Banking Regulation in Austria: Overview

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This Banking Regulation guide provides a high level overview of the governance and supervision of banks, including legislation, regulatory bodies and the role of international standards, licensing, the rules on liquidity, foreign investment requirements, liquidation regimes and recent trends in the regulation of banks.

Legislation and Regulatory Authorities

Legislation

1. What is the legal and regulatory framework for banking regulation?

The primary sources of banking regulatory law are AustriaSen federal laws and EU laws.

Federal Law

Relevant Austrian federal laws include the following:

- *Austrian Banking Act* (*Bankwesengesetz*) implementing the Capital Requirements Directive (2013/36/EU) (*CRD IV*) as amended by *CRD V*I ((EU) 2024/1619). The Banking Act governs (among other things) the:
    - licensing of credit institutions (Article 1) and of (mixed) financial holding companies (Article 7b);
    - freedom of establishment and to provide services within the EEA as well as cross-border demergers (Articles 9 and following);
    - authorisation of Austrian branches of third-country credit institutions (Article 4(4) and Article 5(3));
    - ownership requirements (Articles 20 and following);

- governance requirements (Articles 5, 28a, 29, 39, 39c, 39d, 42, 63a);
- rules on cover funds for gilt-edged securities (*Deckungsstock*) (Articles 66 and following);
- contractual terms such as for savings deposits (Article 31 and following), certain value date provisions and banking secrecy (Article 38);
- protection of the designations "bank" and "credit institution" (Article 94);
- special penalty provisions for banks qualifying as legal entities (Article 99d); and
- provisions facilitating whistleblowing by bank employees (Article 99g) and "naming and shaming" by the *Financial Market Authority* (FMA) (Article 99c).

- *Financial Market Authority Act* (*Finanzmarktaufsichtsbehördengesetz*) (FMABG).
- *Act on the Recovery and Resolution of Banks 2015* (*Sanierungs- und Abwicklungsgesetz*) (BaSAG) (German version only) implementing:
  - Directive 2014/59/EU (*BRRD II*I) (as amended by *Directive (EU) 2024/1174*); and
  - the Single Resolution Mechanism Regulation ((EU) 806/2014) (*SRM Regulation*) (as amended by *Directive (EU) 2024/1174*).
- *Deposit Guarantee Schemes and Investor Compensation Act 2015* (*Einlagensicherungs- und Anlegerentschädigungsgesetz) (ESAEG*) implementing:
  - the Deposit Guarantee Schemes Directive *(2014/49/EU)* (*DGSD*); and
  - the Investor Compensation Schemes Directive *(97/9/EC)* (*ICSD*).
- *Investment Firms Act 2023* (*Wertpapierfirmengesetz*) (implementing the Investment Firms Directive ((EU) 2013/2034) (*IFD*)) and the *Securities Supervision Act 2018* (*Wertpapieraufsichtsgesetz*) (SSA) implementing MiFIDII and IFD/IFR, which set out regulations on financial instruments' trading, compliance and organisation of FMA or European Central Bank (ECB) licensed credit institutions and of FMA licensed investment firms. See also Hot topics: *proposed Directive on retail investment protection* (trilogue negotiations suspended since June 2025).
- *Payment Services Act 2018* (*Zahlungsdienstegesetz*) implementing the Payment Services Directive ((EU) 2015/2366) (*PSD2*), which regulates the performance of payment services rendered, among others, by FMA or

ECB licensed credit institutions, and the *Consumer Payment Account Act* (*Verbraucherzahlungskontogesetz*) implementing Directive 2014/92/EU.
See also *Practice note, Overview of PSD2*.

- *Financial Market Money Laundering Act* (*Finanzmarkt-Geldwäschegesetz*), which stipulates statutory due diligence obligations relating to money laundering and terrorism financing.
This implements, among others, the Fourth Money Laundering Directive ((EU) 2015/849) (*MLD4*), as amended by the Fifth Money Laundering Directive ((EU) 2018/843) (*MLD5*).
The Anti-Money Laundering Authority (AMLA) Regulation ((EU) 2024/1620) (*AMLA*) entered into force on 1 July 2025 and direct supervision by the AMLA Frankfurt starts from 1 Jan 2028. The *AML Regulation* ((EU) 2024/1624) and the Sixth Money Laundering Directive (*MLD6*) ((EU) 2024/1640) must be implemented by 10 July 2027.
See Hot topics: *EU AML and CTF legislative package*.

- *Consumer Credit Act* (*Verbraucherkreditgesetz*) and the *Mortgage and Real Estate Credit Act* German version only) (*Hypothekar- und Immobilienkreditgesetz*), covering the online distribution of consumer credits and digital lending, implementing the :
    - Consumer Credit Directive (2008/48/EC) (*CCD*) (by 20 Nov 2026);
    - Consumer Credit Directive 2024 ((EU) 2023/2225) (*CCD II*); and
    - Mortgage Credit Directive (2014/17/EU) (*MCD*)

- *Covered Bonds Act* (*Pfandbriefgesetz*) (which repealed the Acts on mortgage bonds (*Pfandbriefe*), mortgage banks (*Hypothekenbanken*) and funded bank bonds (*fundierte Bankschuldverschreibungen*), following the adoption of the *Covered Bonds Directive* ((EU) 2019/2162) and the entry into force of the *Covered Bonds Regulation* ((EU) 2019/2160).
This Act enables credit institutions without a special licence to issue covered bonds in compliance with statutory requirements. Consent declarations by consumers and non-consumers are widely used in Austria to enable bank issuers to enter eligible assets (mortgage loans, substitute assets and specified derivative contracts) into the cover register.

- *Credit Servicers and Credit Purchasers Act* (*Kreditdienstleister- und Kreditkäufergesetz*) (KKG) (German version only), which entered into force on 18 March 2025, implements the *Credit Servicers Directive* (EU 2021/2167). It designates the FMA as the competent licensing and supervisory authority for credit servicers and the monitoring authority for credit purchasers. Banking secrecy relating to credit servicers was addressed in amendments under the Austrian Omnibus Act on FATF Evaluation Enhancements.

- *MiCAR Enforcement Act* (*MiCA-VVG; MiCA-Verordnung-Vollzugsgesetz*) (in force 20 July 2024):
    - implements the Markets in Cryptoassets Regulation ((EU) 2023/1114) (*MiCA* or MICAR; and

- designates the FMA as the competent supervisory authority in Austria. The FMA has, among others, published a detailed information document for preparing a Crypto-Asset Service Provider's authorisation (in German only). Starting from 30 December 2024, the provisions of the EU Regulation on Markets in Crypto-Assets (MiCA) have largely become effective. In addition, together with amendments effected by the Austrian Omnibus Act on FATF Evaluation Enhancements, consents to exemptions from the banking secrecy were facilitated and the scope of the banking secrecy was clarified relating to credit servicers.

See also:

- Hot topics: *EU Regulation on markets in cryptoassets (MiCA).*
- Practice Note: *MiCA: delegated acts, technical standards and guidelines*.

Many of the main laws are available from the English language version of the FMA's website: *https://www.fma.gv.at/en/national/supervisory-laws/*. All English translations of the German text are unofficial and are for information purposes only.

EU Law

Applicable EU laws include the following:

- Capital Requirements Regulation ((EU) 575/2013) (*CRR*), as amended by Regulation (EU) 2024/1623 (*CRR III*).

  See *Hot topics: CRR III and CRD VI*.
  The application of the CRR to Austrian credit institutions qualifying as CRR financial institutions is mandatory under the Austrian Banking Act.
  These include:

  - (mixed) financial holding companies;
  - investment holding companies;
  - payment institutions;
  - asset management companies; and
  - ancillary services undertakings and investment firms.

  It excludes companies that constitute:

  - institutions;
  - securitisation special purpose entities;

- insurance holding companies; or
- mixed-activity insurance holding companies.

- *SSM Regulation* ((EU) 1024/2013) and Regulation (EU) 468/2014 (*SSM Framework Regulation*)
- Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain cryptoassets (*WCTR*)

  applicable from 30 Dec 2024 to services rendered by payment service providers, intermediary payment service providers, crypto-asset service providers and intermediary crypto-asset service providers.
- The *Basel III framework* including CRR III and CRD VI (in effect from January 2025 (CRR III) and from 11 Jan 2027 (CRD VI).
  See: Practice note: *Basel III: overview*.

EU Law Developments

Relevant EU legislative developments affecting Austrian banking regulation include:

- Proposed amendments to strengthen EU bank crisis management and deposit insurance (CMDI) are under way.

