

### **3.3 AUSTRIA**

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#### **I. FRAMEWORK**

Austria has three different frameworks under which covered bonds can be issued. These are:

1. Hypothekbankgesetz: Mortgage Banking Act (Law of 7/13/1899) "Pfandbriefe"
2. Gesetz betreffend fundierte Bankschuldverschreibungen: Law on Secured Bank Bonds (Law of 12/27/1905) „FBS“
3. Pfandbriefgesetz: Mortgage Bond Act (Law of 12/21/1927) "Pfandbriefe"

Each of these was last amended in 2010.

Under these laws, banks can issue two kinds of covered bonds, Pfandbriefe which are issued under the Mortgage Banking and Mortgage Bond Act, and Fundierte Bankschuldverschreibungen (FBS) issued under the Law on Secured Bank Bonds.

Amendments of all three laws have been suggested by Austria's banks to the legislator with the aim of further harmonising/unifying Austrian Pfandbrief legislation in a single Act, and including, for example, an improved risk management system and standardised reporting requirements to achieve more transparency that offers investors a high level of security in terms of frequency and scope of the reports and ensure that investors receive clearly defined data relating to the cover assets.

#### **II. STRUCTURE OF THE ISSUER**

All three laws provide that only duly authorised credit institutions, with a special license to such effect, may issue covered bonds.

The Mortgage Banking Act stipulates a specialist banking provision and this would apply to any new mortgage bank. However, the only 2 issuers under the Mortgage Banking Act currently are universal banks into which former specialised issuers were merged.

The Mortgage Bond Act applies to public-sector "Landes-Hypothekbanken", which used to be owned by the Austrian provinces and some of which have been privatised.

The Law on Secured Bank Bonds applies to all banks that have a license allowing them to issue covered bonds.

Under all frameworks, the issuer holds the cover assets on its balance sheet (unless it uses another bank's assets as cover, which is permitted under pooling rules contained in all three laws) and the assets are not transferred to a separate legal entity. This means that the covered bonds are an unconditional obligation of the issuer, rather than a direct claim (solely) on the cover assets. In the case of insolvency of the issuer, the cover assets will form a pool which is separate from the issuer's other assets and a special cover pool administrator will be appointed to manage the cover assets. The covered bond holders have a preferential claim on the cover assets.

#### **III. COVER ASSETS**

Eligible cover pool assets are loans secured by (predominantly) first-ranking mortgages and public-sector assets. ABS/MBS are not eligible. Pfandbriefe backed by mortgage loans are commonly referred to as "Hypothek-entpfandbriefe", while Pfandbriefe backed by public sector assets are referred to as "öffentliche Pfandbriefe".

The Law on Secured Bank Bonds allows mixed cover pools consisting of mortgage loans and public-sector assets but in practice, issuers under that law form separate pools with mortgages and public-sector assets, too, each backing a separate class of covered bonds.

The geographical scope of eligible mortgage assets is restricted to EU / EEA countries and Switzerland.

USA, Canada and Japan are not eligible. For eligible countries that do not recognise the bondholders' insolvency privilege, a 10% limit is in place. For "öffentliche Pfandbriefe", the geographic scope of assets is the same as for "Hypothekenpfandbriefe".

The limits for FBS are similar. In addition to mortgage loans and public-sector assets, FBS may also be backed by assets which, by law, are suitable for investment of a ward's assets ("Mündelgelder"). This includes certain local public bonds, or Austrian Pfandbriefe.

Derivative contracts are allowed in the cover pool if they are entered to hedge interest rate, currency and credit default risks. Derivatives are only allowed for hedging and there is no limit in place on the volume of derivatives in the cover pool.

So-called substitute cover assets are limited to 15% of the amount of covered bonds outstanding and may consist of cash, bank deposits and bonds from public issuers from EEA countries and Switzerland.

#### **IV. VALUATION AND LTV CRITERIA**

The Mortgage Bank Act stipulates conditions for property valuation and the value of mortgage lending. One condition is a 60% LTV (loan to value) limit for residential and commercial mortgages based on the so-called "mortgage lending value" (which is a conservatively assessed value).

For Mortgage Bond Act issuers, the 60% LTV limit is stipulated in the statutes of each issuer for historical reasons.

There is no explicit provision for property valuation for FBS but – to our knowledge – issuers mostly adhere to the 60% LTV limit stipulated in the Mortgage Bank Act.

