Translation of Liechtenstein Law

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Ordinance

of 22 February 1994

on Banks and Investment Firms (Banking Ordinance; BankV)[1]

Pursuant to Articles 3, 3a, 4l, 4y, 4z^bis, 7a, 7c, 8a to 8k, 10, 10a, 13, 14a, 14b, 17, 19, 22, 24, 26, 26a, 30a^quater, 30c, 30d, 30h, 30s, 30t, 30v to 30y, 35a, 35b, 37, 37b, 62a and 67 of the Law of 21 October 1992 on Banks and Investment Firms (Banking Act; BankG), LGBl. 1992 No. 108, as amended, the Government issues the following Ordinance:[2]

I. General provisions[3]

Article 1[4]

Object, purpose, and applicable law

1) Implementing the Banking Act, this Ordinance governs details concerning the taking up, pursuit, and supervision of the business of banks and investment firms.

2) It also serves to transpose and implement the following EEA legislation:[5]

1 Title of Act amended by LGBl. 2007 No. 278.
2 Preamble amended by LGBl. 2022 No. 130.
3 Title preceding Article 1 amended by LGBl. 2015 No. 17.
4 Article 1 amended by LGBl. 2015 No. 17.
5 Article 1(2) amended by LGBl. 2022 No. 130.

a) Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms[6];
b) Directive 2014/65/EU on markets in financial instruments[7];
c) Directive 2001/24/EC on the reorganisation and winding up of credit institutions[8];
d) Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms[9];
e) Regulation (EU) No 600/2014 on markets in financial instruments[10].

3) It is without prejudice to the implementing provisions for Directive 2013/36/EU and Regulation (EU) No 575/2013 listed in Annex 1.

4) The version in force of the EEA legislation referred to in this Ordinance follows from the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette in accordance with Article 3(k) of the Promulgation Act.[11]

Article 1a[12]

Designations

The designations used in this Act to denote persons, professions, and functions include persons of male and female gender.

6 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, 338)

7 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, 349)

8 Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, 15)

9 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, 1)

10 Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, 84)

11 Article 1(4) amended by LGBl. 2022 No. 130.

12 Article 1a amended by LGBl. 2022 No. 130.

Article 2[13]

Repealed

Article 2a[14]

Proprietary trading

1) The provisions of this Ordinance shall apply to proprietary trading unless they only govern the provision of services to clients.

2) The provisions of Chapter II Section C shall not apply to banks and investment firms that engage exclusively in proprietary trading.

Article 3

Publicity for deposits[15]

Any person who is prohibited under Article 3(1) of the Banking Act from accepting deposits and other repayable funds on a professional basis may likewise not publicise them in any form, in particular in advertisements, prospectuses, circulars, or electronic media.[16]

Article 3a[17]

Repealed

Article 3b[18]

Significant banks and investment firms

1) Banks and investment firms that are significant in terms of their size, internal organisation, and the nature, scope, and complexity of their activities shall be deemed significant banks and investment firms. Banks and investment firms which are required to maintain a G-SII buffer under Article 4h of the Banking Act or an O-SII buffer under Article 4i of the

13 Article 2 repealed by LGBl. 2022 No. 130.
14 Article 2a inserted by LGBl. 2007 No. 278.
15 Article 3 heading amended by LGBl. 2007 No. 278.
16 Article 3 amended by LGBl. 1999 No. 86.
17 Article 3a repealed by LGBl. 2022 No. 130.
18 Article 3b inserted by LGBl. 2015 No. 17.

Banking Act shall always be deemed significant banks and investment firms.[19]

2) A bank or investment firm shall in any event not be deemed significant if it:

a) employs fewer than 250 people; or
b) either has an annual turnover of less than 100 million Swiss francs or its annual balance sheet total is less than 90 million Swiss francs.

3) Repealed[20]

II. Business activity[21]

A. Capital buffer[22]

Article 4[23]

Determination of the systemic risk buffer

1) Banks granting loans secured by mortgages on residential or commercial immovable property located in Liechtenstein must hold a systemic risk buffer in addition to the Common Equity Tier 1 capital used to comply with the own funds requirements under Article 92 of Regulation (EU) No 575/2013.

2) The systemic risk buffer rate shall be 1% of the risk exposure amount of all loans granted secured by mortgages on residential or commercial immovable property located in Liechtenstein.

3) The systemic risk buffer shall be determined and held on an individual and consolidated basis in accordance with Articles 6 to 24 of Regulation (EU) No 575/2013.

19 Article 3b(1) amended by LGBl. 2022 No. 130.
20 Article 3b(3) repealed by LGBl. 2022 No. 130.
21 Title preceding Article 4 amended by LGBl. 2022 No. 130.
22 Title preceding Article 4 amended by LGBl. 2022 No. 130.
23 Article 4 amended by LGBl. 2022 No. 130.

B. Risk weights for residential property[24]

Article 5[25]

Special risk weights

Instead of the risk weighting set out in Article 125(2) of Regulation (EU) No 575/2013, the following risk weights shall be applied for residential property pursuant to Article 124(2) of Regulation (EU) No 575/2013:

a) for residential property with a mortgage lending value of up to 66 2/3%: 35%;

b) for residential property with a mortgage lending value of more than 66 2/3% up to and including 80%: 50%.

C. Netting agreements[26]

Article 6[27]

Recognition

1) Netting agreements shall be deemed to be recognised within the meaning of Article 296(1) of Regulation (EU) No 575/2013 if:

a) the provisions set out in paragraph 2 and, if applicable, paragraph 3 of Article 296 of Regulation (EU) No 575/2013 are fully complied with;

b) claims against the bank or investment firm are subject to credit quality step 1 to 3 as set out in Article 120 of Regulation (EU) No 575/2013; and

c) compliance with the requirements of subparagraphs (a) and (b) is audited by the internal audit department at least every two years.

2) The treatment, timeliness, and inspection of netting agreements, as well as their differentiation into recognised and non-recognised agreements, shall be documented appropriately.

24 Title preceding Article 5 amended by LGBl. 2022 No. 130.
25 Article 5 amended by LGBl. 2022 No. 130.
26 Title preceding Article 6 inserted by LGBl. 2022 No. 130.
27 Article 6 amended by LGBl. 2022 No. 130.

Articles 7 to 7c[28]

Repealed

Articles 7d to 7g[29]

Repealed

Articles 7h to 7k[30]

Repealed

Articles 7l and 7m[31]

Repealed

Article 8[32]

Repealed

Article 9[33]

Repealed

Article 10[34]

Repealed

28 Articles 7 to 7c repealed by LGBl. 2022 No. 130.
29 Articles 7d to 7g repealed by LGBl. 2022 No. 130.
30 Articles 7h to 7k repealed by LGBl. 2022 No. 130.
31 Articles 7l and 7m repealed by LGBl. 2022 No. 130.
32 Article 8 repealed by LGBl. 2004 No. 222.
33 Article 9 repealed by LGBl. 2017 No. 7.
34 Article 10 repealed by LGBl. 2017 No. 7.

Article 11[35]

Repealed

Article 12[36]

Repealed

Article 13[37]

Repealed

Article 14[38]

Repealed

Article 15[39]

Repealed

Article 16[40]

Repealed

Article 17[41]

Repealed

35 Article 11 repealed by LGBl. 2017 No. 7.
36 Article 12 repealed by LGBl. 2017 No. 7.
37 Article 13 repealed by LGBl. 2004 No. 222.
38 Article 14 repealed by LGBl. 2017 No. 7.
39 Article 15 repealed by LGBl. 2017 No. 7.
40 Article 16 repealed by LGBl. 1999 No. 86.
41 Article 17 repealed by LGBl. 2017 No. 7.

Articles 18 to 18k[42]

D. Risk distribution and transactions with governing bodies

Articles 19 to 20[43]

Repealed

Article 20a[44]

Repealed

Articles 21 to 21b[45]

Repealed

E. Risk management[46]

Article 21c[47]

Responsibilities of the board of directors and senior management

1) The board of directors shall approve the strategies and policies for taking up, managing, monitoring, and mitigating the risks the bank or investment firm is or might be exposed to, including those posed by the macroeconomic environment, in relation to the status of the business cycle ("risk policy"). The board of directors shall periodically review the risk policy and compliance therewith.[48]

42 Articles 18 to 18k repealed by LGBl. 2021 No. 54.
43 Articles 19 to 20 repealed by LGBl. 2007 No. 278.
44 Article 20a repealed by LGBl. 2004 No. 222.
45 Articles 21 to 21b repealed by LGBl. 2022 No. 130.
46 Title preceding Article 21c inserted by LGBl. 2007 No. 278.
47 Article 21c amended by LGBl. 2015 No. 17.
48 Article 21c(1) amended by LGBl. 2022 No. 130.

2) The senior management shall be actively involved in and shall allocate adequate time and resources to the management of all material risks. The senior management shall be involved in the valuation of assets and in the use of external credit ratings and internal models relating to material risks.

3) For risk management, in particular the management of credit risk, counterparty risk, concentration or cluster risk, residual risk, securitisation risk, reputational risk, market risk, interest rate risk, operational risk, liquidity risk, risk of excessive leverage, and risk associated with remuneration policies and practices, the senior management shall comply with the requirements set out in Articles 21d to 21r. Risk management shall be governed *mutatis mutandis* by the provisions set out in Annexes 4.1 to 4.5.[49]

4) The board of directors and, where one has been established, the risk committee shall be given adequate access to information on the risk situation of the bank or investment firm and, if necessary and appropriate, to risk management. External expert advice may also be sought as needed.

5) The board of directors and, where one has been established, the risk committee shall determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

6) The chair of the risk committee or, if no risk committee has been established, the board of directors, may obtain information directly from the internal audit department and the risk management department.

7) The senior management shall compile all documents required for decision-making and monitoring in relation to transactions involving risk. These documents must also allow the external audit office to form a reliable opinion on the business activities and the financial situation of the bank or investment firm. In reporting to the board of directors, the senior management shall, in any case, communicate all material risks and comply with the risk management provisions of the Banking Act, Regulation (EU) No 575/2013, and this Ordinance.

8) The external audit office shall comment annually in its audit report on the adequacy and effectiveness of the arrangements made in relation to risk management.

49 Article 21c(3) amended by LGBl. 2022 No. 130.

Article 21d[50]

Basic features of risk management

1) A bank or investment firm shall establish a risk management function that is independent of the operational divisions. The risk management function shall have sufficient authority, stature, resources to perform its duties, and access to the board of directors and senior management. The FMA may authorise this function to be under the same management as the compliance function referred to in Article 34a.[51]

2) The responsibilities of the risk management function shall include in particular:

a) identifying, measuring, and reporting all material risks to the board of directors and senior management;
b) participating in the elaboration of the risk strategy of the bank or investment firm and in all material risk management decisions;
c) ensuring a complete view of the whole range of risks, in particular the character of the existing types of risk and the risk situation of the bank or investment firm.

3) The bank or investment firm shall ensure that the risk management function can report directly to the board of directors, independent from senior management, and can raise concerns and warn the board of directors, where appropriate, where specific risk developments affect or may affect the bank or investment firm.

4) The head of the risk management function shall be an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the bank or investment firm do not justify a specially appointed person, another senior person within the bank or investment firm may fulfil that function, provided there is no conflict of interest.

5) The head of the risk management function may be removed only by the board of directors. The head of the risk management function may inform the board of directors directly if necessary.

50 Article 21d amended by LGBl. 2015 No. 17.
51 Article 21d(1) amended by LGBl. 2017 No. 110.

Article 21e[52]

Risk committee

1) Banks and investment firms that are significant must establish a risk committee composed of members of the board of directors. Members of the risk committee shall not perform any executive function in the bank or investment firm and shall have appropriate knowledge, skills, and expertise to fully understand and monitor the risk strategy and the risk appetite. The board of directors shall retain overall responsibility for risks.

2) The responsibilities of the risk committee shall include:

a) advising the board of directors on the overall current and future risk appetite and strategy of the bank or investment firm;
b) supporting the board of directors in supervising implementation of the risk strategy by the senior management;
c) reviewing whether the pricing of liabilities and assets offered adequately takes into account the business model and risk strategy of the bank and investment firm, and where this not the case, presenting a remedy plan;
d) examining whether incentives provided by the remuneration system take into consideration risk, capital, liquidity, and the likelihood and timing of earnings.

3) The FMA may permit all banks and investment firms which are not significant to combine the risk committee with the audit committee. Members of the combined committee shall have the knowledge, skills, and expertise required for both committees.

Article 21f[53]

Internal approaches for calculating own funds requirements

1) In the cases referred to in Article 22(2b) of the Banking Act, the FMA shall, taking into account the nature, scale and complexity of the activities of a bank or investment firm, review whether they do not solely or mechanistically rely on external credit ratings for assessing a financial instrument or the creditworthiness of an entity.

2) The FMA may entrust the external audit office appointed under the Banking Act with the review referred to in paragraph 1 and in Article 35b

52 Article 21e amended by LGBl. 2015 No. 17.
53 Article 21f amended by LGBl. 2015 No. 17.

of the Banking Act. The costs shall be borne by the bank or investment firm.

Article 21g[54]

Supervisory benchmarking of internal approaches for calculating own funds requirements

1) Banks and investment firms that have developed internal capacities in accordance with Article 22(2b) of the Banking Act shall report to the FMA the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios. The results shall be reported, together with an explanation of the methodologies used to produce them, at a frequency determined by the FMA, at least once a year.

2) Banks and investment firms shall submit the results of the calculations referred to in paragraph 1 in accordance with the template developed by the EBA to the FMA and to the EBA. Where the FMA chooses to develop specific portfolios, it shall do so in consultation with the EBA and ensure that banks and investment firms report the results of the calculations separately from the results of the calculations for EBA portfolios.[55]

3) The FMA shall, on the basis of the information submitted by banks and investment firms in accordance with paragraph 1, monitor the range of risk weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those banks or investment firms. The FMA shall make an annual assessment of the quality of those approaches paying particular attention to:

a) those approaches that exhibit significant differences in own fund requirements for the same exposure;
b) approaches where there is particularly high or low diversity, and also where there is a significant and systematic underestimation of own funds requirements.

4) Where particular banks or investment firms diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the FMA shall investigate the reasons therefor. If the FMA identifies a shortfall in the own funds

54 Article 21g inserted by LGBl. 2015 No. 17.
55 Article 21g(2) amended by LGBl. 2022 No. 130.

requirements of a bank or investment firm which is not attributable to differences in the underlying risks of the exposures or positions, the FMA shall take appropriate actions to restore a lawful state of affairs.

5) The FMA's decisions on the appropriateness of corrective actions as referred to in paragraph 4 must comply with the principle that such actions must maintain the objectives of an internal approach and therefore do not:

a) lead to standardisation or preferred methods;
b) create wrong incentives; or
c) cause herd behaviour.

6) The FMA may entrust the external audit office appointed under the Banking Act with the review and evaluation referred to in paragraphs 1 to 5 and in Article 35b of the Banking Act. The costs shall be borne by the bank or investment firm.

Article 21h[56]

Credit and counterparty risk

1) The following requirements apply to the management of credit and counterparty risk:

a) credit-granting must be based on sound and well-defined criteria;
b) the process for approving, amending, renewing, and re-financing credits must be clearly established;
c) effective systems must be established for the ongoing administration and monitoring of credits, including for identifying and managing problem credits and for making adequate value adjustments and provisions;
d) diversification of credit portfolios must be adequate given a bank's target markets and overall credit strategy;
e) the bank or investment firm must have internal methodologies that enable it to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level. Internal methodologies shall not rely solely or mechanistically on external credit ratings. Where own funds requirements are based on a rating by an external credit assessment institution or based on the fact that an exposure is unrated, the bank or investment firm must

56 Article 21h inserted by LGBl. 2015 No. 17.

additionally consider other relevant information for assessing its allocation of own funds.

2) Repealed[57]

Article 21i[58]

Residual risk

The residual risk that recognised credit risk mitigation techniques used by the bank or investment firm prove less effective than expected shall be addressed and controlled including by means of written policies and procedures.

Article 21k[59]

Concentration risk

1) The concentration or cluster risk arising from exposures to the same counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same industry or region or with the same services or goods, the use of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, shall be addressed and controlled including by means of written guidelines of banks and investment firms.

2) The following exposures shall be fully exempt from the application of Article 395(1) of Regulation (EU) No 575/2013:

a) covered bonds falling within Article 124(1), (2) and (5) of Regulation (EU) No 575/2013;

b) asset items constituting claims on regional governments or local authorities of EEA Member States where those claims would be assigned a 20% risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20% risk weight under Part Three, Title II, Chapter 2 of Regulation (EU) No 575/2013;

57 Article 21h(2) repealed by LGBl. 2022 No. 130.
58 Article 21i inserted by LGBl. 2015 No. 17.
59 Article 21k inserted by LGBl. 2015 No. 17.

c) exposures incurred by a bank or investment firm, including through participations or other kinds of holdings, to its parent undertaking, to other subsidiaries of that parent undertaking, or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the bank or investment firm itself is subject, in accordance with Regulation (EU) No 575/2013, Directive 2002/87/EC or with equivalent standards in force in a third country; exposures that do not meet those criteria, whether or not exempted from Article 384(1) of Regulation (EU) No 575/2013, shall be treated as exposures to a third party;
d) asset items constituting claims on and other exposures, including participations or other kinds of holdings, to regional banks or central credit institutions with which the bank belongs to a network in accordance with legal provisions or provisions of its statutes and which are responsible, under those provisions, for cash-clearing operations within the network;
e) asset items constituting claims on and other exposures to banks incurred by banks, one of which operates on a non-competitive basis and provides or guarantees loans under legislative programmes or its statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via banks or from the guarantees of these loans;
f) asset items constituting claims on and other exposures to banks or investment firms, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency;
g) asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their currencies;
h) asset items constituting claims on central governments in the form of legal liquidity requirements held in government securities which are denominated and funded in their currencies provided that, at the discretion of the competent authority, the credit assessment of those central governments assigned by a nominated external credit assessment institution is investment grade;
i) 50% of medium/low risk off-balance-sheet documentary credits and of medium/low risk off-balance-sheet undrawn credit facilities referred to in Annex I of Regulation (EU) No 575/2013 and, subject to the competent authorities' agreement, 80% of guarantees other than loan guarantees which have a legal or regulatory basis and are given for

their members by mutual guarantee schemes possessing the status of banks;

k) legally required guarantees used when a mortgage loan financed by issuing mortgage bonds is paid to the mortgage borrower before the final registration of the mortgage in the land register, provided that the guarantee is not used as reducing the risk in calculating the risk-weighted exposure amounts;

l) asset items constituting claims on and other credits to recognised exchanges.

Article 21l[60]

Securitisation risk

1) The risks arising from securitisation transactions in relation to which the bank is an investor, originator or sponsor, including reputational risks, such as arise in relation to complex structures or products, shall be evaluated and addressed through appropriate requirements and procedures, in particular to ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

2) Liquidity plans to address the implications of both scheduled and early amortisation must exist at banks which are originators of revolving securitisation transactions involving early amortisation provisions.

Article 21m[61]

Market risk

1) Banks and investment firms shall enact guidelines and implement processes for the identification, measurement and management of the sources and effects of market risks.

2) Where the short position falls due before the long position, banks and investment firms shall also take measures against the risk of a shortage of liquidity.

3) The internal capital shall be adequate for material market risks that are not subject to an own funds requirement.

60 Article 21l inserted by LGBl. 2015 No. 17.
61 Article 21m inserted by LGBl. 2015 No. 17.

4) Banks and investment firms which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of Regulation (EU) No 575/2013, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities. Banks and investment firms shall also have such adequate internal capital where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

5) Where banks and investment firms use the treatment in Article 345 of Regulation (EU) No 575/2013 for the reduction of net positions, it shall be ensured that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.

Article 21n[62]

Interest rate risk in non-trading book activities

1) Banks and investment firms shall implement adequate internal systems or shall use the standardised methodology or the simplified standardised methodology to identify, measure, manage, and limit the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of the non-trading book activities of the bank or investment firm.

2) Banks and investment firms shall implement adequate internal systems to assess and monitor the risks arising from potential changes in credit spreads that affect both the economic value of equity and the net interest income of the non-trading book activities of the bank or investment firm.

3) The FMA may require use of the standardised methodology referred to in paragraph 1 where:

a) the internal systems of a bank or investment firm for assessing interest rate risk are not adequate; or
b) use of the simplified standardised method by a small and non-complex institution as defined in Article 4(1)(145) of Regulation (EU) No

62 Article 21n amended by LGBl. 2022 No. 130.

575/2013 is not adequate to identify, measure, manage, and limit the interest rate risk.

Article 21o[63]

Operational risk and model risk

1) Banks and investment firms shall have adequate internal processes in place to measure and manage their operational risks, including model risk and risks associated with outsourcing, and to cover low-frequency high-severity events. For this purpose, they shall define operational risk according to Article 4(1)(52) of Regulation (EU) No 575/2013 and use it in a uniform manner.

2) Banks and investment firms shall have contingency and emergency plans in place to ensure that their operations are maintained without interruption at all times, and they shall implement processes to limit, to the greatest extent possible, losses resulting from operational disruptions.

Article 21p[64]

Liquidity risk

1) Banks and investment firms shall have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers. Those strategies, policies, processes and systems shall be tailored to business lines, currencies and entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.

2) The strategies, policies, processes and systems referred to in paragraph 1 must be proportionate to the complexity, risk profile, scope of operation of the bank or investment firm and risk tolerance set by the board of directors. They must furthermore reflect the importance of the bank or investment firm in each country in which it carries out business. Banks and investment firms shall communicate risk tolerance to all relevant business lines.

3) Banks and investment firms, taking into account the nature, scale and complexity of their activities, shall have liquidity risk profiles that are

63 Article 21o amended by LGBl. 2022 No. 130.
64 Article 21p inserted by LGBl. 2015 No. 17.

consistent with and, not in excess of, those required for a well-functioning and robust system.

4) The FMA shall monitor developments in relation to liquidity risk profiles, such as product design and volumes, risk management, funding policies and funding concentrations. The FMA shall take effective action where developments may lead to instability of individual banks or investment firms or systemic instability.

5) Banks and investment firms shall develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

6) Banks and investment firms shall distinguish between pledged and unpledged assets. Unpledged assets must be available at all times, in particular during emergency situations. Banks and investment firms shall also take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account, and their timely eligibility, and they shall monitor how assets can be liquidated in a timely manner.

7) Banks and investment firms shall also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unpledged assets amongst entities, both within and outside the EEA.

8) A bank or investment firm shall consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly.

9) Alternative scenarios on liquidity positions and on risk mitigants shall be considered and the assumptions underlying decisions concerning the funding position shall be reviewed at least annually. For these purposes, alternative scenarios shall address, in particular, off-balance-sheet items and other contingent liabilities, including those of SSPEs or other special purpose entities, in relation to which the bank or investment firm acts as sponsor or provides material liquidity support.

10) Banks and investment firms shall consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time horizons and varying degrees of stressed conditions shall be considered.

11) Banks and investment firms shall adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in paragraph 9.

12) In order to deal with liquidity crises, banks and investment firms shall have in place contingency plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including at branches in another EEA Member States. Those plans shall be tested regularly, at least annually, updated on the basis of the outcome of the alternative scenarios set out in paragraph 9, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly.

13) Banks and investment firms shall take the necessary operational steps in advance to ensure that liquidity recovery plans as referred to in paragraph 12 can be implemented immediately. In the case of banks, those operational steps shall include holding collateral immediately available for central bank funding. The necessary operational steps shall also include holding collateral in the currency of another EEA Member State as needed, or the currency of a third country to which the bank has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.

Article 21q[65]

Risk of excessive leverage

1) Banks and investment firms shall enact guidelines and implement processes for the identification, measurement and management of the risk of excessive leverage. Indicators for the risk of excessive leverage shall include, in particular, the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 and mismatches between assets and obligations.

2) Banks and investment firms shall address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the institution's own funds through expected or realised losses. To that end, banks and investment firms shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.

65 Article 21q inserted by LGBl. 2015 No. 17.

Article 21r[66]

Risk associated with remuneration policies and practices

For the management of risks associated with remuneration policies and practices, banks and investment firms shall comply with the provisions set out in Annex 4.4.

Article 21r[bis67]

Risks associated with the execution of ETP transactions

For the management of risks associated with credit business ETP transactions, banks shall comply with the provisions set out in Annex 5.

Article 21s[68]

Technical criteria on review and evaluation of risk management and risk coverage

1) In addition to credit, market, and operational risks, the FMA shall review and evaluate:

a) the results of the stress test carried out in accordance with Article 177 of Regulation (EU) No 575/2013 by banks and investment firms, where they apply an internal ratings based approach;
b) the exposure to and management of concentration risk by banks and investment firms, including their compliance with the requirements on large exposures set out in Part Four of Regulation (EU) No 575/2013 and the requirements set out in Article 21k;
c) the robustness, suitability and manner of application of the policies and procedures implemented by banks and investment firms for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;
d) the extent to which the own funds held by a bank or investment firm in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

66 Article 21r inserted by LGBl. 2015 No. 17.
67 Article 21rbis inserted by LGBl. 2022 No. 130.
68 Article 21s inserted by LGBl. 2015 No. 17.

e) the exposure to, measurement and management of liquidity risk by banks and investment firms, including the development of alternative scenario analyses, the management of risk mitigants (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

f) the impact of diversification effects and how such effects are factored into the risk measurement system;

g) the results of stress tests carried out by banks and investment firms using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013;

h) the geographical location of the exposures of the bank or investment firm;

i) the business model of the bank or investment firm.

k) Repealed[69]

2) For the purposes of paragraph 1(e), the FMA shall regularly carry out a comprehensive assessment of the liquidity risk management by banks and investment firms and promote the development of sound internal methodologies. While conducting those reviews, the FMA shall have regard to the role played by banks and investment firms in the financial markets. The FMA shall duly consider the potential impact of its decisions on the stability of the financial system in all other EEA Member States concerned.

3) If a bank or investment firm is found by the FMA to have provided implicit support on more than one occasion, the FMA shall take appropriate measures reflective of the increased expectation that the bank or investment firm will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

4) For the purposes of the determination provided for under Article 35a(1) of the Banking Act, the FMA shall also consider whether the valuation adjustments taken for positions or portfolios in the trading book of the bank or investment firm, as set out in Article 105 of Regulation (EU) No 575/2013, enable the bank or investment firm to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

5) The FMA shall review the exposure of banks or investment firms to the interest rate risk arising from non-trading book activities. The FMA

69 Article 21s(1)(k) repealed by LGBl. 2022 No. 130.

shall make use of its powers set out in Article 35(2)(w) or Article 35c of the Banking Act in particular where:[70]

a) the economic value of equity of a bank or investment firm as referred to in Article 21n(1) declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to interest rates;

b) the net interest income of a bank or investment firm experiences a large decline as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to interest rates.

5a) The FMA may refrain from exercising its powers where it considers, based on the review and evaluation referred to in paragraph 5, that the management by the bank or investment firm of interest rate risk arising from non-trading book activities is adequate and that the bank or investment firm is not excessively exposed to interest rate risk arising from non-trading book activities.[71]

5b) Interest rate risk arising from non-trading book positions may be considered material within the meaning of Article 35c^{bis}(4) of the Banking Act in particular in the cases referred to in paragraph 5 unless the FMA, in performing the review and evaluation referred to in Article 35a of the Banking Act, comes to the conclusion that the management by the bank or investment firm of interest rate risk arising from non-trading book activities is adequate and that the bank or investment firm is not excessively exposed to interest rate risk arising from non-trading book activities.[72]

6) The FMA shall review the exposure to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. The FMA shall determine the adequacy of the leverage ratio of a bank or investment firm and of the arrangements, strategies, processes and mechanisms implemented by the bank or investment firm to manage the risk of excessive leverage, taking into account the business model of the bank or investment firm.

7) The FMA shall review the governance arrangements of banks and investment firms, their corporate culture and values, and the ability of members of the board of directors and the senior management to perform their duties. For that purpose, banks and investment firms shall, on

70 Article 21s(5) amended by LGBl. 2022 No. 130.
71 Article 21s(5a) inserted by LGBl. 2022 No. 130.
72 Article 21s(5b) inserted by LGBl. 2022 No. 130.

request, make available to the FMA agendas and supporting documents for meetings of the board of directors, the senior management, and the committees of the board of directors and the results of the internal or external evaluation of performance of the board of directors or senior management.

8) The FMA may entrust the external audit office appointed under the Banking Act with the review and evaluation referred to in paragraphs 1 to 7 and in Article 35a of the Banking Act. The costs shall be borne by the bank or investment firm.

Article 21t[73]

Policies for risk data aggregation and risk reporting

1) Banks and investment firms shall establish in writing appropriate policies and processes for risk data aggregation and risk reporting on an individual and consolidated basis; these shall encompass:

a) a comprehensible presentation of the data structure and data hierarchy (data architecture);
b) the definition of corresponding responsibilities and control mechanisms; and
c) the requirements set out in paragraphs 2 to 4.

2) Banks and investment firms must establish an appropriate data architecture and IT infrastructure that are suitable for aggregating risk data within an appropriate timeframe, largely on an automated basis. The data architecture and IT infrastructure must ensure the completeness and consistency as well as the high quality and timeliness of risk data both in normal times and in times of crisis.

3) Banks and investment firms must establish appropriate processes for internal and external risk reporting. The processes must ensure effective risk reporting within an appropriate timeframe both in normal times and in times of crisis and shall cover both standardised and ad hoc requests. Risk reporting must be adapted to the respective addressee and must present the material risks in a complete, accurate, timely, consistent and coherent manner. The frequency of risk reporting must be determined by the board of directors or the competent committee of the board of directors, the senior management, or other addressees as appropriate, taking into account the purpose of the report, the nature of the risks, the

73 Article 21t inserted by LGBl. 2022 No. 130.

speed with which risks can change, and the importance of risk reports for sound risk management and effective and efficient decision-making. In stress periods or times of crisis, the frequency of reports shall be increased. Consistency between internal and external risk reporting must be ensured.

4) Banks and investment firms shall ensure a regular independent review of the policies and processes for risk data aggregation and risk reporting. This review may be carried out by the internal audit department, the audit office, or other independent and competent third parties. In the case of significant banks and investment firms, the review must take place regularly, but at least every three years, and in the case of all other banks and investment firms, every five years.

F. Annual financial statement, consolidated financial statement, interim financial statement, consolidated interim financial statement[74]

Article 22[75]

Annual financial statement, consolidated financial statement

1) The annual financial statement and consolidated financial statement of banks and investment firms shall be prepared in accordance with the provisions of this Ordinance, and in particular with the provisions set out in Annex 3.

2) For investment firms with a limited scope of activities, the FMA may, with the licence, permit simplifications of the annual financial statement within the framework of the provisions of private law.[76]

74 Title preceding Article 22 amended by LGBl. 2001 No. 189.
75 Article 22 amended by LGBl. 2007 No. 278.
76 Article 22(2) amended by LGBl. 2015 No. 17.

Article 23[77]

Cash flow statement, consolidated cash flow statement

1) Banks and investment firms that have a balance sheet total of at least CHF 100 million and conduct balance sheet transactions to a significant extent must also prepare a cash flow statement as an additional component of the annual financial statement.

2) Banks and investment firms that are required to prepare a consolidated financial statement must in any case prepare a consolidated cash flow statement.

Article 24

Interim financial statement, consolidated interim financial statement[78]

1) Banks and investment firms with a balance sheet total of at least CHF 100 million must prepare an interim financial statement on a semi-annual basis, while banks and investment firms subject to consolidation must prepare a consolidated interim financial statement.[79]

2) The interim financial statement shall consist of the balance sheet and the income statement, the consolidated interim financial statement of the consolidated balance sheet and the consolidated income statement.[80]

3) The interim financial statements shall be prepared in accordance with the same principles as the annual financial statement, the consolidated interim financial statement in accordance with the same principles as the consolidated financial statement. The provisions of this Ordinance shall apply, in particular the provisions set out in Annex 3.[81]

Article 24a

Principles of proper financial reporting[82]

77 Article 23 amended by LGBl. 2007 No. 278.
78 Article 24 heading amended by LGBl. 1999 No. 86.
79 Article 24(1) amended by LGBl. 2007 No. 278.
80 Article 24(2) amended by LGBl. 1999 No. 86.
81 Article 24(3) amended by LGBl. 1999 No. 86.
82 Article 24a heading inserted by LGBl. 1999 No. 86.

1) The annual financial statement and the consolidated financial statement shall be prepared in accordance with the principles of proper financial reporting.[83]

2) Financial reporting shall be carried out in particular in accordance with the following principles:

a) proper recording of business transactions;
b) completeness of the (consolidated) annual financial statement;
c) clarity of information;
d) materiality of information;
e) prudence;
f) going-concern basis of accounting;
g) consistency in presentation and valuation;
h) proper accrual;
i) inadmissibility of offsetting assets & liabilities and income & expense items;
k) substance over form.[84]

3) Circumstances and amounts shall be deemed material for purposes of paragraph 2(d) if they affect the annual financial statement or consolidated financial statement in such a way that the recipient of the annual financial statement or consolidated financial statement might be influenced in their assessment and decisions in respect of the bank or investment firm.[85]

4) In the annual financial statement and consolidated financial statement, the figures of the preceding year shall be stated. In the interim financial statement and consolidated interim financial statement, the figures of the most recent annual financial statement or the most recent consolidated financial statement shall be stated in the balance sheet, and those of the interim financial statement or consolidated interim financial statement of the previous year shall be stated in the income statement.[86]

Article 24b

83 Article 24a(1) inserted by LGBl. 1999 No. 86.
84 Article 24a(2) inserted by LGBl. 1999 No. 86.
85 Article 24a(3) amended by LGBl. 2007 No. 278.
86 Article 24a(4) inserted by LGBl. 1999 No. 86.

Classification of the balance sheet[87]

1) The classification of the balance sheet shall be at least as follows:

Assets

1. Liquid assets
2. Debt instruments of public bodies and other bills eligible for refinancing with central banks:
   a) debt instruments of public bodies and similar securities
   b) bills of exchange
3. Amounts due from banks:
   a) payable on demand
   b) other receivables
4. Amounts due from customers,
   of which:
   mortgage loans
5. Bonds and other fixed-income securities:
   a) money market papers
      aa) from public-sector issuers
      bb) from other issuers,
      of which:
      own money market papers
   b) bonds
      aa) from public-sector issuers
      bb) from other issuers,
      of which:
      own bonds
6. Equities and other non-fixed-income securities
7. Participating interests
8. Shares in affiliated undertakings
9. Intangible assets
10. Tangible assets

87 Article 24b heading inserted by LGBl. 1999 No. 86.

11. Outstanding contributions to subscribed capital,
    of which:
    called in
12. Own shares
13. Other assets
14. Accrued income and prepaid expenses

Total assets

Liabilities

1. Amounts due to banks:
   a) payable on demand
   b) with agreed term or period of notice
2. Amounts due to customers:
   a) savings deposits
   b) other liabilities
      aa) payable on demand
      bb) with agreed term or period of notice
3. Securitised liabilities:
   a) bonds issued,
      of which:
      medium-term notes
   b) other securitised liabilities
4. Other liabilities
5. Accrued expenses and deferred income
6. Provisions:
   a) provisions for pensions and similar liabilities
   b) tax provisions
   c) other provisions
7. Subordinated liabilities
8. Provisions for general banking risks
9. Subscribed capital

10. Capital reserves
11. Profit reserves:
    a) legal reserves
    b) reserve for own shares
    c) reserves pursuant to articles of association
    d) other reserves
12. Profit/loss carried forward
13. Profit/loss for the year

Total liabilities

Off-balance-sheet transactions

1. Contingent liabilities,
   of which:
   a) acceptances and endorsement liabilities from bills of exchange passed on
   b) liabilities from guarantees and indemnity agreements as well as liability from the furnishing of collateral
2. Credit risks,
   of which:
   a) irrevocable commitments
   b) liabilities for calls on shares and other equities
   c) commitment credits
   d) liabilities from non-genuine repurchase agreements
3. Derivative financial instruments
4. Fiduciary transactions[88]

2) The following shall be shown as separate sub-items:

a) the securitised and unsecuritised claims on affiliated undertakings included in asset items 2 (debt instruments of public bodies and other bills eligible for refinancing with central banks), 3 (amounts due from banks), 4 (amounts due from customers) and 5 (bonds and other fixed-income securities);

88 Article 24b(1) inserted by LGBl. 1999 No. 86.

b) the securitised and unsecuritised claims on undertakings with which a participating interest exists included in asset items 2 (debt instruments of public bodies and other bills eligible for refinancing with central banks), 3 (amounts due from banks), 4 (amounts due from customers) and 5 (bonds and other fixed-income securities);
c) the securitised and unsecuritised liabilities to affiliated undertakings included in liability items 1 (amounts due to banks), 2 (amounts due to customers), 3 (securitised liabilities) and 7 (subordinated liabilities);
d) the securitised and unsecuritised liabilities to undertakings with which a participating interest exists included in liability items 1 (amounts due to banks), 2 (amounts due to customers), 3 (securitised liabilities) and 7 (subordinated liabilities).

These disclosures may be made separately in the notes instead of in the balance sheet in the order of the items concerned.[89]

3) Subordinated assets shall be shown separately on the assets side under the relevant items or sub-items. Instead of being shown separately in the balance sheet, they may be made in the notes in the order of the items concerned. In the interim balance sheet, the total of subordinated assets shall be shown separately under the total assets.[90]

4) Assets shall be shown in the corresponding balance sheet items even if the reporting bank or investment firm has pledged them as collateral for its own liabilities or for liabilities of third parties or has otherwise assigned them to third parties as collateral. Assets pledged to the reporting bank or investment firm as collateral or otherwise assigned as collateral shall be shown in the balance sheet only if they are cash deposits with the same bank or investment firm.[91]

5) If credit is granted jointly by several banks or financial institutions (joint credit), each participating or sub-participating institution must include only its own share of the credit in the balance sheet to the extent that it has provided the funds for the joint credit. If an institution assumes liability for a higher amount in excess of its own share, the difference shall be recorded as a contingent liability under item 1b of off-balance-sheet transactions.[92]

6) Assets acquired in the name of and for the account of third parties may not be recognised in the balance sheet.[93]

89 Article 24b(2) inserted by LGBl. 1999 No. 86.
90 Article 24b(3) inserted by LGBl. 1999 No. 86.
91 Article 24b(4) amended by LGBl. 2007 No. 278.
92 Article 24b(5) amended by LGBl. 2007 No. 278.
93 Article 24b(6) inserted by LGBl. 1999 No. 86.

7) The items of assets and liabilities marked with lower case letters may be shown together if:

a) they include an amount that is not material for the fair presentation of the net assets, financial position, and earnings situation; or
b) doing so increases the clarity of the presentation; in this case, however, the combined items must be disclosed separately in the notes.[94]

Article 24c

Classification of the income statement [95]

1) The classification of the income statement shall be at least as follows:[96]

1. Interest income,
   of which:
   a) from fixed-income securities
   b) from trading[97]
2. Interest expense[98]
3. Current income from securities:
   a) equities and other non-fixed-income securities,
      of which:
      from trading
   b) participating interests
   c) shares in affiliated undertakings[99]
4. Income from commission business and services:
   a) commission income from lending activities
   b) commission income from securities trading and investment activities
   c) commission income from other services[100]

94 Article 24b(7) inserted by LGBl. 1999 No. 86.
95 Article 24c heading inserted by LGBl. 1999 No. 86.
96 Article 24c(1) introductory phrase inserted by LGBl. 1999 No. 86.
97 Article 24c(1)(1) inserted by LGBl. 1999 No. 86.
98 Article 24c(1)(2) inserted by LGBl. 1999 No. 86.
99 Article 24c(1)(3) inserted by LGBl. 1999 No. 86.
100 Article 24c(1)(4) inserted by LGBl. 1999 No. 86.

5. Commission expense[101]
6. Result from financial transactions,
   of which:
   from trading[102]
7. Other ordinary income:
   a) result from real estate
   b) other result from ordinary activities[103]
8. Operating expenses:
   a) personnel expenses,
      of which:
      aa) wages and salaries
      bb) social security contributions and expenditures for pensions and other employee benefits,
          of which:
          for pensions
   b) general and administrative expenses[104]
9. Amortisation of intangible assets and depreciation of tangible assets[105]
10. Other ordinary expenses[106]
11. Value adjustments on receivables and funds allocated to provisions for contingent liabilities and credit risks[107]
12. Income from the release of value adjustments on receivables and from provisions for contingent liabilities and credit risks[108]
13. Write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets[109]
14. Income from write-ups on participating interests, shares in affiliated undertakings, and securities treated as fixed assets[110]

101 Article 24c(1)(5) inserted by LGBl. 1999 No. 86.
102 Article 24c(1)(6) inserted by LGBl. 1999 No. 86.
103 Article 24c(1)(7) inserted by LGBl. 1999 No. 86.
104 Article 24c(1)(8) inserted by LGBl. 1999 No. 86.
105 Article 24c(1)(9) inserted by LGBl. 1999 No. 86.
106 Article 24c(1)(10) inserted by LGBl. 1999 No. 86.
107 Article 24c(1)(11) inserted by LGBl. 1999 No. 86.
108 Article 24c(1)(12) inserted by LGBl. 1999 No. 86.
109 Article 24c(1)(13) inserted by LGBl. 1999 No. 86.
110 Article 24c(1)(14) inserted by LGBl. 1999 No. 86.

15. Result on ordinary business activity[111]
16. Extraordinary income[112]
17. Extraordinary expenses[113]
18. Extraordinary result[114]
19. Corporate earnings tax[115]
20. Other taxes not included in the above items[116]
21. Funds allocated to provisions for general banking or investment firm risks/income from the release of provisions for general banking or investment firm risks[117]
22. Profit/loss for the year[118]

2) The income statement must be supplemented by the following items with regard to the appropriation of profit or the coverage of losses:

1. Profit/loss for the year
2. Profit/loss carried forward
3. Balance sheet profit/loss
4. Appropriation of profit:
   a) allocation to legal reserves
   b) allocation to reserves pursuant to articles of association
   c) allocation to other reserves
   d) dividend on the bank's or investment firm's capital
   e) other appropriation of profit

   Loss to be offset:
   f) withdrawal from legal reserves
   g) withdrawal from reserves pursuant to articles of association
   h) withdrawal from other reserves
   i) other coverage of losses

111 Article 24c(1)(15) inserted by LGBl. 1999 No. 86.
112 Article 24c(1)(16) inserted by LGBl. 1999 No. 86.
113 Article 24c(1)(17) inserted by LGBl. 1999 No. 86.
114 Article 24c(1)(18) inserted by LGBl. 1999 No. 86.
115 Article 24c(1)(19) inserted by LGBl. 1999 No. 86.
116 Article 24c(1)(20) inserted by LGBl. 1999 No. 86.
117 Article 24c(1)(21) amended by LGBl. 2007 No. 278.
118 Article 24c(1)(22) inserted by LGBl. 1999 No. 86.

5. Profit/loss carried forward[119]

3) The interim income statement may be limited to the disclosure of items 1 through 15. In this case, the risk development and the provisions must be explained instead of items 16 through 22.[120]

4) For the combined presentation of the items of the income statement marked with lower case letters in paragraph 1, Article 24b(7) shall apply.[121]

Article 24d[122]

Classification of the cash flow statement

1) The cash flow statement must show the causes of the change in liquidity in the financial year on the basis of the inflow and outflow of funds.

2) In the separate financial statement, the classification of the cash flow statement shall be at least as follows:

1. Cash flow from operating activities (internal financing);
2. Cash flow from shareholders' equity transactions;
3. Cash flow from investment activities;
4. Cash flow from banking operations.

3) The cash flow from banking operations must be broken down in such a way that the refinancing is apparent.

Article 24e

Classification and content of the notes[123]

1) The classification of the notes shall be as follows and shall contain at least the following information:[124]

119 Article 24c(2) inserted by LGBl. 1999 No. 86.
120 Article 24c(3) inserted by LGBl. 1999 No. 86.
121 Article 24c(4) inserted by LGBl. 1999 No. 86.
122 Article 24d inserted by LGBl. 1999 No. 86.
123 Article 24e heading inserted by LGBl. 1999 No. 86.
124 Article 24e(1) introductory phrase inserted by LGBl. 1999 No. 86.

1. explanatory notes on the scope of the individual business areas and its impact on reporting; headcount;[125]

2. accounting and valuation policies for the annual financial statement, including disclosure of the method of foreign currency conversion and treatment of exchange differences, and exchange rates for major foreign currencies; principles of recording business transactions and explanatory notes on risk management, in particular the treatment of interest rate risk, and the use of derivative financial instruments;[126]

3. information on the balance sheet:[127]

3.1 overview of collateral for loans and off-balance-sheet transactions;[128]

3.2 disclosure of the amount of trading portfolios and securities and precious metals held as current assets (excluding trading portfolios) and fixed assets, their breakdown by the balance sheet items in which they are included, and their composition in detail; disclosure of own shares included in current (excluding trading portfolios) and fixed assets; breakdown of participating interests and shares in affiliated undertakings;[129]

3.2.1 in addition, the lent trading portfolios as well as the lent securities and precious metals held as current assets (excluding trading portfolios) and fixed assets must be stated;[130]

3.2.2 for trading portfolios as well as securities and precious metals held as current assets (excluding trading portfolios) and securities and precious metals held as fixed assets valued at the lower of cost or market, the difference between the acquisition cost and the higher market value must also be stated;[131]

3.3 for participating interests and shares in affiliated undertakings: name of company, registered office, business activities, capital and equity interests (voting shares, capital shares, and any contractual commitments);[132]

125 Article 24e(1)(1) inserted by LGBl. 1999 No. 86.
126 Article 24e(1)(2) amended by LGBl. 2004 No. 222.
127 Article 24e(1)(3) inserted by LGBl. 1999 No. 86.
128 Article 24e(1)(3.1) inserted by LGBl. 1999 No. 86.
129 Article 24e(1)(3.2) amended by LGBl. 2001 No. 189.
130 Article 24e(1)(3.2.1) amended by LGBl. 2001 No. 189.
131 Article 24e(1)(3.2.2) amended by LGBl. 2001 No. 189.
132 Article 24e(1)(3.3) amended by LGBl. 2001 No. 189.

3.3.1 in addition, the total amount of participating interests in banks and investment firms reported under participating interests (asset item 7) must be stated;[133]

3.3.2 the total amount of shares in affiliated banks and investment firms reported under shares in affiliated undertakings (asset item 8) must also be stated;[134]

3.4 presentation of fixed assets;[135]

3.4.1 for properties and other tangible assets, the fire insurance values must also be stated;[136]

3.4.2 the total amount of land and buildings included in tangible assets (asset item 10) used by the bank or investment firm as part of its own activities must also be stated;[137]

3.4.3 the total amount of unrecognised lease liabilities must also be stated;[138]

3.5 breakdown of intangible assets;[139]

3.5.1 disclosure of the total amount of capitalised expenses for the establishment and expansion of business operations;[140]

3.5.2 disclosure of the total amount of goodwill acquired for consideration;[141]

3.6 total amount and breakdown of pledged or assigned assets to secure own commitments and third-party commitments (including contingent liabilities) as well as assets subject to reservation of title;[142]

3.7 liabilities relating to own pension schemes;[143]

3.8 bonds outstanding;[144]

3.9 breakdown of provisions (liability item 6), provisions for general banking risks (liability item 8) and value adjustments as well as overview of changes therein during the financial year;[145]

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133 Article 24e(1)(3.3.1) amended by LGBl. 2007 No. 278.
134 Article 24e(1)(3.3.2) amended by LGBl. 2007 No. 278.
135 Article 24e(1)(3.4) inserted by LGBl. 1999 No. 86.
136 Article 24e(1)(3.4.1) inserted by LGBl. 1999 No. 86.
137 Article 24e(1)(3.4.2) amended by LGBl. 2007 No. 278.
138 Article 24e(1)(3.4.3) inserted by LGBl. 1999 No. 86.
139 Article 24e(1)(3.5) inserted by LGBl. 1999 No. 86.
140 Article 24e(1)(3.5.1) inserted by LGBl. 1999 No. 86.
141 Article 24e(1)(3.5.2) inserted by LGBl. 1999 No. 86.
142 Article 24e(1)(3.6) inserted by LGBl. 1999 No. 86.
143 Article 24e(1)(3.7) inserted by LGBl. 1999 No. 86.
144 Article 24e(1)(3.8) inserted by LGBl. 1999 No. 86.
145 Article 24e(1)(3.9) inserted by LGBl. 1999 No. 86.

3.9.1 the value adjustments and provisions shall be broken down by: value adjustments for default risks (individual value adjustments, general individual value adjustments, portfolio value adjustments, general individual value adjustments for country risks), provisions for contingent liabilities and credit risks, provisions for other business risks, provisions for taxes and deferred taxes, and other provisions;[146]

3.9.2 value adjustments and provisions for specific risks must be always disclosed under section 3.9.1;[147]

3.9.3 value adjustments shall be deducted from the total of value adjustments and specific provisions;[148]

3.9.4 significant releases and reutilisations of value adjustments and provisions as well as provisions for general banking risks must be explained and justified;[149]

3.10 composition of the bank's or investment firm's capital;[150]

3.10.1 if known, or if they should be known, the names and percentage participations of the holders of interests and groups of holders of interests with pooled voting rights whose participations exceed 5% of all voting rights on the balance sheet date must be stated; if the articles of association stipulate a transfer restriction of less than 5%, this limit shall apply;[151]

3.11 statement of shareholder's equity and its change before appropriation of profits/coverage of losses;[152]

3.12 maturity analysis of assets and liabilities;[153]

3.13 amounts due from/to affiliated undertakings (Article 24b(2)(a) and (c)), undertakings with which a participating interest exists (Article 24b(2)(b) and (d)), unless these disclosures are made in the balance sheet, and persons with qualifying holdings, as well as loans to members of governing bodies and significant transactions with closely associated persons;[154]

146 Article 24e(1)(3.9.1) amended by LGBl. 2004 No. 222.
147 Article 24e(1)(3.9.2) inserted by LGBl. 1999 No. 86.
148 Article 24e(1)(3.9.3) inserted by LGBl. 1999 No. 86.
149 Article 24e(1)(3.9.4) inserted by LGBl. 1999 No. 86.
150 Article 24e(1)(3.10) inserted by LGBl. 1999 No. 86.
151 Article 24e(1)(3.10.1) inserted by LGBl. 1999 No. 86.
152 Article 24e(1)(3.11) inserted by LGBl. 1999 No. 86.
153 Article 24e(1)(3.12) amended by LGBl. 2001 No. 189.
154 Article 24e(1)(3.13) amended by LGBl. 2004 No. 222.

