

# Investment Fund Act 2011

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## Part 1

### General provisions

#### Scope

**Section 1.** This Federal Act stipulates conditions on which UCITS (Section 2) may be constituted, managed and marketed in Austria. Furthermore, this Federal Act lays down conditions on which other special assets, pension investment funds and special funds may be constituted, managed and marketed in Austria, taking into account Section 48 (3) and (4) of the Alternative Investment Fund Managers Act – AIFMG, Federal Law Gazette I No. 135/2013.

#### Undertakings for collective investment in transferable securities (UCITS)

**Section 2.** (1) An undertaking for collective investment in transferable securities (UCITS)

1. has the sole object of collective investment in transferable securities or in other liquid financial assets referred to in Section 67 of capital raised from the public and operates on the principle of risk spreading; and

2. has units which are, at the request of unit-holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets; action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption; and

3. has been authorised in accordance with Section 50 or has been authorised in its home Member State in accordance with Art. 5 of Directive 2009/65/EC.

(2) In Austria, a UCITS may be established only as a portfolio of assets according to Section 46 which is divided into equal units evidenced by securities and jointly owned by the unit-holders. If this Federal Act stipulates obligations of a UCITS, any obligation to act arising therefrom shall relate to the management company managing the UCITS.

(3) A UCITS may consist of several investment compartments; for the purposes of Part 2 Chapter 3 Article 3, any investment compartment of a UCITS shall be regarded as a separate UCITS. For the purposes of Part 2 Chapter 3 Article 6 and Chapter 4, a UCITS shall include its constituent investment compartments. A separate KID shall be drawn up for each investment compartment according to Section 134.

#### Definitions

**Section 3.** (1) Unless other definitions are specified for terms in this Federal Act, the definitions of the terms used in this Federal Act shall be the same as those used in the Banking Act – BWG (Federal Law Gazette No. 532/1993), the Capital Market Act 2019 – KMG 2019 (Federal Law Gazette I No. 62/2019), and Regulation (EU) No. 583/2010, Regulation (EU) No. 584/2010 and Regulation (EU) No. 575/2013.

(2) For the purposes of this Federal Act, the following definitions shall apply:

1. management company (investment fund management company): any undertaking in accordance with Section 5 or Art. 6 of Directive 2009/65/EC, the regular business of which is the management of UCITS in accordance with Section 2 and, where relevant, of alternative investment funds (AIF) in accordance with Part 3 of this Federal Act;

2. regular business of a management company: functions of collective portfolio management which include investment management and, where appropriate, also administration in accordance with Section 5 (2) no. 1 (b), and marketing;

3. collective portfolio management: the management of portfolios for the joint account of the unit-holders as specified in the fund rules in accordance with Section 53;

4. unit-holder: any natural or legal person holding one or more units in a UCITS in accordance with Section 2 (2) or an AIF within the meaning of no. 31;

5. depositary: an institution entrusted with the functions set out in Section 40 and, if it has its registered office in Austria, as a custodian bank is subject to the provisions of Sections 41 to 45 of this Federal Act or the provisions laid down in Chapter IV and Chapter V Section 3 of Directive 2009/65/EC;

6. management company's home Member State: the Member State in which the management company has its registered office;



7. management company's host Member State: a Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;
8. UCITS' home Member State: the Member State in which the UCITS has been authorised in accordance with Article 5 of Directive 2009/65/EC;
9. UCITS' host Member State: a Member State, other than the UCITS' home Member State, in which the units of the UCITS are marketed;
10. branch: a place of business which is a part of the management company, which has no legal personality and which provides services for which the management company has been authorised; several places of business in the same host Member State shall be deemed one branch;
11. competent authorities: the authorities which each Member State designates under Article 97 of Directive 2009/65/EC;
12. durable medium: an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;
13. transferable securities:
  - a) shares in companies and other securities equivalent to shares in companies (shares);
  - b) bonds and other forms of securitised debt (debt securities);
  - c) any other negotiable securities which carry the right to acquire any such transferable securities as defined in this Federal Act by subscription or exchange, in accordance with Section 69, with the exception of the techniques and instruments referred to in Section 73;
14. money market instruments: instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time, in accordance with Section 70;
15. mergers: an operation whereby
  - a) one or more UCITS or investment compartments thereof (the "merging UCITS"), on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof (the "receiving UCITS") in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units (gross merger by acquisition);
  - b) two or more UCITS or investment compartments thereof (the "merging UCITS"), on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof (the "receiving UCITS") in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units (gross merger by the formation of a new UCITS);
  - c) one or more UCITS or investment compartments thereof (the "merging UCITS"), which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof (the "receiving UCITS") (net merger);
16. cross-border merger: a merger of UCITS
  - a) at least two of which have been authorised in different Member States, or
  - b) authorised in the same Member State into a newly constituted UCITS authorised in another Member State;
17. domestic merger: a merger between UCITS authorised in the same Member State where at least one of the involved UCITS has been notified in accordance with Section 139;
18. unit certificates: transferable securities that evidence co-ownership of the assets of the fund and the rights of the unit-holders in relation to the management company and the custodian bank and qualify as financial instruments as defined in Section 1 no. 7 (c) of the Securities Supervision Act 2018 – WAG 2018, Federal Law Gazette I No. 107/2017;
19. funds: UCITS in the form of a portfolio of assets in accordance with Section 2 (2) and alternative investment funds (AIF) in accordance with Section 3 (2) no. 31;
20. client: any natural or legal person, or any other undertaking including a UCITS or AIF, to whom a management company provides a service of collective portfolio management or services as referred to in Section 5 (2) no. 3 or 4;
21. relevant person: in relation to a management company, any of the following:
  - a) a shareholder or equivalent, or member of senior management of the management company,
  - b) an employee of the management company, as well as any other natural person whose services are placed at the disposal and under the control of the management company and who is involved in the provision by the management company of collective portfolio management, or

- c) a natural person who is directly involved in the provision of services to the management company under a delegation of functions to third parties for the purpose of the provision by the management company of collective portfolio management;
22. senior management: the persons who actually direct the business activities of the management company in accordance with Section 6 (2) no. 10;
23. supervisory function: the relevant persons or body or bodies responsible for the supervision of senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management practices of the policies, arrangements and procedures put in place to comply with the obligations under this Federal Act;
24. counterparty risk: the risk of loss for the UCITS resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow;
25. liquidity risk: the risk that a position in the UCITS' portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the UCITS to comply at any time with the repurchase and redemption obligation in accordance with Section 55 (2) is thereby compromised;
26. market risk: the risk of loss for the UCITS resulting from fluctuation in the market value of positions in the UCITS' portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's creditworthiness;
27. operational risk: the risk of loss for the UCITS resulting from inadequate internal processes and failures in relation to people and systems of the management company or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS;
28. reweighting of the portfolio: a significant modification of the composition of the portfolio of a UCITS;
29. synthetic risk and reward indicators: synthetic indicators within the meaning of Article 8 of Regulation (EU) No. 583/2010;
30. investment fund: a UCITS regardless of its legal form and AIF in accordance with no. 31;
31. alternative investment fund (AIF): collective investment undertakings that are constituted as portfolios of assets and authorised in accordance with Part 3 Chapter 1 which are divided into equal units evidenced by securities and jointly owned by the unit-holders;
32. index fund: a UCITS whose fund rules expressly provide that the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the Financial Market Authority (FMA);
33. key information document (KID): a document containing the key investor information in accordance with Art. 3 of Regulation (EU) No. 583/2010;
34. financial instrument: a financial instrument in accordance with Section 1 no. 7 of the Securities Supervision Act 2018.
35. sustainability risk: a sustainability risk as defined in Art. 2 number 22 of Regulation (EU) 2019/2088, OJ No. L 17 of 09 December 2019 p. 1, as amended by Regulation (EU) 2020/852, OJ No. L 198 of 22 June 2020 p. 13;
36. sustainability factors: sustainability factors as defined in Art. 2 number 24 of Regulation (EU) 2019/2088.

## **Derogations**

**Section 4.** If, under the fund rules or the instrument of incorporation, units may be sold only to the public in third countries or if units may not be sold to the public in Austria or in another Member State, Part 2 of this Federal Act shall not apply.

## **Part 2**

### **Management and supervision of UCITS**

#### **Chapter 1**

#### **Management companies**

## Article 1

### Conditions for taking up business

#### Licence requirement and scope of the licence

**Section 5.** (1) Performing the activities of a management company with its registered office in Austria shall require a licence by the FMA in accordance with Section 1 (1) no. 13 of the Banking Act in conjunction with Section 6 (2) of this Federal Act. A management company shall not perform any activities other than the activities referred to in subsection (2) and transactions required for the investment of its own assets, as well as activities that are directly related to the licence requirement.

(2) A management company may perform the following activities:

1. the management of UCITS in the context of collective portfolio management, which includes the following activities:

- a) investment management;
- b) administration:
  - aa) legal and fund management accounting services,
  - bb) customer inquiries,
  - cc) valuation and pricing (including tax returns),
  - dd) regulatory compliance monitoring,
  - ee) maintenance of the unit-holder register,
  - ff) distribution of income,
  - gg) unit issues and redemptions,
  - hh) contract settlements (including certificate dispatch),
- ii) record keeping;

c) marketing;

2. In addition to the management of UCITS in accordance with no. 1, the management of AIF in accordance with the Alternative Investment Fund Managers Act if the management company was granted a licence under the Alternative Investment Fund Managers Act in that respect;

3. In addition to the management of UCITS in accordance with no. 1 the management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Annex I Section C to Directive 2014/65/EU (Section 3 (2) no. 2 of the Securities Supervision Act 2018);

4. The following non-core activities:

a) Investment advice concerning one or more of the instruments listed in Annex I Section C to Directive 2014/65/EU;

b) Safe-keeping and administration in relation to units of UCITS.

(3) Under its licence as a management company, a management company shall not be permitted to only provide the services referred to in subsection (2) nos. 3 and 4 or to provide non-core services referred to in subsection (2) no. 4 without being authorised to provide the services referred to in subsection (2) no. 3. Section 1 (3) of the Banking Act shall not apply to management companies.

(4) The services listed in subsection (2) nos. 3 and 4 do not refer to services provided by a counterparty to the state, the central bank of a Member State or other national institutions with similar tasks in connection with the monetary policy, exchange rate policy, national debt policy and reserve policy of the Member State concerned.

#### Application for a licence and grant of the licence

**Section 6.** (1) The applicant shall enclose the information and documents referred to in Section 4 (3) nos. 1, 2, 4, 5, and 6 of the Banking Act with the application for a licence, as well as a programme of operations setting out the organisational structure of the management company, the planned strategies and procedures to monitor, control and limit the risks described in Section 86 (3), and the procedures and plans in accordance with Sections 86 to 89.

(2) A licence shall be granted if:

1. the undertaking is operated as a management company in the legal form of a stock corporation or a limited liability company;
2. the shares of the stock corporation are registered and the transfer of shares requires the consent of the supervisory board of the undertaking in accordance with the instrument of incorporation;
3. in the case of management companies organised in the form of a limited liability company, the instrument of incorporation specifies the appointment of a supervisory board;
4. in the case of management companies organised in the form of a limited liability company, the premium is to be allocated to a special reserve which may be used only to compensate for diminutions in value and to cover any other losses;
5. the initial capital is EUR 2.5 million and is freely available to the directors without limitations or charges in Austria; if the value of the fund assets belonging to the management company exceeds EUR 250 million, the company shall have additional Common Equity Tier 1 capital at its disposal (Part 2 Title I Chapter 2 of Regulation (EU) No. 575/2013). These additional own funds shall be equal to at least 0.02% of the amount by which the value of the portfolios of the management company exceeds EUR 250 million. However, if the additional own funds calculated in this way do not exceed the amount of EUR 2,375,000, it is not necessary to allocate additional capital. The maximum amount of additional own funds to be held is EUR 7.5 million. For the purposes of this provision, portfolios shall include UCITS and AIF as referred to in Section 5 (2) no. 2 managed by the management company, including investment funds for which it has delegated the management function to third parties, but excluding investment funds that it is managing under delegation; Sections 57 (5), 39a and 103 no. 9 (b) of the Banking Act and Parts 3, 5 and 8 of Regulation (EU) No. 575/2013 shall not be applicable to credit institutions which hold a licence pursuant to Section 1 (1) no. 13 of the Banking Act;
6. at least half of the paid-up share capital has been invested in trustee securities;
7. the management company has been established for an indefinite period;
8. the requirements of Arts. 21 and 24 of Commission Delegated Regulation (EU) 2016/438 are met;
10. on the basis of their prior education, all directors possess the professional qualifications and management experience and the experience necessary for operating the management company, and at least two directors possess sufficient practical and theoretical experience with regard to the type of the UCITS managed by the management company;
11. adequate and effective risk management policies, arrangements, processes and procedures in accordance with Section 86 (3) have been provided for;
12. in the event of the performance of activities referred to in Section 5 (2) no. 3 or nos. 3 and 4
  - a) the initial capital is freely available to the directors without limitations in Austria in the amount to be calculated in accordance with Section 10 (5) no. 1 of the Securities Supervision Act 2018;
  - b) in addition to the requirements of no. 10, the directors meet the requirements in accordance with Section 3 (5) no. 3 of the Securities Supervision Act 2018;
  - c) the conditions of Section 3 (5) no. 4 of the Securities Supervision Act 2018 are complied with;
13. and the requirements of Section 5 (1) nos. 2 to 4a, 6, 7 and 9 to 14 of the Banking Act are met.

(3) Within six months of receipt of the application or, if the application is incomplete, within six months after submission of all information required for the official notice, the FMA shall either grant the applicant the licence or inform the applicant of the rejection of the application in writing by official notice. The licence shall be granted in writing, otherwise it shall be rendered void; licences may be issued subject to the appropriate conditions and requirements, and shall also stipulate to which extent the management company is entitled to provide services referred to in Section 5 (2) nos. 2 to 4 and, where relevant, which types of UCITS its authorisation for collective portfolio management extends to.

(4) Sections 5 (2) first and third sentences of the Banking Act and Section 160 (1) of this Federal Act shall be applied to the procedure for the grant of a licence.

### **Revocation and lapse of licences**

**Section 7.** (1) In addition to the reasons set forth in Section 6 of the Banking Act, the FMA shall revoke the licence if

1. the requirements for the grant of a licence are no longer fulfilled (Section 148 (5) of this Federal Act in conjunction with Section 70 (4) no. 3 of the Banking Act);
2. the provisions on own funds (Section 8) are not complied with;
3. functions are delegated to third parties in a manner or to an extent that the management company becomes a letter-box entity (Section 28 (2)); or

4. the management company has seriously or repeatedly violated this Federal Act or the regulations adopted pursuant to Directive 2009/65/EC; in that event, the procedure in accordance with Section 70 (4) of the Banking Act shall also be applied.

(2) In respect of the lapse of a licence, Sections 7 and 7a of the Banking Act shall apply.

(3) A management company may not decide on its winding-up before its right to manage all UCITS has ended in accordance with Section 60.

## **Article 2**

### **Operating conditions**

#### **Own funds**

**Section 8.** (1) The own funds of the management company shall at no time be less than the amount referred to in Section 6 (2) no. 5; otherwise the FMA shall proceed in accordance with Section 70 (4) of the Banking Act.

(2) Irrespective of the requirement concerning own funds in accordance with subsection (1), the own funds of the management company shall at no time be less than the amount to be calculated in accordance with Section 10 (5) no. 1 of the Securities Supervision Act 2018.

#### **State commissioners**

**Section 9.** The Federal Minister of Finance shall appoint a state commissioner and a deputy state commissioner for each management company for a maximum term of five years; reappointments shall be permissible. The state commissioners and their deputies shall act as functionaries of the FMA and, in this capacity, shall exclusively be subject to the instructions of the FMA. Section 76 (2) to (9) of the Banking Act shall be applied.

#### **General organisational requirements**

**Section 10.** (1) A management company shall

1. establish, implement on an ongoing basis and maintain decision-making procedures and an organisational structure that clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
2. ensure that all relevant persons are familiar with the procedures which must be followed for the proper discharge of their responsibilities;
3. establish and maintain on an ongoing basis adequate internal control mechanisms designed to ensure compliance with decisions and procedures at all levels of the management company;
4. establish and ensure on an ongoing basis effective internal reporting and communication of information at all relevant levels as well as effective information flows with any third party involved;
5. maintain adequate and orderly records of its business and internal organisation;
6. ensure that responsibilities are discharged by employees who have the necessary skills, knowledge and expertise;
7. ensure the necessary resources and expertise required to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risks associated with those arrangements;
8. ensure that functions are performed properly, honestly and professionally even if relevant persons have been entrusted with multiple functions.
9. ensure the necessary resources and expertise required to guarantee the effective integration of sustainability risks;
10. also take into account sustainability risks in fulfilling the requirements in nos. 1 to 5;
11. integrate sustainability risks in the management of UCITS.

In this context the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken shall be taken into account.

(2) Furthermore, the management company shall establish and implement on an ongoing basis systems and procedures that are adequate to safeguard the security, integrity and confidential nature of information, taking into account the nature of the information in question. The relevant provisions on data protection shall be complied with.

(3) The management company shall take reasonable steps to ensure the continuity and regularity of the business activities. For that purpose, it shall establish appropriate systems, resources and procedures and take other reasonable steps ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions,

and the maintenance of services and activities. Where that is not possible, such data and functions shall be able to be recovered in a timely manner so that its investment services and activities can be resumed in a timely manner.

(4) The adequacy and effectiveness of the systems, internal control mechanisms and arrangements established in accordance with subsections (1) to (3) shall be monitored and evaluated on a regular basis, and appropriate measures to remedy any deficiencies shall be taken.

(5) Furthermore, management companies that are also entitled to provide services referred to in Section 5 (2) no. 3 or 4 shall comply with the provisions referred to in Art. 1 (1) of Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ No. L 87, p. 1, as well as Sections 33, 38 to 60, Section 62 (1) to (3) and Sections 94 to 96 of the Securities Supervision Act 2018 in respect of such activities. Moreover, management companies that also market units not managed by themselves shall comply with Sections 47 to 67, 69 and 70 of the Securities Supervision Act 2018, Arts. 36 and 44 to 70 of Commission Delegated Regulation (EU) 2017/565 as well as Art. 25 of Regulation (EU) No. 600/2014 in respect of such activities.

(6) Management companies shall comply with Sections 2, 20 to 21, 28 to 28b, 29 to 30, 35 to 39, 41, 43 (1), (2) and (3), 44 to 68, 70a, 74 to 76, 81 to 91, 99g (1) and 103q of the Banking Act as well as Parts 1 and 2 of Regulation (EU) No. 575/2013 and Part 3 of the Deposit Guarantee and Investor Compensation Act – ESAEG, Federal Law Gazette I No. 117/2015. Sections 28a (5a) to (5c), 39 (3), (4), (5) last sentence and (6), 57 (5) and 74 (1) in conjunction with 74 (6) no. 3 (a) as well as 75 of the Banking Act shall not be applicable.

### **Investor complaints**

**Section 11.** (1) The management company shall establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors. Each complaint and the measures taken for its resolution shall be recorded, and the records shall be kept.

(2) Filing a complaint shall be free of charge for investors. Information on the procedures referred to in subsection (1) shall be provided to investors free of charge.

(3) If the UCITS managed by the management company has been authorised in another Member State, the management company shall take measures in accordance with Section 141 (1) and establish appropriate procedures and arrangements to ensure that it deals properly with investor complaints and that there are no restrictions on investors exercising their rights. Those measures shall allow investors to file complaints in the official language or one of the official languages of the home Member State and, if applicable, the host Member State of the UCITS.

(4) The management company shall also establish appropriate procedures and arrangements to make information available at the request of the investors, other interested persons or bodies or the competent authorities of the UCITS' home Member State, in particular information in accordance with Section 38 (1) for competent authorities.

(5) Taking into account the guidelines and recommendations of the European Securities and Markets Authority – ESMA (Regulation (EU) No. 1095/2010), the FMA can establish, by way of regulation, the criteria that effective and transparent procedures pursuant to subsection (1) must fulfil in any event with regard to the complaints management function of the management company and internal follow-up of complaints handling.

(6) Section 74 (1) of the Banking Act in conjunction with Section 74 (6) no. 3 (c) of the Banking Act shall be applied subject to the provision that compliance with the obligations pursuant to subsections (1) to (5) can be assessed and monitored as well.

### **Electronic records**

**Section 12.** (1) The management company shall make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction and subscription or repurchase order in order to be able to comply with Sections 19, 20 and 31 to 33.

(2) During electronic data processing, the management company shall ensure a high level of security as well as integrity and confidentiality of the recorded information. The relevant provisions on data protection shall be complied with.

## **Accounting policies and procedures of the management company**

**Section 13.**(1) To protect the unit-holders, the management company shall establish, implement and maintain on an ongoing basis accounting policies and procedures that enable it, at the request of the FMA, to deliver in a timely manner to the FMA financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules. The management company shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of such policies and methods and arrangements, and take appropriate measures to remedy any deficiencies.

(2) With regard to the accounting of the UCITS, the management company shall

1. establish, implement and maintain accounting policies and procedures in accordance with the accounting rules of the home Member States of the respective UCITS managed by it to ensure

a) that the calculation of the net asset value of each UCITS is accurately effected on the basis of the accounting, and

b) that subscription and repurchase orders can be properly executed at that net asset value;

2. establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS that is consistent with Section 57.

UCITS accounting shall be kept in such a way that all assets and liabilities of the UCITS can be directly identified at all times. If a UCITS has different investment compartments, separate accounts shall be maintained for those investment compartments. With regard to UCITS approved by the FMA, Section 49 shall be taken into account.

(4) The UCITS managed for the unit-holders by the management company and the total assets of these UCITS shall be published together with the annual accounts of the management company.

## **Control by senior management and the supervisory board**

**Section 14.** (1) Senior management and, where relevant, the supervisory board shall be responsible for the management company's compliance with its obligations under this Federal Act and other relevant federal acts and under the regulations adopted pursuant to these federal acts and EU regulations adopted pursuant to Directive 2009/65/EC. Functions within the management company shall be allocated accordingly.

(2) Senior management shall

1. be responsible, in particular, for the implementation of the general investment policy for each managed UCITS, as defined in the prospectus and the fund rules or the instrument of incorporation of the investment company in accordance with Art. 1 (3) of Directive 2009/65/EC;

2. oversee the authorisation of investment strategies for each managed UCITS;

3. be responsible, in particular, to ensure that the management company has a permanent and effective compliance function (Section 15), even if this function has been delegated to a third party in accordance with Section 28;

4. ensure and verify on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function (Section 17) has been delegated to a third party in accordance with Section 28;

5. approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;

6. approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in Section 86 (1) and (2), including the risk limit system for each managed UCITS;

7. assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations stipulated in this Federal Act and in other relevant federal acts and regulations adopted pursuant to these federal acts and EU regulations adopted pursuant to Directive 2009/65/EC;

8. take appropriate measures to address any deficiencies.

9. be responsible for taking into account sustainability risks in performing the activities set forth in nos. 1 to 8.

(3) The obligations in accordance with subsection (2) nos. 7 and 8 shall be subject to the additional supervisory review by the supervisory board.

(4) In connection with its obligations in accordance with subsections (1) and (2), senior management shall also be provided with the following reports:

1. regular reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in subsection (2) nos. 2 to 5; and
2. written reports on a regular basis, but at least annually, on matters of compliance, internal audit (Section 16) and risk management (Section 17), indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

(5) The reports referred to in subsection (4) no. 2 shall be regularly provided to the supervisory board. The FMA may specify by way of regulation to which extent, in which period and in which form the reports in accordance with subsection (4) shall be provided to senior management and the supervisory board. In that context, the FMA shall take into consideration European practices in this area.

## **Compliance**

**Section 15.** (1) The management company shall

1. establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the management company to comply with its obligations under this Federal Act and under the EU regulations adopted pursuant to Directive 2009/65/EC, as well as the associated risks, and
2. put in place adequate measures and procedures designed to minimise the risk in accordance with no. 1 and to enable the FMA to exercise its powers effectively.

In that regard, the nature, scale and complexity of the business, and the nature and range of services and activities undertaken in the course of that business shall be taken into account.

(2) The management company shall establish and maintain an effective and independent compliance function which has the following responsibilities:

1. to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with subsection (1), and the measures taken to address any deficiencies;
2. to advise and assist the relevant persons responsible for carrying out services and activities to comply with the management company's obligations under this Federal Act and under the regulations adopted pursuant to this Federal Act and under the EU regulations adopted pursuant to Directive 2009/65/EC.

(3) In order to enable the compliance function to discharge its responsibilities properly and independently, the management company shall ensure that

1. the compliance function has the necessary authority, resources, expertise and access to all relevant information;
2. a compliance officer is appointed and is responsible for the compliance function and for any reporting on a regular basis, but at least annually, to the senior management on matters of compliance, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;
3. the relevant persons involved in these functions are not involved in the performance of services or activities they monitor;
4. the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.

(4) The requirements referred to in subsection (3) nos. 3 and 4 shall not be required to be met if the management company is able to demonstrate that, in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, such requirements are not proportionate and that its compliance function continues to be effective.

## **Internal audit**

**Section 16.** (1) The management company shall establish a permanent internal audit function which reports directly to the directors and serves the exclusive purpose of ongoing and comprehensive reviews of the legal compliance, adequacy and suitability of the entire undertaking and, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of collective portfolio management activities undertaken in the course of that business, is separate and independent from the other functions and activities of the management company. The duties of the internal audit function must not be entrusted to persons with regard to whom reasons for exclusion exist.



(2) Circumstances which make the proper performance of the duties of the internal audit function appear improbable shall be regarded as reasons for exclusion. In particular, reasons for exclusion shall be considered to exist if

1. the persons in question lack the required expertise and experience in investment funds; and
2. the objective performance of this function may be compromised, especially if the persons in question have been appointed as bank auditors at the same management company or if one of the reasons for exclusion as bank auditors of the management company indicated in Section 62 nos. 6, 12 and 13 of the Banking Act would apply to these persons due to their activities in the internal audit function.

(3) The internal audit function shall have the following responsibilities:

1. to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the management company's systems, internal control mechanisms and arrangements;
2. to issue recommendations based on the result of work carried out in accordance with no. 1;
3. to verify compliance with the recommendations referred to in no. 2;
4. to prepare reports on internal audit matters in accordance with Section 14 (4) no. 2.

(4) Instructions involving the internal audit function shall be made jointly by a minimum of two directors. The internal audit function shall also review the following:

1. the accuracy and completeness of the content of notifications and reports to the FMA and to Oesterreichische Nationalbank;
2. compliance with Section 41 of the Banking Act and the provisions of the Financial Markets Anti-Money Laundering Act – FM-GwG (Federal Law Gazette I No. 118/2016);
3. the suitability and enforcement of the procedures referred to in Section 39 (2) of the Banking Act.

(5) The internal audit function shall prepare an annual audit plan and conduct its audits according to this plan. In addition, the internal audit function shall also carry out unscheduled audits whenever necessary.

### **Risk management**

**Section 17.**(1) The management company shall establish a permanent risk management function which shall be hierarchically and functionally independent from operating units, where this is appropriate and proportionate in view of the nature, scale and complexity of the UCITS managed by the management company.

(2) A management company shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management practices satisfy the requirements of Chapter 3 Article 4.

(3) The permanent risk management function shall:

1. implement the risk management policies and procedures;
2. ensure compliance with the UCITS' risk limits, including statutory limits concerning global exposure and counterparty risk in accordance with Sections 89, 90 and 91;
3. provide advice to the senior management as regards the identification of the risk profile of each managed UCITS;
4. provide regular reports to the senior management and the supervisory board on the following:
  - a) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS;
  - b) the compliance of each managed UCITS with the respective risk limits;
  - c) the adequacy and effectiveness of the risk management practices, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
5. provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;
6. review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in Section 92.

(4) The permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in subsection (3).

## Remuneration policies and practices

**Section 17a.** (1) The management company shall establish remuneration policies and practices for categories of staff, including directors, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of directors and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage. The remuneration policies and practices must be consistent with, and promote, sound and effective risk management and must neither encourage risk taking which is inconsistent with the risk profiles or fund rules of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interests of the UCITS.

(2) The remuneration policies and practices shall include fixed and variable remuneration components and discretionary pension benefits.

## Remuneration committee

**Section 17b.**(1) In management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities, the supervisory board shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgement on remuneration policies and practices and the incentives created for managing risk. The tasks of the remuneration committee include preparing resolutions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be passed by the supervisory board, and overseeing the remuneration of the senior officers in the risk management and compliance functions.

(2) The composition of the remuneration committee shall allow independent and unbiased assessment of the establishment and application of the remuneration policies and practices. The remuneration committee shall consist of at least three members of the supervisory board, and at least one these persons must have expert knowledge and practical experience in the area of remuneration policy (remuneration expert). In the event that, pursuant to Section 110 of the Collective Labour Relations Act – ArbVG, Federal Law Gazette No. 22/1974, one or more employee representatives are required to participate in the management company's supervisory board, at least one member of the group of employee representatives shall be on the remuneration committee.

(3) The remuneration committee shall hold at least one meeting a year.

## Principles governing remuneration policies

**Section 17c.** (1) When establishing and applying the remuneration policies referred to in Section 17a (1) and (2), management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

1. the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, fund rules or instruments of incorporation of the UCITS that the management company manages;
2. the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the unit-holders of such UCITS, and includes measures to avoid conflicts of interest;
3. the remuneration policy is adopted by the supervisory board of the management company; that board adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation;
4. the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the supervisory board;
5. staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;
6. where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;
7. the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the unit-holders of the UCITS managed by the management company in order to

ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;

8. guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;

9. the fixed and variable components of the overall remuneration are proportionate to one another, with the share of overall remuneration accounted for by the fixed component being high enough to afford complete flexibility with regard to the variable remuneration components, including forgoing the payment of a variable component altogether;

9a. payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

10. the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

11. subject to the legal structure of the UCITS and its fund rules, a substantial portion, and in any event at least 50%, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or unit-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this provision, unless the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, in which case the minimum of 50% does not apply;

12. the instruments referred to in no. 11 shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the unit-holders of such UCITS;

13. a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the unit-holders of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question;

14. the period pursuant to no. 13 shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount shall be deferred;

15. the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

16. the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

17. the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages;

18. if the employee leaves the management company before retirement, discretionary retirement benefits shall be held by the management company for a period of five years in the form of instruments referred to in no. 11. In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in no. 11, subject to a five-year retention period;

19. staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

20. variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in this Federal Act.

(2) the principles set out in subsection (1) shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on its risk profile or the risk profile of the UCITS that they manage.

(3) Taking into account European practices, the FMA can, by way of regulation, establish more detailed criteria with regard to the staff categories pursuant to Section 17a (1), to which the remuneration policies and practices must be applied in any event, the criteria to assess the

significance of a management company and the principles governing remuneration policies referred to in Section 17c (1).

### **Personal transactions**

**Section 18.** (1) The management company shall establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Art. 7 (1) to (4) of Regulation (EU) No. 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ No. L 173 of 12 June 2014, p. 1, or to other confidential information relating to UCITS or transactions with or for UCITS by virtue of an activity carried out by that person on behalf of the management company:

1. entering into a personal transaction (Art. 28 of Commission Delegated Regulation (EU) 2017/565) which fulfils at least one of the following criteria:

a) that person is prohibited from entering into a personal transaction that infringes a prohibition pursuant to Art. 8, 10 or 12 or Chapter 3 of Regulation (EU) No. 596/2014;

b) it relates to the misuse or improper disclosure of confidential information;

c) it conflicts or is likely to conflict with an obligation of the management company under this Federal Act, the Securities Supervision Act 2018 or a regulation adopted in accordance with Directive 2009/65/EC or Directive 2014/65/EC;

2. advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction (Art. 28 of Commission Delegated Regulation (EU) 2017/565) of the relevant person, would be covered by no. 1 or by point (a) or (b) of Art. 37 (2) of Commission Delegated Regulation (EU) 2017/565, or would otherwise constitute a misuse of information relating to pending orders;

3. disclosing, other than in the normal course of his employment or contract for services and without prejudice to Section 153 (1) no. 2 of the Stock Exchange Act 2018 – BörseG 2018, Federal Law Gazette I No. 107/2017, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

a) to enter into a transaction in financial instruments which, if a personal transaction (Art. 28 of Commission Delegated Regulation (EU) 2017/565) of the relevant person, would be covered by no. 1 or by point (a) or (b) of Art. 37 (2) of Commission Delegated Regulation (EU) 2017/565, or would otherwise constitute a misuse of information relating to pending orders;

b) advise another person to enter into such a transaction or assist them in entering into such a transaction.

(2) The arrangements required under subsection (1) shall in particular be designed to ensure that:

1. every relevant person falling under subsection (1) is aware of the restrictions on personal transactions (Art. 28 of Commission Delegated Regulation (EU) 2017/565) and of the measures established by the management company in connection with personal transactions and disclosure, in accordance with subsection (1).

2. the management company is informed promptly of any personal transaction (Art. 28 of Commission Delegated Regulation (EU) 2017/565) entered into by a relevant person, either by notification of that transaction or by other procedures enabling the management company to identify such transactions.

3. a record is kept of the personal transaction (Art. 28 of Commission Delegated Regulation (EU) 2017/565) notified to the management company or identified by it, including any authorisation or prohibition in conjunction with such a transaction.

(3) For the purposes of subsection (2) no. 2, where certain activities are performed by third parties (Section 28), the management company shall ensure that the entity performing the activity maintains a record of personal transactions (Art. 28 of Commission Delegated Regulation (EU) 2017/565) entered into by any relevant person and provides that information to the management company promptly upon request.

(4) Subsections (1) and (2) shall not apply to:

1. personal transactions effected under a discretionary portfolio management service agreement where there is no prior communication in conjunction with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

2. personal transactions in UCITS or units in collective investment undertakings that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in

their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

### **Recording of portfolio transactions**

**Section 19.** (1) The management company shall ensure, for each portfolio transaction relating to UCITS, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

(2) The record referred to in subsection (1) shall include:

1. the name or other designation of the UCITS and of the person acting for the account of the UCITS;
2. the details necessary to identify the instrument in question;
3. the quantity;
4. the type of the order or transaction;
5. the price;
6. for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;
7. the name of the person transmitting the order or executing the transaction;
8. where applicable, the reasons for the revocation of an order;
9. for executed transactions, the counterparty and execution venue identification.

(3) For the purposes of subsection (2) no. 9, an “execution venue” shall mean a regulated market as referred to in Section 1 (2) of the Stock Exchange Act 2018, a multilateral trading facility as referred to in Section 1 no. 24 of the Securities Supervision Act 2018, an organised trading facility as referred to in Section 1 no. 25 of the Securities Supervision Act 2018, a systematic internaliser as referred to in Section 1 no. 28 of the Securities Supervision Act 2018, or a market maker (Section 52 of the Stock Exchange Act 2018) or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

### **Recording of subscription and repurchase orders**

**Section 20.** (1) The management company shall take all reasonable steps to ensure that the received UCITS subscription and repurchase orders are centralised and recorded immediately after receipt of any such order.

(2) The following information shall be recorded:

1. the relevant UCITS;
2. the person giving or transmitting the order;
3. the person receiving the order;
4. the date and time of the order;
5. the terms and means of payment;
6. the type of the order;
7. the date of execution of the order;
8. the number of units subscribed or repurchased;
9. the subscription or repurchase price for each unit;
10. the total subscription or repurchase value of the units;
11. the gross value of the order including charges for subscription or net amount after charges for repurchase.

### **Record-keeping requirements**

**Section 21.** (1) The management company shall retain the records referred to in Sections 19 and 20 for a period of at least five years.

(2) In exceptional circumstances, the FMA may require management companies to retain any or all of those records for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the FMA to exercise its supervisory function under this Federal Act or under EU regulations adopted pursuant to Directive 2009/65/EC.

(3) In the official notice of its decision on the revocation of the licence, the FMA may stipulate that records shall be retained until the lapse of a term of a maximum period of five years.

(4) Where the management company transfers its responsibilities in accordance with Section 61 or 62 (2) in relation to the UCITS to another management company, the FMA may require that arrangements are made that such records for the past five years are accessible to that company.

(5) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the FMA, and in such a form and manner that the following requirements are met:

1. the FMA must be able to access the records readily and to reconstitute each key stage of the processing of each portfolio transaction;
2. it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
3. it must not be possible for the records to be otherwise manipulated or altered.

### **Criteria for the identification of conflicts of interest**

**Section 22.** (1) The management company shall identify the types of conflicts of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS and shall take into account:

1. the interests of the management company, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the management company towards the UCITS;
2. the interests of two or more managed UCITS.

(2) Furthermore, the management company, when identifying conflicts of interest, shall take into account, by way of minimum criteria, the question of whether the management company, a relevant person or a person directly or indirectly linked by way of control to the management company is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

1. there is the risk that the management company or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;
2. the management company or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or another client, which is distinct from the UCITS' interest in that outcome;
3. the management company or that person has a financial or other incentive to favour the interests of another client or group of clients over the interests of the UCITS;
4. the management company or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;
5. the management company or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS in the form of monies, goods or services, in addition to the standard commission or fee for that service.

(3) When identifying the types of conflicts of interest that could damage the interests of the UCITS, the management company shall also take into account conflicts of interest that could arise due to the integration of sustainability risks into its processes, systems and system of internal controls.

### **Conflicts of interest policy**

**Section 23.** (1) The management company shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the management company and the nature, scale and complexity of its business.

(2) Where the management company is a member of a group, the policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

(3) The conflicts of interest policy established in accordance with subsections (1) and (2) shall identify:

1. with reference to the collective portfolio management activities carried out by or on behalf of the management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients;
2. procedures to be followed and measures to be adopted in order to manage such conflicts.

## **Independence in conflict management**

**Section 24.** (1) The procedures and measures referred to in Section 23 (3) no. 2 shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry out those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients. Furthermore, the procedures and measures shall include, where necessary and appropriate for the management company to ensure the requisite degree of independence, the following:

1. effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
2. the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict or who otherwise represent different interests that may conflict, including those of the management company;
3. the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
4. measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;
5. measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

(2) Where the adoption or the practice of one or more of those measures and procedures referred to in subsection (1) does not ensure the requisite degree of independence, the management companies shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

## **Management of activities giving rise to a potentially detrimental conflict of interest**

**Section 25.** (1) The management company shall keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest entailing a material risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

(2) Where the organisational or administrative arrangements made by the management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unit-holders will be prevented, the senior management or other competent internal body of the management company shall be promptly informed in order for it to take any necessary decision to ensure that in any case the management company acts in the best interests of the UCITS and of its unit-holders. The management company shall inform investors in accordance with Section 132 (2).

## **Strategies for the exercise of voting rights in respect of investments**

**Section 26.** (1) The management company shall develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised to the exclusive benefit of the UCITS concerned.

(2) The strategies referred to in subsection (1) shall determine measures and procedures for

1. monitoring relevant corporate events;
2. ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS;
3. preventing or managing any conflicts of interest arising from the exercise of voting rights.

## **Investor protection in the case of individual portfolio management**

**Section 27.** A management company whose licence also covers discretionary portfolio management services in accordance with Section 5 (2) no. 3

1. shall not be permitted to invest all or a part of the investor's portfolio in UCITS it manages, unless it receives prior general approval from the client; and

2. shall be subject, with regard to the services referred to in Section 5 (2) no. 3, to the provisions set out in Section 45 (1) of the Deposit Guarantee and Investor Compensation Act.