  See Hot topics: *EU bank crisis management and deposit insurance (CMDI) reforms*.
- PSD 2 will be replaced by PSD 3 and PSR streamlining the regulatory frameworks for payment institutions and e-money institutions. An EU Commission proposal for a Financial Data Access Framework (FIDA) accompanies the revisions of PSD 2 and the introduction of the digital euro. See *Hot topics: proposed Regulation on framework for financial data access (FIDA).*
  The ECB has begun the preparation phase for the digital euro, with its introduction expected in 2026. The ECB envisages the digital euro as enhancing strategic sovereignty in EU payment transactions.
- Affordable ESG reporting obligations are being introduced (Sustainability Omnibus package). See also *Practice Note: Omnibus I: delayed application and proposal to amend EU sustainability reporting and due diligence legislation*.
  Prudential regulations of the ECB and EBA and FMA guidelines have integrated ESG risk factors into banking supervisory law which requires sustainability risks such as the following to be included and monitored in a bank's:
  - business model, business strategy (analyses), internal governance and determination of risk appetite;
  - remuneration policy;

- risk management, compliance and internal audit functions (3 lines of defence);
- data governance, data management, internal risk reporting, credit, operational, market and liquidity risk management and stress-testing;
- disclosure relating to financed scope 3 greenhouse gas emissions of the whole banking group;
- SREP capital assessment;
- fit and proper criteria for a bank's board members and key function holders; and
- procedures for granting and monitoring loans.

There are delays in CSRD reporting requirements envisaged due to the implementation of the *Omnibus I Directive* ((EU) 2025/794) by 31 December 2025 and additional exemptions from CSRD reporting requirements for companies with up to 1,000 employees expected due to the adoption of a Sustainability Omnibus Package (COM EU (2025) 81 fin).

Regulatory Authorities

2.What are the regulatory and supervisory authorities for banking regulation in your jurisdiction?

Lead Bank Regulators

These are the:

- ECB.
- Financial Market Authority (FMA).

ECB. The ECB is responsible for banking supervision in the euro zone under the Single Supervisory Mechanism (SSM) and supervises seven significant entities (SIs) and their groups and the (mixed) financial holding companies of significant banking groups in Austria in conjunction with the FMA and the *Austrian Central Bank* (*Oesterreichische Nationalbank*) (OeNB).

From 1 May 2025, seven significant groups of institutions headed by the following entities have been directly supervised by the ECB:

- Addiko Bank AG (Credit Institution)
- BAWAG Group AG (Financial Holding Company).
- Erste Group Bank AG (Credit Institution).
- Volksbank Wien AG (Credit Institution).
- Raiffeisen Bank International AG (Credit Institution).
- Raiffeisen-Holding Niederösterreich-Wien regGenmbH (Financial Holding Company)
- Raiffeisenbankengruppe Oberösterreich Verbund eGen (Financial Holding Company).

The ECB applies:

- The relevant provisions of EU and national law to significant institutions or groups of institutions (SIs).
- EU Regulations and Directives, binding Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) drawn up by the European Banking Authority (EBA) and the European Commission.
- National legislation, such as the Banking Act.

FMA. The FMA is the supervising authority for:

- Less significant banks, institutions and groups of credit institutions (micro-prudential supervision of less significant institutions (LSIs)).
- "Austrian credit institutions" qualifying as CRR financial institutions, non-class 1 investment firms, third-country branches and (mixed) financial holding companies for which the FMA is the consolidating supervisor.

The OeNB is responsible for the overall risk assessment (macro-prudential analysis) of the above institutions.

The FMA is the national competent authority (NCA) and the national designated authority (NDA) within the SSM framework (in most cases).

The FMA is also the national supervising authority for:

- Insurance companies.
- Pension funds.

- Non class 1-investment firms.
- Investment management companies.
- Payment services providers.
- Crypto-asset service providers.
- Central securities depositaries and central counterparties.
- Compliance, in relation to:
    - AML.
    - Regulation (EU) 2022/2554 on digital operational resilience for the financial sector (*DORA*); and
    - financial sanctions (from 1 Jan 2026).

The FMA must act in accordance with:

- The Banking Act and the CRR.
- The SSM Regulation.
- The BaSAG and the SRM Regulation.
- The Deposit Guarantee Scheme and Investor Compensation Act.
- Directly applicable EU law including RTS/ITS converted into Commission (Implementing or Delegated) Regulations.
- Applicable EBA guidelines and recommendations.
- The ECB's guidance.
- Due attention to financial stability, the smooth functioning of the banking system and creditor protection.

The FMA:

- Can take official measures and pass certain regulations specifying supervisory obligations of LSIs.
- Is responsible for enforcing its own administrative decisions, except for orders imposing administrative penalties.
- Is the resolution authority for Austrian LSIs and is responsible for implementing the resolution decisions of the *Single Resolution Board* (SRB), an EU agency that acts as the resolution authority for SIs.

Administrative and penal decisions of the FMA can be appealed against at the Austrian Administrative Court of first instance.

OeNB. The OeNB has no authoritative power over banking supervision (which was confirmed by the Austrian Constitutional Court to be constitutional, (*Judgment G 224/2021 et al, December 2021*). It has, however, certain powers relating to the supervision of payment and settlement systems and (by 2026) of international financial sanctions.

In its function as expert and fact-finding entity for the FMA and the ECB, the OeNB:

- Conducts on-site inspections on behalf of the FMA.
- Renders reports about on-site inspections on behalf of the ECB or the FMA.
- Provides expert opinions on risk assessment models after a bank has submitted an application for approval.

Its reports provide the basis for authoritative measures to be taken by the ECB or the FMA. Any credit institution has the right to express its opinion on the inspection report (Article 71(6), Banking Act).

Other Authorities

These include:

- **State commissioners.** These are representatives of and accountable to the FMA and have authoritative power on behalf of the FMA. They:
  - are appointed for a maximum of five years;
  - must be invited by the credit institution to company meetings and audit committees;
  - must object to resolutions that violate administrative decisions of the Federal Minister of Finance or the FMA.
  - have inspection rights and must report facts to the FMA which indicate that the institution's fulfilment of its obligations to creditors or the security of its assets are no longer ensured.

  The Minister of Finance must appoint a state commissioner and a deputy state commissioner for credit institutions with total assets of more than EUR1 billion.

- ***Oesterreichische Kontrollbank AG* (*OeKB*).** This is Austria's main provider of financial and information services to the export industry and the capital market without any authoritative powers.
  Issuers of securities and fund companies can fulfil their reporting and disclosure obligations by using the OeKB's electronic reporting platforms and prospectus storage systems.
  OeKB will also (from about 2027) take statutory responsibilities as a collection body in Austria relating to the introduction of the digital information platform "European Single Access Point" (ESAP).
  Together with the operating company, the Vienna Stock Exchange, OeKB is half-owner of the Central Counterparty Austria (CCP.A) of the Austrian Securities and Electricity Exchanges.
  Its subsidiary, OeKB CSD GmbH, is the only Austrian licensed central securities depositary pursuant to the Central Securities Depositories Regulation (Regulation (EU) 909/2014) (*CSDR*), rendering securities account maintenance services at the top tier level (central maintenance service), initial recording of securities in bank-entry systems (notary service) and the operation of a securities settlement system (settlement service).

Central Bank

OeNB. The OeNB contributes to monetary and economic policy decision making in Austria and in the euro zone. It only has authoritative power in supervising the establishment of payment systems in Austria until 1 Jan 2026 (this competence will be transferred to the FMA) in monitoring compliance of banks with international financial sanctions imposed by the UN or the EU.

The primary focus of the OeNB is safeguarding domestic financial stability and supplying high-quality, counterfeit-proof cash.

In addition, it:

- Manages reserve assets within the *Statute of the European System of Central Banks* and of the ECB, that is, gold and foreign exchange holdings.
- Prepares economic analyses.
- Compiles statistical data.
- Is active in international organisations.
- Has non-authoritative functions (fact-finding, expert role) in banking supervision (*see above*, *Lead bank regulators*).

Others

The role of external bank auditors was clarified in 2005 by the Austrian legislation. Neither contractually mandated bank auditors (which are the rule) or auditors acting as representatives of statutory auditing institutions (savings banks and co-operative banks) can become liable under Austrian national law for damages caused to the bank.

However, if such auditors act on the basis of a separate mandate granted by the FMA, the Austrian State will become liable if damages are caused directly to the bank by their acts and omissions.

