



Small Mutual Associations Investment Regulation

(kV-KAV; kleine Versicherungsvereine Kapitalanlageverordnung)

Full title

Regulation of the Financial Market Authority (FMA) on investments of small mutual associations (Small Mutual Associations Investment Regulation – kV-KAV; kleine Versicherungsvereine Kapitalanlageverordnung)

Original version: Federal Law Gazette II No. 98/2015

As amended by: Federal Law Gazette II No. 355/2017

Preamble/Promulgation clause

Based on Article 72 para. 2 of the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016), published in Federal Law Gazette I No 34/2015, the following shall be determined by Regulation:

Text

Scope of application

Article 1 This Regulation shall apply to small mutual associations as defined in Article 5 no. 4 of the Insurance Supervision Act 2016 (VAG 2016; Versicherungsaufsichtsgesetz).

Principles of investment

Article 2. (1) Small mutual associations are required to take the aspects of security, profitability and the need for liquidity into account and to ensure an appropriate mix and diversification in their selection of assets pursuant to Article 72 para. 1 VAG 2016. In addition, any risk entailed with the assets must be considered, ensuring in particular that the issuer or contracting party has a sufficiently good credit quality. This applies specifically to receivables from reinsurance business. Risk assessment must be appropriate, guaranteed and documented.

(2) Non-recurring loans, credit balances and receivables may only be used if the borrower, guarantor or trustee in the case of trusteeships has waived any rights of set-off and retention in writing.

(3) Securities may only be used if the custodian has waived any rights of set-off and retention in writing, and the liability of the custodian or intermediary custodian for third-party custodians' negligence is neither contractually limited nor excluded. Securities shall be deposited with a credit or financial institution that is authorised to pursue custody business (custodian) in an OECD Member State, while ensuring that the respective securities deposited with the custodian constitute special funds that would not form part of the bankrupt's estate in the event of bankruptcy proceedings against the custodian.

(4) Assets pursuant to para. 1 may only be used if redemptions and repayments will definitely be credited to a bank account for which the bank has waived in writing any rights of set-off and retention vis-à-vis the small association.

(5) Assets must be held in sufficiently safe custody, provided they are not subject to a deposit obligation.

Note for the following provision

See Article 5 para. 2 about the time frame for applicability

Eligible assets

Article 3. (1) The following assets pursuant to para. 2 are considered eligible for investment by small mutual associations:



1. euro-denominated, non-subordinated debt securities with an investment grade rating issued by a credit rating agency in accordance with Regulation (EC) No 1060/2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 1, last amended by Directive 2014/51/EU, OJ L 153, 22.05.2014, p. 1, as amended by the corrigendum, OJ L 267, 06.09.2014, p. 30. or which, while lacking a credit rating, have internal ratios that demonstrate a stable earnings and financial situation:
 - a) debt securities of an OECD Member State or a regional or local authority of an OECD Member State as well as debt securities, for which an OECD Member State or a regional or local authority of an OECD Member State guarantees repayment and interest payments;
 - b) debt securities of companies with their registered office in an OECD Member State and debt securities of supranational organisations admitted to trading on a regulated market pursuant to Article 1 no. 2 of the Stock Exchange Act 2018 (BörseG 2018; Börsegesetz 2018) published in Federal Law Gazette I No. 107/2017, or which are authorised on an equivalent market pursuant to Article 107 para. 5 no. 2 BörseG 2018 in an OECD Member State;
 - c) other debt securities of companies with their registered office in an OECD Member State and debt securities of supranational organisations that can be sold within an appropriate period of time.

The following are not eligible for investments: structured debt securities in which a derivative instrument is embedded, or which contain a structure, which makes it difficult for the small mutual association to understand the risk involved;
2. shares and other units with variable return:
 - a) of companies that are listed for trading on a regulated market pursuant to Article 1 no. 2 BörseG 2018 or on an equivalent market pursuant to Article 107 para. 5 no. 2 BörseG 2018 in an OECD Member State;
 - b) in joint stock companies with head offices in an OECD Member State whose business activities are exclusively limited to mediating insurance contracts,
 - c) equity interests and securitised participation rights in corporations with head offices in an OECD Member State whose principal purpose of business is the acquisition of real estate and immovable property rights entered in a public register, which yield a profit or are expected to yield a profit, the construction of buildings on such real estate and the management of such real estate, provided that the value of the real estate or immovable property rights has been proven by means of an appraisal carried out by a certified court expert at the time of the acquisition;
3. euro-denominated units in investment funds falling under one of the following categories:
 - a) units in undertaking for collective investment in transferable securities (UCITS) pursuant to Article 2 para. 1 of the Investment Funds Act 2011 (InvFG 2011; Investmentfondsgesetz 2011), as amended by Federal Act in Federal Law Gazette I No. 150/2017;
 - b) units in real estate funds pursuant to Article 1 para. 1 of the Real Estate Investment Fund Act (ImmoInvFG; Immobilien-Investmentfondsgesetz), published in Federal Law Gazette I No. 80/2003 in the version amended by Federal Act in Federal Law Gazette I No. 107/2017, as well as units in real estate funds managed by an investment fund management company with its registered office in another OECD Member State and subject to public supervision;
4. euro-denominated, non-subordinated loans:
 - a) non-recurring loans to a regional or local authority of an OECD Member State, as well as loans and other receivables where liability for repayment and interest payments lies with a regional or local authority of an OECD Member State,
 - b) non-recurring loans and other receivables from municipal governments or loans guaranteed by a municipal authority, with the exception of the federal capital of Vienna, provided that the income from statutory duties is pledged,
 - c) mortgage loans on real estate entered in a public register or immovable property rights entered in a public register which are located in an OECD Member State, up to an encumbrance of 60% of the current market value of the real estate or the



immovable property right, provided that the current market value has been documented by means of an appraisal carried out by a certified court expert at the time of the acquisition and that the real estate has been sufficiently insured against the risk of fire for the term of the loan;

