

# Bank Austria Creditanstalt

## **BA-CA Finance (Cayman) (2) Limited**

*(Incorporated with limited liability in the Cayman Islands)*

**150,000**

## **Perpetual Non-cumulative Non-voting Fixed/Floating Rate**

### **Preferred Securities**

**having the benefit of a support agreement entered into with**

## **Bank Austria Creditanstalt AG**

*(Incorporated with limited liability under the laws of the Republic of Austria)*

**Issue Price: 100 per cent.**

150,000 Perpetual Non-cumulative Non-voting Fixed/Floating Rate Preferred Securities with a liquidation preference of €1,000 each (the "Preferred Securities") are proposed to be issued by BA-CA Finance (Cayman) (2) Limited (the "Issuer") on 22 February 2005 (the "Closing Date"). The holders of the Preferred Securities will have the benefit of a support agreement entered into between the Issuer and Bank Austria Creditanstalt AG ("Bank Austria Creditanstalt") as further described in the "Support Agreement" herein. The Preferred Securities will entitle holders to receive (subject to the limitations described in "Description of the Preferred Securities") non-cumulative preferential cash dividends ("Dividends") (i) from (and including) the Closing Date to (but excluding) 22 March 2006 at a fixed rate of 7.50 per cent. per annum payable in arrear on 22 March 2006; and (ii) from (and including) 22 March 2006 at a rate of 0.15 per cent. per annum above the annual Euro swap rate expressed as a percentage for swap transactions with a 10-year maturity (EUR-ISDA-EURIBOR Swap Rate), subject to a cap of 8.00 per cent. per annum payable in arrear on 22 March in each year, commencing on 22 March 2007.

Payments will be calculated on the aggregate principal amount of Preferred Securities outstanding.

The Preferred Securities are redeemable at the option of the Issuer, subject to the prior consent of Bank Austria Creditanstalt, (which shall grant such consent only after either replacement of the principal amount of the Preferred Securities so redeemed by the issue of other capital of at least equivalent quality (*Kapital gleicher oder besserer Qualität*) or having applied for and been granted consent by the Austrian Financial Market Supervisory Authority (the "*Finanzmarktaufsichtsbehörde*" or "FMA"), in whole but not in part, at €1,000 per Preferred Security plus accrued and unpaid Dividends for the then current Dividend Period on 22 March 2012 or any Dividend Date falling thereafter and, for taxation reasons or capital reasons, in whole but not in part at any time, subject as described in "Description of the Preferred Securities". In the event of the liquidation, dissolution or winding-up of the Issuer or Bank Austria Creditanstalt, holders of Preferred Securities will be entitled to receive for each Preferred Security a liquidation preference of €1,000 plus accrued and unpaid Dividends for the then current Dividend Period (as defined in "Description of the Preferred Securities") to the date of payment, subject as described in "Description of the Preferred Securities".

The Preferred Securities are expected to be assigned on issue a rating of Baa1 (currently with a negative outlook) by Moody's Investor Services Inc. and BBB (currently on watch negative) by Standard & Poor's Rating Services, a division of the McGraw Hill Companies Inc.

See "Investment Considerations" for a discussion of certain factors that should be considered by prospective investors.

Application has been made to list the Preferred Securities on the Official Segment of the stock market of Euronext Amsterdam N.V. ("Euronext Amsterdam").

**BNP PARIBAS**

**HVB Corporates & Markets**

**Deutsche Bank**

**JPMorgan**

The date of this Offering Circular is 18 February 2005.

The Issuer confirms that, to the best of its knowledge and belief, after having made all reasonable inquiries, this Offering Circular contains all information with regard to the Issuer and the Preferred Securities which is material to the issue of the Preferred Securities, that such information is true and accurate in all material respects and is not misleading, that the opinions and intentions expressed in this Offering Circular on the part of the Issuer are honestly held and that there are no other facts the omission of which makes any such information or the expression of any such opinion or intention misleading in any material respect. The Issuer accepts responsibility for the information contained in this Offering Circular accordingly.

Bank Austria Creditanstalt confirms that, to the best of its knowledge and belief, after having made all reasonable inquiries, this Offering Circular contains all information with regard to the Issuer, Bank Austria Creditanstalt and its subsidiaries and affiliates (the "Group") and the Preferred Securities which is material to the issue of such Preferred Securities, that the information contained in this Offering Circular is true and accurate in all material respects and is not misleading, that the opinions and intentions expressed in this Offering Circular are honestly held and that there are no other facts the omission of which makes this Offering Circular as a whole or any such information or the expression of any such opinion or intention misleading in any material respect. Bank Austria Creditanstalt accepts responsibility for the information contained in this Offering Circular accordingly.

No person has been authorised to give information or to make any representation other than those contained in this Offering Circular and, if given or made, such information or representation must not be relied on as having been authorised by the Issuer, Bank Austria Creditanstalt, any of the Agents (as defined in "Description of the Preferred Securities") or any of the Managers mentioned under "Subscription and Sale" below. Neither the delivery of this Offering Circular nor any subscription, sale or purchase made in connection herewith shall, in any circumstances, create any implication that there has been no change in the affairs of the Issuer or Bank Austria Creditanstalt or the Group since the date hereof.

Prospective investors should inform themselves as to the legal requirements and tax consequences within the countries of their residence and domicile for the acquisition, holding or disposition of Preferred Securities and any foreign exchange restrictions that might be relevant to them. This Offering Circular does not constitute an offer of, or an invitation by or on behalf of, the Issuer, Bank Austria Creditanstalt, the Agents or any of the Managers mentioned under "Subscription and Sale" below to subscribe for or purchase any of the Preferred Securities. Prospective investors are also advised to inform themselves about any tax consequences which may apply to them arising from the implementation of the EU Council Directive 2003/48/EC of June 3 2003 on the taxation of savings income, further particulars of which are set out in "Taxation – EU Savings Tax Directive" below.

Investors should satisfy themselves that they understand all the risks associated with making investments in the nature of the Preferred Securities. It should be remembered that the price of securities and the income from them can go down as well as up. If a prospective investor is in any doubt whatsoever as to the risks involved in investing in the Preferred Securities, he or she should consult his or her professional advisers.

No action has been taken to permit a public offering of the Preferred Securities in any jurisdiction where action would be required for such purpose. The distribution of this Offering Circular and the offering of the Preferred Securities in certain jurisdictions may be restricted by law. Persons into whose possession this Offering Circular comes are required by the Issuer, Bank Austria Creditanstalt and the Managers mentioned under "Subscription and Sale" below to inform themselves about, and to observe any such restrictions.

Preferred Securities may not be offered or sold, directly or indirectly, and this Offering Circular may not be distributed in any jurisdiction, except in accordance with the legal requirements applicable in that jurisdiction. In particular, the Preferred Securities have not been and will not be registered under the United States Securities Act of 1933 as amended (the "Securities Act"). Subject to certain exceptions, the Preferred Securities may not be offered, sold or delivered within the United States or to U.S. persons.

A further description of certain restrictions on the offering and sale of the Preferred Securities and on the distribution of this Offering Circular is given under "Subscription and Sale" below.

The Preferred Securities are only suitable for financially sophisticated investors who are capable of evaluating the risks involved in investing in the Preferred Securities.

No offer shall be made to the public in the Cayman Islands to subscribe for any of the Preferred Securities.

This Offering Circular constitutes a prospectus for the purposes of the Listing and Issuing Rules of Euronext Amsterdam. It does not constitute an Austrian sales prospectus (*KMG-Prospekt*) within the meaning of the Austrian Capital Markets Act, Federal Law Gazette 1991/625 as amended.

Unless otherwise specified or the context requires, references to “€”, “euro”, “Euro” and “EUR” are to the currency introduced at the start of the third stage of European Economic and Monetary Union pursuant to the Treaty establishing the European Community, as amended from time to time.

In connection with this issue, BNP Paribas (the “Stabilising Manager”) (or any duly appointed person acting for the Stabilising Manager) may over-allot or effect transactions which stabilise or maintain the market price of the Preferred Securities at a level which might not otherwise prevail for a limited period. However, there is no obligation on the Stabilising Manager (or any agent of the Stabilising Manager) to do this. Such stabilising, if commenced, may be discontinued at any time and must be brought to an end after a limited period. Such stabilisation shall be in compliance with all applicable laws, regulations and rules. *Stabilisation transactions conducted on Euronext Amsterdam must be conducted by a member of Euronext Amsterdam and must be conducted in accordance with all applicable rules and regulations, including those of Euronext Amsterdam and Article 32 of the “Further Regulation on the supervision of the Securities Trade 2002” (Nadere Regeling Gedragtoezicht 2002).*

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## DOCUMENTS INCORPORATED BY REFERENCE

The following documents shall be deemed to be incorporated in, and to form part of, this Offering Circular:

- (1) the most recently published, audited, annual, consolidated financial statements of Bank Austria Creditanstalt for the years ended 31 December 2003 and 31 December 2002 and the unaudited interim consolidated financial statements for the nine months ended 30 September 2004. The audited consolidated financial statements and the unaudited interim consolidated financial statements have been prepared in accordance with International Financial Reporting Standards (“IFRS”); and
- (2) all amendments and supplements to the Offering Circular prepared by the Issuer or Bank Austria Creditanstalt from time to time,

save that any statement contained in this Offering Circular or in any of the documents incorporated by reference in, and forming part of, this Offering Circular shall be deemed to be modified or superseded for the purpose of the Offering Circular to the extent that a statement contained in any document subsequently incorporated by reference modifies or supersedes such statement.

The Issuer and Bank Austria Creditanstalt will, at the specified offices of the Principal Paying and Transfer Agent and the Paying and Transfer Agent, provide, free of charge, upon the oral or written request therefor, a copy of this Offering Circular (or any document incorporated by reference in this Offering Circular). Written or oral requests for such documents should be directed to the specified office of the Principal Paying and Transfer Agent, or the specified office of Deutsche Bank AG as Paying and Transfer Agent and Listing Agent in The Netherlands.

## SUMMARY

*The following summary is qualified in its entirety by the more detailed information and financial statements included elsewhere in this Offering Circular, the Agency Agreement and the terms and conditions of the Preferred Securities themselves.*

<b>Issuer</b>	BA-CA Finance (Cayman) (2) Limited, a wholly-owned subsidiary of Bank Austria Cayman Islands Ltd. (“Bank Austria Cayman”), which is a majority-owned subsidiary of Bank Austria Creditanstalt, incorporated as a limited liability company under the laws of the Cayman Islands on 27 January 2005.
<b>Support Provider</b>	Bank Austria Creditanstalt AG.
<b>Issue Size</b>	€150,000,000.
<b>Issue Details</b>	150,000 Perpetual Non-cumulative Non-voting Fixed/Floating Rate Preferred Securities each with a liquidation preference of €1,000.00 (the “Liquidation Preference”). The Preferred Securities will constitute regulatory hybrid capital of Bank Austria Creditanstalt on a consolidated basis for the purposes of § 24 subparagraph (2) No. 5 and No. 6 of the Austrian Banking Act ( <i>Bankwesengesetz</i> ) (“BWG”).
<b>Dividends</b>	Subject to Cayman law and as provided in the Issuer’s Articles of Association, non-cumulative Dividends will be payable (i) from (and including) the Closing Date to (but excluding) 22 March 2006 at a fixed rate of 7.50 per cent. per annum payable in arrear on 22 March 2006; and (ii) from (and including) 22 March 2006 at a rate of 0.15 per cent. per annum above the annual Euro swap rate expressed as a percentage for swap transactions with a 10-year maturity (EUR-ISDA-EURIBOR Swap Rate), subject to a cap of 8.00 per cent. per annum, payable in arrear on 22 March in each year, commencing on 22 March 2007 all as more fully described in “Description of the Preferred Securities”.
<b>Non-Cumulative</b>	The right of holders of the Preferred Securities to receive payments in respect of Dividends is non-cumulative. The holders of Preferred Securities will have no right to receive payments in respect of any missed or reduced Dividends, whether or not Distributable Funds or Distributable Profits are sufficient or Dividends are paid by the Issuer in respect of any future Dividend Period.
<b>Support Agreement</b>	<p>The Issuer and the holders of the Preferred Securities will have the benefit of a support agreement entered into as a deed poll between Bank Austria Creditanstalt and the Issuer in respect of the obligations of the Issuer under the Preferred Securities (the “Support Agreement”).</p> <p>The Support Agreement is intended to provide for dividend, redemption and liquidation rights equivalent to those which would attach to the Preferred Securities if issued directly by Bank Austria Creditanstalt and to oblige Bank Austria Creditanstalt to make funds available to the Issuer to meet its payment obligations under the Preferred Securities.</p> <p>Bank Austria Creditanstalt’s obligations under the Support Agreement rank (i) <i>pari passu</i> with Bank Austria Creditanstalt’s obligations under the support agreement entered into by Bank Austria Creditanstalt in connection with the issue of €250,000,000 preferred securities in October 2004, (ii) junior to all other liabilities of Bank Austria Creditanstalt (other than any liability expressed to rank <i>pari passu</i> with or junior to its obligations under the Support</p>

Agreement), (iii) *pari passu* with Bank Austria Creditanstalt's obligations in respect of Asset Parity Securities and (iv) senior to Bank Share Capital.

For the text of the Support Agreement, see "Support Agreement".

**Link to Distributable Profits;  
Dividend Pusher**

Payments in respect of Dividends on the Preferred Securities are only made on any Dividend Date to the extent that Bank Austria Creditanstalt has, in accordance with § 24 subparagraph (2) No. 6 BWG, an amount of Distributable Profits at least equal to the aggregate amount of (a) Dividends (including Additional Amounts in respect thereof) payable on the respective Dividend Date and (b) payments made during the period commencing on the date that Distributable Profits for the relevant fiscal year were determined in accordance with Austrian law by the supervisory board or the shareholders' meeting of Bank Austria Creditanstalt immediately preceding such Dividend Date and ending on the relevant Dividend Date, in respect of Dividends on the Preferred Securities and dividends or other distributions or payments on Parity Securities, if any.

Notwithstanding the foregoing, the Preferred Securities will pay Dividends, if Bank Austria Creditanstalt or any of its Subsidiaries, on any Parity Securities, declares or pays any dividends or makes any other payment or other distribution other than as a result of this provision or a provision of substantially similar effect in any Parity Securities being triggered by this provision. If the dividend or other payment or distribution on such Parity Securities was the full stated amount payable on such Parity Securities, payments in respect of Dividends will be made in full on the first Dividend Date, falling contemporaneously with and/or immediately following the date on which such dividend or other payment or distribution was declared or made on such Parity Securities. If the dividend or other payment or distribution was only a portion of the amount so owing, the payments in respect of Dividends on the Preferred Securities will be reduced proportionally.

Further, notwithstanding the foregoing, if Bank Austria Creditanstalt or any of its Subsidiaries, declares or pays any dividend or makes any other payment or distribution on any Junior Securities other than to other Group companies, the Preferred Securities will pay Dividends on the first Dividend Date falling contemporaneously with and/or immediately following the date on which such dividend was declared or other payment made.

Further, notwithstanding the foregoing, if Bank Austria Creditanstalt or any of its Subsidiaries redeems, repurchases or otherwise acquires any Parity Securities or Junior Securities for any consideration except by way of replacement by, conversion into or exchange for shares of common stock of Bank Austria Creditanstalt or except where any such redemption, repurchase or acquisition is funded, directly or indirectly, by the issue of shares of common stock of Bank Austria Creditanstalt or unless such Parity Securities or Junior Securities are redeemed, repurchased or otherwise acquired (i) by Bank Austria Creditanstalt in the ordinary course of its investment banking or trading activities or (ii) in order to fulfil its obligations under stock option or employees stock ownership schemes, in each case as permitted by the Austrian Stock Corporations Act, the Issuer will make payments on the Preferred Securities in full on the first Dividend Date falling contemporaneously with and/or immediately following the date on which such redemption, repurchase or other acquisition occurred.

In the event that the payments described above cannot be made in full by reason of any such unavailability of Distributable Profits, such payments will be made *pro rata* in the proportion that the amount available for payment bears to the full amount that would have been payable but for such limitation.

The Preferred Securities ordinarily will rank senior to the Issuer's ordinary shares as to payment of Dividends. However, in the event that Dividends are not required to be paid in relation to a Dividend Period on the Preferred Securities, all amounts received by the Issuer in relation to such Dividend Period may be distributed as dividends to the holder of the Issuer's ordinary shares instead of being paid to the holders of the Preferred Securities.

#### **Regulatory Limitations**

Even if Distributable Funds of the Issuer and Distributable Profits of Bank Austria Creditanstalt are sufficient on a particular Dividend Date, to the extent that, (i) Bank Austria Creditanstalt has determined that in accordance with applicable Austrian banking regulations affecting banks that fail to meet their capital ratios on a consolidated basis pursuant to the BWG, Bank Austria Creditanstalt would be limited in making payments on preference shares or preferred securities issued by it ranking *pari passu* as to participation in profits with Bank Austria Creditanstalt's obligations under the Support Agreement or (ii) on such date there is in effect any law or an order of the Austrian *Finanzmarktaufsichtsbehörde* (or any other relevant regulatory authority) ("FMA") prohibiting Bank Austria Creditanstalt from making any distribution of profits, the Issuer shall not be required to make any payments in respect of Dividends on any such Dividend Date.

#### **Withholding Tax and Additional Amounts**

The Issuer will pay such additional amounts to each holder of the Preferred Securities as may be necessary in order that every net payment in respect of the Preferred Securities, after withholding for any taxes imposed by the Cayman Islands or the Republic of Austria, upon or as a result of such payment, will not be less than the amount otherwise required to be paid, subject to the exceptions described in "Description of the Preferred Securities". The obligations of the Issuer to pay any such additional amounts are described more fully in "Description of the Preferred Securities".

#### **Optional Redemption**

The Preferred Securities are redeemable at the option of the Issuer, subject to the prior consent of Bank Austria Creditanstalt (which shall grant such consent only after either replacement of the principal amount of the Preferred Securities so redeemed by issuing other capital of at least equivalent quality (*Kapital gleicher oder besserer Qualität*) or having applied for and been granted consent by the FMA), in whole but not in part, at the Redemption Price (being the Liquidation Preference plus accrued and unpaid Dividends for the then current Dividend Period ending on the date fixed for redemption (as described in "Description of the Preferred Securities")) (subject to Cayman Law and the Issuer's Articles of Association) on 22 March 2012 or any Dividend Date falling thereafter.

#### **Redemption for Tax Reasons and Capital Reasons**

The Preferred Securities are redeemable at the option of the Issuer at any time, subject to the prior consent of Bank Austria Creditanstalt (which shall grant such consent only after either replacement of the principal amount of the Preferred Securities so redeemed by issuing other capital of at least equivalent quality (*Kapital gleicher oder besserer Qualität*) or having applied for and been granted consent by the FMA), in whole but not in part, at the Redemption Price (subject to Cayman law and the Issuer's Articles of Association), if (i) the Issuer is or would be required to pay Additional Amounts (as defined



in “Description of the Preferred Securities”) or (ii) (a) the FMA determines and announces that, or as a result of a change in law or regulation or the interpretation thereof, the Preferred Securities no longer qualify as Core Capital (“*Kernkapital*” (as defined in “Description of the Preferred Securities”)) of Bank Austria Creditanstalt for Austrian banking capital adequacy purposes on a consolidated basis or (b) as a result of any change in law or regulation or the interpretation thereof or of any ruling, decision or assessment in respect thereof issued by competent authorities payments made by Bank Austria Creditanstalt or any member of the Group on any of the Investments (as defined in “Description of the Preferred Securities”) cease to be deductible as expenses for income tax purposes.

#### **Substitution for Capital Reasons**

In the event that the FMA determines and announces that, or as a result of a change in law or regulation or the interpretation thereof, the Preferred Securities no longer qualify as Core Capital (*Kernkapital*), the Issuer and Bank Austria Creditanstalt may take such steps as may be necessary to cause the substitution for the Preferred Securities of similar ranking securities issued by a company incorporated within the European Union, as more fully described under “Description of the Preferred Securities – Substitution”.

#### **Rights upon Liquidation**

In the event of the liquidation, dissolution or winding-up of the Issuer, holders of Preferred Securities will be entitled to receive for each such Preferred Security the Liquidation Distribution (as defined in “Description of the Preferred Securities”) subject to Cayman law and as provided in the Issuer’s Articles of Association.