Bank Licences

3. What licence(s) are required to conduct banking services and what activities do they cover?

Types of Licence

The ECB licenses Austrian CRR credit institutions including:

- Systemic investment firms in Austria and other SSM member states.
- Austrian (mixed) financial holding companies for which the ECB is the consolidating supervisor.

The scope of the licence issued by the ECB also covers regulated activities under Austrian law other than taking deposits from the public and granting credits (see below, *Regulated Activities*).

The FMA licenses:

- All credit institutions headquartered in Austria that do not qualify as CRR credit institutions and all non-class 1 investment firms (both categories qualifying as CRR financial institutions) (*see below, Regulated Activities*).
- (Mixed) financial holding companies with their head office in Austria for which the FMA is the consolidating supervisor (non-significant supervised groups), provided that at least one group member is a credit institution and more than 50% of the own funds, consolidated turnover, income or other indicators within the group can be attributed to CRR credit institutions or CRR financial institutions.
- Austrian class 1- and class 2- branches of third-country undertakings exercising core banking activities of:
  - taking deposits or other repayable funds;
  - lending; or
  - issuing guarantees or commitments in Austria.

  For the second two activities, the third-country undertaking must also qualify as a CRR credit institution if established in the EU.

(Above applies from 11 Jan 2027 at the latest.)

- Branches of third-country credit institutions exercising "regulated activities" reserved for "Austrian credit institutions" (*see below, Regulated Activities*).

Licences can be granted subject to conditions and requirements and can cover one or more types of listed transactions. The terms of the licence can also exclude individual banking transactions.

Credit institutions licensed in Austria can further provide banking services in other member states by way of the freedom to provide services or the freedom of establishment (Article 10, Banking Act).

Mixed financial holding companies registered in Austria must apply to the FMA for a special licence as a (mixed) financial holding company if they exceed specified trigger thresholds relating to the equity, consolidated assets, revenues, personnel or other indicators of a subsidiary qualifying as credit institution or financial institution. The relevant licensing procedure is comparable to that of a banking licence procedure but somewhat less burdensome (*see Timing and Basis of Decision*).

Regulated Activities

A "CRR credit institution" is defined an undertaking which takes deposits or other repayable funds from the public and grants credit for its own account (Article 4(1), CRR).

Investment firms with a balance sheet total or aggregated assets of EUR30 billion dealing on their own account or underwriting or placing financial instruments on a firm commitment basis are also CRR credit institutions ("systemic investment firms") and are therefore required to apply for a CRR banking licence once they cross the EUR30 billion threshold.

The CRR's concept of "institutions" has been changed since 26 June 2021 by eliminating investment firms (apart from systemic ones with EUR30 billion or more in consolidated assets) from this legal term. As a result, CRR investment firms generally now come under the scope of "(CRR) financial institutions".

"Austrian credit institutions" (*see Question 1*) must obtain a banking licence for financial activities carried out for commercial purposes in Austria, including one or more of the following types of business:

- Deposits.
- Current accounts.
- Lending.
- Discounting.
- Custody.
- Issue and administration of payment instruments.

- Foreign exchange, money market instruments; futures, options and swaps; transferable securities and other derivative instruments.
- Commodity derivatives.
- Guarantees.
- Issue of covered bonds.
- Issue of other bonds (than covered bonds) for investing their proceeds in any other banking transactions.
- Securities and derivatives underwriting, placement and issuance support.
- Building savings and loans.
- Managing investment funds.
- Managing real estate investment funds.
- Capital financing.
- Factoring.
- Money brokering transactions on the interbank market.
- Brokerage transactions relating to banking deposits, lending, guarantees and foreign exchange.
- Severance and retirement funds.
- Purchase and sale of forex and of traveller's cheques.

Austrian credit institutions can apply for limited licences that cover only some of the above banking transactions. Any Austrian licensed credit institution is also generally authorised to render specified investment services and payment services, trade in gold bullion and provide data reporting services (under the SSA).

Licensed Austrian credit institutions do not require an additional investment firm or payment institution licence to perform specified investment services and payment services, as this is included in the scope of their statutory licence.

Entities not licensed as credit institutions must apply for:

- A CRR credit institution licence (firms class 1) issued by the ECB, if trading on their own account or underwriting or placing financial instruments on a firm commitment basis and having EUR30 billion or more consolidated assets.
- An investment firm (class 1 minus) licence if:
    - they provide any of the two above activities or services; and
    - have EUR15 billion or more in consolidated assets.

      Those with assets of between EUR5 billion and EUR15 billion are subject to supervision in line with CRR and CRD requirements, if covered by a pertaining decision of a competent supervisory authority.

  This licence is issued by the FMA in line with the Investment Firms Regulation ((EU) 2019/2033) (*IFR*) and the Investment Firms Act 2023, and the SSA.
- Sufficiently small and non-interconnected investment firms (class 3) and investment firms not falling in any of the other categories (class 2) and providing any of the investment services or activities listed in section 3(2) of the SSA only require an investment firm licence issued by the FMA (see above paragraph). Activities permitted on the basis of a class 2 or 3 investment firm licence in Austria now include all nine investment services and the ancillary services listed in Annex I of the *MiFID II Directive* (2014/65/EU), the Investment Firms Act 2023 and other laws).
- Entities not licensed as credit institutions must apply for a payment institution licence if providing any of the payment services listed in the Payment Services Act 2018.
- The provision of account information services as a single payment service rendered by a non-credit institution only requires registration with the FMA.
- Licensing by the FMA under MiCAR is further required (from 1 Jan 2025) for the provision of services by crypto-asset service providers (CASPs), but there are in line with MiCAR lighter enabling rules (notification requirements) for:
    - licensed credit institutions;
    - investment firms;
    - AIFMs;
    - UCITS management companies;
    - central securities depositaries; and

- market operators (operating regulated markets, MFTs or OTFs) providing crypto-asset services.

See also *Practice note, EU Capital Requirements Regulation (CRR).*

4. What is the application process for bank licences?

Application

The licensing process for a CRR credit institution (both SIs and LSIs, see *Question 2*) is as follows:

The main documents to be examined by the FMA/ECB are the:

- Application(s) for authorisation of a credit institution that must be structured in line with:
  - Commission Delegated Regulation (*EU) 2022/2580*; and
  - the ECB's revised guide to assessment of licence applications (2019) and its guide to assessment of Fintech credit institutions licence applications (2018).
- Programme of operations and business plan, which must also reflect the EBA's and the ECB's requirements referred to in the above documents.

Receipt of the application is confirmed in a pre-application discussion phase before the application is formally submitted. The FMA, co-operating with the ECB, usually requests more information before confirming completion of the application. A 12-month assessment period runs from the confirmation date, at the end of which the ECB must issue a formal authorisation decision. ECB experts must be involved by the FMA at an early stage of this process.

The FMA assesses the application on the basis of the conditions in the Banking Act. If it considers that the application complies with CRD IV and Banking Act requirements, it prepares a draft decision and sends it to the ECB for a final decision.

The ECB conducts its own assessment of the application based on the FMA's draft decision, and makes a final decision which is then notified to the applicant.

Licensing applications for Austrian non-CRR credit institutions (CRR financial institutions apart from financial holding companies and class 1 investment firms) or Austrian branches of non-EU-based and non-EEA-based (CRR and non-CRR) credit institutions are conducted entirely by the FMA.

A link to the contact form for legal enquiries about business models can be found *here*.

Requirements

Austrian non-CRR credit institutions and branches of foreign non-EU-based credit institutions must obtain a licence from the FMA (Article 4(1)(a), SSM Regulation). The ECB also verifies that the requirements under Austrian law are fulfilled.

Credit institutions must enclose the following information and documents with their applications:

- Place of establishment and legal form of business organisation.
- Articles of association.
- Business plan for the first three years together with a budget calculation, and if the application includes an application to receive deposits, the forecasted level of covered deposits.
- Initial capital.
- Identity and amount contributed by shareholders with a qualifying participation in the credit institution.
- Identity and the amount contributed of the 20 largest shareholders, as well as an indication of the group structure if those shareholders belong to a group of companies (if none of the owners holds a qualifying participation).
- Identities of the designated executive directors and their qualifications for operating the undertaking.
- Identities and addresses of agents.

