

# FEDERAL LAW GAZETTE

## FOR THE REPUBLIC OF AUSTRIA

Volume 2004 Issued on 30 April 2004 Part I

45. Federal Act: *Pfandbriefstelle Act – PfBrStG* and amendment of the Savings Bank Act and of the Act concerning funded bank bonds (NR: GP XXII RV 392 AB 430 S. 56. BR: AB 7017 S. 707.)

45. Federal Act passing the *Pfandbriefstelle Act – PfBrStG* and amending the Savings Bank Act and the Act concerning funded bank bonds

The National Council has resolved:

### Article I

**Federal Act on *Pfandbriefstelle der österreichischen Landes-Hypothekenbanken (Pfandbriefstelle Act – PfBrStG)***

#### *Pfandbriefstelle der österreichischen Landes-Hypothekenbanken.*

§ 1. (1) The *Pfandbriefstelle der österreichischen Landes-Hypothekenbanken* (hereinafter: *Pfandbriefstelle*) is a public law entity having registered offices in Vienna which is subject to the legal supervision of the Federal Minister of Finance.

(2) The *Pfandbriefstelle*'s task is to issue common mortgage bonds, public mortgage bonds, and other debentures and to procure funds for the business operations of its members by raising or brokering loans or by issuing debentures.

(3) The *Pfandbriefstelle* may carry a seal or stamp designated "*Pfandbriefstelle der österreichischen Landes-Hypothekenbanken*".

(4) The *Pfandbriefstelle*, as a public law credit institution, is governed by the Mortgage Bond Act, dRGBL. 1927 I S 492, and the Banking Act – BWG, Federal Law Gazette No. 532/1993 Art. I.

(5) The following credit institutions are members of and have exclusively founded the *Pfandbriefstelle*.

1. EB und HYPO - Bank Burgenland AG, Eisenstadt;
  2. HYPO ALPE-ADRIA-BANK AG, Klagenfurt;
  3. Niederösterreichische Landesbank-Hypothekenbank AG, St. Pölten;
  4. Oberösterreichische Landesbank AG, Linz;
  5. Salzburger Landes-Hypothekenbank AG, Salzburg;
  6. Landes-Hypothekenbank Steiermark AG, Graz;
  7. HYPO TIROL BANK AG, Innsbruck;
  8. Vorarlberger Landes- und Hypothekenbank AG, Bregenz.
- Membership with the *Pfandbriefstelle* extends also to the members' universal legal successors.

(6) The *Pfandbriefstelle*'s bodies are the board of directors and the administrative council.

### Liability

§ 2. (1) The *Pfandbriefstelle*'s members are jointly and severally liable for its liabilities. The members may make other arrangements for those liabilities which are no longer covered by the liability of a guarantor under paragraph 2 in a particular case. These are, however, valid only if published in the terms and conditions of issue.

(2) The members' guarantors are jointly and severally liable for all liabilities of the *Pfandbriefstelle* which have arisen until 2 April 2003. The guarantors are jointly and severally liable for all liabilities that have arisen after 2 April 2003 up to 1 April 2007 only if the agreed terms do not mature after 30 September 2017. The guarantors are no longer liable for all liabilities arising after 1 April 2007. The *Pfandbriefstelle* shall establish and include in a separate liability report the scope of liabilities covered by the guarantors' liability annually as of the balance sheet date. The *Pfandbriefstelle's* board of directors shall submit the liability report to the guarantors and to the Financial Market Authority no later than within six months from the end of the business year.

### **Board of Directors**

§ 3. (1) The board of directors shall conduct the *Pfandbriefstelle's* operations with the diligence of a prudent and conscientious manager (Section 39 (1) Banking Act). The board of directors has at least two members who shall be appointed by the administrative council for not more than five years; reappointments are permitted. The members of the board must satisfy the requirements laid down in Section 5 (1) (6) through (11) and (13) Banking Act. Every appointment of a board member and every termination of a board mandate shall be promptly notified in writing to the Federal Minister of Finance.

(2) The board of directors particularly represents the *Pfandbriefstelle* in and out of court.

### **Administrative Council**

§ 4. (1) The *Pfandbriefstelle's* administrative council consists of the chairman, his deputy and a number of further members as described in paragraph 2.

(2) Each member institute will delegate one member to the administrative council. The delegated member may be represented by another board member of that bank or by another member of the administrative council. Members may be repeatedly delegated to the administrative council after expiry of their term of office which shall not exceed five years.

(3) The administrative council will appoint a chairman and a deputy from among its members, subject to the terms and conditions of the articles of association. These appointments and any termination of the chairman's or his deputy's mandate shall be promptly notified in writing to the Federal Minister of Finance and to the Financial Market Authority.

