

Translation from German

(Only the German version of the Charter shall be binding.)

2010 CHARTER

of the Trusteeship¹ Facility
of the Vienna Bar Association [*Rechtsanwaltskammer Wien*]
"Lawyers' Electronic Trusteeship Register (*eATHB*)"

If hereinafter only the masculine form is used for description of natural persons it shall likewise refer to women and men.

¹ Translator's note: compare: escrow arrangement, hereinafter referred to as "trusteeship"

Part One

Fundamentals

1. Directive

According to Section 10a Austrian Lawyer's Code [*RAO*] the bar associations shall establish trusteeship facilities that serve the purpose of monitoring and securing the duties of lawyers, in particular notification duties, information duties and insurance duties in connection with the acceptance and consummation of contractually assumed trusteeships.

2. Implementation

In fulfilment of the said duty the "Lawyers' Electronic Trusteeship Register (*eATHB*) of the Vienna Bar Association" has been established with the Vienna Bar Association.

3. Contents

This Charter regulates the facilities and tasks of the *eATHB* as well as the rights and duties of the lawyers who are subject to this Charter.

4. Effect on other duties

The other statutory, contractual and professional duties to which a lawyer is subject are neither set aside nor limited by this Charter.

Part Two

Terms and Scope of Applicability

5. Terms

In this Charter the terms listed below shall have the following meaning:

- 5.1. **"Bar Association"**: Vienna Bar Association.
- 5.2. **"Lawyer"**: A lawyer who is authorised to practice in the Republic of Austria and is registered in the lawyers' register of the Vienna Bar Association (Section 1 para 1 in conjunction with Sections 5, 5a *RAO* and/or Sections 18 *et seq.* or 24 *et seq. EiRAG* [Austrian statute on the free exchange of services and the establishment of European lawyers and on the rendering of legal services by internationally active lawyers and lawyers in Austria]) and who is a citizen of the Member States of the European Union or the other signatory states of the Treaty on the European Economic Area and of the Swiss Confederation, who is registered in the register of established European lawyers of the Vienna Bar Association (Sections 9 *et seq. EiRAG*) and authorised to render services as defined in Article 50 of the Treaty on the European Union in Austria in accordance with Article I Part 2 *EiRAG*. Lawyer shall be equivalent to all partnerships or companies of lawyers that are registered in the register of partnerships and companies of lawyers of the Vienna Bar Association (except for civil-law partnerships).
- 5.3. **"Trusteeship"**: All instructions that are accepted by a Lawyer, whether against compensation or not, in the course of which he receives the express written instruction to keep safe and later disburse an amount of money deposited with him to one or several third parties notified to him as beneficiaries in the case of fulfilment of one or several conditions defined in advance.
- 5.4. **"Anonymised Trusteeships"**: A Trusteeship within the scope of which, as an exception, all contracting parties have prohibited the Lawyer from disclosing the

names and other data of the contracting parties when notifying the Bar Association of the Trusteeship (enclosure); this is independent from the duties to disclose as defined in Section 40, 41 of the Austrian Banking Act [BWG] vis-à-vis banks and finance institutions and the auditing duties, ascertainment duties and notification duties as defined in Sections 8a, 8b and 8c of the Austrian Lawyers Code.

Other provisions, such as the Austrian Statute on Developer Contracts [BTVG] shall not be affected thereby.

5.5. **"Uniform Trusteeships"**: Two or more trust instructions that are directly connected by the same underlying transaction. Such a direct connection must be assumed also if the lawyer acts as trustee and handles the financing of the underlying transaction (especially in the form of financing a purchase through a financing credit institution).

5.6. **"Amount held in Trust/Trust Amount"**: The amount to be deposited in accordance with the trust agreement.

5.7. **"Contracting Party"**: The instructing parties under the trust agreement (= parties to the underlying transaction).

The Bar Notification shall be signed by the parties to the trust agreement; the said contracting parties shall receive a certificate from the Bar Association on the notification(s) made.

5.8. **"Underlying Transaction"**: the legal transaction underlying the Trusteeship.

5.9. **"Bar Notification"**: is the summary of the data relevant to the payment transaction that is certified to the contracting parties and the trustee and is generated by the trusteeship module.

5.10. **"Release Seal"**: Electronic signature of the Bar Association for each wire transfer.

