

TRANSLATION FROM GERMAN ORIGINAL

Federal Law: Entire Statutory Provision regarding Covered Bank Bonds, as amended on November 13, 2009

Please note

As regards the scope of applicability, compare Art. VIII of the Introductory Ordinance to the Mortgage Bank Act (Austrian "*Einführungsverordnung zum Hypothekenbankgesetz*"), German *Reich* Law Gazette ("*dRGI.*") I p. 1574/1938

Long title

Act of December 27, 1905 Relating to Covered Bank Bonds - FBSchVG (Austrian "*Gesetz vom 27. Dezember 1905, betreffend fundierte Bankschuldverschreibungen - FBSchVG*"). Original version published in the Imperial Law Gazette ("*RGI*") No. 213/1905.

Amendment:

as amended by:

Federal Law Gazette ("*BGBl.*") I No. 45/2004 (*NR*¹: *GP*² XXII *RV*³ 392 *AB*⁴ 430 p. 56. *BR*⁵: *AB* 7017 p. 707.)

Federal Law Gazette I No. 32/2005 (*NR*: *GP* XXII *RV* 795 *AB* 893 p. 109. *BR*: *AB* 7260 p. 722.)

Text

Sec. 1 (1) Credit institutions which have the right to issue covered bank bonds (sec. 1 para. 1 sub-para. 9 of the [Austrian] "*BWG*" [Banking Act]) must, subject to the conditions stipulated in this Federal Act, establish a reserve fund to provide preferential cover (backing) for any claims under such bonds.

(2) The credit institution is only allowed to dispose of the assets held as security in the reserve fund (para. 5) with the consent of the government commissioner. The government commissioner is only allowed to give his consent if he is convinced that by the disposal the mandatory backing for the covered bank bonds is not impaired.

¹ Translator's note: "*Nationalrat*" (Austrian National Council)

² Translator's note: "*Gesetzgebungsperiode*" (legislative period)

³ Translator's note: "*Regierungsvorlage*" (government bill)

⁴ Translator's note: "*Ausschussbericht*" (committee report)

⁵ Translator's note: "*Bundesrat*" (Austrian Federal Council)

(3) Each of the assets held as security in the reserve fund shall be recorded separately by the credit institution in a cover register ("*Deckungsregister*"). Hedging transactions (derivatives contracts) according to para. 5 may only be registered with the consent of the government commissioner and the credit institution's counterparty under the transaction; any registration to which such consent has not been given shall be deemed not to have been made. The consent of the government commissioner to the registration confers the absolute presumption in the relationship between the credit institution and its counterparty that the derivatives contract has been entered into for the purpose of reducing the risks indicated in para. 5. The consent of the credit institution's counterparty may also be given for several derivatives contracts in advance. If assets or parts of such assets are held in trust for the credit institution (para. 6), the credit institution acting as trustee in each case shall be recorded in the cover register.

(4) With respect to assets in which a registerable right may be obtained, their use as cover must be entered into the public registers, based on a statement to be issued by the credit institution. If in the event of para. 6 a mortgage of any other credit institution is assigned as cover for the covered bank bonds, the "*Kautionsband*" (*i.e.*, annotation that the mortgage pertains to the so-called "*Deckungsstock*", *i.e.*, assets serving as cover) shall, upon application of the other credit institution, be entered in the public registers. The mortgage may be entered into the cover register of the credit institution only after the "*Kautionsband*" has been entered into the public registers. In order to delete the evidence of use as cover ("*Kautionsband*"), the government commissioner must confirm that the asset was deleted from the cover register. The government commissioner must be informed of the registration and deletion of the evidence of use as cover.

(5) The following assets are suitable as preferential cover for the claims under the covered bank bonds:

1. claims and securities if they are suitable for the investment of money held in trust for a ward of court (sec. 230b of the [Austrian] "*ABGB*" [General Civil Code]);
2. claims and securities, if a pledge has been entered for their benefit into a public register;
3. claims, if they are due from an Austrian corporation governed by public law, from any Contracting State to the Agreement on the European Economic Area other than Austria, from Switzerland, or from the regional governments or local authorities of those countries, for which the competent authorities have set a weighting of 20%, at the most, under Article 43(1)(b)(5) of Directive 2000/12/EC, or if one of the above mentioned corporations guarantees payment;
4. securities, if they were issued by any of the bodies listed in sub-para. 3 or if one of these bodies guarantees payment.

Furthermore, hedging transactions (derivatives contracts) which serve to reduce the risks of future interest or currency fluctuations or default - also in the event of the insolvency of

the credit institution - with regard to the so-called "*Deckungsstock*", i.e., assets used as cover, for the covered bank bonds issued may also be used to provide preferential cover. In respect of the liabilities incurred by the credit institution under a derivatives contract, the credit institution's counterparty under such hedging transaction shall rank *pari passu* with the creditors of the covered bank bonds as regards the assets entered into the cover register.