The licence will be issued by the FMA (or the ECB for CRR credit institutions) if the:

- Undertaking is to be a joint-stock company (including a *societas europea*) (SE), a co-operative society or a savings bank.
- Articles of association do not contain any provisions which fail to ensure the security of the assets and the proper execution of transactions under the Banking Act (Article 1(1)).
- Capital, liquidity and solvency of the institution will prospectively be sufficient.
- Internal organisation (risk management, compliance, audit) will be compliant.
- Persons that hold qualifying participations (more than 10% of the share capital or voting rights) meet prudent requirements and are "suitable shareholders" (if there are no qualifying participations, then the 20 largest stakeholders).
- FMA is not prevented from fulfilling:

  - its supervisory duties because of the institution's close links to other natural or legal persons (this includes the prevention of non-transparent group structures); or
  - its monitoring duties by the laws, regulations or administrative provisions of a third country.
- Initial capital or initial endowment amounts to at least EUR5 million and is freely available to the directors without restrictions or charges in Austria.
- Directors (and key function holders) or members of the supervisory board (SB) are financially sound and not subject to criminal charges or convictions or bankruptcy proceedings.
- Directors and some key function holders like the head of risk management, the head of banking compliance, the AML responsible officer and the head of investment services compliance, are sufficiently fit and proper to operate the institution and the members of the SB have sufficient professional qualifications and experience to exercise their function.
- Directors commit sufficient time to perform their functions and none has another main profession outside the banking industry or outside insurance undertakings or pension funds. At least one director must speak German.
- Centre of at least one director's interests is in Austria.
- Institution has at least two directors and the articles rule out individual powers of representation and powers of attorney for the entire business operation or, in credit co-operatives, the management of the business is restricted to the directors.
- Place of establishment and the head office of the credit institution is located in Austria.
- Adequate programme of operations.

In practice, the most important criteria assessed by the FMA and by the ECB are:

- Programme of operations, business plan for the first three to five years and risk profile.
- Governance (fitness and propriety of board members, of key function holders and of qualifying direct and indirect shareholders (see Annexes I and II to Commission Delegated Regulation (EU) 2022/2580).
- Amount, quality, origin and composition of the applicant's capital, expected capital at authorisation and reliably available future capital resources, adequacy of internal capital and liquidity.
- Compliant internal organisation (risk management, compliance, audit, and AML officer) and structure (IT organisation and outsourcing requirements).

Foreign Applicants

Special licensing requirements for foreign non-EU applicants under the Banking Act include the following obligations:

- There must be at least one director whose interests are based in Austria and one that is competent in German.
- The FMA/ECB must not be prevented from its supervisory functions by third-state legal provisions of a person/entity having close relations with the credit institution (which includes non-transparent group structures).
- There must be a duly licensed intermediate EU parent company/financial holding company if the applicant belongs to a third-state group where at least another CRR credit institution is a member.

These also apply to subsidiaries of foreign banks.

See *Question 12* for the rules for direct or indirect non-EU, non-EEA and non-Swiss acquirers of shareholdings in Austrian licensed banks that qualify as "critical infrastructure".

A foreign (non-EU and non-EEA headquartered) credit institution (whether or not qualifying as CRR credit institution) that applies for a licence to operate a branch in Austria must enclose the following (in addition to the information listed above):

- Last three annual financial statements of the undertaking.
- Transactions conducted by the foreign undertaking, as well as the locations at which those transactions are conducted.
- Amount in euros of the initial capital dedicated to the Austrian branch and freely available to the directors without limitations or charges in Austria.
- Decision-making powers granted to the management of the branch, as well as those of the head office whose consent is required for certain internal decisions.
- Written declaration from the supervisory authority responsible for the undertaking's head office stating that it has no objections to the establishment of a branch of this undertaking in Austria.

This regime will be strengthened in line with the implementation of the “third-country branch” rules under CRDVI in 2027.

Timing and Basis of Decision

CRR financial institutions qualifying as Austrian credit institutions. The granting of a licence is declared by the FMA in a written administrative decision. The procedure lasts between six and 12 months and may in exceptional cases take longer (for example, if additional information is requested).

Licences can be subject to appropriate conditions and requirements and limited to one or more of the types of transactions listed in the Banking Act (Article 1(1)) and can exclude parts of individual types of transactions.

CRR credit institutions including systemic (class 1) investment firms. The application procedure lasts between six and 12 months (calculated from confirmation of completed information issued by the FMA/ECB). The licence issued by the ECB may be subject to conditions and requirements and limited in scope. If an application is (partly) rejected or conditions are imposed, it becomes subject to a hearing procedure.

Before issuing or notifying a licence to a credit institution, the FMA/ECB must consult the OeNB and notify the Federal Ministry of Finance. If the licence application includes the authorisation to accept deposits subject to guarantee obligations or to provide investment services subject to compensation obligations, the FMA/ECB must also consult the relevant protection schemes before issuing the licence (*see Question 16*).

Every credit institution licensed in Austria must belong to a trade association and be a member of a protection scheme if it takes deposits or provides certain investment or banking services.

The ECB and the FMA both have the power to withdraw a licence.

The FMA/ECB must inform the EBA of any grant or withdrawal of a licence and it must inform the European Commission, the EBA and the European Banking Committee (EBC) without delay of any approvals of branches which are granted to credit institutions established in a third country (*see above, Foreign Applicants*).

Financial holding companies. The granting or withdrawal of a licence to a financial holding company with its head office in Austria for which the FMA is the consolidating supervisor is declared by the FMA by written administrative decision. The procedure is similar to that of granting a banking licence (but less onerous) and lasts a maximum of six months on the complete filing of all application documents with the authority.

There are special rules governing the co-ordination procedure between the FMA and the consolidating supervisory authority, if the FMA is not the consolidating supervisory authority of the group.

Licences for financial holding companies in Austria for which the ECB is the consolidating supervisor (significant supervised group) are granted by the ECB.

Third-country branches. From 1 Jan 2027, the existing authorisation requirement for any banking activity exercised by an Austrian branch of a third-state undertaking (Article 4(4), Banking Act) will be aligned to the CRD VI authorisation regime for class 1- and class 2- branches of specified third-country undertakings in Austria (*see Question 3, Types of Licence*).

Cost and Duration

The FMA fees are as follows:

- Issuing a licence: EUR10,000.
- Administrative decision fee: EUR100.
- Extension fee: EUR2,000.

The costs of the licence proceedings also depend on whether the applicants engage a lawyer. There are also annual ongoing costs for supervision by the competent supervisory authority prescribed by FMA decrees.

In addition, the ECB charges annual supervisory fees to all CRR credit institutions in Austria, and significant banks must pay a higher supervisory fee than less significant banks.

A "stability tax" applies to Austrian licensed banks and Austrian branches of EU banks with a balance sheet total of more than:

- EUR300 million that amounts to 0.033% of the taxable base.
- EUR20 billion that amounts to 0.041% of the taxable base.

They must pay an additional tax of 0.050% of the balance sheet total and of 0.061% of the exceeding calculation basis if the balance sheet total exceeds EUR20 billion (for 2025 and 2026).

5. Can banks headquartered in other jurisdictions operate in your jurisdiction on the basis of their home state banking licence?

CRR credit institutions authorised in an EU member state can conduct the activities listed in Annex I of CRD IV in Austria through a branch or by means of the freedom to provide services, provided that their authorisation permits this (Article 1a(1), paragraph 1, Banking Act).

CRR credit institutions authorised in an EEA member state can also provide cross-border activities through a branch (freedom of establishment) or under the freedom to provide services. The intention to conduct cross-border banking activities on either basis must be notified to the respective supervisory authority.

There are supplementary rules in the SSM Framework Regulation for CRR credit institutions located in or outside eurozone member states but within the EU or the EEA.

Branches of non-EU and non-EEA based banks cannot rely on the single licence principle. The establishment of such branches on Austrian territory requires an application for a licence to be submitted to the FMA where the licensing criteria are comparable to the foundation of an Austrian subsidiary qualifying as credit institution.

There is an exemption from the banking licensing requirement for the provision of cross-border banking services supplied exclusively on request by an Austrian customer. This exemption has been narrowed by an extensive interpretation by ESMA concerning the cross-border provision of investment services to EU residents under MiFID II (*ESMA35-43-349, Chapter 13*).

Organisation of Banks

Legal Entities

6. What legal entities can operate as banks?

Credit institutions can conduct their business as a corporation (*Kapitalgesellschaft*) such as a:

- Limited liability company (GmbH).
- Flexible company (FlexKapG).
- Stock corporation (AG).
- European public company (SE).
- Co-operative society (*Genossenschaft*).
- European cooperative society (SCE).
- Savings bank.

