

## Federal Law Federal Financing Act

Federal Act on the Administration and Coordination of the Financial and  
other Federal Debt - Federal Financing Act  
(Federal Law Gazette no. 763/1992 in the version of  
Federal Law Gazette I No. 107/2017)

### **Austrian Treasury**

- Sec.1. (1) (Constitutional provision) The Federal Minister of Finance is authorised to found a Gesellschaft mit beschränkter Haftung [Austrian limited liability company], owned completely by the Federation, to perform the tasks defined in Sec. 2 hereof. The seat of the Gesellschaft mit beschränkter Haftung is Vienna. The nominal capital is one million shilling.
- (2) The Gesellschaft mit beschränkter Haftung has the title „Oesterreichische Bundesfinanzierungsagentur“ (OeBFA – Austrian Treasury) and is entitled to bear the federal coat of arms. A majority of founders is not required. The GmbH Act [Act on Austrian Limited Liability Companies] is to be applied to the Austrian Treasury, with the exception of Sec. 5 par. 2, in accordance with the provisions of this Federal Act. Sec. 30j par. 5 of the GmbH Act shall not be applied to tasks performed by the Austrian Treasury in accordance with Sec. 2 in the name and on behalf of the Federation. In the articles of association the power of representation conferred to a single person, “prokura” conferred to a single person or the commercial power of attorney conferred to a single person have to be excluded in relation to all of the business.
- (3) The provisions of the Banking Act (“BWG”, Federal Law Gazette no. 532/1993), with the exception of Sec. 39 par. 1 and 2 BWG and Sec. 40 to 41 BWG, are not to be applied. The provisions of the Financial-Market-Money- Laundering Law (“FM-GwG, Federal Law Gazette I no. 118/2016), with the exception of Sec. 5 to 9,11,12,16 to 20 FM-GwG, 21 par. 1 no. 1 and par 2 to par 6 FM-GwG, and Sec. 23 par. 3 and par. 5 FM-GwG are not to be applied to the activities of the Austrian Treasury. In the same way, the provisions of the Securities Supervision Act 2018 (“WAG 2018”, Federal Law Gazette I no. 107/2017) and the Trade, Commerce and Industry Regulations Act (“GewO 1994”, Federal Law Gazette no. 194/1994) are not to be applied to the activities of the Austrian Treasury.
- (4) With regard to retirement and survivor annuities from direct pension obligations of the Company, insofar as they exceed the amount of the monthly maximum contribution basis (§ 45 of the Austrian General Social Security Act), the Company shall withhold for those shares which exceed the portion derived from the Austrian General Social Security Act a pension security contribution in accordance with the following provisions:
1. 5% for that portion of the retirement and survivor annuity that is above 100% of the monthly maximum contribution basis, but amounts to no more than 150% of the monthly maximum contribution base;

2. 10% for that portion of the retirement and survivor annuity that is above 150% of the monthly maximum contribution basis, but amounts to no more than 200% of the monthly maximum contribution base;
  3. 20% for that portion of the retirement and survivor annuity that is above 200% of the monthly maximum contribution basis, but amounts to no more than 300% of the monthly maximum contribution base; and
  4. 25% for that portion of the retirement and survivor annuity that is above 300% of the monthly maximum contribution base.  
This shall also apply to bonus payments.
- (5) Beneficiaries of retirement and survivor annuities from direct pension obligations of subsidiaries of the Company that are subject to control by the Court of Accounts shall, insofar as their retirement and survivor annuities exceed the amount of the monthly maximum contribution basis (§ 45 of the Austrian General Social Security Act), make a pension security contribution for those shares which exceed the portion derived from the Austrian General Social Security Act to that subsidiary from which they obtain these annuities. This pension security contribution is to be withheld by the paying subsidiary, its amount being determined in accordance with section (4).
- Sec.2. (1) (Constitutional provision) On behalf and for the account of the Federation, the Austrian Treasury is to perform the following tasks under consideration of the aims defined in Sec. 2 Federal Budget Accounting Act:
1. to incur financial debts for the Federation,
  2. to enter into swaps and other credit transactions, i.e., in particular agreements on the a) exchange of fixed rate amounts against floating rate amounts in the same currency and b) exchange of interest and/or redemption amounts in different currencies.
  3. to restructure the credit transactions mentioned in nos. 1 and 2, including the public debt existing when this Act enters into force, swaps and other credit transactions if the currency risk or interest requirement is reduced or the redemption structure is improved,
  4. to service the credit transactions under nos. 1 to 3, including the financial debt existing when this Act enters into force, swaps and other credit transactions,
  5. to act as the central liquidity manager of the Federation according to Sec. 40 par. 1 and 3 Federal Budget Accounting Act,
  6. (Remark: repealed by Federal Law Gazette I no. 124/1997)
  7. to invest the funds of the Emergency Fund according to the Emergency Fund Act,
  8. (Remark: Qualified as no longer applicable by Art. 2 Sec. 2 par. 3 no. 26, Federal Law Gazette I no. 2/2008)
  9. to invest the funds for the housing water supply in accordance with Sec. 7 par. 4 Financial Burden Sharing Act 1993,
  10. (Constitutional provision) to incur debts, to enter into swaps and to invest funds also for other entities and special accounts of the Federation upon request of the Federal Minister of Finance.
- (2) Upon request of the Federal Minister of Finance, the Austrian Treasury shall issue an expert opinion in respect of other credit operations with effects on the Federal budget, as well as with regard to risk management and finance controlling within the Federation. Upon request of the Federal Minister of

