

# **BKS Bank**

## **Employee Share Offering 2022**

### **100 years BKS**

Document replacing the prospectus  
according to Article 1 (4) (i) of Regulation (EU) 2017/1129  
in conjunction with section 13 para 6 Capital Markets Act 2019

1 December, 2022

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## Definitions

Recovery and Resolution Act	Austrian Act on the Recovery and Resolution of Banks (Recovery and Resolution Act – <i>Sanierungs- und Abwicklungsgesetz</i> ) as amended
BKS Bank Group	BKS Bank AG as well as all those companies that are required to be consolidated in accordance with the International Financial Reporting Standards (IFRS) (credit institutions, financial institutions, banking-related auxiliary services) with their registered office in Austria or abroad.
BKS ordinary shares	No-par value ordinary shares of the Issuer (ISIN AT0000624705)
Stock Exchange Act 2018	Austrian Stock Exchange Act 2018 - ( <i>Börsegesetz 2018</i> ) as amended.
Banking Act	Austrian Act on Banking (Banking Act - <i>Bankwesengesetz</i> ) as amended
CRD IV	Capital Requirements Directive; Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC as amended.
CRR	Capital Requirements Regulation; Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 646/2012 as amended.
Issuer	BKS Bank AG, St. Veiter Ring 43, 9020 Klagenfurt, under the Commercial Register No. 91810s
EUR, Euro	The common currency of those Member States of the European Union participating in the third stage of European Monetary Union, which entered into force on 1 January 1999.
FMA	Austrian Financial Market Authority, Otto-Wagner-Platz 5, A-1090 Vienna
going concern	Going concern principle: in the valuation of balance sheet items, the going concern assumption is applied, provided that there are no factual or legal reasons to the contrary.

gone concern	Liquidation approach: the valuation is based on whether creditors can be satisfied in full in the event of a notional liquidation.
ISIN	International Securities Identification Number (international numbering system for securities identification).
Capital Markets Act 2019	Austrian Capital Markets Act 2019 - <i>Kapitalmarktgesetz 2019</i> (Federal Law Gazette I No. 62/2019 as amended).
MPLR 2019	Regulation of the Financial Market Authority (FMA) on the minimum content of documents replacing prospectuses, on the publication of prospectuses in newspapers and on the language regime 2019 (Minimum Content, Publication and Language Regulation 2019 - <i>Mindestinhalts-, Veröffentlichungs- und Sprachenverordnung 2019</i> )
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC.
Tier 1	Component of own funds in accordance with CRR. The items and instruments of Common Equity Tier 1 (Hard Core Capital) are dealt with in Article 26ff CRR and the items and instruments of Additional Tier 1 (Additional Core Capital) are dealt with in Article 51ff CRR.
Tier 2	Component of own funds in accordance with CRR. The items and instruments of Tier 2 capital (supplementary capital) are dealt with in Article 62ff CRR.
Securities Supervision Act 2018	Austrian Securities Supervision Act 2018 of 26 July 2017- ( <i>Wertpapieraufsichtsgesetz 2018</i> ), as amended.

For reasons of better readability, the simultaneous use of the language forms male, female and diverse (m/f/d) is waived. All personal terms apply equally to all genders.

## **1. Name and registered office of the Issuer**

The legal name of the Issuer is "BKS Bank AG". The Issuer has its registered office in 9020 Klagenfurt, St. Veiter Ring 43, and is registered in the commercial register under FN 91810s at the Regional Commercial Court of Klagenfurt.

## **2. Where can additional information on the Issuer be obtained?**

The latest published annual financial statements as well as further annual reports and interim reports of the Issuer are available free of charge at any time on the Issuer's website [www.bks.at](http://www.bks.at) under the menu item "About Us" / "Investor Relations" / "Reports & Publications".

The Issuer's publications made within the last 12 months in fulfilment of disclosure obligations (ad hoc announcements and director's dealings announcements) can also be accessed free of charge at any time at [www.bks.at](http://www.bks.at) under the menu item "About Us" / "Investor Relations" / "Reports & Publications" / "Ad hoc Announcements" or under the menu item "About Us" / "Investor Relations" / "Compliance Information" / "Director's Dealings Announcements".

Under the menu item "About Us" / "Investor Relations", you will also find a great deal of additional information on the Issuer's shares, shareholder structure, shareholder dates, general meetings, bond issues, corporate governance and compliance information.

If you have any questions or require further information on this or any other matter, please contact [bks@bks.at](mailto:bks@bks.at).

## **3. Reasons for the public offer**

In 2022, BKS ordinary shares will be offered free-of-charge to eligible employees and directors of the Issuer, its subsidiaries and certain foreign branch or representative offices (see section 5.2. below) on the basis of the 100th anniversary of BKS Bank AG in the form of BKS ordinary shares. The participation of employees represents an important element of the shareholder structure and a broadening of the free float base of the Issuer.

On 1 December 2022, the management board of the Issuer decided to offer eligible employees and directors of the Issuer a total of up to 15,000 BKS ordinary shares within the framework of this offer.

The purpose of this offer is to give eligible employees and directors the opportunity to invest in the Issuer to create a broader free float basis and to ensure the Issuer's independence. Furthermore, this is intended to strengthen the loyalty of employees and directors to their employer.

#### **4. Legal provisions on the basis of which this document was prepared**

This document is prepared in reliance on the exemption pursuant to Article 1 (4) (i) Prospectus Regulation in conjunction with section 13 (6) Capital Markets Act 2019. Article 1 (4) (i) Prospectus Regulation contains the following exemption from the general obligation to publish a prospectus pursuant to Article 3 (1) Prospectus Regulation: If securities are offered, allotted or are to be allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided that the said securities are of the same class as the securities already admitted to trading on the same regulated market and that a document is made available containing information on the number, nature of securities and the reasons for and details of the offer or allotment (so-called prospectus-replacing document). As the issuer has published this document replacing the prospectus, the prospectus exemption pursuant to Article 1 (4) (i) Prospectus Regulation is fulfilled.

