

short title

Banking Act

announcement body

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§/Article/Annex

Section 93a

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text

Section 93a.(1) The deposit guarantee schemes shall oblige their member institutions to immediately make pro rata contributions in the event of a payout of secured deposits or compensation for secured investment services. The security schemes must take the organizational precautions that enable the immediate assessment and payment of the secured claims. If paragraph 4 does not apply, the obligation to contribute initially applies only to the member institutes of the protection scheme of the relevant professional association, without prejudice to paragraph 2. In the event of a payout of secured deposits, the contributions of the member institutes are based on the share of the secured deposits (§ 93 Para. 2 to 5) in the sum of the total secured deposits (in accordance with the relevant provisions according to § 93 Para. 2 to 5) as of the previous balance sheet date. In the case of a payment of compensation for secured investment services, the assessment is made according to § 93b. In the financial year, however, the member institutions are only entitled to a maximum of 0.93 per cent of the assessment base pursuant to Section 22 (2) plus 12.5 times the own funds requirement for the items in the trading book pursuant to Section 22o (2) nos. 1, 3 and 6 in the case of credit institutions that apply Section 22o, as of the last balance sheet date, whereby the basis of assessment pursuant to Section 22 (2) is reduced by the amounts already used multiplied by a factor of 40 in the event of multiple claims within a period of five financial years; this applies analogously to voluntarily affiliated credit institutions and investment firms pursuant to Section 93 (7) and (7a). The member institutes are also liable to the same extent for claims for damages against the guarantee scheme that have been determined by a court; this applies analogously to voluntarily affiliated credit institutions and investment firms pursuant to Section 93 (7) and (7a).

(2) If the protection scheme concerned is unable to pay out secured deposits or claims in full, the protection schemes of the other professional associations are obliged to make proportional contributions immediately to cover the shortfall. Paragraph 1 and § 93b are to be applied accordingly when measuring the shares. These protection schemes are entitled to recourse against the protection scheme concerned in the amount of the contributions paid and the proven costs.

(3) If the deposit guarantee schemes as a whole cannot pay the full payment of secured deposits (claims), the deposit guarantee scheme first affected must issue bonds to fulfill the remaining payment obligations, for which the Federal Minister of Finance can assume federal liability in accordance with special statutory authorization.

(4) In the event of withdrawal of secured deposits or claims

1. a voluntarily affiliated credit institution pursuant to Section 93 (7),

- 1a. a voluntarily affiliated investment firm pursuant to Section 93 (7a),
2. a credit institution that was licensed after June 30, 1996, or
3. a credit institution that changes professional associations after June 30, 1996,

all deposit guarantee schemes must immediately make pro rata contributions. Paragraph 1 and Section 93b shall be applied analogously to the calculation of the shares. The institutes are obliged to provide the protection scheme of their professional association with all the information it needs to fulfill this obligation. The deposit guarantee schemes are authorized to exchange the information required to fulfill their obligations with one another. Institutes pursuant to nos. 1 to 3 belong to a separate accounting group as part of their deposit guarantee scheme for a period of ten years from the time of the voluntary supplementary connection pursuant to para. 7 or 7a, the granting of a license or the change of professional association. After ten years, the affiliation to the separate accounting group expires,

(5) Para. 4 shall not apply if the responsible protection scheme decides to release the institute from the application of the ten-year period of para. 4 pursuant to para. 4 nos. 1 to 3. Credit institutions pursuant to para. 4 no. 2 can also be included in the guarantee scheme of the professional association to which the majority of the owners themselves belong, subject to the consent of a majority of the owners; in this case, the approval of the guarantee scheme of the trade association to which these owners belong is also required.

(6) Aside from the payment of deposits subject to compulsory protection (claims) in accordance with the above provisions, protection schemes can, with the consent of their member institutions, contribute to the restructuring of institutions that have got into financial difficulties. The majority requirements of § 42 paragraph 1 AO apply to the consent, with the proviso that the contributions to be paid in the event of a security claim take the place of the claims. In the case of the reorganization of institutes pursuant to para. 4 nos. 1 to 3, the approval of all guarantee schemes is required while they belong to the separate accounting group; the second sentence applies to the decision-making process within the individual guarantee schemes.

(7) All guarantee schemes must work together within the framework of an early warning system and exchange the information required for this; Para. 4 applies analogously to the provision and exchange of information. All institutes affiliated to a deposit guarantee scheme must provide it with the information required to carry out the tasks of the early warning system.

(8) The protection scheme has

1. submit their annual financial statements to the FMA and the Oesterreichische Nationalbank within six months of the end of the financial year at the latest, and
2. to report the withdrawal of an institution from the protection scheme to the FMA without delay.

(9) The guarantee schemes must cooperate with the deposit guarantee and investor compensation schemes of the Member States in accordance with Annex II of Directive 94/19/EC and Annex II of Directive 97/9/EC. Credit institutions pursuant to Section 9 (1) and investment firms pursuant to Section 12 (1) WAG 2007 which accept deposits in Austria via a branch or provide investment services subject to compulsory guarantee must provide the responsible guarantee scheme in the home Member State with all the information it needs to ensure that depositors (investors) are promptly and properly compensated.