

Ordinance on the introduction of the mortgage bank act and the act on *Pfandbriefe* and related bonds from public credit institutions in Austria

Article 1

(1) The following come into force in Austria:

§§ 1 to 42 of the Mortgage Bank Act of 13 July 1899 (Austrian Official Journal I p. 375) in the version of the laws of 26 January 1926 (Austrian Official Journal I p. 97) of 21 December 1927 (Austrian Official Journal I p. 491) and of 29 March 1930 (Austrian Official Journal I p. 108);

§§ 1 to 7, 13, 15 of the law on *Pfandbriefe* and related bonds from public credit institutions of 21 December 1927 (Austrian Official Journal I p. 492).

(2) The provisions referred to in paragraph 1 are applicable in Austria in accordance with the following terms which are adopted in application of the law applicable in Austria. These terms become null and void as soon as the grounds therefore cease to exist as a result of the progress made in standardising the law.

(3) Article 4 paragraph 2 in the version of federal law BGBl (Official Journal) No 532 No 532/1993 came into force on 1 January 1994.

Article 2. Harmonising provisions of the Mortgage Bank Act

Re § 22:

The following provisions are applicable in addition to § 22:

(1) The liability of a mortgage intended to cover a *Hypothekpfandbrief* on property located in Austria is to be recorded in the public books at the request of the bank (surety link). The mortgage may only be recorded in the mortgage register at the bank when the surety link has been recorded in the public books.

(2) If, in the case of § 6 paragraph 3, property is intended as cover for *Hypothekpfandbriefe*, it should also be recorded in the mortgage register. Registration is only permissible when it is indicated in the public books, at the request of the bank, that the property is used as cover for *Hypothekpfandbriefe*.

Re § 30

(1) The obligation of the trustee in accordance with paragraph 2 covers the registration in the mortgage register of property which is intended as cover for *Hypothekpfandbriefe*, in the case of § 6 paragraph 3.

(2) The consent of the trustee in accordance with paragraph 4 is also required to delete a property from the mortgage register.

In addition to § 30, the following provisions also apply:

(1) Registrations in the public books, which relate to a mortgage recorded in the mortgage register and encumbered with a surety link, can only be undertaken on the basis of a certificate prepared, amongst others, by the trustee.

(2) The surety link can only be partly or wholly deleted if confirmation is provided by the trustee that the mortgage has been deleted from the mortgage register or the encumbered property has been released from liability for the mortgage.

(3) The trustee must be informed of the registration and deletion of the surety link.

(4) The certificates drawn up for the purpose of registering and deleting the surety link and the registrations in the books undertaken are free of fees and stamp duties.

(5) Paragraphs 2 to 4 apply by analogy to the comment that a property is part of the cover provided for *Hypothekpfandbriefe*. The effect of this comment is that in legal terms the property can only be made available with the consent of the trustee.

Re § 31:

(1) Insofar as the mortgages recorded in the mortgage register relate to properties that are located in Austria, the trustee does not have to keep the certificates concerning the mortgages.

(2) The trustee's obligation based on paragraph 2, clause 1 extends to involvement in the deletion of a property from the mortgage register and the deletion of the surety link, as well as the comment regarding the fact that property is part of cover in the public books.

Re § 34a:

In addition to § 34a, clauses 1 and 2, the following provision is applicable:
The same applies for properties recorded in the mortgage register.

Re § 35:

(1) Paragraph 1 is also applicable by analogy to properties recorded in the mortgage register.

(2) Paragraphs 2 to 4 are not applicable.

Re § 36:

(not applicable)

Re § 37:

(1) When calculating the decisive amount in accordance with paragraph 1, the properties recorded in the mortgage register should also be taken into account.

(2) According to paragraph 2, anyone who deliberately disposes of a property recorded in the mortgage register for a mortgage bank will also be punished. When checking whether the remaining cover is sufficient, properties recorded in the mortgage register are also to be taken into account.

Re § 41

In addition to § 41 the following provisions are applicable:

(1) If claims which are not recorded in a public book are intended as cover for the bonds of a mortgage bank, then when acquiring any such claims the bank should indicate its liability for the debtor's bonds. such claims may only be recorded in the register when this has been done.

(2) A challenge to compensation can only be set against a claim serving as cover for bonds, even if it is not recorded in the public books, if the debtor of the mortgage bank already had the counterclaim at the bank when he was informed of the allocation of the claim as cover for the bonds and immediately informed the trustee of this.

Article 3. Supplementary provisions for mortgage banks in Austria

(1) If the supervisory authority considers that the rights of the owners of the *Hypothekenspfandbriefe* are threatened, it should obtain the appointment of a joint administrator to represent these owners before the competent court.

(2) If the bank goes bankrupt, such an administrator is to be appointed automatically by the bankruptcy court.

(3) The appointment of such a joint administrator can also be requested by the party whose rights would be impeded owing to the lack of representation of the *Pfandbrief* owner.

(4) The trustee of the bank can also be appointed as administrator.

(5) These administrators are subject to the provisions which apply in Austria in view of the joint administrators to the representation of owners of partial bonds which have bearer status or can be transferred by endorsement.