Pursuant to Article 13 (6) Capital Markets Act 2019, the FMA may, by way of regulation, determine the minimum content of the documents pursuant to Article 1 (4) (i) Prospectus Regulation, unless a delegated act has been adopted on the basis of Article 1 (7) Prospectus Regulation. The statutory minimum content of this prospectus replacing document is thus determined by section 4 MPLR 2019.

#### **5. Details of the offer**

##### **5.1. Subject of the offer**

Each employee and each director of subsidiaries or subsidiaries of a subsidiary of BKS Bank AG in Austria entitled to receive shares under the offer (but not employees of BKS Bank AG on secondment) as well as those employees who are employed in a foreign branch or representative office (see section 5.2 ("*Circle of addressees*") below) can expect to receive an estimated fixed allocation of 20 BKS ordinary shares (part-time employees on a pro rata basis) as well as a maximum of 4 BKS ordinary shares (part-time employees on a pro rata basis) for each completed year of service. The number of shares may vary depending on the stock market price of the BKS ordinary shares on or around 14 December 2022. The subscription of a minimum number of BKS ordinary shares is not intended.

This subscription of BKS ordinary shares free-of-charge is the subject of this offer.

##### **5.2. Circle of addressees**

This offer is directed to all employees and directors who have been in an employment relationship with a subsidiary or subsidiaries of a subsidiary of BKS Bank AG (but not seconded employees of BKS Bank AG) in Austria for at least three years as at the cut-off date of 1 December 2022, as well as those employees who are employed in a foreign branch or representative office in Croatia, Slovakia and Slovenia for at least three years as at the cut-off date of 1 December 2022 ("*eligible employees and directors*").

### **5.3. Period of the offer**

The offer is valid from and including 6 December 2022 up to and including 14 December 2022. Should the eligible employees and directors entitled to subscribe to the BKS ordinary shares decide to do so, they must notify the Issuer of this no later than 14 December 2022.

### **5.4. Scope of the offer**

A total of 15,000 BKS ordinary shares will be offered as part of the offer (100 years of BKS).

### **5.5. Number and distribution of BKS ordinary shares to be issued**

There is no minimum number of shares per eligible employee and director for voluntary subscription. Each eligible employee and each eligible director can expect to receive an estimated fixed allocation of 20 BKS ordinary shares (part-time employees on a pro rata basis) as well as a maximum of 4 BKS ordinary shares (part-time employees on a pro rata basis) for each completed year of service. The number of BKS ordinary shares may vary depending on the stock market price of BKS ordinary shares on or around 14 December 2022.

### **5.6. Issue price**

The issue price of the BKS ordinary shares is EUR 0 (zero).

### **5.7. Delivery of BKS ordinary shares**

The BKS ordinary shares offered in this offer are expected to be delivered and transferred to the securities account held by the Issuer (see below section 5.8) on or about 19 December 2022.

### **5.8. Lock-up period**

The BKS ordinary shares allocated through this offer are subject to a lock-up period of 5 years (the “**Lock-Up Period**”).

The BKS ordinary shares cannot be sold by employees and directors during the Lock-Up Period. For the duration of the Lock-up Period, the BKS ordinary shares will be held on a securities deposit account held by the Issuer as trustee for the account of the eligible employee or director. Upon expiration of the Lock-Up Period, the Issuer will transfer the BKS ordinary shares to a securities deposit account of the eligible employee’s or director’s choosing. Other rights associated with the BKS ordinary shares remain unaffected (see below in section 5.9).

### **5.9. Nature of BKS ordinary shares and the rights attaching thereto**

The BKS ordinary shares are listed on the Vienna Stock Exchange (Official Market, Standard Market Auction) and have the ISIN AT0000624705.



The BKS ordinary shares offered represent a participation in BKS Bank AG, which has the legal form of a stock corporation under Austrian law. Each BKS ordinary share carries various participation, asset and control rights. These include, in particular, the right to receive a dividend resolved by the annual general meeting of the Issuer. In the event of an increase in the share capital, the ordinary shares generally carry the right to subscribe for new shares if this subscription right of the shareholders has not been excluded. In the event of a liquidation of the Issuer, the shareholders have a claim to the assets remaining after the creditors have been satisfied or secured.

For tax aspects of an investment in BKS ordinary shares, see Annex ./1.

## **5.10. The risks associated with an investment in BKS ordinary shares**

### **5.10.1. General**

The acquisition of and investment in the BKS ordinary shares involves risks for the acquirer in relation to the Issuer, in relation to the legal framework and in relation to the BKS ordinary shares. The occurrence of these risks, individually or together with other circumstances, may have a material adverse effect on the Issuer's business and may have a material adverse effect on the Issuer's net assets, financial position and results of operations. The risks listed below may not prove to be exhaustive and may therefore not be the only risks to which the Issuer is exposed. The order chosen does not imply any statement as to the likelihood of occurrence or the severity or significance of the individual risks. Other risks and uncertainties, for example, of which the Issuer is not currently aware or which it currently considers to be immaterial, may also affect its business and have a material adverse effect on the Issuer's net assets, financial position and results of operations. The occurrence of any of the events described in the Risk Factors, or any combination thereof, may adversely affect the Issuer's ability to meet its obligations to Shareholders. As a result, shareholders may lose part or all of their investment (i.e. that there may be a total loss of the capital invested by the investor).

