

Translation from German

**ACT REGULATING THE EXERCISE OF THE LAWYER'S  
PROFESSION  
(“RECHTSANWALTSORDNUNG” = LAWYERS’ ACT)**

**Chapter I – Requirements for the Exercise of the Lawyer’s Profession**

**Section 1**

- (1) No appointment by a public authority is required for the exercise of the lawyer’s profession in the Republic of Austria; it suffices to provide evidence on compliance with the following requirements and on registration in the Register of Lawyers (Section 5 and Section 5a).
- (1a) To the extent that this federal law contains only a male form when referring to natural persons, these designations apply equally to women and men. When using a designation to refer to a specific natural person, the gender-specific form will be used.
- (2) The requirements are:
  - a) Austrian nationality;
  - b) legal capacity regarding all affairs and non-existence of valid legal guardianship as defined in Section 1034 of the “*Allgemeines Bürgerliches Gesetzbuch*” (ABGB – Austrian Civil Code);
  - c) a completed course of studies in Austrian law (Section 3); \*
  - d) practical training of the type and term stipulated by law;
  - e) the successful passing of the “*Rechtsanwaltsprüfung*” (bar exam);
  - f) attendance of a minimum of 42 half-days of professional development activities, as required by the “*Richtlinien für die Ausbildung von Rechtsanwaltsanwärtern*” (Guidelines for the Training of Trainee Lawyers);
  - g) taking out professional indemnity insurance pursuant to Section 21a.
- (3) The nationality of a Member State of the European Union or another Contracting State of the Agreement on the European Economic Area or of the Swiss Confederation shall be equivalent to Austrian nationality. The same applies to effective nationality of the United Kingdom and Northern Ireland of the applicant and by meeting the conditions of Art. 10 of the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Community (withdrawal agreement between the European Union and the United Kingdom), official journal no. L 029 of 31.01.2020, page 7, if he/she
  1. has been registered in the list of lawyers before 1. January 2021,
  2. has been registered in the list of trainee lawyers and applies the latest within five years after this registration his/her registration in the list of lawyers or
  3. meets the preconditions of § 1 para 1a EIRAG.
- (4) A lawyer can only be registered in the “*Firmenbuch*” (Company Register) if he exercises the lawyer’s profession in the form of a “*Rechtsanwalts-Gesellschaft*” (company of lawyers).
- (5) The professional title “*Rechtsanwalt*” (lawyer) may only be recorded in the company register when evidence is provided on the consent of the respective “*Rechtsanwaltskammer*” (Bar).



## Section 1a

- (1) The lawyer's profession may also be exercised in the legal structure of a "*Gesellschaft bürgerlichen Rechts*" (civil-law partnership), a registered private partnership (lawyer's partnership) or an incorporated company, with the exception of the legal structure of the joint-stock company. Meeting the requirements of §§ 21a and 21c and of an effective formation of the respective company in accordance with the respective relevant law the lawyer's profession may also be exercised in another structure in accordance with the law of another member state of the European Union or another contracting state of the agreement on the European Economic Area or the Swiss Confederation as personal or incorporated company legal structure available for the exercise of the lawyer's profession with the exception of the legal form of the joint-stock company (or a similar incorporated company). The profession of lawyer may only be exercised in accordance with the statutory provisions on the lawyer's profession. It requires registration in the "*Liste der Rechtsanwalts-Gesellschaften*" (list of companies of lawyers) maintained by the bar for the district with competences for the location of the company's office. A partnership of lawyers and a lawyers' incorporated company in the sense of the first phrase must first be registered in the company register before being registered in the list of companies of lawyers; in case of a lawyers partnership otherwise admissible in accordance with the second phrase, which is to be registered in a public register according to the applicable law, the registration in the list of lawyers' partnerships requires the evidence of registration in the public register. Evidence of registration must be submitted to the board of the competent bar.
- (2) The intention to set up a company must be communicated to the board of the competent bar using the form sheet to be published by the Austrian Bar. The application must state:
  1. the type of company and the company name or the denomination of the company (Section 1b);
  2. the names, addresses, law-practice locations and professional titles of the company partners authorized to represent and manage the company, as well as the names and addresses of the other company partners; Section 12 (1) of the "*Europäisches Rechtsanwaltsgesetz*" (EIRAG - European Lawyer's Act), Federal Law Gazette I No. 27/2000, shall apply in analogy;
  3. the office location of the company of lawyers;
  4. all additional information which proves that the requirements of Section 21a and Section 21c are met;
  5. a statement by the "*Rechtsanwalts-Gesellschafter*" (company partners) that they confirm the correctness of the data in the application, in full awareness of their disciplinary responsibility.
- (3) Every change in the circumstances that must be indicated in the application according to paragraph (2) must be communicated without delay to the board of the bar, using the form sheet according to paragraph (2), together with the respective statement according to paragraph (2) number 5.
- (4) The board shall refuse registration in the list of companies of lawyers or delete the registration if it should emerge that the requirements of Section 21a or Section 21c do not, or no longer apply. The second sentence of Section 5 (2) as well as Section 5a shall apply in analogy. Except in the case of imminent danger, the board can grant the company of lawyers a respite of six months, as a maximum, before deleting its registration so that it can re-establish a status that is compatible with the law. The company-register court (Section 13 of the "*Firmenbuchgesetz* [FBG – Company Register Act]) or eventually the



authority keeping the public register into which the lawyer's company is registered shall be informed that the registration has been deleted.

- (5) Registration of a lawyer's company as well as any further entries in the company register relating to a company of lawyers shall require the presentation of a statement by the competent bar that it does not object to such a registration or entry. When moving the office of a company of lawyers to the district of another bar, the statement shall be issued by the bar responsible for the district where the office is moved. Objections shall only be raised if the intended registration is contrary to the law; the second sentence of Section 5 (2) and Section 5a shall apply in analogy.
- (6) The provisions applicable to lawyers shall equally apply to companies of lawyers.
- (7) A company of lawyers not registered in the company register has to inform the competent bar immediately on any change in the composition of its partners and in addition to submit the latest till 31. January of each calendar year an updated list of the partners as well as eventually an updated entry of its registration in the public register relevant for it.

## Section 1b

- (1) The name or designation of a company of lawyers must only comprise the names of one or several of the following persons: a company partner who is a lawyer, as defined in Section 21c number 1 letter a), or a former lawyer who resigned as a lawyer and was a company partner at the time of resignation, or whose law practice, which was managed as a company of lawyers or as a sole entrepreneurship, is being continued by the company of lawyers. The names of other persons must not be included in the company name. Section 12 (1) of the "*Europäisches Rechtsanwaltsgesetz*" (EIRAG - European Lawyers' Act), Federal Law Gazette I No. 27/2000, shall apply in analogy. As material reference in the name of the company or the denomination of the company may be an indication that the lawyer's profession being exercised is to be included, further addenda are admissible to the extent not being misleading and also not creating the impression of a specific or regional exclusivity. The designation "*offene Gesellschaft*" (general partnership) may be replaced by the designation "*Partnerschaft*" (partnership) or – if the company name does not include the names of all partners – the addition "*und (&) Partner*" (and [&] partner[s]). The designation "*Kommanditgesellschaft*" (limited partnership) may be replaced by the designation "*Kommandit-Partnerschaft*" (limited partnership of lawyers).
- (2) The designation of a lawyer's undertaking that is continued in the form of a company of lawyers may continue to be used, yet, only with an addition referring to the new legal structure.

## Section 2

- (1) The practical training required for the exercise of the lawyer's profession shall consist of working as a legal professional at court, or with a public prosecution office, or with a lawyer. Moreover, it may also consist of working as a legal professional with a notary, or with an administrative agency, at a university, or with a chartered accountant or tax adviser<sup>1</sup>, if the work is conducive to the exercise of the lawyer's profession. Working at the "*Finanzprokuratur*" (Office of the Lawyers and Legal Advisers of the Republic of Austria) is equivalent to training with a lawyer. Working with a lawyer will only qualify as practical training if this activity is pursued as a primary occupation and is not affected by any other occupational activity. Periods spent on statutory leaves or absences due to illness, accident or a ban on employment under the "*Mutterschutzgesetz*" (MSchG –

Maternity Protection Act) are also recognized in this context. If standard working time is reduced in keeping with Section 14a and Section 14b of the “*Arbeitsvertragsrecht-Anpassungsgesetz*” (AVRAG – Labour Contract Law Amendment Act), or for severely disabled persons as defined in the “*Behinderteneinstellungsgesetz*” (BEInstG – Employment of Persons with Disabilities Act), as well as in cases of part-time employment in keeping with the “*Mutterschutzgesetz*” (MSchG – Maternity Protection Act) or the “*Väter-Karenzgesetz*” (VKG – Paternal Leave Act) the training period shall be recognized at the level to which the standard working time was reduced.

- (2) The practical training as defined in paragraph (1) shall cover a period of five years. A minimum of seven months of this period shall be spent working at a court or a public prosecution office in Austria, as well as with a lawyer in Austria for a minimum of three years.
- (3) The following activities shall also be recognized among the training periods that need not necessarily be spent at court, with a public prosecution office or a lawyer in Austria:
  1. a maximum of six months of university education after completing the study of Austrian law (Section 3), if it led to an additional academic degree in the field of legal science; \*
  2. a practical training period abroad that is equivalent to the training as defined in paragraph (1), if this training is conducive to the exercise of the lawyer’s profession;
  3. any other practice of the legal profession in Austria or abroad, provided that such work has been useful for practising as a lawyer and has been carried out with a person or office being responsible that is adequately qualified.

The board of the bar shall resolve on guidelines defining the requirements to be met for the practical training defined in number 2 and number 3 to be recognised and the extent to which it will be recognised; those guidelines shall, in particular, contain information about the requirements to be met by the person or office where practical training is done or that supervises the same and about the form in which the required evidence of the type and contents of such practical training has to be provided. The guidelines shall be published on the website of the bar and provided there on a permanent basis.

- (4) The practical training may be recognized upon the successful completion of studies of Austrian law (Section 3), at the earliest. It is excluded that periods according to paragraphs (1) to (3) will be recognized on a multiple basis. \*

### **Section 3 \***

- (1) The studies of Austrian law required for the exercise of the lawyer’s profession shall be pursued at a university and shall be completed with an academic degree in legal science, which may also be based on several studies (Section 54 and following of the “*Universitätsgesetz 2002*” [UnivG – 2002 University Act]). The study course shall cover a minimum of four years and comprise studies equivalent to a minimum amount of 240 ECTS points (Section 51 (2) number 26 of the “*Universitätsgesetz 2002*” [UnivG – 2002 University Act]).
- (2) In the course of the studies according to paragraph (1), proof shall be provided that reasonable knowledge has been obtained in the following areas of knowledge:
  1. Austrian civil law and Austrian civil procedural law,
  2. Austrian criminal law and criminal procedural law,
  3. Austrian constitutional law including fundamental and human rights, and Austrian administrative law including administrative procedural law,
  4. Austrian commercial law, Austrian labour and social law and Austrian tax law,



5. European law; general international law,
6. if required, other areas of legal science, and
7. basis of the law; economics; other areas of knowledge related to law.

These areas of knowledge shall be covered in a scope which is appropriate to ensure an education in legal science commensurate to the requirements for exercising the lawyer's profession. The amount of work in these areas of knowledge shall amount to a total of 200 ECTS points, as a minimum, with areas of knowledge relating to legal science accounting for 150 ECTS points, as a minimum. Proof of knowledge shall be provided by successfully passing examinations and/or obtaining positive grades on written papers, including the paper according to paragraph (3). The subject of both, i.e. the examination and the paper, may also cover several areas of knowledge.

- (3) In the course of the studies, one written paper shall be produced and obtain a positive grade. The main focus of the content shall be on one or several of the areas of law listed in paragraph (2), and the paper shall serve to prove the ability to independently engage in scientific legal work.
- (4) Other law studies at a university, pursued by a national of one of the Member States of the European Union and the other Contracting States of the Agreement on a European Economic Area as well as of the Swiss Confederation, which are completed with an academic degree in legal science, will only be recognized if there is equivalence with the requirements under paragraph (1). The education and its content shall be equivalent if the knowledge and the skills of the graduate correlate with the knowledge and skills obtained when studying Austrian law, as listed in paragraphs (2) and (3). The provisions of the first chapter of the “*Ausbildungs- und Berufsprüfungsanrechnungsgesetz*” (ABAG – Recognition of Education and Occupational Admission Tests Act) shall apply to establishing equivalence and, if necessary, obtaining equivalence in case of partial equivalence.

#### Section 4

The “*Rechtsanwaltsprüfungsgesetz*” (RAPG – Bar Examination Act), Federal Law Gazette No. 556/1985, shall apply to where and how the bar exam shall be taken.

#### Section 5

- (1) A person wishing to exercise the lawyer's profession must obtain admission to the “*Liste der Rechtsanwälte*” (Register of Lawyers) by providing proof of satisfying all statutory requirements to the board of the bar which has competences over the location of his law practice, indicating its address.
- (1a) If there are doubts as to whether the studies of Austrian law completed by the applicant correspond to the requirements of Section 3, the board can request – prior to taking its decision and at the expense of the applicant – the chairperson of the “*Ausbildungsprüfungskommission*” (Educational Qualifications Review Commission) with competences according to the Section 5 (4) of the “*Ausbildungs- und Berufsprüfungsanrechnungsgesetz*” (ABAG – Recognition of Education and Occupational Admission Tests Act) that an expert opinion is obtained from one or several of the commissioners who are university professors (Section 3 (3) of the “*Ausbildungs- und Berufsprüfungsanrechnungsgesetz*” [ABAG - Recognition of Education and Occupational Admission Tests Act]). \*

- (2) Admission to the list of lawyers shall be refused if the applicant has committed an act that makes him untrustworthy. The board shall conduct the necessary inquiries and, if admission is to be refused, interview the applicant before doing so.
- (3) Admission to the list of lawyers shall otherwise be granted if there are no grounds pursuant to the provisions of the present law which oppose the applicant's admission.
- (4) The provisions on disciplinary measures determine to what extent admission shall be refused on account of disciplinary decisions.
- (5) Admission to the list of lawyers shall be published, without delay and in a generally accessible form, on the Internet website of the "Österreichischer Rechtsanwaltskammertag" (Austrian Bar) (<http://www.rechtsanwaelte.at>).
- (6) If an application for admission is rejected for reasons of untrustworthiness, no further application for admission must be filed with any of the bars prior to the expiry of three years following a legally effective refusal.

### Section 5a

- (1) If the board refuses admission to the list of lawyers (Section 5), the applicant has the right to appeal this decision to the Supreme Court (Chapter Seven of the "Disziplinarstatut" [DSt – Disciplinary Code for Lawyers and Trainee Lawyers]). The right of appeal can be exercised within a period of four weeks.
- (2) The following provisions shall be applied to the proceedings according to paragraph (1) before the Supreme Court:
  1. The Supreme Court shall decide by majority vote; in case of a tie, the presiding judge shall have the casting vote.
  2. The decision, together with its reasons, shall be sent to the board which is responsible for the necessary service of the decision.
  3. Furthermore, Section 49 to Section 52, Section 54, Section 55, Section 57 and Section 58 of the "Disziplinarstatut" (DSt - Disciplinary Code for Lawyers and Trainee Lawyers) and, on a subsidiary basis, the provisions of the "Außerstreitgesetz" (AußStrG – Non-Contentious Proceedings Act) shall apply in analogy, to the extent that their application is compatible with the principles and specific features of the admission procedure.

### Section 6 – deleted

### Section 7

- (1) Prior to being admitted to the list of lawyers the applicant shall solemnly promise as follows:

*"Ich gelobe bei meinem Gewissen und bei meiner staatsbürgerlichen Ehre, der Republik Österreich treu zu sein, die Grundgesetze sowie alle anderen Gesetze und gültigen Vorschriften unverbrüchlich zu beobachten und meine Pflichten als Rechtsanwalt gewissenhaft zu erfüllen."*

("I swear on my conscience and my honour as a citizen and pledge my allegiance to the Republic of Austria that I will respect at all times the constitutional laws as well as all other laws and valid regulations and that I will conscientiously perform my duties as a lawyer.")

- (2) The solemn promise shall be made into the hands of the president or the vice-president of the bar. When moving to another location for the purpose of exercising the lawyer's profession, the solemn promise need not be renewed.

### **Section 7a**

- (1) Lawyers have the right to also set up places of business outside of the location of their law practice provided that, in each case, the management of these places of business is assigned to a lawyer who has his law office at the respective place of business.
- (2) Setting up a place of business shall require the approval of the bar to which the lawyer is associated. If the place of business is to be set up within the jurisdiction of another bar, its opinion shall be obtained. The approval shall be granted if the requirement according to paragraph (1) is satisfied.
- (3) The second sentence of Section 5 (2) and the final sentence of Section 21 (1) shall apply in analogy.
- (4) Both the law office and the places of business are locations for the service of documents, as defined in Section 13 (4) of the "Zustellgesetz" (ZustG - Service of Documents Act).

## **Chapter II – The Rights and Obligations of Lawyers**

### **Section 8**

- (1) A lawyer's right of representation extends to all courts and authorities of the Republic of Austria and comprises the power to represent parties on a professional basis, both in and out of court, as well as in all public and private matters. A reference to this power substitutes for any proof by way of documents in all courts and before all authorities.
- (2) The power to represent parties on a professional basis in all matters, as defined in paragraph (1), is reserved to lawyers. The foregoing shall not affect the powers resulting from Austrian legislation on the professions of notaries, patent agents, chartered accountants and civil engineers.
- (3) Moreover, the foregoing shall not affect the powers granted in other statutory provisions under Austrian law to persons or associations who represent parties within a limited material scope, the scope of competences of statutory professional organisations and voluntary occupational associations of employers or employees with collective-bargaining powers, the provision of information or assistance by persons or organisations, to the extent that these services do not directly or indirectly serve the objective of obtaining economic advantages for these persons or organisations, as well as the powers granted in other statutory provisions under Austrian law that are part of the range of powers of regulated or licensed crafts or businesses.
- (4) The professional title "*Rechtsanwalt*" (lawyer) may only be used by persons who are registered in the list of lawyers of bars. Other persons, who are entitled to use the professional title "*Rechtsanwalt*" (lawyer) on the basis of the provisions of the "*Europäisches Rechtsanwaltsgesetz*" (EIRAG - European Lawyers' Act), may use this professional title only by indicating the location of their law practice abroad. The title "*Rechtsanwalt*" (lawyer) may only be added to the name of a company of lawyers with powers to exercise the profession (Section 21c) and may only be used by such a company to refer to a line of business (Section 3 number 5 of the "*Firmenbuchgesetz*" [FBG –

Company Register Act]) and be recorded in the company register. The same applies to all other concepts and phrases referring to the exercise of the lawyer's profession.

- (5) If a lawyer acts as a mediator or conducts a public auction pursuant to Section 87c of the "Notariatsordnung" (NO – Notaries' Act), he must also comply with the professional obligations of a lawyer in this function. The foregoing shall not affect any special regulations applicable to mediators under other statutory provisions.

## Section 8a

- (1) With a view to the particularly high risk of money laundering (Section 165 of the "Strafgesetzbuch" (StGB - Austrian Criminal Code) or financing of terrorist activities (Section 278d of the Austrian Criminal Code [StGB]) in specific contexts, lawyers are obliged to examine with special attention all operations when acting in the name and for the account of their client in financial or real-estate transactions, or participating for their client in the planning or performance of deals that relate to the following:
1. buying or selling real-estate property or undertakings,
  2. managing money, securities or other assets, opening or managing bank, savings or securities accounts, or
  3. establishing, operating or managing trusts, companies, partnerships, foundations or similar structures, including raising of funds necessary to establish, operate or manage companies or partnerships.
- (2) Lawyers shall introduce and maintain reasonable and appropriate strategies and procedures in order to comply with the duties of care imposed upon them in connection with combating money-laundering (Section 165 of the Austrian Criminal Code [StGB]) and financing of terrorist activities (Section 278d Austrian Criminal Code [StGB]) in respect of clients, suspicious transaction reports, the keeping of records, internal controls, risk assessment and risk management, as well as ensuring compliance with the relevant provisions and communication within their law offices in order to prevent and forestall transactions associated with money laundering (Section 165 of the Austrian Criminal Code [StGB]) or financing of terrorist activities (Section 278d of the Austrian Criminal Code [StGB]). This also includes strategies, controls and procedures (including a check of their staff in this regard) that are adequate in terms of their specific business activity and the type and size of their law firm for effective minimisation and control of the risks of money laundering (Section 165 of the Austrian Criminal Code [StGB]) and terrorist financing (Section 278d of the Austrian Criminal Code [StGB]) identified at European Union level, at national level and at their own level (para 3). In the case of partnerships or companies of lawyers those measures may include appointment of a lawyer belonging to the partnership or company as compliance officer for the area of prevention of money laundering (Section 165 of the Austrian Criminal Code [StGB]) and terrorist financing (Section 278d of the Austrian Criminal Code [StGB]). The continuous observation of the strategies, controls and procedures is to be surveyed, eventually through the compliance agent appointed, the measures taken are to be improved to the extent necessary.
- (3) In addition lawyers shall analyse and assess the risk of their work being used for purposes of money laundering (Section 165 of the Austrian Criminal Code [StGB]) or terrorist financing (Section 278d of the Austrian Criminal Code [StGB]) to which they may be exposed; this shall be done to an extent that is adequate in terms of their specific business activity and the type and size of their law firm. In doing so they shall pay special attention to risk factors resulting with respect to their clients, certain countries or geographical territories or certain products, services, transactions or distribution channels. Such risk

assessments shall be recorded by the lawyers, kept up to date and made available at the bar's request. Facts of which the lawyers have learnt under the conditions stated in the third sentence of Section 8c (1) need not be included in the written risk assessments.(4) In order to ascertain whether a client or its beneficial owner is a politically exposed person, a family member of a politically exposed person or a person who is known to be related to a politically exposed person (Section 8f (2) to (4)), lawyers shall, in addition, introduce and maintain a risk management system that is adequate in terms of their specific business activity and the type and size of their law firm and includes risk-based procedures.

