

TRANSLATION FROM GERMAN ORIGINAL

Mortgage Bond Act

(Austrian "*Pfandbriefgesetz - PfandbriefG*")

German *Reich* Law Gazette of 1927 I 492, as amended by

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| 1 German <i>Reich</i> Law Gazette of 1938, I 1574 (Law Gazette for the province (" <i>Land</i> ") of Austria 1938/648) | 2 (Austrian) Federal Law Gazette No. 1993/532 | 3 (Austrian) Federal Law Gazette Part I No. 1998/88 |
| 4 (Austrian) Federal Law Gazette Part I No. 2001/97 | 5 (Austrian) Federal Law Gazette Part I No. 2004/90 | 6 (Austrian) Federal Law Gazette Part I No. 2005/32 |
| 7 (Austrian) Federal Law Gazette Part I No. 2006/48 | | |

Act on Mortgage Bonds and Related Debentures of Credit Institutions Governed by Public Law, of Dec. 21, 1927, German *Reich* Law Gazette of 1927 I 492

" (Mortgage Bond Act) "

([Austrian] Federal Law Gazette No. 1993/532)

Sec. 1 Debentures issued by a "*Kreditanstalt*" (credit institution) under public law constitute "*Pfandbriefe*" (mortgage bonds) if they are to be covered by mortgages as specified in this Act.

Sec. 2 (1) The total volume of "*Pfandbriefe*" (mortgage bonds) in circulation must at all times be covered at their nominal value by mortgages of at least the same amount and with at least the same interest yield. "If "*Pfandbriefe*" (mortgage bonds) are issued as zero-coupon bonds or with a redemption value greater than the nominal value, the imputed redemption value of the mortgage bonds shall be used instead of the nominal value for the

calculation of the cover amount. In addition, securing excess cover at a rate of two percent of the nominal value of the "Pfandbriefe" (mortgage bonds) in circulation has to be maintained at all times in the form of assets eligible as substitute cover. The Articles of Association of the credit institution may provide that in addition to cover at the nominal value of the "Pfandbriefe" (mortgage bonds), cover at the discounted present value ("Barwert") must exist at all times."

([Austrian] Federal Law Gazette Part I No. 2005/32)

"(1a) Mortgages or parts of mortgages of any other credit institution according to sec. 2 sub-para. 20 of the (Austrian) "BWG" (Banking Act) shall be considered equivalent to those mortgages 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 mortgages or parts of mortgages in trust for the credit institution, must apply sec. 48 of the (Austrian) Banking Act subject to the proviso that the sum of the mortgages or parts of mortgages thus held shall be shown separately.

([Austrian] Federal Law Gazette Part I No. 2005/32)

"(2) If the credit institution has acquired real property " " to prevent a loss from a mortgage established on such property in favour of the bank, it may use such property as cover for "Pfandbriefe" (mortgage bonds) instead of the mortgage, however, at a maximum of half the amount at which the mortgage was used as cover before the purchase of the property by the credit institution."

(German Reich Law Gazette of 1938, I 1574 (Law Gazette for the province ("Land") of Austria 1938/648), [Austrian] Federal Law Gazette Part I No. 1998/88)

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

1. by debentures issued by any of the Austrian corporations governed by public law, states, regional governments and local authorities mentioned in sec. 7 para. 1,
2. 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
3. by cash

(substitute cover). Debentures shall only be used as substitute cover if they are traded on a regulated market in Austria or in any of the states mentioned in sec. 7 para. 1. The value attributed to the debentures may not exceed the amount resulting from the respective stock exchange or market price of the debentures, less five percent of their nominal value, provided that the resulting amount shall not exceed the nominal value of the debentures. The substitute cover shall not exceed 15 percent of the total amount of the "Pfandbriefe" (mortgage bonds) and "Kommunalschuldverschreibungen" (public sector bonds) in circulation."