Notwithstanding the availability of sufficient assets of the Issuer to pay any Liquidation Distribution to the Holders of the Preferred Securities as aforesaid, if, at the time such Liquidation Distribution is to be paid, proceedings are pending or have been commenced for the voluntary or involuntary liquidation, dissolution or winding-up of Bank Austria Creditanstalt, the Liquidation Distribution to be paid to holders of Preferred Securities and the liquidation distribution per share to be paid to the holders of all Asset Parity Securities (as defined in “Description of the Preferred Securities”) shall not exceed the amount per share that would have been paid as the Liquidation Distribution from the assets of Bank Austria Creditanstalt (after payment in full in accordance with Austrian law of all creditors of Bank Austria Creditanstalt, including holders of its subordinated debt but excluding holders of any liability ranking or expressed to rank *pari passu* with or junior to the obligations of Bank Austria Creditanstalt under the Support Agreement) had the Preferred Securities and the Asset Parity Securities been issued by Bank Austria Creditanstalt and ranked (a) *pari passu* with Bank Austria Creditanstalt’s obligations under the support agreement entered into by Bank Austria Creditanstalt in connection with the issue of €250,000,000 preferred securities in October 2004, (b) junior to all liabilities of Bank Austria Creditanstalt (other than any liability expressed to rank *pari passu* with or junior to the obligations of Bank Austria Creditanstalt under the Support Agreement), (c) *pari passu* with all payment obligations of Bank Austria Creditanstalt in respect of Asset Parity Securities and (d) senior to Bank Austria Creditanstalt’s Bank Share Capital. In the event of the liquidation, dissolution or winding-up of Bank Austria Creditanstalt, the Board of Directors of the Issuer shall convene an Extraordinary General Meeting of the Issuer for the purpose of proposing a Special Resolution to place the Issuer in voluntary liquidation and in these circumstances the amount per

share payable by the Issuer as liquidation distribution to holders of Preferred Securities in the event of a winding-up of the Issuer will be as described above. Bank Austria Creditanstalt has undertaken in the Support Agreement that, so long as any of the Preferred Securities is outstanding, unless Bank Austria Creditanstalt itself is in liquidation, Bank Austria Creditanstalt will not permit, or take any action to cause, the liquidation, dissolution or winding-up of the Issuer.

#### **Voting Rights**

Holders of the Preferred Securities will not be entitled to vote at any general meeting of shareholders of the Issuer except in certain limited circumstances. Holders of the Preferred Securities, together with the holders of any other preference shares or preferred securities of the Issuer ranking *pari passu* as to payment of Dividends with the Preferred Securities having the right to vote for the election of Directors in similar circumstances, are entitled to elect two additional Directors to the Issuer's Board of Directors if Dividends (and any Additional Amounts in respect of such Dividends) have not been paid (in whole or in part) for any Dividend Period. Such additional Directors must vacate their office if Dividend payments are resumed by the Issuer in full. For a more detailed description see "Description of the Preferred Securities".

#### **Form of the Preferred Securities**

The Preferred Securities will be issued in registered form. On the Closing Date, a single securities certificate representing the Preferred Securities will be registered in the name of and deposited with Clearstream Banking AG, Frankfurt am Main ("Clearstream, Frankfurt"). The Preferred Securities will also be eligible for clearing and settlement in Euroclear Bank S.A./N.V., as operator of the Euroclear System ("Euroclear") and Clearstream Banking, *société anonyme* ("Clearstream, Luxembourg"). For so long as the Preferred Securities are deposited and registered as described above, book-entry interests in the Preferred Securities will be shown on, and transfers thereof will be effected only through, records maintained by Clearstream, Frankfurt.

If any or all of Clearstream, Frankfurt, Euroclear and/or Clearstream, Luxembourg announces an intention permanently to cease business and the Issuer is unable to locate a qualified successor within 60 days of receiving notice of, or becoming aware of, such intention, the number of Preferred Securities corresponding to each holder's book-entry interest in the Preferred Securities represented by the initial securities certificate will be transferred to each holder of Preferred Securities, and each such holder will be registered as a holder of the Preferred Securities in the register of members maintained by the Issuer, and receive a securities certificate made out in its name. Other than in the circumstances referred to in this paragraph, definitive securities certificates will not be available to holders of the Preferred Securities.

#### **Ratings**

The Preferred Securities are expected to be assigned on issue a rating of Baa1 (currently with a negative outlook) by Moody's Investor Services Inc. and BBB (currently on watch negative) by Standard & Poor's Rating Services, a division of the McGraw Hill Companies Inc.

#### **Governing law**

The Preferred Securities will be governed by and construed in accordance with the law of the Cayman Islands. The Support Agreement will be governed by and construed in accordance with English law save that the provisions concerning the ranking of the Support Agreement (Clauses 2.1.2 and 2.4 of the Support Agreement) will be governed by and construed in accordance with Austrian law.

<b>ISIN</b>	DE000A0DYW70.
<b>Common Code</b>	021299707.
<b>Amsterdam Security Code</b>	15203.
<b>German Security Code (WKN)</b>	A0DYW7.
<b>Listing</b>	Application has been made to list the Preferred Securities on the Official Segment of Euronext Amsterdam N.V.
<b>Principal Paying and Transfer Agent and Calculation Agent</b>	JPMorgan Chase Bank, N.A., London Branch.
<b>Paying and Transfer Agents</b>	Deutsche Bank AG, Amsterdam, J.P. Morgan AG, Frankfurt.
<b>Amsterdam Listing Agent</b>	Deutsche Bank AG.
<b>Registrar</b>	J.P. Morgan Bank Luxembourg S.A.

## INVESTMENT CONSIDERATIONS

*Prospective investors should carefully consider the following information in conjunction with the other information contained in this Offering Circular.*

### **Risks Associated with Bank Austria Creditanstalt's Financial Condition**

An investment in the Preferred Securities will have similar economic risks to an investment in non-cumulative perpetual preference shares issued directly by Bank Austria Creditanstalt having the same liquidation preference and rate of distribution as the Preferred Securities. The Issuer is a newly established company with no previous operating history or revenues. It is expected that the Issuer's sole source of funds to pay Dividends on the Preferred Securities will be investments in the Group. The Preferred Securities have the benefit of the Support Agreement entered into between the Issuer and Bank Austria Creditanstalt. Accordingly, if Bank Austria Creditanstalt's financial condition were to deteriorate, the Holders may suffer direct and materially adverse consequences, including non-payment of Dividends on the Preferred Securities.

**For risks associated with litigation involving Bank Austria Creditanstalt see "General Information – Litigation".**

### **Distributions Not Cumulative**

Distributions on the Preferred Securities are not cumulative. As set out in "Description of the Preferred Securities", Dividends on the Preferred Securities will be paid on each Dividend Date out of interest received by the Issuer from its investments in the Group and from other resources legally available, if any, unless Bank Austria Creditanstalt has insufficient Distributable Funds to enable the Issuer to pay Dividends on the Preferred Securities (and in respect of any Parity Securities), or such payment would breach or cause a breach of Austrian banking capital adequacy requirements then applicable. If Dividends on the Preferred Securities for any Dividend Period are not paid for such reasons, the Holders will not be entitled to receive such Dividends.

### **Perpetual Nature of the Preferred Securities**

The Preferred Securities have no fixed final redemption date and Holders have no rights to call for the redemption of the Preferred Securities. Although the Issuer may redeem the Preferred Securities in certain circumstances (including at its option on 22 March 2012 or on any Dividend Date thereafter), there are limitations on its ability to do so. Therefore, Holders should be aware that they may be required to bear the financial risks of an investment in the Preferred Securities for an indefinite period of time.

### **Absence of prior public markets**

The Preferred Securities constitute a new issue of securities by the Issuer. Prior to this issue, there will have been no public market for the Preferred Securities. Although application has been made for the Preferred Securities to be listed on Euronext Amsterdam, there can be no assurance that an active public market for the Preferred Securities will develop and, if such a market were to develop, the Managers are under no obligation to maintain such a market. The liquidity and the market prices for the Preferred Securities can be expected to vary with changes in market and economic conditions, the financial condition and prospect of Bank Austria Creditanstalt and other factors that generally influence the market prices of securities.

## **USE OF PROCEEDS**

The net proceeds of the issue, which are expected to amount to approximately €147,000,000, will be used for general corporate purposes of the Group.

## THE ISSUER

### History

The Issuer was incorporated in the Cayman Islands on 27 January 2005 (registered number 144423) for an unlimited duration and with limited liability under the laws of the Cayman Islands.

The registered office of the Issuer is at 238 North Church Street, PO Box 31362 SMB George Town, Grand Cayman, Cayman Islands. The Issuer has no place of business in Austria.

### Business

The Issuer is a direct wholly-owned subsidiary of Bank Austria Cayman Islands Ltd. and an indirect majority-owned subsidiary of Bank Austria Creditanstalt. The Issuer will enter into a support agreement with Bank Austria Creditanstalt in respect of the Preferred Securities.

### Litigation

There are no legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the Issuer is aware) which may have or have had since the incorporation of the Issuer a significant effect on the financial position of the Issuer.

### Share Capital

- (a) The existing issued ordinary shares are not listed on any stock exchange and are not dealt on any other recognised market.
- (b) The Issuer was established with an authorised share capital of €150,015,000 divided into 15,000 ordinary shares with a par value of €1 each and 150,000 Preferred Securities with a par value of €1,000 each. At the date of this Offering Circular, the issued share capital of the Issuer comprises 15,000 ordinary shares of a par value of €1 each, registered in the name of Bank Austria Cayman Islands Ltd.
- (c) The holders of the ordinary shares in the Issuer have no rights of pre-emption or preferential subscription rights in respect of the Preferred Securities.
- (d) No capital of the Issuer is under option or is agreed conditionally or unconditionally to be put under option.

### Capitalisation of BA-CA Finance (Cayman) (2) Limited

The following table sets out the short-term liabilities, long-term liabilities and stockholders' equity of the Issuer as at 18 February 2005, adjusted to give effect to the issue of the Preferred Securities to be issued on 22 February 2005.

	<i>As at 18 February 2005 (in €)</i>
Short-term liabilities .....	0
Long-term liabilities .....	0
Preferred Securities .....	150,000,000
Ordinary Shares .....	15,000
Reserves .....	0
Retained earnings .....	0
<b>Total capitalisation</b> .....	<b>150,015,000</b>

### Indebtedness

Since the date of its incorporation, the Issuer has not had outstanding any loan capital and has not incurred any other borrowings or indebtedness in the nature of borrowings and has had no contingent liabilities or granted any guarantees.

### Directors

(a) The Directors of the Issuer and their principal activities outside the Issuer are as follows:

<i>Name</i>	<i>Function in the Issuer</i>	<i>Principal Activity Outside the Issuer</i>
James E. O'Neill	Director	Managing Director, Bank Austria Cayman Islands Ltd.
Nicola Corsetti	Director	First Vice-President, Bank Austria Cayman Islands Ltd.
Dion Degrand	Director	Assistant Vice-President, Bank Austria Cayman Islands Ltd.

The business address of the Directors of the Issuer is 238 North Church Street, PO Box 31362 SMB, George Town, Grand Cayman, Cayman Islands.

(b) The Directors do not, and it is not proposed that they will, have service contracts with the Issuer. No Director has entered into any transaction on behalf of the Issuer which is or was unusual in its nature or conditions or is or was significant to the business of the Issuer since its incorporation.

No Director or any connected person has any interest, whether or not held by a third party, in the share capital of the Issuer.

At the date of this document there were no loans granted or guarantees provided by the Issuer to any Director of the Issuer.

(c) As at the date of this document, the Directors have not received any remuneration for the provision of their services to the Issuer.

The remuneration of the Directors shall from time to time be determined by the Issuer in general meeting.

(d) The Articles of Association of the Issuer provide that:

Subject to the provisions of the Law, any Director of the Issuer may be counted in the quorum present at any meeting at which any proposed arrangement or contract in which he or she is interested is considered and, subject to the Articles of Association, may vote on any proposal, arrangement or contract in which he is interested provided he has disclosed the nature of his interest in it prior to its consideration and any vote thereon, provided however that notwithstanding the above, no Director of the Issuer may vote or be counted in the quorum in relation to any proposal, arrangement or contract in which he is interested, save where the Director's interest is by virtue of either (i) an interest in shares or other securities of the Issuer or (ii) the giving of a security, guarantee or indemnity in relation to either any money lent by

the Director at the request of or for the benefit of the Issuer, any indebtedness of the Issuer for which the Director has assumed responsibility, any issue of shares in which the Director may be entitled to participate, any contract with another company in which the Director is interested (unless the Director has a holding of more than 1 per cent.), the adoption by the Issuer of any employee scheme in which the Director may benefit, or the purchase of insurance for the Director against any liability.

Subject to the provisions of the Articles of Association, a Director shall hold office until such time as he is removed from office by an ordinary resolution of the Issuer in general meeting.

For purposes of the Issuer's Articles of Association, "Law" means the laws of the Cayman Islands, as amended.

#### **Secretary**

The Secretary of the Issuer is Dion Degrand.

#### **General**

- (a) Since 27 January 2005, the date upon which the Issuer was incorporated, there has been no significant change in the trading or financial position of the Issuer.
- (b) Deloitte & Touche of One Capital Place, PO Box 1787 GT, Grand Cayman, Cayman Islands have been appointed as auditors to the Issuer.
- (c) No financial statements have been prepared for the Issuer nor have any dividends been declared or paid since the date of the Issuer's incorporation.
- (d) As at the date of issue of the Preferred Securities no transactions will have occurred since incorporation of the Issuer other than (i) the allotment of the shares described under "Share Capital" and (ii) the signing of the Support Agreement, Subscription Agreement and the Agency Agreement described in this Offering Circular.



## BANK AUSTRIA CREDITANSTALT

Bank Austria Creditanstalt was established on 5 October 1991 as the merged entity of Zentralsparkasse und Kommerzbank AG, Wien and Österreichische Länderbank Aktiengesellschaft. Bank Austria Creditanstalt changed its name on 2 August 1993 from Z-Länderbank Bank Austria Aktiengesellschaft to Bank Austria Aktiengesellschaft. In 1997, it acquired Creditanstalt AG, the second largest bank in Austria, which traces its origins to 1855. On 13 August 2002, Creditanstalt AG merged into Bank Austria Aktiengesellschaft, who assumed on occasion of this merger the name "Bank Austria Creditanstalt AG", in this Offering Circular also referred to as "Bank Austria Creditanstalt", as "Bank Austria Creditanstalt Group" as "BA-CA" and as the "Group". The head offices of Bank Austria Creditanstalt are Vordere Zollamtsstrasse 13, A-1030 Vienna, and Am Hof 2, A-1010 Vienna.

Bank Austria Creditanstalt is the largest banking group in Austria. As at 30 September 2004, it had consolidated total assets of EUR 140 billion. For the first nine months of 2004 its net income before taxes and minority interests amounted to EUR 632 million, its consolidated net income amounted to EUR 434 million, which leads to a return on equity after taxes of 9.5 per cent. for the Group.

In 2000, Bank Austria Creditanstalt became part of the group made up of Bayerische Hypo- und Vereinsbank Aktiengesellschaft ("HVB") and its consolidated subsidiaries (the "HVB Group"), after which the Group increased its resources for a strategy of expansion in its core markets. In accordance with the Bank of the Regions Agreement with HVB, BA-CA is responsible for Austria and the markets in Central and Eastern Europe.

BA-CA operates as a universal bank throughout its core region of Austria and the countries of Central and Eastern Europe. In Austria, BA-CA has been able not only to maintain but to further extend its market leadership: it is the foremost provider of banking services in Austria. In addition, it has access to the international network of the HVB Group in the world's key financial centres. In Central and Eastern Europe, the Group plays a leading role and operates the largest banking network; as at 30 September 2004 the Group had almost 900 offices in 11 countries, with approximately 16,400 employees serving 4.2 million customers throughout the region.

Bank Austria Creditanstalt completed a capital increase by offering ordinary no-par value voting bearer shares on the Vienna Stock Exchange in July 2003 and strengthened the capital base of BA-CA to support the expansion in its core Central and Eastern Europe market. Since 14 October 2003, its shares have also been listed on the Warsaw Stock Exchange (secondary listing). Since the issue of new shares HVB has held 77.5 per cent. of BA-CA's share capital, the remainder being in public hands.

In October 2004 Bank Austria Creditanstalt, while continuing to be a member of the Austrian savings banks sector, left the Austrian Association of Savings Banks ("*Österreichischer Sparkassenverband*") and joined the Austrian Association of Banks and Bankers ("*Verband österreichischer Banken und Bankiers*") in order to transfer its employees to the collective bargaining agreement applicable to employees of Austrian Banks and Bankers. Talks and negotiations between management and the employee's council are currently in progress with a view to creating new internal service regulations for all employees. The new internal service regulations are planned to become effective in the first half of 2005.

### **Business Segments of Bank Austria Creditanstalt**

Bank Austria Creditanstalt publishes details of the results of individual business segments in accordance with International Financial Reporting Standards ("IFRS"). Bank Austria Creditanstalt is divided into five business segments: Private Customers Austria, Corporate Customers Austria, CEE, International Markets and the Corporate Center.

*(Changes in segment reporting with effect from 2004: capital allocation is based on risk-weighted assets. Risk-weighted assets are calculated according to Austrian supervisory guidelines. In the past, capital allocated to the business segments amounted to 6.2 per cent. of the risk positions (credit and market risk equivalent). In 2004, the percentage rate has been changed to 7 per cent.; however, in line with international capital market practices, capital allocated to foreign units in the CEE business segment amounts to 10 per cent. of the respective risk equivalent. The difference to the equity capital actually available in each case is transferred to the Corporate Center business segment. Furthermore, of the costs incurred within Bank Austria Creditanstalt, only those costs which have a direct earnings-generating business connection with CEE units are allocated to the CEE business segment. Other costs*

which Bank Austria Creditanstalt has so far allocated to the CEE business segment according to specific cost allocation methods remain in the Corporate Center business segment. As a result of these changes, net interest income in the CEE business segment improves by €11.8 million, general administrative expenses decline by €16.7 million, and net income thus improves by €28.5 million (at the expense of the Corporate Center business segment). This should be taken into account in comparing the figures with those for the previous year, **which have not been restated**. Starting from 2004, the interest rate applied to allocated equity capital on a uniform Group-wide basis is 5 per cent., compared with 6.5 per cent. in 2003).

### **Private Customers Austria**

The Private Customers Austria segment covers the retail banking activities, the fund management activities and the credit card business. In the first nine months of 2004, the segment recorded net income before taxes of EUR 130 million, an increase of 53 per cent. from the previous year. The return on equity before taxes was 19.3 per cent. and the cost/income ratio reached 79.0 per cent.

In its retail banking activities, Bank Austria Creditanstalt pursues an innovative multi-channel strategy. Customers can settle their banking transactions via the distribution channel they prefer: branches, mobile sales teams, and direct sales channels (online banking, telephone banking). Branches are the mainstay of customer business, but mobile sales and direct banking services are gaining in importance: in 2004, the number of customers using the bank's online banking services rose by more than 6 per cent. to 435,000 (2003: 407,000 customers). Almost 25 per cent. of BA-CA's customers are online banking customers.

Mobile sales teams are an essential factor on the lending side. In 2004, mobile sales accounted for EUR 1,908 million or 46 per cent. of new business (2003: EUR 1,225 million). The relevant volume is planned to be increased to EUR 2,050 million during 2005, with the share of new business generated by mobile sales teams remaining at the same level.

### **Corporate Customers Austria**

The Corporate Customers Austria segment essentially includes the corporate banking business, the real estate financing activities and the leasing business. Net income before taxes declined from EUR 188 million in the first nine months of 2003 to EUR 174 million in the first nine months of 2004. This decline constitutes a return to normal levels following the impact in 2003 of one-off valuation-related effects. The segment contributes 27 per cent. of the Group's net income before taxes. The cost/income ratio was 51.8 per cent. The return on equity before taxes reached 10.1 per cent.