- (4) To be able to determine whether a party or its beneficial owner is a politically exposed person, a family member of a politically exposed person or a person being close to a known politically exposed person (§ 8 f para 2 to 4), the lawyer furthermore has to introduce and maintain a risk-based procedure including risk-management-system being adequate to his specific business activity and type and size of his law firm.
- (5) In case a lawyer operates a branch office he has to introduce and maintain strategies and procedures to be applied for the purpose of combating money laundering and terrorism financing, both at the main office (law practise location), as well as at the branch office, including data protection strategy as well as strategies and procedures for internal information communication. The same applies to branch establishments or branch offices of a company of lawyers. These strategies and procedures are to be implemented effectively at the level of the branch establishments or branch offices in member states of the European Union and third countries.
- (6) In case of branch establishments or branch offices in another member state of the European Union it is to be safeguarded, that the national laws passed in the respective member state to implement the directive (EU) 2015/849 to prevent the use of the financial system for the purpose of money laundering and terrorism financing, for the modification of the regulation (EU) no. 648/2012 and for the repeal of the directive 2005/60/EG and the directive 2006/70/EG, official journal no. L141 of 05.06.2015, page 73, as amended by directive (EU) 2018/843 for the amendment of the directive (EU) 2015/849 to prevent the use of the financial system for the purpose of money laundering and terrorism financing and for the amendment of the directives 2009/138/EG and 2013/36/EU, official journal no. L 156 of 19.06.2018, page 43, are observed. In case of a branch office or establishment in a third country, in which the minimum regulations for the combating of money laundering and terrorism financing are less strict than those in this Federal Act, the requirements of this Federal Act are to be applied to the extent the law in the third country permits.
- (7) In case the implementation of the strategies and procedures according to para 5 of this Act are not admissible in a third country, the lawyer or the company of lawyers has to inform the bar. Also it is to be safeguarded, that the branch establishment or branch office in such third country applies additional measures in order to effectively combat the risk of money laundering or terrorism financing. These additional measures and their qualification are to be reviewed in the frame of the survey (Section 23 para 2) of the bar, eventually the bar has to take additional survey measures in the frame of which also the instruction may be given, that in the respective third country no business and transaction may be carried out in the sense of Section 8a para 1 or respective business connections must not be established or have to be terminated.
- (8) An exchange of information including person related data of clients between main office and branch establishment or branch office for the purpose to combat money laundering and terrorism financing is admissible, most of all the documents and information required to meet the diligence due towards the clients and the information transmitted with a

suspicion report between main office and branch establishment or branch office can be forwarded in order to implement the strategies and procedures according to para 5. A transfer is not admissible to the extent the Federal Minister for Interior Affairs (Federal Criminal Office, Money Laundering Reporting Agency according to section 4 para 2 Federal Criminal Office Act) or the Central Reporting Unit of another member state of the European Union or a third country give different instructions.

## Section 8b

- (1) In the event of one of the transactions listed in Section 8a (1), the lawyer is obliged to establish and check the identity of his client and that of the beneficial owner (Section 8d):
  1. prior to accepting a client's brief, when establishing a contractual relationship (business relationship) that is designed for a certain length of time,
  2. in case of all other transactions, prior to performing the operation, if the contract value (which is the assessment basis in keeping with the "*Allgemeine Honorar-Kriterien für Rechtsanwälte*" [General Fee Criteria for Lawyers] in conjunction with the "*Rechtsanwaltstarifgesetz*" [RATG – Lawyers' Fees Act]) amounts to EUR 15,000, as a minimum, and irrespective of whether the operation is transacted in one single step or in several steps which appear to have some connection; if the contract value (the amount of the assessment basis) is not known initially, the client's identity must be established as soon as it becomes foreseeable, or has become clear that the contract value (the amount of the assessment basis) will probably amount to EUR 15,000 as a minimum,
  3. if the lawyer knows, suspects or has justified reason to assume that the operation serves money laundering (Section 165 of the Austrian Criminal Code [StGB]) or to finance terrorist activities (Section 278d of the Austrian Criminal Code [StGB]), or
  4. if the lawyer has doubts concerning the authenticity or the adequacy of the proof of identity which he received.
- (2) A party shall prove his identity by personally presenting an official identity card, by means of an officially documented, equally conclusive procedure or on the basis of documents, data or informations stemming from a credible and independent source. Subject to available technical preconditions this also comprises legally provided or recognised secure procedures and means for the identification in electronic way or remote as well as such electronic means of identification being issued through a notified electronic identification system from a member state of the European Union according to Art. 9 para 1 of the regulation (EU) no. 910/2014 on electronic identification and confidential services for electronic transactions in the domestic market and for the repeal of the directive 1999/93/EG, official journal no. L 257 of 28.08.2014, page 73, as amended by the correction official journal no. L 155 of 14.06.2016, page 44, in the following: eIDAS-VO), and correspond with the security level "substantial" or "high" (Art. 8 para 2 lit. b and c eIDAS-VO). As official identity card in the sense of the first phrase official identity cards with photographs shall be all documents issued by a state authority which bear a non-exchangeable, recognizable photograph of the head of the person in question and indicate the name, the signature and, to the extent required by the laws of the issuing state, also the date of birth of the person, as well as the issuing authority. If a representative intervenes on behalf of a party, his identity must be established in the same manner. The authorization to represent the party must be checked by presenting suitable attestations.



- (3) If the party is not physically present when the business relationship is established or the operation is performed (non-face-to-face transaction), the lawyer must respect adequately such fact in his risk-based assessment to be made (para 8) and take additional, appropriate and evidential measures in order to reliably examine and establish the identity of the party as well as to check and ensure.
- (4) The lawyer shall take reasonable measures to check the identity of the beneficial owner. In the case of legal entities, trusts, companies, partnerships, foundations and similarly agreed structures this includes reasonable measures to understand the specific ownership and control structure. An adequate measure is the viewing of the register of beneficial owners according to § 11 WiEReG (Beneficial Owner Register Act). Where beneficiaries of trusts or similarly agreed structures in the sense of § 2 number 2 letter d and number 3 WiEReG are determined according to specific features or according to categories, lawyers shall obtain sufficient information to ensure that they will be able to identify the beneficiary at the time of payment or at the time at which the beneficiary exercises his vested rights. In case of natural persons, proof of identity of the contracting party in question shall be provided by presenting the original, or a copy of an official identity card with a photograph of the contracting party in question, as well as by means of conclusive documents in the case of legal entities. Lawyers shall keep and maintain records on the measures taken by them to identify the beneficial owner in the sense of § 2 number 1 letters a and b WiEReG.
- (4a) Starting a new business relation with a legal carrier in the sense of Section 1 para 2 WiEReG an extract from the register of beneficial owners (Section 7 para 1 WiEReG) according to Section 9 or Section 10 WiEReG is to be obtained in the frame of the examination of the identity of the beneficial owner. In case of a legal carrier domiciled in another member state of the European Union or a third country, in which an obligation for registration of the beneficial owners in a register meeting the requirements of Art. 30 and 31 of the Directive (EU) 2015/849 exists and such register is in effect in operation, the lawyer eventually has to obtain evidence on the registration or an extract from the register; the examination of the identity of the beneficial owner may also only be completed during the establishment of the business relation, if this is necessary not to interrupt the regular course of business and a reduced risk of money laundering or terrorism financing exists.
- (4b) In case the beneficial owner inquired is a member of the top executive level according to Section 2 para 1 lit. b WiEReG, the lawyer has to take the necessary adequate measures to examine the identity of the natural person having the position as member of the top executive level and to keep records on the measures taken as well as eventual problems arising during the examination procedure and to store such.
- (5) To the extent possible lawyers shall keep the originals of the documents pursuant to paragraphs (2) to (4b) presented to or obtained by him to establish identity. Copies shall be made and filed in the case of official identity cards with photographs and other documents where it is impossible or not feasible to file the original. The same applies – to the extent applicable – to information having been obtained when determining and examining the identity applying one of the procedures or identification means named in para 2 second phrase.
- (6) Lawyers shall assess the purpose and the envisaged type of business relationship or transaction by means of the information available to them or, where necessary, to be obtained by them on the basis of a risk-based assessment and monitor the business relationship on an ongoing basis; they shall retain such information. Lawyers shall examine the background and purpose of all business relationships that are complex or intended to serve the processing of transactions that are unusually large or unusual due to

their structure or pattern and have no apparent economic or legal purpose, to the extent that this is reasonably possible; in order to ascertain whether such business relationships or transactions are suspicious, lawyers shall, in particular, increase the scope and manner of their monitoring. Moreover, lawyers shall certainly be obliged to attach such increased attention if in a business relation or a transaction a third country identified with high-risk or a natural or legal entity with a residence or domicile in such third country is involved in a delegated act adopted by the European Commission according to Article 9(2) of Directive (EU) 2015/849. Towards the party the lawyer has to apply accordingly the increased care measures named to prevent money laundering and terrorism financing in the financial market (FM-GwG). In addition, the Federal Minister for Justice may, in accordance with the international duties of the European Union and under consideration of Section 9a para 4 FM-GwG

1. introduce one or several additional risk-reducing measures to be observed by the lawyers concerning all or certain third countries with high risk, consisting of one or several of the elements named in Section 9a para 2 no. 1 to 3 FM-GwG or
2. eventually one or several measures to be applied accordingly according to Section 9a para 3 no. 1 to 3 FM-GwG for handling affairs with all or certain third countries with high risk.

Before issuing an order according to no. 1 or 2 the Federal Minister for Justice has to inform the European Commission. Monitoring shall include a review of the transactions performed in the course of the business relationship in order to ensure that these correspond to the lawyer's information about the party, his business activities and risk profile, including, if necessary, the source of the funds. The lawyer shall make sure that the respective documents, data or information are kept updated at all times. The lawyers' duties for care measures shall apply also to all existing business relationships, independent of the time at which they were established.

- (6a) The application of care measures on a risk-based basis has to be made in case of existing business relations, especially if the lawyer
1. obtains knowledge of a modification of essential circumstances at the party or he,
  2. based on other legal rules, is obliged to contact the party in the course of the respective calendar year in order to eventually review pertinent information about the beneficial owner(s); such obligation for contacting may eventually also arise from Directive 2011/16/EU on the cooperation of the administrative authorities in the field of taxation and the repeal of Directive 77/799/EEG, Abl. No. L 64 of 11.03.2011, page 1, as amended by Directive (EU) 2018/822, Abl. No. L 139 of 05.06.2018, page 1.
- (7) If the lawyer is not or no longer in a position to establish and check the identity of a party or that of a beneficial owner, or to obtain information about the purpose and the intended type of business relationship, he must not establish the contractual relationship and must not perform the transaction; any existing business relationship shall be ended. Moreover, it should be contemplated to send a report to the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations, Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the "Bundeskriminalamt-Gesetz" [BKA-G - Austrian Federal Office of Criminal Investigations Act]). This also applies, if the party wantonly does not comply with a lawyer's justified demand for information in the context of his obligation to establish a person's identity. The third sentence of Section 8c (1) shall apply in analogy.
- (8) A lawyer shall determine the scope of his obligations pursuant to the above paragraphs on the basis of a risk-based assessment to be carried out by him and shall in the course of such assessment and evaluation of the risks of money laundering (Section 165 of the Austrian Criminal Code [StGB]) and terrorist financing (Section 278d of the Austrian

Criminal Code [StGB]) at least take into consideration the purpose of the transaction or business relationship, the amount of the assets used by a customer or the volume of the transactions carried out and the regularity or duration of the business relationship; a lawyer shall in any case also take into account the factors for a potentially lower or higher risk as described in Annex II and Annex III of the FM-GwG - (Austrian Financial Markets Anti-Money Laundering Act). A lawyer shall explain reasonableness of those measures to the bar accordingly upon their request; this shall not apply to any facts of which the lawyer has learned in the situations described in the third sentence of Section 8c (1).

- (9) If a lawyer knows, suspects or has justified reason to assume that the transaction serves the purpose of or is related to money laundering (Section 165 of the Austrian Criminal Code [StGB]) or terrorist financing (Section 278d of the Austrian Criminal Code [StGB]) and has at the same time a reason to assume that the client would obtain knowledge of such suspicion against him if the lawyer were to take the steps to be taken by him according to this provision, the lawyer shall be under no obligation to continue or stop the measures taken in compliance with his identification and other due diligence duties. However, he shall immediately make a report to the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations, Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “Bundeskriminalamt-Gesetz” [BKA-G - Austrian Federal Office of Criminal Investigations Act]), unless the prerequisites of the third sentence of Section 8c (1) are fulfilled; Section 8c (2) shall be applied.
- (10) Except for the obligation to constantly monitor the business relationship, a lawyer may use third parties to fulfil his duties as defined in the foregoing paragraphs, unless he possesses information according to which equivalent fulfilment of the duties must be doubted. Ultimate responsibility for fulfilment of these requirements shall, however, lie with the lawyer who uses the third party. Only the following third parties may be used:
1. credit institutions or financial institutions whose registered office is in Austria, unless they hold a licence exclusively to carry on the business of a currency exchange office (Section 1 (1) number 22 of the “Bankwesengesetz” [BWG – Austrian Banking Act]), or lawyers, notaries, auditors, tax advisors, balance clerks, bookkeepers and payroll clerks, whose registered office is in Austria or
  2. credit institutions or financial institutions as defined in Article 3(1) and (2) of Directive (EU) 2015/849, unless they hold a licence exclusively for carrying on the business of a currency exchange office, or lawyers, notaries, auditors, tax advisors, balance clerks, bookkeepers and payroll clerks, whose registered office is in another Member State or persons subject to obligations vis-à-vis them whose registered office is in a third country
    - (a) whose due diligence and retention duties are in line with those defined in Directive (EU) 2015/849 and
    - (b) who are subject to supervision with respect to compliance with these duties which is in line with Article 47 and Article 48 of Directive (EU) 2015/849.

Lawyers shall not be allowed to use third parties established in third countries with a high risk (third sentence of paragraph (6)).

- (11) A lawyer shall obtain the necessary information regarding the due diligence duties mentioned in the first sentence of paragraph (10) from the third party without delay. In addition, he shall take appropriate steps to ensure that the third party will be able to forward to him copies of the documents used to comply with those due diligence duties and of other relevant records on the identity of the customer or beneficial owner

- without delay, including informations, which were obtained when determining and examining the identity applying a procedure or means of identification named in para 2 second phrase.
- (12) The requirements of para 10 and 11 may be met implementing strategies and procedures according to Section 8a para 5, to the extent the following requirements are met:
1. The lawyer or the company of lawyers uses informations of a branch establishment or branch office,
  2. the diligence duties, the rules for storing and programs to combat money laundering and terrorism financing applied by the branch establishment or branch office, are in accordance with this Federal Act, the Directive (EU) 2015/849 or equivalent regulations.
  3. the effective implementation of the requirements listed under no. 2 is supervised on the level of the main-, branch office or subsidiary through a competent authority of the member state of origin or the third country.
- (13) Paras 10 to 12 do not apply in case of employment of external ancillary staff through the lawyer, not meeting the requirements towards third parties according to para 10, in which the ancillary staff is directly included in the organisation or the internal procedures of the law firm on the basis of the contractual agreement concluded with him/her.

### Section 8c

- (1) In the cases of Section 8a (1) a lawyer must, without delay, inform the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) of all transactions, including attempted transactions, if and when he learns, suspects or has justified reason to assume that monies which are involved in the transaction, irrespective of the amount concerned, have originated from criminal activities or are related to terrorist financing (suspicious transaction report); Section 16 (1) number 1, 2 and 4 of the “*Bundesgesetz zur Verhinderung der Geldwäscherei und Terrorismusfinanzierung im Finanzmarkt*” (FM-GwG - (Austrian) Financial Markets Anti-Money Laundering Act) shall apply analogously to the specific facts and circumstances that must be reported. The suspicious transaction report shall be transmitted in a common electronic format via the secure communication channels established by the Federal Minister for the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit as defined in Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]). However, the lawyer is not obliged to report a suspicion concerning facts that have come to his knowledge from or via a party in the course of providing legal advice, or in connection with representing a party in court, or before an agency preceding legal proceedings, or before a public prosecution office, unless it becomes obvious to the lawyer that the party has sought the lawyer’s advice clearly for the purpose of money-laundering (Section 165 of the Austrian Criminal Code [StGB]) or financing terrorist activities (Section 278 Austrian Criminal Code [StGB]).
- (1a) The lawyer may only inform the authorities with competences for combating money laundering and financing terrorist activities, the bar and the criminal prosecution offices of a report on a suspicion or a report to the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations Austrian Federal Office of Criminal Investigations ,

Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]), pursuant to Section 8b, all measures serving the observation of the duties and tasks according to para 1 and 2 to 4 are to be kept secret towards the party and other third parties (ban on disclosing information); to this extent the ban on disclosing information also extends to the access of the party to person-related data processed by the lawyer. It is admissible to disclose this information within the lawyer’s office as well as within the company of lawyers. The ban on disclosing information does not oppose efforts by the lawyer to keep the party from committing an unlawful act. If the party also retains a lawyer in a Member State of the European Union or a third country where requirements are valid that are equivalent to those of Directive (EU) 2015/849, as well as where there are equivalent obligations on confidentiality and data protection, or if such a lawyer is otherwise involved in the transaction of the party, then information relating to the transaction in question may be exchanged between these lawyers. However, the exchanged information may only be used to prevent money laundering (Section 165 Austrian Criminal Code [StGB]) or financing of terrorist activities (Section 278d of the Austrian Criminal Code [StGB]).

- (2) If the lawyer is required to file a report on a suspicion pursuant to paragraph (1) he may not perform the operation prior to having filed his report with the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]). The lawyer has the right to demand a decision from the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) as to whether there are reservations concerning the immediate performance of the operation. If the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) does not respond by the end of the following working day, the operation may be performed immediately. However, if it is not possible to relinquish the transaction, if relinquishing the transaction would render it more difficult, or prevent that the facts are established, or that the assets are secured or if prosecution of the beneficiaries of a suspicious transaction might be obstructed, the lawyer shall provide to the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) the necessary information immediately after performing the transaction.
- (3) The Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) has the right to order that the operation in question must not be performed, or must be postponed for the time being. The Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) shall inform the lawyer, the party and the public prosecution office of such an order without any undue delay. The information provided to the lawyer shall be deemed to be the official notification of the order. The information provided to the party shall include an indication that the party or any other person concerned has the right to file

a complaint with the Federal Administrative Court for violation of his rights. Reference shall be made to the provisions concerning such complaints, which are contained in Section 7 to Section 9 of the “*Verwaltungsgerichtsverfassungsgesetz*” (VwGVG – Administrative Court Constitution Act). Whenever the party would need to be informed of such an order, the lawyer may certainly inform his party accordingly.

- (4) The Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) shall repeal an order pursuant to paragraph (3) as soon as the requirements for issuing it no longer prevail, or the public prosecution office states that the pre-conditions for confiscation pursuant to Section 115 (1) number 3 of the “*Strafprozessordnung*” (StOP - Code of Criminal Procedure ) no longer apply. Moreover, the order shall cease to be effective,
1. if more than six months have passed since it was issued, or
  2. as soon as a court has taken a final and enforceable decision on the order for confiscation pursuant to Section 115 (1) of the Code of Criminal Procedure (StPO).
- (5) The Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations, Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) has the right to investigate such data of natural persons and legal entities as well as of other institutions with legal personality, as are required to comply with the obligations imposed upon him by paragraphs (1) to (4) as well as Section 8b and to process it together with data he has processed or is authorised to process in enforcing federal or provincial/regional laws in a data application. Data shall be erased as soon as it is no longer required to fulfil the tasks and in any case after five years. Transmissions are allowed subject to Section 4 (2) number 1 and number 2 of the “*Bundeskriminalamt-Gesetz*” (BKA-G - Austrian Federal Office of Criminal Investigations Act).

## Section 8d

Beneficial owners are all natural persons who ultimately own or control the party, or upon whose instruction the party ultimately acts. The concept of beneficial ownership shall therefore comprise at least the following groups of persons, listed in Section 2 no. 1 to 3 WiEReG.

## Section 8e

- (1) Except for the cases of Section 8b (1) number 3 and the second and third sentence of paragraph (6), the obligations of lawyers listed in Section 8b shall not apply if the risk analysis to be carried out by them including the risk factors to be taken into account (Section 8a (3)) and evaluation of the same on the basis of the factors for a potentially lower risk as described in Annex II to the “*Bundesgesetz zur Verhinderung der Geldwäscherei und Terrorismusfinanzierung im Finanzmarkt*” (FM-GwG - (Austrian) Financial Markets Anti-Money Laundering Act) shows that with respect to a specific transaction or a specific business relationship there is only a low risk of money laundering (Section 165 of the Austrian Criminal Code [StGB]) or terrorist financing (Section 278d of the Austrian Criminal Code [StGB]). This may in particular be the case if the party is
1. a credit or financial institution that falls under the scope of application of Directive (EU) 2015/849,

- domiciled in a third country and is subject in that country to requirements and duties that are equivalent to the requirements stipulated in Directive (EU) 2015/849 and which is subject to supervision concerning fulfilment of the same,
2. an Austrian authority, or any other authority or public institution,
    - a) which has been entrusted with public tasks on the basis of the Treaty on the European Union, the Treaties on the European Communities or the secondary legislation of the Community, and
    - b) whose identity can be publicly checked and is transparent and exists beyond any doubt,
    - c) whose activities and accounting practices are transparent, and
    - d) which are accountable to a body of the Community or the authorities of a Member State, or for which other controls and mechanisms for double-checking exist to review their activities,
  - (2) Before applying a simplified due diligence procedure as defined in paragraph (1) a lawyer shall reasonably satisfy himself that the specific transaction or the specific business relationship actually poses a lower risk of money laundering (Section 165 of the Austrian Criminal Code [StGB]) or terrorist financing (Section 278d of the Austrian Criminal Code [StGB]). If this is not possible at all or to a sufficient extent, the simplified due diligence procedure shall not be applied.
  - (3) Also in the cases in which a simplified due diligence procedure was applied for justified reasons lawyers shall monitor the transaction and the business relationship to a sufficient extent to facilitate the uncovering of unusual or suspicious transactions.