The content of this document replacing the Prospectus is in no way to be understood as legal, economic or tax advice, nor does it in any way satisfy any obligation to inform the investor within the meaning of the Securities Supervision Act 2018. Apart from the non-binding summary of certain tax aspects in Annex ./1, the Issuer makes no statements regarding tax aspects in connection with this offer and the tax consequences of subscribing for BKS ordinary shares. Each potential investor is therefore advised to obtain additional economic, tax and legal advice before subscribing for ordinary shares in the Issuer from a financial adviser, tax adviser or lawyer licensed to do so.

The material risk factors from the Issuer's point of view are presented below. The following risk factors do not claim to be complete.

### **5.10.2. Risk factors relating to the Issuer's business**

***Risk of default of agreed payments to be made by a debtor to the Issuer (credit and default risk)***

Credit risk is the risk of partial or total default on agreed payments, in particular interest and/or principal payments, to be made by a debtor to the Issuer. The credit or default risk is higher the worse the creditworthiness of the Issuer's contractual partner is and represents all negative consequences from defaults or the non-fulfilment of concluded contracts in the lending business due to the deterioration in the creditworthiness of a partner. Credit risk is one of the Issuer's most significant risks, as it exists both in traditional banking products, such as lending, discounting and guarantee business, and in certain trading products, such as derivative contracts like futures, swaps and options, or repurchase agreements and securities lending. Collateral posted by the debtor may not be sufficient to cover defaulted payments, for example, due to a decline in market prices. Defaults may also be caused by country risk, which is the risk that a foreign debtor, despite its own solvency, may not be able to make its interest and/or principal payments on time or at all, for example due to a lack of foreign exchange reserves held by the relevant central bank or due to political intervention by the relevant government. The extent of bad debts of the Issuer's debtors as well as necessary value adjustments may exceed the Issuer's provisions formed for this purpose and thus negatively affect its financial position.

***Risk of incurring losses due to changes in market prices (market risk)***

Market risk is the risk that losses may be incurred due to changes in market prices, in particular due to changes in interest rates, share prices or exchange rates as well as price fluctuations of goods and derivatives. Market risks arise primarily from unfavorable and unexpected developments in the economic environment, the competitive situation, interest rates and share and exchange rates. The demand for the products and services offered by the Issuer and thus its earnings situation also depend to a large extent on these factors in a broader sense. In a narrower sense, market risk includes possible negative changes in positions in the Issuer's trading or banking book.

***Risk of the Issuer being adversely affected by changes in the interest rate level on the money or capital market***

A significant component of the Issuer's income is the interest margin. This is the difference between the interest to which it is entitled to by granting of loans and other capital investments and the interest to be paid to investors. The level of interest rates in the money and capital markets can fluctuate daily and can therefore lead to daily changes. If there is a change in interest rates, the Issuer's interest receivables and interest liabilities will also automatically change. Interest rate risk thus arises from uncertainty about future changes in market interest rates. Strong fluctuations in interest rates may have a negative impact on the Issuer's net interest margin and results of operations.

***Risk that the economic environment and pandemic developments may lead to a deterioration in the Issuer's business performance***

The Issuer is domiciled in Austria and conducts its business mainly in the Eurozone, i.e. in Austria, Slovenia, Slovakia and Italy, but also outside the Eurozone in Croatia. The economic and political environment in the countries in which the Issuer operates, as well as the development of the world economy and global financial markets, have a significant influence on the demand for services and financial products developed and offered by the Issuer. (Geo-)political and/or economic uncertainties

such as the Ukraine war, growing protectionism in the global economy, the United Kingdom's exit from the EU (Brexit) and low or excessive inflation could each, individually or in combination, have a negative impact on the financial markets.

Higher interest rates, high commodity prices and continuing difficulties in global supply routes are increasingly weighing on global growth. Even if most analysts are currently still assuming that economic output will grow in the current year, recessions in individual countries cannot be ruled out.

Pandemics, epidemics and outbreaks of infectious diseases, such as the outbreak of coronavirus disease (COVID-19), can have severe effects. Measures to contain the rate of infection, such as curfews, plant and border closures, may affect the business and sales of the Issuer's clients. This may increase counterparty risk as, at most, customers may not be able to meet their payments in full under the loans extended to them or the collateral posted for such loans may become insufficient. If economic conditions deteriorate, this could result in credit losses.

The same measures may affect the Issuer's business if its premises were to be closed or quarantined, employees were to become ill or isolated, or the acquisition of new customers were to be adversely affected if personal contacts could not be maintained or established due to travel restrictions.

Measures to protect against an economic crisis resulting from the pandemic, such as officially ordered moratoria on payments due, caps on interest or other government intervention, may have a negative impact on the Issuer's results of operations. With respect to assets in which the Issuer is invested, such as in particular investments in shares or equity funds, or with respect to assets serving as collateral for its loans, such as in particular commercial real estate or other mortgage collateral, pandemics may adversely affect their market value.

In addition, there is the risk that the growing volatility on financial markets and widening credit spreads due to global losses in stock markets, due to the outbreak of the Ukraine war or the coronavirus disease (COVID-19), could negatively affect the Issuer's refinancing options.

The credit spread is the credit premium that reflects the creditworthiness of the issuer compared to a risk-free investment with the same maturity. Credit spreads are traded as premiums on current risk-free interest rates.

#### ***Risk that the core capital ratio is insufficient***

The Issuer has a consolidated Tier 1 capital ratio of 13% as of 31 December 2021 (Tier 1 capital according to CRR in relation to total risk exposure according to CRR) within the BKS Bank Group. This ratio could be insufficient in view of the consequences of the outbreak of the COVID-19 pandemic on the Issuer's business situation and refinancing options or for another event that is unforeseeable from today's perspective and could make it necessary to involve lenders in the restructuring and winding-up of the Issuer.