Bank Austria Creditanstalt is the leading bank for corporate customers in Austria, with a customer share of up to 86 per cent. in this segment. The bank holds a particularly strong position in all product areas of corporate finance business which require a high level of expertise: from leasing to private equity products and structured financings all the way to export and project finance. At present Bank Austria Creditanstalt is making intensive efforts to prepare its customers for the impact which the new capital adequacy framework, known as "Basel 2", will bring for them. An important topic in this connection is "How to manage my credit rating?". In this area, Bank Austria Creditanstalt was the first bank in Austria to develop a special rating advisory product – "RatingBeratung der BA-CA" – which it offers to corporate customers free of charge.

### **CEE**

The CEE business segment includes the banking subsidiaries of the Group in Central and Eastern Europe. Bank Austria Creditanstalt's consolidated subsidiaries in CEE achieved aggregated net income before taxes of EUR 342 million in the first nine months of 2004, an increase of 49 per cent. over the previous nine-month figure (EUR 230 million). All countries in the region contributed to this improvement in results, but especially Poland, the Czech Republic, Romania and Bulgaria. After goodwill amortisation, consolidation effects and costs incurred in Vienna, the CEE business segment's net income before taxes amounted to EUR 254 million, an increase of more than 100 per cent. from the previous nine months (Q1-Q3 2003: EUR 123 million). The CEE segment now contributes 40 per cent. to the bank's overall profits, although only 27 per cent. of the average equity capital needs to be allocated to this segment. The cost/income ratio in this business segment was 58.6 per cent., the return on equity before taxes reached 20.7 per cent.

In November 2004, Bank Austria Creditanstalt further expanded its CEE network by signing the agreement to purchase 99.9 per cent. of the shares in Hebros Bank, a bank in Bulgaria. Hebros Bank

has total assets of approximately EUR 291 million, with some 1,000 employees serving 210,000 customers. In December 2004, Bank Austria Creditanstalt acquired Eksimbanka, a bank in Serbia, after a public takeover bid directed to all shareholders. Eksimbanka has total assets of approximately EUR 144 million, with some 300 employees serving 60,000 customers. As of 17 January 2005, Bank Austria Creditanstalt held 98.95 per cent. of the shares in Eksimbanka.

The CEE region is a core market of Bank Austria Creditanstalt. Within the HVB Group, Bank Austria Creditanstalt is responsible for these growth markets and makes available to its customers the leading network in the region, with almost 1,000 offices (including the offices of Hebrós Bank and Eksimbanka) in 11 countries. The Group offers the complete range of financial services in the region: retail and corporate banking services, investment banking and leasing products. This is the most extensive range of services offered by any bank operating in the region. Bank Austria Creditanstalt pursues a consistent strategy of expansion in the CEE region. Over the past eight years, total assets of the Group's operations in Central and Eastern Europe have increased almost tenfold, to a total of more than EUR 26 billion.

At mid-year 2004 BA-CA launched a retail initiative in CEE, which is paving the way to becoming a universal bank serving the entire region. Apart from large banking networks such as that in Poland, the acquisition of Bank Biochim in Bulgaria and of Splitska Banka in Croatia as well as the acquisition of Central profit banka in Bosnia and Herzegovina in the past year have provided an excellent basis for further growth of retail banking operations. About 200 new branches will be added to the network in the region. Some 80 new branches will be opened in Poland by 2007, while in Hungary the number of branches will be more than doubled, from 40 to a total of 100. In Croatia all of the 32 branches taken over from FINA in the previous year have been integrated. At least 30 branches are planned to be added to the network in South-East Europe. BA-CA intends to expand mobile sales activities and cooperation arrangements with other companies, which have proved to be highly effective, for example, in the Czech Republic. The number of customers is expected to be increased to 4.8 million (without acquisitions) by 2005.

### **International Markets**

The International Markets segment essentially comprises the treasury activities of Bank Austria Creditanstalt AG. The segment achieved net income before taxes of EUR 91 million for the first nine months of 2004. The business segment has delivered a good performance in volatile markets. The cost/income ratio was 54.3 per cent., the return on equity before taxes was 58.8 per cent.

The International Markets business segment makes available to customers of Bank Austria Creditanstalt a portal to global financial markets. Being part of the HVB Group, Bank Austria Creditanstalt has access to a level of international capital markets expertise that other Austrian banks cannot offer.

### **Corporate Center**

The Corporate Center segment covers all equity interests and other items that are not assigned to other business segments.

## Capitalisation

The following table sets forth the unaudited consolidated capitalisation of Bank Austria Creditanstalt at 30 September 2004:

	<i>As at 30 September 2004</i>
	<u>(€ million)</u>
Paid-in capital <sup>(1)</sup> .....	1,069
Capital reserve .....	2,154
Revenue reserve .....	560
Reserve pursuant to section 23(6) of the Austrian Banking Act .....	2,070
Untaxed reserves .....	154
Differences on consolidation pursuant to section 24(2) of the Austrian Banking Act .....	(260)
Less Intangible assets .....	(505)
<b>Core capital (Tier 1)</b> .....	<b>5,242</b>
Supplementary capital <sup>(2)</sup> .....	1,225
Revaluation reserve .....	182
Subordinated capital <sup>(2)(3)</sup> .....	2,485
<b>Supplementary elements (Tier 2)</b> .....	<b>3,892</b>
Deductions .....	(411)
<b>Net capital resources (Tier 1 and Tier 2 minus deductions)</b> .....	<b>8,723</b>
Tier 3 capital <sup>(4)</sup> .....	397
Liabilities evidenced by certificates <sup>(3)(5)</sup> .....	12,862
<b>Total capitalisation<sup>(6)(7)</sup></b> .....	<b>21,982</b>
<b>Capital Adequacy</b>	
Tier 1 capital .....	5,242
Tier 2 capital .....	3,892
Net capital resources (Tier 1 and Tier 2 minus deductions) .....	8,723
Tier 1 ratio (%) .....	7.5
Solvency ratio (%) .....	12.4

Note:

- (1) As at 30 September 2004, Bank Austria Creditanstalt had authorised and issued share capital of €1,068,920,750 represented by 147,031,740 ordinary shares.
- (2) From 31 December 2003 until 30 September 2004, Bank Austria Creditanstalt did not issue any supplementary nor subordinated capital.
- (3) Due after one year.
- (4) From 31 December 2003 until 30 September 2004 €101 million of subordinated capital was paid back by Bank Austria Creditanstalt.
- (5) From 31 December 2003 until 30 September 2004 Bank Austria Creditanstalt issued bonds with a total principal amount of approximately €1,847 million.
- (6) In October 2004 BA-CA Finance (Cayman) Limited issued €250 million of preferred securities. Due to other consolidation effects, Tier 1 capital remains almost unchanged following this issue.
- (7) Save as disclosed herein, there has not been any material change in Bank Austria Creditanstalt's capitalisation since 30 September 2004.

## **Management and Audit**

### **Board of Management**

As at the date of this Offering Circular the Board of Management consists of the following members:

Erich Hampel	Chairman and Chief Executive Officer
Wolfgang Haller	Deputy Chairman
Willibald Cernko	Board Member
Stefan Ermisch	Board Member
Wilhelm Hemetsberger	Board Member
Regina Prehofer	Board Member
Johann Strobl	Board Member

### **Supervisory Board**

As at the date of this Offering Circular the Supervisory Board consists of the following members:

Gerhard Randa	Chairman
Rudolf Humer	Deputy Chairman
Erich Becker	Member
Alberto Crippa	Member
Armin Gebhard Fehle	Member
Stefan Jentzsch	Member
Gerhard Mayr	Member
Michael Mendel	Member
Franz Rauch	Member
Veit Sorger	Member
Wolfgang Sprißler	Member
Hedwig Fuhrmann	Employees' Representative
Wolfgang Heinzl	Employees' Representative
Adolf Lehner	Employees' Representative
Thomas Schlager	Employees' Representative
Heribert Kruschik	Employees' Representative
Wolfgang Lang	Employees' Representative

### **Representatives of the Supervisory Authorities**

Doris Radl	Commissioner
Josef Kramhöller	Deputy Commissioner
Alfred Katterl	State Cover Fund Controller
Christian Wenth	Deputy State Cover Fund Controller
Martin Mareich	Trustee pursuant to Mortgage Bank Act
Gerhard Reicher	Deputy Trustee pursuant to Mortgage Bank Act

### **Auditing and Financial Statements**

The auditors of the consolidated financial statements of Bank Austria Creditanstalt are the Auditing Board of the Savings Bank Auditing Association (Bank Auditors), Österreichische Wirtschaftsberatung GmbH Wirtschaftsprüfungs- und Steuerberatungsgesellschaft and KPMG Austria GmbH Wirtschaftsprüfungs- und Steuerberatungsgesellschaft.

The financial reporting year of Bank Austria Creditanstalt is the calendar year. The financial statements are drawn up in accordance with regulations in force in Austria, which allow use of international accounting standards, such as IFRS, for consolidated financial statements.

### **Outlook**

On the basis of financial information currently available to it Bank Austria Creditanstalt expects its net income before taxes for the year ended 31 December 2004 to be at least EUR 800 million.

**Additional Information**

The website address of Bank Austria Creditanstalt is [www.ba-ca.com](http://www.ba-ca.com). From time to time Bank Austria Creditanstalt provides information as to recent developments relating to Bank Austria Creditanstalt and its subsidiaries on this website. The information contained therein does not form a part of this Offering Circular and should not be used for the purposes of making any investment decision with regard to the offering of the Preferred Securities.

## THE AUSTRIAN BANKING SYSTEM

### Overview

As at 30 June 2004, the Austrian banking industry consisted of 894 independent banks with a total of 4,359 branches. The structure of Austria's banking system is characterised by a large number of small institutions and a smaller number of medium to large sized banks.

The industry can be split into the following "sectors" (data based on individual financial statements of the banks reported to *Oesterreichische Nationalbank* ("OeNB")):

	<i>Total assets (as at 30 November 2004)</i>
	<i>(€ billion)</i>
Savings banks (including Bank Austria Creditanstalt).....	232
Commercial banks .....	99
Raiffeisen (rural co-operatives).....	151
Mortgage banks.....	53
Volksbanken (trade co-operatives) .....	35
Specialised banks .....	58
Building Societies.....	20
	<hr/>
	648
	<hr/> <hr/>

Changes in banking practice generally, and in Austrian banking legislation specifically, have contributed to an erosion of the original distinctions between the sectors. Today, commercial banks, savings banks and co-operative banks all engage in substantially similar business; however, each has different business policies and a different focus as to customers.

### Membership of the European Union

Austria joined the European Economic Area ("EEA") in January 1994 and became a member of the EU on 1 January 1995. Membership of the EEA entailed the adoption of and implementation by Austria of most of the EU directives, which has resulted in significant changes to Austrian banking law and accounting rules as Austrian laws have been harmonised with EU directives.

### Banking Act

The legal framework of the banking system was reformed in 1993 with the passing of the *Bankwesengesetz 1993* (the "Banking Act") which was part of the *Finanzmarktanpassungsgesetz 1993* ("Financial Markets Harmonisation Act"). The Financial Markets Harmonisation Act was passed to bring Austrian law into compliance with the EEA treaty and EU banking directives. The Banking Act implements 11 EU directives and five EU recommendations. In August 1996, an amendment to the Banking Act was made, bringing Austrian law into compliance with EU directives on large exposures, deposit guarantee, consolidation, supervision and reporting.

A further amendment to the Banking Act, which, among other things, implements the EU Investment Services Directive and the EU Capital Adequacy Directive, was enacted on 30 December 1996. The amendment consisted of the new *Wertpapieraufsichtsgesetz* (the "Securities Supervision Act") as well as amendments to the Banking Act, the *Börsegesetz* (the "Stock Exchange Act") and Austrian insolvency law, and had various effective dates up to 1 January 1999.

Further amendments of the Banking Act followed. A recent amendment was enacted in 2001 by the *Finanzmarktaufsichtsgesetz* ("Financial Market Supervision Act") which provided for a new Financial Market Supervisory Authority ("*Finanzmarktaufsichtsbehörde*" or "FMA") and had various effective dates up to 1 April 2002.

By the enactment of the *Bundesgesetz über das Internationale Insolvenzrecht 2003* (the "Act on International Insolvency Law") the provisions concerning general insolvency proceedings and those on the insolvency of banks were amended in line with the Council directive (EC) No 1346/2000 of 29

May 2000 on insolvency proceedings and the directive 2001/24, on the reorganisation and winding up of credit institutions of 5 May 2001.

### **Regulation and Supervision**

The structure of the regulation and supervision of the Austrian banking system is set forth in a number of statutes, including the Banking Act, the National Bank Act 1984 and the Mortgage Bond Act 1927, each as amended.

The Banking Act contains most of the essential regulations for “credit institutions”, as banks are designated. In addition to setting out capital adequacy rules, the Banking Act imposes various other requirements, restrictions and regulations on Austrian banks, including reporting and liquidity requirements, restrictions on participations and large exposures, and regulations regarding internal controls and internal audits, deposit guarantees, money laundering and customer protection.

The National Bank Act 1984 regulates the governance, as well as the tasks of the OeNB and its position in the system of European Central Banks, while the Mortgage Bond Act 1927 and the Mortgage Bank Act 1899 govern bonds backed by mortgages.

Under the Banking Act, regulation and supervision of Austrian banks and of the branches of foreign banks in Austria is the responsibility of the FMA assisted by the OeNB. The FMA may take a variety of actions under the Banking Act to supervise banks on a comprehensive basis. In order to enable the FMA to fulfil its obligations, banks must, among other things, prepare monthly preliminary balance sheets and quarterly profit and loss statements, and submit annual audit reports.

The Foreign Exchange Act 2004 provides a new legal basis for the free movement of capital and monetary cross border transactions.

### **Federal Ministry of Finance**

The Federal Ministry of Finance (the “Ministry of Finance”) is headed by the Federal Minister of Finance (the “Minister of Finance”), who is a member of the Federal Government. The Ministry of Finance monitors compliance with the Banking Act and other relevant legislation by the FMA.

### **Financial Market Supervisory Authority**

Since April 2002 most supervisory tasks and resources have been transferred from the Federal Ministry of Finance (supervision of banking, insurance and pension funds) and the former Austrian Securities Authority (securities supervision) to the FMA. The FMA monitors compliance with the Banking Act and other relevant legislation and regulations by Austrian banks and financial institutions, both at home and abroad, and by foreign banks operating in Austria. In accordance with EU legislation and the Banking Act, credit and financial institutions organised in and regulated by the authorities of EEA Member States are subject to regulation and supervision by their home state and not by Austria. With respect to activities in Austria, some regulations of the Banking Act must be observed.

### **The European Central Bank and the OeNB**

Since 1 January 1999, responsibility for the monetary and currency policy of all the states participating in the third stage of European economic and monetary union, including Austria, rests with the European Central Bank. The governor of the OeNB is a member of the council of the European Central Bank.

In addition to its functions within the European System of Central Banks, the OeNB reviews reports filed by banks and makes recommendations to the Ministry of Finance. Detailed foreign currency statistics concerning the foreign currency position of all Austrian banks are compiled by the OeNB and provide it with an indication of the business volume of all large Austrian banks. Austria’s detailed information reporting requirements have the effect of acting as a form of regulatory mechanism since the figures in these reports and the information provided by the banks must be consistent and compiled in accordance with the rules and regulations of the OeNB.

The OeNB continuously evaluates the status of Austrian banks as part of the banking supervision regime provided for in the Banking Act.



## Capital Adequacy Requirements

Under Austrian risk-based capital adequacy rules, which are based on EU law, each bank must maintain on an unconsolidated basis a ratio (the “Solvency Ratio”) of at least 8 per cent. The Solvency Ratio is the ratio of Qualifying Capital (as explained below) to risk-adjusted assets and certain off-balance sheet items (as explained below).

For purposes of calculation of the Solvency Ratio, the Banking Act defines “Own Funds” as consisting principally of (i) paid-in capital, (ii) disclosed reserves, (iii) funds for general bank risks, (iv) certain hidden reserves, (v) supplementary capital, (vi) participation capital, (vii) subordinated capital, (viii) revaluation reserves and (ix) the commitments of members of co-operative banks to make additional contributions quantified in relation to their shareholdings. As further prescribed in § 23 subparagraph 14 of the Banking Act, only certain items of Own Funds qualify in full as Qualifying Capital. Certain losses, certain intangible assets and certain investments in banks, financial institutions, (re-)insurance companies or insurance holding companies are required to be deducted from Own Funds in computing Qualifying Capital.

These investments in banks, financial institutions, (re-)insurance companies and insurance holding companies are no longer to be deducted, if the group is also, since 1 January 2005, subject to supervision as a financial conglomerate pursuant to the Act on Financial Conglomerates (*Finanzkonglomeratengesetz*), implementing the Financial Conglomerates Directive 2002/87/EC, or if these investments are consolidated.

“Core Capital” consists of (i) paid-in capital, (ii) disclosed reserves, and (iii) funds for general banking risks, less losses and intangible assets. The Banking Act requires that the aggregate amount of the elements comprising Qualifying Capital, other than those elements which are part of Core Capital, must not exceed the Core Capital. In addition, the sum of subordinated debt may not exceed 50 per cent. of the Core Capital. Core Capital reflects a concept similar to “Tier 1 Capital” and Qualifying Capital (other than Core Capital) reflects a concept similar to “Tier 2 Capital”.

Risk-adjusted assets and certain off-balance sheet items are computed by assigning the assets to five broad categories of relative credit risk: 0 per cent., 10 per cent., 20 per cent., 50 per cent., and 100 per cent. The balance sheet value of each asset is multiplied by the percentage weight applicable to its risk category to arrive at the risk-adjusted value. Special off-balance sheet items on the bank book such as swaps and other financial derivatives are valued either at cost or market price. As with on-balance sheet assets, each off-balance sheet item is assigned to a credit risk category depending upon the type of product and multiplied by the applicable percentage weight. Since 1998, banks have been required to meet the capital requirements regarding position risk as well as settlement and counterparty risk according to “trading book approach”. As a complementary measure, short-term subordinated capital will be accepted as part of Own Funds (short-term subordinated capital is commonly referred to as “Tier 3 Capital”, as such term is used in BIS capital adequacy rules).

The capital adequacy requirements must be met not only by a bank, but also by the bank together with all other financial services companies in the bank’s group. For this purpose, the group consists of the parent company bank and all other banks (including factoring companies), financial institutions (e.g. leasing companies), investment firms and ancillary banking service undertakings which it controls or in which it holds more than 20 per cent. of the share capital or voting rights and the participation in which it manages jointly with one or several companies not belonging to the same group.

## Minimum Reserves

As of 1 January 1999, all banks incorporated in a state which is participating in the third stage of European Economic and Monetary Union (“EMU”) are obliged to maintain minimum reserves at the OeNB for liabilities in all currencies of EMU participating member states. The percentages of the minimum reserve requirements may be determined by ordinance if this is necessary for the protection of creditors and the readiness to pay. As of now the minimum reserve requirement for sight deposits and time deposits for up to 2 years is set at 2.0 per cent. A general allowance of €100,000 can be deducted. These reserves are interest bearing.

Failure by a bank to meet the minimum reserve requirements exposes the bank concerned to potential penalty interest charges.

### **Deposit Guarantee Scheme**

Austrian law requires that any bank which receives deposits must join the guarantee scheme of its sector within the banking system. Non-membership of the relevant guarantee scheme results in the lapse of the bank's licence to conduct deposit-taking business in Austria. Payments made by a guarantee scheme to restore guaranteed deposits are met by contributions from each member bank in the relevant sector. Each bank's contribution is determined in proportion to the aggregate amount of such bank's deposits, subject to a maximum contribution amount equal to one-third of the Banking Act liability reserve of such bank pursuant to § 23 subparagraph 6 of the Banking Act. Bank Austria Creditanstalt has been, and is, a member of the deposit guarantee organisation for savings banks.

### **Accounting and Auditing**

Generally, Austrian auditing regulations are adapted to EU standards. Austrian banks, and banks operating in Austria, are required to submit audited financial statements, including the audit reports thereon, to the FMA and the OeNB. Such statements must be submitted within six months of the end of the business year.

Legislation allows banks to use international accounting standards (such as International Financial Reporting Standards or US GAAP) to consolidate financial statements provided that the financial statements comply with EU guidelines, contain all required information and are audited. In addition the auditor has to confirm compliance with EU directive requirements.

