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Austria

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Austria.

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AUSTRIA
BANKING & FINANCE

1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The Austrian Financial Market Authority ("FMA") is established as an integrated supervisory institution, regulating and supervising all financial service providers in Austria. The FMA shares responsibilities with the Österreichische Nationalbank ("OeNB") in connection with banking supervision. While the OeNB is in charge of fact-finding, including on-site and off-site analysis of banks, the FMA is responsible for the decision-making process and therefore is empowered to act as the competent authority in the area of banking supervision as well as in the area of banking recovery and resolution. The European Central Bank ("ECB") is responsible for banking supervision in the Euro area under the Single Supervisory Mechanism ("SSM") and supervises significant entities in Austria, together with the FMA as the National Competent Authority ("NCA") and the OeNB. Therefore, the FMA works in close cooperation with the ECB and the OeNB. However, the exclusive responsibility for granting and extending concessions of CRR credit institutions – i.e. those credit institutions that receive deposits or other repayable funds from the general public and grant loans on their own account pursuant to Article 4 para 1 no 1 Capital Requirements Regulation 2013/575/EU ("CRR") – lies with the ECB. For Austrian non-CRR credit institutions as well as for branches of foreign credit institutions, the exclusive responsibility remains with the FMA. The competent resolution authority under the Single Resolution Mechanism ("SRM") for significant credit institutions supervised by the ECB is the Single Resolution Board ("SRB"), together with the FMA acting as the National Resolution Authority ("NRA").

2. Which type of activities trigger the requirement of a banking licence?

The ECB licenses CRR-credit institutions in SSM-Member States. The scope of the license granted by the ECB also covers banking transactions under national law.

Pursuant to the Austrian Banking Act ("BWG") an entity requires a license as a credit institution, which is issued by the competent supervisory authority, for activities listed in sec 1 para 1 BWG, in particular when carrying out one or more of the following activities for a commercial purpose: (i) deposit business ("*Einlagengeschäft*"), (ii) current account business ("*Girogeschäft*"), (iii) lending business ("*Kreditgeschäft*"), (iv) discount business ("*Diskontgeschäft*"), (v) custody business ("*Depotgeschäft*"), (vi) issuing and administration of payment instruments ("*Ausgabe und Verwaltung von Zahlungsmittel*"), (vii) trading for one's own account or on behalf of others on specific markets or with certain instruments set out in sec 1 para 1 no 7 lit a–f BWG including trading with futures and equity swaps or financial instruments pursuant to the Securities Supervision Act ("WAG"), (viii) guarantee business ("*Garantiegeschäft*"), (ix) securities issuing business ("*Wertpapieremissionsgeschäft*"), (x) building savings and loan business ("*Bauspargeschäft*"), (xi) investment fund business ("*Investmentgeschäft*"), (xii) real estate investment fund business ("*Immobilienfondsgeschäft*"), (xiii) capital financing business ("*Kapitalfinanzierungsgeschäft*"), (xiv) factoring business ("*Factoringgeschäft*"), (xv) money brokerage transactions in the interbank market or brokerage of transactions in connection with specific banking transactions ("*Geldmaklergeschäft*"), (xvi) severance and retirement fund business ("*Betriebliches Vorsorgekassengeschäft*"), and (xvii) exchange bureau business ("*Wechselstubengeschäft*").

3. Does your regulatory regime know different licenses for different banking services?

The license for conducting banking activities as a credit institution may be granted under conditions and obligations connected to it and may be restricted to individual banking activities mentioned above. In the company database of the FMA the scope of the license(s) granted to each entity is publicly available.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

A credit institution is – pursuant to sec 1 para 3 BWG – in particular entitled to carry out an exchange bureau business, leasing operations, safety deposit box management services, financial transfer business or operation of payment systems. Further, a credit institution may conduct ancillary activities pursuant to its license that are directly connected with banking activities in accordance with the scope of the banking license granted, such as the brokerage of building savings contracts, of investment fund shares and of own funds shares or the distribution of credit cards. A credit institution is also allowed to provide investment advice, portfolio management services, the acceptance and transmission of orders and data provision services pursuant to the WAG.

