

MORTGAGE BANK ACT

§ 1. Joint stock companies whose purpose consists of mortgage lending against properties and issuing bonds on the basis of the mortgages acquired (mortgage banks) require the authorisation of the Federal Minister for Finance to carry out their business.

If the articles of association of a mortgage bank state that the mortgage lending may only take place in the territory of the country in which the credit institution has its head office, then the central authorities of this country are responsible for granting the authorisation.

The approval of the authorities stipulated in paragraphs 1 and 2 is required for any modification to the articles of association.

§ 2. Open trading companies, limited partnerships, limited liability companies, (registered) cooperatives and individual persons are prohibited from operating a company of the type described in § 1, paragraph 1.

§ 3. Mortgage banks are subject to state supervision. The Federal Minister for Finance is responsible for this supervision. The supervision covers the entire business of the credit institution and continues after this has been wound up until the end of the liquidation process.

§ 4. The supervisory authority is empowered to issue all orders which are required to keep the business of the credit institution in line with the laws, the articles of association and other binding provisions.

In particular, the supervisory authority is empowered:

1. to consult the books and documents of the credit institution at any time, as well as to examine the cash situation and the stocks of securities;
2. to request information concerning all business matter from the administrative bodies of the credit institution;
3. to send a representative to the general meetings and to the meetings of the administrative bodies of the credit institution, to require the general meeting to be convened, meetings of the administrative bodies to be called and subjects requiring a decision to be announced and, if this requirement is not fulfilled, to undertake these steps itself, at the expense of the credit institution;
4. to prohibit the implementation of decisions or orders which are against the law, the articles of association or other binding provisions.

The supervisory authority can appoint a commissioner, who exercises the supervision under its direction. It can stipulate that the credit institution shall pay a remuneration to the Treasury for the activity of the commissioner. Its sets the amount of the remuneration.

§ 5. Apart from granting mortgage loans and issuing *Hypothekendarlehen* (mortgage bonds), the mortgage banks may only engage in the following transactions:

1. acquiring, selling and lending mortgages;
2. granting non-mortgage loans to domestic public corporations or to a Member State of the European Economic Area other than Austria or to Switzerland as well as to their regional governments and local authority bodies, for which the competent authorities have established a weighting of a maximum of 20% in accordance with Article 6 paragraph 1 lit . B, line 5 of the Council Directive on a Solvency Ratio for credit institutions (89/674/EEC) or in return for the full guarantee being taken over by one of the aforementioned bodies and the issuing of bonds on the basis of claims thus acquired;
3. granting loans to domestic narrow-gauge railway companies in return for the pledging of the railway and issuing bonds on the basis of the claims thus acquired;
4. buying and selling securities on commission, but to the exclusion of forward transactions;

5. accepting money or other personal property for safekeeping, on condition that the total amount of the money deposited may not exceed half the paid-up authorised capital;

6. collecting bills, remittances and other similar instruments.

The mortgage banks may make available money useful by depositing it with suitable banks, by purchasing their *Hypothekenspfandbrief* and bonds issued in accordance with paragraph 1 No 2, 3, by purchasing such bills and securities, and by lending securities in accordance with instructions to be drawn up by the mortgage bank. These instructions have to establish the instruments eligible as collateral and the permitted lending level. Mortgage banks are only permitted to acquire property to safeguard against losses on mortgages or to procure business premises.

§ 5a. Without prejudice to the rights of mortgage banks on the basis of the Mortgage Bank Act, only bonds corresponding to the provisions of this federal law may be brought into circulation under the name 'Pfandbrief', 'Kommunalbrief', 'Kommunalschuldverschreibung' or 'öffentlicher Pfandbrief' (public mortgage bonds) or another name containing one of these words.

Bonds from private mortgage banks whose head offices are located outside Austria may be brought into circulation under the names permitted for this purpose locally. If a German translation of these names is used, then the name in the original language must be added. If one of the names listed in paragraph 1 is used when distributing bonds from private mortgage banks whose head offices are located outside Austria either alone or in combination with another name, then such bonds may in addition only be brought into circulation if, in terms of content, they satisfy the provisions of Article 22 paragraph 4 of the Council Directive on the Coordination of legislation and administrative acts relating to certain undertakings for common investments in transferable securities (85/611/EEC in the version 88/220/EEC).

