

Federal Act on Public Offerings of Securities and Other Capital Investments
(Capital Market Act 2019 - Kapitalmarktgesetz, KMG 2019)

Main Part I

Public Offerings of Investments

Definitions

§ 1 (1) For the purposes of this federal act, the following definitions shall apply:

1. Public offering: A communication to the general public in any form whatsoever that contains adequate information on the terms and conditions of an offering (or an invitation to subscribe) for securities or an investment, and on the securities or investments that give potential investors a basis on which to reach an informed decision on the purchase or subscription of securities. This definition shall also apply to the placement of securities or investments by financial intermediaries;
2. Issuer: A legal entity that issues securities or investments or intends to do so;
3. Investments: Property rights for which no securities are issued, arising out of direct or indirect investments of the capital of several investors for their collective account and collective risk or for the collective account or risk together with the issuer if the administration of the capital invested is not overseen by investors themselves; Investments in the meaning of this federal act are all transferable, securitized rights that are not mentioned in no 4;
4. Securities: Transferable securities in the meaning of Article 2 a Regulation (EU) 2017/1129;
5. Investor: Anyone who acquires a security the offer of which was subject to the obligation to publish a prospectus;
6. Qualified investor: A qualified investor is a professional customer pursuant to § 66 or § 67 Securities Supervision Act 2018 - FLG I No 107/2017 or a suitable counterparty pursuant to § 68 Securities Supervision Act 2018 unless such person has applied for treatment as a non-professional customer; investment firms and credit institutions shall notify their classification irrespective of the applicable provisions on data protection upon request of the issuer;
7. Person who makes an offer ("offeror"): a legal entity or natural person who makes public offerings of securities or investments;

(2) The regulations contained in this federal act addressing the offeror also apply to issuers if these make a public offering within Austria subject to the obligation to publish a prospectus.

Public Offerings Subject to the Obligation to Publish a Prospectus

§ 2 (1) An initial public offering shall be permissible within Austria on the condition that a prospectus is drawn up and audited in conformity with the provisions of this Act and is published at least one banking workday in advance.

(2) Main Part I of this federal act governs public offerings of investments.

(3) Money market instruments with a remaining time to maturity of less than 12 months are not subject to the obligation to publish a prospectus pursuant to § 2.

Exemptions from the Obligation to Publish a Prospectus

§ 3 (1) The obligation to publish a prospectus pursuant to § 2 does not apply to:

1. Unit certificates of investment funds pursuant to § 3 para 2 no 30 Investment Fund Act 2011, FLG I No 77/2011 and unit certificates pursuant to § 1 Real Estate Investment Fund Act, FLG I No 80/2003 as well as open AIF, which meet the requirements of Article 1 (2) of the Delegated Regulation (EU) No 694/2014 supplementing Directive 2011/61/EU with regard to the regulatory technical standards that determine the types of alternative investment fund managers, Official Journal No L 183 of 24 June 2014 p. 18;
2. An investment offer addressed to investors who for every separate security or investment offer acquire as a minimum amount EUR 100,000 per investor as well as a security or investment offer with a minimum denomination of EUR 100,000;
3. An investment offer for a total value of less than euro two million in the European Economic Area (EEA); with this upper limit being calculated to include any income from offers in the past twelve months for securities or investments exempt from the obligation to publish a prospectus under this clause;
4. A securities or investment offer that is addressed exclusively to qualified investors;
5. Offers addressed to fewer than 150 natural or legal persons per EEA member state who are not qualified investors.

(2) Any subsequent resale of securities or investments, which were previously the subject of exemptions from the obligation to publish a prospectus pursuant to para 1 nos 2 to 5 shall be regarded as a separate offer and the definition set out in § 1 para 1 no 1 shall apply for the purpose of deciding whether this resale is deemed a public offering. The placement of securities or investments through financial intermediaries shall be subject to the publication of a prospectus if none of the conditions pursuant to para 1 nos. 2 to 5 are met for the final placement and a public offering exists.

(3) Should a planned issue result in the situation that the outstanding amount of all funds received pursuant to para 1 no 3 through the issuance of investments without a prospectus over a period of seven years exceed the total amount of five million euro, the relevant issue shall be subject to the obligation to prepare a prospectus pursuant to § 2 in departure from the provisions of para 1 no 3.

Advertising

§ 4 (1) Any advertising that refers to a public offering of securities or investments or to the admission to trading on a regulated market must comply with the principles of paras. 2 to 5. Paragraphs 2 to 4 apply only to those cases in which the issuer or the offeror is subject to the obligation to publish a prospectus.

(2) All advertising must indicate that a prospectus including any changed or supplemented information has been published or will be published and must state where said prospectus is available to investors.

(3) Advertisements must be clearly recognizable as such. The information contained in an advertisement shall not be inaccurate or misleading. This information shall also be consistent with the information contained in the prospectus or any amendments or supplementary information if already published, or with the information required to be in the prospectus, if the prospectus is published at a later time.

(4) In any case, all information concerning the offer to the public or the admission to trading on a regulated market disclosed in an oral or written form, even if not for advertising purposes, shall be consistent with the information contained in the prospectus including any amendments or supplementary information.

(5) When no prospectus is required according to this federal act, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed. Where the publication of a prospectus is mandatory, such information shall be included in the prospectus or in a supplement (amendments or supplementary information) to the prospectus in accordance with § 6 para 1.

(6) The Financial Market Authority (FMA) has the power to exercise control over the compliance of advertising activity with the principles referred to in paragraphs 2 to 5. The FMA shall exercise this control, in particular, in the case of well-founded suspicions of an infringement of the provisions of paras. 1 to 5.

Content of the Prospectus

§ 5 (1) The prospectus must contain all information, which, according to the particular nature of the issuer and of the investments offered to the public, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attached to such securities. This information shall be presented in a form easy to analyze and easily comprehensible.

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

(3) A simplified prospectus may be prepared pursuant to **Annex D** instead of pursuant to **Annex A** if the securities or investment offer has a value in the European Economic Area of less than EUR five million during a period of twelve months. Should a planned issue result in a situation in which the value of the issuance of securities or investments reaches or surpasses an amount of five million euro in the European Economic Area within a period of twelve months, a simplified prospectus shall not suffice, and therefore, the first sentence does not apply. The simplified prospectus for investments must be prepared in German or English. Issues pursuant to the Austrian Act on Alternative Forms of Financing (FLG I No 114/2015) shall be included in the calculation.

(4) The issuer shall duly sign the prospectus and add the note “as issuer” to the signature. This signature constitutes the irrefutable assumption that the prospectus was prepared by the issuer and for the issuer.

(5) If the offeror is not identical with the issuer, the offeror must obtain the written consent of the issuer for the use of the prospectus before using it for the purpose of a public offering.

Supplement to the Prospectus

§ 6 (1) Every significant new factor, material mistake or inaccuracy relating to the information included in the prospectus which is capable of affecting the assessment of the securities and which arises or is noted between the time when the prospectus is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a regulated market begins, shall be mentioned in a supplement (amendment or supplementary information) to the prospectus. This supplement shall be published by the offeror and filed without delay in accordance with the same arrangements applied when the original prospectus was published and filed. Simultaneously with the publication, the supplement shall be submitted by the offeror to the prospectus auditor who shall approve it by an audit certificate within seven banking workdays as of receipt of the application if the conditions pursuant to § 7 para 1 are met. If the prospectus auditor must conduct further auditing activities pursuant to § 7 para 1 to clarify any inaccuracies or lacking information, the period for furnishing the respective required information is interrupted; the offeror must send a counterpart of the supplement bearing the audit certificate to the notification office without delay. In the event that the outcome of the audit procedure is an amendment to the text of the supplement, such amendment shall be published including the already published correction notice.

(2) In any case, investors who have already agreed to purchase or subscribe to the securities after the circumstances requiring a supplement pursuant to para 1 occur, but prior to the publication, shall have the right to withdraw their acceptances within two working days after the publication of the supplement. The period for withdrawing acceptance must be stated in the supplement. If the investors are consumers in the meaning of § 1 para 1 no 2 Consumer Protection Act FLG No 140/1979, they shall have the right to withdraw acceptance for seven days after publication of the supplement. § 21 paras 3, 5 and 6 shall apply mutatis mutandis.

