

short title

Banking Act

announcement body

Federal Law Gazette No. 532/1993 last amended by Federal Law Gazette I No. 108/2007

§/Article/Annex

§ 1

Effective Date

01/01/2008

expiry date

10/31/2009

text**I. General Provisions****credit and financial institutions**

§ 1.(1) A credit institution is anyone who, on the basis of Sections 4 or 103

No. 5 of this federal law or special federal regulations is entitled to conduct banking business. Banking transactions are the following activities, insofar as they are carried out commercially:

1. The acceptance of third-party funds for administration or as a deposit (deposit business);
2. the implementation of cashless payment transactions and billing transactions on a current account for others (giro business);
3. the conclusion of money credit agreements and the granting of money loans (credit business);
4. the purchase of checks and bills of exchange, in particular the discounting of bills of exchange (discount business);
5. safekeeping and administration of securities for others (deposit business);
6. the issuance and management of payment methods such as credit cards and travelers checks;
7. trading on their own account or on behalf of others
 - a) foreign means of payment (currency and currency transactions);
 - b) money market instruments;
 - c) Financial futures contracts (futures), including equivalent instruments with cash payment and call and put options on the instruments specified in letters a and d to f, including equivalent instruments with cash payment (futures and options);
 - d) interest rate futures, forward rate agreements (FRA), interest rate and currency swaps, and swaps on assets or stock indices ("equity swaps");
 - e) securities (securities business);
 - f) instruments derived from lit. b to e,
unless trading is for private property;
- 7a. Trading for one's own account or that of a third party in financial instruments pursuant to Article 1 Paragraph 1 Item 6 Letters e to g and j of the Securities Supervision Act 2007 – WAG 2007, Federal

Law Gazette I No. 60/2007, with the exception of trading by persons pursuant to Article 2 Paragraph 1 Z 11 and 13 WAG 2007;

- 8th. the assumption of sureties, guarantees and other liabilities for others, provided that the obligation assumed is for monetary payments (guarantee business);
9. the issue of Pfandbriefe, municipal bonds and covered bank bonds and the investment of the proceeds in accordance with the special legal provisions applicable to this (securities issuing business);
- 10 the issuance of other fixed-income securities to invest the proceeds in other banking transactions (other securities underwriting);
11. Participation in the issue by third parties of one or more of the instruments specified in Section 7 lit. b to f and the related services (Loro issue business);
12. the acceptance of building savings deposits and the granting of building society loans in accordance with the Building Society Act (building society business);
13. the management of capital investment funds according to the Investment Funds Act - InvFG 1993, Federal Law Gazette No. 532/1993 Art. II (investment business);
- 13a. the management of real estate funds according to the Real Estate Investment Fund Act - ImmoInvFG, Federal Law Gazette I No. 80/2003 (real estate fund business);
- 14 the establishment or management of investment funds in accordance with the Investment Funds Act, Federal Law Gazette No. 111/1982 (participation fund business);
- 15 the financing business through the acquisition of shares and their resale (capital financing business);
- 16 the purchase of receivables from the delivery of goods or services, the assumption of the risk of collectibility of such receivables - with the exception of credit insurance - and in connection therewith the collection of such receivables (factoring business);
- 17 the operation of money broking in the interbank market;
- 18 the mediation of transactions
 - a) Z 1, except by contract insurance companies;
 - b) No. 3 excluding the brokerage of mortgage and personal loans within the scope of the real estate broker trade and the brokerage of personal loans, mortgage loans and investment advice;
 - c) Z 7 lit. a, insofar as this relates to foreign exchange transactions;
 - d) Z 8.
- 19 (Note: repealed by Federal Law Gazette I No. 60/2007)
- 20 issuing electronic money (e-money business)
- 21 the acceptance and investment of severance payment contributions and self-employed pension contributions (company provision fund business);
- 22 the over-the-counter purchase of foreign currency (e.g. money, cheques, traveler's credit letters and instructions) and the over-the-counter sale of foreign money and traveler's checks (currency exchange business);
- 23 the spatial transfer of assets, with the exception of physical transport, by accepting money or other means of payment from the client and paying a corresponding sum in money or other means of payment to the recipient through non-cash transfer, communication, bank transfer or other use of a payment or settlement system (financial transfer business) .

(2) A financial institution is anyone who is not a credit institution within the meaning of paragraph 1 and is entitled to carry out one or more of the following activities on a commercial basis, provided that this is their main activity:

1. The conclusion of leasing contracts (leasing business);
2. (Note: repealed by Federal Law Gazette I No. 35/2003)
3. advising companies on capital structure, industrial strategy and related matters and providing advice and services in the field of mergers and acquisitions;
4. (Note: repealed by Federal Law Gazette No. 753/1996)
5. the provision of commercial information;
6. the provision of locker management services.

(3) Credit institutions are also entitled to carry out the activities specified in para. 1 nos. 22 and 23 and para. 2, as well as to carry out all other activities that are directly related to the banking activity in accordance with the respective scope of the license or auxiliary activities in relation to this represent, such as in particular the mediation of building loan contracts, of companies and businesses, of investment fund shares, of equity shares, the provision of services in the field of automatic data processing and the sale of credit cards. Furthermore, they are entitled to trade in coins and medals as well as gold bars within the framework of foreign exchange regulations, as well as to rent lockers (safes) with co-locking by the landlord.

(4) The Federal Minister of Finance can change or supplement the list of activities in paragraphs 1 and 2 by ordinance if this is necessary due to the obligations of the Republic of Austria, which are sufficiently specific in terms of content, which result from accession to the European Union; if the list of activities in paragraph 2 is amended or supplemented, the Federal Minister of Finance shall issue the ordinance in agreement with the Federal Minister of Economics and Labour.

(5) When deciding legal disputes arising from banking transactions, the objection that the claim is based on a difference transaction to be assessed as a game or bet is inadmissible if at least one contracting party is authorized to carry out such banking transactions commercially.

(6) § 1346 para. 2 ABGB does not apply to liabilities assumed by credit institutions in the course of their business operations.