([Austrian] Federal Law Gazette Part I No. 2005/32)

"(4) Mortgages on real property located in any Contracting State to the Agreement on the European Economic Area other than Austria or in Switzerland shall be considered equal to mortgages on real property located in

Austria, provided that, considering all circumstances, the legal and economic position of the mortgage bond creditors as regards such mortgages is comparable to the legal and economic position of the mortgage bond creditors as regards Austrian mortgages. In particular, such positions will be deemed comparable only if it has been ensured that, in the event of bankruptcy, the right of the mortgage bond creditors to repayment on a priority basis pursuant to sec. 6 para. 1 shall also extend to such mortgages, provided that failure of such comparability test by up to a total amount of ten percent of the mortgages on those pieces of real property for which such right has been ensured shall be tolerated."

([Austrian] Federal Law Gazette Part I No. 1998/88, Austrian] Federal Law Gazette Part I No. 2005/32)

"(5) 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 "Pfandbriefe" (mortgage 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 mortgage bond creditors as regards the assets entered into the "Deckungsregister" (cover register) (sec. 3 para. 1)."

([Austrian] Federal Law Gazette Part I No. 2004/90, ([Austrian] Federal Law Gazette Part I No. 2005/32)

"Sec. 3 (1) Each of the mortgages, substitute cover assets (sec. 2 para. 3) and hedging transactions (sec. 2 para 5) that are assigned as cover for the "Pfandbriefe"

(mortgage bonds) and for the claims of the credit institution's counterparty under a hedging transaction (derivatives contract) shall be recorded separately by the credit institution in a "*Deckungsregister*" (cover register). Individual securities so entered shall be designated separately. The cash serving as substitute cover shall be held in safekeeping separately. If mortgages or parts of mortgages are held in trust for the credit institution (sec. 2 para. 1a), the credit institution acting as trustee in each case shall be recorded in the cover register. Hedging transactions (derivatives contracts) according to sec. 2 para. 5 may only be registered with the consent of the trustee 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 trustee 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 by the credit institution for the purpose of reducing the risks indicated in sec. 2 para. 5. The consent of the credit institution's counterparty may also be given for several derivatives contracts in advance."

(2) "The credit institution shall keep secured transcripts from the cover register. Transcripts from the cover register shall be submitted to the Austrian Financial Market Authority (FMA) upon its request."

([Austrian] Federal Law Gazette Part I No. 2005/32)

Sec. 4 *(cancelled)*

"Sec. 5 (1) The levying of execution against the assets recorded in the cover register shall be permitted only in favour of claims arising from the "*Pfandbriefe*" (mortgage bonds) and from derivatives contracts.

(2) Claims entered into the cover register shall not be subject to set-off. The claim may be entered in 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. 2 para. 5."

([Austrian] Federal Law Gazette Part I No. 2005/32)

"Special Provisions Under Insolvency Law

Sec. 6 (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 mortgage bond creditors (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 FMA shall be heard. The rights and obligations of the trustee 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 mortgage bond creditors 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 "*Kurator*" (special representative) appointed for the mortgage bond creditors, 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 "*Pfandbriefe*" (mortgage 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 institution shall continue to be responsible for the liabilities arising under the "*Pfandbriefe*" (mortgage 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 "*Pfandbriefe*" (mortgage 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 mortgage bond creditors and the costs of the special estate and to maintain the securing excess cover pursuant to sec. 2 para. 1 shall be passed on to the bankrupt's estate divisible amongst all creditors.

(6) The mortgage bond creditors 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 mortgage bond creditors only in so far.

(7) In lieu of a transfer according to para. 4, all claims of the mortgage bond creditors 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 "*Pfandbriefe*" (mortgage 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 mortgage bond creditors, 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 "*Pfandbriefe*" (mortgage bonds) shall fall due for repayment in their entirety. From the proceeds, the special administrator shall satisfy the claims of the mortgage bond creditors on a *pro-rata* basis. If the bankrupt's estate includes any number of the credit institution's own

"Pfandbriefe" (mortgage 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 "Pfandbriefe" (mortgage bonds).

(9) The realization according to paragraphs 7 and 8 shall be effected by the special administrator pursuant to sec. 119 of the (Austrian) Bankruptcy Act. Mortgage bond creditors are not deemed secured creditors ("Absonderungsberechtigte") within the meaning of sec. 120 of the (Austrian) Bankruptcy Act."