(6) The provisions of Articles V and VI of the ordinance of 10 December 1914 (Austria Official Journal No 337) on the introduction of a Bankruptcy Act, a Compensation Act and an Act on Avoidance, of Article XXIV of the law of 6 June 1896 (Austrian Official Journal No 78) on the introduction of the law on the implementation and security procedure and of § 171, paragraph 1 of the implementing

ordinance are applied by means of the measure whereby in the latter provision the trustee acts in place of the government commissioner.

Article 4. Transitional provisions for mortgage banks

(1) § 1, paragraph 1 of the Mortgage Bank Act does not apply to mortgage banks already in existence when this ordinance came into force.

(2) Mortgage banks already in existence when this ordinance came into force are not subject to the provisions of § 5 of the Mortgage Bank Act insofar as they engaged in business of a wider scope than that described in § 5 in accordance with their articles of association until this ordinance came into force. (Official Journal 1993/532)

(3) The provisions of § 17 paragraph 1, clause 3, sub-clause 2, in the version of Article 2 of this ordinance, of § 17, paragraphs 2, 3 and §§ 18 to 21 of the Mortgage Bank Act only apply for contracts concluded after this ordinance came into force.

Article 5. Harmonisation provisions in respect of the law on *Pfandbriefe* and related bonds from public credit institutions.

Re § 3:

In addition to § 3 the following provisions are applicable:

(1) The liability of a mortgage on a property in Austria intended as cover for mortgage bonds should be recorded in the public books (surety link) at the request of the credit institution. The mortgage may only be recorded in the cover register of the credit institution once the surety link has been recorded in the public books.

(2) If a property is assigned as cover for *Pfandbriefe* under § 2, paragraph 2, then this too must be recorded in the cover register. This registration is only permissible if it is noted in the public books at the request of the credit institution that the property provides cover for *Pfandbriefe*.

(3) Compliance with §§ 2,3 and these provisions by credit institutions is to be supervised by a trustee in Austria. A deputy should be appointed for each trustee. The trustee and his deputy are appointed by the Federal Minister for Finance. §§ 30 to 33 of the Mortgage Bank Act and the provisions of Article 2 of this ordinance apply in respect of the rights and duties of the trustee.

(4) Entries in the public books relating to a mortgage recorded in the cover register and encumbered with a surety link can only be made in the basis of a certificate prepared among others by a trustee.

(5) The surety link can only be deleted wholly or in part if confirmation is provided from the trustee that the mortgage has been deleted from the cover register or the encumbered property has been released from liability for the mortgage.

(6) The trustee is to be informed of the registration or deletion of the surety link.

(7) The certificates made out and the entries made to register and delete the surety link are free of fees and stamp duties.

(8) Paragraphs 5 to 7 apply by analogy to the note to the effect that the property serves as cover for *Pfandbriefe*. As a result of this note, the property can only be made available in legal terms with the consent of the trustee.

Re § 5:

In addition to §5, the follow provision is applicable

Paragraphs 1 and 2 are applicable by analogy to properties which are recorded in the cover register.

Re § 6:

(1) Paragraphs 1 and 2 are applicable by analogy to properties which are recorded in the cover register.

(2) Paragraphs 3 and 4 are not applicable.

Re § 7:

In addition to §7, the following provisions are applicable.

(1) If claims which are not entered in a public book are intended as cover for bonds, the credit institution should indicate its liability for the bonds to the debtor when acquiring such claims.

(2) A challenge to compensation can only be set against a claim serving as cover for bonds, even if it is not recorded in the public books, if the debtor of the mortgage already had the counterclaim at the bank when he was informed of the allocation of the claim as cover for the bonds and immediately informed the trustee of this.

Article 6. Supplementary provisions for public credit institutions in Austria.

Article 3 of this provision is applicable by analogy to public credit institutions whose head offices are in Austria.

Article 7. Transitional provisions for public credit institutions

(1) The Federal Minister for Finance can decide that public credit institutions that already existed when this ordinance came into force are not subject to the law on *Pfandbriefe* and related bonds from public credit institutions. If a credit institution is established after this ordinance comes into force, then the Federal Minister for Finance decides whether the credit institution is subject to the law referred to in clause 1. These decisions are to be published in the *Amtsblatt zur Wiener Zeitung*.

(2) The act only applies to bonds issued by a public credit institution in Austria before this ordinance came into force if the Federal Minister for Finance decides that these bonds are to be considered *Pfandbriefe* within the meaning of this act or as bonds of the type described in § 7 of the act. The decision is to be published in the *Amtsblatt zur Wiener Zeitung*. It takes effect upon publication.

Article 8. Repealing and amending laws.

The law of 24 April 1874 (Austrian Official Journal No 48) relating to the safeguarding of the rights of *Pfandbriefe* owners and the law of 27 December 1905 (Austrian Official Journal No 213) on funded bank bonds are not applicable to mortgage banks and those public credit institution which are subject to the law on *Pfandbriefe* and related bonds from public credit institutions of 21 December 1927. However, this law does apply to bonds from public credit institutions in respect of which the Federal Minister for Finance has not taken a decision within the meaning of Article 7, paragraph 2.

Article 9. Authorisation

(not applicable).