securities with a total consideration within the EEA of less than EUR 2 million; any revenues within the last twelve months from offerings of securities that are exempted from the obligation to publish a prospectus are to be counted towards this ceiling. In this case a prospectus in accordance with Regulation (EU) 2017/1129 may be drawn up voluntarily instead, with all the legal consequences of Chapter 2 of this Federal Act being associated with doing so.

(3) Provided a public offering of securities has a total consideration within the EEA of less than EUR 5 million during a twelve month period, then a simplified prospectus pursuant to **Annex D** is to be drawn up. In this case a prospectus in accordance with Regulation (EU) 2017/1129 may be drawn up voluntarily instead, with all the legal consequences of Chapter 2 of this Federal Act being associated with doing so. Where a planned issuance may lead to the total consideration within the EEA reaching or exceeding the amount of EUR 5 million within twelve months as a result of the issuance of securities or investments, then the simplified prospectus is no longer sufficient and the first sentence shall therefore not apply. Issuances pursuant to the Alternative Financing Act (AltFG; Alternativfinanzierungsgesetz) must be included. This shall apply irrespective of the application of para. 2.

(4) Provided that a simplified prospectus has been drawn up for a public offering as defined in para. 3, then it shall be approved by the FMA in the same manner as other securities prospectuses; otherwise for such offerings the provisions for investments contained in Chapters 1 and 3 shall apply, but not however Article 3 para. 3, Article 5 para. 4 and Article 7. The approval (official signature) of the FMA replaces the audit certificate of the prospectus auditor in such cases. Article 13 para. 4 shall be applicable.

##### Competent authority

**Article 13** (1) The Austrian Financial Market Authority (FMA) is the competent authority for Austria pursuant to Article 31(1) of Regulation (EU) 2017/1129. Regardless of the tasks allocated to the FMA in other Federal Acts, it shall exercise the tasks and powers conferred upon competent authorities pursuant to Article 31(1) of Regulation (EU) 2017/1129 and shall monitor compliance with the provisions set out in this Federal Act and in Regulation (EU) 2017/1129 as well as any delegated legal acts issued on the basis of this Regulation. The FMA is independent of the market participants.

(2) The FMA shall take into account European convergence in respect of supervisory tools and supervisory procedures in the enforcement of this Federal Act and Regulation (EU) 2017/1129. For this purpose the FMA shall apply the Guidelines, Recommendations and other measures decided by the





European Securities and Markets Authority (ESMA) (Regulation (EU) No. 1095/2010) within the scope of application of Regulation (EU) 2017/1129. The FMA may deviate from the guidelines and recommendations, provided that justified grounds exist to do so, in particular where they conflict provisions set out under national law.

(3) The FMA may delegate tasks in conjunction with the electronic publication of approved prospectuses and the accompanying documents to the Notification Office. The delegation of tasks shall be made in a specific decision, setting out the following:

1. the tasks to be delegated and the conditions under which they are to be carried out;
2. a clause obliging the Notification Office to act and be organised in such a manner as to avoid conflicts of interest and to ensure that information obtained while carrying out the delegated tasks is not used unfairly or to prevent competition;
3. all agreements between the FMA and the Notification Office, provided tasks have been delegated to it.

Irrespective of Article 17, the FMA is the ultimate authority for monitoring of compliance of Regulation (EU) 2017/1129 and furthermore is also responsible for the approval of securities prospectuses.

(4) The authorisation conferred upon the FMA by way of Article 27 of Regulation (EU) 2017/1129 in relation to the recognition of languages for the purpose of preparing a prospectus shall be addressed by means of issuing a Regulation. The prospectus must be attached to the application to the FMA for the approval of the prospectus. The application as well as all draft versions of the prospectus including the final version are to be submitted electronically to the FMA. The FMA may stipulate by means of a Regulation how a clear technical allocation of the prospectus to the issuer should be ensured in accordance with the current technical state of the art. If a prospectus is submitted in an orderly manner in accordance with such standards, then this shall justify the absolute presumption that the prospectus has been drawn up by the issuer or by someone on his/her behalf. The same shall apply for other documents to be approved by the FMA. On the day of the approval, the administrative decision approving the prospectus shall be sent by the FMA including the document to be approved to the Notification Office, provided that doing so is stipulated in a agreement regarding delegation pursuant to para. 3 no. 3.

(5) For the filing of documents in accordance with this Chapter or Regulation (EU) 2017/1129 the FMA may prescribe remuneration by means of a Regulation, which shall not be allowed to exceed the average costs of the official act, taking into consideration fixed costs.

(6) The FMA may prescribe by means of a regulation the minimum contents required for documents pursuant to Article 1 (4) points f to i as well (5) points e to h of Regulation (EU) 2017/1129, provided that no delegated legal act is issued on the basis of Article 1 (7) of Regulation (EU) 2017/1129 that stipulates minimum contents. The documents listed in the first sentence are to be made publicly available pursuant to Article 21 (2) of Regulation (EU) 2017/1129.