([Austrian] Federal Law Gazette Part I No. 2005/32)

Sec. 7*) "(1) If, on the basis of loans which have been granted to Austrian corporations governed by public law "or to any Contracting State to the Agreement on the European Economic Area other than Austria or to Switzerland as well as to their regional governments and local authorities, for which the competent authorities, in accordance with Article 43.1.b.5 of Directive 2000/12/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions, have set a weighting of 20 percent, at the most" or against the guarantee by one of such authorities, debentures are issued by a credit institution governed by public law under the name of "Kommunalschuldverschreibung" (public sector bond) or "öffentlicher Pfandbrief" (public sector mortgage bond), then sec. 2, sec. 3, sec. 5, sec. 6 and sec. 9 shall be applicable."

([Austrian] Federal Law Gazette 1993/532, [Austrian] Federal Law Gazette Part I No. 1998/88, *) ([Austrian] Federal Law Gazette Part I No. 2004/90), ([Austrian] Federal Law Gazette Part I No. 2005/32)

"(2) The following assets shall be considered equal to loans that have been granted by the credit institution to the Austrian corporations governed by public law, states, regional governments and local authorities mentioned in para. 1:

1. debentures issued by any one of the aforementioned authorities or
2. debentures guaranteed by any one of the aforementioned authorities.

The total amount of the loans and debentures for which it has not been ensured that, in the event of bankruptcy, the right of the creditors of the public sector bonds to repayment on a priority basis pursuant to sec. 6 para. 1 also extends to the claims of the credit institution under such loans and debentures may not exceed ten percent of the total amount of the loans and debentures for which such right has been ensured."

(In Austria, only sections 1 through 7, sec. 13 and sec. 15 of the Mortgage Bond Act have been introduced; German Reich Law Gazette of 1938, I 1574 (Law Gazette for the province ("Land") of Austria 1938/648))

**) cf. Art. 5 of the (Austrian) Introductory Ordinance to the Mortgage Bank Act.*

"Sec. 8 The debtor's right to call for repayment of, and to repay, all or part of the mortgage may be excluded only for such period of time for which the credit institution does not have an ordinary right to call for repayment. If this Federal Act does not permit the exclusion of the debtor's right to repay the mortgage, the credit institution may not reserve the right to demand a fee for early repayment of the loan or the granting of security in the case of a call for repayment."

([Austrian] Federal Law Gazette Part I No. 1998/88)

"Sec. 9 *"Pfandbriefe"* (mortgage bonds) may be issued only if their maturities do not considerably exceed the period of time required in view of the maturities of the mortgage loans granted by the credit institution. The nominal value of the newly issued *"Pfandbriefe"* (mortgage bonds) with maturities of more than 15 years shall not, at the end of a calendar-year quarter, over a *"Durchrechnungszeitraum"* (computing period) of three years, account for more than 60 percent of the nominal value of the entirety of the newly issued *"Pfandbriefe"* (mortgage bonds). In making the computation, the nominal value of the *"Pfandbriefe"* (mortgage bonds) with maturities of more than 15 years may be reduced by the nominal value of the *"Deckungswerte"* (cover assets) with maturities of more than 15 years newly acquired over the computing period. When computing the percentage share, the following *"Pfandbriefe"* (mortgage bonds) shall under all circumstances be allocated to *"Pfandbriefe"* (mortgage bonds) with a maturity of 15 years or less: *"Pfandbriefe"* (mortgage bonds) where the credit institution is barred from repaying the *"Pfandbriefe"* (mortgage bonds) for a period not exceeding one third of their maturity; *"Pfandbriefe"* (mortgage bonds) the repayment of which must begin no later than after the expiration of one third of their maturity."

([Austrian] Federal Law Gazette Part I No. 2005/32)

"Sec. 10 (1) Without prejudice to the rights of the *"Hypothekenbanken"* (banks subject to the Mortgage Bond Act) under the (Austrian) *"Hypothekbankgesetz"* (Mortgage Bank Act), only debentures complying with the provisions of this Federal Act may be put on the market under the name of *"Pfandbrief"* (mortgage bond), *"Kommunalbrief"* (public sector certificate), *"Kommunalschuldverschreibung"* (public sector bond) or *"öffentlicher Pfandbrief"* (public sector

mortgage bond) or any other name containing one of these terms.