#### ***Risk of lack of availability of low-cost refinancing options***

The future business development of the Issuer and its profitability depend on access to cost-effective refinancing opportunities on the national and international money and capital markets. The access to and availability of these refinancing opportunities may change compared to the past or the Issuer's plans due to unexpected events, such as a change in interest rates. Such circumstances leading to disadvantageous refinancing opportunities may adversely affect the Issuer's ability to service issued securities.

***Risk that unfavorable market conditions or unfavorable economic conditions have a negative impact on the investments held (investment risk)***

Unfavorable market conditions or unfavorable economic conditions, in particular those resulting from the recession as a consequence of the COVID-19 pandemic, may have a negative impact on the investments held by the Issuer and may lead, for example, to losses on disposal, loss of dividends or partial write-downs in value. This may result in a deterioration of the Issuer's business and financial results.

***Risk due to the Issuer's business activities outside Austria and risk that the Issuer may not be able to realize its business strategies in individual countries***

The Issuer operates in Austria, Slovenia, Croatia, Slovakia and Italy. The business strategies pursued by the Issuer in the regions outside Austria are based on assumptions based on past economic developments in these countries. Furthermore, the Issuer's operations are subject to risks relating to political, economic and social changes (including currency fluctuations, possible exchange controls and restrictions, changes in the regulatory environment, inflation, recession, local market distortions and labor disputes). If these business prospects do not materialize in the manner expected by the Issuer, this may have an adverse effect on the Issuer's business development.

The BKS Bank Group has a branch and a leasing subsidiary in each of Croatia, Slovenia and Slovakia, with the aim of opening up further markets. The legal system in these countries has developed further in recent years due to the implementation of European laws and directives as well as European regulations. However, uncertainties remain, particularly with regard to the application and interpretation of existing or future legislation by national courts and administrative authorities. In addition, there is a risk that local companies will be favored over internationally active companies, such as the BKS Bank Group. Such weaknesses in the legal system and/or disadvantages for foreign market participants may also have a negative impact on the Issuer's business development.

***Risk of the Issuer suffering disadvantages due to intense competition or an intensifying competitive situation (competitive risk)***

The Issuer faces intense competition in the regions in which it operates. In addition, steady technological advances and developments in the e-commerce sector enable non-banks and other new competitors to offer products and services that have traditionally been offered exclusively by banks, which is likely to further intensify competition in the future. Intense competition from other banks, financial service providers and new competitors and an intensifying competitive situation in the home

market of Austria, may put pressure on profit margins and have a material adverse effect on the Issuer's business.

***Risk that the Issuer may not be able to meet its current or future payment obligations in full or on time due to the different maturities of receivables and liabilities (liquidity risk)***

Due to the different maturities of the Issuer's receivables and liabilities, there is a risk that the Issuer's liquid funds will not be sufficient to meet its current and future payment obligations in full or on time. In addition, the Issuer is exposed to the risk that it may not be able to sell or hedge positions held in the banking or trading book in the short term or may only be able to sell them on less favorable terms due to insufficient market liquidity.

***Risk that the Issuer may suffer a financial loss as a result of a devaluation of money (inflation risk)***

The risk of a loss of assets as a result of a devaluation of money (inflation risk) exists primarily if the actual inflation is higher than the expected inflation. The inflation risk primarily affects the real value of the Issuer's existing assets and the real return that can be generated by the Issuer. Accordingly, a higher than expected inflation rate may have an adverse effect on the performance of the Issuer's assets.

***Risk of losses due to the failure of internal procedures, systems and processes, of employees or the occurrence of external events (operational risk)***

Operational risk is the risk of loss resulting from the inadequacy or failure of internal procedures, systems and processes, personnel or from the occurrence of external events, such as changes in normal operations due to the outbreak of the COVID-19 pandemic, property damage, processing errors or fraud. If such risks materialize, the Issuer may experience increased costs or reduced revenues and the Issuer's financial condition and results of operations may be adversely affected, which could exceed the amount of capital it holds against such risks.

***Risk of potential conflicts of interest of the Issuer***

The members of the management board and the supervisory board of the Issuer perform board functions and other executive functions in other companies within and outside the BKS Bank Group. These activities for other companies may result in potential conflicts of interest with their function on the Issuer's corporate bodies. Such conflicts of interest may arise in particular if the Issuer has an active business relationship with these companies. Conflicts of interest may arise, for example, in connection with the provision of services such as the purchase, sale or brokerage of financial instruments, investment advice, the issuing and placement business, the Issuer's own transactions in financial instruments, the custody business, the financing of financial instruments, the provision of advice to companies, for example on their capital structure and on corporate acquisitions or mergers, foreign exchange transactions in connection with transactions in financial instruments and the forwarding of third-party financial analyses to customers. Conflicts of interest on the part of members of governing bodies may have an adverse effect on the Issuer's business performance and reputation.

***Risk that failures, interruptions or security deficiencies temporarily impair the ongoing operations of various business areas of the Issuer (ICT risk)***

The Issuer's business is highly dependent on functioning communications and data processing systems. Failures or interruptions in the systems for customer relations, accounting, custody, support and/or customer administration and cyber-attacks on the data processing systems may temporarily impair the ongoing operation of various business areas of the Issuer and thus have an adverse effect on the Issuer's customer business and reputation. In the wake of the COVID-19 pandemic, the Issuer is making greater use of video conferencing and enabling its employees to work from outside the Issuer's premises. This requires increased ICT solutions such as conferencing systems and secure teleworking workstations. Despite the use of state-of-the-art technologies, these are exposed to the risk of cyber attacks, which could temporarily impair the Issuer's business operations.