### **Powers**

**Article 14** (1) The FMA shall be authorised at all times in relation to the monitoring of the observance of the regulations contained in this Federal Act, in Regulation (EU) 2017/1129 as well as any delegated acts issued on the basis of this Regulation irrespective of the powers conferred upon it in other Federal Acts:

1. to require issuers, offerors or persons asking for admission to trading on a regulated market to include in the prospectus supplementary information, where necessary for investor protection;
2. to require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents;
3. to require auditors and managers of the issuer, offeror or person asking for admission to trading on a regulated market, as well as financial intermediaries commissioned to carry out the offer of securities to the public or ask for admission to trading on a regulated market, to provide information;
4. to suspend an offer of securities to the public or admission to trading on a regulated market for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for suspecting that Regulation (EU) 2017/1129 has been infringed;
5. to prohibit or suspend advertisements or require issuers, offerors or persons asking for admission to trading on a regulated market, or relevant financial intermediaries to cease or



- suspend advertisements for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that this Regulation has been infringed;
6. to prohibit an offer of securities to the public or admission to trading on a regulated market where they find that Regulation (EU) 2017/1129 has been infringed or where there are reasonable grounds for suspecting that it would be infringed;
  7. to suspend or require the relevant regulated markets, MTFs or OTFs to suspend trading on a regulated market, an MTF or an OTF for a maximum of 10 consecutive working days on any single occasion where there are reasonable grounds for believing that Regulation (EU) 2017/1129 has been infringed;
  8. to prohibit trading on a regulated market, an MTF or an OTF where they find that Regulation (EU) 2017/1129 has been infringed;
  9. to make public the fact that an issuer, an offeror or a person asking for admission to trading on a regulated market is failing to comply with its obligations;
  10. to suspend the scrutiny of a prospectus submitted for approval or suspend or restrict an offer of securities to the public or admission to trading on a regulated market where the FMA is making use of the power to impose a prohibition or restriction pursuant to Article 42 of Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 OJ L 173, 12.06.2014, p.84, as long as such a prohibition or restrictions apply;
  11. to refuse approval of any prospectus drawn up by a certain issuer, offeror or person asking for admission to trading on a regulated market for a maximum of five years, where that issuer, offeror or person asking for admission to trading on a regulated market has repeatedly and severely infringed Regulation (EU) 2017/1129;
  12. to disclose, or to require the issuer to disclose, all material information which may have an effect on the assessment of the securities offered to the public or admitted to trading on a regulated market in order to ensure investor protection or the smooth operation of the market;
  13. to suspend or require the relevant regulated market, MTF or OTF to suspend the securities from trading where the FMA considers that the issuer's situation is such that trading would be detrimental to investors' interests;
  14. to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for that purpose to enter premises in order to access documents and other data in any form, where a reasonable suspicion exists that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of Regulation (EU) 2017/1129. Articles 119 to 122 of the Code on Criminal Procedure 1975 (StPO; Strafprozeßordnung 1975), published in Federal Law Gazette no. 631/1975, shall apply accordingly; where the affected party opposes the FMA's intended measure, the Federal Administrative Court (BVwG; Bundesverwaltungsgericht) shall decide by means of a resolution about the FMA's request in accordance with para. 1 no. 14, applying the principle of legality and proportionality in accordance with Article 5 StPO. The FMA shall be required to justify its request for an inspection and the submit it to the Federal Administrative Court (BVwG; Bundesverwaltungsgericht) along with the relevant files.
- (2) If the approval of a prospectus was rejected in accordance with para. 1 no. 11, then the FMA shall communicate this to ESMA.
- (3) The FMA shall conduct the tasks and powers listed in para. 1 in any of the following ways:
1. directly;
  2. in cooperation with other authorities;
  3. under their responsibility by delegation of tasks to such authorities;
  4. by means of a request to the competent court (para. 1 no. 14).
- (4) Regulation (EU) 2017/1129 is without prejudice to federal acts on takeover bids, merger transactions and other transactions affecting the ownership or control of companies that transpose Directive 2004/25/EC and that impose requirements in addition to the requirements set out in Regulation (EU) 2017/1129.
- (5) A person making information available to the FMA in accordance with Regulation (EU) 2017/1129 shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not be subject to liability of any kind related to such notification.



### Penal provisions

**Article 15** (1) Anyone who in connection with a public offering of securities that are subject to the obligation to publish a prospectus pursuant to Regulation (EU) 2017/1129

1. fails to comply with the requirements in relation to publication contained to Article 3 or 5 of Regulation (EU) 2017/1129, or publishes a prospectus in contravention of Article 20 (1) of Regulation (EU) 2017/1129;
2. fails to include the necessary information in the prospectus or the summary of the prospectus or in the base prospectus or in the universal registration document pursuant to Article 6 or Article 7 (1) to (11) or Article 8 or Article 9 or Article 10 of Regulation (EU) 2017/1129 or otherwise breaches the aforementioned provisions;
3. breaches the simplified disclosure rules for secondary issuances contained in Article 14 (1) and (2) of Regulation (EU) 2017/1129, or breaches the prospectus rules for EU Growth prospectuses set forth in Article 15 (1) of Regulation (EU) 2017/1129;
4. breaches the disclosure obligations in Article 16 (1), (2) or (3) of Regulation (EU) 2017/1129;
5. breaches the obligations in Article 17, 18, Article 19 (1) to (3) or Regulation (EU) 2017/1129;
6. breaches the publication obligations pursuant to Article 21 (1) to (4) or (7) to (11) of Regulation (EU) 2017/1129;
7. advertises in contravention of Article 22 (2) or (5) of Regulation (EU) 2017/1129;
8. breaches the requirements for supplements pursuant to Article 23 (1), (2), (3) or (5) of Regulation (EU);
9. breaches the language rules pursuant to Article 27 of Regulation (EU) 2017/1129;
10. fails to cooperate with the authorities in an investigation or review or fails to comply with a request listed in Article 32 of Regulation (EU) 2017/1129;
11. fails to inform the notification office as an offeror or issuer pursuant to Article 23 para. 2 or as a party subject to reporting requirements pursuant to Article 24, also in the case where there is no public offering or otherwise even when an exemption from the obligation to produce a prospectus exists;

commits an administrative offence and shall be punished by the FMA with a fine of up to twice the amount of the profits gained or losses avoided because of the infringement, where those can be determined, or where it is not possible to do so to be punished with a fine of up to EUR 700 000.