Scrutiny of the Prospectus

§ 7 (1) The prospectus for securities or investments must be duly signed by

1. a specialized association for auditing of credit cooperatives according to the Schulze-Delitsch system or according to the Raiffeisen system, or
2. the auditing body of the auditing association of the savings banks, or
3. a court-certified auditor or auditing firm, or
4. by
 - a) a credit institution in the meaning of § 1 para 1 Banking Act FLG No 532/1993 licensed for transactions pursuant to § 1 para 1 no 9, 10 or 11 Banking Act and with an amount of more than EUR 18.2 million in eligible own funds; or
 - b) a credit or financial institution licensed to carry on business in Austria pursuant to §§ 9, 11 or 13 Banking Act through a branch office or within the scope of the freedom to provide services as long as it is licensed to carry on a similar business in its home member state (Art. 4 (1) 43 Regulation (EU) 575/2013) as stated in § 1 para 1 no 9, 10 or 11 Banking Act and has at its disposal an equivalent of more than EUR 18.2 million in eligible own funds

as regards correctness and completeness and, if given, signed by the auditor stating place and date and adding “as prospectus auditor”. The abovementioned note evidences the irrevocable assumption that the auditor has scrutinized the prospectus and has found it to be correct and complete. The issuer shall provide the auditor with all documents he or she might need to enable an audit of the prospectus as to its integrity and correctness without any reservations. Based on the last report by the auditor of the issuer’s financial statements pursuant to § 273 of the Austrian Business Code – Imperial Gazette p. 219/1897 insofar as the issuer is subject to a statutory audit requirement, the prospectus auditor shall examine with due professional care all the documents the issuer must provide to determine if the prospectus contains the information required pursuant to § 5 and if the legal and financial status are represented correctly. The documents to be provided by the issuer shall be audited by random sampling as to their correctness and integrity.

Should there be instances of suspected incorrectness or lack of completeness in the documents or prospectus information, the auditor must take further auditing measures to clarify the matter; should the suspicion be confirmed, the auditor shall take measures to carry out the required corrections and supplements in the prospectus. Auditors pursuant to no 3 shall acquire a liability insurance policy with a domestic insurer licensed to operate an insurance business that covers the risk from the auditing activity, whereby the amount covered must be at least be EUR 3.65 million per yearly insurance period, and the insurance premium is paid up in full before the prospectus is published; the insurer shall inform the Notification Office in writing pursuant to **Annex E** of the existence of the insurance and the receipt of the premium prior to the publication of the prospectus.

(2) The FMA has the obligation to maintain a list of adequately qualified auditors and auditing firms from which the prospectus auditor can be selected, if such auditor must be a member of this profession. The Austrian Chamber of Public Accountants may submit proposals to the FMA of suitable candidates for the list.

(3) If the nominal value of the entire issue or the selling price of the entire issue or the total of the capital invested is more than EUR 3 million or its corresponding euro value in a foreign currency or in a currency unit, the prospectus audit may be done by

1. an auditor pursuant to para 1 no 1 only in the first case if the issuer is a member of
 - a) the specialized association of credit cooperatives according to the Schulze-Delitsch system,
 - b) is a credit or financial institution in which one or more members of the specialized association pursuant to letter a, directly or indirectly hold a total of at least 25%;
2. an auditor pursuant to para 1 no 1 only in the second case if the issuer is a member of
 - a) the specialized association of credit cooperatives according to the Schulze-Delitsch system,
or
 - b) is a credit or financial institution in which one or more members of the specialized association pursuant to letter a, directly or indirectly hold a total of at least 25%;
3. an auditor pursuant to para 1 no 2, only if the issuer is a member of
 - a) the specialized association of credit cooperatives, or
 - b) is a credit or financial institution in which one or more members of the specialized association pursuant to letter a, directly or indirectly hold a total of at least 25%.

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

(4) Prospectus auditors shall only be accepted if there are no reasons for exclusion. Reasons for exclusion are those in the meaning of the facts listed in § 271 and § 271a of the Austrian Business Code.

(5) The auditing of the prospectus by a credit or financial institution in the meaning of para 1 no 4, for which a reason for exclusion is given in the meaning of para 4, shall be permitted in spite of para 4 if the prospectus is also audited by an additional auditor in the meaning of para 1 nos 1 to 4 against whom there is no reason for exclusion. If there are reasons for assuming partiality on the part of the prospectus auditor in the meaning of § 271 and § 271a Austrian Business Code, the prospectus as well as any modifications or supplements to it, shall only then be considered audited if in addition to the partial prospectus auditor another impartial prospectus auditor in the meaning of para 1 nos 1 to 4, has also duly signed the audit. The reversal of the burden of proof pursuant to § 22 para 1 shall apply to the credit or financial institution against whom reasons for exclusion are given. The restriction stipulated in para 3 for auditors shall not apply if these are additional auditors in the meaning of this paragraph.

(6) If the prospectus auditor is a credit institution, regardless of the reasons for exclusion that may exist pursuant to para 4, the issuer may not, either directly or indirectly, hold shares of the credit institution that reach or surpass ten percent of its nominal capital.

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

(8) The prospectus for securities or investments shall be submitted by the offeror to the Notification Office bearing with the required signatures, including the signature of the prospectus auditor, in a timely manner so as to ensure that it is received at the latest on the banking workday of the disclosure.

Publication of the Prospectus

§ 8 (1) No prospectus shall be published until it has been audited by the prospectus auditor pursuant to § 7.

(2) Once approved, the prospectus shall be published by the issuer or offeror as soon as practicable, but in any case at the latest one banking workday prior to the start of the public offering.

(3) The prospectus shall be deemed available to the public in the meaning of this federal act when published

1. in at least one newspaper with nation-wide circulation, or
2. in a printed form made available, free of charge, to the public at the venue of the registered office of the issuer and of the financial intermediaries placing or selling the securities, as well as of the paying agents; or
3. on the issuer's website or on the website of the financial intermediaries placing or selling the securities, including any domestic paying agents; or
4. on the website of the FMA or on the website of an organization charged with this task for an adequate fee if the FMA has decided to offer this service.

If the listing prospectus is published pursuant to nos 1 or 2, the issuer, the offeror must publish the listing prospectus also on a website pursuant to nos 3 or 4. The FMA shall be notified in advance of how the prospectus will be published and where it can be obtained; the criteria for the publication pursuant to no 1 may be defined in a decree issued by the FMA. All approved prospectuses shall remain publicly available for at least ten years after publication on the websites specified in paras 3 and 4.

Special Provisions for Investments in Real Estate

§ 9 Undertakings for collective investments in real estate are given if investments are issued or offered by issuers who earn profits directly or indirectly from capital invested for the purpose, or in actual practice, of generating income from the rental or transference of real estate to third parties. For these types of real estate undertakings for collective investments, the following provisions shall also apply:

1. The prospectus (§ 5) shall be supplemented by the information contained in **Annex B**;
2. The auditing of the prospectus shall be carried out by an auditor pursuant to § 7 para 1 nos 3 or 4; § 7 para 1 last sentence shall be applied provided that the coverage amount of the insurance policy is a minimum of EUR 18.2 million per yearly insurance period;
3. The investor shall receive in writing a confirmation on the acquisition of an investment at the time the contract is concluded; the confirmation shall contain the main characteristics of the investment, in particular, its equivalent value and the legal status of the investor as well as the publication medium and date of publication of the prospectus as well as any other information pursuant to this federal act; the confirmation shall be drawn up by the issuer;

4. The issuer shall draw up the financial statements according to **Annex C** for each undertaking for collective investments on a yearly basis; the method applied to evaluate the properties shall be the same within each undertaking for collective investments in real estate; the financial statements shall be examined by an auditor for correctness and integrity applying §§ 268 to 276 Austrian Business Code accordingly; if the examination does not give rise to objections, the auditor shall confirm this with the following annotation: “After having duly conducted our audit of the statement of accounts, we hereby certify that they are in compliance with statutory requirements. The evaluation of the real estate properties is in compliance with the principles stated in the prospectus and in the statement of accounts. The financial statements present a true and fair view of the financial position of the undertakings for collective investments in conformity with generally accepted accounting principles.”
5. The issuer shall publish the audited financial statements with the audit opinion within six months after the close of the financial year; if there is no financial year, by 30 of June of every year according to the provisions for the publication of the prospectus pursuant to § 8;
6. The auditor of the financial statements is liable towards investors in the meaning of § 275 Austrian Business Code.

