

## Translation from German

# **GUIDELINES FOR PRACTISING THE PROFESSION OF LAWYER (RL-BA 2015)**

StF: [Resolution of 26.09.2015, published on 28.09.2015](#) (only available in German)

### **Amendments**

[Resolution of 12.05.2017, published on 15.05.2017](#) (only available in German)

[Resolution of 25.09.2020, published on 28.09.2020](#) (only available in German)

[Resolution of 24.06.2021, published on 30.06.2021](#) (only available in German)

### **Text**

Where gender-specific expressions are used in these Guidelines, they equally refer to persons of both sexes.

## **Part 1**

### **Fundamental principles of practice**

**Section 1.** (1) A lawyer, who is distinguished by his training and continuing education in jurisprudence and economics, his secrecy, trustworthiness and independence, is counsel for, advisor to or representative of his clients in all public and personal matters, including defence counsel in criminal matters. In addition, a lawyer's vocation is to advocate the defence of fundamental rights and to safeguard liberty and public peace, to contribute to the prevention of conflicts and to settle conflicts out of court and to assist as representative of individual interests and concerns that can be realised by lawful means, being bound by his conscience and social competence.

(2) The profession of lawyer, which is understood in that way, is indispensable for the rule of law; these personal qualities and professional tasks shall therefore determine a lawyer's conduct vis-à-vis the bodies of the community, his clients, his profession and third parties both when practising his profession and in his private life. A lawyer has solemnly vowed fulfilment of his duties. He is, in general, obliged to safeguard the honour and reputation of his profession through his integrity and sense of honour in his conduct. He shall be responsible vis-à-vis his profession for any compromise of honour and reputation of his profession by his conduct within and outside his professional life.

(3) The following detailed regulations on the one hand constitute the guidelines for practice of the profession issued by the Austrian Bar [ÖRAK] in accordance with Section 37 of the Austrian Lawyers' Code [*Rechtsanwaltsordnung/RAO*] and, on the other hand, a partial codification of current established views of the profession.

## **Part 2**

### **Lawyers, their profession and the reputation of the profession**

**Section 2.** (1) Any profession-related handling of third-party matters by a lawyer, be it under a client-lawyer relationship or by an appointment procedure by a court or public authority, shall be done as part of his practice, except for activities as a representative of a corporate body.

(2) A lawyer shall also be deemed to act as part of his practice if he does not handle third-party matters directly but appears as a lawyer in connection with those activities.

(3) In the case of doubt one has to assume that a lawyer handles third-party matters as part of his practice.

(4) Any other activity of a lawyer shall not be deemed to be done as part of his practice.

**Section 3.** A lawyer may only assume an obligation for himself or a third party (including in matters unrelated to his profession) if, after careful consideration at the time the obligation is assumed, proper fulfilment of the same could be expected.

**Section 4.** A lawyer shall settle his liabilities, whether related to his profession or not; well-founded objections to a claim shall be permitted.

**Section 5.** A lawyer shall be prohibited from engaging in any unauthorised legal counselling activities on a commercial basis or any other unauthorised legal service.

### **Part 3**

#### **The lawyer-client relationship**

#### **Chapter 1**

##### **Duty of loyalty**

**Section 6** A lawyer's utmost professional duty is loyalty towards his client. Any interests of the lawyer, the interests of third parties and consideration for fellow lawyers shall be subordinate in conflicts.

#### **Chapter 2**

##### **Instruction**

**Section 7.** A lawyer may normally accept instructions and power of attorney only from the person whose interests he has been entrusted with.

**Section 8.** A lawyer may only accept an instruction from a third party if the client whose interests he is supposed to safeguard (as well) is not unreasonably restricted in the free choice of his lawyer.

**Section 9.** A lawyer shall be entitled to enter into a written agreement with his client that limits liability arising from his professional activities in accordance with the general rules of civil law to the minimum statutory third-party liability amount from time to time.

#### **Chapter 3**

##### **Conflicts of interests**

**Section 10.** (1) If safeguarding the interests of the relevant clients in the cases a lawyer has been entrusted with may be compromised as a result thereof, the lawyer shall not, in order to fulfil his duty of loyalty, accept a new instruction and shall immediately discontinue his services for all clients concerned, in particular if and when

1. there is a risk that the duty to maintain secrecy about information which was entrusted to him by a former client or which he otherwise obtained in the course of representation might be breached, or



2. knowledge of matters of a former client were to constitute an unfair advantage for the new client, or
3. there is a conflict of interests between those clients, or
4. a lawyer's independence in fulfilling the instructions seems to be not guaranteed vis-à-vis a client, even if only one.