#### **Section 8f \***

- (1) In the event of one of the transactions listed in Section 8a (1), the lawyer shall check, as part of his identification obligation, whether the party is a politically exposed person as defined in paragraph (2), a family member of such a person (paragraph (3)) or a person who is known to be related to such a person (paragraph (4)). For this purpose he must have at his disposal adequate, risk-based procedures in order to determine this criterion.
- (2) Politically exposed persons means natural persons who hold or have held important public offices, including but not limited to:
  1. heads of state, heads of government, ministers, deputy ministers and secretaries of state; in Austria these are, in particular, the Federal President, the Federal Chancellor and the members of the federal government and of the regional governments;
  2. members of parliament or members of similar legislative bodies; in Austria these are, in particular, the members of the National Council and of the Federal Council;
  3. members of executive bodies of political parties; in Austria these are, in particular, the members of the executive bodies of the political parties represented in the National Council;
  4. members of supreme courts, constitutional courts or other high courts where appeal can be lodged against their decisions anymore; in Austria these are, in particular, the judges of the Austrian Supreme Constitutional Court (*Verfassungsgerichtshof/VfGH*), of the Austrian Supreme Administrative Court (*Verwaltungsgerichtshof/VwGH*) and of the Austrian Supreme Court (*Oberster Gerichtshof/OGH*);
  5. members of courts of audit or the management boards of central banks; in Austria these are, in particular, the President of the Austrian Court of Audit (*Rechnungshof*)

and the directors of the Regional Courts of Audit (*Landesrechnungshöfe*) and members of the Governing Board of the Austrian Central Bank (*OeNB*);

6. ambassadors, charges d'affaires and high-ranking officers of the armed forces; in Austria high-ranking officers of the armed forces are, in particular, military staff from the rank of a lieutenant general (*Generalleutnant*);
7. members of the administrative, managing or supervisory boards of state-owned enterprises; in Austria these are, in particular, enterprises where the federal government holds at least 50% of the share capital or equity capital or which are operated by the federal government alone or which are actually controlled by the federal government through financial or other business or organisational measures; concerning enterprises where a *Land* (province/region) holds at least 50% of the share capital or equity capital or which are operated by a *Land* alone or which are actually controlled by a *Land* through financial or other business or organisational measures, the executive board and/or the management where the total annual turnover of such enterprise exceeds EUR 1,000,000. The total annual turnover is determined on the basis of the annual revenues from the most recently adopted annual financial statements;
8. directors, deputy directors and members of the management board or a similar office at an international organisation.

None of the public offices stated in numbers 1 to 8 shall include medium-rank or low-rank officers.

- (3) Family members of politically exposed persons shall include, without limitation:
  1. the spouse of a politically exposed person or a person of equal status as the spouse of a politically exposed person or the partner as defined in Section 72 (2) of the Austrian Criminal Code [StGB];
  2. the children (including adopted and foster children) of a politically exposed person and their spouses, persons of equal status as spouses or partners as defined in Section 72 (2) of the Austrian Criminal Code [StGB];
  3. the parents of a politically exposed person.
- (4) Persons who are known to be related to politically exposed persons are
  1. natural persons who are known to be beneficial owners together with a politically exposed person of legal entities or comparable agreed structures or who maintain other close business relations with a politically exposed person, or
  2. natural persons who are the sole beneficial owner of a legal entity or a comparable agreed structure who are known to have, in fact, been established for the benefit of a politically exposed person.
- (5) A contractual relationship with a politically exposed person may only be entered after having obtained the lawyer's consent (a lawyer authorized to manage a company of lawyers). If the party or the beneficial owner is a politically exposed person, the lawyer shall take reasonable measures in order to check the origin of the money that is deployed in the course of the business relationship or the transaction, and the business relationship shall be subject to increased continuous monitoring. The lawyer shall be subject to this obligation also where the party or beneficial owner was a politically exposed person during the last twelve months before the business relationship was established.
- (6) The first and the second sentence of paragraph (5) shall apply accordingly to family members of politically exposed persons and to persons who are known to be related to politically exposed persons.

## Section 9

- (1) The lawyer is obliged to represent the clients whose brief he has accepted in accordance with the law, as well as to represent his clients' rights vis-à-vis third parties applying his diligence, loyalty and conscientiousness. He is authorized to openly put forward everything which he deems to be conducive, according to the law, to represent his client, to use his client's pleas and defences in any form and way that is not in conflict with his submissions, his conscience and the law.
- (1a) In keeping with technical and organisational possibilities as well as the requirements of an orderly and structured administration of justice, the lawyer is obliged, subject to guidelines which are defined in Section 37 number 6, to ensure that he uses the instruments necessary to preserve, pursue and enforce the interests entrusted to him, especially to use electronic legal communication (Section 89a of the "*Gerichtsorganisationsgesetz*" [GOG – Court Organisation Act]) in contacts with courts.
- (2) The lawyer is obliged to maintain professional secrecy concerning all matters entrusted to him and the facts that have otherwise come to his knowledge in his professional capacity, whenever maintaining confidentiality is in the interest of his party. In court and other proceedings before authorities, the lawyer has this right to secrecy, in keeping with procedural regulations. The same applies to the company partners as well as the members of supervisory bodies of a company of lawyers established under law or articles of association. In case the members or supervisory bodies are not lawyers, the lawyer must oblige them to confidentiality and take sufficient precautionary measures for the reliable observation of this obligation. The same applies to ancillary staff employed by the lawyer.
- (3) The right of a lawyer to secrecy pursuant to the second sentence of paragraph (2) must not be bypassed by court or other measures of authorities, especially by questioning a lawyer's auxiliary staff or by ordering the surrender of documents, video, audio or data carriers, or by confiscating these. Special rules defining this ban shall remain unaffected.
- (4) Where a lawyer's right to secrecy so requires in order to warrant protection of the party or the rights and freedoms of other persons or enforcement of civil-law claims, the data subject may not claim the rights of Articles 12 to 22 and Article 34 of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ No. L 119 of 4 May 2016, p. 1 (hereinafter: GDPR) or Section 1 of the "*Datenschutzgesetz*" (DSG - Data Protection Act).
- (5) Before establishing an operation relation or the carrying out of a transaction the lawyer has to submit to a new party the information provided for in Art. 13 and 14 DSGVO. These informations have to contain in case of business listed in Section 8a para 1 especially a general reference to the legal duties of the lawyer according to this Federal Act when processing person related data for the purpose of preventing money laundering and terrorism financing. The processing of person related data on the basis of this Federal Act for the purpose of preventing money laundering (Section 165 Criminal Code) and terrorism financing (Section 278d Criminal Code) is to be regarded as matter of public interest according to DSGVO.
- (6) In the event of one of the operations listed in Section 8a (1), the lawyer shall provide information to the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations , Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the "*Bundeskriminalamt-Gesetz*" [BKA-G - Austrian Federal Office of Criminal Investigations Act]), upon his inquiry immediately, concerning all circumstances known to him, to the extent that this is required to clarify any suspicion of money-laundering



(Section 165 of the Austrian Criminal Code [StGB]) or financing terrorist activities (Section 278d of the Austrian Criminal Code [StGB]) directed against the party. This obligation exists independently, whether the lawyer has filed a suspicion report before (Section 8c para 1), it does not apply under the preconditions listed under Section 8c para 1 third phrase. To meet these obligations the lawyer has to have systems which allow him through safe communication channels and in a kind and way, safeguarding confidential treatment of inquiries to give to respective inquiries of the Federal Minister for Interior Affairs (Federal Criminal Office, Money Laundering Report Office according to Section 4 para 2 Federal Criminal Office Act) completely and quickly information especially, whether he is in a business relation with certain persons or has been during a period of five years prior to the inquiry as well as the type of this business relation.

- (7) The bona fide information provided to the Federal Minister of the Interior (Austrian Federal Office of Criminal Investigations, Money-Laundering Reporting Unit, pursuant to Section 4 (2) of the “*Bundeskriminalamt-Gesetz*” [BKA-G - Austrian Federal Office of Criminal Investigations Act]) pursuant to Section 8b and Section 8c shall not be regarded as a violation of the obligation to secrecy, nor of any other restrictions on disclosure governed by other contractual or judicial and administrative provisions (secrecy obligations) and shall not lead to any prejudicial legal consequences for the lawyer. The same applies to trainee lawyers as well as other staff of the attorney, who report internally or to the Federal Minister for Interior Affairs (Federal Criminal Office, Money Laundering Report Office according to Section 4 para 2 Federal Criminal Office Act) a suspicion of money laundering (Section 165 Criminal Code) or terrorism financing (Section 278d Criminal Code). These persons are to be protected, under observation of the applicable Labour Law provisions, from threats, retaliation measures or hostilities and especially against detrimental or discriminating measures in the employment relationship. To the extent the lawyer does not meet or not sufficiently meets this obligation, the person concerned may refer this to the Bar, which has to look to the reproach within the frame of supervision (Section 23 para 2). Section 20a DSt is to be applied analogously. Other legal remedies of the person concerned in this connection remain unaffected.
- (8) The lawyer has to apply adequate procedures and being in adequate relation to kind and size of his law firm allowing his staff, under observation of confidentiality of their identity, to report a violation of the provisions of this Federal Act, which serve the prevention or combating of money laundering (Section 165 Criminal Code) or terrorism financing (Section 278d Criminal Code) internally.
- (9) The Federal Minister for Interior Affairs (Federal Criminal Office, Money Laundering Report Office according to Section 4 para 2 Federal Criminal Office Act) has to provide access for lawyers to actual information on methods of money laundering and terrorism financing and on clues allowing the identification of suspicious transactions. Also he has to care, that a timely feedback with regard to the efficiency of suspicion reports of money laundering or terrorism financing and the then measures taken takes place.

## Section 9a

In connection with escrow accounts of lawyers information about the actual identity of the persons in whose name the money has been deposited shall be disclosed to the credit institution; in the case of global fiduciary accounts and in the case of probate, wardship or insolvency escrow accounts this shall, however, only be done upon the credit institution's request. The lawyer shall keep the documents that prove the identity (Section 8b (5)). Copies of such documents and copies of any other available relevant documents regarding the



identity of such persons or the beneficial owner shall be forwarded to the credit institution upon its request.

## Section 10

- (1) The lawyer is not obliged to accept representing a party and can refuse to do so without indicating any reasons. However, he is obliged to refuse representing a party or to merely provide advice to that party if he represented the adverse party in the same matter or a matter associated to it, or if he acted as a judge or public prosecutor in such matters at an earlier point in time. Moreover, he must not provide services or provide advice to both sides in a legal dispute.
- (2) Altogether, the lawyer is obliged to preserve the honour and dignity of the legal profession by acting truthfully and honourably.
- (3) The board of a bar shall appoint a lawyer for a solvent party when no lawyer voluntarily accepts to represent that party. In such a case, the lawyer must accept representing that party against securing a deposit for the cost of representation.
- (4) If the law requires that a document shall be issued before a lawyer, the lawyer shall check the identity of the party by means of an official identity document with a photograph; he shall inform the party comprehensively about the possible structure and content of the document in question as well as its legal effects, and he shall make sure that the party has understood the consequences and effects of the legal transaction performed by the party through that document. The lawyer shall also sign the document, as proof of having complied with this obligation.
- (5) A lawyer is permitted to engage in advertising to such an extent as the advertising provides true and factual information about his professional activity and is in agreement with his professional obligations.
- (6) A lawyer is obliged to engage in continuous professional development. This especially applies to the areas of knowledge that were the subject of his studies (Section 3) and the bar exam (Section 20 of the “*Rechtsanwaltsprüfungsgesetz*” [RAPAG – Bar Exam Act]).

## Section 10a

- (1) An escrow accepted by a lawyer must be handled by him on his own responsibility. Acting as surety or granting loans or credits in this connection is prohibited. The tasks to be performed by the lawyer under the escrow shall be fully defined in the escrow agreement, which shall be concluded in writing. The lawyer shall register the escrows accepted by him in a register with consecutive numbering.
- (2) If the escrow deposit exceeds an amount of EUR 40,000 or if pursuant to a different statutory provision the amount has to be secured by an escrow facility of the bar, the escrow shall in any case be handled via an escrow facility that has to be maintained by the bar. This shall not apply to funds received by the lawyer in connection with proceedings or collection of accounts receivable, asset management or when acting as an insolvency administrator or which are intended to be used to pay court fees, taxes, levies or charges.
- (3) If an escrow is agreed that has to be secured by an escrow facility of the bar, the lawyer shall notify the escrow facility of the escrow prior to initial disposal of the escrow deposit. The lawyer shall also be obliged to notify termination of escrow.
- (4) The lawyer shall allow the escrow facility to review proper handling of the escrows accepted by him in accordance with the guidelines of Section 27 (1) letter g by providing relevant information and allowing inspection of all documents related to the escrows

accepted by him, including the register to be kept by him according to paragraph 1. To that extent the lawyer shall ask his client for release from his obligation to maintain secrecy.

- (5) If there are concrete indications that the lawyer has not or not sufficiently complied with his obligation to handle escrows via the escrow facility, he may be subject to a review as defined in paragraph 5 even independent of any specific escrow. In that case the bar's right to information and inspection concerns all escrows to be handled or which have been handled by the lawyer as defined in paragraph 2.
- (6) The lawyer shall pay contributions to the premiums for the insurance to be taken out by the bar in order to secure the depositors' rights (Section 23 (4)), with the contributions to be calculated equally for all members of the bar from among the community of lawyers independent of the number of escrows which are handled by a specific lawyer via the escrow facility.
- (7) In the case of data processing for maintaining the escrow facility the rights and duties resulting from Articles 12 to 22 and Article 34 GDPR and from the right to information, rectification and erasure of data as defined in Section 1 of the "Datenschutzgesetz" (DSG - Data Protection Act) and enforcement of the same shall be subject to the provisions of this Federal Act and of the guidelines issued pursuant to Section 27 (1) letter g. Other rights and duties of the controller of such data processing shall be the responsibility of the bar, unless the specific lawyer is responsible pursuant to this Federal Act or pursuant to the guidelines issued in accordance with Section 27 (1) letter g.

### **Section 10b**

- (1) If a lawyer considers himself especially qualified to accept precautionary powers of attorney for healthcare, property and/or finances (*Vorsorgevollmachten*) and court-appointed adult guardianships (*gerichtliche Erwachsenenvertretungen*), he may have himself registered in the list defined in Section 28 (1) letter o. The prerequisite therefor is that he
  1. or at least one member of his staff possesses many years of experience in dealing with persons whose decision-making capacity is limited due to a mental illness or similar impairment,
  2. possesses a professional organisation which meets the requirements of modern quality management, a sufficient number of staff and appropriate infrastructure for this area of responsibilities,
  3. will ensure that the tasks assigned to him will be fulfilled in compliance with the statutory provisions and generally accepted professional standards for the welfare of the person represented,
  4. will be able to keep in sufficient contact with the person represented to be informed about their wishes, needs and personal situation,
  5. has attended training on how to deal with persons whose decision-making capacity is limited due to a mental illness or similar impairment,
  6. warrants that his staff will undergo specific training and will be guided and supervised appropriately when fulfilling the tasks.
- (2) The list to be kept by the bar as defined in Section 28 (1) letter o shall be made generally available on the website of the bar.
- (3) The lawyer shall report the number of precautionary powers of attorney for healthcare, property and/or finances and court-appointed adult guardianships taken on by him to the bar once a year.

## Section 11

- (1) A lawyer owes performance of the business entrusted to him during the term of his brief or commission, and he shall be responsible for non-performance.
- (2) However, the lawyer has the right to terminate representation of a party, in which case, as well as in the event that the party terminates the representation, the lawyer has the duty to continue representation for another 14 days after receipt of the termination notice, to the extent that this is necessary in order to protect the party against adverse legal effects.
- (3) The foregoing obligation shall cease if the party revokes the lawyer's brief.

## Section 12

- (1) If representation of a party has ended, the lawyer is obliged, upon the party's request, to return the originals of the documents and files belonging to the party. However, he has the right, in the event that his costs for representing the party have not been paid, to make and retain copies, at the party's expense, of the documents to be returned which are required to prove his costs.
- (2) The lawyer never has any obligation to return to the party drafts of writings, letters by the party to the lawyer and other reference files, as well as proof of payments made by the lawyer which have not yet been refunded to him. However, the lawyer is advised to return copies of these items, upon a party's request and at a party's expense. This obligation, as well as the obligation to keep files, expires after five years, calculated as of the date at which representation of the party ends.
- (3) The obligation to keep documents and informations pursuant to Section 8b (4) ends after five years, at the earliest, calculated as of the time at which the business relationship with the party has ended. The same applies to receipts and records concerning the business matters covered by Section 8a (1) which the lawyer processes in fulfilling the due diligence duties imposed on him in connection with combatting money laundering (Section 165 of the Austrian Criminal Code [StGB]) and terrorist financing (Section 278 of the Austrian Criminal Code [StGB]). All personal data processed in this connection shall be erased not later than after ten years unless the lawyer is entitled or under an obligation to retain data for a longer period of time due to a different statutory or a contractual obligation. If data refers to facts or circumstances which are the subject matter of an investigation, trial or appellate proceedings regarding Section 165, Section 278a, Section 278b, Section 278c, Section 278d, Section 278d or Section 278e of the Austrian Criminal Code [StGB] and if the lawyer has demonstrably obtained knowledge of that fact and of the pending proceedings, the data concerned may not be erased until the case is closed in a non-appealable/final manner. The documents on transactions retained by the lawyer in the cases of Section 8a (1) must allow subsequent reconstruction of the specific transaction.

## Section 13

The lawyer is not obliged to return the power of attorney to the party. However, a party has the right to visibly indicate the revocation of the power of attorney on that form.

## Section 14

If a lawyer is prevented, he has the right to be substituted by another lawyer maintaining, though, his statutory liability. If he is continually prevented or absent for a longer period of time, he shall notify the board of his bar that he is being substituted. The board, in turn, must also notify the competent “*Oberlandesgericht*” (Higher Regional Court) so that the subordinate courts can be informed accordingly. A lawyer does not need permission for a holiday leave planned for a longer period of absence.

## Section 15

- (1) If it is a statutory requirement to retain a lawyer, the lawyer can also be represented before all courts and authorities by a trainee lawyer who is employed by him and entitled to act as a substitute, while retaining his responsibility. However, it is not admissible that the trainee lawyer signs any submissions to courts or authorities.
- (2) A trainee lawyer is entitled to act as a substitute if he has successfully passed the bar exam. Upon request by the lawyer, the requirement to have passed the bar exam may be waived by the board of a bar for those trainee lawyers employed by the requesting lawyer for reasons deserving consideration, whenever these trainee lawyers have completed their law studies (Section 3) and can prove their practical training for a minimum of seven months with a court or public prosecution office as well as of eighteen months with a financial procurator’s office or a lawyer. However, the waiver of the bar exam shall only apply for the time that the trainee lawyer is employed by the lawyer upon whose request it was granted. \*
- (3) Whenever it is not a statutory requirement to retain a lawyer, the lawyer can be substituted before all courts and authorities by any other trainee lawyer employed by him, while retaining his responsibility. However, it is not admissible that the trainee lawyer signs any submissions to courts or authorities.
- (4) The board of a bar shall issue identity cards to the trainee lawyers employed by a lawyer, which indicate the entitlement to act as a substitute pursuant to paragraph (2) (full entitlement card) or the entitlement to act on behalf of a lawyers pursuant to paragraph (3) (partial entitlement card).

## Section 16

- (1) A lawyer is free to agree his fees with a party. However, he is not entitled to fully or partially share in the proceeds of a litigation entrusted to him (*quota litis*).
- (2) A lawyer appointed pursuant to Section 45 or Section 45a shall accept representing or defending a party in keeping with the decree on his appointment and with the same care as a freely retained lawyer. He has a title to remuneration against the party represented or defended by him, with the proviso of additional procedural rules, only to the extent that the losing party refunds the litigation costs.
- (3) Concerning services provided by lawyers appointed pursuant to Section 45 or Section 45a, for which they would otherwise have no title to remuneration on account of procedural law provisions, the lawyers admitted to the list of lawyers of an Austrian bar have a claim against that bar in that the bar credits them an equal share to their contributions to old-age, occupational disability and surviving dependants’ pension, from the lump sum allocated to the bar, unless there is a title to remuneration pursuant to paragraph (4).

- (4) In proceedings where the lawyer appointed pursuant to Section 45 or Section 45a provides services on more than ten days of hearings or altogether more than 50 hours of hearings within one year, since the first day of hearings attended by him, he has a claim to adequate remuneration against the bar concerning all services in a year that are in excess of the aforementioned periods, subject to the requirements of paragraph (3). Upon request by the lawyer, the service to draw up a written legal remedy, in proceedings where the court decides to extend the deadline for filing a legal remedy in keeping with Section 285 (2) of the Code of Criminal Procedure (StPO), shall be regarded as equal to ten hours of hearing for every full week by which the deadline for the legal remedy is extended. The same applies in case of extension of the period for the reply to an appeal making use of Section 285 para 4 second phrase Code of Criminal Procedure. The lawyer shall file his application for remuneration with the bar by 31 March of the year following the expired calendar year in which the lawyer provided his service, with the claim being lost otherwise. Upon his request, the lawyer shall be granted a reasonable advance payment by the bar concerning this remuneration, in keeping with advance payments pursuant to the last sentence of Section 47 (5). The board decides on the amount of the remuneration as well as on granting an advance payment and on its amount. In the course of determining a reasonable remuneration, the services detailed in the lawyer's application shall be taken into account and evaluated according to their sequence over time. If the remuneration is smaller than the advance payment granted, the lawyer shall return the respective amount to the board of the bar.
- (5) The provisions of paragraphs (3) and (4) shall be applied analogously if the remuneration claim of an *ex officio* defence counsel, appointed under Section 61 (3) of the Code of Criminal Procedure (StPO), proves to be uncollectible, in spite of exhausting all steps that he can reasonably be expected to take for its collection, and this fact has been established by the bar.

#### **Section 16a** – deleted

#### **Section 17**

- (1) In the absence of an agreement, the amount of the remuneration due in civil disputes shall be calculated for the time spent and the efforts made by the lawyer in keeping with a schedule of fees, to the extent possible. This schedule of fees shall be stipulated by way of legislation, as soon as the new Code of Civil Procedure has become effective. The statutory provisions on work contracts shall apply to those items that are not contained in the schedule of fees.
- (2) Prior to the introduction of the aforementioned schedule of fees and in all other cases, the statutory provisions on work contracts shall solely be applicable to the determination of expenses and the consideration due to the lawyer in the absence of an agreement.

#### **Section 18**

- (1) If, upon application by a party, that party's rights are enforced against a third party whose legal representation in court is assigned to a lawyer, the refund of the cash expenses shall be borne by the state. If the party represented by the lawyer, who is appointed by the state, has financial means or obtains possession of financial means, that party shall refund the cash expenses to the state and pay a remuneration to his representative.

- (2) The laws on fees and charges shall determine in which case an exemption from stamp duty shall be granted or when it needs to be paid.