A credit institute holding a banking license for deposit business ("*Einlagengeschäft*") and lending business ("*Kreditgeschäft*") or for current account business ("*Girogeschäft*") is entitled to provide payment services pursuant to the Payment Services Act ("ZaDiG"). A credit institute holding a banking license for the issuing and administration of payment instruments ("*Ausgabe und Verwaltung von Zahlungsmittel*") is allowed to carry out acquiring business pursuant to the ZaDiG.

A credit institute holding a banking license for deposit business ("*Einlagengeschäft*") and lending business ("*Kreditgeschäft*") or for current account business ("*Girogeschäft*") or for the issuing and administration of payment instruments ("*Ausgabe und Verwaltung von Zahlungsmittel*") is entitled to issue electronic money pursuant to the Electronic Money Act ("E-GeldG").

5. Is there a "sandbox" or "license light" for specific activities?

There is no predetermined license light scheme or a sandbox allowing for banking transactions set forth in the BWG. However, in September 2020 the FMA established an accompanying licensing procedure in the sense of a regulatory sandbox. In this sandbox, FinTechs seeking a license, but also existing licensed entities wanting to test financial innovations, are to be prepared for supervision in an intensive dialogue with the FMA so that they can test their business models.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

There are no specific restrictions under Austrian law with respect to the issuance or custody of crypto currencies. However, depending on the business model of the entity, such activity may require *inter alia* a banking license or another license falling within the competence of the FMA. For example, according to the FMA, the issuance of payment tokens may require a licence for the issuance and administration of payment instruments ("*Ausgabe und Verwaltung von Zahlungsmittel*") pursuant to the BWG, a licence pursuant to the ZaDiG or a licence pursuant to the E-GeldG. The custody of security tokens requires on the other hand a licence for custody business ("*Depotgeschäft*") pursuant to the BWG if such tokens are qualified as transferable securities.

Therefore, the FMA offers a contact form for enquiries ("*Kontaktformular Rechtsanfragen zu FinTech-Modellen*") as to whether the specific business model requires a license to be granted by the FMA. The enquiry needs to explain the specific business model in detail.

However, providers in relation to virtual currencies as defined in sec 2 no 22 of the Austrian Financial Markets Anti-Money Laundering Act ("FM-GwG"), such as custodian wallet providers or providers of financial services for the issuance and selling of virtual currencies, must apply for a registration with the FMA (as provided for in the 5th Anti Money Laundering Directive 2018/843/EU). The registered providers are subject to FMA's supervision in the field of anti-money laundering and anti-terrorism financing.

The Markets-in-Crypto-Assets Regulation ("MiCAR") 2023/1114/EU will finally create a regulatory framework for crypto-assets service providers in the EU; this regulation will – with regard to asset-referenced tokens and e-money tokens – be partially applicable from 30 June 2024 and fully applicable from 30 December 2024. MiCAR lays down requirements for public offering, admission to trading and provision of crypto-assets services, especially authorization requirements and supervision of crypto-assets service providers and issuers of crypto-assets, as well as for their operation, organization and governance.

7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Since crypto assets are not issued by any central bank or authority, they do not qualify as deposits. Hence, they are not covered by deposit insurance and/or segregation of funds. MiCAR also clarifies that crypto assets are not covered by the deposit guarantee or investor compensation schemes.

8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

Crypto assets can be due to their structure and especially their volatility subject to extensive risks, especially liquidity, market and credit risks. Because of this, crypto assets can be qualified as high-risk for both own funds and liquidity.