(2) The provision of paragraph 1 shall apply *mutatis mutandis* to a lawyer who is a representative of a corporate body if he acts in his capacity as lawyer (Section 2).

**Section 11.** Where a lawyer has accepted an instruction from only one client to conduct contract negotiations or to draft a contract, he shall be entitled to represent that client in a legal dispute arising out of that contract, provided that also the other party has obtained legal advice from a professional party representative or at the time of commencement of his work the lawyer has expressly stated that he would only represent his client.

**Section 12.** (1) A lawyer shall be authorised to file the tax returns related to the legal transaction concerned (e.g. real estate income tax [*ImmoESf*] returns, land acquisition tax [*Grunderwerbsteuer*] returns) also for another party, even though he is the counsel for only one client as defined in Section 11, upon separate instruction and authorisation by that other party.

(2) If, subsequently, a legal dispute arises between the clients over circumstances which became known to the lawyer in connection with the tax returns related to the legal transaction, the lawyer shall not be allowed to represent any of those clients in such a legal dispute.

## **Chapter 4 Financial practices**

**Section 13.** A lawyer shall not use funds or other assets which were handed over to him for a specific purpose other than for their designated purpose and shall not withhold same.

**Section 14.** If a lawyer does not exercise the power granted to him pursuant to Section 19(3) RAO, he shall immediately surrender the funds.

## **Chapter 5 Fees**

**Section 15.** (1) A lawyer shall be free to agree his fees, including lump-sum fees or contingency fees (Section 16(1) RAO, Section 2 of the Austrian Statute on Lawyers' Tariffs [*Rechtsanwaltstarifgesetz/RATG*]).

(2) When accepting a new instruction, a lawyer shall advise his client of the calculation basis for the fees and of his right to issue interim bills of fees.

(3) If a lump-sum fee is agreed for a specific activity of a lawyer, it shall be calculated by reasonably taking the services to be expected and the client's interests into account.

(4) If a lawyer agrees to charge his fee on the basis of hours worked, he shall keep time records of the actual hours worked.



**Section 16.** (1) A lawyer shall be entitled to issue interim bills of fees to his client at reasonable intervals and at least once a year for the services rendered until then.

(2) A lawyer shall be entitled to ask for reasonable payments on account at any time.

(3) Unless a lump sum has been agreed, a lawyer's client may, at reasonable intervals, ask for an interim bill of fee or statement of the services rendered so far and, if billing by the hour has been agreed, for a statement of the hours worked by the lawyer and his staff so far.

#### **Part 4**

##### **A lawyer's position in relation to the opposing party and witnesses**

**Section 17.** A lawyer must not accept an instruction the carrying out of which would compromise the honour and reputation of the profession. He may only use means that are in compliance with the law, honour and reputation of the profession. He shall neither pursue claims with inappropriate harshness nor announce or apply measures that are not justified from an objective point of view.

**Section 18.** Contact with witnesses before or during pending proceedings shall be permitted but any form of inadmissible influencing must be avoided.

**Section 19.** A lawyer must not circumvent a lawyer of another party, not even in his own matters.

#### **Part 5**

##### **A lawyer's relationship with colleagues**

**Section 20.** A lawyer may accept representation of a party in lieu of another lawyer without the latter's consent only if the client terminates the existing representation relationship without delay.

**Section 21.** (1) A lawyer shall neither start an unnecessary dispute with nor personally attack the lawyer of the other party.

(2) In the case of a personal dispute with another lawyer arising from practice of the profession who is a member of the same Austrian Bar Association lawyers shall resort to the committee of the Bar Association for mediation.

**Section 22.** (1) Unless agreed otherwise, a lawyer who has been asked to substitute for another lawyer shall be entitled to one half of the fee according to the lawyers' tariff and reimbursement of expenses; the lawyer requesting substitution shall be personally liable for those amounts.

(2) Unless agreed otherwise, the fee for acting as counsel at an appellate hearing as laid down in Section 23(9) RATG shall amount to 25% of the fee payable to the requesting lawyer for the submissions in the appellate proceedings.

**Section 23.** If a lawyer uses the services of a foreign lawyer from a CCBE member state, the CCBE Code of Conduct shall apply subject to Part 14 of these Guidelines.

## **Part 6**

### **The lawyers and their professional organisation**

**Section 24.** Every lawyer shall maintain the health insurance (group contract or other admissible insurance contract) which he has chosen according to the articles of association of the insurance provider and as notified to the Bar Association on the occasion of his registration for as long as he is listed in the Register of the Bar Association and pay the relevant recurring premiums or contributions when due and promptly notify the competent Bar Association of any change in his health insurance without being requested to do so.