(2) The FMA may impose fines on legal persons if persons who either acted 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. an authority to take decisions on behalf of the legal person, or
3. an authority to exercise control within the legal person

have breached the prohibitions or obligations listed in para. 1. Legal persons may also be held responsible for breaches listed in para. 1, if such breaches 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. In the case of the activity being conducted by a legal person the maximum fine to be imposed by the FMA in accordance with para. 1 shall increase to EUR 5 000 000 or to 3 % of the total annual turnover of the relevant legal person on the basis of the most recently available financial report that was approved by the management body.

(3) Where the legal person is a parent undertaking or a subsidiary of a parent undertaking, which is required to draw up a consolidated financial statement in accordance with 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, 29.06.2013, p. 19, last amended by Directive 2014/102/EU OJ L 334, 21.11.2014, p. 86, then the authoritative total annual turnover is the total annual turnover of the relevant type of income according to the relevant accounting provisions under Union law, that was/were stated in the last available consolidated accounts adopted by the management body of the ultimate parent undertaking.

(4) If the FMA has delegated in conjunction with publications the receipt of the final conditions, the final offer price and the final issue size to the Notification Office pursuant to Article 13 para. 3, then anyone who has complied with their filing obligations with regard to the report pursuant to Article 24 para. 1, shall not be fined for a breach of the filing obligations in accordance with Article 15 para. 1 no. 2 or 5.



(5) Where a reporting obligation pursuant to Article 24 is breached the FMA shall refrain from initiating and conducting administrative penal proceedings pursuant to no. 11, in the case that that report that was not submitted in an orderly manner, was subsequently made, prior to the FMA gaining knowledge of this breach.

(6) The FMA also has the power in the case of breaches pursuant to para. 1 nos. 1 to 9 to take the following actions:

1. to publicly disclose the names of the responsible natural or legal person and the manner of the infringement pursuant to Article 42 of Regulation (EU) 2017/1129;
2. to order the natural or legal person responsibly to cease the conduct that constitutes the infringement.

#### **Exercising of supervisory and sanctioning powers**

**Article 16** (1) The FMA shall, when determining the manner and amount of the fines and other actions under administrative procedural law, take all relevant circumstances into consideration, including as applicable

1. the severity and duration of the breach;
2. the degree of responsibility of the person responsible for the infringement;
3. the financial strength of the person responsible for the infringement, as indicated by the total turnover of the responsible legal person or the annual income and net assets of the responsible natural person;
4. the impact of the infringement on retail investors' interests;
5. the importance of the profits gained, losses avoided by the person responsible for the infringement or the losses for third parties derived from the infringement, insofar as they can be determined;
6. the level of cooperation of the person responsible for the infringement with the authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
7. previous infringements by the person responsible for the infringement;
8. measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

(2) In the exercise of their powers to impose administrative sanctions and other administrative measures under Article 38, of Regulation (EU) 2017/1129, the FMA shall cooperate closely with the competent authorities of other Member States to ensure that the exercise of their supervisory and investigative powers and the administrative sanctions and other administrative measures that they impose are effective and appropriate under Regulation (EU) 2017/1129. The FMA shall coordinate their actions with those of the competent authorities of other Member States in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative sanctions and other administrative measures in cross-border cases.

#### **Right of appeal**

**Article 17** The FMA's decisions in the enforcement of Regulation (EU) 2017/1129 and this Federal Act shall be justified in accordance with legal acts under administrative procedural law. The right of appeal to the Federal Administrative Court (BVwG; Bundesverwaltungsgericht) exists against these decisions. The legal remedy for an appeal on the grounds of delay shall also exist in the case that the FMA has neither reached a decision within the deadlines listed in Article 20 (2), (3) and (6) of Regulation (EU) 2017/1129 in relation to the application and approval in question to approve or reject it, nor requested changes or additional information.

#### **Reporting of infringements**

**Article 18** (1) The FMA must have effective mechanisms at its disposal to encourage and enable the reporting of actual or potential infringements against this Federal Act or against Regulation (EU) 2017/1129 to it.

(2) The mechanisms referred to in para. 1 shall include at least the following:

1. specific procedures for the receipt of reports of actual or potential infringements and their follow-up, including the establishment of secure communication channels for such reports;
2. appropriate protection for employees working under a contract of employment who report infringements at least against retaliation, discrimination and other types of unfair treatment by their employer or third parties;
3. protection of the identity and personal data of both the person who reports the infringements and the natural person who is allegedly responsible for an infringement, at all stages of the procedure





unless such disclosure is required by other legal regulations in the context of further investigation or subsequent judicial proceedings.

(3) Employers that are engaged in activities that are regulated for financial services purposes shall be required to have appropriate procedures in place to allow their employees to report actual or potential infringements internally through a specific, independent and autonomous channel.

#### **Publication of decisions**

**Article 19** (1) A decision imposing an administrative sanction or other administrative measure for infringement against Regulation (EU) 2017/1129 shall be published by the FMA on its official website immediately after the person subject to that decision has been informed of that decision. The publication shall furthermore include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

(2) Where the publication of the identity of the legal entities, or identity or personal data of natural persons, is considered by the FMA to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where such publication would jeopardise the stability of financial markets or an on-going investigation,, then the FMA shall:

1. defer the publication of the decision to impose a sanction or a measure until the moment where the reasons for non-publication cease to exist; or
2. publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with other legal provisions, where such anonymous publication ensures an effective protection of the personal data concerned; or
3. not publish the decision to impose a sanction or other measure, if it believes the options pursuant to no. 1 or 2 are not sufficient to ensure that:
  - a) the stability of the financial markets is not endangered;
  - b) proportionality is duly observed, in the case of the publication of the decision in the case of measures, the significance of which is deemed to be low.

In the case of a decision to publish a sanction or measure on an anonymous basis, as referred to in no. 2, the publication of the relevant data may be deferred for a reasonable period where it is foreseen that within that period the reasons for anonymous publication shall cease to exist.