(4) The administrative council is particularly responsible for:

1. appointing and recalling board members; a member shall be appointed without delay if the board has less than two members; members shall be recalled without delay if the requirements laid down in Section 5 (1) (6) through (11) and (13) Banking Act are no longer satisfied or in case of good cause as set forth in Section 75 (4) Stock Corporation Act 1965, Federal Law Gazette 98/1965;
2. adopting the board's rules of procedure and the assignment of responsibilities and the rules of procedure for the administrative council;
3. establishing the requirements for the use of a mortgage as mortgage bond cover, in particular the security requirements (lending principles);
4. deciding on the use of the capital sums to be procured by the *Pfandbriefstelle*;
5. establishing the extent to which the member banks shall make operating resources available to the *Pfandbriefstelle*;
6. approving the purchase and sale of real property and other measures for which the board seeks the administrative council's approval in view of their importance;
7. supervising the entire management and carrying out the necessary examinations, whereas substantial drawbacks or difficulties, which cannot be removed shortly, shall promptly be notified to the Federal Minister of Finance;
8. determining the contributions which will be demanded from the members;
9. commenting on the budget, approving the financial statements and the annual report and discharging the board of directors;
10. compensating retiring members;

11. adopting the articles of association or any amendment thereof, dissolving the *Pfandbriefstelle* and distributing the liquidation proceeds.

(5) The administrative council may appoint one or several committees from among its members and ask experts for assistance.

(6) The administrative council will form a quorum if it was properly convened and if the chairman or his deputy and at least half of the other members or their deputies are present. A valid resolution requires a simple majority of the votes cast. In case of a tie, the chairman shall have a casting vote. Resolutions referred to in paragraph 4 (11) require a majority of two thirds of the votes validly cast. Abstentions shall not qualify as votes cast. Circular resolutions are valid only if all members of the administrative council (or their deputies) have agreed with a written vote in a particular case.

### **Articles of Association**

§ 5. (1) The *Pfandbriefstelle's* board of directors shall draw up the articles which govern the legal relationships between the *Pfandbriefstelle* and its members. After they have been approved by the administrative council of the *Pfandbriefstelle*, the articles of association or any amendment thereof shall be submitted to the Federal Minister of Finance for approval without delay.

(2) The articles shall contain particularly the following information:

1. name, registered offices and legal nature;
2. liability;
3. withdrawal of members;
4. business divisions, in particular information whether certain types of business may be carried out only with the consent of the administrative council;
5. rights and obligations between the *Pfandbriefstelle* and its members, more particularly the *Pfandbriefstelle's* rights to obtain information from and audit its members as well as the contributions payable by the latter;
6. operating resources which the members shall make available to the *Pfandbriefstelle* in a scope laid down by the administrative council;
7. bodies of the *Pfandbriefstelle* and their composition, more particularly the number of members of the administrative council;
8. the bodies' responsibilities;
9. representation and signing authority;
10. publications;
11. dissolution;
12. supervision.

### **Supervision of the *Pfandbriefstelle***

§ 6. (1) The legal supervision of the Federal Minister of Finance refers to the *Pfandbriefstelle* as a public law entity and continues after its dissolution until the completion of its liquidation. All documents and information shall be provided to the Federal Minister of Finance at all times upon his request. In addition, the experts he may have appointed shall be granted access to the books, records and data carriers.

(2) Notwithstanding Section 5 (1) which governs the approval of the articles of association or any amendment thereof, also resolutions adopted by the administrative council on the dissolution of the *Pfandbriefstelle* and the distribution of the liquidation proceeds (Section 4 (4) (11)) shall require the consent of the Federal Minister of Finance.

(3) The Federal Minister of Finance shall grant the approvals provided for herein if the public interest does not oppose such approvals within the scope of his organizational supervision.

## Transitional Provisions

§ 7. (1) The approvals already granted to the *Pfandbriefstelle* when this Federal Act enters into force shall remain valid and in force.

(2) The *Pfandbriefstelle's* existing articles of association shall be adjusted and submitted to the Federal Minister of Finance pursuant to Section 5 (1) for approval within six months after this Federal Act has entered into force. Pending such approval, the existing articles of association along with their amendments by virtue of Section 2 (Liability) of this Federal Act shall continue to be in force.

## Entry out of Force and Referral

§ 8. (1) The promulgation of the Reichstatthalter in Austria, by which the decree on measures in the fields of public banking and savings banking in Austria of 27 March 1939, GBl. Nr. 492/1939 was published, shall enter out of force with the entry into force of this Federal Act.

(2) In as far as this Federal Act refers to provisions of other federal acts, these shall be applied in the version as amended from time to time.

## Implementation

§ 9. Responsibility for the implementation of this Federal Act shall lie with the Federal Minister of Finance.