Anyone who brings bonds into circulation under the name 'Pfandbrief', 'Kommunalbrief', 'Kommunalschuldverschreibung' or 'öffentlicher Pfandbrief', contrary to paragraphs 1 and 2, without being entitled to do so, and insofar as the act does not constitute a criminal action falling within the jurisdiction of the courts, commits an administrative infringement and will be punished by the authorities with a fine of up to S 300 000.

§ 6. The nominal value of the overall amount of the *Hypothekenspfandbriefe* in circulation must be covered by mortgages of at least the same level and with at least the same rate of interest at all times.

If mortgages on agricultural property are used for this purpose, at least half the cover must consist of sinking fund mortgage loans, whereby the annual redemption amount of the debtor may not amount to less than one quarter of a per cent of the mortgage capital. However, if such mortgages are redeemed in advance, the credit institution may use a different type of mortgage as cover in its place until the expiry of the planned redemption period.

If the credit institution has acquired a property to guard against a loss on a mortgage on the property to which it is entitled, then it may use the property in place of the mortgage as cover for mortgage bonds, but at the most to the value of half the amount, for which the mortgage was appropriated as cover before the credit institution acquired the property.

If, as a result of the redemption of mortgages or for any other reason, the prescribed cover in mortgages is no longer available in full and if this cover cannot be supplemented immediately by other mortgages or by calling in a corresponding amount in mortgage bonds, then the credit institution must temporarily replace the lacking mortgage cover by federal or Land bonds or by money. The bonds may be appropriated at the most for an amount which remains 5 % of the nominal value below their prevailing stock market price.

§ 7. (repealed, BGBl, 1993/352).

§ 8. The provisions determining the legal relationship between the mortgage bank and the *Pfandbrief* (mortgage bond) creditors, in particular as regards the possibility of terminating the *Hypothekenspfandbrief*, are to be made clear on the *Hypothekenspfandbriefe*.

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The mortgage bank may waive its right to the redemption of *Hypothekpfandbriefe* for a maximum of ten years. No right of termination may be granted to *Pfandbrief* creditors.

§ 9. The issuing of *Hypothekpfandbriefe* whose redemption value exceeds the nominal value is not permitted.

§ 10. Only mortgages which correspond to the requirements laid down in §§ 11 and 12 may be used as cover for *Hypothekpfandbriefe*.

§ 11. Lending is restricted to domestic property and generally speaking is only permitted when ranking first.

The amount lent may not exceed the first three fifths of the value of the property.

The Federal Minister for Finance may permit lending on agricultural property up to two-thirds of the value.

Mortgages on property in Member States of the European Economic Area other than Austria or in Switzerland are placed in the same category as mortgages on property in Austria, provided that the legal and economic situation of the mortgage bond creditors in relation to these mortgages is comparable to the legal and economic situation of *Pfandbrief* creditors in respect of domestic mortgages, taking all circumstances into account. In particular, this situation is only comparable if it is guaranteed that the preferential right of the *Pfandbrief* creditor in the event of bankruptcy in accordance with § 35 paragraph 1 also extends to these mortgages, whereby a tolerance is accepted of up to a total amount of 10 % of the mortgages on domestic properties which fail the comparability test.

The currency of the nominal value of the *Hypothekpfandbriefe* issued by the mortgage bank may only differ from the currency of the assets used to provide cover for it insofar as appropriate measures are taken to rule out a currency risk, even in the event of the bankruptcy of the credit institution. The claims acquired by the mortgage bank on the basis of these measures are to be indicated in the books of the mortgage bank as cover assets and to be recorded in the mortgage register. The entry should indicate the individual claim. The regulations of this federal law for securities in §§ 30 paragraph 4, 32 paragraph 1, 34a, 35, 37 paragraph 1 and 37 paragraph 2 also apply to these claims, even when they are not certified in the form of securities.

§ 12. The value of the property adopted as regards the lending transaction may not exceed the selling value calculated on a cautious basis. When determining this value, only the permanent characteristics of the property and the return which the property can guarantee any owner on a lasting basis given a satisfactory economy may be taken into account.

If the property is assessed by the public authorities of the district in which it is located for the purpose of the lending transaction, the Federal Minister for Finance can decide that the value adopted for the lending transaction may not exceed the value established following such an assessment.

