

## Client Briefing

17 October 2008

### Austrian Bank Stability Update

#### Background

On 13 October 2008 the Austrian government announced coordinated stability measures for the financial markets following the joint declaration on the concerted European action plan of the euro area countries last Sunday. The stability measures approved on Monday by the Austrian cabinet (*Ministerrat*) aim at protecting banks and insurance companies swiftly and decisively from the possibly serious effects of the international financial crisis.

A draft bill on the stability measures has been published. The proposed legislative measures, inter alia, include the implementation of the Inter-Bank Market Enhancement Act (*Interbankmarktstärkungsgesetz – IBSG*), the Financial Market Stabilization Act (*Finanzmarktstabilitätsgesetz – FinStaG*) and certain amendments to the Banking Act (*Bankwesengesetz – BWG*) and the Stock Exchange Act (*Börsegesetz – BörseG*). The bill is expected to be approved by parliament on 20 October 2008 (and 21 October 2008 respectively) in extraordinary sessions. Austria will earmark up to EUR 100 billion in support of the banking system. EUR 15 billion are to be used for recapitalization measures, EUR 85 billion shall be made available for state guarantees.

We have briefly summarized the Austrian government's stability measures. This reflects developments as at 16 October 2008.

## Guarantee fund

EUR 85 billion shall be made available for state guarantees, sureties or similar assumptions of liabilities.

According to the IBSG a separate entity shall be set up as clearing house to facilitate refinancing of banks on the inter-bank market. The newly established entity shall borrow funds from banks or insurance companies on the inter-bank market and on-lend such funds to banks and insurance companies on arm's length terms (sufficient security, interest taking into account an adequate fee for state guarantees). According to the IBSG the Federal Minister of Finance shall be entitled to (i) guarantee liabilities of such entity and (ii) assume liability for losses incurred by this entity in connection with such arrangements for a limited period of time. The proposed IBSG does not specify any maximum period of time for such state guarantees given under (i).

The entity shall also be entitled to issue notes. Any issue by such entity may be guaranteed by the Austrian state.

The services of this new entity are open to credit institutions holding a license pursuant to the BWG (including subsidiaries of foreign banks) and Austrian insurance companies only. Credit institutions and insurance companies rendering services in Austria by using the EEA single passport regime will not benefit from the IBSG. Moreover, the IBSG does not confer a right on banks or insurance companies to claim any such stabilization measures from the state.

According to the draft IBSG any claims of such entity against the state may not be assigned or pledged to third parties and shall not be subject to an attachment (*Pfändung*).

The state guarantee may also be extended to notes issued by banks (according to § 1 para 1 no 10 BWG) with a maturity of two to five years in order to facilitate the raising of fresh capital.

The scheme is scheduled to expire by 31 December 2009. However, state guarantees issued under the IBSG before this date will not be affected.

## **Deposit guarantee**

Under the Austrian banking system banks must belong to the depositors' protection scheme of their trade association (*Fachverband*). Each protection scheme is financed by contributions from its respective member banks. If any protection scheme should be unable to pay out the guaranteed deposits or claims in full, the protection schemes of the other trade associations are obliged to make proportionate contributions to cover the shortfall. In cases where the protection schemes as a whole are unable to pay out guaranteed deposits (claims) in full, the protection scheme originally concerned must issue notes or, according to the proposed stability measures, take out a loan to meet the remaining payment obligations. The Federal Minister of Finance may assume liability for such issue or loan according to a special legal authorization.

The proposed stability measures provide for an amendment of the current Austrian depositor's protection scheme, in particular an increase of the protected amount from EUR 20,000 per depositary and bank to 100% of bank deposits of natural persons as from 1 October 2008. These measures shall not apply to claims of creditors which are not natural persons (for such claims the guarantee continues to be limited to 90% of the guaranteed deposit in the maximum amount of EUR 20,000 per depositary and bank).

## **Recapitalization**

Up to EUR 15 billion (or an additional amount not utilized under the guarantee fund) are earmarked for the recapitalization of credit institutions holding a license pursuant to the BWG (including subsidiaries of foreign banks) and Austrian insurance companies.

According to the FinStaG the Federal Minister of Finance shall be authorized to (i) guarantee the liabilities of the bank or insurance company, (ii) assume liability vis-à-vis the bank or insurance company, (iii) grant loans to the bank or insurance company or provide such entity with own funds (*Eigenmittel*), (iv) acquire shares (whether in a capital increase or from existing shareholders) or convertible bonds and (v) take over the assets of the company by way of merger pursuant to § 235 Stock Corporation Act (*Aktiengesetz – AktG*).

According to the draft FinStaG, any claims against the state may not be assigned or pledged to third parties and shall not be subject to an attachment (*Pfändung*).

If there is a risk that the bank or insurance company cannot fulfill its obligations vis-à-vis its creditors and the abovementioned measures are not sufficient or are not available in due time, the Federal Minister of Finance shall, in consultation with the Federal Chancellor, be authorized to expropriate the owners of the bank against payment of an adequate compensation where required to protect the national economy from severe disruption. The ordinance to be issued by the Federal Minister of Finance effecting the expropriation shall specify the terms and conditions for the assertion of compensation claims by the respective owners. At the request of the owners, the Federal Minister of Finance shall determine such compensation. Such decision shall be suspended in case the owner makes an application to the competent court for re-assessment of the compensation. Specific rules shall apply for compensation payments in connection with the expropriation of interests in banks or insurance companies listed at the Vienna Stock Exchange. In this case, the compensation shall be determined in accordance with the provisions of the Austrian Takeover Act (*Übernahmegesetz – ÜbG*).

To enhance flexibility, a separate entity may be set-up and may carry out such capital measures. Such newly established entity can be formed as a direct subsidiary of the Österreichische Industrieholding AG, the Austrian investment and privatization agency owned by the state.

Once the aims of the recapitalization measures have been achieved the state shall dispose of its equity stakes to private investors.

Further conditions may be imposed. The stability measures also extend the rights of the FMA, which shall be entitled to lay down rules pursuant to which banks have to take on additional own funds which are suitable for the current risk situation and which go beyond the statutory minimum requirements.

The FinStaG does not confer a right on banks or insurance companies to claim any such stabilization measures from the state.

## Prohibition on short selling

Furthermore, under certain circumstances the FMA may for a period of not more than three months prohibit or restrict short selling of financial instruments specified by the FMA (including derivative products) at the Vienna Stock Exchange.

## Useful links

**Austrian Federal Government**

<http://www.austria.gv.at>

**The Austrian National Bank**

<http://www.oenb.at>

**Austrian Parliament**

<http://www.parlinkom.gv.at>

**The Austrian Financial Market Authority**

<http://www.fma.gv.at>

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