Finance, all other units of the State Sector (S. 13) in accordance with the European System of National and Regional Accounts (ESA), and legal entities which in each case are in predominantly direct or indirect possession of these units, or of the Federation, or in each case are administered or supervised by bodies appointed by them, may arrange to be advised by the Austrian Treasury in connection with financial instruments, risk management, and finance controlling.

- (3) The Austrian Treasury is to perform credit transactions according to Sec. 5 par. 1 Inland Water Navigation Fund Act, Federal Law Gazette no. 69/2000.
- (4) Upon request of the Federal Minister of Finance, the Austrian Treasury shall, on behalf and for the account of the Federation, and respecting the aims in accordance with Sec. 2 of the Federal Budget Accounting Act 2013 (BHG 2013), Federal Law Gazette I No. 139/2009, for legal entities of the Sector 1314 (Social Security) in accordance with the European System of National and Regional Accounts (ESA) as well as for the Provincial States, against reimbursement of costs
  1. carry out and conclude credit operations and grant loans from these resources to these legal entities and the Provincial States,
  2. conclude currency exchange contracts, in order then to enter into contracts with these legal entities and Provincial States, in order to retroactively alter obligations from credit operations of these Provincial States and legal entities by way of transfer of commitment of the claims and obligations arising from these currency exchange contracts,
  3. carry out and conclude assessments of cash resources of these legal entities and Provincial States,
  4. establish cash pooling in support of the liquidity control of these legal entities and Provincial States and offer this service to them,
  5. provide risk management services, including monitoring and reporting.

The decision as to whether the Provincial States or legal entities approach the Federation in respect of the matters in accordance with Nos 1 to 5 rests with them. In addition, upon request of the Federal Minister of Finance, the Austrian Treasury may, on behalf and for the account of the Federation in respect of the contracts referred to in Nos 1 to 4, agree with these legal entities and Provincial States on the arrangement of guarantees.

- (4a) A precondition for a request in accordance with Par. 4, Nos 1 to 4, is the annual provision of proof by the legal entities or the Provincial States with regard to the maintaining of the principles of Sec. 2a. This proof shall be deemed to have been provided if a corresponding ruling by the Regional Assembly or a confirmation by the Provincial Audit Office is presented in the respective province financial statements. For legal entities, a corresponding auditor's certificate in the current annual statements of accounts in each case, or a published decision by the executive body with the consent of the supervisory body is required. Furthermore, the estimate of expenditure by a province is to contain a certification to the effect that the principles under Sec. 2a are being respected. Likewise, for already existing financing arrangements, annual proofs are to be provided in the form set forth heretofore.
- (5) The Austrian Treasury can also carry out the administration and settlement of credit transactions, the handling of money market transactions, the disposition of accounts, payment transactions or other financial transactions on behalf and for the account of other legal entities in which the Federation has a majority

stake or for the credit transactions of which the Federation - based on a legal authorisation in the Federal Finance Act or in a special Federal Act according to Sec. 42 par. 5 Federal Constitution Act - may assume the liability in accordance with Sec. 1357 General Civil Code or in the form of guarantees.