5.11. **"Lawyers' Electronic Trust Accounts"**: Accounts managed by licensed banks exclusively for the consummation of Trusteeships within the scope of the *eATHB*,

which have a special security standard (dispositions are processed only if an electronic seal is available), hereinafter referred to as "**Trust Account**".

5.12. "**Bank**": The bank as defined in the Austrian Banking Act that manages the Trust Account.

5.13. "**Licensed Banks**": Those banks, which have concluded a license agreement with the licensor of *eATHB*, UniCredit Bank Austria AG, and have established the technological infrastructure for the processing of wire transfers within the scope of the Lawyers' Electronic Trusteeship Register. The regulations stipulated in the Charter that concern Licensed Banks also relate to the licensor UniCredit Bank Austria AG.

6. Scope of application

6.1. Application to persons

Every Lawyer as defined in Article 5.2 shall be subject to this Charter.

6.2. Application as to the merits

6.2.1. As to the merits this Charter applies to **all Trusteeships** as defined in Article 5.3. unless they are exempt pursuant to Clause 6.2.2.

6.2.2. Exceptions are:

- (a) Trusteeships involving an Amount held in Trust of **less than EUR 10,000** (ten thousand euros), except for those that are subject to the *BTVG* or if the contracting parties expressly request the processing via the *eATHB*.
- (b) Amounts held in Trust that are dedicated to the payment of court fees, taxes, other public levies or fees;
- (c) The receipt of amounts of money within the scope of the collection of a claim or the conduct of court proceedings;
- (d) The receipt, management and distribution of amounts of money within the

scope of activities as administrator in composition or insolvency matters, receiver, curator or asset manager, including the distribution of quotas after the termination of insolvency proceedings.

Part Three

Rights and duties of the Lawyer

7. General Duties

7.1. General Terms and Conditions of Banks

Every Trusteeship assumed by the Lawyer must be consummated independent of the nature of the transaction underlying the Trusteeship, also vis-à-vis contracting parties who are no Banks, in accordance with the

- (a) "General Terms and Conditions for Trust Accounts of Lawyers and Partnerships and Companies of Lawyers" and with the
- (b) "General Terms and Conditions for acting as Trustee in Real Estate Transactions"

as amended from time to time that have been agreed by and between the Austrian Federal Bar Association [*Rechtsanwaltskammertag*] and the Bank and Insurance Division of the Austrian Federal Economic Chamber.

7.2. Form of Trust Agreement

The Trust Agreement shall be concluded in writing by and between all contracting parties.

7.3. Inadmissibility of financial participation

The Lawyer shall be prohibited from assuming suretyships and from granting any loans or credits in connection with the assumed Trusteeship and from the consummation of a Trusteeship for his own account.

As regards Trusteeships of persons who live in the same household with the trustee, and of the trustee's relations, which shall include the trustee's spouse and persons who are related or related by marriage to the trustee directly or in the second degree of the collateral line, insurance cover shall be excluded for those persons and this fact shall be disclosed to all contracting parties.

7.4. Use of Forms

The Lawyer shall use the forms stated in the enclosure for the fulfilment of his recording and notification duties as defined by this Charter.

8. Account Management

8.1. Trust Account

8.1.1. The Lawyer shall reserve Trust Accounts at the Licensed Banks he employs for the consummation of Trusteeships and shall instruct those Banks to send a list of such accounts to the *eATHB*.

8.1.2. In the case of a Uniform Trusteeship, the Lawyer shall be entitled to manage only one trust account provided that all Trusteeships concern the same Amount held in Trust. If this is not the case or if there is only a factual financial relation between the individual Trusteeships (such as in the case of legal transactions that are subject to the *BTVG*) the Lawyer shall be obliged to use separate Trust Accounts that are secured electronically.

8.1.3. The Amount held in Trust shall be kept safe only in the form of a credit note on the Trust Account. If the trust property is not deposited in the form of a wire transfer to the trust account, the Lawyer shall ensure that the Amount held in Trust is paid into the trust account without delay (Section 43 para 1 RL-BA).

8.2. Limitations on dispositions

8.2.1. On the occasion of signing the contract related to the Trusteeship the Bar Notification shall be signed by the contracting parties personally, without any modifications in handwriting or machine writing and without adding of data relevant to disbursement.