Bank auditors are required to certify compliance with certain regulatory requirements, and to include in their long form reports to the relevant supervising authorities an overall judgement on the risks, profitability and financial position of the respective bank. Bank auditors may be auditing firms but also sector related but independent institutions.

## DESCRIPTION OF THE PREFERRED SECURITIES

*As used in the Articles of Association of the Issuer, "Company" means the Issuer.*

*The following is a description of the rights attaching to the Preferred Securities which are set out in full in, are subject to, and are qualified in their entirety by reference to the Issuer's Memorandum and Articles of Association (the "Articles"). Paragraphs in italics are not included in the Articles and contain, inter alia, a summary of certain procedures of Clearstream AG, Frankfurt am Main ("Clearstream, Frankfurt"), Euroclear Bank S.A./N.V., as operator of the Euroclear System ("Euroclear") and Clearstream Banking, société anonyme, ("Clearstream, Luxembourg") that will be applicable to the Preferred Securities. Clearstream, Frankfurt, Euroclear and/or Clearstream, Luxembourg may, from time to time, change these procedures.*

*References in this section to paragraphs are to paragraphs in the schedule to the Issuer's Articles of Association in which the rights and restrictions applying to the Preferred Securities are set out.*

1. The following are the definitions, taken from the Articles of Association of the Issuer, which relate to the Preferred Securities:

"Agents" means the Principal Paying and Transfer Agent, the Registrar and the Paying and Transfer Agents, or such other entity as is appointed by the Company and notified to the Holders in accordance with paragraph 2(i) and "Agent" means any one of the Agents;

"Asset Parity Security" means any preference share, preferred security or other security issued by Bank Austria Creditanstalt, the Company or any other Subsidiary of Bank Austria Creditanstalt (a) ranking *pari passu* as to participation in the assets of Bank Austria Creditanstalt with Bank Austria Creditanstalt's obligations under the Support Agreement or (b) entitled to the benefit of a guarantee or support agreement from Bank Austria Creditanstalt ranking *pari passu* as to participation in the assets of Bank Austria Creditanstalt with Bank Austria Creditanstalt's obligations under the Support Agreement;

"Austrian Tax" means any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of the Republic of Austria or by any authority therein or thereof having power to tax;

"Bank Austria Creditanstalt" means Bank Austria Creditanstalt AG;

"Bank Share Capital" means the common shares of Bank Austria Creditanstalt, together with all other securities of Bank Austria Creditanstalt (including *Vorzugsaktien*), ranking *pari passu* with the common shares of Bank Austria Creditanstalt as to participation in a liquidation surplus;

"Business Day" means a day on which TARGET is operating;

"Calculation Agent" means JPMorgan Chase Bank, N.A., London Branch, or such other entity as is appointed by the Company and notified to the Holders in accordance with paragraph 2(i);

"Cayman Tax" means any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of the Cayman Islands or by any authority therein or thereof having power to tax;

"Closing Date" means 22 February 2005;

"Core Capital" means capital which qualifies as core regulatory capital (*Kernkapital*) of Bank Austria Creditanstalt for Austrian banking capital adequacy purposes as defined in the Austrian Banking Act (*Bankwesengesetz*) ("BWG"), as amended from time to time and/or as determined by the FMA;

"Directors" means the directors of the Company for the time being;

"Distributable Funds" of the Company for any Dividend Period means the distributions and redemption payments deriving from the Investments and the claims of the Company against Bank Austria Creditanstalt under the Support Agreement;

"Distributable Profits" means, in respect of each fiscal year of Bank Austria Creditanstalt, the balance sheet profit (*Bilanzgewinn*) of Bank Austria Creditanstalt as of the end of such fiscal year, as shown in the audited unconsolidated balance sheet of Bank Austria Creditanstalt as of the end of such fiscal year, but before deduction of the amount of any dividend or other distribution declared on Bank Share Capital in respect of such fiscal year. Such balance sheet profit includes the annual surplus or loss (*Jahresüberschuss/Jahresfehlbetrag*), plus any profit carried forward from previous years, minus any loss carried forward from previous years, plus transfers from capital reserves and earnings reserves, minus allocations to earnings reserves, all as determined in accordance with the

accounting principles generally accepted in Austria as principally described in the Austrian Commercial Code (*Handelsgesetzbuch*), the provisions of the Austrian Banking Act (*Bankwesengesetz*) and other applicable Austrian law then in effect;

“Dividend Date” means 22 March in each year, provided that the first Dividend Date shall be 22 March 2006;

“Dividend Period” means the period from and including 22 February 2005 to (but excluding) the first Dividend Date and each successive period from and including a Dividend Date to (but excluding) the next succeeding Dividend Date;

“euro”, “€” and “EUR” mean the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty and whose smallest subdivision shall be one hundredth of a euro or one “cent”;

“Euro-zone” means the region comprised of member states of the European Union that adopt or have adopted the euro as single currency in accordance with the Treaty;

“FMA” means *Finanzmarktaufsichtsbehörde* or any successor thereto performing for the time being the same or similar functions in relation to banks in Austria;

“Group” means Bank Austria Creditanstalt together with its Subsidiaries;

“Holder” means a person whose name is entered in the Register as a holder of Preferred Securities;

“Investments” means the investments within the Group for which the Company shall subscribe using the net proceeds of the issue of the Preferred Securities;

“Junior Securities” means (i) Bank Share Capital, (ii) each class of preference shares of Bank Austria Creditanstalt ranking junior to Parity Securities of Bank Austria Creditanstalt, if any, and any other instrument of Bank Austria Creditanstalt ranking *pari passu* therewith or junior thereto and (iii) preference shares or any other instrument of any Subsidiary of Bank Austria Creditanstalt subject to any guarantee or support agreement of Bank Austria Creditanstalt ranking junior to the obligations of Bank Austria Creditanstalt under the Support Agreement;

“Liquidation Distribution” means the Liquidation Preference plus accrued and unpaid Dividends for the then current Dividend Period to the date of payment;

“Liquidation Preference” means €1,000.00 per Preferred Security or, in relation to any other preference shares or preferred securities of the Company ranking *pari passu* with the Preferred Securities as regards participation in the assets of the Company, such amount as the holders thereof are entitled to receive by way of liquidation preference per preference share or preferred security held by them in the event of any voluntary or involuntary winding-up of the Company;

“Parity Security” means any preference share, preferred security or other security (a) issued by Bank Austria Creditanstalt and ranking *pari passu* as to payment of dividends with Bank Austria Creditanstalt’s obligations under the Support Agreement or (b) issued by the Company or any other Subsidiary of Bank Austria Creditanstalt and entitled to the benefit of a guarantee or support agreement from Bank Austria Creditanstalt ranking *pari passu* as to payment of dividends with Bank Austria Creditanstalt’s obligations under the Support Agreement;

“Paying and Transfer Agents” means Deutsche Bank AG in Amsterdam and J.P. Morgan AG in Frankfurt, or such other entity as is appointed by the Company and notified to Holders in accordance with paragraph 2(i);

“Principal Paying and Transfer Agent” means JPMorgan Chase Bank, N.A., London Branch, or such other entity as is appointed by the Company and notified to the Holders in accordance with paragraph 2(i);

“Redemption Calculation Date” means the third Business Day prior to the Specified Redemption Date on which the Preferred Securities are redeemed at the option of the Company as a result of (i) the Company being required to pay Additional Amounts in respect of payments due on the Preferred Securities or (ii) (a) the FMA determining and announcing that, or as a result of a change in law or regulation or interpretation thereof, the Preferred Securities no longer qualify as Core Capital (*Kernkapital*) of Bank Austria Creditanstalt for Austrian banking capital adequacy purposes on a consolidated basis or (b) there occurring a change in law or regulation or the interpretation thereof, or of any ruling, decision or assessment in respect thereof issued by competent

authorities which results in payments made by Bank Austria Creditanstalt or any member of the Group on any of the Investments ceasing to be deductible as expenses for income tax purposes;

“Redemption Price” means the Liquidation Preference plus accrued and unpaid dividends for the then current Dividend Period ending on the date fixed for redemption;

“Register” means the register of Holders to be kept pursuant to the Articles of Association of the Issuer;

“Registrar” means J.P. Morgan Bank Luxembourg S.A., or such other entity as is appointed by the Company and notified to the Holders in accordance with paragraph 2(i);

“Specified Redemption Date” means any date designated for the redemption for tax reasons or for capital reasons of the Preferred Securities pursuant to paragraph 2(d);

“Subsidiary” means a subsidiary of Bank Austria Creditanstalt (within the meaning of § 228 sub-paragraph 3 of the Austrian Commercial Code);

“Support Agreement” means the Support Agreement to be dated 22 February 2005 and made between Bank Austria Creditanstalt and the Company;

“TARGET” means the Trans European Real-Time Gross Settlement Express Transfer (TARGET) system; and

“Treaty” means the Treaty establishing the European Community, as amended.

The following (with the exception of the paragraphs in italics) is paragraph 2 of the Company’s Articles of Association relating to the Preferred Securities:

“Without limiting the generality of the authority granted to the Board of Directors of the Company in these Articles (the “Board of Directors”, which expression in this Schedule shall include any duly authorised committee of the Board of Directors), the Directors may issue at their discretion all or any of the 150,000 Perpetual Non-cumulative Non-voting Fixed/Floating Rate Preferred Securities (the “Preferred Securities”, which expression shall include any further Preferred Securities issued pursuant to paragraph 2(f)(iv) below) which shall have attached to them the following rights and obligations:

## **2. (a) Dividends**

(i) Subject to the Law and as provided in paragraphs 2(a)(iii) and 2(a)(v), non-cumulative dividends (“Dividends”) on the Preferred Securities will accrue:

(A) from and including the Closing Date to (but excluding) 22 March 2006, at a rate of 7.50 per cent. per annum payable in arrear on 22 March 2006. The amount of Dividend payable for any period less than a Dividend Period will be calculated by applying the rate of Dividend to the aggregate principal Liquidation Preference amount of the Preferred Securities outstanding, on the basis of the number of days elapsed in the period using a calendar year of 360 days consisting of 12 months of 30 days each divided by 360;

(B) from (and including) 22 March 2006 to (but excluding) the next succeeding Dividend Date and for each Dividend Period thereafter at the lower of 8.00 per cent. per annum and the aggregate of 0.15 per cent. per annum and:

(a) the rate (rounded, if necessary, up to the nearest one hundred thousandth of a percentage point (0.000005 per cent., being rounded upwards)) for the annual Euro swap rate expressed as a percentage for swap transactions with a 10-year maturity at 11.00 a.m. (Brussels time) on the second Business Day before 22 March 2006 or the relevant Dividend Date in question thereafter (the “Dividend Determination Date”) as appears on the Reuters monitor as “ISDAFIX2” under the heading “EURIBOR BASIS” and above the caption “11:00 AM C.E.T.” (or such other page or service as may replace it for the purpose of displaying such information) as determined by the Calculation Agent; or

(b) if such rate does not appear on that page, the arithmetic mean (rounded, if necessary, up to the nearest one hundred thousandth of a percentage point (0.000005 per cent. being rounded upwards)) of quotations to prime banks in the Euro-zone interbank market for the annual Euro swap rate expressed as a percentage for swap transactions with a 10-year maturity at 11.00 a.m. (Brussels

time) on the relevant Dividend Determination Date obtained by the Calculation Agent from the principal Euro-zone office of each of four major banks (the “Reference Banks”) in the Euro-zone interbank market, provided at least two of such banks provide the Calculation Agent with such quotations; or

- (c) if, on the Dividend Determination Date to which the provisions of subparagraph (b) above apply, one only or none of the Reference Banks provides the Calculation Agent with such a quotation, the arithmetic mean (rounded, if necessary, up to the nearest one hundred thousandth of a percentage point (0.000005 per cent. being rounded upwards)) of the euro lending rates which major banks in the Euro-zone selected by the Calculation Agent are quoting at approximately 11.00 a.m. (Brussels time) on the first day of the relevant Dividend Period to leading European banks for a period of three months,

except that, if the banks so selected by the Calculation Agent under subparagraph (c) above are not quoting as mentioned above, the relevant dividend rate shall be the aggregate of 0.15 per cent. per annum and the rate or (as the case may be) the arithmetic mean so determined for the last preceding Dividend Period.

From (and including) 22 March 2006 the Calculation Agent will, as soon as practicable after the Dividend Determination Date in relation to each relevant Dividend Period, calculate the amount of Dividend (the “Dividend Amount”) payable in respect of the aggregate principal Liquidation Preference amount of the Preferred Securities for such Dividend Period. The Dividend Amount will be calculated by applying the rate of Dividend (as determined by the Calculation Agent) for such Dividend Period to the aggregate principal Liquidation Preference amount of the Preferred Securities outstanding, multiplying the product by the number of days elapsed in such Dividend Period using a calendar year of 360 days consisting of 12 months of 30 days each divided by 360 and rounding the resulting figure to the nearest cent (half a cent being rounded upwards).

The Calculation Agent will, upon determining the rate of the Dividends pursuant to this paragraph 2(a)(i)(B) calculate the Dividend Amount and cause such rate and such amount to be notified to Bank Austria Creditanstalt, the Agents and Euronext Amsterdam and to be notified to the Holders as soon as possible after their determination but in no event later than the second Business Day after the first day of the relevant Dividend Period. The Calculation Agent will be entitled to recalculate any Dividend Amount (on the basis of the foregoing provisions) without notice in the event of an extension or shortening of the relevant Dividend Period.

- (ii) All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this paragraph 2(a) by the Calculation Agent will (in the absence of manifest error) be binding on the Company, Bank Austria Creditanstalt, the Agents and the Holders and (subject as aforesaid) no liability to any such person will attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions for such purposes.
- (iii) Dividends on the Preferred Securities will be non-cumulative. Dividends on the Preferred Securities will be paid by the Company out of funds legally available therefor; provided, however, that Dividend payments (“Dividend Payments”) on the Preferred Securities are only made on any Dividend Date to the extent that Bank Austria Creditanstalt has in accordance with § 24 subparagraph 2 No. 6 BWG an amount of Distributable Profits at least equal to the aggregate amount of (a) Dividends (including Additional Amounts in respect thereof) payable on the respective Dividend Date and (b) payments made during the period commencing on the date that Distributable Profits for the relevant fiscal year were determined in accordance with Austrian law by the supervisory board or the shareholders meeting of Bank Austria Creditanstalt immediately preceding such Dividend Date and ending on the relevant Dividend Date, in respect of Dividends on the Preferred Securities (including Additional Amounts in respect thereof) and in respect to dividends or other distributions or payments on Parity Securities (including Additional Amounts in respect thereof), if any.

- (iv) Notwithstanding the foregoing, the Preferred Securities will pay Dividends if Bank Austria Creditanstalt or any of its Subsidiaries:
- (a) on any Parity Securities, declares or pays any dividends or makes any other payment or other distribution other than as a result of this provision or a provision of substantially similar effect in any Parity Securities being triggered by this provision. If the dividend or other payment or distribution on such Parity Securities was the full stated amount payable on such Parity Securities, payments in respect of Dividends will be made in full on the first Dividend Date, falling contemporaneously with and/or immediately following the date on which such dividend or other payment or distribution was declared or made on such Parity Securities. If the dividend or other payment or distribution on such Parity Securities was only a partial payment of the amount so owing, the payments in respect of Dividends on the Preferred Securities will be reduced proportionally;
  - (b) on any Junior Securities, declares or pays any dividend or makes any other payment or distribution other than to other Group companies, the Preferred Securities will pay Dividends on the first Dividend Date, falling contemporaneously with and/or immediately following the date on which such dividend was declared or other payment made;
  - (c) redeems, repurchases or otherwise acquires any Parity Securities or Junior Securities for any consideration except by way of replacement by, conversion into or exchange for shares of common stock of Bank Austria Creditanstalt or except where any such redemption, repurchase or acquisition is funded, directly or indirectly, by the issue of shares of common stock of Bank Austria Creditanstalt or unless such Parity Securities or Junior Securities are redeemed, repurchased or otherwise acquired (i) by Bank Austria Creditanstalt in the ordinary course of its investment banking or trading activities or (ii) in order to fulfil its obligations under stock option or employees stock ownership schemes, in each case as permitted by the Austrian Stock Corporations Act (*Aktiengesetz*), the Company will make payments on the Preferred Securities in full on the first Dividend Date falling contemporaneously with and/or immediately following the date on which such redemption, repurchase or other acquisition occurred.
- (v) Even if Distributable Funds of the Company and Distributable Profits of Bank Austria Creditanstalt are sufficient on a particular Dividend Date and notwithstanding the provisions of paragraph 2(a)(iv), to the extent that, (i) Bank Austria Creditanstalt has determined that in accordance with applicable Austrian banking regulations affecting banks that fail to meet their capital ratios on a consolidated basis pursuant to the BWG, as amended, Bank Austria Creditanstalt would be limited in making payments on preference shares or preferred securities issued by it ranking *pari passu* as to participation in profits with Bank Austria Creditanstalt's obligations under the Support Agreement or (ii) on such date there is in effect any law or an order of the FMA (or any other relevant regulatory authority) prohibiting Bank Austria Creditanstalt from making any distribution of profits, the Company shall not be required to make any payments in respect of Dividends on any such Dividend Date.
- (vi) If no Dividend (or proportion thereof) falls to be paid by the Company in respect of the Preferred Securities in any Dividend Period then the right of Holders to receive a Dividend (or proportion thereof) in respect of the Dividend Period ending on the relevant Dividend Date will be extinguished and the Company will have no obligation to pay the Dividend accrued for such Dividend Period or to pay any interest thereon, whether or not Dividends on the Preferred Securities are paid for any future Dividend Period.
- (vii) When, by reason of any limitation described in paragraphs 2(a)(iii) and 2(a)(v) above, dividends are not paid in full on the Preferred Securities and any Parity Securities, all dividends declared or payable upon the Preferred Securities and any such Parity Securities will be payable *pro rata* in the proportion that the amounts available for payment on the Preferred Securities and any such Parity Securities on the due date of payment shall bear to the full amount that would have been payable on the Preferred Securities and such Parity Securities but for such limitation and any claims in respect of the difference between

the full amount and the amount so payable shall be thereupon extinguished. If Dividends are not paid in full in accordance with the foregoing, the Holders will be notified in accordance with paragraph 2(i).

- (viii) Save as described in this paragraph 2(a), Holders will have no right to participate in the profits of the Company.

*It is intended that the Preferred Securities will be initially represented by a single security certificate for the total number of the Preferred Securities. Such certificate for the Preferred Securities is to be delivered into the physical custody of Clearstream, Frankfurt. Each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will make payment of any amounts received by it to its accountholders in accordance with its published rules and regulations.*

**(b) Liquidation Distributions**

- (i) In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Company, the Holders at the time will be entitled to receive the Liquidation Distribution in respect of each Preferred Security held out of the assets of the Company available for distribution to shareholders.

Such entitlement will arise before any distribution of assets is made to holders of ordinary shares, preference shares or preferred securities or any other class of shares of the Company or any other share or other security issued by the Company ranking junior as regards participation in assets to the Preferred Securities, but such entitlement will rank equally with the entitlement of the holders of any other preference shares or preferred securities, if any, of the Company ranking *pari passu* with the Preferred Securities as regards participation in assets of the Company.

Notwithstanding the availability of sufficient assets of the Company to pay any Liquidation Distribution to the Holders if, at the time such Liquidation Distribution is to be paid, proceedings are pending or have been commenced for the voluntary or involuntary liquidation, dissolution or winding-up of Bank Austria Creditanstalt, the Liquidation Distribution paid to Holders and the liquidation distribution per share paid to the holders of all Asset Parity Securities, shall not exceed the amount per share that would have been paid as the liquidation distribution from the assets of Bank Austria Creditanstalt (after payment in full in accordance with Austrian law of all creditors of Bank Austria Creditanstalt, including holders of its subordinated debt but excluding holders of any liability expressed to rank *pari passu* with or junior to Bank Austria Creditanstalt's obligations under the Support Agreement) had the Preferred Securities and all Asset Parity Securities been issued by Bank Austria Creditanstalt and ranked (a) *pari passu* with Bank Austria Creditanstalt's obligations under the support agreement entered into by Bank Austria Creditanstalt in connection with the issue of €250,000,000 preferred securities in October 2004, (b) junior to all liabilities of Bank Austria Creditanstalt (other than any liability ranking or expressed to rank *pari passu* with or junior to Bank Austria Creditanstalt's obligations under the Support Agreement), (c) *pari passu* with all payment obligations of Bank Austria Creditanstalt in respect of Asset Parity Securities and (d) senior to Bank Austria Creditanstalt's Bank Share Capital.