In December 2022, the Basel Committee on Banking Supervision ("BCBS") finalized the standards on the prudential treatment of banks' exposure to crypto assets. According to this standard crypto assets (private digital assets that depend on cryptography and distributed ledger technologies or similar technologies) need to be classified on an ongoing basis into Group 1 crypto assets, including tokenised traditional assets (Group 1a) and crypto assets with effective stabilisation mechanisms (Stablecoins; Group 1b), and Group 2 crypto assets, including tokenised traditional assets and stablecoins that fail the classification conditions under Group 1 and unbacked crypto assets. The crypto assets which meet the classification conditions under Group 1 are subject to capital requirements based on the risk weights of underlying exposures as set out in the existing Basel framework; with an add-on for infrastructure risks. Group 2 crypto assets pose additional and higher risks and are therefore subject to a newly prescribed conservative capital treatment. Group 2 crypto assets, if they provide a hedging arrangement that meet the hedge recognition criteria, (Group 2a) are subject to adapted market risk rules with netting and an additional 100% capital charge. Crypto assets of Group 2 without a hedging arrangement that meet the hedge recognition criteria (Group 2b) will be required to apply a 1250% risk weighting under the applicable capital requirements of the Basel framework. In addition to the special capital requirements for Group 2 crypto assets, there is also Group 2 exposure limit: a threshold of 1% and a limit of 2% of their Tier 1 capital.

9. What is the general application process for bank licenses and what is the average timing?

In general, the ECB is competent for granting and extending licenses to CRR-credit institutions. For Austrian non-CRR credit institutions, as well as, for branches of foreign credit institutions in Austria, competence remains with the FMA.

All applications are to be submitted to the FMA, regardless of whether the decision has to be taken by the FMA or the ECB. The FMA assesses the application based on the conditions set out in the BWG. In case the applicant fulfils the conditions in accordance with the CRR, the FMA forwards the application with a draft decision and the relevant documentation to the ECB for the decision-making process. The applicant must enclose particular information on the business plan from which the type of the planned transactions, the organizational structure of the credit institution, the planned strategies and processes for the monitoring, controlling and limitation of risks arising from banking transactions and banking operations, as well as, the identity and the amount contributed by owners, who possess a qualifying holding in the credit institution and information required for the purpose of assessing the reliability of these owners, is apparent. The average timing essentially depends on whether the application is for a "full" license and therefore for major banking activities and the concept presented to the FMA. However, the process should be completed within a period of twelve months.

10. Is mere cross-border activity permissible? If yes, what are the requirements?

The rules for banking activities on a cross-border basis are set down in the EU Directive 2013/36/EU ("Capital Requirement Directive" – "CRD IV") amended by the EU Directive 2019/878/EU ("Capital Requirements Directive" – "CRD V") and sec 9 to 19 BWG. Therefore, CRR credit institutions incorporated (and licensed) within the EEA are authorized to also provide banking operations in Austria (single license principle) by way of a branch ("freedom of establishment") or under the freedom to provide services. They must notify the home NCA of their intention to conduct activities in Austria. This authority must in turn inform the FMA as host NCA of the institution's intention.

11. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

A banking license may be granted to (i) a limited-liability corporation ("*Gesellschaft mit beschränkter Haftung*"), (ii) a stock corporation ("*Aktiengesellschaft*"), (iii) a European public company ("*Societas Europaea*"), (iv) a cooperative society ("*Genossenschaft*"), (v) a European cooperative society ("*Europäische Genossenschaft*") or a savings bank ("*Sparkasse*"). The initial capital has to be in each case at least EUR 5 million and has to be available to the directors without restriction or encumbrance in Austria. However, most Austrian banks choose the legal form of a stock corporation for operating their business.

12. What are the organizational requirements for banks, including with respect to corporate governance?

The FMA has published a detailed set of guidelines and circular letters ("*FMA Rundschreiben*") on the application and the scope of the organizational regulations, which depend on the type of business activities envisaged by the entity. An institution has to implement and continuously monitor a comprehensive set of organizational requirements such as organizational structure, clear decision-making processes, documentation and reporting obligations, as well as responsibilities. Furthermore, the management shall define and oversee the internal principles of proper business management ("fit & proper"), guaranteeing the requisite level of care when managing the institution, and in particular, focus on the segregation of duties in the organization and the prevention of conflicts of interest and therefore, establish mechanisms to safeguard security and confidentiality of information in particular pursuant to sec 38 BWG.