### **Section 19**

- (1) A lawyer is entitled to deduct the sum of his expenses and his remuneration from cash funds which he receives from his client, to the extent that these are not covered by advance payments received; yet, he owes it to the client to immediately settle these positions with the client.
- (2) In the event that the correctness and the amount of his claim are contested, both the lawyer and the client have the right to seize the board of the bar for an amicable solution.
- (3) However, in the event that the correctness and the amount of a lawyer's claim is contested, the lawyer is entitled to use, as coverage, also the cash funds received for depositing with the court, up to the amount of the contested claim. However, he is equally obliged to prove the correctness and the amount of the latter if the requested amicable solution is not obtained.
- (4) The lawyer has a statutory lien on the deposited amount for the claim which arises from representing a party.

### **Section 19a**

- (1) If a party is granted the refund of costs in proceedings before a court or another public authority, or if he is awarded refund of costs by an arbitral tribunal, the lawyer, who last represented that party, has a lien in connection with the cost refund claim of that party, with regard to his own and his predecessors' claims for refund of the cash expenses and the remuneration for representing the party.
- (2) If a party was ultimately represented by several lawyers, the first-mentioned lawyer has the right to this lien.
- (3) If the debtor of the costs does not pay the full amount of the costs, then the last lawyer shall distribute the received amount among himself and the earlier lawyers, in accordance with the amounts of costs due to him and the other lawyers.
- (4) The party required to refund the costs may pay these, at any time and with legal effect, to the lawyer entitled to a lien and also to the party, as long as the lawyer has not demanded that the payment is made to him.

### **Section 20**

It is incompatible with the exercise of the lawyer's profession:

- a) to hold a paid government office/position, with the exception of a teaching position; a paid government office/position is any activity as member of the Federal Government, as Secretary of State, as member of a Government of a Land, as President of the National Council, as chairman of a club in the National Council, as President of the Court of Audit or a Court of Audit of a Land, as member of the Ombudsmann-Office, as member of the Court of Administration, as prosecutor, as judge of the regular judiciary or an Administrative Court as well as any activity for valuable consideration under the control of the supreme organs of the Federation or of the Laender, the chairman of the Ombudsmann-Office or the President of the Court of Audit through appointed professional organs, no case of incompatibility is the holding of a seat in a legislative body;



- b) to exercise the profession of notary public;
- c) to engage in such other activities as run counter to the reputation of the lawyer's profession.

## Section 21

- (1) A lawyer is permitted to choose and change the location of his law practice. However, prior to re-locating, he shall notify the move to the board of his bar, as well as to the board of the bar responsible for the newly chosen location of his law practice. The board of the bar shall publish the notification immediately and generally accessible on the Internet website of the Austrian Bar (<http://rechtsanwaelte.at>).
- (2) A lawyer is entitled to use his qualified electronic signature as a lawyer (Article 3(12) of Regulation (EU) No. 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ No L 257 of 28 August 2014, p. 73, as amended by corrigendum published in OJ No L 257 of 29 January 2015, p. 19) in the course of his professional activities, which is reserved to the exercise of his profession as a lawyer (electronic lawyer's signature). The request to be issued the qualified certificate and the identity card for the electronic lawyer's signature shall be filed with the responsible bar, in keeping with Section 8 (1) of the "*Signaturgesetz- und Vertrauensdienstegesetz*" (SVG – Signature and Trust Services Act). The professional title shall be included in the qualified certificate. It is inadmissible to use a pseudonym. Trust service providers shall render the content of the qualified certificate accessible on the Internet in a secure mode. The qualified certificate shall be revoked upon every change of the data in the qualified certificate. The attaching identity card shall be returned to the bar. The latter shall issue an identity card upon application, which shall be attached to the new qualified certificate.
- (3) Upon expiry of the right to exercise the lawyer's profession (Section 34 (1)), the right to use the electronic lawyer's signature expires as well. The identity card must be returned to the respective bar without delay. In the cases defined in Section 34 (2) the right to use the electronic lawyer's signature is also suspended. The bar shall immediately inform the Austrian Bar of the expiry or suspension of the right to exercise the lawyer's profession and shall request the trust service provider to revoke the certificate (Article 24 (3) eIDAS Regulation). In these cases the certification service provider shall revoke the certificate upon request by the bar and with immediate effect, (Section 9 of the "*Signaturgesetz*" [SigG – Signature Act]). The electronic register for lawyers' signatures must indicate that the right to exercise the lawyer's profession has been suspended or has expired.
- (4) The identity card for the electronic signature entitles the lawyer to archive, with the consent of the party, public and private documents in the Lawyers' Documents Archive, adding his electronic lawyer's signature ("*Archivium*" - Section 91c and Section 91d of the "*Gerichtsorganisationsgesetz*" [GOG – Court Organisation Act]). The lawyer shall facilitate electronic access to these documents to the parties (Section 91c (3) of the "*Gerichtsorganisationsgesetz*" [GOG – Court Organisation Act]). If a bar commissioner has been appointed, that person shall facilitate the access for the parties. In the absence of such a deputy, the Austrian Bar shall facilitate access to these documents to the parties. The parties have the right to permit electronic access to additional persons, in the form provided in the guidelines. Except for the cases provided in the law, access to these documents may be facilitated to the court only upon a court order, or to the competent bar upon its order in the course of exercising its supervision over the rules of conduct and ethics.

## Section 21a

- (1) Every lawyer is obliged to prove to the board of the bar, prior to being registered in the list of lawyers, that he has taken out professional indemnity insurance with an insurer entitled to operate in Austria, which will cover claims for damages against him, arising from his professional activity. He shall maintain this insurance throughout the period in which he exercises the lawyer's profession.
- (2) If a lawyer does not comply with his obligation to maintain professional indemnity insurance, in spite of being requested to do so by the board of the bar, the board shall ban him from exercising the lawyer's profession until he has provided proof of compliance with this obligation.
- (3) The minimum insured sum shall amount to a total of EUR 400,000 for every insurance claim. For partnerships of lawyers the insurance must also cover claims for damages that are filed against a lawyer on account of his position as a company partner.
- (4) For companies of lawyers in the form of a limited-liability company or a partnership of lawyers, where the only general partner is a limited-liability company, the minimum insured sum shall amount to a total of EUR 2,400,000 for every insurance claim. If the professional indemnity insurance is not maintained or not in the required amount, the company partners will also be held personally responsible in the amount of the missing insurance coverage, in addition to the company, irrespective of whether they can be found to be at fault.
- (5) Any exclusion or time limitation of the insurer's follow-up liability is inadmissible.
- (6) The insurer is obliged to report to the competent bar, without being so requested and without any delay, any circumstance that results, or may result in a termination or restriction of the insurance coverage, or a deviation from the original insurance confirmation, as well as to inform the competent bar on its request about such circumstances, with the insurer's obligation to provide coverage otherwise continuing up to two weeks as of providing the information.

## Section 21b

- (1) The lawyer shall make sure that the trainee lawyer receives comprehensive training in keeping with the professional profile of the lawyer and to deploy him accordingly on a full-time basis.
- (2) The lawyer shall make the trainee lawyer aware, as well as the other persons employed by him, by means of appropriate measures, which shall be reasonable in proportion to his specific business activity and the type and size of his law firm, of the provisions that serve to prevent or combat money laundering (Section 165 of the Austrian Criminal Code [StGB]) or the financing of terrorist activities (Section 278d of the Austrian Criminal Code [StGB]). These measures include, *inter alia*, attendance by the lawyer and the trainee lawyer of special further-training programs (Section 28 (2) to identify transactions associated with money-laundering (Section 165 of the Austrian Criminal Code [StGB]) or the financing of terrorist activities (Section 278d of the Austrian Criminal Code [StGB]) and the proper conduct to be pursued in such cases. Depending on the risk that his activities might be used for purposes of money laundering or terrorist financing (Section 8a (3)) and taking his specific business activity and the type and size of the law firm into account the lawyer shall also enable the other persons employed by him to attend appropriate training programs.

## Section 21c

In case of partnership or company for the exercise of the lawyer's profession ("*Gesellschaften zur Ausübung der Rechtsanwaltschaft*"), the following requirements must be satisfied at all times:

1. The company partners shall only be
  - a) Austrian lawyers, lawyers according to the annex to the "*Europäisches Rechtsanwaltsgesetz*" (EIRAG – European Lawyer's Act), as well as internationally active lawyers under the preconditions and in the extent of Section 41 para 2 EIRAG,
  - b) the spouses or registered partners of a lawyer belonging to the company for the duration of the marriage or the registered partnership,
  - c) the children of a lawyer associated to the company till the completion of the 35<sup>th</sup> year of life as well as longer, as long as they prepare to exercise the lawyer's profession,
  - (d) former lawyers who gave up exercising the lawyer's profession and who were company partners at the time of their waiver, or whose law practice is continued by the company,
  - (e) the surviving spouse or registered partner of a deceased lawyer if the latter was a company partner at the time of his demise, or if the widow (widower) or the children set up the company with a lawyer for the purpose of continuing the law practice,
  - (f) children of the deceased lawyer, if the latter was a company partner at the time of his demise or the children set up the company for the purpose of continuing the law practise with a lawyer, with the restriction that the children may belong to the company only till the completion of their 35th year of life and in addition as long as they prepare themselves to become lawyer.
  - (g) limited-liability companies as well as similar capital companies in the sense of Section 1a para 1 second phrase, whenever they are the sole general partner of a partnership of lawyers organised in the form of a limited partnership or a similar personal company in the sense of Section 1a para 1 second phrase.
2. Except for the case of a partnership of lawyers in which the sole general partner is a limited-liability company, lawyers may be associated to a company only as personally liable company partners or, in the case of limited-liability companies or a similar capital company in the sense of Section 1a para 1 second phrase, as company partners authorized to represent and manage the company. Lawyers who temporarily do not exercise the lawyer's profession pursuant to Section 20 letter a), as well as the company partners listed in number 1 of letters b) to e) may belong to the company only as limited partners (partners with limited liability), as company partners without authorization to represent and manage the company, or like dormant company partners. Other persons who are company partners must not share in the turn-over or profit of the company.
3. The temporary discontinuation or prohibition to exercise the lawyer's profession does not prevent a person from being associated to a company; yet, these conditions prevent that person from representing and managing the company.
4. The Articles of Association of the lawyers' company have to provide that any transfer or encumbrance of a company share requires the approval of the shareholders (shareholders' meeting).
5. All company partners must exercise their rights in their own name and for their own account. Any fiduciary assignment and exercise of company rights is not admissible.
6. The activities of the company must be limited to exercising of the lawyer's profession, including all necessary ancillary activities and the management of the company assets.

7. At least one of the company partners must have his law practice at the office of the company. Section 7a shall apply in analogy to the setting up of branch offices.
8. Lawyers must not belong to any other professional affiliation in Austria. The foregoing shall not preclude participation of a lawyer either as a limited partner (partner with limited liability) in a partnership of lawyers in which the only general partner (personally liable partner) is a limited-liability company or a similar capital company in the sense of Section 1a para 1 second phrase, or as a company partner in the limited-liability company in question which acts as general partner. The articles of association may provide, though, that a lawyer may also exercise the lawyer's profession outside of the company. Participation of companies of lawyers in other affiliations for the joint exercise of the profession in Austria is not admissible. The foregoing shall not prevent participation of a lawyer's company with limited liability which acts as the only general partner (or a similar capital company in the sense of Section 1a para 1 second phrase) in a partnership of lawyers that is organised as a limited partnership (or a similar personal company in the sense of Section 1a para 1 second phrase).
9. Except where a lawyer is a limited partner of a partnership of lawyers the sole general partner of which is a limited liability company (GmbH) all lawyers associated with a partnership or company must individually be authorized to represent and to manage the partnership or company. However, they can exercise representing and managing the company only within the framework of their professional authorization. All other company partners must be excluded from representing and managing the company. The foregoing shall apply in analogy to liquidation. Only a lawyer may be appointed as liquidator, for as long as the exercise of the lawyer's profession has not been terminated. In the event that Section 117 and Section 140 of the "Unternehmensgesetzbuch" (UGB – Commercial Law Code) apply, an effective arbitral award in arbitral proceedings shall be equivalent to a court decision.
10. In a company of lawyers only company partners may be appointed as managing directors. In a company of lawyers Powers of attorney (*Prokura*) can only be effectively granted to lawyers, the granting of powers to act is only admissible to carry out such business not affecting the exertion of lawyer's practise.
11. The lawyers must hold the majority in the company capital, and they must have a decisive influence on the decision-making process. The exercise of a brief/retainer by a lawyer associated with a company must not be tied to any instruction or consent of the company partners (meeting of company partners).
12. If a limited-liability company of lawyers (or a similar capital company in the sense of Section 1a para 1 second phrase) is the sole personally liable shareholder of a partnership of lawyers in form of a limited partnership (or a similar personal company in the sense of Section 1a para 1 second phrase), the provisions applicable to companies of lawyers constituted as limited-liability companies shall apply in analogy, with the proviso that the business purpose of the limited-liability company acting as general partner must be limited to performing its tasks as a company partner of the personal company as well as the management of the company assets, including the ancillary activities required in this connection, and that the limited-liability company acting as general partner must not be authorized to independently exercise the lawyer's profession. The managing directors of the personally liable partnership acting as general partner may only be lawyers, who are also limited partners (partners with limited liability) of the limited partnership.

### **Section 21d**

- (1) Every lawyer associated with a company shall ensure compliance with the provisions of Section 21c and the reporting obligation pursuant to Section 1a (2) and (3), especially by appropriate wording in the articles of association. Nor may he engage in any practice that is in contradiction to these provisions.
- (2) He is personally responsible for complying with his professional and ethical obligations. This responsibility can neither be restricted nor set aside by articles of association, or decisions of the company partners, or measures by the managing director(s).

### **Section 21e**

Powers of attorney may be granted to companies of lawyers. The company partners, who are authorized to represent the company, are authorized to exercise this representation on account of their personal professional authorization, as defined in Section 8.

### **Section 21f**

Only a lawyer may be appointed as the liquidator of a dissolved company of lawyers.

### **Section 21g**

Lawyers may only become employed in an employment relationship with a lawyer or a company of lawyers when the purpose of the employment relationship also comprises activities that are part of the tasks for which a lawyer is authorized.

## **Chapter III – The Bar and its Board**

### **Section 22**

- (1) Bars are constituted by all lawyers admitted to the list who have the office of their law practice in the district covered by that bar, as currently defined, as well as all trainee lawyers who are being trained by lawyers and who are registered in the list of trainee lawyers.
- (2) Bars are corporations under public law; they are entitled to display the national coat of arms. The official seal of a bar shall comprise the national coat of arms surrounded by the name of the bar.
- (3) For the purpose of affixing an electronic signature, when managing the business of a bar, the bar president shall use his electronic lawyer's signature, adding a graphic presentation of the official seal of the bar (Section 19 (3) of the “*E-Government-Gesetz*” (E-GovG – E-Government Act) and the words “as President of the Bar”. The foregoing shall apply in analogy to his deputies.

### **Section 23**

- (1) The sphere of activities of a bar shall cover the “*Bundesland*” (federal province/region) for which it was set up, as well as all lawyers and trainee lawyers who have been entered into the lists of that bar. The bar manages its business partly directly in the plenary assembly and partly indirectly via its board.



- (2) Within its sphere of activities, a bar shall safeguard, promote and represent the professional, social and economic interests of the lawyers and trainee lawyers associated to the bar in question. In this context, the bar is also charged with protecting the honour, the reputation and the independence of lawyers, as well as with protecting the rights and monitoring compliance with the duties of its members, including the provisions serving the purpose of preventing or combatting money laundering (Section 165 of the Austrian Criminal Code [StGB] or terrorist financing (Section 278d of the Austrian Criminal Code [StGB])). In the course of such supervision, which may eventually also comprise control actions directly at the lawyer, the bar shall take particular account of the risks of money laundering (Section 165 of the Austrian Criminal Code [StGB]) and terrorist financing (Section 278d of the Austrian Criminal Code [StGB]) which have been identified at European Union level, national level and at the level of the lawyers and to proceed supervising in this area on a risk-based approach. The frequency and intensity of supervision measures in the area to prevent money laundering (Section 165 Criminal Code) and terrorism financing (Section 278d Criminal Code) mainly have to follow the risks inquired and the results obtained by review of the risk-evaluations on a risk-based basis (Section 8a para 4) of the lawyers and the evaluation of the measures taken by them according to Section 8a para 2 (risk-profile) by the bar; these circumstances are to be evaluated in regular intervals and always newly when the bar obtains information on essential changes in the business activity or -structure of a lawyer. Doing so the bar has to take into account the scope of discretion vested to the lawyers. If in fulfilling its tasks the bar discovers facts which are related to money laundering (Section 165 of the Austrian Criminal Code [StGB]) or terrorist financing (Section 278d of the Austrian Criminal Code [StGB]) Section 8c (1) shall apply *mutatis mutandis* in this respect, further the existence of the preconditions for measures according to Section 78 para 1 Code of Criminal Procedure is to be examined. A request for information by the Federal Minister for Interior Affairs (Federal Criminal Office, Money Laundering Report Office, according to Section 4 para 2 Federal Criminal Office Act), serving the clarification of suspicion of money laundering (Section 165 Criminal Code) or terrorism financing (Section 278d Criminal Code) is to be complied with analogous application of Section 9 para 6. The bar on its side is authorised to file requests for information concerning money laundering, prior offences being in connection with or regarding terrorism financing to the Federal Minister for Interior Affairs (Federal Criminal Office, Money Laundering Report Office, according to Section 4 para 2 Federal Criminal Office Act). The bar has to give feedback to the Federal Minister for Interior Affairs (Federal Criminal Office, Money Laundering Report Office, according to Section 4 para 2 Federal Criminal Office Act) on the handling of the information having been supplied upon such request and on the results of the measures taken on the basis of the information having been supplied.
- (3) The bar is authorised to exchange information and to grant official assistance (Art. 22 Federal Constitutional Act) for the purposes to prevent money laundering and terrorism financing towards other authorities competent in this regard. Notwithstanding the obligation to official confidentiality (Art. 20 para 3 Federal Constitutional Act) the bar must not refuse from its side a request of a competent authority for exchange of information or official assistance serving the purpose to prevent money laundering and terrorism financing for one of the following reasons:
1. According to the view of the bar the request also touches fiscal matters,
  2. an investigation, examination or proceedings which are pending in Austria, except, the investigation, examination or proceedings would be affected through the exchange of information or the official assistance;



3. type and position of the competent requesting authority are different from the type and position of the bar.

A refusal referring to an existing obligation for secrecy or confidentiality is only admissible in cases, in which the professionally provided confidentiality of the lawyers is to be applied. The same applies to requests for information with regard to information to which a similar duty for confidentiality applies to notaries, defence lawyers in criminal cases, auditors, tax advisors or bookkeepers or who have the privilege of a witness.

- (4) When monitoring compliance with the duties of its members the bar shall also check whether the lawyers registered in the list of lawyers fulfil and comply with the requirements of Section 10b (1) numbers 1 to 6. If it turns out that the requirements for registration are not fulfilled, the lawyer shall be deleted from the list as defined in Section 28 (1) letter o.
- (5) Service between the bar and its members being lawyers may be also by way of electronic judicial mail; Sections 89a to 89d GOG are to be applied accordingly. The transmission of information by the bar to its members may also be made by way of electronic mail. Bulk mailings to bar members, which serve to fulfil the tasks entrusted to bars, do not require any agreement on the part of the recipients pursuant to Section 107 of the “Telekommunikationsgesetz” (TKG – Telecommunications Act).
- (6) The bar shall establish and maintain an escrow facility which serves the purpose of securing escrows handled in accordance with Section 10a (2) and shall monitor compliance with the lawyers' duties under Section 10a and under the guidelines defined in Section 27 (1) letter g. In addition, the bar shall take out insurance to secure the depositors' rights to the escrow deposit whose escrows are handled via the escrow facility to be maintained by the bar. Every depositor shall be entitled to ask the bar for information about whether and in what way the escrow concerning him is secured by the escrow facility and what kind of insurance coverage exists therefor.
- (7) The bar is authorised to process personal data of its members, of persons eligible for benefits or beneficiaries under the pension and insurance scheme of the bar and of other third parties (Article 4(2) GDPR) to the extent that this is necessary for fulfilling the statutory tasks of the bar.
- (8) Bars shall perform the tasks conferred upon them within their own sphere of activities. The Federal Minister of Justice has the right to obtain information on whether the administrative business is being conducted lawfully. Upon his request, the bar shall provide him the requested information. As part of his supervisory obligations, the Federal Minister of Justice also has the right
1. to deny or grant his approval to the internal rules of procedure of bars and their boards, which shall be submitted within one month after their adoption, as well as of the articles of incorporation of their pension funds pursuant to Section 27 (6),
  2. to issue the articles of incorporation of the pension fund pursuant to Section 49 (3), and
  3. to demand the presentation of the register on appointments in keeping with Section 45 based on Section 56 (2), which bars shall maintain.
- (9) Unless statutory provisions provide otherwise, the official notices issued on the basis of the present law can be appealed by means of complaint to the administrative court of the respective “*Bundesland*” (federal province/region).

## Section 24

- (1) At the plenary assembly of bar members,
  1. all bar members elect the president, the vice-presidents, the lawyers who act as examination commissioners at the bar exam, and the auditors,
  2. the lawyers registered in the list of lawyers elect the other members of the board from among the lawyers,
  3. the trainee lawyers registered in the list of trainee lawyers elect the members of the boards from among the trainee lawyers, and
  4. the lawyers registered in the list of lawyers elect the delegates to the Assembly of Representatives (Section 39) from among the registered lawyers who are members of the board.
- (2) Only bar members who are registered in the list of lawyers can be elected to the positions listed in paragraph (1) number 1.
- (3) The elections pursuant to paragraph (1) are conducted by secret vote during the plenary assembly by means of voting slips. If the internal rules of procedure of the bar so provide, the voting right may also be exercised by correspondence (Section 24a). Under the preconditions of Section 24a para 8 the board may order voting by correspondence also in case the procedural rules of the bar do not or only restrictively provide such possibility, eventually without plenary meeting. At elections pursuant to paragraph (1) number 1, the votes cast by trainee lawyers shall be weighted so that two votes each cast by trainee lawyers correspond to the vote of one lawyer. Except for ballots pursuant to Section 27 (1) letter d), which fixes the annual contribution of bar members to funding the administrative expenses of the bar as well as the contributions of bar members to funding the expenses arising under Section 27 (1) letter c), and the decision on the schedule of contributions pursuant to Section 51, analogous provisions shall apply to ballots taken in the course of a plenary assembly.
- (4) The voting slips cast shall be collected separately for the individual elections (paragraph (1)), and also separate for lawyers and trainee lawyers. The counting of the votes shall be monitored by the person chairing the plenary assembly. If that person runs as a candidate, Section 27 (3) shall be applied in analogy concerning monitoring of the vote-counting.
- (5) The absolute majority of all votes cast by the bar members participating in an election shall be required for the election of president and vice-president. If such a majority is not obtained on the first ballot, the persons who obtained the relatively largest number of votes on the first ballot shall be short-listed for the second ballot. The number of short-listed persons shall always be twice the number of persons to be elected. All votes shall be invalid when cast for a person who has not been short-listed.
- (6) The simple majority of all votes cast by the bar members participating in each of the elections of auditor and examination commissioner for the bar exams shall be required for these elections, as well as for elections to the positions indicated in paragraph (1) items 2 to 4.

