

short title

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Section 93

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text**XIX. Deposit insurance and investor compensation**

Section 93.(1) Credit institutions that accept deposits subject to compulsory security pursuant to Para. 2 or perform investment services subject to compulsory security pursuant to Para. 2a must belong to the protection scheme within the framework of their professional association. If such a credit institution does not belong to the protection scheme, its authorization (license) to accept deposits subject to compulsory protection pursuant to para. 2 and to carry out investment services subject to compulsory protection pursuant to para. 2a expires; § 7 paragraph 2 is to be applied.

(2) Deposits subject to compulsory protection are:

1. Deposits pursuant to Article 1 Paragraph 1 Items 1 and 12,
2. Balances resulting from amounts remaining in an account or from intermediate positions in the context of banking transactions, to be repaid by the credit institution in accordance with the applicable legal and contractual provisions, as well as
3. Receivables that are securitized by the credit institution through the issuance of a document, with the exception of covered bonds, municipal bonds and covered bank bonds.

(2a) Investment services requiring security are:

1. The custody business (§ 1 Para. 1 Z 5),
2. trading in instruments for one's own account or for the account of a third party pursuant to Section 1 (1) no. 7 lit. b to f,
3. the Loro emission business (§ 1 Para. 1 Z 11),
4. the operational provident fund business (§ 1 Para. 1 Z 21).

Furthermore, all credit institutions of the professional association that make use of the authorization mentioned in § 1 Para. 3 to provide investment services according to § 3 Para. 2 Z 2 WAG 2007 must belong to the protection scheme.

(3) Each professional association must maintain a guarantee scheme that includes all credit institutions belonging to this professional association that are authorized to accept deposits subject to compulsory security and to carry out investment services subject to compulsory security. The security schemes are to be operated in the form of liability companies as legal entities. The guarantee schemes must include all credit institutions and

branches of credit institutions pursuant to para. 7 with the authorization to accept deposits pursuant to para. 2 or to carry out security-related investment services pursuant to para. 2a. Overall, the safeguards must ensure that, if

1. bankruptcy is opened via a member institution,
2. business supervision is ordered via a member institute (§ 83),
3. a suspension of payments is officially ordered with regard to the secured deposits of a member institution (section 70 (2), section 78) or
4. the competent authorities of the home member state of a credit institution that is also voluntarily affiliated (paragraph 7) have submitted the declaration provided for in Annex II letter b to Directive 94/19/EC regarding the non-availability of the deposits,

the deposits up to a maximum of EUR 20,000 or the equivalent in foreign currency per depositor are paid out within three months upon request and after authorization; Multiple withdrawals are only allowed when there are secured deposits in legitimate joint accounts or when eligible depositors from a legitimate account prove their entitlement. If there are deposits in an escrow account for the account of other persons, payment must be guaranteed in accordance with the rules applicable to multiple payments. Cases of social hardship and small deposits in legitimate accounts of up to EUR 2,000 are to be given priority in terms of time. If criminal proceedings within the meaning of para. 5 no. 3 are pending or if the authority (§ 6 SPG) has been informed in accordance with § 41 para. 1, the payment is to be suspended until the final conclusion of the criminal proceedings or until the authority has declared (§ 6 SPG) that there is no reason for further prosecution; the authority (Section 6 SPG) must submit this declaration to the protection scheme concerned immediately once the facts of the case have been clarified. The protection scheme is entitled to recourse claims against the bank concerned in the amount of the amounts paid and the proven costs. If one of the cases mentioned in nos. 2 to 4 occurs, the bank is obliged to provide the deposit guarantee scheme with all the information necessary for its activities, to provide documents and personnel and to enable the necessary access to IT systems. In the case of Z 1, this obligation applies to the liquidator.

(3a) The guarantee schemes must also ensure overall that if a guarantee event occurs pursuant to para. 3 or if the competent authority pursuant to Annex II letter b of Directive 97/9/EC reports the determination or decision pursuant to Art. 2 para. 2 of the directive mentioned, the claims of an investor from investment services pursuant to para. 2a up to a maximum amount of EUR 20,000 or the equivalent in foreign currency per investor at his request and after legitimacy within three months from the time at which the amount and entitlement of the claim were determined to be paid out. The provisions of paragraph 3 on joint accounts, escrow accounts, pending criminal proceedings within the meaning of paragraph

(3b) In accordance with this section, the guarantee schemes must compensate investors for claims from investment services pursuant to para. 2a that arose because a credit institution or an investment firm pursuant to Article 12 para. 1 WAG 2007 was unable to or contractual arrangements

1. To repay monies owed to or owned by investors and held for their account in connection with investment services or
2. return to investors instruments that belong to them and are held, custodial or managed on their behalf in connection with securities transactions.