3.14 breakdown of assets and liabilities by domestic and foreign origin, provided the bank or investment firm has a balance sheet total of at least one billion Swiss francs or more than 50 employees;[155]

3.15 breakdown of total assets according to country or country group if the foreign business is significant and the bank or investment firm has a balance sheet total of at least one billion Swiss francs or more than 50 employees;[156]

3.15.1 the bank or investment firm may determine the level of detail of the breakdown itself;[157]

3.15.2 in addition to the absolute amount per country or country group, the percentage share must also be stated;[158]

3.16 breakdown of assets and liabilities according to the most significant currencies for the bank or investment firm, if it has a balance sheet total of at least one billion Swiss francs or more than 50 employees; in each case, the total amount of assets and the total amount of debts denominated in foreign currencies must be stated in Swiss francs;[159]

3.16.1 the bank or investment firm may determine the level of detail of the breakdown itself;[160]

4. information on off-balance-sheet transactions:[161]

4.1 continent liabilities, broken down by amount into guarantees to secure credits and similar instruments, performance guarantees and similar instruments, irrevocable commitments, and other contingent liabilities; in addition, the nature and amount of any contingent liability that is significant in relation to the overall activities of the bank or investment firm must be stated;[162]

4.2 commitment credits, broken down by amount into commitments arising from deferred payments, commitments arising from acceptances, and other commitment credits; in addition, the nature and amount of any commitment that could give rise to a credit risk must be stated if it is significant in relation to the bank or investment firm as a whole;[163]

155 Article 24e(1)(3.14) amended by LGBl. 2007 No. 278.
156 Article 24e(1)(3.15) amended by LGBl. 2007 No. 278.
157 Article 24e(1)(3.15.1) amended by LGBl. 2007 No. 278.
158 Article 24e(1)(3.15.2) inserted by LGBl. 1999 No. 86.
159 Article 24e(1)(3.16) amended by LGBl. 2007 No. 278.
160 Article 24e(1)(3.16.1) amended by LGBl. 2007 No. 278.
161 Article 24e(1)(4) inserted by LGBl. 1999 No. 86.
162 Article 24e(1)(4.1) amended by LGBl. 2007 No. 278.
163 Article 24e(1)(4.2) amended by LGBl. 2007 No. 278.

4.3 derivative financial instruments outstanding at the end of the financial year, with details of positive and negative replacement values and contract volumes, broken down by interest rate instruments, foreign currencies, precious metals, equity securities/indices, and other;[164]

4.4 fiduciary transactions, broken down into fiduciary investments at third-party banks, fiduciary investments at affiliated banks and investment firms, fiduciary loans and other financial transactions in a fiduciary capacity;[165]

5. information on the income statement:[166]

5.1 disclosure of any significant refinancing income in the item "interest income" (item 1) if the corresponding expenses are offset with income from trading (point 49(3) of Annex 3);[167]

5.2 appropriate breakdown of the result from trading activities (item 6) according to line of business;[168]

5.3 breakdown of personnel expenses (item 8a) in wages and salaries, social security contributions and expenditures for pensions and other employee benefits (of which: for pensions) and other personnel expenses, if these disclosures are not made in the income statement in application of Article 24c(4);[169]

5.4 breakdown of general and administrative expenses (item 8b) in office space expense, in expenses for IT, machinery, furniture, vehicles and other equipment, and in other operating expenses;[170]

5.5 explanations of material losses, extraordinary income and expenses, and the creation and release of provisions for general risks arising from the operation of the bank or investment firm;[171]

5.6 breakdown of income and expenses from ordinary banking or investment firm business in accordance with Article 24c(1)(1) to (8) and (10) separated into domestic and foreign operations according to place of business, provided the bank or investment firm operates abroad and has a balance sheet total of at least one billion francs or more than 50 employees;[172]

164 Article 24e(1)(4.3) inserted by LGBl. 1999 No. 86.
165 Article 24e(1)(4.4) amended by LGBl. 2007 No. 278.
166 Article 24e(1)(5) inserted by LGBl. 1999 No. 86.
167 Article 24e(1)(5.1) inserted by LGBl. 1999 No. 86.
168 Article 24e(1)(5.2) inserted by LGBl. 1999 No. 86.
169 Article 24e(1)(5.3) inserted by LGBl. 1999 No. 86.
170 Article 24e(1)(5.4) inserted by LGBl. 1999 No. 86.
171 Article 24e(1)(5.5) amended by LGBl. 2007 No. 278.
172 Article 24e(1)(5.6) amended by LGBl. 2007 No. 278.

6. disclosure of return on assets, calculated as the ratio of profit/loss for the year in accordance with Article 24c(1)(22) and balance sheet total.[173]

2) The following additional information shall also be provided in the notes:

1. the total amount of the following items in the income statement shall be broken down by geographical markets to the extent that these markets differ materially from the point of view of the organisation of the bank or investment firm:
   a) interest income (item 1);
   b) current income from securities (item 3);
   c) income from commission business and services (item 4);
   d) result from financial transactions (item 6);
   e) other ordinary income (item 7).

   The breakdown may be omitted to the extent that it is likely to cause significant disadvantage to the bank or investment firm or to another company of which the bank or investment firm owns at least a fifth of the shares;[174]
2. the following shall be stated for the item "subordinated liabilities" (liability item 7):
   a) the amount of expenses incurred for subordinated liabilities;
   b) for each borrowing exceeding 10% of the total amount of subordinated liabilities:
      1. the amount, the currency in which it is denominated, its interest rate and maturity, and whether an early repayment obligation may arise,
      2. the conditions of its subordination and its possible conversion into capital or into another form of debt;
   c) the material conditions for other borrowings;[175]
3. a breakdown of the securities negotiable on the stock exchange included in the items "bonds and other fixed-income securities" (asset item 5), "equities and other non-fixed-income securities" (asset item 6), "participating interests" (asset item 7) and "shares in affiliated

173 Article 24e(1)(6) inserted by LGBl. 2015 No. 17.
174 Article 24e(2)(1) amended by LGBl. 2007 No. 278.
175 Article 24e(2)(2) inserted by LGBl. 1999 No. 86.

undertakings" (asset item 8) according to listed securities and unlisted securities;[176]

4. a breakdown of the securities negotiable on the stock exchange included in the items "bonds and other fixed-income securities" (asset item 5) and "equities and other non-fixed-income securities" (asset item 6) according to securities treated as current assets and securities treated as fixed assets; the criterion used to distinguish between securities treated as fixed assets and those treated as current assets must also be stated;[177]
5. the amount attributable to leasing transactions for each balance sheet item affected by them, and further the depreciation on objects in finance leasing included in the item "amortisation of intangible assets and depreciation of tangible assets" (item 9 of the income statement), the lease expenses for objects in operating leases included in the item "general and administrative expenses" (item 8b of the income statement), and the income from leasing transactions included in the item "other result from ordinary activities" (item 7b of the income statement);[178]
6. a breakdown of the following items by the most significant individual amounts included in them, unless these are immaterial to the assessment of the annual financial statement:
   a) "other assets" (asset item 13);
   b) "other liabilities" (liability item 4);
   c) "other ordinary expenses" (item 10 of the income statement);
   d) "extraordinary expenses" (item 17 of the income statement);
   e) "other ordinary income" (item 7 of the income statement);
   f) "extraordinary income" (item 16 of the income statement).

   The amounts and their nature shall be explained;[179]
7. administration and intermediary services provided to third parties, provided that their scope is material in relation to the overall activity of the bank or investment firm.[180]

176 Article 24e(2)(3) inserted by LGBl. 1999 No. 86.
177 Article 24e(2)(4) inserted by LGBl. 1999 No. 86.
178 Article 24e(2)(5) inserted by LGBl. 1999 No. 86.
179 Article 24e(2)(6) inserted by LGBl. 1999 No. 86.
180 Article 24e(2)(7) amended by LGBl. 2007 No. 278.

8. broken down by EEA Member State and third country where the bank or investment firm has an establishment, and on a consolidated basis for the financial year:[181]
   a) name(s), nature of activities and geographical location;
   b) total net turnover;
   c) number of employees on a full-time equivalent basis;
   d) profit or loss before tax;
   e) tax on profit or loss;
   f) public subsidies received.

3) In addition to the information required under paragraphs 1 and 2, all information required to be included in the notes or optionally in the information to be stated in the notes under the accounting provisions of the Law on Persons and Companies and the provisions of this Ordinance, in particular of Annex 3, shall be included in the notes. The information required under paragraphs 2 and the first sentence of paragraph 3 shall be integrated as far as possible into the classification of the notes as set out in paragraph 1.[182]

4) Items without content can be omitted, and non-essential items can be summarised appropriately.[183]

Article 24f[184]

Preparation of the consolidated financial statement

1) The consolidated financial statement shall be prepared in accordance with Articles 24a to 24e and points 1 to 91 of Annex 3, unless its particular characteristics require otherwise and unless otherwise provided for in the accounting provisions and in the following.

2) The classification of the balance sheet, income statement, cash flow statement, and notes to the consolidated financial statements shall in principle be governed *mutatis mutandis* by the corresponding provisions for the annual financial statement pursuant to points 13 to 91 of Annex 3. Those provisions shall be applied in accordance with the special features and requirements of the consolidated financial statement.

181 Article 24e(2)(8) inserted by LGBl. 2015 No. 17.
182 Article 24e(3) amended by LGBl. 2007 No. 278.
183 Article 24e(4) inserted by LGBl. 1999 No. 86.
184 Article 24f inserted by LGBl. 1999 No. 86.

Article 24g

Classification of the consolidated balance sheet[185]

1) The classification of the consolidated balance sheet shall be at least as follows:

Assets

1. Liquid assets
2. Debt instruments of public bodies and other bills eligible for refinancing with central banks:
   a) debt instruments of public bodies and similar securities
   b) bills of exchange
3. Amounts due from banks:
   a) payable on demand
   b) other receivables
4. Amounts due from customers,
   of which:
   mortgage loans
5. Bonds and other fixed-income securities:
   a) money market papers
      aa) from public-sector issuers
      bb) from other issuers,
          of which:
          own money market papers
   b) bonds
      aa) from public-sector issuers
      bb) from other issuers,
          of which:
          own bonds
6. Equities and other non-fixed-income securities
7. Non-consolidated participating interests
8. Intangible assets
9. Tangible assets

185 Article 24g heading inserted by LGBl. 1999 No. 86.

10. Outstanding contributions to subscribed capital,
    of which:
    called in
11. Own shares
12. Other assets
13. Accrued income and prepaid expenses

Total assets

Liabilities

1. Amounts due to banks:
    a) payable on demand
    b) with agreed term or period of notice
2. Amounts due to customers:
    a) savings deposits
    b) other liabilities
        aa) payable on demand
        bb) with agreed term or period of notice
3. Securitised liabilities:
    a) bonds issued,
       of which:
       medium-term notes
    b) other securitised liabilities
4. Other liabilities
5. Accrued expenses and deferred income
6. Provisions:
    a) provisions for pensions and similar liabilities
    b) tax provisions
    c) other provisions
7. Subordinated liabilities
8. Provisions for general business risks arising from the operation of the bank or investment firms
9. Subscribed capital

10. Capital reserves
11. Profit reserves
12. Minority interests in equity
13. Revaluation reserves
14. Profit/loss for the year of the consolidated financial statement,
    of which:
    minority interests in profit/loss for the year

Total liabilities

Off-balance-sheet transactions

1. Contingent liabilities,
   of which:
   a) acceptances and endorsement liabilities from bills of exchange passed on
   b) liabilities from guarantees and indemnity agreements as well as liability from the furnishing of collateral
2. Credit risks,
   of which:
   a) irrevocable commitments
   b) liabilities for calls on shares and other equities
   c) commitment credits
   d) liabilities from non-genuine repurchase agreements
3. Derivative financial instruments
4. Fiduciary transactions[186]

2) Article 24b(2) shall be applied to the consolidated financial statement with the proviso that claims from and liabilities to non-consolidated participating interests shall be stated.[187]

3) The reserves for other shares of the parent undertaking shall be included in the item "capital reserves" (liability item 10).[188]

186 Article 24g(1) inserted by LGBl. 1999 No. 86 and amended by LGBl. 2007 No. 278.
187 Article 24g(2) inserted by LGBl. 1999 No. 86.
188 Article 24g(3) amended by LGBl. 2015 No. 17.

4) Any revaluation reserves shall be included in the item "revaluation reserves" (liability item 13).[189]

5) For the combined presentation of the asset and liability items marked with lower case letters, Article 24b(7) shall apply.[190]

Article 24h

Classification of the consolidated income statement[191]

1) The classification of the income statement shall be at least as follows:[192]

1. Interest income,
   of which:
   a) from fixed-income securities
   b) from trading[193]
2. Interest expense[194]
3. Current income from securities:
   a) equities and other non-fixed-income securities,
      of which:
      from trading
   b) participating interests,
      of which:
      aa) from participating interests included in the consolidated financial statement using the equity method
      bb) from other non-consolidated participations[195]
4. Income from commission business and services:
   a) commission income from lending activities
   b) commission income from securities trading and investment activities

189 Article 24g(4) inserted by LGBl. 1999 No. 86.
190 Article 24g(5) inserted by LGBl. 1999 No. 86.
191 Article 24h heading inserted by LGBl. 1999 No. 86.
192 Article 24h(1) introductory phrase inserted by LGBl. 1999 No. 86.
193 Article 24h(1)(1) inserted by LGBl. 1999 No. 86.
194 Article 24h(1)(2) inserted by LGBl. 1999 No. 86.
195 Article 24h(1)(3) inserted by LGBl. 1999 No. 86.

c) commission income from other services[196]

5. Commission expense[197]
6. Result from financial transactions,
   of which:
   from trading[198]
7. Other ordinary income:
   a) result from real estate
   b) other result from ordinary activities[199]
8. Operating expenses:
   a) personnel expenses,
      of which:
      aa) wages and salaries
      bb) social security contributions and expenditures for pensions and other employee benefits,
          of which:
          for pensions
   b) general and administrative expenses[200]
9. Amortisation of intangible assets and depreciation of tangible assets[201]
10. Other ordinary expenses[202]
11. Value adjustments on receivables and funds allocated to provisions for contingent liabilities and credit risks[203]
12. Income from the release of value adjustments on receivables and from provisions for contingent liabilities and credit risks[204]
13. Write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets[205]

196 Article 24h(1)(4) inserted by LGBl. 1999 No. 86.
197 Article 24h(1)(5) inserted by LGBl. 1999 No. 86.
198 Article 24h(1)(6) inserted by LGBl. 1999 No. 86.
199 Article 24h(1)(7) inserted by LGBl. 1999 No. 86.
200 Article 24h(1)(8) inserted by LGBl. 1999 No. 86.
201 Article 24h(1)(9) inserted by LGBl. 1999 No. 86.
202 Article 24h(1)(10) inserted by LGBl. 1999 No. 86.
203 Article 24h(1)(11) inserted by LGBl. 1999 No. 86.
204 Article 24h(1)(12) inserted by LGBl. 1999 No. 86.
205 Article 24h(1)(13) inserted by LGBl. 1999 No. 86.

14. Income from write-ups on participating interests, shares in affiliated undertakings, and securities treated as fixed assets[206]
15. Result on ordinary business activity[207]
16. Extraordinary income[208]
17. Extraordinary expenses[209]
18. Extraordinary result[210]
19. Corporate earnings tax[211]
20. Other taxes not included in the above items[212]
21. Funds allocated to provisions for general banking or investment firm risks/income from the release of provisions for general banking or investment firm risks[213]
22. Profit/loss for the year of the consolidated financial statement,
    of which:
    minority interests in profit/loss for the year[214]

2) For the combined presentation of the items of the income statement marked with lower case letters in paragraph 1, Article 24b(7) shall apply.[215]

Article 24i[216]

Classification of the consolidated cash flow statement

1) In the consolidated financial statement, the classification of the cash flow statement shall be governed by Article 24d(2) and (3).

2) The items shall be expanded in accordance with the special features of the consolidated financial statement.

206 Article 24h(1)(14) inserted by LGBl. 1999 No. 86.
207 Article 24h(1)(15) inserted by LGBl. 1999 No. 86.
208 Article 24h(1)(16) inserted by LGBl. 1999 No. 86.
209 Article 24h(1)(17) inserted by LGBl. 1999 No. 86.
210 Article 24h(1)(18) inserted by LGBl. 1999 No. 86.
211 Article 24h(1)(19) inserted by LGBl. 1999 No. 86.
212 Article 24h(1)(20) inserted by LGBl. 1999 No. 86.
213 Article 24h(1)(21) amended by LGBl. 2007 No. 278.
214 Article 24h(1)(22) inserted by LGBl. 1999 No. 86.
215 Article 24h(2) inserted by LGBl. 1999 No. 86.
216 Article 24i inserted by LGBl. 1999 No. 86.

Article 24k[217]

Classification of the notes to the consolidated financial statement

1) Unless otherwise provided in the following paragraphs, Article 24e shall be followed in preparing the notes to the consolidated financial statement.

2) In addition to the information required under Article 24e(1)(2), the consolidation principles applied in the preparation of the consolidated financial statement must be stated.

3) The information referred to in point 3.3 of Article 24e(1) must be broken down into fully consolidated participations, participations accounted for using the equity method, and other non-consolidated participations.

4) Participations accounted for using the equity method must be disclosed separately in the presentation of fixed assets in accordance with point 3.4 of Article 24e(1). Likewise, any goodwill resulting from consolidation must be segregated; significant changes in goodwill must be explained.

5) The statement of equity and its change under point 3.11 of Article 24e(1) shall be adjusted in the consolidated balance sheet in accordance with Article 24g(1).

6) The information referred to in point 3.10 of Article 24e(1) shall be omitted.

Article 24l[218]

Simplifications

1) If a bank or investment firm is required to prepare a consolidated financial statement, it shall be exempt from presenting the cash flow statement in the annual financial statement in accordance with Article 24d.

2) The obligation to prepare a consolidated interim financial statement shall further exempt the bank or investment firm from preparing its own interim financial statement in accordance with Article 24.

217 Article 24k inserted by LGBl. 1999 No. 86.

218 Article 24l amended by LGBl. 2007 No. 278.

Article 24m

Publication of business reports and interim financial statements[219]

1) Banks and investment firms shall publish the business report (annual financial statement and annual report) and the consolidated business report (consolidated financial statement and consolidated annual report) on their website and make them available there in an easily accessible form. If banks or investment firms do not operate a website, they must publish the business report and the consolidated business report in printed form. In addition, the interim financial statement and the consolidated interim financial statement must also be made available to anyone who requests it.[220]

2) The business report and the consolidated business report shall be published in accordance with paragraph 1 and submitted to the FMA within four months of the end of the financial year, the interim financial statement and the consolidated interim financial statement within two months of the reporting date of the interim financial statement or the consolidated interim financial statement, respectively.[221]

3) The duly approved annual financial statement and the audit report under company law, as well as the proposal for the appropriation of the result and the decision on its appropriation, stating the profit or loss for the year, unless that information is included in the annual financial statement, must be submitted to the Office of Justice by the end of the fifth month of the financial year following the balance sheet date at the latest. After the documents have been submitted, the Office of Justice shall announce in the official publication media, at the expense of the submitting banks and investment firms, under which registration number the documents have been submitted to the Office of Justice.[222]

4) Paragraph 3 shall apply to the disclosure of the duly approved consolidated financial statement and the associated audit report.[223]

5) The annual report and the consolidated annual report do not have to be submitted to the Office of Justice; however, they must be available for inspection by anyone at the registered office of the company. A full or partial copy of the annual report and the consolidated annual report must

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219 Article 24m heading amended by LGBl. 2007 No. 278.
220 Article 24m(1) amended by LGBl. 2022 No. 130.
221 Article 24m(2) amended by LGBl. 2004 No. 300.
222 Article 24m(3) amended by LGBl. 2013 No. 12.
223 Article 24m(4) inserted by LGBl. 1999 No. 86.

be available on request. The fee charged for this purpose shall not exceed the administrative expenses.[224]

5a) If the securities of a bank or investment firm or of a company to be included in the consolidated financial statement of a bank or investment firm are admitted to trading on a regulated market in an EEA Member State as defined in Article 4(1)(14) of Directive 2004/39/EC, the annual report and/or the consolidated annual report shall be disclosed not in accordance with paragraph 5, but in accordance with paragraphs 1 to 4.[225]

6) Banks and investment firms shall disclose the duly approved annual financial statement, the duly approved consolidated financial statement, the annual report, the consolidated annual report, the report on the audit of the annual financial statement under company law, and the report on the audit of the consolidated financial statement in each Member State of the European Economic Area in which they operate a branch. Disclosure (submission to a register, publication in an official journal, applicable language) shall be governed by the law of the respective Member State of the European Economic Area.[226]

7) Branches within the scope of application of the Banking Act of undertakings having their registered office in another State shall disclose the documents of their principal establishment as referred to in the first sentence of paragraph 6, which have been prepared and audited in accordance with the law of that State, in accordance with paragraphs 1 to 5. Branches within the scope of application of the Banking Act of undertakings having their registered office in a Member State of the European Economic Area shall not be required to disclose separate accounting documents as referred to in the first sentence of paragraph 6 relating to their own business activities. Branches within the scope of application of the Banking Act of undertakings having their registered office in a third country shall not be required to disclose separate accounting documents as referred to in the first sentence of paragraph 6 relating to their own business activities, provided that the documents to be disclosed pursuant to the first sentence have been prepared and audited in accordance with law adapted to Directive 86/635/EEC or are equivalent to documents prepared in accordance with such law. If the documents have not been drawn up in German, a certified translation in German shall be enclosed.[227]

224 Article 24m(5) amended by LGBl. 2013 No. 12.
225 Article 24m(5a) amended by LGBl. 2007 No. 278.
226 Article 24m(6) amended by LGBl. 2007 No. 278.
227 Article 24m(7) inserted by LGBl. 1999 No. 86.

Article 24n[228]

Additional financial information

1) Banks and investment firms shall submit the following financial information to the FMA on an individual basis as follows:[229]

a) quarterly, no later than two months after the end of the quarter:
   1. balance sheet consisting of assets and liabilities, structured according to the applicable accounting provisions;
   2. income statement, structured according to the applicable accounting provisions;
   3. breakdown of assets under management in accordance with point 88a of Annex 3;
   4. disclosure of off-balance-sheet transactions in accordance with Article 24b(1);
   5. disclosure of lending transactions and repurchase and reverse repurchase agreements (repo transactions) with securities in accordance with points 45 et seq. of Annex 3;
   6. disclosure of fiduciary transactions in accordance with Article 24b(1);
   7. disclosure of amounts due from/to closely associated persons in accordance with point 81(5) of Annex 3;
   8. disclosures of loans to customers in accordance with point 17 of Annex 3;

b) semi-annually, no later than two months after the end of the half-year:
   1. detailed disclosure of provisions and reserves for general banking risks in accordance with point 77 of Annex 3;
   2. open derivative financial instruments in accordance with point 87 of Annex 3:
      aa) total open derivative financial instruments before netting agreements;
      bb) total open derivative financial instruments after consideration of netting agreements.

228 Article 24n amended by LGBl. 2017 No. 354.
229 Article 24n(1) introductory phrase amended by LGBl. 2019 No. 292.

2) On request, banks and investment firms shall additionally submit the following to the FMA on an annual basis, no later than two months after the end of the financial year:[230]

a) disclosure of their five main sources of revenue;

b) disclosure pursuant to Article 4h(2) and Article 4i(2) of the Banking Act.[231]

3) Banks must submit the following reports to the FMA on a consolidated basis:[232]

a) quarterly or semi-annual reporting of financial information in accordance with paragraph 1, unless they are already subject to the obligation to report financial information on a consolidated basis pursuant to Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, 1);

b) quarterly, no later than two months after the end of the quarter: reporting of the "breakdown of assets under management" in accordance with point 88a of Annex 3; and

c) annually, no later than three months after the end of the calendar year: reporting of the amount of assets under management as well as the overall volume of cash receipts and payments and non-cash inward and outward payments per year, taking into account the domicile or registered office of the contracting party.

4) The deadlines set out in paragraphs 1 to 3 may, in justified cases and on an exceptional basis, be extended by the FMA by a maximum of 20 days.

5) The FMA may request further documents or information as needed.

6) The financial information referred to in paragraph 1 shall be subsequently audited by the external audit office appointed under the Banking Act as part of the audit of the business report and the consolidated business report. If it turns out that the disclosures provided in the business report or consolidated business report deviate materially from those provided pursuant to paragraph 1, the deviations must be pointed out and justified by the external audit office in the audit report.

230 Article 24n(2) introductory phrase amended by LGBl. 2019 No. 292.

231 Article 24n(2)(b) amended by LGBl. 2022 No. 130.

232 Article 24n(3) amended by LGBl. 2019 No. 292.

G. Securities financing transactions, pledge agreements, and title transfer structures[233]

Article 25[234]

Securities financing transactions

1) Banks and investment firms shall not enter into arrangements for securities financing transactions in respect of financial instruments held by them on behalf of a client, or otherwise use such financial instruments for their own account or the account of any other person or client of the firm, unless both of the following conditions are met:[235]

a) the client has given prior express consent to the use of the financial instruments on specified terms, as clearly evidenced in writing and affirmatively executed by signature or equivalent; and

b) the use of that client's financial instruments is restricted to the specified terms to which the client consents.

2) Banks and investment firms shall not enter into arrangements for securities financing transactions in respect of financial instruments which are held on behalf of a client in an omnibus account maintained by a third party, or otherwise use financial instruments held in such an account for their own account or for the account of any other person unless, in addition to the conditions set out in paragraph 1, at least one of the following conditions is met:[236]

a) each client whose financial instruments are held together in an omnibus account must have given prior express consent in accordance with paragraph 1(a);

b) the bank or investment firm must have in place systems and controls which ensure that only financial instruments belonging to clients who have given prior express consent in accordance with paragraph 1(a) are so used.

3) The records of the bank or investment firm shall include details of the client on whose instructions the use of the financial instruments has been effected, as well as the number of financial instruments used

233 Title preceding Article 25 amended by LGBl. 2017 No. 431.
234 Article 25 amended by LGBl. 2007 No. 278.
235 Article 25(1) amended by LGBl. 2022 No. 273.
236 Article 25(2) amended by LGBl. 2022 No. 273.

belonging to each client who has given his consent, so as to enable the correct allocation of any loss.[237]

4) Banks and investment firms must take appropriate measures to prevent the unauthorised use of client financial instruments for their own account or the account of any other person such as:[238]

a) the conclusion of agreements with clients on measures to be taken by the bank or investment firms in case the client does not have enough provision on its account on the settlement date, such as borrowing of the corresponding securities on behalf of the client or unwinding the position;
b) the close monitoring by the bank or investment firm of its projected ability to deliver on the settlement date and the putting in place of remedial measures if this cannot be done; and
c) the close monitoring and prompt requesting of undelivered securities outstanding on the settlement day and beyond.

5) Banks and investment firms must adopt specific arrangements for all clients to ensure that the borrower of client financial instruments provides the appropriate collateral and that the bank or investment firm monitors the continued appropriateness of such collateral and takes the necessary steps to maintain the balance with the value of client instruments.[239]

6) Articles 25a, 26 and 26a shall apply to special forms of securities financing transactions.[240]

Article 25a[241]

Rehypothecation

1) The bank or investment firm authorised to rehypothecate a pledge shall make sure that the rehypothecated securities shall not become subject to the rights of third parties, in particular to any rights of retention, for a higher amount than the one it may claim from its pledgor.

2) The bank shall be obliged to release title to the pledge to the pledgor immediately after the debt secured by the pledge has been properly paid.

237 Article 25(3) amended by LGBl. 2022 No. 273.
238 Article 25(4) amended by LGBl. 2017 No. 431.
239 Article 25(5) inserted by LGBl. 2017 No. 431.
240 Article 25(6) inserted by LGBl. 2017 No. 431.
241 Article 25a inserted by LGBl. 2007 No. 278.

3) If a bank induces its debtor to also sign a bill of exchange for its claims, it shall make sure on the occasion of the pledging or rediscounting of such bill of exchange that no higher claims arise against its debtor than those the bank itself has against the debtor.

Article 26

Carryover business

Any authorisation to use a pledge for carryover businesses of the bank shall indicate the time at which the bank shall retransfer ownership to the same titles carried over (not necessarily with the same numbers) to the pledgor for the pledged securities carried over.

Article 26a[242]

Individual rehypothecation

The entire rehypothecation of different pledge deposits shall be permissible only subject to the provisions set out in Article 25.

Article 27[243]

Inappropriate use of title transfer collateral arrangements

1) Banks and investment firms must properly consider, and be able to demonstrate that they have done so, the use of title transfer collateral arrangements in the context of the relationship between the client's obligation to the bank or investment firm and the client assets subjected to title transfer collateral arrangements by the bank or investment firm.

2) When considering, and documenting, the appropriateness of the use of title transfer collateral arrangements, banks and investment firms shall take into account all of the following factors:

a) whether there is only a very weak connection between the client's obligation to the bank or investment firm and the use of title transfer collateral arrangements, including whether the likelihood of a clients' liability to the bank or investment firm is low or negligible;

242 Article 26a inserted by LGBl. 2017 No. 431.
243 Article 27 amended by LGBl. 2017 No. 431.

b) whether the amount of client funds or financial instruments subject to title transfer collateral arrangements far exceeds the client's obligation, or is even unlimited if the client has any obligation at all to the bank or investment firm; and
c) whether all clients' financial instruments or funds are made subject to title transfer collateral arrangements, without consideration of what obligation each client has to the bank or investment firm.

3) Where using title transfer collateral arrangements, banks and investment firms shall highlight to professional clients and eligible counterparties the risks involved and the effect of any title transfer collateral arrangement on the client's financial instruments and funds.

H. Qualifying holdings[244]

Article 27a[245]

Repealed

I. Provision of investment services[246]

Article 27b[247]

Safeguarding of client funds

1) Banks and investment firms providing investment services shall comply with the following requirements on a permanent basis:
a) proper accounting with regard to the allocation of funds and financial instruments to the individual client relationships and their differentiation from the company's own holdings;
b) careful selection and regular review of third parties engaged in the safekeeping of clients' financial instruments, in particular with regard to their supervision, management, and solvency;

244 Title preceding Article 27a inserted by LGBl. 1999 No. 86.
245 Article 27a repealed by LGBl. 2022 No. 130.
246 Title preceding Article 27b amended by LGBl. 2007 No. 278.
247 Article 27b amended by LGBl. 2007 No. 278.

c) segregation of own holdings and client funds when funds and financial instruments are held in safekeeping by third parties, provided this is the only way to achieve legally effective allocation to individual client funds in the event of insolvency. This provision is subject to paragraphs 1a and 1b.[248]

1a) Where the safekeeping of financial instruments for the account of another person is subject to special requirements and supervision in the country where the deposit of financial instruments of clients with a third party is intended to take place, banks and investment firms shall ensure that the deposit of financial instruments takes place only if the third party in that country is covered by such requirements and supervision.[249]

1b) Financial instruments may be deposited for a client with a third party in a third country in which the safekeeping of financial instruments for the account of another person is not regulated only if such deposit:[250]

a) must take place in that third country for legal or sufficient factual reasons; or

b) is carried out in that third country on the express written instructions of an eligible counterparty or professional client pursuant to Annex 1 of the Banking Act.

1c) The requirements of paragraphs 1a and 1b shall also apply if the third party has assigned tasks relating to the holding and safekeeping of financial instruments to another third party.[251]

2) On receiving any client funds, banks and investment firms must promptly place those funds into one or more accounts opened with a central bank, a bank from an EEA Member State or third country, or a qualifying money market fund as referred to in Annex 2 Section A. This does not apply to a bank in relation to deposits held by that bank.[252]

3) If client funds are not deposited with a central bank, the bank or investment firm shall observe the provisions set out in paragraph 1 and shall consider the need for diversification as part of its due diligence. Banks and investment firms must also ensure that the funds of clients are placed in a qualifying money market fund only with their explicit consent. Consent shall be effective only if the bank or investment firm has informed clients that funds placed with a qualifying money market fund will not be

248 Article 27b(1)(c) amended by LGBl. 2013 No. 165.
249 Article 27b(1a) inserted by LGBl. 2013 No. 165.
250 Article 27b(1b) inserted by LGBl. 2013 No. 165.
251 Article 27b(1c) inserted by LGBl. 2017 No. 431.
252 Article 27b(2) amended by LGBl. 2017 No. 431.

held in accordance with the requirements for safeguarding client funds set out in the Banking Act and this Ordinance.[253]

4) Where banks or investment firms deposit client funds as referred to in paragraph 2 with a bank or money market fund of a group to which the bank or investment firm also belongs, they shall limit the funds that they deposit with any such group entity or combination of any such group entities so that funds do not exceed 20% of all such funds. A bank or investment firm may, however, not comply with this limit where it is able to demonstrate that, in view of the nature, scale and complexity of its business, and also the safety offered by the group entities, and including in any case the small balance of client funds the bank or investment firm holds the requirement is not proportionate. If a bank or investment firm lawfully exceeds the limit, it must periodically review the assessment made and must notify its initial and reviewed assessments to the FMA.[254]

5) Security interests, liens or rights of set-off over client financial instruments or funds enabling a third party to dispose of client's financial instruments or funds in order to recover debts that do not relate to the client or provision of services to the client shall not be permitted. They shall be permitted on an exceptional basis only where this is required by applicable law in a third country jurisdiction in which the client funds or financial instruments are held. In this case, where banks and investment firms are obliged to enter into agreements that create such security interests, liens or rights of set-off, they must disclose that information to clients indicating to them the risks associated with those arrangements. Where security interests, liens or rights of set-off are granted by the bank or investment firm over client financial instruments or funds, or where the bank or investment firm has been informed that they are granted, they shall be recorded in client contracts and the own accounts of the bank or investment firm to make the ownership status of client assets clear, such as in the event of an insolvency.[255]

6) Banks and investment firms are required to make information pertaining to clients' financial instruments and funds readily available to the FMA, appointed liquidators, and those responsible for the resolution of failed institutions. This information shall include the following:[256]

a) related internal accounts and records that readily identify the balances of funds and financial instruments held for each client;

253 Article 27b(3) inserted by LGBl. 2017 No. 431.
254 Article 27b(4) inserted by LGBl. 2017 No. 431.
255 Article 27b(5) inserted by LGBl. 2017 No. 431.
256 Article 27b(6) inserted by LGBl. 2017 No. 431.

b) where client funds are held by the bank or investment firm, details on the accounts in which client funds are held and on the relevant agreements with those banks or investment firms;
c) where financial instruments held by the bank or investment firm are deposited, details on the accounts opened with third parties and on the relevant agreements with those third parties;
d) details of third parties carrying out any related (outsourced) tasks and details of any outsourced tasks;
e) key individuals of the bank or investment firm involved in related processes, including those responsible for oversight of the requirements of the bank or investment firm in relation to the safeguarding of client assets; and
f) agreements relevant to establish client ownership over assets.

7) Banks and investment firms must appoint a single officer of sufficient skill and authority with specific responsibility for matters relating to compliance with their obligations regarding the safeguarding of client financial instruments and funds. They shall decide whether the appointed officer is to be dedicated solely to this task or whether the officer can discharge responsibilities effectively whilst having additional responsibilities.[257]

Article 27c[258]

Conflicts of interest and inducements

1) Banks and investment firms shall identify potential adverse conflicts of interest for clients.

2) For this purpose, they shall take appropriate organisational measures to either avoid conflicts of interest altogether or to exclude the adverse impact on clients by such conflicts of interest.[259]

3) Where the procedures and measures to prevent conflicts of interest from adversely affecting the interest of clients are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the bank or investment firm shall clearly disclose to the client the general nature and/or sources of conflicts of interest and the steps

257 Article 27b(7) inserted by LGBl. 2017 No. 431.
258 Article 27c amended by LGBl. 2007 No. 278.
259 Article 27c(2) amended by LGBl. 2022 No. 273.

taken to mitigate those risks before executing a transaction that is subject to conflicts of interest.[260]

4) The disclosure referred to in paragraph 3 shall be made in a durable medium and, depending on the classification of the client, shall include sufficient detail to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.[261]

5) Regularly occurring types of conflicts of interest may be disclosed by the bank or investment firm to the clients in a standardised manner before relevant transactions are carried out.[262]

6) Banks and investment firms shall comply with the provisions regarding inducements set out in Annex 7.1.[263]

Article 27d[264]

Code of conduct

Banks and investment firms providing investment services to clients shall comply with the code of conduct on a permanent basis, in particular with the provisions of Annex 7.1.

Article 27dbis[265]

Product intervention measures pursuant to Article 42 of Regulation (EU) No 600/2014

1) The marketing, distribution or sale of binary options and financial contracts for differences to retail clients shall be prohibited or restricted in accordance with the conditions set out in Annex 7.5.

2) For the purposes of paragraph 1, the following definitions apply:

a) "binary option" means a derivative that meets the following conditions, irrespective of whether it is traded on a trading venue as defined in Article 3a(1)(5) of the Banking Act:

260 Article 27c(3) amended by LGBl. 2022 No. 273.
261 Article 27c(4) amended by LGBl. 2022 No. 273.
262 Article 27c(5) inserted by LGBl. 2022 No. 273.
263 Article 27c(6) inserted by LGBl. 2022 No. 273.
264 Article 27d amended by LGBl. 2022 No. 273.
265 Article 27dbis inserted by LGBl. 2019 No. 204.

1. It must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.
2. It provides for payment only in the case of its close-out or expiry, in which case payment is limited to:
   aa) a predetermined fixed amount or zero if the underlying of the derivative meets one or more predetermined conditions; and
   bb) a predetermined fixed amount or zero if the underlying of the derivative does not meet one or more predetermined conditions;

b) "financial contract for difference, CFD" means a derivative structured as a financial contract for difference, the purpose of which is to give the holder a long or short exposure to fluctuations in the price, level or value of an underlying and that meets the following conditions, irrespective of whether it is traded on a trading venue as defined in Article 3a(1)(5) of the Banking Act:
   1. The financial contract for difference does not simultaneously meet the requirements of an option, future, swap or forward rate agreement.
   2. The financial contract for difference must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.

3) Violations of the prohibitions and restrictions set out in paragraph 1 shall be punished in accordance with Article 63a(2)(100) of the Banking Act.

4) The power of the FMA pursuant to Article 35(2)(p) of the Banking Act shall remain unaffected.

Article 27e[266]

Product verification obligation when manufacturing financial instruments

1) Banks and investment firms manufacturing financial instruments, which encompasses the creation, development, issuance and/or design of financial instruments, shall comply, in a way that is appropriate and proportionate, with the following requirements in particular, taking into

266 Article 27e amended by LGBl. 2017 No. 431.

account the nature of the financial instrument, the investment service and the target market for the product.

2) Banks and investment firms must establish, implement and maintain procedures and measures to ensure the manufacturing of financial instruments complies with the requirements on proper management of conflicts of interest, including remuneration. In particular, banks and investment firms manufacturing financial instruments shall ensure that the design of the financial instrument, including its features, does not adversely affect end clients or does not lead to problems with market integrity by enabling the bank or investment firm to mitigate and/or dispose of its own risks or exposure to the underlying assets of the product, where the bank or investment firm already holds the underlying assets on own account.

3) Banks and investment firms must analyse potential conflicts of interests each time they manufacture a financial instrument. In particular, banks and investment firms shall assess whether the financial instrument creates a situation where end clients may be adversely affected if they take:

a) an exposure opposite to the one previously held by the bank or investment firm itself; or
b) an exposure opposite to the one that the bank or investment firm wants to hold after the sale of the product.

4) Banks and investment firms shall consider whether the financial instrument may represent a threat to the orderly functioning or to the stability of financial markets before deciding to proceed with the launch of the product.

5) Banks and investment firms shall ensure that relevant staff involved in the manufacturing of financial instruments possess the necessary expertise to understand the characteristics and risks of the financial instruments they intend to manufacture.

6) Banks and investment firms shall ensure that the board of directors has effective control over the product verification process. They shall ensure that the compliance reports to the board of directors systematically include information about the financial instruments manufactured by the bank or investment firm, including information on the distribution strategy. The bank or investment firm shall make the reports available to the FMA on request.

7) Banks and investment firms shall ensure that the compliance function monitors the development and periodic review of product verification arrangements in order to detect any risk of failure by the bank or investment firm to comply with the obligations set out in this Article.

8) Banks and investment firms must, where they collaborate, including with entities which are not licensed under the Banking Act or third-country firms, to create, develop, issue and/or design a product, outline their mutual responsibilities in a written agreement.

9) Banks and investment firms must identify at a sufficiently granular level the potential target market for each financial instrument and specify the type(s) of client for whose needs, characteristics and objectives, including any sustainability-related objectives, the financial instrument is compatible. As part of this process, the bank or investment firm shall identify any group(s) of clients for whose needs, characteristics and objectives the financial instrument is not compatible, unless the financial instruments in question take account of sustainability factors as defined in Article 2(24) of Regulation (EU) 2019/2088[267]. Where banks or investment firms collaborate to manufacture a financial instrument, only one target market needs to be identified. Banks and investment firms manufacturing financial instruments that are distributed through other investment firms shall determine the needs and characteristics of clients for whom the product is compatible based on their theoretical knowledge of and past experience with the financial instrument or similar financial instruments, the financial markets and the needs, characteristics and objectives of potential end clients.[268]

10) Banks and investment firms must undertake a scenario analysis of their financial instruments which shall assess the risks of poor outcomes for end clients posed by the product and in which circumstances these outcomes may occur. They must assess the financial instrument under negative conditions covering what would happen if, for example:

a) the market environment deteriorated;
b) the manufacturer or a third party involved in manufacturing and or functioning of the financial instrument experiences financial difficulties or other counterparty risk materialises;
c) the financial instrument fails to become commercially viable; or
d) demand for the financial instrument is much higher than anticipated, putting a strain on the resources of the bank or investment firm and/or on the market of the underlying instrument.

267 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, 1)

268 Article 27e(9) amended by LGBl. 2022 No. 371.

11) Banks and investment firms must determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining the following elements:[269]

a) the financial instrument's risk/reward profile is consistent with the target market;

b) any sustainability factors of the financial instrument are compatible with the target market; and

c) financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable.

12) Banks and investment firms must consider the charging structure proposed for the financial instrument, including by examining the following:

a) financial instrument's costs and charges are compatible with the needs, objectives and characteristics of the target market;

b) charges do not undermine the financial instrument's return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument; and

c) the charging structure of the financial instrument is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand.

13) Banks and investment firms shall ensure that:[270]

a) the provision of information about a financial instrument to distributors includes information about the appropriate channels for distribution of the financial instrument, the product approval process and the target market assessment and is of an adequate standard to enable distributors to understand and recommend or sell the financial instrument properly;

b) the sustainability factors of the financial instrument are described in a transparent manner and distributors are provided with the information they need to duly consider any sustainability-related objectives of the client or potential client.

14) Banks and investment firms must review the financial instruments they manufacture on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market.

269 Article 27e(11) amended by LGBl. 2022 No. 371.

270 Article 27e(13) amended by LGBl. 2022 No. 371.

They shall consider if the financial instrument remains consistent with the needs, characteristics and objectives, including any sustainability-related objectives, of the target market and if it is being distributed to the target market, or is reaching clients for whose needs, characteristics and objectives the financial instrument is not compatible.[271]

15) Banks and investment firms must review financial instruments prior to any further issue or re-launch, if they are aware of any event that could materially affect the potential risk to investors and at regular intervals to assess whether the financial instruments function as intended. They shall determine how regularly to review their financial instruments based on relevant factors, including factors linked to the complexity or the innovative nature of the investment strategies pursued.

16) Banks and investment firms shall identify crucial events that would affect the potential risk or return expectations of the financial instrument, such as the crossing of a threshold that will affect the return profile of the financial instrument or the solvency of certain issuers whose securities or guarantees may impact the performance of the financial instrument. When such events occur, banks and investment firms must take appropriate action which may consist of:

a) the provision of any relevant information on the event and its consequences on the financial instrument to the clients or the distributors of the financial instrument if the bank or investment firm does not offer or sell the financial instrument directly to the clients;
b) changing the product approval process;
c) stopping further issuance of the financial instrument;
d) changing the financial instrument to avoid unfair contract terms;
e) considering whether the sales channels through which the financial instruments are sold are appropriate where the bank or investment firm becomes aware that the financial instrument is not being sold as envisaged;
f) contacting the distributor to discuss a modification of the distribution process;
g) terminating the relationship with the distributor; or
h) informing the FMA.

271 Article 27e(14) amended by LGBl. 2022 No. 371.

Article 27f[272]

Product verification obligation of distributors of financial instruments

1) Banks and investment firms, when deciding the range of financial instruments issued by themselves or other firms and services they intend to offer or recommend to clients, must comply, in a way that is appropriate and proportionate, with the relevant requirements laid down in the following paragraphs, taking into account the nature of the financial instrument, the investment service and the target market for the product.

2) Banks and investment firms must also comply with the requirements for product verification by the distributor as set out in the Banking Act and this Article when offering or recommending financial instruments manufactured by entities that are not subject to Directive 2014/65/EU. They must have in place effective arrangements to ensure that they obtain sufficient information about these financial instruments from these manufacturers.

3) Banks and investment firms must have in place adequate product verification arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics and objectives, including any sustainability-related objectives, of an identified target market and that the intended distribution strategy is consistent with the identified target market. They must appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures. As part of this process, any groups of clients shall be identified for whose needs, characteristics and objectives the product or service is not compatible, unless sustainability factors are taken into account for the financial instrument in question.[273]

4) Banks and investment firms shall ensure that they obtain information which they must be provided with under Article 27e(13) by banks and investment firms manufacturing financial products to gain the necessary understanding and knowledge of the products they intend to recommend or sell in order to ensure that these products will be distributed in accordance with the needs, characteristics and objectives of the identified target market.

5) In the case of manufacturers not subject to Directive 2014/65/EU, banks and investment firms must take all reasonable steps to ensure they obtain adequate and reliable information from in order to distribute

272 Article 27f inserted by LGBl. 2017 No. 431.

273 Article 27f(3) amended by LGBl. 2022 No. 371.

products in accordance with the characteristics, objectives and needs of the target market. Where relevant information is not publicly available, the distributing bank or investment firm shall take all reasonable steps to obtain such relevant information from the manufacturer or its agent. Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under the Disclosure Act, the Securities Prospectus Act, and the Alternative Investment Fund Managers Act. This obligation is relevant for products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is obtainable and the complexity of the product.

6) The distributing bank or investment firm must use the information obtained from manufacturers and information on their own clients to identify the target market and distribution strategy. This also applies if the target market has not been defined by the manufacturer. When a bank or investment firm acts both as a manufacturer and a distributor, only one target market assessment shall be required.

7) Banks and investment firms, when deciding the range of financial instrument and services that they offer or recommend and the respective target markets, must maintain procedures and measures to ensure compliance with all applicable requirements under the Banking Act and this Ordinance, including those relating to disclosure, assessment of suitability or appropriateness, inducements and proper management of conflicts of interest. In this context, they must take particular care when they intend to offer or recommend new products or there are variations to the services they provide.

8) Banks and investment firms must periodically review and update their product verification arrangements in order to ensure that they remain robust and fit for their purpose, and take appropriate actions where necessary.

9) Banks and investment firms must review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. They must assess at least whether the product or service remains consistent with the needs, characteristics and objectives, including any sustainability-related objectives, of the identified target market and whether the intended distribution strategy remains appropriate. They shall reconsider the target market and/or update the product verification arrangements if they recognise that they have wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the

identified target market, such as where the product becomes illiquid or very volatile due to market changes.[274]

10) Banks and investment firms shall ensure that their compliance function oversees the development and periodic review of product verification arrangements in order to detect any risk of failure to comply with the obligations set out in this Article.

11) Banks and investment firms shall ensure that relevant staff possess the necessary expertise to understand the characteristics and risks of the products that intend to offer or recommend and the services provided as well as the needs, characteristics and objectives of the identified target market.

12) Banks and investment firms shall ensure that the board of directors has effective control over the product verification process to determine the range of investment products that they offer or recommend and the services provided to the respective target markets. They must also ensure that the compliance reports to the board of directors systematically include information about the products they offer or recommend and the services provided. The reports shall be made available to the FMA on request.

13) As distributors of financial products, banks and investment firms must provide manufacturers with information on sales and, where appropriate, information on the above reviews to support product verifications carried out by manufacturers.

14) Where different banks, investment firms, and asset management companies work together in the distribution of a product or service, the bank or investment firm with the direct client relationship has ultimate responsibility to meet the product verification obligations set out in this Article. However, intermediary banks and investment firms shall:

a) ensure that relevant product information is passed from the manufacturer to the final distributor in the chain;
b) if the manufacturer requires information on product sales in order to comply with their own product verification obligations, enable them to obtain it; und
c) apply the product verification obligations for manufacturers, where relevant, in relation to the service they provide.

274 Article 27f(9) amended by LGBl. 2022 No. 371.

K. Data processing

Article 27g[275]

Repealed

L. Algorithmic trading[276]

Article 27h[277]

Algorithmic trading

1) A bank or investment firm established in Liechtenstein that engages in algorithmic trading in another EEA Member State shall notify this to the FMA and to the competent authority of the trading venue at which the investment firm engages in algorithmic trading as a member or participant of the trading venue.