Penal Provisions

§ 10 (1) Any person who, in connection with a public offering of securities or investment, acts in any manner listed below shall be deemed to have committed an administrative offence sanctioned by the FMA by a fine of EUR 100,000.

1. fails to publish a prospectus or fails to publish the modifying or supplementary information or who offers investments or professionally mediates such investments and the prospectus or the modified or supplemented information pursuant to § 6 contradicts the provisions of this federal act, or, when the public offering has already been completed, as an issuer draws up or publishes financial statements that contradict this federal act or fails to publish any financial statements;
2. as an issuer gives incorrect information in a prospectus or in the modified or supplementary information pursuant to § 6 or as an auditor of financial statements gives incorrect information in financial statements or as a prospectus auditor signs a prospectus without having the required insurance coverage pursuant to § 7 para 1 no 3 or para 5 or pursuant to § 9 no 2;
3. engages in solicitation in violation of the provisions of § 4;
4. as an offeror or issuer does not notify the Notification Office pursuant to § 23 para 2, or as a person subject to reporting requirements does not notify the Notification Office pursuant to § 24, also in cases of exemption from the prospectus obligation;
5. as an offeror fails to send the prospectus or the modified or supplemented information pursuant to § 6 to the Notification Office pursuant to this federal act in a timely manner with the audit certification of the prospectus auditor;
6. as a prospectus auditor signs a prospectus or the modified or supplemented information pursuant to § 6 in spite of the fact that reasons for exclusion of said person are given (except if signed simultaneously with an impartial auditor), or, as auditor of financial statements audits financial statements or initiates such an audit or review by an auditor or prospectus auditor against whom such reasons for exclusion are given fails to send to the Notification Office in time the corresponding insurance confirmation pursuant to Annex E;
7. as an offeror fails to send the prospectus supplement pursuant to § 6 para 1 to the Notification Office in a timely manner with the audit certification of the prospectus auditor without delay;

8. as prospectus auditor approves a prospectus or a supplement to a prospectus, which contains false information, by giving it an audit certification even though the auditor noticed - or should have noticed - the false information in the course of a professional due diligence and the prospectus or prospectus supplement has been used in a public offering for sales purposes;

(2) In the event of a violation of the notification obligation pursuant to § 24, the FMA may refrain from initiating and carrying out administrative penal proceedings pursuant to no 4 if the failure to make the notification has been corrected by the notification being made at a later time, but before the FMA gains knowledge of this violation.

Responding to Inquiries and Publication of Decisions

§ 11 (1) The FMA may publish or disclose information to the public relating to any official action taken or sanctions imposed on the grounds of violations of the provisions of this federal act only in accordance with the provisions of nos. 1 through 3.

1. In the event of any official action in the course of ongoing proceedings, the FMA shall refrain from naming the parties involved unless these are already known to the public, or if there if the public has a material interest in knowing these names.
2. When the FMA imposes sanctions, it may respond to inquiries or disclose the names of the persons or companies against whom sanctions have been imposed, or the names of the companies for which there are persons acting on the company's behalf against whom sanctions have been imposed and also information on the sanctions themselves. Sanctions in the meaning of these provisions shall be understood to be all legal acts of the FMA taken after proceedings have been closed by issuing an official notice with a decision.
3. The FMA shall refrain from giving such information on official acts or from making a related disclosure in the following cases.
 - a) If the response to an inquiry or the disclosure would put the stability of financial markets at a considerable risk, or
 - b) If the response to an inquiry or the disclosure would be disproportionately damaging to one of the persons affected by the information released or disclosed, or
 - c) If the information given would stop, hamper, delay or endanger proceedings or measures that are in the interest of the general public.

(2) The party affected by the publication or disclosure of information may request the FMA to review the lawfulness of the publication or disclosure of information pursuant to para 1 within the scope of proceedings closed by issuing an official notice with a decision. In this case, the FMA shall announce the initiation of such proceedings in the same manner. If the outcome of the review ascertains the unlawfulness of the publication or disclosure of information, the FMA shall correct the publication or disclosure of information, or, upon request of the concerned party, revoke it or remove it from the internet. Should an objection against an official decision, which is made public pursuant to para 1, be granted with a postponing effect on the decision's effectiveness in proceedings before a public court of law, the FMA shall disclose this fact in the same manner. The publication or disclosure of information shall be corrected, or upon request of the concerned party, revoked or removed from the internet when the official notice is repealed.

Main Part II

Public Offerings of Securities

Application of Regulation (EU) 2017/1129

Purpose of Main Part II

§ 12 (1) This Main Part serves to put into effect Regulation (EU) 2017/1129

(2) The obligation to publish a prospectus pursuant to Regulation (EU) 2017/1129 does not apply to an offering of securities with a total value of less than euro two million European Economic Area (EEA); this upper limit is calculated to include any income from offers in the past twelve months for securities exempt from the obligation to publish a prospectus under this clause; In such cases, the issuer may voluntarily prepare a prospectus pursuant to Regulation (EU) 2017/1129, with this step also entailing all of the legal consequences of Main Part II of this federal act.

(3) A simplified prospectus pursuant to **Annex D** must be prepared when the public offering of securities has a total value in the European Economic Area (EEA) of less than EUR five million during a period of twelve months. In such cases, the issuer may instead voluntarily prepare a prospectus pursuant to Regulation (EU) 2017/1129, with this step also entailing all of the legal consequences of Main Part II of this federal act. Should a planned issue result in a situation in which the value reaches or surpasses an amount of five million euro in the European Economic Area within a period of twelve months on account of the issuance of securities or investments, a simplified prospectus shall not suffice, and therefore, the first sentence does not apply. Issues pursuant to the Act on Alternative Forms of Financing shall be included in the calculation. This shall apply to securities irrespective of para 2.

(4) If a simplified prospectus has been prepared for a public offering in the meaning of para 3, this prospectus must be approved by the FMA in the same manner as other securities prospectuses. Furthermore, the provisions of Main Part I and Main Part III applicable to investments shall apply to these offerings, but not § 3 para 3, § 5 para 4 and § 7. In such cases, the approval of the FMA (official stamp) shall replace the audit certificate of the prospectus auditor. § 13 para 4 shall apply.

Competent Authority

§ 13 (1) The Financial Market Authority (FMA) is the competent authority in Austria pursuant to Article 31 (1) Regulation (EU) 2017/1129. Regardless of its duties under other federal acts, the FMA shall be the competent authority with all attached duties and powers as set out in Article 31 (1) Regulation (EU) 2017/1129 and shall monitor compliance with the provisions of this federal act, of Regulation (EU) 2017/1129 and of any delegated legal acts promulgated under this Regulation. The FMA shall be independent from market participants.

(2) When enforcing this federal act and Regulation (EU) 2017/1129, the FMA must take into account the European supervisory convergence instruments and procedures. To this end, the FMA must apply the Guidelines, Recommendations and other measures relating to Regulation (EU) 2017/1129 decided by the European Securities and Markets Authority - ESMA (Regulation (EU) No 1095/2010). The FMA may depart from these Guidelines and Recommendations, if there are well-founded reasons, in particular, if there are provisions that contradict Austrian federal legislation.

(3) The FMA may delegate tasks relating to the electronic publication of approved prospectuses and related documents to the Notification Office. The assignment of tasks shall be done by issuing a specific decision that covers the following:

1. the tasks to be assigned and the conditions under which these are to be carried out;

2. a clause obliging the Notification Office to act and be organized in such a manner as to avoid conflicts of interest and to ensure that information obtained while carrying out the delegated tasks is not used unfairly or to prevent competition;
3. all arrangements entered into by the FMA and the Notification Office to which the tasks are delegated.