### **Delegation of functions of the management company to third parties**

**Section 28.** (1) The management company shall be allowed to delegate to third parties for the purpose of a more efficient conduct of the company's business one or more of its functions in accordance with Section 5 (2). The third party shall act for the account of the unit-holders. The following preconditions shall be complied with:

1. the management company shall notify the FMA of the delegation without delay in accordance with Section 151; the FMA shall, without delay, transmit the information to the competent authorities of the UCITS' home Member State in accordance with Section 161;
2. the mandate must not impair the effectiveness of supervision over the management company in any way, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the interest of its investors;
3. where the delegation concerns collective portfolio management, the mandate may be given only to undertakings which are licensed or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment allocation criteria periodically laid down by the management company;
4. where the mandate concerns collective portfolio management and is given to a third-country undertaking, cooperation between the FMA and the supervisory authorities concerned must be ensured;
5. a mandate with regard to the core function of collective portfolio management (Section 5 (2) no.1 (a)) must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;
6. it must be ensured that the management company is able to monitor effectively at any time the activity of the undertaking to which the mandate is given;
7. it must be ensured that the management company can give further instructions to the undertaking to which functions have been delegated at any time or to withdraw the mandate with immediate effect when this is in the interest of investors;
8. having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question;
9. the UCITS' prospectuses (Section 131) must list the functions delegated;
10. if risk management functions are delegated to third parties, Section 30 (3) shall additionally be complied with.

(2) The obligations of the management company and the obligations of the custodian bank in accordance with this Federal Act shall not be affected by such delegation. The management company shall be liable for the acts of the third party as for its own acts. The management company shall not delegate its functions to the extent that it becomes a letter-box entity; a letter-box entity shall be assumed to exist if the management company delegates most of its business activity to third parties.

### **Duty to act in the best interests of UCITS and their unit-holders**

**Section 29.** (1) The management company shall treat unit-holders of managed UCITS equally and shall refrain from placing the interests of any group of unit-holders above the interests of any other group of unit-holders.

(2) The management company shall apply appropriate policies and procedures for preventing malpractices and practices that might reasonably be expected to affect the stability and integrity of the financial market.

(3) In respect of its duty to act in the best interests of the unit-holders, the management company shall ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS it manages and prevent disproportionately high costs being charged to the UCITS and its unit-holders. The management company shall ensure that the UCITS' portfolios are accurately valued. If the management company manages UCITS established in Austria, Sections 57 to 59 shall be complied with. The management company shall try to avoid conflicts of interests and, when they cannot be avoided, ensure that the funds it manages are fairly treated.

(4) The management company shall be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations



set out in the fund rules or in the instrument of incorporation, as well as with the obligations set out in the prospectus.

(5) In performing its tasks, the management company shall act honestly, fairly, professionally, independently and solely in the interest of the UCITS and of the unit-holders of the UCITS.

### **Due diligence requirements**

**Section 30.** (1) The management company shall ensure special diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market. The management company shall also ensure that it has adequate knowledge and understanding of the assets in which the UCITS are invested. The management company shall establish written policies and procedures on compliance with due diligence requirements and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.

(2) When implementing its risk management policies (Section 86), and where it is appropriate after taking into account the nature of a foreseen investment, the management company shall formulate forecasts and perform analyses concerning the investment's contribution to the composition of the UCITS' portfolio, liquidity, and risk and reward profile before carrying out the investment. The analyses shall only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

(3) The management company shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties (Section 28) in relation to the performance of risk management activities. Before entering into such arrangements, the management company shall verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The management company shall also establish methods for the ongoing assessment of the standard of performance of the third party.

(4) The management company shall comply with all provisions applicable to the performance of its activities in the best interests of its investors and the integrity of the market. The management company shall also provide all information to investors so that investors can meet their disclosure and evidential requirements under tax law.

(5) The management company shall establish appropriate and documented procedures and arrangements to enable the rapid replacement of the custodian bank in case the custodian bank can no longer ensure the fulfilment of its tasks.

(6) Management companies shall take sustainability risks into account in fulfilling the requirements in subsections (1) to (3).

(7) Management companies that take into account the principal adverse impacts of investment decisions on sustainability factors in accordance with Art. 4 (1) letter a of Regulation (EU) 2019/2088 or in accordance with Art. 4 (3) and (4) of this Regulation shall take these principle adverse impacts into account in fulfilling the requirements in subsections (1) to (4).

### **Handling of subscription and repurchase orders, and disclosure requirements**

**Section 31.** (1) Where a management company has carried out a subscription or repurchase order from a unit-holder, the management company shall notify the unit-holder, by means of a durable medium in accordance with Section 133, confirming execution of the order as soon as possible, but no later than the first business day following execution or, where the confirmation is received by the management company from a third party, no later than the first business day following receipt of the confirmation from the third party. Where another person is obligated to promptly dispatch such information to the unit-holder, the management company shall not be required to notify the unit-holder.

(2) The notice referred to in subsection (1) shall, where applicable, include the following information:

1. the management company identification;
2. the name or other designation of the unit-holder;
3. the date and time of receipt of the order and method of payment;
4. the date of execution;
5. the UCITS' identification;
6. the nature of the order (subscription or repurchase);

7. the number of units involved;
8. the unit value at which the units were subscribed or repurchased;
9. the reference value date;
10. the gross value of the order including charges for subscription or net amount after charges for repurchase;
11. a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

(3) Where orders for a unit-holder are executed regularly, the management company shall provide the unit-holder with the information referred to in subsection (2) either in accordance with subsection (1) or at least once every six months in respect of the transactions concerning this period.

(4) The management company shall supply the unit-holder, upon request, with information about the status of his order in accordance with Section 133.

### **Best execution of decisions to deal on behalf of the managed UCITS**

**Section 32.** (1) The management company shall act in the best interests of the UCITS it manages

1. when executing decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios, or

2. when placing orders to deal on behalf of the managed UCITS with other entities for execution in the context of the management of their portfolios

and take all reasonable steps to obtain the best possible result for the UCITS, taking into account as factors the price, costs, speed and likelihood of execution and settlement, size, and nature of the order or any other consideration relevant to the execution of the order.

(2) The relative importance of the factors referred to in subsection (1) shall be determined by reference to the following criteria:

1. the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or as the case may be in the fund rules or instrument of incorporation of the UCITS;

2. the characteristics of the order;

3. the characteristics of the financial instruments that are the subject of that order;

4. the characteristics of the execution venues (Section 19 (3)) to which that order can be directed.

(3) The management company shall establish and implement effective arrangements for complying with the obligation referred to in subsection (1) and, in particular, shall establish and implement a policy to allow the management company to obtain, for UCITS orders, the best possible result in accordance with subsection (1). For the purposes of subsection (1) no. 2 the policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The management company shall only enter into arrangements for execution in accordance with subsection (1) no. 2 where such arrangements are consistent with the obligations laid down in this provision.

(4) If the management company manages a UCITS in the legal form of an investment company, the management company shall obtain the prior consent of the investment company on the execution policy.

(5) The management company shall monitor on a regular basis the effectiveness of its arrangements and policy for the execution of orders established as referred to in subsection (3) and, in the case of subsection (1) no. 2, in particular, the execution quality of the entities identified in that policy in order to identify and, where appropriate, correct any deficiencies. In addition, the management company shall review its execution policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

(6) The management company shall be able to demonstrate that, in the case of subsection (1) no. 1, it has executed orders on behalf of UCITS in accordance with its execution policy and, in the case of subsection (1) no. 2, that it has placed orders on behalf of UCITS in accordance with the policy established pursuant to subsection (3).

## **General principles for handling orders in the context of collective portfolio management**

**Section 33.** (1) The management company shall establish and implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of UCITS and satisfy the following conditions:

1. they ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated to the respective UCITS;
2. otherwise comparable UCITS orders are executed sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impossible, or the interests of the UCITS require otherwise.

(2) The management company shall ensure that financial instruments or sums of money received in settlement of the executed orders are promptly and correctly delivered to the account of the appropriate UCITS.

(3) The management company shall not misuse information relating to pending UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

### **Aggregation and allocation of trading orders**

**Section 34.** (1) The management company shall not be permitted to carry out a UCITS' order in aggregate with an order of another UCITS or another client or with an order for its own account, unless the following conditions are met:

1. it must be unlikely that the aggregation of orders will work overall to the disadvantage of any UCITS or client whose order is to be aggregated;
2. an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and how to treat partial executions.

(2) Where a management company aggregates a UCITS' order with one or more orders of other UCITS or clients and the aggregated order is partially executed, the management company shall allocate the related trades in accordance with its order allocation policy.

(3) Where a management company has aggregated transactions for its own account with one or more orders of UCITS or other clients, the management company shall not allocate the related trades in a way that is detrimental to the UCITS or other client.

(4) Where a management company aggregates an order of a UCITS or another client with a transaction for its own account and the aggregated order is partially executed, the management company shall allocate the related trades to the UCITS or other client in priority over those for its own account. However, if the management company is able to demonstrate to the UCITS or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for its own account proportionally, in accordance with the policy referred to in subsection (1) no. 2.

### **Granting and accepting inducements to the disadvantage of the UCITS**

**Section 35.** (1) The management company shall not be regarded as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the portfolio management for the UCITS, it pays or is paid any fee or commission, or provides or accepts any non-monetary benefit.

(2) Without prejudice to subsection (1), accepting or granting inducements shall be permitted if the inducement concerns

1. a fee, commission or non-monetary benefit that is paid or provided to the UCITS or a person acting on behalf of the UCITS, or that is paid or provided by the UCITS or a person acting on behalf of the UCITS;
2. a fee, commission or non-monetary benefit that is paid or provided to a third party or a person acting on behalf of a third party, or that is paid or provided by such a person where the following conditions are satisfied:

a) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;

b) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;

3. it involves fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the management company's duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.

(3) The management company, for the purposes of subsection (2) no. 2 (a), may disclose the essential terms of the arrangements relating to the fees, commissions or non-monetary benefits in summary form. The management company shall disclose further details at the request of the unit-holder.

### **Article 3**

#### **Freedom of establishment and freedom to provide services**

##### **Management companies from Member States in Austria**

**Section 36.** (1) The activities of a management company, as referred to in Section 5 (2), may be pursued by a management company in accordance with Art. 6 of Directive 2009/65/EC, which is licensed in another Member State, in Austria through a branch or under the freedom to provide services in accordance with Directive 2009/65/EC to the extent it is entitled to do so under its licence. Where a management company proposes to perform collective portfolio management of UCITS authorised in Austria, the management company shall file an application with the FMA in accordance with Section 50 (3) in addition to complying with the procedures provided for in this Section.

(2) The establishment of a branch in Austria shall be permissible if the competent authority of the home Member State has provided the FMA with all information in accordance Section 37 (1), and the FMA has confirmed receipt of this information to the authority of the home Member State, but no later than two months after the FMA received the information in accordance with Section 37 (1). Within the period referred to in the first sentence, the FMA may prepare for supervising compliance with the rules under its responsibility that the branch is to comply with.

(3) The pursuit of activities under the freedom to provide services in Austria shall be permissible, with the exception of subsection (6), if the competent authority of the management company's home Member State has provided the FMA with all information in accordance with Section 37 (5) and, where relevant, subsection (6), and the FMA has confirmed receipt of this information, but no later than one month after the authority of the management company's home Member State received the information. In the event of collective portfolio management of UCITS authorised in Austria, authorisation by the FMA in accordance with Section 50 (4) shall be awaited. If there is a planned marketing of units of UCITS, Section 140 shall be complied with.

(4) Management companies pursuing activities by way of a branch in Austria shall comply with Sections 10 (1) to (4), Sections 11 to 35, the provisions of Chapter 4 Section 151 nos. 13 to 19, Section 152 and Section 153 of this Federal Act as well as Section 41 of the Banking Act. Management companies pursuing activities of collective portfolio management by way of a branch in Austria shall also comply with the provisions of Chapter 3 and the obligations contained in the fund rules and the prospectus of the UCITS. Management companies pursuing activities of collective portfolio management in Austria under the freedom to provide services shall comply with Sections 10 (1) to (4), Sections 11 to 28, the provisions of Chapters 3 and 4 and Section 151 nos. 13 to 19, Section 152 and Section 153 of this Federal Act as well as Section 41 of the Banking Act, and the obligations contained in the fund rules and the prospectus of the UCITS.

(5) The management company shall give written notice to the FMA of any change of the particulars communicated in accordance with Section 37 (1) at least one month before implementing the change and of any change of the particulars communicated in accordance with Section 37 (5) before implementing the change so that the FMA may take a decision on each change concerning the particulars in accordance with Section 36 (2).

(6) If the management company proposes to pursue the collective portfolio management of a UCITS authorised in Austria, the management company shall file an application to that effect with the FMA in accordance with Section 50 and shall provide the following documents:

1. the written agreement with the depositary referred to in Article 22 (2) of Directive 2009/65/EC; and
2. information on delegation arrangements regarding functions of portfolio management and administration referred to in Section 5 (2) no. 1 (a) and (b).

If a management company already manages other UCITS of the same type in Austria, reference to the documentation already provided shall be sufficient.

(7) In so far as it is necessary to ensure compliance with the rules for which it is responsible, the FMA may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation referred to in subsection (6) and, based on the attestation referred to in Section 37 (2) and (6), as to whether the type of UCITS for which authorisation is requested falls within the scope of the management company's licence.

(8) The FMA, after consulting the competent authorities of the management company's home Member State in accordance with subsection (7), may refuse the application referred to in subsection (6) within the period referred to in Section 50 (5) if:

1. the management company does not comply with the provisions of this Federal Act falling under the FMA's responsibility pursuant to Section 143 (1) nos. 2, 3 and 4,
2. the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested, or
3. the management company has not provided the documentation referred to in subsection (6).

(9) The management company shall notify the FMA of any future material modifications of the documentation referred to in subsection (6).

### **Austrian management companies in Member States**

**Section 37.** (1) Any management company referred to in Section 5 (1) wishing to establish a branch within the territory of another Member State shall give prior written notice to the FMA and communicate the following information:

1. the Member State within the territory of which the management company plans to establish a branch;
2. the programme of operations setting out the activities and services according to Section 5 (2) envisaged and the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company and a description of the procedures and arrangements in accordance with Section 11 (3) and (4) and Section 141 (1);
3. the address in the management company's host Member State from which documents may be obtained;
4. the names of those responsible for the management of the branch.

(2) Unless the FMA has reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, the FMA shall, within two months of receiving all the information referred to in subsection (1), communicate that information and, where the management company wishes to pursue the activity of collective portfolio management as referred to in Section 5 (2) no. 1 (a), an attestation of the management company's licence in accordance with Directive 2009/65/EC and a description of the scope of the licence and, where relevant, details of any restrictions on the types of UCITS that the management company is authorised to manage, to the competent authorities of the management company's host Member State and shall inform the management company accordingly. The FMA shall also communicate details of any compensation scheme intended to protect investors.

(3) Within two months of receipt of all documents, the FMA shall prohibit the establishment of a branch by a written official notice if the requirements of subsection (1) have not been met with absolute certainty.

(4) After receipt of a communication from the competent authorities of the management company's host Member State or, if no communication from those authorities is received, no later than two months after receipt of the documents referred to in subsection (1) by the competent authorities of the host Member State, the branch may be established.

(5) Any management company as referred to in Section 5 (1) wishing to pursue activities in accordance with Section 5 (2) within the territory of another Member State for the first time under the freedom to provide services shall give prior written notice to the FMA and communicate the following information:

1. the Member State within the territory of which the management company intends to operate, and
2. the programme of operations stating the activities and services according to Section 5 (2) envisaged which shall include a description of the risk management process put in place by the management company and a description of the procedures and arrangements in accordance with Section 11 (3) and (4).

(6) The FMA shall communicate the information referred to in subsection (5) and, where the management company wishes to pursue the activity of collective portfolio management as referred to in Section 5 (2) no. 1 (a), an attestation of the management company's authorisation in accordance with Directive 2009/65/EC and a description of the scope of the authorisation and, where relevant, details of any restrictions on the types of UCITS that the management company is authorised to manage, to the competent authority of the management company's host Member

State within one month of receiving that information. The FMA shall also communicate details of any compensation scheme intended to protect investors. Subject to the authorisation by the competent authority of the UCITS' home Member State required for collective portfolio management and subject to Section 139, the management company may start business in the host Member State upon notification from the FMA of the transmission, but no later than one month after the FMA has received the information referred to in subsection (5).

(7) The mere marketing of units of the UCITS managed by the management company in a Member State other than the UCITS' home Member State without establishing a branch and without proposing to pursue any other activities or services shall not require a notice in accordance with subsection (1) or (5); only the procedure pursuant to Section 139 shall apply.

(8) Where a management company applies to manage a UCITS authorised in another Member State, the management company shall directly provide the competent authorities of the UCITS' home Member State with the documentation referred to in Section 36 (6). If, in that regard, the FMA receives a request for information by the competent authority of the UCITS' home Member State within the meaning of Section 36 (7), the FMA shall submit its opinion within ten working days after receipt of the original request for information.

(9) The management company shall give written notice to the FMA and the competent authorities of the host Member State of any change of the particulars communicated in accordance with subsection (1) at least one month before implementing the change and of any change of the particulars communicated in accordance with subsection (5) before implementing the change so that the FMA and the competent authorities may take a decision on each change concerning the particulars in accordance with subsection (1). The FMA shall communicate to the competent authority of the host Member State changes of the particulars communicated in accordance with subsection (2) and changes of the scope of the authorisation of the management company and details of any restriction on the types of UCITS that the management company is authorised to manage, if necessary by updating the information contained in the attestation referred to in subsection (2).

(10) Where the proposed change to the particulars in accordance with subsection (1) infringes provisions of this Federal Act or Directive 2009/65/EC, the FMA shall inform the management company within 15 working days after receipt of the complete notification in accordance with subsection (9) that the proposed change may not be implemented. The FMA shall notify the competent authorities of the management company's host Member State accordingly. In the event that the management company implements the change in the particulars in accordance with subsection (1) despite this, the FMA shall promptly inform the competent authorities of the management company's host member state of all measures taken in accordance with Section 148 (5).

### **Supervision in respect of the freedom of establishment and freedom to provide services**

**Section 38.** (1) Any management company as referred to in Section 36 that operates in Austria by a branch shall allow auditors to audit compliance with the provisions set out in Section 36 (4). An audit report shall be prepared in German about the result of such an audit, which shall be explained, if required. The branch of the management company shall provide this audit report to the FMA within six months of the end of the financial year. A management company within the meaning of Section 36 shall ensure that the FMA obtains the information referred to in this subsection directly from the management company.

(2) Where the FMA ascertains that a management company that has a branch or provides services in Austria pursuant to Section 36 is in breach of one of the provisions referred to in Section 143 (1) nos. 2 to 5, the FMA shall require the management company to put an end to that breach and inform the competent authorities of the management company's home Member State thereof.

(3) If the management company refuses to provide the FMA with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach as referred to in subsection (2), the FMA shall inform the competent authorities of the management company's home Member State thereof.

(4) If the FMA receives information within the meaning of subsection (3) by a competent authority of another Member State according to which a management company pursuant to Section 37 refuses to provide information to such authority or does not take sufficient steps to put an end to the breach as referred to in subsection (2), the FMA shall, at the earliest opportunity, take all appropriate measures to ensure that the management company provides the information requested by the management company's host Member State pursuant to subsection (1) or puts an end to the breach. The FMA shall communicate to the competent authorities of the

management company's host Member State the nature and content of those measures. Reasons shall be given for any measure taken in accordance with this subsection, and the management company shall be given written notice thereof.

(5) If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, a management company pursuant to Section 36 continues to refuse to provide the information requested by the FMA in accordance with subsection (1), or persists in breaching the provisions as referred to in subsection (2), the FMA shall take one of the following measures:

1. after informing the competent authorities of the management company's home Member State, take appropriate measures, including under Sections 147 to 150, to prevent or penalise further irregularities; in so far as necessary, the FMA may prohibit such management company from initiating any further transactions in Austria. Where the service provided by a management company as referred to in Section 36 in Austria is the management of a UCITS, the FMA may require the management company to cease managing that UCITS and withdraw the authorisation from the management company in accordance with Section 50 (7); or

2. where the FMA considers that the competent authorities of the management company's home Member State have not acted adequately, the FMA may inform the European Securities and Markets Authority – ESMA (Regulation (EU) No. 1095/2010) of the case, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No. 1095/2010.

Reasons shall be given for any measure taken in accordance with this subsection, and the management company shall be given written notice thereof. If an official notice has been issued by the FMA pursuant to no. 1 or 2, the legal force of that official notice shall be restricted in accordance with Section 21b of the Financial Market Authority Act – FMABG (Federal Law Gazette I No. 97/2001).

(6) Where official documents of the competent authorities of the host Member State of a management company, as referred to in Section 37, are served, the addressee may refuse acceptance in accordance with Section 12 (2) of the Service of Documents Act – ZustG (Federal Law Gazette No. 200/1982) only if such documents have not been written in the official language of a Member State.

(7) Before following the procedure laid down in subsection (2), (3) or (5) the FMA may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others to whom services are provided. The FMA shall inform the European Commission, ESMA and the competent authorities of the other Member States concerned of such measures at the earliest opportunity. The FMA shall also take appropriate measures to safeguard investors' interests if it is informed by the competent authority of the management company's home Member State that the authority intends to withdraw the licence. Those measures may include decisions preventing the management company concerned from initiating any further transactions in Austria. If the FMA has issued an official notice in this respect, the legal force of such official notice shall be restricted pursuant to Section 21b of the Financial Market Authority Act.

(8) The FMA shall consult the competent authorities of the UCITS' home Member State before withdrawing the licence from the management company as referred to in Section 37 so that the competent authorities of the UCITS' home Member State can take appropriate measures to safeguard investors' interests.

## **Chapter 2**

### **Custodian bank**

#### **Requirement of a custodian bank**

**Section 39.** (1) The assets of a UCITS shall be entrusted to a custodian bank within the meaning of Section 41 (1) for safe custody.

(2) Before being issued, the unit certificates shall be placed in safe custody with the custodian bank. The custodian bank may issue them only if the corresponding value in accordance with Section 55 (1) has been made available to it without any restrictions. The custodian bank shall add the consideration received to the fund assets without delay.

#### **Tasks of the custodian bank**

**Section 40.** (1) The management company shall appoint one single custodian bank that meets the requirements of Section 41 to keep in safe custody the securities belonging to a UCITS (Section 50) and to keep the accounts belonging to the UCITS.

(1a) The appointment of the custodian bank requires a written contract to be effective. That contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the custodian bank to perform its functions for the UCITS for which it has been appointed as custodian bank, as laid down in Directive 2009/65/EC, Commission Delegated Regulation (EU) 2016/438, this Federal Act and in the regulations adopted by the FMA pursuant to this Federal Act.

(2) The custodian bank shall ensure that

1. the sale, issue, repurchase, redemption and cancellation of units effected on behalf of a UCITS or by a management company are carried out in accordance with the provisions of this Federal Act and the fund rules in the interest of the unit-holders;
2. the value of units is calculated in accordance with the provisions of this Federal Act and the fund rules in the interest of the unit-holders;
3. in transactions involving an investment fund's assets, any consideration is remitted to it without delay;
4. an investment fund's income is applied in accordance with the provisions of this Federal Act and the fund rules.

(3) The custodian bank shall carry out the instructions of the management company, unless they conflict with the provisions of this Federal Act or the fund rules.

(4) The custodian bank shall be authorised and obligated to raise an objection in its own name in accordance with Section 37 of the Execution Code by way of bringing an action if execution is levied on an asset belonging to a UCITS, unless the claim against the UCITS has been created in accordance with Sections 80 to 84.

### **Requirements on the custodian bank**

**Section 41.** (1) Only a credit institution authorised to carry on custody business (Section 1 (1) no. 5 of the Banking Act) or a domestic branch of an EEA credit institution established under Section 9 (4) of the Banking Act may be appointed as custodian bank. The appointment of the custodian bank shall require authorisation by the FMA. Such authorisation may be given only if the credit institution may be expected to ensure the fulfilment of the duties of a custodian bank. The appointment of the custodian bank shall be published; the public announcement shall contain a reference to the official notice of approval.

(2) In the procedure for the authorisation of the custodian bank, the FMA shall also verify whether the directors of the custodian bank are sufficiently experienced in relation to the type of UCITS to be kept in safe custody.

(3) The custodian bank shall ensure that the FMA or the competent authority of the UCITS' home Member State obtains, upon request, all information that the custodian bank has obtained while discharging its duties and that is necessary for the FMA to supervise compliance with the provisions of this Federal Act, the Banking Act, the EU regulations implementing Directive 2009/65/EC and Commission Delegated Regulation (EU) 2016/438.

### **Obligations of the custodian bank**

**Section 42.** (1) The custodian bank shall properly monitor the cash flows of the UCITS, and, in particular, ensure that all payments made by, or on behalf of, unit-holders upon the subscription of units of the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts that are:

1. opened in the name of the UCITS, of the management company acting on behalf of the UCITS, or of the custodian bank acting on behalf of the UCITS;
2. opened at an entity referred to in Section 40 (1) nos. 1 to 3 of the Securities Supervision Act 2018; and
3. maintained in accordance with the principles set out in Section 38 of the Securities Supervision Act 2018.

Where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, no cash of the entity referred to in no. 2 and none of the own cash of the custodian bank shall be booked on such accounts.

(2) The assets of the UCITS shall be entrusted to the custodian bank for safe-keeping as follows:

1. for financial instruments that may be held in custody, the custodian bank shall:
  - a) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
  - b) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance



with the principles set out in Section 38 of the Securities Supervision Act 2018, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;

2. for other assets, the custodian bank shall:

a) verify the ownership by the UCITS, or by the management company acting on behalf of the UCITS, of such assets by assessing whether the UCITS or the management company acting on behalf of the UCITS holds the ownership based on information or documents provided by the UCITS or by the management company and, where available, on external evidence; and

b) maintain a record of those assets for which it is satisfied that the UCITS or the management company acting on behalf of the UCITS holds the ownership and keep that record up to date.

(3) The custodian bank shall provide the management company, on a regular basis, with a comprehensive inventory of all of the assets of the UCITS.

(4) The assets of the UCITS held in custody by the custodian bank must not be reused by the custodian bank, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

(5) The assets held in custody by the custodian bank are allowed to be reused only where:

1. the reuse of the assets is executed for the account of the UCITS;

2. the custodian bank is carrying out the instructions of the management company acting on behalf of the UCITS;

3. the reuse is for the benefit of the UCITS and in the interest of the unit-holders;

4. the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

### **Delegation of tasks of the custodian bank to third parties**

**Section 42a.** (1) The custodian bank shall not delegate to third parties the functions referred to in Section 40 (2) and Section 42 (1).

(2) The custodian bank may delegate to third parties the functions referred to in Section 42 (2) only where:

1. the functions are not delegated with the intention of avoiding the requirements laid down in this Federal Act, in Directive 2009/65/EC or in Commission Delegated Regulation (EU) 2016/438;

2. the custodian bank must be able to justify the delegation by an objective reason;

3. the custodian bank has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its functions; and

4. the custodian bank continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its functions and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions referred to in Section 42 (2) may be delegated by the custodian bank to a third party only where that third party at all times during the performance of the functions delegated to it:

1. has organisational structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the management company acting on behalf of the UCITS which have been entrusted to it;

2. with regard to the custodian bank functions referred to in Section 42 (2) nos. 1 and 2, is subject to

a) effective prudential supervision, including minimum own funds requirements, and supervision in the respective jurisdiction, and

b) an external periodic audit to ensure that the financial instruments are in its possession;

3. the assets of the clients of the custodian bank are segregated from their own assets and the assets of the custodian bank in such a way that ensures that they can be clearly identified as belonging to the clients of a particular custodian bank;

4. takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and

5. complies with Section 40 (1a), Section 42 (2) and (4) and Section 44.

(4) If the law of a third country requires that certain financial instruments be held in custody by an entity located in that third country and no entity coming into consideration satisfies the requirements pursuant to subsection (3) no. 2 (a), the custodian bank may delegate the functions pursuant to Section 42 (2) only to the extent prescribed by the legal provisions of that third country, only for as long as there are no entities located in that third country that satisfy the requirements of this Federal Act, and only where the following requirements are satisfied:

1. the unit-holders of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to mandatory legal provisions in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
2. the management company acting on behalf of the UCITS has instructed the custodian bank to delegate the custody of such financial instruments to such an entity located in the third country.

(5) The third party to whom the custodian bank has delegated tasks pursuant to Section 42 (2) may, in turn, sub-delegate those functions, subject to the same requirements. Section 43 shall be applied to all relevant parties.

(6) For the purposes of subsections (1) to (5), the provision of services as specified by Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

### **Liability of the custodian bank**

**Section 43.** (1) The custodian bank shall be liable to the management company and the unit-holders for any loss caused by the custodian bank or a third party to whom the safe-keeping of financial instruments held in safe custody pursuant to Section 42 (2) nos. 1 and 2 has been delegated. In the case of a loss of a financial instrument held in custody the custodian bank shall return a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on behalf of the UCITS without delay. The custodian bank shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(2) The custodian bank is also liable for all losses incurred as a result of the custodian bank's negligent or intentional failure to properly fulfil its obligations pursuant to this Federal Act or Directive 2009/65/EC.

(3) The custodian bank's liability as referred to in subsection (1) or (2) shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe custody.

(4) The liability of the custodian referred to in subsection (1) or (2) cannot be excluded or limited by agreement, otherwise the agreement shall be rendered void.

(5) Unit-holders in the UCITS may invoke the liability of the custodian bank directly or indirectly through the management company or the investment company provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.

### **Independence of the custodian bank**

**Section 44.** (1) No company shall act as both management company and custodian bank or depositary. Section 6 (2) nos. 8 and 9 shall also apply to the custodian bank.

(2) In carrying out its functions, the custodian bank shall act honestly, fairly, professionally, independently and solely in the interest of the unit-holders.

(3) The custodian bank shall not carry out activities with regard to the UCITS or the management company acting on behalf of the UCITS that may create conflicts of interest between the UCITS, the unit-holders of the UCITS, the management company and itself, unless the custodian bank has functionally and hierarchically separated the performance of its tasks as a custodian bank from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.

### **Information obligations of the custodian bank**

**Section 44a.** (1) The custodian bank shall make available to the FMA, upon request, all information which it has obtained while performing its duties.

(2) If the FMA is not at the same time the competent authority of the UCITS or of the management company, the FMA shall without delay share the information received from the custodian bank with the competent authority of the UCITS and of the management company.

## Remuneration of the custodian bank and the management company

**Section 45.** The remuneration payable to the management company for managing the fund in accordance with the fund rules, and the reimbursement of the expenses arising from the management of the fund, shall be paid by the custodian bank out of the accounts kept for the fund. The custodian bank may charge to the fund the remuneration payable to it for the safe custody of the securities held by the fund and for keeping the accounts. In doing so, the custodian bank may act only on the basis of instructions given by the management company.

## Chapter 3

### UCITS

#### Article 1

#### Assets

##### Unit certificates

**Section 46.** (1) A UCITS in the form of a portfolio of assets in accordance with Section 2 (2) has no legal personality of its own; the portfolio of assets is divided into equal units evidenced by securities (unit certificates). The unit certificates are financial instruments (Section 1 no. 7 (c) of the Securities Supervision Act 2018); they evidence co-ownership of the assets of the UCITS and the rights of the unit-holders in relation to the management company and the custodian bank. The unit certificates may be in bearer form or in registered form. Unit certificates in bearer form shall be placed in safe custody in a securities account, with delivery to the unit-holders not being permissible. Registered certificates shall be subject, mutatis mutandis, to Sections 61 (2) to (5), 62 and 63 of the Stock Corporation Act – AktG (Federal Law Gazette No. 98/1965).

(2) The unit certificates shall be signed by the management company and by one director or employee of the custodian bank appointed for that purpose. Section 13 of the Stock Corporation Act shall apply mutatis mutandis. The unit certificates may be issued to evidence one or more units or fractions thereof.

(3) Unit certificates of portfolios of assets shall be eligible for the investment of money held in trust for wards if, under the fund rules,

1. the fund assets may be invested exclusively in securities in accordance with Section 217 of the General Civil Code;
2. bank balances, excluding income from such deposits, must not exceed 10% of the fund assets;
3. transactions in derivative products within the meaning of Section 73 may only be effected to hedge the fund assets.

Securities lending transactions in accordance with Section 84 shall be permissible. Such unit certificates shall also be eligible for investment in the cover pool of a domestic bank for savings deposits in accordance with Section 216 of the General Civil Code.

(4) In compliance with the fund rules (Section 53 (3) nos. 7 and 14), several classes of unit certificates may be issued for a portfolio of assets, in particular with regard to the distribution policy, the issue charge, the repurchase charge, the currency of the unit value, the remuneration for management, or a combination of the mentioned criteria. The costs of introducing new classes of units for existing portfolios of assets shall be charged to the unit prices of the new classes of units. The value of a unit shall be calculated separately for each class of units.

(5) In Austria unit certificates may only be offered if Section 50 and the provisions of Chapter 4 are complied with.

##### Investment compartments

**Section 47.** (1) Taking into consideration the specifications in the regulation by the FMA in accordance with subsection (3), several portfolios of assets which differ in respect of their investment policy or another feature (investment compartments) may be combined (umbrella structure). The costs of establishing a new investment compartment shall be charged to the unit prices of the new investment compartments. The fund rules of an investment compartment and their amendments shall be approved by the FMA in accordance with Section 53 (2). The same custodian bank shall be designated for all investment compartments of a portfolio of assets. In addition, all investment compartments of a portfolio of assets shall have the same accounting year.

(2) The respective investment compartments of an umbrella structure shall be separate from the other investment compartments of the umbrella structure as regards their assets and their

liabilities. In the relationship between unit-holders, each investment compartment shall be treated as an individual portfolio of assets. The rights of investors and creditors in respect of an investment compartment, in particular its establishment, management, transfer and winding-up, shall be restricted to the assets of such investment compartment. Only the respective investment compartment shall be liable for liabilities payable by an individual investment compartment.

(3) The FMA may specify, by way of regulation, more detailed provisions on the presentation in the books, accounting and calculation of the value of each investment compartment.

### **Accounting year of the fund**

**Section 48.** The accounting year of the portfolio of assets shall be the calendar year unless otherwise provided for in the fund rules.

### **Annual and half-yearly reports**

**Section 49.** (1) The management company shall prepare an annual report for each accounting year and each portfolio of assets as well as a half-yearly report for the first six months of each accounting year and each portfolio of assets.

(2) The annual report shall include a statement of income, a statement of assets and liabilities as well as the fund rules; the annual report shall also include a statement of changes in the fund assets and indicate the number of units at the beginning and at the end of the reporting period. Furthermore, the annual report shall contain a report on the activities in the past accounting year and all other data provided for in Annex I Schedule B, as well as any essential information enabling investors to make an informed assessment of the development of activities and results of the portfolio of assets. Furthermore, the annual report shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the other UCITS or collective investment undertaking in which it invests. The assets of the portfolio of assets shall be stated at the values in accordance with Section 57 (1). In addition to the information provided for in Annex I Schedule B, the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS. The annual report of the feeder UCITS shall indicate how the annual report of the master UCITS can be obtained.

(3) The half-yearly report shall contain at least the information provided for in Articles 1 to 4 of Annex I Schedule B; if the UCITS has paid or proposed to pay an interim dividend, the figures shall show the result after taxes for the half-year period concerned and the interim dividend paid or proposed. The assets of the portfolio of assets shall be stated at the values in accordance with Section 57 (1). The half-yearly report of the feeder UCITS shall indicate how the half-yearly report of the master UCITS can be obtained.

(4) If a management company enters into repurchase agreements (Section 83) or securities lending transactions (Section 84) for the account of a portfolio of assets, such transactions shall be reported separately in the half-yearly report and in the annual report, together with notes thereto.

(5) The annual report shall be audited by an auditor or an auditing company, who/which may also be the bank auditor of the management company; this audit shall be subject, mutatis mutandis, to Sections 268 to 276 of the Business Code – UGB (German Imperial Law Gazette 1897, p. 219). The audit shall also extend to compliance with this Federal Act and with the fund rules. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

(6) The audited annual report and the half-yearly report shall be submitted to the supervisory board of the management company.

(7) The audited annual report and the half-yearly report shall be made available for inspection in the offices of the management company and of the custodian bank. In all other respects, Sections 136 to 138 shall be complied with.

## **Article 2**

### **Authorisation of UCITS and general provisions**

#### **Authorisation of UCITS**

**Section 50.** (1) The issuance of unit certificates of a UCITS in Austria shall require authorisation by the FMA.

(2) When approving a UCITS in accordance with subsection (4), the FMA shall grant the following authorisations:

1. establishment of the UCITS in accordance with the fund rules (Section 53);

2. management of the UCITS by the applicant management company;

3. appointment of the custodian bank (Section 41).

(3) A management company that wishes to establish and manage a UCITS in Austria shall file an application for the grant of authorisation for the UCITS with the FMA and include the following information and documents in the application:

1. the fund rules (Section 53);

2. the name and registered office of the management company and proof that the management company

a) is authorised to manage a UCITS within the meaning of the fund rules provided in accordance with no. 1, and

b) in the event that the management company does not have a licence as referred to in Section 6 (2), proof that the management company meets the requirements of Section 36 by submitting an attestation by the authority of the home Member State;

3. the name and registered office of the custodian bank (Section 41) and the names of the directors of the custodian bank and proof that the requirements referred to in Section 41 have been met.

(4) A UCITS shall be approved if

1. the fund rules comply with this Federal Act and, if the fund rules provide for a derogation from the investment limits referred to in Section 74 in accordance with Section 76, the fund rules have been reviewed in accordance with Section 76 (3) and comply with Section 76 (1) no. 2;

2. the custodian bank meets the requirements of Sections 40 to 45 and its directors are sufficiently experienced in relation to the type of UCITS to be kept in safe custody;

3. marketing the units of the UCITS in Austria is not prohibited pursuant to the fund rules; and

4. the applicant management company either

a) has a licence in accordance with Section 6 (2) and is authorised to manage the UCITS for which an application has been filed, or

b) if the management company has its registered office in another Member State, the requirements of subsection (3) no. 2 (b) have been met.

(5) The FMA shall either grant the approval to the management company in writing within two months of receipt of the application or, if the application is incomplete, within two months after all information required for the official notice has been provided, or inform the management company of the rejection of the application in writing by official notice. The authorisation may stipulate conditions, time limits and obligations.

(6) The authorisation shall lapse if the management company does not make use of the authorisation within one year after it was granted or prior to that expressly renounces the authorisation.

(7) The FMA shall withdraw the authorisation if

1. the management company has obtained the authorisation by making false statements or by any other irregular means;

2. the requirements referred to in subsection (4) are no longer met;

3. the management company persistently infringes the provisions of this Federal Act.

If the authorisation is withdrawn in accordance with no. (1), (2) or (3), the custodian bank shall wind up the UCITS in accordance with Section 63.

### **Unit-holder register**

**Section 51.** (1) A unit-holder register shall be kept for registered unit certificates at the registered office of the UCITS. For each unit-holder, the following information shall be included in the unit-holder register:

1. name (company name) and address relevant for the service of documents and, where available, the electronic address of the unit-holder, in the case of natural persons their date of birth, in the case of legal persons the register and the number under which the legal person is registered in the home Member State;

2. number of units or number of the unit certificate;

3. a bank account held in the name of the unit-holder with a credit institution as referred to in Section 10a (1) of the Stock Corporation Act into which all payments must be made;

4. if the unit-holder holds the units for the account of another person, the information referred to in nos. 1 and 2 also in respect of such person, unless the unit-holder is a credit institution within the meaning of Section 10a (1) of the Stock Corporation Act.