2) The FMA may require the bank or investment firm to provide, on a regular or ad-hoc basis, a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the systems established in accordance with Article 8k(1) and (2) of the Banking Act are subject, the key compliance and risk controls of the systems, and details of the testing of the systems. The FMA may, at any time, request further information from the bank or investment firm about its algorithmic trading and the systems used for that trading.

3) The FMA shall, on the request of a competent authority of a trading venue in another EEA Member State at which a bank or investment firm established in Liechtenstein as a member or participant of the trading venue is engaged in algorithmic trading and without undue delay, communicate the information referred to in paragraph 2 that it receives from the bank or investment firm.

4) The bank or investment firm shall arrange for records to be kept in relation to the matters referred to in Article 8k of the Banking Act and this Article and shall ensure that those records be sufficient to enable the FMA to monitor compliance with the requirements of the Banking Act and this Ordinance.

275 Article 27g repealed by LGBl. 2021 No. 410.
276 Title preceding Article 27h inserted by LGBl. 2017 No. 431.
277 Article 27h inserted by LGBl. 2017 No. 431.

5) A bank or investment firm that engages in algorithmic trading to pursue a market making strategy shall, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded:

a) carry out this market making continuously during a specified proportion of the trading venue's trading hours, except under exceptional circumstances, with the result of providing liquidity on a regular and predictable basis to the trading venue;

b) enter into a binding written agreement with the trading venue which shall at least specify the obligations of the investment firm in accordance with subparagraph (a); and

c) have in place effective systems and controls to ensure that it fulfils its obligations under the agreement referred to in subparagraph (b) at all times.

6) For the purposes of Article 8k of the Banking Act and of this Article, a bank or investment firm that engages in algorithmic trading shall be considered to be pursuing a market making strategy when, as a member or participant of one or more trading venues, its strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue or across different trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

7) A bank or investment firm that provides direct electronic access to a trading venue must in any case have in place effective systems and controls which ensure:

a) a proper assessment and review of the suitability of clients using the service;

b) that clients using the service are prevented from exceeding appropriate pre-set trading and credit thresholds;

c) that trading by clients using the service is properly monitored; and

d) that appropriate risk controls prevent trading that may create risks to the bank or investment firm itself or that could create or contribute to a disorderly market or could be contrary to market abuse legislation or the rules of the trading venue.

8) A bank or investment firm that provides direct electronic access shall be responsible for ensuring that clients using that service comply with the requirements of the Banking Act and this Ordinance and the rules of the trading venue. The bank or investment firm shall monitor the transactions in order to identify infringements of those rules, disorderly

trading conditions or conduct that may involve market abuse and that is to be reported to the FMA. The bank or investment firm shall ensure that there is a binding written agreement between the investment firm and the client regarding the essential rights and obligations arising from the provision of the service and that under the agreement the bank or investment firm retains responsibility under the Banking Act and this Ordinance.

9) A bank or investment firm that provides direct electronic access to a trading venue shall notify the FMA and – if the trading venue is situated in a different EEA Member State – the competent authorities of the trading venue at which the bank or investment firm provides direct electronic access accordingly.

10) The FMA may require the bank or investment firm to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in paragraph 7 and evidence that those have been applied.

11) The FMA shall, on the request of a competent authority of a trading venue in another EEA Member State in relation to which the bank or investment firm established in Liechtenstein provides direct electronic access, communicate without undue delay the information referred to in paragraph 10 that it receives from the bank or investment firm.

12) The bank or investment firm shall arrange for records to be kept in relation to the matters referred to in paragraphs 7 to 10 and shall ensure that those records be sufficient to enable the FMA to monitor compliance with the requirements of the Banking Act and this Ordinance.

13) A bank or investment firm that acts as a general clearing member for other persons shall have in place effective systems and controls to ensure clearing services are only applied to persons who are suitable and meet clear criteria and that appropriate requirements are imposed on those persons to reduce risks to the bank or investment firm and to the market. The bank or investment firm shall ensure that there is a binding written agreement between the bank or investment firm and the person regarding the essential rights and obligations arising from the provision of that service.

III. Taking up of business[278]

A. Licensing applications[279]

Article 28

Application documents[280]

1) The application for a licence as a bank or investment firm must sufficiently document the licensing conditions set out by law. The application must be accompanied in particular by:[281]

a) documents on the origin and significant ownership of share capital and the form of its payment;

b) the draft articles of association and business regulations in accordance with the requirements set out in Article 31;

c) the description of the organisation and staffing of the bank or investment firm;[282]

d) the composition of the board of directors and the senior management;

e) proof of the guarantee of sound and proper business operation of the members of the board of directors, the senior management, and the management of the internal audit department in accordance with Articles 29 and 30;

f) the budget for the first three years;

g) a declaration by an external audit office recognised by the FMA that it accepts the mandate as external auditor.[283]

1a) The application for a licence as a financial holding company or mixed financial holding company pursuant to Article 30a^{quater} of the Banking Act must sufficiently document the licensing conditions set out by law. The application must be accompanied in particular by:[284]

a) documents on the origin of assets and the significant ownership of the capital and its nature;

b) information on the legal form and statutes of the applicant;

278 Title preceding Article 28 amended by LGBl. 2015 No. 17.
279 Title preceding Article 28 amended by LGBl. 2015 No. 17.
280 Article 28 heading amended by LGBl. 1999 No. 86.
281 Article 28(1) introductory phrase amended by LGBl. 2007 No. 278.
282 Article 28(1)(c) amended by LGBl. 2007 No. 278.
283 Article 28(1)(g) amended by LGBl. 2004 No. 300.
284 Article 28(1a) inserted by LGBl. 2022 No. 130.

c) information on the registered office and address of the applicant's head office;

d) if the financial holding company or mixed financial holding company has a bank or investment firm as a subsidiary, information to be submitted for the assessment of the criteria under Article 26c of the Banking Act; if compliance with the criteria under Article 14 of Directive 2013/36/EU has already been assessed by a competent authority of another EEA Member State, proof of the result of such assessment;

e) information on the composition of the governing bodies of the financial holding company or mixed financial holding company;

f) proof of the guarantee of sound and proper business operation of the persons who effectively direct their business as referred to in Article 41i of the Banking Act;

g) a description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;

h) a declaration by an external audit office recognised by the FMA that it accepts the mandate as external auditor.

2) The application for a licence as an external audit office of banks or investment firms as well as of financial holding companies or mixed financial holding companies with a licence pursuant to Article 30a^{quater}(1) or (2) must sufficiently document the licensing conditions set out by law. The application must be accompanied in particular by:[285]

a) documents on the origin and significant ownership of share capital and the form of its payment;

b) the business report;

c) a list of audit mandates with banks or investment firms, financial holding companies or mixed financial holding companies with a licence pursuant to Article 30a^{quater}(1) or (2) and asset management companies;[286]

d) supporting documents for the qualifications and impeccable repute and good reputation of the lead auditors and senior management;

285 Article 28(2) introductory phrase amended by LGBl. 2022 No. 130.

286 Article 28(2)(c) amended by LGBl. 2022 No. 130.

e) all documents showing compliance with the requirements set out in Article 37(2) and (2a) and Article 37a of the Banking Act.[287]

Article 28a[288]

Easing and tightening of conditions

1) The FMA shall ease the licensing conditions only if:

a) so provided in the Banking Act, this Ordinance, or Regulation (EU) No 575/2013; and
b) the Banking Act, this Ordinance, or Regulation (EU) No 575/2013 does not provide for other conditions and the applicant proves that compliance with the legal requirements would entail disproportionate disadvantages.

2) The FMA may order stricter conditions in particular if:

a) so provided in the Banking Act or Regulation (EU) No 575/2013;
b) the purpose of the provisions of the Banking Act or of Regulation (EU) No 575/2013 can be achieved only in this way; or
c) such stricter conditions are necessary for reasons of financial market stability.

B. Guarantee of sound and proper business operation

Article 29

Skills

1) The persons designated for the board of directors, the senior management, the management of the internal audit department and the risk committee, and, in the case of banks and investment firms that are significant, all other key function holders, must be sufficiently qualified for the designated responsibilities on the basis of their education and professional experience.[289]

287 Article 28(2)(e) amended by LGBl. 2022 No. 130.
288 Article 28a amended by LGBl. 2015 No. 17.
289 Article 29(1) amended by LGBl. 2022 No. 130.

2) In assessing the requirements, the FMA shall take into account, *inter alia*, the material and geographic scope of business and the organisation of the bank or investment firm.[290]

3) The designated persons must also be able to perform their duties in the bank or investment firm properly, taking into account their other commitments and place of residence.[291]

4) When assessing the designated persons, the FMA may consult the curriculum vitae, educational and employment certificates, and references.[292]

5) For persons designated to effectively direct the business of a financial holding company or mixed financial holding company, paragraphs 1 to 4 shall apply *mutatis mutandis*.[293]

Article 29a[294]

Mandate limits for members of governing bodies

1) In the case of banks or investment firms that are significant, a member of the senior management shall not be a person who:

a) is a member of the senior management in a bank or investment firm; or
b) is a member of the board of directors in two other banks or investment firms.

2) In the case of banks or investment firms that are significant, a member of the board of directors shall not be a person who:

a) is a member of the senior management in another bank or investment firm and is already a member of the board of directors in two other banks or investment firms; or
b) is a member of the board of directors in four banks or investment firms.

3) For the calculation, several mandates are considered as one mandate if they are exercised at undertakings:

a) belonging to the same group of companies;

290 Article 29(2) amended by LGBl. 2007 No. 278.
291 Article 29(3) amended by LGBl. 2007 No. 278.
292 Article 29(4) amended by LGBl. 2004 No. 300.
293 Article 29(5) inserted by LGBl. 2022 No. 130.
294 Article 29a inserted by LGBl. 2015 No. 17.

b) which are members of the same institutional protection scheme, provided that the requirements of Article 113(7) of Regulation (EU) No 575/2013 are met;

c) in which the bank or investment firm has a qualifying holding.

4) Mandates as a member of the board of directors or senior manager in organisations that do not predominantly pursue commercial objectives and mandates as a representative of an EEA Member State on the board of directors of a bank or investment firm shall not be taken into account for the calculation pursuant to paragraph 2(b).

5) On application, the FMA may approve the assumption of a further board of directors mandate in addition to the permissible board of directors mandates referred to in paragraphs 2 and 3. The FMA shall regularly inform the EBA of such approvals.[295]

Article 29b[296]

Nomination committee

1) Banks and investment firms that are significant must establish a nomination committee composed of members of the board of directors. The members of the nomination committee shall not perform any executive function at the bank or investment firm.

2) The nomination committee shall:

a) identify candidates to fill senior management vacancies or in the preparation of nominations for the election of members of the board of directors. For this purpose, the nomination committee shall evaluate the balance of knowledge, skills, diversity and experience of the governing body in question and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected;

b) periodically, but at least annually, assess the structure, size, composition and performance of the senior management and the board of directors and make recommendations with regard to any necessary changes;

c) periodically, but at least annually, assess the knowledge, skills and experience of individual members of the board of directors and the senior management as well as of the governing body in question as a

295 Article 29a(5) amended by LGBl. 2022 No. 130.

296 Article 29b inserted by LGBl. 2015 No. 17.

whole, and report its assessment to the board of directors and the senior management;

d) periodically review the policy of the board of directors for selection and appointment of senior management and make recommendations to the board of directors.

3) The nominating committee, in the course of its duties, shall ensure that the decision-making of the senior management or the board of directors is not influenced by any one individual or group in a manner that is detrimental to the interests of the bank or investment firm.

4) In performing its duties, the nomination committee may use any forms of resources that it considers to be appropriate, and it may also engage external advisors. It shall receive appropriate funding to that effect from the bank or investment firm.

Article 29c[297]

Publications concerning corporate governance and compensation

Banks or investment firms operating a website shall explain on that website how they comply with the requirements of Article 7a(6), Article 22(2)(b), (2a) and (5) to (8), and Article 23(1) and (2)(a), (b) and (d) to (f) of the Banking Act, as well as Article 24e(1)(6) and (2)(8), Article 29(1), Article 29a, 29b and Annex 4.4(1) and (2).

Article 30[298]

Good reputation

1) The persons designated for the senior management or board of directors of a bank or investment firm and, in the case of banks and investment firms that are significant, all other key function holders must have a good reputation as business people. For this purpose, the FMA shall also consult the database of the European Supervisory Authorities on administrative penalties.[299]

2) On the basis of the submitted criminal register extract, the FMA shall check whether the persons referred to in paragraph 1 have been convicted of a relevant offence.

297 Article 29c inserted by LGBl. 2015 No. 17.
298 Article 30 amended by LGBl. 2015 No. 17.
299 Article 30(1) amended by LGBl. 2022 No. 130.

3) Paragraphs 1 and 2 shall apply *mutatis mutandis* to persons designated to effectively direct the business of a financial holding company or mixed financial holding company.[300]

C. Scope of business and organisation

Article 31[301]

Articles of association and business regulations

1) The provisions of Article 279 PGR apply to the content of the articles of association. The articles of association shall also contain, in particular, a clear description of the material and geographical scope of business to which the activities of the bank or investment firm regularly extend.

2) The business regulations shall define the organisation as well as the principles of business activity and financial management of the bank or investment firm. They shall contain in particular:

a) the responsibilities and powers of the board of directors, the senior management, the compliance function, the internal audit department and, where they are to be established by the bank or investment firm, the risk management function and the committees of the board of directors;[302]
b) an allocation of powers and rules governing risk management in accordance with Article 21c;
c) provisions on transactions with governing bodies and employees as referred to in Article 9 of the Banking Act.[303]

3) The business regulations shall also ensure that the board of directors provides for:[304]

a) the definition, approval, and oversight of the corporate organisation with respect to the provision of investment services, ancillary services, and investment activities, taking into account all the requirements the bank or investment firm has to comply with; the requirements

300 Article 30(3) inserted by LGBl. 2022 No. 130.
301 Article 31 amended by LGBl. 2007 No. 278.
302 Article 31(2)(a) amended by LGBl. 2015 No. 17.
303 Article 31(2)(c) amended by LGBl. 2022 No. 130.
304 Article 31(3) inserted by LGBl. 2017 No. 431.

governing corporate organisation shall depend on the nature, scale, and complexity of the business of the bank or investment firm; the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and investment activities by the bank or investment firm shall be taken into account in particular;

b) the definition, approval, and oversight of a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the bank or investment firm and the characteristics and needs of the clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate;

c) the definition, approval, and oversight of a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.

Article 31a[305]

General organisational requirements

1) Banks and investment firms shall comply with the following general organisational requirements on a permanent basis:

a) creation and implementation of decision-making processes and an organisational structure in which assigned functions and tasks, as well as the corresponding reporting requirements, are clearly documented;

b) creation and implementation of appropriate internal control procedures that ensure compliance with decisions and operational procedures at all levels;

c) guarantee that members of the senior management of tied agents and senior persons of undertakings providing material services to the bank or investment firm in connection with investment services have sufficient knowledge of the operational procedures concerning them;

d) employment of employees with sufficient knowledge and experience to perform the tasks assigned to them;

e) introduction and guarantee of smoothly functioning reporting and dissemination of information essential for the performance of assigned tasks at all relevant levels;

305 Article 31a inserted by LGBl. 2007 No. 278.

f) keeping of adequate and systematic records of business activities and internal organisation;

g) creation and permanent application of systems and procedures for the security and protection of the integrity and confidentiality of information, in particular for the protection of professional secrecy;

h) creation of appropriate policies and procedures that ensure the continuation of the performance of services in the event of a failure of people and technical systems, or that guarantee the resumption of the performance of services as soon as possible in such an event;

i) creation and permanent application of effective and transparent internal procedures for handling and documenting complaints from clients or potential clients.

2) The implementation of the organisational requirements shall correspond to the nature, scope, and complexity of the services provided and other transactions carried out, including in particular the scope of proprietary trading.

3) If members of the senior management of the bank or investment firm, of tied agents and senior persons of undertakings providing material services to the bank or investment firm in connection with investment services hold more than one function, appropriate organisational arrangements shall be made to ensure that this does not impede the orderly, fair, and professional performance of investment services.

Article 31b[306]

Corporate governance and control

1) The board of directors must in particular ensure the implementation of business regulations that guarantee the effective and prudent management of the bank or investment firm and provide, *inter alia*, for the separation of responsibilities in the bank or investment firm and the prevention of conflicts of interest. This shall be done in a manner that promotes the integrity of the market and the interests of clients. The board of directors shall be accountable to the FMA with regard to the definition and the monitoring of implementation of these business regulations and must provide the FMA with the relevant proof on request.

2) The board of directors shall monitor and periodically assess the adequacy and the implementation of the strategic objectives of the bank

306 Article 31b inserted by LGBl. 2017 No. 431.

or investment in the provision of investment services, ancillary services, and investment activities, the effectiveness of the business regulations of the bank or investment firm, and the adequacy of the policies relating to the provision of services to clients and take appropriate steps to address any deficiencies.

3) Members of the board of directors shall have adequate access to information and documents which are needed to oversee and monitor decision-making by the senior management.

Article 31c[307]

Communication records

1) The bank or investment firm shall arrange for the required records to be kept of all services, activities and transactions undertaken by it. Required records shall be those sufficient to enable the FMA to fulfil its supervisory tasks and, where applicable, to perform the enforcement actions under the Banking Act, this Ordinance, Regulation (EU) No 600/2014, and market abuse legislation, and in particular to ascertain that the bank or investment firm has complied with all obligations including those with respect to clients or potential clients and to the integrity of the market.

2) Records shall include the recording of telephone conversations or electronic communications relating to, at least, transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of client orders, even if those conversations or communications do not result in the conclusion of such transactions or in the provision of client order services.

3) The bank or investment firm shall take all reasonable steps to record relevant telephone conversations and electronic communications as referred to in paragraph 2, made with, sent from or received by equipment provided by the investment firm to an employee or contractor or the use of which by an employee or contractor has been accepted or permitted by the bank or investment firm. The bank or investment firm shall take all reasonable steps to prevent an employee or contractor from making, sending or receiving relevant telephone conversations and electronic communications on privately-owned equipment which the bank or investment firm is unable to record or copy.

307 Article 31c inserted by LGBl. 2017 No. 431.

4) The bank or investment firm shall notify new and existing clients that telephone conversations or electronic communications between the bank or investment firm and its clients that result or may result in transactions will be recorded. The notification may also be made in a standardised form. Such a notification may be made once, before the provision of investment services.

5) Without prior information of its client about the recording of telephone conversations or electronic communications, a bank or investment firm shall not provide, by telephone, investment services and activities to clients who have not been notified in advance, where such investment services and activities relate to the reception, transmission and execution of client orders. Orders may be placed by clients through other channels, however such communications must be made in a durable medium. In particular, the content of corresponding face-to-face conversations with a client may be recorded by using written minutes or notes. Such orders shall be considered equivalent to orders received by telephone.

6) The records kept in accordance with this Article shall be provided to the client involved upon request and shall be kept for a period of five years. At the request of the FMA, records shall be for a period of up to seven years.

Article 32

Board of directors

1) The board of directors must consist of at least three members.

2) If the board of directors consists of five or more members, it may delegate the duties not expressly reserved to it by law to a committee formed from among its members. The committee must have at least three members.

Article 33[308]

Independence of the internal audit department

1) The employees and the head of the internal audit department shall not perform any tasks that are inconsistent with the activities of the internal audit department or would constitute a self-audit. The employees

308 Article 33 amended by LGBl. 2022 No. 130.

and the head of the internal audit department shall not be members of the board of directors or senior management of a bank or investment firm or effectively direct the business of a financial holding company or mixed financial holding company with a licence pursuant to Article 30a^{quater} of the Banking Act.

2) The head of the internal audit department shall confirm its independence to the board of directors at least annually. This confirmation shall be documented. In addition, the internal audit department shall immediately disclose to the board of directors any conflicts of interest which may actually or apparently impair independence or objectivity.

Article 34[309]

Repealed

Article 34a[310]

Compliance function

1) Banks and investment firms shall create a compliance function that supports and monitors the persons responsible for the provision of services with regard to compliance with the applicable legal and regulatory requirements.

2) The persons entrusted with the compliance function shall not perform or manage activities which they are responsible for monitoring. Their compensation or remuneration must neither impair their objectivity nor make their objectivity appear to be impaired.

3) The person entrusted with the management of the compliance function shall report regularly to the senior management.

4) The person entrusted with the management of the compliance function shall report to the board of directors in writing at least once a year on their activities, the findings made, and the measures taken. The report shall in particular contain a statement on compliance with the treatment of transactions with governing bodies and employees as referred to in Article 9 of the Banking Act as well as the provisions on the provision

309 Article 34 repealed by LGBl. 2022 No. 130.
310 Article 34a inserted by LGBl. 2007 No. 278.

of investment services as referred to in Articles 27b et seq. of this Ordinance.[311]

5) Banks and investment firms for which the establishment of an independent compliance function would be disproportionate due to the scope and complexity of their business activities may be exempted from this obligation by the FMA.

Outsourcing[312]

Article 34b[313]

a) General principles

1) Outsourcing under Article 14a of the Banking Act shall be deemed to occur when a bank or investment firm enters into agreements with service providers, in whatever form, under which the service provider performs a process, provides a service, or carries out an activity that would otherwise have to be performed by the bank or investment firm itself.[314]

2) Banks and investment firms shall examine whether agreements with third parties constitute outsourcing as referred to in paragraph 1. In this examination, particular consideration shall be given to whether:

a) the outsourced process, service or activity is provided or performed by the third party on a recurring or ongoing basis; and

b) critical or important outsourcing within the meaning of Article 35(1) occurs, taking into account that outsourcing may become critical or important over time.

3) Outsourcing as referred to in paragraph 1 shall comply with the following principles:

a) Before entering into an outsourcing agreement, banks and investment firms shall assess whether the process, service or activity to be outsourced is the outsourcing of a critical or important function as defined in Article 35(1).

b) Banks and investment firms shall identify, assess, monitor and manage all risks attributable to outsourcing arrangements as part of their risk management in accordance with Article 7a of the Banking Act. For this purpose, banks and investment firms shall clearly allocate

311 Article 34a(4) amended by LGBl. 2022 No. 130.
312 Heading preceding Article 34b inserted by LGBl. 2021 No. 410.
313 Article 34b inserted by LGBl. 2021 No. 410.
314 Article 34b(1) amended by LGBl. 2022 No. 130.

responsibilities for the documentation, management and control of outsourcing arrangements and shall establish an outsourcing function within the risk management function that is responsible for the documentation of outsourcing arrangements and for the management and control of the risk arising from outsourcing arrangements.

c) Banks and investment firms shall assess the potential impact of outsourcing arrangements, in particular with regard to their operational risk. This assessment shall include, where appropriate, scenarios of possible risk events and the potential impact of failure to provide the outsourced function or inappropriate provision of the outsourced function. Banks and investment firms must document the results and analyses. The risk assessment shall be updated regularly.

d) Outsourcing shall be audited by the internal audit department using a risk-based approach, with a particular focus on the outsourcing of critical or important functions as referred to in Article 35(1). Taking into account the relevant guidelines of the EBA, the internal audit department may give due consideration within the audit to, *inter alia*, the findings of pooled audits or certifications by third parties and external or internal audit reports made available by the service provider, but may not rely on them exclusively.

e) Repealed[315]

f) Repealed[316]

g) Banks and investment firms shall have adequate financial and human resources at all times to ensure compliance with subparagraphs (e) and (f).

h) Banks and investment firms shall have written outsourcing policies that set out the principles, responsibilities and processes related to outsourcing, taking into account the relevant EBA guidelines. In the outsourcing policy, banks and investment firms must distinguish between outsourcing of critical or important functions, outsourcing to service providers with or without licences, intragroup outsourcing, or outsourcing to service providers located in a third country. The outsourcing policy must be approved by the board of directors. The senior management shall regularly review and, if necessary, update the outsourcing policy and ensure that the outsourcing policy is applied on a consolidated, sub-consolidated or individual basis.

i) Banks and investment firms shall identify, assess and manage conflicts of interests with regard to their outsourcing arrangements.

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315 Article 34b(3)(e) repealed by LGBl. 2022 No. 130.

316 Article 34b(3)(f) repealed by LGBl. 2022 No. 130.

k) Before entering into an outsourcing agreement, banks and investment firms shall ensure in their selection and assessment process that service providers are suitable.

l) Each outsourcing shall be based on a written outsourcing agreement between the outsourcing bank or investment firm and the service provider, in which the respective rights and obligations are clearly allocated and set out. The content of this outsourcing agreement shall be based on the relevant guidelines of the EBA. In particular, this outsourcing agreement shall ensure that:

   1. the internal and external auditors of the outsourcing bank or investment firm are able to audit the outsourced process, service or activity;
   2. when outsourcing non-critical or non-important functions, the service provider grants rights of inspection and audit and full access to the business premises of the service provider and its devices, systems, networks, information and data ("access and information rights") to the FMA, the resolution authority (Article 4 SAG), and the external audit office according to a risk-based approach.

m) When outsourcing, banks and investment firms shall monitor on an ongoing basis the performance of the service provider according to a risk-based approach; where relevant, banks and investment firms shall ensure and monitor on an ongoing basis that the service provider complies with relevant IT security standards and with data and system security requirements.

n) Banks and investment firms must also take the following into account in the case of intragroup outsourcing:

   1. The parent undertakings shall ensure that the intragroup governance arrangements, procedures and mechanisms in the subsidiaries are consistent, well integrated and adequate at all levels.
   2. The subsidiaries shall ensure that, in the event of intragroup outsourcing of operational tasks of internal control functions for the monitoring and audit of outsourcing arrangements, the operational tasks are also performed for these outsourcing arrangements.
   3. If there is no waiver of the application of prudential requirements on an individual basis pursuant to Article 7 of Regulation (EU) No 575/2013:

      aa) the subsidiaries shall ensure that, even in the case of a centralised monitoring function, at least for outsourced critical or important functions as referred to in Article 35(2), both independent monitoring of the service provider and appropriate oversight by each subsidiary are possible, and that reports of the centralised monitoring function are submitted to them at least annually or on an ad hoc basis;

bb) the subsidiaries shall ensure that their senior management is informed of relevant planned changes regarding service providers that are monitored centrally and the resulting impact of these changes on critical or important functions and that an assessment of the impact by means of a risk analysis is made possible;

cc) where the register as referred to in paragraph 4 is maintained centrally within the group at one of the group companies, an individual register of all outsourcing arrangements of each individual group company shall be made available to the group companies and the FMA;

dd) the subsidiaries, when relying on a centralised exit plan for a critical or essential function at the group level, shall ensure that a summary of the exit plan is available and can be effectively executed.

4) Banks and investment firms shall record and document all existing outsourcing arrangements in a register, taking into account the relevant EBA guidelines. The register must be kept up to date at all times.

5) When applying the requirements set out in this Article and in Article 35, the complexity of the outsourced process, service or activity, the risks arising from the outsourcing arrangements, and the criticality or importance of the outsourced process, service or activity shall be taken into account. The internal processes and procedures related to outsourcing shall be commensurate with the individual risk profile, the nature and business model, and the scale and complexity of the operations of the outsourcing bank or investment firm.

Article 35[317]

b) Special requirements for critical or important functions

1) Banks and investment firms may also outsource critical or important functions, subject to compliance with the principles set out in paragraph 2 and Article 34b(3) and (4). Outsourcing of critical or important functions must be reported to the FMA as part of the supervisory examination

317 Article 35 amended by LGBl. 2021 No. 410.

programme referred to in Article 35a of the Banking Act. A process, service or activity shall be deemed a critical or important function in particular where:

a) a defect or failure in its performance would materially impair:
   1. compliance on an ongoing basis with the provisions of the Banking Act, the Payment Services Act, the Electronic Money Act, or Regulation (EU) No 575/2013;
   2. the financial performance of a bank or investment firm; or
   3. the soundness or continuity of banking activities or payment services;
b) operational tasks of internal control functions are outsourced, unless a failure to provide the outsourced function or the inappropriate provision of the outsourced function would not have an adverse impact on the effectiveness of the internal control function;
c) functions are or are to be outsourced in such a scope or to such an extent that the service provider is subject to a licensing requirement under the Banking Act, the Payment Services Act, or the Electronic Money Act as a result of such outsourcing.

2) In addition to the principles set out in Article 34b(3) and (4), an outsourcing of critical or important functions as referred to in paragraph 1 shall comply with the following requirements:

a) The content of the outsourcing agreement shall be governed by the specific requirements of the relevant guidelines of the EBA for the outsourcing of critical or important functions. In particular, this outsourcing agreement shall ensure that, in the event of outsourcing of critical or important functions, the FMA, the resolution authority (Article 4 SAG), and the external audit office have unrestricted rights of inspection and audit and full access to the business premises of the service provider and its devices, systems, networks, information and data ("access and information rights") used by the service provider for the performance of the outsourced process, service or activity.
b) The outsourcing agreement shall specify whether sub-outsourcing of critical or important functions, or material parts thereof, to another service provider is permitted. If sub-outsourcing is permitted, the outsourcing agreement shall specify in particular:
   1. activities that are excluded from sub-outsourcing;
   2. the conditions to be complied with by the service provider in the case of sub-outsourcing;
   3. the monitoring obligations incumbent on the service provider with regard to the services it has sub-contracted;

4. the authorisation and information obligations that exist for the service provider in the case of sub-outsourcing;
5. the termination rights for banks or investment firms in the case of undue sub-outsourcing by the service provider.

c) Banks and investment firms shall prepare, keep up to date, and regularly test appropriate business continuity plans for outsourced critical or important functions to ensure that they are able at any time, for example, to exit outsourcing arrangements or to compensate for the failure of a service provider without:
1. undue disruption to their business activities;
2. limiting compliance with supervisory requirements; and
3. any detriment to the continuity and quality of provision of services to clients.

d) When outsourcing critical or important functions as referred to in paragraph 1(c) to service providers located in Switzerland or another EEA Member State, banks and investment firms shall ensure that the service provider has the necessary licences to perform the functions to be outsourced.

e) Outsourcing of critical or important functions as referred to in paragraph 1(c) to service providers located in a third country shall be permissible only if:
1. the service provider has the necessary licence in that third country for the provision of the services;
2. the service provider is subject to supervision by the competent authority of that third country;
3. there is a cooperation agreement as referred to in Article 30q of the Banking Act between the FMA and the competent authority of that third country, and the FMA can obtain access to information, data, documents, premises or personnel in the third country at any time.

f) Banks and investment firms shall ensure that service providers to which critical or important functions are to be outsourced have the business reputation, appropriate and sufficient abilities, the expertise, the capacity, the human and financial resources, and an appropriate organisational structure to meet their obligations arising from an outsourcing agreement to be concluded.

g) If, in the case of outsourcing of critical or important functions, outsourcing agreements provide for the possibility of the service provider sub-contracting the functions to another service provider, banks and investment firms shall take the resulting risks into account in their risk assessment pursuant to Article 34b(3)(c).

h) Banks and investment firms shall ensure, as part of the outsourcing agreement, that the service provider appropriately oversees the other service provider in the case of sub-outsourcing of critical or important functions or material parts thereof and that sub-outsourcing takes place only if the sub-contracted service provider undertakes to grant the bank or investment firm, the external audit office, and the FMA the same contractual rights of access and audit as those granted by the service provider.

i) Banks and investment firms shall regularly update their risk assessment pursuant to Article 34b(3)(c) and regularly report to the senior management and the board of directors on the risks identified in the case of outsourcing of critical or important functions.

k) Banks and investment firms shall have a documented exit strategy that is in line with their outsourcing policy and business continuity plans.

3) Banks and investment firms shall ensure that, when outsourcing critical or important functions, they are able to do the following within an appropriate time frame:

a) transfer the outsourced process, service or activity to an alternative service provider;

b) perform the outsourced process, service or activity themselves again; or

c) discontinue those business activities that depend on the outsourced process, service or activity.

4) These provisions are subject to Articles 30 to 32 of Commission Delegated Regulation (EU) 2017/565[318].

[318] Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 87, 31.3.2017, 1).

D. Relationship with the European Economic Area[319]

Article 35a

Activities of banks and financial institutions[320]

1) Banks having their registered office in another EEA Member State, provided that their authorisation under Directive 2013/36/EU entitles them to do so, may provide one or more of the following activities within the country under the freedom to provide services or through a branch:[321]

a) acceptance of deposits and other repayable funds;

b) lending including, *inter alia:* consumer credit, mortgage credit, factoring, with or without recourse, financing of commercial transactions (including forfeiting);

c) financial leasing;

d) payment services as referred to in Article 2(2) of the Payment Services Act;[322]

e) issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);

f) guarantees and commitments;

g) trading for own account or for account of customers in:

   aa) money-market instruments (cheques, bills, certificates of deposit, etc.);

   bb) foreign exchange;

   cc) financial futures and options;

   dd) exchange and interest-rate instruments;

   ee) securities;

h) participation in securities issues and the provision of services related to such issues;

i) advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;

k) money broking;

l) portfolio management and advice;

319 Title preceding Article 35a inserted by LGBl. 1999 No. 86.

320 Article 35a heading amended by LGBl. 2007 No. 278.

321 Article 35a(1) introductory phrase amended by LGBl. 2022 No. 130.

322 Article 35a(1)(d) amended by LGBl. 2022 No. 130.

m) safekeeping and administration of securities;
n) credit reference services;
o) safe custody services.
p) issuance of electronic money.[323]

2) Financial institutions having their registered office in another EEA Member State may provide one or more of the activities listed in paragraph 1(b) to (m) and (p) in Liechtenstein under the freedom to provide services or through a branch, provided that they meet the requirements set out in Article 30d(2) or Article 30e(3) of the Banking Act.[324]

Article 35b[325]

Activities of investment firms

For activities of investment firms in the European Economic Area, mutual recognition applies to investment services and ancillary services as referred to in Annex 2 Sections A and B of the Banking Act and proprietary trading as referred to in Article 2a.

E. Relationship with the United Kingdom of Great Britain and Northern Ireland [326]

Article 35c[327]

Activities in Liechtenstein of banks and investment firms from the United Kingdom of Great Britain and Northern Ireland

1) Banks or investment firms with registered offices in the United Kingdom of Great Britain and Northern Ireland may provide investment services and activities as well as ancillary services (Annex 2 Sections A and B BankG) in Liechtenstein only if:

a) the investment services, investment activities, or ancillary services are provided exclusively to clients who are eligible counterparties within

323 Article 35a(p) inserted by LGBl. 2015 No. 17.
324 Article 35a(2) amended by LGBl. 2022 No. 130.
325 Article 35b amended by LGBl. 2007 No. 278.
326 Title preceding Article 35c inserted by LGBl. 2020 No. 341.
327 Article 35c inserted by LGBl. 2020 No. 341.

the meaning of Annex 1(1) of the Banking Act or professional clients within the meaning of Annex 1(2)(1) of the Banking Act;

b) the bank or investment firm has the necessary authorisation in the United Kingdom of Great Britain and Northern Ireland to provide those investment services, investment activities, or ancillary services which are provided in Liechtenstein;

c) the FMA has entered into a cooperation agreement with the competent authorities of the United Kingdom of Great Britain and Northern Ireland under Article 30q of the Banking Act; and

d) no Decision of the European Commission pursuant to Article 47(1) of Regulation (EU) 600/2014 on equivalence of the legal and supervisory arrangements of the United Kingdom of Great Britain and Northern Ireland is available.

2) Banks or investment firms with registered offices in the United Kingdom of Great Britain and Northern Ireland must notify the FMA in writing in advance of taking up their activities as referred to in paragraph 1. They may take up their activities only once the FMA has confirmed receipt of a complete notification. The notification must contain the following information in particular:

a) the full name or business name of the bank or investment firm and any other name used by it in its business dealings;

b) information about which investment services, investment activities, and ancillary services are to be provided in Liechtenstein;

c) the contact details of the person responsible for the notification, including telephone number and email address;

d) the national identification number, Legal Entity Identifier (LEI), and Business Identifier Code (BIC) of the bank or investment firm, where applicable;

e) information about which investment services, investment activities, and ancillary services the bank or investment firm may provide in the United Kingdom of Great Britain and Northern Ireland under its authorisation.

3) Banks or investment firms with registered offices in the United Kingdom of Great Britain and Northern Ireland shall inform the FMA within 30 days of any change in the information provided under paragraph 2.

4) If a bank or investment firm with registered offices in the United Kingdom of Great Britain and Northern Ireland intends to discontinue its activities in Liechtenstein as referred to in paragraph 1, it must notify the

FMA of this intention together with proof of the winding-up of all investment services or activities in Liechtenstein.

5) If the conditions set out in paragraph 1 are no longer met, banks or investment firms with registered offices in the United Kingdom of Great Britain and Northern Ireland may no longer pursue their activities in Liechtenstein as referred to in paragraph 1. The FMA must be notified of the termination of activities in Liechtenstein after all investment services or activities have been wound up, together with the relevant proof.

IV. Supervision[328]

Articles 36 and 37[329]

Repealed

Article 38

Extraordinary audits

1) For an extraordinary audit as referred to in Article 35(2)(b) of the Banking Act, the FMA may itself designate a recognised external audit office.[330]

2) The FMA may demand an advance on costs from the bank or investment firm.[331]

328 Title preceding Article 36 amended by LGBl. 2022 No. 130.
329 Articles 36 and 37 repealed by LGBl. 2022 No. 130.
330 Article 38(1) amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 300.
331 Article 38(2) amended by LGBl. 2007 No. 278.

Article 38a[332]

Measures in the context of supervision of banks and investment firms operating in several EEA Member States

1) If the competent authorities of the host Member State take measures pursuant to Article 50 of Directive 2013/36/EU and the FMA rejects the measures taken, it may refer the matter to the following authorities pursuant to Article 19 of Regulation (EU) No 1093/2010:

a) the EFTA Surveillance Authority in cases involving exclusively competent authorities of EFTA States;

b) the EFTA Surveillance Authority and the EBA in cases involving both the FMA and competent authorities of Member States of the European Union.

2) The FMA may request information from the competent authorities of the home Member State on how the information provided pursuant to Articles 30f, 30h, 30i, 30k^{bis}, 30l to 30l^{quater} and 30n of the Banking Act has been taken into account and what measures have been taken on this basis, and may also request supplementary explanations. If, in the opinion of the FMA, the measures taken by the competent authorities of the home Member State are not sufficient, the FMA may, after having informed the competent authorities of the home Member State and the EBA, take appropriate measures itself.

3) The FMA may refer to the EFTA Surveillance Authority and/or EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

Article 38b[333]

Cooperation in the supervision of compliance with position limits[334]

1) Without prejudice to the obligation to cooperate set out in Articles 30f and 30g of the Banking Act, the FMA shall notify ESMA and other competent authorities of an EEA Member State of the details of:

a) any requests to reduce the size of a position or exposure pursuant to Article 35(2)(n) of the Banking Act;

332 Article 38a amended by LGBl. 2022 No. 130.
333 Article 38b inserted by LGBl. 2017 No. 431.
334 Article 38b heading amended by LGBl. 2022 No. 130.

b) any limits on the ability referred to in Article 35(2)(o) of the Banking Act to enter into a commodity derivative.

2) The notification shall include, where relevant, the details of the request or the demand pursuant to Article 35(2)(m) of the Banking Act including the identity of the person or persons to whom it was addressed and the reasons therefor, as well as the scope of the limits introduced pursuant to Article 35(2)(o) of the Banking Act including the person concerned, the applicable financial instruments, any limits on the size of positions the person can hold at all times, any exemptions thereto granted in accordance with Article 55m, and the reasons therefor.

3) The notifications shall be made not less than 24 hours before the actions or measures are intended to take effect. In exceptional circumstances, the FMA may make the notification less than 24 hours before the measure is intended to take effect where it is not possible to give 24 hours' notice.

4) Where the FMA receives notification from the competent authority of another EEA Member State under this Article, it may take measures in accordance with Article 35(2)(n) or (o) of the Banking Act where it is satisfied that the measure is necessary to achieve the objective of the notifying competent authority. The FMA shall also give notice in accordance with this Article where it proposes to take measures.

5) When an action under paragraph 1(a) or (b) relates to wholesale energy products, the FMA shall also notify the Agency for the Cooperation of Energy Regulators (ACER) established under Regulation (EC) No 713/2009.

Articles 39 to 43[335]

Repealed

Article 43a[336]

Repealed

Article 43b[337]

Repealed

335 Articles 39 to 43 repealed by LGBl. 2022 No. 130.
336 Article 43a repealed by LGBl. 2015 No. 17.
337 Article 43b repealed by LGBl. 2022 No. 130.

Article 44[338]

Repealed

Articles 45 to 49[339]

Repealed

V. Reorganisation and winding up

A. Court of Justice

Article 50[340]

Opinion of the FMA

1) The Court of Justice shall obtain the opinion of the FMA before granting a moratorium and for the measures to be taken in this connection.

2) Before making an appointment under Articles 44, 45, 55, 57 or 58 of the Banking Act, the Court of Justice shall obtain the opinion of the FMA.

Article 51

Petition for bankruptcy

The Court of Justice shall suspend the decision on petitions for bankruptcy filed against the bank after receipt of the request for moratorium until the request for moratorium has been dealt with.

Article 52

Public announcement

1) If the commissioner has issued an opinion on an extrajudicial reorganisation pursuant to Article 51 of the Banking Act, such opinion

338 Article 44 repealed by LGBl. 2022 No. 130.
339 Articles 45 to 49 repealed by LGBl. 2015 No. 17.
340 Article 50 amended by LGBl. 1999 No. 87 and LGBl. 2004 No. 300.

shall be made available for inspection by the shareholders and creditors at the Court of Justice for a period of 20 days.[341]

2) The draft debt restructuring agreement, together with the accompanying files, shall be made available for inspection by the creditors at the Court of Justice for a period of 30 days.

3) Objections by creditors to the draft debt restructuring agreement must be submitted in writing to the Court of Justice during the availability period. Creditors who do not raise any objections within this period shall be deemed to have approved the draft debt restructuring agreement.

4) The Court of Justice shall publicly announce the place and time of availability.

B. Commissioner and liquidator

Article 53

Powers

1) The commissioner shall have the power to consult experts and to hire personnel either themself or to have them assigned by the bank.

2) The commissioner shall have the power to temporarily suspend or permanently dismiss any person in the service of the bank.

3) The commissioner may obtain an instruction from the Court of Justice for the order of payments under Article 48 of the Banking Act.

Article 54

Liability claims

If a moratorium has been granted or debt restructuring proceedings have been instituted, the commissioner or the liquidator shall ensure that liability claims to which the bank is entitled under Article 64 of the Banking Act and Article 221 of the Law on Persons and Companies are examined and safeguarded.

341 Article 52(1) amended by LGBl. 1999 No. 86.

Article 55

Remuneration of the commissioner

1) The remuneration of the commissioner shall be determined by the Court of Justice, generally on a semi-annual basis.

2) The remuneration shall be secured by the bank. The amount and form of the security shall be determined by the Court of Justice when granting the moratorium.

C. Creditors' meeting

Article 55a[342]

Convening and chairing

A creditors' meetings pursuant to §§ 124 et seq. and 150 of the Final Part on the Law on Persons and Companies relating to the community of bond creditors shall be convened and chaired by the commissioner or the liquidator.

VI. Regulated markets, multilateral and organised trading facilities[343]

A. Regulated markets

Article 55b[344]

Licensing and operation of a regulated market

1) The licence for operating a regulated market as referred to in Article 30s of the Banking Act shall be granted by the FMA if:

342 Article 55a inserted by LGBl. 2017 No. 431.
343 Title preceding Article 55b inserted by LGBl. 2017 No. 431.
344 Article 55b inserted by LGBl. 2017 No. 431.

a) the operator presents a programme of operations setting out the types of business envisaged, the organisational structure, and all material internal processes;

b) the persons who can exercise, directly or indirectly, significant influence over the management of the regulated market are suitable;

c) the regulated market, its operators and their responsible employees demonstrate the necessary expertise and offer a guarantee of sound and proper business operation (Article 55c);

d) the operator ensures compliance with the obligations set out in Article 30s of the Banking Act and this Article through its regulations and organisation;

e) the regulated market has its own operational, management, and monitoring organisation appropriate to its activities; in particular, the following must be in place:

   1. a regulation for the organisation of efficient and transparent trading;
   2. rules corresponding to Article 30s(1)(b) of the Banking Act on the authorisation, obligations, and exclusion of members of a regulated market; banks and investment firms from other EEA Member States shall be granted access to membership, including by becoming remote members where the trading procedures and systems of the regulated market in question do not require a physical presence for conclusion of transactions on the market, in the same way as domestic banks and investment firms;
   3. a regulation on the authorisation and tradability of financial instruments and the information necessary for investors to assess the characteristics of the financial instruments and the quality of the issuer;
   4. arrangements to avoid conflicts of interest;
   5. organisational and systematic arrangements for the identification and handling of risks (risk management) to mitigate them effectively;
   6. arrangements to ensure technical operability, including the establishment of effective contingency arrangements to cope with risks of system disruptions;
   7. arrangements to have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed;

8. arrangements to review regularly the compliance with the admission requirements of the financial instruments which they admit to trading;

f) a recognised external audit office for banks is appointed to audit annually whether the regulated market complies with the obligations arising from the Banking Act, this Ordinance, and its own regulations;

g) the settlement of transactions concluded on the regulated market is arranged in such a way as to ensure the smooth and orderly functioning of financial markets, while guaranteeing all members and participants in the regulated market the right to designate the settlement system, provided that:

1. such links and arrangements between the designated settlement system and all other systems or facilities exist as are necessary to ensure the efficient and economic settlement of the transaction in question; and
2. the FMA is convinced that the designation of settlement systems other than that designated by the regulated market ensures the smooth and orderly functioning of financial markets.

2) With respect to paragraph 1(b), the operator of the regulated market must:

a) provide the FMA with, and make public, information regarding the ownership of the regulated market and/or the market operator, and in particular, the identity and scale of interests of any parties in a position to exercise significant influence over the management;

b) notify the FMA of and make public any transfer of ownership which gives rise to a change in the identity of the persons exercising significant influence over the operation of the regulated market.

3) The FMA shall refuse to approve proposed changes to the controlling interests of the regulated market and/or the market operator as referred to in paragraph 2 where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the regulated market.

4) The rules referred to in paragraph 1(e)(2) must specify in particular:

a) the obligations arising for the members or participants from the constitution and management of the regulated market;

b) rules relating to transactions on the market;

c) professional standards imposed on the staff of the banks or investment firms that are operating on the market;

d) the conditions established for members or participants other than banks and investment firms under Article 55d(1);

e) the rules and procedures for the clearing and settlement of transactions concluded on the regulated market.

5) The rules referred to in paragraph 1(e)(3) shall ensure in particular that any financial instruments admitted to trading on a regulated market are capable of being traded in a fair, orderly and efficient manner and, in the case of transferable securities, are freely negotiable. In the case of derivatives, the rules shall ensure in particular that the design of the derivative contract allows for its orderly pricing as well as for the existence of effective settlement conditions.

Article 55c[345]

Requirements for the management body of a market operator

1) All members of the management body of a market operator shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experience.

2) The members of the management body shall commit sufficient time to perform their functions in the market operator.

3) The number of directorships a member of the management body can hold at the same time shall take into account individual circumstances and the nature, scale and complexity of the market operator's activities. The members of the management body of market operators that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not at the same time hold positions exceeding one executive directorship and two non-executive directorships or four non-executive directorships. Executive or non-executive directorships held within the same group or undertakings where the market operator owns a qualifying holding shall be considered to be one single directorship. Directorships in organisations which do not pursue predominantly commercial objectives shall be exempt from the limitation on the number of directorships a member of a management body can hold.

4) The FMA may authorise members of the management body to hold one additional non-executive directorship. The FMA shall regularly inform ESMA of such authorisations.

345 Article 55c inserted by LGBl. 2017 No. 431.

5) The management body must possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks.

6) Each member of the management body must act with honesty, integrity and independence of mind to assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor decision-making.

7) The market operator shall devote adequate human and financial resources to the induction and training of members of the management body.

8) Market operators which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities must establish a nomination committee, unless the management body does not have any competence in the process of selection and appointment of any of its members. Article 29b shall apply *mutatis mutandis* to the composition and duties of the nomination committee. Additionally, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target.

9) A market operator and its nomination committees must engage a broad set of qualities and competences when recruiting members to the management body and for that purpose put in place a policy promoting diversity on the management body.

10) The management body of a market operator must define and oversee the implementation of the business regulations that ensure effective and prudent management of an organisation, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market.

11) The management body must monitor and periodically assess the effectiveness of the market operator's business regulations and take appropriate steps to address any deficiencies.

12) Members of the management body must have adequate access to information and documents which are needed to oversee and monitor management decision-making.

13) Persons who effectively direct the business and the operations of a regulated market already authorised under Directive 2014/65/EU shall be presumed to meet the requirements placed on a member of the management body.

14) The market operator must notify the FMA of the identity of all members of its management body and of any changes to its membership, along with all information needed to assess whether the requirements set out in paragraphs 1 to 9 are met.

Article 55d[346]

Access to a regulated market

1) Regulated markets may admit as members or participants:

a) banks and investment firms;

b) other persons who:

   1. are of sufficient good repute;
   2. have a sufficient level of trading ability, competence and experience;
   3. have, where applicable, adequate organisational arrangements; and
   4. have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the regulated market may have established in order to guarantee the adequate settlement of transactions.

2) For the transactions concluded on a regulated market, members and participants are not obliged to apply to each other the obligations laid down in Articles 8a to 8h of the Banking Act. However, the members or participants of the regulated market shall apply these obligations with respect to their clients when they, acting on behalf of their clients, execute their orders on a regulated market.

3) Regulated markets from other EEA Member States may, without further legal or administrative requirements, provide appropriate arrangements in Liechtenstein so as to facilitate access to and trading on those markets by remote members or participants established in Liechtenstein. The FMA may request a list of the members and participants of the regulated market from the competent authority of the home Member State.