"(2) Credit institutions governed by public law which are domiciled outside of Austria may put debentures on the market under the names permitted in their countries. If German translations of such names are used in this connection, the original-language name shall also be given. Furthermore, if any of the names indicated in para. 1 is used alone or in connection with another name in the distribution of debentures of credit institutions governed by public law which are domiciled outside of Austria, such debentures may be put on the market only if they materially meet the requirements of Art. 22 para. 4 of the Council Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (85/611/EEC, as amended by 2001/108/EC)".

(*[Austrian] Federal Law Gazette Part I No. 1998/88, [Austrian] Federal Law Gazette Part I No. 2004/90*)

"Sec. 11 Any person who, without being authorized thereto, issues debentures under the name of *"Pfandbrief"* (mortgage bond), *"Kommunalbrief"* (public sector certificate), *"Kommunalschuldverschreibung"* (public sector bond) or *"öffentlicher Pfandbrief"* (public sector mortgage bond) contrary to sec. 10 commits an administrative offense and shall be liable to pay a fine of up to EUR 20,000.00 imposed by the FMA, unless such act constitutes a criminal offense subject to the jurisdiction of courts of law."

(*[Austrian] Federal Law Gazette Part I No. 2001/97, [Austrian] Federal Law Gazette Part I No. 2006/48*)

"Equal Treatment in Language

Sec. 11a 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."

([Austrian] Federal Law Gazette Part I No. 2005/32)

"References

Sec. 11b Insofar as this Federal Act makes reference to other Federal Acts, these shall, unless provided otherwise, be applicable as amended from time to time."

([Austrian] Federal Law Gazette Part I No. 2005/32)

Entry into force

([Austrian] Federal Law Gazette Part I No. 2004/90)

"Sec. 12. (1) The title of this Act as well as sec. 7, sec. 10, sec. 11 and sec. 13, as amended by the (Austrian) "*Bundesgesetz BGBl. Nr. 532/1993*" (Federal Act published in the Federal Law Gazette No. 532/1993), shall enter into force on January 1, 1994."

([Austrian] Federal Law Gazette 1993/532)

"(2) Sec. 2 paragraphs 2, 4 and 5, sec. 6 para. 5, sec. 7 paragraphs 1, sec. 8, sec. 10 and sec. 11, as amended by the (Austrian) Federal Act published in the Federal Law Gazette Part I No. 88/1998, shall enter into force on July 1, 1998."

([Austrian] Federal Law Gazette Part I No. 1998/88)

"(3) Sec. 3 paragraphs 1 and 2, sec. 4, sec. 7 para. 2, and sec. 11, as amended by the (Austrian) Federal

Act published in the Federal Law Gazette Part I No. 97/2001, shall enter into force on April 1, 2002."

([Austrian] Federal Law Gazette Part I No. 2001/97)

"(4) Sec. 2 para. 5, sec. 7 para. 1, sec. 10 para. 2 and the heading to sec. 12, as amended by the (Austrian) Federal Act published in the Federal Law Gazette Part I No. 90/2004, shall enter into force on August 1, 2004."

([Austrian] Federal Law Gazette Part I No. 2004/90)

(5) The short title, sec. 2 paragraphs 1, 1a and 3 through 5, sec. 3, sec. 5, sec. 6 (plus heading), sec. 7 paragraphs 1 and 2, sec. 9 first and fourth sentences, sec. 11a (plus heading) as well as sec. 11b (plus heading), as amended by the (Austrian) Federal Act published in the Federal Law Gazette Part I No. 32/2005), shall enter into force on June 1, 2005.

([Austrian] Federal Law Gazette Part I No. 2005/32)

(6) The second and third sentences of sec. 9, as amended by the (Austrian) Federal Act published in the Federal Law Gazette Part I No. 32/2005, shall apply to "Pfandbriefe" (mortgage bonds) issued after May 31, 2005, with the first computing period commencing on that date."

([Austrian] Federal Law Gazette Part I No. 2005/32)

"Repeal

Sec. 13 Sec. 4 shall cease to be in force upon the expiration of May 31, 2005."

([Austrian] Federal Law Gazette Part I No. 2005/32)

(Sec. 14 not adopted)

Sec. 15. *(obsolete)*