**Section 25.** If a lawyer takes on representation in a case against another lawyer, he shall notify the committee of the Bar Association of which the lawyer concerned is a member including a short description of the facts and circumstances of the case and report on the outcome of such representation.

**Section 26.** A lawyer shall follow the instructions given to him by the Bar Association and cooperate with the committee in reviews it carries out pursuant to Section 23(2) RAO.

**Section 27.** In the case of a search of his office or home a lawyer shall insist that a representative of his Bar Association be called in to attend the official action to safeguard his duty to maintain secrecy and the lawfulness of the search procedure.

## **Part 7**

### **Joint practice**

**Section 28.** (1) When practising his profession, a lawyer shall state his first name and his surname as well as the professional title of "*Rechtsanwalt*". Established European lawyers providing services and internationally active lawyers shall comply with the provisions of the *EIRAG*.

(2) Partnerships or companies of lawyers who are registered in the Business Register shall use their business name as entered in the Business Register.

(3) If a lawyer or partnership or company of lawyers refers to a person who is no lawyer vis-à-vis a third party, the professional qualification of that person must be stated clearly.

(4) In addition to the details stated in paragraphs 1, 2 and 3 a short name may also be used.

**Section 29.** Articles of association or partnership agreements for companies or partnerships of lawyers and all agreements regulating the organisational relationship shall be made in writing to the extent that they are concluded with persons who are no lawyers; any modification or amendment shall require written form and shall therefore be made in writing and a copy thereof shall be submitted to the committee of the Bar Association that is the competent body pursuant to Section 23 RAO.

**Section 30.** When establishing a partnership/company to practise the profession of lawyer with a person who is no lawyer (Section 21c RAO), lawyers shall reserve the right to terminate the corporate or partnership relationship with that person in any case

where that person loses the capacity which allowed him to form the partnership/company.

**Section 31.** When concluding articles of association or a partnership agreement lawyers shall in any case provide that any disputes arising out of the organisational relationship shall exclusively be settled by an arbitral tribunal consisting of one or more lawyers.

## **Part 8 Lawyers and trainee lawyers**

**Section 32.** A lawyer shall remunerate trainee lawyers reasonably.

**Section 33.** (1) A lawyer shall enable his trainee lawyers to attend training courses as defined in Section 1(2)(f) *RAO* to the extent required by law and in reasonable proportion to the duration of the employment relationship.

(2) If such training courses are held during the trainee lawyer's normal working hours, his absence from work shall be considered justified inability to work.

(3) A lawyer shall bear reasonable costs for the number of training courses defined in Section 1(2)(f) *RAO* (seminar fees) prescribed by law and subject to Section 33(1) hereof.

**Section 34.** (1) Trainee lawyers shall attend training courses for at least 42 half days. The participation in training courses has to take place during the effective service with a lawyer (Federal Legal Agency) or at least in close timely connection of up to 6 months with the effective service, the passing of the bar exam or to the registration in the list of lawyers and must serve the preparation for the bar exam or the training to become lawyer.

(2) Attendance at training courses of at least 24 half days is a prerequisite in order to take the bar examination as defined in Section 2(2) of the Austrian Bar Examination Act [*Rechtsanwaltsprüfungsgesetz/RAPG*].

(3) The Bar Associations shall consider a trainee lawyer's attendance at training courses of at least 12 half days a reason worthy of being taken into account as defined in Section 15(2) *RAO*.

**Section 35.** (1) Training courses serve the purpose of preparing for the bar examination and training to become a lawyer. They shall teach the skills and knowledge required for the purposes of Section 1 *RAPG* – under reservation of para 2 – and the examination subjects of the bar examination as defined in Section 13 *RAPG* and Section 20 *RAPG* shall be considered.

(2) Training courses serving job-related personal, social or methodical competences (soft skills) are credited up to the extent of up to 6 half-days.

(3) A creditable half training day shall last at least three hours.

**Section 36.** Pursuant to Section 28(1) *RAO* the Bar Associations shall only recognise events as training courses which meet the criteria of Section 35 and are held in their circuit.

**Section 37.** For training courses which are obligatory for trainee lawyers written evidence of attendance shall be required. Such evidence shall include:

1. organiser and lecturer(s);
2. topic and type of training;
3. date and duration of training and
4. evidence of the fact that a Bar Association has recognised a training course held in its circuit but not by the Bar Association itself as defined in Section 28(1)(m) RAO.