4) If a domestic regulated market wishes to provide an arrangement to facilitate access for remote members or participants in another EEA Member State, it shall inform the FMA in which EEA Member State it intends to provide such arrangements. The FMA shall communicate this

346 Article 55d inserted by LGBl. 2017 No. 431.

information within one month to the Member State in which the regulated market intends to provide such arrangements. ESMA may request access to this information. At the request of the competent authority of the host Member State, the FMA shall also communicate without undue delay the identity of the members or participants of the domestic regulated market.

Article 55e[347]

Obligations relating to the operation of a regulated market

1) In addition to the following provisions, the provisions of Regulation (EU) No 600/2014 must also be complied with on a permanent basis when operating a regulated market.

2) The regulated market is obliged on a permanent basis to record in a journal the time, the traders involved, the financial instruments, the number or nominal value and the price of the financial instruments traded and to publish all information necessary for the transparency of trading in admitted financial instruments on and outside the regulated market. The regulated market must also make arrangements to facilitate access to information subject to disclosure requirements for its members or participants.

3) The regulated market must establish and maintain effective arrangements to verify that issuers of transferable securities that are admitted to trading on the regulated market comply with their obligations in respect of initial, ongoing or ad hoc disclosure obligations.

4) A transferable security that has been admitted to trading on a regulated market can subsequently be admitted to trading on other regulated markets, even without the consent of the issuer and in compliance with the relevant provisions of the Securities Prospectus Act. The issuer shall be informed by the regulated market of the fact that its securities are traded on that regulated market. The issuer shall not be subject to any obligation to provide information required under paragraphs 2 and 3 directly to any regulated market which has admitted the issuer's securities to trading without its consent.

5) The regulated market shall establish and maintain effective arrangements and procedures including the necessary resource for the regular monitoring of the compliance by its members or participants with its rules. In particular, the regulated markets shall monitor orders sent including cancellations and the transactions undertaken by its members or

347 Article 55e inserted by LGBl. 2017 No. 431.

participants under its systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behaviour that is prohibited under market abuse legislation or system disruptions in relation to a financial instrument.

6) A market operator shall inform the FMA without undue delay of significant infringements of its rules or disorderly trading conditions or conduct that may indicate behaviour that is prohibited under market abuse legislation or system disruptions in relation to a financial instrument. In the case of investigation and prosecution of market abuse occurring on or through the systems of the regulated market, the market operator must supply without undue delay all relevant information to the FMA and provide full assistance to the FMA in investigating and prosecuting market abuse.

7) The FMA shall communicate to ESMA and to the competent authorities of the other EEA Member States the information referred to in paragraph 6. In relation to conduct that may indicate behaviour that is prohibited under market abuse legislation, the FMA must be convinced that such behaviour is being or has been carried out before it notifies ESMA and the competent authorities of the other EEA Member States.

8) Market operators shall not execute client orders against proprietary capital, or engage in matched principal trading on any of the regulated markets they operate.

Article 55f[348]

Provisions regarding central counterparties and clearing and settlement arrangements

1) A regulated market may enter into appropriate arrangements with a central counterparty or clearing house and a settlement system of another EEA Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by market participants under their systems.

2) The FMA may not oppose the use of central counterparties, clearing houses and/or settlement systems in another EEA Member State except where demonstrably necessary in order to maintain the orderly functioning of that regulated market. Moreover, links and arrangements between the settlement system and any other system or facility must exist

348 Article 55f inserted by LGBl. 2017 No. 431.

as are necessary to ensure the efficient and economic settlement of the transaction in question.

3) In order to avoid undue duplication of control, the FMA shall take into account the oversight and supervision of the clearing and settlement system already exercised by other supervisory authorities with competence in relation to such systems.

Article 55g[349]

Suspension and removal of financial instruments from trading

1) A market operator may suspend or remove from trading a financial instrument in accordance with Article 30s of the Banking Act unless such suspension or removal would cause significant damage to the investors' interests or the orderly functioning of the market. Market operators may also suspend or remove the derivatives as referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument. This shall not affect the FMA's right under Article 35(2)(u) and (v) of the Banking Act to require the suspension of trading in a financial instrument or its removal from trading.

2) The operator of a regulated market that suspends or removes from trading a financial instrument or derivatives as referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument must publish its decision and provide the FMA with the relevant information. In addition, the operator of a regulated market may directly inform the operators of other regulated markets of the suspension or removal from trading of the financial instrument concerned.

3) Where the suspension or removal is due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing the ad hoc notification requirement, the FMA shall require that other trading venues which fall under its jurisdiction and trade the same financial instrument or derivatives as referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument, also suspend or remove that financial instrument or derivatives from trading, except where such suspension or removal could cause significant damage to the investors' interests or the orderly functioning of the market.

349 Article 55g inserted by LGBl. 2017 No. 431.

4) Where the FMA requires the suspension of trading or removal from trading on one or more regulated markets for a financial instrument or a derivative as referred to in Annex 2 Section C(4) to (10) of the Banking Act that relates or is referenced to that financial instrument, it shall without undue delay publish its decision and notify ESMA and the competent authorities of the other EEA Member States. Such publication or notification must also be made if the FMA refrains from suspension or removal.

5) Where the FMA is notified by the competent authority of another EEA Member State, it shall require that regulated markets, other multilateral trading facilities, other organised trading facilities, and systematic internalisers, which fall under their jurisdiction and trade the same financial instrument or derivatives referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument, also suspend or remove that financial instrument or derivatives from trading, where the suspension or removal is due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing the ad hoc notification requirement, except where such suspension or removal could cause significant damage to the investors' interests or the orderly functioning of the market.

6) The notification procedure referred to in this Article shall also apply in the case where the decision to suspend or remove from trading a financial instrument or derivatives as referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument is taken by the FMA.

7) This Article shall apply also when the suspension from trading of a financial instrument or derivatives as referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument is lifted.

Article 55h[350]

List of members and participants of the regulated market

1) The operator of a regulated market shall communicate, on a regular basis, the list of the members or participants of the regulated market to the FMA.

350 Article 55h inserted by LGBl. 2017 No. 431.

2) The FMA shall draw up a list of the domestic regulated markets and shall forward that list to the other EEA Member States and ESMA. A similar communication shall be effected in respect of each change to that list.

Article 55i[351]

Systems resilience, circuit breakers and electronic trading

1) A regulated market must have in place effective systems, procedures and arrangements to ensure its trading systems are resilient and have sufficient capacity to deal with peak order and message volumes. Its trading systems must be able to ensure orderly trading under conditions of severe market stress. They must be fully tested to ensure such conditions are met. The regulated market must provide effective business continuity arrangements to ensure continuity of its services if there is any failure of its trading systems.

2) A regulated market must have in place:

a) written agreements with all banks or investment firms pursuing a market making strategy (Article 27h(6)) on the regulated market; and

b) schemes to ensure that a sufficient number of banks or investment firms participate in such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis, where such a requirement is appropriate to the nature and scale of the trading on that regulated market.

3) The regulated market shall monitor and enforce compliance by investment firms with the requirements of such binding written agreements referred to in paragraph 2. The regulated market shall inform the FMA about the content of the binding written agreement and shall, upon request, provide all further information to the FMA necessary to enable the FMA to satisfy itself of compliance by the regulated market with this paragraph. The written agreement shall at least specify:

a) the obligations of the bank or investment firm in relation to the provision of liquidity and where applicable any other obligation arising from participation in the scheme referred to in paragraph 2;

b) any incentives in terms of rebates or otherwise offered by the regulated market to a bank or investment firm so as to provide liquidity to the market on a regular and predictable basis and, where applicable, any

351 Article 55i inserted by LGBl. 2017 No. 431.

other rights accruing to the bank or investment firm as a result of participation in the scheme referred to in paragraph 2.

4) A regulated market must have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous.

5) A regulated market must be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period and, in exceptional cases, cancel, vary or correct any transaction. The regulated market must ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account the liquidity of different asset classes and sub-classes, the nature of the market model and types of users and is sufficient to avoid significant disruptions to the orderliness of trading.

6) A regulated market must report the parameters for halting trading and any material changes to those parameters to the FMA in a consistent and comparable manner. The FMA shall report this information to ESMA. A regulated market must have the necessary systems and procedures in place to ensure that it will notify the FMA if it halts trading in a financial instrument and such trading is material in terms of liquidity in that financial instrument. The FMA may coordinate a market-wide response to determine whether it is appropriate to halt trading on other venues on which the financial instrument is traded until trading resumes on the original market.

7) A regulated market must have in place effective systems, procedures and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions which do arise from such algorithmic trading systems. This shall include systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached. The systems must limit and enforce the minimum tick size that may be executed on the market. A regulated market must ensure that members or participants carry out appropriate testing of algorithms and must provide environments to facilitate such testing.

8) If a regulated market permits direct electronic access, it must:

a) have in place effective systems, procedures and arrangements to ensure that:

   1. only banks or investment firms may provide such services;

2. appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided;
3. the bank or investment firm offering direct electronic access retains responsibility for orders and trades executed using that service;

b) set appropriate standards regarding risk controls and thresholds on trading through such access and be able to distinguish and if necessary to stop orders or trading by a person using direct electronic access separately from other orders or trading by the member or participant;

c) have arrangements in place to suspend or terminate the provision of direct electronic access by a bank or investment firm to a client in the case of non-compliance with this paragraph.

9) A regulated market must ensure that its rules on co-location services are transparent, fair and non-discriminatory.

10) A regulated market must ensure that its fee structures including execution fees, ancillary fees and any rebates are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way which contributes to disorderly trading conditions or market abuse. In particular, a regulated market must impose market making obligations in individual shares or a suitable basket of shares in exchange for any rebates that are granted.

11) A regulated market shall have the ability to adjust its fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply.

12) A regulated market must be able to identify, by means of flagging from members or participants, orders generated by algorithmic trading, the different algorithms used for the creation of orders and the relevant persons initiating those orders. That information shall be available to the FMA upon request.

13) Upon request by the FMA, the regulated market must make available to the FMA data relating to the order book or give FMA access to the order book so that it is able to monitor trading on the regulated market.

Article 55k[352]

Tick sizes

1) Regulated markets must adopt tick size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and in any other financial instruments covered by Commission Delegated Regulation (EU) 2017/588.

2) The tick size regimes referred to in paragraph 1 must:

a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads;

b) adapt the tick size for each financial instrument appropriately.

B. Multilateral and organised trading facilities[353]

Article 55l[354]

Licensing and operation of multilateral or organised trading facilities

1) The licence for operating a multilateral or organised trading facility as referred to in Article 30t of the Banking Act shall be granted by the FMA if:

a) the operator presents a programme of operations setting out the types of business envisaged, the organisational structure, and all material internal processes;

b) the persons who can exercise, directly or indirectly, significant influence over the management of the multilateral or organised trading facility are suitable;

c) the operator of the multilateral or organised trading facility and its responsible employees demonstrate the necessary expertise and offer a guarantee of sound and proper business operation;

d) the operator ensures compliance with the obligations set out in Article 30t of the Banking Act and this Article through its regulations and organisation;

352 Article 55k inserted by LGBl. 2017 No. 431.
353 Title preceding Article 55l inserted by LGBl. 2017 No. 431.
354 Article 55l inserted by LGBl. 2017 No. 431.

e) the multilateral or organised trading facility has an operational, management, and monitoring organisation appropriate to its activities; in particular, the following must be in place:
   1. a regulation for the organisation of efficient and transparent trading, in particular non-discretionary rules and procedures for fair trading;
   2. transparent rules on the criteria relating to financial instruments tradable through the multilateral or organised trading facility;
   3. transparent, objective, and publicly available rules for access to the system;
   4. arrangements to avoid conflicts of interest;
   5. arrangements to ensure the technical operability and continuity of trading; in particular systems resilience (Article 55i) and compliance with tick sizes (Article 55k) must be guaranteed;
   6. arrangements to facilitate the effective settlement of transactions concluded within the multilateral or organised trading facility. Members and participants must be clearly informed by the operator of the multilateral or organised trading facility of the facility's responsibility for the settlement of transactions executed through the facility;

f) a recognised external audit office for banks is appointed to audit annually whether the multilateral or organised trading facility complies with the obligations arising from the Banking Act, this Ordinance, and its own regulations.

2) The following requirements must also be met on a permanent basis when operating a multilateral or organised trading facility:

a) compliance with the provisions set out in Regulation (EU) No 600/2014;

b) compliance with recording requirements;

c) publication of all information required for the transparency of trading;

d) establishment of effective arrangements and procedures, relevant to the multilateral or organised trading facility, for the regular monitoring of the compliance by its members or participants or users with its rules;

e) provision of sufficient publicly available information to users, taking into account both the nature of the users and the types of instruments traded;

f) monitoring of the orders sent, including cancellations and the transactions undertaken by their members or participants or users under the trading systems, in order to identify infringements of those rules, disorderly trading conditions, conduct that may indicate behaviour that is prohibited under market abuse legislation, or system disruptions in relation to a financial instrument and deployment of the resource necessary to ensure that such monitoring is effective;

g) immediate communication to the FMA of significant infringements of the rules of the multilateral or organised trading facility or disorderly trading conditions or conduct that may indicate behaviour that is prohibited under market abuse legislation or system disruptions in relation to a financial instrument;

h) provision of full assistance to the FMA in investigating and prosecuting market abuse occurring on or through the systems of the multilateral or organised trading facility and supply without undue delay of the information referred to in subparagraph (g) to the FMA.

3) The FMA shall communicate to ESMA and to the competent authorities of the other EEA Member States the information referred to in paragraph 2(g). In relation to conduct that may indicate behaviour that is prohibited under market abuse legislation, the FMA must be convinced that such behaviour is being or has been carried out before it notifies ESMA and the competent authorities of the other EEA Member States.

4) Where a transferable security that has been admitted to trading on a regulated market is also traded on a multilateral or organised trading facility without the consent of the issuer, the issuer shall not be subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that multilateral or organised trading facility.

5) Multilateral and organised trading facilities must have at least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation.

6) The operator of a multilateral or organised trading facility shall provide the competent authority with a detailed description of the functioning of the multilateral or organised trading facility, including, without prejudice to Article 55m(1), (4) and (5), any links to or participation by a regulated market, a multilateral trading facility, an organised trading facility, or a systematic internaliser owned by the same investment firm or market operator, and a list of their members, participants and/or users. The FMA shall make that information available to ESMA on request.

Article 55m[355]

Specific requirements for multilateral trading facilities

1) Operators of a multilateral trading facility must establish and implement non-discretionary rules for the execution of orders in the system.

2) The rules referred to in Article 55l(1)(e)(3) governing access to a multilateral trading facility must comply with the conditions established in Article 55d(1).

3) Operators of a multilateral trading facility must have arrangements to:

a) be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks;

b) have effective measures to facilitate the efficient and timely finalisation of the transactions executed under its systems; and

c) have available, at the time of authorisation and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the multilateral trading facility and the range and degree of the risks to which it is exposed.

4) If, in accordance with the rules applicable to a multilateral trading facility, transactions are concluded between the multilateral trading facility and its members or participants or only between the members and participants in relation to the use of the multilateral trading facility, the obligations set out in Articles 8a to 8h of the Banking Act, with the exception of Article 8e(2) and (3) of the Banking Act, shall not apply. However, the members of or participants in the multilateral trading facility shall comply with these obligations in connection with the provision of securities and ancillary services with respect to their clients when, acting on behalf of their clients, they execute their orders through the systems of an multilateral trading facility.

5) Operators of a multilateral trading facility shall not execute client orders against proprietary capital, or engage in matched principal trading.

355 Article 55m inserted by LGBl. 2017 No. 431.

Article 55n[356]

Specific requirements for organised trading facilities

1) Operators of an organised trading facility must establish arrangements preventing the execution of client orders in that organised trading facility against the proprietary capital of the operator or an entity attributable to the operator.

2) Operators of an organised trading facility may engage in matched principal trading in bonds, structured finance products, emission allowances and certain derivatives only where the client has consented to the process.

3) Operators of an organised trading facility shall not use matched principal trading to execute client orders in an OTF in derivatives pertaining to a class of derivatives that has been declared subject to the clearing obligation in accordance with Article 5 of Regulation (EU) No 648/2012.

4) Operators of an organised trading facility shall not evade the restrictions in paragraphs 2 and 3 by structuring the transaction in such a way that the definition of matched principal trading in Article 4(1)(38) of Directive 2014/65/EU is not complied with. They must establish arrangements to ensure this obligation.

5) Operators of an organised trading facility may engage in dealing on own account other than matched principal trading only with regard to sovereign debt instruments for which there is not a liquid market.

6) The operation of an organised trading facility and of a systematic internaliser within the same legal entity shall be prohibited. An organised trading facility shall not connect with a systematic internaliser in a way which enables orders in an organised trading facility and orders or quotes in a systematic internaliser to interact. An organised trading facility shall not connect with another organised trading facility in a way which enables orders in different organised trading facilities to interact.

7) Operators of an organised trading facility may engage other banks or investment firms to carry out market making on that organised trading facility on an independent basis. For the purposes of this Article, a bank or investment firm shall not be deemed to be carrying out market making on an independent basis if it has close links to the operator of the organised trading facility.

356 Article 55n inserted by LGBl. 2017 No. 431.

8) The execution of orders on an organised trading facility shall be carried out on a discretionary basis. However, operators of an organised trading facility shall exercise discretion only:

a) when deciding to place or retract an order on the organised trading facility they operate; and/or

b) when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client and with its obligations in accordance with Article 8e of the Banking Act.

9) If the system crosses client orders, the operator of the organised trading facility may decide if, when and how much of two or more orders it wants to match within the system. In accordance with paragraphs 1, 2, 4 and 5 and without prejudice to paragraph 3, with regard to a system that arranges transactions in non-equities, the operator of the organised trading facility may facilitate negotiation between clients so as to bring together two or more potentially compatible trading interest in a transaction. That obligation shall be without prejudice to Article 8e of the Banking Act and Article 55l of this Ordinance.

10) The FMA may require, either when authorisation for operation of an organised trading facility is applied for or on an ad hoc basis, a detailed explanation why the system does not correspond to and cannot operate as a regulated market, multilateral trading facility, or systematic internaliser, a detailed description as to how discretion will be exercised, in particular when an order to the organised trading facility may be retracted and when and how two or more client orders will be matched within the organised trading facility. In addition, operators of an organised trading facility must provide the FMA with information explaining its use of matched principal trading. The FMA shall monitor engagement in matched principal trading to ensure that it continues to fall within the definition of such trading and that its engagement in matched principal trading does not give rise to conflicts of interest between the operator of the organised trading facility and its clients.

11) The obligations in connection with the provision of securities and ancillary services set out in Articles 8a to 8h of the Banking Act shall also apply to transactions concluded on an organised trading facility.

Article 55o[357]

Suspension and removal of financial instruments from trading on a multilateral or organised trading facility

1) Without prejudice to the right of the FMA under Article 35(2)(u) and (v) of the Banking Act to demand suspension or removal of a financial instrument from trading, an operator of a multilateral or organised trading facility may suspend or remove from trading a financial instrument which no longer complies with the rules of the multilateral or organised trading facility unless such suspension or removal would be likely to cause significant damage to the investors' interests or the orderly functioning of the market (Article 30t(5) of the Banking Act).

2) An operator of a multilateral or organised trading facility that suspends or removes from trading a financial instrument must also suspend or remove derivatives referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument where necessary to support the objectives of the suspension or removal of the underlying financial instrument. An operator of a multilateral or organised trading facility must make public its decision on the suspension or removal of the financial instrument and of any related derivative and communicate the relevant decisions to the FMA.

3) The FMA shall require that regulated markets, other multilateral trading facilities, other organised trading facilities, and systematic internalisers, which fall under its jurisdiction and trade the same financial instrument or derivatives referred to Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument, also suspend or remove that financial instrument or derivatives from trading, where the suspension or removal is due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing market abuse legislation, except where such suspension or removal could cause significant damage to the investors' interests or the orderly functioning of the market.

4) The FMA shall immediately make public and communicate to ESMA and the competent authorities of the other EEA Member States such a decision.

5) Where the FMA is notified by the competent authority of another EEA Member State of the suspension or removal from trading of a financial instrument, it shall require that regulated markets, other multilateral trading facilities, other organised trading facilities, and

357 Article 55o inserted by LGBl. 2017 No. 431.

systematic internalisers, which fall under their jurisdiction and trade the same financial instrument or derivatives referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument, also suspend or remove that financial instrument or derivatives from trading, where the suspension or removal is due to suspected market abuse, a take-over bid or the non-disclosure of inside information about the issuer or financial instrument infringing market abuse legislation, except where such suspension or removal could cause significant damage to the investors' interests or the orderly functioning of the market.

6) Where the FMA is notified in accordance with paragraph 5, it shall communicate its decision to ESMA and other competent authorities, including an explanation if the decision was not to suspend or remove from trading the financial instrument or derivatives referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument.

7) Paragraphs 2 to 6 shall also apply when the suspension from trading of a financial instrument or derivatives referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument is lifted.

8) The notification procedure referred to in paragraphs 3 to 7 shall also apply in the case where the decision to suspend or remove from trading a financial instrument or derivatives referred to in Annex 2 Section C(4) to (10) of the Banking Act that relate or are referenced to that financial instrument is taken by the FMA.

Article 55p[358]

SME growth markets

1) On the application of an operator of a multilateral trading facility as referred to in Article 30t(6) of the Banking Act, the FMA shall register the multilateral trading facility as an SME growth market if is satisfied that the requirements in paragraph 2 are complied with in relation to the multilateral trading facility.

2) The multilateral trading facility must be subject to effective rules, systems and procedures which ensure that the following special requirements are complied with:

358 Article 55p inserted by LGBl. 2017 No. 431.

a) at least 50% of the issuers whose financial instruments are admitted to trading on the multilateral trading facility are SMEs at the time when the multilateral trading facility is registered as an SME growth market and in any calendar year thereafter;

b) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;

c) on initial admission to trading of financial instruments on the market there is sufficient information published to enable investors to make an informed judgment about whether or not to invest in the financial instruments, either an appropriate admission document or a prospectus if the requirements laid down in the Securities Prospectus Act are applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the multilateral trading facility;

d) there is appropriate ongoing periodic financial reporting by or on behalf of the issuers on the market, for example audited annual reports;

e) issuers as defined in Article 3(1)(21) of Regulation (EU) No 596/2014, persons discharging managerial responsibilities as defined in Article 3(1)(25) of Regulation (EU) No 596/2014 and persons closely associated with them as defined in Article 3(1)(26) of Regulation (EU) No 596/2014 comply with relevant requirements applicable to them under market abuse legislation;

f) regulatory information concerning the issuers on the market is stored and disseminated to the public;

g) there are effective systems and controls aiming to prevent and detect market abuse on that market as required under market abuse legislation.

3) The criteria in paragraph 2 are without prejudice to compliance by the operator of the multilateral trading facility with other obligations under the Banking Act and this Ordinance relevant to the operation of multilateral trading facilities. The operator of the multilateral trading facility may also impose additional requirements to those specified in that paragraph.

4) If the FMA registers or deregisters a multilateral trading facility as an SME growth market, it shall as soon as possible notify ESMA of that registration or deregistration.

5) Where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may additionally be traded on another SME growth market only where the issuer has been informed and has not objected. In such a case, however, the issuer shall

not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the additional SME growth market.

Article 55q[359]

Provisions regarding central counterparties, clearing and settlement arrangements in respect of multilateral trading facilities

1) Operators of a multilateral trading facility may enter into appropriate arrangements with a central counterparty or clearing house and a settlement system of another EEA Member State with a view to providing for the clearing and/or settlement of some or all trades concluded by the members or participants under their systems.

2) The FMA may not oppose the use of central counterparties, clearing houses and/or settlement systems in another EEA Member State by operators of a multilateral trading facility, except where demonstrably necessary in order to maintain the orderly functioning of that multilateral trading facility. Moreover, links and arrangements between the settlement system and any other system or facility must exist as are necessary to ensure the efficient and economic settlement of the transaction in question.

359 Article 55q inserted by LGBl. 2017 No. 431.

3) In order to avoid undue duplication of control, the FMA shall take into account the oversight and supervision of the clearing and settlement system already exercised by the central banks as overseers of clearing and settlement systems or by other supervisory authorities with competence in relation to such systems.

VII. Position limits and reporting[360]

Article 55r[361]

Position limits

1) The establishment of the position limits for the size of a net position by the FMA pursuant to Article 30w of the Banking Act shall be carried out in accordance with the methodology for calculation determined by ESMA.

2) The position limits shall be set on the basis of all positions held by a person and those held on its behalf at an aggregate group level in order to:

a) prevent market abuse;

b) support orderly pricing and settlement conditions, including preventing market distorting positions, and ensuring, in particular, convergence between prices of derivatives in the delivery month and spot prices for the underlying commodity, without prejudice to price discovery on the market for the underlying commodity.

3) Position limits shall not apply to:[362]

a) positions held by or on behalf of a non-financial entity and which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity;

b) positions held by, or on behalf of, a financial entity that is part of a predominantly commercial group and is acting on behalf of a non-financial entity of the predominantly commercial group, where those positions are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity;

360 Title preceding Article 55r inserted by LGBl. 2017 No. 431.

361 Article 55r inserted by LGBl. 2017 No. 431.

362 Article 55r(3) amended by LGBl. 2022 No. 273.

c) positions held by financial and non-financial counterparties for positions that are objectively measurable as resulting from transactions entered into to fulfil obligations to provide liquidity on a trading venue as referred to in Article 2(4)(4)(c) of Directive 2014/65/EU;

d) any other securities as referred to in Article 3a(1)(42)(c) of the Banking Act which relate to a commodity or an underlying as referred to in Annex 2 Section C(4) of the Banking Act.

4) Position limits shall specify clear quantitative thresholds for the maximum size of a position in a commodity derivative that persons can hold.

5) The FMA shall set position limits for each contract on critical or significant commodity derivatives and agricultural commodity derivatives that are traded on trading venues, based on the calculation methodology determined by ESMA. Such position limits shall include economically equivalent OTC contracts. Commodity derivatives shall be considered to be critical or significant where the sum of all net positions of end position holders constitutes the size of their open interest and is at a minimum of 300 000 lots on average over a one-year period.[363]

6) The FMA shall review the position limits referred to in paragraph 5 where there is a significant change on the market, including a significant change in deliverable supply or open interest, based on its determination of deliverable supply and open interest, and reset those position limits in accordance with the calculation methodology determined by ESMA.[364]

7) The FMA shall notify ESMA of the exact position limits it intends to set in accordance with the methodology for calculation established by ESMA. The FMA shall, where applicable, modify the position limits in accordance with ESMA's opinion on the FMA's plan for setting position limits or provide ESMA with justification why the change is considered to be unnecessary. Where the FMA imposes limits contrary to an ESMA opinion, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

8) Where an agricultural commodity derivative based on the same underlying and sharing the same characteristics is traded in significant volumes on more than one trading venue in the EEA, or where critical or significant commodity derivatives based on the same underlying and sharing the same characteristics are traded, the FMA shall proceed as follows:[365]

363 Article 55r(5) amended by LGBl. 2022 No. 273.
364 Article 55r(6) amended by LGBl. 2022 No. 273.
365 Article 55r(8) amended by LGBl. 2022 No. 273.

a) If the FMA is the competent authority of the trading venue where the largest volume of trading takes place, it shall, as the central competent authority, set the single position limit to be applied on all trading in those derivatives; in doing so, it shall consult the competent authorities of other trading venues on which this derivative is traded in significant volumes or on which critical or significant commodity derivatives are traded, on the single position limit to be applied and any revisions to that single position limit.
b) If the FMA is the competent authority of a trading venue on which significant volumes are traded, but not the largest volume, the FMA shall cooperate with the foreign competent authority of the trading venue with the largest traded volume; if the foreign central competent authority sets a single position limit, the FMA shall also adopt this limit for the trading venue in Liechtenstein, subject to subparagraph (c).
c) In the event of disagreement between the FMA and the competent foreign authorities, the FMA shall consult the EFTA Surveillance Authority in cases in which only competent authorities of EFTA States are concerned. In cases in which both the FMA and competent authorities of Member States of the European Union are concerned, the FMA shall contact the EFTA Surveillance Authority and ESMA. The FMA shall state the full and detailed reasons why it considers that the requirements laid down in paragraph 1 have or have not been met.

9) The FMA shall put in place cooperation arrangements, which shall include the exchange of relevant data, in order to enable the monitoring and enforcement of the single position limit, with the competent authorities of the trading venues in the EEA where agricultural commodity derivatives that are based on the same underlying and that share the same characteristics are traded in significant volumes or critical or significant commodity derivatives that are based on the same underlying and that share the same characteristics are traded, and with the competent authorities in the EEA of position holders in those derivatives.[366]

10) Operators of a domestic trading venue which trades commodity derivatives must apply position management controls. These controls shall at least include powers for the trading venue to:

a) monitor the open interest positions of persons;
b) access information, including all relevant documentation, from persons about the size and purpose of a position or exposure entered

366 Article 55r(9) amended by LGBl. 2022 No. 273.

into, information about beneficial or underlying owners, any concert arrangements, and any related assets or liabilities in the underlying market, including, where appropriate, positions held in commodity derivatives that are based on the same underlying and that share the same characteristics on other trading venues and in economically equivalent OTC contracts through members and participants;[367]

c) require a person to terminate or reduce a position, on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and

d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.

11) The position limits and position management controls shall be transparent and non-discriminatory. They shall specify how they apply to persons and taking account of the nature and composition of market participants and of the use they make of the contracts submitted to trading.

12) Operators of a trading venue shall inform the FMA of the details of position management controls. The FMA shall communicate this information and the details of the position limits it has established to ESMA.

13) The FMA shall not impose limits which are more restrictive than those adopted pursuant to paragraph 1 except in exceptional cases where they are objectively justified and proportionate taking into account the liquidity of the specific market and the orderly functioning of that market. The FMA shall publish on its website the details of the more restrictive position limits it decides to impose, which shall be valid for an initial period not exceeding six months from the date of their publication on the website. The more restrictive position limits may be renewed for further periods not exceeding six months at a time if the grounds for the restriction continue to be applicable. If not renewed after that six-month period, they shall automatically expire.

14) Where the FMA decides to impose more restrictive position limits, it shall notify ESMA. The notification shall include a justification for the more restrictive position limits. If the FMA does not follow the opinion issued by ESMA on the more restrictive position limits, it shall immediately publish on its website a notice fully explaining its reasons for doing so.

367 Article 55r(10)(b) amended by LGBl. 2022 No. 273.

15) In the event of an infringement of a position limit, the FMA may impose sanctions under Article 63a(2)(44) of the Banking Act with respect to:

a) positions held by persons situated or operating in Liechtenstein or abroad which exceed the limits on commodity derivative contracts the FMA has set in relation to contracts on domestic trading venues or economically equivalent OTC contracts;
b) positions held by persons situated or operating in Liechtenstein which exceed the limits on commodity derivative contracts set by competent authorities in other EEA Member States.

Article 55s[368]

Reporting requirements

1) Operators of domestic trading venues which trade commodity derivatives or emission allowances or derivatives thereof shall:

a) make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances or derivatives thereof traded on their trading venue, specifying the number of long and short positions by such categories, changes thereto since the previous report, the percentage of the total open interest represented by each category and the number of persons holding a position in each category in accordance with paragraph 4 and communicate that report to the FMA and to ESMA; this obligation shall only apply when both the number of persons and their open positions exceed minimum thresholds;
b) provide the FMA with a complete breakdown of the positions held by all persons, including the members or participants and the clients thereof, on that trading venue, at least on a daily basis.

1a) The position reporting requirement set out in paragraph 1a shall not apply to transferable securities within the meaning of Article 3a(1)(42)(c) of the Banking Act which relate to a commodity or an underlying as referred to in Annex 2 Section C(10) of the Banking Act.[369]

2) Liechtenstein banks or investment firms trading in commodity derivatives or emission allowances or derivatives thereof outside a trading venue must provide, on at least a daily basis, the central competent authority referred to in Article 55r(8) or – where there is no central

368 Article 55s inserted by LGBl. 2017 No. 431.

369 Article 55s(1a) inserted by LGBl. 2022 No. 273.

competent authority – the competent authority of the trading venue where the commodity derivatives or emission allowances or derivatives thereof are traded, with a complete breakdown of their positions taken in economically equivalent OTC contracts and, when relevant, in commodity derivatives or emission allowances or derivatives thereof traded on a trading venue, as well as of those of their clients and the clients of those clients until the end client is reached, in accordance with Article 26 of Regulation (EU) No 600/2014.[370]

3) In order to enable monitoring of compliance with Article 30w(1) of the Banking Act and Article 55r(1) to (3) of this Ordinance, members or participants of regulated markets and multilateral trading facilities and clients of organised trading facilities must report to the operator of the trading venue the details of their own positions held through contracts traded on that trading venue at least on a daily basis, as well as those of their clients and the clients of those clients until the end client is reached.

4) Persons holding positions in a commodity derivative or emission allowance or derivative thereof shall be classified by the operator of the trading venue according to the nature of their main business, taking account of any applicable authorisation, as either:

a) banks or investment firms;
b) investment funds, either an undertaking for collective investments in transferable securities (UCITS) as defined in the UCITS Act or an alternative investment fund manager as defined in the AIFM Act;
c) other financial institutions, including insurance undertakings and reinsurance undertakings as defined in the Insurance Supervision Act, and institutions for occupational retirement provision as defined in Pension Funds Act;
d) commercial undertakings;
e) in the case of emission allowances or derivatives thereof, operators with compliance obligations under the Emissions Trading Act.

5) The reports referred to in point (a) of paragraph 1 shall specify the number of long and short positions by category of persons, any changes thereto since the previous report, percent of total open interest represented by each category, and the number of persons in each category.

6) The reports referred to in paragraph 1(a) and the breakdowns referred to in paragraph 2 shall differentiate between:

370 Article 55s(2) amended by LGBl. 2022 No. 273.

a) positions identified as positions which in an objectively measurable way reduce risks directly relating to commercial activities; and

b) other positions.

VIII. Data reporting services[371]

Article 55t[372]

Data reporting services providers

1) As part of the licensing procedure set out in Article 30x of the Banking Act, the applicant shall provide to the FMA all information, including a programme of operations setting out, *inter alia*, the types of services envisaged and the organisational structure, necessary to enable the FMA to satisfy itself that the applicant has established, at the time of initial authorisation, all the necessary arrangements to meet its obligations as a data reporting services provider.

2) An applicant shall be informed, within six months of the submission of a complete application, whether or not a licence has been granted.

3) All members of the management body of a data reporting services provider must at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties. The management body must possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body must act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management and to effectively oversee and monitor management decision-making where necessary. Where a market operator seeks a licence to operate an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in this paragraph.

4) The data reporting services provider must notify the FMA of all members of its management body and of any changes to its membership,

371 Title preceding Article 55t inserted by LGBl. 2017 No. 431.

372 Article 55t inserted by LGBl. 2017 No. 431.

along with all information needed to assess whether the entity complies with paragraph 3.

5) The management body of a data reporting services provider must define and oversee the implementation of the business regulations that ensure effective and prudent management of an organisation, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.

6) The FMA shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

7) The data reporting services providers shall provide their services under the supervision of the FMA. The FMA shall keep under regular review the compliance of data reporting services providers with the provisions for the operation of the data reporting service. The FMA shall in particular monitor that data reporting services providers comply at all times with the conditions for initial licensing.

Article 55u[373]

Approved publication arrangements (APAs)

1) An APA must have adequate policies and arrangements in place to make public the information required under Articles 20 and 21 of Regulation (EU) No 600/2014 as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the APA has published it. The APA must be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in a format that facilitates the consolidation of the information with similar data from other sources.

2) The information made public by an APA in accordance with paragraph 1 shall include, at least, the following details:

a) the identifier of the financial instrument;

373 Article 55u inserted by LGBl. 2017 No. 431.

b) the price at which the transaction was concluded;
c) the volume of the transaction;
d) the time of the transaction;
e) the time the transaction was reported;
f) the price notation of the transaction;
g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code "SI" or otherwise the code "OTC";
h) if applicable, an indicator that the transaction was subject to specific conditions.

3) An APA must operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an APA who is also a market operator, bank or investment firm must treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

4) An APA must have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication. The APA must maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

5) An APA must have systems in place that can effectively check trade reports for completeness, identify omissions and obvious errors and request re-transmission of any such erroneous reports.

6) An APA shall have in place appropriate procedures for employees to report potential or actual breaches of the Banking Act and Regulation (EU) No 600/2014 internally through a special, independent and autonomous channel.[374]

Article 55v[375]

Consolidated tape providers (CTPs)

1) A CTP must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 6 and 20

374 Article 55u(6) inserted by LGBl. 2022 No. 273.
375 Article 55v inserted by LGBl. 2017 No. 431.

of Regulation (EU) No 600/2014, consolidate it into a continuous electronic data stream and make the information available to the public as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP must be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in formats that are easily accessible and utilisable for market participants.

2) The information referred to in paragraph 1 shall include, at least, the following details:

a) the identifier of the financial instrument;
b) the price at which the transaction was concluded;
c) the volume of the transaction;
d) the time of the transaction;
e) the time the transaction was reported;
f) the price notation of the transaction;
g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code "SI" or otherwise the code "OTC";
h) where applicable, the fact that a computer algorithm within the bank or investment firm was responsible for the investment decision and the execution of the transaction;
i) if applicable, an indicator that the transaction was subject to specific conditions;
k) if the obligation to make public the information referred to in Article 3(1) of Regulation (EU) No 600/2014 was waived in accordance with Article 4(1)(a) or (b) of that Regulation, a flag to indicate which of those waivers the transaction was subject to.

3) A CTP must have adequate policies and arrangements in place to collect the information made public in accordance with Articles 10 and 21 of Regulation (EU) No 600/2014, consolidate it into a continuous electronic data stream and make following information available to the public as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available free of charge 15 minutes after the CTP has published it. The CTP must be able to efficiently and consistently disseminate such information in a way that ensures fast access to the information, on a non-discriminatory basis and in generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

4) The information referred to in paragraph 3 shall include, at least, the following details:

a) the identifier or identifying features of the financial instrument;
b) the price at which the transaction was concluded;
c) the volume of the transaction;
d) the time of the transaction;
e) the time the transaction was reported;
f) the price notation of the transaction;
g) the code for the trading venue the transaction was executed on, or where the transaction was executed via a systematic internaliser the code "SI" or otherwise the code "OTC";
h) if applicable, an indicator that the transaction was subject to specific conditions.

5) The CTP must ensure that the data provided is consolidated from all the regulated markets, multilateral trading facilities, organised trading facilities, and APAs and for the financial instruments specified in Commission Delegated Regulation (EU) 2017/571.

6) The CTP must operate and maintain effective administrative arrangements designed to prevent conflicts of interest. In particular, a market operator or an APA, who also operate a consolidated tape, shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

7) The CTP must have sound security mechanisms in place designed to guarantee the security of the means of transfer of information and to minimise the risk of data corruption and unauthorised access. The home Member State shall require the CTP to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

Article 55w[376]

Approved reporting mechanisms (ARMs)

1) An ARM must have adequate policies and arrangements in place to report the information required under Article 26 of Regulation (EU) No 600/2014 as quickly as possible, and no later than the close of the working

376 Article 55w inserted by LGBl. 2017 No. 431.

day following the day upon which the transaction took place. Article 26 of Regulation (EU) No 600/2014 shall apply to the report.

2) An ARM must operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an ARM that is also a market operator, bank or investment firm shall treat all information collected in a non-discriminatory fashion and shall operate and maintain appropriate arrangements to separate different business functions.

3) An ARM must have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The home Member State shall require the ARM to maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

4) An ARM must have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the bank or investment firm and where such error or omission occurs, to communicate details of the error or omission to the bank or investment firm and request re-transmission of any such erroneous reports.

5) An ARM must further have systems in place to enable the ARM to detect errors or omissions caused by the ARM itself and to enable the ARM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the competent authority.

6) An ARM shall have in place appropriate procedures for employees to report potential or actual breaches of the Banking Act and Regulation (EU) No 600/2014 internally through a special, independent and autonomous channel.[377]

Article 56[378]

Repealed

377 Article 55w(6) inserted by LGBl. 2022 No. 273.

378 Article 56 repealed by LGBl. 2017 No. 431.

Article 56a[379]

Repealed

Article 56b[380]

Repealed

IX. Investment firm with administrative powers[381]

Article 56c[382]

Reporting requirements

In accordance with the second sentence of Article 30v(3) of the Banking Act, the investment firm with administrative powers must inform the respective depositary that custody accounts and accounts in its own name but for the account of third parties are investments held on a fiduciary basis for clients.

X. Extrajudicial conciliation board[383]

Article 56d[384]

Principle

The provisions of the Ordinance on the Financial Services Conciliation Board shall apply to the extrajudicial conciliation board.

379 Article 56a repealed by LGBl. 2017 No. 431.
380 Article 56b repealed by LGBl. 2017 No. 431.
381 Title preceding Article 56c amended by LGBl. 2017 No. 431.
382 Article 56c amended by LGBl. 2017 No. 431.
383 Title preceding Article 56d amended by LGBl. 2017 No. 431.
384 Article 56d amended by LGBl. 2017 No. 431.

Article 56e[385]

Repealed

Articles 56f to 56g[386]

Repealed

XI. Tied agents[387]

Article 56h[388]

Monitoring obligation of the bank or investment firm

Banks and investment firms that use tied agents shall be obliged to:

a) monitor the activities of their tied agents so as to ensure that they comply on a permanent basis with the provisions of the Banking Act and this Ordinance;

b) ensure that a tied agent discloses the capacity in which the tied agent is acting and the bank or investment firm which the tied agent is representing when contacting or before dealing with any client or potential client;

c) take adequate measures in order to avoid any negative impact that the activities of the tied agent not covered by the scope of the Banking Act could have on the activities carried out by the tied agent on their behalf in accordance with the Banking Act.

Article 56i[389]

Registration and deletion

1) Tied agents shall be entered in the register referred to in Article 35(8) of the Banking Act:

385 Article 56e repealed by LGBl. 2017 No. 431.
386 Articles 56f to 56g repealed by LGBl. 2009 No. 281.
387 Title preceding Article 56h amended by LGBl. 2017 No. 431.
388 Article 56h inserted by LGBl. 2007 No. 278.
389 Article 56i inserted by LGBl. 2007 No. 278.

a) whose registered office or residence is in Liechtenstein or in another EEA Member State, the latter only in the event that the home Member State does not provide for registration of tied agents and the tied agent is appointed by a domestic bank or investment firm;
b) who have a good reputation and are trustworthy; and
c) who possess the appropriate general, commercial and professional knowledge and competence so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

2) The FMA shall delete the entry in the register if the tied agent no longer meets the conditions for entry set out in paragraph 1.

XII. Final provisions[390]

Article 57

Repeal of law hitherto in force

The following are hereby repealed:

a) Regulation of 18 October 1966 on the Scope of Activities of the External Audit Offices Recognised by the Government, LGBl. 1966 No. 23;
b) Ordinance of 19 April 1977 on the Law on Banks and Savings Banks, LGBl. 1977 No. 28;
c) Ordinance of 22 August 1978 amending the Ordinance on the Law on Banks and Savings Banks, LGBl. 1978 No. 29;
d) Ordinance of 27 October 1981 amending the Ordinance on the Law on Banks and Savings Banks, LGBl. 1981 No. 53;
e) Ordinance of 29 June 1982 on the Law on the Liechtensteinische Landesbank, LGBl. 1982 No. 48;
f) Ordinance of 23 May 1989 amending the Ordinance on the Law on Banks and Savings Banks, LGBl. 1989 No. 42;
g) Ordinance of 23 May 1989 amending the Ordinance on the Law on the Liechtensteinische Landesbank, LGBl. 1989 No. 43;

390 Title preceding Article 57 amended by LGBl. 2017 No. 431.

h) Ordinance of 26 June 1991 amending the Ordinance on the Law on the Liechtensteinische Landesbank, LGBl. 1991 No. 40.

Article 57a[391]

Repealed

Article 58

Entry into force

1) Subject to paragraph 2, this Ordinance shall enter into force on the day of its promulgation.

2) Articles 4 to 7, 19, 20, and 35 shall enter into force on 31 December 1994.

The Government:
signed *Dr. Mario Frick*
Prime Minister

391 Article 57a repealed by LGBl. 2017 No. 354.

Annex 1[392]

Implementing provisions for Directive 2013/36/EU and Regulation (EU) No 575/2013

1. Repealed
2. Commission Delegated Regulation (EU) 2018/1620 of 13 July 2018 amending Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions (OJ L 271, 30.10.2018, 10).

392 Annex 1 amended by LGBl. 2019 No. 292, LGBl. 2021 No. 410 and LGBl. 2022 No. 130.

Annex 1.1[393]

393 Annex 1.1 repealed by LGBl. 2019 No. 292.

Annex 1.2[394]

394 Annex 1.2 repealed by LGBl. 2022 No. 130.

Annex 2[395]

Qualifying money market funds and non-complex financial instruments in accordance with Article 8d BankG and Article 27b(2)

A. Qualifying money market funds

1) Qualifying money market funds are collective investment undertakings which are:

a) authorised under Directive 2009/65/EC or

b) subject to supervision and, if applicable, authorised under the domestic law of an EEA Member State.

2) Qualifying money market funds must also meet the following requirements:

a) Their primary investment objective must be to maintain the net asset value of the undertaking either constant at par (net of earnings), or at the value of the investors' initial capital plus earnings).

b) They must, with a view to achieving that investment objective, invest exclusively in high quality money-market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of 60 days; they may achieve this investment objective by investing also in deposits with credit institutions.

3) Money-market instruments, i.e. those classes of instruments which are normally dealt in on the money market, such as debt instruments of public bodies, certificates of deposit and commercial papers and excluding instruments of payment, shall be considered to be high-quality if they are rated by competent rating agencies and have received the highest rating from each competent rating agency that has rated this instrument. A rating agency shall be considered to be competent if it issues credit ratings in respect of money market funds regularly as part of its business activity and is a credit assessment institution agency within the meaning of Article 4(1)(98) of Regulation (EU) No 575/2013.

395 Annex 2 amended by LGBl. 2007 No. 278, LGBl. 2011 No. 314 and LGBl. 2015 No. 17

B. Non-complex financial instruments

Non-complex financial instruments are:

1. shares admitted to trading on a regulated market or in an equivalent third country market;
2. money-market instruments;
3. bonds and other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative);
4. units in collective investment undertakings;
5. other financial instruments, provided they meet the following requirements:
   a) it does not fall within Annex 2 Section C(1)(c) of the Banking Act;
   b) it does not fall within Annex 2 Section C(4) to (10) of the Banking Act;
   c) it does not involve any actual or potential liability for the client that exceeds the acquisition cost;
   d) there are frequent opportunities to dispose of, redeem, or otherwise realise that instrument at prices that are publicly available to market participants and that are either market prices or prices made available, or validated, by valuation systems independent of the issuer;
   e) adequately comprehensive information on its characteristics is publicly available and is such as to enable the average retail client to make an informed judgment as to whether to enter into a transaction in that instrument.

Annex 3[396]

Guidelines on the accounting provisions in accordance with Articles 22 to 24n

I. Principles of proper financial reporting (Article 24a(2))

1. Proper recording of business transactions/completeness of the annual financial statements

1) All transactions concluded as of the balance sheet date are to be recorded and valued in accordance with recognised principles on a daily basis. The income from all such transactions is to be recorded in the income statement. Spot transactions not yet settled at the balance sheet date are to be recognised applying the trade date accounting principle or the settlement date accounting principle. It is permissible to apply trade date accounting or settlement date accounting by product category (e.g. securities, foreign exchange, etc.); in so doing, consistent application must be ensured. The rules set out in point 22(1) and (2) and point 27(1) apply to how derivative financial instruments are to be dealt with for accounting purposes.

2) A transaction is regarded as completed if the contractual agreements between the contracting parties have been concluded in accordance with the general provisions of contract law and are legally binding.

3) Under trade date accounting, assets acquired as the result of a spot trade are recorded under the related asset item as of the trade date. The obligation to effect payment is recognised at the same time in the balance sheet. Sold assets are derecognised from their associated asset items as of the trade date, with the receivable corresponding to the sales price being recognised at the same time.

4) Posting in accordance with settlement date accounting: Between the trade date and settlement date, replacement values of assets purchased and sold are recognised in the balance sheet under the asset item "other assets" or under the liability item "other liabilities". Recognition in or

396 Annex 3 amended by LGBl. 1999 No. 86, LGBl. 2001 No. 189, LGBl. 2004 No. 222, LGBl. 2007 No. 278, LGBl. 2011 No. 314, LGBl. 2013 No. 260, LGBl. 2015 No. 17 and LGBl. 2021 No. 410 and LGBl. 2022 No. 130.

derecognition from the relevant asset item is done on the settlement date. The associated payable or receivable is recognised at the same time.

5) The accounting method selected is to be applied consistently in the annual financial statement and in the consolidated financial statement and disclosed in the notes under the accounting and valuation policies (point 69/1). There is a transitional period until 31 December 2008 for consistent application in the consolidated financial statement.

2. Clarity of information

1) The unequivocal and true presentation of the financial position, net assets, and earnings situation is to be ensured by way of clear-cut classifications and labelling of positions. The minimum classification used in the balance sheet, income statement, notes, and cash flow statements for the (consolidated) annual financial statements of banks and investment firms is to be in accordance with Articles 22 to 24l.

2) The balance sheet, income statement, notes, and cash flow statement are equally important components of the (consolidated) annual financial statement.

3. Materiality of information

1) The description of materiality in Article 24a(3) of the Banking Ordinance is based on the definition of the Commission for Financial Reporting Standards (Swiss GAAP FER), according to which the term material covers all facts that impact the valuation and presentation of the (consolidated) annual financial statement as a whole or of individual positions of the annual financial statement, if this changes the statement in such a way that the addressees of the (consolidated) annual financial statement can be influenced in their decisions vis-à-vis the bank or investment firm.