## Section 24a

- (1) The internal rules of procedure of a bar may provide that the elections pursuant to Section 24 (1) may also be conducted by way of delivering a closed envelope to the bar (vote by correspondence). If a bar member intends to exercise his voting right by way of correspondence, he shall inform the bar accordingly up to three weeks, at the latest, before the day of the plenary assembly. The bar shall send to the bar member one or several

voting slips, at the latest ten days before the day of the elections, together with a sealable election envelope, as well as a sealable return envelope, on which the address of the bar, as recipient, and the name of the respective association member, as sender, has been printed. The election envelopes for lawyers and trainee lawyers must be of a different colour. The following sentence shall be shown on the reverse side of the return envelope: *“Mit meiner Unterschrift erkläre ich eidesstattlich, dass ich den/die einliegenden Stimmzettel persönlich, unbeobachtet und unbeeinflusst ausgefüllt habe.”* (With my signature I make this declaration in lieu of oath that I have completed the enclosed voting slip(s) personally, unobserved and uninfluenced.)

- (2) In order to exercise his voting right, the bar member shall place the voting slip(s) completed by him into the election envelope, seal it and place it into the return envelope. He shall then sign and declare in lieu of oath on the return envelope that he has completed the voting slip(s) personally, unobserved and uninfluenced. The bar member shall then seal the return envelope and deliver it to the bar personally, by messenger or mail, and in such good time that it arrives one day before the plenary assembly, at the latest, in the course of which the elections take place.
- (3) The return envelopes received by the bar shall be collected and kept unopened as well as stored under lock and key until the election procedures in the plenary assembly have been completed.
- (4) Prior to the election procedures, the plenary assembly shall elect a minimum of two, and if required also more, tellers, in addition to members of the bar staff of the bar office may be elected tellers; to the extent the procedural rules of the bar so provide. Under the supervision of the person chairing the plenary assembly or, if he is prevented, under the supervision of his deputy (Section 24 (4) last sentence) the tellers shall check the return envelopes that have been received in good time, immediately after the election procedures in the plenary assembly have ended, whether the sender listed on the envelope is registered in the list of lawyers or in the trainee list of lawyers and has provided the required declaration in lieu of oath pursuant to paragraph (2). If one of these requirements is not satisfied, the vote cast by way of correspondence shall be invalid, and the election envelope inside the return envelope shall be excluded from any further consideration. The same applies if it turns out that the respective person eligible to vote is or was personally present at the plenary assembly. The person chairing the plenary assembly shall put the respective election envelopes into the election file that he must keep.
- (5) The tellers shall then take the election envelopes from the return envelopes that merit further processing and place them, without opening them, into a separate ballot box. Separate ballot boxes shall be used for lawyers and trainee lawyers. The empty return envelopes shall be attached to the election file.
- (6) If any other envelope than the election envelope sent out by the bar was used, or if any notes, signs or alike are written on the election envelopes, this vote cast by way of correspondence shall be null and void, and the respective election envelope shall be excluded from any further consideration. This fact shall be noted in the election file. Ballot papers that were not placed into the election envelope but directly into the return envelope shall be treated in the same way.
- (7) When counting the votes, the voting slips cast in the plenary assembly and the voting slips sent in by way of correspondence shall be counted together. Moreover, Section 24 shall apply in analogy.
- (8) Deviating from para 1 first phrase, to prevent the spreading of COVID-19, upon resolution of the board, the elections to be held in the plenary assembly may also be held by voting in correspondence till 31<sup>st</sup> December 2021 in case the procedural rules of the bar do not or

only restrictively so provide. Independently from an eventually existing provision in the procedural rules of this bar in such case also the exclusive carrying out of voting by correspondence may be provided without convocation of a plenary assembly. In case such exclusive voting by correspondence is held, the paras 1 to 7 and Section 24b are to be applied accordingly with the following peculiarities:

1. The bar has to send its members the latest three weeks before the simultaneously to be published election day the ballot paper(s), the election envelope and the return envelope (para 1 third to fifth phrase),
2. the tellers are to be appointed simultaneously with taking the resolution for exclusive holding of voting by correspondence and to be disclosed to the members of the bar simultaneously with sending the voting documents,
3. instead of the day of the plenary assembly the election day is decisive,
4. the tasks of the chairman of the plenary assembly are to be implemented by the President of the bar,
5. the participation- and majority-requirements for taking a resolution are governed by Section 27 para 4.

### **Section 24b**

- (1) The person chairing the plenary assembly establishes the result of the elections pursuant to Section 24 (1), possibly as soon as possible, the latest, however, within three working days after election day, separate for every election. Every person eligible to vote can challenge the election within one week of the announcement of the election result (Section 25 (5)), if a person was unjustly excluded from an election, or admitted to an election, or declared as elected.
- (2) The “*Oberste Gerichtshof*” (Supreme Court) shall decide on challenges of an election. An election shall be repeated if calculations indicate that another person would have been elected to a given position without the specific reason given to challenge the election.

### **Section 25**

- (1) The president, the vice-presidents and the other members of the board from among the lawyers, as well as the delegates to the Assembly of Representatives from among the lawyers shall be elected for a term of office of four years; the members of the board from among the trainee lawyers and the auditors shall be elected for a term of office of two years. If one of the elected persons resigns during his term of office and a replacement is elected, then the newly elected person shall serve for the remaining term of office in the position of the resigned board member. Section 24 (1) shall apply to the removal from office of the president and the vice-presidents, with the proviso that a majority of two thirds of the votes cast by a plenary assembly in a secret ballot shall be required for a removal from office.
- (2) After the expiry of a term of office, the elected persons shall continue in their official duties until their successors have been elected.
- (3) Re-election is admissible; however, the elected persons are not obliged to accept re-election.
- (4) The internal rules of procedure of a bar can stipulate that, if a completely new board were to be elected, the vice-presidents and some of the board members will resign already during their term of office of four years, in order to ensure the best-possible transition and continuation in managing the board’s activities. A corresponding earlier withdrawal of an

or several vice-presidents may further be provided in the procedural rules for the case of new election of all vice-presidents.

- (5) The result of every election shall be published on the Internet website of the bar, without delay and in a generally accessible form.

## Section 26

- (1) The board of a bar shall consist of 5 members, when the list of lawyers of a bar did not comprise more than 100 lawyers on 31 December of the calendar year preceding the election to the board, or 10 members, respectively, if a bar has 101 to 250 lawyers, or 15 members, respectively, if a bar has 251 to 1,000 lawyers, or 30 members, respectively, if a bar has more than 1,000 members. The president and the vice-presidents are members of the board.
- (1a) In addition, a board shall comprise one or several members from among the trainee lawyers. For bars, where on the 31 December of the calendar year preceding the election the trainee list of lawyers included
1. not more than 100 trainee lawyers, one trainee lawyer shall be elected,
  2. between 101 and 1,000 trainee lawyers, two trainee lawyers shall be elected, and
  3. more than 1,000 trainee lawyers, three trainee lawyers shall be elected to the board.
- (2) If the board consists of a minimum of ten members, the tasks listed in Section 28 (1) letters b), d), f), g), h), i) and m), as well as monitoring of the lawyers and trainee lawyers, decision-taking pursuant to Section 16 (5) and decision-taking on granting benefits from the pension fund shall be carried out by one of its sections on behalf of the board, whenever this is possible without conducting preliminary inquiries. The sections shall consist of a minimum of three board members. In addition, a minimum of two board members shall be available as substitute members. The board shall constitute the sections and distribute the tasks among the sections.
- (3) The president, one vice-president or the most senior board member (in terms of age) shall preside over the board and the sections. If these persons are prevented, another board member elected by the board can also be assigned this function.
- (4) The board and the sections take decisions by simple majority. The chairperson shall only cast a vote in the event of a tied vote. The presence of a minimum of one half of the members is required to take decisions in the board and the sections. The board member appointed on behalf of the board or the section shall be responsible for all decisions in connection with the tasks assigned to the board pursuant to Section 28 (1) letter a), except for decisions on registration in the list of lawyers or its refusal, as well as on the refusal to register, or on deleting a company, on issuing certification documents for law office staff (Section 28 (1) letter b), for collecting annual contributions (Section 28 (1) letter d), as well as for appointing lawyers pursuant to Section 28 (1) letter h) and pursuant to Section 45 or Section 45a, when an immediate decision is necessary. If the internal rules of procedure of a bar stipulate that the next bar member from among the lawyers in alphabetical order shall be appointed as the lawyer required pursuant to Section 45 or Section 45a, the respective decision may be issued by the bar office without seizing the board or the section.
- (5) A decision taken by a section on behalf of the board can be appealed to the board within 14 days after service of the decision.
- (6) In urgent cases the board or the sections may also take their decisions by correspondence, by means of facsimile transmission or by electronic communication, using the electronic lawyer's signature, without the board or the section convening for a meeting (decision by

circular vote) if all members of the board or the section who are eligible to vote have agreed to this form of decision-taking.

## Section 27

- (1) The plenary assembly shall be responsible for the following matters:
  - a) establishing its internal rules of procedure and those of the board;
  - b) election of the president, the vice-presidents and the members of the board of a bar, the delegates to the Assembly of Representatives (Section 39), as well as examination commissioners who are practicing lawyers for the bar exam, and the auditors;
  - c) establishing the expenses of the bar for humanitarian purposes, to the extent that they exceed the benefits provided from the pension fund pursuant to Section 49 and Section 50, taking due account of the economic capacity of the bar members;
  - d) fixing the annual subscriptions of bar members to cover the administrative expenses of the bar, the expenses for measures in the interest of bar members, especially for insurance policies and public relations for the profession, as well as contributions of the bar members to cover expenses pursuant to letter c);
  - e) establishing the draft budget for income and expenses as well as auditing and approving the invoices of the bar;
  - f) applications for amending the geographical scope of existing bars and setting up new ones;
  - g) issuing guidelines for establishing and maintaining an escrow facility to secure the handling of escrows as defined in Section 10a (2) and which may also be maintained electronically, including but not limited to the design, structure and form of such escrow facility, the modalities and procedures for reviewing proper handling of the escrows accepted by a lawyer, including regulations on where and in what form the lawyer has to fulfil his obligations to cooperate in the review, for the design, coverage and sum insured of the insurance to be taken out to secure the depositors' rights, and fixing the contributions payable by the lawyers to the premiums for that insurance as well as the form and content of the information to be provided to the depositors about the way in which the escrow is secured;<sup>+</sup>
  - h) fixing the maximum amount of lump-sum contributions of the bar as defined in Section 34b (3).
- (2) For trainee lawyers the subscriptions and contributions pursuant to paragraph (1) letter d) may only amount to half of the sum fixed for lawyers, as a maximum. Moreover, the subscriptions and contributions shall generally be fixed at the same amount for all bar members. The plenary assembly can decide that the subscriptions and contributions of trainee lawyers shall always be collected from the lawyer where they receive their training. ^ When the economic capacity of the individual bar members differs considerably, a bar may be required to stipulate in the regulations on subscriptions and contributions that the amounts shall be fixed on several levels, in keeping with the number of staff or the earnings position of the law offices. The board may defer or waive subscriptions and contributions in exceptionally extenuating circumstances.
- (3) The president and, if prevented, a vice-president and, if they are prevented, the most senior board member present (in terms of years) shall chair the plenary assembly. If no board member is present, the most senior member of the plenary assembly present (in terms of years) shall chair the plenary assembly.
- (4) A plenary assembly shall constitute a quorum if, as a minimum, one tenth of the bar members take part in a vote. It takes its decision by a simple majority of the votes cast.

However, a minimum of one fifth of the bar members and a two-thirds majority shall be required for decisions on the internal rules of procedure of the bar and the board. The chairperson shall only cast a vote in case of a tied vote.

- (5) The internal rules of procedure of the bar can stipulate that decisions, which are the responsibility of the plenary assembly pursuant to paragraph (1), may also be taken by means of delivering a closed envelope to the bar (vote by correspondence). In such cases, Section 24a shall be applied in analogy.
- (5a) Deviating from para 1 first phrase, to prevent the spreading of COVID-19, upon resolution of the board, the elections to be held in the plenary assembly may also be held by voting in correspondence till 31<sup>st</sup> December 2021 in case the procedural rules of the bar do not or only restrictively so provide. Notwithstanding, an existing provision in the procedural rules in this regard eventually also may be provided that elections exclusively are held by voting by correspondence without convocation of a plenary assembly.
- (5) The internal rules of procedure of bars and their boards shall require the approval of the Federal Minister of Justice in order to become effective. They must therefore be submitted to him within one month after their adoption. The approval shall be granted if the internal rules of procedure and the articles of incorporation comply with the law. If the approval is not denied within three months, it shall be deemed to have been granted.

### **Section 27a**

- (1) In case a proposal in a matter of Section 27 para 1 lit. a or lit. g contains provisions restricting the listing as or the exertion of the profession of a lawyer or the activity as trainee lawyer or modifies existing provisions in this regard, the board has to examine before taking a resolution, whether the proposed provisions for the realisation of the achieved goal are apt, simultaneously do not exceed the measure necessary to achieve the goal and whether they are justified through goals of common interest (examination of relativity) and that there is neither direct or indirect discrimination because of nationality or residence. To the extent relevant, the board has to observe in the examination especially the reasons and criteria provided in Art 6 and 7 para 2 to 4 of the Directive (EU) 2018/958, official journal no. L 173 of 9.7.2018, page 25, on the examination of proportionality before issuing new professional rules, and the extent of the examination must be in relation to the kind, content and effects of the provision. The essential aspects of the examination done and its result are to be presented in adequate form in writing and to be attached to the proposal. In case the proposed provision serves the implementation of the Law of the Union, such examination of proportionality may be waived in case the Law of the Union provides the precise type and kind of the implementation and the proposal corresponds with these requirements.
- (2) A proposal in the sense of para 1 is to be disclosed to the members of the bar in such time, that they may give comments to it within an adequate period not less than one week. Also, the proposal is to be presented in general to the public on the website of the bar, also granting the possibility for comments during a period of at least one week after publication. On the basis of the comments received eventually the bar has to undergo another examination of the proposal according to para 1 and to revise such, if necessary, under observation of the principles of proportionality and no-discrimination.
- (3) To the extent the relevant circumstances for the assumption of proportionality of a provision in the sense of para 1 change after taking the resolution, the board has to review in adequate manner, whether, taking into account the changed circumstances, the provision continues to be proportionate.

## Section 28

- (1) The board shall be responsible for the following matters:
- a) maintaining the list of lawyers (Section 1 and Section 5 and following), especially the decisions on registration in the list, as well as on the withdrawal of a member, issuing the identity card for the electronic lawyer's signature (official identity cards with photograph), monitoring the obligations on returning the identity card, and maintaining the list of companies of lawyers, especially the decision to refuse registration or to delete a company;
  - b) maintaining the list of trainee lawyers, confirming the practical training as a lawyer, as well as issuing the identity cards (Section 15 (4)) and the certification documents for staff members of law offices (Section 31 (3) of the Code of Civil Procedure – ZPO);
  - c) implementing the bar decisions;
  - d) managing the economic operations of the bar and collecting the annual subscriptions, including the collection of the subscriptions according to Section 27 para 1 lit. d and the amounts determined in the contribution rules;
  - e) communicating with authorities and persons outside the bar;
  - f) writing expert opinions on the reasonableness of fees and remunerations for a lawyer's services, as well as reaching the requested amicable settlement in a fee dispute (Section 19);
  - g) mediating in case of controversies between bar members in the course of exercising the lawyer's profession;
  - h) appointing and dismissing temporary substitutes or bar commissioners (*Kammerkommissäre*), issuing official confirmations pursuant to Section 34a (3) and fixing lump-sum contributions pursuant to Section 34b (3);
  - i) appointing a lawyer pursuant to Section 45 or Section 45a and deciding on claims pursuant to Section 16 (4);
  - k) convening ordinary and extraordinary plenary assemblies of the bar;
  - l) in relation to the "*Bundesland*" (federal province/region) in which the bar was established, submitting proposals for legislation and opinions on legislative proposals, reports on the state of the administration of justice, as well as communications on deficiencies and requests in connection with the administration of justice; submitting such comments to the Austrian Bar when relating to other "*Bundesländer*" (federal provinces/regions) and/or the entire national territory;
  - m) organising, if applicable recognizing, compulsory educational events for trainee lawyers pursuant to the guidelines issued by the Austrian Bar; where educational events are completed abroad, the board in whose list the applying trainee lawyer is registered shall decide on accreditation of the same;
  - n) fixing a reasonable remuneration for the drafting of expert opinions on the reasonableness of fees, especially in legal proceedings.
  - o) keeping a list of lawyers who are especially suitable for taking on precautionary powers of attorney for healthcare, property and/or finances (*Vorsorgevollmachten*) and court-appointed adult guardianships (*gerichtliche Erwachsenenvertretungen*).
- (1a) In case of overdue contributions (para 1 lit. d) the board has to issue a notice of arrears for collection, containing name and address of the debtor, the outstanding amount, the type of arrears, the interests for delay of the outstanding amount since the day of issuance of the notice of arrears in the amount of four percent above the basic interest rate at the day of issuance and the information that the notice of arrears is not subject to appeal

impeding the enforceability; such notices of arrears are enforcement titles in the sense of Section 1 of the Act on Execution.

- (2) Moreover, the board shall be responsible for all tasks that are not expressly assigned by law to another entity.
- (3) An extraordinary plenary assembly shall be convened if the board so decides, or if one tenth of the bar members so demand.

## Section 29

Upon application and against cost refund the bar shall issue identity cards to its members from among the lawyers, which must be official identity cards with photographs in keeping with Section 8b (2), and which shall be used for the electronic lawyer's signature.

## Section 30

- (1) In order to obtain registration in the list of lawyers, a notice shall be sent to the board when commencing practical training with a lawyer, proving Austrian nationality, nationality of a member state of the European Union or another Contracting State of the Agreement on a European Economic Area or the Swiss Confederation, as well as proof of having completed studies of Austrian law (Section 3). The period of practical training with a lawyer (Section 2 (2)) will only be calculated as of the date on which this notice is received. \*
- (1a) In case of doubt as to whether the studies of Austrian law completed by the applicant satisfy the requirements of Section 3, the board may obtain an expert opinion, at the expense of the applicant, from one or several examination commissioners from among the university professors (Section 3 (3) of the "*Ausbildungs- und Berufsprüfungsanrechnungsgesetz*" [ABAG - Recognition of Education and Occupational Admission Tests Act] via the chairperson of the competent training commission pursuant to Section 5 (4) of the "*Ausbildungs- und Berufsprüfungsanrechnungsgesetz*" [ABAG - Recognition of Education and Occupational Admission Tests Act]). \*
- (2) Every lawyer is also obliged to inform the board whenever a trainee lawyer leaves his law office, as well as whenever a trainee lawyer is prevented from pursuing his practical training with the lawyer for more than one month.
- (3) Registration in the list shall be denied if one of the exclusions pursuant to Section 2 (2) of the "*Rechtspraktikantengesetz*" (RPG – Traineeship at Court Act) applies, or the applicant has committed an act which renders him unworthy of confidence. The board shall conduct all possibly necessary inquiries, and if the registration is to be denied, the applicant shall first be heard. \*
- (4) The persons concerned have the right to appeal to the "*Oberster Gerichtshof*" (Supreme Court) when being denied registration in the list of trainee lawyers, when being deleted from this list and when being refused the confirmation concerning their practical training (Seventh Chapter of the Disciplinary Measures Act for Lawyers and Trainee Lawyers). The last sentence of Section 5 (1) and paragraph (2) shall apply.

## Section 31

The identity card required to exercise the right to substitute for a lawyer, as contained in Section 15, will be issued upon intervention by the lawyer where the trainee lawyer received his training, and it shall cease to be valid as soon as this deployment has ended.

**Section 32** – deleted

**Section 33**

- (1) Lawyers are independent of the courts.
- (2) Disciplinary powers over lawyers and trainee lawyers shall first of all be exercised by the bodies of the lawyer's profession. Disciplinary regulations, issued through legislation, shall govern the procedure in this context, as well as provisions on the type and degree of sanctions, the appellate instances and the legal remedies against decisions taken.
- (3) – *not applicable*
- (4) However, the right of the courts to maintain order during court hearings shall remain unaffected.

**Chapter IV – Expiry of the Right to Exercise the Profession of Lawyer**

**Section 34**

- (1) The right to exercise the lawyer's profession expires
  1. upon loss of Austrian nationality;
  2. upon commencement of legal representation as defined in Section 1034 of the "*Allgemeines Bürgerliches Gesetzbuch*" (ABGB – General Civil Law Code);
  3. upon waiver of the right to exercise the lawyer's profession;
  4. upon the legally effective opening of insolvency proceedings or the legally effective non-opening of such proceedings in the absence of cost-covering property;
  5. in case of final revocation of the jurisprudential academic degree, necessary for the exertion of the lawyer's profession,
  6. due to a non-appealable/final disciplinary decision and deletion from the list or;
  7. upon death,with no separate decision being required. Deletion from the list shall be ordered by the board.
- (2) The right to exercise the lawyer's profession is suspended due to
  1. a decision of the board
    - a) in the cases listed in Section 20 letters a and b;
    - b) if no professional indemnity insurance as required by Section 21a (2) is maintained, or
    - c) if legal proceedings are instituted to appoint an adult guardian for a lawyer and if they are continued on the basis of the results of the initial hearing, and if a suspension is required due to concerns over grave prejudices to the interests of people in search of legal assistance, or the reputation of the profession,
  2. a decision rendered in disciplinary proceedings on a prohibition on practising as a lawyer.
- (3) The lawyer has the right to appeal to the "*Oberster Gerichtshof*" (Supreme Court) (Chapter 7 of the Disciplinary Measures Act for Lawyers and Trainee Lawyers) against decisions pursuant to paragraphs (1) and (2), to the extent that they have not been issued on the basis of a disciplinary decision or in the course of disciplinary proceedings. In the cases of paragraph (1) numbers 2 and 4 and of paragraph (2) number 1 letters b and c, the appeal does not have any delaying effect. Moreover, the provisions of the last sentence of Section 5a (1) and (2) shall apply.

