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FEDERAL LAW GAZETTE

FOR THE REPUBLIC OF AUSTRIA

For the year 2008

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Part II

382th Ordinance: Determining the details of the conditions and obligations imposed for measures taken pursuant to the Financial Market Stability Act (Finanzmarktstabilitätsgesetz, "FinStaG") and the Interbank Market Support Act (Interbankmarktstärkungsgesetz, "IBSG")

Ordinance enacted by the Federal Minister of Finance for the purpose of determining the details of the conditions and obligations imposed for measures taken pursuant to the Financial Market Stability Act (Finanzmarktstabilitätsgesetz, "FinStaG") and the Interbank Market Support Act (Interbankmarktstärkungsgesetz, "IBSG")

On the basis of sec. 2 para. 5 of the Financial Market Stability Act (*FinStaG*), Federal Law Gazette I No. 136/2008, in conjunction with sec. 1 para. 4 of the Interbank Market Support Act (*IBSG*), Federal Law Gazette I No. 136/2008, the following ordinance is herewith made in agreement with the Federal Chancellor:

Scope of application

Section 1 (1) The beneficiaries under this Ordinance shall be credit institutions and insurance companies during the periods in which they make use of the benefits provided pursuant to the Interbank Market Support Act (*IBSG*) or the Financial Market Stability Act (*FinStaG*).

(2) Should the Federal Minister of Finance decide to avail himself of the instruments provided under sec. 2 para. 1 of the Financial Market Stability Act (*FinStaG*) and sec. 1 para. 4 of the Interbank Market Support Act (*IBSG*), the relevant agreements with the beneficiaries shall be made in accordance with the provisions of the present Ordinance; these shall be complied with throughout the entire period during which the measure takes effect.

Sustainability

Section 2 The main aim of the beneficiary's business policy shall be sustainability. In order to achieve this, it may be necessary that transactions that are subject to special risks, including the risks listed in Annex V of Directive 48/2006/EC of the European Parliament and of the Council of June 14, 2006, on the taking up and pursuit of the business of credit institutions, OJ No. L 177, or the trade in certain products or on certain markets are reduced or abandoned.

Use of funds

Section 3 The beneficiary shall be obliged to commit itself to using the funds it receives as a result of the implemented measure in accordance with its business objects also for the granting of loans or for capital investments at usual market terms in order to benefit the economy; this shall include, but not be limited to, the provision of loans to small and medium-sized enterprises and the provision of mortgage loans to households. If the beneficiary belongs to a group of companies and if the need to recapitalize is due at least partly to the economic situation of one or more subsidiaries, the obligation to use the funds received as a result of the measure for the benefit of the subsidiaries in question may be stipulated in a contract.

Remuneration

Section 4 (1) The beneficiary shall be obliged to commit itself to examine the systems of remuneration with regard to their incentive effect and appropriateness, and to ensure, within the scope of the possibilities provided

by civil law, that they do not constitute temptations to take inappropriate risks and that they are transparent and geared towards long-term, sustainable objectives.

(2) The beneficiary shall be obliged to commit itself, within the scope of the possibilities provided by civil law, to calculate the amount of the remuneration paid to the members of its executive bodies, employees and principal vicarious agents in accordance with the following principles:

1. The employees and principal vicarious agents shall not be paid any inappropriate remuneration, remuneration components and bonuses and they shall not receive any other inappropriate benefits, either.
2. The remuneration of the members of the beneficiary's executive bodies and of its executive staff members shall be limited to an appropriate amount; particular attention shall be paid to the following aspects:
 - a) the contribution provided by the person in question to the economic situation of the beneficiary, particularly his/her role with regard to the former business policy and to risk management, and
 - b) the necessity of offering a remuneration that is in conformity with market conditions, in order to be able to employ persons who are specially qualified and suitable to ensure a sustainable economic development.
3. Furthermore, the beneficiary shall not be entitled to subsequently amend existing target agreements, regulations in connection with share option programs and other regulations concerning success-related remuneration components for the benefit of the members of its executive bodies, employees and principal vicarious agents. Within the scope of the possibilities provided by civil law, share option programs for the benefit of the members of its executive bodies or the principal vicarious agents shall be suspended for the period during which the company in question is making use of the benefits from the instruments according to sec. 2 para. 1 sub-para. 3, 2nd instance, sub-paragraphs 4 to 6 of the Financial Market Stability Act (*FinStaG*).