2) The principle of materiality underlies all aspects of the preparation of financial statements. Materiality is to be assessed on a case-by-case basis both qualitatively and quantitatively.

4. Prudence

1) The principle of prudence requires that in all cases where there is uncertainty regarding valuation and risk assessment, the more prudent of two available values is to be taken into account.

2) The principle of the lower of cost or market value, historical cost principle, realisation principle, and the principle of the unequal treatment of losses and income derived from the principle of prudence are not to be

applied, in the context of trading operations, to marketable positions held in the normal course of business, if they are traded on a recognised exchange as referred to in Article 4(1)(72) Regulation (EU) No 575/2013, a regulated market, a multilateral trading facility, or an organised trading facility.

5. Going-concern basis of accounting

Assets and liabilities are to be valued on the assumption that the enterprise will continue as a going concern, meaning there is no intention or necessity to liquidate the company nor has this been ordered by the competent authorities.

6. Consistency in presentation and valuation

1) According to the principle of consistency, all (consolidated) annual financial statements must be prepared in accordance with the same presentation and valuation principles as to enable comparison between accounting periods. This rule may be deviated from only where there are cogent reasons for making a change to the method of presentation or valuation, reasons that are expected to continue to apply in the years following. Justified changes to the presentation and valuation rules and their effect are to be disclosed in the (consolidated) notes as prescribed in Article 24e(1)(2), and an explanation included.

1a) If there is a deviation from the principle of consistency set out in paragraph 1, the previous year's figures are to be restated as a matter of principle unless the IASB's international accounting standards permit the omission of the restatement or a restatement is not possible with reasonable effort, in which case the latter must be justified in the notes. The previous year's figures are also not to be restated if the estimates or assumptions made in the valuation (e.g. with regard to the useful economic life of tangible assets) have to be changed. If the previous year's figures are restated, they are to be presented as if the amended accounting and valuation policies had always been in effect. In so doing, the newly chosen accounting and valuation policies are to be applied to events and transactions as from the date of origin of these items. The corrective amounts for previous periods not included in the current (consolidated) annual financial statement are to be offset in equity in the earliest period presented. The restatement of the previous year's figures shall be disclosed in the notes.

2) Positions in trading operations may only be valued at the market price on the balance sheet date that exceeds the acquisition cost if they are traded on a recognised exchange as referred to in Article 4(1)(72)

Regulation (EU) No 575/2013, a regulated market, a multilateral trading facility, or an organised trading facility. If these requirements are not met, they must be valued at the lower of cost or market. Private equity holdings shall also be valued at the lower of cost or market. "Private equity" is defined as temporary equity financing in undertakings that are generally not listed on an exchange (other terms: equity banking, merchant banking, equity financing).

3) In the case of fixed-income securities that are intended to be used on a permanent basis for business operations and are intended to be held to maturity, variations in value resulting from changes in the debtor's credit standing are to be immediately recognised in accordance with the second sentence. In the case of fixed-income securities that are intended to be used on a permanent basis for business operations and are not intended to be held to maturity, depreciation is recognised in the item "write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets" (item 13 of the income statement) and the reversal of previous depreciations via the item "income from write-ups on participating interests, shares in affiliated undertakings, and securities treated as fixed assets" (item 14 of the income statement).

4) Convertible and warrant bonds: the principle of the lower of cost or market value, except where the bank or investment firm elects to value the warrant and interest components separately and values the warrant component using the lower of cost or market value principle and the interest component using the accrual method. The valuation method selected must be retained until the maturity of the bond.

5) Where an interest transaction position is valued using the accrual method, is sold prior to maturity or redeemed prematurely, realised gains and losses corresponding to the interest component are not to be recognised immediately but rather deferred over the remainder of the original time to maturity.

6) Liabilities exhibiting an original value lower than their notional value can be recorded either at their net value, or at their gross value combined with an offsetting adjustment entry under asset item 14 "accrued income and prepaid expenses" (discount). In either case, the discount is to be reversed through the interest expense (item 2 of the income statement) over the term of the bond in accordance with the accrual method. The same applies to premiums.

7) Derivative financial instruments, with the exception of those used for hedging purposes outside trading operations, are always trading operations and as such are valued at fair value, provided they are traded

on a recognised exchange as referred to in Article 4(1)(72) Regulation (EU) No 575/2013, a regulated market, a multilateral trading facility, or an organised trading facility; otherwise, the lower of cost or market principle must be applied (contracts with a positive replacement value at the lower of cost or market value; contracts with a negative replacement value at the higher of cost or market value).

8) When settling derivative hedging transactions, the hedging relationships as well as the goals and strategies for the hedges are to be documented by the risk management of the bank or investment firm. Documentation is to include identification of the hedged transaction or portions of a transaction and the hedging transaction, identification of the hedged risk, and the method with which the effectiveness of the hedging is to be determined.

9) Derivative financial instruments used for hedging purposes are to be valued in the same way as the underlying hedged transaction. Gains/losses from hedging are to be recorded in the same results item as the corresponding gains/losses from the underlying hedged transaction. In the case of "macro-hedges" relating to interest operations, the balance may be recorded either under the item "interest income" (item 1 of the income statement) or the item "interest expense" (item 2 of the income statement). Accrued interest on hedging positions that are valued according to the accrual method is not to be recorded as accruals or deferrals, but rather in a "compensation account" under "other assets" or "other liabilities" in order to avoid being double-counted with the recognised replacement values. In the event of the premature sale of an interest hedging transaction that has been valued according to the accrual method, the general provisions on the treatment of interest transactions valued according to the accrual method are applicable. Where the effect of hedging transactions exceeds the effect of the hedged positions, the excess portion of the derivative instruments is equivalent to a trading transaction. The valuation of the excess portion is to be posted under the item "result from financial transactions" (item 6 of the income statement) and not via the compensation account.

10) According to the accrual method, the interest component is to be recognised in the income statement pro rata or applying the compound interest method over the term until maturity. When allocating premiums and/or discounts of fixed-income debt instruments over their respective term, the expression "amortised cost method" is also used in this context.

11) Interest operations extend to transactions where a bank, using its available equity and monies accepted by it from third parties, grants loans to third parties, acquires interest-bearing assets, and finances its trading activities with the objective of earning a positive interest margin between the

interest received and paid. Income and expenses from interest hedging transactions also fall under interest operations.

6a. Valuation of receivables and certain real estate properties

1) If receivables are exposed to acute and latent loss risks, these must be covered by appropriate value adjustments, the amount of which must be determined using a systematic approach that takes the risks into account.

2) Impaired loans/receivables are to be valued individually, and their impairment (the expected recoverable amount taking into account the collateral falls short of the book value of the receivable) must be covered by individual value adjustments. A collective assessment is permitted only for homogenous credit portfolios consisting exclusively of a large number of small receivables (e.g. consumer credit, leasing and credit card receivables) (general individual value adjustment). The country risk must also be taken into account with general individual value adjustments. The general individual value adjustments, the amount of which must be based on own or third-party country analyses, relate to the total exposure of the borrowers of a specific country.

3) Additional portfolio value adjustments can be made (based on rule-of-thumb values, for example) to cover latent default risks that experience shows to be present in a credit portfolio on a specific valuation date and that, however, cannot be allocated to a particular borrower or receivable.

4) The various criteria and methods for establishing value adjustments are to be documented in detail.

5) Impaired loans/receivables and any collateral are to be valued at their liquidation value and the value to be adjusted taking the debtor's creditworthiness into account. Where the recovery of the loan/receivable is dependent exclusively on the liquidation proceeds value of the collateral, an allowance must be established to completely cover the unsecured portion.

6) Impaired loans are loans/receivables for which the debtor will unlikely be able to fulfil its future obligations. Indications for an impaired loan/receivable include the following cases in particular: considerable financial difficulties on the part of the debtor; actual breach of contract (e.g. default on or delay in interest or principal payments); concessions on the part of the lender to the borrower based on economic or legal circumstances linked to the financial difficulties of the borrower that would not be granted under normal conditions; high probability of bankruptcy or otherwise need for restructuring on the part of the debtor; recording of impairment for the respective asset in an earlier financial year; disappearance of an active market for this particular financial asset due to

financial difficulties; prior experience in connection with debt collection that indicates that the total face value of a portfolio of receivables is not collectible.

7) Specific real estate properties acquired via credit transactions destined for sale are to be valued at acquisition value or liquidation value, if this is lower than the acquisition value.

8) The liquidation value referred to in paragraphs 5 and 7 represents an estimated realisable disposal value. Determining the liquidation value is based on the item's estimated market value. The following have to be deducted from this amount: the usual declines in value, current holding costs (maintenance costs, refinancing costs until liquidation), and the liquidation costs incurred, reversion costs etc. In the case of subordinated real estate liens, the interest from preceding liens must also be taken into account.

6b. Valuation of tangible assets

1) The tangible asset positions, in particular real estate properties held in the own portfolio, must be assessed for signs of impairment on each balance sheet date. Irrespective of this, if there are indications of impairment, an impairment test must also be carried out during the year and, if necessary, a corresponding value adjustment recognised.

2) An impairment loss is recognised if the book value is greater than the recoverable amount. The recoverable amount is the higher of the net market value (e.g. selling price) and the value in use (present value of future cash flows). The impairment loss must be recognised in profit or loss.

3) In subsequent periods, a review must be carried out to determine whether impairment still exists. The change in the underlying factors may fully or partially reverse the previously recognised impairment.

7. Proper accrual

Income and expenses are to be properly accrued in accordance with the (consolidated) annual financial statement reporting date. In particular, provisions and value adjustments to cover risks that are apparent at the time of preparation of the interim and annual financial statements and that originate during the financial accounting period just ended are to be charged in full to the income statement of the financial accounting period just ended.

8. Inadmissibility of offsetting assets & liability and income & expense items

1) Offsetting and netting out assets & liabilities and income & expenses is fundamentally prohibited.

2) Exceptions to the prohibition of offsetting assets and liabilities are permitted where receivables and payables arise from transactions of the same type with the same counterparty, with the same maturity or earlier maturity of the asset, and in the same currency that cannot lead to a counterparty risk, whether on the balance sheet reporting date or up to the maturity of the offset transactions.

3) Furthermore, the following exceptions to the prohibition of offsetting assets and liabilities exist:

1. offsetting of holdings of own debt securities in accordance with the second sentence of point 26(2), point 26(3), and the second sentence of point 26(4) of this Annex against the corresponding liability items;
2. offsetting of value adjustments against the respective current assets in accordance with point 44 of this Annex;
3. netting of positive and negative replacement values of derivative financial instruments pursuant to Article 6e;
4. netting of adjustments in the book value made during the reporting period with no income effect that have been entered in the compensation account under "other assets" (asset item 13) or "other liabilities" (liability item 4).

4) In the income statement, the prohibition of offsetting means in particular that offsetting income against operating expenses, interest income against interest expense, commission income against commission expense, income against depreciation/losses from fixed assets, and other ordinary and extraordinary income and expenses is not permitted. The following exceptions exists, however (see also point 48(2) of this Annex):

1. offsetting gains and losses from trading operations and other related items directly relating to trading (e.g. melting costs, brokerage fees paid etc.);
2. offsetting real estate expenses against real estate income;
3. offsetting value adjustments in the securities and precious metals portfolio of current assets in accordance with point 54(1) of this Annex;
4. offsetting refinancing costs for trading operations in accordance with point 54(4) of this Annex;

5. offsetting gains/losses from hedging transactions against the gains/losses from the underlying hedged transaction.

9. Substance over form

The (consolidated) annual financial statement must give a true and fair view of the net assets, financial position, and earnings situation of a bank or investment firm. Consequently, when preparing (consolidated) annual financial statements, preference is to be given to the economic substance of the items reported as opposed to evaluating them from a legal point of view (substance over form).

II. Hidden reserves

10. Definition; prohibition of hidden reserves; treatment of existing hidden reserves

1) "Hidden reserves" refers to the difference between book values and the (higher) legally permissible maximum values. Compulsory reserves — defined as the difference between the legal maximum values and their (higher) economic real values — are not considered hidden reserves.

2) With the exception of provisions for general banking or investment firm risks, banks and securities firms are in principle prohibited from forming hidden reserves as defined in the first sentence of paragraph 1 in their annual financial statements and consolidated financial statements.

3) Value adjustments recognised in previous financial years that are no longer permissible under paragraph 2 and are allowable only under tax law must either be released with income effect or assigned to provisions for general banking risks when these requirements are applied for the first time.

11. Release of hidden reserves

Repealed

12. Disclosure

Repealed

III. Classification of the balance sheet (Article 24b)

A. Principle

13. In general

1) Minimum classification rules applicable to all banks and investment firms are designed to ensure a simple and understandable presentation of the balance sheet. Additional information on collateral, remaining maturities and similar information is to be disclosed in the notes.

2) The following provisions on the content of individual balance sheet items cover the most significant elements. Where elements are listed, this list of elements should not be considered exhaustive.

B. Requirements for individual asset items

14. Asset item 1: Liquid assets

1) The item "liquid assets" includes cash on hand and balances with central banks and post office banks.

2) Legal tender including foreign notes and coins as well as postage stamps and court fee stamps are to be reported as cash in hand. Commemorative coins and gold coins acquired at an amount higher than their par value, even if they are legal tender, and gold bullion are to be recognised under other assets (asset item 13).

3) Only payable on demand balances, including payable on demand foreign currency balances at central banks and post office banks in the countries in which the bank or investment firm is established, may be reported as credit balances. Other credit balances with these institutions must be reported as amounts due from banks (asset item 3) or amounts due from customers (asset item 4).

15. Asset item 2: Debt instruments of public bodies and other bills eligible for refinancing with central banks

1) Asset item 2 (debt instruments of public bodies and other bills eligible for refinancing with central banks) shall comprise treasury bills, non-interest-bearing treasury certificates, as well as similar debt instruments issued by public bodies and bills of exchange that have been accepted at a discount and are authorised for refinancing with the central banks of the countries of establishment. Debt instruments issued by public bodies that do not meet the specified requirements must be reported under

bonds and other fixed-income securities from public-sector issuers (asset item 5a) if they are negotiable, otherwise under amounts due from customers (asset item 4).

2) This item also includes promissory notes to the bank's order that are authorised for refinancing with the central banks of the countries of establishment, excluding mere collateral bills.

3) The portfolio of own acceptances need not be reported. Bills of exchange not cleared to the customer, promissory notes of the bank or investment firm, and own drafts deposited with the reporting bank or investment firm (depository or surety bills) are not to be recognised as bills of exchange.

16. Asset item 3: Amounts due from banks

1) The institutions subject to the Liechtenstein Banking Act as referred to in Article 3(1) of the Act as well as all foreign central banks, credit and other institutions that are considered banks or savings banks under the legislation of the country concerned are deemed to be banks. Multilateral development banks are also deemed to be banks.

2) Amounts due from banks include all types of receivables from banking transactions with domestic and foreign banks, including interest due but not paid on amounts due from banks, cheques drawn on a bank and bills of exchange presented by banks, unless they are bills of exchange eligible for refinancing with central banks (asset item 2b). Amounts due from banks do not include receivables in the form of bonds or other forms of securitisation, which are reported under asset item 5, or equities and other non-fixed-income securities, which are reported under asset item 6.

17. Asset item 4: Amounts due from customers

1) Amounts due from customers are all amounts due from domestic and foreign non-banks ("customers") that are not to be disclosed under another position.

2) Amounts due from customers include in particular:

1. mortgage loans;
2. receivables in form of current accounts, including receivables secured by mortgage in the form of current accounts including construction credits prior to consolidation and commercial loans;
3. receivables from public-sector entities;
4. amounts due to the bank or investment firm in its capacity as lessor in the context of finance leasing;

5. due but unpaid interest;
6. bills of exchange presented by customers, unless they are bills of exchange eligible for refinancing with central banks (asset item 2b).

3) Mortgage loans include in particular:

1. direct and indirect mortgage claims in the form of secured loans (mortgage certificates pledged or assigned as collateral);
2. credits for land in the form of loans and fixed advances;
3. amounts due to the bank or investment firm as lessor from real estate financial leasing transactions;
4. due but unpaid interest from mortgage loans.

4) Public-sector entities are corporations, foundations, and establishments that are organised under public law, e.g. the State and the municipalities. In Switzerland, public-sector entities include, e.g., the Confederation, cantons, local municipal bodies (political communes, communes of citizens, religious communes, and school communes), and state-owned and operated enterprises; outside of Switzerland, by analogy: states, countries, departments and municipalities. Public-private enterprises, publicly owned but subject to private law, do not fall into this category, irrespective of the extent of the shareholding unless public funds are used to guarantee their liabilities in full and without limitation. Receivables from and liabilities to Swiss cantonal banks or comparable banks in other countries must always be recognised as amounts and receivables due to banks.

5) Amounts due from customers do not include receivables in the form of bonds or other forms of securitisation, which are reported under asset item 5, or equities and other fixed-income securities, which are reported under asset item 6.

18. Asset item 5: Bonds and other fixed-income securities

1) The asset item "bonds and other fixed-income securities" includes in particular the following bonds and book-entry securities, provided they are fixed-income and negotiable: fixed-income bearer bonds, order bonds that are part of an overall issue, treasury bills, treasury certificates and other money-market instruments (commercial papers, euro notes, certificates of deposit, bons de caisse, and similar securitised rights), medium-term notes and money-market book claims. However, public-sector bonds are to be included under this asset item only to the extent that they are not included under the item "debt instruments of public bodies and other bills eligible for refinancing with central banks" (asset item 2a). This asset item also includes combined products which, when

viewed from an economic point of view, constitute capital market interest instrument.

2) Securities bearing interest rates that vary in accordance with specific factors, for example the interest rate on the inter-bank market or on the Euromarket, shall also be regarded as debt securities including fixed-income securities, as well as zero bonds and bonds that securitise a pro rata claim to proceeds from pooled assets.

3) Securities are deemed to be negotiable if they meet the requirements for admission to trading; in the case of bonds, it is sufficient for all units of an issue to have the same interest rate, start of term and maturity date.

4) Own money market papers (asset item 5a bb) and own bonds (asset item 5b bb) to be disclosed as "of which" must include repurchased marketable money market papers and debt securities of own issue. The portfolio of non-negotiable own bonds and non-negotiable own money market papers must be deducted from the bonds issued (liability item 3a) and other securitised liabilities (liability item 3b).

19. Asset item 7: Participating interests

1) Participating interests are:

1. in case of doubt, shares in an undertaking exceeding in total one fifth of the share capital of that undertaking (Article 1073(1) PGR);
2. participating interests owned by the bank or investment firm and possessing an infrastructure character for the bank or investment firm, in particular holdings in joint organisations;
3. amounts due from enterprises in which the bank or investment firm has a permanent holding, if such amounts are deemed to be equity for taxation purposes.

2) Investments held for resale that were acquired as part of a recovery are not considered investments. Such recovery investments are to be reported under asset item 6 "equities and other non-fixed-income securities".

3) If a relationship between two undertakings fulfils both the criterion of participation and that of affiliation, i.e. if an asset is both a participating interest and shares in affiliated undertakings, it must be reported in the balance sheet under the item "shares in affiliated undertakings" (asset item 8) and not under the item "participating interests" (asset item 7).

19a. Asset item 8: Shares in affiliated undertakings

1) Affiliated undertakings are parent and subsidiary companies that have a relationship in accordance with Article 1097(1) PGR, irrespective of the existence of a consolidation obligation and irrespective of the legal form and registered office of the parent undertaking. Subsidiaries of subsidiaries are always deemed to be subsidiaries of the ultimate parent undertaking (Article 1073(2) PGR).

2) All shares held by the reporting bank or investment firm in subsidiaries held directly by it or directly or indirectly by the ultimate parent undertaking (majority participating interests) must be reported under shares in affiliated undertakings. Shares in the ultimate parent undertaking held directly or indirectly by the reporting bank or investment firm must be reported under the item "own shares" (asset item 12).

3) Shares in affiliated undertakings also include receivables from affiliated undertakings if they constitute equity for taxation purposes.

20. Asset item 9: Intangible assets

The item "intangible assets" includes the following:

1. expenses for the establishment and expansion of business operations (capitalisation of formation, issue, and organisational costs subject to amortisation, etc.);
2. research and development costs;
3. concessions, patents, licences, trade marks and similar rights and assets, if they were acquired for valuable consideration;
4. goodwill, to the extent that it was acquired for valuable consideration;
5. payments on account.

21. Asset item 10: Tangible assets

1) The item "tangible assets" includes the following:

1. land, rights to land, similar rights and buildings, including buildings on third-party land;
2. plant and machinery;
3. other fixtures and fittings, tools and equipment;
4. payments on account and tangible assets in the course of construction (including balances of construction and renovation accounts);
5. constructions on properties owned by third parties;

6. tangible assets acquired under financial leases.

The item "tangible assets" (asset item 10) does not include real estate properties whose ownership has been assumed by virtue of a credit transaction and are destined to be resold. These shall be recorded under asset item 13 "other assets".

2) Assets used by the bank or investment firm in the capacity of lessee in the context of finance leases (leasing transactions with a purchase character; ownership rights and obligations on the part of the bank) are to be recorded in the balance sheet under the asset item "tangible assets" at their cash purchase value and are to be shown separately in the presentation of fixed assets in the notes as provided for in point 3.4 of Article 24e(1). Leasing obligations are to be disclosed under "amounts due to banks" (liability item 1) or "amounts due to customers: other liabilities" (liability item 2b). Amortisation and depreciation of capitalised assets arising from finance leases is to be charged to the position "amortisation of intangible assets and depreciation of tangible assets" (item 9 of the income statement).

3) Assets used by the bank or investment firm under operating lease contracts (leasing transactions with loan-for-use character; ownership rights and obligations on the part of the lessor) are not to be capitalised. Operating lease expenses are to be charged to the position "general and administrative expenses" (item 8b of the income statement) and the future obligations entered into for the payment of leasing instalments are to be disclosed separately in the presentation of fixed assets in the notes as provided for in point 3.4 of Article 24(e)(1).

22. Asset item 13: Other assets

1) The asset item "other assets" includes the following in particular:

1. the positive replacement values of all derivative financial instruments outstanding on the balance sheet date and resulting from transactions for the bank's own account and that of customers (with regard to netting, see point 8(3) of this Annex), irrespective of the treatment in the income statement of, for example, hedge transactions; combined products which, from an economic point of view, constitute money-market interest instruments are not to be reported here, but rather under the asset item "bonds and other fixed-income securities";
2. the credit balance of the compensation account for value adjustments having no income effect during the accounting period (value adjustments with no income effect to the replacement values of derivative financial instruments and value adjustments with no income effect resulting from loan transactions involving assets other than

money, interest margins, and borrowing costs on central mortgage institution loans and loans of central issuing institutions, in addition to the interest components of interest transactions that are sold at a loss or repaid prior to maturity where they have been valued according to the accrual method);

3. coupons;
4. pure clearing accounts;
5. balances arising from internal bank business operations;
6. commodities;
7. precious metals; precious metal positions that serve to secure commitments arising from precious metal accounts are to be valued and accounted for at market values in the same manner as the precious metal accounts;
8. real estate properties that have been acquired as a result of credit transactions and are designated for resale (see point 21(1));
9. indirect taxes.

2) The replacement values of derivative financial instruments arising from transactions for the account of customers are to be posted if a risk may arise for the bank or investment firm during the remaining term of the contract in the event that the customer or the other counterparty (stock exchange, stock exchange member, issuer of instrument, broker, etc.) may no longer be able to honour any of its obligations. The following rules follow from this principle:

1. For over-the-counter contracts (OTC):
   a) The bank or investment firm is the commission agent:

      The replacement values of commission transactions are, as a general rule, to be posted to the balance sheet except where the bank or investment firm discloses the identity of the counterparty to the customer. In this case, the bank or investment firm assumes a credit risk only if the contract constitutes a loss for the customer. Consequently, only such positive replacement values are to be recorded. The corresponding double entries in book-keeping terms are the corresponding negative replacement values, i.e. the profit realised by the counterparty with whom the bank or investment firm deals in its name but for the account of a third party. However, the transaction need not be recognised where the contract represents a profit for the customer. Where the bank or investment firm is not in a position for technical reasons to make this distinction, all replacement values arising from commission transactions are to be recorded. Banks and investment firms are to disclose in the accounting and valuation policies (Article 24e(1)(2)) which principles have been followed in arriving at the replacement values for commission transactions.

b) The bank or investment firm is the principal:

Replacement values are to be reported.

c) The bank or investment is the broker:

No replacement values are to be reported.

2. For exchange-traded contracts:

a) The bank or investment firm is the commission agent:

The replacement values are not to be recorded in the balance sheet as a general rule except where the accrued daily loss ("daily variation margin") is not fully covered by the initial margin effectively received. Only the uncovered portion must be recorded. In the case of traded options, an identification requirement exists only where the maintenance margin effectively charged does not fully cover the customer's daily loss. Here, too, only the uncovered portion must be recorded. Daily gains of customers are to never be reported.

3) The composition of the asset item "other assets" is to be disclosed in the notes. The balance of the compensation account is to be disclosed separately.

4) Losses shown in the income statement of the interim financial statement are to be disclosed separately under liability item 13 "loss for the year" so as to avoid disclosing equity that is no longer intact, with the labelling of this position being changed to "loss for the half-year period", not under other assets.

23. Asset item 14: Accrued income and prepaid expenses

All accruals of interest and other types of income, premiums on asset items and discounts on liability items, and assets arising from other prepaid and accrued items (transitory assets) are to be disclosed under accrued income and prepaid expenses.

C. Requirements for individual liability items

24. Liability item 1: Amounts due to banks

1) Amounts due to banks include all types of liabilities from banking transactions to domestic and foreign banks, unless they are securitised liabilities (liability item 3). This item also includes amounts due to banks from registered bonds, bonds to order that are not part of an overall issue, and from registered money-market instruments.

2) Amounts due to banks also include the following:

1. liabilities resulting from short positions arising from spot short sales, per security, recognised according to the trade date accounting principle;
2. leasing instalments recognised as a liability and payable for assets leased from banks where they have been capitalised under tangible assets (asset item 10);
3. mortgages in favour of third parties secured by real estate owned by the bank.

25. Liability item 2: Amounts due to customers

1) Amounts due to customers include all types of liabilities to domestic and foreign non-banks ("customers"), unless they are securitised liabilities (liability item 3) and unless they are liabilities to be disclosed under a different liability item. This item also includes amounts due to customers from registered bonds, bonds to order that are not part of an overall issue, and from registered money-market instruments.

2) Amounts due to customers also include the following:

1. liabilities resulting from short positions arising from spot short sales, per security, recognised according to the trade date accounting principle;
2. leasing instalments recognised as a liability and payable for assets leased from customers where they have been capitalised under tangible assets (asset item 10);
3. Mortgages in favour of third parties secured by real estate owned by the bank.

3) Only monies that are identified as such and are subject to withdrawal restrictions are deemed to be savings deposits.

26. Liability item 3: Securitised liabilities

1) Debt securities and liabilities for which non-registered transferable certificates have been issued, in particular certificates of deposit, bons de caisse, and liabilities from own acceptances and own promissory notes, are to be reported as securitised liabilities.

2) Bonds issued are bearer bonds and bonds to order that are part of an overall issue, irrespective of their marketability. Repurchased own bonds that are not marketable are to be deducted. Zero bonds are to be reported including pro rata interest.

3) Repurchased, non-marketable own money market securities are to be deducted from other securitised liabilities.

4) Only acceptances issued by the bank or investment firm for its own refinancing and for which it is the first payer ("drawee") are deemed to be own acceptances. The stock of own acceptances and own promissory notes as well as pledged own acceptances and own promissory notes are not considered to be in circulation.

27. Liability item 4: Other liabilities

1) The liability item "other liabilities" includes the following in particular:

1. the negative replacement values of all derivative financial instruments outstanding as of the balance sheet date for the account of the bank and that of customers (for netting, see point 8(3), and for reporting of replacement values arising from transactions for the account of customers, see point 22(2) of this Annex);
2. the debit balance of the compensation account for value adjustments having no income effect during the accounting period (value adjustments with no income effect to the replacement values of derivative financial instruments and value adjustments with no income effect resulting from loan transactions involving assets other than money, interest components of interest transactions that are sold at a profit or repaid prior to maturity where they have been valued according to the accrual method);
3. "funds" set up by the bank and possessing no separate legal personality, e.g. pension and charitable funds;
4. pure clearing accounts;
5. balances arising from internal bank business operations;
6. matured, but unredeemed coupons and debt instruments;

7. indirect taxes;
8. profit as disclosed in the income statement of the interim financial statement.

2) The composition of the liability item "other liabilities" is to be disclosed in the notes. The balance of the compensation account is to be disclosed separately.

28. Liability item 5: Accrued expenses and deferred income

Point 23 of this Annex applies *mutatis mutandis* to accrued expenses and deferred income (transitory liabilities).

29. Liability item 6: Provisions

1) Tax provisions (liability item 6b) include specific provisions for taxes and deferred taxes.

2) If a provision is recognised under other provisions (liability item 6c) for an impending loss from a contingent liability or credit risk reported under off-balance-sheet transactions, the relevant item reported under off-balance-sheet transactions must be reduced by the amount of the provision.

30. Liability item 7: Subordinated liabilities

Subordinated liabilities include securitised and non-securitised liabilities which, in the event of liquidation or bankruptcy, are contractually only to be satisfied after the claims of other creditors.

31. Liability item 8: Provisions for general banking risks

1) Provisions for general banking risks are provisions that are established as a precaution and charged to expenses for the purpose of covering latent banking risks.

2) Provisions for general banking risks may be established and released only via the item "funds allocated to provisions for general banking risks/income from the release of provisions for general banking risks" (item 21 of the income statement). Only the applicable part of the item designation is to be used.

32. Liability item 9: Subscribed capital

1) Irrespective of their exact designation in individual cases, all amounts that are deemed to be equity capital amounts subscribed by the shareholders

or other owners (capital owners) in accordance with the legal form of the bank or investment firm are to be reported as subscribed capital.

2) Unpaid guarantee capital is to be disclosed in the notes in accordance with the presentation as provided for in Article 24e(1)(3.10) (see Table F, Chapter VIII).

33. Liability item 10: Capital reserves

Capital reserves consist of the premium resulting from issuing equity securities and exercising conversion and option rights, the amount of additional payments made by shareholders for their shares, and gains from the repurchase of own shares.

34. Liability item 11: Profit reserves

1) Profit reserves consist of the legal reserves, the reserve for own shares, the reserves pursuant to articles of association, and other reserves.

2) The reserve for own shares is to be established by transferring it from other reserves (liability item 11d).

3) For the purposes of the consolidated financial statement, the own funds generated by the undertakings included in the consolidated financial statement are deemed to be profit reserves; this includes, in particular, negative goodwill arising upon initial consolidation, undistributed profits, foreign exchange differences, and differences arising from changes in the scope of consolidation.

D. Requirements for individual off-balance-sheet transactions

35. Off-balance-sheet item 1: Contingent liabilities

1) Contingent liabilities are agreements under which an existing debt on the part of a principal debtor is guaranteed in favour of a third party, such as guarantees to secure credits in the form of bill of exchange guarantees, sureties and other guarantees including guarantee obligations in the form of irrevocable letters of credit, endorsement liabilities arising from rediscounted bills, advance payment guarantees and similar facilities such as pledges in favour of third parties, and unrecorded portions of joint and several liabilities resulting from rights of recourse based on an internal legal relationship (i.e. in the case of ordinary (unincorporated) partnerships), legally binding letters of comfort.

2) Agreements are also to be recognised as contingent liabilities where at the time of concluding the transaction and disclosing the contingent liability, no debt of the principal debtor in favour of a third party exists as yet, but may arise in the future, e.g. when legal liability arises. Examples of this type of contingent liability are bid bonds, delivery and performance bonds, builders' guarantees, letters of indemnity, other performance guarantees including guarantees in the form of irrevocable letters of credit and similar facilities.

3) When reporting "liability from the furnishing of collateral" (off-balance-sheet item 1b), the amounts must be stated at the book value of the collateral provided. This includes assignments by way of security, transfers of ownership by way of security, and bails for third-party liabilities as well as liabilities from the creation of liens on movable property and rights as well as mortgages for third-party liabilities.

4) Irrevocable commitments arising from documentary letters of credit and all other contingent liabilities must also be reported as contingent liabilities.

36. Off-balance-sheet item 2: Credit risks

1) All irrevocable commitments that could give rise to a credit risk are to be recognised as credit risks.

2) The sub-item "irrevocable commitments" (off-balance-sheet item 2a) includes the following:

1. as of the balance sheet date unused, but firm and irrevocable commitments to grant credit or other facilities. Credit limits granted to customers and banks or investment firms that can be revoked at any time by the bank or investment firm are not to be disclosed unless the contractual period of notice exceeds six weeks;
2. firm commitments to underwrite securities issues less firm subscriptions;
3. firm commitments to redeem credits (credit commitments in favour of the buyer, collateralisation of the claims of creditors by way of a bank guarantee). Where both commitments forming an indivisible transaction binding upon the bank are structured in such a manner so that, from the point of view of execution of the transaction as well as from an economic and legal point of view, no risk can arise for the bank, only the irrevocable commitment must be shown in this sub-item since the fulfilment of such a commitment is considered to be a certainty and the fulfilment of the guarantee is strictly contingent.

3) The sub-item "liabilities for calls on shares and other equities" (off-balance-sheet item 2b) includes calls and margin commitments for shares and other equity instruments.

4) The sub-item "commitment credits" (off-balance-sheet item 2c) includes commitments arising from deferred payments, commitments arising from acceptances (only liabilities arising from own acceptances in circulation), and other commitment credits, insofar as they have not been fulfilled by at least one party.

5) "Liabilities from non-genuine repurchase agreements" (off-balance-sheet item 2d) are repurchase and reverse repurchase agreements within the meaning of point 46(1) and (3) of this Annex.

37. Off-balance-sheet item 3: Derivative financial instruments

1) Derivative financial instruments are financial contracts whose value is derived from the price of one or more of their underlying asset values (equity securities, commodities) or reference rates (interest, currencies). Derivative financial instruments may be essentially subdivided into the following two groups:

1. Fixed forward contracts: exchange-traded forward contracts (futures), OTC forward contracts (forwards), swaps and forward rate agreements (FRAs);
2. Options: OTC options and exchange-traded options. The distinction between purchased and written option contracts is of significance.

2) Exchange-traded refers to all derivative financial instruments admitted to trading on EUREX or another options and/or financial futures stock exchange that is subject to appropriate governmental or stock exchange supervision of the market and market participants, and guarantees financial security comparable to that of EUREX for the performance of contracts through a clearing house, which participates in each stock market transaction as a contracting party or guarantor. In addition, exchange-traded contracts are subject to daily margining, i.e. a daily revaluation with a possible margin call.

3) Over-the-counter (OTC) derivative financial instruments are derivative financial instruments that are not standardised and not traded in terms of the definition of derivative financial instruments traded on a qualified stock exchange as set out in paragraph 2. According to this definition, the following are also included under OTC derivatives: spot, forward and premium transactions are deemed OTC transactions if the daily margining requirement is not satisfied.

4) All derivative financial instruments outstanding as of the balance sheet date both for the account of the bank and that of customers in interest rates, foreign currencies, precious metals, equity securities/indices and other valuables with disclosure of the positive and negative (gross) replacement values as well as the respective contract volumes, each expressed in a total amount shall be reported as derivative financial instruments. Unsettled spot transactions recognised according to the settlement date accounting principle are to be included in forward transactions (see point 1).

5) The replacement value corresponds to the market value of derivative financial instruments outstanding on the balance-sheet date arising from customer and proprietary transactions. Transactions undertaken by the bank for other banks are deemed to be customer transactions. Positive replacement values constitute a receivable and thus an asset of the bank or investment firm. Negative replacement values constitute a financial obligation and thus a liability of the bank or investment firm.

6) Positive replacement values are exposed to credit risk and represent the maximum possible book loss to be incurred by the bank as of the balance sheet date if the counterparties are no longer able to meet their payment obligations. Purchased options are to be included under the positive replacement values. Positive replacement values are to be disclosed on a gross basis, i.e. without being offset against the negative values.

7) Negative replacement values correspond to the amount which the counterparties would lose if the bank or investment firm were not to honour its commitments. Written options are to be included under negative replacement values. Negative replacement values are to be disclosed on a gross basis, i.e. without being offset against positive values. Negative replacement values from customer transactions are to be disclosed according to the same basic principles as apply in the case of positive replacement values from customer transactions.

8) In the case of over-the-counter (OTC) contracts and if the bank or investment firm is a commission agent or principal, the replacement values of derivative financial instruments from transactions for the account of customers are to be disclosed; they are not to be disclosed if the bank or investment firm is a broker. In the case of exchange-traded contracts and if the bank or investment firm is a commission agent, the replacement values are not to be recorded in the balance sheet as a general rule except where the accrued daily loss ("daily variation margin") is not fully covered by the initial margin effectively received. Only the uncovered portion must be recorded. In the case of traded options, an identification requirement exists only where the maintenance margin effectively charged

does not fully cover the customer's daily loss. Here, too, only the uncovered portion must be recorded. Daily gains of customers are to never be reported.

9) The replacement values to be disclosed pursuant to paragraphs 4, 6 and 7 do not necessarily correspond to those shown under "other assets" (asset item 13) or "other liabilities" (liability item 4). Differences may arise from netting positive and negative replacement values in the balance sheet as provided for in Article 6e and in the derivative financial instruments of customer transactions.

10) The contract volumes are to be disclosed of all derivative financial instruments entered into by the bank or investment firm for its own account and that of customers outstanding as of the balance sheet date. "Contract volumes" are defined by the receivables side of the underlying instruments or notional values of derivative financial instruments, as provided for in Article 273 of Regulation (EU) No 575/2013.

In the case of over-the-counter (OTC) contracts and if the bank or investment firm is a commission agent or principal, the contract volumes are to be disclosed; they are not to be disclosed if the bank or investment firm is a broker. In the case of exchange-traded contracts and if the bank or investment firm is a commission agent, the contract volumes are not to be disclosed.

The following values are relevant for options:

1. Purchase call/sale put: Receivable side = current market value × quantity of the underlying instruments;
2. Sale call/purchase put: Receivable side = exercise price × quantity of the underlying instruments.

11) The contract volume corresponds to the receivable side of the underlying value or notional amount on which the derivative financial instrument is based, subject to the provisions of Article 273 of Regulation (EU) No 575/2013. Derivative financial instruments outstanding on the balance sheet date from customer transactions and proprietary transactions (bank acting as principal) are taken into account. Transactions undertaken by the bank for other banks are deemed to be customer transactions.

12) A bank or investment firm is considered a principal where transactions are effected for the bank's or investment firm's own account (proprietary transactions). In customer transactions, the bank or investment firms acts as a principal when it acts as a contracting party interposed directly between two counterparties. The bank or investment

firm must also fulfil the contract vis-à-vis one of the counterparties if the other counterparty fails to fulfil its contractual obligations.

13) A bank or investment acts as a broker (arranger) if, upon the instructions of a customer and in exchange for the payment of a fee, it introduces the customer to another party willing to enter into a contract and advises the parties during the contract negotiations. If a contract comes about, it is concluded bilaterally between the two parties. The bank or investment firm assumes no market or credit risk.

14) A commission agent is a person who, acting in their own name, but for the account of a customer, concludes a transaction with another counterparty (e.g. broker) in exchange for payment of a commission. Since the bank or investment firm is acting in its own name, but for the account of a customer, it is obligated to honour its contractual obligations towards the counterparty if customers do not honour their obligations. If, on the other hand, the counterparty defaults, the bank or investment firm is liable to its customers only if it did not disclose to them the name of the party with whom it was dealing for the customer accounts. If the bank or investment firm does not disclose to the customer the name of the party with whom it is dealing for the customer's account, the bank is acting for its own account.

38. Off-balance-sheet item 4: Fiduciary transactions

1) Fiduciary transactions encompass customer deposits, loans, participations, and securities lending and borrowing transactions entered into or granted by the bank or investment firm in its own name, however exclusively for the customer's account and risk on the basis of written instructions. The customer assumes the currency, transfer, price and default risks, with all income from the transaction accruing to the customer. The bank or investment firm receives only a commission.

2) Commission income from fiduciary transactions is to be recorded in the item "income from commission business and services" (item 4 of the income statement). Income from fiduciary placements and payment thereof to the principal may not be recorded in the income statement.

E. Regulations for various balance sheet items and off-balance-sheet transactions

39. Money-market instruments and money-market book claims

1) Money-market instruments are receivables in the form of certificates for short-term funds, as a rule of up to one year, made available by debtors of good credit-worthiness.

2) Money-market books claims are short-term receivables that are not documented as securities, but rather are carried in debt registers as portions of large loans that issuers have taken out with a large number of investors subject to uniform terms and conditions and that are publicly offered.

40. Trading items; trading portfolio

1) Trading means entering into actively managed positions in order to profit from fluctuations in the market price with an ongoing willingness to increase, decrease, close or hedge the risk position. The classification as a trading portfolio is to be established and accordingly documented when the transaction is concluded. Expenses and income from trading activities are to be disclosed exclusively in the designated items of the income statement.

2) The trading portfolio shall include all securities, book-entry securities, precious metals, foreign exchange, combined products that, from an economic point of view, are capital market interest instruments, and other financial instruments held by the bank or investment firm for trading purposes.

41. Joint credits, sub-participations

A sub-participation assumed as part of a joint credit within the meaning of Article 24b(5) sentence 1 is the assumption of shares in a credit transaction entered into by another bank or investment firm, the lead bank or investment firm. The sub-participating bank or investment firm does not act as the lender vis-à-vis the borrower. It assumes the default risk for its share of the loan and is entitled to receive its share of the interest income in keeping with its share of the loan. The lead bank or investment firm must deduct the sub-participations from the total credit amount; the sub-participating bank or investment firm must recognise its share of the loan in accordance with the respective borrower.

42. Securities

Securities are standardised debt or equity instruments designated for mass trading; rights with comparable functions but without a certificate (book-entry securities) are deemed equivalent to securities.

43. Subordinated assets

Securitised and unsecuritised assets are deemed to be subordinated where they arise from an irrevocable written declaration that in the event of liquidation, bankruptcy or restructuring, they rank after the claims of all other creditors and may not be offset against amounts payable to the debtor nor secured by its assets.

43a. Non-performing loans/past due receivables

1) Loans are non-performing where at least one of the following payments has not yet been effected in full as of ninety days from the due date: interest payments, commission payments, amortisation (partial repayments of principal), full repayment of principal.

2) If payments for interest, commission and/or amortisation are overdue, the face value of the loan is to also be considered to be non-performing. Loans to debtors undergoing liquidation are to always be considered non-performing. Loans subject to special conditions based on the borrower's credit standing (e.g. significant reductions in interest rates, with interest dipping below the bank's or investment firm's refinancing costs) are to be considered non-performing.

3) Past due receivables are frequently a component of impaired loans/receivables according to point 6a(6).

44. Value adjustments

Value adjustments are corrections of value for assets classified as current assets to adjust for losses in value that have already occurred or are expected to occur. Value adjustments are allocated to specific assets; they may not be shown on the liabilities side of the balance sheet.

45. Securities lending and borrowing

1) Securities lending and borrowing for the bank's or investment firm's own account and risk (principal) are to be disclosed as follows when the transaction is concluded:

1. the exchanged amounts of cash are to be recorded in the balance sheet;

2. the transfer of securities has no effect on the balance sheet where the transferring party maintains economic ownership of the rights associated with the securities. The securities are to be disclosed in the notes in accordance with point 74(3);
3. the resale of received securities is to be recorded in the balance sheet and posted at market rates as a non-monetary obligation.

2) As a rule, the economic ownership of transferred securities is not considered to be lost where the transferring party continues to carry the market price risk and where it is directly or indirectly entitled to the current income and other rights from the transferred securities. This may be ensured by way of margin agreements, for example, in which the acquiring party is economically in the position of a secured creditor. In the case of non-tradable securities, beneficial ownership remains with the transferring party. Where it is agreed that the transaction is substantively of the same maturity as the transferred securities, beneficial ownership is transferred to the acquiring party.

3) Banks and investment firms that deal in securities lending and borrowing under their own names but act on behalf of clients for whom, however, they assume neither liability nor a guarantee and thus do not act as a principal, are to treat the transactions according to the rules of fiduciary transactions as provided for in point 38(1) and report them in accordance with point 38(2). A performance guarantee on the part of the bank for the proper fulfilment of its services (e.g. margining) does not change the fiduciary character of the transaction.

46. Repurchase and reverse repurchase agreements

1) Repurchase and reverse repurchase agreements are contracts for the purpose of transferring assets, such as bills of exchange, receivables, or securities, from a bank or investment firm or the customer of a bank or investment firm (transferor) to another bank or investment firm or a customer of that bank or investment firm (transferee) in exchange for payment of an amount with the simultaneous agreement that the assets must or may be transferred back to the transferor in exchange for the repayment of this amount or for a predetermined different amount.

2) If the transferee assumes the obligation to transfer the assets back at a predetermined date or a date to be determined by the transferor, this is a genuine repurchase agreement.

3) If the transferee is merely entitled to transfer the assets back at a predetermined date or a date to be determined by the transferee, this is a non-genuine repurchase agreement.

4) In the case of genuine repurchase agreements, the transferred assets must continue to be recognised in the balance sheet of the transferor. The transferor must recognise a liability to the transferee in the amount received for the transfer. If a higher or lower amount has been agreed for the transfer back, the difference must be spread over the term of the repurchase agreement. In addition, the transferor must disclose the book value of the assets transferred under a repurchase agreement in the notes. The transferee may not recognise the assets transferred under a repurchase agreement in its balance sheet; the transferee must recognise a receivable from the transferor in its balance sheet for the amount paid for the transfer. If a higher or lower amount has been agreed for the transfer back, the difference must be spread over the term of the repurchase agreement.

5) In the case of non-genuine repurchase agreements, the assets are not to be recognised in the balance sheet of the transferor but in the balance sheet of the transferee. The transferor must state the amount agreed for the case of a transfer back.

6) Forward exchange transactions, forward stock exchange transactions and similar transactions as well as the issue of own bonds on an abbreviated time basis are not deemed to be repurchase agreements within the meaning of this provision.

7) Repealed

47. Receivables and liabilities payable on demand

Only those receivables and liabilities that can be disposed of at any time without prior notice or for which a term or notice period of 24 hours or one business day has been agreed are to be reported as payable on demand; this also includes so-called overnight money and money with daily notice, including money invested over non-business days with a maturity date or notice period on the next business day.

IV. Classification of the income statement (Article 24c)

A. Principle

48. In general

1) Minimum classification rules on income statements applicable to all banks and investment firms are designed to enable the presentation of the results of the various business areas in a simple and understandable manner for a broad group of readers and thus lead to a better

understanding of the sources of the bank's or investment firm's profits. The income statement must be prepared compulsorily in an echelon format (vertical layout).

2) As a general rule, the no-netting principle is to be applied to "income" and "expense" items except where the explanations in the text concerning these individual items require otherwise. Income and expenses can be offset against one another under the positions designated "result".

B. Requirements for individual items of the income statement

49. Item 1: Interest income

1) Interest income and similar income from banking transactions, including the factoring business, must be reported under "interest income", in particular all income from the assets reported under "liquid assets" (asset item 1), "debt instruments of public bodies and other bills eligible for refinancing with central banks" (asset item 2), "amounts due from banks" (asset item 3), "amounts due from customers" (asset item 4) and "bonds and other fixed-income securities" (asset item 5), regardless of the form in which they are calculated. This also includes discount deductions, distributions on participation rights and income bonds in the portfolio, income of an interest nature that arises in connection with the distribution over time of the difference between assets acquired below the redemption amount and liabilities incurred above the redemption amount, write-ups of accrued interest on zero bonds in the portfolio, income of an interest nature arising from covered forward transactions distributed over the actual term of the respective transaction, as well as fees and commissions of an interest nature that are calculated according to the passage of time or the amount of the receivables. The result from refinancing trading positions where this income is offset against the result from trading activities must also be reported under interest income.

2) Past due interest (including accrued interest) and related commissions are not to be included in interest income. Interest and commissions are past due where they are more than ninety days overdue. In the case of overdrafts, interest and commissions are considered impaired where the overdraft limit has been exceeded for more than ninety days. From then on, future interest and commissions accruing may no longer be credited to interest income (item 1 of the income statement) until any overdue interest has not been outstanding for longer than ninety days. A retroactive cancellation of interest income is not expressly prescribed. Where no retroactive cancellation is made, all receivables arising from such interest that have accrued and have been owing up to ninety days (due and unpaid interest and accrued interest) are to be written off via item 11

("value adjustments on receivables and funds allocated to provisions for contingent liabilities and credit risks"). Any treatment of impaired interest that is at variance with this rule with regard to the ninety-day time limit, is to be disclosed in the notes as provided for in Article 24e(1)(2).

3) All interest income resulting from trading is only to be reported under the "of which" sub-item "from trading" if it is not offset against the refinancing expense for trading portfolios in the item "result from financial transactions, of which: from trading" (item 6 of the income statement. Banks and investment firms that offset the refinancing of positions entered into for trading purposes against interest operations are to disclose this in the notes (Article 24e(1)(2)).

50. Item 2: Interest expense

1) The item "interest expense" includes interest expenses and similar expenses from banking transactions, including the factoring business, in particular all expenses for liabilities reported under the items "amounts due to banks" (liability item 1), "amounts due to customers" (liability item 2), "securitised liabilities" (liability item 3), and "subordinated liabilities" (liability item 7), regardless of the form in which they are calculated. This also includes discount deductions, distributions on participation rights and income bonds issued, expenses of an interest nature that arise in connection with the distribution over time of the difference between liabilities incurred below the redemption amount and assets acquired above the redemption amount, write-ups of accrued interest on zero bonds issued, expenses of an interest nature arising from covered forward transactions distributed over the actual term of the respective transaction, as well as fees and commissions of an interest nature that are calculated according to the passage of time or the amount of the liabilities.