## Artikel II

### Änderung des Sparkassengesetzes

Das Sparkassengesetz – SpG, BGBl. Nr. 64/1979, zuletzt geändert durch das Bundesgesetz BGBl. I Nr. 97/2001, wird wie folgt geändert:

1. § 2 Abs. 1 lautet:

„(1) Gemeindesparkassen sind die von Gemeinden im eigenen Wirkungsbereich gegründeten Sparkassen. Die Gemeinde haftet für alle bis zum 2. April 2003 entstandenen Verbindlichkeiten der Sparkasse als Ausfallsbürge im Falle der Zahlungsunfähigkeit gemäß § 1356 ABGB; mehrere Gemeinden einer Sparkasse haften zur ungeteilten Hand. Für alle nach dem 2. April 2003 bis zum 1. April 2007 entstandenen Verbindlichkeiten haftet die Gemeinde nur dann als Ausfallsbürge im Falle der Zahlungsunfähigkeit gemäß § 1356 ABGB, wenn die vereinbarten Laufzeiten nicht über den 30. September 2017 hinausgehen. Für alle nach dem 1. April 2007 entstandenen Verbindlichkeiten besteht keine Haftung der Gemeinde(n) mehr. Der Umfang der von der Haftung der Gemeinde(n) erfassten Verbindlichkeiten ist von der Gemeindesparkasse jährlich zum Bilanzstichtag zu ermitteln. Verbindlichkeiten aus Teilschuldverschreibungen sind in Summe darzustellen. Bei Verbindlichkeiten, wo abweichende tatsächliche materielle Laufzeiten vorliegen, kann die zu erwartende Verweildauer herangezogen werden, wenn deren Berechnung nach anerkannten Regeln der Statistik erfolgt. Dabei ist zu berücksichtigen, dass Auszahlungen stets zu Lasten der zuerst einbezahlten Beträge zu erfolgen haben. Für Anwartschaften sind die erforderlichen Rückstellungen anzuführen. Die Plausibilität dieser Aufstellung, das in der Gemeindesparkasse zur Verfügung stehende Vermögen zur Abdeckung von Risiken sowie die sich daraus ergebende Wahrscheinlichkeit der Inanspruchnahme der Gemeinde(n) sind durch die Prüfungsstelle des Sparkassen-Prüfungsverbandes im Zuge der Prüfung des Jahresabschlusses zu prüfen. Das Ergebnis dieser Prüfung ist in einen gesonderten haftungsrechtlichen Prüfungsbericht aufzunehmen. Dieser ist dem Vorstand der Gemeindesparkasse gleichzeitig mit dem Prüfungsbericht über den Jahresabschluss zu übermitteln. Der Vorstand der Gemeindesparkasse hat den haftungsrechtlichen Prüfungsbericht längstens innerhalb von sechs Monaten nach Abschluss des Geschäftsjahres der (den) Gemeinde(n) und der FMA vorzulegen. Bei Zahlungsunfähigkeit einer Sparkassen Aktiengesellschaft (§ 1 Abs. 3) erstreckt sich die Haftung der Gemeinde im Wege über die Sparkasse, die ihr Unternehmen oder ihren bankgeschäftlichen Teilbetrieb in diese Sparkassen Aktiengesellschaft eingebracht hat, auch auf die Verbindlichkeiten der Sparkassen Aktiengesellschaft. Mit der Eintragung der Umwandlung der einbringenden Sparkasse in eine Privatstiftung gemäß § 27a haftet die Gemeinde gemäß Abs. 2a.“

2. In § 24 Abs. 2 Z 3 wird die Wortfolge „Prüfungen gemäß § 2 Abs. 2a“ durch die Wortfolge „Prüfungen gemäß § 2 Abs. 1 und 2a“ ersetzt.

## **Article III**

### **Amendment of the Act concerning funded bank bonds**

The Act of 27 December 1905 concerning funded bank bonds, Reich Law Gazette No. 213/1905, will be amended as follows:

*1. In Section 1 (2) the wording*, or if there exists a payment commitment or surety of the state, of any of the (kingdoms represented in the Reichsrat) and countries or a domestic public law entity authorized to collect contributions” *will be replaced by* “or if they exist towards a domestic public law entity, a Member State of the European Economic Area other than Austria or towards Switzerland or their regional governments or local political subdivisions, for which the competent authorities, pursuant to Article 43 (1) (b) (5) of Council Directive 2000/12/EC have established a weighting of not more than 20 %, or if any of the foregoing entities accepts full warranty“.

*2. The following sentence will be added to Section 1 (2):*  
„In addition, also hedging transactions (derivative contracts) may be used for preferential cover, which serve to reduce the risk of future interest or currency risks – also in case the credit institution files for bankruptcy – in proportion of the assets of the cover funds in relation to the issued funded bank bonds.“

**Klestil**

**Schüssel**