Mortgages on building land and new buildings which have not yet been completed and are not yet in a position to produce an income used as cover for *Hypothekpfandbriefe* may not, taken together, exceed one tenth of the overall amount of the mortgages used to cover *Hypothekpfandbriefe* or half the amount of the paid-up authorised capital. Moreover, mortgages on property that does not guarantee a lasting revenue, in particular pits and quarries, may not be used to cover *Hypothekpfandbriefe*. This also applies to mortgages on mines. Mortgages on other entitlements to which the provisions relating to property apply may not be used as cover for *Hypothekpfandbriefe* insofar as the entitlements do not guarantee a lasting revenue.

§ 13. On the basis of the provisions of § 12, the mortgage bank has to issue instructions on valuation. These instructions require the approval of the supervisory authority.

§ 14. Mortgage loans should be granted in money.

Granting loans in mortgage bonds of the credit institution at the nominal value is only permitted if the articles of association of the credit institution authorise this and the debtor expressly agrees. In this

case, the debtor must be given the right, established in a document, to redeem the mortgage as he prefers in money or in *Hypothekpfandbriefe* from the credit institution which have the same form as those received, in terms of nominal value. *Hypothekpfandbriefe* which do not differ in terms of the official calculation of the stock exchange price, are always considered to have the same form within the meaning of this provision.

§ 15. The basic features of the conditions for mortgage loans are to be established by the mortgage bank. The basic features must be approved by the supervisory authority. The conditions must state in particular what disadvantages the debtor will experience if payments are not made on time and under what conditions the credit institution is authorised to demand the advance redemption of the mortgage.

§ 16. All the provisions concerning the way in which the loan is paid out, deductions in favour of the credit institution, the rate and maturity of interest and other obligations incumbent upon the debtor, the beginning of a redemption process and termination and repayment are to be laid down in the loan prospectus and application forms used by the mortgage bank.

§ 17. Should the security of the mortgage be threatened by deterioration of the property loaned, the credit institution can grant the owner an adequate period to overcome the threat. After the expiry of this period, the credit institution is entitled to assert its lien immediately if the threat has not been overcome by improvements to the property or the assignment of other mortgages. However, if the deterioration of the loaned property cannot be attributed to uneconomic methods of the owner, the credit institution can only assert the lien immediately for the amount for which the cover required by the law or the articles of association is no longer available as a result of the reduced value of the property. Over and above this amount, the credit institution may not reserve the right to demand the immediate redemption of the mortgage if the value of the property falls. The property is also considered to have deteriorated if accessories covered by the mortgage deteriorate or are removed from the property contrary to proper business rules.

The credit institution may not reserve any rights to guarantee or satisfaction other than those granted by law should part of the property be sold and the harmlessness of the sale for the beneficiaries be established by the competent authority in accordance with the Land law.

It may not be stipulated that the credit institution can demand the advance redemption of the mortgage if it is liquidated.

§ 18. The debtor must be granted the right, established in a document, to terminate and redeem the mortgage in part or in whole.

§ 19. The debtor's right to terminate and redeem the mortgage in part or in whole may only be precluded for that period of time for which the credit institution has no ordinary right of termination. Insofar as this federal law does not permit the debtor's right to redeem the mortgage to be precluded, the credit institution may not stipulate an early repayment penalty or the creation of a security upon termination.

§ 20. The start of the redemption process may be postponed for a period of no longer than ten years. If an amount has to be paid to the bank in addition to the stipulated interest in such a case as a result of the postponement of the redemption process, this is to be made clear in the loan documents.

As from the start of the redemption process, the annual interest may not be calculated on an amount higher than the residual capital at the end of the previous year. Any surplus from the annual interest and redemption payments is to be used for redemption.

§ 21. With redemption mortgages, the debtor's right to redeem the mortgage in part can be restricted in that the credit institution only has to accept a payment if the payment is intended and suitable to shorten the redemption period by one year or several years while maintaining the same level of annual interest and redemption payments as hitherto. However, this provision does not apply if the amount of the payments equals one tenth of the residual capital and the debtor requests that the later annual interest and redemption payments be reduced and the original redemption payment maintained. In this case, with the mortgages described in § 6 paragraph 2 the annual redemption amount may come to less than one quarter of a percent of the original capital. The credit institution shall draw up a new redemption plan.