(3) Where an appeal is made before the courts or other authorities against a decision to a sanction or measure, the FMA shall also publish such information immediately on its official website as well as any subsequent information on the outcome of such an appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure shall also be published.

(4) The FMA shall ensure that publications in accordance with this provision shall remain accessible on its official website for at least five years following publication. Personal data contained in the publication shall however only be allowed to remain visible on the FMA's official website, for the period that is necessary in accordance with the applicable data protection provisions.

#### **Reporting of sanctions to ESMA**

**Article 20** (1) The FMA shall submitted aggregated information to ESMA annually about all administrative penalties and other administrative measures pursuant to Article 38 of Regulation (EU) 2017/1129.

(2) Where the FMA has published administrative sanctions or other measures under administrative procedural law or criminal sanctions, then it shall simultaneously report them to ESMA.

(3) The FMA shall inform ESMA of all administrative sanctions or other administrative measures that have been imposed but not published in accordance with point (c) of the first subparagraph of Article 42(2) of Regulation (EU) 2017/1129, including any appeal in relation thereto and the outcome thereof. The courts shall inform the FMA about information and the final judgement in relation to sanctions imposed under criminal law, and the FMA shall forward them to ESMA.

### **Chapter 3**

#### **Common provisions for investments and securities**

##### **Consumer transactions**

**Article 21** (1) Where an offering of securities or investments subject to the obligation to publish a prospectus is offered without the prior publication of a prospectus, then investors, who are consumers as defined in Article 1 para. 1 no. 2 of the Consumer Protection Act (KSchG;



Konsumentenschutzgesetz), shall be allowed have the right to withdraw from the offering or their contract.

(2) Regardless of the right to withdraw or cancel pursuant to para. 1, investors, who are consumers as defined in Article 1 para. 1 no. 2 KSchG, may cancel a contract where it was not confirmed to them pursuant to Article 9 no. 3 that they were acquiring an investment in real estate.

(3) Such a cancellation of the contract must be made in writing; it shall however suffice for the consumer to return the document containing his/her her contract declaration or that of the seller, to the seller or the seller's agent who took part in the contract negotiations, with a remark that makes it recognisable that the consumer rejects the drawing up of or continuation of the contract. It shall suffice if the declaration of cancellation is sent within the period stated in para. 4.

(4) The right of cancellation in accordance with para. 1 shall expire one week after the day on which the prospectus was published. The right to cancel pursuant to para. 2 expires at the end of one week after the day on which the consumer has received confirmation of the acquisition pursuant to Article 9 no. 3.

(5) Any agreements contrary to the provisions of paras. 1 to 4 to the detriment of the consumer shall be invalid.

(6) All further reaching rights of investors arising out of other provisions shall remain unaffected.

### **Responsibility attaching to the Prospectus**

**Article 22** (1) The persons responsible for the prospectus as well as the supplements thereto shall be clearly named in the prospectus with their name and function being stated – in the case of legal entities their name and their registered office. The prospectus as well as the supplements thereto must contain declarations by the persons in question that to their knowledge the information in the prospectus is correct and that no information therein is missing, that may change the meaning of the prospectus and the supplements thereto. The following shall be liable for damages towards every investor that have arisen as a result of the investor placing their trust in the correctness of the details contained in the prospectus or in a supplement thereto (Article 6 of this Federal Act or Article 23 of Regulation (EU) 2017/1129), which are significant with regard to the assessment of securities or investments:

1. the issuer for any incorrect or incomplete information arising from their own negligence or the negligence of their staff or other persons whose services were used to draw up the prospectus,
2. the person applying for admission to trading on a regulated market as well as the guarantor, for incorrect or incomplete information that has occurred due to their own fault or through the fault of their staff or other persons whose activity was used for drawing up the prospectus,
3. the prospectus auditor for investment prospectuses, although only for any incorrect or incomplete scrutiny due to their own gross negligence or the gross negligence of their staff or other persons whose services were used for the auditing the prospectus,
4. any person, who has accepted the contract declaration of the investor in their own name or on behalf of others, and the broker of the contract, provided that the person involved performs the brokering of securities or investments on a commercial basis and they or their staff have recognised the incorrectness or incompleteness of the details as defined in no. 1 or in the scrutiny, or are unaware of this due to gross negligence, and
5. The auditor of the financial statements, who being aware of the incorrectness or incompleteness of the details as defined in no. 1 and in the knowledge of the annual financial statement that he has confirmed is a document that constitutes a document for the scrutiny of the prospectus, has provided an audit opinion for an annual financial statement.

In the event of a reason for exclusion exists against the prospectus auditor, the investor shall not be required to prove the existence of the fault listed in no. 1 or 2. Liability pursuant to no. 4 shall only exist towards those investors, whose contract declaration was received by a liable party or where the liable party mediated their purchase of securities or investments. Anyone who makes an offer that is subject to the obligation to publish a prospectus in Austria without the approval of the issuer in accordance with Article 5 para. 5 of this Federal Act or pursuant to Article 5 of Regulation (EU) 2017/1129 shall be liable towards investors, who have assumed during the offering or invitation to subscribe instead of the issuer in accordance with no. 1, provided that the issuer did not know or did not need to know that the prospectus was the subject of an offering pursuant to Article 2 of Regulation (EU) 2017/1129 without its approval and the issuer informed the Notification Office and the FMA about the unlawful use of the prospectus without delay, after having gained knowledge of the unlawful usage or having had to have known about it. The Notification Office must proceed pursuant to Article 23 para. 2 with the notifications received.