(2) The provisions of Sections 61 (2) to (5), 62 and 63 of the Stock Corporation Act shall apply mutatis mutandis.

### **Power of disposal over the assets of a UCITS**

**Section 52.** Only the management company shall be authorised to dispose over assets belonging to a UCITS managed by it and to exercise the rights in such assets; in doing so, the management company acts in its own name for the account of the unit-holders. The management company shall safeguard the unit-holders' interests, use the care and diligence of a prudent director within the meaning of Section 84 (1) of the Stock Corporation Act and observe the provisions of this Federal Act and the regulations adopted pursuant to this Federal Act as well as the fund rules.

### **Fund rules**

**Section 53.** (1) The fund rules shall be drawn up by the management company and shall regulate the legal relationship between the unit-holders and the management company as well as the custodian bank. The fund rules shall be submitted to the custodian bank for its consent and shall be brought to the attention of the supervisory board in the next meeting.

(2) The fund rules shall require authorisation by the FMA. Such authorisation shall be given if the fund rules comply with this Federal Act.

(3) Apart from such other information as is required to be provided under this Federal Act, the fund rules shall specify:

1. if the unit certificates are bearer or registered certificates;
2. the principles according to which the securities, money market instruments and liquid financial assets purchased for the fund are selected;
3. the maximum proportion of the fund assets permitted to be held in the form of bank balances;
4. if, and if yes to what amount, a minimum proportion of the fund assets is to be held in the form of bank balances;
5. the remuneration payable to the management company for managing the fund and the expenses for which it is to be reimbursed (Section 59);
6. if, and if yes to what amount, a sales charge may be added to the net asset value of the units to cover the issuing costs incurred by the management company upon the issuance of the unit certificates (Sections 57 (2) and 59);
7. to what extent the annual income is to be distributed to the unit-holders. In this connection it may be provided that several classes of unit certificates may be issued for UCITS, namely unit certificates evidencing a claim to annual distributions of annual income to the unit-holders (income-distributing unit certificates) and unit certificates not evidencing a claim to distributions of annual income to the unit-holders (non-distributing unit certificates) (Section 58) or other distinctions within the meaning of Section 46 (4);
8. the times at which the value of the units is to be calculated (Section 57 (1));
9. if, and if yes to what amount, a remuneration for the management company may be deducted from the repurchase price when unit certificates are repurchased (Section 55 (2) and Section 59);
10. the remuneration payable to the management company upon the winding-up of the UCITS (Sections 59 and 63);
11. the way in which the fund assets are liquidated and distributed to the unit-holders if the fund has been established only for a limited duration;
12. the name and registered office of the management company;
13. the name and registered office of the custodian bank;
14. if, and if yes which, classes of unit certificates (Section 46 (4)) are issued.

(4) The management company may change the fund rules subject to the consent of the custodian bank; any change shall require authorisation by the FMA. Such authorisation shall be given if the change in the fund rules is not in contradiction with the legitimate interests of the unit-holders. The change shall be publicly announced in accordance with Section 136 (4). It shall enter into force on the date indicated in the public announcement, but no earlier than three months after the public announcement. A public announcement shall not be required to be made if the change in the fund rules is communicated to all unit-holders in accordance with Section 133; in that event, the interests of unit-holders shall be deemed adequately safeguarded, and the change shall enter into

force on the date indicated in the public announcement, but no earlier than thirty days after having been communicated to the unit-holders. The change of the fund rules shall be brought to the attention of the supervisory board in the next meeting.

### **Liability**

**Section 54.** (1) To secure or recover claims against unit-holders, execution may be levied on their unit certificates, but not on the assets of the UCITS.

(2) To secure or recover claims under liabilities which have effectively been created by the management company for a UCITS in accordance with the provisions of this Federal Act, execution may be levied only on the assets of the UCITS.

### **Issuance, repurchase and redemption of units**

**Section 55.** (1) The issuance of units of the UCITS shall be permissible only if the equivalent of the net issue price is paid into the fund assets without delay. The contribution of securities, money market instruments and other liquid financial assets referred to in Section 67 (1) shall be permissible only if a market price is available for them, and the securities, money market instruments and other liquid financial assets referred to in Section 67 (1) shall be contributed in accordance with the fund rules at their market price on the day the units are issued.

(2) At the request of a unit-holder, however, his unit shall be redeemed out of the UCITS against surrender of the unit certificate, the coupons and the renewal certificate. The conditions of redemption shall be laid down in the fund rules (Section 53). The unit-holders' co-ownership of the assets of the UCITS may be cancelled only in accordance with Section 63.

### **Suspension of repurchase or redemption**

**Section 56.** (1) The payment of the redemption price of a UCITS authorised by the FMA in accordance with Section 50 may be temporarily suspended, subject to notice being given to the FMA at the same time, and may be made dependent on the sale of assets of the UCITS and on the receipt of the sale proceeds if there are extraordinary circumstances which make this appear necessary in consideration of legitimate interests of the unit-holders.

(2) The management company shall inform the investors by way of public announcement in accordance with Section 136 (4) of the suspension of the repurchase of unit certificates and of the resumption of the repurchase of unit certificates and, at the same time, notify the FMA thereof in accordance with Section 151. If unit certificates are marketed in another Member State, the management company shall pass on this information to that Member State's competent authorities without delay.

### **Calculation of the value of units; issue price**

**Section 57.** (1) The value of a unit shall be calculated by dividing the total value of the UCITS, including income, by the number of units. The total value of the UCITS shall be determined by the management company in accordance with the fund rules on the basis of the respective market prices of the securities, money market instruments and subscription rights belonging to the UCITS, plus the value of the liquid financial assets belonging to the UCITS according to Section 67 (1), cash, balances held, claims as well as other rights, less liabilities. If no market price or no current market price is available for a security, the market value that is appropriate on the basis of careful assessment, taking into account the overall circumstances, shall be used.

(2) The issue price of a unit shall correspond to its net asset value. A sales charge laid down in the fund rules (Section 53) may be added to the net asset value to cover the issuing costs incurred by the management company.

(3) The management company shall publish the issue price and the repurchase price for the units whenever units are issued or repurchased, but at least twice a month.

### **Appropriation of income and distribution**

**Section 58.** (1) The fund rules shall include rules on the manner in which income of the UCITS is distributed to the unit-holders. However, distributions must not reduce the fund assets to below EUR 1,150,000.

(2) Within seven months of the end of a financial year, if no distribution is made, an amount equalling the investment income tax payable on income equivalent to distributions in accordance with Section 186 (2) no. 1 first sentence, plus the amount paid voluntarily in accordance with Section 124b no. 186 of the Personal Income Tax Act 1988, shall be paid. Income shall also include amounts that new unit-holders pay for income from interest, distributions and fund assets shown on the day of issuance (adjustment of income from interest and distributions, and capital gains). In the case of UCITS or certain classes of unit certificates of a portfolio of assets, payment

shall not be required to be made if the management company managing the UCITS provides clear evidence either that income distributed and income equivalent to distributions of all holders of the unit certificates issued are not subject to domestic personal income tax or corporation tax, or that the prerequisites for an exemption in accordance with Section 94 of the Personal Income Tax Act 1988 have been fulfilled. This shall be deemed proved if declarations by both the custodian bank and the management company are available, stating that they do not know of any sales to other persons, and by fund rules that provide that certain classes may only be sold abroad. In addition, payment of investment income tax shall not be required if, in the case of unit-holders that are subject to limited tax liability pursuant to Section 98 (1) no. 5 (b) of the Personal Income Tax Act 1988, investment income tax can be deducted by debiting the unit-holder's settlement account.

## **Remuneration**

**Section 59.** The remuneration and cost reimbursement which a management company is allowed to charge to the fund assets, and the method of calculation of such remuneration, shall be laid down in the fund rules. If the fund rules do not contain any provisions to that effect, the management company shall not have a claim to cost reimbursement or to remuneration out of the fund assets.

## **Termination of management by the management company**

**Section 60.** (1) The management company may, by way of public announcement (Section 136 (4)) subject to at least six months' notice, terminate the management of a UCITS subject to authorisation by the FMA. Authorisation shall be given if the interests of the unit-holders are adequately safeguarded. No public announcement shall be required to be made if there is evidence that the termination has been communicated to all unit-holders in accordance with Section 133. In that event, the interests of unit-holders shall be deemed adequately safeguarded and the termination shall enter into force on the date indicated in the announcement, but no earlier than thirty days after having been communicated to the unit-holders.

(2) If the fund assets are less than EUR 1,150,000, the management company may terminate the management as of the date of the public announcement without observing a period of notice, while at the same time informing the FMA of such termination. Termination because of the fund assets being less than the above amount shall not be permissible during the process of terminating the management of the fund assets in accordance with subsection (1).

(3) The right of the management company to manage a UCITS shall terminate when the company's licence to conduct investment business (Section 1 (1) no. 13 of the Banking Act in conjunction with Section 6 (2) of this Federal Act) or the authorisation referred to in Art. 6 of Directive 2009/65/EC ceases to be valid, or when it is resolved that the management company be wound up, or when the authorisation is withdrawn pursuant to Section 50 (7).

## **Replacement of the management company or the custodian bank**

**Section 61.** (1) The management company may transfer the management of a UCITS to another management company without giving notice in accordance with Section 60 (1) if the following requirements are met:

1. authorisation by the FMA,
2. consent of the supervisory board of the management company and the custodian bank, and
3. consent of the directors and the supervisory board of the management company to which management is to be transferred.

No costs shall be charged to the unit-holders and no disadvantages shall be incurred by unit-holders as a result of this procedure. The transfer of management shall be publicly announced in accordance with Section 136 (4). It shall enter into force on the date indicated in the public announcement, but no earlier than three months after the public announcement. No public announcement shall be required to be made if the transfer of management to a different management company has been communicated to all unit-holders in accordance with Section 133, in any case at least thirty days before the transfer of management.

(2) Replacement of the custodian bank shall also require authorisation by the FMA and shall enter into force on the date indicated in the public announcement unless any additional changes of the fund rules are requested. In the event of such replacement, the protection of unit-holders shall be taken into account. If a government commissioner pursuant to Section 70 (2) no. 2 of the Banking Act or a supervisor pursuant to Section 84 of the Banking Act has been appointed for a custodian bank and the custodian bank is replaced, the consent of the custodian bank to the change of the fund rules required pursuant to Section 53 (4) shall be required to be given only by the custodian bank to be newly appointed.



## Temporary management by the custodian bank

**Section 62.** (1) If the right of a management company to manage a UCITS ends pursuant to Section 60 (3), management shall pass to the custodian bank.

(2) Subject to authorisation by the FMA, the custodian bank may transfer the management of the UCITS to another management company pursuant to subsection (1). Such authorisation shall be given if proper account is taken of the legitimate interests of the unit-holders. The transfer of management to the other management company shall be publicly announced by that other company in accordance with Section 136 (4).

(3) If the custodian bank does not transfer the management to another management company within six months after termination of management by the management company, the custodian bank shall wind up the UCITS. Section 63 (1) to (3) shall be applied mutatis mutandis.

## Winding-up of a UCITS

Section 63 (1) If the right of a management company to manage a UCITS ends pursuant to Section 60 (1) or (2), the management company shall wind up the UCITS. The commencement of the winding-up procedure shall be publicly announced in accordance with Section 136 (4) and communicated to the notification office (Section 23 of the Capital Market Act 2019). From the date of this announcement, the redemption of units shall not be permissible.

(2) Securities shall be turned into cash as rapidly as possible while safeguarding the interests of the unit-holders. The assets shall be distributed to the unit-holders only after the liabilities of the UCITS have been met and after the payments to the management company and the custodian bank permissible under the fund rules have been made. At the request of a unit-holder, the distribution of assets that have become illiquid shall be permissible if all other unit-holders expressly consent to this pro-rated distribution.

(3) Taking into consideration subsection (2), advance payments may also be made on the distribution of securities already converted into cash.

(4) Subsection (1) shall not apply if a UCITS established for a specific period (Section 53 (3) no. 11) expires; if a UCITS ceases to exist due to the complete redemption of all units (without notice of termination), the management company shall immediately inform the FMA thereof in accordance with Section 151.

(5) By way of derogation from Section 49 (1), if a UCITS is wound up, the management company shall prepare a winding-up report. The winding-up report shall

comply with the requirements for the annual report in accordance with Section 49 (2),

also contain the relevant information in relation to the winding-up proceedings,

be prepared for each accounting year and for the day on which the winding-up is concluded, and

be audited by an auditor or auditing company; Section 49 (5) shall apply.

## Conversion into a special fund

**Section 64.** The conversion of a UCITS whose fund rules have been authorised in accordance with Section 50 into a special fund (Section 163) shall only be permissible, subject to an application pursuant to Section 29 of the Alternative Investment Fund Managers Act being filed at the FMA at the same time, if there is evidence that all unit-holders agree, the UCITS has not been notified for marketing in another Member State in accordance with Section 139 and the requirements of Section 163 regarding the minimum amount invested have been met, the UCITS is not marketed in another Member State and all unit-holders have received prior information from the management company on all legal consequences resulting from the conversion in respect of the unit-holders. The unit-holders shall be informed in accordance with Section 133. In the event of delegations referred to in Section 28 that have already been notified, the management company shall notify the FMA without delay on whether such delegations continue to remain in place. If, at the same time, management is transferred to another management company, that management company shall notify the FMA.

## Segregation

**Section 65.** (1) With the consent of the supervisory board, with the consent of the custodian bank and after having obtained authorisation by the FMA, management companies may segregate parts of the fund assets of a UCITS managed by them that have unforeseeably become illiquid into a UCITS to be newly formed. Such UCITS shall be wound up by the custodian bank in accordance with Section 63, the effective date of the segregation shall be publicly announced,

and the unit-holders shall hold units of the UCITS to be segregated in the same proportion as in the previous UCITS. The public announcement shall state the UCITS affected by the split-off, the segregated UCITS, the management company, the custodian bank, the official notice of authorisation by the FMA and information on the unit holdings in the UCITS to be newly formed. The segregation shall require an application by the management company. Within four weeks of receipt of the application or, if the application is incomplete, within four weeks after submission of all information required for the authorisation, the FMA shall either approve the segregation by a written official notice or inform the management company of the rejection of the application by official notice. The authorisation may stipulate conditions, time limits and obligations. No costs shall be charged to the unit-holder as a result of the segregation. The segregation shall be notified without delay to the FMA and the notification office (Section 23 of the Capital Market Act 2019). In addition, the proportion of the repurchase values of the units in the UCITS from which assets are segregated as compared to the segregated UCITS shall be communicated to the notification office.

(2) The application for the segregation shall in any event include the following information:

1. description and amount of the assets affected by the segregation;
2. reasons for the illiquidity of such assets;
3. confirmation of the illiquidity of such assets by an auditor;
4. whether and, if yes, in which other countries the UCITS is marketed.

(3) The segregated UCITS shall carry the designation “in liquidation” and shall not be a UCITS as referred to in Art. 1 (2) of Directive 2009/65/EC. The FMA shall be provided with quarterly reports on the segregated UCITS.

## **Article 3**

### **Investment rules**

#### **General principles, risk spreading**

**Section 66.** (1) The securities, money market instruments and other liquid financial assets of a UCITS referred to in Section 67 shall be selected according to the principle of risk spreading, taking into account Sections 66 to 84, and the legitimate interests of the unit-holders shall not be violated.

(2) Subject to compliance with the principle of risk spreading, the maximum rates of Sections 74 to 77 may be exceeded by 100% within the first six months of the beginning of the first issuance of units of a UCITS.

#### **Liquid financial assets**

**Section 67.** (1) For the assets of a UCITS, only the following may be acquired:

1. transferable securities within the meaning of Section 3 (2) no. 13 in conjunction with Section 69,
2. money market instruments within the meaning of Section 3 (2) no. 14 in conjunction with Section 70,
3. units of UCITS within the meaning of Section 50 or Art. 5 of Directive 2009/65/EC in conjunction with Section 71 and units in other collective investment undertakings of the open-ended type which operate on the principle of risk spreading (UCI),
4. deposits which are repayable on demand or have the right to be withdrawn within the meaning of Section 72,
5. financial derivative instruments (derivatives), including equivalent cash-settled instruments within the meaning of Section 73.

(2) The securities, money market instruments and, subject to Section 73, derivatives referred to in subsection (1) nos. 1, 2 and 5 may be acquired only if they are

1. admitted to or dealt in on a regulated market as referred to in Section 1 no. 2 of the Stock Exchange Act 2018, or
2. dealt in on another regulated market in an EEA Member State, which operates regularly and is recognised and open to the public, or
3. admitted to official listing on a stock exchange in a third country (Section 2 no. 8 of the Banking Act) or dealt in on another regulated market in a third country which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market is expressly provided for in the fund rules.

(3) By way of derogation from subsection (2), it shall be sufficient in the case of securities from new issues that

1. the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or on another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market is provided for in the fund rules, and

2. the admission referred to in no. 1 is secured within a year of issue.

(4) A maximum of 10% of the fund assets may be invested in securities and money market instruments other than those referred to in subsections (2) and (3) and Sections 69 and 70.

### **Prohibition of investment in precious metals**

**Section 68.** Precious metals or certificates representing them may not be acquired for the assets of a UCITS.

### **Transferable securities**

**Section 69.** (1) Instruments shall fulfil the following criteria to be qualified as transferable securities (Section 3 (2) no. 13):

1. the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them;

2. their liquidity does not compromise the ability of the UCITS to pay the redemption price in accordance with Section 55 (2), which shall be presumed to be fulfilled in the case of securities which are admitted to or dealt in on a regulated market within the meaning of Section 67 (2) or (3) unless there is information available to the management company that would lead to a different determination;

3. a reliable valuation is available for the instruments as follows:

a) in the case of securities admitted to or dealt in on a regulated market within the meaning of Section 67 (2) or (3), in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;

b) in the case of other securities as referred to in Section 67 (4), in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research;

4. appropriate information shall be available for these financial instruments as follows:

a) in the case of securities admitted to or dealt in on a regulated market within the meaning of Section 67 (2) or (3), in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security;

b) in the case of other securities as referred to in Section 67 (4), in the form of regular and accurate information to the management company on the security or, where relevant, on the portfolio of the security;

5. they are negotiable, which shall be presumed to be fulfilled in the case of securities which are admitted to or dealt in on a regulated market within the meaning of Section 67 (2) or (3), unless there is information available to the management company that would lead to a different determination;

6. their acquisition is consistent with the investment objectives or the investment policy, or both, of the fund;

7. their risks are adequately captured by the risk management practices of the UCITS.

(2) Transferable securities as referred to in Section 3 (2) no. 13 shall be deemed to include the following:

1. units in closed-end funds constituted as investment companies or as investment funds which fulfil the following criteria:

a) they fulfil the criteria set out in subsection (1);

b) the corporate governance mechanisms applying to companies limited by shares are applicable to the closed-end funds;

c) if the fund is managed by another entity on behalf of the closed-end fund, that entity is subject to the legally binding provisions regarding investor protection;

2. units in closed-end contractual funds which fulfil the following criteria:

a) they fulfil the criteria set out in subsection (1);

b) the corporate governance mechanisms equivalent to those specified in no. 1 (b) are applicable to the closed-end fund;

c) they are managed by an entity which is subject to the legally binding provisions regarding investor protection;

3. financial instruments which fulfil the following criteria:

- a) they fulfil the criteria set out in subsection (1);
- b) they are backed by, or linked to the performance of, other assets, which may differ from those referred to in Section 67 (1).

### **Money market instruments**

**Section 70.** (1) A financial instrument customarily dealt in on the money market shall be understood as a money market instrument (Section 3 (2) no. 14) if at least one of the following criteria is fulfilled:

1. the financial instrument has a maturity at issuance of up to and including 397 days;
2. it has a residual maturity of up to and including 397 days;
3. it undergoes regular yield adjustments in line with money market conditions at least every 397 days;
4. its risk profile, including credit and interest rate risk, corresponds to that of financial instruments which have a maturity referred to in no. 1 or no. 2, or are subject to a yield adjustment referred to in no. 3.

(2) A financial instrument shall be deemed liquid in accordance with Section 3 (2) no. 14 if it can be sold at limited cost in an adequately short time frame, taking into account the obligation to repurchase or redeem the units in accordance with Section 55 (2). The value of a financial instrument is deemed as accurately determinable in accordance with Section 3 (2) no. 14 if accurate and reliable valuation systems are available which

1. enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable, willing parties in an arm's length transaction, and
2. are based either on market data or on valuation models including systems based on amortised costs.

(3) Liquidity (subsection (2)) and the accurate determinability of their value at any time (subsection (2) nos. 1 and 2) shall be presumed to be fulfilled in the case of money market instruments admitted to or dealt in on a regulated market within the meaning of Section 67 (2) or (3), unless there is information available to the management company that would lead to a different determination.

(4) By way of derogation from Section 67 (2), investments may also be made in money market instruments other than those dealt in on a regulated market, which are freely negotiable, fall under the definition of Section 3 (2) no. 14 and for which adequate information is available, including information providing for an adequate assessment of credit risks related to the investment in such instruments, if the issue or issuer of these instruments is already subject to deposit and investor protection regulations, provided that they are

1. issued or guaranteed by a central, regional or local authority, a central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a third country, or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more Member States belong, or
2. issued by an undertaking whose securities are dealt in on regulated markets referred to in Section 67 (2), or
3. issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Union law, or by an establishment which is subject to and complies with prudential rules considered by the FMA to be at least as stringent as those laid down by Union law, or
4. issued by other issuers belonging to the categories approved by the FMA provided that the investments in such instruments are subject to investor protection equivalent to that laid down in Section 67 (1) to (3) and provided that the issuer is an undertaking whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Directive 2013/34/EU, or is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which, in the form of an undertaking, company or contract, is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line; the banking liquidity line shall be secured by a financial institution which itself fulfils the criteria specified in no. 3.

(5) The FMA may specify, by way of regulation,

1. with regard to "adequate information" referred to in subsection (4) in compliance with Art. 5 of Directive 2007/16/EC, which information is adequate, with information on the instrument, issuer, issuance programme and the related credit risks having to be provided;
2. in compliance with Art. 6 of Directive 2007/16/EC, the criteria to be applied to assess whether prudential rules referred to in subsection (4) no. 3 are equivalent;

## Units in UCITS and UCI

**Section 71.** (1) Units in UCITS authorised in accordance with Directive 2009/65/EC may be acquired for the fund assets only if no more than 10% of the assets of the UCITS whose units are contemplated to be acquired can, according to its fund rules or instrument of incorporation, be invested in aggregate in units of other UCITS or other UCI. A UCI is an AIF as defined in the Alternative Investment Fund Managers Act that invests in liquid financial assets pursuant to Section 67 and meets the requirements of subsection (2).

(2) Units in UCI, whether or not established in a Member State, may be acquired for the fund assets provided that:

1. they are authorised under laws which provide that they are subject to prudential supervision considered by the FMA to be equivalent to that laid down in Union law, and that cooperation between authorities is sufficiently ensured,
2. the level of protection for unit-holders in the UCI is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of Directive 2009/65/EC,
3. the business of the UCI is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period, and
4. the UCI whose units are contemplated to be acquired fulfils the criteria of subsection (1).

(3) The FMA may specify, by way of regulation, criteria to be used by the management company to assess whether the level of protection for unit-holders is equivalent. These criteria must ensure comparability with regard to the safe custody of portfolios of assets, borrowing, lending, uncovered sales, corporate governance mechanisms and prudential supervision and must comply with European practice and international standards.

## Deposits repayable on demand and deposits which have the right to be withdrawn

**Section 72.** Deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than twelve months, may be acquired for the assets of the UCITS provided that the credit institution has its registered office in a Member State or, if the credit institution has its registered office in a third country, provided that it is subject to prudential rules considered by the FMA as equivalent to those laid down in Union law.

## Derivatives

**Section 73.** (1) Financial derivative instruments (derivatives), including equivalent cash-settled instruments dealt in on a regulated market referred to in Section 67 (2), or financial derivative instruments dealt in over-the-counter (OTC derivatives) may be used for fund assets provided that:

1. the underlying assets consist of instruments within the meaning of Section 67 (1) nos. 1 to 4 or of financial indices, interest rates, foreign exchange rates or currencies in which the UCITS may invest in accordance with the investment objectives laid down in its fund rules, but the FMA shall specify, by way of regulation, criteria for the financial indices and, taking into account Art. 9 of Directive 2007/16/EC, shall take sufficient diversification, the benchmark for the market and publication of the index into consideration,
2. the counterparties to OTC derivative transactions are institutions subject to prudential supervision and belonging to the categories that the FMA has authorised by way of regulation,
3. the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the initiative of the management company, where
  - a) fair value shall be understood as a reference to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction, and
  - b) reliable and verifiable valuation does not rely only on market quotations by the counterparty; on the one hand, the basis for the valuation shall be either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology; on the other hand, verification of the valuation shall be carried out by either an appropriate third party who is independent from the counterparty of the OTC derivative, at an adequate frequency and in such a way that the management company is able to check it, or by a unit within the management company which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose, and

4. they do not result in the delivery or in the transfer of assets other than those referred to in Section 67 (1).

(2) Subsection (1) shall also apply to instruments that allow the transfer of the credit risk of an asset within the meaning of subsection (1) no. 1 independently from the other risks associated with that asset.

(3) The use of commodity derivatives shall not be permissible. Derivatives on indices other than financial indices shall not be acquired. Indices composed of commodity derivatives or tangible assets shall be financial indices.

(4) The market value of OTC derivatives shall be determined in accordance with Section 92.

(5) The global exposure relating to derivatives shall not exceed the total net value of the fund assets. The exposure shall be calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. A UCITS may invest, as a part of its investment policy and within the limits laid down in Section 74 (1), (4), (5), (6) and (7) and Section 76, in derivatives provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Sections 74 and 76.

(6) Investments by a UCITS in index-based derivatives shall not be combined with the limits of Sections 74 and 76. When a security or money market instrument embeds a derivative, the latter shall be taken into account when complying with the requirements of subsections (1) to (5).

#### **Quantitative limits to avoid issuer concentration**

**Section 74.** (1) Securities or money market instruments of the same issuer may be acquired only up to 10% of the fund assets, but the total value of the securities and money market instruments of the issuers in whose securities and/or money market instruments more than 5% of the fund assets is invested must not exceed 40% of the fund assets. This limitation shall not apply to deposits repayable on demand, deposits which have the right to be withdrawn and OTC derivative transactions that are made with credit or financial institutions as defined by Art. 4 (1) no. 26 of Regulation (EU) No. 575/2013 which are subject to prudential supervision. Warrants shall be attributed to the issuer of the securities on which the option may be exercised. Securities and money market instruments within the meaning of subsections (4) and (5) shall not be taken into consideration in respect of the investment limit of 40%. Furthermore, only up to 20% of the fund assets may be invested in deposits repayable on demand and deposits which have the right to be withdrawn with the same credit institution.

(2) The risk exposure to a counterparty of the UCITS in an OTC derivative transaction shall not exceed:

1. 10% of the fund assets, when the counterparty is a credit institution within the meaning of Section 72,
2. 5% of the fund assets in other cases.

(3) Notwithstanding the individual limits laid down in subsections (1) and (2), a combination of any of the following liquid financial assets shall not be acquired for the fund assets where this would lead to investment of more than 20% of the fund assets in a single undertaking:

1. investments in transferable securities or money market instruments issued by that undertaking,
2. deposits with such undertaking which are repayable on demand or which have the right to be withdrawn, or
3. OTC derivatives acquired from that undertaking.

(4) By way of derogation from subsection (1),

bonds from credit institutions with their registered office in an EEA Member State, which are subject by law to special public supervision designed to protect bond-holders, which were issued before 8 July 2022, and with the proceeds from the issue of those bonds being required to be invested in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of the default of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest, and

bonds in accordance with Art. 3 number 1 of Directive (EU) 2019/2162 on the issue of covered bonds and covered bond public supervision and amending Directives 2009/65/EC and 2014/59/EC, OJ No. L 328 of 18 December 2019, p. 29,

may be acquired for up to 25% of the fund assets. If the investment in such bonds in accordance with nos. 1 and 2 of the same issuer exceeds 5% of the fund assets, the total value of all bonds in accordance with nos. 1 and 2 shall not exceed 80% of the fund assets.

(5) By way of derogation from subsection (1), up to 35% of the fund assets may be invested in transferable securities or money market instruments which are issued or guaranteed by a Member State or by its local authorities, by a third country or by a public international organisation to which one or more EEA Member States belong.

(6) The limits referred to in nos. 1 to 5 shall not be combined. In total investments in transferable securities, money market instruments or derivatives issued by the same issuer or in deposits repayable on demand and deposits which have the right to be withdrawn made with this issuer shall not exceed 35% of the fund assets.

(7) Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 2013/34/EU or in accordance with recognised international accounting rules, shall be regarded as a single issuer for the purpose of calculating the limits contained in subsections (1) to (6). Up to 20% of the fund assets may be invested in transferable securities and money market instruments of the same group.

#### **Quantitative investment limits for index funds**

**Section 75.** (1) By way of derogation from Section 74 but without prejudice to the investment limits laid down in Section 78, a UCITS may invest up to 20% of the fund assets in shares or debt securities issued by the same issuer if the fund rules explicitly provide that the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the FMA (index fund). Replicating the composition of an index shall be understood as a replication of the composition of the underlying assets of the index, to which purpose derivatives may also be used.

(2) The index shall be recognised if, in particular,

1. the composition of the index complies with the risk spreading rules of subsections (1) and (3),
2. the index represents an adequate benchmark for the market to which it refers, with the index provider having to use a recognised methodology which does not result in the exclusion of a major issuer of the market to which the index refers, and
3. the index is published in an appropriate manner. The index shall be deemed as published in an appropriate manner if it is accessible to the public and the index provider is independent from the management company managing the index fund, although this does not preclude index providers and the management company managing the index fund from forming part of the same group of companies, provided that effective arrangements for the management of conflicts of interest are in place.

(3) The index fund may invest up to 35% of the fund assets in shares or debt securities of a single issuer where that proves to be justified by exceptional market conditions, in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. An investment up to that limit shall be permitted only for a single issuer. The maximum limit of 40% referred to in Section 74 (1) shall not apply to index funds.

#### **Quantitative limits for investments in issues issued or guaranteed by public bodies**

**Section 76.** (1) By way of derogation from Section 74, subject to compliance with the principle of risk spreading, up to 100% of the fund assets may be invested in transferable securities and money market instruments from different issues which are issued or guaranteed by a Member State, by one or more of its local authorities, by a third country or by a public international organisation to which one or more EEA Member States belong if

1. they are transferable securities and money market instruments within the meaning of Section 74 (5),
2. unit-holders in that UCITS have protection equivalent to that of unit-holders in UCITS complying with the investment limits laid down in Section 74, and
3. such securities have been issued in at least six different issues, but securities from any single issue shall not account for more than 30% of the total fund assets.

(2) The fund rules shall make express mention of the Member States, local authorities, third countries or public international organisations issuing or guaranteeing the securities in which it is intended to invest more than 35% of the fund assets.

(3) The FMA shall verify compliance with the requirements of subsection (1) no. 2 when approving the fund rules.

#### **Quantitative limits for investments in UCITS or UCI**

**Section 77.** (1) Units of other UCITS or UCI may be acquired for the fund assets provided that no more than 20% of the fund assets are invested in units of a single UCITS or UCI.

(2) Investments made in UCI shall not exceed, in aggregate, 30% of the fund assets of the UCITS.

(3) Where units of UCI or other UCITS have been acquired, the assets of the respective UCITS or UCI shall not be required to be combined for the purposes of the limits laid down in Section 74.

(4) Where units of other UCITS or UCI have been acquired that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company shall not charge subscription or repurchase fees on account of the UCITS' investment in the units of such other UCITS or UCI.

### **Quantitative limits to prevent influence over issuers**

**Section 78.** (1) A management company, acting in connection with all of the UCITS which it manages, shall not acquire any shares carrying voting rights which would enable it to exercise significant influence within the meaning of subsection (2) no. 1 over the management of an issuer. If another Member State has specified a lower limit for the acquisition of shares carrying voting rights of the same issuer, such limit shall be decisive where the management company acquires such shares of an issuer with its registered office in that country for the UCITS managed by the management company.

(2) Liquid financial assets issued by a single issuer may be acquired for the fund assets of a UCITS only to the following extent:

1. shares up to 7.5% of the share capital of the issuing stock corporation, if the shares carry voting rights;
2. shares up to 10% of the share capital of the issuing stock corporation, if the shares are non-voting shares;
3. bonds up to 10% of the total issue volume of a single issuer;
4. money market instruments up to 10% of a single issuer;
5. only a maximum of 25% of units of a single UCITS or UCI.

(3) The investment limits laid down in subsection (2) nos. 3, 4 and 5 may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the units issued, cannot be calculated.

(4) The investment limits laid down in subsection (2) may be disregarded as regards

1. transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;
2. transferable securities and money market instruments issued or guaranteed by a third country;
3. transferable securities and money market instruments issued by a public international organisation to which one or more Member States belong;
4. shares held by a UCITS in the capital of a company incorporated in a third country investing its assets mainly in the securities of issuers having their registered offices in that country, where under the legislation of that country such a holding represents the only way in which the UCITS can invest in the securities of issuers of that country. This derogation, however, shall apply only if, in its investment policy, the company from the third country complies with the limits laid down in Sections 74 to 77 and in subsections (1), (2) and (3) of this Section. Where the limits are exceeded, Section 66 (2) and Section 79 shall apply mutatis mutandis.

### **Exceptions and derogations from the investment limits**

**Section 79.** (1) The investment limits laid down in Sections 66 to 78 shall not be required to be complied with when exercising subscription rights attaching to transferable securities or money market instruments which form part of the fund assets.

(2) If the limits referred to in Sections 66 to 78 are exceeded unintentionally or as a result of the exercise of subscription rights, sales transactions from the fund assets shall have as a priority objective the remedying of that situation, taking due account of the interests of unit-holders.

(3) The legal effect of the acquisition of securities, money market instruments and other liquid financial assets within the meaning of Section 67 (1) shall not be affected by a breach of the investment limits laid down in Sections 66 to 78.

(4) The maximum rates referred to in Sections 74 to 77 shall not be required to be complied with two weeks before the maturity of a UCITS established for a specific period and one week before and after the effective date of a merger, taking due account of the interests of unit-holders. The same shall apply where a UCITS is wound up in accordance with Section 63, in the event of a UCITS in liquidation in accordance with Section 65 and in the event of irrevocable orders for the complete redemption of all units in accordance with Section 63 (4).



## **Prohibition of borrowing and lending**

**Section 80.** (1) The management company or the custodian bank shall not borrow for the account of the fund assets unless this is permitted under the fund rules and provided that such borrowing is on a temporary basis and represents no more than 10% of the value of the fund assets.

(2) The acquisition of foreign currency by means of a “back-to-back” loan shall be permissible.

(3) The management company or the custodian bank shall neither grant loans nor enter into any liabilities under a surety or guarantee agreement for the account of the fund assets; Sections 67, 68, 70 to 74 shall remain unaffected.

(4) The prohibition in subsection (3) shall not prevent the acquisition of transferable securities, money market instruments or other financial instruments referred to in Section 71 or 73 which are not fully paid.

## **In rem disposals over assets**

**Section 81.** Assets forming part of a UCITS shall not be pledged or otherwise encumbered or given in security or assigned, except in the cases expressly provided for in this Federal Act. Any transaction violating this provision shall be ineffective in relation to the unit-holders. This provision shall not apply if derivative transactions as referred to in Section 73 are concluded for a UCITS.

## **Uncovered sales**

**Section 82.** Neither the management company nor the custodian bank shall sell, for the account of the fund assets, any securities, money market instruments or other liquid financial assets referred to in Section 67 (1) that are not part of the fund assets at the time of the transaction. Section 73 shall remain unaffected.

## **Repurchase agreements**

**Section 83.** If expressly provided for in the fund rules, the management company shall be authorised, within the investment limits laid down by this Federal Act, to purchase assets for the account of the UCITS for the fund assets, subject to the seller’s commitment to repurchase such assets at a predetermined time and at a predetermined price (repurchase agreements). The FMA may specify, by way of regulation, more detailed criteria relating to the definition, disclosure requirements, investor information and investment limits of repurchase agreements, taking into account European practice and Art. 11 of Directive 2007/16/EC.

## **Securities lending**

**Section 84.** If expressly provided for in the fund rules, the management company shall be authorised, within the investment limits laid down by this Federal Act, to transfer to third parties for a specific period securities up to 30% of the fund assets under a recognised securities lending system, provided that such third party shall be obligated to retransfer such securities upon expiry of the predetermined lending period. The securities lending system shall ensure that the rights of the unit-holders are adequately safeguarded (securities lending). Under this authorisation, the management company may grant an authorisation for the account of a UCITS in accordance with Section 8 of the Safe Custody of Securities Act. The FMA may specify, by way of regulation, more detailed criteria relating to the definition, designation, disclosure requirements, investor information, eligibility for the investment of money held in trust for wards and investment limits of securities lending transactions and systems, taking into account European practice and Art. 11 of Directive 2007/16/EC.

## **Securitisation**

**Section 84a.** Where a management company, on behalf of a UCITS managed by it, is exposed to a securitisation that no longer meets the requirements provided for in Regulation (EU) 2017/2402, the management company shall, in the best interest of the unit-holders in the relevant UCITS, act and take corrective action, if appropriate.

## **Article 4**

### **Risk management of the UCITS**

#### **Risk management practices**

**Section 85.** (1) In respect of a UCITS, a management company shall employ risk management practices that enable it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the assets of the UCITS. In particular, it shall not solely or mechanistically rely on credit ratings issued by credit rating agencies as defined in Art. 3 (1) (b) of Regulation (EC) No. 1060/2009 on credit rating agencies, OJ No. L 302 of 17 November 2009,

p. 1, for assessing the creditworthiness of the UCITS' assets. The management company shall adequately capture by its internal control mechanisms, in accordance with this Article, any asymmetry of information between the management company and the counterparty resulting from potential access of the counterparty to non-public information on undertakings to which credit derivatives relate.

(2) To ensure the accurate and independent assessment of the value of OTC derivatives, the management company shall employ the process laid down in Section 92.

(3) Taking into account the nature, scale and complexity of the UCITS' activities, the FMA shall monitor the adequacy of the credit assessment processes of the management or investment companies, assess the use of references to credit ratings, as referred to in subsection (1), in the UCITS' investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

### **Risk management policy**

**Section 86.** (1) The management company shall establish, implement and maintain an adequate and documented risk management policy which is adequate for the nature, scale and complexity of the management company's activities and of the UCITS it manages and which

1. identifies the risks to which the UCITS it manages are or might be exposed;
2. states the techniques, tools and arrangements that enable it to comply with the obligations set out in Sections 87 to 89;
3. states the division of duties within the management company pertaining to risk management;
4. states the terms, contents and frequency of reporting by the risk management function to senior management and, where appropriate, to the supervisory board, as referred to in Section 17.

(2) The risk management policy referred to in subsection (1) shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity, sustainability and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.