The credit institution may not release itself in advance from the obligation, in view of the redeemed amount, to undertake the actions incumbent upon it for the purpose of correcting the land register and paying off the mortgage in accordance with the provisions of civil law.

After the publication of the annual accounts, the credit institution must inform each debtor upon request what amount of the mortgage was redeemed at the end of the previous year.

§ 22. The mortgages intended to cover mortgage bonds are to be recorded individually in a register by the credit institution. In the event of § 6, paragraph 4, securities intended as replacement cover should also be recorded in the register. The entry must indicate the individual items.

Within the first few months of each six-month calendar period, a copy of the entries made in the mortgage register during the previous six months, authenticated by the trustee appointed in accordance with § 29, is to be submitted to the supervisory authority. The supervisory authority keeps the copy.

§ 23. Within the second month of every six-month calendar period, the credit institution has to publish in the *Amtsblatt zur Wiener Zeitung* and the journals intended for publications from the credit institution the total amount of the mortgage bonds in circulation on the last day of the previous six-month period and the total amount, after deduction of all redemptions or other reductions, of the mortgages entered in the mortgage register on the last day of the previous six-month period, as well as the total amount of the securities entered in this register on this day and the money in the custody of the trustee.

If securities or such mortgages which are not suitable to cover mortgage bonds to their full amount are entered in the register, the announcement must indicate which amounts of the securities or mortgages do not serve as cover.

The Federal government or the authorities appointed by it can release the credit institutions from the obligation to publish announcements in the *Amtsblatt zur Wiener Zeitung* in accordance with the provisions of paragraphs 1 and 2, if it is guaranteed that the details referred to in these provisions are published elsewhere in the *Amtsblatt zur Wiener Zeitung*.

§ 24. (not applicable. Cf. the provisions of the BWG on accounting.)

§ 25. If *Hypothekpfandbriefe* are issued for a lower amount than the nominal value, an amount may be included on the assets side of the balance sheet equal to four fifths of the reduced return. The profit which the credit institution has made by repurchasing *Hypothekpfandbriefe* for a lower amount than the nominal value is to be deducted from the reduced return. At least a fourth of the assets included in the balance sheet in this way must be written off annually.

The assets included in the balance sheet in accordance with the provisions of paragraph 1 taken together may never amount to more in one year than twice the surplus produced by mortgage interest for the accounting year, when the mortgage bond interest and a quarter of one per cent of the total sum of the mortgage has been deducted. The assets in question taken together must also not exceed the amount of the reserve fund intended exclusively to cover a negative net worth.

The full amount of the costs incurred by the issuing of *Hypothekpfandbriefe*, including the provisions paid for their placement, is to be charged to the year in which they are incurred.

The credit institute's claims to annual interest and redemption payment from the mortgage debtor for the period following the accounting reference period may not be included in the assets in the balance sheet.

§ 26. If *Hypothekpfandbriefe* are issued for a higher amount than the nominal value and the credit institution has waived the right to redeem the *Hypothekpfandbriefe* at any time, the surplus return is to be included in the liabilities of the balance sheet, insofar as the amount exceeds the nominal value by one and a half per cent. During the years when the redemption of the *Hypothekpfandbriefe* is precluded, the credit institution may have this at its disposal every year only a portion corresponding to the number of these years. This disposal is precluded as long as a reduced return as described in § 25, paragraph 1 is included in the assets of the balance sheet. The surplus return may be used at any

time to redeem such a reduced return and to cover losses incurred by the credit institution due to the repurchase of *Hypothekendarlehen* at an amount in excess of the nominal value.

§ 27. The total amounts of the mortgage interest, loan provisions and other supplementary payments from the mortgage debtors earned by the credit institution during the business year are to be indicated in separate items in the income statement, as well as the total amount of the *Pfandbrief* interest to be paid by the credit institution for the business year.