(3) The beneficiary shall also be obliged to commit itself, within the scope of the possibilities provided by civil law, to reclaim, to an appropriate extent, remuneration already received by the members of its executive bodies and senior staff who have contributed significantly to the beneficiary's adverse economic situation by their activities in the context of the beneficiary's former business policy and its risk management, provided such remuneration would have been inappropriate according to the provisions of paragraph 2 and the amounts were objectively significant. The beneficiary may waive its right to reclaim such amounts if a repayment would constitute an unreasonable hardship in view of the economic situation of the person in question or the reclamation would be uneconomical for the beneficiary due to the legal hopelessness or the duration of the proceedings, or the resulting costs. Such a waiver of the right of reclamation shall be communicated to the Federal Minister of Finance and *prima-facie* evidence of the circumstances giving rise to the waiver shall be provided.

Provision with own funds

Section 5 Assumptions of liability according to sec. 2 para. 1 sub-paragraphs 1 and 2 of the Financial Market Stability Act (*FinStaG*) and according to sec. 1 para. 4 of the Interbank Market Support Act (*IBSG*) require the beneficiary to be provided with adequate own funds, unless liability should be assumed for the purpose of increasing the beneficiary's own funds.

Distribution of profits

Section 6 In cases where the benefits from instruments according to sec. 2 para. 1 sub-paragraphs 1 to 6 of the Financial Market Stability Act (*FinStaG*) are made use of, dividends or other shares in the profits may – unless expressly owed under a contract or statute - only be paid out to the beneficiary's owners in appropriate amounts taking into account the beneficiary's results. Moreover, the beneficiary shall also be prohibited from providing other benefits to its shareholders that are not owed under a contract or statute, such as, for instance, redemption of shares or capital reductions, unless such measures should be required for restructuring purposes or be implemented in connection with usual capital market arrangements.

Jobs

Section 7 The beneficiary shall take reasonable care to safeguard the jobs provided in its enterprise. Measures entailing significant effects on the job situation shall be reported to the company established pursuant to sec. 3 para. 5 of the Financial Market Stability Act (*FinStaG*).

Prevention of distortions of competition

Section 8 In order to prevent any distortions of competition that could result from measures implemented according to the provisions of the Interbank Market Support Act (*IBSG*) and the of the Financial Market Stability

Act (*FinStaG*), the beneficiary's business activities shall be subjected to conditions that appear suitable to prevent such distortions of competition.

Fees

Section 9 (1) In case of any assumption of liability pursuant to sec. 2 para. 1 sub-paragraphs 1 and 2 of the Financial Market Stability Act (*FinStaG*) and sec. 1 para. 4 of the Interbank Market Support Act (*IBSG*), the yearly fee for the assumption of liability shall be fixed at 0.5% if liability is assumed for a period not exceeding one year; in all other cases, it shall be based on the lower of the two following values, plus an additional charge of 0.5% of the maximum exposure limit granted per year:

1. Median of the CDS spreads for the beneficiary's debt instruments with 5-year maturities within the reference period between January 1, 2007 and August 31, 2008;
2. Median of the CDS spreads for debt instruments of the beneficiary's rating category with 5-year maturities within the reference period between January 1, 2007 and August 31, 2008, based on a sample, defined by Eurosystem, of large banks in the Euro zone.

(2) In cases where neither a CDS spread nor a credit rating is available for the beneficiary in question, the calculation of an equivalent CDS spread within the meaning of para. 1 shall be based on the median of the CDS spreads for maturities of five years applicable to rating category A for the duration of the reference period according to para. 1, on the basis of a sample, defined by Eurosystem, of large banks in the Euro zone.

(3) In determining the fee for the assumption of liability, the provision of security shall be taken into account accordingly.

(4) In cases where loans are granted and own funds are supplied to credit institutions pursuant to sections 23 and 24 of the Banking Act (*Bankwesengesetz*, "*BWG*") and to insurance companies pursuant to sec. 73b of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*, "*VAG*") in accordance with sec. 2 para. 1 sub-para. 3 of the Financial Market Stability Act (*FinStaG*), interest in conformity with market conditions shall be agreed if, from an economic point of view, these transactions have an interest component; the interest rate shall be linked to objective and understandable parameters corresponding to the nature, the maturity and the risk content of the instrument.