It shall not be permitted to scan the Bar Notifications or to otherwise prepare them as an electronic document and to send them to the *eATHB*. This form shall be sent to the *eATHB* by the Lawyer upon request by the *eATHB*.

8.2.2. Disposition over the Amount held in Trust by the Lawyer on the Trust Account shall be permitted exclusively in the form of a wire transfer. The Lawyer may provide for and effect wire transfers to his own account for coverage of own claims and/or transfers of charges only after repayment of the principal.

8.3. Bar Notification

8.3.1. The Lawyer shall ensure that the Bar Notification is signed by the parties to the underlying transaction and by the Lawyer and is provably sent to the *eATHB* of the Bar Association together with the documents in accordance with Article 16 prior to the first disposition of the Amount held in Trust.

8.3.2. The same (formal) requirements shall apply to the case that the trust agreement or other instructions or statements contained in the Bar Notification that are relevant to disbursement are modified. Modifications of the Bar Notification shall require the express approval by the contracting parties.

It shall be inadmissible to state as recipient in the Bar Notification the trustee's own account, the account of a partner within the partnership/company/law firm and of a staff member or shareholder of the partnership/company of lawyers which acts as trustee except in the case defined in Article 8.2.2. The statement of an electronic Trust Account of the Lawyer shall be admissible.

8.4. Account statements

The Lawyer shall ensure that an account excerpt is sent electronically to the *eATHB* upon every movement on the Trust Account.

9. Duty to inform

The Lawyer shall provably inform the contracting parties of this Charter prior to assuming the trust instruction and shall inform them (except in the cases of Article 10.2.3.) that the Trusteeship shall be consummated in accordance with the

provisions of this Charter.

10. Recording duties and notification duties

10.1. Trusteeship register

The Lawyer shall enter all Anonymised Trusteeships with a consecutive number in a trusteeship register that is kept in a timely, chronological and consecutive manner so that the related hardcopy file of the Lawyer can be identified exactly and quickly.

10.2. Notification Duty

10.2.1. Notification:

The Lawyer shall notify the *eATHB* of the Bar Association of every Trusteeship that is subject to the Charter.

10.2.2. Declaration of conclusion:

The Lawyer shall be obliged to set the status of the Trusteeship in the trusteeship module to "historical" upon conclusion (change of status).

10.2.3. Anonymised Trusteeships:

In those cases in which the contracting parties prohibit the Lawyer in writing from notifying the aforementioned data regarding a contractually accepted Trusteeship, the Lawyer shall restrict the notification of such Trusteeship to the mere statement of its acceptance, its consecutive number in his trusteeship register under which the said anonymised Trusteeship is kept, as well as to the conclusion deadline. Upon conclusion of the Trusteeship a declaration of conclusion shall be sent to the Trusteeship Register.

11. Protection of secrecy and declarations of consent under data protection law

11.1. Banking Secrecy

The Lawyer shall be obliged to release the Bank managing the Trust Account vis-à-vis

the *eATHB* of the Bar Association from the duty to maintain banking secrecy with regard to dispositions over the Trust Account.

11.2. Professional secrecy

The Lawyer shall be obliged to provide for a release in the trust agreement by the contracting parties from the professional duty to maintain secrecy vis-à-vis the *eATHB*.

11.3. Other duties to disclose

In order to check due consummation of his assumed Trusteeships in accordance with Section 17 para 1 letter g *RAO* the Lawyer shall have the parties release him from his professional duty to maintain secrecy vis-à-vis the trusteeship facility in order to provide related information and to inspect the documents regarding all Trusteeships assumed by him including the register to be kept by him.

Moreover, the Lawyer shall comply with the duties to disclose as defined in Sections 40 and 41 *BWG* vis-à-vis banks and finance institutions and the auditing duties, ascertainment duties and notification duties as defined in Sections 8a, 8b and 8c *RAO*.

12. Fee

12.1. The Lawyer shall be prohibited from claiming or accepting a separate fee on grounds of to or for fulfilment of the duties in connection with this Charter.

12.2. This shall not include the Lawyer's right to claim a fee for the acceptance of the Trusteeship, in particular in accordance with Section 14 of the Austrian Statute on Lawyers' Tariffs as well as out-of-pocket expenses and cash expenses.