(3) The management company shall assess, monitor and periodically review:

1. the adequacy and effectiveness of, and the level of compliance with, the risk management policy and the arrangements, processes and techniques referred to in Sections 87 to 89; and
2. the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management practices.

### **Measuring and managing risks**

**Section 87.** (1) The management company shall adopt effective arrangements, processes and techniques which are adequate to the nature, scale and complexity of the management company's activities and of the UCITS it manages and consistent with the UCITS' risk profile in order to

1. measure and manage at any time the risks which the UCITS it manages are or might be exposed to; and
2. ensure compliance with limits concerning global exposure and counterparty risk in accordance with Sections 89 and 91.

(2) For the purposes of subsection (1), the management company shall take the following measures for each UCITS it manages:

1. put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that
  - a) the risks of taken positions and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data, and
  - b) the risk measurement arrangements, processes and techniques are adequately documented;
2. conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
3. conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might have an adverse impact on the UCITS;
4. establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS taking into account all risks which may be material to the UCITS as referred to in Section 86 (1) and (2) and ensuring consistency with the UCITS' risk profile;
5. ensure that the current level of risk complies with the risk limit system as set out in no. 4 for each UCITS;

6. establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches of the risk limit system of the UCITS, result in timely remedial actions in the best interests of unit-holders.

(3) Taking into account relevant European practice, the FMA may specify by way of regulation:

1. the conditions under which periodic back-tests referred to in subsection (2) no. 2 and periodic stress tests and scenario analyses referred to in subsection (2) no. 3 must be conducted;
2. the requirements that must be fulfilled to ensure compliance of the current level of risk of each UCITS with the risk limit system as referred to in subsection (2) no. 5;
3. the criteria which an adequate risk management process for liquidity risks must fulfil (Section 88);
4. the specific details of the risk management policy (Section 86), risk measurement and risk management (Section 87 (1) and (2));
5. the definition of global exposure (Section 89) and its quantitative and qualitative specification in risk management;
6. the calculation of global exposure using the commitment approach and the quantitative and qualitative specification of such approach in risk management (Section 90);
7. the calculation of global exposure using the value at risk approach and the quantitative and qualitative specification of such approach in risk management (Section 89);
8. the calculation of counterparty risk, taking into account collateral, and its quantitative and qualitative specification in risk management (Section 90);
9. the rules for hedging derivative transactions and their quantitative and qualitative specification in risk management;
10. the permitted advanced measurement methodologies (Section 89);
11. the inclusion of netting and hedging arrangements in the commitment approach (Section 90);
12. the processes for appropriate, accurate and independent valuation of OTC derivatives at the market value (Section 92);
13. the arrangements and procedures to be established, implemented and maintained which ensure appropriate, transparent and fair valuation of UCITS' exposures to OTC derivatives and adequately document such risks (Section 92);
14. the collateral and the amount of collateral permissible when treating counterparty and issuer risk, and the calculation of the risk of OTC derivative transactions (Section 91).

### **Liquidity risk management**

**Section 88.** (1) The management company shall employ appropriate liquidity risk management practices in order to ensure that each UCITS it manages is able, at any time, to repurchase and redeem the units in accordance with Section 55 (2). To assess the liquidity risk of the UCITS under exceptional circumstances, the management company shall conduct stress tests.

(2) The management company shall ensure that for each UCITS it manages the liquidity profile of the investments of the UCITS is appropriate to the repurchase policy laid down in the fund rules and in the prospectus.

### **Calculation of global exposure**

**Section 89.** (1) The management company shall, on at least a daily basis, calculate the global exposure of a managed UCITS within the meaning of Section 73 (5) and (6) as either of the following:

1. the incremental exposure and leverage generated by the managed UCITS through the use of financial derivative instruments, including embedded derivatives pursuant to Section 73 (6), which may not exceed the total of the UCITS' net asset value;
2. the market risk of the UCITS' portfolio.

(2) Global exposure shall be calculated by using the commitment approach, the value at risk approach or other advanced risk measurement methodologies as may be appropriate. In this connection, "value at risk" shall mean a measure of the maximum expected loss at a given confidence level over a specific time period. The method selected to measure global exposure shall be appropriate, taking into account the investment strategy pursued by the UCITS as well as the types and complexities of the financial derivative instruments used and the proportion of the UCITS' portfolio which comprises financial derivative instruments. Transactions referred to in Sections 83 and 84 shall also be taken into account in the calculation of global exposure.

## **Commitment approach**

**Section 90.** (1) Where the commitment approach is used for the calculation of global exposure, the management company shall

1. apply this approach to all financial derivative instrument positions including embedded derivatives within the meaning of Section 73 (6), whether used as part of the UCITS' general investment policy, for purposes of risk reduction or for the purposes of efficient portfolio management within the meaning of Sections 83 and 84;

2. convert each financial derivative instrument position into the market value of an equivalent position in the underlying asset of that derivative (standard commitment approach).

(2) The management company may take account of netting and hedging arrangements when calculating global exposure, where these arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.

(3) Where the use of financial derivative instruments does not generate incremental exposure for the UCITS, the underlying exposure shall not be required to be included in the commitment calculation.

(4) Where the commitment approach is used, temporary borrowing arrangements pursuant to Section 80 (1) shall not be required to be included in the global exposure calculation.

## **Counterparty risk and issuer concentration**

**Section 91.** (1) Counterparty risk arising from over-the-counter financial derivative instruments (OTC derivatives) shall be subject to the limits set out in Section 74. When calculating the UCITS' exposure to a counterparty in accordance with the limits referred to in Section 74 (1) and (2), the management company shall use the positive market value of the OTC derivative contract with that counterparty.

(2) The management company may net the derivative positions of a UCITS with the same counterparty, provided that it is able to legally enforce netting agreements with the counterparty on behalf of the UCITS. Netting shall only be permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with that same counterparty.

(3) The management company may reduce the UCITS' exposure to a counterparty of an OTC derivative transaction through the receipt of collateral. Collateral received shall be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation. The management company shall take collateral into account in calculating exposure to counterparty risk within the meaning of Section 74 (1) and (2) when the management company passes collateral to an OTC counterparty on behalf of the UCITS. Collateral passed may be taken into account on a net basis only if the management company is able to legally enforce netting arrangements with this counterparty on behalf of the UCITS.

(4) The management company shall calculate issuer concentration limits as referred to in Section 74 on the basis of the underlying exposure created through the use of financial derivative instruments pursuant to the commitment approach. With respect to the exposure arising from OTC derivative transactions as referred to in Section 74 (2), the management company shall include in the calculation any exposure to OTC derivative counterparty risk.

## **Procedures for the valuation of OTC derivatives**

**Section 92.** (1) Management companies shall verify that UCITS' exposures from OTC derivatives are assigned market values that do not rely only on market quotations by the counterparties of the OTC transactions and fulfil the criteria set out in Section 73 (1) no. 3 (b). For that purpose, the management company shall establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of UCITS' exposures from OTC derivatives and adequately document such arrangements and procedures.

(2) The management company shall ensure that the market value of OTC derivatives is subject to adequate, accurate and independent valuation. The valuation arrangements and procedures shall be adequate and proportionate to the nature and complexity of the OTC derivatives concerned. When the arrangements and procedures concerning the valuation of OTC derivatives involve the performance of certain activities by third parties, the management company shall comply with the requirements set out in Section 10 (1) no. 7 and Section 30 (3).

## Article 5

### Master-feeder structures

#### Feeder UCITS

**Section 93.** (1) A feeder UCITS is a UCITS, or an investment compartment thereof, which invests, by way of derogation from Section 2 (1) no. 1, Sections 67, 68, 70, 71, 74, 76, 77 and 78 (3), at least 85% of its assets in units of another UCITS or investment compartment thereof (the “master UCITS”).

(2) A feeder UCITS may hold up to 15% of its assets in one or more of the following:

1. deposits which are repayable on demand and deposits which have the right to be withdrawn held in accordance with Section 67 (1) no. 4;
2. financial derivative instruments pursuant to Section 73 which may be used only for hedging purposes;
3. movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an investment company.

(3) For the purposes of compliance with Section 73 (5) and (6), the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under subsection (2) no. 2 with either:

1. the master UCITS’ actual exposure from financial derivative instruments in proportion to the feeder UCITS’ investment in the master UCITS; or
2. the master UCITS’ potential maximum global exposure in relation to financial derivative instruments provided for in the master UCITS’ fund rules or instrument of incorporation in proportion to the feeder UCITS’ investment in the master UCITS.

#### Master UCITS

**Section 94.** (1) A master UCITS is a UCITS, or an investment compartment thereof, which:

1. has, among its unit-holders, at least one feeder UCITS,
2. is not itself a feeder UCITS, and
3. does not hold units of a feeder UCITS.

(2) The following derogations for a master UCITS shall apply:

1. if a master UCITS has at least two feeder UCITS as unit-holders, the requirement of raising capital from the public in Member States (Section 2 (1) no. 1 in conjunction with Section 4) shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;
2. if a master UCITS does not raise capital from the public in a Member State other than that in which it is established and only has one or more feeder UCITS in that Member State, the provisions of Chapter 4 Article 5 and Section 143 (1) no. 2 shall not apply.

#### Authorisation of the master-feeder structure by the FMA

**Section 95.** (1) Investment of a feeder UCITS authorised in Austria in a given master UCITS which exceeds the limit referred to in Section 77 (1) for investments in other UCITS shall require prior authorisation by the FMA and a legally effective agreement as referred to in Section 96.

(2) Within fifteen working days following the submission of a complete application, the FMA shall grant to the feeder UCITS authorisation of the investment of the feeder UCITS in the master UCITS by written official notice, or inform the feeder UCITS of the rejection of the application by official notice. If the FMA informs the applicant that documents or information are missing from the application, Section 13 (3) last sentence of the General Administrative Procedure Act shall not apply. If the FMA does not prohibit investment in the master UCITS within the period referred to in the first sentence, investment shall be deemed authorised. At the request of the feeder UCITS, however, the FMA shall also issue a written official notice if the investment is not prohibited.

(3) The FMA shall grant authorisation if the feeder UCITS, its depositary and its auditor, as well as the master UCITS, comply with all the requirements set out in this Article. For such purposes, the feeder UCITS shall provide to the FMA the following documents:

1. the fund rules or instruments of incorporation of the feeder UCITS and the master UCITS,
2. the prospectus and the key information document referred to in Section 134 for investors of the feeder and the master UCITS,
3. the agreement referred to in Section 96 between the feeder and the master UCITS or the internal rules referred to in Section 98,
4. if an existing UCITS is converted, the information for unit-holders referred to in Section 111 (1),

5. if the master UCITS and the feeder UCITS have different depositaries, the agreement referred to in Section 107 (1) between their respective depositaries, and

6. if the master UCITS and the feeder UCITS have different auditors, the agreement referred to in Section 109 (1) between their respective auditors.

(4) If the master UCITS has been authorised in another Member State, the feeder UCITS shall also provide an attestation by the competent authorities of the master UCITS' home Member State that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Article 58 (3) (b) and (c) of Directive 2009/65/EC. For the feeder UCITS, documents shall be provided in accordance with the use of language pursuant to Art. 27 of Regulation (EU) 2017/1129.

(5) If a feeder UCITS intends to invest in a UCITS authorised by the FMA as the master UCITS, the FMA shall issue, at the request of the feeder UCITS, an attestation for submission to the competent authorities of the feeder UCITS' home Member State and as proof of fulfilment of the requirements, stating that the master UCITS is a UCITS, is not itself also a feeder UCITS and does not hold units in a feeder UCITS. The custodian bank shall issue an attestation as proof that no units are held in a feeder UCITS, such attestation not being older than two weeks at the time the application is filed.

### **Agreement between feeder UCITS and master UCITS**

**Section 96.** (1) The feeder UCITS and the master UCITS shall enter into an agreement in which the master UCITS undertakes to provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements under this Federal Act. The agreement shall contain at least the information referred to in subsections (2) to (7).

(2) With regard to access to information, the agreement in accordance with subsection (1) shall include the following:

1. how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instrument of incorporation, prospectus and key investor information;
2. how and when the master UCITS shall inform the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with Section 28;
3. where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as a description of its risk management process and its compliance reports;
4. what details of breaches by the master UCITS of the law, the fund rules or instrument of incorporation and the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of, and the manner and timing thereof;
5. where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS shall provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure in accordance with Section 93 (3) no. 1;
6. a statement that the master UCITS informs the feeder UCITS of any other information-sharing agreements entered into with third parties and, where applicable, how and when the master UCITS makes those other information-sharing agreements available to the feeder UCITS.

(3) The agreement referred to in subsection (1) shall include the following with regard to the basis of investment and repurchase by the feeder UCITS:

1. a statement of which classes of units of the master UCITS are available for investment by the feeder UCITS;
2. the charges and expenses to be borne by the feeder UCITS, and details of any rebate or reimbursement of charges or expenses by the master UCITS;
3. where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

(4) The agreement referred to in subsection (1) shall include the following with regard to standard dealing arrangements:

1. coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
2. coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, a description of the role of transfer agents or any other third party;
3. where applicable, any arrangements necessary to take account of the fact that either or both UCITS are admitted to or dealt in on a secondary market;

4. where necessary, further appropriate measures required to ensure coordination of the timing (Section 99);
5. where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
6. settlement cycles and payment details for purchases and subscriptions, and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind from the master UCITS to the feeder UCITS, notably in the cases of a winding-up (Section 101) and a merger or division (Section 104);
7. procedures to ensure enquiries and complaints from unit-holders are handled appropriately;
8. where the fund rules or instrument of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

(5) The agreement referred to in subsection (1) shall include the following with regard to events affecting dealing arrangements:

1. the manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption, purchase or subscription of units of each UCITS;
2. arrangements for notifying and resolving pricing errors in the master UCITS.

(6) The agreement referred to in subsection (1) shall include the following with regard to standard arrangements for the audit report:

1. where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
2. where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with Section 109 (2).

(7) The agreement referred to in subsection (1) shall include the following with regard to changes to existing arrangements:

1. the manner and timing of notice by the master UCITS of proposed and effective amendments to its fund rules or instrument of incorporation, prospectus and key information document, if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS' fund rules, instrument of incorporation or prospectus;
2. the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;
3. the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS, respectively;
4. the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;
5. the manner and timing of notice of other changes to existing arrangements that the master UCITS undertakes to provide.

(8) Where the agreements between master UCITS and feeder UCITS correspond to the fund rules of the master UCITS included in the prospectus of the master UCITS, a cross-reference to the relevant parts of the prospectus of the master UCITS in the agreement referred to in subsection (1) shall suffice.

### **Choice of the law applicable to the agreement**

**Section 97.** (1) If the feeder UCITS and the master UCITS have been authorised in Austria, Austrian law shall apply to the agreement; the choice of a different law or a place of jurisdiction other than Austria shall be ineffective.

(2) If either the feeder UCITS or the master UCITS has been authorised in another Member State,

1. the applicability of Austrian law, or
2. the applicability of the law of the other Member State in which the master UCITS or the feeder UCITS has been approved

may be agreed on. In the case of no. 1, the choice of a place of jurisdiction other than Austria shall be ineffective. In the case of no. 2, solely the jurisdiction of the courts of the other Member State may be agreed on.

## **Internal rules between master UCITS and feeder UCITS**

**Section 98.** (1) In the event that both master UCITS and feeder UCITS are managed by the same management company, the agreement (Section 96) may be replaced by internal rules which are to ensure compliance with the provisions of Section 96.

(2) The internal rules referred to in subsection (1) shall include the following:

1. appropriate measures to avoid conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unit-holders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet the requirements of Sections 22 to 26;
2. with regard to the basis of investment and repurchase by the feeder UCITS, the rules in accordance with Section 96 (3);
3. with regard to the standard dealing arrangements, the rules in accordance with Section 96 (4) nos. 1 to 6 and 8;
4. with regard to events affecting dealing arrangements, the rules in accordance with Section 96 (5);
5. with regard to the audit report, the rules in accordance with Section 96 (6).

## **Coordination of timing**

**Section 99.** The master UCITS and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.

## **Suspension of repurchase, redemption or subscription**

**Section 100.** (1) Without prejudice to Sections 55 (2) and 56, if a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or, if the master UCITS has been authorised in another Member State, at the request of the competent authority in its home Member State, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units notwithstanding the conditions laid down in Section 56 (1) within the same period of time as the master UCITS.

(2) If, in accordance with this Federal Act, unit-holders of the feeder UCITS have the right to request redemption in the case of a winding-up, merger or division of the master UCITS, exercise of such right shall not be undermined by the feeder UCITS by temporarily suspending the repurchase or redemption, unless exceptional circumstances require it to do so to protect the interests of unit-holders.

## **Winding-up of a master UCITS**

**Section 101.** (1) If a master UCITS is wound up, the feeder UCITS shall also be wound up, unless the FMA approves:

1. the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS, or
2. the amendment of its fund rules or instrument of incorporation in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS.

(2) Without prejudice to Sections 60 to 63, the winding-up of a master UCITS shall take place no earlier than three months after the master UCITS has informed all of its unit-holders and the FMA as the competent authority of the feeder UCITS or, if the feeder UCITS has been authorised in another Member State, the competent authorities of the feeder UCITS' home Member State of the binding decision to wind up.

## **Application for the authorisation of the winding-up**

**Section 102.** (1) The feeder UCITS shall submit to the FMA, no later than two months after the date on which the master UCITS informed it of the binding decision to wind up, the following:

1. where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS in accordance with Section 101 (1) no. 1:
  - a) its application for authorisation of that investment;
  - b) its application for authorisation of the proposed amendments to its fund rules;
  - c) the amendments to its prospectus and its key information document in accordance with Section 137 (1) nos. 1 and 2;
  - d) the other documents required pursuant to Section 95 (3);
2. where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Section 101 (1) no. 2, the documents and information referred to in no. 1 (b) and (c);
3. where the feeder UCITS intends to be wound up, a notification of that intention.



(2) By way of derogation from subsection (1), where the master UCITS informed the feeder UCITS of its binding decision to wind up more than five months before the date at which the winding-up will start, the feeder UCITS shall submit to the FMA its application or notification in accordance with subsection (1) no. 1, 2 or 3 no later than three months before the start of the winding-up.

(3) The feeder UCITS shall inform its unit-holders of its intention to be wound up without delay.

### **Authorisation of the winding-up**

**Section 103.** (1) Within fifteen working days following the complete submission of the documents referred to in Section 102 (1) no. 1 or 2, the FMA shall approve the application by the feeder UCITS for the authorisation of the winding-up by a written official notice, or inform the feeder UCITS of the rejection of the application in writing by official notice. If the FMA informs the applicant that documents or information are missing from the application, Section 13 (3) last sentence of the General Administrative Procedure Act shall not apply.

(2) After receipt of the authorisation by the FMA in accordance with subsection (1), the feeder UCITS shall inform the master UCITS of it.

(3) The feeder UCITS shall take all necessary measures to comply with the requirements of Section 111 without undue delay after the FMA has granted the necessary authorisations pursuant to Section 102 (1) no. 1.

(4) Where the payment of the winding-up proceeds of the master UCITS is executed before the date on which the feeder UCITS starts to invest either in different master UCITS in accordance with Section 102 (1) no. 1 or in accordance with its new investment objectives and policy pursuant to Section 102 (1) no. 2, the FMA shall grant authorisation only subject to the following conditions:

1. the feeder UCITS shall receive

a) the liquidation proceeds in cash, or

b) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or the internal rules referred to in Section 98 and the binding decision to liquidate provide for it;

2. any cash held or received in accordance with this subsection may be reinvested only for the purpose of efficient liquidity management before the date on which the feeder UCITS starts to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

(5) Where subsection (4) no. 1 (b) applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

### **Merger or division of a master UCITS**

**Section 104.** (1) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be wound up, unless the FMA grants authorisation to the feeder UCITS to

1. continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS,

2. invest at least 85% of its assets in units of another master UCITS not resulting from the merger or the division, or

3. amend its fund rules in order to convert into a UCITS which is not a feeder UCITS.

(2) No merger or division of a master UCITS shall become effective unless the master UCITS has provided all of its unit-holders and the FMA or, if the feeder UCITS has been approved in another Member State, the competent authorities of its feeder UCITS' home Member State, with the information referred to, or comparable with that referred to, in Section 120 (1) and Section 121 by sixty days before the proposed effective date.

(3) Unless the FMA has, or, if the feeder UCITS has been approved in another Member State, the competent authorities of the feeder UCITS' home Member State have, granted authorisation pursuant to subsection (1) no. 1, the master UCITS shall enable the feeder UCITS to return or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

### **Application for authorisation of the merger or division**

**Section 105.** (1) The feeder UCITS shall submit to the FMA, no later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with Section 104 (2), the following:

1. where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:
  - a) its application for authorisation thereof;
  - b) where applicable, its application for authorisation of the proposed amendments to its fund rules or instrument of incorporation;
  - c) where applicable, the amendments to its prospectus and its key information document in accordance with Section 137 (1) nos. 1 and 2;
2. where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the proposed merger or division:
  - a) its application for authorisation of that investment;
  - b) its application for authorisation of the proposed amendments to its fund rules or instrument of incorporation;
  - c) the amendments to its prospectus and its key information document in accordance with Section 137 (1) nos. 1 and 2;
  - d) the other documents required pursuant to Section 95 (3);
3. where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Section 101 (1) no. 2:
  - a) its application for authorisation of the proposed amendments to its fund rules or instrument of incorporation;
  - b) the amendments to its prospectus and its key information document in accordance with Section 137 (1) nos. 1 and 2;
4. where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) With regard to subsection (1) nos. 1 and 2

1. the expression “continues to be a feeder UCITS of the same master UCITS” refers to cases where:
  - a) the master UCITS is the receiving UCITS in a proposed merger;
  - b) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division;
2. the expression “becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS” refers to cases where:
  - a) the master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unit-holder of the receiving UCITS;
  - b) the feeder UCITS becomes a unit-holder of a UCITS resulting from a division that is materially different from the master UCITS.

(3) By way of derogation from subsection (1), in cases where the master UCITS provided the information referred to, or comparable to that referred to, in Section 120 (1) and Section 121 to the feeder UCITS more than four months before the proposed effective date of the merger or division, the feeder UCITS shall submit to the FMA its application or notification in accordance with subsection (1) no later than three months before the proposed effective date of the merger or division of the master UCITS.

(4) The feeder UCITS shall inform its unit-holders and the master UCITS of its intention to be wound up without delay.

### **Authorisation of the merger or division**

**Section 106.** (1) Within fifteen working days following the complete submission of the documents referred to in Section 105 (1) nos. 1 to 3, the FMA shall approve the application by a feeder UCITS for a merger or division by a written official notice, or inform the feeder UCITS of the rejection of the application in writing by official notice. If the FMA informs the applicant that documents or information are missing from the application, Section 13 (3) last sentence of the General Administrative Procedure Act shall not apply.

(2) As soon as the feeder UCITS has received the official notice on the authorisation of the merger or division by the FMA in accordance with subsection (1), the feeder UCITS shall inform the master UCITS of it.

(3) After the feeder UCITS has been informed that the FMA has granted the necessary authorisations pursuant to Section 105 (1) no. 2, the feeder UCITS shall take the necessary measures to comply with the requirements of Section 111 without delay.

(4) In the cases specified in Section 105 (1) nos. 2 and 3, the feeder UCITS shall have the right to request repurchase and redemption of its units in the master UCITS in accordance with

Section 104 (3) and Section 123, where the FMA has not granted the necessary authorisations required pursuant to Section 105 (1) by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division becomes effective. The feeder UCITS shall also exercise this right in order to ensure that the rights of its own unit-holders to request the repurchase or redemption of their units in the feeder UCITS in accordance with Section 111 (1) no. 4 are not affected. Before exercising this right, the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.

(5) Where the feeder UCITS requests repurchase or redemption of its units in the master UCITS, it shall receive one of the following:

1. the repurchase or redemption proceeds in cash, or
2. some or all of the repurchase or redemption proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it.

In the case of no. 2, the feeder UCITS may realise any part of the transferred assets for cash at any time.

(6) The FMA shall grant authorisation on the condition that any cash held or received in accordance with subsection (5) may be reinvested only for the purpose of efficient liquidity management before the date on which the feeder UCITS starts to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

### **Depositaries of master UCITS and feeder UCITS**

**Section 107.** (1) If the master UCITS and the feeder UCITS have different depositaries, those depositaries shall enter into an information sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

(2) The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

(3) Where they comply with the requirements laid down in this Article, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any statutory or contractual provision safeguarding data protection or relating to the restriction of the disclosure of information. Such compliance shall not give rise to any liability on the part of either such depositary or any person acting on its behalf.

(4) The management company of the feeder UCITS shall communicate to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

(5) The depositary of the master UCITS shall immediately inform the FMA and, where relevant, the competent authority in another Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS about any irregularities it detects when performing its duties with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS. Such irregularities shall include, in particular:

1. errors in the net asset value calculation of the master UCITS;
2. errors in transactions for or the settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;
3. errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;
4. breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information;
5. breaches of investment and borrowing limits set out in this Federal Act or in the fund rules, instrument of incorporation, prospectus or key information document.

### **Content of the agreement between the depositaries of the master UCITS and the feeder UCITS**

**Section 108.** (1) The information sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in Section 107 (1) shall include the following:

1. the identification of the documents and categories of information which are routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available upon request;
2. the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

3. the coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under this Federal Act as well as the Banking Act and the Safe Custody of Securities Act (Federal Law Gazette No. 424/1969), in relation to operational matters, including:

a) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against market timing in accordance with Section 99;

b) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;

4. the coordination of accounting year-end procedures;

5. what details of breaches by the master UCITS of the law and the fund rules or instrument of incorporation the depositary of the master UCITS shall provide to the depositary of the feeder UCITS, and the manner and timing of their provision;

6. the procedure for handling ad hoc requests for assistance from one depositary to the other;

7. identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and the manner and timing in which this will be done.

(2) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Section 96 (1), the information sharing agreement between the depositaries of the master UCITS and the feeder UCITS shall be subject to the law of the Member State applying to that agreement in accordance with Section 97; both depositaries shall agree to the exclusive jurisdiction of the courts of that Member State.

(3) Where the agreement between the feeder UCITS and the master UCITS referred to in Section 96 (1) has been replaced by internal rules in accordance with Section 98, the information sharing agreement between the depositaries of the master UCITS and the feeder UCITS may only provide that the applicable law shall be either that of the Member State in which the feeder UCITS has been approved or, where different, the law of the Member State in which the master UCITS has been approved, for the agreement to take legal effect; both depositaries shall agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information sharing agreement.

## **Auditors**

**Section 109.** (1) If the master UCITS and the feeder UCITS have different auditors, those auditors shall enter into an information sharing agreement including the arrangements taken to comply with the requirements of subsection (2) in order to ensure the fulfilment of the duties of both auditors. The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

(2) In its audit report, the auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder UCITS and the master UCITS have different accounting years, the auditor of the master UCITS shall make an ad hoc report on the closing date of the feeder UCITS. The auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

(3) Where they comply with the requirements laid down in this Article, neither the auditor of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any statutory or contractual provision safeguarding data protection or relating to the restriction of the disclosure of information. Such compliance shall not give rise to any liability on the part of either such auditor or any person acting on the auditor's behalf.

## **Content of the agreement between the auditors of the master UCITS and the feeder UCITS**

**Section 110.** (1) The information sharing agreement between the auditor of the master UCITS and the auditor of the feeder UCITS referred to in Section 109 (1) shall include the following:

1. the identification of the documents and categories of information which are routinely shared between both auditors;

2. whether the information or documents referred to in no. 1 are provided by one auditor to the other or made available upon request;

3. the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;

4. the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;

5. identification of the irregularities to be disclosed in the audit report of the auditor of the master UCITS for the purposes of Section 109 (2);

6. the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS.

(2) The agreement referred to in subsection (1) shall include provisions on the preparation of the reports referred to in Section 109 (2) and Section 49 (5) and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.

(3) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in subsection (1) shall include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required by Section 109 (2) and to provide it and drafts of it to the auditor of the feeder UCITS.

(4) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Section 96 (1), the information sharing agreement between the auditors of the master UCITS and the feeder UCITS shall be subject to the law of the Member State applying to that agreement in accordance with Section 97; both auditors shall agree to the exclusive jurisdiction of the courts of that Member State.

(5) Where the agreement between the feeder UCITS and the master UCITS referred to in Section 96 (1) has been replaced by internal rules in accordance with Section 98, the information sharing agreement between the auditors of the master UCITS and the feeder UCITS may only provide that the applicable law shall be either that of the Member State in which the feeder UCITS has been approved or, where different, the law of the Member State in which the master UCITS has been approved, for the agreement to take effect; both auditors shall agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information sharing agreement.

### **Conversion of existing UCITS into feeder UCITS and change of master UCITS**

**Section 111.** (1) Where an existing UCITS is converted into a feeder UCITS and a master UCITS is changed, the feeder UCITS shall provide the following information to its unit-holders free of charge:

1. a statement that the FMA has authorised the investment of the feeder UCITS in units of such master UCITS,

2. the key information document referred to in Section 134 (1) concerning the feeder UCITS and the master UCITS,

3. the date when the feeder UCITS starts to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the investment limits referred to Section 77 (1), and

4. a statement that the unit-holders have the right to request, within thirty days, the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this subsection. Such information shall be provided at least thirty days before the date referred to in no. 3.

(2) In the event that the feeder UCITS has been notified in accordance with Section 139, the information referred to in subsection (1) shall be provided to investors in the official language, or one of the official languages, of the feeder UCITS' host Member State or in a language approved by its competent authorities. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

(3) The feeder UCITS shall not invest in units of the given master UCITS in excess of the limit referred to in Section 77 (1) before the period of thirty days referred to in subsection (1) no. 4 has elapsed.

(4) The procedure specified in Section 133 shall be applied to the provision of the information referred to in subsection (1) by the feeder UCITS.

### **Monitoring of the master UCITS by the management company of the feeder UCITS**

**Section 112.** (1) The management company of the feeder UCITS shall monitor effectively the activities of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary or auditor, unless there is reason to doubt their accuracy.

(2) Where, in conjunction with an investment in the units of the master UCITS, a distribution fee, commission or other non-cash benefit is received by the management company of the feeder

UCITS or any person acting on behalf of either the feeder UCITS or its management company, the fee, commission or other non-cash benefit shall be paid into the assets of the feeder UCITS.

### **Obligations of the master UCITS and the FMA**

**Section 113.** (1) The master UCITS authorised in Austria shall immediately inform the FMA of the identity of each feeder UCITS which invests in its units. If the master UCITS and the feeder UCITS are established in different Member States, the FMA shall immediately inform the competent authorities of the feeder UCITS' home Member State of such investment in respect of a master UCITS authorised in Austria.

(2) The master UCITS shall not charge subscription or repurchase fees for the investment of the feeder UCITS in its units or the divestment thereof.

(3) The master UCITS shall ensure the timely availability of all information that is required in accordance with this Federal Act, other federal acts or European Union law, the fund rules or the instrument of incorporation to the feeder UCITS or, where applicable, its management company, and to the competent authorities, the depositary and the auditor of the feeder UCITS.

## **Article 6**

### **Mergers**

#### **Principles**

**Section 114.** (1) Mergers of UCITS shall be permissible subject to one of the merger techniques referred to in Section 3 (2) no. 15. This shall apply both to cross-border and domestic mergers. Cross-border techniques shall be permissible irrespective of the legal form of the UCITS. Furthermore, Section 50 shall apply to mergers by the formation of a new UCITS. Sections 115 to 126 shall be applied to domestic mergers.

(2) Sections 115 and 117 to 126 shall apply to cross-border mergers where the merging UCITS has been authorised in Austria in accordance with Section 50. If the merging UCITS has been authorised in another Member State, the laws of the merging UCITS' home Member State shall apply. A change of the legal form of a receiving UCITS authorised in Austria shall not be permissible in the context of a merger.

(3) Any merger of a UCITS authorised in Austria shall require the prior consent of the supervisory board of the management company managing the UCITS and the consent of the custodian bank of each UCITS.

#### **Authorisation of the merger of a merging UCITS authorised in Austria**

**Section 115.** (1) The merger of a merging UCITS authorised in Austria in accordance with Section 50 shall require the prior authorisation by the FMA to take legal effect. The merging UCITS shall provide the following information to the FMA:

1. the common draft terms of the merger approved by the merging UCITS and the receiving UCITS,
2. an up-to-date version of the prospectus and the key information document referred to in Section 134 (1) for investors of the receiving UCITS, if established in another Member State,
3. a statement by each of the depositaries of the merging UCITS and the receiving UCITS confirming that, in accordance with Section 118, they have verified compliance of the particulars set out in Section 117 (1) nos. 1, 6, and 7 with the requirements of this Federal Act, Directive 2009/65/EC where a cross-border merger is concerned, and the fund rules or instrument of incorporation of their respective UCITS, and
4. the information on the proposed merger that the merging UCITS and the receiving UCITS intend to provide to their respective unit-holders.

(2) The information referred to in subsection (1) shall be provided to the FMA in German or, in the case of a cross-border merger, in German and in the official language or one of the official languages of the receiving UCITS' home Member State or in English or in accordance with the use of language pursuant to Art. 27 of Regulation (EU) 2017/1129.

(3) If the FMA considers that the application referred to in subsection (1) is not complete, it shall request additional information within ten working days of receiving the information referred to in subsection (2). Section 13 (3) last sentence of the General Administrative Procedure Act shall not apply. After receipt of the complete application, the FMA shall, in the case of a cross-border merger, submit to the competent authorities of the receiving UCITS' home Member State copies of the information referred to in subsection (1) for review. If the FMA receives an indication of concerns regarding the information for the investors of the receiving UCITS within fifteen working days of submitting copies of the information referred to in subsection (1), the proceedings in

accordance with Section 38 last sentence of the General Administrative Procedure Act shall be suspended.

(4) To assess whether the information for unit-holders is appropriate, the FMA shall consider the potential impact of the proposed merger on unit-holders of the merging UCITS. The FMA may require, in writing, that the information for unit-holders of the merging UCITS be clarified. Such requirement shall delay continuance of the period of assessment referred to in subsection (6) until receipt of the amended information for unit-holders by the FMA.

(5) Authorisation of the merger shall be granted if the following conditions are met:

1. the proposed merger complies with all of the requirements of this Section and Sections 116 to 119;
2. the receiving UCITS has been notified, in accordance with Article 93 of Directive 2009/65/EC, to market its units in all Member States where the merging UCITS has either been authorised or has been notified to market its units in accordance with Article 93 of Directive 2009/65/EC, and
3. the FMA and, in the case of a cross-border merger, the competent authorities of the receiving UCITS' home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of concerns from the competent authorities of the receiving UCITS' home Member State has been received within the meaning of Section 116 (2).

(6) Within twenty working days of receipt of the complete application referred to in subsection (1), the FMA shall either grant authorisation of the merger in writing by official notice to the merging UCITS in accordance with subsections (3), (4) and (5) or, in the case of a domestic merger, in accordance with subsections (4) and (5) and Section 116 (2), or inform the merging UCITS of the rejection of the application in writing by official notice. At the same time, in the case of a cross-border merger, the FMA shall also inform the competent authorities of the receiving UCITS' home Member State of the decision.

### **Assessment of information for unit-holders in the merger of a receiving UCITS authorised in Austria**

**Section 116.** (1) In the merger of a receiving UCITS authorised in Austria, the FMA shall, in the case of a cross-border merger on the basis of the information provided by the competent authorities of the merging UCITS' home Member State, consider the potential impact of the proposed merger on unit-holders of the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

(2) If the FMA has concerns in respect of the appropriateness of the information provided to unit-holders of the receiving UCITS, it shall require, in writing, no later than fifteen working days of receipt of the complete information or, in the case of a cross-border merger no later than fifteen working days of receipt of the copies of the complete information referred to in subsection (1), that the receiving UCITS modify the information to be provided to its unit-holders. In the case of a domestic merger, such requirement shall delay continuance of the period of assessment referred to in Section 115 (6) until receipt of the modified information for unit-holders by the FMA.

(3) In the case of a cross-border merger, the FMA shall send an indication of its concerns to the competent authorities of the merging UCITS' home Member State within the period referred to in subsection (2) first sentence and, after the modified information to be provided to the unit-holders of the receiving UCITS has been submitted to the FMA, the FMA shall, within twenty working days, inform the competent authorities of the merging UCITS' home Member State whether it is satisfied with the modified information.

### **Draft terms of merger**

**Section 117.** (1) The merging UCITS and the receiving UCITS shall draw up common draft terms of merger, which shall set out the following particulars:

1. an identification of the type of merger and of the UCITS involved,
2. the background to and rationale for the proposed merger,
3. the expected impact of the proposed merger on the unit-holders of both the merging UCITS and the receiving UCITS,
4. the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Section 125 (1) or (2),
5. the calculation method of the exchange ratio,
6. the planned effective date of the merger,
7. the rules applicable, respectively, to the transfer of assets and the exchange of units, and
8. in the case of a merger pursuant to Section 3 (2) no. 15 (b) and, where applicable, Section 3 (2) no. 15 (c), the fund rules or instrument of incorporation of the newly constituted receiving UCITS.

(2) The FMA shall not require that any additional information be included in the draft terms of the merger. However, the merging UCITS and the receiving UCITS may decide to include further items in the draft terms of merger.

### **Review of the draft terms of merger by the depositaries**

**Section 118.** The depositaries of the merging UCITS and of the receiving UCITS shall verify the conformity of the particulars set out in Section 117 (1) nos. 1, 6 and 7 with the requirements of this Federal Act and the fund rules of their respective UCITS, and shall confirm their compliance.

### **Certification by the auditor**

**Section 119.** (1) In a merger of a merging UCITS authorised in Austria in accordance with Section 50, an independent auditor shall validate the following:

1. the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio, as referred to in Section 125 (1) or (2),
2. where applicable, the cash payment per unit, and
3. the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Section 125 (1) or (2).

(2) The statutory auditors (Section 49 (5)) of the merging UCITS or the receiving UCITS shall be considered independent auditors for the purposes of subsection (1).

(3) A copy of the report of the independent auditor shall be made available upon request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to the FMA.

### **Information to unit-holders**

**Section 120.** (1) The merging UCITS and the receiving UCITS shall provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable them to make an informed judgement of the impact of the proposed merger on their investment and exercise their rights as referred to in Section 123. The information shall be written in a concise manner and in non-technical language.

(2) In the case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, shall explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in their own Member State.

(3) The information to be provided to the unit-holders of the merging UCITS shall meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation. It shall draw the attention of unit-holders to the key information document of the receiving UCITS and emphasise the desirability of reading it.

(4) The information to be provided to the unit-holders of the receiving UCITS shall focus on the operation of the merger and its potential impact on the receiving UCITS.

(5) If the merging UCITS or the receiving UCITS has been notified in accordance with Section 139, the information shall be provided to the unit-holders in the official language, or one of the official languages, of the relevant UCITS' host Member State, or in a language approved by its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

(6) The information referred to in subsection (1) shall be provided to the respective unit-holders in accordance with Section 133 at least thirty days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge in accordance with Section 123, but only after the consent

1. of the FMA, if the merging UCITS has been authorised in Austria, or
2. of the competent authority of the home Member State, if the merging UCITS has been approved in another Member State.