- (4) Trainee lawyers who have lost their Austrian nationality shall be deleted from the list.
- (5) Paragraph (1) number 1 and paragraph (5) shall apply in analogy to the loss of nationality concerning one of the states listed in Section 1 (3) and Section 30 (1). The legal consequences of a loss of nationality will not become effective if the lawyer or trainee lawyer continues to be a national of one of the states listed in Section 1 (3) and Section 30 (1). The same applies to meeting the preconditions of Art. 10 of the withdrawal agreement between the European Union and the United Kingdom for a lawyer or trainee lawyer with valid nationality of the United Kingdom, whose registration in the list of lawyers or trainee lawyers took place before 1<sup>st</sup> January 2021.

### Section 34a

- (1) If the lawyer is temporarily unable to pursue his profession due to illness or absence, the board shall appoint a temporary substitute for the period of inability unless the lawyer himself has nominated one. For that purpose the temporary substitute shall have the status of a substitute as defined in Section 14.
- (2) If the authorisation to practise the profession of lawyer (Section 34 (1) and (2)) expires or is suspended, the board shall appoint a bar commissioner who shall act as an officer of the bar. He shall inform the lawyer's clients about his appointment and the legal consequences thereof and, where necessary, advise them in connection with the transfer of cases to other lawyers, identify escrows of the lawyer and inform the persons involved about the possibility that the escrow may be taken over by a different escrow agent; identify and manage third-party funds of the lawyer and to ensure that the files of the lawyer and instruments/deeds deposited with the same be properly kept safe. For this purpose the lawyer concerned has to deposit the files and registered documents to the bar commissioner and grant access to the documents registered by him in the lawyer's archive deposit.
- (3) The board shall issue official confirmations to temporary substitutes and bar commissioners on their appointment.
- (4) If the lawyer is registered in the Business Register, the appointment of a bar commissioner shall be *ex officio* registered in the Business Register upon notification by the bar. Registration shall be cancelled after termination of the appointment upon notification by the bar. In addition, the appointment of a bar commissioner and dismissal of the same shall immediately be published on the internet on the bar's website. Relevant announcements on its website shall also be made by the bar in the case of an appointment or dismissal of a temporary substitute.
- (5) No bar commissioner shall be appointed if, within one week of expiration or suspension, another lawyer notifies the bar that he will take on the tasks for which a bar commissioner would otherwise be responsible (paragraph (2)) and the board is not aware of any reasons against such discharge of tasks by that other lawyer. If a bar commissioner has already been appointed, he shall be dismissed.
- (6) If in the course of the activities of a temporary substitute (paragraph (1)) tasks as defined in the last sentence of paragraph (2) have to be fulfilled in the interest of the lawyer concerned or his clients, the temporary substitute shall also be appointed bar commissioner upon his request.
- (7) A lawyer may refuse to be appointed temporary substitute or bar commissioner only for the reasons stated in the second half-sentence of the first sentence or in the second sentence of Section 10 (1) or due to lack of impartiality. A temporary substitute or bar commissioner shall be dismissed for important reason (cause). He shall also be dismissed

at the request of the temporary substitute or of the bar commissioner if the prerequisites for temporary substitution are no longer fulfilled or if the bar commissioner has fulfilled his tasks (paragraph (2)). The reasons for dismissal shall be substantiated in the request.

### Section 34b

- (1) The Austrian Bar shall grant the bar commissioner access to the documents of the lawyer stored in the Lawyers' Documents Archive (*Archivium*). Likewise, the bar shall grant the bar commissioner access to the Escrow Register (*Treuhandregister*) for the escrows registered by the lawyer. If necessary, this shall also apply in cases where the tasks for which a bar commissioner would otherwise be responsible are discharged by another lawyer (Section 34a (5)).
- (2) Except for appointments in the cases of Section 34 (1) numbers 2 and 4, first case, the bar commissioner shall have sole power to dispose of and sign on escrow accounts and all accounts of the lawyer related to his professional activity for the term of his appointment. At the bar commissioner's request the credit institutions shall provide him with information about all accounts of the lawyer managed by them and shall grant him access to those accounts.
- (3) The bar commissioner shall be entitled vis-à-vis the lawyer to reimbursement of necessary expenses and reasonable remuneration for his services and in the case of the lawyer's death vis-à-vis his legal successors. If the bar commissioner is unable to collect this claim within a reasonable period of time, he shall be entitled vis-à-vis the bar to a contribution to such costs which shall be fixed as a lump sum. The lump-sum contribution shall be fixed by the board in a reasonable amount taking into account the type, scope and difficulty of the work and the expenses to be proved by the bar commissioner and considering any advantages for the bar commissioner resulting from such appointment. The lump-sum contribution may not exceed the maximum amount fixed by the plenary assembly for such contributions.
- (4) The bar shall pay the lump-sum contributions to be paid by it out of the funds available for administrative expenses of the bar. The bar commissioner's claim for reimbursement vis-à-vis the lawyer (his legal successor) shall pass to the bar in the amount of the payment effected.

## Chapter V – The Austrian Bar

### Section 35

- (1) The Austrian Bar comprises all bars in Austria. It is a corporation under public law and has its registered office in Vienna. Its sphere of activities covers the entire national territory.
- (2) The Austrian Bar has the right to display the national coat of arms; its official seal shall comprise the national coat of arms and the words “*Österreichischer Rechtsanwaltskammertag*” (Austrian Bar) written around it.
- (3) Whenever issues concern the members of all bars or exceed the sphere of activities of any one of the bars, the Austrian Bar shall be responsible for safeguarding the rights and interests of lawyers as well as for representing them. The Austrian Bar shall take care of the tasks conferred upon it by law within its own sphere of activities. The Federal Minister

of Justice has the right to obtain information about the lawfulness of the administrative management. Upon his request, the Austrian Bar shall provide the necessary information.

- (4) When filing documents in the Lawyers' Documents Archive (*Archivium*) (Section 91c and Section 91d of the "*Gerichtsorganisationsgesetz*" (GOG – Court Organisation Act) the Austrian Bar shall regard those lawyers as entities pursuant to Section 91d of the "*Gerichtsorganisationsgesetz*" (GOG – Court Organisation Act) who have been issued an identity card with an electronic lawyer's signature.

### Section 36

The Austrian Bar is responsible, in particular,

1. for submitting proposals for legislation and opinions on draft legislation as well as for identifying deficiencies in the administration of justice and public administration to the competent body, and for presenting proposals to improve the administration of justice and public administration;
2. for deciding on measures which promote the exercise of the lawyer's profession, in particular
  - a) with regard to preserving the independence of the lawyer's profession, as well as
  - b) with regard to basic and further training;
3. for representing the members of the bars vis-à-vis other professional organisations in Austria and abroad which have the same or a similar remit;
4. for establishing and managing the Lawyers' Documents Archive (*Archivium*) (Section 91c and Section 91d of the "*Gerichtsorganisationsgesetz*" [GOG – Court Organisation Act]) for filing public and private documents, as well as the accompanying register, and for determining the requirements for filing, access to and the deletion of documents, as well as the time of their archiving, in addition to determining the charges necessary to cover the expenses related to entering, granting access to and deleting documents;
5. for providing an electronic directory of the lawyers registered in the lists of the bars ("electronic Register of Lawyers") and for maintaining an electronic register of the lawyers' signatures which can be maintained within the electronic Register of Lawyers and from which one can gather the authorizations for the electronic lawyers' signatures; the directories must be generally accessible via the website of the Austrian Bar;
6. for issuing the articles of incorporation for the pension funds of the bars for old-age, occupational disability and surviving dependants' pensions based on the contribution and funded scheme as well as for the health insurance schemes of the bars; Section 27 (6) and Section 37 (2) shall be applied *mutatis mutandis*.
7. for collecting personal data of the members of the bars and any persons eligible for benefits or beneficiaries under the pension and insurance schemes of the bars and for recording and providing such data in a database and use of the same for the purposes of the pension and insurance schemes of the bars;
8. for keeping a "*Patientenverfügungsregister der österreichischen Rechtsanwälte*" (Austrian Lawyers' Register of Advance Healthcare Directives) for registration of advance healthcare directives made in accordance with the provisions of the "*Patientenverfügungs-Gesetz*" (PatVG - Advance Healthcare Directives Act) and defining the requirements for registration and storage, if any, of such advance healthcare directives at the party's request, as well as access to and erasure of registered data, including fixing the fees required to cover the necessary costs;



9. for keeping a “*Testamentsregister der österreichischen Rechtsanwälte*” (Austrian Lawyers’ Register of Last Wills and Testaments) for registration by a lawyer of testamentary dispositions and the place where they are kept and for defining the requirements for registration at the party's request, as well as access to and erasure of registered data, including fixing the fees required to cover the necessary costs.
- (1a) In the case of data processing for maintaining the archive defined in paragraph (1) number 4 and the registers defined in paragraph (1) numbers 8 and 9 the rights and duties resulting from Articles 12 to 22 and Article 34 GDPR and from the right to information, rectification and erasure as defined in Section 1 of the “*Datenschutzgesetz*” (DSG - Data Protection Act) and enforcement of the same shall be subject to the provisions of this Federal Act and of the guidelines issued pursuant to Section 37 (1) number 7; in the case of the archive defined in paragraph (1) number 4 they shall also be subject to the provisions of Section 91c of the “*Gerichtsorganisationsgesetz*” (GOG – Court Organisation Act). Other rights and duties of the controller of such data processing shall be the responsibility of the Austrian Bar, unless the regulations stated in the first sentence provide that a specific lawyer is responsible.
- (2) The foregoing shall not affect the rights of bars.
- (3) Every bar can transfer to the Austrian Bar, with its consent, matters falling within their own range of tasks, such as managing the pension fund of a bar, organising and recognizing educational events that are mandatory for trainee lawyers, negotiating and signing insurance contracts, and managing the registers for fiduciary relationships (trust books).
- (4) The Austrian Bar can disseminate information to lawyers also by way of electronic judicial mail; Sections 89a to 89d GOG are to be applied accordingly. The transmission of information to lawyers and trainee lawyers may also be made by way of electronic mail. Bulk mailings to lawyers and trainee lawyers which serve to comply with tasks transferred to the Austrian Bar shall not require the consent of the recipients pursuant to Section 107 of the “*Telekommunikations-Gesetz*” (TKG – Telecommunications Act).
- (5) The bars shall make available to the Austrian Bar the data which they have been permitted to collect and process within the scope of their statutory sphere of activities, to the extent that the Austrian Bar needs these in order to comply with the tasks assigned to it by law or transferred to it for management pursuant to paragraph (3). Once these data are no longer needed for complying with one of these tasks, the Austrian Bar shall delete or destroy them.
- (6) The Austrian Bar is authorised to process personal data of the members of the bars, of persons eligible for benefits, if any, or beneficiaries under the pension and insurance schemes of the bars and of other third parties (Article 4(2) GDPR) to the extent that this is necessary for discharging the statutory tasks of the Austrian Bar.

### **Section 37**

- (1) The Austrian Bar can issue guidelines
1. on the exercise of the lawyer’s profession;
    - 1a. for issuing and distributing the identity cards with the electronic lawyer’s signature, as well as for monitoring their use, including the amount and type of the fees necessary for them;
  2. on monitoring the duties of lawyers and trainee lawyers;



- 2a. on working as a bar commissioner, especially on his rights and obligations vis-à-vis the lawyer, the former lawyer or his legal successor and the parties/clients concerned, as well as on his entitlement to remuneration and on how to manage the law office;
  3. on the training of trainee lawyers, especially on the type, scope and subject of the educational events which satisfy the requirements of the “*Rechtsanwaltsprüfungsgesetz*” (RAPG – Bar Examination Act), which have to prepare trainee lawyers for the exercise of the lawyer’s profession, and which the trainee lawyer shall attend as a prerequisite for being admitted to the bar exam, as well as on the credits to given to their practical training. In the guidelines the trainee lawyers can also be granted the possibility to participate in some of the educational events only after having taken the bar exam and prior to their registration in the list of lawyers;
  4. on the criteria for determining reasonable fees;
  5. on the awarding of decorations;
  6. on determining the obligation pursuant to Section 9a (1)a;
  7. on establishing and managing the Lawyers’ Documents Archive (*Archivium*) (Section 91c and Section 91d of the “*Gerichtsorganisationsgesetz*” [GOG – Court Organisation Act]), the Austrian Lawyers’ Register of Advance Healthcare Directives, the Austrian Lawyers’ Register of Last Wills and Testaments and the electronic register for lawyers’ signatures, especially on the content and form of the records, the documentation of the document-saving procedures, the access and the information to be given, as well as the modalities for electronic access and review, including the granting of review authorizations and their validity to parties and the persons authorized by them, as well as the amount and form of collecting the associated necessary fees; the guidelines for establishing and maintaining the Lawyers’ Documents Archive shall conform with all requirements of the ordinance pursuant to Section 91b (5) numbers 2 to 5 of the “*Gerichtsorganisationsgesetz*” [GOG – Court Organisation Act].
- (2) In case a proposal in a matter of para 1 contains provisions restricting the listing as or the exertion of the profession of a lawyer or the activity as trainee lawyer or modifies existing provisions in this regard, the executive committee of the Austrian bar has to examine before taking a resolution, whether the proposed provisions for the realisation of the achieved goal are apt, simultaneously do not exceed the measure necessary to achieve the goal and whether they are justified through goals of common interest (examination of relativity) and that there is neither direct or indirect discrimination because of nationality or residence. Section 27a is to be applied accordingly with the proviso that all members of the bar are to be informed on the proposal and that the publication of the proposal has to be made generally accessible on the website of the Austrian bar.
- (3) The guidelines issued by the Austrian Bar shall be available on the Internet website of the Austrian Bar (<https://www.rechtsanwaelte.at>) at all times.

### Section 38

The bodies of the Austrian Bar are the “*Vertreterversammlung*” (Assembly of Representatives), the “*Präsidentenrat*” (Presidents’ Council) and the “*Präsidium*” (Presidency).



### Section 39

- (1) The delegates to the Assembly of Representatives are
  1. the presidents of bars,
  2. the additional delegates from among the lawyers, who are elected in the plenary assembly of the respective bar from among the board members belonging to the lawyers and who continue to be on the board from among the lawyers; one delegate shall be elected for every commenced entity of 150 members of a bar from among the lawyers, and
  3. the trainee lawyers who are on the boards of bars.The presidents of the bars shall belong to the Assembly of Representatives in any event; they shall be taken into consideration accordingly when determining the number of delegates pursuant to item 2.
- (2) It is admissible for a delegate to be represented by another delegate associated to the same or another bar.

### Section 40

- (1) The Assembly of Representatives shall constitute a quorum whenever a minimum of six bars are represented by the majority of their delegates or their authorized persons (Section 39 (3)).
- (2) The Assembly of Representatives shall take its decisions by a simple majority of the votes cast. Every delegate shall have one vote. It is also required for a decision that the majority of delegates from six bars, as a minimum, vote in favour of the decision. In case of a tie, the vote of the person chairing the Assembly shall be the casting vote (Section 41 (3)). If the person chairing the Assembly is not a delegate at the same time, he shall have only the right to vote in case of a tie.
- (3) The Assembly of Representatives shall:
  1. issue guidelines (Section 37);
  - 1a. issue articles of incorporation as defined in Section 36 (1) number 6;
  2. elect the President and the Vice-Presidents as well as the auditors;
  3. make proposals to improve the administration of justice and the public administration;
  4. take decisions on proposals by the Presidents' Council;
  5. take decisions on submissions by two bars, as a minimum, concerning matters that were not already previously deliberated in the Presidents' Council;
  6. approve the annual accounts and the budget as well as the annual amount of the expenses to be incurred by the Austrian Bar;
  7. issue internal rules of procedure for the Austrian Bar.

### Section 41

- (1) The Assembly of Representatives shall elect from the members of the individual bars the President and the three Vice-Presidents of the Austrian Bar, in compliance with the prerequisites required for decisions (Section 40 (1) and (2)). Only lawyers can be elected to these positions as well as to the position of auditor. During the terms of their office, the President and the three Vice-Presidents shall also be members of the Assembly of Representatives if they are not delegates. In the latter case, though, they shall not have the right to vote – with the proviso of the last sentence of Section 40 (2).



- (2) The President and the Vice-Presidents shall have a term of office of three years. If one of the elected persons resigns during that period, and if an election to replace that person takes place, the newly elected person will succeed to the vacant position for the remaining term of office. Section 25 (2) and (3) shall apply in analogy. Section 40 (1) and (2) shall apply to the revocation of the President and the Vice-Presidents, with the proviso that a revocation shall require a two-thirds majority of the votes cast by the Assembly of Representatives in a secret ballot by voting slips.
- (3) The President or one of the Vice-Presidents shall chair the Assembly of Representatives.
- (4) The President shall convene the Assembly of Representatives whenever necessary, as a minimum, though, once every year and, in addition, at any time upon a request by two bars or a minimum of five delegates. A minimum period of fourteen days shall lapse between convening and holding an Assembly.

## Section 42

- (1) The “*Präsidentenrat*” (Presidents’ Council) of the Austrian Bar consists of the presidents of the individual bars. The bars take turns of six months each in chairing the Presidents’ Council. Members of the “*Präsidium*” (Presidency) of the Austrian Bar cannot be members of the Presidents’ Council.
- (2) Whenever the president of a bar is prevented, he shall be represented by a vice-president or, if the latter is prevented, by another member of the board of his bar who the president shall authorize, or by the president of another bar who the president shall authorize. The members of the Presidency of the Austrian Bar cannot represent the president of their bar, if he should be prevented, nor can they be authorized to represent him.
- (3) The Presidents’ Council shall constitute a quorum if six bars, as a minimum, are represented. Only the representatives of bars have the right to vote. The representatives of six bars, as a minimum, shall vote in favour of a decision, for a decision of the President’s Council to become effective. However, a decision shall not become effective if the representatives of bars, who jointly represent a majority of the delegates (Section 39 (1)), have voted against the application submitted for decision-taking. However, one half of the members of the Presidents’ Council present and eligible to vote shall be sufficient for applications of the Presidents’ Council to the Assembly of Representatives. In any event, it shall be sufficient for applications if four members eligible to vote cast their vote in favour of the application.
- (4) The Presidents’ Council can also take its decisions in writing if all members of the Presidents’ Council who are eligible to vote agree on a vote by correspondence.
- (5) The Presidents’ Council shall
  1. establish the ethical principles of the lawyer’s profession and the policy to be pursued for the legal profession in Austria;
  2. approve the budget of the Austrian Bar which the Presidency of the Austrian Bar shall present to the Assembly of Representatives for approval;
  3. continuously monitor budget implementation as well as approve any shifts within the budget in order to cover non-budgeted expenses;
  4. monitor the activities of the Presidency and issue instructions and orders to the Presidency; the Presidency shall report to the Presidents’ Council;
  5. take decisions on applications by the Presidency on matters in which the Presidency could not agree unanimously (Section 42a (3)), as well as in the event that only one member of the Presidency moves such a decision by the Presidents’ Council.

- (6) The Presidents' Council can require that performance of individual transactions by the Presidency or one of the members of the Presidency with management powers depends on its approval.
- (7) The members of the Presidency of the Austrian Bar shall attend the meetings of the Presidents' Council, unless the Presidents' Council takes a decision to the contrary. The members of the Presidency do not have any right to vote in the Presidents' Council.
- (8) The chairperson of the Presidents' Council shall convene meetings whenever necessary, in any event upon request by two members of the Presidents' Council or a member of the Presidency of the Austrian Bar. The meetings shall take place within three weeks following the request to the chairperson of the Presidents' Council.

#### **Section 42a**

- (1) The "*Präsidium*" (Presidency) of the Austrian Bar comprises the President and the three Vice-Presidents of the Austrian Bar. The President of the Austrian Bar acts as the chairperson of the Presidency and, if prevented, he is represented by a Vice-President (Section 42b (2)).
- (2) The chairperson shall convene the meetings of the Presidency whenever necessary; yet, in any event, upon a request by one Presidency member. The meetings shall take place within two weeks after the application has been communicated to the chairperson of the Presidency.
- (3) The Presidency shall constitute a quorum if a minimum of three members are present after having been duly convened. The consent of all Presidency members present is required if a decision of the Presidency is to become effective. If unanimity cannot be reached, the matter shall be presented to the Presidents' Council, also upon application by only one of the Presidency members present on that occasion (Section 42 (5) item 5). Decisions of the Presidency can also be taken by way of correspondence, if all Presidency members agree to a decision by way of correspondence.
- (4) The Presidency shall have collective responsibility for performing all tasks that are not reserved to the Assembly of Representatives pursuant to Section 40 (3) or the Presidents' Council pursuant to Section 42 (5) and (6).
- (5) The Presidency shall agree on the distribution of duties, which shall require the approval of the Presidents' Council. Notwithstanding the collective responsibility of the Presidency, the distribution of duties shall determine which Presidency member is responsible for a specific task. These tasks shall be performed by taking account of the budget specifications, in keeping with the ethical principles, established by the Presidents' Council, of the lawyer's profession and the policy to be pursued for the legal profession, observing the decisions of the Presidents' Council and the Presidency of the Austrian Bar.

#### **Section 42b**

- (1) The President of the Austrian Bar shall represent the Austrian Bar vis-à-vis third parties and implement the decisions of the Assembly of Representatives, the Presidents' Council and the Presidency of the Austrian Bar.
- (2) If the President is prevented, or upon the request by the President of the Austrian Bar, the President shall be represented by the Vice-President instructed by him or, in the absence of an instruction, by the Vice-President of the Austrian Bar with competences according to the internal rules of procedure of the Austrian Bar.

- (3) For the purpose of an electronic signature when conducting the business of the Austrian Bar, the President shall use his electronic lawyer's signature adding a graphic presentation of the official seal of the Austrian Bar (Section 19 (3) of the "*E-Government-Gesetz*" [E-GovG – E-Government Act]) and the words "*als Präsident des Österreichischen Rechtsanwaltskammertags*" ("as President of the Austrian Bar"). The foregoing shall apply to his deputies in analogy.