- (ii) If the Liquidation Distribution and any other such liquidation distributions cannot be made in full by reason of the limitation described in paragraph 2(b)(i) above, such amounts will be payable *pro rata* in the proportion that the amount available for payment bears to the full amount that would have been payable but for such limitation. After payment of the Liquidation Distribution, as adjusted if applicable, the Holders will have no right or claim to any of the remaining assets of the Company or Bank Austria Creditanstalt.
- (iii) In the event of the liquidation, dissolution or winding-up of Bank Austria Creditanstalt, the Board of Directors shall convene an Extraordinary General Meeting of the Company for the purpose of proposing a Special Resolution to put the Company into voluntary winding-up and the amount per Preferred Security to which Holders shall be entitled as a Liquidation Distribution will be as set out in paragraphs 2(b)(i) and 2(b)(ii) above.

*Bank Austria Creditanstalt will undertake in the Support Agreement that, so long as any of the Preferred Securities is outstanding, unless Bank Austria Creditanstalt itself is in liquidation, Bank*



*Austria Creditanstalt will not permit, or take any action to cause, the liquidation, dissolution or winding-up of the Company.*

**(c) Optional Redemption**

- (i) The Preferred Securities are redeemable, at the option of the Company, subject to the Law and to the prior consent of Bank Austria Creditanstalt (which shall grant such consent only after either replacement of the principal amount of the Preferred Securities so redeemed by issuing other capital of at least equivalent quality (*Kapital gleicher oder besserer Qualität*) or having applied for and been granted consent by the FMA), in whole but not in part, on 22 March 2012 or on any Dividend Date falling thereafter upon not less than 30 nor more than 60 days' notice to the Holders with a copy to Euronext Amsterdam for so long as the Preferred Securities are listed on such exchange specifying the relevant date fixed for redemption (which notice shall be irrevocable), each to be redeemed at the Redemption Price on the date fixed for redemption.
- (ii) Upon the expiry of such notice, the Company shall be bound to redeem the relevant Preferred Securities accordingly, in accordance with and subject to the Law.

**(d) Redemption for Tax Reasons and for Capital Reasons**

Notwithstanding the foregoing, the Preferred Securities will be redeemable, at the option of the Company at any time, subject to the Law and to the prior consent of Bank Austria Creditanstalt, (which shall grant such consent only after either replacement of the principal amount of the Preferred Securities so redeemed by issuing other capital of at least equivalent quality (*Kapital gleicher oder besserer Qualität*) or having applied for and been granted consent by the FMA), in whole but not in part at the Redemption Price:

- (i) if the Company is or would be required to pay Additional Amounts (as defined in paragraph 2(g)); or
- (ii) (a) if the FMA determines and announces that, or as a result of a change in law or regulation or interpretation thereof, the Preferred Securities no longer qualify as Core Capital (*Kernkapital*) of Bank Austria Creditanstalt for Austrian banking capital adequacy purposes on a consolidated basis; or  
(b) if as a result of a change in law or regulation or the interpretation thereof, or of any ruling, decision or assessment in respect thereof issued by competent authorities, payments made by Bank Austria Creditanstalt or any member of the Group on any of the Investments cease to be deductible as expenses for income tax purposes,

upon not less than 60 nor more than 90 days' notice to the Holders designating the relevant Specified Redemption Date (which notice shall be irrevocable), each to be redeemed on the Specified Redemption Date. Upon the expiry of such notice, the Company shall be bound to redeem the Preferred Securities accordingly, in accordance with and subject to the Law.

**(e) Payments and Purchases**

- (i) Dividends declared or payable on the Preferred Securities will be payable by the Company on the relevant Dividend Date (but without interest in respect of a delay where such Dividend Date is not a Business Day) or other due date for payment as provided herein to the Holders of record thereof as they appear on the Register for the Preferred Securities on the relevant record date, which will be five Business Days prior to the relevant date for payment.

*For so long as the Preferred Securities are represented by a single security certificate for the total number of Preferred Securities outstanding, the record date for the Preferred Securities will be the Business Day immediately preceding the relevant date for payment.*

- (ii) If the Company gives a notice of redemption in respect of the Preferred Securities, then, by 10.00 a.m. (Frankfurt time) on the date specified for redemption, the Company will irrevocably deposit with the Principal Paying and Transfer Agent funds sufficient to pay the Redemption Price, and will give the Principal Paying and Transfer Agent irrevocable instructions and authority to pay the Redemption Price to the Holders as at the relevant record date, which will be five Business Days prior to the relevant date specified for redemption. If notice of redemption shall have been given and funds deposited as required,

then upon the date of such deposit, all rights of Holders will be extinguished, except the right of the Holders to receive the Redemption Price in respect of each Preferred Security, but without interest, and the Preferred Securities will cease to be outstanding.

- (iii) Subject to any applicable fiscal or other laws and regulations:
- (a) each payment in respect of Dividends will be made by cheque and mailed to the Holder of record at such Holder's address as it appears on the Register on the relevant record date; and
  - (b) any payment in respect of the redemption of any Preferred Security will be made by cheque against presentation and surrender of the relevant security certificate at the office of the Principal Paying and Transfer Agent,

provided however, that a Holder may receive any such payment by wire transfer if the Company (or its agent) so agrees with such Holder and if appropriate wire transfer instructions have been received by the Principal Paying and Transfer Agent in sufficient time prior to the relevant date of payment.

- (iv) In the event that payment of the Redemption Price in respect of any Preferred Security is improperly withheld or refused and not paid by the Company, Dividends on such Preferred Security, subject as described in paragraphs 2(a)(iii) and 2(a)(v), will continue to accrue, at the then applicable rate, from the date specified for redemption to the date of actual payment of such Redemption Price.
- (v) In making any payment in respect of the Preferred Securities, amounts shall be rounded, if necessary, to the nearest €0.01 (with €0.005 being rounded upwards).
- (vi) Subject to the foregoing and to applicable law (including, without limitation, to Cayman Islands and Austrian securities and banking laws and regulations) and to the rules of Euronext Amsterdam (for such time as the Preferred Securities remain listed thereon), the Company or Bank Austria Creditanstalt or any of Bank Austria Creditanstalt's other Subsidiaries may at any time and from time to time purchase outstanding Preferred Securities by tender, in the open market or by private agreement. If purchases are made by tender, the tender must be available to all Holders alike. Any such Preferred Security so purchased by Bank Austria Creditanstalt or any of Bank Austria Creditanstalt's other Subsidiaries may be resold.

Any such purchase if made by the Company shall be made in such manner and on such terms as the Company shall approve in general meeting.

**(f) Voting Rights**

- (i) Holders will not be entitled to receive notice of or attend or vote at any general meeting of shareholders of the Company.
- (ii) If in any Dividend Period, Dividends and any Additional Amounts in respect of such Dividends have not been paid in full on the Preferred Securities by the Company, then the Holders together with the holders of any other preference shares or preferred securities of the Company ranking *pari passu* as to payment of Dividends with the Preferred Securities having the right to vote for the election of Directors on the occurrence of a concurrent event of similar effect under the terms of such shares or preferred securities, acting as a single class without regard to series, will be entitled, by written notice to the Company given by the Holders of a majority of the aggregate Liquidation Preference of the Preferred Securities and the holders of a majority of the aggregate Liquidation Preference of such other preference shares or preferred securities or by ordinary resolution passed by the Holders of a majority of the aggregate Liquidation Preference of the Preferred Securities and the holders of a majority of the aggregate Liquidation Preference of such other preference shares or preferred securities present in person or by proxy at a separate general meeting of the Holders and holders of such other preference shares or preferred securities convened for the purpose, to appoint two additional members of the Board of Directors.

Not later than 30 days after such entitlement arises, if the written notice of the Holders and the holders of any other preference shares or preferred securities of the Company having the right to vote for the election of Directors in the circumstances described in the preceding paragraph has not been given as provided for in the preceding paragraph, the Board of Directors will convene a separate general meeting for the above purpose. If the

Board of Directors fails to convene such meeting within such 30 day period, the Holders of 10 per cent. of the aggregate Liquidation Preference of the Preferred Securities and the holders of 10 per cent. of the aggregate Liquidation Preference of such other preference shares or preferred securities will be entitled to convene such meeting. The provisions of the Articles concerning the convening and conduct of general meetings of shareholders will apply with respect to any such separate general meeting. Any member of the Board of Directors so appointed shall vacate office, subject to the terms of such other preference shares or preferred securities, if for any Dividend Period, Dividends and any Additional Amounts in respect of such Dividends have been paid in full on the Preferred Securities by the Company.

*Each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will notify its accountholders in the event of its becoming aware that any such entitlement arises. Each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will, upon receipt of timely requests, take appropriate action to enable voting and other shareholder rights to be exercised in respect of the Preferred Securities.*

- (iii) Any variation or abrogation of the rights, preferences and privileges of the Preferred Securities by way of amendment of these Articles or otherwise (including, without limitation, the authorisation or issuance of any shares or preferred securities of the Company ranking, as to participation in the profits or assets of the Company, senior to the Preferred Securities) shall not be effective (unless otherwise required by applicable law) except with the consent in writing of (i) Bank Austria Creditanstalt and (ii) the Holders of at least two-thirds of the outstanding Preferred Securities or with the sanction of a resolution, passed at a separate meeting, by the Holders of at least two-thirds of the outstanding Preferred Securities present and voting at such meeting.

*Each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will notify its accountholders in the event that any consent referred to in the paragraph above is requested from it. Each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will, upon receipt of timely requests, take appropriate action consistent with the above to enable rights in respect of the above to be exercised.*

- (iv) Notwithstanding the foregoing, provided that the most recent Dividend payable on the Preferred Securities has been paid in full by the Company, the holders of ordinary shares of the Company (in the case of the increase of the authorised amount of Preferred Securities and the creation of one or more other series of preference shares or preferred securities of the Company as provided in paragraph 2(f)(iv)(a) and the authorisation and creation of one or more other classes of shares or preferred securities of the Company as provided in paragraph 2(f)(iv)(b)), or the Board of Directors (in the case of the issue of such shares or preferred securities as provided in paragraphs 2(f)(iv)(a) and 2(f)(iv)(b)) may, without the consent or sanction of the Holders, take such action as is required in order to amend these Articles:
  - (a) to increase the authorised amount of Preferred Securities or to create and issue one or more other series of preference shares or preferred securities of the Company ranking *pari passu* with the Preferred Securities as regards participation in the profits and assets of the Company; or
  - (b) to authorise, create and issue one or more other classes of shares or preferred securities of the Company ranking junior, as regards participation in the profits and assets of the Company, to the Preferred Securities.
- (v) Notwithstanding the foregoing, no vote of the Holders will be required for the Company to redeem and cancel the Preferred Securities in accordance with these Articles.
- (vi) No resolution may be proposed for adoption by the ordinary shareholders of the Company providing for the winding-up of the Company, unless the Holders and the holders of any other preference shares or preferred securities of the Company ranking *pari passu* as regards participation in profits or assets with the Preferred Securities have approved such resolution. Such approval may only be given by the consent in writing of the Holders of at least two-thirds of the aggregate Liquidation Preference of the outstanding Preferred Securities and the holders of at least two-thirds of the aggregate Liquidation Preference of such other preference shares or preferred securities or with the sanction of a resolution passed by at least two-thirds of the aggregate Liquidation

Preference at a meeting of the Holders and the holders of such other preference shares or preferred securities present and voting at such meeting. Such approval shall not be required if the winding-up of the Company is proposed or initiated because of the liquidation, dissolution or winding-up of Bank Austria Creditanstalt.

- (vii) Any Preferred Security outstanding at such time that is owned by Bank Austria Creditanstalt or any entity in which Bank Austria Creditanstalt, either directly or indirectly, owns 20 per cent., or more of the voting shares or similar ownership interests, shall not carry a right to vote and shall, for voting purposes, be treated as if it were not outstanding.
- (viii) The Company will cause a notice of any meeting at which Holders are entitled to vote to be mailed to each Holder. In addition the notice shall be published in accordance with paragraph 2(i) below. Each such notice will include a statement setting forth (a) the date, time and place of such meeting, (b) a description of any resolution to be proposed for adoption at such meeting on which such Holders are entitled to vote and (c) instructions for the delivery of proxies.

**(g) Additional Amounts**

All payments in respect of the Preferred Securities by the Company will be made without withholding or deduction for, or on account of, any Cayman Tax or Austrian Tax, unless the withholding or deduction of such Cayman Tax or Austrian Tax is required by law. In that event, the Company will pay, as further Dividends, such additional amounts (“Additional Amounts”) as may be necessary in order that the net amounts received by the Holders after such withholding or deduction shall equal the amounts which would have been receivable in respect of the Preferred Securities in the absence of such withholding or deduction; except that no such Additional Amounts will be payable with respect to the Preferred Securities:

- (i) to the extent that the Preferred Securities are presented for payment in the Republic of Austria or in the Cayman Islands or for which payments are credited in one of these countries; and/or
- (ii) to the extent that the Preferred Securities are presented for payment by or on behalf of a person or credited to such person liable to such tax, duty or charge in respect of such Preferred Security by reason of his having some connection with the Republic of Austria or the Cayman Islands other than being a Holder (or beneficial owner) of such Preferred Security; and/or
- (iii) where such withholding or deduction is required to be made pursuant to the Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income, or any law or regulation implementing or complying with, or introduced in order to conform to, such Directive; and/or
- (iv) where such withholding or deduction is based on any agreement on the taxation of savings income (implementing the principles laid down in the Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income) entered into between the Cayman Islands and any EU Member State applying withholding tax pursuant to Council Directive 2003/48/EC or any law or regulation implementing or complying with, or introduced in order to conform to, such agreement; and/or
- (v) more than 30 days after the Relevant Date except to the extent that the Holder thereof would have been entitled to such Additional Amounts on presenting the same for payment on the expiry of such period of 30 days; and/or
- (vi) to the extent that the Preferred Securities are presented for payment by or on behalf of a Holder (or beneficial owner) or credited to such person who would be able to avoid such withholding or deduction by presenting the Preferred Security to another Paying Agent in a Member State of the European Union,

and except that the Company’s obligations to make any such payments are subject to the limitations provided in paragraphs 2(a)(iii) and 2(a)(v) and paragraphs 2(b)(i) and 2(b)(ii) above.

As used herein, the “Relevant Date” means the date on which the relevant payment first becomes due and payable or, if the full amount of the money payable has not been duly received by the Principal Paying and Transfer Agent on or prior to such due date, the date on which, the full

amount of such money having been so received, notice to that effect shall have been duly given to the Holders in accordance with paragraph 2(i) of this Schedule to the Articles.

**(h) Substitution**

In the event that the FMA determines and announces that, or as a result of a change in law or regulation or the interpretation thereof, the Preferred Securities no longer qualify as Core Capital (*Kernkapital*), the Issuer and Bank Austria Creditanstalt may take such steps as may be necessary to cause the substitution for the Preferred Securities of similar ranking securities (“Substituted Securities”) issued by a company incorporated within the European Union; provided that the terms of the Substituted Securities together with any substitute support arrangements provided by Bank Austria Creditanstalt will provide the Holders, in all material respects, the same economic rights and benefits as are attached to the Preferred Securities and the Support Agreement taken together. Prior to the issue of any such Substituted Securities, the Issuer and Bank Austria Creditanstalt will have obtained a consent to a listing for the Substituted Securities on a European Stock Exchange and will give not less than 30 days’ prior written notice of any such substitution. As soon as practicable after any such determination the Issuer will give written notice to the Holders. Any such substitution shall be effected subject to any applicable fiscal laws or other laws and regulations.

The Issuer agrees and Bank Austria Creditanstalt will agree in the Support Agreement to pay any taxes, capital duties or stamp duties payable arising on the allotment and issue of any such Substituted Securities. Notwithstanding the foregoing, if Substituted Securities are to be issued, Holders will continue to be entitled to receive Dividends and/or Liquidation Distributions in respect of the Preferred Securities until such time as notice is given by the Issuer in accordance with paragraph 2(i) that the Substituted Securities are available upon substitution and thereafter Holders will have no further rights, title or interest in or to their Preferred Securities except to have them substituted in the manner described above.

**(i) Notices**

Notices, including notice of any redemption of the Preferred Securities, will be given by the Company (i) so long as any Preferred Security is listed on Euronext Amsterdam, in a leading newspaper having general circulation in The Netherlands (which is expected to be the *Financieele Dagblad*) and, as long as the rules of Euronext Amsterdam so require, in the Euronext Daily official List (*Officiële Prijscourant*) and (ii) by mail to Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg and, in the case of a notice of redemption of the Preferred Securities not less than 30 nor more than 60 days prior to the date fixed for such redemption.”

*In accordance with their published rules and regulations, each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will notify the holders of securities accounts with it to which any Preferred Securities are credited of any such notices received by it.*

## OTHER PROVISIONS OF THE ISSUER'S ARTICLES

In addition, the Articles of Association of the Issuer contain, *inter alia*, provisions (with the exception of sections in italics) to the following effect. As used in the Articles of Association of the Issuer, the words “share” and “holder” shall without limitation be construed respectively as including the Preferred Securities and Holders:

### *(a) Transfer of Shares*

The shares of the Issuer are in registered form. Shares may be transferred by instrument in writing in the usual or common form, or in such other form as the Directors may approve. All instruments of transfer shall be signed by or on behalf of the transferor and, in the case of a partly paid share, by the transferee. Registration of transfers of shares will be effected without charge by or on behalf of the Issuer, but upon payment (or the giving of such indemnity as the Issuer may require) in respect of any tax or other governmental charges which may be imposed in relation to it. The Directors of the Issuer may, without assigning any reason, refuse to register a transfer of any share which is not fully paid and may also refuse the registration of any transfer of any share (which is not fully paid) on which the Issuer has a lien. The Directors of the Issuer will not be required to register the transfer of any Preferred Security after it has been called for redemption. Save as aforesaid, the Articles of Association contain no restrictions on the transferability of fully paid shares, provided that the instrument of transfer is lodged at the office of the Paying and Transfer Agents in Frankfurt or in The Netherlands or at the offices of any other authorised transfer agent appointed by the Issuer in respect of the Preferred Securities, accompanied by the relevant share certificate and such other evidence of title as the Directors may require and is only in respect of one class of share.

Every person whose name is entered as a member in the Register shall be entitled without payment to one certificate, for each class of shares, evidencing all shares in registered form held by him. Where a holder has transferred part of the shares comprised in his holding, he shall be entitled to a share certificate for the balance without charge. Every certificate with respect to shares shall be issued within two months after allotment or the lodgement at the office of the Paying and Transfer Agents in Frankfurt or in The Netherlands or such other authorised transfer agent appointed by the Issuer for such purposes by the relevant holder of an instrument of transfer in respect of the shares (unless the conditions of issue of such shares otherwise provide).