Irrespective of the provisions of § 17, the FMA has final responsibility for supervising compliance with Regulation (EÜ) 2017/1129 and also for approving securities prospectuses.

(4) The powers assigned to the FMA under Article 27 Regulation (EÜ) 2017/1129 regarding the acceptance of languages used in a prospectus must be enacted through the issuance of a decree. The application submitted to the FMA for approval of the prospectus shall include the prospectus. The application as well as all draft versions of the prospectus including the final approved version must be submitted electronically to the FMA. The FMA may issue a decree to define the method for unambiguously determining the assignment of the prospectus to the issuer using state of the art technology. When a prospectus is presented in accordance with these rules, the irrefutable assumption shall be made that it was produced by the issuer or by a third party charged with the task. The same shall apply to any other documents to be approved by the FMA. On the day of the approval, the approval notice of the FMA including the documents to be approved are to be sent to the Notification Office provided this is accorded in a transfer agreement pursuant to para 3 no 3.

(5) For the filing of documents in accordance with this Main Part or with Regulation (EU) 2017/1129, the FMA may issue a decree defining a fee the amount of which may not exceed the average costs of the official act taking into account a fixed cost share.

(6) The FMA may issue a decree stipulating the minimum content for the documents pursuant to Article 1 (4) f to i as well as (5) e to h Regulation (EU) 2017/1129, provided no delegated legal act has been issued on the basis of Article 1 (7) of Regulation (EU) 2017/1129 that defines the minimum content. The documents mentioned in the first sentence are to be made available to the public pursuant to Article 21 (2) Regulation (EU) 2017/1129.

Powers

§ 14 (1) The FMA shall at all times have the following powers within the scope of its duty to monitor compliance with the provisions of federal act, of Regulation (EU) 2017/1129 and of any other delegated legal acts promulgated under this Regulation irrespective of any powers assigned to it under other federal acts:

1. to require issuers, offerors or persons asking for admission to trading on a regulated market to include supplementary information in the prospectus if necessary for investor protection;
2. to require issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide information and documents;
3. to require auditors and managers of the issuer, offeror or persons requesting admission to trading on a regulated market, as well as financial intermediaries charged with the placement of a public offering of securities or with the application for admission to trading on a regulated market, to provide information;
4. to suspend a public offering of securities or the admission to trading for a maximum of ten consecutive banking workdays if there are reasonable grounds for suspecting an infringement of the provisions of Regulation (EU) 2017/1129;
5. to prohibit or suspend advertisements or require issuers, offerors or persons requesting admission to trading on a regulated market or relevant financial intermediaries to cease or suspend

advertisements for a maximum of ten consecutive working days on any single occasion where there are reasonable grounds for believing that the provisions of Regulation (EU) 2017/1129 have been infringed;

6. to suspend a public offering of securities or the admission to trading on a regulated market where they find that Regulation (EU) 2017/1129 has been infringed or where there are reasonable grounds for suspecting that it would be infringed;
7. to prohibit or suspend trading on a regulated market, on an MTF or an OTF for a maximum of ten consecutive workdays or require the concerned regulated markets, MTF or OTF to suspend trading on a regulated market or an MTF where there are reasonable grounds for believing that the provisions of Regulation (EU) 2017/1129 have been infringed;
8. to prohibit trading on a regulated market, on an MTF or an OTF if it finds that the provisions of Regulation (EU) 2017/1129 have been infringed;
9. to make public the fact that an issuer, an offeror or a person asking for admission to trading on a regulated market is failing to comply with its obligations;
10. to suspend the scrutiny of a prospectus submitted for approval or suspend or restrict an offer of securities to the public or admission to trading on a regulated market where the FMA is making use of the power to impose a prohibition or restriction pursuant to Article 42 of Regulation (EU) No 600/2014 on Markets in Financial Instruments and Amending Regulation (EU) No 648/2012, OJ No L 173 of 12 June 2014, p. 84 until such prohibition or restriction has ceased;
11. to refuse approval of any prospectus drawn up by a certain issuer, offeror or person requesting admission to trading on a regulated market for a maximum number of five years, if this issuer, offeror or person requesting admission to trading on a regulated market has repeatedly and severely infringed the provisions of Regulation (EU) 2017/1129;
12. to disclose, or to require the issuer to disclose, all material information which may have an effect on the assessment of the securities offered to the public or admitted to trading on a regulated market in order to ensure investor protection or the smooth operation of the market;
13. to suspend trading in securities or request the relevant regulated market, MTF or OTF to suspend trading where the FMA considers that the issuer's situation is such that trading would be detrimental to investor interests;
14. to carry out on-site inspections or investigations at sites other than the private residences of natural persons, and for this purpose to enter premises in order to access documents and other data in any form, where there is a reasonable suspicion that documents and other data related to the subject-matter of the inspection or investigation may be relevant to prove an infringement of Regulation (EU) 2017/1129. §§ 119 to 122 of the Code of Criminal Procedure 1975 FLG No 631/1975 applies mutatis mutandis; if the party concerned resists the measures planned by the FMA, the Federal Administrative Court shall, upon request of the FMA, if necessary, reach a decision by resolution pursuant to para 1 no 14, applying the principle of legality and proportionality pursuant to § 5 Code of Criminal Procedure. The FMA must give reasons for its request and send it together with the files to the Federal Administrative Court.

(2) When approval of a prospectus is refused pursuant to para 1 no 11, the FMA must notify the ESMA of this fact.

(3) The FMA shall exercise its functions and powers referred to in para 1 in any of the following ways:

1. directly;
2. in collaboration with other authorities;

*This translation of the Austrian Capital Market Act (Kapitalmarktgesetz) serves information purposes only; the German version shall be binding.
Translation by Mag. Edith Vanghelof*

3. under its own responsibility by delegation to other such authorities;
4. by application to the competent courts (para 1 no 14).

(4) Regulation (EU) 2017/1129 does not affect federal acts, mergers and other transactions that concern the ownership or controlling interests of companies, by which Directive 2004/25/EC is implemented and that defines further requirements in addition to the requirements of the aforementioned Regulation.

(5) A person reporting information to the FMA in accordance with Regulation (EU) 2017/1129 shall not be considered to be infringing any restriction on disclosure of information imposed by contract or by a legislative or administrative provision and shall not be subject to liability of any kind related to such notification.

Penal Provisions

§ 15 (1) Any person who, in connection with a public offering of securities subject to the obligation to publish a prospectus pursuant to Regulation (EU) 2017/1129,

1. fails to comply with the disclosure obligations pursuant to Article 3 or 5 of Regulation (EU) 2017/1129 or publishes a prospectus in an infringement of Article 20 (1) of Regulation (EU) 2017/1129;
2. does not include the required information in the prospectus or in the prospectus summary or in the base prospectus or in the uniform registration form specified in Article 6 or in Article 7 (1) to (11) or in Article 8 or Article 9 or Article 10 of Regulation (EU) 2017/1129 or commits a violation of these provisions in any other manner;
3. commits a violation of the simplified disclosure rules of Article 14 (1) and (2) of Regulation (EU) 2017/1129 for secondary offerings or against the prospectus rules for the EU growth prospectus of Article 15 (1) of Regulation (EU) 2017/1129;
4. commits a violation of the disclosure obligations for the risk factors listed in Article 16 (1), (2) or (3) of Regulation (EU) 2017/1129;
5. commits a violation of the obligations in Article 17, Article 18 or Article 19 (1) to (3) of Regulation (EU) 2017/1129;
6. commits a violation of the publication obligations pursuant to Article 21 (1) to (4) or (7) to (11) of Regulation (EU) 2017/1129;
7. advertises in violation of Article 22 (2) to (5) of Regulation (EU) 2017/1129;
8. commits a violation of the obligation regarding prospectus supplements pursuant to Article 23 (1) to (3a) or (5) of Regulation (EU) 2017/1129;
9. commits a violation of the language rules pursuant to Article 27 of Regulation (EU) 2017/1129;
10. does not collaborate with the authorities in an investigation or audit or fails to respond to a request under Article 32 of Regulation (EU) 2017/1129;
11. as an offeror or issuer does not notify the Notification Office pursuant to § 23 para 2, or as a person subject to reporting requirements does not notify the Notification Office pursuant to § 24, also in cases of exemption from the prospectus obligation;

shall be deemed to have committed an administrative offence punishable by a fine imposed by the FMA in an amount of up to twice as much as the profit earned or losses avoided by the violation committed; however, if it cannot be expressed in figures, by a fine of up to EUR 700,000.