- (2) In the case of securities or investments with issuers from third countries, liability pursuant to para. 1 no. 1 shall also be assumed by the party placing the offering subject to the obligation to publish a prospectus in Austria.
- (3) Where several parties are liable, then they shall be jointly and severally liable. Their liability shall not be mitigated by virtue of the fact that others are also liable for compensation of the same damages.
- (4) Liability to the detriment of investors may neither be restricted nor excluded in advance.
- (5) Compensation claims for damages may not be derived from the circumstance that the securities or investments contained in the prospectus or supplements to the prospectus were not acquired as a result of incorrect or incomplete information.
- (6) The amount of the liability towards each individual shall be limited on the basis of the purchase price paid by the investor plus fees and interest from the date of purchase, provided that the action causing the damage to occur was performed intentionally. In the case of the acquisition occurring at no charge, then the last paid acquisition price plus fees and interest as of the date of acquisition shall apply.
- (7) Claims by investors in accordance with this Federal Act must be filed with a court within ten years following the conclusion of the offering subject to the obligation to publish a prospectus; the right to claim damages shall otherwise expire.
- (8) Claims for damages arising from violations of other legal provisions or from breaches of contract shall remain unaffected by these provisions.
- (9) In the case of securities prospectuses compensation claims may not be made exclusively on the basis of the summary in accordance with Article 7 of Regulation (EU) 2017/1129 or the special summary of an EU Growth prospectus in accordance with the second subparagraph of Article 15 (1) of Regulation (EU) 2017/1129 including any translations, unless:
1. it is misleading, inaccurate or inconsistent, when read together with the other parts of the prospectus; or
  2. it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in the securities.
- (10) In the case of securities prospectuses the responsibility for the information given in a registration document or in a universal registration document shall attach to the persons referred to in para. 1 only in cases where the registration document or the universal registration document is in use as a constituent part of an approved prospectus. This shall apply irrespective of Articles 4 and 5 of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390, 31.12.2004 p. 38, last amended by Directive 2013/50/EU, OJ L 294, 06.11.2013, p. 13, where the information to be published pursuant to those Articles are contained in a universal registration document.
- (11) The arrangements about the FMA's liability pursuant to the Financial Market Authority Act (FMABG; Finanzmarktaufsichtsbehördengesetz), published in Federal Law Gazette I no. 97/2001, shall apply irrespective of Regulation (EU) 2017/1129.
- (12) The provider shall also be liable towards the investors as well as the persons listed in para. 1 no. 4, whether due to their own fault or through the fault of their staff or other persons whose activity was used for the distribution of securities or investments, for information that is contradictory to the information in the prospectus or other erroneous information contained in a supplement, where they were causal for the damage.

#### Notification Office

**Article 23** (1) The Oesterreichische Kontrollbank Aktiengesellschaft is the Notification Office in accordance with this Federal Act. It shall scrutinise the received securities prospectuses and other details for the existence of the approval by the FMA that it receives on the basis of a delegation agreement in accordance with Article 13 para. 3 for the existence of the approval by the FMA or a confirmation of notification and retain them for safekeeping and shall scrutinise investment prospectuses received and other details in accordance with this Federal Act for the existence of the necessary signatures (issuer, prospectus auditor) pursuant to Article 5 para. 4, Article 7 para. 1 or Article 9 no. 2 and retain them for safekeeping. The Notification Office shall be allowed to destroy the received prospectuses and other information in accordance with this Federal Act at earliest 15 years following their filing at the Notification Office. The Notification Office shall be authorised to charge providers notifying or filing a prospectus an appropriate fee for its services.



(2) The Notification Office is obliged to respond to enquiries as quickly as possible, at latest however within five working days, about whether a prospectus or other details in accordance with this Federal Act, for securities or investments that are the object of the enquiry have been published and filed with the Notification Office and whether the investment prospectus or other details in accordance with this Federal Act contain the necessary signatures in accordance with this Federal Act and whether the securities prospectus or other information in accordance with this Federal Act bear the approval (official signature) or confirmation of notification (certificate of approval) from the FMA. At the same time questions are to be asked about the place and date of publication and the existence of any confirmation of insurance pursuant to Article 7 para. 1. To this end, the offeror and the issuer shall inform the Notification Office immediately about the date and place of publication, provided that such information is not apparent from submitted prospectus or from the information about any amendments or addenda. The Notification Office shall provide copies of the prospectus, or any other information, to persons interested for a cost-covering fee upon request.

(3) Furthermore, the Notification Office shall also

1. analyse the information in the prospectuses about the securities, investments and issuers statistically and using computer assistance, where there is necessary to fulfil its duties in accordance with this Federal Act;
2. regularly report to the Federal Minister of Finance and the FMA about the developments that have been observed in the capital market as well as without delay where special circumstances prevail;
3. provide the FMA for the purpose of the performance of its tasks in relation to securities supervision and data transmission with computer-assisted access at all times to information based of reports pursuant to this Federal Act as well as Regulations issued on the basis of this Federal Act.

### Issuing Calendar

**Article 24** (1) Anyone intending to offer securities or investments within Austria for the first time is obliged to inform the Notification Office as soon as possible about the issuer, the planned timing of the issuance, the total volume, denomination, and term in the case of public offerings of any other conditions as well as, if applicable, any circumstances that constitute an exemption from the obligation to publish a prospectus pursuant to Article 3 or pursuant to Regulation (EU) 2017/1129; specific individual details that can only be determined shortly before the subscription period may be submitted at a later date. When stating the prevailing circumstances in relation to the exemption from the obligation to publish a prospectus, the relevant circumstance for this exemption in accordance with Article 3 of Regulation (EU) 2017/1129 or other provisions set out in Federal Acts shall expressly be stated. Furthermore, for the purpose of unique identification of the issuance to be reported, the offeror shall disclose the ISIN number assigned by the Oesterreichische Kontrollbank Aktiengesellschaft (Austria's domestic ISIN issuing body) or by a foreign ISIN issuing body or an equivalent identification number and the issuer's LEI number. The details are to be submitted by reporting portal to be made available electronically by the Notification Office. Where the offering is an offering subject to the obligation to produce a prospectus in accordance with Regulation (EU) 2017/1129 or if a prospectus was drawn up on pursuant to Regulation (EU) 2017/1129 on a voluntary basis and the FMA is the competent approval authority, then the conditions in accordance with this paragraph shall in addition to the final terms shall also contain the accompanying information relating to the issuance for the classification of the prospectuses, provided that this information are specified in a Regulatory Technical Standard issued by the European Commission in accordance with Article 21 (13) of Regulation (EU) 2017/1129 and published in the Official Journal of the European Union. This information may be submitted subsequently provided that the final issue price or the final issue size pursuant to Article 17 of Regulation (EU) 2017/1129 is not yet fixed before the commencement of the offering. The Notification Office shall stipulate the reporting fields that are necessary for the purposes of this paragraph.