### **Content of the information to be provided to unit-holders**

**Section 121.** (1) The information referred to in Section 120 shall include at least the following:

1. the background to and the rationale for the proposed merger;
2. the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;



3. any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the depositary upon request, and the right to request the repurchase or redemption in accordance with Section 123 or, where applicable, the conversion of their units without any charges, and the last date for exercising that right, including the following:

- a) details of how any accrued income in the respective UCITS is to be treated;
- b) an indication of how the report of the independent auditor referred to in Section 119 (3) may be obtained;
4. the relevant procedural aspects, in particular the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently, and when the merger will take effect in accordance with Section 125 (planned effective date of the merger);
5. a copy of the key information document of the receiving UCITS referred to in Section 134 (1).

(2) The information referred to in Section 120 to be provided to unit-holders of the merging UCITS shall also include:

1. details of any differences in the rights of unit-holders of the merging UCITS before and after the proposed merger takes effect;
2. if the key information documents of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;
3. a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key information documents;
4. if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;
5. if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unit-holders who previously held units in the merging UCITS;
6. in cases where Section 124 permits costs associated with the preparation and the completion of the merger to be charged to either the merging or the receiving UCITS or any of their unit-holders, details of how those costs are to be allocated;
7. an explanation of whether the management company of the merging UCITS intends to undertake any reweighting of the portfolio before the merger takes effect;
8. if the terms of the proposed merger include provisions for a cash payment in accordance with Section 3 (2) no. 15 (a) or (b), details of that proposed payment, including when and how unit-holders of the merging UCITS will receive the cash payment;
9. the period during which the unit-holders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS;
10. the period during which those unit-holders not making use of their rights granted pursuant to Section 123 within the relevant time limit shall be able to exercise their rights as unit-holders of the receiving UCITS.

(3) The information in accordance with Section 120 to be provided to the unit-holders of the receiving UCITS shall also include a statement as to whether the management company of the receiving UCITS expects the merger to have any material impact on the portfolio of the receiving UCITS, and whether it intends to undertake any reweighting of the portfolio either before or after the merger takes effect.

(4) If a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

### **New unit-holders**

**Section 122.** Between the date when the information pursuant to Section 120 is provided to unit-holders and the date when the merger takes effect, the information documents pursuant to Section 120 and the up-to-date key information document for the unit-holders of the receiving UCITS shall be provided to each person who purchases or subscribes units in either the merging or the receiving UCITS or asks to receive copies of the fund rules or instrument of incorporation, prospectus or key information document of either UCITS.

### **Unit-holders' right to redemption and conversion**

**Section 123.** The unit-holders of both the merging UCITS and the receiving UCITS shall have the right to request, without any charges other than those retained by the UCITS to meet repurchase costs in accordance with Section 59 in conjunction with Section 53,

1. the redemption or repurchase of their units, or

2. where possible, their conversion into units in another UCITS with similar investment policies and managed by the same management company, or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding. That right shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with Section 120 and shall cease to exist five working days before the date for calculating the exchange ratio referred to in Section 125 (1) or (2).

### **Costs**

**Section 124.** Any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging UCITS or the receiving UCITS, or to any of their unit-holders.

### **Entry into effect**

**Section 125.** (1) A domestic merger shall enter into effect on the date referred to in Section 117 (1) no. 6. For calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments, the date referred to in the draft terms of merger shall be relevant.

(2) In cross-border mergers where the receiving UCITS has been approved in Austria, the dates referred to in subsection (1) shall apply, but the required approval by the unit-holders of the merging UCITS, where relevant, shall be awaited in any event. In cross-border mergers where the receiving UCITS has been authorised in another Member State, the dates referred to in subsection (1) shall be determined by the law of the receiving UCITS' home State.

(3) The entry into effect of the merger shall be publicly announced in accordance with Section 136 (4) no. 1, 3 or 4 and shall be notified to the FMA and, in the case of a cross-border merger, to the competent authority of the home Member State of the receiving or the merging UCITS.

(4) A merger which has entered into effect in accordance with subsection (1) or (2) may not be declared null and void.

### **Consequences of the merger**

**Section 126.** (1) A merger effected in accordance with Section 3 (2) no. 15 (a) (gross merger by acquisition) shall have the following consequences:

all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the depositary of the receiving UCITS,

2. the unit-holders of the merging UCITS become unit-holders of the receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS, and

3. the authorisation of the merging UCITS ceases to exist on the entry into effect of the merger.

(2) A merger effected in accordance with Section 3 (2) no. 15 (b) (gross merger by the formation of a new UCITS) shall have the following consequences:

1. all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS,

2. the unit-holders of the merging UCITS become unit-holders of the newly constituted receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS, and

3. the authorisation of the merging UCITS ceases to exist on the entry into effect of the merger.

(3) A merger effected in accordance with Section 3 (2) no. 15 (c) (net merger) shall have the following consequences:

1. the net assets of the merging UCITS are transferred to the receiving UCITS,

2. the unit-holders of the merging UCITS become unit-holders of the receiving UCITS, and

3. the authorisation of the merging UCITS ceases to exist only after all liabilities have been discharged.

(4) The management company of the receiving UCITS shall confirm to the depositary of the receiving UCITS that the transfer of assets and, in the case of subsection (1) or (2), liabilities is complete.

(5) The provisions on the control of concentrations between undertakings in the Cartel Act 2005 – KartG 2005 (Federal Law Gazette I No. 61/2005) and Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation) shall remain unaffected.

## **Facilitations in non-cross-border fund mergers**

**Section 127.** (1) The merger (combination) of UCITS authorised in Austria and not notified for marketing in another Member State in accordance with Section 139 shall be subject to Sections 114 (3), 119 and 122 to 126. Sections 120 and 125 and Section 3 (2) no. 15 (c) shall not be applied. The FMA may only grant authorisation if the interests of all investors are sufficiently safeguarded.

(2) The management company of the receiving UCITS and the UCITS to be newly formed may manage the fund assets resulting from a merger from the effective date of the merger as a UCITS in accordance with this Federal Act if the effective date of such merger is publicly announced subject to at least three months' notice. No public announcement shall be required to be made if there is evidence that the termination has been communicated to all unit-holders in accordance with Section 133. In that event, the interests of unit-holders shall be deemed adequately safeguarded and the merger shall enter into force on the date indicated in the announcement, but no earlier than thirty days after having been communicated to the unit-holders. Such notice shall specify the UCITS to be merged, the official notice of authorisation by the FMA, details of the exchange of units, details of the management company managing the merged or newly formed UCITS, any change in the custodian bank (Section 61) and the fund rules (Section 53) applicable from the effective date of the merger. Fractions can be redeemed in cash. Combining a UCITS with an AIF shall not be permissible.

(3) Subject to authorisation by the FMA, the management company may terminate the management of a UCITS without giving notice in accordance with Section 60 (1) by transferring the assets of the fund to a different UCITS managed by the same or another management company, or by combining these assets with another fund to establish a new UCITS. The provisions set out in subsection 1 shall apply. No costs shall be charged to the unit-holders as a result of this procedure. It shall enter into force on the date indicated in the public announcement, but no earlier than three months after the public announcement.

## **Chapter 4**

### **Information to be provided to investors, advertising and marketing**

#### **Article 1**

#### **Advertising and offering of units**

##### **Advertising units of UCITS**

**Section 128.** (1) Units of UCITS may be advertised only with a simultaneous reference to the prospectus (Section 131) published pursuant to Section 136 (4) and the key information document (Section 134) to be made available pursuant to Section 138 and must specify in which manner and in which language the prospectus and the key information document may be obtained by and are accessible to investors and potential investors.

(2) Advertising to be provided to investors shall be

1. clearly identifiable as such,
2. fair,
3. clear and
4. not misleading.

In particular, any advertising communication comprising an invitation to acquire units of UCITS and specific information about a UCITS shall make no statement that contradicts, or diminishes the significance of, the information contained in the prospectus and the key information document referred to in Section 134 (1).

(3) Advertising for units of UCITS where the fund's historical performance is referred to shall contain an indication that makes clear that the performance record of a fund does not provide any reliable indication as to its future performance.

(4) A feeder UCITS shall include in any advertising an indication that it permanently invests at least 85% of its assets in units of a specific master UCITS.

(5) Furthermore, any advertising shall include a prominent statement drawing attention to the following facts:

1. the investment policy of the UCITS, if it invests principally in the categories of assets defined in Section 67 (1) nos. 3 to 5 other than securities or money market instruments or if it replicates a stock or debt securities index;
  2. a high volatility, if the net asset value of a UCITS has a high volatility due to its portfolio composition or the portfolio management techniques used;
  3. the authorisation of the fund rules by the FMA in the case of a UCITS as defined in Section 76.
- (6) A UCITS as defined in Section 76 shall also indicate the Member States, local authorities or public international bodies in whose securities the UCITS intends to invest or has invested more than 35% of its assets.
- (7) Subsection (1) and (2) shall not be applied by natural and legal persons falling under the scope of Art. 2 of Regulation (EU) 2019/1156.

### Offering of units

**Section 129.** (1) Except as provided in Article 5, units of UCITS may only be offered in Austria if the UCITS was authorised by the FMA in accordance with Section 50, if the key information document pursuant to Section 138 is available no later than one working day before the offering and if the prospectus was published in accordance with Section 136 (4).

(2) Both the prospectus signed by the management company including the fund rules and its amendments (Section 131 (6)) as well as an up-to-date version of the key information document and any translations shall be submitted to the notification office in good time so as to be available to the latter no later than on the day of publication of the prospectus. After consulting the notification office the FMA may, taking into account European practices in this regard, lay down by way of regulation the detailed requirements for filing these documents by electronic means and also stipulate by way of regulation that transmission be allowed exclusively by electronic means. Section 23 (1), (2) and (3) nos. 1 and 2 of the Capital Market Act 2019 shall apply subject to the proviso that the period of safe custody shall be calculated by the notification office from the date of the winding-up of the UCITS and that the reporting duty pursuant to Section 23 (3) no. 2 of the Capital Market Act 2019 only applies in special cases as required by the Federal Minister of Finance, the FMA or Oesterreichische Nationalbank.

(3) Where the agreed terms deviate from the provisions laid down in this Federal Act to the detriment of consumers as defined in Section 1 (1) no. 2 and 3 of the Consumer Protection Act, they shall be void.

### Protection of designations

**Section 130.** (1) The designations “Kapitalanlagegesellschaft”, “Kapitalanlagefonds”, “Investmentfondsgesellschaft”, “Investmentfonds”, “Miteigentumsfonds”, “Wertpapierfonds”, “Aktienfonds”, “Obligationenfonds”, “Investmentanteilscheine”, “Investmentzertifikate”, “Pensionsinvestmentfonds”, “Spezialfonds”, “Indexfonds”, “Anleihefonds”, “Rentenfonds”, “Dachfonds”, “thesaurierende Kapitalanlagefonds”, “OGAW-ETF”, “UCITS ETF”, “ETF”, “Exchange-Traded Fund” or equivalent designations or abbreviations of such designations may only be used for funds and their unit certificates and may only be included in the names of management companies. The designation “OGAW” may only be used for UCITS and their units. The addition “mündelsicher” or equivalent designations or abbreviations may only be used in the names of funds and their unit certificates only for UCITS in accordance with Section 46 (3).

(2) For the purpose of carrying on their activities under Part 2 Chapter 1 Article 3, management companies from an EEA Member State may use the same general designations that they use in the state in which their registered office is situated. However, they must provide adequate additional explanatory information relating to such names in the event of any danger of confusion.

## Article 2

### Prospectus and key investor information

#### UCITS prospectus

**Section 131.** (1) The prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed to them and, in particular, about the risks attached to the investment.

(2) The prospectus shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund’s risk profile.

(3) The prospectus shall contain at least the information specified in Schedule A of Annex I, unless this information is already contained in the fund rules of the UCITS that must be annexed to the prospectus in accordance with subsection (5).

(4) The prospectus shall, in particular, contain the following information:

1. the categories of assets in which the UCITS is authorised to invest;
2. whether or not transactions in financial derivative instruments are authorised;
3. provided that the UCITS may invest in derivative transactions (no. 2), a prominent statement indicating whether those operations may be carried out for the purpose of hedging investment positions or as part of the investment policy and the possible outcome of the use of financial derivative instruments on the risk profile;
4. a prominent statement drawing attention to the investment policy, if the UCITS invests principally in any category of investment instruments defined in Section 67 (1) nos. 3 to 5 other than securities or money market instruments or if it replicates a stock or debt securities index in accordance with Section 75;
5. where applicable, a prominent statement drawing attention to the fact that the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques used;
6. in the case of a UCITS as defined in Section 76, a prominent statement drawing attention to the fact that the FMA has approved the fund rules and the information on the Member States, local authorities or public international bodies in whose securities the UCITS intends to invest or has invested more than 35% of its assets;
7. if a substantial proportion of the assets of a UCITS is invested in units of another UCITS or other collective investment undertakings, information on the maximum level of the management fees to be borne by the relevant UCITS itself and the other UCITS or collective investment undertakings in which it intends to invest;
8. a list of the functions delegated in accordance with Section 28;
9. the method of calculating global exposure;
10. where applicable, the expected leverage if derivative instruments are used and the possibility of higher values;
11. where applicable, information on the reference assets used;
12. information on the remuneration policies, with either information pursuant to (a) or information pursuant to (b) being included:
  - a) the details of the up-to-date remuneration policy, including a description of how remuneration and other benefits are calculated, the identity of the persons responsible for awarding the remuneration and other benefits including the composition of the remuneration committee, where such a committee exists; or
  - b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including a description of how remuneration and other benefits are calculated, the identity of the persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

(5) The fund rules authorised by the FMA shall form an integral part of the prospectus and shall be annexed thereto. They shall not be required to be annexed if the investors are informed that they can, upon request, be sent those documents or be apprised of the place where, in each Member State in which the units are marketed, they may inspect them. This shall be without prejudice to the filing of fund rules pursuant to Section 129 (2).

(6) Changes to the information referred to in subsections (1) to (4) that are capable of influencing the assessment of the units of UCITS shall be added to the prospectus as a supplement in a clearly recognisable manner and published in consolidated form without delay.

(7) Where unit certificates are offered without previous publication of the prospectus, Section 21 (1) and (3) to (6) of the Capital Market Act 2019 shall be applied mutatis mutandis.

(8) The prospectus of the feeder UCITS shall, in addition to the information specified in Annex I Schedule A and the information according to subsections (1) to (4), contain the following information:

1. a declaration that the feeder UCITS is a feeder fund of a particular master UCITS and as such it permanently invests at least 85% of its assets in units of that master UCITS,
2. the investment objective and investment policy, including the risk profile, as well as whether the performance of the feeder UCITS and the master UCITS are identical or to what extent and for which reasons they differ, including a description of the investments made in accordance with Section 93 (2),

3. a brief description of the master UCITS, its organisation, its investment objective and investment policy, including the risk profile, and information on how the updated prospectus of the master UCITS may be obtained,
4. a summary of the agreement entered into between the feeder UCITS and the master UCITS according to Section 96 (1) or the corresponding internal rules pursuant to Section 98,
5. information on how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS according to Section 96 (1),
6. a description of all remuneration and costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as the aggregate charges of the feeder UCITS and the master UCITS, and
7. a description of the tax implications for the feeder UCITS caused by the investment in the master UCITS.

### **Individual and ad hoc information obligations**

**Section 132.** (1) Upon request by an investor, the management company shall also provide supplementary information on the investment limits of the risk management system of the UCITS, the risk management methods and the most recent developments of risks and yields of the major investment instrument categories according to Section 133.

(2) The management company shall notify investors, by means of a durable medium pursuant to Section 133, of the circumstances stipulated under Section 25 (2) (potentially detrimental conflicts of interest) including details of the reasons.

(3) A brief description of the strategies on the exercise of voting rights in respect of investments referred to in Section 26 (1) shall be made available to investors free of charge; alternatively, this information may also be provided in the prospectus (Section 131). Details of the actions taken on the basis of those strategies shall be made available to the unit-holders free of charge and on their request pursuant to Section 133.

(4) The management company shall provide appropriate information to unit-holders on the policy on the best execution of decisions to deal pursuant to Section 32 and major changes to it in the prospectus or in accordance with Section 133.

### **Manner of providing information**

**Section 133.** (1) If, in accordance with this Federal Act, the unit-holders have to be informed of certain facts or events, this information shall, unless otherwise explicitly provided in this Federal Act, be made available to unit-holders on paper or in another durable medium, whereas, in the case of a durable medium other than paper, the following prerequisites shall be met:

1. The information shall be provided in a form appropriate to the context in which the business between the unit-holder and the UCITS or, where relevant, the respective management company is, or is to be, carried on; and
2. the unit-holder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, has specifically chosen the latter.

(2) For the purposes of subsection (1), the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the UCITS or their respective management companies and the unit-holder is, or is to be, carried on if there is evidence that the unit-holder has regular access to the Internet. The provision by the unit-holder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence. If this is not the case, the information shall be sent to an address provided by the unit-holder when acquiring the units.

(3) Where unit certificates are not held in safe custody by the management company or the management company cannot itself carry out the transmission of information, it shall make available the information to the unit-holders' custodians in a form appropriate for transmitting it to the unit-holders. Upon availability of the information to custodians, they shall transmit it to the unit-holders without delay.

## **Article 3**

### **Key investor information – key information document**

#### **Key information document (KID)**

**Section 134.** (1) The management company shall prepare a brief document containing the key information for investors for each UCITS it manages. This document is referred to in Regulation (EU) No. 583/2010 as “key investor information” and is called “key information document” or “KID”

in this Federal Act. The expression “wesentliche Anlegerinformation” (“key investor information”) shall be clearly specified in the KID in the German language.

(2) The key information document constitutes pre-contractual information. It shall be fair, clear and not misleading as well as consistent with the relevant parts of the prospectus. The essential elements (Section 135 (2)) of the KID shall be kept up to date at all times (Section 131 (6)).

(3) The investor cannot infer any civil liability solely on the basis of the KID, including any translation thereof, unless the information contained is misleading, inaccurate or not consistent with the relevant parts of the prospectus. The KID shall contain a clear warning in this respect.

(4) The KID shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail clients as defined in Section 1 no. 36 of the Securities Supervision Act 2018. The requirements of Regulation (EU) No. 583/2010 shall be complied with. Taking into account European practice in this regard, the FMA may, by way of regulation, set out more detailed provisions on Art. 8 and Art. 10 (2) b as well as Annex I of Regulation (EU) No. 583/2010, in particular with regard to transitional provisions, the description of a synthetic indicator, the risk categories, the performance of the UCITS and the ongoing charges.

(5) The KID shall be used in all Member States where the units of UCITS are notified for marketing in accordance with Section 139, without alterations or supplements except the translation.

(6) If the management company, or if applicable the investment company, has prepared a key information document within the meaning of Regulation (EU) Number 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ No. L 352 of 09 December 2014 p. 1 for an investment product, no key information document as referred to in subsection (1) shall be required, and the requirements in subsections (2) to (5) and of Section 135 shall be considered to have been met.

### **Content of the KID**

**Section 135.** (1) The KID shall contain appropriate information on the essential characteristics of the UCITS concerned and aim at helping the investor understand the nature and the risks of the investment product offered and on this basis make an informed investment decision.

(2) The KID shall contain the following information on the essential elements of the respective UCITS:

1. identification of the UCITS and the competent authority of the UCITS,
2. a brief description of the investment objectives and investment policy,
3. description of the past performance or, where applicable, performance scenarios,
4. costs and associated charges, and
5. risk/return profile of the investment, including appropriate indication of the risks associated with the respective UCITS and corresponding warnings.

The investor must be able to understand the key elements without reference to additional documents.

(3) The KID shall clearly specify where and how to obtain additional information relating to the proposed investment, including where and how the prospectus and the annual reports and half-yearly reports can be obtained upon request and free of charge at any time and the languages in which such information is available to investors.

(3a) The KID shall also contain a statement to the effect that the details of the up-to-date remuneration policy, including a description of how remuneration and benefits are calculated, the identity of the persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

(4) As to the specific details of the KID as defined in subsections (1) to (3), Regulation (EU) No. 583/2010 shall be relevant.

## **Article 4**

### **Publications and information provision arrangements**

#### **Publications**

**Section 136.** (1) For each of the UCITS managed by it, the management company shall publish the following documents:

1. a prospectus,
2. an annual report for each accounting year,
3. a half-yearly report covering the first six months of the accounting year, and
4. in the case of the winding-up of the UCITS the winding-up report for each accounting year and as of the winding-up date.

(2) The annual reports, half-yearly reports and winding-up reports shall be published within the following periods, calculated from the end of the respective reporting period:

1. four months for the annual report,
2. two months for the half-yearly report, and
3. four months for the winding-up report.

The annual reports and half-yearly reports shall be accessible to the public in the places indicated in the key investor information and the prospectus or in any other form to be approved by the FMA by way of regulation. The winding-up reports shall be accessible to the public in the same manner as the annual reports.

(3) In addition, the UCITS shall publicly announce, in an appropriate manner, the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, but in any case at least twice a month. The FMA may permit a UCITS to reduce the frequency to once a month on condition that such a derogation does not prejudice the interests of the unit-holders.

(4) Public announcements stipulated by this Federal Act may be made:

1. in the official gazette "Amtsblatt zur Wiener Zeitung" or in at least one other newspaper with nationwide circulation in Austria, or
2. by making them available to the public in printed form free of charge at the place of the management company's registered office, or, if the units are marketed in Austria by a UCITS approved in another Member State, at the place of the registered office of the credit institution as referred to in Section 141 (1), or
3. in electronic form on the management company's website and, where applicable, on the website of the financial intermediaries placing or selling the units including paying agents, or
4. if the FMA has decided to offer this service, in electronic form on the website of an institution commissioned by the FMA against appropriate payment.

(5) In the case of public announcement in electronic form pursuant to subsection (4) nos. 3 and 4, except for the information to be published pursuant to subsection (3) (issue price and repurchase price), a paper version shall be supplied to investors free of charge upon their request by the management company, the offeror, the person applying for admission to trading or the financial intermediaries placing or selling the units. In the case of publication on paper pursuant to subsection (4) no. 2, the management company shall supply to investors upon their request an electronic version pursuant to Section 133.

### **Information to be provided to the FMA**

**Section 137.** (1) A UCITS authorised in Austria shall submit to the FMA

1. the KID and any amendments thereto,
2. the prospectus of the UCITS and any amendments thereto, and
3. the annual reports, half-yearly reports and, in the case of winding-up, the winding-up reports and the audit report of the UCITS.

The documents referred to in nos. 1 and 2 shall be submitted to the FMA in accordance with Section 129 (2) via the notification office (Section 23 of the Capital Market Act 2019). Upon request of the competent authorities of the management company's home Member State, the UCITS shall also provide the documents referred to in nos. 1 to 3 to those authorities.

(2) In addition to the documents specified in subsection (1), the feeder UCITS authorised in Austria shall provide to the FMA the prospectus, the KID referred to in Section 134, including any relevant amendments, as well as the annual and half-yearly reports of the master UCITS within the periods set forth in subsection (3) in German or in English or in accordance with the use of language pursuant to Art. 27 of Regulation (EU) 2017/1129.

(3) The audited annual report and the audit report on the annual report, or in the case of winding-up the winding-up report and audit report on the winding-up report shall be submitted to the FMA by the management company within a maximum period of four months after the closing date of the accounting year of the UCITS. The half-yearly report shall be submitted to the FMA within two months after the end of the reporting period.



(4) If the management company, or if applicable the investment company, has prepared a key information document within the meaning of Regulation (EU) Number 1286/2014, no key information document shall be notified as referred to in subsections (1) and (2) or provided in accordance with subsection (1).

### **Time and manner of providing the prospectus, KID and annual reports to investors**

**Section 138.** (1) The management company shall, for each of the UCITS it manages and sells directly or through another natural or legal person who acts on its behalf and under its full and unconditional liability, provide the following information in good time before offering subscription of the units of UCITS:

1. the KID for this UCITS in German, and
2. upon request additionally
  - a) the prospectus,
  - b) the fund rules, unless they are contained in the prospectus, and
  - c) the latest annual and half-yearly reports published, as well as
  - d) in the case of a master-feeder UCITS the agreement entered into between the master UCITS and the feeder UCITS pursuant to Section 96 free of charge on paper or in another durable medium (Regulation (EU) No. 583/2010).

(2) If the management company does not sell the UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional liability, it shall provide the KID to product manufacturers and intermediaries offering, selling or advising investors on investments in such UCITS or in products entailing exposure to such UCITS upon their request. The intermediaries that sell or provide advice to investors on potential investments in UCITS shall provide to their clients or potential clients the KID and, upon the investors' request, also the fund rules, free of charge on paper or in another durable medium (Regulation (EU) No. 583/2010).

(3) In addition to subsections (1) and (2), the management company shall provide on a website:

1. a continually updated version of the key information document, and
2. an up-to-date version of the prospectus.

(4) The annual reports and half-yearly reports shall be made available to the investor in the form specified in the prospectus and the KID. In the case of winding-up, the winding-up reports shall be made available to the investor in the same manner as the annual reports.

(5) Without prejudice to the requirements of subsections (2) to (4), an up-to-date paper version of the key information document, the prospectus, the annual reports and half-yearly reports, in the case of winding-up the winding-up report and, in the case of master-feeder UCITS, additionally the prospectus and the annual and half-yearly reports of the master UCITS, and in the case of winding-up the winding-up report of the master UCITS, shall be provided by the feeder UCITS to the unit-holders upon their request and free of charge.

(6) Additionally, in the case of a merger, an up-to-date version of the key information document of the receiving UCITS pursuant to Section 133 shall be provided to the unit-holders of the merging UCITS at the time stipulated in Section 120 (6). If, due to the proposed merger, any changes are made to the key information document for the investors of the receiving UCITS, the amended key information document shall be provided to the unit-holders of the receiving UCITS pursuant to Section 133 at the time stipulated in Section 120 (6).

(7) A UCITS authorised in Austria shall provide to investors any and all documents and information set out in this Chapter in German in any case. With regard to a UCITS authorised in another Member State, Section 142 shall apply.

(8) If the management company, or if applicable the investment company, has provided and published on its website a key information document within the meaning of Regulation (EU) Number 1286/2014, the requirements laid down in subsection (1) no. 1, subsection (2), subsection (3) no. 1, subsection (5) and subsection (6) shall be considered to have been fulfilled. Subsection 4 shall apply subject to the proviso that the form described in the key information document shall be followed.

## **Article 5**

### **Marketing of units of UCITS in Member States other than the UCITS home Member State**

#### **Marketing in other Member States of units of a UCITS authorised in Austria**

**Section 139.** (1) Where a UCITS intends to market its units in another Member State, it shall in advance submit to the FMA a notification letter pursuant to Art. 1 of Regulation (EU) No. 584/2010 containing the following information and documents:

1. the manner in which the units of UCITS are to be marketed in the host Member State;
2. where applicable, information on the classes of units and investment compartments;
3. if the UCITS is marketed by the management company that manages it (Section 37 - freedom of establishment and freedom to provide services), indication thereof;
4. an up-to-date version of
  - a) the fund rules,
  - b) the prospectus, and
  - c) where applicable, the latest annual report and the subsequent half-yearly report in the translation, according to Section 142 (1) no. 4, into the official language or one of the official languages of the host Member State of the UCITS or a language accepted by the competent authorities of the host Member State or a language customary in the sphere of international finance, and
5. the key information document referred to in Section 134 in the translation, according to Section 142 (1) no. 4, into the official language or one of the official languages of the host Member State of the UCITS or a language accepted by the competent authorities of the host Member State.

(1a) The notification letter referred to in subsection (1) shall also contain the information required for the charging or indication of any applicable official fees and charges of the competent authorities in the host Member State, including the postal address and information about the entities that are responsible for the performance of the functions referred to in subsection (8).

(2) Upon verifying completeness of the information and documents submitted according to subsection (1), the FMA shall transmit to the competent authorities of the Member State where the UCITS intends to market its units the complete documents specified in subsection (1) no later than ten working days after receipt of the notification letter and the complete documents required by subsection (1) together with an attestation pursuant to Art. 2 of Regulation (EU) No. 584/2010 that the UCITS fulfils the conditions imposed by Directive 2009/65/EC. Section 13 (3) last sentence of the General Administrative Procedure Act shall not apply.

(3) The FMA shall notify the UCITS of the transmission of the documents immediately after sending them. The UCITS may commence marketing its units in the host Member State as from the date of that notification.

(4) The notification letter specified in subsection (1) shall be written by the notifying institution, and the attestation specified in subsection (2) shall be written by the FMA in a language customary in the sphere of international finance or in German provided that this is the official language of the host Member State.

(5) Electronic submission and filing of the documents referred to in subsections (1) and (2) shall be permissible and the FMA shall provide a designated e-mail address in accordance with Art. 3 of Regulation (EU) No. 584/2010 to which the documents and information, as well as any changes to the documents and information pursuant to subsection (1), can be sent, either by describing the change or attachment of an amended version in a commonly used electronic format.

(6) The management company of a UCITS authorised in Austria shall ensure that all information and documents in accordance with subsection (1) nos. 4 and 5, including any translations, are made available electronically to the FMA and the competent authority of the host Member State on a website to be specified in the notification letter pursuant to subsection (1), are kept up to date at all times and that the competent authority of the host Member State is informed of any changes to the documents specified in subsection (1) and of their electronic availability. Each document provided on this website shall be made available there in a commonly used electronic format.

(7) The FMA may, by way of regulation and taking into account the requirements of ESMA, provide for electronic data processing and central storage systems appropriate for the purposes of subsections (5) and (6).

(8) The UCITS shall provide bodies in every Member State in which it intends to market its units in accordance with subsection (1) for the performance of the following functions:

1. processing of the subscription, repurchase and redemption orders and effecting other payments to the unit-holders for units in the UCITS in conformity with the preconditions set forth in the UCITS prospectus and in the key information document;
2. providing information to investors on how the dealing orders referred to in no. 1 can be submitted and how repurchase and redemption proceeds are paid out;
3. facilitation of the handling of information and access to procedures and arrangements in accordance with Section 11 in relation to the exercise of investor rights arising from investments in UCITS in the Member State in which the UCITS is marketed;
4. provision to the investors of the information and documents referred to in Chapter IX of Directive 2009/65/EC in accordance with the requirements in Art. 94 of Directive 2009/65/EC for inspection and the production of copies;
5. provision to the investors of relevant information in respect of the functions performed by the bodies in a durable medium, and
6. the function as a contact point for communication with the competent authorities.

(9) The UCITS shall ensure that the bodies are also provided for the electronic performance of the functions referred to in subsection (8), in particular:

1. in the official language or one of the official languages of the Member State in which the UCITS is marketed, or in a language approved by the competent authorities of this Member State;
2. by the UCITS itself, by a third party that is subject to the valid rules for and the prudential supervision that is applicable to the functions to be performed, or by both.

For the purposes of no. 2, the appointment of this third party – if the functions are to be performed by a third party – shall be agreed upon in a written arrangement, which shall specify which of the functions referred to in subsection (8) are not to be performed by the UCITS and which shall specify that the third party shall receive from the UCITS all relevant information and documents.

(10) The UCITS shall notify to the FMA and the competent authorities of the host Member State in writing every change in the particulars submitted in accordance with subsection (1) or any change in the classes of units to be marketed at least one month before such changes are to enter into effect,

(11) Where the proposed change in accordance with subsection (10) infringes provisions of this Federal Act or Directive 2009/65/EC, the FMA shall inform the UCITS within 15 working days after receipt of the complete notification in accordance with subsection (10) that the proposed change may not be implemented. The FMA shall notify the competent authorities of the UCITS' host Member State accordingly. In the event that the UCITS implements the change in the particulars in accordance with subsection (1) despite this, the FMA shall promptly inform the competent authorities of the UCITS' host member state of all measures taken in accordance with Section 148 (5).

De-notification of the marketing of units of a UCITS authorised in Austria in other Member States

Section 139a. (1) The UCITS shall be entitled to revoke the arrangements made for marketing in respect of units or classes of unit certificates (Section 46 (4)) in a Member State for which a notification in accordance with Section 139 (1) has been submitted provided that all of the following preconditions are met:

1. a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such units held by investors in that Member State, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in that Member State whose identity is known;
2. the intention to terminate arrangements made for marketing of such units in that Member State is made public by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor;
3. any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units identified in the notification referred to in subsection 3.

The information referred to in nos. 1 and 2 shall include a clear description of the consequences for the investor should the investor choose to decline the offer for the redemption or repurchase of their units.

(2) The UCITS shall provide the information referred to in Section (1) nos. 1 and 2 in the translation, according to Section 142 (1) no. 4, into the official language or one of the official languages of the host Member State of the UCITS or a language accepted by the competent authorities of the host Member State. Starting on the date referred to in subsection (1) no. 3, the UCITS shall refrain from any new or further, direct or indirect, offering or placement of the de-notified units in the host Member State.

(3) The UCITS shall notify to the FMA its intention to de-notify the marketing with the information referred to in subsection (1) without delay.

(4) Upon verifying the completeness of the information and documents submitted according to subsection 3, the FMA shall transmit to the competent authorities of the host Member State and ESMA the notification in accordance with subsection (3) no later than fifteen working days after receipt of the complete notification letter and shall inform the UCITS of this transmission. Section 13 (3) last sentence of the General Administrative Procedure Act shall not apply.

(5) The UCITS shall make available to investors maintaining their investments in the UCITS and the FMA the information referred to in Section 142 (1). In the event that this information is available in the translation, according to Section 142 (1) no. 4, into the official language or one of the official languages of the host Member State of the UCITS or a language accepted by the competent authorities of the host Member State, the UCITS shall be permitted to use all electronic or other means of distance communication, but vis-à-vis the FMA only those means which this authority has approved for distance communication.

(6) The FMA shall transmit to the competent authorities of the host Member State information on any change to the documents referred to in Section 139 (1).

(7) The FMA shall in executing the functions in subsections (1) to (6) and the powers referred to in Sections 11 (4), 38 (1) and (6), 143 (1) no. 1 and 2, 157 (7), 158 (3) and 162 (1) and (2), including the possibility of demanding the submission of particulars required to supervise compliance with the relevant provisions for this UCITS for which the FMA is responsible, exercise its supervisory function and take measures in the event of the infringement of one of these provisions. Without prejudice to other supervisory activities and supervisory powers in accordance with Sections 11 (4), 38 (1), 143 (1) nos. 1 and 2 and (2), the FMA shall refrain from the date of the submission referred to in subsection (6) from requiring the UCITS concerned to provide evidence of compliance with the national laws, regulations and administrative provisions governing the marketing requirements referred to in Art. 5 of Regulation (EU) 2019/1156.

### **Marketing in Austria of units of a UCITS authorised in another Member State**

**Section 140.** (1) The units of a UCITS authorised in another Member State may be marketed in Austria as soon as the complete documents and information according to Section 139 (1) and the attestation according to Section 139 (2) have been supplied to the FMA by the competent authority of the home Member State of the UCITS.

(2) In conducting its business activities the UCITS can use the same reference to its legal form as in its home Member State (Section 130), for example “*Investmentgesellschaft*” (investment company) or “*Investmentfonds*” (investment fund).

(3) For the processing of the notification pursuant to subsection (1), a fee in the amount of EUR 1,100 shall be paid to the FMA. In the case of funds which consist of several investment compartments (umbrella funds), this fee shall increase by EUR 220 for each fund, starting from the second investment compartment. In addition, for supervision of compliance with the obligations under this Article, an annual fee in the amount of EUR 600 shall be paid to the FMA at the beginning of each calendar year, but no later than by 15 January of the respective year for every fund authorised as of the cut-off date of 1 January of that year; in the case of funds which consist of several investment compartments (umbrella funds), this fee shall increase by EUR 200 for each investment compartment, starting from the second investment compartment. Any fees not paid by the due date shall be enforceable. The FMA shall issue a statement of arrears, which constitutes an executory title. The statement of arrears shall include the name and address of the person or entity subject to the fee, the amount of the debt and the note that the debt has become enforceable. Any failure to pay the fee within the set period shall constitute a ground for prohibiting marketing in accordance with Section 162 (3).

(4) The UCITS authorised in another Member State shall make electronically available to the FMA on a website all information and documents according to Section 139 (1) nos. 4 and 5, including any translations, keep them up to date at all times and notify the FMA of any changes to these documents and their electronic availability.

(5) The UCITS shall notify to the FMA and the competent authorities of the home Member State in writing every change in the particulars submitted in accordance with Section 139 (1) or any change in the classes of units to be marketed at least one month before such changes are to enter into effect.

#### **De-notification of the marketing in Austria of units of a UCITS authorised in another Member State**

Section 141. (1) The marketing of units of a UCITS authorised in another Member State may be de-notified in Austria as soon as the complete documents and information according to Section 139a (1) have been supplied to the FMA by the competent authority of the home Member State of the UCITS.

(2) The UCITS shall make available to investors maintaining their investments in the UCITS the information referred to in Section 142 (1).

(3) The FMA shall in executing the functions in subsections (1) and (2) and the powers referred to in Sections 11 (4), 38 (1) and (6), 143 (1) no. 1 and 2, 157 (7), 158 (3) and 162 (1) and (2), including the possibility of demanding the submission of particulars required to supervise compliance with the relevant provisions for this UCITS for which the FMA is responsible, exercise its supervisory function and take measures in the event of the infringement of one of these provisions.

(4) For the processing of the notification pursuant to subsection (1), a fee in the amount of EUR 750 shall be paid to the FMA. In the case of funds which consist of several investment compartments (umbrella funds), this fee shall increase by EUR 150 for each fund, starting from the second investment compartment up to and including the tenth investment compartment, and by EUR 100 for each further fund from the eleventh investment compartment up to the fifteenth investment compartment. Any fees not paid by the due date shall be enforceable. The FMA shall issue a statement of arrears, which constitutes an executory title. The statement of arrears shall include the name and address of the person or entity subject to the fee, the amount of the debt and the note that the debt has become enforceable. Any failure to pay the fee within the set period shall constitute a ground for prohibiting marketing in accordance with Section 162 (3).

#### **Information obligations of a UCITS authorised in another Member State**

**Section 142.** (1) A UCITS authorised in another Member State that markets its units in Austria shall make available to investors in Austria all information and documents as well as any changes to them which it is required to make available to investors in its home Member State pursuant to Chapter IX of Directive 2009/65/EC, that is:

1. without prejudice to the provisions of Chapter IX of Directive 2009/65/EC, such information and documents and their changes shall be made available to investors in accordance with Sections 128, 132, 133, 136 and 138;
2. the key information document referred to in Section 134 and any amendments to it shall be translated into German;
3. any information or documents other than the key information document specified in Section 134, as well as any amendments, shall be translated, at the choice of the UCITS, into German or English or into a language in accordance with the use of language pursuant to Art. 27 of Regulation (EU) 2017/1129; and
4. translations of information and documents according to nos. 2 and 3 shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

(2) The frequency of the publication of the issue, sale or repurchase price of units of UCITS shall be subject to the laws, regulations and administrative provisions of the UCITS' home Member State.

(3) If the management company, or if applicable the investment company, has prepared a key information document within the meaning of Regulation (EU) No. 1286/2014, the key information document (KID) shall not be included in the information and documents as referred to in subsection (1) which must be provided to investors in accordance with Chapter IX of Directive 2009/65/EC.