***Risk of loss of one or more senior executives or failure to identify material developments and trends in the banking sector in a timely manner (personal risk)***

The success of the Issuer depends to a large extent on qualified managers and employees, most of whom have been employed by the Issuer for many years. The loss of one or more of these managers may have a significant adverse effect on the Issuer's business development. Furthermore, the Issuer may suffer losses if the management fails to recognize significant developments and trends in the banking sector in good time or assesses them incorrectly. As a result, fundamental decisions may be made which, ex post, prove to be disadvantageous with regard to the achievement of the long-term corporate objectives and which may also be difficult to reverse. This is also associated with the risk that the customer loyalty necessary for the Issuer may be impaired by reputational losses.

***Risk of losses of the Issuer due to acquisitions***

Part of the Issuer's corporate planning consists of making acquisitions, whereby above all antitrust or similar regulations make acquisitions more difficult. Furthermore, acquisitions are associated with considerable investments and risks. Possible errors, e.g. in the planning stage, in the valuation of the target company, the assessment of future synergies or the integration of the target company into the Issuer cannot be excluded. Such misjudgements and other failures in connection with acquisitions may have adverse effects on the Issuer's financial position and results of operations.

**5.10.3. Risk factors relating to the legal framework**

***Risk of financial burdens arising for the Issuer due to regulatory requirements***

The CRR includes two categories of own funds: Tier 1, which serves to absorb losses already in the "going concern", and Tier 2, which serves as "gone concern" capital. In principle, the predominant form of own funds should be formed as "Common Equity Tier 1", the so-called "hard core capital". Paid-in capital, open reserves and the fund for general banking risks are added to this capital. According to the CRR, securities are only suitable as Additional Tier 1 capital if they contain provisions that provide for a write-down of the capital amount or a conversion into Common Equity

Tier 1 instruments upon the occurrence of certain events. It may also be the case that instruments issued by the Issuer can no longer be used as own funds in the same way due to certain events. For such instruments, the CRR contains grandfathering provisions, providing for eligibility during a transitional period, within defined limits.

In order to ensure the successful continuation of the business, effective capital management by the Issuer is essential. Any changes that make it more difficult for the Issuer to actively manage its balance sheet and capital resources or to access sources of financing may have a material adverse effect on the Issuer's balance sheet and capital resources.

The Issuer calculates the regulatory capital ratios and ratios on the basis of the statutory requirements, in particular the provisions of the CRR and the Banking Act. Any breach of regulations relating to capital adequacy and other regulatory ratios may result in the Issuer being subject to regulatory sanctions, which in turn may lead to an increase in operating costs and a loss of reputation. There is also a risk that regulatory requirements may change in the future, which in turn may lead to an increase in the Issuer's costs and expenses.

The Issuer is required to contribute to the unified resolution fund, which is intended to be available for bank resolutions. It is also a member of the deposit guarantee scheme, which is to be endowed ex ante with 0.80% of covered deposits by credit institutions - such as the Issuer - until 3 July 2024. In addition to the ex ante contributions, credit institutions could be required to pay certain extraordinary (ex post) contributions in the event that available funds are insufficient to compensate depositors in the event that deposits are not available. The contributions to the resolution fund and deposit insurance may result in additional financial burdens for the Issuer.

In addition, credit institutions are required to maintain a minimum amount of own funds and eligible liabilities in the form of a percentage of their total liabilities and own funds as prescribed by the competent resolution authority ("MREL") in order to ensure compliance with the bank recovery and resolution regimes within the meaning of the Recovery and Resolution Act and the SRM Regulation, respectively. The Single Resolution Board ("SRB") may also require that part or all of this percentage be composed of own funds instruments or specific classes of liabilities such as subordinated bonds.

***Risks due to possible changes in the legal framework in the countries in which the Issuer operates***

The Issuer operates on the basis of the currently applicable political, economic, legal and tax framework. The Issuer is exposed to the risk of changes in the legal framework. Legislative amendments and changes in judicial and administrative practice in the jurisdictions in which the Issuer operates may affect the Issuer's business and have a negative impact on the Issuer's net assets, financial position and results of operations.

***Legal disputes, court and administrative proceedings or lawsuits may have a negative impact on the net assets, financial position and results of operations of the Issuer or the BKS Bank Group***

On 26 June 2020, the minority shareholders of the Issuer, UniCredit Bank Austria AG and CABO Beteiligungsgesellschaft m.b.H. filed a lawsuit with the Regional Court of Klagenfurt pursuant to

sections 195 et seq. of the Austrian Stock Corporation Act to challenge resolutions of the Annual General Meeting of 29 May 2020. The resolved discharge of the members of the Management Board and the (non-)discharge of individual members of the Supervisory Board as well as the refusal to conduct special audits on ALPENLÄNDISCHE GARANTIE - GESELLSCHAFT m.b.H. are challenged, on the establishment of Generali 3Banken Holding AG, on the capital increase of the issuer in 2018, on the capital increase of Bank für Tirol und Vorarlberg Aktiengesellschaft (“BTV”) in 2018, on Beteiligungsverwaltung Gesellschaft m.b.H., on payments and other services to Oberbank AG (“Oberbank”), BTV and Generali 3Banken Holding AG and on payments or other services to shareholders or "friendly investors". Furthermore, a positive resolution is requested on the non-discharge of the members of the Management Board and individual members of the Supervisory Board, the discharge of a member of the Supervisory Board and a positive resolution on the performance of the above-mentioned special audits. The contestation proceedings were interrupted upon application pursuant to section 29 (2) of the Austrian Takeover Act by resolution dated 1 September 2020. The file was submitted to the Takeover Commission.