(2) The reporting obligation pursuant to para. 1 shall not apply for securities pursuant to points a and c of Article 1 (2), points e, h and i of Article 1 (4) of Regulation (EU) 2017/1129 and investments in accordance with Article 3 para. 1 no. 1 of this Federal Act.

(3) The Notification Office shall publish the reports received pursuant to para. 1 on its website in an ongoing manner. The Notification Office shall disclose the publication medium and any changes in the Official Gazette "Amtsblatt zur Wiener Zeitung".

(4) If the Notification Office, has reasonable doubts on the basis of the notifications received pursuant to para. 1 regarding the application for an exemption from the obligation to publish a prospectus in the case of an issuance contrary to the information submitted pursuant to para. 1, then it shall inform the





offeror of this circumstance. Should the Notification Office has the founded suspicion based on notifications received pursuant to para. 1 that an activity punishable by a fine that a public offering has occurred without the prospectus pursuant to Article 2 of this Federal Act or Article 3 of Regulation (EU) 2017/1129, then it shall inform the FMA about this without delay.

(5) Claims for damages to the Notification Office may not be filed on the grounds that notifications to the FMA pursuant to para. 4 were made improperly and negligently, or have not been made.

#### **Official secrecy**

**Article 25** (1) All persons who work for, or have worked for the FMA, including the Notification Office shall be bound by the obligation to keep official secrets.

**Article 26** Valid provisions in accordance with other Federal Acts regarding the obligation to maintain professional secrecy shall not be affected by the provisions of this Federal Act.

### **Chapter 4**

#### **Transitional and final provisions**

**Article 27** Where expressions in this Federal Act relating to persons are given only in the masculine form, they shall refer equally to men and women. The respective gender-specific form shall be used when applied to specific persons.

**Article 28** For the enforcement of an administrative decision in accordance with this Federal Act, the amount of EUR 35 000 shall apply instead of a lower amount as stated in Article 5 para. 3 of the Administrative Enforcement Act (VVG; Verwaltungsvollstreckungsgesetz).

**Article 29** (1) Where references to other federal acts are made in this federal act, those acts are to be applied in their respective current versions.

(2) Where this federal act refers to Regulation (EU) 2017/1129, then, unless otherwise instructed, Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, OJ L 168, 30.06.2017, p. 12 shall apply.

#### **Entry into force**

**Article 30** (1) This federal act shall enter into force on 21 July 2019. Articles 10 and 15 shall however enter into force on the day on which the publication of this federal act in the Federal Law Gazette occurs.

(2) The Capital Market Act (KMG; Kapitalmarktgesetz) published in Federal Law Gazette No. 625/1991 in the version of the federal act amended by Federal Law Gazette I No. 62/2019, shall be repealed irrespective of Article 46 (3) of Regulation (EU) 2017/1129 at the end of 20 July 2019.

#### **Enforcement Clause**

**Article 31** The following entities are responsible for the enforcement of this Federal Act:

1. With regard to Article 22 the Federal Minister for the Constitution, Reforms, Deregulation and Justice;
2. the Federal Minister of Finance with regard to all other provisions.

**Schedule A**  
**SCHEDULE FOR INVESTMENTS**

**CHAPTER 1 - Information about Parties Liable pursuant to Article 7 and Article 22.**  
(Name, position)

**CHAPTER 2 - Information about the Investment**

1. Investment terms, in particular, any rights attached to the investment;
2. The registrar, depository and paying agent,
3. Overview of any asset rights issued to date,
4. Legal status of the investment (shares, creditor's rights or mixed form), total amount, denomination as well as purpose of the offer,
5. Type of investment fund (open-ended or closed type),
6. Type and number of other undertakings for collective investments of the issuer or any other undertakings for collective investments that may influence the investment;
7. Stock exchanges on which the investments subject of the public offering and any other securities of the issuer are already listed or traded;
8. Any third parties guaranteeing the investment;
9. Persons who have firmly underwritten the offering or act as guarantor for it;
10. Information on those persons to whom the capital raised through the issue is available for business purposes if these persons are not identical with the issuer;
11. Any taxes levied on income earned on the investment (e.g. capital yield tax, foreign withholding taxes);
12. Subscription period;
13. Any restrictions to the tradeability of the investment offered and name of the market on which it can be traded;
14. Distribution, administration and management costs listed by amount and method of calculation;
15. Information on valuation principles;
16. Information on any liens or liabilities;
17. Details on the preparation of the financial statements and of the statement of accounts, if available;
18. Provisions on the distribution and use of the net profit or surplus for the year;
19. Most recent statement of accounts including audit opinion;
20. Description of the purchase price of the investment including all extra charges;
21. Type and scope of surety for an investment recorded in a public register;
22. Information on future prospects of the investment;
23. Conditions and calculation of the offer price for investments issued after placement of the initial issue;
24. Information on any pre-emptive rights granted to existing investors and their prices in the event of an increase in investment volume, information on how the assets and earnings growth of existing investors is protected against new investors;
25. Description of the possibilities and costs of selling the investment at a later time,
26. Services of the management company and the costs charged;
27. Periods of notice granted by the management company;
28. Provisions on the settlement and position of investors in the event of insolvency;
29. Securities identification number (if available),

**CHAPTER 3 - Information about the Issuer**

1. Name and registered office of the issuer, object of the company;
2. Description of the legal and economic status, in particular, information on the share capital or other capital of the company equivalent to share capital, its denomination including the designation of any different classes of shares;



3. Members of the bodies of the management, administration and supervision (name, position);
4. Names of shareholders who directly or indirectly play – or could play – a controlling role in the management of the issuer;
5. The most recent annual financial statement including any management reports and audit opinion(s).