## Chapter 5

### Supervision and cooperation at European and international level

#### Article 1

##### Prudential supervision

##### Section 143. (1) The FMA shall monitor

1. compliance with Sections 5 to 35 by management companies having their registered office in Austria, as well as their branches, in accordance with Section 37;
  2. compliance with the provisions of Chapters 3 and 4 as well as with the obligations specified in the fund rules and the prospectus of the UCITS and Regulations (EU) No. 583/2010, (EU) No. 584/2010 and (EU) No. 2016/438 adopted pursuant to Directive 2009/65/EC with regard to a UCITS approved in Austria by the management company pursuant to Section 5 (1) and by management companies from Member States that pursue activities of collective portfolio management under the freedom to provide services or through a branch;
  3. compliance with Sections 10 to 28 by management companies according to Section 36 that pursue activities of collective portfolio management under the freedom to provide services in Austria;
  4. compliance with Sections 10 to 35 by branches of management companies from other Member States according to Section 36; and
  5. compliance with Sections 141 and 142 and the provisions laid down therein by UCITS referred to in Section 140 and their management companies
- and, in this context, take into account the national economic interest in maintaining a functioning financial market and stability of the financial market.

##### (1a) The FMA shall monitor compliance with

the provisions of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector and

the provisions of Art. 5, 6 and 7 of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment

by management companies having their registered office in Austria on a continuous basis. Without prejudice to the powers conferred to the FMA in these Regulations, the FMA shall in particular have the powers referred to in Section 147.

(2) Section 23 of the Capital Market Act 2019 concerning the duties of the notification office shall also apply to the scope of application of this Federal Act.

(3) The FMA and Oesterreichische Nationalbank shall cooperate with the aim of effectively fulfilling their respective tasks under the Banking Act and this Federal Act.

(4) Section 72 of the Banking Act shall be applied to cooperation with other authorities.

##### Costs

**Section 144.** (1) The costs of the FMA arising from the securities supervision accounting group (Section 19 (1) no. 3 and (4) of the Financial Market Authority Act) shall be borne by management companies licensed pursuant to Section 5 (1) and by the management companies pursuant to Section 36 (1) that pursue activities by way of a branch in Austria. For that purpose, the FMA shall form an additional joint accounting subgroup for management companies, real estate investment management companies (Real Estate Investment Fund Act), corporate staff and self-employment provision funds (Corporate Staff and Self-Employment Provision Act), and AIFM (Alternative Investment Fund Managers Act).

(2) The FMA shall demand payment of the amounts payable by the entities liable to pay pursuant to subsection (1) by official notice; determining flat amounts shall be permissible. The FMA shall specify, by way of regulation, more detailed rules regarding the allocation of costs and its demands for payment. In particular, the following shall be regulated:

the assessment bases of the individual types of demands for payment;

the dates of the official notices concerning the costs and the deadlines for payments by the entities liable to pay.

The management companies shall provide the FMA with all necessary information concerning the bases of the assessment of the costs.

### **Data protection**

**Section 145.** (1) The FMA and Oesterreichische Nationalbank shall be authorised to carry out conventional and automated retrieval and processing of personal data within the meaning of Regulation (EU) 2016/679 to the extent this is within the scope of application of this Federal Act; this comprises

1. licences of management companies and custodian banks and the circumstances relevant for the granting of licences;
2. management, administrative and accounting procedures as well as internal control (risk management) and auditing of management companies, UCITS, AIF and custodian banks;
3. branches and the pursuit of activities under the freedom to provide services;
4. capital and reserves;
5. qualifying holdings in management companies;
6. annual accounts and accounting;
7. supervisory measures pursuant to Sections 147 to 150 and appeal procedures related to such measures;
8. administrative penalties according to Sections 190 to 192;
9. investigations pursuant to Sections 147 to 149 and Sections 157, 158, 161 and 162 of this Federal Act, Section 153 or Section 140 (1) of the Stock Exchange Act 2018, Section 70 of the Banking Act, Section 90 of the Securities Supervision Act 2018, Section 14 of the Capital Market Act 2019 and Section 22b of the Financial Market Authority Act;
10. information received by the competent authorities in the course of the exchange of information according to subsection (2) of this provision, Sections 157, 158, 160 to 162 of this Federal Act or according to Sections 101, 102 and 140 (3) and (4) of the Stock Exchange Act 2018 or Arts. 26 and 26 of Regulation (EU) No. 596/2014 or based on Section 21 of the Financial Market Authority Act;
11. the allocation of costs for the investment fund supervision;
12. authorisation of UCITS and AIF and the circumstances relevant for the granting of authorisations;
13. compliance with the provisions of Article 2 of Chapter 1;
14. investment in UCITS and AIF;
15. remuneration data in accordance with Sections 39b and 39c of the Banking Act.

(2) Transmission of data in accordance with subsection (1) shall be permissible

1. by Oesterreichische Nationalbank to the FMA, and
2. by the FMA in the framework of rendering assistance between authorities, and
3. by the FMA to
  - a) Oesterreichische Nationalbank,
  - b) the competent authorities or central banks of Member States,
  - c) ESMA,
  - d) the European Systemic Risk Board – ESRB (Regulation (EU) No. 1092/2010) and the European Central Bank, where this is necessary to fulfil tasks that are equivalent to the duties of the FMA and Oesterreichische Nationalbank in accordance with this Federal Act, the Stock Exchange Act 2018, the Banking Act, the Securities Supervision Act 2018, the Capital Market Act 2019, Regulation (EU) No. 583/2010 or Regulation (EU) No. 584/2010 or to perform other statutory functions within the scope of financial market supervision of a requesting competent authority, and
  - e) clearing houses including Oesterreichische Kontrollbank AG, where this is necessary for fulfilling their tasks of ensuring the functioning of these institutions in the case of possible infringements by market participants or other statutory functions within the scope of financial market supervision of a requesting competent authority and where a reasonable request has been submitted and where the data transmitted is subject to professional secrecy according to Art. 102 of Directive 2009/65/EC with these authorities or institutions.

The FMA may draw attention to this fact when transmitting the information and, in the case of transmission to clearing houses including Oesterreichische Kontrollbank AG, the FMA shall emphasise that this information may be published only with its express authorisation.

(3) Transmission by the FMA of data referred to in subsection (1) shall be permissible to authorities of third countries that fulfil the same functions as the FMA or Oesterreichische

Nationalbank within the same framework, for the same purposes and subject to the same restrictions as applicable to competent authorities of Member States pursuant to subsection (2) only where the data transmitted is subject, with these authorities, to professional secrecy equivalent to the professional secrecy set out in Art. 102 of Directive 2009/65/EC and where the transmission is in compliance with Chapter V of Regulation (EU) 2016/679.

(4) For the purposes of cooperation and exchange of information in accordance with subsections (2) and (3) where this is necessary to fulfil tasks that are equivalent to the duties of the FMA in accordance with this Federal Act, the Stock Exchange Act 2018, the Banking Act, the Securities Supervision Act 2018, the Capital Market Act 2019, Regulation (EU) No. 583/2010, Regulation (EU) No. 584/2010 or Regulation (EU) No. 575/2013 or to perform other statutory functions within the scope of financial market supervision of a requesting competent authority, and where the requesting authority would equally meet a similar request for cooperation and exchange of information, the FMA may also make use of its powers for the exclusive purposes of such cooperation, even if the behaviour that is the subject of such investigation does not constitute a breach of a regulation in force in Austria. The FMA may, for the purposes of such cooperation, also make use of all of the powers conferred upon it in accordance with subsection (1) no. 9 with regard to natural and legal persons who are not, or in their country of origin are, authorised to provide asset management services within the meaning of Directive 2009/65/EC.

(5) If, in the context of exchange of information according to subsection (2) or (3), the FMA receives information indicating that it may be published only upon the express agreement of the transmitting authority or if the information received in accordance with subsection (3) originates from another Member State, the information contained therein may be transmitted only for the purposes for which authorisation was given; however, the exchange of information in the context of judicial criminal proceedings, insolvency proceedings or a receivership procedure of the UCITS or the management company or the custodian bank shall continue to be permitted.

### **Professional secrecy**

**Section 146.** Experts commissioned by the FMA or Oesterreichische Nationalbank shall be subject to the duty to observe secrecy in accordance with Section 14 (2) of the Financial Market Authority Act.

### **Inspections and verifications**

**Section 147.** (1) The FMA shall conduct all inspections and take those measures required to fulfil its tasks in accordance with Section 143 (1) and (1a) of this Federal Act taking into account Section 3 (8) of the Banking Act.

(2) In exercising its responsibilities according to subsection (1), the Banking Act and the Securities Supervision Act 2018 the FMA shall, without prejudice to its powers conferred upon it in other federal acts, be authorised at any time to

1. inspect, and obtain copies of, the books, documents and data media of undertakings in accordance with Section 143 (1) and (1a); Section 60 (3) of the Banking Act shall apply to the scope of the information, presentation and inspection rights of the FMA and the obligation to make documents available in Austria;
2. require information from management companies and custodian banks and their functionaries or executive bodies as well as from all entities to which services have been outsourced, as well as summon and question individuals in accordance with administrative procedure legislation;
3. have auditors or other experts conduct all required verifications, with the reasons for exclusion referred to in Section 62 of the Banking Act having to be applied; the provision of information by the FMA to auditors commissioned by it shall be permitted where this is appropriate to fulfilling the audit engagement;
4. conduct on-the-spot verifications through its own inspectors, auditors or other experts;
5. also request the authorities of the host Member State to conduct inspections at branches and representative offices in Member States where this simplifies or expedites the procedure compared to the verification referred to in no. 4 or where this is in the interest of expedience, simplicity, speed or cost-effectiveness; under these conditions, FMA officials may participate in such audits;
6. obtain information from the auditors.

(3) In the case of a verification pursuant to subsection (2) no. 3 or 5, the auditing organisations shall be provided with a written audit engagement and shall voluntarily present proof of their identity and the audit engagement before starting their verification activities. In all other respects, Section 71 of the Banking Act shall be applied.

### **Prudential measures**

**Section 148.** (1) In order to avert any risks to the financial matters of unit-holders of a UCITS referred to in Section 50 or clients of a management company referred to in Section 5 (1) in



conjunction with their activities, the FMA may impose temporary measures by way of an official notice that cease to have effect no later than eighteen months after their entering into force. By issuing an official notice, the FMA may in particular:

1. fully or partly prohibit withdrawals of capital and profit by a management company;
2. in the interest of the unit-holders or the public, require suspension of the issue, repurchase or redemption of units;
3. appoint an expert supervisor (government commissioner), who is either a lawyer or an auditor; the expert supervisor, who is entitled to all rights stipulated under Section 147 (2), shall:
  - a) prohibit the management company from carrying out any business which is likely to increase the aforementioned risk, or
  - b) where the management company has been fully or partly prohibited from continuing its business operations, permit the performance of specific business transactions that do not increase the risk mentioned in the introductory clause of this provision;
4. fully or partly prohibit the directors of the management company from managing the company, with simultaneous notification to the functionary or executive body responsible for appointing the directors; the responsible functionary or executive body shall appoint the respective number of new directors within one month; in order to be legally effective the appointment requires the consent of the FMA, which shall be denied if the newly appointed directors do not seem suitable to avert the aforementioned risk;
5. fully or partly prohibit the continuation of business activities.

(2) At the request of the supervisor (government commissioner) appointed pursuant to subsection (1) no. 3 or subsection (3), the FMA may appoint a deputy if and as long as this is necessary for important reasons, in particular because of a temporary incapacity of the adviser to perform his duties. The provisions applicable to the supervisor shall also apply to the appointment of the deputy as well as to his rights and obligations. For the performance of his duties, the supervisor (government commissioner) may use professionally qualified persons upon authorisation of the FMA where this is necessary due to the extent and complexity of the duties. These persons shall be listed by name in the authorisation of the FMA and the authorisation shall also be served on the management company. These persons shall act on the instruction and in the name of the supervisor (government commissioner) or his deputy. Section 70 (2b) and (3) and (6) of the Banking Act shall apply.

(3) All measures ordered by the FMA in accordance with subsections (1) and (2) shall be suspended for the duration of a receivership procedure.

(4) The FMA shall submit official notices fully or partly prohibiting directors from managing a management company in accordance with Section 5 (1), as well as a possible revocation of any such measure, to the court with jurisdiction over the company register in order to enter them into the company register.

(5) If a licensing requirement pursuant to Section 6 (1) is no longer met after the licence has been granted, or if a management company in accordance with Section 5 (1) violates provisions under Section 143 (1) of this Federal Act or the Banking Act or provisions of a regulation issued on the basis of this Federal Act or the Banking Act, or of an official notice or provisions of Regulation (EU) No. 583/2010, Regulation (EU) No. 584/2010 or Regulation (EU) No. 575/2013 or an official notice issued on the basis of these Regulations, the FMA shall take the measures referred to in Section 70 (4) nos. 1 to 3 of the Banking Act regarding this management company and, where necessary, withdraw the licence in accordance with Section 5 (1) or the authorisation in accordance with Section 50. If the custodian bank violates provisions of this Federal Act or of a regulation issued on the basis of this Federal Act or of an official notice, Sections 70 (3) and 96 of the Banking Act shall be applied subject to the proviso that the withdrawal of the licence in accordance with Section 70 (4) no. 3 of the Banking Act is replaced with the revocation of the authorisation in accordance with Section 50.

### **Cooperation with courts and law enforcement agencies**

**Section 149.** (1) In order to avert any risks to the financial matters of unit-holders of a UCITS referred to in Section 50 or clients of a management company referred to in Section 5 (1) in conjunction with their activities or for the purpose of fulfilling its tasks according to this Federal Act, the FMA may

1. require existing telephone and existing data traffic records;
2. file a motion with the competent public prosecution office requesting it to file an application with the court for seizure in accordance with Sections 109 (1) and 110 (1) no. 3 or sequestration in accordance with Sections 109 no. 2 and 115 (1) no. 3 of the Code of Criminal Procedure 1975 (Federal Law Gazette No. 631/1975).

## Publications

**Section 150.** (1) Unless measures that are of an investigatory nature are concerned, the FMA shall publish measures as referred to in Section 148 (1), (2) and (5) that have been ordered in an unappealable form, together with the identity of the persons concerned and information on the type and nature of the underlying infringement, on the Internet without delay after the person concerned has been informed of the decision by which the measure was imposed. Any decision by a court confirming the justification of a measure shall be included in the public announcement.

(2) The FMA shall publish fines that have been imposed in an unappealable form for infringements pursuant to Section 190 and Section 190a, together with the identity of the person penalised and information on the type and nature of the underlying infringement, on the Internet without delay after the person concerned has been informed of the decision by which the penalty was imposed. Any decision by a court confirming the justification of a fine shall be included in the publication.

(3) If the FMA considers the publication of the identity of the legal persons or of the personal data of the natural persons to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such information, or where publication jeopardises the stability of financial markets or an ongoing investigation, the FMA can:

1. defer the publication of the decision to impose the penalty or measure until the reasons for non-publication cease to exist;
2. publish the decision to impose the penalty or measure on an anonymous basis in a manner which complies with national law, if such anonymous publication ensures effective protection of the personal data concerned; or
3. not publish the decision to impose a penalty or measure in the event that the options laid down in no. 1 or 2 are, in its view, insufficient to ensure:
  - a) that the stability of the financial markets would not be put in jeopardy;
  - b) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a penalty or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is to be presumed that within that period the reasons for anonymous publication shall cease to exist.

(4) The FMA may inform the public by announcement on the Internet, by printing in the official gazette "*Amtsblatt zur Wiener Zeitung*" or in another newspaper with nationwide circulation that a particular natural or legal person (person), whose name is to be published, is not entitled to issue units of UCITS (Section 50 (1)), manage investment funds (Section 1 (1) no. 13 of the Banking Act in conjunction with Section 5 (2) nos. 1 and 2 of this Federal Act) or provide investment advice or depositary services (Section 5 (2) no. 4), where this person has given cause for such action and informing the public is necessary due to the nature and severity of the violation, it does not seriously jeopardise the stability of the financial markets and is not detrimental to the interests of investors and proportionate to possible disadvantages of the party involved. These public announcements may also be made cumulatively. The person shall be clearly identifiable in the public announcement; for this purpose, the FMA may also state the business or residential address, company register number, Internet address, telephone number and fax number, to the extent that it is aware of these.

(5) The person subject to this public announcement may request the FMA to review the lawfulness of the publication pursuant to subsection (1), (2), (3) or (4) in a procedure resulting in an official notice. In this case, the FMA shall publicly announce initiation of such a procedure in the same manner. If, in the course of a review, it is found that the public announcement was unlawful, the FMA shall correct the publication or, at the involved person's request, either revoke it or remove it from the website. If an appeal brought against a measure or penalty which was made public in accordance with subsection (1), (2), (3) or (4) is suspended in proceedings before public courts of law, the FMA shall make this known in the same manner. The publication shall be corrected or either revoked or removed from the website at the involved person's request, once the measure or penalty has been revoked.

(6) If a public announcement pursuant to subsection (1), (2) or (3) is not to be revoked or removed from the Internet pursuant to a decision in accordance with subsection (5), it shall be maintained for a period of at least five years. Publication of the personal data shall, however, only be maintained for as long as none of the criteria pursuant to subsection (3) first sentence are fulfilled.

## **Notifications to be provided to the FMA**

**Section 151.** The management company shall notify the FMA without delay of any changes relevant to the granting of the licence, while in the event of a resolution, notification shall not wait until the object of the resolution takes effect, in particular:

1. any amendment to the instrument of incorporation and any resolution to dissolve the company;
2. any change to the requirements pursuant to Section 5 (1) nos. 6, 7, 10 and 13 of the Banking Act with regard to existing directors;
3. any change to any person who is director and compliance with Section 5 (1) nos. 6, 7 and 9 to 13 of the Banking Act as well as Section 6 (2) nos. 8, 9, 10 and 12b of this Federal Act;
- 3a. any change to any person appointed as supervisory board member, giving details on fulfilment of the conditions pursuant to Article 28a (5) of the Banking Act, as well as any change to the conditions pursuant to Article 28a (3) and (5) of the Banking Act with regard to existing supervisory board members;
4. plans to open, as well as relocate, close or temporarily discontinue business activities at the head office;
5. circumstances by which a prudent director recognises that compliance with the obligations is in jeopardy;
6. the occurrence of insolvency or over-indebtedness;
7. any intended expansion of the business activities;
8. any reduction of paid-up capital (Section 6 (2) no. 5);
9. the person(s) responsible for internal audits as well as changes to this or these person(s);
10. the reduction of eligible own funds below the amounts specified in Section 8;
11. any non-compliance, lasting more than one month, with standards set forth in Section 25 of the Banking Act and Arts. 89 to 91 and Parts 2, 4 and 6 of Regulation (EU) No. 575/2013 as well as any regulations or official notices adopted on their basis;
- 11a. any non-compliance, lasting more than one month, with standards set forth in Arts. 89 to 91 and Parts 2, 4 and 6 of Regulation (EU) No. 575/2013 as well as any regulations or official notices adopted on its basis;
12. any appointment of an auditor as well as any changes to this person;
13. any delegation in accordance with Section 28 as well as any termination of the delegation;
14. all material changes to the risk management practices set out in Sections 85 to 92;
15. any suspension of the repurchase or redemption in accordance with Section 56 as well any resumption;
  
17. termination of the management of the UCITS pursuant to Section 60 (2);
18. liquidation without notice of termination in accordance with Section 63 (4);
19. conversion in accordance with Section 64.

## **Periodic reporting requirements**

**Section 152.** The management company shall, by agreement with the custodian bank, submit to the FMA quarterly reports containing information which reflect a true and fair view of the derivative instruments used for each UCITS managed, the underlying exposure, the investment limits and the methods that are used to assess the risks associated with the derivative transactions. The FMA may specify by way of regulation the manner of transmission; in particular, the use of electronic reporting systems or data media as well as electronic data processing formats may be stipulated.

## **Form of communication with the FMA – electronic transmission**

**Section 153.** (1) After consulting Oesterreichische Nationalbank the FMA may by way of regulation stipulate that the notifications and transmissions in accordance with Sections 151 and 152 of this Federal Act and Section 20 (3), Section 28a (4), Section 44 (1) first sentence and (4) as well as Section 70a (5) of the Banking Act as well as Section 2 (2) of the Regulation on the Protection of Money Held in Trust for Wards, Federal Law Gazette No. 650/1993, as amended by the regulation promulgated in Federal Law Gazette II No. 219/2003, shall only be submitted electronically and shall comply with specific structural requirements, technical minimum standards and methods of transmission. In so doing, the FMA shall observe the principles of efficiency and expediency, ensuring that the data is electronically available to the FMA and Oesterreichische Nationalbank at all times and prudential supervisory interests are not compromised. Furthermore, for attestations, transmissions, reports and notifications pursuant to Section 154, the FMA may also allow auditors optional participation in the electronic system specified in the first sentence. The FMA shall make the necessary arrangements to allow individuals subject to reporting obligations or, where applicable, individuals responsible for submitting the reports on their behalf,

to verify over an appropriate period of time whether the reported data submitted by them or by the person responsible for submitting the reports is correct and complete.

(2) Communication between the FMA and the competent authorities in other Member States in connection with the marketing of units of UCITS in accordance with Sections 139 to 142 shall be governed by Art. 3 to 5 of Regulation (EU) No. 584/2010.

### **Reporting obligation of auditors**

**Section 154.** (1) If an auditor who audits the annual accounts of a management company (Section 5 (1)) or the annual report of a UCITS (Section 49) or who pursues a similar statutory activity for it finds facts that are subject to a reporting obligation in accordance with Section 273 (2) and (3) of the Business Code, he or she shall, without delay but no later than simultaneously, also transmit the report pursuant to Section 273 (3) of the Business Code to the FMA and Oesterreichische Nationalbank.

(2) The auditor shall, even in the absence of a reporting obligation pursuant to Section 273 (2) and (3) of the Business Code, submit without delay a written report including explanations to the FMA and Oesterreichische Nationalbank as well to the directors and the supervisory body that is competent on the basis of the law or the instrument of incorporation, if during his auditing activities the auditor finds facts that

1. are indicative of a material breach of the provisions set out in Section 143 (1) or any other regulations adopted on the basis of this Federal Act or official notices of the FMA; or
2. indicate that fulfilling the obligations of the management company or the UCITS may be jeopardised; or
3. are indicative of an impairment of the continuous functioning of the UCITS or the management company or an undertaking to which activities were delegated in accordance with Section 28; or
4. reveal that key balance sheet items or off-balance sheet items of the management company do not reflect their true value; or
5. provide reason to doubt the accuracy of the documents or the director's declaration of completeness; or
6. result in a refusal of the auditor's report or the expression of reservations.

If the auditor identifies other defects, changes in exposure or in the economic situation that are not a cause for concern, or only minor violations of provisions, and if these defects and violations can be remedied quickly, then the auditor is required to report to the FMA and Oesterreichische Nationalbank only when the management company fails to remedy the defects and to provide the auditor with evidence of such remedies within a reasonable period of time, at the latest, however, within three months. The reporting requirement also applies in cases where the directors fail to provide information properly as requested by the auditor within a reasonable period of time. In cases where an auditing company is appointed as the auditor, the reporting requirement also applies to the natural persons named pursuant to Section 88 (7) of the Professional Code for Certified Public Accountants and Tax Advisers 2017 – WTBG 2017 (Federal Law Gazette I No. 137/2017).

(3) The auditor shall also be obligated to report any circumstances he or she becomes aware of in performing one of the above activities in an undertaking that is affiliated (Section 189a no. 8 of the Business Code) to the management company mentioned in Section 5 (1) for which he or she is performing this activity.

(4) In performing his tasks, the auditor shall also be obligated to inform the chairperson of the supervisory body even without an audit engagement from the supervisory body if, due to the nature and circumstances of the regulatory offences determined, reporting to the directors would not achieve the purpose of remedying the defects and such defects are serious.

(5) If the auditor submits a report pursuant to subsections (1) to (4) in good faith, this shall not constitute a breach of any restriction to the disclosure requirement imposed by contract or any legislative provision and shall not subject such auditor to liability of any kind.

### **Information by the FMA on relevant statutory provisions**

**Section 155.** (1) The FMA shall provide information on its website about all laws and regulations as well as minimum standards and circulars of the FMA referring to the establishment and business activities of a UCITS.

*Note: Subsection 2 repealed by Art. 3 no. 22 Federal Law Gazette I No. 198/2021*

(3) The information in accordance with subsections (1) and (2) shall be provided in a complete, clear and unambiguous manner in German and English and be kept up to date at all times.

## **Information of the FMA on measures involving master-feeder funds**

**Section 156.** If the master UCITS and/or the feeder UCITS have been authorised in Austria, the FMA shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the provisions of Chapter 3 Article 5 or of any information reported pursuant to Section 154 (1) and (4) with regard to the master UCITS or its management company, depositary or auditor and, where necessary, ensure that the other unit-holders of the master UCITS are informed accordingly.

### **Article 2**

#### **Cooperation at European and international level**

##### **Contact point and exchange of information**

**Section 157.** (1) The FMA shall be the competent authority according to Art. 97 of Directive 2009/65/EC. The FMA may at any time obtain information on the activities of Austrian management companies and UCITS in other Member States and third countries as well as on the situation of management companies from other Member States or third countries whose activities may have an effect on the financial market in Austria, where this is in the national economic interest in maintaining a functioning financial market or in the interest of creditor protection.

(2) The FMA may cooperate with

1. the competent authorities of other Member States,
2. the European Central Bank and the central banks of other Member States in their capacity as monetary and supervisory authorities, and
3. other authorities responsible for overseeing payment and settlement systems, clearing houses or the protection of natural persons in conjunction with the processing of personal data, as well as
4. ESMA

where this is necessary for the purpose of carrying out the functions under Directives 2009/65/EC, 2010/43/EU or 2010/44/EU, or in Regulations (EU) No. 583/2010 or (EU) No. 584/2010 or (EU) No. 1095/2010 or providing mutual administrative or judicial assistance and where this information submitted to these authorities is subject to professional secrecy in accordance with Art. 102 of Directive 2009/65/EC; in this context, the FMA may specifically address requests to question individuals to the competent authority in another Member State.

(3) The FMA may, for the purposes of cooperation and data transmission set out in this Chapter, make use of its powers, even if the behaviour that is the subject of such investigation does not constitute a breach of a regulation in force in Austria; the FMA shall make use of the aforementioned powers in order to ensure that the authorities of the host Member State of a management company pursuant to Section 37 collect the particulars referred to in Art. 21 (2) of Directive 2009/65/EC and in order to inform the competent authorities of the home Member State of a management company pursuant to Section 36 of any measures taken in accordance with Section 38 (5) which involve measures or penalties imposed on the management company or restrictions on its activities. The FMA may, for the purposes of cooperation, make use of its powers conferred by Section 147 (2) nos. 1 and 2 vis-à-vis legal persons that are licensed in their home Member State to provide asset management services as a management company as defined in Art. 6 (1) of Directive 2009/65/EC.

(4) The FMA shall supply to other competent authorities information necessary to fulfil their tasks according to Art. 97 of Directive 2009/65/EC provided that these tasks are derived from this Federal Act or from Directive 2009/65/EC, in particular in the case of non-compliance or suspected non-compliance of a branch or a business unit to which activities have been outsourced. The FMA shall provide any appropriate information upon request and all material information on its own initiative. When transmitting information, the FMA may reserve the right that information it exchanges with other authorities be published only with its express authorisation. In this case, the information may be exchanged only for the purposes for which the approval was granted.

(5) The FMA and other bodies or natural or legal persons receiving confidential information pursuant to subsection (2), in accordance with Section 145 (5) or from a third country may use it to fulfil its tasks only, in particular, for the following purposes:

1. checking that the conditions governing the taking-up of business of UCITS or management companies or of undertakings contributing towards their business activity are met and facilitating the monitoring of the conditions of performing their business activity, administrative and accounting procedures and internal control mechanisms;
2. imposing penalties;

3. conducting administrative appeals against decisions by the competent authorities;
4. pursuing proceedings conducted by a court or a public prosecution office.

(6) The FMA may transmit confidential information to the following authorities for the fulfilment their tasks:

1. the central banks, the European System of Central Banks and the European Central Bank in their capacity as monetary authorities; and
2. where applicable, to other public authorities responsible for overseeing or carrying out statutory audits of credit institutions, investment firms, insurance undertakings or other financial institutions or of the financial markets; or
3. functionaries or executive bodies involved in the liquidation or bankruptcy of UCITS; or
4. ESMA,
5. the European Banking Authority – EBA (Regulation (EU) No. 1093/2010 of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ No. L 331 of 15 December 2010, p. 12),
6. the European Insurance and Occupational Pensions Authority – EIOPA (Regulation (EU) No. 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ No. L 331 of 15 December 2010, p. 48), or
7. the ESRB.

This transmission of information or a transmission by authorities or bodies referred to in nos. 1 to 7 to the competent authorities or to bodies in charge of investor compensation schemes requiring this information for the purpose of performing their functions in accordance with Directive 2009/65/EC does not contravene professional secrecy, subsections (2) to (4) as well as Section 145 (3) and (5) provided that these authorities or bodies are subject to professional secrecy as defined in Art. 102 of Directive 2009/65/EC.

(7) The FMA shall notify without delay the competent authorities of the host Member State of the UCITS and, where the UCITS' management company is established in another Member State, the competent authorities of the management company's home Member State of any decision to withdraw the authorisation pursuant to Section 50 and any other serious measure taken against a UCITS in accordance with Section 148 or any measures imposed on it suspending the issue, repurchase or redemption of its units.

### **Cooperation in investigations and on-the-spot verifications**

**Section 158.** (1) The FMA may request the cooperation of the competent authority of another Member State for an on-the-spot verification or an investigation. If the FMA receives a request to conduct an investigation or an on-the-spot verification it shall, within the scope of its powers:

1. carry out the verifications or investigations itself, or
2. allow the requesting authority to carry out the verification or investigation; in this case, FMA officials may also accompany the officials of the requesting authority, or
3. allow auditors or experts to carry out the verification or investigation on behalf of the authority.

(2) Where a management company referred to in Section 36 pursues business in Austria through a branch, the competent authorities of the management company's home Member State shall be permitted, after having informed the FMA thereof, to carry out verification themselves, or have on-the-spot verification carried out by intermediaries they instruct for the purpose, of the information referred to in Section 161. The rights of the FMA with regard to the on-the-spot verification of the branch based on its responsibilities under this Federal Act shall remain unaffected.

(3) Where the FMA has good reason to suspect that acts contrary to the provisions of Directive 2009/65/EC are being or have been carried out by undertakings not subject to its supervision on the territory of another Member State, it shall notify the competent authority of the other Member State thereof in as specific a manner as possible. If it has received such information from another competent authority, it shall take appropriate action on its part and inform that authority of the outcome of the action and, to the extent possible, of any significant interim developments. The powers of the FMA as the competent authority shall remain unaffected by this subsection.

### **Refusal to cooperate**

**Section 159.** (1) The FMA may refuse to act on a request for cooperation in carrying out an investigation or an on-the-spot verification or to exchange information in accordance with Section 157 or 158 only where:

1. the on-the-spot verification, investigation or exchange of information might adversely affect Austria's sovereignty, security or public policy;
2. judicial proceedings have already been initiated in respect of the same actions and the same persons before an Austrian court;
3. a final judgement in respect of the same persons and the same actions has already been delivered in Austria.

(2) In the case of a refusal by the FMA, it shall notify the requesting competent authority pursuant to subsection (1) accordingly, providing as detailed information as possible.

(3) The FMA may notify ESMA of situations where a request by the FMA

1. to exchange information according to Section 157 or 158 has been rejected or has not been acted upon within a reasonable time;
2. to carry out an on-the-spot verification or an investigation according to Section 158 has been rejected or has not been acted upon within a reasonable time;
3. for authorisation for FMA officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

(4) If the FMA has refused a request pursuant to subsection (1) and an official notice was issued by the FMA to the management company or the UCITS in this context, the legal effect of this official notice pursuant to Section 21b of the Financial Market Authority Act shall be restricted.

### **Consultation of authorities and reports to the European Commission, ESMA and the ESRB**

**Section 160.** (1) The FMA shall consult the competent authorities of the other Member State concerned prior to granting a licence to a management company that

1. is a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State; or
2. is a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State; or
3. is controlled by the same natural or legal persons as control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

(2) The FMA shall consult the authorities referred to in subsection (1) especially when reviewing the eligibility of the shareholders as well as the reliability and experience of those persons who effectively conduct the business of another undertaking of the same group. Upon their request, it shall submit to these authorities all information concerning the eligibility of the shareholders as well as the reliability and experience of those persons who effectively conduct the business of another undertaking of the same group as well as all information to facilitate supervision of the management companies where it is required for the other competent authorities to grant the licence and to review compliance with the conditions for pursuing the business activity on an ongoing basis.

(3) If the master UCITS and the feeder UCITS are established in different Member States, the FMA shall, if master UCITS approved in Austria are concerned, immediately communicate any decision, measure, observation of non-compliance with the conditions of Chapter 3 Article 5 or information reported pursuant to Section 154 (1) and (4) with regard to the master UCITS or its management company, depositary or auditor to the competent authority of the feeder UCITS' home Member State and, where applicable, ensure that the other unit-holders of the master UCITS are informed accordingly.

(4) The FMA shall:

1. inform the Commission and ESMA of any general difficulties which UCITS encounter in marketing their units in any third country and which were reported to the FMA;
2. send to the Commission and ESMA a list of the categories of bonds referred to in Section 74 (4) together with the categories of issuers authorised, in accordance with Section 74 (4), to issue bonds complying with the criteria set out in Section 74. A notice specifying the status of the guarantees offered shall be attached to those lists;
3. inform the Commission and ESMA of the number and type of cases in which it has refused authorisation under Section 37 (3) or an application under Section 36 (8); as well as
4. inform the Commission and ESMA of the measures taken in accordance with Section 38 (5).

(5) The FMA shall report to ESMA:

1. each licence granted in accordance with Section 6 (3) and each licence revoked in accordance with Section 7;

2. all information received by the FMA pursuant to Section 152 in respect of all management companies and UCITS it supervises in accordance with Art. 35 of Regulation (EU) No. 1095/2010 for the purpose of monitoring systemic risks at Union level.

The information pursuant to no. 2 shall also be submitted to the ESRB in accordance with Art. 15 of Regulation (EU) No. 1092/2010 for the purpose of monitoring systemic risks at Union level.

### **Cooperation to monitor management companies according to Section 38**

**Section 161.** (1) The FMA shall, upon their request, supply to the authorities of a host Member State of a management company pursuant to Section 37 all information relevant for collecting the particulars specified in Art. 21 (2) of Directive 2009/65/EC and inform the competent authorities of the home State of a management company pursuant to Section 36 about all measure taken in accordance with Section 38 (5) that involve measures or penalties imposed on the management company or a restriction on its activities.

(2) The FMA shall, without delay, notify the competent authority of the home Member State of a UCITS managed by a management company pursuant to Section 5 (1) of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach by the management company of the requirements under Chapter 1.

(3) The FMA shall, without delay, notify the competent authorities of the home Member State of a management company pursuant to Section 36 managing a UCITS authorised by the FMA pursuant to Section 50 of any problem identified at the level of the UCITS which may affect the ability of the management company to perform its duties properly or to comply with the requirements of this Federal Act which fall under the responsibility of the FMA as the competent authority of the UCITS' home Member State.

### **Precautionary measures**

**Section 162.** (1) In the event that the FMA as the competent authority of the host Member State has clear and demonstrable grounds for believing that a UCITS, the units of which are marketed in Austria in accordance with Section 140, is in breach of the obligations arising from this Federal Act or Regulations (EU) No. 583/2010 or (EU) No. 584/2010 which do not confer powers on the FMA as the competent authority of the host Member State, it shall refer those findings to the competent authorities of the UCITS' home Member State.

(2) If, despite the measures taken by the competent authorities of the home Member State of the UCITS or the management company or because such measures prove to be inadequate, or because the home Member State of the UCITS or the management company fails to act within a reasonable timeframe no longer than three months and the UCITS or the management company of the UCITS persists in acting in a manner that is clearly prejudicial to the interests of investors in Austria, the FMA may take either of the following actions:

1. after informing the competent authorities of the home Member State of the UCITS or the management company, take all the measures needed in order to protect investors, including the possibility of prohibiting the UCITS concerned from carrying out any further marketing of its units in Austria; the Commission and ESMA shall be informed without delay of any measures taken;

2. bring the matter to the attention of ESMA, which may act in accordance with the powers conferred upon it under Art. 19 of Regulation (EU) No. 1095/2010.

(3) For the purpose of protecting the interests of investors pursuant to subsection (2), the FMA shall prohibit the further marketing of the units of UCITS in the following cases:

1. the notification referred to in Section 140 has not been submitted,

2. there were material breaches of other provisions of domestic law in the course of marketing,

3. the competent authorities of the Member State in which the management company has its registered office have withdrawn the authorisation,

4. the marketing requirements set out in Section 141 are no longer met, or

5. the duties under Section 142 are not fulfilled.

(4) The marketing prohibition shall be communicated to the competent authorities of the EEA Member State where the management company has its registered office and published in the official gazette "*Amtsblatt zur Wiener Zeitung*". The obligations resulting from public marketing arising from this Federal Act shall end no earlier than three months after the date of publication of the intended prohibition of marketing. The FMA may order that this period be extended and a respective public announcement be made in the interest of the unit-holders.



**Section 162a.** The provisions of Sections 163 to 174 shall apply in accordance with the Alternative Investment Fund Managers Act.

## **Part 3**

### **AIF**

#### **Chapter 1**

#### **Domestic AIF: special funds, other special assets, pension investment funds**

##### **Article 1**

##### **Special funds**

**Section 163.** (1) A special fund is a portfolio of assets consisting of liquid financial assets as defined in Section 67 (1) that is divided into equal units evidenced by securities and jointly owned by unit-holders and that is established pursuant to the provisions laid down in this Federal Act; according to the fund rules, the unit certificates of a special fund must not be held by more than ten unit-holders each, who must be identified to the management company.

(2) In the case of an acquisition of unit certificates by a natural person, the minimum amount invested shall be EUR 250,000. A group of unit-holders shall also be deemed such a unit-holder provided that all rights of these unit-holders are exercised homogeneously vis-à-vis the management company by one joint representative. The minimum amount invested shall be attained by each natural person in a group of unit-holders. The fund rules shall stipulate that the transfer of unit certificates of the unit-holders requires the authorisation of the management company. Special funds are not UCITS in accordance with Art. 1 (2) of Directive 2009/65/EC. In the case of special funds, management companies shall be deemed to meet the disclosure requirements under this Federal Act if there is evidence that each time they inform all the unit-holders in writing or by any other means agreed upon with the respective unit-holders.

##### **Applicable provisions**

**Section 164.** (1) A special fund shall be managed only by a management company in accordance with Section 5 (1). The provisions of Part 2 Chapter 1 Articles 1 and 2 shall be applied, with Section 28 (1) nos. 1 to 8 and no. 10 as well as subsection (2) being applied subject to the proviso that subsection (1) nos. 3 and 5 need not be applied if a corresponding written instruction by the investors exists.

(2) The provisions concerning the custodian bank set out in Sections 39 to 45 shall be applied subject to the proviso that the FMA may generally approve of the selection of the custodian bank for special funds upon application of the management company. If all unit-holders give their express consent, Section 42 (4) shall not be applied.