2) The item "interest expense" must also in particular include interest on mortgages in favour of third parties secured with the bank's or investment firm's own real estate properties and the interest components of real estate finance lease instalments.

3) The interest payable on cooperative and endowment capital, partners' capital and capital accounts as well as guarantee capital is not to be treated as interest expense but as profit appropriation.

51. Item 3: Current income from securities

1) The item "current income from securities" includes all dividends on shares, other share rights, and non-fixed-income securities as well as on participating interests and shares in related undertakings. The same applies

to income from units in UCITS, investment undertakings for other assets or real estate and AIFs.

2) Interest income from loans deemed part of equity capital (point 19(1)(3) of this Annex) must also be included as income from participating interests. Interest income on loans deemed part of equity capital of an affiliated undertaking must also be included as income from shares in affiliated undertakings (item 19a(3) of this Annex).

3) Gains and losses from the sale of participating interests and from the sales of shares in affiliated undertakings under fixed assets are to be included under the item "other result from ordinary activities" (item 7b of the income statement) or "other ordinary expenses" (item 10 of the income statement).

4) For the disclosure of current income from trading within the meaning of paragraph 1 under the "from trading" sub-item, point 49(3) of this Annex applies *mutatis mutandis*.

52. Item 4: Income from commission business and services

1) The item "income from commission business and services" includes not only commissions in the strict sense, but also income in general arising from the ordinary provision of services.

2) The sub-item "commission income from lending activities" includes in particular stand-by, guarantee, surety, and letter of credit confirmation commissions as well as advisory commissions and commissions for the administration of loans for the account of other lenders.

3) The sub-item "commission income from securities trading and investment activities" includes in particular custodian fees, brokerage commissions, commissions from asset management activities, commissions from fiduciary transactions, investment advisory commissions, commissions from estate planning, company formation, and taxation advisory services, and income from securities issuing operations both by way of underwriting on a commission basis or firm underwriting. If the primary market trading income from securities issuing operations is reported under income from trading (sub-item to item 6 of the income statement), this must be recorded in the valuation principles in accordance with Article 24e(1)(2).

4) The sub-item "commission income from other services" includes in particular rent for safe deposit boxes, payment transaction commissions, income from the collection of bills of exchange, documentary collection commissions, account management fees, any commissions from foreign

exchange, foreign notes and coins, and precious metals trading for third parties as well as commissions for brokerage activities for credit transactions, savings and insurance contracts.

53. Item 5: Commission expense

1) The item "commission expense" includes not only commissions in the strict sense, but also expenses in general arising from the ordinary provision of services. This includes in particular commissions and similar expenses from services described in item 52, in particular custodian fees paid, brokerage fees paid, and retrocessions, where retrocessions agreed in advance may be offset against the corresponding commission income.

2) Commissions to indemnify any existing guarantee capital are not to be treated as commission expense but as profit appropriation.

54. Item 6: Result from financial transactions

1) The result from financial transactions includes the balance of income and expenses from transactions in securities and precious metals held as current assets, financial instruments and foreign exchange, as well as income from the reversal of value adjustments and expenses for value adjustments on these assets; income resulting from the valuation of trading positions at a market value above the acquisition cost must also be included. The offsetting must also include expenses for the formation of specific provisions for impending losses from the transactions described in sentence 1 and income from the release of these provisions.

2) The result from trading activities includes the balance of income and expenses from transactions in securities, financial instruments, precious metals, and foreign exchange held in trading portfolios, as well as income from the reversal of value adjustments and expenses for value adjustments on these assets; income resulting from the valuation of trading positions at a market value above the acquisition cost must also be included. The offsetting must also include expenses for the formation of specific provisions for impending losses from the transactions described in sentence 1 and income from the release of these provisions.

3) The result from trading activities includes in particular:

1. gains and losses on trading with securities and book-entry securities, debt register claims, other marketable assets and commitments, foreign exchange and bank notes, precious metals, commodities, derivative financial instruments, etc.; this also includes gains and losses from the sale of securities and precious metals held in trading portfolios;
2. gains and losses on loaned assets belonging to the trading portfolio;

3. proceeds from subscription rights;
4. valuation result from the translation of foreign exchange positions;
5. components directly linked to trading activities and partly included in the market prices such as brokerage, transportation and insurance expenses, fees and duties, melting costs etc.

4) The result from trading activities also includes interest and dividend income from securities trading portfolios as well as refinancing expenses, if point 49(3) of this Annex is applied.

55. Item 7: Other ordinary income

1) The result from real estate includes income from the use of own real estate not used for banking operations, in particular rental income and maintenance expenses for own real estate properties, must be reported as result from real estate.

2) Gains from the sale of real estate properties and other tangible assets are to be reported under "other result from ordinary activities" (item 7b of the income statement).

3) Gains and losses from the sale of real estate properties that have been acquired as a result of credit transactions and are designated for resale are to be reported under "other result from ordinary activities" (item 7b of the income statement) or as other ordinary expenses (item 10 of the income statement), as they do not constitute a result from real estate.

4) The item "other result from ordinary activities" (item 7b of the income statement) includes the proceeds from the sale of non-current assets in excess of the most recent book value, subject to point 6(5).

5) Upward revaluations of precious metals held as non-current assets to the extent of the reversal of previous write-downs and the proceeds from the sale of precious metals held as non-current assets in excess of the most recent book value are also to be disclosed as "other result from ordinary activities" (item 7b of the income statement).

6) Proceeds from the sale of participating interests and shares in affiliated undertakings held as fixed assets that exceed the last balance sheet value (book value) are to be reported under "other result from ordinary activities" (item 7b of the income statement).

7) Income not relating to the current period, also those due to corrections of errors or mistakes from previous years, are to be reported under "other result from ordinary activities" (item 7b of the income statement). Significant income not relating to the current periods must be explained in the notes.

56. Item 8: Operating expenses

1) The item "operating expenses" is made up of the sub-items "personnel expenses" and "general and administrative expenses".

2) Personnel expenses include all expenses for the bank's governing bodies and personnel, including in particular:

1. meeting attendance fees and retainers for the bank's governing bodies;
2. salaries and benefits, contributions to the Old-Age and Survivors'/Disability Insurance Schemes (AHV/IV), Unemployment Insurance Scheme (ALV) and other legal contributions;
3. premiums and voluntary appropriations to pension and other funds as well as in-house funds with the same purpose, but without any separate legal personality, where they do not have the character of a profit distribution;
4. premiums for life and pension insurance policies;
5. ancillary personnel expenses, including direct training and recruitment costs;
6. costs related to enabling price reductions associated with employee participation plans.

3) General and administrative expenses include in particular:

1. office space expense:
   a) rent and maintenance costs paid for the premises used for banking operations;
   b) operating lease expenses for premises used for banking operations.
2. IT expenses (including the costs for the services of external data processing centres), machinery, furniture, motor vehicles and other equipment and fixtures, in addition to operating lease expenses. Finance lease instalments are not to be recorded here but recorded, applying the annuity method, as an interest expense and repayment of leasing instalments recognised as liabilities. If low-value items are not concerned, depreciation and amortisation are not to be recorded here, but rather under item 9 of the income statement ("amortisation of intangible assets and depreciation of tangible assets").
3. other operating expenses:
   a) office supplies and consumables, printed matter, telephone, telegraph, telex, postage and other transport costs;
   b) travelling allowances;
   c) insurance premiums;

d) advertising expenses;
e) legal and debt collection costs, commercial register and land registry fees;
f) auditing expenses;
g) issuing costs including expenses associated with the procurement of third-party capital where they are not regarded as interest expense and are amortised over the term of the loan;
h) donations where they are not distributions associated with profit appropriations;
i) value-added tax if it does not represent a component of the cost price of tangible fixed assets.

57. Item 9: Amortisation of intangible assets and depreciation of tangible assets

1) The item "amortisation of intangible assets and depreciation of tangible assets" includes amortisation of intangible assets (asset item 9) as well as depreciation of tangible assets required for operations (asset item 10). Amortisation and depreciation of assets capitalised under finance leases must also be reported under this item.

2) Losses from disposals of tangible fixed assets are to be included under other ordinary expenses (item 10 of the income statement).

3) Where real estate assets are acquired as the result of a forced realisation without interested third parties and an immediate depreciation of the property to the effective market value must be made, this depreciation is to be charged to the item "value adjustments on receivables and funds allocated to provisions for contingent liabilities and credit risks" (item 11 of the income statement), because the deprecation possesses the character of a value adjustment dictated by a decline in the credit standing of the debtor.

57a.Item 10: Other ordinary expenses

1) The item "other ordinary expenses" includes in particular cash differences, losses on receivables, transaction losses, and similar expenses.

2) This item also includes realised losses (proceeds less higher last balance sheet value or book value) from the sale of participating interests, shares in affiliated undertakings held as fixed assets, securities held as fixed assets, real estate, and other tangible assets.

3) This item also includes depreciation on precious metals held as fixed assets and the exchange losses realised on their sale that have not yet been recognised.

4) This item also includes losses from the sale of properties that were acquired as a result of credit transactions and designated for resale.

5) Losses from the sale of securities and precious metals held as current assets are not reported here, but under "result from financial transactions" (item 6 of the income statement).

6) Expenses not relating to the current period, also those due to corrections of errors or mistakes from previous years, are to be reported as other ordinary expenses (item 10 of the income statement). Significant expenses not relating to the current periods must be explained in the notes.

58. Item 11: Value adjustments on receivables and funds allocated to provisions for contingent liabilities and credit risks

1) Expenses for value adjustments made in the items "amounts due from banks" (asset item 3) and "amounts due from customers" (asset item 4) are to be reported as value adjustments on receivables.

2) Expenses for the formation of provisions for contingent liabilities and credit risks reported under "contingent liabilities" (off-balance-sheet item 1) and "credit risks" (off-balance-sheet item 2), are to be recognised as funds allocated to provisions for contingent liabilities and credit risks.

3) The amount of value adjustments on receivables and funds allocated to provisions for contingent liabilities and credit risks may not be offset against the amount of income from the release of value adjustments on receivables and from provisions for contingent liabilities and credit risks (item 12 of the income statement).

4) The value adjustments on amounts due from banks, customers and undertakings with which a participating interest exists, as well as affiliated undertakings, must be broken down in the notes unless they are immaterial.

59. Item 12: Income from the release of value adjustments on receivables and from provisions for contingent liabilities and credit risks

1) Income from the recovery of receivables written off and from the release of value adjustments and provisions previously established for business purposes within the meaning of point 58(1) and (2) of this Annex

must be reported as income from the release of value adjustments on receivables and from provisions for contingent liabilities and credit risks.

2) The amount of income from the release of value adjustments on receivables and from provisions for contingent liabilities and credit risks may not be offset against the amount of value adjustments on receivables and funds allocated to provisions for contingent liabilities and credit risks (item 11 of the income statement).

60. Item 13: Write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets

1) Write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets include write-downs on assets included in the items "bonds and other fixed-income securities" (asset item 5), "equities and other non-fixed-income securities" (asset item 6), "participating interests" (asset item 7), and "shares in affiliated undertakings" (asset item 8). Write-downs on assets included in the items "bonds and other fixed-income securities" (asset item 5), "equities and other non-fixed-income securities" (asset item 6), and "shares in affiliated undertakings" (asset item 8) are to be included in this item only if they are not items within the scope of financial transactions (item 6 of the income statement.

2) Losses realised on the sale of participating interests and shares in affiliated undertakings held as fixed assets are not recognised here, but under "other ordinary expenses" (item 10 of the income statement).

3) Losses realised on the sale of securities treated as fixed assets are not recognised here, but under "other ordinary expenses" (item 10 of the income statement).

4) The amount of write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets may not be offset against the amount of income from write-ups on participating interests, shares in affiliated undertakings, and securities treated as fixed assets (item 14 of the income statement).

5) Write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets must be broken down in the notes unless they are immaterial.

61. Item 14: Income from write-ups on participating interests, shares in affiliated undertakings, and securities treated as fixed assets

1) Income from write-ups on participating interests, shares in affiliated undertakings, and securities treated as fixed assets includes income from the reversal of previously recognised write-downs within the meaning of item 60 (1) of this Annex.

2) Proceeds from the sale of participating interests and shares in affiliated undertakings held as fixed assets in excess of the most recent book value are not recognised here, even to the extent of the reversal of previous write-downs, but under "other result from ordinary activities" (item 7b of the income statement).

3) Proceeds from the sale of securities held as fixed assets in excess of the most recent book value are not recognised here, even to the extent of the reversal of previous write-downs, but under "other result from ordinary activities" (item 7b of the income statement).

4) The amount of income from write-ups on participating interests, shares in affiliated undertakings, and securities treated as fixed assets may not be offset against the amount of write-downs on participating interests, shares in affiliated undertakings, and securities treated as fixed assets (item 13 of the income statement).

62. Item 16: Extraordinary income

1) Extraordinary income is income arising from events or transactions that are clearly distinct from the ordinary activities of the bank or investment firm and therefore are not expected to recur frequently or regularly. One example of this is subvention payments received from shareholders during the course of the financial year. Income not relating to the current period, also those due to corrections of errors or mistakes from previous years, are not recognised here, but under "other result from ordinary activities" (item 7b of the income statement).

2) Subvention payments that are received from shareholders only after the end of the financial year are to be reported as coverage of losses under item 4 of Article 24c(2). Guarantees to cover a loss are not recognised as extraordinary income, but as a note to Article 24c(2).

63. Item 17: Extraordinary expenses

Extraordinary expenses are expenses arising from events or transactions that are clearly distinct from the ordinary activities of the bank or investment firm and therefore are not expected to recur frequently or regularly. Expenses not relating to the current period, also those due to corrections of errors or mistakes from previous years, are not recognised here, but under "other ordinary expenses" (item 10 of the income statement.

64. Item 19: Corporate earnings tax

In addition to direct corporate earnings tax, the item "corporate earnings tax" also includes the corresponding creation of provisions for deferred corporate earnings tax. The current corporate earnings tax payable on the result of the respective period is to be determined in compliance with the relevant rules and regulations on the calculation of tax.

65. Appropriation of profits/coverage of losses

Any guarantees for covering losses must also be noted as part of the information pursuant to Article 24c(2).

V. Classification of the cash flow statement (Article 24d)

66. Classification of the cash flow statement

1) Table A in Chapter VIII is designed to serve as a model and may be adapted to the requirements of the bank or investment firm, subject to compliance with the minimum classification requirements as provided for in Article 24d(2) and (3).

2) The comparative figures for the previous year must be presented in each case.

VI. Classification of the notes (Article 24e)

67. In general

1) The notes are an integral part of the annual financial statement. They complement and provide information on the balance sheet and income statement, and the cash flow statement where necessary, and thus enable the informed reader to obtain a better understanding of significant aspects of the financial position of the bank or investment firm (net assets, financial positions and results). The notes are designed to unburden the balance sheet and income statement with regard to an overabundance of details so as to provide for an improved understanding at first glance.

2) In preparing the compulsory components of the notes, the size and business activities of the individual bank or investment firm and materiality are to be taken into consideration. As a consequence, the notes must show a varying degree of detail and scope with regard to the various bank types. This differentiation is to be justified in the notes by way of summary disclosures of the bank's business activities as defined in Article 24e(1)(1).

3) In order to unburden the balance sheet and income statement with regard to an overabundance of details, yet at the same time structure the notes in a clear and legible manner, a certain minimum layout has been specified for the purpose of organising the content of certain presentations in the notes. Further analyses and supplementation of these presentations are possible. By the same token, insignificant positions can be grouped in accordance with their content.

4) The notes must contain the following subsections:

1. explanatory notes on the bank's business activities, headcount;
2. accounting and valuation policies;
3. information on the balance sheet;
4. information on off-balance-sheet transactions;
5. information on the income statement;
6. any other significant disclosures, explanatory notes, and justifications.

5) The bank or investment firm is free to choose the form of presentation within the framework of the minimum disclosure and sequence as required by legal rules.

6) Unless expressly provided for otherwise by the remarks and tables set out in Chapter VIII, all financial information is to be accompanied by comparative figures from the previous year.

7) The terms used in the notes have the following meaning:

1. disclosure: simple statement without further elaboration; depending on the respective circumstances, this may be expressed in figures or as text;
2. explanatory note: commentary in text form and interpretation of facts;
3. justification: disclosure of considerations and arguments on which certain actions or omissions have been based. Justification is to be provided in the form of text. Impacts and effects are to be quantified;
4. breakdown: quantitative segmentation of a figure into its component parts in such a manner that their relation to one another is clear;
5. presentation: rendering in two-dimensional summarised tabular format in accordance with a particular minimum layout of content. The tables pursuant to Section XI are to be understood as models with regard to format; as to their content, they represent the minimum requirements, with the exception of the table for the cash flow statement (see point 66 of this Annex).

68. Explanatory notes on business activities, disclosure of headcount (position 1)

This includes summarised disclosures of the bank's or investment firm's business lines and size and of the outsourcing of business operations in accordance with Articles 34b and 35. Mention is to be made in particular of the types of business activities for which no disclosure is made either because they are negligible or are not present. The content, scope and degree of detail of the information contained in the notes are to be indicated. The number of employees as at end of the financial year must be expressed in terms of full-time employees and adjusted for part-time employees (trainees = 50%).

69. Disclosure of the accounting and valuation policies (position 2)

The following in particular must be disclosed with regard to the accounting and valuation policies:

1. disclosure of the accounting and valuation policies for the individual balance sheet and off-balance-sheet position;
2. justification of changes in the accounting and valuation policies as well as disclosure and explanatory notes on their effects;
3. disclosures concerning the treatment of impaired interest where the treatment employed is at variance with that set out in point 49(2) of this Annex;

4. disclosures of the treatment of the refinancing of trading positions (point 49(3) of this Annex);
5. explanatory notes on risk management, in particular on the treatment of interest rate risks, country risks, risks in trading and the use of derivatives, other market risks and credit risks;
6. explanatory notes on the bank's business policy regarding the use of derivative financial instruments;
7. disclosures as to how transactions are recorded (point 1 of this Annex);
8. explanatory notes on the methods used for identifying default risks and measuring the need for creating value adjustments;
9. explanatory notes on the valuation of collateral for loans, in particular key criteria for the calculation of the current market value and the lending value.

70. Overview of collateral for loans and off-balance-sheet transactions (position 3.1)

1) This includes a presentation of collateral for amounts due from customers, mortgage loans, contingent liabilities, irrevocable commitments, calls commitments and commitment credits, broken down into:

1. secured by mortgage;
2. secured by other collateral;
3. unsecured;

in accordance with the minimum classification as set out in Table B "Overview of collateral for loans and off-balance-sheet transactions" (Chapter VIII).

1a) In addition to the disclosures pursuant to paragraph 1, the total amount of impaired loans/receivables is to be disclosed here (point 6a(6) of this Annex). Explanations are to be provided for material changes as compared to the previous year. The impaired loans/receivables are to be stated at their gross and net values. In addition, the estimated liquidation values of the collateral and the existing individual value adjustments applied to the net debt amount are to be disclosed.

2) Collateral by way of mortgage is the firm assumption of mortgage claims and of mortgage certificates pledged or assigned as collateral. All other forms of collateral are deemed those that are not mortgage-backed. Loans that have been granted without any valid collateral and those for which collateral has ceased to be valid in form or substance are to be

included under the "unsecured" position. Receivables resulting from a spot transaction recognised according to the trade date (see point 1) may be recorded in the "secured by other collateral" column until the settlement date.

3) The following are not considered collateral: assignments of wages and salaries, collector's items, expected future benefits or entitlements, debtor's promissory notes, claims contested by the courts, shares of the bank or investment firm itself where not traded on a recognised stock exchange, equity securities, debt certificates and guarantees of debtors or of companies affiliated with these debtors, and assignments of future receivables. Collateral is to be considered at its fair market value.

71. Disclosure of the amount of trading portfolios and securities and precious metals held as current assets (excluding trading portfolios) and fixed assets, their breakdown by the balance sheet items in which they are included, and their composition in detail; disclosure of own shares included in current (excluding trading portfolios) and fixed assets; breakdown of participating interests and shares in affiliated undertakings (position 3.2)

1) Trading positions must be disclosed in total and broken down by the balance sheet items in which they are included. The trading positions are to be broken down according to:

1. debt instruments (further broken down into listed and unlisted instruments), disclosing the bank's or investment firm's holdings of its own issued bonds and medium-term notes;
2. equity securities, specifying the bank's or investment firm's holdings of its own shares;
3. precious metals;
4. other positions.

The other positions must be broken down further if they are material. The trading portfolios lent and the difference between the acquisition cost and the higher market value must be disclosed in each case.

2) The securities and precious metals held as current assets (excluding trading portfolios) and fixed assets must each be disclosed in total and broken down by the balance sheet items in which they are included. They are to be broken down according to:

1. Debt instruments with information on the holdings of:
    a) the bank's own issued bonds and medium-term notes;
    b) debt instruments valued according to the accrual method;

c) debt instruments valued according to the lower of cost or market value principle;

2. equity securities, specifying the bank's holdings of qualified participations (at least 10% of the share capital or voting rights);
3. precious metals.

The book value, acquisition value, and market value must be stated for securities and precious metals valued at the lower of cost or market. Eligible securities and securities and precious metals lent must also be disclosed.

3) With regard to own shares, the opening and closing balance and changes during the current year resulting from purchases, sales, and value adjustments or write-downs and write-ups must be disclosed separately for current (excluding trading portfolios) and fixed assets.

4) Participating interests and shares in affiliated undertakings are to be broken down into those with and those without a listed value. Participating interests and shares in affiliated undertakings with a listed value are those traded on a recognised exchange as defined in Article 4(1)(72) of Regulation (EU) No 575/2013, a regulated market, or a multilateral trading facility.

5) The minimum classification as set out in Tables C "Trading portfolios", "Securities and precious metals held as current assets (excluding trading portfolios)", "Securities and precious metals held as fixed assets", "Disclosure of own shares included in current (excluding trading portfolios) and fixed assets" and "Participating interests and shares in affiliated undertakings" (Chapter VIII) is compulsory.

72. For participating interests and shares in affiliated undertakings: name of company, registered office, business activities, capital and equity interests (voting shares, capital shares, and any contractual commitments) (position 3.3)

All participating interests and shares in affiliated undertakings as well as significant changes compared to the previous year must be disclosed. Obligations to assume further shares, e.g. by way of a firm agreement or an option (purchased call option or written put option) or the release of shares, e.g. by way of a firm commitment or an option (purchased put option or written call option) are to be disclosed.

73. Presentation of fixed assets (position 3.4)

1) The presentation of fixed assets must show the development of "participating interests" (asset item 7), "shares in affiliated undertakings" (asset item 8), "intangible assets" (asset item 9), "tangible assets" (asset item 10) as well as securities and precious metals held as fixed assets and other fixed assets.

2) Fixed assets are to be broken down into:

1. acquisition costs;
2. accumulated depreciation and amortisation;
3. book value at previous year end;
4. additions;
5. disposals;
6. reclassifications;
7. reversals of impairment;
8. depreciation and amortisation for the financial year;
9. book value at the end of the financial year;

in accordance with the minimum classification as set out in Table D "Presentation of fixed assets" (Chapter VIII).

3) If, when applying paragraph 1 for the first time, the acquisition value of a fixed asset cannot be determined without unjustified costs or delays, the remaining carrying amount at the beginning of the financial year may be regarded as the acquisition value. The application of sentence 1 must be disclosed in the notes.

4) Real estate properties and participating interests designated for resale are not to be included in the presentation of fixed assets; the respective total amounts of real estate properties and participating interests designated for resale must be stated, however.

5) Foreign-currency translation differences, if any, are to be recorded in the "disposals" column of Table D (Chapter VIII).

6) The future obligations to effect payment of leasing instalments for non-recognised assets subject to operating leases are to be disclosed in Table D as the total amount of non-recognised operating lease commitments.

74. Disclosure of pledged or assigned assets to secure own commitments and third-party commitments (including contingent liabilities) as well as assets subject to reservation of title (position 3.6)

1) The total amount of assets pledged or assigned as collateral must be stated for each item of the liabilities reported in the balance sheet and the contingent liabilities reported under off-balance sheet transactions.

2) The book value of assets that are pledged or assigned as collateral and the effective commitments to which they are subject are to be disclosed.

3) The following values are to be disclosed for securities lending and repurchase transactions:

1. book value of receivables from cash collateral in securities borrowing and reverse repurchase agreements;
2. book value of obligations from cash collateral in securities lending and repurchase agreements;
3. book value of securities lent in connection with securities lending or delivered as collateral in connection with securities borrowing as well as securities in own portfolio transferred in connection with repurchase agreements; of which the book value of those securities with unrestricted right to resell or pledge;
4. market value of securities serving as collateral in connection with securities lending or securities borrowed in connection with securities borrowing or securities received in connection with reverse-repurchase agreements for which the right to resell or rehypothecate is unrestricted; of which the market value of associated resold or rehypothecated securities.

4) Table O (Chapter VIII) is to be used.

75. Disclosure of liabilities relating to own pension schemes (position 3.7)

Debenture bonds and medium-term notes of the bank as well as negative replacement values are to also be included.

76. Presentation of bonds outstanding (position 3.8)

To be individually disclosed for all outstanding bonds: the year of issue, interest rate, type of bond, maturity, and early termination possibilities, in addition to the amount outstanding. Central mortgage institution loans and loans of central issuing institutions are to be reported in one total amount each.

77. Presentation of provisions, provisions for general banking risks and value adjustments, and changes therein during the financial year (position 3.9)

1) The following positions are to be presented:

1. value adjustments for default risks, broken down into individual value adjustments, general individual value adjustments, portfolio value adjustments, and general individual value adjustments for country risks;
2. provisions for contingent liabilities and credit risks;
3. provisions for other business risks;
4. provisions for taxes and deferred taxes;
5. other provisions;
6. total value adjustments and provisions;
7. deduction of value adjustments from total value adjustments and provisions;
8. total provisions as per balance sheet;
9. provisions for general banking risks.

2) The positions referred to in paragraph 1 are to be broken down according to:

1. balance at end of previous year;
2. use in conformity with designated purpose;
3. recoveries, past due interest, currency translation differences;
4. value adjustments, provisions, and provisions for general banking risks charged to income;
5. value adjustments, provisions, and provisions for general banking risks released to income;
6. balance at end of financial years.

3) Past due interest charged to customers but not collected as interest income is to be disclosed in the column "recoveries, past due interest, currency translation differences".

4) Provisions for litigation expenses or amounts earmarked for severance pay, for instance, are to be included under "other provisions".

5) Table E "Value adjustments and provisions/provisions for general banking risks" (Chapter VIII) is to be used.

78. Presentation of the bank's or investment firm's capital and disclosure of holders of interests exceeding 5% of all voting rights (position 3.10)

1) Presentation of the composition of the bank's or investment firm's capital, broken down into:

1. total par value;
2. number of shares or interests;
3. capital eligible for dividend;

in accordance with the minimum classification as set out in Table F "Bank's or investment firm's capital" (Chapter VIII).

2) Direct as well as indirect shareholders must be disclosed, applying the principle of substance over form.

79. Statement of shareholder's equity (position 3.11)

Shareholder's equity must be stated in accordance with the minimum classification as set out in Table G "Statement of shareholder's equity" (Chapter VIII).

80. Presentation of the maturity analysis of assets and liabilities

1) The assets and liabilities are to be broken down in accordance with the minimum classification as set out in Table H "Maturity analysis of assets and liabilities" (Chapter VIII) as follows according to their remaining period to maturity, i.e. according to the capital maturities:

1. at sight;
2. cancellable;
3. due within 3 months;
4. due between 3 and 12 months;
5. due between 12 months and 5 years;
6. due after 5 years;
7. no maturity.

2) Categories of capital that are in principle subject to withdrawal restrictions are to be reported in full in the "cancellable" column in Table H. "Cancellable" means a certain maturity is not established until after

withdrawal notice has been given. Call deposits are to also be included in the "cancellable" column.

3) Trading portfolios, securities held as current assets (excluding trading portfolios) and physical precious metals, including those used to cover liabilities from precious metal accounts, must all be reported under sight deposits.

4) Amounts due from customers in the form of current account credits and construction credits are considered to be "cancellable"; obligations toward customers in the form of current accounts are considered to be "at sight".

5) In the case of receivables or liabilities with repayments in regular instalments, the remaining period to maturity is the period between the balance sheet date and the due date of each instalment.

6) The following must also be included:

1. the receivables with an indefinite term contained in the item "amounts due from customers" (asset item 4);
2. the amounts contained in the item "bonds and other fixed-income securities" (asset item 5) and in the sub-item "bonds issued" (liability item 3a) that fall due in the year following the balance sheet date.

81. Disclosure of amounts due from/to affiliated undertakings, undertakings with which a participating interest exists, and persons with qualifying holdings; loans to members of governing bodies and transactions with closely associated persons

1) In addition to the disclosures required under Article 24b(2)(a), (b), (c) and (d), the total amounts due from/to affiliated undertakings and undertakings with which a participating interest exists must be stated here; the total amount of loans to members of governing bodies and guarantee obligations entered into in favour of governing bodies must also be stated. In addition, the total amount of the loans to members of governing bodies and the guarantee obligations entered into in favour of governing bodies must be stated for each of the groups of persons named in the fourth sentence of paragraph 3.

2) Affiliated undertakings are affiliated undertakings within the meaning of the accounting provisions of the Law on Persons and Companies. The Liechtensteinische Landesbank AG must include, under affiliated undertakings, establishments of the Principality of Liechtenstein under public law or public-private undertakings in which the Principality of Liechtenstein has a qualifying holding. The Liechtensteinische

Landesbank AG must disclose the amount due to/from the Principality of Liechtenstein in accordance with Article 24b(2)(a) and (c).

3) All amounts owed to the bank or investment firm by members of a bank's or investment firm's governing bodies and by members of governing bodies of the parent company are deemed to be loans to governing bodies for the purpose of the financial statements at the individual institute level. Where consolidated financial statements are published for a subgroup, all amounts owing by members of the governing bodies of the sub-holding company are to be additionally taken into account. At the consolidated level, loans to governing bodies encompass all receivables owed to the parent company and to the individual group companies by the governing bodies of the parent. "Governing bodies" refers to members of the body responsible for the bank's or investment firm's overall direction, supervision, and control (board of directors, bank council or supervisory board), executive bank management, advisory board or similar structure, statutory auditors, and any and all closely associated persons and companies.

4) Irrespective of whether or not they are governing bodies, amounts due from/to persons with qualifying holdings in the bank or investment firm must also be disclosed. Persons with qualifying holdings are natural persons and legal persons who directly or indirectly hold at least 10% of the capital or votes in the bank or investment firm or who can significantly influence its business activities in another way (qualifying holding).

5) All significant transactions and the resulting amounts due from/to closely associated persons are to be disclosed according to the no-netting principle. The following information is to be additionally disclosed: description of the transactions, volume of the transactions (generally the amount or ratio), and significant other conditions. Closely associated persons are natural or legal persons that have direct or indirect material influence (affiliated undertakings, persons with qualifying holdings, and governing bodies) on the financial or operational decisions of an undertaking or a group of undertakings; companies that in turn are themselves controlled by closely associated persons are also considered closely associated.

82. Presentation of assets and liabilities by domestic and foreign origin (position 3.14)

1) The breakdown must be in accordance with the minimum classification as set out in Table I "Analysis of assets and liabilities by domestic and foreign origin" (Chapter VIII).

2) The breakdown according to domestic and foreign origin is to be done according to the domicile of the customer. For mortgage loans,

however, the domicile of the real estate property is the determining factor. Liechtenstein and Switzerland are deemed to be of domestic origin.

83. Presentation of total assets broken down by country or group of groups (position 3.15)

1) The assets must be broken down in accordance with the minimum classification as set out in Table J "Analysis of assets by country/group of countries" (Chapter VIII). The level of detail in the breakdown by country/group of countries may be established by the bank or investment firm as needed.

2) The breakdown is to be done according to the domicile of the customer, with the exception of mortgage loans, for which the domicile of the real estate property is the determining factor.

84. Presentation of assets and liabilities broken down by the most significant currencies for the bank or investment firm (position 3.16)

The assets and liabilities must be broken down in accordance with the minimum classification as set out in Table K "Analysis of assets and liabilities according to currency" (Chapter VIII). The level of detail in the breakdown by currency may be established by the bank or investment firm as needed.

85. Breakdown of contingent liabilities (position 4.1)

See point 35 of this Annex concerning the allocation of individual contingent liabilities to the categories "guarantees to secure credits", "performance guarantees", "irrevocable commitments" and "other contingent liabilities".

86. Breakdown of commitment credits (position 4.2)

See point 36(4) of this Annex concerning the allocation of individual commitment credits to the categories "commitments arising from deferred payments", "commitments arising from acceptances" and "other commitment credits".

87. Breakdown of derivative financial instruments outstanding at the end of the financial year (position 4.3)

1) The derivative financial instruments outstanding at the end of the financial year must be broken down in accordance with the minimum

breakdown set out in Table L "Outstanding derivative financial instruments" (Chapter VIII). For each of the classification items provided in Table L, it must be stated whether a significant portion of them was concluded to cover interest rate, currency, or market price fluctuations and whether a significant portion of them is attributable to trading operations.

2) Point 37(4), (6), (7), (8), (9) and (10) of this Annex are applicable with regard to the disclosure of the contract volumes and positive and negative replacement values.

3) Unsettled spot transactions as of the balance sheet date that are recognised according to the settlement date are to be included in forward transactions.

4) In all cases, a distinction is to be made between over-the-counter transactions and exchange-traded transactions. Unsettled spot transactions are to be treated as over-the-counter transactions.

5) The breakdown of derivative financial instruments outstanding at the end of the financial year must take into account the disclosures to be made in accordance with point 22(3) and point 27(2) of this Annex with regard to the disclosure of the replacement values of derivative financial instruments recognised in the balance sheet and the balance of the adjustment account.

88. Breakdown of fiduciary transactions (position 4.4)

Fiduciary transactions must be broken down in accordance with Article 24e(1)(4.4).

88a.Breakdown of assets under management

Assets under management must be broken down and disclosed in accordance with Table P "Breakdown of assets under management" (Chapter VIII).

89. Breakdown of result from trading activities (position 5.2)

1) The breakdown of trading income by business segment is to be done in accordance with the organisation of these business activities. Trading gains or losses that cannot be attributed to a particular business area because of the overlapping nature of the organisation are to be reported in the position "combined trading operations".

2) Gains or losses from commodities trading are to be reported as "other trading transactions".

3) All gains/losses from spot trading and trading in forward/option contracts in all business segments are to be reported.

90. Breakdown of personnel expenses (position 5.3)

Under personnel expenses, sub-item a) "wages and salaries" includes attendance fees and retainers to bank authorities, salaries, and benefits.

91. Breakdown of general and administrative expenses (position 5.4)

General and administrative expenses must be broken down in accordance with point 56(3)(1), (2) and (3) of this Annex.

VII. Classification of the consolidated financial statement (Articles 24f to 24k)

92. Revaluation reserves (Article 24g(1) liability item 13)

If assets have been valued in the annual financial statement of a company to be included in the consolidated financial statement at a value higher than the acquisition cost in accordance with the applicable national provisions (for example, real estate properties and participating interests in accordance with the Swiss Code of Obligations) and these values are included in the consolidated financial statement, the difference between this higher value and the acquisition value must be reported under this item.

93. Consolidated cash flow statement (Article 24i)

1) Table A in Chapter VIII is a model and may be adapted to the bank's or investment firm's requirements and the specifics of the consolidated financial statement, subject to compliance with the minimum classification requirements as provided for Article 24d(2) and (3).

2) The comparative figures for the previous year must be presented in each case.

94. Notes to the consolidated financial statement (Article 24k)

1) The presentation of fixed assets and the statement of shareholders' equity must follow Tables M and N respectively (Chapter VIII). The other presentations according to the tables set out in Chapter VIII apply in the same manner to the consolidated financial statement as they do to the

annual financial statement. Table F (Bank's or investment firm's capital) is not applicable to consolidated financial statements.

2) Goodwill must be capitalised and amortised over its estimated useful life. The amortisation is to be done applying the straight-line method unless another method of amortisation is more appropriate in a particular case. The amortisation period may not exceed five years unless a longer period, which may not exceed twenty years as calculated from the time of acquisition, is justified.

3) Goodwill is the remaining difference where the acquisition cost exceeds the worth of net assets assumed and valued according to uniform standards.

VIII. Tables

A) Table according to Article 24d (annual financial statement and consolidated financial statement)

CASH FLOW STATEMENT				
	CURRENT YEAR		PREVIOUS YEAR	
	Source of funds	Use of funds	Src. of funds	Use of funds
Cash flow from operating activities (internal financing)				
Profit/loss for the year				
Depreciation of fixed assets				
Value adjustments and specific provisions				
Accrued income and prepaid expenses				
Accrued expenses and deferred income				
Other positions				
Previous year dividend				
Total				
Cash flow from shareholders' equity transactions				
Share/participation/dotation capital etc.				
Share premium				
Total				
Cash flow from investment activities				
Participating interests				
Real estate				
Other tangible fixed assets				
Intangible assets				
Mortgages on own real estate				
Total				
Cash flow from banking operations				
Medium- and long-term business (> 1 year)				
- Amounts due to banks				
- Amounts due to customers (without savings deposits)				
- Debenture bonds				
- Medium-term notes				
- Central mortgage institution loans				
- Loans of central issuing institutions				
- Savings deposits				
- Other liabilities				
- Amounts due from banks				
- Amounts due from customers (without mortgage loans)				
- Mortgage loans				
- Other receivables				
Short-term business				
- Amounts due to banks				
- Amounts due to customers				
- Other liabilities				
- Amounts due from banks				
- Amounts due from customers				
- Trading portfolios of securities and precious metals				
- Securities and precious metals held as current assets (excluding trading portfolios)				
- Other receivables				
Liquidity				
- Liquid assets				
Total				

B) Table according to Article 24e(1)(3.1) (annual financial statement and consolidated annual financial statement)

OVERVIEW OF COLLATERAL FOR LOANS AND OFF-BALANCE-SHEET TRANSACTIONS				
	TYPE OF COLLATERAL			
	Secured by mortgage	**Other collateral**	**Unsecured**	**Total**
Loans and advances Amounts due from customers (without mortgage loans) Mortgage loans - Residential property - Office and business premises - Trade and industry - Other				
Total loans and advances Current year Previous year				
Off-balance-sheet Contingent liabilities Irrevocable commitments Liabilities for calls on shares and other equities Commitment credits				
Total off-balance-sheet Current year Previous year				

Impaired loans/receivables:

	Gross debt amount	Estimated liquidation proceeds of collateral **	Net debt amount	Individual value adjustments
Current year				
Previous year*				

* The first disclosure does not have to include the previous year's figures.
** Credit or liquidation value per customer: the lower value is to be applied.

C) Tables according to Article 24e(1)(3.2) (annual financial statement and consolidated annual financial statement)

TRADING PORTFOLIOS OF SECURITIES AND PRECIOUS METALS	BOOK VALUE		ACQUISITION VALUE		MARKET VALUE	
	Current year	Previous year	Current year	Previous year	Current year	Previous year
Trading portfolios of securities and precious metals						
- Debt securities						
- listed (traded on a recognised exchange)						
- unlisted						
- of which own issued bonds and medium-term notes						
- Equity securities						
- of which own equity securities						
- Precious metals						
Total						
of which eligible securities						

C) Tables according to Article 24e(1)(3.2) (annual financial statement and consolidated annual financial statement) / continued

SECURITIES AND PRECIOUS METALS HELD AS CURRENT ASSETS (EXCLUDING TRADING PORTFOLIOS)

	BOOK VALUE		ACQUISITION VALUE		MARKET VALUE	
	Current year	**Previous year**	**Current year**	**Previous year**	**Current year**	**Previous year**
Debt securities - of which own issued bonds and medium-term notes Equity securities - of which qualifying holdings (at least 10% of the capital or votes) Precious metals						
Total						
of which eligible securities						

SECURITIES AND PRECIOUS METALS HELD AS FIXED ASSETS

	BOOK VALUE		ACQUISITION VALUE		MARKET VALUE	
	Current year	**Previous year**	**Current year**	**Previous year**	**Current year**	**Previous year**
Debt securities - of which own issued bonds and medium-term notes - of which valued according to the accrual method - of which valued according to the lower of cost or market Equity securities - of which qualifying holdings (at least 10% of the capital or votes) Precious metals						
Total						
of which eligible securities						

C) Tables according to Article 24e(1)(3.2) (annual financial statement and consolidated annual financial statement) / continued

DISCLOSURE OF OWN SHARES HELD AS CURRENT ASSETS (EXCLUDING TRADING PORTFOLIOS) AND AS FIXED ASSETS

Current assets (excluding trading portfolios)	QUANTITY		BOOK VALUE	
	Current year	Previous year	Current year	Previous year
Opening balance				
Purchased				
Sold				
Value adjustments	---	---		
Write-ups	---	---		
Closing balance				

Fixed assets	QUANTITY		BOOK VALUE	
	Current year	Previous year	Current year	Previous year
Opening balance				
Purchased				
Sold				
Write-downs	---	---		
Write-ups	---	---		
Closing balance				

PARTICIPATING INTERESTS AND SHARES IN AFFILIATED UNDERTAKINGS

Participating interests	CURRENT YEAR	PREVIOUS YEAR
with listed value		
without listed value		
Total participating interests		
Shares in affiliated undertakings	**CURRENT YEAR**	**PREVIOUS YEAR**
with listed value		
without listed value		
Total shares in affiliated undertakings		

D) Tables according to Article 24e(1)(3.4) (annual financial statement)

PRESENTATION OF FIXED ASSETS

	Acquisition costs	Accumulated depreciation	Book value at previous year end	Current year					
				Additions	Disposals	Re-classifications	Reversals of impairment	Depreciation	Book value at current year end
Total participating interests (minority participations)									
Total shares in affiliated undertakings									
Total securities and precious metals held as fixed assets									
Total intangible assets									
Real estate - Bank buildings - Other real estate Other tangible fixed assets Finance lease assets Other									
Total tangible fixed assets									
Total other fixed assets									

Fire insurance value of real estate	
Fire insurance value of other tangible fixed assets	

Commitments: future leasing instalments arising from operating leases	

Designated for resale:
- Real estate
- Participating interests

(not included in the presentation of fixed assets)

E) Table according to Article 24e(1)(3.9) (annual financial statement and consolidated annual financial statement)

VALUE ADJUSTMENTS AND PROVISIONS / PROVISIONS FOR GENERAL BANKING RISKS	Balance at previous year end	Use in conformity with designated purpose	Re-classification*	Recoveries, past due interest, currency translation differences	New provisions charged to income	Releases to income	Balance at current year end
Value adjustments for default risks							
- individual value adjustments			---				
- general individual value adjustments (incl. for country risks)			---				
- portfolio value adjustments			---				
Value adjustments allowable only under tax law*		---		---	---		---
Provisions for contingent liabilities and credit risks			---				
Provisions for other business risks			---				
Provisions for taxes and deferred taxes							
Other provisions			---				
Total value adjustments and provisions							
less: Value adjustments		---	---	---	---	---	
Total provisions as per balance sheet		---	---	---	---	---	
Provisions for general banking risks		---		---			

* May be used only in the 2004 annual financial statement (see point 10(3)).

F) Table according to Article 24e(1)(3.10) (annual financial statement)

BANK'S OR INVESTMENT FIRM'S CAPITAL

	CURRENT YEAR			PREVIOUS YEAR		
Bank's or investment firm's capital	**Total par value**	**Number of shares or interests**	**Capital eligible for dividend**	**Total par value**	**Number of shares or interests**	**Capital eligible for dividend**
Share capital/establishment capital or similar Participation capital						
Total bank's or investment firm's capital						
Authorised capital of which capital increases completed Conditional capital of which capital increases completed						

	CURRENT YEAR		PREVIOUS YEAR	
Significant shareholders and groups of shareholders with pooled voting rights	**Nominal**	**% of equity**	**Nominal**	**% of equity**
with voting right .... without voting right				

G) Table according to Article 24e(1)(3.11) (annual financial statement)

STATEMENT OF SHAREHOLDER'S EQUITY	
Equity at beginning of current year Paid-up subscribed capital Capital reserves Legal reserve Reserve for own shares Reserves pursuant to articles of association Other reserves Provisions for general banking risks Balance sheet profit/loss	
Total equity at beginning of current year (before appropriation of profit/coverage of losses)	
+ / - Capital increases/decreases + Share premium + / - Other transfers to/from reserves - Dividends and other distributions from previous year's profit + / - Profit/loss for the current year	
Total equity at end of current year (before appropriation of profit/coverage of losses)	
of which Paid-up subscribed capital Capital reserves Legal reserve Reserve for own shares Reserves pursuant to articles of association Other reserves Provisions for general banking risks Balance sheet profit/loss	

H) Table according to Article 24e(1)(3.12) (annual financial statement and consolidated annual financial statement)

MATURITY ANALYSIS OF ASSETS AND LIABILITIES AND PROVISIONS

	at sight	cancellable	due					Total
			within 3 months	within 3 to 12 months	within 12 months to 5 years	after 5 years	no maturity	
Assets								
Liquid assets		---	---	---	---	---	---	
Debt instruments of public bodies and other bills eligible for refinancing with central banks							---	
Amounts due from banks							---	
Amounts due from customers							---	
of which mortgage loans		---	---	---	---	---	---	
Trading portfolios of securities and precious metals								
Securities and precious metals held as current assets (excluding trading portfolios))		---	---	---	---	---	---	
Securities and precious metals held as fixed assets								
Other assets								
Total assets Current year								
Previous year								
Liabilities and provisions								
Amounts due to banks								
Amounts due to customers								
a) savings deposits								
b) other liabilities								
Securitised liabilities								
a) bonds issued								
of which medium-term notes	---	---						
b) other securitised liabilities								
Provisions (excluding provisions for general banking risks)								
Subordinated liabilities								
Other liabilities								
Total liabilities and provisions Current year								
Previous year								

The amounts contained in the item "bonds and other fixed-income securities" (asset item 5) and in the sub-item "bonds issued" (liability item 3a) that fall due in the year following the balance sheet date must also be included (point 80(6)).

I) Table according to Article 24e(1)(3.14) (annual financial statement and consolidated annual financial statement)

ANALYSIS OF ASSETS AND LIABILITIES BY DOMESTIC AND FOREIGN ORIGIN	CURRENT YEAR		PREVIOUS YEAR	
	Domestic	**Foreign**	**Domestic**	**Foreign**
Assets				
Liquid assets				
Debt instruments of public bodies and other bills eligible for refinancing with central banks				
Amounts due from banks				
Amounts due from customers (excluding mortgage loans)				
Mortgage loans				
Bonds and other fixed-income securities				
Equities and other non-fixed-income securities				
Participating interests				
Shares in affiliated undertakings				
Intangible assets				
Tangible assets				
Outstanding contributions to subscribed capital				
Own shares				
Other assets				
Accrued income and prepaid expenses				
Total assets				
Liabilities				
Amounts due to banks				
Amounts due to customers (excluding savings deposits)				
Savings deposits				
Securitised liabilities				
Other liabilities				
Accrued expenses and deferred income				
Provisions				
Subordinated liabilities				
Provisions for general banking risks				
Subscribed capital				
Capital reserves				
Legal reserves				
Reserve for own shares				
Reserves pursuant to articles of association				
Other reserves				
Revaluation reserves				
Profit/loss carried forward				
Profit/loss for the year				
Total liabilities				

J) Table according to Article 24e(1)(3.15) (annual financial statement and consolidated annual financial statement)

ANALYSIS OF ASSETS BY COUNTRY / GROUP OF COUNTRIES				
	CURRENT YEAR		PREVIOUS YEAR	
	Absolute	**Share as %**	Absolute	**Share as %**
Assets				
For example:				
Europe				
Liechtenstein				
Switzerland				
...				
North America				
...				
South America				
...				
Africa				
...				
Asia				
...				
Australia/Oceania				
...				
Total assets				

K) Table according to Article 24e(1)(3.16) (annual financial statement and consolidated annual financial statement)

ANALYSIS OF ASSETS AND LIABILITIES ACCORDING TO CURRENCY

		Currencies					
		CHF	**EUR**	**USD**	**...**	**...**	**...**
Assets	Liquid assets						
	Debt instruments of public bodies and other bills eligible for refinancing with central banks						
	Amounts due from banks						
	Amounts due from customers (excluding mortgage loans)						
	Mortgage loans						
	Bonds and other fixed-income securities						
	Equities and other non-fixed-income securities						
	Participating interests						
	Shares in affiliated undertakings						
	Intangible assets						
	Tangible assets						
	Outstanding contributions to subscribed capital						
	Own shares						
	Other assets						
	Accrued income and prepaid expenses						
Total assets shown in balance sheet							
Delivery entitlements from spot exchange, forward forex and forex options transactions*							
TOTAL ASSETS							
Liabilities	Amounts due to banks						
	Amounts due to customers (excluding savings deposits)						
	Savings deposits						
	Securitised liabilities						
	Other liabilities						
	Accrued expenses and deferred income						
	Provisions						
	Subordinated liabilities						
	Provisions for general banking risks						
	Subscribed capital						
	Capital reserves						
	Legal reserves						
	Reserve for own shares						
	Reserves pursuant to articles of association						
	Other reserves						
	Revaluation reserves						
	Profit/loss carried forward						
	Profit/loss for the year						
Total liabilities shown in balance sheet							
Delivery obligations from spot exchange, forward forex and forex options transactions*							
TOTAL LIABILITIES							
NET POSITION PER CURRENCY							

* Delta-weighted contract volumes

L) Table according to Article 24e(1)(4.3 (annual financial statement and consolidated annual financial statement)

OUTSTANDING DERIVATIVE FINANCIAL INSTRUMENTS							
		TRADING INSTRUMENTS			HEDGING INSTRUMENTS		
		Positive replacement values	Negative replacement values	Contract volumes	Positive replacement values	Negative replacement values	Contract volumes
Interest rate instruments	- Forward contracts incl. FRAs - Swaps - Futures - Options (OTC) - Options (exchange-traded)						
Foreign exchange/ precious metals	- Forward contracts - Combined interest/currency swaps - Futures - Options (OTC) - Options (exchange-traded)						
Equity securities/ indices	- Forward contracts - Futures - Options (OTC) - Options (exchange-traded)						
Other	- Forward contracts - Futures - Options (OTC) - Options (exchange-traded)						
Total before netting contracts: Current year Previous year**							

* (e.g. credit derivatives, commodities)
** The first disclosure does not have to include the previous year's figures.