(3c) Beneficiaries from investment services may, for a period of one year from the announcement of the occurrence of a security event pursuant to para. 3 or the notification from the competent authority pursuant to Annex II letter b of Directive 97/9/EC on the determination or decision pursuant to Art 2 Paragraph 2 of the said guideline register their claims with the guarantee scheme. However, the protection scheme cannot refuse compensation to an investor based on the expiry of this period if the investor was not able to assert his claim in time.

(3d) In the case of claims from credit balances on accounts which, according to the provisions of this section, can be compensated both as a secured deposit and as a claim from securities transactions subject to mandatory security, the deposit guarantee scheme must allocate these claims in accordance with nos. 1 and 2; a creditor is not entitled to double compensation because compensation is paid under both systems for one and the same claim.

1. Funds that have been entrusted to the credit institution or investment firm to purchase instruments are to be allocated to deposit protection;
2. Credit balances resulting directly from the crediting of income, sales and other settlements from securities transactions are to be attributed to the investor compensation;

3. Assets that are assigned to an investment community of a BV fund are to be attributed to the investor compensation regardless of the type of investment; the maximum amount of EUR 20,000 pursuant to paragraph 3a relates to the entitlement to severance pay or the entitlement to a self-employed provision of the individual beneficiary of the BV-Kasse in the case of company provision fund business.

(4) For claims of creditors who are not natural persons, the liability of the deposit guarantee scheme is limited to 90% of the secured deposit and 90% of the claim from securities transactions, notwithstanding the maximum amounts specified in paragraphs 3 and 3a. Deposits in an account that can be accessed by two or more persons as members of a general partnership, a limited partnership, a commercial partnership, a civil-law partnership or a company equivalent to one of these types of company under the law of a Member State or a third country are included in the calculation of the upper limit of paragraph 3 and when applying the limit of 90% combined and treated as a deposit of a depositor; this applies in the same way to credit balances and other claims from securities transactions. The guarantee scheme is entitled to offset claims for compensation against claims from the bank. Section 19 (2) KO applies to all cases of payment of secured deposits or claims from securities transactions.

(5) The following deposits and claims from securities transactions are excluded from protection by the protection scheme:

1. deposits made by other credit or financial institutions or investment firms in their own name and for their own account,
- 1a. Claims from securities transactions by other credit or financial institutions or investment firms,
2. Own fund items pursuant to Section 23 without regard to their eligibility,
3. Deposits and claims in connection with transactions as a result of which persons have been convicted of money laundering in criminal proceedings (sections 165 and 278a (2) of the Criminal Code),
4. deposits and claims of states and central governments as well as deposits and claims of regional and local governments,
5. Deposits and claims from undertakings for collective investment in transferable securities (Directive 85/611/EEC), capital investment companies and investment funds as well as deposits and claims from contract insurance companies, pension funds, pension and annuity funds,
6. Deposits and receivables from
 - a) Managers and members of statutory or statutory supervisory bodies of the credit institution or investment firm pursuant to Section 12 (1) WAG 2007 and, in the case of credit cooperatives, by their board members,
 - b) Personally liable partners of credit institutions or investment firms in the legal form of a partnership under commercial law,
 - c) Depositors and claimants who hold at least 5% of the capital of the credit institution or investment firm pursuant to Section 12 (1) WAG 2007,
 - d) Depositors and persons entitled to claims who are entrusted with the statutory control of the accounting of the credit institution or the investment firm in accordance with Section 12 (1) WAG 2007 and
 - e) Depositors and persons entitled to claims who hold one of the functions mentioned in lit. a to d in affiliated companies (§ 244 HGB) of the credit institution or the investment firm according to § 12 Para. 1 WAG 2007,
7. Deposits and claims of close relatives (§ 72 StGB) and third parties who act on behalf of the depositors or persons entitled to claim under no. 6,
- 8th. Deposits and claims of other companies that are affiliated companies (§ 244 HGB) of the bank concerned or the investment firm according to § 12 Para. 1 WAG 2007,
9. Deposits and claims for which the depositor or claimant has received interest rates or other financial benefits from the credit institution or investment firm pursuant to Section 12 (1) WAG 2007 on an individual basis that lead to a deterioration in the financial situation of the credit institution or investment firm pursuant to Section 12 Paragraph 1 WAG have contributed,
- 10 Bonds issued by the bank or investment firm in accordance with section 12 (1) WAG 2007 and liabilities from own acceptances and promissory notes,
11. Deposits and claims that are not denominated in euros, shillings, the national currency of a member state or in ECU, although this restriction does not apply to financial instruments pursuant to Article 1 Z 6

WAG 2007, as well as

12. Deposits and receivables from companies that meet the requirements for large corporations within the meaning of Section 221 (3) HGB.

