

*(Translation from German)*

## **The Austrian Banking Act**

(Fed. Law Gaz. no. 532/1999, most recently amended by Fed. Law Gaz. I no. 97/2001)

### **II. Licence**

#### **Granting a Licence**

##### **Art. 4. Austrian Banking Act**

(1) A licence from the Financial Market Authority (FMA) is required to conduct the businesses indicated in Art. 1 Par. 1.

(2) The Licence shall be granted in writing; otherwise it shall be null and void. It may be qualified with corresponding conditions and stipulations, be granted for only individual businesses or several businesses set out in Art. 1 Par. 1 and may preclude parts of individual banking transactions from its scope.

(3) Applicants shall enclose the following information and documentation with their licence applications;

- 1) head offices and legal form;
- 2) articles of association;
- 3) business plan indicating the type of the intended business, the banking institution's organisational structure and internal control procedure; the business plan shall also include a budget calculation for the initial three fiscal years;
- 4) the amount of unencumbered initial capital freely and unrestrictedly available in Austria to the managers;
- 5) the identity and amount of the contributions of the owners who hold a qualified participating interest in the banking institution, if those owners are members in a group of affiliated companies, as well as all the information required to assess the reliability of those owners, legal representatives and any and all of those owners' personally liable shareholders;
- 6) the names of the designated managers and their qualifications to operate the business.

4) Foreign banking institutions (Art. 2 Fig. 13) applying for a licence to operate a branch office within Austria shall also include the following information and documentation in addition to those of Par. 3 Fig. 1 through 3, 5 and 6;

1. The company's last three annual financial statements;
2. the businesses which the foreign company operates pursuant to Art. 1 Par. 1, as well as the locations where they are operated;
3. the initial endowment in euros freely available to the managers in Austria, unrestricted and unencumbered;
4. the decision-making authority of the branch office management as well as of the head office, the approval of which must be obtained for specific internal decisions;
5. a written declaration from the supervisory authority of the company's head office according to which the authority has no objection to the company opening a branch office in Austria.

5) Prior to granting a licence to a banking institution, the FMA shall inform the competent authorities of another member state of the application if

1. the application pursuant to Par. 3 has been filed by a subsidiary of a banking institution licensed in another member state as defined in Art. 1 First Indent of Directive 77/780/EEC or of an investment firm licensed in another member state;
2. the application pursuant to Par. 3 has been filed by a subsidiary of an enterprise which is itself a subsidiary of a banking institution licensed in another member state as defined in Art. 1 First Indent of Directive 77/780/EEC or of an investment firm licensed in another member state;
3. the banking institution is controlled by the same natural or legal person as controls a banking institution licensed in another member state as defined in Art. 1 First Indent of Directive 77/780/EEC or an investment firm licensed in another member state.

6) Prior to granting a licence to a banking institution, the FMA shall simultaneously inform the Federal Minister of Finance and consult the Austrian National Bank. Should the licence application include a request for authorisation to accept deposits requiring a guarantee (Art. 93 Par. 2) or to perform investment services requiring a guarantee (Art. 93 Par. 2a), the FMA shall also consult the deposit guarantee organisations.

7) In individual cases, the FMA is entitled to inform the public that a specifically named enterprise is not entitled to undertake specific banking transactions, by publishing notification thereof in the Official Gazette of the *Wiener Zeitung* daily newspaper or other printed bulletin distributed throughout Austria. If requested by individuals, the FMA shall provide information on the scope of banking institution's licences within a reasonable time. By January 1, 2004, the FMA is to have compiled a database containing information on the current scope of the banking institutions' licences and provide Internet access to those data.

## **Art. 5. Austrian Banking Act**

(1) The Licence shall be granted if

1. the enterprise is to be operated in the legal form of a stock corporation, a co-operative or a savings bank;
2. the articles of association contains no provisions which fail to guarantee the security of the assets entrusted to the banking institution and the due and proper performance of transactions according to Art. 1 Par.1;
3. the persons who hold a qualified participating interest in the banking institution satisfy the requirements in the interest of sound and circumspect management of the banking institution, and if there are no circumstances which engender doubt regarding the personal reliability of those persons; if such circumstances exist, the licence may only be granted if the doubt has been proved to be unfounded;
4. the FMA's supervisory duty is not hindered due to the banking institution having close affiliation with other natural or legal persons;
- 4a. the FMA is not hindered in its supervisory duty by third-country statutory and administrative regulations governing a natural or legal person with whom the banking institution is closely affiliated, or due to difficulties in applying those regulations;
5. the initial capital or initial endowment amounts to at least 5 million euros and is freely available to the managers, unrestricted and unencumbered;
6. none of the managers is disqualified for a reason set out in Art. 13 Par. 1 through 6 of the 1994 Austrian Trade Act;

7. none of the managers is charged with intentionally committing a criminal act carrying a penalty of imprisonment for more than one year, as of the entry into force of the indictment or the bringing of criminal charges until the verdict terminating the proceedings has entered into force;
8. the managers have the training and the professional qualifications, qualities and experience necessary to operate a banking institution, their personal financial situation is in order, and there are no circumstances which engender doubt regarding the personal reliability of those managers; if such circumstances exist, the licence may only be granted if the doubt has been proved to be unfounded; the managers' professional qualification comprises sufficient theoretical and practical knowledge of the businesses they are applying for pursuant to Art. 1 Par. 1, as well as experience in management; professional qualification to manage a banking institution is presumed if the managers have at least three years' executive experience in an enterprise of comparable size and type of business;
9. there are no grounds for disqualification of a manager of a banking institution who is not an Austrian citizen in the country of which he is a national as defined in Fig. 6, 7, 8 and 13; this must be confirmed by the banking supervision committee in his home country; however, if such a confirmation cannot be obtained, the manager concerned must demonstrate that it cannot be obtained, evidence that there are no grounds for disqualification and submit a declaration regarding the aforementioned grounds for disqualification;
10. Austria is the focal point of at least one manager's activities;
11. at least one manager has command of German;
12. the banking institution has at least two managers and the articles of association rule out individual power of representation, individual signing authority and individual commercial power of attorney for the entire business operation and, in the case of loan co-operatives, directing the business transactions is limited to the managers;
13. no manager has another full-time occupation outside the banking, insurance or pension fund sectors;
14. the head office and central administration are situated in Austria.

(2) A banking institution and all designations protected according to Art. 94 may only be entered as a company name or branch of business in the Company Register if the corresponding legally effective rulings are available in their originals or as certified duplicates (photocopies). The rulings need not be submitted as long as the performance of banking transactions is permissible according to Art. 9, 11, 13 and 103 Fig. 5. The competent court must serve notifications of such Company Register entries to the FMA and the Austrian National Bank as well. The FMA must provide the competent court with the information obtained in accordance with Art. 9 Par. 2 and 5, Art. 11 Par. 3 and Art. 13 Par. 3.

(3) In the event of issuing a licence to operate a branch office of a foreign banking institution in Austria, the FMA must provide the supervisory authority for the head office with a copy of the ruling.

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**END OF TRANSLATION**