- (6) The Austrian Treasury shall, on behalf of and for the account of the Federation, carry out the funding of the special endowment of the Research Billion.
- (7) On behalf and for the account of the Federation, the Austrian Treasury is to perform the functions of an auctioneer according to Article 23 of the Regulation (EU) No 1031/2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowances trading within the Community against reimbursement of costs through the Federal Ministry of Finance.

Sec.2a. In the exercise of the stipulations in accordance with Sec. 2, the following principles are to be applied:

1. The principle of risk-averse financial management. The risks associated with financial management are to be restricted to a minimum. The minimisation of the risks is to be weighted more heavily than the optimisation of yields or costs. The assumption of credit for the purpose of middle-term and long-term assessments and the acquisition of derivative financial instruments without corresponding underlying transactions are not permissible. The assumption of credits in foreign currency with the simultaneous securing of the exchange rate risk, the assessment of cash resources of contractors with good creditworthiness, and the assumption of interest cost risks of the debt portfolio within predefined risk limitations are permissible. This means, further, that guidelines for the risk management for all relevant types of risk must be present, in particular for the risk types of credit, market, liquidity, reputation, legal, and operational risks.

2. The principle of strategic planning in respect of debt management and liquidity management, in accordance with the provisions set by the bodies responsible for this.

3. The principle of the implementation of an organisational and operational structure, with the maintaining of the personnel function separation between front office and back office or controlling respectively (the two-person or dual control principle). The persons concerned must have the necessary knowledge and experience, depending on their tasks, areas of competence, and responsibilities.

4. The principle of transparency with regard to the transactions carried out, in relation to the bodies responsible in this respect.

Sec. 2b. The principles enumerated in Sec. 2a are also to be applied, by analogy, by the legal entities from Sectors 1311 (Federation) and 1314 (Social Security) in accordance with the European System of National and Regional Accounts (ESA), with the exception of the social security agencies grouped in the Hauptverband der österreichischen Sozialversicherungsträger (Main Association of Austrian Social Security Institutions), as well as with the exception of the provident and pension associations of the various Chambers which are not financed from public funds.”

## Board of directors

- Sec. 3. (1) The board of directors of the Austrian Treasury consists of at least two managing directors appointed by the Federal Minister of Finance. Only persons with expert knowledge in the field of banking and budget planning may be appointed managing directors. In relation to a managing director no reason for exclusion according to Section 13 par. 1 to 3, 5 and 6 Trade, Commerce and Industry Regulations Act 1994 shall exist. A managing director shall live in orderly economic conditions and no facts shall exist which give rise to doubts as to the good character of such managing director.
- (2) The Federal Minister of Finance can issue instructions for the managing directors of the Austrian Treasury with regard to the performance of the tasks of Sec. 2 par. 1.
- (3) The Federal Minister of Finance shall repeal the appointment of a managing director if such managing director fails to perform any instruction according to par. 2 hereof. In such a case, a new managing director shall be appointed without delay.
- Sec. 4. (1) Resolutions of the board of directors shall be made by a simple majority of votes. If a resolution cannot be adopted due to an equality of votes or with regard to matters according to par. 2 a unanimous resolution cannot be passed, the board of directors has to inform the supervisory committee and the Federal Minister of Finance.
- (1a) The board of directors manages the business in accordance with the relevant statutes, the articles of association and the rules of procedure to be adopted by the supervisory committee. In the articles of association the power of representation conferred to a single person, "prokura" conferred to a single person or the commercial power of attorney conferred to a single person are to be excluded in relation to all of the business. The representation of the company is made through two managing directors or one managing director together with a holder of a special statutory power ("Prokurist").
- (2) With regard to the following matters the board of directors has to obtain approval of the supervisory committee:
1. selection of the currency and financial instruments,
  2. selection of the interest form,
  3. evaluation (rating) of the contractual partners in swaps,
  4. restructuring and debt refunding measures,
  5. monthly determination of the liquidity of the Federation,
  6. Determination of the risk management guidelines (including adequate control mechanisms for all relevant types of risk, in particular also the types of risk of credit risk, market risk, liquidity risk, legal risk, operational risk, and reputation risk), taking into account the precept of risk-averse orientation in accordance with Sec. 79, par. 6, BHG 2013, the assessment guidelines, and the rating of the debtor with agendas in accordance with Sec. 2, par. 1, Nos 2 to 5,
  7. the performance of other credit transactions.
- (3) The board of directors is to issue an annual report to the Federal Minister of Finance on the performance of the tasks of the Austrian Treasury in accordance with Sec. 2 par. 1, as well as a quarterly intermediate report, four weeks following the end of the reporting period, respectively.