The same minority shareholders filed an action for declaratory and injunctive relief against the Issuer with the Klagenfurt Regional Court on 24 June 2021. The request is that the Issuer refrain from allowing BTV, Oberbank, Generali 3Banken Holding AG or other shareholders in which it holds an interest to increase the Issuer's capital in the future. If these requests are rejected, it is requested that the issuer refrain from allocating shares to the aforementioned shareholders in the context of a capital increase to an extent greater than the participation in the share capital less any back participation, as long as the shareholders do not pay a corresponding additional amount. Furthermore, the same minority shareholders seek a declaration that resolutions adopted by the Issuer's Management Board and Supervisory Board in connection with the Issuer's capital increases in 2009, 2014, 2016 and 2018 are null and void. Due to a joint notice of suspension, there is currently a simple suspension.

The Issuer has also joined as an intervening party in the parallel proceedings which these minority shareholders are conducting against the sister banks Oberbank and BTV with similar contentious issues and claims. Conversely, the sister banks are also participating in the aforementioned proceedings against the Issuer as intervening parties.

Furthermore, on 2 March 2020, the 1st Senate of the Austrian Takeover Commission decided to initiate proceedings before the Austrian Takeover Commission pursuant to section 33 of the Austrian Takeover Act at the request of the above-mentioned minority shareholders. The subject of the investigation in these review proceedings is the preliminary question regarding the above-mentioned proceedings for the contestation of resolutions of the General Meeting and for the appointment of a special auditor by the court, whether there has been a violation of the obligation to make an offer, in particular pursuant to section 22a no. 3 or section 22 para. 4 Austrian Takeover Act, by the Issuer and its affiliated legal entities. It was also decided to initiate review proceedings pursuant to section 33 Austrian Takeover Act with respect to Oberbank and BTV at the request of the aforementioned minority shareholders. The Takeover Commission combined these proceedings and held a hearing. In these proceedings, the aforementioned minority shareholders filed an application claiming the partiality of a member of the senate of the Takeover Commission. The Takeover Commission rejected



this application, and the minority shareholders appealed to the Supreme Court. The Supreme Court has rejected the appeal. The decision of the Takeover Commission is still pending. Given the links between the members of the 3 Banken Group, a breach of the duty to make an offer by one of the three banks may also affect the other two banks. Should a breach of the duty to make an offer be established, the voting rights of the aforementioned legal entities arising from the shares in the Issuer and the voting rights of the Issuer arising from the shares in the other two banks will be suspended until a mandatory offer to acquire all shares in the Issuer from the aforementioned legal entities or the Issuer in accordance with the Takeover Act is made or the suspension of voting rights is lifted by the Takeover Commission. A suspension of voting rights would have the consequence that the aforementioned legal entities would not be entitled to vote on resolutions during an ordinary or extraordinary general meeting of the Issuer. If the Issuer's voting rights in the other two banks are suspended, the Issuer would not be entitled to vote on resolutions at an ordinary or extraordinary general meeting of the other two banks. If a breach of the obligation to make an offer were to be established with respect to one or both of the other banks, the Issuer would be obliged, together with the other shareholders who have breached an obligation to make an offer, to make an offer in accordance with the provisions of the Takeover Act to all other shareholders of one or both of the other banks to acquire the shares in one or both of the other banks.

***Risk of the Issuer that in the event of repeated and/or serious violations of the legal framework, the Issuer's license will be restricted or withdrawn***

There is a risk that in the event of serious and/or repeated violations of the legal framework, the Issuer's banking license may be restricted or even withdrawn entirely. The competent authority has wide-ranging authority in this regard and may, for example, decide on such measures in the event of breaches of the minimum capital requirement.

#### **5.10.4. Risk factors relating to the offer and the BKS ordinary shares offered**

***Risk that the Issuer does not or cannot make dividend payments in every financial year***

The potential return on equity investments is derived from dividend payments and capital appreciation (in the case of listed shares, from price gains). Both depend, among other things, on the success of the Issuer and can therefore not be reliably forecast. A dividend payment to investors presupposes that sufficient distributable profits have been generated by the Issuer. The Issuer cannot guarantee that distributable profits can be generated for every financial year. Future dividend payments regularly depend on revenues, future financial and related business developments, the corresponding resolution in the general meeting and other factors, such as in particular the legal framework.

***Dividend payments may also be reduced or eliminated as a result of distributions on certain regulatory capital instruments of the Issuer.***

At the time of publication of this document, the Issuer has issued Additional Tier 1 Bonds (subordinated instruments without final maturity with unlimited term) in a volume of EUR 65.2 million. Interest payments on the Additional Tier 1 Bonds may only be made if - as in the case of

dividend payments on shares - the Issuer has sufficient distributable funds. Furthermore, interest payments on the Additional Tier 1 Bonds are at the sole discretion of the Issuer. If the Issuer were to make interest payments on the Additional Tier 1 Bonds, this could reduce the amount of any dividend to be distributed to shareholders or lead to a complete failure to make dividend payments to shareholders.

In addition, the interests of the Issuer, the shareholders or the holders of certain regulatory capital instruments, such as the holders of Additional Tier 1 Bonds, may diverge, in particular with regard to dividends and/or interest payments. The Issuer may make, or be required to make, decisions that do not correspond with the interests of the shareholders and therefore have adverse effects for shareholders.

***Risk of dividend payments being cancelled or excluded for regulatory reasons***

Dividend payments may also be cancelled or excluded if and to the extent that the FMA as the competent supervisory authority instructs the Issuer to cancel the dividend payments or such dividend payments are prohibited on a dividend payment date due to a statutory or administrative order.