Part Four

The Trusteeship Register

13. Establishment of the Trusteeship Register

- 13.1 The trusteeship facility of the Bar Association is based on Section 10a *RAO* in conjunction with Section 23 *RAO*.
- 13.2 The deputy president who is in charge according to the Bar Association's Committee's allocation of tasks shall be responsible for the facility.
- 13.3 A department, the *eATHB*, shall be established within his scope of responsibility that shall have to register the trusteeship notifications received and shall check the same for their formal accuracy and completeness and shall claim additional records thereto, if necessary. Furthermore, the said department shall be responsible for the release of the electronically secured accounts in the case that the notifications are complete.
- 13.4 In the case of a suspicion of irregularities or received complaints the deputy president in charge and, in the case of his inability, the president of the Bar Association shall be notified without delay. The former shall have to decide whether the Lawyer concerned must be instructed to submit a reasoned statement or whether an inspection of the law firm/office must be carried out immediately.
- 13.5 If possible, the law firm/office must be inspected without delay by two members of the committee department in charge. The Lawyer concerned shall grant the said two members of the committee department access to the law firm/office and inspection of all files and registers concerned in accordance with Section 10a *RAO*. Staff members of the *eATHB* may also participate in such inspections.
- 13.6 A report shall be prepared on the result of the inspection that shall include a recommendation of measures to be taken.

14. Organisational tasks of the trusteeship facility

14.1. Trusteeship register

The Trusteeship Register shall maintain a register with consecutive numbering of Trusteeships notified to the Bar Association that are subject to this Charter which shall bear the name "Lawyers' Electronic Trusteeship Register of the Vienna Bar Association".

14.2. Certificates

The *eATHB* shall be obliged to certify registration of the Trusteeship to the Lawyer, the contracting parties or other beneficiaries and to the Bank managing the Trust Account or financing the transaction within a reasonable period of time. Upon receipt of the said certificate disposition over the trust account shall be released.

14.3. Obstacles for release

The *eATHB* shall deny the release of a notified Trusteeship if

- (a) the Trusteeship does not fall within the scope of application the Charter or
- (b) the notification contains a formal error that may constitute an obstacle to processing.

The *eATHB* shall be obliged to timely notify the Lawyer of the reason for denial of release.

15. Control

15.1. The *eATHB* shall be notified of acceptance of a Trusteeship electronically and in writing by means of the enclosed forms. On the occasion of signing the contract related to the Trusteeship the Bar Notification shall be signed by the parties to the underlying transaction in accordance with Article 8.2.1 hereof and shall be provably sent to the *eATHB* by fax or in the original if the trusteeship facility so requires.

15.2. It shall be inadmissible to state as recipient the trustee's own account, the account of

his partner within the partnership/company or of a staff member or partner or shareholder of the partnership/company of lawyers that acts as trustee except in the case of Article 8.2.2. The statement of an electronic trust account of the Lawyer as target account shall be admissible.

15.3. The documents that allow monitoring of the payment flow shall be submitted to the *eATHB* together with the Bar Notification, in particular

- records regarding the underlying transaction,
- evidence of existence of a written trust instruction,
- evidence of representation including powers to collect as well as
- resolutions on court appointment and/or resolutions on authorisation, if applicable.

A trustee shall not be permitted to sign the Bar Notification for one of the contracting parties, even if he has been authorised to do so.

15.4. Except for the case of Article 15.3 of this Charter, the *eATHB* shall confirm to the Lawyer, the contracting parties and other beneficiaries and the Bank managing the Trust Account and the financing Bank the registration of the Trusteeship within a reasonable period of time of receipt of the electronic notification and of the complete documents. Upon receipt of the said certificate disposition over the trust account shall be released.

16. Insurance

16.1. A Trusteeship assumed by a Lawyer shall be handled by the Lawyer in his own responsibility and subject to his personal liability.

16.2. Irrespective thereof the Bar Association shall take out an insurance against breach of trust for all Trusteeships managed via the *eATHB*.

Insurance cover per event insured shall be EUR 8 (eight) million, the maximum

amount of compensation for all events insured for all insured persons that occur within an insurance period shall be limited at EUR 16 (sixteen) million.