Credit institutions cannot be established in the corporate form of joint partnerships (*OG*), limited partnerships (*KG*) or sole proprietorships.

Member state credit institutions are entitled to provide their services in Austria either by establishing a branch (freedom of establishment) or under the freedom to provide services.

The most usual legal form to operate even small Austrian banks is the AG due to its ideal interplay between:

- Corporate governance exigencies (for example, mandatory SB committees).
- Minimum regulatory and organisation requirements.
- Internal and external capital financing opportunities.
- Internal control and organisation system demands.
- Potential integration into an existing corporate group structure.

Limited liability companies are suitable only for banks with special restricted licences such as asset management companies of UCITS and AIFs, which do not need to approach the share capital markets.

7. What requirements apply to the structure of banking groups?

The Austrian banking regulatory requirements conform to the EU framework including the CRR and CRD IV. The Austrian rules on removing impediments to the resolvability of resolution groups also conform to the EU framework including the BRRD and the SRM.

An intermediate EU parent financial holding company or EU parent credit institution must be established where there are supervisory concerns on a group structure with an ultimate parent company outside the EU.

The resolution authority can also require an entity or parent undertaking to set up a parent financial holding company in the EU or an EU parent financial holding company to remove potential impediments to group resolution.

Other regulatory tools include the:

- Suspension of voting rights held by financial holding companies or by credit institutions.
- Administrative instruction to transfer participations in CRR credit institutions or CRR financial institutions to the owners of these entities.
- Orders to:
    - transfer or reduce participations in credit institutions; and
    - immediately comply with group-related supervisory requirements.

The restrictions on foreign shareholdings in banks and the group-related licensing requirements also apply (*see Question 4, Requirements, and Question 13*).

Licensed credit institutions must have their place of establishment and head office in Austria and licensed financial holding companies must have their seat and registration within Austria.

Austria also applies the EU and UN sanctions regimes through implementing laws and has transposed MLD5 into its national laws.

Governance

8. What are the governance and organisational requirements for banks?

Governance rules of corporate bodies depend on the chosen corporate form.

For example, an Austrian stock corporation has three corporate layers:

- Shareholders' meeting.
- Supervisory board (SB) (two-tier system).
- Management board (MB).

The annual shareholders' meeting elects the SB for a maximum five-year term, but can terminate this appointment by a qualified majority (or simple majority if enabled by the articles of incorporation). A minority of 10% can petition a court to remove members from office for good cause. The SB elects a chairperson for a maximum five-year term, although it can call for their early resignation for good cause (such as violation of duties or a vote of no confidence).

The MB is solely responsible for running the company and not subject to instructions by the annual general meeting nor by the SB (duty to act independently for MB members). It is also responsible for compliance, risk management, independent audit and AML/TF monitoring. Group interests are usually enforced towards MB members of stock corporations by:

- The SB's right of nomination and revocation of MB members.
- Majority resolutions taken by the shareholders' meeting.

Under the Banking Act, MBs of credit institutions whose total assets exceed EUR1 billion or which have transferable securities listed on a regulated market must establish an audit committee to supervise the:

- Audit and issuance of financial statements.
- Internal control system, audit function and risk management system.

The MBs of credit institutions whose total assets exceed EUR5 billion (credit institutions of significant relevance) (CISR) must establish at least the following committees within their SB:

- **Nomination committee**. This committee proposes appointments of the members of the management body before the external (FMA/ECB) "fitness and propriety" procedure is applied.

- **Remuneration committee.** It supervises the remuneration policy, practices and incentive structure with the purpose of controlling, monitoring and limiting risks and drafts decisions on remuneration by the SB.
- **Risk committee.** The risk committee must advise the management body on the risk strategy and other risk matters.

The Banking Act requires a minimum number of "formally independent" SB and committee members in Austrian licensed banks (see Article 28a (5b), Banking Act). A CISR must comply with the following requirements:

- At least two "formally independent" SB members must be appointed [Article 28a (5a), Banking Act].
- At least the chairperson and the remuneration expert within the remuneration committee must be "formally independent". There are stricter independence requirements for remuneration committees in SIFIs (O-SIIs) under the EBA guidelines on sound remuneration policies.
- At least the chairperson and the accounting/audit expert as well as the majority of members of the audit committee must be independent by, among others, complying with a three-year blocking period after previous occupations.
- Two "formally independent" members must be appointed for the risk committee. There are stricter independence requirements for committee members of the risk committee of SIFIs (O-SIIs), where the majority of the members and the chairperson must meet the formal independence criteria (Article 28a (5b), Banking Act).
- No independent member requirement exists for the nomination committee.

9. What is the supervisory regime for key individuals within banks?

Key function holders are employees of a credit institution who are not members of the MB or SB that exercise a significant influence on the business activities of a credit institution . They comprise:

- The heads of internal control functions which are:
  - risk management;
  - Banking Act compliance;
  - MiFID compliance;

- internal audit; and
- AML compliance.

- The chief financial officer (if not member of the MB).
- Any head of an important business activity.
- Any head of a significant branch.
- The managers responsible for the group's subsidiaries.

(Article 3(1)(9a) CRD IV (as amended by Article 1(2)(c), *CRD VI*)); FMA Circular on Fitness and Propriety of Management Board Members, Supervisor Board Members and Key Function Holders (FMA Circular 03/2023 dated 18 March 2023).)

Key function holders:

- Must be assessed for their fitness and propriety in performing key functions within the credit institution.
- Can, at the FMA's discretion, be invited to pass a fit and proper test.

The appointment of and changes to the following key function holders in Austrian licensed CISR must be notified to the FMA before they start their activities:

- Head of risk management.
- Head of Banking Act compliance.
- Head of MiFID-compliance.
- Head of AML-compliance.

The appointment of and changes to the head of internal audit function in any Austrian credit institution must be notified to the FMA in advance.

The fit and proper assessment for heads of internal control functions is carried out by the credit institutions based on criminal records, the CVs of the candidates and a check on their conflicting interests.

The appointment and/or change in person can be prohibited or rejected by the FMA.

10. Do any specific remuneration requirements apply to bank employees?

Credit institutions must generally have a remuneration policy and practices.

Requirements for the remuneration policies and practice of any credit institution licensed in Austria and of any Austrian branch of a foreign credit institution are set out in the Banking Act (Articles 39, 39b and the Annex to Article 39b).

Requirements for remuneration policies and practice of investment firms licensed in Austria are set out in the Investment Firms Act 2023 (Articles 21ff and Annex to Article 21).

The remuneration rules for licensed investment firms under the Investment Firms Act 2023 differ from those for licensed credit institutions.

Under the Sustainable Finance Disclosure Regulation (*SFDR*) ((EU) 2019/2088), sustainability risks and ESG criteria must also be considered in the remuneration policy (which must be established on a gender-neutral basis).

Other rules and guidelines governing remuneration policies and practices are found in:

- FMA's Circular on Principles of Remuneration Policy and Practices 05/22, dated 15 June 2022.
- Annex REMBM to FMA's VERA Regulation reflecting remuneration reporting obligations of banks to the OeNB.
- EBA guidelines, recommendations and technical standards such as the:
  - Guidelines on Sound Remuneration Policies dated 2 July 2021; and
  - Guidelines on Remuneration Policies and Practices related to the sale and provision of retail banking products and services dated 28 September 2016.
- Sectoral ESMA remuneration guidelines applying to mutual funds management companies (UCITS) and Alternative Investment Funds management companies (AIFMs) that are subsidiaries of Austrian licensed credit institutions.

The credit institution's SB (or remuneration committee) must examine, approve, monitor and implement the policy. For an Austrian CISR, a special remuneration committee must be installed (*see Question 8*). The MB, however, remains responsible for implementing remuneration policies.

Remuneration policies must differentiate between principles applying to all employees and those which apply to specific groups of employees only, such as MB members, risk takers and staff engaged in control functions ("identified staff").

"Material risk-takers" in any credit institution must be identified (Delegated Regulation *(EU) 2021/923*) and include:

- MB and SB members and employees with higher management tasks.
- Employees with management tasks in internal control functions and substantial business areas.
- Any employee whose remuneration is at least EUR500,000 and equals the average remuneration of the MB and SB members.
- Employees with a higher management role whose activities have a material impact on the risk profile of the business area in which they perform.

(Article 39b(2), Banking Act.)

SIFIs (O-SIIs) and small, non-large or non-complex institution are excluded from categorisation under the CRD.