Under the CRR, the Issuer is prohibited from making dividend payments if (but only to the extent that) the respective dividend payments (plus any additional amounts) exceed the distributable items. Dividend payments must be excluded or omitted if such distributions would reduce the Issuer's Common Equity Tier 1 capital to such an extent that the combined capital buffer requirement would no longer be met (section 24 para 1 Banking Act). Dividend payments are also excluded if, on the relevant dividend payment date, (i) dividend payments on the Shares together with other distributable amounts (section 24 para 2 Banking Act) would not be in accordance with the restrictions on the maximum distributable amounts; or (ii) dividend payments on the Shares are not permitted under the otherwise applicable regulatory provisions. The maximum distributable amount is a concept which applies if the combined capital buffer requirements (Annex to section 24 Banking Act) are not (or not fully) met.

With regard to regulatory capital, the CRR requires a minimum capital ratio of 8% of the risk-weighted assets of the institution or group concerned and also sets minimum requirements for core capital and hard core capital. Pursuant to section 22a para 3 Banking Act, the FMA may set higher minimum requirements for regulatory capital under certain circumstances.

CRD IV also introduced requirements for so-called capital buffers, which apply in addition to the minimum capital requirements and which must be complied with in addition to the requirements for hard core capital. In accordance with the requirements of CRD IV, five new capital buffers were introduced into Austrian law in sections 23 et seqq Banking Act: (i) the capital conservation buffer, (ii) the countercyclical capital buffer, (iii) the buffer for global systemically important institutions or, depending on the institution, (iv) the buffer for other systemically important institutions and (v) the systemic risk buffer. While the Capital Conservation Buffer will, in all cases, be applied to the Issuer, any or all of the other Buffers may be additionally determined and applied to the Issuer (provided that the Global Systemically Important Institutions Buffer and the Other Systemically Important Institutions Buffer may only be applied alternatively and not cumulatively). All applicable buffers will be combined into one combined capital buffer. If the Issuer fails to meet such combined capital buffer

requirement, the Issuer is restricted under certain circumstances from making dividend payments until the FMA, as the competent supervisory authority, has approved a capital conservation plan pursuant to section 24a Austrian Banking Act. In the capital conservation plan, the Issuer must explain how it can be ensured that interest payments and certain other voluntary payments, including distributions on hard core capital instruments and variable remuneration payments, do not exceed the maximum distributable amount. In the event of a breach of the combined capital buffer requirement, it may be necessary to reduce payments that may be made at the Issuer's discretion. This may also result in dividend payments being cancelled in whole or in part.

It cannot be ruled out that the European Union, the Republic of Austria or competent authorities will enact further statutory regulations with respect to the Issuer which may also adversely affect the dividend rights of shareholders.

There is a risk that the Issuer may be prevented from making dividend payments on the Shares due to regulatory requirements and/or supervisory measures, even if the Issuer were profitable in its own right and moreover willing to make dividend payments. In all cases, shareholders would receive no or reduced distributions on the relevant dividend payment date.

***Risk of a fluctuating market price of the BKS ordinary shares (price risk)***

The historical price of a share is not an indication of the future performance of that share. It is not possible to predict the direction in which the market price of the share will develop. The realization of the price risk may result in a total or partial loss of the investment.

***Risk of reduced earnings opportunities for the shares due to commissions and other transaction costs***

When buying and selling shares, commissions and other transaction costs may be incurred, which can lead to a significant cost burden. The cost burden can significantly reduce the earnings opportunities.

***Risk of significant share price fluctuations due to internal and external factors***

In general, share prices have been subject to considerable price fluctuations in the past. There were also significant price fluctuations on the Vienna Stock Exchange. The price of BKS shares may be subject to significant fluctuations, in particular as a result of fluctuations in operating results, failure to meet the earnings expectations of securities analysts, general economic conditions, global economic or financial crises, analysts' forecasts, mergers, strategic partnerships, changes in economic conditions, political or economic developments or other factors. General price fluctuations may also lead to price pressure on the Issuer's shares without there necessarily being a reason for this in the Issuer's business or earnings prospects.

***Risk of dilution or impairment of the share price due to possible future capital increases of the Issuer with exclusion of subscription rights***

In order to finance possible future acquisitions or other investments, the Issuer may carry out capital increases, if necessary, also excluding the subscription rights of existing shareholders at that time. Such capital increases may adversely affect the price of the shares and, in the event of the exclusion

of subscription rights, would dilute the proportion of the Issuer's share capital held by existing shareholders.

***Subscription rights that are not exercised expire without compensation and dilute the shares of shareholders who decide not to participate in the offer***

If shareholders or holders of subscription rights do not properly exercise this subscription right, their subscription right may expire before the end of the subscription period. In this case, shareholders or holders of subscription rights will not receive any compensation. Only partial exercise or non-exercise of this subscription right leads to a reduction in the participation of shareholders or holders of subscription rights in the Issuer's share capital.

***Risk that investors may not be able to sell the acquired shares at all or at a fair price due to an inactive trading market***

There is no assurance that an active trading market for the Issuer's shares will form and continue or that - due to an illiquid market - there will be no temporary suspensions of trading. In an illiquid market, there is a risk that investors will not be able to sell the shares at any time and/or at a fair price. The stated maximum issue volume does not allow any conclusion to be drawn as to the liquidity of the shares. Investors must therefore expect that the shares they have acquired may not be able to be sold, or may not be sold at the desired time or at the desired price, particularly in the event of sale in extreme cases.

***Risk of a possible suspension of trading by the FMA and Wiener Börse AG due to important circumstances***

Pursuant to Article 14 para 1 no 7 Capital Markets Act 2019, the FMA is authorized to suspend trading on a regulated market for a maximum of ten consecutive banking days at a time or to require the regulated markets concerned to suspend trading if there are reasonable grounds to believe that the provisions of the Prospectus Regulation have been violated. Furthermore, there is the possibility of a suspension of trading by Wiener Börse AG (section 17 Stock Exchange Act 2018), provided that such a measure does not conflict with investor interests or the interest in the orderly functioning of the market, if the shares no longer comply with the rules of the regulated market. Investors must therefore expect that, in extreme cases, the shares held by them cannot be traded or cannot be traded at the desired time or at the desired price, their orders will be declared cancelled and will have to be placed anew.