**Section 38.** The Bar Association in whose circuit the trainee lawyer is registered or has most recently been registered shall confirm pursuant to Section 7 *RAPG* that the prerequisite for admission to the bar examination as required by Section 2(2) *RAPG* has been fulfilled.

**Section 39.** (1) The training lawyer shall confirm vis-à-vis the Bar Association the date at which the trainee lawyer joined his law firm and the date at which the trainee lawyer left his law firm as well as the extent of employment (expressed as the number of working hours) in writing (certificate of employment [*Verwendungszeugnis*]) within 14 days of the date the trainee lawyer left the law firm.

(2) The training lawyer shall notify the competent Bar Association in writing of any changes in the number of weekly hours to be worked by the trainee lawyer within 14 days of the date such changes occurred.

## **Part 9**

### **Management of the law firm**

**Section 40.** (1) A lawyer shall manage his law firm with due care and prudence.

(2) A lawyer shall be responsible for properly instructing and supervising office clerks, trainee lawyers, shareholders or partners who do not pursue the profession of lawyer and all third parties insofar as they have been entrusted with matters of the law firm and client matters, any form of electronic data processing included. For this purpose the lawyer shall, through evidential contractual instructions on the existing professional duties to maintain secrecy, ensure that secrecy will also be observed by the office clerks, trainee lawyers, shareholders or partners who do not pursue the profession of lawyer and third parties who are in charge of matters of the law firm and client matters, i.e. all ancillary staff.

(3) The lawyer is authorised to make use of the services of an external data provider, observing the existing professional duties of secrecy and legal data protection requirements for the purpose of electronic data processing, to the extent

1. the interests of the client are observed,
2. the lawyer carefully selects the external data provider,
3. the lawyer evidentially obliges the external data provider to inform him immediately in case of a house search,
4. an adequate level of data security and confidentiality of the data is guaranteed and the technical and organisational measures are taken, under consideration of the state of technology, and
5. the lawyer informs the client on the categories of the external data provider engaged and the data services to be rendered by such.

(4) A lawyer shall ensure that facilities to use Electronic Legal Communication [*Elektronischer Rechtsverkehr*] with the courts and to retrieve data from the Business

Register and the Land Register will be available to him which are necessary to safeguard, pursue and enforce the interests which are entrusted to him.

**Section 41.** (1) If a lawyer uses electronic signatures in connection with his practice, he shall

1. use a certification agency which has been recognised by the Austrian Bar;
2. state the name of the certification agency appropriately;
3. in principle, use the signatures of a lawyer's ID and in all other cases he shall ensure by appropriate organisational measures that the lawyer's duty to maintain secrecy (Section 9 RAO) will be fulfilled.

(2) The certificate must in any case include the name of the lawyer, his ADVm code and his professional title of lawyer.

(3) The Austrian Bar shall recognise certification agencies that undertake

1. to immediately notify the Austrian Bar of every certificate that is granted as well as of any change to or revocation of the same;
2. to immediately revoke certificates at the request of the Austrian Bar or the Bar Association where the lawyer concerned is registered.

(4) Recognition of a certification service provider shall be published by the Austrian Bar in the Austrian *Anwaltsblatt* [Lawyer's Gazette] and on the website of the Austrian Bar.

**Section 42.** (1) Before carrying out a search of the Register of Persons of the Land Register on behalf of another for entries regarding that individual him/herself lawyers shall identify that individual and obtain a power of attorney for that search. Where the instruction is given by a representative of that person, lawyers shall ask for proof of the representative's authorisation, in particular for searches of the Register of Persons; in the case of professional counsel reference to the power of attorney granted to them (analogous to Section 30(2) ZPO) shall suffice.

(2) A lawyer shall keep records on inspections of the Register of Persons of the Land Register, which shall include the following details:

1. date of the search;
2. first name and surname of the individual being the subject of the search;
3. reference to the relevant office file and, if applicable, to the court file, the specific instruction given, the type of identification and, if applicable, the power of representation.

(3) A lawyer shall retain the records defined in paragraph 2 for a minimum of three years.

**Section 43.** (1) A lawyer shall ensure that third-party money is always paid into a client account as defined by the lawyers' terms and conditions for client accounts with a credit institution that is subject to public supervision.

(2) Lawyers shall pay third-party money to the beneficiary without unnecessary delay unless there is a reason for keeping it.

(3) If there is such a reason, lawyers shall keep the third-party money in a lawyer's client account to be separately opened for that purpose.