(3) The provisions of

1. Sections 46 (1) to (4), 47 to 48, 52, 53 (1) and (3), 54, 55, 63 and 85 to 92 shall be applied;
2. Sections 49, 136 and 137 shall be applied subject to the proviso that the fund rules may be omitted in the annual report, that the annual report and the half-yearly report need not be made available at the custodian bank and that the publication may be replaced with submission of the audited annual and half-yearly reports to all unit-holders, and half-yearly reports and the audit report of the annual report be submitted to the FMA only upon request;
3. Section 53 (4) shall be applied subject to the proviso that the FMA's approval and the public announcement shall not be required;
4. Section 56 shall be applied subject to the proviso that the notification to the FMA pursuant to Section 56 (1) may be omitted;
5. Section 57 shall be applied subject to the proviso that the duty under Section 57 (3) to publish the issue price and the repurchase price at least twice per month can be omitted;
6. Sections 58 to 60 as well as Sections 61 and 62 shall be applied subject to the proviso that delegation of the management to another management company and the replacement of the custodian bank shall not require the authorisation of the FMA but shall be notified to the FMA without delay;
7. Section 65 shall be applied subject to the proviso that, where special funds are marketed abroad, the segregation shall be notified to the respective competent supervisory authority as well as the unit-holders;
8. Special funds may also be established as "other special assets". Sections 166, 167 (2) no. 1 and (3) to (5) as well as (7) and (8) shall be applied.

(4) The provisions of Sections 66 to 83 shall be applied subject to the proviso that the investment limits referred to in Sections 66 (2), 67 (4), 71 (1), 74 (1), (3) to (7), 76 (1) and (2), 77 (1) and (2), 78 (2) may be exceeded by 100%, if this is explicitly laid down in the fund rules, and the provisions of Section 84 subject to the proviso that the limit of 30% shall not be applicable to special funds if the unit-holder is a credit institution as defined in Section 1 (1) of the Banking Act or the unit-holders are credit institutions as defined in Section 1 (1) of the Banking Act and the borrower uses the securities lent as a collateral for refinancing transactions concluded on behalf of the unit-holder with the European Central Bank, a central bank of one of the EEA Member States, the Swiss National Bank or the US Federal Reserve and all unit-holders expressly agree to this. Section 42 (5) shall apply in relation to such securities lending transactions, subject to the proviso that the market value of the collateral transferred in a securities lending transaction pursuant to Section 84 can also be lower than the market value of the reused assets.

(5) The provisions on master-feeder structures (Sections 93 to 113) shall be applied subject to the proviso that the term "UCITS" shall be replaced with the term "special fund" and the mandatory authorisation by the FMA set forth in Sections 95 and 101 to 106 is omitted, but instead there must be evidence that the unit-holders agree in advance and the management company shall notify the FMA of the change immediately before its entry into effect. The unit-holders' agreement shall be required for the measures to take effect.

(6) The provisions of Sections 114 to 127 shall be applied subject to the proviso that cross-border mergers are not permissible and the merger of a special fund with another fund other than a special fund is not permissible. Additionally, the special fund shall not require authorisation by the FMA, but instead the FMA must be notified of the merger and there must be evidence that the unit-holders have been informed. The unit-holders' notification shall be required for the merger to take effect.

(7) The provisions of Sections 128, 132, 133, 137 and 138 shall be applied subject to the proviso that the provisions governing the prospectus and the KID shall not be applied.

(7a) By way of derogation from subsection (7), the provisions of Sections 128, 132, 133, 137 and 138 shall be applied to special funds that were notified to the FMA as being marketed to retail clients pursuant to Section 48 (10) of the Alternative Investment Fund Managers Act subject to the provision that the provisions referring to the prospectus do not apply.

(8) Special funds shall be subject to the supervision of the FMA in accordance with Sections 143 to 154.

## Article 2

### Other special assets

**Section 166.** (1) "Other special assets" within the meaning of this Federal Act shall be portfolios of assets that are divided into equal units evidenced by securities, are jointly owned by the unit-holders and are established pursuant to the provisions laid down in this Federal Act and that may acquire, apart from the assets specified in Section 67 (1), up to 100% of the fund assets in accordance with the fund rules:

1. up to 50% of the fund assets each in the case of units in the same UCITS or UCI pursuant to Section 71 regardless of whether the UCITS is allowed to invest a maximum total of 10% of the fund assets in units of other UCITS according to its fund rules or instrument of incorporation;
2. up to 50% of the fund assets in the case of units in the same domestic special fund as defined in this Federal Act, provided that the acquiring other portfolio of assets is a special fund itself and all unit-holders of the special fund to be acquired give their consent before the acquisition;
3. up to 10% each of the fund assets in the case of units in collective investment undertakings that are invested in compliance with the law, the instrument of incorporation or actual practice in accordance with the principles of risk spreading and that do not comply with the requirements of Section 71; these collective investment undertakings may also invest in instruments that are marketable to a limited extent, are subject to high price fluctuations, have a limited risk spreading or the valuation of which is difficult, although no obligation of the investor to effect a subsequent payment may be provided for;
4. up to 10% of the fund assets each in the case of units in the same real estate fund pursuant to Section 1 of the Real Estate Investment Fund Act (Federal Law Gazette I No. 80/2003) and units in the same open-ended real estate fund that is managed by an EU AIFM. In total, the units in real estate funds in accordance with Section 1 of the Real Estate Investment Fund Act and units in open-ended real estate funds managed by an EU AIFM shall not exceed 20% of the fund assets. The acquisition of units in special real estate funds in accordance with Section 1 (3) of the Real Estate Investment Fund Act and units in special real estate funds that are managed by an EU AIFM shall be permissible provided that the acquiring other portfolio of

assets is a special fund itself and all unit-holders of the special real estate fund to be acquired give their consent before the acquisition;

6. up to 10% each of the fund assets in the case of units in the same other portfolio of assets in accordance with this provision. This investment limit may be raised to up to 50% of the fund assets provided that this other portfolio of assets may, according to its fund rules, invest a maximum of 10% of the fund assets in units of collective investment undertakings pursuant to no. 3.

“Other special assets” are not UCITS in accordance with Art. 1 (2) of Directive 2009/65/EC.

(2) The investment limits set out in Sections 66 to 84 and Section 84a shall not be applied to the investments referred to in subsection (1) nos. 1 to 4 and 6.

### **Applicable provisions**

**Section 167.** (1) The provisions of Part 2 of this Federal Act, with the exception of Sections 36 to 38 and 131, shall be applied to other portfolios of assets unless explicitly provided otherwise in Section 166 and subsections (2) to (8) of this Section. Sections 50 to 65 shall be applied subject to the proviso that, where other portfolios of assets are marketed abroad, the split-off shall be notified to the respective competent supervisory authority as well as the unit-holders.

(2) Other special assets may stipulate in the fund rules that

1. units may be issued and, by way of derogation from Section 55 (2), redeemed only at specific dates, but at least once each calendar quarter;

2. the management company or custodian bank, by way of derogation from Section 57 (3), shall publish the issue price and the repurchase price at least once a month. The publication shall also occur upon each issue or repurchase of units.

(3) The management company may, for the account of “other special assets” that invest mainly in assets referred to in Section 166 (1) no. 3, raise short-term loans of up to 20% of the fund assets, if this is provided for in the fund rules. The FMA may, upon proper review of the individual case, permit raising higher loans or order their reduction.

(4) The investment and issuer limits applicable to “other special assets” shall be set out in the fund rules. The principle of risk spreading shall also be deemed observed if the funds to be acquired for the “other special assets” include a number of units of one or several other funds that is not insubstantial and if such other funds invest directly or indirectly according to the principle of risk spreading.

(5) The directors of the management company who manage “other special assets” must be appropriately qualified for the intended investments.

(6) The key information document in accordance with Section 134 shall contain a specific indication of special valuation and repayment modalities in accordance with subsection (2). In the case of other special assets that invest more than 10% in investments in accordance with Section 166 (1) no. 3, the key information document shall contain a warning to this effect. The warning shall require authorisation by the FMA. Advertisements for unit certificates of other special assets shall always include the warning in the form authorised by the FMA.

(7) An acquisition of units of a foreign fund or of an investment company of the open-ended type or of an open-ended real estate fund that is managed by an EU AIFM by a portfolio of other special assets in itself does not constitute a public offer in Austria (Section 129 (1), Section 140 and Section 175 (1)).

(8) The provisions of Sections 128, 132, 133, 137 and 138 shall be applied to other special assets with the proviso that the provisions regarding the prospectus do not apply.

() “Other special assets” shall be subject to the supervision of the FMA in accordance with Sections 143 to 154.

## **Article 3**

### **Pension investment funds**

#### **Applicable provisions**

**Section 168.** A pension investment fund is a portfolio of assets consisting of liquid financial assets within the meaning of Section 67 (1) that is divided into equal units evidenced by securities, is jointly owned by the unit-holders and is established according to the provisions of this Federal Act, and that under the fund rules is designated “pension investment fund”. The provisions of Part 2 of this Federal Act, with the exception of Section 131, shall apply mutatis mutandis to pension investment funds, unless otherwise provided in the following provisions of this Article. A pension investment fund is not a UCITS as defined in Art. 1 (2) of Directive 2009/65/EC that fulfils all

provisions of that Directive. The FMA shall exercise supervision of pension investment funds in accordance with Sections 143 to 154.

**Section 168a.** The provisions of Sections 128, 132, 133, 137 and 138 shall be applied to pension investment funds with the proviso that the provisions regarding the prospectus do not apply.

#### **Requirements for acquisition**

**Section 169.** The unit certificates of pension investment funds shall be represented by global certificates (Section 24 of the Safe Custody of Securities Act).

#### **Appropriation of income**

**Section 170.** Distributions by a pension investment fund shall not be permissible.

#### **Investment rules**

**Section 171.** Securities may only be acquired for a pension investment fund subject to the following conditions and restrictions:

1. Securities of issuers having their registered office outside the EEA may be acquired for up to 50% of the fund assets.
2. At least 5% of the fund assets shall be invested in shares, securities representing participation capital within the meaning of Section 23 (4) of the Banking Act in the version in force before the federal act promulgated in Federal Law Gazette I No. 184/2013, instruments without voting rights as referred to in Section 26a of the Banking Act or subordinated liabilities as referred to in Section 170 (1) no. 2 of the Insurance Supervision Act 2016, Federal Law Gazette I No. 34/2015, profit-sharing certificates and income bonds.
3. At least 30% of the fund assets shall be invested in bonds, cash deposit certificates, convertible bonds, mortgage bonds, local authority bonds and Austrian federal treasury bills.
4. Units in real estate funds referred to in Section 1 (1) of the Real Estate Investment Fund Act and units in real estate funds managed by an investment fund management company having its registered office in the EEA may be acquired for up to 10% of the fund assets.
5. Warrants are not permitted to be acquired.

#### **Derivative products**

**Section 172.** The acquisition of derivative products in accordance with Section 73 for a pension investment fund shall only be permissible for the purpose of hedging fund assets.

#### **Key information document**

**Section 173.** The key information document of a pension investment fund shall contain a note to the effect that the pension investment fund serves the purpose of pension provision and therefore pursues a long-term investment policy.

#### **Fund rules and redemption plan**

**Section 174.** (1) The fund rules shall provide that it is permissible to issue units only

- to taxpayers subject to unlimited tax liability within the meaning of Section 1 (2) of the Personal Income Tax Act 1988 who have previously entered into an irrevocable redemption plan with the custodian bank for the units to be issued, as well as
- to insurance undertakings for the investment of the cover pool of a supplementary pension insurance, as well as
- to pension schemes for the investment of assets belonging to a defined group of persons making joint investments at joint risk, and
- to employees' retirement and severance pay funds for the investment of assets allocated to a collective investment.

(2) The redemption plan shall provide that units of a pension investment fund shall only be redeemed under the following conditions:

1. if the unit-holder meets the performance conditions of Section 108b (1) no. 2 of the Personal Income Tax Act 1988, and
2. the unit-holder instructs the custodian bank to transfer the equivalent of the units available at the time when the conditions in accordance with no. 1 above are met, or the units themselves, to an insurance company of his choice, as a single premium for a supplementary pension insurance (Section 108b of the Personal Income Tax Act 1988) which the unit-holder can prove to have previously concluded.

## Chapter 2

### Rules concerning the marketing of units of foreign AIF in Austria

(Repealed by Federal Law Gazette I No. 135/2013)

#### Part 4

#### Taxes

##### Taxes on income and on net assets

**Section 186.** (1) The income distributed from the earnings within the meaning of Section 27 of the Personal Income Tax Act 1988 less the associated expenses of

1. a fund, including an entity requiring authorisation pursuant to Section 50, or
2. an AIF, as defined in the Alternative Investment Fund Managers Act, whose home Member State is Austria, with the exception of AIF in real estate as defined in the Alternative Investment Fund Managers Act, shall constitute taxable income for the unit-holders. If earnings within the meaning of Section 27 of the Personal Income Tax Act 1988 less the associated expenses result in a loss, such loss shall be offset against earnings within the meaning of Section 27 of the Personal Income Tax Act 1988 in the following years, the loss being offset primarily against earnings of the fund within the meaning of Section 27 (3) and (4) and Section 27b (3) of the Personal Income Tax Act 1988. If pro-rated earnings from the provision of capital within the meaning of Section 27 (2) no. 2 and current earnings from crypto-assets in accordance with Section 27b (2) of the Personal Income Tax Act 1988 are accounted for on an accrual basis in the accounting of the fund, such earnings shall be deemed earnings within the meaning of Section 27 (2) and Section 27b (2) of the Personal Income Tax Act 1988.

(2) 1. a) If no actual distribution within the meaning of subsection (1) is made or if not all income within the meaning of subsection (1) is distributed, the income from the provision of capital within the meaning of Section 27 (2) and current earnings from crypto-assets in accordance with Section 27b (2) of the Personal Income Tax Act 1988 that has not been distributed and 60% of the positive balance from the earnings within the meaning of Section 27 (3) and (4) and of Section 27b (3) of the Personal Income Tax Act 1988 less the associated expenses of a fund shall be deemed distributed to the unit-holders in accordance with (b) in proportion to the relevant units (income equivalent to distributions). In the case of unit certificates held as part of the assets of a business, the entire positive balance from earnings within the meaning of Section 27 (3) and (4) and Section 27b (3) of the Personal Income Tax Act 1988 less the associated expenses shall be deemed to have been distributed. If the income deemed to have been distributed is actually distributed at a later stage, it shall be tax-free.

b) Irrespective of the manner in which earnings are determined, income equivalent to distributions shall constitute taxable income for the unit-holders as of the following times:

aa) if investment income tax is paid (Section 58 (2)), as of the date of payment;

bb) otherwise, as of the time of publication of the data relevant for investment income tax treatment by the notification office on the basis of a notification made within the set period;

cc) in all other cases, as of the time referred to in no. 3.

2. a) The breakdown of the composition of distribution as referred to in subsection (1) and of income equivalent to distributions as referred to in no. 1 and the required data relevant for tax purposes to determine the amount of investment income tax and the adjustments of the acquisition cost pursuant to subsection (3) shall be submitted to the notification office referred to in Section 23 of the Capital Market Act 2019 by a tax representative. On the basis of these data, the notification office shall determine the tax treatment in accordance with the statutory provisions and publish the values for tax purposes thus determined in an appropriate form. Section 23 (1) last sentence of the Capital Market Act 2019 shall be applied mutatis mutandis to this activity of the notification office.

b) Only an Austrian independent certified public accountant or a person with comparable professional qualifications may be appointed as tax representative. If the notification office rejects a tax representative due to doubts about the comparability of the qualification, the Federal Minister of Finance shall decide.

c) The Federal Minister of Finance is authorised to regulate in greater detail, by way of regulation, aa) the period for submission to the notification office, taking into account the periods relevant for annual reports,

bb) the requirements for submission to the notification office,

cc) the content and structure of the submitted data,

dd) the determination of the values for tax purposes on the basis of the submitted data by the notification office in accordance with the statutory provisions,

- ee) any corrections of the submitted data, and
- ff) the manner of publication of the determined values for tax purposes by the notification office.

d) The federal government shall be liable for damage culpably caused to any person whatsoever by the notification office or other persons on behalf of the notification office in performing its tasks pursuant to Section 186 (2) no. 2 (a) and (b) in accordance with the provisions of the Liability of Public Bodies Act, Federal Law Gazette No. 20/1949. The notification office and its functionaries or executive bodies and employees shall not be liable to the injured party. If the federal government has reimbursed the injured party for the damage, the federal government can claim reimbursement from the notification office if the damage was caused intentionally or by gross negligence.

3. If no notification is made in accordance with no. 2 with regard to the distribution the entire distribution shall be taxable. If no notification is made in accordance with no. 2 with regard to the income equivalent to distributions within the meaning of no. 1, it shall be estimated to be 90% of the difference between the first and last repurchase price established in the calendar year, in any case at least 10% of the repurchase price established at the end of the calendar year. The income equivalent to distributions established in this manner shall be deemed to have accrued as of 31 December of each year. The unit-holders may furnish proof of the amount of income equivalent to distributions or the exemption from tax of the actual distribution by submitting the required documents.

4. If investment income tax has been deducted, proof as referred to in no. 3 shall be furnished to the party subject to the deduction obligation. If no realisation within the meaning of subsection (3) has yet occurred, such party shall either refund or subsequently charge investment income tax and correct the acquisition cost in accordance with subsection (3). If an attestation as referred to in Section 96 (4) no. 2 of the Personal Income Tax Act 1988 has already been issued, investment income tax may be refunded and the acquisition cost corrected only if the unit-holder instructs the party subject to the deduction obligation to submit a corrected attestation to the competent tax office.

(3) Any increases in value realised upon the sale of unit certificates or units in an AIF shall be subject to taxation in accordance with Section 27 (3) of the Personal Income Tax Act 1988 irrespective of the type of earnings generated on an ongoing basis. Income equivalent to distributions shall increase, while tax exempt distributions (in particular those pursuant to subsection (2) no. 1 (a) last sentence) and distributions which do not constitute earnings within the meaning of the Personal Income Tax Act 1988 shall reduce a unit-holder's acquisition cost (Section 27a (3) no. 2 of the Personal Income Tax Act 1988) of the unit certificate or the unit in an AIF. In the case of segregation within the meaning of Section 65, the acquisition cost relevant for taxation of the units in the fund from which assets are segregated shall be reduced and the same amount shall be stated as acquisition cost of the units of the segregated fund to the same extent as the values which are used in the calculation of the value of units within the meaning of Section 57 (1) are changed by such segregation. The provision of new units due to a segregation shall not be deemed an exchange. The redemption of the unit certificate in accordance with Section 55 (2) and the winding-up in accordance with Section 63 shall be deemed sales.

(4) In the case of mergers pursuant to Sections 114 to 127, the following shall apply:

1. The acquisition cost of all assets of the merging fund shall be stated at amortised cost by the receiving fund if there is no final transfer of the hidden reserves. Otherwise, all assets of the merging fund shall be deemed to have been sold at their current value as of the effective date of the merger (fictitious liquidation).

2. The income equivalent to distributions which has accumulated on the basis of no. 1 by the effective date of the merger and any other income equivalent to distributions (subsection (2)) of the merging fund shall be deemed accrued on the effective date of the merger and the loss carry-forwards of the merging fund as defined in subsection (1) shall be eliminated. The acquisition cost shall be increased in accordance with subsection (3) second sentence and an amount in accordance with Section 58 (2) first sentence shall be paid out.

3. The exchange of units due to a merger shall not be deemed a realisation within the meaning of subsection (3) and the acquisition cost of the units of the merging fund, which are increased in accordance with no. 2, shall be carried on as the acquisition cost of the units of the receiving fund.

4. Any cash payments (Section 126 (1) no. 2 and Section 126 (2) no. 2) shall be deemed a unit-holder's increases in value realised in accordance with subsection (3) first sentence.

(5) The following shall apply to income that does not constitute earnings within the meaning of Section 27 of the Personal Income Tax Act 1988:

1. Section 40 of the Real Estate Investment Fund Act shall be applied mutatis mutandis to income corresponding to profits from asset management and profits from appreciation as referred to in Section 14 (2) nos. 1 and 2 of the Real Estate Investment Fund Act.

2. a) Irrespective of the manner in which earnings are determined, the income distributed from other earnings within the meaning of the Personal Income Tax Act 1988 shall constitute taxable income for the unit-holders as of the time of receipt. If no actual distribution is made or if not all income is distributed, income not distributed shall be deemed distributed as of the time that is also relevant for income equivalent to distributions as referred to in subsection (2) no. 1 (b).

b) Other earnings shall be determined in accordance with the relevant provisions of the Personal Income Tax Act 1988 subject to the proviso that expenses related to the earnings can be deducted. In the case of unit certificates not held as part of the assets of a business, 30% of the earnings from the sale of economic assets, with the exception of economic assets as referred to in Sections 27 and 30 of the Personal Income Tax Act 1988, shall be deemed to be earnings from speculative transactions as defined in Section 31 of the Personal Income Tax Act 1988. This shall not apply if the unit certificates or the units are held by no more than 50 unit-holders; in that case, it shall be verified at the level of each individual unit-holder whether or not a transaction is a speculative transaction as defined in Section 31 of the Personal Income Tax Act 1988.

c) If the income determined pursuant to (b) is positive and in total is no more than 10% of earnings that constitute earnings as referred to in Section 27 of the Personal Income Tax Act 1988, the earnings determined pursuant to (b) shall be deemed earnings as referred to in Section 27 (2) of the Personal Income Tax Act 1988.

3. Income that does not constitute earnings as referred to in Section 27 of the Personal Income Tax Act 1988 shall be included in the notification referred to in subsection (2) no. 2.

(6) In the case of a distribution, the following shall be deemed distributed for tax purposes:

1. first, the current earnings and the earnings generated in the previous years within the meaning of Section 27 of the Personal Income Tax Act 1988,
2. then, the other current earnings and earnings generated in the previous years within the meaning of the Personal Income Tax Act 1988, and
3. last, the amounts which do not constitute earnings within the meaning of the Personal Income Tax Act 1988.

(7) For purposes of corporation tax, AIF as defined in the Alternative Investment Fund Managers Act to which subsections 1 to 6 apply shall not be deemed corporations as defined in Section 1 of the Corporation Tax Act 1988.

### **Pension investment funds**

**Section 187.** With regard to units of pension investment funds within the meaning of Part 3 Chapter 1 Article 3 that meet the conditions of Section 108h (1) nos. 2 to 5 of the Personal Income Tax Act 1988, the following shall apply:

1. Income equivalent to distributions shall be exempt from personal income tax and investment income tax.
2. If there is evidence that domestic investment income tax has been withheld on income distributions (dividends) received by the pension investment fund, such domestic investment income tax may be refunded at the request of the management company. The fund rules shall specify the deadline for the submission of such a request.
3. Any exchange of units for other units of pension investment funds within the meaning of Part 3 Chapter 1 Article 3 that meet the conditions of Section 108h (1) nos. 2 to 5 of the Personal Income Tax Act 1988, or for the purpose of fulfilling the redemption plan shall be treated like a free transfer with regard to realisation in accordance with Section 27 (3) of the Personal Income Tax Act 1988.

### **Application to foreign funds**

**Section 188.** The provisions of Section 186 shall also apply to foreign funds. The following shall be deemed foreign funds:

1. UCITS whose home Member State is not Austria, including entities requiring authorisation pursuant to Art. 5 of the UCITS Directive;

AIF, as defined in the Alternative Investment Fund Managers Act, whose home State is not Austria, with the exception of AIF in real estate as defined in the Alternative Investment Fund Managers Act;

3. any undertaking that is subject to foreign law, irrespective of its legal form, whose assets are invested pursuant to the law, the instrument of incorporation or actual practice in accordance with the principles of risk spreading if the undertaking does not fall under no. 1 or 2 and meets one of the following requirements:

a) The undertaking is not, in fact, directly or indirectly subject to a tax in a foreign country that is comparable to Austrian corporation tax.

b) The gains of the undertaking are subject to a tax in a foreign country that is comparable to Austrian corporation tax, the applicable rate of which is more than 10 percentage points lower than the Austrian corporation tax pursuant to Section 22 (1) of the Corporation Tax Act 1988.

c) The undertaking is subject to a comprehensive personal or subject-based exemption in a foreign country.

(2) Subsection (1) shall not apply to collective investments in real estate within the meaning of Section 42 of the Real Estate Investment Fund Act.

## Part 5

### Penal provisions, transitional provisions and final provisions

#### Chapter 1

#### Penal provisions

##### Judicial penalties

**Section 189.** (1) Any person who, in conjunction with a public offer of units of foreign investment funds, offers such units in Austria although

(Repealed by Federal Law Gazette I No. 135/2013)

(Repealed by Federal Law Gazette I No. 135/2013)

3. the FMA has prohibited the taking up of marketing activities

4. the FMA has prohibited the continuation of marketing activities, or

any person who, in conjunction with a public offer of units of domestic investment funds, offers such units in Austria although the fund established in Austria has not been authorised by the FMA in accordance with Section 50 or 95 shall be punished by the court with imprisonment for a term not exceeding two years or with a fine not exceeding 360 daily rates, unless the offence is punishable with higher penalties under other provisions.

(2) Any person who, in a published prospectus or in a key information document of a domestic or foreign investment fund or in a statement modifying or amending such a prospectus or in an annual report or a half-yearly report of a domestic or foreign investment fund or in the context of providing information in accordance with Section 120, makes incorrect favourable statements on material facts or conceals unfavourable facts shall be punished in the same way.

(3) Any person who voluntarily prevents the acquisition of fund units before the payment required for such acquisition has been made shall not be punished in accordance with subsection (1). The perpetrator shall also not be punished if the payment is not made without any action on the part of the perpetrator and if the perpetrator, unaware of this, makes voluntary and serious efforts to prevent payment from being made.

(4) An offence shall not be punishable in accordance with subsection (2) if the effects of the offence are averted by active repentance under the conditions of Section 167 of the Criminal Code provided that the compensation paid covers the entire payment required for the acquisition including any associated charges.

##### Administrative penalties

**Section 190.** (1) Any person who

1. in a published prospectus or in a key information document of an investment fund or in a statement modifying or amending such a prospectus or in an annual report or a half-yearly report of an investment fund or in the context of providing information in accordance with Section 120, makes incorrect favourable statements on material facts or fails to make statements on unfavourable facts;

2. otherwise violates the provisions of Section 129;

3. contrary to Section 128, advertises a UCITS without a published prospectus or an available key information document;

4. fails to provide the information referred to in Section 128 when advertising a UCITS;

5. otherwise violates Sections 132, 133, 136, 138, 140, 141 or 142 of this Federal Act or Art. 3 to 5 or 7 to 36 or 38 of Regulation (EU) No. 583/2010 or Art. 1 of Regulation (EU) No. 584/2010;

6. without being authorised to do so, operates under the designations "Kapitalanlagegesellschaft", "Kapitalanlagefonds", "Investmentfondsgesellschaft", "Investmentfonds", "Miteigentumsfonds", "Wertpapierfonds", "Aktienfonds", "Obligationenfonds", "Investmentanteilscheine", "Investmentzertifikate", "Pensionsinvestmentfonds", "Spezialfonds", "Indexfonds", "Anleihefonds", "Rentenfonds", "Dachfonds", "thesaurierende Kapitalanlagefonds", "OGAW-ETF", "UCITS ETF", "ETF", "Exchange-Traded Fund", the addition "mündelsicher" or equivalent designations or abbreviations of such designations in contravention of Section 130



7. without being authorised to do so, operates under a designation referred to in Art. 6 of Regulation (EU) 2017/1131,

commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

(2) Any person who, as a responsible person (Section 9 of the Administrative Penal Act) of an investment fund management company or a management company,

1. violates the notification obligations referred to in Section 37, 113 (1), 125 (3), 137 or 151;
2. violates the reporting obligations referred to in Section 152 or 153;
3. violates the obligations in accordance with Sections 10 to 35, 39 (1), 42 or 45 of this Federal Act, Art. 3 (4), Art. 9, Art. 10 (2), Art. 11, Art. 14 (1) or Arts. 21 to 24 of Commission Delegated Regulation (EU) 2016/438;
4. violates Sections 46 (2) and (3), 47 (1) and (2), 49, 52, 53 (4), 57, 59, 60 (1) or (2), 61, 63, or 65;
5. suspends the repurchase or redemption of units in accordance with Section 55 although there are no extraordinary circumstances as referred to in Section 56 (1), or violates the obligation to inform investors or the authorities in other Member States in accordance with Section 56 (2);
6. violates the investment rules of Sections 66 to 84 or the rules on risk management of Sections 85 to 92;
7. violates the provisions of Sections 120 to 124 or 127 (2) or (3);
8. violates the provisions of Sections 163 (2), 164 (1), (3) nos. 1 to 8 or (4) to (6);
9. violates the provisions of Section 166, Section 167 (1), (3), (5) or (6);
10. violates the provisions of Sections 168 to 174;
11. when providing services in accordance with Section 5 (2) nos. 3 and 4, violates the provisions of Arts. 21 to 25, 28 to 34, 36, 37, 44 to 65 or 67 to 70 of Commission Delegated Regulation (EU) 2017/565 or Sections 33, 38 to 61, 71 or 72 of the Securities Supervision Act 2018;
12. violates the fund rules authorised by the FMA;
13. violates a regulation issued by the FMA pursuant to this Federal Act;
14. violates Art. 13 of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No. 648/2012, OJ No. L 337 of 23 December 2015, p. 1;
15. violates Art. 14 of Regulation (EU) 2015/2365;
16. fails to comply with
  - a) any of the requirements regarding asset composition pursuant to Arts. 9 to 16 of Regulation (EU) 2017/1131,
  - b) any of the portfolio requirements pursuant to Art. 17, 18, 24 or 25 of Regulation (EU) 2017/1131,
  - c) any of the requirements regarding the internal credit quality assessment pursuant to Art. 19 or 20 of Regulation (EU) 2017/1131,
  - d) any of the governance, documentation or transparency requirements pursuant to Art. 21, 23, 26, 27, 28 or 36 of Regulation (EU) 2017/1131,
  - e) any of the requirements regarding valuation pursuant to Art. 29, 30, 31, 32, 33 or 34 of Regulation (EU) 2017/1131,
  - f) any of the reporting requirements pursuant to Art. 37 of Regulation (EU) 2017/1131 or the associated requirements pursuant to the legal acts adopted on the basis of Regulation (EU) 2017/1131,
17. has obtained authorisation of money market funds pursuant to Art. 4 of Regulation (EU) 2017/1131 through false statements or any other irregular means,
18. the requirements for marketing communications pursuant to Art. 4 of Regulation (EU) 2019/1156;
19. the requirements of Art. 13 of Regulation (EU) 2019/2088 in advertising units of a UCITS;
20. the obligation of transparency in pre-contractual information and periodic reports
  - a) for environmentally sustainable investments pursuant to Art. 5 of Regulation (EU) 2020/852,
  - b) for financial products with which environmental characteristics are promoted pursuant to Art. 6 of Regulation (EU) 2020/852, or
  - c) for other financial products pursuant to Art. 7 of Regulation (EU) 2020/852,

commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

(2a) Any person who, as a responsible person (Section 9 of the Administrative Penal Act) of an investment fund management company or a management company, obtained the licence as referred to in Section 5 (1) by providing false information or taking deceptive action, or by other

fraudulent means, commits an administrative offence and shall be punished by the FMA with a fine of up to five million euros or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified.

(3) Any person who, as a responsible person (Section 9 of the Administrative Penal Act) of a management company from another Member State in accordance with Section 36,

1. when providing the service of collective portfolio management, violates Sections 10 to 28 or 36 (1) to (6) and (9);

2. when providing collective portfolio management, violates Sections 46 (2) and (3), 47 (1) and (2), 49, 52, 53 (4), 57, 59, 60, 61, 63 (1) to (3) or 65;

3. suspends the repurchase or redemption of units in accordance with Section 55 although there are no extraordinary circumstances as referred to in Section 56 (1), or violates the obligation to inform investors or the authorities in other Member States in accordance with Section 56 (2);

4. when providing the service of collective portfolio management, violates the investment rules of Sections 66 to 92;

5. when providing the service of collective portfolio management, violates Sections 96 to 106, 107 (2), 111, 112, 113 (2) and (3);

6. when providing the services in accordance with Section 5 (2) nos. 3 and 4, violates Arts. 21 to 25, 28 to 34, 36, 37, 44 to 65 or 67 to 70 of Commission Delegated Regulation (EU) 2017/565 or Sections 33, 38 to 61, 71 or 72 of the Securities Supervision Act 2018

commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

(4) Any person who, as a responsible person (Section 9 of the Administrative Penal Act) of a branch of a management company from another Member State in accordance with Section 36,

1. when providing the service of collective portfolio management, violates Sections 10 to 35 or 36 (1) to (6) and (9);

2. violates Sections 46 (2) and (3), 47 (1) and (2), 49, 52, 53 (4), 57, 59, 60, 61, 63 (1) to (3) or 65;

3. suspends the repurchase or redemption of units in accordance with Section 55 although there are no extraordinary circumstances as referred to in Section 56 (1), or violates the obligation to inform investors or the authorities in other Member States in accordance with Section 56 (2);

4. when providing the service of collective portfolio management, violates the investment rules of Sections 66 to 92;

5. when providing the service of collective portfolio management, violates Sections 96 to 106, 107 (2), 111, 112, 113 (2) and (3);

6. when providing the services in accordance with Section 5 (2) nos. 3 and 4, violates Arts. 21 to 25, 28 to 34, 36, 37, 44 to 65 or 67 to 70 of Commission Delegated Regulation (EU) 2017/565 or Sections 33, 38 to 61, 71 or 72 of the Securities Supervision Act 2018

commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

(5) Any person who, as a responsible person (Section 9 of the Administrative Penal Act) of a custodian bank,

1. violates Sections 39 (2), 40 (2) to (4), 41 (3), 42, 42a, 44 or 45 of this Federal Act, Arts. 3 to 8, Art. 10, Arts. 12 to 17 or Art. 21 to 24 of Commission Delegated Regulation (EU) 2016/438;

2. violates Section 107 (1), (3), (4) or (5) or Section 108; or

3. against his better judgement, confirms compliance in accordance with Section 118

commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

(6) Any person who, as an auditor of a UCITS,

1. violates Sections 109 or 110; or

2. against his better judgement, provides certification in accordance with Section 119 (1)

commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

(7) In the event of a violation of an obligation as defined in Section 151 no.1 regarding amendments to the instrument of incorporation, no. 4, no. 7, no. 9 and no. 13 regarding the termination of delegation, the FMA shall refrain from initiating and conducting administrative penal proceedings if the notification not duly submitted was subsequently made before the FMA gained knowledge of said violation.

## **Penal provisions regarding legal persons**

**Section 190a.** (1) The FMA may impose fines on legal persons if persons who acted individually or as a functionary or part of an executive body of a legal person and who have a management position 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 acted in breach of the obligations listed in Section 190 (1), (2), (2a), (3), (4), but not with regard to Section 14, and Section 190 (5).

(2) Legal persons may also be held responsible for breaches of the obligations listed in Section 190 (1), (2), (2a), (3), (4), but not with regard to Section 14, and Section 190 (5) if such breaches by a person acting for the legal person were made possible by a lack of supervision or control by one of the persons referred to in subsection (1).

(3) The fine pursuant to subsections (1) and (2) shall amount to up to 5% of the total annual net turnover, but, in the event of a breach pursuant to Section 190 (2a), to up to 10% of the total annual net turnover or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified.

(4) The total annual net turnover in the case of management companies is the total amount of all income listed in nos. 1 to 7 of Annex 2 to Section 43 of the Banking Act minus the listed expenses; if the company is a subsidiary, the relevant amount for the total annual net turnover shall result from the consolidated account of the ultimate parent undertaking in the preceding financial year. With regard to other legal persons, the relevant figure shall be the total annual turnover. If the FMA cannot determine or calculate the basis for the total turnover figures, it shall make an estimate. When the estimate is made, all relevant circumstances shall be taken into account.

**Section 190b.** When determining the type of penalty or measure in response to breaches of the provisions of this Federal Act or to breaches of regulations or official notices issued on the basis of this Federal Act, and when setting the amount of a fine, the FMA shall, as far as appropriate, take account of the following circumstances in particular:

Effective penalties for violations of law

1. the gravity and duration of the breach;
2. the degree of responsibility of the natural or legal person responsible;
3. the financial strength of the natural or legal person responsible as indicated, for example, by the total turnover of the legal person responsible or the annual income of the natural person responsible;
4. the importance of the profits gained or losses avoided by the natural or legal person responsible, insofar as they can be determined;
5. the damage caused to third parties by the breach, insofar as the damage can be determined;
6. the damage caused to the functioning of markets or to the wider economy, insofar as the damage can be determined;
7. the level of cooperation of the natural or legal person responsible with the competent authority;
8. previous breaches by the natural or legal person responsible; and
9. measures taken after the breach by the natural or legal person responsible for the breach to prevent repetition of the breach.

The provisions of the Administrative Penal Act shall be unaffected by this Section.

## **Appropriation of revenues from fines**

**Section 190c.** Fines imposed by the FMA pursuant to Section 190 (2a) and Section 190a shall be received by the federal government.

## **Reports to ESMA**

**Section 190d.** (1) The FMA shall provide ESMA annually with aggregated information regarding all penalties imposed for breaches pursuant to Section 190 (2) nos. 18 to 20, (2a) and Section 190a and all measures imposed pursuant to Section 148 (1), (2) and (5).

(2) The FMA shall report to ESMA all administrative penalties and measures published in accordance with Section 150. The FMA shall also report to ESMA all administrative penalties

imposed but not published in accordance with Section 150 (3) no. 3 including any appeal in relation thereto and the outcome of such an appeal.

### **Cooperation with competent authorities in other Member States**

**Section 190e.** (1) In the exercise of its powers to impose penalties under Section 190 and Section 190a, the FMA shall cooperate closely with the competent authorities in other Member States to ensure that the supervisory and investigative powers pursuant to Section 148 and the administrative penalties can be effectively ordered or imposed. The FMA shall also coordinate its measures in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative penalties and measures to cross-border cases.

(2) The FMA may refuse a request for information or a request to cooperate with an investigation conducted by a competent authority in another Member State only where:

1. communication of relevant information might adversely affect national security, in particular the fight against terrorism and other serious crimes;
2. compliance with the request is likely to affect adversely its own investigation, enforcement measures or a criminal investigation;
3. judicial proceedings have already been initiated in respect of the same actions and against the same persons before the national authorities; or
4. a final judgement has already been delivered in relation to such persons for the same actions.

### **Violations of the Banking Act**

**Section 191.** Sections 96, 97, 98 (1), (1a), (2) nos. 4a, 5, 8, 10 and 11 having regard to Section 44 of the Banking Act, Section 98 (3) no. 10, Section 98 (5a) nos. 1 to 2 and 6 as well as Section 99 (1) nos. 3 to 8, 10 and 15 as well as Sections 99a, 99b, 99c, 99d, 100 and 101 of the Banking Act shall be applied to management companies.

### **Coercive penalty**

**Section 192.** If a custodian bank infringes any provisions of this Federal Act or a regulation or official notice issued on the basis of this Federal Act, Section 70 (4) and Section 96 of the Banking Act shall apply subject to the proviso that the revocation of the licence in accordance with Section 70 (4) no. 3 of the Banking Act shall be replaced by the revocation of the authorisation given in accordance with Section 50 (2) no. 3.

### **Proceedings and mediation panel**

**Section 193.** (1) In proceedings at the first instance, the FMA shall be responsible for imposing administrative penalties referred to in Sections 190 to 191 and coercive penalties referred to in Section 192.

(3) When conducting investigations in administrative penal proceedings referred to in Sections 190 to 191, the FMA shall have full competence in accordance with Sections 147 to 150.

(3a) If a criminal case in court for an offence under Sections 189 to 191 is finally terminated other than by withdrawal from prosecution (diversion) or by final conviction, notification thereof is to be given to the FMA. In cases of discontinuation of the investigation, the public prosecution office has to give notification, in all other cases the court of law has to do so.