5. real estate and immovable property rights entered in a public register in an OECD Member State that yield a profit or are expected to yield a profit, provided that the purchase price has been documented by means of an appraisal carried out by a certified court expert or by other suitable means and that the real estate, if still under development, has been sufficiently insured against the risk of fire;
6. euro-denominated cash at bank and in hand:
 - a) credit balances with credit institutions authorised to carry out banking transactions in an OECD Member State ("bank balances"),
 - b) cash balances.

(2) Para. 1 no. 1 lits. b and c and nos. 2 to 5 shall not apply to small mutual associations that exclusively pursue animal insurance activities.

Investment thresholds

Article 4. (1) The following individual investments may only be made up to the percentages stated below, based on the carrying amount of the total investment ("individual threshold"):

1. up to 2% each: shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lit. a of the same company;
2. up to 10% each:
 - a) debt securities pursuant to Article 3 para. 1 no. 1 lits. b to c of the same issuer,
 - b) shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lits. b and c of the same company,
 - c) units in real estate funds pursuant to Article 3 para. 1 no. 3 lit. b of the same fund,
 - d) loans pursuant to Article 3 para. 1 no. 4 lits. a to c of the same obligor;
3. up to 25% each:
 - a) debt securities pursuant to Article 3 para. 1 no. 1 lits. a of the same issuer,
 - b) units in investment funds pursuant to Article 3 para. 1 no. 3 lit. a of the same fund;
4. up to 30% each: bank balances pursuant to Article 3 para. 1 no. 6 lit. a;
5. up to 35% each: real estate and immovable property rights pursuant to Article 3 para. 1 no. 5.

(2) The following total investments may only be made up to the percentages stated below, based on the carrying amount of the total investment ("total threshold"):

1. up to 10% in total: debt securities pursuant to Article 3 para. 1 no. 1 lit. c;
2. up to 25% in total: shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lits. a and b including any shares held indirectly via investment funds pursuant to Article 3 para. 1 no. 3 lit. a;
3. up to 45% in total:
 - a) real estate and immovable property rights pursuant to Article 3 para. 1 no. 5,
 - b) shares and other variable-yield participations pursuant to Article 3 para. 1 no. 2 lit. c,
 - c) units in real estate funds pursuant to Article 3 para. 1 no. 3 lit. b,
 - d) loans and immovable property rights pursuant to Article 3 para. 1 no. 4 lit. c;
4. up to 50% in total: debt securities pursuant to Article 3 para. 1 no. 1 lit. b and loans pursuant to Article 3 para. 1 no. 4 lits. a and b,

(3) By way of derogation from paras. 1 and 2, the following investment thresholds apply to small mutual associations that exclusively pursue animal insurance activities:

1. up to 15% each: debt securities pursuant to Article 3 para. 1 no. 1 lit. a of the same issuer,
2. up to 20% in total: cash balances pursuant to Article 3 para. 1 no. 6 lit. b,
3. from EUR 30 000 up to 60% each: bank balances pursuant to Article 3 para. 1 no. 6 lit. a.



(4) By way of derogation from paras. 1 to 3 the the investment thresholds shall increase by the extend of 15% respectively with regard to the respective individual or overall threshold, where the own funds of a small mutual association exceeds the own funds requirement pursuant to Articles 1 to 3 of the Own Funds Requirements Regulation for Small Mutual Associations (kv-EEV; kleine Versicherungsvereine Eigenmittelerfordernisverordnung), published in Federal Law Gazette II no. 94/2015, by at least 30%.

(5) Where the own funds do not reach the threshold determined in para. 4, then in the event of the investment thresholds stipulated in paras. 1 to 3 being temporarily exceeded by up to 10% of the threshold value due to market fluctuations or claims, no immediate measures are required in cases where renewed compliance with the investment thresholds will be restored within a short period of time.

Entry into force

Article 5. (1) This Regulation shall enter into force on 1 January 2016.

(2) Article 2 para. 3, Article 3 and Article 4 in the version of the Regulation as amended in Federal Law Gazette II No. 355/2017 shall enter into force on the day after its publication. The references contained in Article 3 para. 1 no. 1 lit. b and Article 3 para. 1 no. 2 lit. a to Article 1 no. 2 and Article 107 para. 5 no. 2 BörseG 2018 shall prior to the expiry of 2 January 2018 be read as a reference to Article 1 para. 2 of the Stock Exchange Act 1989 (BörseG; Börsengesetz), published in Federal Law Gazette no. 555/1989.