Prudential Requirements

11. What are the prudential requirements for banks?

The Austrian prudential requirements for banks do not substantially diverge from the Basel framework, reflecting the EU framework for banking regulation underpinned by the CRR, CRD, BRRD including TLAC and the SRM Regulation.

Changes to the BRRD and the SRM Regulation are expected through the proposal for a CMDI package, while Basel 3.1 (CRR III) took effect in the EU on 1 Jan 2025 (*see Question 1*).

Capital Requirements

Minimum capital requirements of credit institutions are regulated by Article 92 of the CRR.

Credit institutions must at all times satisfy the following own funds requirements:

- Common Equity Tier 1 capital ratio of 4.5% of the risk-weighted assets (RWA) and other positions.
- Tier 1 capital (Common Equity Tier 1 and Additional Tier 1 capital) of 6% of RWA.
- Total capital ratio of 8% of RWA (attributable Tier 2 capital is currently limited to:

  - 30% of Tier 1 capital for qualifying holdings outside the financial sector; or
  - 0% of Tier 1 capital for large exposure purposes.
- Mandatory leverage ratio of 3% of the total risk exposure amount (TREA) in Tier 1 capital applies for any CRR credit institution. G-SIIs must in addition apply an additional leverage ratio buffer of half of the G-SII buffer (*see below*).

The introduction of capital buffers by the CRD has been transposed into Austrian law (Articles 23 to 23f, Banking Act).

The capital conservation buffer of 2.5% of RWA applies by virtue of Austrian law to any credit institution licensed in Austria.

The following additional capital buffers can individually be prescribed by the FMA:

- Countercyclical capital buffer of up to 2.5% of RWA generated in the respective EU member state (currently 0% for RWA generated in Austria).
- Systemic risk buffer on a consolidated basis for twelve Austrian institutions' groups and ten Austrian credit institutions having to comply on a non-consolidated basis in addition (between 0.5% and 1% of RWA in 2025).
- Buffer for global systemically important institutions (G-SII buffer, not relevant in Austria).
- Buffer for other SIIs:
  - 0.45% to 1.5% of RWA on a consolidated basis for seven Austrian institutions; and
  - 0.45% to 1.75% on a solo basis for eight Austrian institutions.

The systemic risk buffer and the O-SII buffer must be applied cumulatively, but if a cumulated buffer ratio of 5% of RWA is exceeded, this triggers a consent requirement by the EU Commission.

These buffers mainly:

- Act as a better absorption of losses by institutions in times of crisis.
- Purport to reduce pro-cyclical effects due to the economy of a member state.
- Envisage reducing systemic risks that could affect the entire economy of a member state.

The FMA/ECB in practice additionally impose bank-specific Supervisory Review and Evaluation Process (SREP) Guidance (P2G), reflecting their additional individual capital expectations for SREP compliance reasons.

Non-compliance with additional individual capital expectations issued by the FMA/ECB (P2G) will not trigger restrictions on the distribution of profits or any other supervisory measures, as opposed to the violation of buffer or Pillar 2 requirement (P2R) ratio or minimum requirement for own funds and eligible liabilities (MREL) requirements.

Bank specific SREP buffers (P2R) can individually be imposed by the FMA/ECB to cover additional risks identified in Pillar 2 as SREP capital add-on. The "SREP capital add-on" must be composed of up to:

- 25% Tier 2 capital.
- 18.75% Additional Tier capital.
- 56.25% Common Equity Tier 1 capital.

Violations of P2R can trigger supervisory sanctions similar to the violation of capital requirements in Pillar 1.

See *Question 15* for MREL quotas and minimum subordination requirements.

Liquidity Requirements

The mandatory liquidity coverage ratio (LCR) required to counterbalance short-term liquidity needs in stress scenarios in Austria is calculated by dividing the sum of liquid assets by the net fund outflow under gravely stressed conditions over 30 days.

The net stable funding ratio (NSFR) is calculated by dividing the sum of stable funding instruments by the requirement for net stable funding instruments for long-term debt of one year under both normal and stressed conditions.

For small and non-complex credit institutions and investment firms (having, among others, total assets of up to EUR5 billion), a simplified NSFR applies.

The liquidity related reporting requirements continue to apply. There are no special requirements for G-SIIs.

Leverage Requirements

The Basel III leverage ratio was introduced into EU legislation by the CRR.

A mandatory leverage ratio of 3% calculated as the banks' Tier 1 capital measure divided by its total exposure applies.

For G-SIIs, an additional leverage ratio buffer requirement of half of the G-SII-buffer calculated on their total exposure applies.

Shareholdings/Acquisition of Control

12. What requirements or restrictions apply to the acquisition of shareholdings and of control of banks?

Shareholdings

Anyone wishing to acquire or dispose of (directly or indirectly) a participation of 10%, or to increase or decrease a qualified participation by reaching a 20%, 30% or 50% threshold of voting rights or capital in an Austrian licensed credit institution (including CRR financial institutions not qualifying as CRR credit institutions), must inform the FMA in advance (Banking Act).

The thresholds include investors acting together.

They must file with the FMA an ownership control notification including around 50 attachments, and obtain a non-objection decision from the ECB.

The FMA/ECB has 60 days from confirming receipt of a complete set of documents to decide whether to allow or prohibit the action or to abstain from issuing any statement. Once the 60-day period has elapsed, the acquisition can be closed.

The FMA/ECB assesses the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in terms of reputation, financial soundness, effective supervision and money laundering risk, among others.

The credit institution itself must also notify the FMA of the ownership change, but only after closing.

Additional approval by the Minister for Digital and Economic Affairs is required for the acquisition of direct or indirect holdings of 25% and 50% in the voting rights of Austrian undertakings of critical infrastructure (including banks, see *Question 13*) (*Foreign Investment Screening Act* (*Investitionskontrollgesetz) (InvKG*)).

Other reporting requirements include the following:

- Articles 130 and following of the *Stock Exchange Act* (*Börsegesetz* 2018 (*BörseG*)) governing notification obligations of purchasers and sellers of shares in a stock corporation having its registered seat and listed on a regulated market in Austria.
- Transparency Regulation (*Transparenz-Verordnung 2018*) which details investor's transparency obligations under the BörseG.
- SSA (Article 14 and following) which governs certain reporting obligations in connection with the acquisition of shares in investment firms.
- Regulation on the Control of Ownership (*Eigentümerkontrollverordnung 2016*) which provides pre-closing transparency obligations in terms of investments in Austrian licensed credit institutions, investment firms, insurance undertakings, payment institutes and e-money-institutes.
- *Takeover Act* (*Übernahmegesetz* 1998 *(*ÜbG*)*) setting out notification obligations in connection with takeover transactions in targeted Austrian stock corporations listed on an Austrian or EU regulated market.

Non-compliance with reporting obligations can result in administrative sanctions and usually results in a suspension of voting rights.

Takeovers/Mergers

Additional legal restrictions are required for bank takeovers and mergers. Generally, a cross-border merger or merger of entirely national credit institutions requires special approval by the FMA to be valid (Article 21, Banking Act).

Special FMA approval is required for:

- Mergers of (CRR) credit institutions where an Austrian licensed credit institution is involved.
- Reaching, exceeding or falling below the thresholds of 10%, 20%, 33% and 50% of the voting rights or capital of a credit institution or CRR credit institution domiciled in a third country.
- Any change in the corporate form of a credit institution.
- Demerger of (CRR) credit institutions where an Austrian licensed credit institution is involved.
- Merger of Austrian licensed credit institutions with non-banks.

If such transactions are attempted without special approval, administrative sanctions can be imposed by the FMA and the transaction becomes legally ineffective.

Banks can make minority or controlling investments in other banks, however subject to compliance with consolidated supervision, minimum own funds, liquidity, large exposure and other CRR requirements. Minority or controlling investments in qualifying holdings in companies outside the financial sector by banks are subject to the additional restrictions in Article 89 and following of the CRR. Qualifying holdings in banks by companies not belonging to the financial sector are subject to the ownership notification procedure permitted.

Financial holding companies are subject to the licensing procedure set out in *Question 4* which also applies to non-class 1 investment firms exceeding the EUR30 billion assets threshold, which must apply for a CRR credit institution licence.

13. Are there specific restrictions on foreign shareholdings in banks?

The Foreign Investment Screening Act introduced a foreign direct investment (FDI) screening mechanism in line with the *FDI Screening Regulation* (EU) 2019/452.