(3b) The period from the day of filing the criminal complaint for an offence under Sections 189 to 191 until the receipt of the notification as per subsection(3a) by the authority shall not be included in the period of limitation pursuant to Section 31 (1) and (2) of the Administrative Penal Act.

(4) The FMA shall inform clients of management companies or UCITS who lodge a complaint against a violation by a management company or a UCITS of Sections 10 to 35 or a provision of Chapter 3 or 4 of the possibility of lodging a complaint with the out-of-court mediation panel (Section 98 of the Payment Services Act 2018), stating its registered office and address.

### **Consequences of unauthorised activities under civil law**

**Section 194.** Any person who issues or markets units of investment funds without the required authorisation shall not have a claim to any of the remuneration, costs and fees associated with such transactions. The legal ineffectiveness of the agreements related to such transactions shall not lead to the legal ineffectiveness of the entire transaction. Agreements to the contrary, and sureties and guarantees related to such transactions, shall be legally ineffective.

## Chapter 2

### Transitional and final provisions

#### Transitional provisions

**Section 195.** (1) The stock corporations and limited liability companies which, when this Federal Act enters into force, carry on investment business (Section 1 (1) no. 13 of the Banking Act) with the authorisation of the FMA are management companies within the meaning of this Federal Act and shall not require renewed authorisation to carry on their business operations.

(2) For the marketing of units of foreign funds within the meaning of Section 3 (2) no. 31 (c) and of EEA funds which have permissibly been offered to the public in Austria at the time when this Federal Act comes into force, a notice under Section 140 or Section 176 shall not be required. However, foreign funds within the meaning of Section 3 (2) no. 31 (c) shall submit to the FMA a declaration of undertaking as referred to in Section 181 (2) no. 5 (e) and (f) by 31 December 2011, failing which the FMA shall proceed in accordance with Section 182 (2).

(3) Investment firms within the meaning of Section 3 (2) no. 1 of the Securities Supervision Act 2018 and investment services undertakings as referred to in Section 4 of the Securities Supervision Act 2018 may apply for a licence in accordance with Section 5 to manage UCITS and act as management companies themselves if they return their licence in accordance with the Securities Supervision Act 2018 at the same time they are granted a licence as a management company.

(4) Management companies already authorised before 1 July 2011 in their home Member State under Directive 85/611/EEC to manage UCITS in the form of an investment fund or investment company shall be deemed to be licensed for the purposes of this provision if the laws of the home Member State provide that, to take up such activity, they must comply with conditions equivalent to those imposed in Articles 7 and 8 of Directive 2009/65/EEC. If such management companies are already pursuing activities in Austria in compliance with Section 32a of the Investment Fund Act 1993 or marketing units of UCITS in Austria in accordance with Section 36 of the Investment Fund Act 1993, a renewal of the attestation referred to in Section 36 of this Federal Act shall not be required. If such management companies intend to provide collective portfolio management of a UCITS constituted in Austria, Sections 36 and 50 of this Federal Act and the provisions of Chapter 4 shall be complied with. However, the marketing of new classes of units or investment compartments shall be notified in accordance with Section 141 (3).

(5) Depending on the official notice of authorisation, funds within the meaning of the Investment Fund Act 1993 that were authorised by the FMA before 1 September 2011 are UCITS or AIF within the meaning of this Federal Act and shall not require another authorisation. They shall comply with the provisions of Sections 134 and 135 from 1 July 2012, at the latest; until then, they may continue to provide a simplified prospectus in accordance with Annex E Schedule E of the Investment Fund Act 1993 instead of the KID.

(6) Management companies that perform activities pursuant to Part 3 of this Federal Act before 22 July 2013 shall take all necessary measures to comply with the provisions adopted on the basis of the Alternative Investment Fund Managers Act and shall file an application for approval as an AIFM within one year of that date, failing which the authorisation to manage AIF pursuant to Part 3 of this Federal Act shall expire.

(7) Until 31 December 2014, Sections 175 to 180, Section 181 (3) and (4) and Sections 182 to 185 as amended by the federal act promulgated in Federal Law Gazette I No. 70/2013 shall continue to be applied to AIFM that are authorised to publicly market units in AIF in Austria pursuant to Part 3 Chapter 2 before 22 July 2013.

(8) The investment rules laid down in Section 171 no. 2 as amended by the federal act promulgated in Federal Law Gazette I No. 34/2015 shall be applied as regards participation capital securities within the meaning of Section 23 (4) of the Banking Act in the version in force before the federal act promulgated in Federal Law Gazette I No. 184/2013 and instruments without voting rights within the meaning of Section 26a of the Banking Act already from the day following promulgation of the federal act in Federal Law Gazette I No. 34/2015.

(9) The following transitional provisions shall apply once the federal act promulgated in Federal Law Gazette I No. 115/2015 has entered into force:

1. If unit certificates in bearer form have been delivered to the unit-holder under provisions previously in force, such unit certificates may, at the request of the unit-holder, by way of derogation from Section 46 (1), be redeemed through, or placed in safe custody with, the unit-holder's credit institution that is authorised to

carry on custody business and registered in accordance with the FATCA Agreement (Federal Law Gazette III No. 16/2015) or a foreign legal basis in accordance with FATCA until 31 December 2016 at the latest.

2. Unit certificates in bearer form that have not been placed in safe custody in a securities account together with all ancillary certificates by 31 December 2016 shall cease to have effect and expire after the end of 31 December 2016. From 1 January 2017, the rights relating to such units may only be invoked through the domestic custodian bank appointed for the fund by the management company, acting as trustee for the respective unit-holders. The units held by the custodian bank as trustee shall be represented by global certificates that are deposited with a domestic central securities depository.

3. After 31 December 2016, the holder of a unit certificate in bearer form that has expired pursuant to no. 2 can identify himself or herself as trustor in respect of the fund units held by the custodian bank appointed for the fund by the management company pursuant to no. 2 by presenting the relevant unit certificate to his credit institution that is authorised to carry on custody business and registered in accordance with the FATCA Agreement or a foreign legal basis in accordance with FATCA. Furthermore, the trustor shall provide proof of identity as required for customers under the provisions of the Banking Act and shall comply with the identification requirements and any other procedural orders referred to in Annex I to the FATCA Agreement and the Common Reporting Standard Act (Federal Law Gazette I No. 116/2015). A trustor who has provided evidence of his entitlement can, through his credit institution that is authorised to carry on custody business and registered in accordance with the FATCA Agreement or a foreign legal basis in accordance with FATCA, request that the custodian bank appointed for the fund by the management company surrender the units held on his behalf pursuant to no. 2 by way of delivery to a securities account or redemption of units. The surrender of cash payments received by the custodian bank appointed for the fund by the management company in the context of the trust relationship, including any proceeds from repurchases, may only be requested in the form of transfer to a cash account in respect of which the trustor is the account holder or a joint account holder. The custodian bank appointed for the fund by the management company can effect payment to the holder of the unit certificate in bearer form with debt-discharging effect through the unit-holder's credit institution that is authorised to carry on custody business and registered in accordance with the FATCA Agreement or a foreign legal basis in accordance with FATCA. The custodian bank appointed for the fund by the management company shall not apply interest to cash payments received in the context of the trust relationship.

4. The claims for surrender pursuant to no. 3 shall become time-barred after the end of 31 December 2032.

## References and regulations

**Section 196.** (1) To the extent that this Federal Act contains references to other federal acts, these acts shall be applied as amended from time to time unless expressly provided otherwise.

(2) If this Federal Act contains references to the following legal acts of the European Union, these acts shall be applied in the following versions unless otherwise provided:

Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ No. L 302 of 17 November 2009 p. 32, as amended by Directive (EU) 2021/2261 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS), OJ No. L 455 of 20 December 2021 p. 15;

2. Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, OJ No. L 176 of 27 June 2013 p. 338 as amended by Directive (EU) 2021/338, OJ No. L 68 of 26 February 2021 p. 14;

3. Directive 2010/43/EU implementing Directive 2009/65/EC as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depository and a management company (OJ No. L 176 of 10 July 2010, p. 42);

4. Directive 2010/44/EU as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure, OJ No. L 176 of 10 July 2010 p. 28 as amended by the corrigendum to the Directive, OJ No. L 179 of 14 July 2010 p. 16;

5. Regulation (EU) No. 583/2010 implementing Directive 2009/65/EC as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, OJ No. L 176 of 10 July 2010 p. 1 as amended by the corrigendum, OJ No. L 108 of 28 April 2011 p. 38;

6. Regulation (EU) No. 584/2010 implementing Directive 2009/65/EC as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ No. L 176 of 10 July 2010, p. 16);

7. Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ No. L 173 of 12 June 2014 p. 349, as amended by Regulation (EU) 2020/1504, OJ No. L 347 of 20 October 2020 p. 50;

*(Note: nos. 8 and 9 repealed by Art. 3 no. 28 Federal Law Gazette I No. 198/2021)*

10. Regulation (EU) No. 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Decision No. 2009/77/EC, OJ No. L 331 of 15 December 2010, p. 84, as amended by Regulation (EU) 2019/2175 amending Regulation (EU) No. 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No. 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No. 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No. 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, OJ No. L 334 of 27 December 2019 p. 1;

11. Regulation (EU) No. 1092/2010 of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ No. L 331 of 15 December 2010 p. 1 as amended by Regulation (EU) 2019/2176 amending Regulation (EU) No. 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ No. L 334 of 27 December 2019 p. 146;

*(Note: no. 12 repealed by Art. 16 no. 11, Federal Law Gazette No. I No. 118/2016)*

13. Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No. L 119 of 04 May 2016 p. 1 as amended by the corrigendum, OJ I No. 127 of 23 May 2018 p. 2;

*(Note: no. 14 repealed by Art. 3 no. 30, Federal Law Gazette I No. 198/2021)*

*(Note: no. 15 repealed by Art. 3 no. 30, Federal Law Gazette I No. 118/2016)*

17. Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, OJ No. L 176 of 27 June 2013 p. 1 as amended by Commission Implementing Regulation (EU) 2021/1043 on the extension of the transitional provisions related to own funds requirements for exposures to central counterparties set out in Regulation (EU) No. 575/2013, OJ No. L 225 of 25 June 2021 p. 52;

18. Directive 98/26/EC on settlement finality in payment and securities settlement systems, OJ No. L 166 of 11 June 1998 p. 45 as amended by Directive (EU) 2019/879 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC, OJ No. 150 of 07 June 2019 p. 296;

19. 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 and repealing Directives 78/660/EEC and 83/349/EEC, OJ No. L 182 of 29 June 2013 p. 19, as amended by Directive (EU) 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, OJ No. L 429 of 01 December 2021 p. 1;

20. Commission Delegated Regulation (EU) 2016/438 supplementing Directive 2009/65/EC with regard to obligations of depositaries, OJ No. L 78 of 24 March 2016 p. 11 as amended by Commission Delegated Regulation (EU) 2018/1619 of 12 July 2018 amending Delegated Regulation (EU) 2016/438 as regards safe-keeping duties of depositaries, OJ No. L 271 of 30 October 2018 p. 6;

21. Regulation (EU) 2017/1131 of 14 June 2017 on money market funds, OJ No. L 169 of 30 June 2017 p. 8 as amended by Commission Delegated Regulation (EU) 2018/990 of 10 April 2018 amending and supplementing Regulation (EU) 2017/1131 of the European Parliament and of the Council with regard to simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCs), requirements for assets received as part of reverse repurchase agreements and credit quality assessment methodologies, OJ No. L 177 of 13 July 2018 p. 1;

22. Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No. 1060/2009 and (EU) No. 648/2012, OJ No. L 347 of 28 December 2017 p. 35 as amended by Regulation (EU) 2021/557 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis, OJ No. L 116 of 06 April 2021 p. 1;

23. Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No. 345/2013, (EU) No. 346/2013 and (EU) No. 1286/2014, OJ No. L 188 of 12 July 2019 p. 55;
24. Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, OJ No. L 17 of 09 December 2019 p. 1, as amended by Regulation (EU) 2020/852, OJ No. L 198 of 22 June 2020 p. 13;
25. Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ No. L 198 of 22 June 2020 p. 13;
26. Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for undertakings for collective investment in transferable securities (UCITS), OJ No. L 277 of 02 August 2021 p. 141;
27. Regulation (EU) No. 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ No. L 352 of 09 December 2014 p. 1 as amended by Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No. 345/2013, (EU) No. 346/2013 and (EU) No. 1286/2014, OJ No. L 188 of 12 July 2019 p. 55;
- (3) Regulations on the basis of this Federal Act as amended may be adopted from the day following the promulgation of the federal act to be implemented; however, they may not enter into force before the statutory provisions to be implemented.
- (4) To the extent that other federal acts contain references to provisions of the Investment Fund Act 1993, such provisions shall be replaced by the corresponding provisions of this Federal Act.

#### Transposition notice

##### **Section 196a. (1) Federal Law Gazette I No. 77/2011 transposes**

1. Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ No. L 302 of 17 November 2009 p. 32;
2. Directive 2010/43/EU implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, OJ No. L 176 of 10 July 2010 p. 42;
3. Directive 2010/42/EU implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure, OJ No. L 176 of 10 July 2010 p. 28 and
4. Directive 2010/78/EU amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) – OJ No. L 331 of 15 December 2010 p. 120.

##### **Directive 2007/16/EC as already transposed by Federal Law Gazette I No. 69/2008 was also already taken into account in the amendment of the Investment Fund Act (Article 2).**

##### **(2) Federal Law Gazette I No. 135/2013 transposes**

1. Directive 2011/61/EU on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010, OJ No. L 174 of 01 July 2011 p. 1, as amended by the corrigendum OJ No. L 155 of 27 April 2012 p. 35, and
2. sets forth the preconditions for the entry into effect of
  - a) Regulation (EU) No. 345/2013 on European venture capital funds, OJ No. L 115 of 25 April 2013 p. 1 and
  - b) Regulation (EU) No. 346/2013 on European social entrepreneurship funds, OJ No. L 115 of 25 April 2013 p. 18.

- (3) Federal Law Gazette I No. 70/2014 transposes Directive 2013/14/EU amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive



2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings, OJ No. L 145 of 31 May 2013 p. 1.

(4) Federal Law Gazette I No. 115/2015 transposes Directive 2014/91/EU amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions, OJ No. L 257 of 28 August 2014 p. 186.

(5) The Federal Act promulgated in Federal Law Gazette I No. 198/2021 serves

1. the transposition of Directive (EU) 2019/1160 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings, OJ No. L 188 of 12 July 2019 p. 106, and

2. the entry into effect of Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No. 345/2013, (EU) No. 346/2013 and (EU) No. 1286/2014, OJ No. L 188 of 12 July 2019 p. 55.

(6) The Federal Act promulgated in Federal Law Gazette I No. 36/2022 serves the entry into effect of

Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, OJ No. L 17 of 09 December 2019 p. 1, as amended by Regulation (EU) 2020/852, OJ No. L 198 of 22 June 2020 p. 13, and

2. Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ No. L 198 of 22 June 2020 p. 13.

(7) The Federal Act promulgated in Federal Law Gazette I No. 112/2022 serves the entry into effect of Commission Delegated Directive (EU) 2021/1270 of 21 April 2021 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for undertakings for collective investment in transferable securities (UCITS), OJ No. L 277 of 02 August 2021 p. 141.

(8) The Federal Act promulgated in Federal Law Gazette I No. 112/2022 serves the entry into effect of Directive (EU) 2021/2261 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS), OJ No. L 455 of 20 December 2021 p. 15.

### **Gender-neutral language**

**Section 197.** To the extent that, in this Federal Act, personal nouns and pronouns are written in male form only, they shall refer equally to women and men. If they are applied to specific persons, the respective gender-specific form shall be used.

### **Repeal**

**Section 198.** (1) The Investment Fund Act – InvFG 1993 (Federal Law Gazette No. 532/1993) as amended by the federal act promulgated in Federal Law Gazette I No. 111/2010 shall be repealed as of the end of 31 August 2011; Sections 6 (1), 20a (7), 21a (1), (2) and (3), 23f and 35, as well as Annex E Schedule E, concerning the simplified prospectus, shall be applied until the end of 30 June 2012 to UCITS and AIF approved before 1 September 2011 as long as no key information document has been submitted for them to the FMA. Sections 3 (2) and 14 (4) shall be applied to the merger of funds in respect of which a complete application for approval has been filed with the FMA by the end of 31 August 2011. Section 44 of the Investment Fund Act 1993 shall continue to be applied without restrictions to any actions taken before 1 September 2011.

(2) The following provisions of the Investment Fund Act 1993, in the version in force before the federal act promulgated in Federal Law Gazette I No. 111/2010, shall continue to apply:

1. Section 13 fourth sentence, Section 40 (1) and (2) and Section 42 (1) and (3) shall continue to be applied, without prejudice to the provisions of Section 200 (2) first sentence, to financial years of a fund starting in calendar year 2012. Loss carry-forwards not used can be offset against earnings of the fund pursuant to Section 27 (3) and (4) of the Personal Income Tax Act 1988 in later financial years; in the case of unit certificates not held as part of the assets of a business, 25% of the loss carry-forwards can be offset. For purposes of investment income tax, that percentage shall be taken as a uniform basis; the breakdown of the composition of income equivalent to distributions pursuant to Section 186 (2) no. 2 for financial years starting in calendar year 2013 shall state the total amount of loss carry-forwards not used. Section 42 (2) and (4) shall be applied until 31 March 2012.

2. The proportion of one fifth referred to in Section 40 (1) second sentence shall increase

a) to 30% for financial years of a fund starting after 30 June 2011;

b) to 40% for financial years of a fund starting in calendar year 2012.

3. The obligation to provide notification of investment income tax on a daily basis as stipulated in Section 40 (2) no. 2 shall cease to exist from 1 April 2012. From that date, Section 186 (2) nos. 2 to 4 as amended by the Investment Fund Act 2011, Federal Law Gazette I No. 77/2011, shall apply instead, notwithstanding no. 1.

4. By way of derogation from Section 40 (2) no. 2, from 1 January 2012 proof of income equivalent to distributions may be provided exclusively by a tax representative. Only an Austrian independent certified public accountant or person with comparable professional qualifications may be appointed as tax representative.

### **Enforcement clause**

**Section 199.** With regard to

1. Section 189, the Federal Minister of Justice,

2. Sections 10 to 35, 50 to 65, 128 to 138 and 194, the Federal Minister of Finance by agreement with the Federal Minister of Justice, and

3. all other provisions, the Federal Minister of Finance shall be entrusted with the enforcement of this Federal Act.

### **Entry into force**

**Section 200.** (1) This Federal Act shall enter into force on 1 September 2011.

(2) Sections 186 and 188 shall enter into force on 1 April 2012. By way of derogation therefrom, the following shall apply:

1. Section 186 (3) shall apply for the first time to sales occurring after 31 March 2012 of unit certificates purchased after 31 December 2010. For such unit certificates, the acquisition cost shall be corrected in accordance with Section 186 (3) as regards distributions and income equivalent to distributions received or deemed received after 31 December 2010. Section 40 (3) of the Investment Fund Act 1993 in the version in force before the federal act promulgated in Federal Law Gazette I No. 111/2010 shall be applied until 31 March 2012.

2. By way of derogation from Section 186 (2) no. 1, in the case of units not held as part of the assets of a business, the percentage of 60% for financial years of a fund starting in calendar year 2013 shall be replaced by a percentage of 50%.

(3) Sections 157 to 161 shall have retroactive effect from 1 July 2011. The following provisions, including the provisions referred to in them, shall apply with retroactive effect from 1 July 2011 to management companies in accordance with Art. 6 of Directive 2009/65/EC that are licensed in another Member State and become active in Austria through a branch, under the freedom to provide services or by way of collective portfolio management: Sections 10 to 36; Section 38; Sections 46 to 142; Section 143 (1) nos. 2, 3, 4 and 5; Section 145; Section 147; Section 151; Section 152; Section 153 (2); Section 162 (1) and (2); Section 195 (2).

(4) Section 190 (1) to (6) as amended by the Second Stability Act 2012, Federal Law Gazette I No. 35/2012, shall enter into force on 1 May 2012.

(5) Section 53 (4) and Section 61 (2) as amended by the federal act promulgated in Federal Law Gazette I No. 83/2012 shall enter into force on 1 July 2012.

(6) Section 193 (2) as amended by the federal act promulgated in Federal Law Gazette I No. 70/2013 shall enter into force on 1 January 2014.

(7) Section 1, Section 2 (3), Section 3 (2) nos. 19, 30 and 31, Section 5 (2) no. 2, Section 5 (5), Section 6 (3), Section 130, Section 134 (1), Section 162a and Section 195 (6) and (7) as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall enter into force on 22 July 2013. Section 27, Section 30 (5), Section 46 (3), Section 60 (1), Section 64, Section 71 (1), Section 166 (1) no. 4, Section 167 (1) and (6) to (9), Section 168, Section 173 including the heading, Section 190 (1) nos. 2 and 6, (2) nos. 11 to 13, (3) no. 2, (4) no. 2 as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall enter into force on the day following promulgation. Section 144 including the heading as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall enter into force on 1 January 2014. Sections 175 to 185 including the headings and Section 189 (1) nos. 1 and 2 shall cease to have effect after the end of 21 July 2013.

(8) Sections 186 and 188 as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall apply for the first time to financial years of funds starting after 21 July 2013. Section 186 (1) second and third sentences as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 may already be applied to financial years starting after 31 December 2012. AIF of the

closed-ended type that do not make any additional investments (Section 67 (5) of the Alternative Investment Fund Managers Act) and do not issue any new units after 22 July 2013 shall not constitute AIF for the purposes of Sections 186 (1) no. 2 and 188 (1) no. 2. This shall only apply in cases where Section 186 or Section 188, in the version in force before the federal act promulgated in Federal Law Gazette I No. 135/2013, did not already apply to the undertaking during the last financial year beginning before 22 July 2013.

Section 124b no. 185 (c) of the Personal Income Tax Act 1988 and Section 6b of the Corporation Tax Act 1988 shall take precedence over the application of Sections 186 and 188.

(9) Section 3 (1), Section 6 (2) no. 5, Section 8 (2), Section 10 (6), Section 74 (1), Section 145 (4), Section 148 (5), Section 150 (1), Section 151 nos. 3a and 11, Section 190 (7), Section 191 including the heading and Section 196 (2) nos. 2 and 17 as amended by the federal act promulgated in Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2014. Section 151 no. 11a as amended by the federal act promulgated in Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2015. Section 151 no. 11 as amended by the federal act promulgated in Federal Law Gazette I No. 184/2013 shall cease to have effect after the end of 31 December 2014.

(10) Section 85 (1) and (3) and Section 196 (2) no. 1 as amended by the federal act promulgated in Federal Law Gazette I No. 70/2014 shall enter into force on 21 December 2014.

(11) Section 186 (2) no. 4 as amended by the federal act promulgated in Federal Law Gazette I No. 70/2014 shall enter into force on 1 January 2015.

(12) Section 171 no. 2 as amended by the federal act promulgated in Federal Law Gazette I No. 34/2015 shall enter into force on 1 January 2016.

(13) Section 10 (6), Section 70 (4) no. 4, Section 74 (7), Section 154 (3) and Section 196 (2) no. 14 as amended by the federal act promulgated in Federal Law Gazette I No. 68/2015 shall enter into force on 20 July 2015. In the case of accounting documents relating to financial years starting before 1 January 2016, Section 10 (6) as amended by the federal act promulgated in Federal Law Gazette I No. 68/2015 shall be applied subject to the proviso that the provisions of the Banking Act shall be applied as prescribed by Section 107 (87) of the Banking Act.

(14) Section 186 (5) nos. 2 and 3 as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall apply for the first time to financial years of entities subject to Section 186 or 188 starting after 21 July 2013.

(15) Section 58 (2) as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall enter into force on 1 January 2015.

(16) Section 14 (3), Section 46 (1), Section 60 (2), Section 70 (4) no. 4, Section 93 (2) no. 1, Section 125 (3), Section 136 (4) no. 2, Section 140 (3), Section 141 (3), Section 151 no. 3a, Section 195 (9) and Section 196 (2) nos. 10 and 17 to 19 as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall enter into force on 1 September 2015. Section 167 (5) shall cease to have effect after the end of 31 August 2015.

(17) Section 186 (2) nos. 1 and 2 as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall apply to financial years of entities subject to Section 186 or 188 ending after 30 September 2015.

(18) The table of contents as regards Sections 17a to 17c, 42, 42a, 44a and 190a to 190e including the headings, Section 3 (2) nos. 33 and 34, Section 10 (6), Section 11 (5), Section 17 (3) no. 6, Sections 17a to 17c including the headings, Section 29 (3) and (5), Section 33 (2), Section 36 (6) no. 1, Section 37 (5) no. 2, Section 40 (1) and (1a), Sections 42 and 42a including the headings, Section 43, Section 44 (2) and (3), Section 44a including the heading, Section 57 (1) and (3), Section 131 (4) nos. 11 and 12, Section 135 (2) no. 1 and (3a), Section 150, Section 164 (4), Section 190, Sections 190a to 190e including the headings, Section 191, Section 193 (3a) and (3b), Section 196 (2) no. 1, Annex I Schedule A I. Investment funds no. 2, Annex I Schedule A II. Management company no. 2, Annex I Schedule A III. Investment company no. 2 and Annex I Schedule B no. 9 as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall enter into force on 18 March 2016. Section 5 (5), Section 12 (3), Section 13 (3), Section 20 (3), Section 21 (6), Section 31 (5), Section 41 (4) and Section 189 (5) shall cease to have effect after the end of 17 March 2016.

(19) Section 6 (2) no. 8, Section 40 (1a), Section 41 (3), Section 42a (2) no. 1, Section 143 (1) no. 2, Section 190 (2) no. 3, Section 190 (5) no. 1 and Section 196 (2) nos. 19 and 20 as amended by the federal act promulgated in Federal Law Gazette I No. 73/2016 shall enter into

force on 13 October 2016. Section 6 (2) no. 9 shall cease to have effect after the end of 12 October 2016.

(20) Section 190 (2) nos. 13 and 14 as amended by the federal act promulgated in Federal Law Gazette I No. 73/2016 shall enter into force on 13 January 2017. Section 190 (2) no. 15 as amended by the federal act promulgated in Federal Law Gazette I No. 73/2016 shall enter into force on 13 July 2017.

(21) Section 10 (6), Section 16 (4) no. 2, Section 17c (1), Section 36 (4), Section 41 (3), Section 157 (2) no. 3 and Section 191 as amended by the federal act promulgated in Federal Law Gazette I No. 118/2016 shall enter into force on 1 January 2017. Section 11 (6) as amended by the federal act promulgated in Federal Law Gazette I No. 118/2016 shall enter into force on 31 December 2016. Section 149 (2) and Section 196 (2) nos. 12 and 15 shall cease to have effect after the end of 31 December 2016. Section 71 (1) as amended by the federal act promulgated in Federal Law Gazette I No. 118/2016 shall be applied to acquisition transactions after 31 December 2016.

(22) Section 164 (7a) a as amended by the federal act promulgated in Federal Law Gazette I No. 107/2017 shall enter into force on 1 January 2018. Section 3 (2) no. 18, Section 3 (2) no. 34, Section 5 (2) no. 3, Section 6 (2) no. 12 (a) to (c), Section 8 (2), Section 10 (5), Section 18 (1) no. 1, Section 18 (1) no. 1 (c), Section 18 (1) nos. 2 and 3, Section 18 (1) no. 3 (a), Section 18 (2) nos. 1 to 3, Section 18 no. 3, Section 19 no. 3, Section 42 (1) no. 2 and no. 3, Section 42 (2) (b), Section 46 (1), Section 67 (2) no. 1, Section 134 (4), Section 145 (1) nos. 9 and 10, Section 145 (2) no. 3 (d), Section 145 (4), Section 147 (2), Section 190 (2) no. 11, (3) no. 6 and (4) no. 6 and Section 195 (3) as amended by the federal act promulgated in Federal Law Gazette I No. 107/2017 shall enter into force on 3 January 2018. Section 190a (5) and Section 193 (2) shall cease to have effect after the end of 2 January 2018.

(23) Section 10 (6) as amended by the federal act promulgated in Federal Law Gazette I No. 150/2017 shall enter into force on 1 September 2018.

(24) Section 193 (4) as amended by the federal act promulgated in Federal Law Gazette I No. 17/2018 shall enter into force on 1 June 2018.

(25) Section 10 (6) as amended by the federal act promulgated in Federal Law Gazette I No. 36/2018 shall enter into force on 1 September 2018.

(26) The table of contents as regards Section 84a, Section 84a including the heading, Section 166 (2) and Section 196 (2) nos. 21 and 22 as amended by the federal act promulgated in Federal Law Gazette I No. 76/2018 shall enter into force on 1 January 2019.

(27) Section 53 (1) and (4) as amended by the federal act promulgated in Federal Law Gazette I No. 46/2019 shall enter into force on 1 July 2019.

(28) Section 3 (1), Section 63 (1), Section 65 (1), Section 95 (4), Section 115 (2), Section 129 (2), Section 131 (7), Section 137 (1) and (2), Section 142 (1) no. 3, Section 145 (1) no. 9, (2) no. 3 (d) and (4) and Section 186 (2) no. 2 (a) as amended by the federal act promulgated in Federal Law Gazette I No. 62/2019 shall enter into force on 21 July 2019.

(29) The table of contents as regards Sections 139a, 141, and 196a, Section 5 (2) no. 3 and 4 (a), Section 18 (1) no. 1 (c), Section 37 (10), Section 63 (5), Section 127 (2), Section 128 (7), Section 136 (1) and (2), Section 137 (1) no. 3, and (3), Section 138 (4) and (5), Section 139 (1a) and (8) to (11), Section 139a including the heading, Section 140 (1), (4) and (5), Section 141 including the heading, Section 154 (2), Section 155 (3), Section 190 (2) no. 18, Section 196 (2) nos. 1, 2, 4, 5, 7, 10 to 13 and 17 to 23 and Section 196a including the heading as amended by the federal act promulgated in Federal Law Gazette I No. 198/2021 shall enter into force on the day following promulgation. Section 155 (2) and Section 196 (2) nos. 8, 9 and 14 shall cease to have effect after the end of the day of promulgation.

(30) Section 74 (4) as amended by the federal act promulgated in Federal Law Gazette I No. 199/2021 shall enter into force on 8 July 2022.

(31) Section 186 (1) and (2) no. 1 (a) as amended by the federal act promulgated in Federal Law Gazette I No. 10/2022 shall enter into force on 1 March 2022.

(32) Section 143 (1a), Section 147 (1) and (2) no. 1, Section 190 (2) nos. 19 and 20, Section 190c, Section 196 (2) nos. 23 to 25 and Section 196a (6) as amended by the federal act promulgated in Federal Law Gazette I No. 36/2022 shall enter into force on the day following promulgation.

(33) Section 2 (3) shall enter into force on 1 July 2022.

(34) Section 3 (2) no. 35 and 36, Section 10 (1) nos. 9 to 11, Section 14 (2) no. 9, Section 22 (3), Section 30 (6) and (7), Section 86 (2), Section 196 (2) no. 26 and Section 196a (7) as amended by the federal act promulgated in Federal Law Gazette I No. 112/2022 shall enter into force on 1 August 2022.

(35) Section 134 (6), Section 137 (4), Section 138 (8), Section 142 (3), Section 196 (2) no. 27 and Section 196a (8) as amended by the federal act promulgated in Federal Law Gazette I No. 112/2022 shall enter into force on 1 January 2023.

## **Annex I to Art. 2 of the Investment Fund Act 2011**

### **SCHEDULE A**

#### **I. Investment funds**

1. Information concerning the investment fund

1.1. Name

1.2. Date of constitution of the investment fund. Indication of duration, if limited

1.3. -

1.4. Statement of the place where the fund rules and periodic reports may be obtained

1.5. Brief indications relevant to unit-holders of the tax system applicable to the investment fund. Details of whether deductions are made at source from the income and capital gains paid by the investment fund to unit-holders

1.6. Accounting and distribution dates

1.7. Names of the persons responsible for conducting the audit referred to in Section 49 (5)

1.8. -

1.9. -

1.10. Details of the types and main characteristics of the units, in particular:

- the nature of the right (real, personal or other) represented by the unit

- original securities or certificates providing evidence of title; entry in a register or in an account

- characteristics of the units: registered or bearer, indication of any denominations which may be provided for

- indication of unit-holders' voting rights if these exist

- circumstances in which the winding-up of the investment fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders

1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in

1.12. Procedures and conditions of issue and/or sale of units

1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended

1.14. Description of rules for determining and applying income

1.15. Description of the investment fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the investment fund

1.16. Rules for the valuation of assets

1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular:

- the method and frequency of the calculation of those prices

- information concerning the charges relating to the sale, issue, repurchase or redemption of units

- the means, places and frequency of the publication of those prices

1.18. Information concerning the manner, amount and calculation of remuneration payable by the investment fund to the management company, the depositary or third parties, and reimbursement of costs by the investment fund to the management company, to the depositary or to third parties

2. Information concerning the depositary:

2.1. the identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;

- 2.2. a description of any safe-keeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;
- 2.3. a statement to the effect that up-to-date information regarding nos. 2.1 and 2.2 will be made available to investors on request.
3. Information concerning the external advisory firms or investment advisers who give advice under contract which is paid for out of the assets of the UCITS:
  - 3.1. name of the firm or the adviser,
  - 3.2. material provisions of the contract with the management company or the investment stock corporation which may be relevant to the unit-holders, excluding those relating to remuneration,
  - 3.3. other significant activities.
4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in respect of the Member State in which the UCITS is authorised. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there
5. Other investment information:
  - 5.1. historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus,
  - 5.2. profile of the typical investor for whom the UCITS is designed.
6. Economic information:
  - 6.1. possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the assets of the UCITS.

## **II. Management company**

1. Information concerning the management company including an indication whether the management company is established in a Member State other than the UCITS' home Member State
  - 1.1. Name or company name, form in law, registered office and head office if different from the registered office
  - 1.2. Date of incorporation of the company. Indication of duration, if limited
  - 1.3. If the company manages other investment funds, indication of those other funds
  - 1.4. -
  - 1.5. -
  - 1.6. -
  - 1.7. -
  - 1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company
  - 1.9. Capital: amount of the subscribed capital with an indication of the capital paid up
  - 1.10. -
  - 1.11. -
  - 1.12. -
  - 1.13. -
  - 1.14. -
  - 1.15. -
  - 1.16. -
  - 1.17. -
  - 1.18. -
2. Information concerning the depositary:
  - 2.1. the identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;
  - 2.2. a description of any safe-keeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;
  - 2.3. a statement to the effect that up-to-date information regarding nos. 2.1 and 2.2 will be made available to investors on request.
  3. Information concerning the external advisory firms or investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

- 3.1. name of the firm or the adviser,
- 3.2. material provisions of the contract with the management company or the investment stock corporation which may be relevant to the unit-holders, excluding those relating to remuneration,
- 3.3. other significant activities.
4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in respect of the Member State in which the UCITS is authorised. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there
5. Other investment information:
  - 5.1. historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus,
  - 5.2. profile of the typical investor for whom the UCITS is designed.
6. Economic information:
  - 6.1. possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the assets of the UCITS.

### III. Investment company

1. Information concerning the investment company
  - 1.1. Name or company name, form in law, registered office and head office if different from the registered office
  - 1.2. Date of incorporation of the company. Indication of duration, if limited
  - 1.3. In the case of investment companies having different investment compartments, the indication of the compartments
  - 1.4. Statement of the place where the instrument of incorporation and periodical reports may be obtained
  - 1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders
  - 1.6. Accounting and distribution dates
  - 1.7. Names of the persons responsible for conducting the audit referred to in Section 49 (5)
  - 1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where these are of significance with respect to that company
  - 1.9. Capital
  - 1.10. Details of the types and main characteristics of the units, in particular:
    - original securities or certificates providing evidence of title; entry in a register or in an account
    - characteristics of the units: registered or bearer, indication of any denominations which may be provided for
    - indication of unit-holders' voting rights if these exist
    - circumstances in which the winding-up of the investment fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders
  - 1.11. Where applicable, indication of stock exchanges or markets where the units are listed or dealt in
  - 1.12. Procedures and conditions of issue and/or sale of units
  - 1.13. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases
  - 1.14. Description of rules for determining and applying income
  - 1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company
  - 1.16. Rules for the valuation of assets
  - 1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular:
    - the method and frequency of the calculation of those prices
    - information concerning the charges relating to the sale, issue, repurchase or redemption of units
    - the means, places and frequency of the publication of those prices

1.18. Information concerning the manner, amount and calculation of remuneration payable by the company to its directors and members of the administrative, management and supervisory bodies, to the depositary, or to third parties, and reimbursement of costs by the company to its directors, to the depositary or to third parties

2. Information concerning the depositary:

2.1. the identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;

2.2. a description of any safe-keeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;

2.3. a statement to the effect that up-to-date information regarding nos. 2.1 and 2.2 will be made available to investors on request.

3. Information concerning the external advisory firms or investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

3.1. name of the firm or the adviser,

3.2. material provisions of the contract with the management company or the investment stock corporation which may be relevant to the unit-holders, excluding those relating to remuneration,

3.3. other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in respect of the Member State in which the UCITS is authorised. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there

5. Other investment information:

5.1. historical performance of the UCITS (where applicable) – such information may be either included in or attached to the prospectus,

5.2. profile of the typical investor for whom the UCITS is designed.

6. Economic information:

6.1. possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the assets of the UCITS.

## **SCHEDULE B**

### **Information to be included in the periodic reports**

1. Statement of assets and liabilities:

- transferable securities,
- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value.

2. Number of units in circulation

3. Net asset value per unit

4. Portfolio, distinguishing between

- a) transferable securities admitted to official stock exchange listing;
- b) transferable securities dealt in on another regulated market;
- c) recently issued transferable securities of the type referred to in Section 67 (3);
- d) other transferable securities of the type referred to in Section 67 (4);

and classified in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS.

Statement of changes in the composition of the portfolio during the reporting period

5. Statement of the developments concerning the assets of the UCITS during the reporting period including the following:

- income from investments;
- other income;



- management charges;
- depositary's charges;
- other charges and taxes;
- net income;
- distributions and income reinvested;
- changes in capital account;
- appreciation or depreciation of investments;
- any other changes affecting the assets and liabilities of the UCITS;
- transaction costs (costs incurred by a UCITS in conjunction with transactions on its portfolio).

6. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:

- the total net asset value;
- the net asset value per unit.

7. Details, by category of transaction within the meaning of Sections 73, 83 and 84 carried out by the UCITS during the reporting period, of the resulting amount of liabilities

8. Method of calculating global exposure:

8.1. Method used to calculate global exposure

8.2. If applicable, information on the reference assets used

8.3. If applicable, the lowest, highest and average amounts of the value-at-risk in the preceding year

8.4. If applicable, the model used and the inputs used for calculating the value-at-risk (calculation model, confidence interval, holding period, length of the data history)

8.5. If the value-at-risk is used, amount of leverage during the preceding period, calculated from the total nominal amounts of the derivatives

9. Information on the remuneration policies:

9.1. the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;

9.2. the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in Section 17a (1);

9.3. a description of how the remuneration and the benefits have been calculated;

9.4. the outcome of the reviews referred to in Section 17c (1) nos. 3 and 4 including any irregularities that have occurred;

9.5. material changes to the adopted remuneration policy.