Total after netting contracts:	Positive replacement values (cumulative)	Negative replacement values (cumulative)
Current year		
Previous year		

M) Table according to Article 24k(4) and Article 24e(1)(3.4) (consolidated annual financial statement)

PRESENTATION OF FIXED ASSETS	Acquisition costs	Accumulated depreciation	Book value at previous year end	Current year					
				Additions	**Disposals**	**Re-classifications**	**Reversals of impairment**	**Depreciation**	**Book value at current year end**
Participating interests - valued according to equity method Participating interests - other									
Total participating interests									
Total securities and precious metals held as fixed assets									
Goodwill Other intangible assets									
Total intangible assets									
Real estate - Bank buildings - Other real estate Other tangible fixed assets Finance lease assets Other									
Total tangible fixed assets									

Fire insurance value of real estate Fire insurance value of other tangible fixed assets

Commitments: future leasing instalments arising from operating leases

Designated for resale: - Real estate - Participating interests (not included in the presentation of fixed assets)

N) Table according to Article 24k(5) and Article 24e(1)(3.11) (consolidated annual financial statement)

STATEMENT OF SHAREHOLDER'S EQUITY	
Equity at beginning of current year Paid-up subscribed capital Capital reserves Profit reserves Revaluation reserves Provisions for general banking risks Consolidated balance sheet profit/loss	
Total equity at beginning of current year	
+/- Capital increases/decreases + Share premium +/- Other transfers to/from reserves - Dividends and other distributions +/- Consolidated profit/loss for the current year	
Total equity at end of current year	
of which Paid-up subscribed capital Capital reserves Profit reserves Revaluation reserves Provisions for general banking risks Consolidated balance sheet profit/loss	

O) Table according to Article 24k(1) and Article 24e(1)(3.6) (annual financial statement and consolidated annual financial statement)

A) Pledged or assigned assets and assets subject to retention of title, excluding lending transactions and securities repurchase agreements	**Current year**	**Previous year***
Book value of pledged assets and assets assigned as collateral:		
Effective obligations:		

B) Lending transactions and securities repurchase agreements	**Current year**	**Previous year***
Receivables from cash collateral delivered in connection with securities borrowing and reverse repurchase agreements:		
Obligations from cash collateral received in connection with securities lending and repurchase agreements:		
Securities lent in connection with securities lending or delivered as collateral in connection with securities borrowing as well as securities in own portfolio transferred in connection with repurchase agreements:		
with unrestricted right to resell or pledge:		
Securities received and serving as collateral in connection with securities lending or securities borrowed in connection with securities borrowing as well as securities received in connection with reverse-repurchase agreements with an unrestricted right to resell or repledge:		
of which repledged or resold securities:		

* The first disclosure does not have to include the previous year's figures.

P) Table "Breakdown of assets under management" according to point 88a of this Annex (annual financial statement and consolidated annual financial statement)

Assets under management:[1]

Type of assets under management:[2]	**Current year**	**Previous year**[3]
Assets in funds managed by the bank or investment firm (investment undertaking)		
Assets under discretionary asset management agreements		
Other assets under management		
Total assets under management (incl. double-counting)		
of which double-counted items[4]		
Net new money inflow/outflow[5 6]		

1 Assets under management are all client assets managed or held for investment purposes. In principle, this includes all amounts due to customers in accordance with Article 24b items 2a) 2b) bb) and 3) of the liabilities as well as fiduciary fixed-term deposits and all valued custody account assets. In addition, there may be other types of assets under management that can be derived from the principle of investment purpose. Assets with an investment purpose from institutional clients, corporate clients, and private clients as well as assets from investment funds or investment undertakings are included, unless they are purely custody assets (i.e. assets held exclusively for transaction and safe-custody purposes, for which the bank limits itself to safe-custody and collection without providing any additional services). In general, such assets originate from banks, securities dealers, custodians, brokers, and additional assets from certain institutional investors, etc. These custody assets are not to be included.

Banks must adhere to the above template. The disclosure of additional information is possible if the items listed above are disclosed clearly and in accordance with the definitions below. If the information is disclosed in the consolidated financial statement, disclosure in the annual financial statement may be omitted.

2 An optional breakdown by client segment (private clients, institutional clients, etc.) must be shown in separate columns.

3 The first disclosure in the (consolidated) annual financial statement does not have to include the previous year's figures.

4 Fund units from funds managed by the bank or investment firm (investment undertakings) that are held in client custody accounts under a discretionary asset management agreement and in other client custody accounts must be stated here in particular.

5 Disclosure of net new money inflow or net new money outflow in the notes is optional. The first disclosure does not have to include the previous year's figures. If the net new money inflow or net new money outflow is not disclosed in the notes, it must be submitted to the FMA together with the business report (Article 24m(2) of the Banking Ordinance).

6 The net inflow (outflow) of assets under management during a given period is made up of the acquisition of new clients, client departures, and the inflow or outflow of existing clients. Performance-related changes in assets (e.g. price changes, interest and dividend payments) do not count as inflows or outflows.

Annex 4[397]

397 Annex 4 repealed by LGBl. 2022 No. 130.

Annex 4.1[398]

Guidelines for the management of country risk pursuant to Article 7a BankG and Articles 21c et seq.

I. In general

1. Object and scope of the Guidelines

1) Every bank with cross-border (foreign) business has to identify, record, assess, limit and if necessary make value adjustments for its own exposure to risks.

2) The aim of these Guidelines is to help banks in setting up their internal structures, policies and procedures for the management of country risk. In no way are they intended to standardise the risk management function at the banks, which are free to implement the Guidelines as they see fit so long as the Guidelines' minimum requirements are met. Basically, the methods and systems should follow the principle of best practice and be appropriate to the size and significance of the foreign exposure in question. The methods employed and the degree of detail incorporated into internal directives should be commensurate with the volume and type of exposure, i.e. must be adequate for the risks.

3) The Guidelines apply to all banks reporting to the FMA as supervisory body. For Liechtenstein bank groups with domestic and foreign branches and subsidiaries, these Guidelines must be implemented both at the level of the individual institution and on a consolidated basis.

4) If the management and control of foreign exposure fail to meet the requirements of the Guidelines, internal structures and procedures must be adjusted to assure compliance; otherwise the activity in question should be scaled back or abandoned altogether.

5) Where the term "bank" is used in these Guidelines, it is understood to mean banks and investment firms.

398 Annex 4.1 inserted by LGBl. 2001 No. 189 and amended by LGBl. 2004 No. 222, LGBl. 2004 No. 300, LGBl 2007 No. 278, LGBl. 2015 No. 17 and LGBl. 2022 No. 130.

II. Country risk

2. Concept of country risk

1) Country risk arises from changes in the value of foreign exposure due to country-specific political and economic conditions. It consists of transfer risk and other country risks. This following terms have the following meanings:

a) "Transfer risk" means the risk to the repatriation of foreign claims as a result of restrictions over the free flow of money and capital, or of other economic or political factor;

b) "Other country risks" means the foreign exposure positions whose value depends on the economic and political risk factors prevailing for the country concerned, independent of the transfer risk or credit risk (individual counterparty risk); these factors include in particular the country-specific liquidity, market and correlation risks;

c) "Country exposure" means total exposure abroad of every kind, including contingent liabilities, irrevocable credit lines, and derivative instruments, irrespective of whether they are posted to the banking book or the trading book.

2) Country risk positions are recorded by risk domicile rather than the domicile of the debtor. The risk domicile of secured exposure must be assessed by examining the collateral. For the definition of the risk domicile the same principles apply as for the risk distribution rules (Article 19e(2) to (4)).

3. Comments

1) While classical cross-border loans in foreign currency were the dominant feature of the 1970s and 80s, this was followed by rapid growth in the securities and derivative instruments businesses. The partial dependence of these businesses on local economic and market conditions as well as the possibility of refinancing them in local currency has led to the increasing importance of "other country risks".

2) "Other country risks" particularly the "country liquidity risk", could best be described as a country-specific risk associated with large concentrations of exposure or "correlation risk" ("cluster risk") analogous to the risk of excessive exposure to a single industry. With regard to foreign claims, the assessment of this risk is often an integral part of the counterparty rating system. In the case of market risk, the country-specific correlation risk must be considered using risk measurement and aggregation techniques.

3) Essentially, all foreign exposure includes elements of "other country risks", while the currency of denomination and the type of refinancing determine whether a transfer risk exists or not. Thus, foreign exposure which is denominated and refinanced in the local (foreign) currency will generally be subject solely to the "other country risks". Foreign claims denominated in a currency other than the domestic currency of the debtor will include transfer risk, unless it can reasonably be ascertained and documented that the risk could be transferred.

4) Exposure recorded in the trading book is not exempt from the Guidelines. However, with regard to provisioning, this exposure might be managed differently, as well as treated differently, than positions in the banking book. Insofar as the management of market risk (interest, forex, equity) is organised by country, it should be considered as part of the country risk management system. Besides the present Guidelines, the "Risk management guidelines for trading and for the use of derivatives" as set out in Annex 4.2 apply.

III. Risk policy

4. Content, responsibility, minimum requirements

1) The risk policy includes, aside from the strategy developed for assuming country risks, the principles for the recording (identification and measurement), management and control of country risk, as well as for the organisational structures.

2) The board of directors is responsible for the risk policy in respect of country risk. The senior management (executive board, group executive board, etc.) formulates the risk policy, which is to be approved and periodically assessed for its suitability by the board of directors. Senior management issues instructions for the implementation of the risk policy and delegates authority for the assumption of risks. Adherence to these regulations is to be monitored.

3) Country risk must be identified, measured, assessed, limited and controlled by all banks. The scope, degree of detail, and systems and methods must be appropriate to the extent of the business activities and their associated risks. There must be an adequate internal control system.

5. Comments

1) Questions of risk management, and in particular key decisions on risk policy and its periodic review, are among the fundamental leadership tasks.

2) Persons who are entrusted with daily risk management and control tasks must possess the necessary qualifications.

3) The minimum requirements for the risk policy pursued (as set out in point 4(3)), which will be discussed in more detail in the following paragraphs, only constitute an outline of what must be accomplished by the banks' own structures and processes. Basically, an adequate system of country risk management must be put in place, a system designed to provide the management and control functions with a sufficiently high standard of precision given the level of country exposure.

IV. Recording (identification and measurement)

6. Risk identification, measurement, assessment; documentation

1) Each bank must be in a position to identify country risk exposure and monitor the performance of these positions. The assessment of country risk should be uniform within a bank and be appropriate to the size of the exposure. The basis for this could be the bank's own country risk analyses (e.g. including classification into rating categories) or accepted externally available country assessments.

2) Banks with considerable foreign exposure and considerable country risk have to periodically review the influence of potential credit deterioration, or payment problems of specific countries or groups of countries, on their balance sheet and income statement. The findings must be brought to the attention of the senior management officers responsible.

3) Foreign exposure, risk assessments and, where necessary, the results of periodic stress tests should be appropriately documented.

7. Comments

1) Risk identification and measurement means in the first instance that the size of the exposure per country can be adequately determined. Furthermore, the risk on this exposure must be determined on the basis of internal or external rating systems. Banks with substantial foreign exposure can be expected to provide quantitative estimates of potential losses in the event of default and to ascertain the probability of default on

a portfolio basis, while simple assessments of the probability of loss and the potential loss on default on a country-by-country basis will be sufficient for banks with little foreign exposure.

2) In-house country ratings, particularly those produced by banks with extensive foreign exposure, often reflect a very good knowledge of the countries studied. However, where there are significant differences between the internal and externally available ratings, a clarification of the differences is indispensable, both as a quality control measure and to avoid conflicts of interest within the bank.

3) Banks with exposure in developing countries and emerging markets have to simulate the effects of extreme credit deterioration by conducting stress tests, if the risk exposure is substantial in relation to their own funds and income statement.

V. Risk limitation and provisions

8. Limit system, internal control system, valuation and provisions

1) Banks with foreign exposure must have an adequate limit system in place for country risk. The limits must be regularly reviewed and authorised by the senior management function designated for that purpose.

2) The banks are obliged to have adequate information systems to monitor compliance with country risk limits. It must be possible to detect a limit violation in good time and this should result in a report to higher authorities. The employees who are entrusted with the controlling function must have the required knowledge and must be sufficiently independent from the staff whose work they are assigned to monitor.

3) The banks make adequate value adjustments, on the basis of their own valuation principles (it being understood that these principles must be compatible with official regulations). Country risk, value adjustments and provisions must be recorded in such a way that they can easily be reviewed by the internal and external auditors.

4) In addition, banks decide for themselves on their own provisioning against future unexpected losses on the basis of their internal risk models and, of course, within the scope of the current accounting rules.

9. Comments

1) The rapid pace of change in the international political and economic environment make it essential to subject the adequacy of the country

limits to regular review. And checks must be made on a daily basis to assure that country limits are not violated. Rules have to be defined for limit excesses as well as rules for approving excesses.

2) Differences can appear in valuation and provisioning of operations in the banking book as compared to the trading book. In both cases, however, the benefits of diversification can be taken into account when deciding on provisioning (for unexpected losses).

3) Value adjustments may not exceed what is economically necessary.

VI. Reporting

10. Reporting and disclosure

1) Country risk exposure as well as comments on large differences between the bank's own ratings and externally available country assessments must be part of the bank's risk reporting. This reporting must also include regular country risk reports, no later than the end of each reporting period, to the board of directors and, where one has been established, the risk committee. Extraordinary changes must be reported immediately.

2) The foreign exposure (countries grouped by risk class) must be published in the business report, if this is important for assessing the asset value and quality of earnings of the bank. The rating system used must be explained. The use of international standards as a guideline is recommended.

3) Foreign exposure based on risk domicile and grouped by country rating must be disclosed in the appendix (notes) to the business report, along with explanations of the country rating applied. This disclosure, which is organised by risk domicile, must not be confused with the reporting organised by the debtors' domicile as referred to in Annex 3(VIII)(J).

VII. Repealed

Annex 4.2[399]

Risk management guidelines for trading and for the use of derivatives pursuant to Article 7a BankG and Articles 21c et seq.

I. In general

1. Aim, purpose, and scope of the Guidelines

1) The aim of these Guidelines is to support banks in formulating internal instructions in the context of risk management. They apply to all banks that are active in trading, regardless of whether they trade in derivatives or not, as well as to those that use derivatives as part of asset and liability management.

2) The Guidelines are not intended to standardise risk management. The banks remain free to implement the Guidelines as they see fit. This applies in particular to the decision on how the Guidelines are to be implemented in accordance with the material risks for the individual bank. The choice of methods and the level of detail of the internal instructions must be appropriate to the situation and the scope of trading and activities in derivatives, i.e. commensurate with the risks involved.

3) If domestic and foreign establishments and subsidiaries of a banking enterprise are combined into groups (whole banks) for the purpose of risk management, overall risk management must also be regulated at the level of that banking group. The applicable principles are not the subject of these Guidelines. The definition of those principles is to be left to the governing bodies for overall management, supervision, and control.

4) The glossary in Appendix 1 applies to the terms used in these Guidelines.

5) Where the term "bank" is used in these Guidelines, it is understood to mean banks and investment firms.

399 Annex 4.2 inserted by LGBl. 2001 No. 189 and amended by LGBl. 2004 No. 222, LGBl. 2007 No. 278 and LGBl. 2015 No. 17.

II. Principles of risk management

2. Risk policy

1) Recording, managing, and limiting risks from trading and the use of derivatives is a central management task.

2) Responsibility for the risk policy for trading and the use of derivatives lies with the board of directors. Senior management formulates the risk policy, which is approved by the board of directors and periodically assessed for appropriateness. It issues regulations for the implementation of the risk policy. In particular, these must stipulate that any risk-taking must be carried out exclusively by authorised persons. Limits are set for all material risks for the bank.

3) All persons entrusted with risk management must have the necessary specialist knowledge.

4) The importance of risk management has increased with the emergence of new products, either because access to risks has become easier or because a wide range of risk management instruments are now available. Risk management issues, in particular the formulation and regular review of risk policy, are therefore among the central management tasks. The risk policy should be part of the general business policy. Specialist knowledge must be available at the levels of the board of directors, senior management, and execution. The periodic assessment of the risk policy can also be delegated to a committee within the board of directors.

5) Remuneration systems can create incentives that make risk management more difficult. For this reason, performance-related remuneration systems in particular require appropriate risk controls.

3. Identification and measurement of risks

1) The identification of risks and their integration into risk management and risk reporting systems must be performed as a permanent task and under the specialist responsibility of a member of senior management. The measurement procedures must be designed appropriately and should enable risk aggregation down to the level of the whole bank.

2) Risk management must be further developed in a permanent process. Written documentation on risk management must be prepared. Due importance must be attached to the expertise, systems, and governing bodies entrusted with special tasks in this context. The activities mentioned in the

guideline must be provided with the necessary resources. The IT systems must be appropriate to the complexity of the financial products and their risks.

3) Senior management must be periodically informed about the bank's overall risk situation. It must be ensured that the reporting presents all parameters relevant to the assessment of the overall risk situation in a way that is appropriate to the level and comprehensible. The risk measurement standards must be known at all levels. In addition, the conditions must be created to ensure that the necessary decisions can be made quickly and purposefully in extraordinary situations and that appropriate measures can be initiated.

4) Before entering into trading with new products or making significant changes to trading strategies, the functions of the products, the markets, and the business strategies must be understood, estimates of the required resources and expected returns must be made, and the risks must be analysed.

5) Each line manager should periodically receive all risks in their unit as management information. It is also recommended that profit and loss be analysed and broken down into their components (share of valuation change, share of transaction result). Risk and return are linked and should therefore not be assessed separately.

6) The board of directors must be informed periodically about the overall risk situation.

4. Internal risk control

1) Compliance with internal regulations is monitored by units that are independent of trading.

2) In particular, organisational measures must be taken to ensure the separation of functions and independent reporting.

3) Control – in the sense of an element of the internal control system (ICS) – must be entrusted to professionally qualified persons who are not dependent on trading through hierarchical subordination, i.e. they must be independent of those persons who enter into exposures.

III. Valuation

5. Principles

1) Trading positions must be valued at least daily according to uniform criteria and based on market data. Profit and loss must be determined daily.

2) For positions in derivatives that are not held in the trading book, at least a periodic valuation based on market data and models that take into account the specific characteristics of the transaction is required.

3) Risk management requires a valuation of transactions and portfolios. The valuation together with realised receipts and redemptions (including any financing costs) allow the economically correct determination of profit and loss. Changes in value caused by market shifts become immediately transparent. The valuation must be uniform for each item type. Market valuations must be carried out independently of the accounting entry in order to test the effectiveness of the hedging measures on the market. Any corrections to the position values must be made for specific market and product characteristics (e.g. market liquidity, position size, etc.).

4) Trading positions must always be valued on a daily basis; depending on the market situation, intraday valuation may also be necessary. If models are used for valuation (relevant in OTC business), the necessary current parameters (volatility, etc.) must always be obtained from sources independent of trading. In addition to the assumptions and parameters used, the models themselves should be reviewed periodically (model risks).

5) In order to quickly identify gaps in hedging of positions in derivatives, uneven market value development of the underlying position and hedging transaction, and misjudgements of a general nature, the underlying position and hedging transaction must be subjected to a uniform assessment. Here again, any models used should be critically reviewed in order to avoid misguided risk management as far as possible.

IV. Risk measurement and risk limitation

6. Separation of asset and liability management and trading

1) In terms of operational liability and the measurement of risk and results, the trading portfolios must be clearly separated from the asset and liability management portfolio.

2) There must be a clear separation between asset and liability management and trading activities. This separation manifests itself, firstly, in a clear separation of functions and, secondly, in a separate limit allocation. Risks and profits must therefore also be reported separately.

3) In view of their similarity, it is appropriate to assess the risks in the areas of trading portfolios and asset and liability management together at a higher level.

4) When recording transactions in the accounts, a clear distinction must be made between trading, investment (in the case of strategic positions), and balance sheet hedging transactions. Income generated from the balance sheet structure must be reported separately from trading income in the accounts.

7. Market risks in trading

1) Risk limits must be set for market risks. The risks must be measured, reported, and monitored at least daily using recognised methods and aggregated periodically down to the level of the whole bank.

2) In trading, positions must be managed continuously; measurement procedures and methods must be based on best market practice. In addition, the models must be reviewed periodically (e.g. backtesting procedure). No trading should take place without correct measurement and presentation of the risks of an instrument or product.

3) In addition to sensitivities and simulation calculations within a risk class, professional market participants should also implement cross-product approaches, particularly for aggregation purposes, provided that these are sufficiently statistically validated. The value-at-risk approach (statistical expression of portfolio risk) or similar scenario-based approaches are recommended.

8. Market liquidity risks

1) The risk of a lack of market liquidity for trading products must be taken into account through appropriate measures.

2) The relative share of the volume of individual issues, the absolute position size, or the amount of the tolerable loss if no market liquidity is available must be checked. Valuation adjustments must be made to take account of the actual market liquidity when calculating profit or loss.

3) A distinction must be made between market liquidity risks and funding risks, which must be taken into account as part of liquidity management.

9. Credit risks from trading and derivative positions

1) All credit risks from trading and derivative positions must be measured, aggregated, and presented periodically as a total exposure with regard to counterparties and countries at the level of the whole bank.

2) Transactions on markets without reserve liability (especially in the OTC area) generate significant implicit credit exposures (especially for forwards and swaps, but also for long positions in options). Financial techniques allow these implicit credit exposures to be measured. Gross and net replacement values and their potential increase over time can be quantified (e.g. using an add-on). The settlement risk that concludes the transaction in terms of risk measures must be taken into account. Attention must be paid to reducing the credit risk (netting agreements, requesting collateral).

3) Recognised methods must be used for the determination of credit risk. The above-mentioned techniques (replacement values and consideration of potential growth over time) together with simulation methods are recommended. The aggregation of credit risks from trading and derivative positions must be carried out for each counterparty and presented together with the limits.

4) A further aggregation of credit risks is useful.

10. Operational risks

1) Operational risks are to be limited by means of a suitable operational organisation and integrated system processes.

2) With regard to organisational measures, particular attention must be paid to a suitable hierarchy of responsibilities, separation of functions, regulation of processes, and built-in systematic inspections (see also point 4).

3) IT-integrated, automated processes can effectively reduce sources of error.

11. Legal risks

1) The legal risks arising from trading and the use of derivatives must be taken into account through appropriate documentation.

2) Where possible, standard market master agreements should be used.

3) Knowledge of the legal and economic environment of the counterparty is the basic prerequisite for efficient management of legal risk.

4) Particularly in international business, the following issues should be given the highest priority in the interests of the bank:

a) binding nature of contracts and
b) enforceability and offsetability of contractual claims.

12. Stress simulation

1) With a view to dealing with possible extreme situations, additional analyses must be carried out on a regular basis.

2) Stress tests should be carried out at the whole bank level to calculate possible extreme losses. These results should be evaluated in a measure-oriented manner. Market risks are at the forefront of such stress analyses based on economically and politically plausible scenarios.

3) Sensitivity analyses such as the value-at-risk method model small market movements in a stable environment. Strategically relevant risks due to exceptional market conditions require more comprehensive stress analyses.

V. Information

13. Information principles

1) Qualitative and quantitative information must be prepared periodically separately for credit and market risks and integrated in the notes to the annual financial statements in an appropriate form. It is recommended to follow internationally accepted standards.

2) Quantitative disclosures must be supplemented by qualitative descriptions of the methods and assumptions used to measure risk. If information on market risk is disclosed using the value-at-risk concept, for example, the assumed confidence intervals, the observation period, the holding period, and the aggregation method should be specified. In the case of information on credit risk, the gross replacement values, the

contract values, and the credit equivalent or add-on must be disclosed, with a breakdown by quality of the counterparties and possibly by maturity of the contracts. Net replacement values may only be disclosed if legally recognised and enforceable netting agreements are in place.

Appendix 1:

Glossary

Add-on

Margin to cover the future potential credit risk during the remaining term of a contract.

Asset and liability management

Management of all balance sheet assets and liabilities and all off-balance-sheet items relating to interest rate and currency risks (excluding trading portfolios).

Backtesting

Retroactive test of the forecast quality of a model. For value-at-risk models, the quality analysis is carried out by comparing the actual daily profit and loss figures with the calculated daily value-at-risk figures. If profit and loss statistically exceed the value-at-risk figures too often, the model tends to underestimate the risks.

Balance sheet structure risks

Interest rate and currency risks resulting from imbalances in the balance sheet (including off-balance-sheet items.

Credit equivalent

The amount comparable to a credit that a bank has outstanding as a receivable from a counterparty during the term of a contract, both effectively (receivable today) and potentially (possible increase in the receivable amount in the future due to market movements).

Credit risk

Possible default of a counterparty during the term of the credit or spread of defaults within a certain credit rating category around a long-term average.

Forward transaction

Contract in which the time of conclusion of the transaction and the time of fulfilment of the transaction are different.

Funding risk

Risk of late payment.

Gaps in hedging

Incomplete coverage on hedged items.

Hedging transaction

Transaction to reduce the risk of an individual position or a portfolio.

Implicit credit exposures

Credit risks that do not arise directly from lending but are entered into in trading transactions with financial instruments (in particular OTC derivatives).

Internal risk control

Bank units that use systems and procedures to measure, aggregate, and report risks (as well as profit and loss) and enforce compliance with risk limits.

Legal risks

The risk of non-recognition of contractually agreed receivables due to the legal peculiarities of the countries in question, whether because the counterparty was not authorised, because contractual defects were subsequently discovered, or because the financial instrument contradicted the legal provisions.

Market liquidity risk

Risk that the instrument to be delivered (received) cannot be procured (sold) or can only be procured (sold) incompletely or only with major price concessions.

Market risk

Risk of losses in balance-sheet and off-balance-sheet items due to changes in market prices such as interest rates, exchange rates, and share prices.

Netting

Offsetting between counterparties of mutual payment obligations on the due date on the one hand and of unrealised gains with unrealised losses in the event of counterparty default on the other, based on bilateral or multilateral agreements.

Option

Right to buy or sell a specific underlying asset at a fixed price in a given quantity during a limited term or on a defined day.

Over-the-counter (OTC) transaction

Trading in non-standardised financial instruments. In general, the parties agree on all details of the transactions or agree on certain simplified market practices.

Replacement value

Market value of open positions at a specific point in time.

Risk limits

Quantitative limits that restrict the scope of risk assumption for certain positions.

Sensitivity

Degree of change in value due to defined price or interest rate changes.

Settlement risk

Risk that the counterparty will not fulfil its obligation in the settlement of the transaction.

Stress simulation

Scenario-based methods for the simulated revaluation of trading positions. The scenarios used are generally based on extreme historical events or possible future extreme events, or they use unusual economic and political constellations. The procedure provides information on one-sided, potentially costly risk exposures.

Swap

Combination of purchase and repurchase agreements whose fulfilment dates do not coincide.

Trading risks

Potential losses (or gains) on the bank's trading positions that are not fully hedged due to price and rate movements.

Value-at-risk

Measure of the potential change in value of a (trading) portfolio under certain assumptions regarding the factors relevant to the performance of the portfolio (market prices, volatilities, correlations).

Volatilities

Measure of the price variability of an instrument.

Whole bank

A bank, including its domestic and foreign establishments, and those of its subsidiaries that are combined into a single entity for the purposes of risk management. The combination must not contradict the objective of appropriate risk management.

Annex 4.3[400]

Guidelines on internal control pursuant to Article 7a BankG and Articles 21c et seq.

I. In general

1. Object

1) An effective system of internal control is a central element of modern bank management and an important prerequisite for appropriate risk management and thus serves to ensure the stability of the financial system.

2) The following Guidelines on internal control are issued in awareness of the fact that the optimal design of internal control depends on various factors, some of which are highly dependent on the institution (in particular company size, business activities, risk structure, organisation, degree of automation). They aim to formulate generally applicable and institution-independent principles for the design of internal controls. They are based on the paper "Framework for Internal Control Systems in Banking Organizations" published by the Basel Committee on Banking Supervision in September 1998.

3) In these guidelines, internal control is understood in a comprehensive sense as the entirety of internal measures to support the achievement of corporate objectives. In particular, risk control and compliance are considered to be components of internal control.

4) Where the term "bank" is used in these Guidelines, it is understood to mean banks and investment firms.

2. Definition, objectives, and delimitation

1) Internal control (internal control system) refers to all processes, methods, and measures ordered by the board of directors, senior management, and other managers that serve to ensure the proper conduct of operational activities. The organisational measures of internal control are integrated into the operational work processes, i.e. they are carried out during work or immediately before or after work is carried out. Internal

400 Annex 4.3 inserted by LGBl. 2004 No. 222, amended by LGBl. 2007 No. 278.

control includes not only control activities as such, but also steering and planning activities.

2) In particular, internal control supports the achievement of business policy objectives, compliance with laws and regulations, the protection of operating assets, the prevention, reduction, and detection of errors and irregularities, ensuring the reliability and completeness of accounting and timely and reliable financial reporting, as well as effective and efficient business management.

3) In contrast, the internal audit department is a unit not integrated in ongoing business operations at the service of the board of directors with the primary function of reviewing internal control. Internal audit is an independent and objective assurance and advisory activity that contributes to value creation and the achievement of objectives by providing a systematic and disciplined approach to evaluating and enhancing the effectiveness of internal control and corporate governance.

4) As part of a continuous process, internal control must identify deviations from targets and point out any need for action. This requires the involvement of the board of directors, senior management, and all employees.

5) The internal control process consists of the following five elements: management oversight and control culture, risk identification and assessment, control activities and segregation of duties, information and communication, and ongoing identification of deficiencies and corrective actions. There are relationships and dependencies between these elements.

II. Elements of the internal control process

A. Management oversight and control culture

3. Responsibility of the board of directors

1) The board of directors itself is responsible for establishing and maintaining an appropriate internal control.

2) The board of directors bears particular responsibility for approving and periodically reviewing decisions of strategic importance, setting adequate upper limits for suitably selected and defined risk types, ensuring the implementation of the measures to be taken by senior management as part of internal control (identification, measurement, monitoring, and control of the risks assumed by the bank) and ensuring appropriate monitoring of the effectiveness of internal control systems by senior management.

3) In order to fulfil these responsibilities, the board of directors must regularly discuss the effectiveness of internal control measures with senior management, assess internal control systems by management, internal and external auditors, and supervisory authorities in a timely manner and draw appropriate conclusions, monitor the ordering of and compliance with corrective measures, and also regularly review strategy and risk limits. In particular, the board of directors has the responsibility to ensure that appropriate corrective measures are implemented if deficiencies in internal control are identified.

4) The board of directors may, along other measures, appoint an audit committee to support it in the performance of its duties in the area of internal control. However, this does not relieve the board of directors of its overall responsibility for internal control.

4. Responsibility of senior management

1) Senior management bears responsibility for implementing the strategies and business principles defined by the board of directors.

2) In particular, senior management is responsible for developing suitable processes for the identification, measurement, monitoring, and control of risks incurred by the bank, maintaining and documenting an organisational structure that clearly defines responsibilities, competencies, and information flows, ensuring that delegated tasks are fulfilled, and monitoring the optimal use of resources in the area of internal control.

3) In connection with the above tasks, senior management shall ensure the quantity and quality, in particular training and experience, of the relevant personnel. Remuneration and promotion structures must not contain any incentives to disregard internal control mechanisms.

5. Risk philosophy and control culture

The conduct of the board of directors and senior management shapes the corporate culture, in particular the risk and control culture, which should be characterised by high standards of integrity. The board of directors and senior management document their intentions regarding the risk philosophy and control culture and communicate these in writing. Employees at all hierarchical levels must know and understand their responsibilities and tasks in the internal control process. The board of directors and senior management bear responsibility for training, in particular for the creation and implementation of a training concept. Any pressure exerted by management on employees to perform well should not lead to the circumvention of control mechanisms.

B. Risk identification and risk assessment

6. Requirements for an internal control system

1) An internal control system ensures that all risks that could substantially impair the achievement of business objectives are identified and assessed in a timely and continuous manner. In particular, credit risks, country and transfer risks, market and interest rate risks, liquidity risks, operational risks, legal risks, and reputational risks must be included in this assessment. The internal control system must also have the necessary flexibility to be able to react quickly and appropriately to new or previously uncontrolled types of risk.

2) As part of this assessment, the factors relevant to decisions are identified. The consequences and possible developments of the situation must be derived, and alternative solutions elaborated on this basis.

3) Risk management must be carried out using adequate methods that take into account the specific characteristics of the bank. Both internal factors (e.g. complexity of the organisational structure or business activities) and external factors (e.g. economic conditions or technological developments) must be taken into account.

4) Risk management must take place at appropriate organisational levels. It must be ensured that all information relating to risk management is available at the appropriate level of aggregation and detail.

C. Control activities and segregation of duties

7. Control activities

1) Control activities are an integral part of all work processes. A distinction must be made between process-oriented procedural controls, result-oriented outcome controls, and direct behavioural checks:

a) procedural controls must identify deviations from targets at a time when corrections are still easily possible (ex ante);
b) outcome controls check the achievement of objectives by comparing the targets set with the results actually achieved. They are used when an immediate correction is not necessary and/or not possible (ex post);
c) behavioural checks are used to directly examine the behaviour of individuals and organisational units. They are used in particular when results are not observable.

2) Methodologically, the control types used must include the following:

a) oversight by senior management: the board of directors and senior management should receive regular performance reports and critically review them (e.g. development of financial results in relation to budget and objectives);
b) activity controls: all hierarchy levels concerned should receive regular (daily, weekly, monthly) level-specific performance reports and review them critically;
c) physical inspections: dual control principle, limitation of technical access to cash and valuables, periodic inventory;
d) review of compliance with specified limits: the review of appropriately selected limits on risk exposure represents a key aspect of risk control. For example, limits for certain debtors and counterparties can reduce the concentration of credit risks and contribute to the diversification of the risk profile;
e) (financial) competencies and authorisations: regular and sporadic inspections of compliance for selected transactions;
f) review and coordination of transactions and risk management models.

8. Segregation of duties

An effective system of internal control also requires a suitable segregation of duties and the minimisation of the allocation of conflicting responsibilities. Such a segregation of duties and independent reporting must be ensured through organisational measures. For example, compliance with internal control rules must be monitored by organisational units that are independent of trading and lending (separation of back and front office). In cases where a segregation of duties cannot be fully implemented due to the size of the undertaking, particular importance must be attached to a correspondingly increased management responsibility of the line units.

D. Information and communication

9. Requirements

1) An effective internal control system requires the availability of adequate internal and external decision-relevant information. This information must be reliable, timely, accessible, and prepared in a consistent form.

2) In particular, a prerequisite for the effectiveness of the internal control system is that suitable information systems are in place to ensure that all relevant information on the operational business areas is collected,

distributed, and processed reliably and in a timely manner (Management Information Systems, MIS).

3) Particular importance must also be attached to communicating the objectives, results, and measures of internal control at the appropriate level. All employees must be familiar with the principles and processes of internal control as far as their own responsibilities are concerned. By creating suitable organisational structures, the corresponding flow of information necessary for coordination and responsiveness must be ensured top-down, bottom-up, and horizontally.

E. Ongoing identification of deficiencies and corrective actions

10. Ongoing identification of deficiencies

1) The effectiveness of internal controls is monitored on an ongoing basis. Senior management defines the corresponding responsibilities. The identification and monitoring of the main risks must be the subject of both day-to-day business and periodic evaluations by management and the internal audit department. The inspections carried out (see C) and the results must be documented as far as possible and in an appropriate manner.

2) Changes in internal and external conditions must be taken into account. For example, the following changes should give rise to control measures: introduction of new products, rapid growth of individual business areas/activities, staff turnover, new information systems, organisational restructuring, mergers, changes in the legal and regulatory environment, changes in international operations.

11. Corrective actions

If deviations and deficiencies are identified, it must be ensured that corrective measures are initiated. The appropriate offices and hierarchical levels must be informed in good time of any problems; the board of directors and senior management must be informed of serious cases.

Appendix:

The following glossary defines important terms from the text of these Guidelines. The definitions do not claim to be generally valid, but are based on the criterion of appropriateness in the given context.

Audit committee:

The audit committee is a committee of the governing body for overall management, supervision, and control (independent specialist committee of the board of directors) that focuses on the methodology and quality of the external audit, the quality of financial reporting, and the interaction between the internal and external auditors and their independence. The audit committee of the board of directors is the primary point of contact for the external auditors and does not relieve the board of directors of its responsibility for oversight and control, but supports it in the performance of its duties.

Behavioural check:

Form of control which directly examines the behaviour of individuals and organisational units instead of the results achieved.

Compliance:

Compliance of operational activities with legal, regulatory, and internal provisions. Ensuring compliance with all laws, articles of association, regulations, and instructions, etc. is primarily a senior management task. The compliance function supports senior management in this regard and monitors compliance with the relevant regulations in order to identify reputational and regulatory risks at an early stage and avoid them wherever possible, as well as to ensure sound and proper business operations in general to a sufficient extent.

Control activities:

Verification measures as part of internal control, including procedural, outcome, and behavioural controls.

Internal audit:

Internal audit is an independent and objective assurance and advisory activity that contributes to value creation and the achievement of objectives by providing a systematic and disciplined approach to evaluating and enhancing the effectiveness of internal control and corporate governance.

Internal control:

Internal control (internal control system) refers to all processes, methods, and measures ordered by the board of directors, senior management, and other managers that serve to ensure the proper conduct of operational activities. Internal control includes not only control activities, but also steering and planning activities.

Outcome control:

Form of control which checks the achievement of objectives by comparing the targets set with the results actually achieved and which is used when an immediate correction is not necessary and/or not possible (ex post).

Procedural control:

Form of control which identifies deviations from targets at a time when corrections are still easily possible (ex ante).

Risk control:

Independent monitoring of the bank's risk profile. Risk control lays the foundation for the corporate risk policy, the risk appetite, and the risk limits to be issued by the responsible bodies and supervises compliance with the framework defined in this way.

Risk management:

Comprehensive and systematic steering and management of risks on the basis of economic and statistical knowledge. Risk management includes the identification, measurement, assessment, steering, and reporting of individual as well as aggregated exposures.

Risk philosophy:

All of the strategies and values relating to a bank's approach to different types of risk.

Annex 4.4[401]

Guidelines for the management of risks associated with remuneration policies and practices pursuant to Article 7a BankG and Articles 21c and 21r

1. Principles of remuneration policies and practices

1) When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff whose professional activities have a material impact on their risk profile, banks or investment firms shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, the scope and the complexity of their activities:

a) The remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the bank or investment firm.

a[bis]) The remuneration policy is gender-neutral in all cases.

b) The remuneration policy is in line with the business strategy, objectives, values and long-term interests of the bank or investment firm, and incorporates measures to avoid conflicts of interest.

c) The board of directors of the bank or investment firm adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation.

d) 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 board of directors.

e) Staff engaged in control functions are independent from the business units they oversee, have sufficient powers, and are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

401 Annex 4.4 amended by LGBl. 2011 No. 250, LGBl. 2015 No. 17, LGBl. 2017 No. 7, LGBl. 2022 No. 130 and LGBl. 2022 No. 275.

f) The remuneration of the members of the senior management and the heads of the risk management and compliance functions is directly overseen by the remuneration committee or, if such a committee has not been established, by the board of directors.

g) The remuneration policy, taking into account Liechtenstein practice on wage setting, makes a clear distinction between criteria for setting:

1. the fixed remuneration component, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and
2. the variable remuneration component, which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

2) For variable remuneration components, the following principles additionally apply:

a) Where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall results of the bank or investment firm and when assessing individual performance, financial and non-financial criteria are taken into account.

b) The assessment of the performance is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the bank or investment firm and its business risks.

c) The total variable remuneration does not limit the bank's or investment firm's ability to improve its capital base.

d) Guaranteed variable remuneration is not in line with sound risk management or the principle of performance-based remuneration and must not be part of future remuneration systems. Provided that the bank or investment firm has a solid and sufficient capital base, guaranteed variable remuneration is exceptional and occurs only when hiring new staff and is limited to the first year of employment.

e) Fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component.

f) Banks and investment firms shall set the appropriate ratios between the fixed and the variable component of the total remuneration. The following principles shall apply:
   1. The variable component shall not exceed 100% of the fixed component of the total remuneration for each individual.
   2. By way of derogation from point 1, the variable remuneration component may be increased by a decision of the shareholders or owners or partners to up to 200% of the fixed remuneration component if the following conditions are met:
      aa) The decision must be preceded by a comprehensive recommendation from the bank or investment firm giving the reasons for, and the scope of, an approval sought, including the number of staff affected, their functions and the expected impact on the requirement to maintain a sound capital base.
      bb) The bank or investment firm shall inform all its shareholders or owners or members in good time in advance of the planned decision.
      cc) The bank or investment firm must inform the FMA immediately of the recommendation made. In particular, this information must include the proposed higher maximum ratio and the reasons therefore. Furthermore, it must be explained that this increase will not impair compliance with the obligations of the bank or investment firm concerned under the Banking Act and Regulation (EU) No 575/2013, including the mandatory own funds obligations.
      dd) An effective decision requires the presence of at least half of the voting capital and a majority of 66% of the votes. By way of derogation, an effective decision may be passed by a majority of 75% of the votes if the required attendance quorum is not reached. Employees of a bank or investment firm who are directly concerned by an increase in the variable remuneration component are excluded from exercising any voting rights, directly or indirectly.
      ee) The bank or investment firm shall inform the FMA without delay of the decisions by its shareholders or owners or members on increasing the fixed remuneration component, including any approved higher maximum ratio. The FMA benchmarks the relevant practices of banks and investment firms in that regard and informs the EBA.

ff) The appropriateness of the decision must be evaluated on a regular basis. The decision must be renewed in the event of significant changes, in particular to the business model, organisation, risk appetite, or ownership structure.

3. The bank or investment firm may apply the discount rate referred to in the point 1 or 2 to a maximum of 25% of total variable remuneration provided the remuneration is paid in instruments that are deferred for a period of not less than five years.

g) Payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure.

h) Remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the bank or investment firm including retention, deferral, performance and clawback arrangements.

i) The measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required. The allocation of the variable remuneration components within the bank or investment firm shall also take into account all types of current and future risk.

k) In the case of significant banks or investment firms, a substantial portion, and in any event at least 50%, of any variable remuneration shall consist of an appropriate balance of:

1. shares or equivalent ownership interests of the bank or investment firm, or share-linked instruments or equivalent non-cash instruments; and
2. Additional Tier 1 instruments within the meaning of Article 52 or Tier 2 instruments within the meaning of Article 63 of Regulation (EU) No 575/2013 or other instruments which can be fully converted to Common Equity Tier 1 instruments or written down in accordance with Regulation (EU) No 575/2013 that adequately reflect the credit quality of the bank or investment firm as a going concern and are appropriate to be used for the purposes of variable remuneration.

These instruments shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the bank or investment firm. The FMA may place restrictions on the types and designs of those instruments or, where appropriate, prohibit certain instruments or permit other participation options.

This provision shall be applied to both the portion of the variable remuneration component deferred in accordance with subparagraph l and the portion of the variable remuneration component not deferred.

l) A substantial portion, and in any event at least 40%, of the variable remuneration component is deferred over a period of four to five years and is aligned accordingly with the nature of the business, its risks and the activities of the staff member concerned. For members of the board of directors and senior management of significant banks or investment firms, the deferral period must be less than five years. Remuneration payable under deferral arrangements shall vest 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. An amount is in any event particularly high if the variable remuneration is at least EUR 300 000 or the equivalent in Swiss francs.

   The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the staff member concerned.

m) The variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the bank or investment firm as a whole, and justified according to the performance of the bank or investment firm, the business unit and the individual concerned.

   Without prejudice to the general principles of contract and labour law, the total variable remuneration shall as a rule be considerably contracted where subdued or negative financial performance of the bank or investment firm occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements.

   Malus or clawback agreements can be concluded for up to 100% of the total amount of the variable remuneration component. Banks and investment firms must define precise criteria for the application of malus and clawback rules. In particular, these criteria must take into account situations in which employees have participated in or been responsible for actions that have led to significant losses, as well as situations in which employees have failed to meet the relevant professional competence or personal reliability requirements.

n) The pension policy is in line with the business strategy, objectives, values and long-term interests of the bank or investment firm. If the employee leaves the bank or investment firm before retirement, the voluntary pension benefits agreed as part of the variable remuneration should be held by the bank or investment firm for a period of 5 years in the form set out in subparagraph (k). In case of an employee reaching retirement, discretionary pension benefits should be paid to the employee in the form of instruments set out in subparagraph (k) subject to a five-year waiting period.

o) Staff members are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk behaviour alignment set out in their remuneration arrangements.

p) Variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of the Banking Act or Directive (EU) No. 575/2013.

3) Categories of staff whose professional activities have a material impact on the risk profile of the bank or investment firm within the meaning of paragraph 1 shall, at least, include:

a) all members of the board of directors and senior management;

b) staff members with managerial responsibility over the bank's or investment firm's control functions or material business units;

c) staff members entitled to significant remuneration in the preceding financial year, if:

   1. the staff member's remuneration is not less than EUR 500 000 or the equivalent in Swiss francs and equal to or greater than the average remuneration awarded to the members of the bank's or investment firm's board of directors and senior management; and

   2. the staff member performs the professional activity within a material business unit and the activity is of a kind that has a significant impact on the relevant business unit's risk profile.

4) In the case of banks and investment firms that benefit from extraordinary government support, the following principles apply in addition to those set out in paragraph 1:

a) variable remuneration is strictly limited as a percentage of net revenue or is not granted at all where it is inconsistent with the maintenance of a sound capital base and liquidity position in the event of potential early exit from government support.

b) The remuneration structure of the bank or investment firm is aligned with sound risk management and long-term growth and is appropriately documented and disclosed.

c) The members of senior management and the board of directors of banks and investment firms do not receive variable remuneration if the bank or investment firm would likely infringe legislative provisions, in particular capital or liquidity requirements, without government support.

5) By way of derogation from Article 7c(2) of the Banking Act, the principles set out in paragraphs 1 to 3 do not apply to:

a) subsidiary undertakings established in the EEA where they are subject to specific remuneration requirements in accordance with other EEA legislation;
b) subsidiary undertakings established in a third country where they would be subject to specific remuneration requirements in accordance with other EEA legislation if they were established in the EEA.

6) By way of derogation from paragraph 5, the principles set out in paragraphs 1 to 3 shall in any case apply to employees of subsidiary undertakings that are not subject to the Banking Act or this Ordinance on an individual basis where:

a) The subsidiary is either an asset management company within the meaning of Article 4(1)(19) of Regulation (EU) No 575/2013 or an investment firm that provides investment services in accordance with Annex 2 Section A(1)(2), (3), (4), (6) and (7) of the Banking Act, and the employees carry out activities that have a direct material impact on the risk profile or the business of banks or investment firms within the group.
b) The subsidiary is a significant subsidiary within the meaning of Article 4(1)(135) of Regulation (EU) No 575/2013, to which paragraph 5 does not apply.

7) The provisions set out in paragraph 2(k), (l) and the second sentence of (n) do not apply to:

a) a bank or investment firm that is not a large institution as defined in Article 4(1)(146) of Regulation (EU) No 575/2013 and the total assets of which are on average and on an individual or consolidated basis in accordance with the Banking Act and Regulation (EU) No 575/2013 equal to or less than EUR 5 billion or the equivalent in Swiss francs over the four-year period immediately preceding the current financial year;
b) a staff member whose annual variable remuneration does not exceed EUR 50 000 or the equivalent in Swiss francs and does not represent more than one third of the staff member's total annual remuneration.

2. Remuneration committee and risk committee

1) Banks or investment firms that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their

activities shall establish a remuneration committee. The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

2) The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the bank or investment firm concerned and which are to be taken by the management body in its supervisory function. The chair of the remuneration committee and the majority of its members shall be members of the management body who do not perform any executive functions in the bank or investment firm concerned. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other participants such as stakeholders in the bank or investment firm.

3) The board of directors adopts the decisions referred to in paragraph 2.

4) In order to assist in the establishment of sound remuneration policies and practices, the risk committee shall, without prejudice to the tasks of the remuneration committee, examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

3. Information requirements

1) The FMA shall use the data reported to it in accordance with Article 26(1)(k) of the Banking Act to benchmark remuneration trends and practices. The FMA shall provide the EBA with that information.

2) Banks and investment firms shall inform the FMA once a year about the number of persons in their undertaking who are remunerated EUR 1 million or more or the equivalent in Swiss francs per financial year. The bank or investment firm shall transmit the number of these persons once a year to the FMA, in pay brackets of EUR 1 million, including their job responsibilities, the business area involved, and the main elements of salary, bonus, long-term award, and pension contribution. The FMA shall forward that information to the European Supervisory Authorities.

4. Repealed

Annex 4.5[402]

Guidelines for the assessment, valuation and treatment of mortgage-backed loans pursuant to Article 7a BankG and Articles 21c et seq.

1. Objectives and content

1) On the basis of the following Guidelines for the assessment, valuation and treatment of mortgage-backed loans and taking into account the institution's specific credit policy, banks must issue internal instructions on the credit business process (credit assessment, credit approval, credit monitoring, and reporting), which cover the following points in particular:

a) the procedures for the systematic calculation of affordability and the corresponding maximum limits;
b) the imputed mortgage interest rate for calculating affordability;
c) the periodicity of internal credit audits according to risk-relevant criteria and the definition of events that trigger an extraordinary credit audit;
d) the definition of property types and their eligibility as collateral;
e) the amortisation and mortgage lending concept, in particular the mortgage lending limits and minimum amortisation rates;
f) the valuation system and the valuation methods by property type;
g) the method for determining the capitalisation rate; and
h) the procedures for the approval, reporting, and monitoring of ETP transactions.