(4) Lawyers shall keep records on third-party monies which enable them to account therefor at any time. The accounts of a lawyer into which third-party monies were paid shall always have a credit balance which is at least equal to the total of the third-party monies entrusted to the lawyer.

(5) If a lawyer acts as escrow agent in real estate transactions he shall comply with the general terms and conditions agreed by and between the Austrian Bar and the Federal Finance, Credit and Insurance Division [*Bundessektion Geld-, Kredit- und Versicherungswesen*] as amended from time to time. They will be published as an Annex to these Guidelines from time to time.

(6) A lawyer shall allow one or more agents authorised by the competent Bar Association in the exercise of its power as laid down in Section 23 RAO, who shall be subject to the obligation to maintain secrecy, to inspect his client accounts and the relating records and documents and shall provide information.

(7) In debt collection matters and asset management matters a lawyer may conclude an agreement with his client that deviates from the principle of paragraphs 2 and 3. However, regular accounting must be done at least on an annual basis.

**Section 44.** A lawyer shall ensure that testamentary dispositions, advance healthcare directives, precautionary powers of attorney for health care, property and/or finances and other instruments and documents accepted for safekeeping will be kept safe in an appropriate manner. He shall ensure that last wills and testaments will be registered in a register of last wills and testaments which is accessible to court commissioners [*Gerichtskommissäre*], that advance healthcare directives will be registered in a public register established for such directives and shall keep internal records of all those instruments and documents as to which instruments and documents of that kind were deposited with his office and of the place where they are kept safe.

**Section 45.** A lawyer shall pay office clerks (except for apprentices and interns) at least the amount of remuneration fixed by the remuneration policy resolved by the Assembly of Representatives.

**Section 46.** Except for participating interests permitted under Section 21c RAO a lawyer may not agree on any financial participation in or share of the law firm's financial result with a trainee lawyer, an office clerk or a third party.

## **Part 10 Lawyers and the public**

**Section 47.** (1) Lawyers shall mainly advertise by means of the quality of their professional services.

(2) Advertising shall be permitted, provided it is true, objective, in line with the honour and reputation of the profession, the professional duties and the function of the lawyer in the area of administration of justice.

(3) The following shall not be permitted (non-exhaustive list):

1. commending oneself through blatant advertising;
2. comparative advertising and referring to a specific other law firm;
3. soliciting of clients by taking advantage of a predicament;
4. making available forms of power of attorney to third parties for distribution to an undefined group of persons;
5. naming clients without their approval;
6. offering or granting advantages for soliciting clients.

**Section 48.** A lawyer shall reasonably ensure that he will not be advertised by third parties, in particular by the media, in violation of professional standards.

**Section 49.** When dealing with the media, a lawyer shall consider the interests of his clients, the honour and reputation of the profession and his professional duties. Publications in the media in connection with a lawyer-client relationship shall be permitted upon the client's express consent, provided that, after careful consideration, the lawyer considers them to be in the client's interest.

## **Part 11**

### **Lawyers as legal aid representatives**

**Section 50.** If a lawyer is appointed a client's legal aid representative, he shall act with the same due care and diligence as when representing other clients.

**Section 51.** As a client's legal aid lawyer he may ask for a fee only if and to the extent that either the opponent who has lost the case reimburses the costs (Section 16(2) RAO) or the client is ordered to pay the lawyer according to the tariff pursuant to Section 71 of the Austrian Code of Civil Procedure [*Zivilprozessordnung/ZPO*].

**Section 52.** As long as a lawyer is appointed for a client under legal aid he may not accept representation of the client in that matter for a fee; he may, however, accept remuneration offered by his client upon conclusion of such representation or voluntary remuneration offered by a third party even before.

**Section 53.** Immediately after conclusion of legal aid representation and in any case after the end of every calendar year the lawyer shall present a statement of his services and the fee to which he is entitled for such services to the committee of the Bar Association.

## **Part 12**

### **The lawyer and his continued education**

**Section 54.** (1) All lawyers, meeting the requirement of continued education, according to section 10 para 6 RAO, are obliged to maintain and enlarge their knowledge required to exert the profession and to keep it updated.

(2) The obligation for continued education consists in the extent of at least 36 hours within a period of 3 calendar years. This obligation is met by participation in appropriate professional educational seminars (worldwide), both in form face to face as well as in digital form (or by personal study). To meet the required extent personal study in the extent of a maximum of 18 hours may be credited.