*It is intended that the Preferred Securities will be initially represented by a single security certificate for the total number of the Preferred Securities. Such certificate for the Preferred Securities is to be delivered into the physical custody of Clearstream, Frankfurt. Each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will make payment of any amounts received by it to its accountholders in accordance with its published rules and regulations.*

*For so long as the Preferred Securities are deposited and registered as described above, book-entry interests in the Preferred Securities will be shown on, and transfers thereof will be effected only through, records maintained by Clearstream, Frankfurt.*

*If any or all of Clearstream, Frankfurt, Euroclear and/or Clearstream, Luxembourg announces an intention permanently to cease business and the Issuer is unable to locate a qualified successor within 60 days of receiving notice of, or becoming aware of, such intention, the number of Preferred Securities corresponding to each holder's book-entry interest in the Preferred Securities represented by the initial securities certificate will be transferred to each holder of Preferred Securities, and each such holder will be registered as a holder of the Preferred Securities in the register of members maintained by the Issuer, and receive a securities certificate made out in its name. Other than in the circumstances referred to in this paragraph, definitive securities certificates will not be available to holders of the Preferred Securities.*

*If definitive security certificates are made available in respect of Preferred Securities, such certificates will be available from the Agents at their offices and will be posted to the relevant Holders at the address shown in the Register or, as applicable, in the relevant instrument of transfer within three days of issue, by uninsured post at the risk of such Holders.*

*In the Agency Agreement (the “Agency Agreement”) to be dated 22 February 2005 between the Issuer, Bank Austria Creditanstalt, the Registrar, the Calculation Agent, the Principal Paying and Transfer Agent and the Paying and Transfer Agents, the Issuer will agree that if a transferee is not a nominee for a common depositary for Clearstream, Frankfurt, Euroclear or Clearstream, Luxembourg, it shall give sufficient notice to the Registrar to allow for the appointment of a replacement registrar by the Issuer, if necessary.*

*The Registrar will initially be J.P. Morgan Bank Luxembourg S.A., the Principal Paying and Transfer Agent will initially be JPMorgan Chase Bank, N.A., London Branch (or such other person as the Issuer may appoint and notify to the Holders), and the Paying and Transfer Agents will initially be Deutsche Bank AG and J.P. Morgan AG (or such other agent(s) as the Issuer may appoint and notify to the Holders). For so long as the Preferred Securities are listed on the Euronext Amsterdam, the Issuer will maintain a Paying and Transfer Agent in The Netherlands.*

*In acting under the Agency Agreement, the Agents act as agents of the Issuer and do not assume any obligation to, or relationship of agency or trust with, any Holder of the Preferred Securities. The Agency Agreement contains provisions permitting any entity into which any Agent is merged or converted or with which it is consolidated to become the successor Agent.*

***(b) Replacement of Share Certificate***

If a share certificate is damaged, defaced, lost, stolen or destroyed, a new share certificate representing the same shares may be issued on payment of such fee and on such terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses as the Directors of the Issuer may think fit and on payment of any exceptional expenses of the Issuer incidental to its investigation of the evidence and, if damaged or defaced, on delivery of the old share certificate.

***(c) Alteration in Capital***

Subject as described in “Description of the Preferred Securities” above, the Issuer may from time to time by special resolution alter its share capital in any manner permitted by the Law and, in particular, may increase its share capital by the creation of new shares, such new capital to be of such amount and to be divided into shares of such respective amounts and to carry such special rights (if any) or to be subject to such restrictions (if any) as the resolution may prescribe.

Subject as described in “Description of the Preferred Securities” above, the Issuer may from time to time by special resolution reduce its share capital in any manner authorised by Cayman Islands law.

***(d) Variation of Rights***

All or any of the rights attached to any class of shares (other than the Preferred Securities) may be varied or abrogated in such manner (if any) as may be provided by such rights or, in the absence of any such provision, with the consent in writing of the holders of not less than two-thirds of the issued shares of the class or with the sanction of a special resolution passed at a separate meeting of the holders of shares of that class. The necessary quorum for such separate meeting (other than an adjourned meeting) is two holders holding or representing at least one-third in nominal amount of the issued shares of that class or, if there is only one holder of the issued shares of such class, such holder.

***(e) Dividends***

Subject to the Law and as provided in paragraph 2(a) in relation to the automatic payment of dividends, the general meeting may declare annual or interim dividends out of profits on the recommendation of, and not exceeding the amount recommended by, the Directors. The Preferred Securities ordinarily will rank senior to the Issuer’s ordinary shares as to payment of dividends. However, in the event that dividends do not fall to be paid in relation to a Dividend Period on the Preferred Securities, all amounts received by the Issuer in relation to such Dividend Period may be distributed as dividends to the holders of the Issuer’s ordinary shares instead of being paid to the holders of the Preferred Securities.

No dividend has been paid on the ordinary shares of the Issuer since its incorporation.

***(f) Prescription and Governing Law***

Any dividend or distribution unclaimed for a period of ten years from its date of declaration shall be forfeited and shall cease to be owing by the Issuer. The Preferred Securities are governed by Cayman Islands law.

***(g) Members’ Rights***

Subject to any rights or restrictions as to voting attached to any class of shares, at any general meeting on a show of hands, every member who is present in person or by proxy has one vote, and, on a poll, every member present in person or by proxy has one vote for every share of any class of which he is the holder.

Subject to the rights attached to the Preferred Securities, the Directors or the liquidator of the Issuer may, as the case may be, with the sanction of a special resolution of the Issuer and any other sanction required by law, divide amongst the members *in specie* or in kind the whole or any part of the assets of the Issuer and may determine how such division shall be carried out as between the members or different classes of members.



## SUPPORT AGREEMENT

Set forth below is the text of the Support Agreement to be dated 22 February 2005:

**THIS SUPPORT AGREEMENT** is executed and delivered as a deed by each of:

1. Bank Austria Creditanstalt AG, Vienna, Republic of Austria (“Bank Austria Creditanstalt”); and
2. BA-CA Finance (Cayman) (2) Limited, a company incorporated with limited liability under the laws of the Cayman Islands (the “Issuer”).

**WHEREAS**, Bank Austria Creditanstalt desires to cause the Issuer to issue, and the Issuer desires to issue, the Preferred Securities (as defined below) and Bank Austria Creditanstalt and the Issuer desire to enter into this Support Agreement.

**NOW, THEREFORE** each of Bank Austria Creditanstalt and the Issuer executes and delivers this Support Agreement for the benefit of the Holders (as defined below) and, in the case of Bank Austria Creditanstalt only, of the Issuer.

### 1. DEFINITIONS

As used in this Support Agreement, the following terms shall, unless the context otherwise requires, have the following meanings:

“Asset Parity Security” means any preference share, preferred security or other security issued by Bank Austria Creditanstalt, the Issuer or any other Subsidiary of Bank Austria Creditanstalt (a) ranking *pari passu* as to participation in the assets of Bank Austria Creditanstalt with Bank Austria Creditanstalt’s obligations under this Support Agreement, or (b) entitled to the benefit of a guarantee or support agreement from Bank Austria Creditanstalt ranking *pari passu* as to participation in the assets of Bank Austria Creditanstalt with Bank Austria Creditanstalt’s obligations under this Support Agreement;

“Bank Share Capital” means the common shares of Bank Austria Creditanstalt, together with all other securities of Bank Austria Creditanstalt (including *Vorzugsaktien*) ranking *pari passu* with the common shares of Bank Austria Creditanstalt as to participation in a liquidation surplus;

“Dividend Period” has the meaning, in relation to the Preferred Securities, given to such term in the Articles of Association of the Issuer;

“Dividends” means the amount of dividends payable on the Preferred Securities in accordance with the terms thereof;

“Holder” means any holder from time to time of any Preferred Security of the Issuer, provided, however, that in determining whether the Holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, such term shall not include Bank Austria Creditanstalt or any entity of which Bank Austria Creditanstalt, either directly or indirectly, owns 20 per cent., or more of the voting shares or similar ownership interests (including the Issuer);

“Liquidation Date” means the date of final distribution of the assets of the Issuer in the case of a winding-up of the Issuer (whether voluntary or involuntary);

“Liquidation Distribution” means, with respect to the Preferred Securities, the liquidation preference per security plus accrued and unpaid Dividends for the then current Dividend Period to the date of payment, as provided by the terms thereof;

“Preferred Securities” means all of the 150,000 Perpetual Non-cumulative Non-voting Fixed/Floating Rate Preferred Securities of the Issuer in issue from time to time, whether or not in issue on the date of this Support Agreement, the Holders of which are entitled to the benefit of this Support Agreement as evidenced by the execution of this Support Agreement;

“Redemption Price” means with respect to each Preferred Security the amount required under the terms thereof to be paid to the Holder upon the optional redemption of such Preferred Securities; and

“Subsidiary” means a subsidiary of Bank Austria Creditanstalt (within the meaning of §228 subparagraph 3 of the Austrian Commercial Code).

Any other terms used in this Agreement and defined in the Articles of Association of the Issuer shall have the same meaning when used in this Agreement.

## 2. SUPPORT

### 2.1

2.1.1 Subject to the limitations contained in the following paragraphs of this Clause 2.1, Bank Austria Creditanstalt irrevocably and unconditionally agrees if at any time the Issuer has insufficient funds to enable it to meet in full all of its obligations under or in respect of the Preferred Securities as and when such obligations fall due, to make available to the Issuer funds sufficient to enable it to meet such payment obligations. The Issuer shall use any amount made available to it by Bank Austria Creditanstalt pursuant to this Support Agreement solely to fulfil its payment obligations under or in respect of the Preferred Securities.

2.1.2 Notwithstanding Clause 2.1.1, if, at the time that any amounts are to be paid in respect of Liquidation Distributions on the Preferred Securities, proceedings are pending or have been commenced for the voluntary or involuntary liquidation, distribution or winding-up of Bank Austria Creditanstalt, payment to the Issuer under this Support Agreement of amounts in respect of such Liquidation Distributions and payment by Bank Austria Creditanstalt in respect of any liquidation distributions payable with respect to any Asset Parity Securities shall not exceed the amount per security that would have been paid as the liquidation distribution from the assets of Bank Austria Creditanstalt (after payment in full in accordance with Austrian law of all creditors of Bank Austria Creditanstalt, including holders of its subordinated debt but excluding holders of any liability expressed to rank *pari passu* with or junior to Bank Austria Creditanstalt's obligations under this Support Agreement) had the Preferred Securities and all such Asset Parity Securities been issued by Bank Austria Creditanstalt and ranked (a) *pari passu* with Bank Austria Creditanstalt's obligations under the support agreement entered into by Bank Austria Creditanstalt in connection with the issue of €250,000,000 preferred securities in October 2004, (b) junior to all liabilities of Bank Austria Creditanstalt (other than any liability expressed to rank *pari passu* with or junior to Bank Austria Creditanstalt's obligations under this Support Agreement), (c) *pari passu* with Asset Parity Securities of Bank Austria Creditanstalt and (d) senior to Bank Share Capital.

2.1.3 In the event that the amounts described in Clause 2.1.1 cannot be paid in full by reason of any limitation referred to in Clause 2.1.2 such amounts will be payable by Bank Austria Creditanstalt to the Issuer *pro rata* in the proportion that the amount available for payment bears to the full amount that would have been payable but for such limitation.

The determination of any such limitation of Bank Austria Creditanstalt's obligations under this Support Agreement as set forth above will be made on the relevant Dividend Date, the date specified for redemption or the Liquidation Date, as the case may be.

2.2 This Support Agreement shall be deposited with and held by JPMorgan Chase Bank, N.A., London Branch, as principal paying and transfer agent until all the obligations of Bank Austria Creditanstalt hereunder have been discharged in full. Bank Austria Creditanstalt hereby acknowledges the right of every Holder to the production of, and the right of every Holder to obtain a copy of, this Support Agreement.

2.3 Subject to applicable law, Bank Austria Creditanstalt may from time to time purchase the Preferred Securities from any Holder and hold or resell any Preferred Security so purchased.

2.4 Subject to applicable law, Bank Austria Creditanstalt's obligations hereunder constitute unsecured obligations of Bank Austria Creditanstalt and rank and will at all times rank (a) *pari passu* with Bank Austria Creditanstalt's obligations under the support agreement entered into by Bank Austria Creditanstalt in connection with the issue of €250,000,000 preferred securities in October 2004, (b) junior to all liabilities of Bank Austria Creditanstalt (other than any liability expressed to rank *pari passu* with or junior to this Support Agreement), (c) *pari passu* with all payment obligations of Bank Austria Creditanstalt in respect of Asset Parity Securities and (d) senior to Bank Share Capital.

## 3. COVENANTS

3.1 Bank Austria Creditanstalt undertakes that it will not issue any preference shares or preferred securities or participation capital (*Partizipationskapital*) pursuant to § 23 subparagraph 4 of the Austrian Banking Act, which are materially equivalent to preference shares ranking senior to its obligations under this Support Agreement and Bank Austria Creditanstalt undertakes that it will

not enter into any support agreement or give any guarantee in respect of any preference shares or preferred securities which are materially equivalent to preference shares issued by any Subsidiary of Bank Austria Creditanstalt if such support agreement or guarantee (including, without limitation, any support agreement or guarantee that would provide a priority of payment with respect to distributable funds) would rank senior to this Support Agreement unless, in each case, (a) this Support Agreement is changed to give the Issuer and/or the Holders (as applicable) such rights and entitlements as are contained in or attached to such preference shares, preferred securities or such other support agreement or guarantee so that this Support Agreement ranks *pari passu* with, and contains substantially equivalent rights of priority as to payment out of distributable funds as, any such preference shares, preferred securities or other support agreement or guarantee, provided that in no case shall this Support Agreement be changed so that Bank Austria Creditanstalt's obligations in respect of it rank *pari passu* with, or junior to, Bank Share Capital and (b) the most recent Dividend payment on the Preferred Securities has been paid in full by the Issuer or (c) Bank Austria Creditanstalt, in its capacity as a controlling shareholder, has to provide such guarantee to minority shareholders under applicable law (e.g. in case of a profit pooling).

- 3.2 Bank Austria Creditanstalt undertakes that any amount required to be paid to the Issuer pursuant to this Support Agreement to enable the Issuer to pay any Dividends payable in respect of the most recent Dividend Period will be paid prior to any payment or other distribution in respect of any dividends (except dividends in the form of Bank Share Capital or other shares of Bank Austria Creditanstalt by way of increase of share capital out of disclosed reserves including a profit carry-forward (*Kapitalerhöhung aus Gesellschaftsmitteln*) ranking junior to the obligations of Bank Austria Creditanstalt under this Support Agreement) upon common shares, *Vorzugsaktien* or any other shares or securities of Bank Austria Creditanstalt ranking junior to Bank Austria Creditanstalt's obligations under this Support Agreement (whether issued directly by Bank Austria Creditanstalt or by a Subsidiary of Bank Austria Creditanstalt and entitled to the benefit of a support agreement or guarantee ranking junior to Bank Austria Creditanstalt's obligations under this Support Agreement).
- 3.3 Bank Austria Creditanstalt undertakes to maintain the Issuer as a Subsidiary for so long as any Preferred Security shall remain in issue. Bank Austria Creditanstalt undertakes that, for so long as any Preferred Security is outstanding, unless Bank Austria Creditanstalt is itself in liquidation, Bank Austria Creditanstalt will not permit, or take any action to cause, the winding-up of the Issuer.

#### **4. TERMINATION**

This Support Agreement shall terminate and be of no further force and effect upon full payment of the Redemption Price on, or purchase and cancellation of, all outstanding Preferred Securities or full payment of the Liquidation Distributions and liquidation of the Issuer, provided, however, that this Support Agreement will continue to be effective or will be reinstated, as the case may be, if at any time payment of any sums paid under the Preferred Securities or this Support Agreement must be restored by a Holder for any reason whatsoever.

#### **5. UNDERTAKING**

Each of Bank Austria Creditanstalt and the Issuer undertakes, for the benefit of the Holders:

- (a) that it will perform its obligations and exercise its rights under this Support Agreement and, in the case of the Issuer (without limitation to the foregoing), will exercise its right to enforce performance of the terms of this Support Agreement by Bank Austria Creditanstalt; and
- (b) that it will consent to an order for specific performance or similar relief by any court of competent jurisdiction in the event that any such order or relief is sought in an action brought by a Holder in respect of this Support Agreement.

#### **6. DEED POLL**

This Support Agreement shall take effect as a Deed Poll for the benefit of the Holders. Each of Bank Austria Creditanstalt and the Issuer hereby acknowledges and covenants that the obligations binding upon it contained in this Support Agreement shall be for the benefit of each and every Holder, and that each Holder shall be entitled severally to enforce the said obligations against Bank Austria Creditanstalt and the Issuer.

## **7. SUCCESSORS AND COMMUNICATIONS**

7.1 Subject to operation of law, all undertakings and agreements contained in this Support Agreement shall bind the successors, assigns, receivers, trustees and representatives of Bank Austria Creditanstalt and the Issuer (as the case may be) and shall inure to the benefit of the Holders and/or the Issuer (as applicable). Subject as provided in paragraph 2(h) of the schedule to the Issuer's Articles of Association, the Issuer shall not transfer its obligations hereunder in any circumstances and Bank Austria Creditanstalt shall not transfer its obligations hereunder without the prior approval of the Holders of not less than two-thirds of the Preferred Securities, which consent shall be obtained in accordance with procedures contained in the Issuer's Memorandum and Articles of Association and the applicable laws of the Cayman Islands; provided, however, that the foregoing shall not preclude Bank Austria Creditanstalt from merging or consolidating with, or transferring or otherwise assigning all or substantially all of its assets and obligations (including its obligations under this Agreement) to, a banking organisation organised under the laws of a member state of the European Union, without obtaining any approval of such Holders.

7.2 Except for those changes (a) required by Clause 3 hereof; (b) which do not materially adversely affect the rights of Holders; or (c) necessary or desirable to give effect to any one or more transactions referred to in the proviso to Clause 7.1 (in any of which cases no agreement will be required), this Support Agreement shall be changed only by agreement in writing signed by Bank Austria Creditanstalt and the Issuer with the prior approval of the Holders of not less than two-thirds of the Preferred Securities (excluding in each case any Preferred Securities held by Bank Austria Creditanstalt or any entity of which Bank Austria Creditanstalt, either directly or indirectly, owns 20 per cent., or more of the voting shares or other similar ownership interests), in accordance with the procedures contained in the Issuer's Memorandum and Articles of Association and the applicable laws of the Cayman Islands.

7.3 Any notice, request or other communication required or permitted to be given hereunder to Bank Austria Creditanstalt or to the Issuer shall be given in writing by delivering the same against receipt therefor or by facsimile transmission (confirmed by mail) addressed to Bank Austria Creditanstalt or to the Issuer, respectively, as follows (and if so given, shall be deemed given upon mailing of confirmation, if given by facsimile transmission), to:

BA-CA Finance (Cayman) (2) Limited  
238 North Church Street  
PO Box 31362 SMB  
George Town  
Grand Cayman  
Cayman Islands

Facsimile: +1 345 949 2030  
Attention: James E. O'Neill

Any notice, request or other communication required or permitted to be given hereunder to the Holders shall be given by Bank Austria Creditanstalt or the Issuer in the same manner as notices sent by the Issuer to the Holders (as set out in the Articles of Association of the Issuer).

7.4 The obligations of Bank Austria Creditanstalt and the Issuer to the Holders under this Support Agreement are solely for the benefit of the Holders and are not separately transferable from the Preferred Securities.

7.5 Bank Austria Creditanstalt will furnish any Holder, upon request of such Holder, with a copy of its annual report, and any interim reports made generally available by Bank Austria Creditanstalt to holders of the common shares of Bank Austria Creditanstalt.

## **8. GOVERNING LAW**

8.1 This Support Agreement shall be governed by, and construed in accordance with English law save that Clause 2.1.2 and Clause 2.4 shall be governed by, and construed in accordance with Austrian law.

8.2 Each of Bank Austria Creditanstalt and the Issuer hereby irrevocably agrees for the benefit of the Holders (and, in the case of Bank Austria Creditanstalt only, the Issuer) that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in

connection with this Support Agreement and that accordingly any suit, action or proceedings arising out of or in connection therewith (together referred to as "Proceedings") may be brought in such courts.

- 8.3 Each of Bank Austria Creditanstalt and the Issuer irrevocably and unconditionally waives and agrees not to raise any objection which it may have now or subsequently to the laying of the venue of any Proceedings in the courts of England or any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably and unconditionally agrees that a final judgment in any Proceedings brought in the courts of England shall be conclusive and binding upon Bank Austria Creditanstalt and the Issuer and may be enforced in the courts of any other jurisdiction.
- 8.4 Each of Bank Austria Creditanstalt and the Issuer hereby undertakes to maintain an agent for service of process in England for as long as any Preferred Securities remain outstanding. Bank Austria Creditanstalt and the Issuer hereby appoint Bayerische Hypo- und Vereinsbank AG at 41 Moorgate, London EC2R 6PP, as their agent for service of process in England in respect of any Proceedings and has undertaken that in the event of its ceasing so to act it will appoint another person as its agent for that purpose.