2) The bank must ensure that the responsible employees are aware of the internal instructions and apply them accordingly.

3) These Guidelines have no influence on the banks' credit policy, which is determined by their governing bodies.

402 Annex 4.5 inserted by LGBl. 2004 No. 222 and amended by LGBl. 2007 No. 278, LGBl. 2014 No. 61, LGBl. 2015 No. 17, LGBl. 2022 No. 130 and LGBl. 2023 No. 394.

2. Risks associated with the granting of mortgage-backed loans

1) The default risk for mortgage-backed loans essentially comprises credit risk, collateral default risk, and operational risk.

2) The bank must make its lending decision on the basis of a review of the borrower's creditworthiness (personal creditworthiness and financial creditworthiness) and the value of the mortgage and on the basis of regulated internal processes.

3. Creditworthiness and affordability

3.1 In general

1) The review of the borrower's creditworthiness and the recoverability of the mortgage serves to ensure sustainable financing and thus to limit the credit risk and the collateral default risk.

2) All mortgage-backed loans must be reviewed at fixed periodic intervals or when events relevant to creditworthiness become known. The principles of the credit assessment must be defined in the bank's internal instructions.

3) When redeeming mortgage-backed loans, the lending bank carefully examines the borrower's motives, in particular for the purpose of identifying problem loans. A redemption constitutes a new transaction for the lending bank and must be examined accordingly. The first and second sentences also apply to redemptions within the same organisation.

3.2 Own funds requirements

1) A maximum loan-to-value ratio of 80% (percentage of the mortgage lending value) is permissible for the initial granting and increase of mortgage-backed loans for owner-occupied residential properties and investment properties as well as for restructuring of usage agreements for owner-occupied residential properties and investment properties. A loan-to-value ratio greater than 80% is possible in exceptional cases, in which case these loan transactions then qualify as "exceptions to policy" transactions.

2) Paragraph 1 does not apply to redemptions with a constant loan amount, increases as part of the management of non-performing loans, and the granting of business loans with real estate as additional cover.

3.3 Affordability for owner-occupied residential properties

1) The basis for calculating affordability in the case of owner-occupied residential property is the borrower's sustainable disposable income (in the case of employed persons, the gross income less social insurance contributions) and their expenditure on the residential property as well as any other significant expenditure not associated with the residential property, in particular longer-term obligations prescribed by court order or contract. The relevant income and expenditure must be defined comprehensibly and conclusively by the bank in its internal instructions with the aim of making a prudent assessment of the borrower's financial situation and reducing the credit risk.

2) The bank must ensure that the calculation of affordability is carried out systematically and must define the procedure to be applied in its internal instructions. The bank is also obliged to specify how affordability is to be proven and documented. It must also define the long-term imputed mortgage interest rate to be used for the affordability calculation. The imputed mortgage interest rate must be determined carefully and take into account long-term averages; its calculation must be justified in the bank's internal instructions. The bank must set the maximum limits for the ratio between income and expenditure within the meaning of paragraph 1.

3.4 Creditworthiness and affordability for investment properties

In the case of investment properties, it is primarily the income generated by the property that forms the basis for the creditworthiness and affordability assessment. The income and cost components to be taken into account and the imputed mortgage interest rate to be applied must be defined in the bank's internal instructions.

3.5 Creditworthiness and affordability for owner-occupied commercial properties

In the case of owner-occupied commercial properties, the assessment of the borrower forms the basis for the creditworthiness and affordability assessment.

4. Valuation of the mortgage

4.1 In general

1) The bank must value its mortgage collateral carefully, systematically, and periodically in accordance with uniform principles and taking into account all relevant documents, considering the character,

location, and situation as well as the current and future economic use of the property. Unless otherwise justified, the market value shall be used as a basis.

2) The properties to be used as collateral must in principle be inspected. Deviations from this principle must be specified in the bank's internal instructions. The use of valuation models is generally possible for certain types of property, although their applicability must be specified in the bank's internal instructions or justified in specific individual cases. The bank sets out the requirements for the skills and independence of real estate assessors in its internal instructions. Extraordinary transactions must be specifically regulated in the internal instructions.

4.2 Owner-occupied residential properties

1) The bank must regulate the valuation of owner-occupied residential properties in its internal instructions.

2) For marketable owner-occupied residential properties, the bank may perform the valuation using validated valuation models (hedonic or equivalent approaches). The bank must define a validation procedure for its own models and adequately document the method used for the valuation model and the statistical basis. Furthermore, the bank must regulate the use of validated valuation models and manual value adjustments (upwards and downwards) in its internal instructions and document them.

4.3 Investment properties

1) The earnings value is decisive for determining the mortgage lending value of investment properties. Property-related criteria must be taken into account appropriately.

2) In its internal instructions, the bank must define the method and system for determining the capitalisation rates for each property type and regulate the monitoring and adjustment of these rates to new economic situations.

3) In the case of mixed-use properties, the earnings value is calculated as the sum of partial earnings values resulting from the earnings for each type of use and the respective capitalisation rates.

4) The bank must regulate the use of valuation models for the valuation of investment properties separately in its internal instructions.

4.4 Owner-occupied commercial properties

For the determination of the mortgage lending value of owner-occupied commercial properties, the room rent according to the borrower's income statement is decisive. The bank must check the plausibility of this value. When determining the mortgage lending value, property-related criteria, the dependency on the property and operator, and the economic viability must be taken into account.

4.5 Other property

4.5.1 Building land

Valuations of building land must be carried out on the basis of current market conditions. The possible future use of the building land and the specific external and internal conditions must be taken into account in the valuation.

4.5.2 Real estate promotion

In the case of project financing for residential properties intended for sale, the marketability of the project as a whole must be taken into account in the valuation. This also applies in the event of a possible hedonic valuation of the individual properties.

4.5.3 Non-marketable properties

Non-marketable properties must be assessed and valued individually and in accordance with their risk profile. The use of valuation models is not permissible for these properties.

5. Mortgage lending

5.1 Mortgage lending value

The mortgage lending value may not exceed the market value. The bank sets out the methods for determining the market value and the mortgage lending value for the various property types in its internal instructions.

5.2 Mortgage lending rates

1) In its internal instructions, the bank must set out the mortgage lending rates for each property type and the underlying values, taking into account its own risk capacity. In addition to the property type, it must take into account the purpose and possible uses of the property.

2) When applying the mortgage lending rates, property-related criteria and borrower-related aspects such as, in particular, affordability and existing assets must be taken into account appropriately. Senior or *pari passu* liens and the resulting interest claims must also be adequately taken into account.

3) In its internal instructions, the bank must regulate the conditions for lending against special mortgages such as non-excluded co-ownership shares and building rights as well as the treatment of senior and *pari passu* mortgages and charges on property.

6. Amortisation

1) The bank must define the amortisation rates for the various types of mortgages in its internal instructions, taking into account the type of property or the expected useful economic life.

2) In the case of owner-occupied residential properties and investment properties, the mortgage debt must be amortised to two thirds of the mortgage lending value of the property within a maximum of 15 years. The amortisation must be linear.

7. Credit monitoring

7.1 In general

1) As part of its risk management, the bank must determine the procedures and principles for monitoring its mortgage-backed loans, the frequency of periodic reviews of property and borrower quality, and the updating of documentation.

2) The bank must also monitor its loans at the level of the entire mortgage portfolio. It must define suitable methods for the preparation of specific risk analyses in its internal instructions and implement these models.

3) The procedures and compliance with the principles must be regularly reviewed by persons who are not involved in the acquisition of credit transactions.

4) In its internal instructions, the bank must define adequate procedures for the identification, treatment, and monitoring of non-performing loans (point 43a of Annex 3) and impaired loans (point 6a(6) of Annex 3).

5) The bank must define its own risk profile, which provides information about its risk capacity and risk appetite.

7.2 Reassessment of creditworthiness and affordability

If the bank becomes aware of events relevant to creditworthiness, a new assessment must be carried out and suitable measures must be derived from that new assessment. The bank must set out in its internal instructions the frequency and conditions under which creditworthiness, affordability, and mortgage lending must be reassessed. The periodicity of the reassessment and the constellations for the reassessment must be determined on the basis of risk-relevant and property-related criteria.

7.3 Monitoring and review of property

1) In its internal instructions, the bank must define the maximum permissible intervals within which the mortgaged properties are to be reassessed. These intervals are to be measured according to the type of property, the loan-to-value ratio, and the market situation. In the event of negative market changes, the bank must assess the risk potential and define and take the necessary measures. As part of periodic specific risk analyses, the bank must assess the impact on the value of the mortgage portfolio. The focus here must be on properties valued using valuation models.

2) The bank must regulate the processing of construction loans in its internal instructions. In particular, the payment of own funds and the use of the loan according to the progress of construction must be monitored in accordance with the bank's internal instructions.

8. Repealed

9. Reporting

9.1 In general

The bank must ensure that it has a meaningful picture of the aggregated risks of the mortgage portfolio. The bank must determine the content, form, and frequency of reporting in its internal instructions.

9.2 Repealed

10. Documentation

1) The credit relationship must be documented in an electronic or physical dossier in a complete, up-to-date, comprehensible, and verifiable manner. The documentation obligation includes all documents on which the bank has relied when granting, monitoring, and renewing the loan, in particular documents on the borrower's personal situation and information on the mortgage, including documents on the valuation method and the valuation result.

2) The results of the review of the borrower's creditworthiness and the periodic valuation of the mortgages must be recorded in the dossier and must be comprehensible. In the case of sub-participations and syndicated loans, it remains the responsibility of each participating bank to independently assess the loan and carry out its own monitoring.

3) In particular, the documents must also allow the audit firm and the FMA to form a reliable opinion on the business activity, the credit decision, and credit monitoring.

Appendix:

Glossary

For the purposes of this Annex, the following terms shall have the means defined in this glossary.

Amortisation

Repayment of the mortgage-backed loans in one or more fixed instalments.

Capitalisation rate

The capitalisation of the long-term achievable income is based on a capitalisation rate, which is generally composed of the imputed mortgage interest rate, surcharges for operating costs (such as ongoing maintenance, administrative costs, fees, insurance premiums, and taxes), surcharges for replacement investments or necessary depreciation and sufficient risk premiums, which take into account the property-specific characteristics (such as use, condition, location), and economic and regional aspects (economic and tax situation in the region, regional vacancy rate).

Collateral default risk

The risk of losses arising from the fact that the proceeds from the realisation of the collateral do not cover the amount of the debt.

Credit policy

The credit policy regulates the principles for the bank's lending activities, taking into account the risk strategy defined by the governing body responsible.

Credit risk

The risk of losses arising from the borrower's failure or inability to meet their obligations.

Earnings value

The earnings value of a property represents the capitalised rental income or rental value that is sustainably achievable in the future and corresponds to the sum of all future rental income or rental values discounted to the valuation date. The earnings value must be calculated on the basis of net rental income (excluding ancillary costs).

(Fair) market value

(Fair) market value corresponds to the price that can probably be achieved within one year under normal conditions and with free operation of supply and demand.

Investment properties

Investment properties are properties held for investment purposes and leased to third parties and can be residential properties, office and business properties, commercial properties, and mixed-use properties in particular.

Mortgage lending rate

Fixed percentage of the mortgage lending value of a collateral to determine the permissible loan utilisation.

Mortgage lending value

The value of a mortgage which the bank uses as the basis for granting mortgage-backed loans.

Operational risk

The risk of losses caused by the inadequacy or failure of internal processes, people, or systems or by external events, including legal risks.

Owner-occupied residential properties

Owner-occupied residential properties can be condominiums as well as a property in sole or co-ownership or an independent building right on a permanent basis.

Property-related criteria

Criteria and risks associated with the property and independent of the borrower. Examples include the use, usability, or buildability of building land or, in the case of investment properties, conversion, vacancy risk, reduced value (refurbishment costs, maintenance backlog, age depreciation) or a particular disparity between the earnings value and the land value.

Real estate promotion

Real estate promotion is the project financing of residential real estate intended for sale, such as condominiums or single-family house developments.

Annex 5[403]

Minimum requirements for the granting, internal reporting, and monitoring of ETP transactions

1) The minimum requirements for the granting, internal reporting, and monitoring of ETP transactions set out in this Annex apply only to:

a) transactions from the lending business; and

b) those internal requirements whose non-compliance means a significant increase in risk.

2) Banks must check and document the internal requirements for which non-compliance represents a significant increase in risk (materiality analysis), particularly in the context of lending and resubmissions. Non-compliance with internal requirements relating to client classification, creditworthiness, affordability, loan-to-value ratio, and amortisation is always considered to significantly increase risk.

3) The execution of ETP transactions within the meaning of this Annex must be appropriately documented in all cases. The identification of business relationships and the execution process of ETP transactions must be fully traceable and verifiable at all times.

4) The internal instructions for the execution of ETP transactions within the meaning of this Annex must contain clear definitions, materiality and threshold values, constellations and allocations of powers, in particular for approvals, rejections, and escalations.

5) ETP transactions within the meaning of this Annex must be clearly identified within the bank and intensively monitored in accordance with their respective risk. Both the labelling and the monitoring of such ETP transactions must ensure a clear distinction between ETP transactions at the time the loan is granted and existing transactions that become ETP transactions within the meaning of this Annex during the term of the loan.

6) Banks must have an internal reporting system for ETP transactions within the meaning of this Annex to ensure that they have a meaningful picture of the risks arising from ETP transactions. The content, form, and frequency of internal reporting must be defined in the internal instructions; internal reporting must in any case include:

403 Annex 5 amended by LGBl. 2022 No. 130.

a) disclosure of the share of ETP transactions in newly concluded transactions;
b) disclosure of ETP transactions identified as part of resubmissions or when events relevant to creditworthiness occur;
c) disclosure of the number and volume of ETP transactions and the development of ETP transactions over time;
d) quantitative aspects and qualitative elements for risk assessment and justifications for significant changes;
e) ETP transactions from at least the following categories, which must be reported separately; risk classes can be formed within the various categories on the basis of internally defined thresholds:
   1. affordability;
   2. lending rates; and
   3. amortisation.

7) The conformity of the total portfolio of ETP transactions within the meaning of this Annex must be reviewed and documented by the bank at least once a year in accordance with the risk appetite, the general risk strategy, and the limit system. If the volume of these ETP transactions exceeds the limits of the risk appetite or the general risk strategy, the board of directors must be informed regularly and comprehensively.

Annex 6 [404]

404 Annex 6 repealed by LGBl. 2021 No. 410.

Annex 7.1[405]

Obligations in connection with the provision of investment services and ancillary services pursuant to Articles 8a to 8e and 8h BankG and Article 27d

I. Duty to act in the best interests of the client

A. Information to clients and potential clients pursuant to Articles 8a, 8c and 8h BankG and Article 27d

1) All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

2) With regard to information on the financial instruments and the proposed investment strategies and with regard to costs and ancillary costs, including issue premiums and redemption fees, appropriate information is deemed to be:

a) in the case of units of a UCITS subject to Directive 2009/65/EC, a Key Investor Information Document (KIID) as referred to in Article 80 of the UCITS Act;
b) in the case of units in an AIF subject to Directive 2011/61/EU[406], a KIID or a key information document as referred to in Article 151(1)(b) of the Alternative Investment Fund Managers Act and, in the case of professional clients, the information pursuant to Article 105 of that Act.

3) The documents referred to in paragraph 2 shall be made available to client free of charge on paper or on another durable medium.

4) Where a transaction involving a financial instrument is concluded using a means of distance communication, including in particular e-banking, and the prior delivery of the cost information (Article 8c(2)(e)

405 Annex 7.1 amended by LGBl. 2022 No. 273.

406 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 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 L 174, 1.7.2011, 1)

and (3) BankG) is not possible, the bank or investment firm may provide the cost information in a durable medium immediately after the client is bound by any agreement, provided both the following conditions are met:

a) The client has consented to receiving the cost information without undue delay after the conclusion of the transaction.
b) The bank or investment firm has given the client the option of delaying the transaction in order to receive the cost information in advance.

B. Payment and receipt of inducements pursuant to Article 8a and 8h BankG

1. Inducements

1) Fees, commissions, or non-monetary benefits shall be considered to be designed to enhance the quality of the relevant service to the client if the following conditions are met:

a) It is justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received, such as:
   1. the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the bank or investment firm;
   2. the provision of non-independent investment advice combined with either: an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested; or with another on-going service that is likely to be of value to the client such as advice about the suggested optimal asset allocation of the client;
   3. the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the bank or investment firm, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments; or

4. where access to investment advice is enabled by the on-site availability of qualified advisors who are able to provide clients with investment services and investment advice in person.

b) It does not directly benefit the recipient bank or investment firm, its shareholders or employees without tangible benefit to the relevant client.

c) It is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement.

2) Fees, commissions, or non-monetary benefits shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, commission or non-monetary benefit.

3) Banks and investment firms must fulfil the requirements set out in paragraphs 1 and 2 on an ongoing basis as long as they continue to pay or receive the fee, commission or non-monetary benefit.

4) Banks and investment firms must have evidence available that any fees, commissions or non-monetary benefits paid or received by the bank or investment firm are designed to enhance the quality of the relevant service to the client by:

a) keeping an internal list of all fees, commissions and non-monetary benefits received by the investment firm from a third party in relation to the provision of investment or ancillary services; and

b) recording how the fees, commissions and non-monetary benefits paid or received by the bank or investment firm, or that it intends to use, enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the bank's or investment firm's duty to act honestly, fairly and professionally in accordance with the best interests of the client.

5) In relation to any payment or benefit received from or paid to third parties, banks and investment firms must disclose to the client the following information:

a) prior to the provision of the relevant investment or ancillary service, the bank or investment firm shall disclose to the client information on the payment or benefit concerned in accordance with Article 8c(10)(a)(3) of the Banking Act. Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid by the bank or investment firm in connection with the investment service provided to a client shall be priced and disclosed separately;

b) where a bank or investment firm was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the firm shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and

c) at least once a year, as long as (on-going) inducements are received by the bank or investment firm in relation to the investment services provided to the relevant clients, the investment firm shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

6) In implementing the requirements set out in paragraph 5, banks and investment firms shall take into account the rules on costs and charges set out in Article 8c(2)(e) of the Banking Act and in Article 50 of Commission Delegated Regulation (EU) 2017/565.

7) When several banks and/or investment firms are involved in a distribution channel, each bank or investment firm providing an investment or ancillary service shall comply with its obligations under paragraph 5 to make disclosures to its clients.

8) The disclosure pursuant to Article 8c(10)(a)(3) of the Banking Act may also be in summary form and general in content in accordance with Article 8h of the Banking Act.

2. Inducements in respect of investment advice on an independent basis or portfolio management services

1) Banks and investment firms providing investment advice on an independent basis or portfolio management must:

a) return to clients any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the services provided to that client as soon as reasonably possible after receipt. All fees, commissions or monetary benefits received from third parties in relation to the provision of independent investment advice and portfolio management shall be transferred in full to the client;

b) set up and implement a policy to ensure that any fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of independent investment advice and portfolio management are allocated and transferred to each individual client;

c) inform clients about the fees, commissions or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the client.

2) Banks and investment firms providing investment advice on an independent basis or portfolio management may not accept non-monetary benefits, unless they are minor. The following benefits qualify as acceptable minor non-monetary benefits:

a) information or documentation relating to a financial instrument or an investment service that is generic in nature or personalised to reflect the circumstances of an individual client;
b) written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any bank or investment firms wishing to receive it or to the general public;
c) participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or an investment service;
d) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under subparagraph (c); and
e) other minor non-monetary benefits capable of enhancing the quality of service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with a bank's or investment firm's duty to act in the best interest of the client.

3) Acceptable minor non-monetary benefits must be reasonable and proportionate and of such a scale that they are unlikely to influence the bank's or investment firm's behaviour in any way that is detrimental to the interests of the relevant client.

4) Disclosure of minor non-monetary benefits must be made prior to the provision of the relevant investment or ancillary services to clients. Minor non-monetary benefits may be described in a generic way in accordance with point 1(5)(a).

3. Inducements in relation to research

1) The provision of research by third parties to banks and investment firms providing portfolio management or other investment or ancillary

services to clients shall not be regarded as an inducement if it is received in return for the following:

a) direct payments by the bank or investment firm out of its own resources;

b) payments from a separate research payment account controlled by the bank or investment firm, provided the following conditions relating to the operation of the account are met:

   1. The research payment account is funded by a specific research charge to the client.

   2. As part of establishing a research payment account and agreeing the research charge with their clients, banks and investment firms set and regularly assess a research budget as an internal administrative measure.

   3. The bank or investment firm is held responsible for the research payment account.

   4. The bank or investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

2) Where a bank or investment firm makes use of the research payment account as referred to in paragraph 1(b), it shall provide the following information to clients:

a) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them;

b) annual information on the total costs that each of them has incurred for third party research.

3) Where a bank or investment firm operates a research payment account, the bank or investment firm shall also be required, upon request by their clients or by the FMA, to provide a summary of the providers paid from this account, the total amount they were paid over a defined period, the benefits and services received by the bank or investment firm, and how the total amount spent from the account compares to the budget set by the bank or investment firm for that period, noting any rebate or carry-over if residual funds remain in the account. For the purposes of paragraph(1)(b) of point 1:

a) The specific research charge shall only be based on a research budget set by the bank or investment firm for the purpose of establishing the need for third party research in respect of investment services rendered to its clients.

b) The specific research charge shall not be linked to the volume and/or value of transactions executed on behalf of the clients.

4) Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in paragraph 1(b) and paragraph 2.

5) The total amount of research charges received may not exceed the research budget.

6) The bank or investment firm shall agree with clients, in the bank's or investment firm's investment management agreement or general terms of business, the research charge as budgeted by the bank or investment firm and the frequency with which the specific research charge will be deducted from the resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the bank or investment firm should have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

7) For the purposes of paragraph 1(b)(2), the research budget shall be managed solely by the bank or investment firm and shall be based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase third party research shall be subject to appropriate controls and senior management oversight to ensure it is managed and used in the best interests of the clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in paragraph 1(b)(4). Banks and investment firms may not use the research budget and research payment account to fund internal research.

8) For the purposes of paragraph 1(b)(3), the bank or investment firm may delegate the administration of the research payment account to a third party, provided that the arrangement facilitates the purchase of third party research and payments to research providers in the name of the bank or investment firm without any undue delay in accordance with the bank's or investment firm's instruction.

9) For the purposes of paragraph 1(b)(4), banks and investment firms shall establish all necessary elements in a written policy and provide it to their clients. It shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios,

including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the bank or investment firm will take to allocate such costs fairly to the various clients' portfolios.

10) A bank or investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same bank or investment firm to banks or investment firms established in the EEA shall be subject to a separately identifiable charge; the supply of and charges for those benefits or services may not be influenced or conditioned by levels of payment for execution services.

11) The provision of research by third parties to banks and investment firms providing portfolio management or other investment or ancillary services to clients is to be regarded as fulfilling the obligations under Article 8a(1) of the Banking Act if:

a) before the execution or research services have been provided, an agreement has been entered into between the bank or investment firm and the research provider, identifying the part of any combined charges or joint payments for execution services and research that is attributable to research;
b) the bank or investment firm informs its clients about the joint payments for execution services and research made to the third party providers of research; and
c) the research for which the combined charges or the joint payment is made concerns issuers whose market capitalisation for the period of 36 months preceding the provision of the research did not exceed EUR 1 billion or the equivalent in Swiss francs, as expressed by end-year quotes for the years when they are or were listed or by the own-capital for the financial years when they are or were not listed.

12) For the purpose of paragraph 11, research shall be understood as covering research material or services concerning one or several financial instruments or other assets, or the issuers or potential issuers of financial instruments, or as covering research material or services closely related to a specific industry or market such that it informs views on financial instruments, assets or issuers within that industry or market. Research shall also comprise material or services that explicitly or implicitly recommend or suggest an investment strategy and provide a substantiated opinion as to the present or future value or price of financial instruments or assets, or otherwise contain analysis and original insights and reach conclusions based on new or existing information that could be used to inform an investment strategy and be relevant and capable of adding value

to the investment firm's decisions on behalf of clients being charged for that research.

II. Assessment of suitability and appropriateness as well as reporting to clients pursuant to Articles 8a und 8d BankG and Article 27d

A. Suitability and appropriateness

1) A transaction is execution-only within the meaning of Article 8d(4) of the Banking Act if the investment service provided by the bank or investment firm only consists of execution or reception and transmission of client orders with or without ancillary services. However, this does not apply to the granting of credits or loans as specified in Annex 2 Section B(2) of the Banking Act that do not comprise of existing credit limits of loans, current accounts and overdraft facilities of clients.

2) To make use of the exemption under Article 8d(4) of the Banking Act, the following requirements must be met in addition to paragraph 1:

a) the services relate to one of the following financial instruments:
   1. shares admitted to trading on a regulated market or on an equivalent third-country market or on a multilateral trading facility, where those are shares in companies, and excluding shares in non-UCITS collective investment undertakings and shares that embed a derivative;
   2. bonds or other forms of securitised debt admitted to trading on a regulated market or on an equivalent third country market or on a multilateral trading facility, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
   3. money-market instruments, excluding those that embed a derivative or incorporate a structure which makes it difficult for the client to understand the risk involved;
   4. shares or units in UCITS, excluding structured UCITS as referred to in the Article 36(1)(2) of Regulation (EU) No 583/2010[407];

407 Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council 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 L 176, 10.7.2010, 1)

5. structured deposits, excluding those that incorporate a structure which makes it difficult for the client to understand the risk of return or the cost of exiting the product before term;
6. other non-complex financial instruments for the purpose of this section;

b) the service is provided at the initiative of the client or potential client;

c) the client or potential client has been clearly informed that in the provision of that service the bank or investment firm is not required to assess the appropriateness of the financial instrument or service provided or offered and that therefore he does not benefit from the corresponding protection of the relevant conduct of business rules; such a warning may be provided in a standardised format;

d) the bank or investment firm complies with its obligations to prevent conflicts of interest.

3) For the purpose of paragraph 2(a), a third-country market shall be considered to be equivalent to a regulated market if the European Commission has issued a decision on equivalence for the market of the third country in question in accordance with the procedure laid down under the third and fourth subparagraphs of Article 25(4)(a) of Directive 2014/65/EU.

4) The bank or investment firm shall establish a record that includes the document or documents agreed between the bank or investment firm and the client that set out the rights and obligations of the parties, and the other terms on which the bank or investment firm will provide services to the client. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

B. Reporting to clients

1) The bank or investment firm shall provide the client with adequate reports on the service provided in a durable medium. Those reports shall include periodic communications to clients, taking into account the type and the complexity of financial instruments involved and the nature of the service provided to the client and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.

2) When providing investment advice, the bank or investment firm shall, before the transaction is made, provide the client with a statement on suitability in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the retail client.

3) Where the agreement to buy or sell a financial instrument is concluded using a means of distance communication which prevents the prior delivery of the suitability statement referred to in paragraph 2, the bank or investment firm may provide the written statement on suitability in a durable medium immediately after the client is bound by any agreement, if the following conditions are met:

a) The client has consented to receiving the suitability statement without undue delay after the conclusion of the transaction.
b) The bank or investment firm has given the client the option of delaying the transaction in order to receive the statement on suitability in advance.

4) Where a bank or investment firm provides portfolio management for a client or has informed the client that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the investment meets the client's preferences, objectives and other characteristics of the retail client.

5) If a credit agreement relating to residential immovable property, which is subject to the provisions concerning creditworthiness assessment of consumers laid down in Directive 2014/17/EU[408] has as a prerequisite the provision to that same consumer of an investment service in relation to mortgage bonds specifically issued to secure the financing of and having identical terms as the credit agreement relating to residential immovable property, in order for the loan to be payable, refinanced or redeemed, that service shall not be subject to the obligations set out in Article 8d of the Banking Act and Chapter II of this Annex.

III. Best execution of client orders pursuant to Articles 8a and 8e BankG and Article 27d

A. Criteria for the best execution of client orders

1) Banks and investment firms take all sufficient steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, where there is a specific instruction from the client the bank

408 Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, 34)

or investment firm shall execute the order following the specific instruction.

2) Where a bank or investment firm executes an order on behalf of a retail client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs relating to execution, which shall include all expenses incurred by the client which are directly relating to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

3) For the purposes of delivering best possible result in accordance with paragraph 1 where there is more than one competing venue to execute an order for a financial instrument, the bank's or investment firm's own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment, in order to assess and compare the results for the client that would be achieved by executing the order on each of the execution venues listed in the bank's or investment firm's order execution policy that is capable of executing that order.

4) A bank or investment firm may not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue, otherwise this would infringe the requirements on conflicts of interest or inducements set out in Articles 8b, 8c and 8h of the Banking Act as well as Article 27c and Chapters I and III(1) of this Annex.

B. Principles for the execution of client orders

1) Banks and investment firms shall establish and implement effective arrangements for complying with Section A(1). In particular, the bank or investment firm shall establish and implement an order execution policy to allow them to obtain, for their client orders, the best possible result in accordance with Section A(1).

2) The order execution policy shall include, in respect of each class of financial instruments, information on the different venues where the bank or investment firm executes its client orders and the factors affecting the choice of execution venue. It shall at least include those venues that enable the bank or investment firm to obtain on a consistent basis the best possible result for the execution of client orders.

3) The bank or investment firm shall provide appropriate information to its clients on its order execution policy. That information shall explain clearly, in sufficient detail and in a way that can be easily

understood by clients, how orders will be executed by the bank or investment firm for the client; banks and investment firms must obtain the prior consent of their clients to the order execution policy.

4) Where the order execution policy provides for the possibility that client orders may be executed outside a trading venue, the bank or investment firm shall, in particular, inform its clients about that possibility. Banks and investment firms must obtain the prior express consent of their clients before proceeding to execute their orders outside a trading venue; such consent may be obtained either in the form of a general agreement or in respect of individual transactions.

5) Banks and investment firms which execute client orders must summarise and make public on an annual basis, for each class of financial instruments, the top five execution venues in terms of trading volumes where they executed client orders in the preceding year and information on the quality of execution obtained.

6) Banks or investment firms which execute client orders shall monitor the effectiveness of their order execution arrangements and execution policy in order to identify and, where appropriate, correct any deficiencies. In particular, they shall assess, on a regular basis, whether the execution venues included in the order execution policy provide for the best possible result for the client or whether they need to make changes to their execution arrangements, taking account of, *inter alia*, the information published under Article 8e(2) and (3) of the Banking Act and paragraph 5. Banks and investment firms must notify clients with whom they have an ongoing client relationship of any material changes to their order execution arrangements or execution policy.

7) Banks and investment firms must be able to demonstrate to their clients, at their request, that they have executed their orders in accordance with the bank's or investment firm's execution policy and to demonstrate to the FMA, at its request, their compliance with Article 8e of the Banking Act and with the provisions of Section A and of this section.

C. Handling of client orders

1) Banks and investment firms authorised to execute orders on behalf of clients shall implement procedures and arrangements which provide for the prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment firm. Those procedures or arrangements shall allow for the execution of otherwise comparable client orders in accordance with the time of their reception by the bank or investment firm.

2) Where client limit orders in respect of shares admitted to trading on a regulated market or traded on a trading venue cannot be executed immediately under prevailing market conditions, the bank or investment firm must, unless the client expressly instructs otherwise, take measures to facilitate the earliest possible execution of that order by making public immediately that client limit order in a manner which is easily accessible to other market participants. The bank or investment firm is deemed to comply with that obligation when it has transmitted the client limit order to a trading venue. The FMA may waive compliance with the obligation to make public a limit order that is large in scale compared with normal market size as determined under Article 4 of Regulation (EU) No 600/2014.

IV. Client classifications and levels of protection pursuant to Articles 8a and 8b and Annex 1 BankG as well as Article 27d

A. General provisions on the classification of clients

1) Before providing investment or ancillary services, banks and investment firms shall inform their clients of their classification and of their right to request a change of classification at any time and of the resulting change in the level of protection.

2) A change in the level of protection is permissible at the request of the client under the conditions of this chapter.

B. Professional clients

1) On request and upon examination, retail clients may be classified and treated as professional clients. As part of this examination, the bank or investment firm must undertake an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making investment decisions and understanding the risks involved.

2) In the course of that assessment, as a minimum, two of the following criteria should be satisfied:

a) the client has carried out transactions, in significant size, on the relevant markets at an average frequency of 10 per quarter over the previous four quarters.

b) the size of the client's financial instrument portfolio, including the client's bank balances, exceeds EUR 500 000 or the equivalent in Swiss francs.

c) The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

3) Clients as referred to in paragraph 1 may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

a) They must state in writing to the bank or investment firm that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product.
b) The bank or investment firm must give them a clear written warning of the protections and investor compensation rights they may lose.
c) They must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections.

4) Banks and investment firms must implement appropriate written internal policies and procedures to categorise clients. Before deciding to accept a request for waiver of the existing level of protection, banks and investment firms shall take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the requirements set out in paragraphs 1 and 2.

5) Professional clients shall keep the bank or investment firm informed about any change which could affect their current categorisation. Should the bank or investment firm become aware that the client no longer fulfils the conditions for classification as a professional client, the bank or investment firm must take appropriate action.

6) If clients have already been categorised as professional clients under parameters and procedures similar to those in Annex 1 of the Banking Act and this section, this classification shall remain in place even after these provisions enter into force.

7) Professional clients may request to be treated as retail clients if they consider that they are unable to properly assess or manage the risks associated with the investment. This must be done by written agreement, which must specify whether the higher level of protection applies to one or more services or transactions or one or more types of products or transactions between the bank or investment firm and the client.

8) Banks and investment firms may provide a higher level of protection to professional clients and eligible counterparties on their own initiative.

C. Eligible counterparties

1) Banks and investment firms authorised to execute orders on behalf of clients and/or to deal on own account and/or to receive and transmit orders may bring about or enter into transactions with eligible counterparties without being obliged to apply the provisions of Article 8a(1), Article 8b(1) and (2), Article 8c(2) to (4) and (5) to (9), Article 8d(1) to (3), Article 8e(2) and (3), and the first and second sentences of Article 8h(2) of the Banking Act as well as Chapter I Section A(1) and Section B(1)(1) and (2), Chapter II Section A and B(5), and Chapter III of this Annex in respect of those transactions or in respect of any ancillary service directly related to those transactions.

2) In their relationship with eligible counterparties, banks and investment firms must act honestly, fairly and professionally and communicate in a way which is fair, clear and not misleading, taking into account the nature of the eligible counterparty and of its business.

3) An eligible counterparty may request the exclusion of the application of paragraph 1, either on a general form or on a trade-by-trade basis.

Annex 7.2[409]

[409] Annex 7.2 repealed by LGBl. 2022 No. 273.

Annex 7.3[410]

410 Annex 7.3 repealed by LGBl. 2022 No. 273.

Annex 7.4[411]

411 Annex 7.4 repealed by LGBl. 2022 No. 273.

Annex 7.5[412]

Product intervention measures pursuant to Article 42 of Regulation (EU) No 600/2014 (Article 27d^{bis})

I. Prohibitions and restrictions

1) The marketing, distribution, or sale to retail clients of binary options shall be prohibited, provided that the binary option does not fulfil one of the following conditions:

a) the lower of the two predetermined fixed amounts pursuant to Article 27d^{bis}(2)(a)(2) is at least equal to the total payment made by a retail client for the binary option, including any commission, transaction fees and other costs related to the binary option; or

b) the binary option fulfils the following conditions:
   1. the term from issuance to maturity is at least 90 calendar days;
   2. a prospectus that has been drawn up and approved in accordance with the applicable law on securities prospectus is available to the public;
   3. the binary option does not expose the provider to market risk; and
   4. the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commission, transaction fees or other related charges.

2) The marketing, distribution or sale of contracts for difference (CFDs) to retail clients shall only be permissible under the following conditions:

a) the provider guarantees that it demands an initial margin from the retail client for the following amount in relation to the nominal value of the contract for differences:
   1. 3.33% of the notional value of the CFD when the underlying currency pair is composed of any two of the following currencies: US dollar, euro, Japanese yen, pound sterling, Canadian dollar or Swiss franc;
   2. 5% of the notional value of the CFD when the underlying index, currency pair or commodity is:

412 Annex 7.5 inserted by LGBl. 2019 No. 204 and amended by LGBl. 2022 No. 273.

aa) any of the following equity indices: Financial Times Stock Exchange 100 (FTSE 100); Cotation Assistée en Continu 40 (CAC 40); Deutsche Bourse AG German Stock Index 40 (DAX 40); Dow Jones Industrial Average (DJIA); Standard & Poor's 500 (S&P 500); NASDAQ Composite Index (NASDAQ), NASDAQ 100 Index (NASDAQ 100); Nikkei Index (Nikkei 225); Standard & Poor's/Australian Securities Exchange 200 (ASX 200); or EURO STOXX 50 Index (EURO STOXX 50);

bb) a currency pair composed of at least one currency that is not listed in point 1; or

cc) gold;

3. 10% of the notional value of the CFD when the underlying commodity or equity index is a commodity or any equity index other than those listed in point 2;
4. 20% of the notional value of the CFD when the underlying is a share or is not listed in points 1 to 3 or 5;
5. 50% of the notional value of the CFD when the underlying is a cryptocurrency;

b) the provider guarantees that it will close one or several open financial contracts for difference of the retail client under the most favourable conditions for the client pursuant to Articles 8a to 8c, 8e, 8h, 13 and 27d of the Banking Act, where the total of funds held in the CFD trading account and the unrealised net profits of all open financial contracts for difference that are associated with this CFD trading account falls below half the total amount of the initial margins, that is prescribed for all of these open financial contracts for difference (margin close-out protection);

c) the provider guarantees that the aggregate liability of a retail client for all financial contracts for difference associated with the same CFD trading account is limited to the amount of the balance in the CFD trading account (negative balance protection);

d) the provider neither directly nor indirectly grants a payment or another monetary benefit or non-monetary benefit in relation to the marketing, distribution or sale of a financial contract for difference (client incentive programmes); the aforementioned benefits do not include:

1. the realised profits of the retail client provided in relation to all financial contracts for difference; and
2. the provision of information and research tools, provided that they relate to contracts for difference; and

e) the provider neither directly nor indirectly sends a communication to the retail client for the marketing, distribution or sale of a financial contract for difference and also does not publish such information in an accessible manner for a retail client, unless the communication or information contains a risk warning pursuant to Chapter II.

II. Risk warnings

A. Risk warning conditions

1) The risk warning shall be in a layout ensuring its prominence, in a font size at least equal to the predominant font size and in the same language as that used in the communication or published information.

2) If the communication or published information is in a durable medium or a webpage, the risk warning shall be in the format specified in Section B.

3) If the communication or published information is in a medium other than a durable medium or a webpage, the risk warning shall be in the format specified in Section C.

4) By way of derogation to paragraphs 2 and 3, if the number of characters contained in the risk warning in the format specified in Section B or C exceeds the character limit permitted in the standard terms of a third party marketing provider, the risk warning may instead be in the format specified in Section D.

5) If a risk warning as specified in Section D is used, the communication or published information must also include a direct link to the webpage of the CFD provider containing the risk warning corresponding to the requirements of a durable medium and webpage provider-specific risk warning.

6) The risk warning shall include an up-to-date provider-specific loss percentage based on a calculation of the percentage of CFD trading accounts provided to retail clients by the CFD provider that lost money. The calculation shall be performed every three months and cover the 12-month period preceding the date on which it is performed ('12-month calculation period'). For the purposes of the calculation, the following applies:

a) An individual retail client CFD trading account shall be considered to have lost money if the sum of all realised and unrealised net profits on CFDs connected to the CFD trading account during the 12-month calculation period is negative.

b) Any costs relating to the CFDs connected to the CFD trading account shall be included in the calculation, including all charges, fees and commissions.

c) The following items shall be excluded from the calculation:
   1. any CFD trading account that did not have an open CFD connected to it within the calculation period;
   2. any profits or losses from products other than CFDs connected to the CFD trading account; and
   3. any deposits or withdrawals of funds from the CFD trading account.

B. Durable medium and webpage provider-specific risk warning

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **[insert percentage per provider] % of retail investor accounts lose money when trading CFDs with this provider.** You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

C. Abbreviated provider-specific risk warning

[insert percentage per provider] % of retail investor accounts lose money when trading CFDs with this provider. You should consider whether you can afford to take the high risk of losing your money.

D. Reduced character provider-specific risk warning

[insert percentage per provider] % of retail CFD accounts lose money.

E. Durable medium and webpage standard risk warning

CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. **Between 74-89% of retail investor accounts lose money when trading CFDs.**

You should consider whether you understand how CFDs work and whether you can afford to take the high risk of losing your money.

F. Abbreviated standard risk warning

Between 74-89% of retail investor accounts lose money when trading CFDs. You should consider whether you can afford to take the high risk of losing your money.

G. Reduced character standard risk warning

74-89% of retail CFD accounts lose money.

Annex 8[413]

413 Annex 8 repealed by LGBl. 2022 No. 130.

Annex 9[414]

414 Annex 9 repealed by LGBl. 2017 No. 354.

Transitional and commencement provisions

952.01 Banking Ordinance (BankV)

Liechtenstein Law Gazette

Year 1999 No. 86 published on 29 April 1999

Ordinance

of 2 March 1999

amending the Ordinance on the Law on Banks and Finance Companies (Banking Ordinance)

. . .

II.

Transitional provisions

1) The provisions set out in Articles 4 to 7a, 19 to 20, and 22 to 24m are applicable for the first time to financial years beginning after 1 January 2001. However, the provisions may be applied earlier.

2) When the accounting standards are applied for the first time, the provisions for general banking risks may be transferred directly to the legal reserves, reserves pursuant to articles of association, or other reserves.

. . .

Liechtenstein Law Gazette

Year 2001 No. 189 published on 20 December 2001

Ordinance

of 11 December 2001

amending the Ordinance on the Law on Banks and Finance Companies (Banking Ordinance)

...

II.

Transitional provisions

1) The provisions set out in Article 4 to 7a, 19 to 20, 21a(1), (2) and (3), and 22 to 24n are applicable for the first time to financial years beginning after 1 January 2001. However, the provisions may be applied earlier.

2) Articles 21a(4) and 35 are applicable for the first time to financial years beginning after 1 January 2003. However, they may be applied earlier.

3) In justified exceptional cases, the Office of Financial Services may, upon request, permit the provisions of Articles 4 to 7a or of Articles 19 to 20 or of Articles 22 to 24n or of Articles 21a(1), (2) and (3) to be applied for the first time, either individually or collectively, to financial years beginning after 1 January 2002, and all or some of the provisions referred to in paragraph 2 to be applied for the first time to financial years beginning after 1 January 2004.

4) When the accounting standards are applied for the first time, the provisions for general banking risks may be transferred directly to the legal reserves, reserves pursuant to articles of association, or other reserves.

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Liechtenstein Law Gazette
Year 2004 No. 222 published on 13 October 2004

Ordinance

of 5 October 2004

amending the Ordinance on the Law on Banks and Finance Companies (Banking Ordinance)

...

II.

Transitional provisions

1) Assets under management as referred to in point 88a of Annex 3 must be disclosed for the first time for financial years beginning on or after 1 January 2006.

2) The provisions of Annexes 4.3 and 4.4 must be implemented by 30 June 2005 at the latest within the framework of internal bank instructions and applied from 1 July 2005.

3) The provisions of Annex 4.5 must be implemented by 30 June 2006 at the latest within the framework of internal bank instructions and applied from 1 July 2006.

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Liechtenstein Law Gazette

Year 2006 No. 281 published on 22 December 2006

Ordinance

of 5 December 2006

amending the Banking Ordinance

...

III.

Transitional provisions

The transitional provisions of the Capital Adequacy Ordinance of 5 December 2006 apply to the own funds and risk distribution provisions.

...

Liechtenstein Law Gazette

Year 2007 No. 278 published on 31 October 2007

Ordinance
of 16 October 2007
amending the Banking Ordinance

...

III.
Transitional provisions

The new law shall apply to proceedings pending at the time of entry into force[415] of this Ordinance.

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415 Entry into force: 1 November 2007.

Liechtenstein Law Gazette

Year 2009 No. 255 published on 2 October 2009

Ordinance

of 29 September 2009

amending the Banking Ordinance

. . .

III.

Transitional provision

The new law shall apply to supervisory proceedings pending at the time of entry into force[416] of this Ordinance.

. . .

416 Entry into force: 2 October 2009.

Liechtenstein Law Gazette

Year 2009 No. 318 published on 15 December 2009

Ordinance

of 9 December 2009

amending the Banking Ordinance

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III.

Transitional provision

The new law shall apply to supervisory proceedings pending at the time of entry into force[417] of this Ordinance.

...

417 Entry into force: 15 December 2009.

Liechtenstein Law Gazette

Year 2011 No. 250 published on 1 July 2011

Ordinance

of 21 June 2011

amending the Banking Ordinance

...

III.

Transitional provision

Banks and investment firms must also apply the guidelines for the management of risks associated with remuneration policies and practices (Annex 4.4) to:

a) remuneration to be paid on the basis of contracts concluded before 1 January 2012 and granted or paid out after that date; and

b) remuneration granted but not yet paid out before 1 January 2012 for services rendered in 2011.

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Liechtenstein Law Gazette
Year 2014 No. 61 published on 13 March 2014

Ordinance
of 11 March 2014
amending the Banking Ordinance

. . .

II.
Transitional provisions

1) Banks must adjust their internal instructions to the new law within five months of entry into force of this Ordinance[418].

2) Points 3.2 and 6(2) of Annex 4.5 apply to new transactions, credit increases, and restructurings of usage agreements that are concluded after entry into force of this Ordinance. Credit transactions initiated before entry into force of this Ordinance may be concluded at the conditions provided for during a transitional period of five months.

. . .

418 Entry into force: 1 April 2014.

Liechtenstein Law Gazette

Year 2015 No. 17 published on 26 January 2015

Ordinance

of 20 January 2015

amending the Banking Ordinance

...

III.

Transitional provisions[419]

Repealed

IV.

Entry into force and expiry

1) This Ordinance shall enter into force on 1 February 2015, subject to paragraphs 2 and 3.

2) Article 1(2) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2013/36/EU.[420]

3) Article 38a(6) and (8) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority

419 Transitional provisions repealed by LGBl. 2017 No. 110.

420 Entry into force: 1 January 2020 (LGBl. 2019 No. 343).

(European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, 12).[421]

4) Repealed[422]

5) Article 21k(2) shall expire on 1 January 2029.

. . .

421 Entry into force: 1 October 2016 (LGBl. 2016 No. 302).

422 IV(4) repealed by LGBl. 2017 No. 431.

Liechtenstein Law Gazette
Year 2017 No. 431 published on 22 December 2017

Ordinance
of 12 December 2017
amending the Banking Ordinance

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IV.
Entry into force

1) The Ordinance shall enter into force on 3 January 2018, subject to paragraphs 2 to 4.

2) Article 1(2)(c) and (c^{ter}) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/65/EU[423] and Regulation (EU) No 600/2014[424].

3) Article 1(2)(c^{bis}) shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Commission Delegated Directive (EU) 2017/593[425].

4) Item 1.6 of Annex 7.3 shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Directive 2014/17/EU[426].

...

423 Entry into force: 3 December 2019 (LGBl. 2019 No. 318).
424 Entry into force: 3 December 2019 (LGBl. 2019 No. 318).
425 Entry into force: 3 December 2019 (LGBl. 2019 No. 319).
426 Entry into force: 1 November 2021 (LGBl. 2021 No. 332).

Liechtenstein Law Gazette
Year 2019 No. 292 published on 29 November 2019

Ordinance
of 26 November 2019
amending the Banking Ordinance

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III.
Entry into force

1) This Ordinance shall enter into force on 1 January 2020, subject to paragraphs 2 and 3.

2) Annex 1 shall enter into force at the same time as Decision of the EEA Joint Committee No 79/2019 of 29 March 2019 amending Annex IX (Financial Services) of the EEA Agreement.[427]

3) The repeal of Article 1(4) and Annex 1.1 shall enter into force at the same time as Decision of the EEA Joint Committee No 78/2019 of 29 March 2019 amending Annex IX (Financial Services) of the EEA Agreement.[428]

...

427 Entry into force: 1 January 2020 (LGBl. 2019 No. 343).
428 Entry into force: 3 December 2019 (LGBl. 2019 No. 318).

Liechtenstein Law Gazette

Year 2020 No. 341 published on 19 November 2020

Ordinance
of 17 November 2020
amending the Banking Ordinance

...

II.

Entry into force and expiry

1) This Ordinance shall enter into force on 1 December 2020.

2) It shall expire at the same time as entry into force of the Decision of the EEA Joint Committee concerning the incorporation of the Decision of the European Commission pursuant to Article 47(1) of Regulation (EU) No 600/2014 on equivalence of the legal and supervisory arrangements of the United Kingdom of Great Britain and Northern Ireland, but at the latest on 31 December 2022.

...

Liechtenstein Law Gazette
Year 2021 No. 410 published on 17 December 2021

Ordinance
of 14 December 2021
amending the Banking Ordinance

...

III.
Transitional provision

Articles 34b and 35 shall apply to outsourcing agreements concluded under the law hitherto in force at the earliest six months after the entry into force[429] of this Ordinance.

...

429 Entry into force: 1 January 2022.

Liechtenstein Law Gazette
Year 2022 No. 371 published on 16 December 2022

Ordinance
of 13 December 2022
amending the Banking Ordinance

...

IIII.
Entry into force

This Ordinance shall enter into force at the same time as Decision of the EEA Joint Committee No 249/2022 of 23 September 2022 amending Annex IX (Financial Services) to the EEA Agreement.[430]

...

430 Entry into force: 15 December 2022 (LGBl. 2023 No. 5).