(3) The adequate time spent for appropriate professional activities as lecturer, examiner, author of professional articles or reviews of law may be credited to the extent of the educational measures. Also time spent for the preparation for lectures and the activity as examiner is to be credited. Such is to be credited with the double of the time of lecturing in general.

(4) The lawyer is obliged, as evidence to meet the obligation of education, to document such. Upon request it is to be transmitted to the bar. The bar is authorised

to review the evidence and the documentation. To such purpose the lawyer is obliged to grant the necessary information to the bar and submit the necessary documents.

(5) The obligation to document the meeting of the obligation for continued education starts in the first calendar year following the first registration in the list of lawyers.

**Section 55.** *Abolished.*

**Section 56.** *Abolished.*

**Section 57.** *Abolished.*

### **Part 13**

#### **Scope of application**

**Section 58.** (1) Where these Guidelines relate to lawyers, they shall in terms of rights and duties equally apply to trainee lawyers, partnerships or companies of lawyers and the natural persons representing the same unless the Guidelines expressly provide otherwise or are inapplicable due to the status of a trainee lawyer or the legal nature of a partnership or company of lawyers.

(2) In the case of cross-border activities as defined in Article 1.5 of the Code of Conduct for European Lawyers the lawyer shall also be subject to that Code of Conduct in the version adopted as binding by the Assembly of Representatives from time to time in accordance with Sections 37 and 40 RAO.

### **Part 14**

#### **Entry into force; Transitional provisions**

**Section 59.** (1) These Guidelines shall enter into force on 1 January 2016.

(2) Upon entry into force of these Guidelines, the Guidelines for Practising the Profession of Lawyer and for Monitoring Fulfilment of the Duties of Lawyers and Trainee Lawyers (*RL-BA 1977*) and the Guidelines for the Education and Training of Trainee Lawyers (Education and Training Guidelines - *Ausbildungsrichtlinie/RL-RAA*) as amended on 31 December 2015 shall cease to be effective, subject to paragraphs 3 and 4.

(3) The Guidelines for Practising the Profession of Lawyer and for Monitoring Fulfilment of the Duties of Lawyers and Trainee Lawyers (*RL-BA 1977*) as amended on 31 December 2015 shall continue to apply to facts and circumstances up to and including 31 December 2015.

(4) The obligations under Section 29 shall in any case apply to all articles of association or partnership agreements which were concluded after 31 December 2015. If agreements, which could be made orally so far, are amended on or after 1 January 2016, Section 29 shall then fully apply to those partnership agreements as well.

(5) Section 44 *RL-BA 1977* as amended shall remain in force until the Assembly of Representatives has issued a new minimum remuneration policy by resolution.

(6) Section 54 enters into force upon the day of expiration of the publication. The obligation for documentation according to section 54 para 4 and the first review period according to section 54 para 2 starts on 1. January 2022, however, continued educational measures in the period of 24. June 2021 till 31. December 2021 are to be considered in the first review period.

## **Annex to Section 43(1) RL-BA**

### **Terms and conditions for client accounts of lawyers and partnerships or companies of lawyers**

Unless regulated otherwise, the following provisions shall apply *mutatis mutandis* to partnerships or companies of lawyers as defined in Section 1a RAO as amended from time to time.

1.
  - (1) The credit institution shall keep accounts and securities accounts (both hereinafter referred to as "Accounts") in the name of its customers for their own purposes (own accounts). Apart from these own accounts the credit institution shall, exclusively for members of certain professions, open accounts which do not serve the account holder's own purposes but where the account holder nonetheless is solely entitled and obliged vis-à-vis the credit institution like with his own accounts (client accounts).
  - (2) The prerequisite for opening a client account of a partnership or company of lawyers as defined in Section 1a RAO as amended from time to time is that the credit institution is furnished evidence of registration in the "*Liste der Rechtsanwalts-Gesellschaften*" (register of companies or partnerships of lawyers) maintained by the Bar Association having jurisdiction over the district where the registered office of the partnership or company is located.  
Law firms that are organised as a registered partnership (partnership of lawyers) or as a limited liability company (company of lawyers) must be registered in the Business Register.
  - (3) Client accounts of a lawyer or a partnership or company of lawyers shall be subject to the general terms and conditions of the credit institution keeping the account subject to the following deviating provisions.
2. For opening a client account a written request of a lawyer shall be required and such accounts may only be opened for escrows with respect to which, according to the lawyer's knowledge, there is no suspicion of money laundering or terrorist financing. The request for opening of an account shall include a statement of the lawyer to the effect that as a client account the account will not serve the account holder's own purposes and whether or not the depositor is resident in Austria for tax purposes.  
The lawyer shall confirm that he will identify the depositor in compliance with the Austrian Lawyers' Code and disclose information about the actual identity to the credit institution upon request.  
Vis-à-vis the credit institution an account that is opened at a lawyer's request shall be deemed his own account unless at the time the account is opened the credit institution receives an express written statement of the lawyer providing otherwise. If such a statement is received by the credit institution after the account has been opened, the credit institution's rights to the account which have been established until that point in time shall remain unaffected.
3. The account holder shall not transfer assets that concern himself to a client account nor leave them in a client account.
4.
  - (1) In the case of partnerships of lawyers only lawyers who are personally liable partners or lawyers who have been authorised accordingly by the partnership may make dispositions regarding the client account of the partnership. In the case of limited liability companies dispositions regarding the client account may only be made by shareholders holding sole power of representation and management or by lawyers who have been authorised accordingly by them to do so.
  - (2) The account holder may grant account authorisation only to a lawyer, a partnership or company of lawyers or a trainee lawyer; the credit institution will not accept any other authorised agent. Account authorisation cannot be granted beyond death.
  - (3) Third parties shall have no rights to benefits out of a client account vis-à-vis the credit institution. Accordingly, the credit institution shall not consider itself authorised to permit any third party to make dispositions with regard to the client account, even if it is proved that the account was opened