13. Do any restrictions on remuneration policies apply?

Requirements for remuneration policies and practice of credit institutions licensed in Austria are set out in sec 39 para 2, sec 39b and in the Annex to sec 39b BWG. These provisions implement the EU Directive governing remuneration policies and practices (CRD IV as amended by CRD V) into Austrian law. The Annex to sec 39b BWG and the revised Guidelines on sound remuneration policies published by the European Banking Authority ("EBA") taking into account the amendments introduced by the CRD V (EBA/GL/2021/04; applicable from 31 December 2021) contain the main rules for restrictions on remuneration. Due to the revision of the Guidelines on sound remuneration policies the FMA updated its circular letter on principles of remuneration policies and practices ("*FMA Circular in relation to Articles 39 para. 2, 39b and 39c BWG*") in June 2022. This circular letter is addressed to credit institutions und serves as a guidance on the application of the respective legal provisions.

The remuneration provisions of the BWG shall ensure that credit institutions adopt remuneration policies and practices that encourage their employees to act in a sustainable and long-term manner and align their personal objectives with the long-term interests of the credit institution.

Pursuant to sec 39 para 2 BWG, credit institutions and groups of credit institutions need to have administrative, accounting and control procedures for the identification, assessment, management and monitoring of banking business and banking operational risks, as well as their remuneration policies and practices, that are appropriate to the nature, scale and complexity of the banking business conducted.

14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

The EU implemented the Basel III framework with respect to regulatory capital via CRR and CRD IV. The CRR is directly applicable in Austria, and CRD IV was implemented in Austria through an amendment to the BWG in 2013. With the EU banking package, further key elements of the Basel III framework were introduced at the European level by amendments to, *inter alia*, the CRR by Regulation 2019/876/EU ("CRR II") and CRD IV by CRD V. The EU banking package entered into force on 27 June 2019.

CRD V was implemented into national law in May 2021, and CRR II applies beginning on 28 June 2021. For example, additional capital buffers with regard to Global Systemically Important Institutions (G-SII) and Other Systemically Important Institutions (O-SII) may be prescribed.

The revised regulations CRR III and CRD VI to finalize Basel III will be published in the course of 2024. CRR III is supposed to enter into force in January 2025, CRD VI within 18 months after publication in the Official Journal of the European Union.

15. Are there any requirements with respect to the leverage ratio?

Since 2015 all institutions are required to disclose their leverage ratio and its components. In order to avoid excessive indebtedness of the institutions on the one hand (as a consequence of the financial crisis 2007), and in order to compensate for potential deficiencies in the internal risk models on the other, banks are required to report the leverage ratio to the supervisory authorities as part of their reporting obligations. Supervisors will track the new ratio in order to analyze its impact more closely and to complete possible adjustments. CRR II has implemented a binding leverage ratio requirement of 3% of Tier 1 capital, which came into effect on 28 June 2021.

16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

The CRR as amended by CRR II requires entities to hold enough liquid assets to deal with any possible imbalance between liquidity inflows and outflows under gravely stressed conditions during a period of 30 days (Liquidity Coverage Ratio, "LCR") and to ensure their ongoing ability to meet short term obligations. The LCR as a short-term liquidity business ratio was fully introduced in 2018; amendments made by the CRR II are applicable beginning on 28 June 2021. CRR II imposes a binding leverage ratio requiring institutions to maintain Tier 1 capital of at least 3% of their non-risk-weighted assets. An additional leverage ratio buffer applies to G-SIIs. Credit institutions also have to ensure that their long-term obligations will adequately be met with a diversity of stable funding instruments under both normal and stressed conditions (Net-Stable-Funding Ratio — "NSFR" as a long-term liquidity business ratio).