## Supervisory committee

- Sec. 5 (1) The supervisory committee consists of five members. Only persons with expert knowledge in the field of banking and budget planning may be appointed.
- (2) In addition to the persons defined in Sec. 30a to j GmbH Act, the following persons may also not be appointed members of the supervisory committee:
1. Members of the Austrian National Assembly, the Federal Council, one of the Regional Assemblies or one of the Regional Governments, as well as
  2. Persons with a conflict of interest with the interests of the Federation regarding the tasks of the Austrian Treasury.
- Sec. 6. (1) Extraordinary meetings of the supervisory committee are to be convoked without delay upon petition of the Federal Minister of Finance.
- (2) The minutes of the meeting of the supervisory committee are to be transferred to the Federal Minister of Finance without delay.
- Sec. 7. The Federation is to bear the expenses of the Austrian Treasury, offsetting any pre-payments made, to the extent that such expenses exceed the proceedings of the Austrian Treasury.
- Sec. 8. (1) The Federal Minister of Finance may
1. request the Austrian Treasury to provide information on all business transactions including evidence in the form and structure as requested,
  2. inspect the books, documents and data carriers of the Austrian Treasury and also carry out inspections on site,
  3. commission the auditor of the Austrian Treasury and other competent persons against reimbursement of costs through the Austrian Treasury with inspections and audits in the sense of no. 2 hereof and
  4. commission the Internal Audit of the Federal Minister of Finance with the inspection of the Austrian Treasury against reimbursement of costs through the Austrian Treasury.
- (2) The audited annual accounts and the auditing report on the annual accounts including annexes and management report are to be transferred to the Federal Minister of Finance within a term of six months following the end of the financial year.
- (3) The Austrian Treasury shall provide for an internal audit, for which it may use a chartered public accountant.
- Sec. 9. With regard to taxation, the Austrian Treasury is to be treated as a public corporation that is not profit-oriented within the frame of its legal scope of tasks. The performance of the tasks in accordance with Sec. 2 and the pertaining legal transactions are not subject to the taxes and charges of federal law.

## Linguistic equality

- Sec. 9a. Insofar in this federal law individual-related notations are used in the masculine form only, these refer similarly to females and males. When applied to specific persons, the gender-specific form has to be used.

## Final provisions

- Sec. 10. To the extent that this Federal Act makes reference to other federal acts, such acts shall be applied in the respective applicable version.
- Sec. 11.(1) Sec. 2 shall come into effect on 1 January 1993.
- (2) Sec. 2 in the version of the Federal Act Federal Law Gazette no. 185/1993 shall come into effect on 1 January 1993.
  - (3) The Federal Minister for Finance is entrusted with the execution of this Federal Act.
  - (4) (Remark: Qualified as no longer applicable by Art. 2 Sec. 2 par. 1 no. 14, Federal Law Gazette I no. 2/2008)
  - (5) Sec. 2 par. 4 in the version of the Federal Act Federal Law Gazette I no. 142/2000 shall come into effect following the publication of this Federal Act.
  - (6) Sec. 2 par. 2 and 5, Sec 4 par. 2 no. 6 in the version of the Federal Act Federal Law Gazette I no. 71/2003 shall come into effect with the publication of the aforementioned Federal Act.
  - (7) Sec. 1 par. 3 in the version of the Federal Act Federal Law Gazette I no. 22/2009 shall come into effect on 1 April 2009.
  - (8) Sec. 1 par. 2 and 3, Sec. 4 par. 1 and 1a and Sec. 4 par. 2 no. 6, in the version of the Federal Act Federal Law Gazette I no. 67/2010, respectively, shall come into effect on 1 October 2010.
  - (9) Sec. 1 par 4 and 5 in the version of the Austrian Federal Law Gazette I No. 46/2014 shall enter into force on 1 January 2015.
  - (10) Sec. 1 par. 3 in the version of the Austrian Federal Law Gazette I No. 118/2016 shall enter into force on 1 January 2017.
  - (11) Sec. 2, par. 4a shall come into force as of 1 August 2018, and is to be applied to material contents which pertain after the expiration of 31 July 2018.
  - (12) Sec. 1, par. 3 in the version of Austrian Federal Law Gazette I No. 107/2017 shall enter into force on 3 January 2018.

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