### Section 43

The Austrian Bar shall adopt its internal rules of procedure. They shall contain detailed provisions, especially on the economic management, on the business to be conducted by its individual bodies, and on the office management of the Austrian Bar.

### Section 44

The bars shall bear the costs of the Austrian Bar in proportion to the number of their members from among the lawyers. The Assembly of Representatives shall determine the amount of these costs on an annual basis.

## Chapter VI – Appointment of Lawyers, Especially for Legal-Aid Purposes

### Section 45

- (1) If the court has decided to assign a lawyer to a party, or if granting legal aid includes assignment of a lawyer, the respective party is entitled to have a lawyer appointed to him by the bar.
- (2) Appointments for proceedings before the "*Verfassungsgerichtshof*" (Constitutional Court), the "*Verwaltungsgerichtshof*" (Administrative Court) or "*Bundesverwaltungsgericht*" (Federal Administrative Court) are the responsibility of the board of the bar with competences for the usual domicile of the party, or otherwise by the board of the bar with competences for the venue of the court.
- (3) If the appointed lawyer would have to take action outside of the district of the first-instance court in which the office of his law practice is located, or if the party, who resides outside of this district, cannot reasonably be expected to travel to the appointed lawyer for a necessary oral consultation, on account of insurmountable obstacles or high costs, the board of the bar with competences for the location in which action is to be taken, or for the place in which the party resides, shall appoint a lawyer to this case upon application by the initially appointed lawyer or the party, and the office of the law practice of this lawyer shall be situated in the district of the first-instance court with competences for the specific location.
- (4) If the appointed lawyer cannot accept or continue representing or defending the party for one of the reasons listed in the second half-sentence of the first sentence, or the second sentence of Section 10 (1), or due to being prejudiced, he shall be released from this case upon an application by the lawyer, the party or *ex officio*, and another lawyer shall be appointed. In the event of demise of the appointed lawyer, or loss of authorization to exercise the lawyer's profession, another lawyer shall be appointed *ex officio*.
- (4a) If the court case for which a lawyer was appointed has ended with final and enforceable effect, and unless forced execution measures are initiated within one year, the appointed lawyer shall be released upon application to the bar, if it is not predictable that the order to

initiate forced execution measures will be initiated in the near future. The person receiving legal aid shall be informed of the release and shall also be informed that he may request the appointment of another lawyer from the competent bar at any time, who shall initiate forced execution proceedings, as the decision to be granted legal aid by assigning a lawyer to his case continues to be valid.

- (5) The board of a bar shall immediately send information about an appointment to the respective court in the cases of paragraph (2), or in the cases of paragraph (3) to the court in which the first-instance proceedings are conducted, or any other court if the appointed lawyer has to take action at a different court. The foregoing shall apply to the cases of paragraphs (4) and (4a).

### **Section 45a**

Section 45 shall apply in analogy to the appointment of a legal-aid lawyer for cases before the administrative authorities and the administrative courts.

### **Section 46**

- (1) The boards of the bars shall proceed according to fixed rules when appointing a lawyer; these shall ensure that the lawyers associated to a bar are assigned to cases and exposed to a workload as equitably as possible, taking special account of local conditions. These rules shall be determined in the internal rules of procedure of boards.
- (2) However, the internal rules of procedure can also lay down general aspects, according to which lawyers shall be partly or fully exempt, for important reasons, from being appointed. The exercise of an activity in the service of the legal profession, which takes up considerable time, or personal circumstances that would make the appointment of the lawyer appear to be a particular hardship, in particular, shall be regarded as important reasons. In any event, the members of the Presidency of the Austrian Bar are exempt from being enlisted for these services.

## **Chapter VII – Lump-Sum Remuneration, Old-Age, Occupational Disability and Survivors’ Benefits**

### **Section 47**

- (1) Before 30 September of every year, the federal authorities shall pay to the Austrian Bar a reasonable lump-sum remuneration for the current calendar year for the services provided by the lawyers who are appointed in keeping with Section 45, for which they would otherwise not have any title to remuneration, due to procedural regulations. Advance payments in reasonable instalments shall be made for the lump-sum remuneration that will be paid for the current calendar year.
- (2) At the time when the present federal law became effective, a lump-sum remuneration of ATS (Austrian Schilling) 32,000,000.00 was deemed to be reasonable.
- (3) The Federal Minister of Justice, with the consent of the Federal Minister of Finance and the “*Hauptausschuss des Nationalrates*” (Main Committee of the National Council), shall adjust accordingly the amount of the lump-sum remuneration, by way of ordinance, if
  1. economic conditions have changed considerably,



2. the number of appointments in a year or the scope of the services pursuant to paragraph (1) have increased or decreased by more than 20 per cent, or
  3. it proves to be necessary, in the absence of statutory fees, to align the remuneration for the services pursuant to paragraph (1) more closely to the compensation that is regarded as adequate according to the lawyers' guidelines on professional conduct.
- (4) When assessing the issue whether a change pursuant to paragraph (3) number 1 or number 2 has occurred, the evaluation shall be made beginning with the date on which these circumstances were last taken into account for a re-assessment.
- (5) For the services provided pursuant to the first sentence of Section 16 (4), a reasonable lump-sum remuneration shall be determined separately. These services shall not be taken into account when re-assessing the lump-sum remuneration pursuant to paragraph (3). The first half-sentence of paragraph (3) shall be applied, when the lump-sum remuneration to be determined exceeds the amount of EUR 50,000. For the lump-sum remuneration which the Federal Minister of Justice shall determine separately by way of ordinance, he may grant the Austrian Bar, upon its application, a reasonable advance for legal-aid services that have been provided from the funds always available for these purposes in the federal budget implementation law; if the ultimately determined lump-sum remuneration is lower than the advance payments, the Austrian Bar shall return the amount in question to the Federal Minister of Justice.
- (6) The foregoing provisions shall also be applied in analogy to the cases described in Section 16 (5).

#### **Section 48**

- (1) When distributing the lump-sum remuneration among the individual lawyers, the Austrian Bar shall pay
1. one third of the lump-sum remuneration in accordance with the number of members who were registered in the list of lawyers as at 31 December of the previous year,
  2. one third of the lump-sum remuneration in keeping with the number of appointments made pursuant to Section 45 among the members of a bar during the previous year and
  3. one third of the lump-sum remuneration pro rata the percentual quota of the legal aid services rendered and invoiced by the members of the bar in the previous year for appointments according to Section 45 compared to the extent of costs for all such legal aid services rendered by lawyers listed in an Austrian bar.

Appointments and claims for remuneration of official defence lawyers appointed according to Section 61 para 3 Code of Criminal Procedure are to be taken into account in the frame of no. 2 and 3 then, when the board of the bar has decided according to Section 16 para 5, that the claim for compensation is unenforceable; this taking into account has to take place for such year in which the board has made the determination according to Section 16 para 5. The lump-sum remuneration pursuant to Section 47 para 5 shall be transferred to the responsible bar.

- (2) The bars shall use the lump-sum remuneration pursuant to Section 47 (1) to (3) for the old-age, occupational disability and surviving dependants' benefits of lawyers and trainee lawyers.

#### **Section 49**

- (1) The bars shall set up and maintain pension funds in order to provide for lawyers and trainee lawyers upon reaching retirement or in case of occupational disability, as well as



for the surviving dependants in the event of the lawyer's or a trainee lawyer's death in accordance with articles of incorporation to be adopted by the Austrian Bar (Section 36 (1) number 6). The articles of the pension and insurance funds based on a contributory system shall stipulate – while preserving already acquired legal titles – that all benefits from the pension fund shall be determined in keeping with the acquired number of contribution months, that upon reaching a specific number of contribution months (standard contribution months) the claim to an old-age pension (basic old-age pension) is acquired, the amount of which is fixed in the schedule of benefits, and that the old-age pension which will be awarded will increase or decrease, compared to the basic old-age pension, if more or less standard contribution months have been accumulated. The actuarial bases for fixing those amounts shall be reviewed by an actuarial expert periodically at least every five years. When determining the basic old-age pension benefit for the first time, it must not fall short of the old-age pension benefit that was available under the previously valid schedule of benefits after 35 years of registration in the list of lawyers. When adopting the articles of incorporation or amending the same acquired rights shall be taken into account and the principle of protection of legitimate expectations shall be respected.

- (1a) The articles of incorporation may also stipulate that the pension funds also pay the contribution pursuant to Section 3 (5) of the “*Bundespflegegeldgesetz*” (BPPG – Federal Care Benefits Act), Federal Law Gazette No. 110/1993, in its respectively valid version. The bars shall pay this contribution for lawyers and trainee lawyers in keeping with the number of lawyers in the list of lawyers and number of lawyers in the list of trainee lawyers as well as in the list of established European lawyers as at 31 December of the previous year. However, when calculating the relevant total number, only one half of the number of trainee lawyers shall be taken into account.
- (2) As a matter of principle, all lawyers registered in a list of an Austrian bar, or the list of established European lawyers of an Austrian bar, as well as the trainee lawyers registered in the list of trainee lawyers of an Austrian bar shall be obliged to pay contributions, unless they are already subject to mandatory insurance contributions, due to their work as lawyers, based on other statutory stipulations applicable to an old-age pension system of a member state of the European Union, another Contracting State of the Agreement on a European Economic Area or the Swiss Confederation. Two or several bars may also set up a pension fund jointly.
- (3) If the Austrian Bar does not comply, or only in a form that is not in compliance with the law, with its duty to adopt articles of incorporation for the pension and insurance funds of the bars, in spite of being so requested by the Federal Minister of Justice, the latter shall decree the articles of incorporation by way of ordinance. This ordinance shall become ineffective as soon as the Austrian Bar has established a situation that is in conformity with the law. The Federal Minister of Justice shall make known the ineffectiveness of the ordinance in the Federal Law Gazette.

## Section 50

- (1) Every lawyer and trainee lawyer as well as their surviving dependants shall have a title to an old-age, occupational disability and surviving dependants' benefit if the requirements are met and when an insured event occurs.
- (2) Fixed rules shall define this claim in the articles of incorporation. In this connection, the following principles shall be observed:

1. Lawyers and trainee lawyers who are or were previously required to pay contributions shall have a title to old-age pension benefits; the widow or the widower (the divorced spouse) and the children of a lawyer or trainee lawyer who is or was previously obliged to pay contributions shall have a title to surviving dependants' benefits.
- 1a. Only lawyers and trainee lawyers who are or were previously required to pay contributions and who were registered in the list of lawyers or the list of trainee lawyers of an Austrian bar, or the list of established European lawyers of an Austrian bar at the time that the insured event occurred, shall have a title to occupational disability insurance benefits, as well as lawyers and trainee lawyers who were previously required to pay contributions and exercised the lawyer's profession in a member state of the European Union, one of the Contracting States of the Agreement on a European Economic Area or the Swiss Confederation under one of the designations listed in the annex to the "*Europäisches Rechtsanwaltsgesetz*" (EIRAG – European Lawyer's Act), Article I, Federal Law Gazette I No. 27/2000 in the respectively valid version, at the time the insured event occurred. The application for being awarded occupational disability benefits shall be filed within one year as of the expiry of the authorization to exercise the lawyer's profession (Section 34 (1)); Section 1494 of the "*Allgemeines Bürgerliches Gesetzbuch*" (ABGB – General Civil Law Code) shall be applied in analogy.
2. The requirements for a title to benefits are
  - a) in the case of old-age pension benefits, the obligation to pay contributions to a pension fund for a minimum period of twelve months, in which connection the articles of incorporation may stipulate that trainee lawyers (Section 53 (2) first sentence) and lawyers who temporarily pay lower contributions on the basis of arrangements contained in the relevant "*Umlagenordnung*" (schedule of contributions) pursuant to Section 53 (2) number 4 letter a, can only acquire contribution months on a pro-rata basis, in keeping with their payments of lower contributions, as well as having reached the age of 70; the articles of incorporation may also provide that irrespective of any exemption from contribution payments due to a regulation made pursuant to Section 53 (2) number 4 letter b the full contribution period will be acquired for periods of exemption; the articles of incorporation may provide for an earlier retirement age; yet, the age of 65 must have been reached, as a minimum; an early-retirement old-age pension may be granted up to four years before the person in question reaches his specific retirement age, in which case pension deductions shall be calculated in keeping with actuarial principles;
  - b) in the case of occupational disability pension benefits that the age limits pursuant to letter a), which are decisive for obtaining benefits, are not reached; moreover, the lawyer or the trainee lawyer must have been required to pay contributions for a minimum period of five years, or must have exercised the lawyer's profession in a member state of the European Union, a Contracting State of the Agreement for a European Economic Area or the Swiss Confederation under a designation listed in the annex to the "*Europäisches Rechtsanwaltsgesetz*" (EIRAG – European Lawyer's Act), Article I, Federal Law Gazette I No. 27/2000 in the respectively valid version, for a minimum period of five years (waiting time); the waiting time will increase to ten years if the period commenced when the lawyer or trainee lawyer had reached the age of 50;
  - c) in the case of old-age or occupational disability insurance benefits
    - aa) the waiver to exercise the lawyer's profession in Austria and abroad;



- bb) in case of established European lawyers, also a confirmation concerning this waiver by the competent authority of the country of origin;
- cc) the waiver to be registered in the list of defence counsels;
- d) in the case of widow (widower) pension benefits, that the marriage was contracted before the deceased lawyer or trainee lawyer had reached the age of 55, unless the marriage was intact at the time of the demise of the lawyer or trainee lawyer and had been maintained for a minimum of five years, and the age difference between deceased lawyer or trainee lawyer and the widow, or widower, is less than 20 years, and children were the offspring of that marriage;
- (e) in the case of pension benefits for a divorced spouse that
  - aa) the deceased lawyer or trainee lawyer had to pay maintenance (subsistence contribution) at the time of his death on the basis of a court decision, a court settlement or a contractual obligation entered prior to the dissolution of the marriage, unless the divorced spouse has married subsequently,
  - bb) the marriage lasted a minimum of ten years, and
  - cc) the spouse had reached the age of 40 at the time at which the marriage was dissolved.

The requirements listed under letter bb) and cc) shall not apply if the spouse has been incapable of earning a living since the dissolution of the marriage, or an orphan's pension pursuant to item 1 becomes due upon the death of the lawyer or trainee lawyer, provided that the child is an offspring of the dissolved marriage or was jointly adopted by the spouses and if, in all these cases, the child has been living in the household of the spouse entitled to benefits on an ongoing bases at the time of the death of the lawyer or trainee lawyer. In the case of children born later, the requirement of living continuously in a common household shall not apply.

3. Every pension title becomes effective at the end of the month in which all requirements for the respective title have been satisfied.
  4. A widow's or a widower's (a divorced spouse's) pension title ends upon re-marriage; the pension benefit title is suspended if the obligation of the deceased to pay maintenance had ceased for another reasons.
  5. A child's title to pension benefits ends with last day of the month in which the obligation of the deceased to pay maintenance would have ended. The title to an orphan's pension is suspended for the period of a temporary self-sufficiency capacity, especially during the period of military service or substitute military service; it shall end, in any event, on the last day of the year in which the child reaches the age of 26.
  6. The articles of incorporation may provide that contribution arrears, if any, may be offset against benefits from the pension funds.
- (3) The articles of incorporation of pension funds may also stipulate pension plans that go beyond the principles laid down in paragraph (2) and are more favourable for the beneficiary, especially allowing for more favourable waiting times; in the case of occupational disability and surviving dependants' pension benefits the requirement of a waiting time may be waived altogether. The articles of incorporation may also provide that former lawyers and trainee lawyers as well as their surviving dependants will remain entitled to benefits if they continue to pay contributions to the pension fund, the amount of which shall take into account that no legal-aid services will be provided. In addition to pension funds based on contributory systems, the articles of incorporation may also stipulate that fully funded pension funds shall be set up where the pension benefit titles are calculated exclusively on the basis of the paid amounts, the bonuses and the investment yields, where the requirement of waiting time can be waived completely, and the waiver

concerning exercise of the profession is not a requirement for a title. In the case of a pension fund based on a fully funded regime, the capital and vested amounts which, in particular, are transferred from a pension fund, a group annuity insurance system, a pension and support scheme of a chamber of self-employed persons, or a former employer, shall be equivalent to the contributions paid into the foregoing. The assets of the pension and insurance funds based on the contribution and funded scheme shall each constitute appropriated special assets to be kept and managed separately.

- (3a) In the event that the authorization to exercise the lawyer's profession expires, or in the event of deletion from the list of lawyers, to the extent that the pension fund, structured as a fully funded system, so requires in the articles of incorporation, the former bar member may apply for the transfer of his credit balance in a pension fund structured as a fully funded system to another pension fund, to which he now has access, especially to a pension fund or an institution pursuant to Section 5 (4) of the "*Pensionskassengesetz*" (PKG – Pension Fund Act), a company's collective insurance or a group annuity insurance of a new employer or a pension fund and support institution for self-employed persons. The detailed provisions of the transfer shall be governed by the articles of incorporation.
- (4) The bars can also set up funds that cover disease; these must satisfy the requirements of Section 5 of the "*Gewerbliches Sozialversicherungsgesetz*" (GSVG – Social Security for Self-Employed Persons in Industry Act), for their members and their dependants as well as other persons who receive benefits from the pension fund (Section 49). These institutions can also consist of a group insurance scheme which the bar sets up by contract.
- (5) When calculating the additional benefits pursuant to paragraphs (3) and (4), the economic capacity of bar members shall be taken into account.

## Section 51

Every year the plenary assembly of a bar shall adopt a "*Leistungsordnung*" (schedule of benefits) and an "*Umlagenordnung*" (schedule of contributions). The bar shall make accessible to the members of the bar the results of the actuarial calculations made in preparation of the resolutions to be passed and, where applicable, the insurance expert opinions rendered not later than three weeks before the day of the plenary assembly on the website of the bar and keep the same available constantly. The schedule of benefits shall determine the amount of the benefits to be paid by the pension fund, while the schedule of contributions shall determine the amount of the contributions required to raise the necessary funds.

## Section 52

- (1) The basic old-age pension benefit (Section 49 (1)) shall not fall short of the reference rate laid down in Section 293 (1) and (2) of the "*Allgemeines Sozialversicherungsgesetz*" (ASVG – General Social Security Act), Federal Law Gazette No. 189/1955 in the respectively valid version.
- (2) If two or more persons are entitled to surviving dependants' pension benefits upon the demise of a lawyer or trainee lawyer, the sum total of benefits payable to these entitled persons shall not be higher than the benefit to which the lawyer or the trainee lawyer would have been entitled. Within the maximum amount, the benefits for the individual entitled persons shall be reduced on a pro-rata basis.

- (3) If the sum total of the benefits paid by the pension fund in one calendar year does not reach the amount of that share in the lump-sum remuneration which is due to the bar, the remaining rest of that share shall be distributed among the entitled persons in relation to their claims pursuant to paragraphs (1) and (2), after taking account of the second sentence of Section 53 (1).
- (4) The schedule of benefits can provide benefits that exceed the aforementioned provisions, especially higher pension benefits, in order to enable the entitled persons to live under living conditions that are commensurate with the average living conditions of lawyers or trainee lawyers, as well as reasonable payments in the case of death and as severance benefits. It can also provide for a scale of benefits depending on the period of registration in the list of lawyers or the period in which contributions were paid into the pension fund of a bar, or the time as of which the pension benefits are claimed. However, when calculating such additional benefits, the economic capacity of the bar members shall be taken into account.

### Section 53

- (1) When determining the contributions to the pension fund, the “*Umlagenordnung*” (schedule of contributions) shall ensure that the payment of benefits is secured on a long-term basis, taking account of the share in the lump-sum remuneration which is due to every bar. To this end, provisions shall be formed, in consideration of the medium-term financing requirements and based on actuarial principles. For recipients of benefits under the old-age, occupational disability and surviving dependants’ pension schemes, the schedule of contributions and the schedule of benefits can determine a contribution to stabilize pension benefits, always limited to a maximum period of ten years, which shall amount to not more than 2.5 per cent of the gross benefit that is paid every month, if actuarial principles indicate that, on a short-term basis, coverage of the pension benefits could only be obtained by an extraordinary rise in contributions, which would exceed the economic capacity of the bar members.
  - (1a) Paragraph (1) shall not apply to pension funds based on fully funded systems.
- (2) The contributions shall generally be established at an equal level for all lawyers and trainee lawyers who are obliged to pay contributions and a standard amount shall be fixed in the schedule of contributions. The contributions payable by trainee lawyers shall be at least one eighth and not more than two fifth of that standard amount. However, the schedule of contributions may determine that
  1. lawyers and trainee lawyers who already satisfy the requirements for claiming benefits but do not actually claim them, are fully or partially exempt from paying contributions;
  2. the level of the contributions is adjusted depending on the period of falling into the category of lawyer or trainee lawyer;
  3. the contributions shall be established to take adequate account of the differences in workload caused by legal-aid cases, for which established European lawyers (Section 13 item 3 of the “*Europäisches Rechtsanwaltsgesetz*” [EIRAG – European Lawyers’ Act]) and trainee lawyers need not provide services;
  4. under extenuating circumstances a respite for or exemption from all or some contribution payments be granted, in particular
    - a) lawyers, when submitting an application within one year as of the birth or adoption of a child, only pay the contribution established for trainee lawyers for a maximum period of twelve calendar months;

- b) upon request lawyers shall be fully exempt from paying contributions during the period of prohibition of employment as defined in the “*Mutterschutzgesetz*” (MSchG - Maternity Protection Act) of 1979 or a period corresponding to such employment prohibition for mothers-to-be.

The schedule of contributions may also stipulate that the contributions of trainee lawyers shall always be collected from the lawyer where they receive their practical training.

#### **Section 54**

The board of a bar shall take a decision on an application for benefits from the pension fund within three months, as a maximum.

#### **Section 55**

Every year before 31 March of the subsequent calendar year, at the latest, The Austrian Bar shall report to the Federal Minister of Justice concerning

1. the distribution of the lump-sum remuneration to the bars, indicating the individual amounts;
2. the use of the individual amounts of the lump-sum remuneration by the bars;
3. the number of cases of representation and defence during the expired calendar year (Section 47 (1)).