Furthermore, entities are required by the BWG to ensure that they are able to meet their payment obligations at any time e.g., by establishing company-specific financial and liquidity planning based on banking experience pursuant to sec 39 para 3 BWG.

17. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Pursuant to the BWG banks are required to publish their annual financial statements, as well as their consolidated financial statements. The BWG contains some specific rules on the illustration of financial statements of credit institutions. Banks have to report on a regular basis (depending on the reporting obligation quarterly or semi-quarterly) to the FMA as supervisory authority. These reports are not necessarily publicly available unless it is required by other provisions. In addition, banks must meet several disclosure requirements under the CRR (as amended by CRR II), for example a description of the main characteristics of the equity instruments issued and the required disclosure of remuneration policies and practices.

18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Under the CRR (as amended by CRR II), consolidated supervision of EU parent and subsidiary institutions may be possible under certain conditions. Therefore, parent institutions in an EU member state have to comply with the consolidation obligations laid down in the CRR (as amended by CRR II). The parent undertakings and their subsidiaries must implement proper organizational structures and appropriate internal control mechanisms to ensure that the data required for consolidation is duly processed and forwarded. Sec 77b BWG requires that the competent supervisory authority shall play a central role in the supervision of the EU parent credit institution (the cross-border coordination of supervisory activities). In doing so, the FMA must ensure appropriate coordination and cooperation with the respective competent authorities of third countries if necessary.

19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Pursuant to sec 20 BWG any party who has taken a decision to acquire or dispose of (directly or indirectly) a participation of 10%, or to increase or decrease qualified shareholding by reaching a 20%, 30% or 50% threshold of voting rights or capital in an Austrian credit institution (or in such a way that the credit institution becomes a subsidiary undertaking of that party), must inform the FMA in advance in writing. Further, the credit institutions shall immediately notify the FMA in writing of any acquisition or relinquishment of qualified shareholdings as well as of any reaching, exceeding or falling below the shareholding thresholds as soon as they become aware thereof. In addition, credit institutions must notify the FMA in writing at least once a year of the names and addresses of shareholders holding qualified shareholdings. The FMA shall have a maximum of 60 working days from the receipt of the notification and all the documents required pursuant to sec 20b para 3 BWG to prohibit the proposed acquisition in writing following an assessment according to the assessment criteria set forth in sec 20b BWG, provided there are reasonable grounds therefore, or the information submitted by the proposed acquirer is incomplete. Thus, the FMA shall examine the suitability of the interested buyer and the financial stability of the intended acquisition.

20. Does your regulatory regime impose

conditions for eligible owners of banks (e.g., with respect to major participations)?

For assessing the notification pursuant to sec 20 para 1 BWG, in order to ensure the sound and prudent management of the credit institution to be acquired and in relation to the likely influence of the proposed acquirer on the credit institution to be acquired, the suitability of the proposed acquirer and the financial stability of the proposed acquisition shall also take into account the reliability of the proposed acquirer, the good reputation, professional qualifications and experience of any person who will direct the business of the credit institution.

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

The notification requirements pursuant to sec 20 para 1 BWG apply to any investor in credit institutions licensed in Austria. Therefore, there are no specific restrictions on foreign shareholdings in banks.

22. Is there a special regime for domestic and/or globally systemically important banks?

The BWG provides for a special capital buffer regime for G-SIIs (sec 23c BWG) and O-SIIs (sec 23d BWG) implementing the respective EU legal requirements, in particular the requirements of CRD V. The classification as G-SII or O-SII is determined by a decision of the FMA.

G-SIIs must hold a capital buffer consisting of Common Equity Tier 1 capital ("CET 1") not otherwise used at a consolidated level corresponding to the subcategory in which they have been classified. The FMA must assign a G-SII to a subcategory and prescribe the required capital buffer by a regulation (with the approval of the Austrian Federal Minister of Finance), taking into account relevant requirements of the EBA and the European Systemic Risk Board ("ESRB").