(6) Assets held as security in the reserve fund or parts of such assets of any other credit institution according to sec. 2 sub-para. 20 of the (Austrian) Banking Act shall be considered equivalent to those assets where the credit institution is the creditor, if it has been agreed in writing that they are held in trust by such other credit institution for the credit institution and it is certain that they correspond to the provisions of this Federal Act. The credit institution holding the assets or parts of such assets in trust for the credit institution, must apply sec. 48 of the (Austrian) Banking Act subject to the proviso that the sum of the assets or parts of such assets thus held shall be shown separately.

(7) If, due to the repayment of cover assets or for any other reason, the prescribed total cover does not exist, the credit institution shall replace the lacking mortgage cover

1. by deposits in bank accounts with a Zone A central bank (sec. 2 sub-para. 18 of the [Austrian] Banking Act) or with credit institutions pursuant to sec. 2 sub-para. 20 of the (Austrian) Banking Act, or
2. by cash

(substitute cover). The substitute cover shall not exceed 15 percent of the total amount of the covered bank bonds in circulation.

(8) The reserve fund must at all times cover at least the repayments and interest of the covered bank bonds in circulation, as well as the administration costs likely to accrue in the event of bankruptcy of the credit institution (sec. 3). The Articles of Association of the credit institution may provide that the current market value of the assets in the reserve fund must cover the discounted present value ("*Barwert*") of the covered bank bonds in circulation plus a securing excess cover which is to be determined by reasonably taking into account market risks but must amount to at least 2%.

(9) If a credit institution issues mortgage bonds ("*Pfandbriefe*") in addition to covered bank bonds, separate reserve funds must be established for the mortgage bonds and for the covered bank bonds. Credit institutions may establish separate reserve funds for the covered bank bonds secured by assets listed in sec. 1 para. 5 sub-paragraphs 3 and 4 and for other covered bank bonds.

Sec. 2 (1) Creditors of the covered bank bonds have the right to preferential satisfaction out of the assets that are held as security for their claims.

(2) The levying of execution against the assets recorded in the cover register shall be permitted only in favor of claims arising from the covered bank bonds and from

This English translation of the authentic German text serves merely for information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl).

derivatives contracts. Claims that have been entered into the cover register shall not be subject to set-off. Claims entered into the cover register shall not be subject to set-off. The claim may be entered into the cover register of the credit institution only after the credit institution has notified the debtor of the claim's status as security and of such prohibition of setting-off. This shall not apply to the offsetting, permissible under the general rules of civil law, of claims and liabilities under derivatives contracts as per sec. 1 para. 5.

(3) If the government commissioner has concerns that the rights of the creditors of the covered bank bonds might be endangered, he shall apply to the competent court to obtain the appointment of a joint special representative ("*Kurator*") of the creditors. In the event of the bankruptcy of the credit institution, such special representative is to be appointed *ex officio* by the bankruptcy court. The appointment of such special representative may also be requested by any person whose rights would be restricted due to the lack of joint representation of the creditors of the bonds. The provisions on joint special representatives of the creditors of bonds contained in the Act published in *RGBI* (Imperial Law Gazette) No. 49/1874 shall apply to these special representatives.

Special Provisions under Insolvency Law

Sec. 3 (1) If bankruptcy proceedings are instituted against the credit institution, the assets recorded in the cover register shall form a "*Sondermasse*" (i.e., a special estate for claims of secured creditors) for the claims of the creditors of the covered bank bonds (sec. 48 of the [Austrian] "*Konkursordnung - KO*" [Bankruptcy Code]).

(2) The bankruptcy court shall appoint a special administrator for the administration of the special estate (sec. 86 of the [Austrian] Bankruptcy Code) without delay. Prior to this appointment, the Financial Markets Authority (FMA) shall be heard. The rights and obligations of the government commissioner shall not be affected. Sec. 82 through sec. 82d of the (Austrian) Bankruptcy Code shall not be applicable to the remuneration of the special administrator.

(3) The special administrator shall satisfy from the special estate any claims of the creditors of the covered bank bonds which are already due and shall take any administrative measures which are necessary to that end with effect for the special estate, for instance by collecting mortgage claims which are already due, by selling individual cover assets or by interim financing.

(4) With the approval of the special representative appointed for the creditors of the covered bank bonds, and after the receiver and the creditors' committee have been heard, the assets entered into the cover register shall be sold collectively to a suitable credit institution by the special administrator, provided that such credit institution shall at the same time take over any and all liabilities arising under the covered bank bonds. The transferee credit institution is entitled to maintain the "*Deckungsstock*" (i.e., assets serving as cover) thus taken over separately from its own "*Deckungsstock*". The transferring credit

This English translation of the authentic German text serves merely for information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl).

institution shall continue to be responsible for the liabilities arising under the covered bank bonds in addition to the transferee credit institution. The sale of the special estate shall be subject to the approval of the bankruptcy court. The transfer shall be publicized by entry into the insolvency file (sec. 14 of the [Austrian] "*Insolvenzrechtseinführungsgesetz - IEG*" [Introductory Act to Insolvency Law]) upon the resolution approving such sale becoming final and absolute.