The exact amount of coverage of the insurance against breach of trust can be found on the website of the Vienna Bar Association under www.rakwien.at/Service/Treuehandbuch.

17. Costs of the Trusteeship Facility

- 17.1. The costs of the *eATHB* and of the premium of the insurance taken out shall be financed via contributions from the Lawyers.
- 17.2. The contributions shall be fixed by the General Assembly in accordance with the principles of Section 27 *RAO*. The contributions shall be collected together with the Bar contribution.

Part Five

Entry into force

18. Entry into force

The revised version of the Charter of the Trusteeship Register of the Vienna Bar Association shall enter into force on 1 January 2010.

The Charter shall apply to all Trusteeships that the Lawyer assumes after the end of 31 December 2009.

Vienna, 15 December 2009

The Committee of the Vienna Bar Association

(Full Committee)

Enclosures:

Form 1 Notification

Form 2 Anonymous Trusteeship

Form 3 Declaration of prohibition

ADVM Code:

Lawyer:

NOTIFICATION

of a trusteeship assumed within the scope of the *eATHB*

(1) **Date of instruction/acceptance of the trust instruction:** _____

(2) **Consecutive number in the Trusteeship Register:** ____/____

(3) **Settlor** (instructing party):

Name, date of birth _____

Address: _____

Account number / sort code: _____/_____

(4) **Trustee's bank details**

Account number / sort code / currency: _____/_____/EUR

(5) **Transaction underlying the trust instruction:**

(e.g. purchase of real property, condominium, shares in a company, etc.)

(6) **Amount held in trust:** EUR _____,-

Place, Date

Stamp of the law office

Signature

Signature of the beneficiary

Signature of the payor/s

(7) **a. Party/parties entitled under the trust instruction** (beneficiary)

Name, date of birth: _____

Address: _____

Account number / sort code: _____/_____

b. Additional beneficiaries (e.g.: pledgee)

Name, date of birth: _____

Address: _____

Account number / sort code: _____/_____

(8) **Financing Bank /Address:** _____

(9) Envisaged deadline (no statement = one year): _____

By signing this form the Trustee and the contracting parties confirm that a written trust instruction has been concluded in accordance with and subject to Section 10a para 1 *RAO* as amended.

The above data shall be registered by the Vienna Bar Association in the *eATHB* and the trustee, the settlor(s), the beneficiary(ies) and the financing bank and the bank managing the trust account shall be notified thereof by being sent a certificate of registration.

If you do not receive such a certificate within fourteen days or if such certificate contains errors, please contact the trusteeship register department of the Vienna Bar Association without delay.

Place, Date

Stamp of the law office
Signature

Signature of the beneficiary

Signature of the payor/s

ADVM Code:

Lawyer:

Place and date

NOTIFICATION

of an **anonymous** trusteeship assumed within the scope of the *eATHB*

1. **Date of instruction/acceptance of the trust instruction:** _____

2. **Consecutive number in the Trusteeship Register:** _____

3. **Envisaged deadline for completion:** _____

Subject to my professional responsibility as a lawyer I declare that all parties to the underlying transaction have signed the declaration of prohibition and have been informed by me that no insurance cover is connected to an anonymous notification of a trusteeship.

The declaration of prohibition is attached hereto.

Stamp of the law office and signature

Declaration of prohibition

The settlor(s) _____ and the beneficiary(ies) _____ have instructed Mr/Mrs _____, lawyer / _____, partnership/company of lawyers to accept and consummate a trusteeship.

Mr./Mrs. _____, lawyer/ _____, partnership/company of lawyers has notified us that trusteeships can be consummated only in accordance with the provision on the Lawyers' Electronic Trusteeship Register (*eATHB*) of the Vienna Bar Association. Copies of such provisions were handed out to us.

Moreover we have been instructed that a waiver of the consummation of the present trust instruction via the *eATHB* of the Vienna Bar Association shall result in the loss of insurance coverage (insurance against breach of trust). The controlling steps provided in accordance with the provisions of the *eATHB* of the Vienna Bar Association would not be taken either.

Being aware of these facts we nonetheless prohibit the consummation of the present trust instruction in accordance with the provisions on the *eATHB* of the Vienna Bar Association.

We shall receive copies of this declaration.

Place, Date

Signature(s) of the settlor(s)

Signature(s) of the beneficiary(ies)