#### **Section 56**

- (1) The bars shall keep a special register for the appointments according to Section 45 in every calendar year. The following minimum information shall be entered into these registers:
1. the continuous reference number, starting with 1;
  2. the designation and the file number of the court which granted the assignment of a lawyer;
  3. the name and location of the law practice of the appointed lawyer;
  4. the date of the appointment decree.
- (2) The bars shall keep these registers for a period of seven years as of the end of the respective calendar year and submit them to the Federal Minister of Justice at his request at any time.

#### **Section 56a**

- (1) Section 55 and Section 56 shall be applied in analogy to the services provided by lawyers appointed pursuant to Section 45a, subject to the provisos that
1. the Federal Minister of Justice shall be replaced by the Federal Chancellor and
  2. the Austrian Bar shall also report the legal matters on which the decisions of the administrative courts were rendered
- (2) The federal authorities shall pay to the Austrian Bar a reasonable lump-sum remuneration by 30 September, at the latest, for the services provided by the lawyers appointed pursuant to Section 45a. The amount of this lump-sum remuneration shall be determined by the Federal Chancellor by way of ordinance. When doing so the Federal Chancellor shall take into account the average number of annual appointments and the average scope of services

provided as defined in the first sentence in the last seven calendar years. Section 48 is to be applied accordingly.

- (3) The Federal Chancellor shall revise the amount of the lump-sum remuneration whenever
  1. the economic circumstances have changed considerably, or
  2. in the past calendar year and in the calendar year before the number of appointments per year or the scope of the services provided pursuant to the first sentence of paragraph (2) increased or decreased by more than 20 per cent compared to the average figure taken into account in the last revision.
- (4) The lump-sum remuneration pursuant to the first sentence of paragraph (2) shall be borne by the federal government and the regional governments on a pro-rata basis, with the shares depending on the proportion between the appointments for the federal government and those for the regional governments and the total number of such appointments. Every region shall refund to the federal government its share by 31 March, midnight, of the year following the calendar year in which the payment defined in the first sentence of paragraph (2) was made. Refunds within the federal government shall depend on the allocation of responsibilities to the different Federal Ministries.
- (5) A reasonable lump-sum remuneration shall be determined separately for the services pursuant to the first sentence of Section 16 (4) provided by the lawyers appointed pursuant to Section 45a. Paragraph (4) shall also be applied to those cases *mutatis mutandis*.

## Chapter VIII – Sanctions

### Section 57

- (1) Whenever a person uses the professional designation “*Rechtsanwalt*” (lawyer) without authorization, one of the professional designations listed in the annex to the “*Europäisches Rechtsanwaltsgesetz*” (EIRAG – European Lawyer’s Act), or one of the professional designations for internationally performing lawyers deriving from Part 5 of the “*Europäisches Rechtsanwaltsgesetz*” (EIRAG – European Lawyer’s Act), adds it to the name of his law office, indicates it to be a business branch or purpose of the undertaking, uses it otherwise for advertising purposes, or pretends in another way to have the authorization to exercise the lawyer’s profession, that person commits an administrative offence and shall be punished to pay a fine of up to EUR 10,000.00.
- (2) Whenever a person offers or provides services, which are reserved to lawyers by the present federal law, on a commercial basis and without authorization, that person commits an administrative offence and shall be punished to pay a fine of up to EUR 16,000.00. This act must not additionally be prosecuted according to other provisions on the punishable offence of pettifogging as a lawyer.
- (3) The aforementioned provisions shall not be applied if one of the punishable acts pursuant to paragraphs (1) and (2) also constitutes the facts of an act that is punishable by a court.

### Section 58

In administrative proceedings pursuant to Section 57 as well as in other proceedings against pettifogging lawyers who, without authorization, exercise an activity that is reserved to lawyers, the bar of that district in which the authority with competences to prosecution is located, can appear as a party and has the right to file legal remedies, as well as to file an

appeal to the “*Verwaltungsgerichtshof*” (Administrative Court) pursuant to Article 133 (1) item 1 of the “*Bundesverfassungsgesetz*” (B-VG – Federal Constitution Act).

## Chapter IX – Arbitration

### Section 59

- (1) Arbitration tribunals can be set up for disputes pursuant to Section 577 and following of the Code of Civil Procedure by a decision of the plenary assembly, in the case of bars, or by decision of the Assembly of Representatives, in the case of the Austrian Bar.
- (2) Arbitration rules can be adopted by the respective board of a bar for its arbitration tribunal, or likewise by the Assembly of Representatives for the Austrian Bar. Moreover, the Assembly of Representatives of the Austrian Bar is also authorized to adopt framework arbitration rules, which can lay down the essential principles of the arbitration rules to be adopted by the bars.
- (3) When exercising their function, the arbitration bodies are independent and not bound to any instructions.

## Chapter X - Entry into Force and Transitional Provisions from 1 January 2016

### Section 60

- (1) Section 2 (3) and Section 28 (1) as amended by the Federal Act BGBl. I No. 156/2015 shall enter into force on 1 January 2016. Section 2 (3) number 3 shall be applied to practical uses that were commenced after 31 December 2015.
- (2) Section 2 (2) and Section 15 (2) as amended by the Federal Act BGBl. I No. 39/2016 shall enter into force on 1 January 2017. The second sentence of Section 2 (2) and Section 15 (2), even in the case of subsequent interruptions of traineeship at court, shall continue to be applied to persons who submitted an application for admission to traineeship at court by 31 December 2016 and fulfilled all requirements for admission as defined in Section 1 (1) and Section 2 of the “*Rechtspraktikantengesetz*” (RPG - Traineeship at Court Act), BGBl. No. 644/1987 at the time of their application, each of the acts as amended until 31 December 2016.
- (3) Section 21 (2) and (3) as amended by the Federal Act BGBl. I No. 50/2016 shall enter into force on 1 July 2016.
- (4) Section 8a (1), Section 8b (3), (6), first to third sentence, and (9) to (11), Section 8c (1), (1a), (2) and (5), Section 9a, Section 12 (3), first and second sentence, Section 21b (2), Section 21c number 9, Section 23 (2), second and fourth sentence, Section 27 (1) letter h, Section 28 (1), Section 34 (1) numbers 1 and 3 to 6, paragraphs (2) to (6), Section 34a, Section 34b, Section 36 (1), Section 37 (1), Section 39, Section 40 (3) number 1a, Section 45 (2), Section 49 (1), third and last sentence, Section 50 (2), (3) and (3a), Section 51, Section 53 (2) and Section 56a (1), (2), second sentence, and paragraphs (3) to (5) as amended by the “*Berufsrechts-Änderungsgesetz*” - 2016” [BRÄG 2016 – 2016 Act Amending Professional Law]), BGBl. I No. 10/2017, shall enter into force on 1 January 2017. Section 8a (2) to (4), Section 8b (4) and the last sentence of (6), and paragraph (8), Section 8d, Section 8e, Section 8f, Section 12 (3), third to fifth sentence, and Section 23

- (2), third sentence, as amended by the “*Berufsrechts-Änderungsgesetz*” - 2016” [BRÄG 2016 – 2016 Act Amending Professional Law] shall enter into force on 26 June 2017.
- (5) Section 34 (1) number 2 as amended by the “*Berufsrechts-Änderungsgesetz*” - 2016” [BRÄG 2016 – 2016 Act Amending Professional Law] shall enter into force on 1 July 2018. Where Section 34 (2) number 1 letter c refers to the term “*gerichtlicher Erwachsenenvertreter*” (court-appointed adult guardian) this shall, until 30 June 2018, be understood as a reference to the term “*Sachwalter*” (guardian) as defined in Section 268 of the “*Allgemeines Bürgerliches Gesetzbuch*” (ABGB – Austrian Civil Code) as amended by the “*Sachwalterrechts-Änderungsgesetz 2006*” (SWRÄG 2006 - Act Amending Guardianship Law), BGBl. I No. 92/2006.
- (6) Section 23 (5), Section 27 (1) letter a, paragraphs (4) and (6), Section 49 (1), first and second sentence, and Section 49 (1a), (2) and (3) as amended by the “*Berufsrechts-Änderungsgesetz*” - 2016” (BRÄG 2016 – 2016 Act Amending Professional Law) shall enter into force on 1 January 2018. The Austrian Bar shall adopt the articles of incorporation to be established pursuant to Section 49 (1) by 31 December 2017 and provide their entry into force as of 1 January 2018. In the case of timely adoption of those articles of incorporation the articles of incorporation of the pension and insurance funds adopted by the bars shall cease to be effective as of 31 December 2017, midnight. If such articles of incorporation are not adopted in time, the articles of incorporation of the pension and insurance funds adopted by the bars shall continue to be in force until the Federal Minister of Justice issues a regulation pursuant to Section 49 (3).
- (7) If the amendment to Section 39 (1) by the “*Berufsrechts-Änderungsgesetz*” - 2016” [BRÄG 2016 – 2016 Act Amending Professional Law] leads to a decrease in the number of delegates to the “*Vertreterversammlung*” (Assembly of Representatives) from among the group of lawyers, a new election as described in Section 24 (1) number 4 shall be held not later than at the first plenary assembly of the relevant bar that is held after 31 December 2016. Until such new election the term of office and the powers of the previously elected delegates shall remain unaffected.
- (8) Section 10b and Section 28 (1) letter o as amended by the “*2. Erwachsenenschutz-Gesetz*” (2. ErwSchG - 2<sup>nd</sup> Adult Protection Act), BGBl. I No. 59/2017, shall enter into force on 1 January 2018; Section 1 and Section 23 (2a) as amended by the “*2. Erwachsenenschutz-Gesetz*” (2. ErwSchG - 2<sup>nd</sup> Adult Protection Act), BGBl. I No. 59/2017, shall enter into force on 1 July 2018. A lawyer may have registered himself in the list pursuant to Section 28 (1) letter o after 31 December 2017. After 30 June the bar shall officiate the examination as defined in Section 23 (2a) as amended by the “*2. Erwachsenenschutz-Gesetz*” (2. ErwSchG - 2<sup>nd</sup> Adult Protection Act).
- (9) Section 8b (6), third sentence, Section 8f (2) number 7 and Section 53 (2), first sentence, as amended by the Federal Act BGBl. I No. 136/2017 shall enter into force on the day following the pronouncement of this Federal Act.
- (10) Section 9 (3a), Section 10a (8), Section 23 (4a), Section 36 (1) numbers 5 to 9, paragraphs (1a) and (6) as well as Section 37 (1) number 7 as amended by the “*Materien-Datenschutz-Anpassungsgesetz 2018*” (Data Protection Legislation Amendment Act 2018), BGBl. I No. 32/2018, shall enter into force on 25 May 2018.
- (11) Section 1 para 3, 1a para 7 and 34 para 5, as amended by the Brexit-Accompanying Act 2019, Federal Law Gazette I no. 25/2019, enter into force upon the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, becoming effective under the condition that the withdrawal takes place without withdrawal agreement according to Art. 50 para 2 EUV.



- (12) Section 8a para 2 and 5 to 8, Section 8b para 12 and 13, Section 8c para 1a and 4 no. 2, Section 9 para 3a to 9, Section 23 para 2, Section 36 para 1 no. 9 and 10 as well as Section 45a, as amended by Federal Law Gazette I no. 61/2019, enter into force on 1st August 2019.
- (13) Section 1 para 2 and 4, Section 1a para 1, 2, 4, 5 and 8, Section 1b para 1 and 2, Section 8c para 5, Section 9 para 2, Section 10 para 3, Section 10a para to 8, Section 16 para 4, Section 20 lit. a, Section 21 para 4, Section 21c no. 1, 2, 4 and 8 to 12, Section 21e, Section 24 para 5 and 6, Section 24a para 4, Section 24b para 1, Section 25 para 4, Section 26 para 4, Section 28 para 1 and 1a, Section 34 para 1, Section 34a para 2, Section 36 para 4, Section 45 para 4a and Section 56a para 2, as amended by Act Amending Professional Law 2020, Federal Law Gazette I no. 19/2020, enter into force on 1st April 2020. Section 8a para 3 and 6, Section 8b para 2 to 11, Section 8d, Section 9 para 5 to 7, Section 12 para 3 and Section 23 para 2a to 9, as amended by Act Amending Professional Law 2020, enter into force upon the expiration of the day of publication in the Federal Law Gazette. Section 27a and Section 37 para 2 and 3, as amended by Act Amending Professional Law 2020, enter into force on 30th July 2020. Section 48 para 1, as amended by Act Amending Professional Law 2020, enters into force on 1st January 2021. By expiration of 31st March 2020 become invalid:
1. Art. VIII of the law, modifying and amending some provisions of the disciplinary statute for advocates and candidates for advocates of 1st April 1872, RGBI. No. 40, and the Rules for Lawyers of 6th July 1868, RGBI. No. 96, RGBI. No. 223/1906, and
  2. the law on the compatibility of the office of a public mandatory with the lawyer's profession and the notaries offices, StGBI. No. 598/1919.
- (14) Section 21c no. 1 lit. e in the version valid till 31st March 2020, for the duration of a valid partner position of the private foundation, continues to be applied to companies for exerting the lawyer's profession, in which a private foundation is partner on 31st March 2020 according to Section 21c no. 1 lit. e in the version valid till 31st March 2020.
- (15) Section 24 para 3 third phrase, Section 24a para 8 as well as Section 27 para 5 first phrase and para 5a, as amended by Federal Act, Federal Law Gazette I No. 58/2020, become invalid upon expiration of the day of the publication of this Federal Act in this version upon expiration of 31<sup>st</sup> December 2021, except Section 27 para 5 first phrase.
- (16) Section 1 para 3, Section 24a para 8 first phrase, Section 27 para 5a first phrase, Section 24 para 5a and Section 60 para 15, as amended by Federal Act, Federal Law Gazette I No. 156/2020, become valid upon expiration of the day of the publication of this Federal Act. Section 48 para 1, as amended by this Federal Act, becomes valid on 1st January 2021. Section 24a para 8 first phrase and Section 27 para 5a first phrase, as amended by this Federal Act, become invalid upon expiration of 30th June 2021.
- (17) Section 24a para 8 first phrase, Section 27 para 5a first phrase and Section 60 para 15, as amended by Federal Act, Federal Law Gazette I No. 106/2021, become valid upon expiration of the day of the publication of this Federal Act. Section 24a para 8 first phrase and Section 27 para 5a first phrase, as amended by this Federal Act, become invalid upon expiration of 31<sup>st</sup> December 2021.

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\* Section 1 (2), Section 2 (4), Section 3, Section 4, Section 5 (1a), Section 15 (2) and Section 30 (1), (1a) and (3) of the "Rechtsanwaltsordnung" (RAO – Lawyers' Act) (in the version of the "Berufsrechts-Änderungsgesetz" - 2008" [BRÄG 2008 – 2008 Act Amending Professional Law]) shall only be applied to university law studies that are commenced after 31 August 2009, in which connection a continuation of the

studies at another university does not have any influence on any time period that has already begun. If the studies of Austrian law which are required for the exercise of the lawyer's profession or the appointment as notary (Section 3 of "*Rechtsanwaltsordnung*" [RAO – Lawyer's Act], Section 6a of the "*Notariatsordnung*" [NO – Notaries' Act]), are based on several studies (Section 54 and following of the "*Universitätsgesetz 2002*" [UnivG - 2002 University Act]), the legal stipulations in force as at 1 September 2009 shall also be applied in those cases where only the final university law studies, which need to be completed successfully for complete compliance with the requirements of Section 3 of the "*Rechtsanwaltsordnung*" (RAO – Lawyers' Act), or Section 6a of the "*Notariatsordnung*" (NO – Notaries' Act), respectively, are commenced after 31 August 2009.

Section 3 (4) of the "*Rechtsanwaltsordnung*" (RAO – Lawyers' Act) (in the version of the "*Berufsrechts-Änderungsgesetz - 2008*" [BRÄG 2008 – 2008 Act Amending Professional Law]) shall be applied to completed studies which are to serve for the exercise of the profession, whenever the applicant submits his application to the respectively competent bar, or the "*Ausbildungsprüfungskommission*" (Education Examination Commission) after 31 August 2009.

- i Section 2 (1) of the "*Rechtsanwaltsordnung*" (RAO – Lawyers' Act) shall be applied to a practical training with a chartered accountant or tax consultant that was completed after 31 August 2013.
- o Section 2 (3) letter 1 "*Rechtsanwaltsordnung*" (RAO – Lawyers' Act) (in the version of the "*Berufsrechts-Änderungsgesetz - 2008*" [BRÄG 2008 – 2008 Act Amending Professional Law]) shall be applied to university studies that lead to a further academic degree by a law university, whenever these studies were commenced after 31 August 2009.
- “ Provisions decisive for spouses, marital issues or marital matters in the respectively valid versions shall be applied in analogy to registered partners, partnership issues or partnership matters.
- + Whenever the plenary assembly of the competent bar does not meet between the announcement and the entry into force of the "*Berufsrechts-Änderungsgesetz - 2010*" [BRÄG 2010 – Act Amending Professional Law]), guidelines pursuant to Section 27 (1) letter g of the "*Rechtsanwaltsordnung*" (RAO – Lawyers' Act), in the version of the "*Berufsrechts-Änderungsgesetz - 2010*" [BRÄG 2010 – 2010 Act Amending Professional Law t]), may on an exceptional basis also be decided by the board of a bar. In such a case, the first plenary assembly, at the latest, convened after the entry into force of the "*Berufsrechts-Änderungsgesetz - 2010*" [BRÄG 2010 – 2010 Act Amending Professional Law]) shall take a decision in plenary assembly pursuant to Section 27 (1) letter g) of the "*Rechtsanwaltsordnung*" (RAO – Lawyers' Act) in the version of the present federal law, with the effect that the board decision becomes ineffective at the same time.
- ‘ The contributions of bar members from among the trainee lawyers pursuant to Section 27 (1) letter d) of the "*Rechtsanwaltsordnung*" (RAO – Lawyers' Act) shall be established only for the time after 31 December 2010.

## RAO – Glossar

*Allgemeines Bürgerliches Gesetzbuch* = (ABGB) Austrian Civil Code  
*Allgemeines Sozialversicherungsgesetz* = (ASVG) General Social Security Act  
*Arbeitsvertragsrecht-Anpassungsgesetz* = (AVRAG) Labour Contract Law Amendment Act  
*Ausbildungs- und Berufsprüfungsanrechnungsgesetz* = (ABAG) Recognition of Education and Occupational Admission Tests Act  
*Außerstreitgesetz* = (AußStrG) Non-Contentious Proceedings Act  
*Bankwesengesetz* = (BWG) Austrian Banking Act  
*Behinderteneinstellungsgesetz* = (BEInstG) Employment of Persons with Disabilities Act  
*Berufsrechts-Änderungsgesetz - 2008* = (BRÄG 2008) 2008 Law on Professions Amendment Act  
*Börsegesetz* = (BörseG) Stock Exchange Act  
*Bundeskriminalamt-Gesetz* = (BKA-G) Austrian Federal Office of Criminal Investigations Act  
*Bundespflegegeldgesetz* = (BPPG) Federal Care Benefits Act  
*Disziplinarstatut* = (DSt) Disciplinary Code for Lawyers and Trainee Lawyers  
*E-Government-Gesetz* = (E-GovG) E-Government Act  
*Europäisches Rechtsanwaltsgesetz* = (EIRAG) European Lawyer's Act  
*Firmenbuchgesetz* = (FBG) Company Register Act  
*Gerichtsorganisationsgesetz* = (GOG) Court Organisation Act  
*Gewerbliches Sozialversicherungsgesetz* = (GSVG) Social Security for Self-Employed Persons in Industry Act  
*Mutterschutzgesetz* = (MSchG) Maternity Protection Act  
*Notariatsordnung* = (NO) Notaries' Act  
*Pensionskassengesetz* = (PKG) Pension Fund Act  
*Rechtsanwaltsordnung* = (RAO) Lawyers' Act  
*Rechtsanwaltsprüfungsgesetz* = (RAPG) Bar Examination Act  
*Rechtsanwaltstarifgesetz* = (RATG) Lawyers' Fees Act  
*Rechtspraktikantengesetz* = (RPG) Traineeship at Court Act  
*Signaturgesetz* = (SigG) Signature Act  
*Telekommunikationsgesetz* = (TKG) Telecommunications Act  
*Universitätsgesetz 2002* = (UnivG) 2002 University Act  
*Unternehmensgesetzbuch* = (UGB) Commercial Law Code  
*Väter-Karenzgesetz* = (VKG) Paternal Leave Act  
*Zustellgesetz* = (ZustG) Service of Documents Act



*Allgemeine Honorar-Kriterien für Rechtsanwälte* = General Fee Criteria for Lawyers  
*Archivium* = Lawyers' Documents Archive  
*Ausbildungsprüfungskommission* = Educational Qualifications Review Commission  
*Bundesland* = federal province/region  
*Finanzmarktaufsicht* = (FMA) Financial Market Authority  
*Finanzprokuratur* = Office of the Lawyers and Legal Advisers of the Republic of Austria  
*Gesellschaft bürgerlichen Rechts* = civil-law partnership  
*Gesellschaft mit beschränkter Haftung* = limited-liability company  
*Hauptausschuss des Nationalrates* = Main Committee of the National Council  
*Kommanditgesellschaft* = limited partnership  
*Kommandit-Partnerschaft* = limited partnership of lawyers  
*Leistungsordnung* = schedule of benefits  
*Liste der Rechtsanwälte* = Register of Lawyers  
*Liste der Rechtsanwalts-Gesellschaften* = list of companies of lawyers  
*Oberlandesgericht* = Higher Regional Court  
*Oberste Gerichtshof* = Supreme Court  
*offene Gesellschaft* = general partnership  
*Österreichischer Rechtsanwaltskammertag* = Austrian Bar  
*Partnerschaft* = partnership  
*Präsidentenrat* = Presidents' Council  
*Präsidium* = Presidency  
*Rechtsanwalt* = lawyer  
*Rechtsanwalt-Partnerschaft* = partnership of lawyers  
*Rechtsanwaltsprüfung* = bar exam  
*Rechtsanwalts-Gesellschafter* = company partners  
*Rechtsanwaltskammer* = Bar  
*Richtlinien für die Ausbildung von Rechtsanwaltsanwärtern* = Guidelines for the Training of Trainee Lawyers  
*Treuhandenschaftseinrichtung* = escrow facility  
*Umlagenordnung* = schedule of contributions  
*Verfassungsgerichtshof* = Constitutional Court  
*Vertreterversammlung* = Assembly of Representatives  
*Verwaltungsgerichtshof* = Administrative Court