(2) The FMA may impose fines on legal entities when persons who have acted alone or as part of a corporate body of the legal entity and hold a management position within the legal entity due to their

1. power to represent the legal entity,
2. power to take decisions in the name of the legal entity, or
3. authority to exercise control within the legal entity

have infringed the prohibitions or obligations listed in para 1. Legal entities may also be held responsible for the infringements listed in para 1, when, due to lacking oversight or control by a person named in para 1, a situation exists that makes it possible for a person acting for the legal entity to commit such infringements. In the case of an act committed by a legal entity, the maximum fine imposed by the FMA pursuant to para 1 increases to a maximum of EUR 5,000,000 or 3 per cent of the annual total revenues of the concerned legal entity according to the last available financial statements approved by the management body.

(3) If the legal entity is a parent company or a subsidiary of a parent company that must prepare consolidated financial statements pursuant to Directive 2013/34/EU on the single-entity financial statements, the consolidated financial statements and thus the related reports of companies with certain legal forms and amending Directive 2006/43/EC and repealing Directives 78/660/EEA and 83/349/EEA, OJ No L 182 of 29 June 2013 p. 19, last amended by Directive 2014/102/EU, OJ No L 334 of 21 November 2014 p. 86, as amended by correction, OJ No L 369 of 24 December 2014 p. 79, then the relevant total annual revenues shall be the total annual revenues or the corresponding type of income according to applicable EU legislation for financial reporting as stated in the last available consolidated financial statements approved by the top management body of the parent company.

(4) If the FMA, in connection with publications, has assigned to the Notification Office the task of accepting the final terms, the final offer price and the final issuing volume pursuant to § 13 para 3, no fine shall be imposed pursuant to § 15 para 1 no 2 or 5 for an infringement of the filing obligation if such party has complied with the filing obligation with respect to this information within the scope of the notification duty pursuant to § 24 para 1.

(5) In the case of an infringement of the notification obligation pursuant to § 24, the FMA may refrain from initiating and carrying out administrative penal proceedings pursuant to no 11 if the failure to make the notification has been corrected at a later time, but before the FMA gains knowledge of this infringement.

(6) Furthermore, the FMA has the authority to take the following measures in the case of violations pursuant to para 1 nos 1 to 9:

1. to disclose to the public, the legal entities or natural persons responsible and the type of infringement pursuant to Article 42 of Regulation (EU) 2017/1129;
2. to order the responsible legal entity or natural person to cease the behavior that constitutes the infringement.

Exercise of Supervisory Powers and Sanctioning Powers

§ 16 (1) The FMA when determining the type and level of administrative sanctions and measures, shall take into account all relevant circumstances including, where appropriate:

1. the gravity and the duration of the infringement;
2. the degree of responsibility of the person responsible for the violation;

3. the financial strength of the person responsible for the infringement as indicated by the total turnover of the responsible legal person or the annual income and the net assets of the responsible natural person;
4. the impact of the infringement on retail investors' interests;
5. the amount of the profits gained or losses avoided by the person responsible for the infringement or losses incurred by a third party, insofar as the amounts can be determined;
6. the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure collection of profits gained or losses avoided by that person;
7. the degree of responsibility of the person responsible for the infringement;
8. measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

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

Right of Appeal

§ 17 The decisions of the FMA in the execution of Regulation (EU) 2017/1129 and this federal act must be properly reasoned in accordance with the laws of administrative procedure. An appeal against such decisions may be lodged with the Federal Administrative Court. The right of appeal regarding complaints against administrative authorities for the failure to reach a decision shall also apply when the FMA does not reach a decision to approve or refuse approval within the time limits named in Article 20 (2), (3) and (6) of Regulation (EU) 2017/1129 with respect to the relevant application for approval and has neither requested changes nor additional information.

Reporting of Infringements

§ 18 (1) The FMA must establish effective mechanisms to promote and enable the notification of actual or potential infringements of this federal act and of Regulation (EU) 2017/1129 to the FMA.

(2) The mechanisms specified in para 1 must include as a minimum

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

unless such disclosure is required by other laws in the context of further investigations or subsequent judicial proceedings.

(3) Employers engaged in regulated activities for financial services must have appropriate procedures for their employees in place to enable them to report actual or potential infringements internally through a specific, independent and autonomous channel.

Publication of Decisions

§ 19 (1) The FMA must publish every decision taken on account of an infringement of Regulation (EU) No 2017/1129 to impose an administrative sanction or take other administrative measures on its official website immediately after the person affected by the decision has been informed of it. In this context, the type and nature of the violation and the identity of the persons responsible must be disclosed as a minimum. This obligation shall not apply to decisions imposing measures that are of an investigatory nature.

(2) Where FMA considers the publication of the identity of the legal entities or identity or personal data of natural persons to be excessive in the circumstances or where such publication would jeopardize the stability of financial markets or an ongoing investigation, the FMA shall either:

1. postpone the publication of a sanction or a measure until the reasons for non-disclosure are no longer given, or
2. publish the decision to impose a sanction or measure in an anonymous form in accordance with other legal provisions, if such anonymous publication provides effective protection for the personal data concerned, or
3. refrain from publishing the decision to impose a sanction or take a measure if, in its opinion, the options pursuant to nos 1 and 2 do not suffice to guarantee that
 - a) the stability of the financial markets is not at risk;
 - b) in the case of the publication of a decision regarding measures which are deemed to be of minor importance, that proportionality is assured.

With respect to the decision to publish a sanction or measure in anonymous form pursuant to no 2, the publication of the relevant data may be postponed for a reasonable period if it is predictable that the reasons for the anonymous publication will no longer exist after the end of this period.

(3) When an appeal is filed with a court of law or other authority against a decision to impose a sanction or measure, the FMA must publish this on its official website without delay and also provide information on the outcome of the proceedings. Furthermore, every decision must be published that repeals an earlier decision to impose sanctions or take measures.

(4) The FMA must ensure that publications pursuant to these provisions remain on its official website for at least five years as of the time of publication. Personal data contained in the publication are permitted to be kept on the official website of the FMA only for the period necessary according to applicable data protection legislation.

Reporting Sanctions to ESMA

§ 20 (1) The FMA must send aggregated information on all administrative sanctions imposed or administrative measures taken pursuant to Article 38 of Regulation (EU) 2017/1129 to ESMA on a yearly basis.

(2) If the FMA must publish administrative sanctions, other administrative measures taken or sanctions under criminal law, it must also report these to ESMA simultaneously.

(3) The FMA must notify ESMA of any administrative sanctions or other administrative measures imposed or taken, but not published in accordance with Article 42 (2) 1 c of Regulation (EU) 2017/1129, including any legal recourse taken in this connection as well as the outcome of the relevant legal recourse proceedings. The court must send the information to the FMA and the final court ruling in connection with sanctions imposed under criminal law and the FMA must forward these documents to ESMA.

Main Part III

Joint Provisions for Investments and Securities

Consumer Transactions

§ 21 (1) If a security or investment subject to the obligation to publish a prospectus is offered for sale without the prior publication of a prospectus, investors who are consumers in the meaning of § 1 para 1 no 2 Consumer Protection Act, have the right to withdraw their bid or rescind the contract.

(2) Regardless of the right to cancellation pursuant to para 1, investors, who are consumers in the meaning of § 1 para 1 no 2 Consumer Protection Act, may withdraw from a contract if the acquisition of an investment in real estate is not confirmed to them pursuant to § 9 no 3.

(3) The rescission of the contract must be done in writing; it suffices if the consumer returns the document that contains his or her contract declaration or of the seller, to the seller or his or her agent who took part in the contract negotiations, with a statement to the effect that the consumer rejects the execution of the contract or its continuation. It suffices if the declaration of cancellation is sent within the periods stated in para 4.