#### **CHAPTER 4 - Information on the Custodian Bank (if applicable)**

1. Name and registered office of the company
2. Annual financial statement including audit opinion.

#### **CHAPTER 5**

1. Type and scope of information the investors receive on a regular basis on the economic development of the investment;
2. Any other information needed by the investor to reach an informed judgement as defined in Article 5 para. 1.

#### **CHAPTER 6 - Audit Certificate of the Prospectus Auditor**

**Annex B**

#### **Schema B**

### **LAYOUT FOR THE ADDITIONAL PROSPECTUS FOR INVESTMENTS IN REAL ESTATE (ARTICLE 9)**

#### **CHAPTER 1 - Information about Parties Liable pursuant to Article 7 and Article 22.**

(Name, position)

#### **CHAPTER 2 - Information on Investments in Real Estate Offered**

1. Legal form of the investment, total volume and any denomination,
2. Type of undertakings for collective investments (open-ended or closed),
3. Type, number and location (in or outside the country) of the available real estate and type and projected number of properties,
4. Principles according to which the acquisition, sale and administration of the real estate is conducted,
5. Distribution and management costs of collective investments undertakings broken down by amount and type of billing including details of the services performed by the management,
6. Legal relations of collective investment undertakings with third parties involved in the distribution and management of the collective investment undertakings and the costs invoiced by third parties and their services performed or to be performed,
7. Valuation methods that must be consistent within every collective investment undertaking
8. For each property: acquisition costs, space available for rent, year of construction, sum of costs of renovation, maintenance, upkeep and improvement work done, sum of costs of planned renovation, maintenance, upkeep and improvement work, method of calculation of overhead costs,
9. Liens entered in the property register or other liabilities insofar as material for the valuation of property; for each property,
10. Details on the method of calculation of the annual net profit or surplus for the year and the preparation of the annual statement of accounts,
11. Provisions on the distribution and use of the net profit or surplus for the year,
12. Presentation of the purchase price of the investments offered for sale including all additional charges,
13. Type and scope of the collateral entered in the land register as surety for the investment,
14. Future position and rights of investors in the event of structural changes,
15. Information on any pre-emptive rights of existing investors and their price and/or price determination in the event of an increase in the investment volume; information on how the



assets and earnings growth of existing investors is protected in contrast to new investors or may be adequately compensated,

16. Projections on profitability and method of calculation,
17. Description to dispose of the investment and calculation of the selling price,
18. Provisions on the settlement and hierarchy of investors in the event of insolvency.

### **CHAPTER 3 - Information on Third Parties involved in the Distribution and Management of the Collective Investment Undertaking**

1. Name and registered office of the company, purpose of business,
2. Persons responsible for the management and oversight over the management,
3. Most recent annual financial statement including the audit opinion and, if available, the annual report.

### **CHAPTER 4 - Information above Insurance Coverage by Property**

Fire insurance, sum insured and level of coverage.

### **CHAPTER 5**

Type and Scope of Regular Information for Investors on the Economic Development of the Investment

### **CHAPTER 6 - If available, statement of accounts for the previous year**

**Annex C**

#### **Schedule C**

#### **LAYOUT FOR THE STATEMENT OF ACCOUNTS OF COLLECTIVE INVESTMENT UNDERTAKINGS IN REAL ESTATE**

##### **I. Information on the Rights of Investors**

##### **A. Financial statements**

- a) Inflow of funds
  1. from the issue of investments,
  2. from real estate,
  3. from the sale of real estate,
  4. from investments in collective investment undertakings in real estate,
  5. from the sale of investments in collective investment undertakings in real estate,
  6. from investments in companies,
  7. from the sale of investments in companies,
  8. from other asset rights, broken down by type of asset right,
  9. from the sale of other asset rights, broken down by type of asset rights,
  10. from other cash flows of incoming funds,
  11. other incoming funds.
- b) Outflow of funds
  1. into real estate,
  2. into investments in collective investment undertakings in real estate,
  3. into participations in companies,
  4. from other asset rights, broken down by types of asset rights,
  5. construction costs,
  6. remuneration and administration costs, broken down by type of remuneration and cost,
  7. into the formation of reserves, broken down into individual types of asset rights,
  8. from other cash outflows,
  9. other outflows.
- c) Net profit/loss for the year





B. Alternative to A – Calculation of profits according to applicable legal provisions

**II. Information on Assets**  
**A. Investment per property**

- a) Location
- b) Size
- c) Year of construction
- d) Year of acquisition
- e) Acquisition costs, broken down into purchase price and ancillary costs, or construction costs
- f) Space available for rent
- g) Method of calculation of overhead costs
- h) Total costs of renovation, maintenance, upkeep, improvement and extension work carried out
- i) Total costs for planned renovation, maintenance, upkeep, improvement and extension work
- j) Administration costs where not included in the overhead costs
- k) Requirements of building authorities if these are relevant for the valuation of the property
- l) Liens entered in the property register and other liabilities, where material to the valuation of the property
- m) Fire insurance, sum insured and level of coverage