(6) Pursuant to paragraphs 1 to 5, those deposits which a credit institution accepts pursuant to Section 10 in a Member State or in a branch in a third country are also protected. This also applies to claims from investment services subject to the obligation to provide security that are effected in accordance with Article 10 in a Member State or in a branch in a third country. If the deposit protection scheme or the investor compensation scheme in this Member State guarantees higher or more extensive protection of deposits or claims than the provisions of paragraphs 1 to 5, the provisions of this Federal Act shall apply exclusively to the compensation to be paid by the Austrian protection scheme.

(7) Credit institutions pursuant to Section 9 (1) which accept deposits subject to compulsory security via a branch or provide investment services subject to compulsory security pursuant to para. 2a in Austria are, provided that they are part of a deposit guarantee scheme within the meaning of Directive 94/19/EC or an investor compensation scheme in their home country within the meaning of Directive 97/9/EC are entitled to join the guarantee scheme of that professional association in addition to the deposit guarantee scheme or the investor compensation scheme of their home member state, to which they would belong according to their type of institution if they were an Austrian credit institution; if they cannot be assigned to a professional association for this reason, they can join that professional association, whose members are most similar in institution type to the credit institution in question. This supplementary affiliation only applies to deposits accepted and compulsory security investment services provided in Austria and only to the extent that paragraphs 1 to 5 guarantee higher or more extensive security for deposits or claims from investment services than the deposit guarantee system or the investor compensation system of the home member state of the credit institution. The protection scheme must oblige the voluntarily affiliated credit institutions (Article 9 (1)) to immediately make pro rata contributions in the event of a payout of secured deposits or claims from investment services. Section 93a is to be applied when determining the proportionate contributions. The voluntarily affiliated credit institution must not be placed in a worse position than an Austrian credit institution. If a voluntarily affiliated credit institution has several branches in Austria, these are to be regarded as one branch when calculating the deposits pursuant to para. 2 and claims pursuant to para. 2a and when calculating the contribution payment pursuant to Section 93a.

(7a) Investment firms pursuant to Section 12 (1) WAG 2007 which provide securities services pursuant to Para. 2a nos. 1 to 3 via a branch in Austria are defined as being part of an investor compensation scheme within the meaning of Directive 97/9/EC in their home country, entitled to join the protection scheme of that professional association in addition to the investor compensation scheme of their home member state, to which they would belong according to their type of institution if they were an Austrian credit institution; if, for this reason, they cannot be assigned to a professional association, they can join the professional association whose members are most similar to the investment firm in question in terms of the type of institution. For investment firms pursuant to Section 12 WAG 2007 that provide investment services in Austria pursuant to Section 3 para. 2 Z 2 WAG 2007 and these services do not include the holding of money, securities or other instruments, so that the provider of the services can never become a debtor to his customers in this regard, Section 78 WAG 2007 applies. The supplementary connection only applies to 1 to 3 and only to the extent that paras. 1 to 5 guarantee higher or more extensive security for claims from investment services than the investor compensation system of the investment firm's home Member State. The protection scheme must oblige the investment firms that are voluntarily affiliated to make pro rata contributions immediately in the event of a payment of secured claims from investment services. Section 93b shall apply mutatis mutandis when determining the proportionate contributions. The investment firm that is voluntarily affiliated must not be placed in a worse position than an Austrian credit institution that is comparable in terms of type of institution and business purpose. If an investment firm that is voluntarily affiliated has several branches in Austria, these are to be regarded as one branch when calculating the claims pursuant to para. 2a and when calculating the contribution payment pursuant to Article 93b. The investment firm that is voluntarily affiliated must not be placed in a worse position than an Austrian credit institution that is comparable in terms of type of institution and business purpose. If an investment firm that is voluntarily affiliated has several branches in Austria, these are to be regarded as one branch when calculating the claims pursuant to para. 2a and when calculating the contribution payment pursuant to Article 93b. The investment firm that is voluntarily affiliated must not be placed in a worse position than an Austrian credit institution that is comparable in terms of type of institution and business purpose. If an investment firm that is voluntarily affiliated has several branches in Austria, these are to be regarded as one

branch when calculating the claims pursuant to para. 2a and when calculating the contribution payment pursuant to Article 93b.