(4) The right of cancellation pursuant to para 1 expires one week after the day on which the prospectus is published. The right of cancellation pursuant to para 2 expires at the end of one week after the day on which the consumer has received confirmation of the acquisition pursuant to § 9 no 3.

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

(6) Any further rights of investors under other statutory provisions shall remain unaffected.

Liability for the Contents of the Prospectus

§ 22 (1) The persons responsible for the prospectus and supplements to it must be clearly identified in the prospectus, stating the name and function – and in the case of legal entities, the name and the venue of the registered office. The prospectus and supplements to it must contain declarations by the persons concerned stating that to the best of their knowledge the information in the prospectus is correct, and that no information is missing that would change the statements in the prospectus and supplements to it. Every investor shall have the right to claim damages arising from placing their trust in the

information contained in the prospectus or a supplement to the prospectus (§ 6 or Article 23 of Regulation (EU) 2017/1129) that is relevant for assessing securities or investments, from the following persons or entities:

1. the issuers for any incorrect or incomplete information for which they are responsible themselves or for which their staff or any other persons whose services were used to draw up the prospectus are responsible;
2. the persons submitting an application to trading on a regulated market and the guarantors for any incorrect or incomplete information for which they are responsible themselves or for which their staff or any other persons whose services were used to draw up the prospectus are responsible;
3. prospectus auditors of prospectuses for investments for any incorrect or incomplete scrutiny, but only if due to their own gross negligence or of their staff or of any other persons whose services were used to audit the prospectus;
4. any persons who, either in their own name or for third parties, have accepted the investor's contract declaration from the broker of the contract, provided the person acting as intermediary is professionally engaged in trading or brokering securities or investment transactions and these persons or their staff knew of the incorrectness or incompleteness of the information pursuant to no 1 or of the audit, or were unaware of this due to gross negligence, and
5. the auditor of the annual financial statements, who, knowing of the incorrectness or incompleteness of the information in the meaning of no 1 and knowing that the financial statements confirmed by him or her form part of the prospectus, has given these an audit certificate.

If a reason for the exclusion of the prospectus auditor is given, the investor shall not have the obligation to prove the fault pursuant to no 1 or 2. Liability vis-à-vis investors pursuant to no 4 is given only for those investors whose contract declaration was accepted by a liable party or if this liable party mediated the purchase of securities or investments. Anyone who makes an offer that is subject to the obligation to publish a listing prospectus within Austria without the consent of the issuer pursuant to § 5 para 5 or Article 5 of Regulation (EU) 2017/1129 shall be liable vis-à-vis investors who have accepted such offer or invitation to subscribe in the place of the issuer pursuant to no 1, provided the issuer did not know or should have known that the prospectus was the object of the offer made without its consent pursuant to § 2 or Regulation (EU) 2017/1129, and therefore, the issuer notified its unlawful use to the Notification Office and the FMA without delay after having gained knowledge of the unlawful use or should have known of said use. The Notification Office must proceed according to § 23 para 2 with the notifications received.

(2) In the case of securities or investments of issuers from third countries, the party making the offering subject to the obligation to publish a prospectus in Austria shall also be liable pursuant to para 1 no 1.

(3) If liability affects more than one party, joint and several liability shall apply. Their liability is not reduced by the fact that others are also liable to compensate the same damages.

(4) Liability towards investors may not be restricted nor excluded in advance.

(5) Compensation claims for damages may not be derived from the fact that securities or investments described in the prospectus were not acquired due to incorrect or incomplete information in the prospectus or in the prospectus supplements.

(6) Unless the damaging action was done intentionally, the amount of the liability towards each individual investor is limited to the purchase price paid plus fees and interest as of the date of purchase. If the acquisition was not paid for, the last price paid plus fees and interest as of the date of acquisition shall apply.

(7) Claims based on this federal act must be filed with a court within ten years of the close of the offering subject to the publication of a prospectus; otherwise, the right to claim damages expires.

(8) Claims for damages arising from violations of other legal provisions or of breaches of contracts shall remain unaffected by these provisions.

(9) In the case of securities prospectuses, claims for damages cannot be filed only on the basis of the summary pursuant to Article 7 of Regulation (EU) 2017/1129 or a special summary of an EU growth prospectus pursuant to Article 15 (1) 2 of Regulation (EU) 2017/1129 including any translations made, unless

1. the summary is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus, or
2. when read together with the other parts of the prospectus, does not supply all material information so as to enable investors to reach an informed decision when evaluating whether to invest in securities.

(10) In the case of securities prospectuses, liability for the information given in a registration form or in a universal registration document shall lie with the persons referred to under para 1 only in cases where the registration form or a standardized registration form is used as a constituent part of an approved prospectus. This shall apply irrespective of Articles 4 and 5 of Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L 390 of 31 December 2004, p. 38, last amended by Directive 2013/50/EU, OJ No L 294 of 6 November 2013 p.13, when the information to be disclosed pursuant to the relevant articles are contained in a universal registration document.

(11) The regulations on the liability of the FMA pursuant to the Financial Market Authority Act – FLG I No 97/2001, shall apply irrespective of Regulation (EU) 2017/1129.

(12) Offerors are also liable towards investors as well as towards the persons named in para 1 no 4, if due to their own fault or due to the fault of their staff or other persons whose services were used to sell the securities or investments, for information that contradicts the information in the prospectus or in the supplement to it or for any other faulty information insofar as such information is the cause of the damage.

Notification Office

§ 23 (1) The Notification Office pursuant to this federal act is Oesterreichische Kontrollbank Aktiengesellschaft. On the basis of an assignment agreement pursuant to § 13 para 3, it shall be responsible for the inspection and safekeeping of prospectuses received and other information pursuant to this federal act with respect to the existence of the approval of the FMA or the confirmation of notification and must inspect the investment prospectuses and the other information pursuant to this federal act as to the existence of the required signatures (issuer, prospectus auditor) pursuant to § 5 para 4, § 7 para 1 or § 9 no 2. The Notification Office may destroy the prospectuses and any other information received pursuant to this federal act, at the earliest, 15 years after it has been filed with the Notification Office. The Notification Office has the right to charge the parties subject to the notification or filing obligation an adequate fee for its services.

(2) The Notification Office has the obligation - as fast as possible, but at the latest within five workdays, to answer inquiries regarding securities or investments if a prospectus or other information pursuant to this federal act has been published and submitted to the Notification Office, and if the prospectus for an investment or other information pursuant to this federal act has all the signatures required under this

act, and if a securities prospectus or other information pursuant to this federal act has the approval (official signature) or notification confirmation of the FMA (certificate of approval). At the same time, the place and date of the publication and the existence of any insurance confirmation pursuant to § 7 para 1 must be given. To this end, the offeror and the issuer shall inform the Notification Office immediately of the publication medium, date of publication and place where it is available unless this is already contained in the prospectus or in the information submitted on amendments or supplements. Upon request, the Notification Office shall provide a copy of the prospectus, or any other information, to persons interested in a cost-covering fee.

(3) The Notification Office also has the duty to

1. conduct a computer-assisted evaluation of the information in the prospectuses about the securities, the investments and the issuers to obtain statistics if this is necessary to fulfill its duties according to this federal act;
2. report to the Federal Ministry of Finance, to the FMA and to Oesterreichische Nationalbank regularly on developments observed on the capital market as well as immediately in any special cases;
3. provide the FMA with computer-aided access at all times to the data based on notifications pursuant to this federal act and to decrees issued on the basis of this federal act for the purpose of fulfilling its tasks as security supervisory authority and of data transmission.