(5) The proceeds from transferring the special estate together with the liabilities arising under the covered bank bonds will be included in the bankrupt's estate divisible amongst all creditors. Prior to the transfer of the special estate, only those assets of the special estate that are obviously not needed to cover the claims of the creditors of the covered bank bonds and the costs of the special estate and to maintain the securing excess cover pursuant to sec. 6 para. 1 shall be passed on to the bankrupt's estate divisible amongst all creditors.

(6) The creditors of the covered bank bonds may only assert their claims as creditors of the bankrupt in the amount of the loss or, as long as such loss has not been finally established, the presumable loss. Sec. 14 para. 2 of the (Austrian) Bankruptcy Code is applicable to the claims of the creditors of the covered bank bonds only in so far.

(7) In lieu of a transfer according to para. 4, all claims of the creditors of the covered bank bonds that have not yet become due shall be redeemed by the special administrator already before the agreed due date at the discounted present value ("*Barwert*"), if the Articles of Association so require in the event of bankruptcy and provided that the cover assets are expected to be sufficient for this purpose. This shall be subject to the approval of the bankruptcy court. The discounted present value ("*Barwert*") shall be determined on the basis of the market data applicable so many banking days before the redemption as are customary in the market plus a premium or discount that is customary in the market. The assets entered into the cover register shall not be sold below the market value. Any and all claims arising under the covered bank bonds shall be redeemed at the same time, at their discounted present value ("*Barwert*"), as soon as the proceeds realized are sufficient for this purpose. The remaining proceeds as well as any unsold cover assets will be included in the bankrupt's estate divisible amongst all creditors.

(8) If a collective sale according to para. 4 is impossible and the assets entered into the cover register are insufficient for satisfying the claims of the creditors of the covered bank bonds, the bankruptcy court at the request of the special administrator shall approve the realization of the special estate. In such case, the claims under the covered bank bonds shall be accelerated in their entirety. From the proceeds, the special administrator shall satisfy the claims of the creditors of the covered bank bonds on a *pro-rata* basis. If the bankrupt's estate includes any number of the credit institution's own covered bank bonds, such bonds shall be included in the calculation of the pro-rata shares in the proceeds from the special estate which are attributable to the individual covered bank bonds.

This English translation of the authentic German text serves merely for information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl).

(9) The realization according to paragraphs 7 and 8 shall be effected by the special administrator pursuant to sec. 119 of the (Austrian) Bankruptcy Code. Creditors of the covered bank bonds are not deemed secured creditors ("*Absonderungsberechtigte*") within the meaning of sec. 120 of the (Austrian) Bankruptcy Code.

Sec. 4 The consent of the government commissioner (sec. 1 para. 2) is not required for those stocks of cash and securities which, in the judgment of the government commissioner, are necessary for the current operations.

Sec. 4a Covered bank bonds issued in accordance with the provisions of this Federal Act are suitable for the investment of money held in trust for a ward of court (sec. 230b sub-para. 5 of the [Austrian] General Civil Code).

Sec. 5 If bonds of the type set out in sec. 1 are issued by provincial institutions where the province (*Land*) is then liable, the tasks assigned by law to a government commissioner shall be carried out by the provincial government, or if this appoints a special commissioner, by such commissioner of the provincial government.

Equal Treatment in Language

Sec. 6 Insofar as designations referring to persons are given in this Federal Act only in their masculine form, they shall relate equally to both women and men. When applying such designations to specific persons, the respective gender form shall be used.

References

Sec. 7 Insofar as this Federal Act makes reference to other Federal Acts, these shall, unless provided otherwise, be applicable as amended from time to time.

Implementation

- Sec. 8** Responsibility for the implementation of this Federal Act lies with
1. the Federal Minister of Justice, as regards sec. 1 para. 4, sec. 2 and sec. 3, and with
 2. the Federal Minister of Finance, as regards the remaining sections.

Entry into Force

Sec. 9 The title of the Act, sec. 1, sec. 2, sec. 3 (plus heading), sec. 4, sec. 4a, sec. 5, sec. 6 (plus heading), sec. 7 (plus heading) and sec. 8 (plus heading), as amended by the Federal Act published in the Federal Law Gazette Part I No. 32/2005, shall enter into force on June 1, 2005.

This English translation of the authentic German text serves merely for information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl).

Repeal

Sec. 10 (1) The previous versions of sec. 9 through sec. 11 shall cease to be in force upon the expiration of May 31, 2005.

(2) Upon the entry into force of this Federal Act, the "*Gesetz vom 24. April 1874 betreffend die Wahrung der Rechte der Besitzer von Pfandbriefen, RGBl. Nr. 48/1874*" (Act of April 24, 1874 Relating to the Safeguarding of the rights of the owners of mortgage bonds, published in Imperial Law Gazette No. 48/1847 shall cease to be in force.