for the third party. The credit institution shall provide information about the client account to a third party only upon presentation of a written authorisation from the account holder.

- (4) The credit institution shall be under no obligation to verify the lawfulness of dispositions of the account holder in his relation to third parties. Therefore, the credit institution rejects any liability for damage suffered by a third party on account of an unlawful disposition by the account holder.
5. The credit institution does not regard the client account as a suitable basis for lending. Accordingly, it will not assert any right of setoff or lien or right of retention with respect to the client account unless they concern accounts receivable that have arisen in relation to the client account itself.
6.
  - (1) The account holder shall not be entitled to change the status of his account as a client account.
  - (2) Claims arising out of client accounts may not be assigned. The account holder may re-register the client account in the name of another lawyer or partnership or company of lawyers but not in the name of any other person.
  - (3) If both the account holder and his authorised agent are unable to exercise the right to make dispositions with regard to the client account, the president of the regional Bar Association or the president's deputy may advise the credit institution of the name of a lawyer, partnership or company of lawyers or trainee lawyer as the person with account authorisation appointed in addition to the account holder. The dispositions made by the appointed substitute shall be effective vis-à-vis the account holder and vis-à-vis the credit institution even if the prerequisites for appointment were not fulfilled. The appointed substitute may only be dismissed by the president of the Bar Association or his deputy. Vis-à-vis the credit institution the substitute's right to make dispositions shall continue to be in force until the president of the Bar Association or his deputy revokes the account authorisation vis-à-vis the branch keeping the account or the branch obtains knowledge of expiry of the authorisation otherwise. In the case of conflicting statements of the account holder or his authorised agent and that of the appointed substitute the credit institution shall only accept joint dispositions henceforth.
  - (4) In the case of the account holder's death the claim arising from the client account shall not pass to his heirs. Rather, the interim substitute appointed by the committee of the competent Bar Association shall become the account holder. In the case of a liquidated partnership or company of lawyers only the lawyer who has been appointed liquidator may dispose of the credit balance in the client account.
  - (5) In cases where the authorisation to practise as a lawyer expires or is suspended as defined in Section 34 RAO, exclusively the interim substitute appointed by the competent committee of the regional Bar Association shall be authorised to make dispositions with regard to the account (including termination of the account contract). Vis-à-vis the credit institution the previous account holder's account authorisation shall remain in force until he is informed about the expiration or suspension of his authorisation to practise as a lawyer or otherwise obtains knowledge thereof. If bankruptcy proceedings are opened, Article 7(2) shall apply.
7.
  - (1) In the case of attachment the credit institution shall consider the debtor's client accounts to be affected only if this is expressly stated in the attachment order. When providing information to the attachment creditor the credit institution will mention that client accounts of the attachment debtor exist but will not disclose the account balance or other details unless a specific client account has been attached by way of execution.
  - (2) If bankruptcy proceedings are opened over the assets of the account holder, the credit institution will inform the administrator in bankruptcy authorised by court decision about the keeping of client accounts and provide information on those accounts upon request. The credit institution shall allow dispositions with regard to the client account only upon the consent of the interim substitute appointed by the committee of the competent Bar Association instead of the debtor in bankruptcy and in any case subject to the consent of the administrator in bankruptcy who has been authorised by court decision.