(5) For measures pursuant to sec. 2 para. 1 sub-paragraphs 3 to 6 of the Financial Market Stability Act (*FinStaG*), a fee in accordance with the provisions of banking law shall be agreed in all cases. Furthermore, better-fortune agreements shall be made in connection with all such measures, although these may be waived if there are substantial reasons for doing so.

(6) In connection with measures according to sec. 2 para. 1 sub-paragraphs 3 to 6 of the Financial Market Stability Act (*FinStaG*), a right of the beneficiary and the company established in accordance with sec. 3 para. 5 of the Financial Market Stability Act (*FinStaG*) to claim repayment after a certain period shall be agreed with the beneficiary.

(7) The provisions of para. 1 to 7 may be deviated from in individual cases if the measures provided therein would be inexpedient in view of the relevant beneficiary's economic situation or could not be reconciled with the goals of the recapitalization measure.

Information

Section 10 The beneficiary shall at any time provide information to the Federal Minister of Finance or to authorized representatives of the same, including, but not limited to, the company established pursuant to sec. 3 para. 5 of the Financial Market Stability Act (*FinStaG*), permit audits of accounts and tax audits and submit all records. Information shall be provided to the Federal Minister of Finance acting in agreement with the Federal Chancellor.

Undertaking

Section 11 To the extent that compliance with the conditions and obligations imposed by this Ordinance cannot be ensured by way of contractual agreements with the beneficiary, and the personal participation of members of the beneficiary's executive bodies is required for the realization of the objectives of the measure in question as set out in the present Ordinance as well as in the Financial Market Stability Act (*FinStaG*) and in sec. 1 para. 4 of the Interbank Market Support Act (*IBSG*), an undertaking shall be requested from the beneficiary in which the relevant conditions and obligations shall be included, and which shall be signed by all members of the beneficiary's executive bodies. Such undertakings shall be given particularly in connection with the providing of information that may be required at a time when the person in question no longer exercises an executive function with the beneficiary.

Procedure

Section 12 (1) The conditions and obligations imposed by this Ordinance shall constitute the basis of measures according to sec. 2 para. 1 of the Financial Market Stability Act (*FinStaG*) or sec. 1 para 4 of the Interbank Market Support Act (*IBSG*) to the extent required in order to guarantee a solid and judicious business policy. Special attention shall be paid to the principle of proportionality, the nature, the financial scope and the duration of the measure in question and the economic situation of the beneficiary.

(2) Subject to the provisions of para. 1 hereof, the agreement shall provide for a significant contribution on the part of the beneficiary to the costs of the measure. In addition to the fees provided in sec. 9, provisions concerning the repayment of amounts paid by the Federal Government as a result of an assumption of liability actually having become operative, as well as the interest charged on such amounts, shall be included in the relevant agreement on the assumption of liability.

(3) Compliance with conditions and obligations imposed shall be ensured by means of contractual agreements. These may include, without limitation, agreements concerning contractual penalties. In those cases where liability is assumed in order to enable the beneficiary to borrow from third parties, the effectiveness of the assumption of liability vis-à-vis the third party shall in no case be made contingent upon the beneficiary's compliance with the conditions for the assumption of liability or with the obligations imposed in the agreement concerning the said assumption of liability.

(4) In the case of measures pursuant to sec. 2 para. 1 of the Financial Market Stability Act (*FinStaG*), the relevant deadlines shall be arranged in such a way as to ensure the achievement of the goal and purpose of the measure.

(5) The company established pursuant to sec. 3 para. 5 of the Financial Market Stability Act (*FinStaG*) shall comply with the rules and principles established in this Ordinance with regard to the share rights and property rights conferred on it, and shall take the measures required in connection therewith on its own initiative without needing special orders from the Federal Minister of Finance in each individual case.

(6) The Federal Minister of Finance shall inform the Federal Chancellor of all agreements concerning measures under the Financial Market Stability Act (*FinStaG*), even if they do not concern the acquisition of ownership rights or other measures regarding which agreement must be sought according to sec. 2 para. 1 subparagraphs 4 to 6 or para. 2.

(7) The company established pursuant to sec. 3 para. 5 of the Financial Market Stability Act (*FinStaG*) shall provide the Federal Minister of Finance, acting in agreement with the Federal Chancellor, with all necessary information in connection with recapitalization measures. In other respects, the company and the members of its executive bodies and its employees shall be considered equal to the executive bodies of authorities according to sec. 38 para. 1 of the Banking Act (*BWG*).