**IN WITNESS WHEREOF** this Support Agreement has been executed as a deed and delivered on behalf of each of Bank Austria Creditanstalt and the Issuer on the date shown below:

Executed as a deed by

**BANK AUSTRIA CREDITANSTALT AG**

By:

acting under the authority of that company in the presence of:

Witness's Signature:

Name:

Address:

Executed as a deed by

**BA-CA FINANCE (CAYMAN) (2) LIMITED**

By:

acting under the authority of that company in the presence of:

Witness's Signature:

Name:

Address:

## TAXATION

### General

The comments below are of a general nature based on current law and practice in the relevant jurisdiction referred to. They relate only to the position of persons who are the holders of their Preferred Securities and may not apply to certain classes of persons such as dealers. Any holders of Preferred Securities who are in doubt as to their personal tax position should consult their professional advisers.

### Taxation in the Cayman Islands

The Government of the Cayman Islands, will not, under existing legislation, impose any income, corporate or capital gains tax, estate duty, inheritance tax, gift tax or withholding tax upon the Issuer or the Holders of Preferred Securities. The Cayman Islands are not party to any double taxation treaties.

The Issuer has applied for and can expect to receive an undertaking from the Governor-in-Cabinet of the Cayman Islands that, in accordance with section 6 of the Tax Concessions Law (1999 Revision) of the Cayman Islands, for a period of 20 years from the date of the undertaking, no law which is enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations shall apply to the Issuer or its operations and, in addition, that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable (i) on the shares, debentures or other obligations of the Issuer or (ii) by way of the withholding in whole or in part of a payment of dividend or other distribution of income or capital by the Issuer to its members or a payment of principal or interest or other sums due under a debenture or other obligation of the Issuer.

### Taxation in Austria

The following discussion is a summary of certain tax matters arising under Austrian tax law. The discussion does not purport to be a comprehensive description of all tax considerations, which may be relevant to a decision to purchase the Preferred Securities. With the exception of certain illustrative data, the discussion is limited to income taxation of dividends, interest and capital gains under Austrian law, and does not address all aspects of such Austrian taxation. The information contained in this summary is not to be construed as tax advice. It is based on an interpretation of the Austrian tax laws as of the date hereof and is subject to change. Any such change may be applied retroactively and may adversely affect the tax consequences described herein. The discussion does not consider any specific facts or circumstances that will be relevant to a particular holder of Preferred Securities. In particular, this discussion does not consider the tax considerations that will be relevant to prospective investors who reside outside Austria, including but not limited to foreign investors with a permanent establishment in Austria. The following summary only applies to individual or corporate holders, who are subject to unlimited tax liability in Austria (“Austrian individual holders” and “Austrian corporate holders”). If not stated otherwise, the discussion applies to both business and private assets of the Austrian individual holder.

*The following assumes that the Preferred Securities will be treated as debt instruments for Austrian tax purposes. However, it cannot be entirely excluded that the Austrian tax authorities will qualify the Preferred Securities not as debt securities but as equity instruments and the income derived therefrom as dividend income. Holders of Preferred Securities are therefore strongly advised to consult their tax adviser.*

#### *Taxation as Debt Instruments*

Austrian individual holders as well as Austrian corporate holders are subject to Austrian personal or corporate income tax on interest income derived from the Preferred Securities. In case the debt instrument is held by an Austrian individual holder and Austrian withholding tax (*Kapitalertragsteuer*) of 25 per cent. is deducted by an Austrian coupon paying agent on the interest payment, the withholding tax is a final tax. However, the individual might opt for an assessment at regular rates if this leads to lower taxation. Expenses incurred in connection with the income under the Preferred Securities are not taken into account either in the case of the fixed rate, or in the case of an income tax assessment. Austrian corporate holders can avoid Austrian withholding tax by submitting a written declaration of exemption from withholding tax (*Befreiungserklärung für Betriebsvermögen* according to Sec 94 lit 5 EStG) to the paying agent. Austrian corporate holders are

subject to corporate income tax on the interest income at the normal rate (25 per cent.) via the corporate income tax return. If the payment is made outside of Austria, there is no deduction of Austrian withholding tax. In this case taxation is – with respect to Austrian individual holders – shifted to the procedure of tax declaration and tax assessment by the tax authorities. Interest payments are subject to personal income tax at a special fixed rate of 25 per cent. unless assessment at the regular rates leads to lower taxation (option for assessment at regular rates). Expenses incurred in connection with the income under the Preferred Securities do not reduce the basis of assessment. Any capital gain from the sale of the Preferred Securities by Austrian individual holders will be subject to Austrian personal income tax at the progressive income tax rates, unless the Preferred Securities are sold by the Austrian individual holder out of his private assets after an ownership period of more than one year. Capital gains do not include interest accrued until the date of actual sale, such interest remaining taxable as outlined above. Capital gains realized by Austrian corporate holders are liable to corporate income tax at the standard rate of 25 per cent.

#### *Taxation as Shares*

In case the Austrian tax authorities should qualify the Preferred Securities as shares or other equity instruments the interest payments should be qualified as dividends and the dividend payments would be subject to income tax in the hands of the Austrian individual holder. Foreign dividends received via Austrian coupon paying agents are subject to a 25 per cent. Austrian withholding tax. In general, the withholding tax is a final tax. The individual can opt for an assessment, if this leads to lower income taxation (half income tax rate procedure). Expenses incurred in connection with the income under the Preferred Securities cannot be taken into account either in the case of the final tax, or in the case of an income tax assessment. If dividend payments are received outside of Austria, no Austrian withholding tax is deducted and the taxation of the dividend income has to be declared via the personal income tax return. Foreign dividends are subject to personal income tax at a final rate amounting to 25 per cent., unless applying half of the average income tax rate of the respective taxpayer leads to lower income taxation. Expenses incurred in connection with the income under the Preferred Securities are not taken into account either in the case of the fixed rate, or in the case of the half rate procedure. As to income from low tax jurisdictions (as the Cayman Islands would normally be), income tax at the rate of 25 per cent. may not apply, if the Minister of Finance should pass an ordinance to this effect; so far no such ordinance has been passed (but may be passed in the near future). The sale of the Preferred Securities by an Austrian individual holder gives rise to a taxable gain if the sales proceeds exceed the book value or the acquisition cost respectively, and the expenses incurred on the sale. The same applies in the case of redemption of shares in the course of a liquidation of the Company. Capital gains, however, are not taxable, if privately held shares amounted to less than 1 per cent. of the shares of the foreign company within the last five years before alienation and if the time span between acquisition and sale of the Preferred Securities exceeds one year. Foreign dividends received by an Austrian corporate holder are in general subject to corporate tax at the standard rate of 25 per cent. However, dividends are exempt from corporate tax, if the Austrian corporation holds at least 10 per cent. of the capital of the foreign dividend paying corporation for an uninterrupted period of 1 year. In this case gains (also capital gains), losses and other changes in value of the participation have no tax effect, unless the foreign company is wound up. Subject to certain conditions the Austrian corporate holder also has the option to treat the gains (capital gains), losses and other changes in value of the participation as taxable income. The participation exemption does not apply if the dividend paying corporation earns mainly passive income in the form of interest or rental income from movable and non-tangible goods or from the sale of participations, and if the income of the dividend paying corporation is not subject to tax comparable to Austrian corporate tax.

#### *Inheritance and gift tax*

Under Austrian law, the transfer of Preferred Securities will be subject to Austrian inheritance or gift tax on a transfer by reason of death or a gift, if at the time of the transfer of the securities: (a) the donor, deceased or the donee, heir or other beneficiary is resident in Austria at the time of the transfer; or (b) the shares were held as assets of a permanent establishment maintained in Austria by the deceased or donor. Inheritance tax will not accrue if the Preferred Securities are qualified as debt instruments and if the securities were held as part of the private assets (*Privatvermögen*) by the deceased Austrian individual holder. In case the Preferred Securities are qualified as shares, no inheritance tax will accrue, if the deceased Austrian individual holder held less than 1 per cent. of the share capital at the time of death.

### *Other Taxes*

There are no transfer, stamp or similar taxes, which would apply to the sale or transfer of the Preferred Securities in Austria. Net wealth tax is not levied in Austria. If a paying agent in Austria makes interest payments, a non-resident of Austria will have to disclose his identity to prevent Austrian withholding tax of presently 25 per cent. being deducted. As to EU withholding tax levied on interest payments to non-residents if made by an Austrian paying agent in the future, please see the description of the EU Savings Directive.

### **Taxation in Germany**

The following section is a short summary of certain German taxation principles that may be or may become relevant with respect to the Preferred Securities. This section does not purport to be a comprehensive description of all of the German tax consequences that may be relevant to holders of the Preferred Securities. The summary is based on German domestic tax laws currently in force and as applied in practice as of the date of this Offering Circular. Provisions may change at short-term notice, possibly with retroactive effect.

There is some uncertainty as to how the German tax authorities and/or tax courts will treat the Preferred Securities. The Preferred Securities may qualify as debt or equity instruments for German tax purposes. **Prospective holders of the Preferred Securities are advised to consult their tax advisers as regards the tax consequences of the acquisition, holding and disposition or transfer without consideration, respectively, of the Preferred Securities. Only these advisers will be able to take into account appropriately the details relevant to the taxation of the respective holders of the Preferred Securities.**

#### *Taxation as debt instruments*

If the German tax authorities and/or tax courts qualify the Preferred Securities as debt instruments and the dividends derived from the Preferred Securities as interest, such interest payments of the Issuer to a Holder resident in Germany as well as accrued interest in case of a disposal (i.e. interest having accrued up to the sale of the Preferred Securities and credited separately) are subject to personal or corporate income tax plus 5.5 per cent. solidarity surcharge thereon. Such interest is also subject to trade tax, if the Preferred Securities are held as business assets. If the Preferred Securities are held in custody with a German credit institution or financial services institution (including a German permanent establishment of a foreign institution), withholding tax on interest (*Zinsabschlag*) at a rate of 30 per cent. (plus 5.5 per cent. solidarity surcharge thereon which results in an overall tax burden of 31.65 per cent.) is deducted. In case of an “Over-The-Counter-Transaction” the tax rate is 35 per cent. (plus 5.5 per cent. solidarity surcharge thereon). The tax deduction will be credited against the Holder’s final income tax or corporation income tax liability.

Any gains from the sale or redemption of the Preferred Securities (including accrued and unpaid interest) are subject to personal or corporate income tax (plus solidarity surcharge at a rate of 5.5 per cent. thereon). In case the Preferred Securities are held as business assets, the gains are also subject to trade tax. If the Preferred Securities are held in custody with a German credit institution or financial services institution (including a German permanent establishment of a foreign institution) as disbursing agent (*inländische auszahlende Stelle*), withholding tax on interest is imposed at a rate of 30 per cent. (plus solidarity surcharge at a rate of 5.5 per cent. thereon) on the excess of the proceeds arising from the sale or redemption (including accrued and unpaid interest) over the purchase price paid for the Preferred Securities, if the Preferred Securities were held in custody by such institution since the acquisition of the Preferred Securities. If custody has changed since the acquisition of the Preferred Securities, withholding tax on interest will be due on an amount equal to 30 per cent. of the proceeds arising from the sale or redemption of the Preferred Securities (including accrued and unpaid interest). Withholding tax on interest will be credited against the Holder’s final (corporate) income tax liability. Any potential excess of the withholding tax on interest over the Holder’s final (corporate) income tax liability is refunded.

#### *Tax consequences in case the Preferred Securities are qualified as equity*

Due to its legal nature and its terms and conditions the Preferred Securities may be qualified as equity instruments.

#### *Risk of applicability of the Investment Tax Act (Investmentsteuergesetz)*

The Issuer believes that even if the Preferred Securities are qualified as equity instruments, holders of the Preferred Securities will not be subject to the Investment Tax Act. The Investment Tax



Act requires an investment according to the principle of risk diversification. As the Issuer only invests in the Group this requirement will not be satisfied.

#### *Risk of applicability of the German Foreign Tax Act (Außensteuergesetz)*

Even if the Preferred Securities are qualified as equity the Issuer believes that it is unlikely that the German Foreign Tax Act will be applied to the Preferred Securities as the Preferred Securities neither grant a participation in the share capital of the Issuer or any other entity nor grant general voting rights.

If, however, the Foreign Tax Act is applied, Holders who are tax resident in Germany will be taxed on their *pro rata* share in the income (determined according to German tax accounting rules) earned by the Issuer irrespective of whether such income is distributed by the Issuer. The full amount of the share in the income of the Issuer will be subject to German income tax or corporation tax (each plus solidarity surcharge thereon) and, in case the Preferred Securities are held as business assets of a German permanent establishment, to trade tax. In the case of German corporations additional tax liability will arise in case the profits of the Issuer are distributed, resulting in a (partial) double taxation, because 5 per cent. of any dividends distributed by the Issuer will be subject to German corporate income tax in the event that the Foreign Tax Act applies. According to the prevailing view of German legal scholars, 5 per cent. (rather than the amount) of such distributions should in addition to the tax liability described above be subject to German trade tax. In case of certain German institutional investors (insurance companies, pension funds (*Pensionsfonds*) and in certain circumstances also credit institutions, financial services institutions or financial enterprises) there is a risk that the full amount of distributions could be subject to corporate income tax and trade tax resulting in an effective double taxation.

#### *Taxation if the German Foreign Tax Act is not applied*

If the German Foreign Tax Act is not applied although the Preferred Securities are qualified as equity, which the Issuer believes is unlikely, the tax analysis as set out in the following paragraphs will apply.

#### *Taxation of Dividends*

For individuals subject to unrestricted taxation in Germany, 50 per cent. of the dividends are subject to income tax at individual rates plus 5.5 per cent. solidarity surcharge thereon. 50 per cent. of the expenses related to such dividends are deductible for tax purposes. In addition, if the Preferred Securities are held as business assets, 50 per cent. of the dividends are subject to trade tax. However, 100 per cent. of dividends are subject to trade tax, if the Holder did not hold at least 10 per cent. of the share capital of the Issuer at the beginning of the relevant assessment period.

If the Holder is a corporation resident in Germany, dividends are generally (subject to special rules for certain credit institutions, financial and financial services institutions, life insurances, health insurances and pension funds) exempt from corporate income tax (and solidarity surcharge) and trade tax. However, 5 per cent. of dividends are treated as non-deductible business expenses, no matter if and to which extent business expenses actually accrued; that is, 5 per cent. of the dividends are subject to corporate income tax (and solidarity surcharge) and trade tax. Actual business expenses are deductible for corporate income tax and trade tax purposes. 100 per cent. of the dividends are subject to trade tax, if the corporate shareholder did not hold at least 10 per cent. of the share capital of the Issuer at the beginning of the relevant assessment period. The above exemption does not apply, if (1) the Preferred Securities are held in the trading book of a German credit institution or financial services institution or if they are held by a German financial institution for the purpose of realising a short-term trading profit and (2) the dividends do not fulfil the criteria of Art. 4 par. 1 of the EC Parent-Subsidiary Directive (90/435/EEC). In this case the dividends are fully subject to tax. Furthermore, the exemption does not apply to Preferred Securities held by a life insurance company, health insurance company or a pension fund unless the criteria of the EC Parent-Subsidiary Directive are fulfilled.

#### *Taxation of Capital Gains*

If the Preferred Securities are held as private assets of an individual, 50 per cent. of capital gains from the disposal are subject to personal income tax at individual rates plus 5.5 per cent. solidarity surcharge thereon only if the disposal takes place within one year after the acquisition of the Preferred Securities and if the aggregate capital gains derived from all private disposals within one year are equal to or exceed €512.00 or after expiration of the aforementioned holding period of one year, the individual or, in case of a gratuitous acquisition, the predecessor held, directly or indirectly,

at least 1 per cent. of the share capital of the Issuer at any time during the five years preceding the disposal.

If the Preferred Securities are held as business assets of an individual, 50 per cent. of the capital gains are subject to income tax at individual rates plus 5.5 per cent. solidarity surcharge thereon. 50 per cent. of the expenses related to such capital gains are deductible for tax purposes. In addition, 50 per cent. of the capital gains are subject to trade tax.

If the Preferred Shares are held by a corporation resident in Germany, capital gains are generally (subject to special rules for certain credit institutions, financial and financial services institutions, life insurances, health insurances and pension funds and additional exceptions) exempt from corporate income tax (and solidarity surcharge) and trade tax. However, 5 per cent. of capital gains are treated as non-deductible business expenses, no matter if and to which extent business expenses actually accrued; that is, 5 per cent. of the capital gains are subject to corporate income tax (and solidarity surcharge) and trade tax. Actual business expenses are deductible for corporate income tax (and solidarity surcharge) and trade tax purposes.

#### *Taxation in case the Issuer is disregarded for German tax purposes*

Income derived from the Preferred Securities may also be treated as interest and may therefore be taxed in accordance with the paragraph "Taxation as debt instruments" in case the German tax authorities consider the Issuer transparent for German tax purposes and therefore treat the Holders in the same way as if they had directly invested in Bank Austria Creditanstalt. However, in this case it cannot be excluded that the Holders are considered to have an equity interest in Bank Austria Creditanstalt in which case the investors would be taxed as described in the paragraph "Tax consequences in case the Preferred Securities are qualified as equity".

#### *Gift or inheritance tax*

A transfer of the Preferred Securities as a gift or by reason of death will be subject to German inheritance or gift tax if the Holder, or the heir, donee or other beneficiary is a German resident for German gift or inheritance tax purposes according to the specific rules of the German Gift and Inheritance Tax Act. This may in particular be the case if the Holders, heir, donee or other beneficiary is:

- (i) an individual having at the time of the donation or death its residence or habitual abode in Germany or if the individual is a German citizen who has not been living abroad for more than five years without having a residence in Germany; or
- (ii) a corporation having its seat or central place of management in Germany,

or the Preferred Securities belong to business assets attributable to a permanent establishment or a permanent representative in Germany.

#### *Other taxes*

No stamp, issue, registration or similar direct or indirect taxes or duties will be payable in Germany in connection with the issue, delivery or execution of the Preferred Securities. Currently, net assets tax is not levied in Germany.

## **Taxation in The Netherlands**

### *General*

The following summary describes the principal Netherlands tax consequences of the acquisition, holding, redemption and disposal of Preferred Securities for residents of The Netherlands. This summary does not purport to be a comprehensive description of all Netherlands tax considerations that may be relevant to a decision to acquire, to hold, and to dispose of the Securities. Each prospective holder of Preferred Securities should consult a professional adviser with respect to the tax consequences of an investment in the Preferred Securities. The discussion of certain Netherlands taxes set forth below is included for general information purposes only.

This summary is based on The Netherlands tax legislation, published case law, treaties, rules, regulations and similar documentation, in force as of the date of this Offering Circular, without prejudice to any amendments introduced at a later date and implemented with immediate (retrospective) effect.

This summary does not address The Netherlands tax consequences of a holder of Preferred Securities who, or any of whose spouse, partner, person deemed to be his partner, or other persons

sharing such person's house or household, or certain other of such persons' relatives (including foster children), holds a substantial interest (*aanmerkelijk belang*) in the Issuer. Generally, a substantial interest will be present if an individual holds, alone or together with his spouse or partner, whether directly or indirectly, the ownership of, or certain other rights (including rights to acquire shares, whether or not already issued) over, (a) shares representing five per cent. or more of the total issued and outstanding capital (or of the issued and outstanding capital of any class of shares) of a company, (b) profit sharing certificates, or membership rights in a co-operative association, entitling the holder to five per cent. or more of the profits or of the liquidation distributions of a company or co-operative association, or (c) membership rights representing five per cent. or more of the voting rights in a co-operative association's general meeting.

#### *Withholding Tax*

No Netherlands withholding tax is due upon payments on the Preferred Securities.

#### *Corporate Income Tax and Individual Income Tax — Residents of The Netherlands*

If the holder of Preferred Securities is subject to Netherlands corporate income tax and the Preferred Securities are attributable to its (deemed) business assets, income derived from the Preferred Securities and gains realized upon the redemption and disposal of the Preferred Securities are generally taxable in The Netherlands.