**B. Investments in collective investment undertakings in real estate, by collective investment undertaking**

- 1. Issuer
  - a) Firm
  - b) Register
  - c) Legal form
  - d) Year of incorporation
  - e) Registered office/headquarters
  - f) Purpose of business
  - g) Members of the management, administration and supervisory bodies (name, position)
- 2. Book value of the investment
- 3. Distribution from the investment

**C. Investments in companies, by participation (if not listed under B)**

- 1. Company
  - a) Firm
  - b) Register
  - c) Legal form
  - d) Year of incorporation
  - e) Registered office/headquarters
  - f) Purpose of business
  - g) Members of the management, administration and supervisory bodies (name, position)
- 2. Book value of the participation
- 3. Distribution from the participation
- 4. Key figures about the entity
  - a) Equity ratio
  - b) Cash flow to operating performance
  - c) Profitability of total capital
  - d) Effective debt to cash flow
  - e) Number of employees
- 5. Direct and indirect participations by the entity listed in C, where the calculated holding is at least 25%
  - a) Firm
  - b) Legal form
  - c) Costs of acquisition



d) Term

**D. Other asset rights, by asset right**

- a) Type of asset right
- b) Capital invested
- c) Profitability of capital invested
- d) Possibilities of cancellation and periods of notice

**E. Investment reserves broken down by type**

**F. Managerial, personnel and material costs if not listed under II. A.**

**III. Distribution by investment**

1. Total volume of investments
2. Denomination
3. Annual Surplus
4. Distribution per investment

**IV. Presentation of performance by investment**

1. Total assets including presentation of valuation methods
2. Assets per investment
3. Profitability of the investment and method of calculation

**V. Explanations**

**VI. Disclosure Provisions**

**VII. Audit Opinion**

**Annex D**

**Schedule D**

**LAYOUT FOR THE SIMPLIFIED PROSPECTUS FOR INVESTMENTS AND SECURITIES**

**(If the Schedule is to be applied for securities, then the term “investment” used therein is to be replaced by the term “security” accordingly)**

**CHAPTER 1 - Information about Parties Liable pursuant to Article 7 and Article 22.**

(Name, position)

**CHAPTER 2 - Information about the Investment**

1. Investment terms, in particular, any rights attached to the investment,
2. The registrar, depository and paying agent,
3. Overview of any asset rights issued to date,
4. Legal status of the investment (shares, creditor's rights or mixed form), total amount, denomination as well as purpose of the offer,
5. Type of investment fund (open-ended or closed type),
6. Any third party guarantees for investment;
7. Persons who have firmly underwritten the offering or act as guarantor for it,
8. Any taxes levied on income earned on the investment (for example capital yields tax, foreign withholding taxes),
9. Subscription period,
10. Any restrictions to the tradeability of the investment offered and name of the market on which it can be traded,
11. Information on any liens or liabilities,
12. Provisions on the distribution and use of the net profit or surplus for the year,
13. Description of the purchase price of the investment including all extra charges,



14. Type and scope of surety for an investment recorded in a public register,
15. Description of the possibilities and costs of selling the investment at a later time,
16. Provisions on the settlement and position of investors in the event of insolvency,
17. Securities identification number (if available),
18. Miscellaneous distribution, administration and management costs listed by amount and method of calculation.

### CHAPTER 3 - Information about the Issuer

1. Company name, registered office and purpose of business,
2. Description of legal and economic status, in particular, information on the share capital or other capital of the company equivalent to share capital, its denomination including the designation of any different classes of shares,
3. Members of the management, administration and supervision bodies (name, position);
4. Names of shareholders who directly or indirectly exercise – or could exercise - a controlling role in the management of the issuer;
5. The most recent annual financial statement including any management reports and audit opinion(s).

### CHAPTER 4 - Information on the Custodian Bank (if applicable)

1. Name and registered office of the company;
2. Annual financial statement including audit opinion.

### CHAPTER 5

1. Type and scope of information the investors receive on a regular basis on the economic development of the investment;
2. Any other information needed by the investor to reach an informed judgement as defined in Article 5 para. 1.

### CHAPTER 6 - Audit Certificate of the Prospectus Auditor

#### Annex E

#### Confirmation of insurance pursuant to Article 7 para. 1 of the Capital Market Act 2019 (KMG 2019 - Kapitalmarktgesetz 2019)

Company name and delivery address of the insurance undertaking or of its authorised representative

For presentation to the

...../ Notification office pursuant to KMG 2019

#### Confirmation of insurance pursuant to Article 7 para. 1 KMG 2019

We hereby confirm to .....as the Notification Office pursuant to the Capital Market Act 2019 (KMG 2019; Kapitalmarktgesetz 2019) that for the activity as a prospectus auditor as defined in the KMG 2019 that a liability insurance policy has been concluded for the **prospectus auditor** stated in point **(ii)** with the **policy number** stated in point **(iii)** at the **insurance undertaking** stated in point **(i)** that is authorised to perform insurance business with a **insured amount** for each one year insurance period stated in point **(iv)**, which covers the risk that results from the scrutiny performed pursuant to Article 7 para. 1 KMG 2019 for the **prospectus/supplement to the prospectus** described in greater detail in point **(v)**. Receipt of the fully paid in insurance premium is hereby confirmed.

- (i) Insurance undertaking:
- (ii) Prospectus auditor:
- (iii) Policy number
- (iv) Sum insured (in accordance with Article 7 para. 1 or Article 9 no. 2 KMG 2019):



(v) Prospectus identification

- Designation of the prospectus or supplement to the prospectus:
- Issuer:
- Date of the prospectus/supplement to the prospectus:
- Date of the prospectus audit certificate:

Date (of the signing of the confirmation of insurance):

Official signature (of the insurance undertaking or in the case of an authorised representative having been disclosed the signature of the authorised representative):