In practice, monitoring of the property value is done by the issuer and regular audits of the cover register are undertaken. Valuation guidelines mostly follow the guidelines prepared by each issuer for solvency purposes, which are approved by the regulator.

#### **V. ASSET – LIABILITY MANAGEMENT**

All Austrian covered bond laws contain the matching principle whereby the total volume of assets in the cover pool must at least cover the total nominal amount of outstanding covered bonds, the interest payable on the outstanding covered bonds and potential running costs in case of insolvency of the issuer (expressed under the Mortgage Bank Act and Mortgage Bond Act as mandatory overcollateralisation of 2% which must be held in highly liquid substitute cover assets).

In addition, issuers may opt in their statutes to maintain cover on a net present value basis, which is used by many of the international benchmark issuers. Issuers may also provide additional over collateral at their discretion, for instance in order to meet rating requirements and withstand stress tests.

The legislation also contains a simple maturity matching formula, limiting the issuance of bonds the maturity of which is considerably greater than the maturity of assets in the cover pool.

#### **VI. TRANSPARENCY**

The Austrian issuers organised in the Austrian Covered Bond Forum have set up a working group developing and analysing the CBIC Template Guidelines. As a result, Austrian issuers have developed a National Transparency Template –available on the Covered Bond Forum and of the Covered Bond Label websites – with quarterly updates – based on the CBIC European Transparency Standards. The cover pool reports can be found at:

One central website of Austrian Covered Bond Forum: <http://www.pfandbriefforum.at/downloads.html>

The National Transparency Template includes the following information:

- > Programme, Issuer Senior and Covered Bond ratings;
- > Overcollateralisation values (based on nominal and net present values);

- > The total volume of Pfandbrief outstanding as well as the related cover pools in terms of nominal, net present and stressed net present value;
- > The share of further cover assets;
- > The maturity structure of the Pfandbrief and cover assets;
- > Information on the size of the cover assets;
- > Information on the mortgages by property type/type of use, region and state;
- > Information on the claims against the public sector by state and type of issuer;
- > Information on the mortgages registered liens by register country;
- > Summary tables including LTV, currency, interest and maturity profile;
- > Information on non-performing loans (the percentage of loans more than ninety days past due);
- > Information on interest rates and currencies of cover assets and outstanding covered bonds.

The National Transparency Template covers the Guidelines according to the ECBC's Covered Bond Label Initiative that have been introduced in the Transparency Template over the last year by the Austrian Covered Bond Forum. Moreover the items above disclose the information required in Article 129(7) of the Capital Requirements Regulation (CRR).

#### **VII. COVER POOL MONITOR AND BANKING SUPERVISION**

The cover pool is monitored by a trustee ("Treuhänder" or, in the case of the Law on Secured Bank Bonds, "Regierungskommissär"), who is appointed by the Minister of Finance. The trustee is liable according to the Austrian Civil Code. The trustee has to ensure that the prescribed cover for the covered bonds exists at all times and that the cover assets are recorded correctly in the cover register. Without his or her approval, no assets may be removed from the cover pool. Any disputes between the issuer and the trustee would be settled by the regulator.

If a concern exists that the rights of the covered bond holders are being infringed, the court must appoint a joint special representative of the covered bond creditors ("Kurator").

#### **VIII. SEGREGATION OF COVER ASSETS AND BANKRUPTCY REMOTENESS OF COVERED BONDS**

The Cover Register ("Deckungsregister") in which all cover assets are entered, permits the identification of the cover assets. All mortgages, public-sector loans, substitute cover assets and derivative contracts which form part of the cover, must be registered in the cover register.

The issuers must inform the debtors (or, as the case may be, counterparties) of the cover assets that their debt (or derivative contract) is made part of the cover pool. On that occasion the issuer must also notify the debtor that it is not allowed to discharge its debt through any set-off. An exemption from the general prohibition of set-off applies to derivative contracts, when the set-off (or netting) occurs in respect of receivables arising under one and the same Master Agreement (i.e. pertaining to the cover assets).

The legal effect of registration is that in the case of insolvency of the issuer, the assets which form part of the separate legal estate (the so called "Sondervermögen") can be identified: All values contained in the register would be qualified as part of the separate legal estate.

While the bank carries out the daily administration of the cover register, it is the cover pool monitor who supervises the required cover and registration in the cover register.

#### **Asset segregation**

Cover assets may only be enforced upon by the covered bond creditors (or counterparties of derivative contracts which form part of the cover pool).