The FMA may require O-SIIs to hold a capital buffer consisting of CET 1 not used for other purposes of between 0% and 3% (or more, provided that the conditions of Art 131 para 5a subpara 3 CRD IV as amended by CRD V are met) of the total risk amount, on an individual, consolidated or partially consolidated basis. The FMA must prescribe O-SIIs domiciled in Austria the required capital buffer by a regulation (with the approval of the Austrian Federal Minister of Finance), taking into account relevant requirements of EBA and the ESRB.

The FMA must submit a list (including names and, if applicable, subcategories) of G-SIIs and O-SIIs domiciled in Austria to the ESRB. The FMA must update this list annually.

23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

The FMA can impose sanctions in case of violations of banking regulations. The BWG provides, *inter alia,* for "penalty interests" as compensation for the benefits arising from the violation pursuant to sec 97 BWG, fines of up to 5 million for certain violations that do not fall within the jurisdiction of the courts pursuant to sec 98 BWG, suspension of voting rights for the shareholdings ("naming and shaming"), provided that such disclosure does not seriously jeopardize the stability of the financial markets or cause a disproportionately high level of damage to the parties concerned.

24. What is the resolution regime for banks?

Austria has implemented the Bank Recovery and Resolution Directive 2014/59/EU ("BRRD") by adopting the Federal Act on the Recovery and Resolution of Banks ("BaSAG"), thereby creating a national legal framework for dealing with banks that are failing or likely to fail. CRD V related changes were implemented into BaSAG in May 2021. In addition, the Single Resolution Mechanism Regulation 2014/806/EU ("SRMR") as amended by Regulation 2019/877/EU ("SRMR II") and by Regulation 2019/2033/EU applies.

The BaSAG contains provisions (i) prescribing the preparation of recovery plans by banks and by the resolution authorities, including powers to remove obstacles to a resolution ("prevention"), (ii) enabling supervisory authorities to intervene at an early stage, including related additional powers to intervene ("early intervention") and (iii) forming the basis for the establishment of a national resolution authority and for entrusting the authority with the necessary powers and tools ("resolution"). The following resolution tools are at the FMA's disposal: (i) the sale of business tool, (ii) the tool to establish a bridge institution ("bridge bank"), (iii) the asset separation tool and (iv) the tool for bailing-in of creditors ("bail-in"). The bail-in is one of the core elements of the BRRD. It provides the resolution authority with the possibility to write down the eligible liabilities in a cascading contribution to absorb losses of an institution, or to convert them into equity capital.

The provisions of BaSAG in this context interact with the provisions of national insolvency law.

25. How are client's assets and cash deposits protected?

The Act on Deposit Guarantee Schemes and Investor Compensation ("ESAEG") implements the Directive on Deposit Guarantee Schemes (Directive 2014/49/EU) and regulates the protection of deposits and credit balances including interest on accounts and savings. The objective of ESAEG is to ensure the rapid and comprehensive compensation of depositors' claims in the event of a guarantee. The aim is to ensure that claims arising from security incidents are satisfied by the member institutions of the security schemes within a short period of time so that financial obligations for the federal government can be avoided. In a guarantee case, deposits of up to EUR 100,000 per customer and bank are covered. Every credit institution domiciled in Austria that wishes to accept customer deposits or provide investment services requiring guarantees must belong to a protection scheme.

26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?

One of the resolution tools at the FMA's disposal is the bail-in as core element of the BRRD. It permits the FMA to write down the eligible liabilities in a cascading contribution to absorb losses of an institution, or to convert them into equity. In principle, all liabilities of an institution with few exceptions are eligible for bail-in. The most important examples for exceptions to the scope of application of the bail-in are protected deposits, secured liabilities and liabilities against employees.

The resolution provisions (as well as the resolution tools) apply when a bank is failing or likely to fail and there is no reasonable prospect that the failure of the institution can be averted within a reasonable time by alternative private sector actions. A mere liquidity crisis would not yet constitute a failure.