Approval from the Minister for Digital and Economic Affairs must be sought by any non-EU, non-EEA and non-Swiss buyer of:

- Direct or indirect holdings of 25% and 50% in voting rights.
- Attainments of controlling influence.

- Acquisitions of substantial assets linked with a controlling influence, all in Austrian undertakings of critical infrastructure including banks.

The application must (at the latest) be filed without delay after the signing date. Before this date, the applicant can apply for a clearance certificate that a specific FDI does not trigger the regulatory approval requirement.

The new approval requirement comes with a reporting requirement for the Austrian target undertaking if that entity is not mentioned on the pending application.

Non-compliance with the approval procedure results in the invalidity of the envisaged FDI transaction and triggers administrative fines.

In addition, the ownership notification procedure applies (*see Question 12*). Insufficiently reliable owners of Austrian licensed banks, non-transparent group structures or owners presumed to be preventing efficient supervision by FMA/ECB, are sufficient reasons for the FMA/ECB to refuse approval for major shareholders (owners) or to withdraw the banking licence.

Liquidation and Resolution

14. What is the legal framework for the liquidation of banks?

The rules on insolvency proceedings, which also apply to the liquidation of banks (credit institution), are found in the *Insolvency Act* (*Insolvenzordnung*).

The Banking Act contains specific insolvency provisions applying only to credit institutions.

In practice the resolution rules (*see Question 15*) will be applied by the FMA/SRB before the opening of insolvency proceedings over a credit institution's assets is filed for at the competent court.

Credit institutions (MBs) are required to immediately notify the FMA in case of illiquidity or of over-indebtedness, without the usual 60-day grace period applying to non-banks.

While generally a debtor and its creditors can file for bankruptcy, only the FMA can do so on the credit institution's behalf outside receivership proceedings.

In addition, while other debtors can file for reorganisation proceedings under the Insolvency Act, this route is not available for credit institutions, which can be subject to receivership (*Geschäftsaufsicht*) instead (Article 81 and following, Banking Act).

Receivership proceedings are reserved for banks and can be brought by the credit institution itself (in addition to the FMA). Under receivership, a court-appointed receiver responsible for the business reorganisation of the institution assumes control and manages the business. The bank's liabilities are deferred by law. Unless the court orders otherwise, the credit institution can continue its business while receivership is in effect. If the proceedings are successful, the credit institution can avoid liquidation.

Liquidation proceedings without insolvency of the bank follow general corporate law rules, as follows:

- A dissolution resolution is taken in the shareholders' general meeting.
- The bank enters into the corporate liquidation stage.
- The bank must change its firm and corporate purpose and liquidate its assets.
- The banking licence, can voluntarily only be waived of once all banking activities have been settled.

Additional procedural rules must be observed if a CRR credit institution with customers in another EU member state becomes subject to insolvency proceedings or receivership proceedings based on *Directive 2001/24/EC*.

15. What is the recovery and resolution regime for banks?

Obligations to Prepare Recovery Plans

In general, any bank recovery measure must be initiated and executed by the bank itself in line with its recovery plan on the basis of an indicator excess ("red light").

Recovery plans must be prepared in advance by any Austrian CRR credit institution and financial holding company and transmitted for approval to the FMA/SRB. The FMA/SRB can, at a later stage, impose early intervention measures based on the occurrence of certain triggers.

The FMA/SRB can only impose resolution measures if:

- The early intervention does not succeed.
- There is a public interest in the resolution.
- The bank fails or is likely to fail.
- There is no other alternative way (in particular a private sector investment) to prevent the bank's failure.

Powers of the Regulator

The powers of the FMA/SRB include measures such as:

- Paying off insured depositors.
- Creating a bridge bank to operate, settle claims, enter into temporary public ownership, convert debt into equity or write off liabilities (*see also below, Resolution Tools Including Bail-in and MREL Quotas*).

The Financial Stability Board's standards on TLAC instruments have been implemented into Austrian law for G-SIIs, top-tier banks and other Pillar 1 banks only.

All other Austrian banks are only subject to the bank-specific MREL quota requirements prescribed by the FMA/SRB (see *Question 11*) to resolution entities including their resolution groups and to non-resolution entities.

Additional subordination minimum requirements may be applied by the FMA/SRB to non-Pillar 1 banks individually to safeguard compliance with the NCWO-principle.

Transfer of Business

This is an eligible resolution tool imposed by the FMA/SRB which can be executed without a third party's consent to affected agreements within the business. However, there are other protective provisions for third parties included the BaSAG (*see below, Resolution Tools Including Bail-in and MREL Quotas*).

Resolution Tools Including Bail-in

The BaSAG, implementing the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD), as amended, covers CRR credit institutions including CRR financial institutions, financial holding companies and branches of third country institutions to the extent they are part of a group of credit institutions.

The FMA is established under the BaSAG as the competent resolution authority for LSIs in close co-operation with the OeNB. The SRM Regulation installs the SRB as the competent resolution authority for SIs.

The FMA/SRB must prescribe to resolution entities on a consolidated basis for their resolution groups two MREL quotas (risk-based MREL and leverage-based MREL), "external" MREL. The MREL for non-resolution entities is set at a solo level or sub-consolidated level, where applicable (internal MREL).

The additional subordination minimum requirements for eligible liabilities under MREL have triggered the introduction of a new asset class under Austrian banking law known as "senior non-preferred" capital from 30 June 2018 (section 131, BaSAG).

Resolution tools. Resolution tools available to the competent resolution authority are:

- Transfer of shares or other instruments of ownership, other assets, rights or liabilities to a purchaser that is not a bridge institution.
- Transfer of assets, rights or liabilities of an institution to a bridge institution in public ownership.

- Transfer of powers, assets, rights and liabilities to an independent legal entity ("bad bank") that is publicly owned for the purpose of the management and sale of non-performing claims and assets (only to be applied in conjunction with another resolution tool).
- Conversion of liabilities (including capital instruments eligible as own funds) into (higher ranking) equity or the writing down of the principal or outstanding amount of the liabilities, for the purpose of the recapitalisation of an institution, for the capitalisation of a bridge institution, or during the sale of the business or during the separation of assets (creditor participation tool or bail-in).

These resolution tools can be combined by the resolution authority with other instruments such as prescribing a temporary suspension of termination rights, reservation on enforcing security rights or write-off of liabilities.

MREL Quotas

MREL quotas are intended to:

- Safeguard resolvability and continuance of critical functions.
- Protect government funds and deposits covered by deposit guarantee schemes.
- Ensure financial market stability.

They are in principle individually determined for single credit institutions and must at all times be fulfilled by each bank.

This also applies to minimum subordination requirements, if applicable.

Additional mandatory MREL quotas and eligible subordination requirements apply to:

- Resolution entities at the level of the resolution group (external MREL).
- Subsidiary non-resolution entities at a solo level enabling a transfer of losses by write-down or conversion of bail in-able liabilities issued to and subscribed by parent resolution entities (internal MREL).

The changes to these rules introduced by the registered reporting mechanism (RRM) package applied from 1 Jan 2024.

Simplified Resolution Plan

Banks which are not G-SIIs, top tier banks or "fished banks" (entities qualified as top-tier banks due to their systemic risk by the SRB or by the FMA, despite not exceeding the EUR100 billion total asset threshold) are "other banks subject to resolution". From 1 January 2024, all MREL and relating minimum subordination requirements must be complied with by CRR credit institutions and other entities belonging to the same credit institution group.

LSIs that are subject to a simplified resolution plan (about 320 in Austria) that will be resolved in regular insolvency proceedings are prescribed an MREL quota equalling their regulatory minimum capital requirement by the FMA as resolution authority.

Individualised Resolution Plan

LSIs which are to subject to resolution proceedings (about 18 in Austria) are prescribed an MREL quota and must have full resolution plans.

Their MREL quotas are prescribed by the FMA/SRB and correspond to:

- The sum of:
  - a loss absorption amount equalling the Total SREP Capital Requirement Ratio (Pillar 1 and Pillar 2); and
  - a recapitalisation amount (equalling the Pillar 1 and Pillar 2 capital requirements including the Market Confidence Buffer);
- Market Confidence Buffer amounting to the Combined Buffer Requirement (CBR) minus the countercyclical capital buffer. Non-Pillar 1 banks subject to resolution proceedings may be subject to additional subordination MREL requirements if the resolution authority deems this necessary to eliminate potential "no creditor worse off" (NCWO) risks, however, in general they do not have any subordination MREL requirement.