***Risk that opinions and forecasts may differ from actual circumstances***

The forward-looking assumptions and statements contained in this document replacing the Prospectus are primarily opinions and forecasts of the management of the Issuer. They reflect the current view of the management with regard to possible future events which, however, are still uncertain. A variety of factors could cause actual events to differ materially from those projected. This may lead to adverse changes in the Issuer's business, financial condition and results of operations and subsequently to adverse effects for investors.

*The acquisition of the shares may violate laws*

The Issuer is not responsible for the legality of an acquisition of Shares by potential investors or their compliance with the laws and regulations applicable under national law or the respective administrative practice in the investor's home country. There is therefore a risk that the acquisition of the shares by potential investors in their home country may violate applicable laws and regulations or respective administrative practices.

**5.11. Any conditions attached to the issue or admission of BKS ordinary shares:**

None

BKS Bank AG (as Issuer)

Klagenfurt, on [●]. December 2022

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VDir. Dr. Herta Stockbauer

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VDir. Dieter Kraßnitzer

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VDir. Alexander Novak

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VDir. Nikolaus Juhász, M.D.

## **Annex ./1 Tax Aspects in Slovakia**

### **Tax aspects of an investment in shares of an Austrian company for employees resident in Slovakia**

*The following summary sets forth certain general principles regarding the expected taxation of employees who are active and resident in Slovakia for purposes of the tax laws of Slovakia and the Convention between the Republic of Austria and the Republic of Slovakia for the Avoidance of Double Taxation dated 7 March 1978, as amended (the “Treaty”). The tax consequences set forth below are described in accordance with the laws and administrative practices currently applicable in Slovakia, the Treaty and certain Austrian tax laws and practices. These principles, practices and laws may change over time. You should also consider your personal situation. For specific information regarding the tax consequences of subscribing for BKS ordinary shares, you should consult your own tax advisor. This summary serves only as initial information and does not claim to be complete or conclusive.*

#### **Taxation in Austria**

The benefit from the granting of the shares at a (100%) discount to you will not be subject to taxation in Austria.

Dividends paid by BKS Bank AG will generally be subject to a 27.5 % withholding tax (*Kapitalertragsteuer*). BKS Bank AG will be obliged to withhold the tax and remit it to the Austrian tax office.

However, according to the Treaty, the Austrian withholding tax on dividends shall not exceed 10 % of the dividends. As the Austrian company will withhold 27.5 % tax on dividends, you may apply for a refund of the Austrian withholding tax on dividends. The application process requires an online pre-notification via the form ZD-RD-DIAG (the link for the form can be obtained from the website of the Austrian Ministry of Finance, [www.bmf.gv.at](http://www.bmf.gv.at)). In order to obtain the refund, the shareholder has to provide a certificate of residence issued by the tax authorities of the country of residence. The printed confirmation of the pre-notification together with the residence certificate needs to be submitted by mail to the Austrian tax office for large companies (*Finanzamt für Großbetriebe*). The application can be filed after the end of the calendar year in which the withholding was made and has to be done within five years.

Realized capital gains on the sale or disposal of shares of an Austrian company by non-resident individuals are not subject to Austrian income tax provided the individual has, within the last five years preceding the sale, held a shareholding of less than 1 % in BKS Bank AG. If Austrian withholding tax has nevertheless been deducted (e.g. by the Austrian bank where the shares are deposited), the withholding tax can be refunded upon an application which requires a similar procedure as the one described above for dividends (form ZS-RD-REWAG).

## **Taxation in Slovakia**

The benefit from the issuance of the BKS ordinary shares in the course of the voluntary subscription is taxable at the level of the employee. The benefit corresponds to the market value of the shares on the date of transfer of the shares to the employee (acquisition of beneficial ownership).

As this benefit derives from the employment relationship, the employer must calculate, withhold and pay wage tax to the tax office in the month in which the employee receives the benefit. The applicable tax rate depends on overall employee's income and ranges from 19% to 25%.

The benefit received by the employee is subject to social security contributions: the employee's social security contribution amounts to 13.4% of the benefit (to be deducted and paid by the employer from the employee's gross salary) and the employer's contribution amounts to 35.2% (to be paid in addition to the gross salary and non-wage labor costs). The maximum contribution base for social security contributions in 2022 is EUR 7,931 per month. Details may vary depending on employee's specific circumstances.

In the event of a sale of the shares, the difference between the acquisition cost and the proceeds from the sale constitutes taxable capital gain. This amount is subject to regular personal tax at the rate of 19 – 25%, depending on employee's total annual income and other specific circumstances. The acquisition cost is deemed to be the market value of the shares at the time of acquisition or transfer to the employee, which was taxed by the employer as per the above provisions. The first EUR 500 p.a. of capital gains is tax free.

Dividends from the shares represent income from capital assets, which is subject to a special tax rate of 7%. In this case (i.e. dividends received from a foreign issuer), the employee must declare and pay the tax through his/her personal tax return. The tax return is typically filed by 31 March of the year following the year during which dividends are received (extensions of the deadline are possible in specific circumstances). If the employee effectively paid the 10% withholding tax in Austria as described in the previous chapter, such Austrian tax can be credited against the Slovak tax liability and therefore no additional tax needs to be paid in Slovakia. The employee will however not be refunded the difference between the 10% Austrian tax and the 7% Slovak tax.

Loss from sale of shares cannot be offset against other types of income, nor can it be offset against received dividends.