Issuing Calendar

§ 24 (1) Anyone having the intention to carry out an initial offering of securities or investments within the country must inform the Notification Office as soon as possible of the issuer, the probable point in time, the total volume, the denomination, the maturity and, in the case of public offerings, the other terms and conditions as well as of any circumstances, if given, that are grounds for an exemption from the prospectus obligation pursuant to § 3 or pursuant to Regulation (EU) 2017/1129; certain information that becomes known only shortly before the subscription period may be submitted afterwards. When stating the circumstances responsible for the exemption from the obligation to publish a prospectus, the facts pertaining to this exemption shall expressly be indicated in accordance with § 3 or of Regulation (EU) 2017/1129 or other provisions of other federal acts. Furthermore, for the purpose of unique identification of an issue reported, the offeror must disclose the ISIN number assigned by the Oesterreichische Kontrollbank Aktiengesellschaft (domestic ISIN issuing body) or by a foreign ISIN issuing body or an equivalent identification and the LEI of the issuer. The information must be transmitted through one of the electronic notification portals made available by the Notification Office. If the offer is subject to the obligation to publish a prospectus pursuant to (EU) 2017/1129 or if a prospectus was prepared on a voluntary basis pursuant to this Regulation and the FMA is the competent approval authority, the conditions pursuant to this paragraph must contain, apart from the final conditions, also the relevant reference data for the issue for the classification of the prospectus provided this data was specified by the European Commission in a technical regulatory standard published in the Official Journal of the European Union pursuant to Article 21 (13) of Regulation (EU) 2017/1129. If the final offer price or the final offer volume pursuant to Article 17 of Regulation (EU) 2017/1129 is not decided before the start of the offering, this information may be submitted afterwards. For the purposes of this paragraph, the Notification Office must make the required notification fields available.

(2) The notification obligation pursuant to para 1 does not apply to securities pursuant to Article 1 (2) a, c (4) e, h and i of Regulation (EU) 2017/1129 and to investments pursuant to § 3 para 1 no 1.

(3) Pursuant to para 1, the Notification Office must publish the notifications received on its website on an ongoing basis. The Notification Office shall announce the publication medium and any changes to it in the Official Gazette “Amtsblatt zur Wiener Zeitung”.

(4) If the Notification Office, based on the notifications received pursuant to para 1, has reasonable doubts regarding the application of the exemption from the obligation to publish a prospectus in the case of an issue – contrary to the information sent pursuant to para 1 – it shall inform the offeror of such circumstance. Should the Notification Office have founded suspicions based on notifications received pursuant to para 1 of an act sanctionable by a court of law due to the fact that a public offering has been made without the required prospectus pursuant to § 2 or pursuant to Article 3 of Regulation (EU) 2017/1129, it shall immediately inform the FMA.

(5) Claims for damages may not be filed on the grounds that notifications to the FMA pursuant to para 4 have been made by wrongful gross negligence or not at all.

Official Secrets

§ 25 All persons working or having worked for the FMA, including the Notification Office shall be bound by the obligation to keep official secrets.

§ 26 Valid provisions of other federal acts regarding the obligation to maintain professional secrecy shall not be affected by the provisions of this federal act.

Relationship to Regulation (EU) 2020/1503

§ 26a (1) This federal act shall not apply to crowdfunding offers that fall within the scope of Regulation (EU) 2020/1503.

(2) The amount limits pursuant to § 5 par. 3 and § 12 par. 3 shall take into account crowdfunding offers that fall within the scope of Regulation (EU) 2020/1503.

Main Part IV

Transitional and Final Provisions

§ 27 Any references in this federal act to persons given only in the masculine form shall refer equally to men and women. When applied to specific persons, the applicable gender-specific form is to be used.

§ 28 For the enforcement of an official notice under this federal act, the lower amount stated in § 5 para 3 Insurance Supervision Act FLG No 53/1991 shall be replaced by the amount of EUR 35,000.

§ 29 (1) Any references made in this federal act to other federal acts shall apply only to the acts in their amended versions.

(2) Insofar as this federal act makes a reference to Regulation (EU) 2017/1129, Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, OJ L 68 of 26 February 2021 p. 1 shall apply unless otherwise stipulated.

Entry into Force

§ 30 (1) This federal act enters into force on 21 July 2019. However, § 10 and § 15 enter into force on the day following the promulgation of this federal act.

(2) The Capital Market Act – FLG No 625/1991 as amended by federal act FLG I No 62/2019, shall expire with the close of 20 July 2019 irrespective of Article 46 (3) of Regulation (EU) 2017/1129.

(3) § 24 para 2 and § 26a, including the heading, as amended by Federal Law Gazette I No. 225/2021 shall entry into force on the day following their promulgation.

Enforcement Clause

§ 31 The following entities are authorized to enforce this federal act:

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

Annex A

Schedule A

SCHEDULE FOR INVESTMENTS

CHAPTER 1

Information on the liable parties pursuant to (name, position) to § 7 and § 22

(Name, Position)

CHAPTER 2

Information on the investment

1. Investment terms, in particular, any rights attached to the investment,
2. The registrar, depository and paying agents,
3. Overview of any asset rights issued up to now;
4. Legal status of the investment (shares, creditor's rights or mixed form), total amount, denomination as well as purpose of the offer,
5. Type of investment (open-ended or closed type),
6. Type and number of other undertakings for collective investments of the issuer or any other undertakings for collective investments that may influence the investment,
7. Stock exchanges on which the investments subject of the public offering and any other securities of the issuer are already listed or traded,
8. Any third parties guaranteeing the investment,

9. Persons who have firmly underwritten the offering or act as guarantor for it,
10. Information on those persons to whom the capital raised through the issue is available for business purposes if these persons are not identical with the issuer,
11. Any taxes levied on income earned on the investment (for example capital yields tax, foreign withholding taxes),
12. Subscription period,
13. Any restrictions to the tradability of the investment offered and name of the market on which it can be traded,
14. Distribution, administration and management costs listed by amount and method of calculation,
15. Information on valuation principles,
16. Information on any liens or liabilities,
17. Details on the preparation of the financial statements and of the annual reports, if available,
18. Provisions on the distribution and use of the net profit/surplus for the year,
19. Last financial statements including the audit certificate,
20. Description of the purchase price of the investment including all extra charges,
21. Type and scope of surety for an investment recorded in a public register,
22. Information on future prospects of the investment,
23. Conditions and calculation of the offer price for investments issued after placement of the initial issue,
24. Information on any preemptive rights granted to existing investors and their prices in the event of an increase in investment volume, information on how the assets and earnings growth of existing investors is protected against new investors,
25. Description of the possibilities and costs of selling the investment at a later time,
26. Services of the management company and the costs charged,
27. Periods of notice granted by the management company,
28. Provisions on the settlement and position of investors in the event of insolvency,
29. Security identification code (if given).

CHAPTER 3

Information on the Issuer

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

3. Members of the management bodies, administration and supervisory bodies (name, position),
4. Names of shareholders who directly or indirectly exercise – or could exercise – control over the management of the issuer,
5. Most recent financial statements including any management reports and audit certificate(s).

CHAPTER 4

Information on the Depository Bank (if applicable)

1. Company Name and Registered Office
2. Financial statements including the audit opinion.

CHAPTER 5

1. Type and scope of regular information for investors on the economic development of the investment,
2. Any other information needed by the investor to reach an informed opinion in the meaning of § 5 para 1.

CHAPTER 6

Verification Note of the Prospectus Auditor

Annex B

Schedule B

SCHEDULE FOR THE ADDITIONAL PROSPECTUS FOR INVESTMENTS IN REAL ESTATE (§ 9)

CHAPTER 1

Information on the liable parties pursuant to § 7 and § 22

(Name, Position)

CHAPTER 2

Information on Investments in Real Estate Offered

1. Legal form of the investment, total volume and any denominations,
2. Type of undertakings for collective investments (open-ended or closed),
3. Type, number and location (in or outside the country) of the available real estate and type and number of real estate properties projected;

4. Principles according to which the acquisition, sale and administration of the real estate is conducted;
5. Distribution and management costs of collective investment undertakings broken down by amount and type of calculation giving the details of the services performed by the management,
6. Legal contracts of collective investment undertakings with third parties involved in the distribution and management of the collective investment undertakings and the costs invoiced by third parties and their services performed or to be performed;
7. Evaluation methods that must be uniform within each undertaking for collective investments,
8. per property: acquisition costs, space available for rent, year of construction, sum of costs of renovation, maintenance, upkeep and improvement work done, sum of costs of planned renovation, maintenance, upkeep and improvement work, method of calculation of overhead costs,
9. Liens entered in the property register or other liabilities insofar as material for the valuation of property, for each property,
10. Details on the method of calculation of the annual net profit or surplus for the year and the preparation of the annual report,
11. Provisions on the distribution and use of the net profit or surplus for the year,
12. Indication of the purchase price of the investments offered for sale including all additional charges,
13. Type and volume of the collateral entered in the land register as surety for the investment,
14. Future position and rights of investors in the event of structural changes,
15. Information on any preemptive rights of existing investors and their price and/or price determination in the event of an increase in the investment volume; information on how the assets and earnings growth of existing investors is protected against new investors or can be adequately compensated,
16. projected profitability and method of calculation of profitability,
17. Possibility placing the investment and determination of the offer price,
18. Provisions on the settlement and position of investors in the event of insolvency.