If the issuer becomes insolvent, the cover assets are segregated from the remainder of its assets. The cover assets form what is known as "Sondervermögen" (pool of special assets) and are earmarked for the claims of the covered bond holders. Any voluntary overcollateralization is also bankruptcy-remote. Only cover assets that are evidently not needed to satisfy the claims of the covered bond holders are passed back to the issuer's general insolvency estate.

The cover assets are managed by a special administrator, who is appointed by the bankruptcy court after consultation with the Austrian regulator (the FMA). The special administrator has the right to manage and dispose of the recorded assets.

### **Impact of insolvency proceedings on covered bonds and derivatives**

Covered bonds are not automatically accelerated in case of insolvency of the issuer, but will be repaid at the time of their contractual maturity. The cover assets are administered in favour of the bond holders and any claims of the covered bond holders in respect of interest or principal repayments are to be paid (primarily) from the cover assets. Equally, in respect of derivatives which belong to the pool, there is no (immediate) legal consequence of insolvency and the counterparty claims as derivative transactions rank *pari passu* with the claims of the covered bond holders.

### **Preferential treatment of covered bond holders**

Covered bond holders enjoy preferential treatment as the law stipulates the separation of the cover assets on the one hand and the insolvency estate on the other hand. To the extent that they are not satisfied from the cover assets, the covered bond holders may also participate in the issuer's general insolvency proceedings. Only if the cover assets do not suffice to satisfy the covered bond creditors, are the covered bonds accelerated.

### **Access to liquidity in case of insolvency**

Once appointed, the special administrator for the cover pool has the duty to manage the cover pool in order to satisfy the claims of the covered bond holders. The administrator may, for example, sell assets in the cover pool or enter into a bridge loan in order to create liquidity to service the bonds in issue.

The administrator also has access to any voluntary over-collateralisation, which is considered bankruptcy-remote. Any surplus collateral may only be transferred back to the insolvency estate to the extent that it is evident that it will not be needed to cover the claims of the covered bond holders.

### **Sale and transfer of mortgage assets to other issuers**

By virtue of his or her appointment, the special administrator has the right to manage and dispose of the cover assets. In particular, the special administrator must collect the cover assets according to their contractual maturity.

The special administrator is also entitled to sell the assets collectively to a separate credit institution. This institution must then take over all liabilities with regard to the covered bonds. In fact, one of the tasks of the special administrator is to find a suitable credit institution that will buy the assets collectively. If a sale is not feasible, the cover pool administrator has to continue the servicing of the cover pool and the outstanding covered bonds.

## **IX. RISK-WEIGHTING & COMPLIANCE WITH EUROPEAN LEGISLATION**

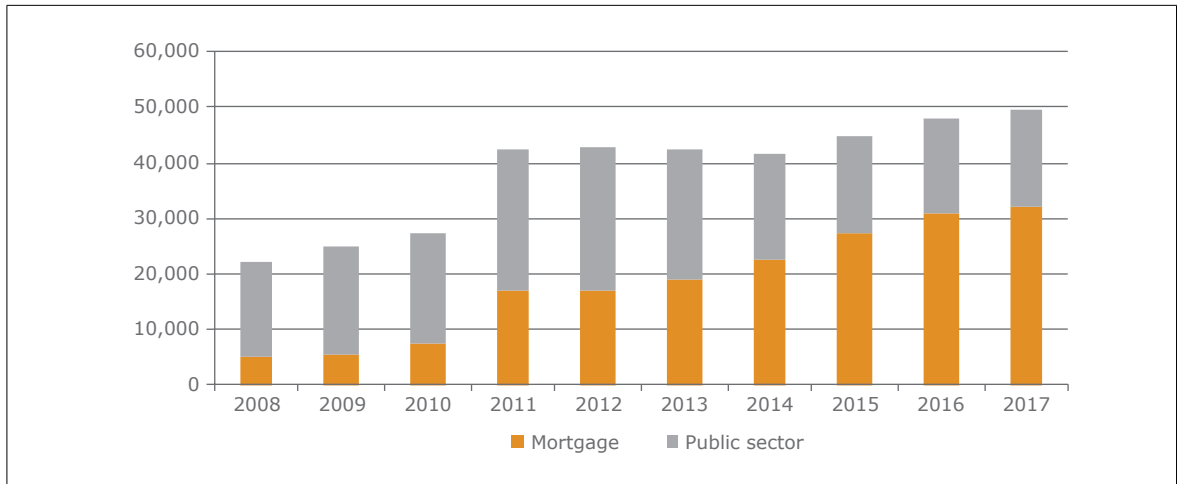
The legislation when taken together with the practices, processes and procedures across the industry should fall within the criteria of Article 129 of the CRR. Austrian Pfandbriefe, as well as Austrian covered bonds (FBS), fulfil the criteria of Article 52(4) of the UCITS Directive as well as those of Article 129 of the CRR<sup>1</sup>. This results in a 10% risk-weighting in Austria and other European jurisdictions where a 10% risk-weighting is allowed.