- (3) In the case of liquidation of a partnership or company of lawyers that is instituted outside of bankruptcy proceedings, the client account authorisation shall pass to the lawyer who is appointed liquidator.
8. Trainee lawyers may open client accounts on the same terms and conditions if and when they have been entrusted with assets by official bodies.
9. The above provisions shall apply *mutatis mutandis* to safes rented out to lawyers for purposes other than the safe renter's own purposes ("escrow safes").

## **Annex to Section 43(5) RL-BA**

### **General terms and conditions for handling of real estate transactions through an escrow agent**

These general terms and conditions shall apply to the financing of real estate transactions that are handled through an escrow agent and which, together with the escrow agreement to be concluded in the specific case, shall constitute the legal basis for the contractual relationship between the credit institution and the escrow agent.

#### **1. Duty to notify participating interests**

In the case that by analogous application of Section 2 No. 3 of the Austrian Banking Act [*Bankwesengesetz/BWG*] the escrow agent holds a direct or indirect qualified interest in the enterprise of the purchaser or in the enterprise of the seller or acquires such interest before the escrow is fully executed, he shall notify the credit institution thereof. The credit institution shall be entitled to forward such information to its customer.

#### **2. Written form and duty to reject**

The agreement to be concluded between credit institutions and an escrow agent shall be made in writing in order to be valid. If it is foreseeable by the escrow agent that he will not be able to carry out the instruction as envisaged, he shall reject the instruction unless the instruction which will then be carried out for the escrow agent is designed differently, with such modified instruction also requiring written form in order to be valid.

#### **3. Keeping of client accounts**

For every transaction to be processed subject to these terms and conditions a separate client account shall be kept, which shall be opened with the credit institution of the client to the extent possible.

#### **4. Disposition of escrow funds**

Unless agreed otherwise in writing, the escrow agent may release or undertake to release escrow funds only if proper fulfilment of the escrow instruction is secured on the basis of the documents that are available to him.

#### **5. Account statement**

The escrow agent shall ensure that after every transaction in the client account the instructing credit institution and his client will be sent a duplicate statement of account directly by the credit institution keeping the account for their exclusive use. The escrow agent hereby authorises the credit institution keeping the account to provide the instructing credit institution with any and all information about dispositions with regard to the escrow funds upon request. The credit institutions involved shall maintain secrecy about the information received by them as defined in Section 38 *BWG*.

## **6. Information**

The escrow agent shall inform the credit institution about the status quo of the instruction at any time and confirm the accuracy of his information upon request.

In the case of doubts about full and/or timely execution of an accepted instruction the escrow agent shall immediately notify the credit institution thereof and shall state the reasons and the expected duration of the delay. The credit institution promises to reasonably extend the processing period in the case of objectively justified reasons without any statutory obligation to do so.

## **7. Fulfilment of the instruction**

After fulfilment of the instruction the instructing credit institution shall issue a written confirmation of proper fulfilment to the escrow agent upon his request.

## **8. Notification of the professional representative body**

If the instructing credit institution has come to the conclusion that the instruction has not been fulfilled at all or has not been fulfilled in time and is not reversed either and if the escrow agent is responsible therefor, the credit institution shall notify the competent professional representative body of the escrow agent thereof to enable the same to exercise its right of supervision (Section 23 RAO).

The professional representative body shall inform the instructing credit institution about the outcome of their investigations within a period of four weeks.

If the investigations lead to a strong suspicion under criminal law, the competent professional representative body of the escrow agent shall also inform the Federal Finance, Credit and Insurance Division of the Austrian Economic Chamber thereof. The Division shall inform the credit institutions thereof without any opinion.

## **9. Banking secrecy**

With respect to the accepted instruction the escrow agent hereby releases the instructing credit institution and the credit institution where the client account is kept from their obligation to maintain banking secrecy (Section 38 BWG) vis-à-vis the body stated in Article 8.

## **10. Professional secrecy**

The escrow agent undertakes to answer all enquiries from the competent professional representative body and to produce all documents relating to the instruction for inspection, i.e. not to exercise his right to maintain secrecy in this respect.

## **11. Agreement under data protection law**

The escrow agent expressly agrees that:

- a. the competent professional representative body will inform the advising credit institution about the outcome of their investigations as set forth in Article 8;
- b. the competent professional representative body will inform the Federal Finance, Credit and Insurance Division of the Austrian Economic Chamber in the case of a strong suspicion under criminal law and that the Federal Division will forward that information to the credit institutions (in accordance with the BWG) without any additional opinion.