§ 28. The following are to be clearly indicated in the annual report or the balance sheet:

1. the number of mortgages intended to provide cover for the *Hypothekendarlehen* and their distribution in terms of their amount in tranches of one hundred thousand schillings 'or ten thousand euro';
2. the amount thereof involving mortgages on agricultural and other properties, redemption mortgages and other mortgage, mortgages on building land and on incomplete new buildings not yet able to produce a return;
3. the number of foreclosure sales and the number of cases of administrative receivership effected during the business year at the request of the credit institution, as well as the number of foreclosure sales and cases of administrative receivership effected in which the credit institution was otherwise involved;
4. the number of cases in which the credit institution has had to take over properties to guard against losses on mortgages during the business year, as well as the total amount of these mortgages and the losses or gains resulting from the resale of properties taken over;
5. the years from which the arrears on interests to be paid by mortgage debtors date and the total amount of arrears of each year;
6. the total amount of the repayments on mortgages made during the business year, divided into repayments made by amortisation and other repayments;
7. the restrictions to which the credit institution has committed as regards the repayment of mortgage bonds, divided into the individual forms of mortgage bond.

The information indicated under points 3 to 5 is to be divided into agricultural and other properties and on the basis of the main districts covered by the business activities of the mortgage bank.

The surplus return and reduced return generated in the business year through the issuing of mortgage bonds at a higher or lower level than the nominal value are to be indicated in the annual report or the income statement.

§ 29. A trustee and a deputy are to be appointed for each mortgage bank.

The appointment is made by the supervisory authority after consultation with the mortgage bank. The appointment may be revoked by the supervisory authority at any time.

§ 30. The trustee has to ensure that the cover required for the *Hypothekendarlehen* in accordance with the provisions is available at all times. In doing so, insofar as the value of the loaned property has been established in accordance with instructions approved by the supervisory authority, he does not have to examine whether the established value corresponds to the actual value.

He has to ensure that the mortgages and securities intended to provide cover for the *Hypothekendarlehen* are entered in the mortgage register in accordance with the provisions of § 22 paragraph 1.

He has to provide the *Hypothekendarlehen*, before issue, with a certificate attesting to the availability of the cover required by law and the entry in the mortgage register.

A mortgage entered in the mortgage register and a security registered in the mortgage paper can only be deleted with the consent of the trustee. The consent of the trustee must be given in writing. It may be granted by the trustee's adding his signature to the mark of deletion.

§ 31. The trustee has to keep safe the documents on the mortgages recorded in the mortgage register and the securities recorded in the register and the money intended as cover for the *Hypothekpfandbriefe* in accordance with § 6 paragraph 4 under the joint seal of the credit institution. He may only hand over these items in accordance with the provisions of this law.

He is obliged to hand over mortgage deeds as well as securities and money at the request of the credit institution and contribute towards the deletion in the mortgage register insofar as the remaining mortgages and securities recorded in the register are adequate to cover the *Hypothekpfandbriefe* or the credit institution procures another form of cover in accordance with the provisions. (If the credit institution is obliged to hand over the mortgage deeds to the mortgage debtor or to undertake the actions laid down in § 1145 of the Civil Code, then the trustee also has to hand over the deeds, if the conditions described are not fulfilled*). If the mortgage is repaid, in the latter case the money paid over is to be given to the trustee for safe keeping in accordance with paragraph 1.

If the credit institution requires a mortgage deed only for temporary use, the trustee has to hand it over, without the credit institution being obliged to provide other cover.

*) Not applicable for Austrian properties.

§ 32. The trustee is empowered to consult the bonds and documents of the credit institution at any time, insofar as these relate to the *Hypothekpfandbriefe* and the mortgages recorded in the mortgage register.

The mortgage bank is obliged to inform the trustee continually of the capital repayments on the mortgages recorded in the mortgage register and of any other changes of significance to the *Pfandbrief* creditors, which affect these mortgages

§ 33. Disputes between the trustee and the mortgage bank shall be settled by the supervisory authority.

§ 34. The trustee may request an appropriate remuneration from the mortgage bank for his management. The supervisory authority is to be informed of the amount of the agreed remuneration. In the absence of any agreement, the amount shall be settled by the supervisory authority.

§ 34a. Seizure for guarantee and compulsory enforcements in the mortgages and securities recorded in the mortgage register only take place in respect of claims from the *Hypothekpfandbriefe*. This also applies to money given to the trustee for safekeeping and serving as cover the *Hypothekpfandbriefe*.