CHAPTER 3

Information on Third Parties Involved in the Distribution and Management of the Collective Investment Undertakings

1. Company name and registered office of the company, object of the company,
2. Persons responsible for the management and supervision of the management,
3. Most recent financial statements including the audit opinion and, if available, the annual report.

CHAPTER 4

Information on Insurance Coverage per Property, Fire Insurance, Amount of Insurance Sum and Coverage.

CHAPTER 5

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

CHAPTER 6

If available, financial statements for the preceding year

Annex C

Schedule C

SCHEDULE FOR THE STATEMENT OF ACCOUNTS OF UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN REAL ESTATE

I. Information on the Rights of Investors

A. Financial statements

a) Inflow of funds

1. from the issuance of investments,
2. from real estate,
3. from the sale of real estate,
4. from investments in undertakings for collective investment in real estate,
5. from the sale of investments in undertakings for collective investment in real estate,
6. from investments in companies,
7. from the sale of investments in companies,
8. from other asset rights, broken down by type of asset right,
9. from the sale of other asset rights, broken down by type of asset right,
10. from other cash flows of incoming funds,
11. other incoming funds.

b) Outflow of funds

1. into real estate,
2. into investments in undertakings for collective investment in real estate,
3. into investments in companies,
4. into other asset rights, broken down by type of asset right,
5. Building costs,

6. Payments and costs of administration broken down by type of payment and cost,
 7. into the formation of reserves, broken down by individual type of asset right,
 8. from other cash outflows,
 9. other outflows.
- c) Net profit/loss for the year
- B. Alternative to A - Calculation of profits according to applicable legal provisions.

II. Information on Assets

A. Investment per property

- a) Location
- b) Size
- c) Year of erection
- d) Year of acquisition
- e) Costs of acquisition, broken down by purchase price and additional costs or production costs
- f) Space available for rent
- g) Method of calculation of overhead costs
- h) Sum of costs of renovation, maintenance, upkeep, improvement and expansion work carried out
- i) Sum of costs for planned renovation, maintenance, upkeep, improvement and expansion work
- j) Costs of administration if these are not included in the overhead costs
- k) Requirements of building authorities if these are relevant for the valuation of the property
- l) Liens entered in the property register and other liabilities, if they are material to the valuation of the property
- m) Fire insurance, the insurance amount and coverage

B. Investments in undertakings for collective investment in real estate, per undertakings for collective investment

1. Issuer
 - a) Name
 - b) Register
 - c) Legal status
 - d) Founding year
 - e) Registered seat/main office

f) Object

g) Members of the bodies of the management, administration and supervision (name, position)

2. Carrying value of the investment

3. Distributions from the investment

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

1. Company

a) Name

b) Register

c) Legal status

d) Founding year

e) Registered seat/main office

f) Object

g) Members of the bodies of the management, administration and supervision (name, position)

2. Carrying value of the investment

3. Distributions from the investment

4. Performance ratios

a) Equity ratio

b) Cash flow to operating income

c) Profitability of total capital

d) Effective debt-to-cash flow ratio

e) Number of employees

5. Direct and indirect investments of the company named under C if the share calculated is at least 25%

a) Name

b) Legal status

c) Costs of acquisition

d) Term

D. Other asset rights, per asset right

a) Type of asset right

b) Capital invested

c) Profitability of capital invested

d) Possibilities of cancellation and periods of notice

E. Investment reserves broken down by each type

F. Management, personnel and material costs if not listed under II. A)

III. Distribution per Investment

1. Total volume of investment
2. Denomination
3. Net profit for the year
4. Distribution per Investment

IV. Description of Development of Property per Investment

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

V. Explanations

VI. Disclosure Requirements

VII. Audit Opinion

Annex D

Schedule D

SCHEDULE FOR THE SIMPLIFIED PROSPECTUS FOR INVESTMENTS AND SECURITIES

(If the Schedule is to be applied to securities, the term “investment” is to be replaced by “security”)

CHAPTER 1

Information on the liable parties pursuant to § 7 and § 22

(Name, Position)

CHAPTER 2

Information on the investment

1. Investment terms, in particular, termination deadlines and rights attached to the investment,
2. The registrar, depository and paying agents,
3. Overview of any asset rights issued up to now,
4. Legal status of the investment (shares, creditor's rights or mixed form), total amount, denomination as well as purpose of the offer,
5. Type of investment (open-ended or closed type),
6. Any third parties guaranteeing the investment,
7. Persons who have firmly underwritten the offering or act as guarantor for it,
8. Any taxes levied on income earned on the investment (for example capital yields tax, foreign withholding taxes),
9. Subscription period,
10. Any restrictions to the tradability of the investment offered and market on which it can be traded,
11. Information on any liens or liabilities,
12. Provisions on the distribution and use of the net profit/surplus for the year,
13. Description of the purchase price of the investment including all extra charges,
14. Type and scope of surety for an investment recorded in a public register,
15. Description of the possibilities and costs of selling the investment at a later time,
16. Provisions on the settlement and position of investors in the event of insolvency,
17. Security identification code (if available).
18. Distribution, administration and management costs listed by amount and method of invoicing.

CHAPTER 3

Information on the Issuer

1. Company name and registered office of the issuer, object of the company,
2. Description of the legal and economic status, in particular, information on the share capital or other capital of the company equivalent to share capital, its denomination including the designation of any different classes of shares,
3. Members of the management bodies, administration and supervisory bodies (name, position),
4. Names of shareholders who directly or indirectly exercise – or could exercise – control over the management of the issuer,
5. Most recent financial statements including any management reports and audit certificate(s),

CHAPTER 4

Information on the Depository Bank (if applicable)

1. Company Name and Registered Office
2. Financial statements including the audit opinion.

CHAPTER 5

1. Type and scope of regular information for investors on the economic development of the investment,
2. Any other information needed by the investor to reach an informed judgment in the meaning of § 5 para 1.

CHAPTER 6

Verification Note of the Prospectus Auditor

Annex E

Confirmation of insurance pursuant to § 7 para 1 of the Capital Market Act 2019 - KMG 2019

Company name and address of the insurance company or its authorized representative

For submission to the

...../ Notification office according to Capital Market Act 2019

Confirmation of insurance according to § 7 para 1 Capital Market Act 2019

It is hereby notified to as notification office pursuant to Capital Market Akt 2019 that the **insurance company** specified under (i) and authorized to operate the insurance business in Austria for the **prospectus controller** specified under (ii). Liability insurance with the **policy number** specified in (iii) with the **insurance sum** specified under (iv) per one-year insurance period for the activity as an inspector within the meaning of the Capital Market Act 2019 exists, which covers the risk arising from the according to § 7 para 1 Capital Market Act 2019 inspection of the **prospectus/prospectus addendum** specified in (v) above. Receipt of the insurance premium paid in full is confirmed.

- (i) Insurance company:
- (ii) Prospectus controller:
- (iii) Policy number
- (iv) Insurance sum (pursuant to § 7 para 1 or § 9 No. 2 Capital Market Act 2019):
- (v) Prospectus identification
 - Name of prospectus/prospectus addendum:
 - Issuer:
 - Date of Prospectus/Prospectus addendum:

- Date of Prospectus control endorsement:

Date (of signing the confirmation of insurance):

Company signature (of the insurance company or in case of disclosed authorization of the authorized representative):