Pillar 1 Resolution Entities

Top tier banks and fished banks must fully be compliant with MREL quotas prescribed by the FMA/SRB and certain minimum subordination requirements.

However, GSIIs, top tier banks and fished banks qualifying as resolution entities must comply with additional MREL minimum quotas.

Related disclosure (publication) requirements also apply.

16. Are there any protections available to customers of a bank that has failed?

Austrian Deposit Guarantee Schemes

There are currently three Austrian deposit guarantee schemes in Austria:

- *Einlagensicherung Austria GmbH*.

- *Österreichische Raiffeisen-Sicherungseinrichtung eGen* (ÖRS).
- *Sparkassen-Haftungs GmbH*.

Deposit guarantee schemes protect savers and accountholders if a payout event occurs. A payout event occurs if:

- A bank is not in the position to repay deposits that are due.
- Insolvency proceedings are initiated regarding a bank.
- A supervised management procedure is imposed.
- An official payment stop is imposed.

The schemes cover credit balances held in current, salary, student and pensions accounts, savings books and accounts including term deposit accounts, securities clearing accounts and saving and loan contracts.

Deposits including interest of up to EUR100,000 per eligible depositor and bank are covered.

A depositor is the holder of a credit balance on a bank´s accounts. Deposits held in foreign currencies are also covered, but are paid out in euros.

Credit balances held by natural persons irrespective of the nationality as well as by legal entities are covered.

Deposits made by public institutions or institutional investors such as credit institutions or insurance companies are not covered.

For joint accounts, all holders are entitled to claims in equal shares. The payout must take no more than seven working days from the payout event.

For a payout to be made, the depositor does not need to file an application but must inform the deposit guarantee facility that they hold an account.

Austrian Investor Compensation Schemes

There are three investor compensation schemes in Austria:

- Einlagensicherung Austria GmbH.
- Österreichische Raiffeisen-Sicherungseinrichtung eGen (ÖRS).
- Sparkassen-Haftungs GmbH.

Investor compensation is provided if a bank is unable to transfer or deliver securities to another custody account as instructed.

A payout occurs if a bank becomes subject to either:

- Bankruptcy or receivership proceedings or to a moratorium declared by an administrative authority.
- The determination of an agreement measure taken in another member state of a bank voluntarily having become a member of the Austrian compensation scheme.

Earnings that accrue between the occurrence of the compensation case and the payment of the secured amount are taken into account by the investor compensation scheme of up to:

- EUR20,000 for natural persons.
- 90% of the secured amount in the case of legal entities.

Amounts resulting from the recovery of the customer's securities (dividend income, current payments, redemption or sales procedures) are protected by the deposit guarantee scheme (up to EUR100,000 per customer).

Contrary to the procedural rules under the deposit guarantee scheme, a claim under the investor compensation scheme requires a written application to the scheme that must be submitted within 12 months of date the payout case arose. The ESA compensates payout cases within three months from assessment of the amount due and a finding that the claim is justified.

Conduct of Business

17. What conduct of business standards apply to banks' deposit-taking and lending activities?

The conduct standards for lending activities are based on:

- FMA ICAAP Minimum Standards (February 2024).
- FMA Minimum standards for the risk management and granting of foreign currency loans and loans with repayment vehicles (August 2023).
- FMA Minimum standards for the loan business and other transactions entailing counterparty risks (28 April 2022).
- EBA guidelines on loan origination and monitoring (EBA GL 2020/06 dated 29 May 2020).

- The Consumer Credit Act 2010 (which will be replaced by a new Consumer Credit Act 2025) and the *Mortgage and Real Estate Credit Act* as well as implementing regulations issued by the FMA under these Austrian laws. There is extensive case law issued by Austrian courts relating to this legislation.
- The EU Commission's implementing regulations on the replacement of the CHF-LIBOR by SARON and on the replacement of EONIA by €STR, which apply to existing loans granted by Austrian credit institutions.
- The FMA Regulation on Measures to Limit Systemic Risks relating to Real Estate Financing by Credit Institutions (2022) which prescribe borrower-based maximum credit volumes to domestic CRR credit institutions and domestic branches of other CRR credit institutions when granting real estate financing to private customers.
- Austrian case law (rendered by the Supreme Court) on:
    - section 879(3) of the Civil Code (validity control of general business conditions and of pre-formulated contractual clauses),
    - section 879(1) and (2) of the Civil Code (prohibition of usury loans and of violation of bonos mores); and
    - consumer protection laws.
- The Austrian KIM-Regulation issued by the FMA in 2022 has been replaced by an FMA circular on private residential real estate lending in 2025.

Deposit business conduct standards are as found in:

- Articles 31 and 32 of the Banking Act on savings books and accounts, and interpretative guidance issued by the FMA on the scope of "deposit business" triggering a licence requirement.
- FMA circulars on designing savings books, the disposal of balances on savings accounts and KYC rules to prevent AML risks.
- Extensive case law on the interpretation of the above statutory provisions.

The EBA's guidelines on internal governance, on the management of ESG risks, operational risks and ICT and security risks, remain unaffected by the above rules.

However, from 2025, banks and other finance entities have been required to introduce an extensive framework on governance and monitoring of ICT-risks beyond the EBA's guidelines and the NIS 2 rules (*DORA* and Commission Delegated Regulation (*EU) 2024/1773*).

One of the legal questions most occurring in practice relates to the assessment of any ICT third-party service provider including cloud service providers as "supporting critical or important functions" under Article 28(3) of DORA. The ECB issued a Guide on outsourcing cloud services to cloud service providers on its understanding of this in 2025.

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Areas of practice. Banking and finance, capital markets, tax law, financial services regulation, insurance supervision law, derivatives and investment funds (UCITS and AIFs).

Recent transactions:

- ODDO BHF SCA on the partial transfer of investment services business by an Austrian bank to ODDO BHF SCA resulting in the establishment of an Austrian branch (2025).
- Agri Europe Cyprus Ltd on its attempted takeover of a minority stake in Addiko Bank AG (2025).
- EBRD on reselling its stake in Erste Bank Hungary Zrt to Erste Group Bank (year-end 2023).
- Hypo-Alpe-Adria Bank International, in project LUX on modelling a "bad bank".
- Republic of Austria, in the restructuring of Hypo Alpe Adria Bank International AG.
- OeNB on financial services regulatory issues (2022-2023).
- Banking regulatory advice: BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG (repayment of participation capital), Svenska Handelsbanken AB (Austrian branch).
- Wiener Börse AG on regulatory, governance and securities laws questions.
- European Bank for Reconstruction and Development (EBRD) on converting its indirect stake in a listed Austrian bank into a direct participation and on exercising its pertaining voting rights.

Languages. German, English.

Professional associations/memberships. European Community Studies Organisation (ECSA) Austria.

Most recent publications:

- *Case Note on Supreme Court judgement 7 Ob 169/24i: Arrangement fees as reflected in the ECJ's most recent case law and the consequences for existing consumer loan contracts, ZFR 2025, 276.*
- *Case Note on Supreme Court judgement 10 Ob 23/23i: Liability for misstatements in prospectuses relating to real estate investments – legal boundaries for the prospectus controller's due diligence, ZFR 2024, 322.*
- *Commentary on Section 86a BaSAG, in Kammel/Schütz (Ed.) BaSAG-Bankensanierungs- und –abwicklungsgesetz (2024).*
- *The Austrian Banking Limited Liability Company (Bank-GmbH) in Foglar-Deinhardstein/Aburumieh/Hoffenscher-Summmer (Eds.), GmbH Gesetz über Gesellschaften mit beschränkter Haftung (2024).*
- *Commentary on Articles 111 to 117 MiCAR, in Ficulovic/Knobl/Kreisl/Maitz/Pfurtscheller/Pracht/Raschauer/Silbernagl/Stern/Wessely/Wolfbauer, Kommentar zur MiCAR-Markets in Crypto-Assets Regulation (2024).*
- *Commentary on Sections 60 to 63b Austrian Banking Act (bank audit), in: Laurer/Schuetz/Kammel/Ratka, Bankwesengesetz-Kommentar (year-end 2021).*
- *Commentary on Arts 12, 13 and 15 Market Abuse Regulation, in: Gruber (Ed.), Kommentar zum BörseG 2018 und zur MAR (2020).*
- *The Rules of Conduct pursuant to the Austrian Securities Supervision Act 2018 – Systematic Overview based on the Requirements of MiFID II, OeBA 2018, pp 460-478.*

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