§ 35. If bankruptcy proceedings are opened against the assets of the mortgage bank, then the claims of *Hypothekpfandbrief* creditors take precedence over all other bankruptcy creditors with a view to settlement from the mortgages and securities recorded in the mortgage register. The same applies to money handed to the trustee for safekeeping and serving as cover for the *Hypothekpfandbriefe*. The *Hypothekpfandbrief* creditors stand on an equal footing among themselves.

«Preferential rights in bankruptcy in favour of the *Pfandbrief* creditors of a mortgage bank which has its head office in a Member State of the European Economic Area other than Austria or in Switzerland are to be admitted in domestic insolvency proceedings if they basically correspond to the preferential right in accordance with paragraph 1 and this is reciprocated.»

§ 36. Trustees who act contrary to the interests of the *Pfandbrief* creditors are to be punished in accordance with § 153 StGB.

§ 37. Anyone who deliberately issues *Hypothekpfandbriefe* for a mortgage bank above the amount covered in accordance with the provisions by the mortgages and securities recorded in the mortgage

registered or the money in the keeping of the trustee shall be punished by a prison sentence of up to one year or a fine of up to 360 per diem charges.

The same punishment shall apply for any who knowingly disposes of a mortgage recorded in the mortgage register or a security recorded in the mortgage register by sale or mortgaging, even though the remaining mortgages and securities in the register are not sufficient to provide the cover required in accordance with the provisions, as well as anyone who refrains, contrary to the provisions laid down in § 31, paragraph 2, clause 2, from handing over the money paid to the trustee for safekeeping upon repayment of a mortgage.

§ 38. Anyone who issues *Hypothekendarlehen* for a mortgage bank without the certificate required in accordance with § 30 paragraph 3 shall be punished with a prison sentence of up to three months or a fine of up to 180 per diem charges.

§ 39. Anyone who acts contrary to the provision of § 2 shall be punished by a prison sentence of up to six months or a fine of up to 360 daily rates.

§ 40. (not applicable to Austrian properties).

§ 41. If bonds (Kommunalschuldverschreibungen/-briefe) are issued by a mortgage bank on the basis of non-mortgage loans granted to domestic public bodies or to a Member State of the European Economic Area other than Austria or to Switzerland, as well as to their regional governments and local authority bodies, for which the competent authorities have established a weighting of a maximum of 20% (89/674/EEC) or in return for the guarantee being taken over by one of the aforementioned bodies (Kommunaldarlehen), then §§ 6 paragraph 1 and paragraph 4 and §§ 8, 9, 11 paragraph 4 and paragraph 5, 22, 23, 25, 26, and 29 to 38 apply to these bonds and the loan claims on which they are based. 'Kommunalschuldverschreibungen/-briefe' may also be issued by mortgage banks under the name 'öffentlicher Pfandbrief'.

§ 42. If bonds are issued by a mortgage bank on the basis of loans granted to narrow-gauge railway companies in return for the pledging of the railway, then the provisions of § 41, paragraph 1 apply accordingly to these bonds and the loan claims on which they are based. The bonds issued by the mortgage bank in this way are equal to mortgage bonds within the meaning of the provisions of § 7 and § 41, paragraph 2.

The articles of association of the credit institution may stipulate that on the basis of the claims on the loans granted in accordance with paragraph 1 and on the basis of the claims on loans granted to narrow-gauge railways in return for the guarantee being taken over by a domestic public body 'or a regional body from a Member State of the European Economic Area other than Austria or from Switzerland, bonds of the same type are issued which serve as cover for both types of claim. The total amount of the claims of one type or the other is to be made clear in the annual report or the balance sheet.

For the rest, the principles applicable to the granting of loans to narrow-gauge railways are to be established by the mortgage bank. The principles require the approval of the supervisory authorities.

§ 43. §§ 7 and 41 paragraph 2 in the version of the federal law BGBl No 532/1993 come into force on 1 January 1994.

§§ 5 paragraph 1, line 2, 5a, 6, paragraph 3, 11 paragraphs 4 and 5, 28 paragraph 1, 35, paragraph 2, 41 and 42 paragraph 2 in the version of the federal law BGBl I No 88/1988 as well as the lapsing of § 18 paragraphs 2 to 4 come into force on 1 July 1998.