(8) Credit institutions pursuant to Paras. 1 and 7, which accept deposits subject to compulsory guarantee in Austria, have the investment-seeking public informed about the provisions of this Federal Act applicable to the guarantee of deposits and, if applicable, about the provisions of the home member state or the third country, if the deposits accepted by a branch of a foreign credit institution are secured according to the regulations of this third country. Every depositor is to be provided with information in German in writing and free of charge when establishing a business relationship via deposits subject to compulsory guarantee, at the latest upon conclusion of the contract, which contains information in an easily understandable form about the guarantee scheme to which the credit institution belongs, as well as the amount and scope of the cover. At the request of the depositor, detailed written information about the deposit guarantee can be provided to him free of charge. The obligation to hand over the above information to depositors also applies to credit institutions that accept deposits subject to compulsory security by way of the freedom to provide services.

(8a) Credit institutions pursuant to paras. 1 and 7 that carry out securities services in Austria and investment firms pursuant to para of the third country if the investment services provided by a branch of a foreign credit institution or a foreign investment firm are subject to a compensation system under the regulations of that third country. When establishing a business relationship via securities services requiring security, each investor is, at the latest when the contract is concluded, provide information in German in writing and free of charge, which contains information in an easily understandable form about the compensation scheme to which the credit institution or investment firm belongs and about the amount and scope of the cover. At the investor's request, detailed written information on investor compensation is to be provided free of charge. The obligation to hand over the above information to investors also applies to credit institutions and investment firms that provide security services by way of free movement of services. At the investor's request, detailed written information on investor compensation is to be provided free of charge. The obligation to hand over the above information to investors also applies to credit institutions and investment firms that provide security services by way of free movement of services. At the investor's request, detailed written information on investor compensation is to be provided free of charge. The obligation to hand over the above information to investors also applies to credit institutions and investment firms that provide security services by way of free movement of services.

(9) If the voluntarily affiliated credit institution fails to meet its obligations, the deposit guarantee scheme concerned must inform the FMA immediately. This must request the voluntarily affiliated credit institution to meet its obligations, while at the same time notifying the competent authority of the home member state of the credit institution. If the voluntarily affiliated credit institution does not meet its obligations despite these measures, it can be excluded from the protection scheme subject to a notice period of twelve months and with the consent of the competent authority of the home member state. The above provisions also apply to investment firms that are voluntarily affiliated. Deposits made before the date of the exclusion remain additionally protected until their maturity. Investment services rendered before the date of exclusion remain covered by the supplementary investor compensation after this date. Depositors and investors are to be informed by the deposit guarantee scheme of the cessation of the supplementary cover by means of an announcement in the Official Gazette of the Wiener Zeitung and in at least one other national daily newspaper. The excluded institution must post the fact that the supplementary cover has ceased to exist in the cash desk and clearly indicate it in its advertising and in the contract documents. Investment services rendered before the date of exclusion remain covered by the supplementary investor compensation after this date. Depositors and investors are to be informed by the deposit guarantee scheme of the cessation of the supplementary cover by means of an announcement in the Official Gazette of the Wiener Zeitung and in at least one other national daily newspaper. The excluded institution must post the fact that the supplementary cover has ceased to exist in the cash desk and clearly indicate it in its advertising and in the contract documents. Investment services rendered before the date of exclusion remain covered by the supplementary investor compensation after this date. Depositors and investors are to be informed by the deposit guarantee scheme of the cessation of the supplementary cover by means of an announcement in the Official Gazette of the Wiener Zeitung and in at least one other national daily newspaper. The excluded institution must post the fact that the supplementary cover has ceased to exist in the cash desk and clearly indicate it in its advertising and in the contract documents. Depositors and investors are to be informed by the deposit guarantee scheme of the cessation of the supplementary cover by means of an announcement in the Official Gazette of the Wiener Zeitung and in at least one other national daily newspaper. The excluded institution must post the fact that the supplementary cover has ceased to exist in the cash desk and clearly indicate it in its advertising and in the contract documents.

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(10) Credit institutions that set up branches in another Member State as a result of the freedom of establishment are entitled in the same way with regard to the deposits accepted in that Member State within the meaning of para. 7 and the investment services provided within the meaning of para. and investor compensation system. In the event of a security event pursuant to para. 3 nos. 1 to 3, the FMA shall submit to the competent authority of the host Member State the declaration of non-availability of deposits provided for in Annex II letter b of Directive 94/19/EC and (or) the declaration in Annex II letter b of Directive 97/9/EC.

(11) Advertising with membership in a deposit guarantee scheme or investor compensation scheme is only permitted insofar as it is limited to naming the guarantee scheme of which the credit institution or investment firm in question is a member.