Austrian covered bonds are eligible in repo transactions with the National Central Bank.

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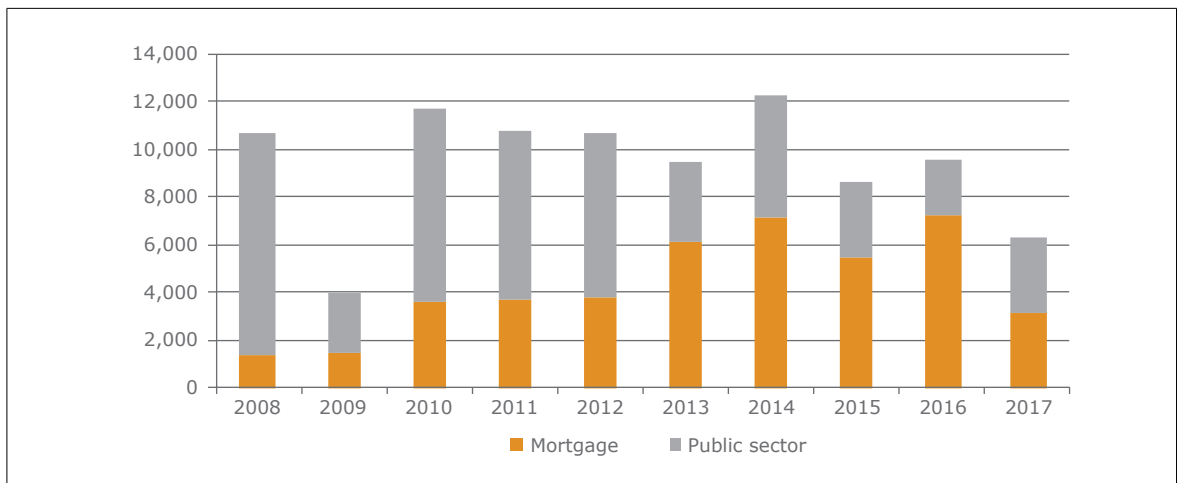
<sup>1</sup> Please click on the following link for further information on the UCITS Directive and the Capital Requirements Regulation (CRR): <https://hyppo.org/ecbc/covered-bonds/>.

> FIGURE 1: COVERED BONDS OUTSTANDING, 2008-2017, EUR M



Source: EMF-ECBC

> FIGURE 2: COVERED BONDS ISSUANCE, 2008-2017, EUR M



Source: EMF-ECBC

**Issuers:** BAWAG P.S.K. Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse AG, Erste Group Bank AG, Allgemeine Sparkasse Oberösterreich Bank, Bausparkasse der österreichischen Sparkassen Aktiengesellschaft, Volksbank Wien AG, Kommunalkredit Austria AG, Raiffeisen Bank International AG, Raiffeisenlandesbank Oberösterreich AG, Raiffeisenlandesbank Niederösterreich-Wien AG, Raiffeisen-Landesbank Steiermark AG, Raiffeisen-Landesbank Tirol AG, UniCredit Bank Austria AG, HYPO NOE Gruppe, HYPO NOE Landesbank, HYPO Tirol Bank AG, Vorarlberger Landes- und Hypothekenbank Aktiengesellschaft, HYPO Bank Burgenland AG, Austrian Anadi Bank AG, Hypo Oberösterreich, Hypo Salzburg, Hypo Steiermark, BKS Bank AG, Oberbank AG, BTV-Bank für Tirol und Vorarlberg AG, Sparkasse Schwaz.

**ECBC Covered Bond Comparative Database:** <http://www.ecbc.eu/framework/8/Pfandbriefe>, and [http://www.ecbc.eu/framework/95/FBS\\_-\\_Fundierte\\_Bankschuldverschreibungen](http://www.ecbc.eu/framework/95/FBS_-_Fundierte_Bankschuldverschreibungen).



COVERED BOND LABEL  
UniCredit Bank Austria AG (2 pools).