27. Is there a requirement for banks to hold gone concern capital ("TLAC")? Does the regime differentiate between different types of banks?

CRR II and the Directive 2019/879/EU ("BRRD II") amending the BRRD have implemented the Total Loss Absorbing Capacity ("TLAC") Standard in the EU and amended the previous Minimum Requirement for Own Funds and Eligible Liabilities ("MREL"). The harmonised level of TLAC was introduced through a new requirement for own funds and eligible liabilities.

The minimum requirement for TLAC pursuant to CRR II requires G-SIIs to hold a sufficient amount of highly loss absorbing (bail-inable) liabilities (to ensure smooth and fast absorption of losses and recapitalisation in the event of a resolution), taking into account the specific mandatory Pillar 1 subordinated MREL. The requirement for own funds and eligible liabilities applies to resolution entities which are G-SIIs themselves or are part of a group identified as G-SII; the requirement applies on either an individual basis or on a consolidated basis, depending on whether such resolution entities are stand-alone institutions with no subsidiaries or parent undertakings.

The institution-specific add-on for G-SIIs and the institution specific requirements for non-G-SIIs were introduced through BRRD II and SRMR II.

The requirements pursuant to BRRD II were implemented into the BaSAG in May 2021. Besides that, the SRMR as amended by SRMR II regarding the loss-absorbing and recapitalisation capacity applies.

The Commission implementing Regulation 2021/763/EU regarding technical standards ("ITS") on the disclosure and reporting requirements for MREL and TLAC, which is applicable beginning in June 2021, has introduced harmonised reporting and disclosure requirements for MREL and TLAC stipulated in CRR (as amended by CRR II) and BRRD (as amended by BRRD II). The aim of the ITS is to increase efficiency and facilitate the use of information by authorities and market participants.

Furthermore, the FMA regulation on the minimum content of the Central Securities Depositories Recovery, Settlement and Contingency Recovery Plan ("ZvSAN-V") also contains provisions regarding TLAC.

28. In your view, what are the recent trends in bank regulation in your jurisdiction?

The EU banking package (CRR II, CRD V, SRMR II and BRRD II) has been implemented into Austrian national law (the regulations are directly applicable). The amendments made by CRR II and CRD V regarding capital requirements of credit institutions and investment firms shall strengthen the resilience of the banking sector by introducing more risk-sensitive capital requirements. The Basel IV regime is expected to be implemented in 2025; in the course of 2024 we expect the publication of CRR III and CRV VI. The new regime will bring significant changes in the regulatory areas of internal modelling, regulation of third-country branches, fit & proper and proportionality.

At the end of 2022, the FMA ordered systematically important banks to increase their capital buffers by a total of 0.25 to 0.5 percentage points by amending the Capital Buffer Regulation ("*Kapitalpuffer-Verordnung*"). With this regulation the FMA implemented a recommendation of the Financial Market Stability Board (FMSG) which aimed to address the increased systemic risks resulting from the additional uncertainties such as Russia's war of aggression in Ukraine, higher energy prices and high inflation. The specific requirements are defined for each institution individually.

29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

The financial sector is facing major challenges.

According to the FMA, the abrupt reversal of interest rates, the significant inflation risk and the globally bleak economic prospects massively increase the pressure on the financial performance and debt servicing capacity of many households and companies. Significant losses in the value of various assets, such as long-term fixed-interest bonds and real estate, are further increasing the pressure on financial service providers. The difficult situation in the real estate sector in particular will continue to challenge the Austrian real and financial economy for some time to come. In addition, the tense situation in the Middle East threatens to further exacerbate geopolitical tensions, which could trigger further exogenous shocks in the global economic system. The great danger is that risks will materialize simultaneously and accelerate and amplify each other.

In the view of this difficult situation in the real economy and on the financial markets, the supervised entities are expected to pursue proactive risk management, build up appropriate provisions and act prudently in their distribution policy in order to further strengthen their capital base and risk-bearing capacity.

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