If the holder of Preferred Securities is an individual, resident or deemed to be resident of The Netherlands and, with respect to individual income taxation, an individual who has elected to be taxed as a resident of The Netherlands for Netherlands tax purposes, the income derived from the Preferred Securities and the gain realized upon the redemption and disposal of the Preferred Securities are taxable at the progressive statutory rates if:

- (i) the holder of Preferred Securities has an enterprise or an interest in an enterprise, to which enterprise the Preferred Securities are attributable; or
- (ii) such income or gains qualify as "income from miscellaneous activities" (*resultaat uit overige werkzaamheden*) which would be the case if the activities with respect to the Securities exceed "regular, active portfolio management" (*normaal, actief vermogensbeheer*).

If neither condition (i) nor condition (ii) applies to the individual holder of Preferred Securities, the actual income derived from the Preferred Securities and the actual gains realized with respect to the Preferred Securities will not be taxable. Instead, such holder of Preferred Securities will be taxed at a flat rate of 30 per cent. on deemed income from "savings and investments" (*sparen en beleggen*). This deemed income amounts to 4 per cent. of the average of the individual's "yield basis" (*rendementsgrondslag*), generally, at the beginning of the calendar year and the individual's yield basis at the end of the calendar year, insofar the average exceeds a certain threshold. The fair market value of the Preferred Securities will be included in the individual's yield basis.

#### *Gift Estate and Inheritance Taxes*

Gift tax may be due in The Netherlands with respect to an acquisition of the Preferred Securities by way of a gift by a holder of the Preferred Securities who is resident or deemed to be resident in The Netherlands. Estate tax may be due in The Netherlands with respect to an acquisition of the Preferred Securities on the death of a holder of the Preferred Securities who is resident or deemed to be resident of the Netherlands, or by way of a gift within 180 days before his death by a holder of the Preferred Securities who is resident or deemed to be resident in The Netherlands at the time of his death.

For purposes of Netherlands gift and estate tax, an individual with Netherlands nationality will be deemed to be resident in The Netherlands if he has been resident in the Netherlands at any time during the ten years preceding the date of the gift or his death. For purposes of Netherlands gift tax, an individual not holding Netherlands nationality will be deemed to be resident of The Netherlands if he has been resident in The Netherlands at any time during the twelve months preceding the date of the gift.

#### *Other taxes and duties*

No Netherlands registration tax, custom duty, transfer tax, stamp duty or any other similar documentary tax or duty, other than court fees, will be payable in The Netherlands in respect of or in connection with the subscription, issue, placement, allotment or delivery of the Preferred Securities.

**EU Savings Tax Directive (2003/48/EC)**

The EU has adopted a Directive regarding the taxation of savings income. Subject to a number of important conditions being met, it is proposed that Member States will be required from 1 July 2005 to provide to the tax authorities of other Member States details of payments of interest and other similar income paid by a person within its jurisdiction to an individual in another Member State, except that Austria, Belgium and Luxembourg will instead impose a withholding system, for a transitional period unless during such period they elect otherwise. The transitional period will end after agreement on exchange of information is reached between the European Union and certain non-European Union states.

It is expected that a number of third countries and territories will adopt similar measures with effect from the same date.

## SUBSCRIPTION AND SALE

Under a Subscription Agreement dated 18 February 2005 (the “Subscription Agreement”) BNP Paribas, Bayerische Hypo- und Vereinsbank AG, Deutsche Bank AG London and J.P. Morgan Securities Ltd. (the “Managers”) have jointly and severally agreed with the Issuer and Bank Austria Creditanstalt, subject to the satisfaction of certain conditions, to subscribe for the Preferred Securities at the issue price of 100 per cent. The Issuer has agreed to pay to the Managers a total commission of 2.0 per cent.. The Managers are entitled to terminate the Subscription Agreement in certain circumstances prior to payment to the Issuer. The Issuer and Bank Austria Creditanstalt have agreed to indemnify the Managers against certain liabilities in connection with the issue of the Preferred Securities.

### United States of America

The Preferred Securities have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from the registration requirements of the Securities Act. Terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act.

Each of the Managers has agreed that, except as permitted by the Subscription Agreement, it will not offer, sell or deliver the Preferred Securities (i) as part of their distribution at any time or (ii) otherwise until the expiration of the period ending 40 days after the later of the commencement of the offering and the Closing Date (the “Distribution Compliance Period”) within the United States or to, or for the account or benefit of, U.S. persons, and that it will have sent to each distributor, dealer or person receiving a selling concession, fee or other remuneration to which it sells Preferred Securities during the Distribution Compliance Period a confirmation or other notice setting forth the restrictions on offers and sales of the Preferred Securities within the United States or to, or for the account or benefit of, U.S. persons. Terms used in this paragraph have the meaning given to them by Regulation S.

The Preferred Securities are being offered and sold outside the United States to non-U.S. persons in reliance on Regulation S.

In addition, until 40 days after the commencement of the offering, an offer or sale of Preferred Securities within the United States by a dealer (that is not participating in the offering) may violate the registration requirements of the Securities Act.

### United Kingdom

Each of the Managers has represented and agreed that:

- (1) it has not offered or sold and, prior to the expiry of the period of six months from the Closing Date, will not offer or sell any Preferred Securities to persons in the United Kingdom except to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of their businesses or otherwise in circumstances which have not resulted and will not result in an offer to the public in the United Kingdom within the meaning of the Public Offers of Securities Regulations 1995;
- (2) it has only communicated or caused to be communicated, and will only communicate or cause to be communicated, any invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000 (“FSMA”)) received by it in connection with the issue or sale of any Preferred Securities in circumstances in which section 21(1) of the FSMA does not apply to the Issuer or the Support Provider; and
- (3) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Preferred Securities in, from or otherwise involving the United Kingdom.

### Austria

Each of the Managers has confirmed that it is aware that no Austrian sales prospectus (*KMG-Prospekt*) within the meaning of the Austrian Capital Markets Act, Federal Law Gazette 1991/625 as amended (“KMG”) has been or will be published with respect to the Preferred Securities and has

represented and agreed that it will only offer the Preferred Securities in the Republic of Austria in compliance with the provisions of the KMG and any other laws applicable in the Republic of Austria governing the offer and sale of the Preferred Securities in the Republic of Austria. Each of the Managers has further agreed that it will, in the case of any offer in Austria, offer the Preferred Securities in compliance with the KMG.

### **Germany**

Each Manager has represented and agreed that it will comply with the Securities Sales Prospectus Act (the “Act”) of the Federal Republic of Germany (*Wertpapier-Verkaufsprospektgesetz*) of 13 December 1990 (as amended). In particular, each of the Managers has represented that it has not engaged and agreed that it will not engage in public offering (*Öffentliches Angebot*) within the meaning of the Act with respect to any Preferred Securities otherwise than in accordance with all other applicable legal and regulatory requirements.

### **Republic of Italy**

The offering of the Preferred Securities has not been cleared by CONSOB (the Italian Securities Exchange Commission) pursuant to Italian securities legislation and, accordingly, no Preferred Securities may be offered, sold or delivered, nor may copies of this Offering Circular or of any other document relating to the Preferred Securities be distributed in the Republic of Italy (“Italy”), except:

- (1) to professional investors (*operatori qualificati*), as defined in Article 31, second paragraph, of CONSOB Regulation No. 11522 of 1 July 1998 (“CONSOB Regulation No. 11522”), as amended; or
- (2) in circumstances which are exempted from the rules on solicitation of investments pursuant to Article 100 of Legislative Decree No. 58 of 24 February 1998 (the “Financial Services Act”) and Article 33, first paragraph, of CONSOB Regulation No. 11971 of 14 May 1999, as amended.

Accordingly, any offer, sale or delivery of the Preferred Securities or distribution of copies of this Offering Circular or any other document relating to the Preferred Securities in Italy under (1) or (2) above must be:

- (a) made by an investment firm, bank or financial intermediary permitted to conduct such activities in Italy in accordance with the Financial Services Act, the CONSOB Regulation No. 11522 and Legislative Decree No. 385 of 1 September 1993 (the “Banking Act”), as amended, and any other applicable laws and regulations;
- (b) in compliance with Article 129 of the Banking Act and the implementing guidelines of the Bank of Italy, pursuant to which the issue or the offer of securities in Italy may need to be preceded and followed by an appropriate notice to be filed with the Bank of Italy depending, *inter alia*, on the aggregate value of the securities issued or offered in Italy and their characteristics; and
- (c) in accordance with all relevant Italian securities, tax and exchange control and other applicable laws and regulations and in compliance with any other applicable requirement or limitation which may be imposed from time to time by CONSOB or the Bank of Italy.

### **The Netherlands**

Each Manager has represented and agreed that prior to publication of the advertisement as mentioned in Article 47.7 of the Listing and Issuing Rules of Euronext Amsterdam (*Fondsenreglement*), no contractually binding offers (or solicitations of such offers) in respect of the Preferred Securities shall be made to any individual or legal entity in The Netherlands, other than to individuals or legal entities, who or which trade or invest in securities in the conduct of a business or profession (which includes banks, securities intermediaries (including dealers and brokers), insurance companies, pension funds, collective investment institutions, central governments, large international and supranational organisations, other institutional investors and other parties, including treasury departments of commercial enterprises, which as an ancillary activity regularly invest in securities; hereinafter, “Professionals”), provided that in any documents or advertisements in which a forthcoming offering of such Preferred Securities is publicly announced (whether electronically or otherwise) in The Netherlands it is stated that such offer is and will be exclusively made to such Professionals.

**General**

Each of the Managers has undertaken that it will comply, to the best of its knowledge and belief, with all applicable securities laws and regulations in each jurisdiction in which it purchases, offers, sells or delivers Preferred Securities or possesses or distributes this Offering Circular or any other offering material and will obtain any consent, approval or permission which is required by it for the purchase, offer or sale by it of Preferred Securities under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes such purchases, offers or sales in all cases at its own expense.

## GENERAL INFORMATION

### 1. LISTING

So long as the Preferred Securities are listed on Euronext Amsterdam, the Issuer will maintain a paying and transfer agent in a city in The Netherlands.

### 2. AUTHORISATIONS

The issue of the Preferred Securities by the Issuer has been duly authorised by a resolution of the Board of Directors of the Issuer passed on 16 February 2005.

The entering into of the Support Agreement by Bank Austria Creditanstalt has been duly authorised by resolutions of its board of directors (*Vorstand*) passed on 24 January 2005.

All consents, approvals, authorisations or other orders of all regulatory authorities required by the Issuer and/or Bank Austria Creditanstalt under the laws of the Cayman Islands and Austria have been given for the issue of Preferred Securities and for the Issuer and Bank Austria Creditanstalt, as the case may be, to undertake and perform their respective obligations under each of the Subscription Agreement, the Agency Agreement, the Preferred Securities and the Support Agreement.

### 3. LEGAL STATUS

The Issuer operates under the laws of the Cayman Islands (registered number 144423) with limited liability and for an unlimited duration.

Bank Austria Creditanstalt operates under Austrian law. Bank Austria Creditanstalt is registered in the Commercial Register (*Firmenbuch*) of the Commercial Court in Vienna (*Handelsgericht Wien*) under file number 150714p.

### 4. LITIGATION

The Issuer is not involved in any litigation or arbitration proceedings relating to claims or amounts which could, if determined adversely, have a material adverse affect on the financial position of the Issuer, Bank Austria Creditanstalt or the Group nor, so far as Bank Austria Creditanstalt and the Issuer is aware, is any such litigation or arbitration pending or threatened.

Bank Austria Creditanstalt and its subsidiaries are involved in various litigation and claims incidental to the normal conduct of its business. Although it is impossible to predict the outcome of any outstanding litigation, Bank Austria Creditanstalt believes that, except as discussed below, such litigation and claims would not have a material adverse effect on its business or consolidated financial positions. Bank Austria Creditanstalt notes, however, that the outcome of litigation can be extremely difficult to predict with certainty, and Bank Austria Creditanstalt offers no assurances in this regard.

1. In June 2002, the European Commission imposed a fine in the amount of approximately €30 million on Bank Austria Creditanstalt for alleged illegal fixing of interest rates, prices of several banking products for retail customers as well as other terms. Similar fines in an aggregate amount of approximately €94 million were imposed on seven other Austrian banks. Bank Austria Creditanstalt challenged the imposition and the amount of the fine before the European Court of First Instance. At present, the outcome of the proceedings is uncertain. Although the total amount of fines imposed on Bank Austria Creditanstalt is not material to the financial position or results of operations of Bank Austria Creditanstalt, the affirmation of the European Commission's decisions by the European Court of First Instance could have a negative impact on Bank Austria Creditanstalt's reputation among its customers, which could in turn adversely affect Bank Austria Creditanstalt's business and results of operations.

Certain Austrian consumer protection associations and politicians have announced that claims for damages against the banks involved in the proceedings described above, including Bank Austria Creditanstalt, are under consideration. Bank Austria Creditanstalt believes that, as a legal matter, it is uncertain whether a violation of Article 81 of the EC Treaty may give rise to private claims for damages by individual customers. As at the date of this Offering Circular, no actions have been filed against Bank Austria Creditanstalt on this basis. Bank Austria Creditanstalt considers such actions to be without merit for a variety of reasons. Furthermore, Austrian consumer protection associations have alleged that banks in Austria have been charging their customers excessive interest and fees in contravention of Austrian consumer protection laws. Whether and to what extent such claims are justified depends on the individual circumstances and various legal issues which to date have not been finally resolved by the



Austrian courts. In view of the uncertain legal situation, the Austrian Savings Banks Association entered into two settlement arrangements with Austrian consumer protection associations. In order to avoid litigation with customers or consumer protection associations or both, Bank Austria Creditanstalt declared that it will act in accordance with the settlement arrangements. However, other Austrian credit institutions are still involved in civil proceedings, and court decisions rendered against those credit institutions may have adverse consequences for the entire banking industry in Austria. Bank Austria Creditanstalt believes that the declaration made by itself should largely avoid such adverse consequences for Bank Austria Creditanstalt.

2. Bank Austria Creditanstalt has been engaged in litigation with former and current employees relating to a 1999 restructuring of Bank Austria Creditanstalt's pension plans. In 1999, the former Bank Austria AG, the former Creditanstalt AG and other Austrian savings institutions converted their pension plans for employees retiring from 1 January 2000 onwards from direct defined benefit arrangements into defined contribution arrangements using two outside pension funds as benefit providers. A vast majority of the then active employees of Bank Austria AG and Creditanstalt AG participated in the conversion, either as a result of savings bank sector or company-specific collective bargaining arrangements or as a result of individual election. For employees, participation in the conversion meant that their right to receive a defined company pension directly from Bank Austria Creditanstalt following retirement was converted into a right to a share of the assets (and hence the investment performance) of the pension funds. Bank Austria AG and Creditanstalt AG contributed an aggregate of approximately €690 million to the outside pension funds in consideration of their assumption of the liabilities for the service periods of the affected employees before 1 January 2000. For service periods after that date, Bank Austria AG and Creditanstalt AG agreed to make periodic defined contributions to the pension funds. The pension plan arrangements of employees who retired before 1 January 2000 were unaffected by the conversion.

The worldwide decline in equity markets since 1999 caused the performance of the pension funds to fall significantly below forecasts. Groups of employees who recently retired claim that Bank Austria Creditanstalt should compensate them for the loss they have suffered as a result of the underperformance of the pension funds. Some former and current employees initiated litigation seeking to recover from Bank Austria Creditanstalt any present or future shortfalls in their pension payments from the pension funds determined by reference to what their defined benefit claims would have been had the conversion not occurred.

In June 2004 the Austrian Supreme Court (*Oberster Gerichtshof*) came to a decision in an exemplary litigation initiated by the Austrian Union Association (*Österreichischer Gewerkschaftsbund*) against the Austrian Savings Bank Association (*Sparkassenverband*). The Supreme Court decided that the transfer of the pension obligations to the pension funds was carried out in compliance with applicable legal requirements, as far as collective agreements with the employees representation are concerned. There is no obligation for Bank Austria Creditanstalt to guarantee a certain pension level for all employees affected by the conversion. However Bank Austria Creditanstalt was ordered to grant some compensation to employees who were close to retirement when the conversion occurred.

Accordingly, Bank Austria Creditanstalt has granted compensation amounting to a total of €1.3 million (i.e. approximately 0.1 per cent. of its annual staff costs) to around 150 employees (being the class of (mostly former) employees who benefited, in the opinion of Bank Austria Creditanstalt, from the above decision).

However, due to the potential for different methods of defining the class of beneficiaries of the above decision, Bank Austria Creditanstalt's line of action might be challenged in court by employees excluded by Bank Austria Creditanstalt from the present compensation procedure. Furthermore, despite the decision of the Supreme Court, some former employees and the workers council have initiated legal proceedings against Bank Austria Creditanstalt regarding the calculation of the compensation granted. The risk for Bank Austria Creditanstalt arising from such litigation will be very moderate according to the principles the Supreme Court established in its decision.

3. Long-pending litigation exists involving purported claims of Treuhandanstalt, the predecessor of Bundesanstalt für vereinigungsbedingte Sonderaufgaben ("BvS"), against Bank Austria (Schweiz) AG, a former subsidiary of Bank Austria Creditanstalt. One of the claims in the proceedings, which were initiated in 1993, is that the former subsidiary participated in the embezzlement of

funds. BvS seeks damages in the amount of approximately €128 million plus interest. Bank Austria Creditanstalt would be liable under an indemnity given to its former subsidiary if such claims were to be successful, but Bank Austria Creditanstalt believes such claims are without merit.

4. In December 2002, Bank Austria Creditanstalt was named (among others) as defendant in an action brought by Constellation 3D, Inc. (a debtor in Chapter 11 proceedings) in the U.S. Bankruptcy Court for the Southern District of New York. The plaintiff is claiming from Bank Austria Creditanstalt an amount of up to U.S.\$45 million as compensation for offences allegedly committed in connection with a loan contract between the pre-petition principal shareholder of the plaintiff and a prospective investor. The charges include, among others, negligent misrepresentation and fraud. Bank Austria Creditanstalt believes that the claims are without merit.
5. Two criminal investigations are underway in Russia concerning alleged tax evasion and illegal entrepreneurial activity purportedly engaged in by a former indirect subsidiary of Bank Austria Creditanstalt during the period of its ownership (mid-1996 to 2000). The investigations also concern a company in which Bank Austria Creditanstalt's subsidiary had an approximately 25 per cent. shareholding. Bank Austria Creditanstalt understands that the relevant investigators believe they have a basis for referring their findings to a court for prosecution and a basis for claiming overdue tax. Bank Austria Creditanstalt cannot exclude the possibility that an attempt would be made by the relevant tax authorities or the buyer of the subsidiary to claim that Bank Austria Creditanstalt's intermediate subsidiary or Bank Austria Creditanstalt should bear all or part of the alleged overdue taxes, interest and penalties, although Bank Austria Creditanstalt does not believe that Bank Austria Creditanstalt should have any liability in this regard.
6. In April 2002, B.I.I. Creditanstalt International Bank Ltd. (Cayman Islands) initiated provisional liquidation proceedings in the Cayman Islands due to losses incurred in the financial crisis in Argentina. Bank Austria Creditanstalt owned a 50 per cent. interest in the company at that time. A Scheme of Arrangement for the Cayman Islands company was approved by its creditors in December 2002 and confirmed by the competent Cayman Islands court in January 2003. Some creditors of the company, whose aggregate deposits total U.S.\$34 million, have informed Bank Austria Creditanstalt and HVB that they are of the opinion that Bank Austria Creditanstalt and certain other parties can be held liable under Argentine law for the Cayman Islands company's unpaid liabilities. Currently, the purported facts put forward by such creditors, and on which the claims in respect of such liabilities are based, are being examined in Argentina and in the Cayman Islands. As of the date of this Offering Circular, none of the creditors of the company has initiated any legal proceedings against Bank Austria Creditanstalt; the creditors, however, served Bank Austria Creditanstalt and HVB with briefs in order to suspend the statute of limitations with respect to their alleged claims. To reduce uncertainties and avoid potential litigation cost and distraction, HVB has offered to the creditors of the Cayman Islands company in connection with the Scheme of Arrangement to enter into an assignment and release agreement whereby the participating creditors, among other things, waive all claims against Bank Austria Creditanstalt and certain other parties. At this time, the estimated maximum amount of creditors' claims that are not covered by the assignment and release is U.S.\$53 million not including interest accrued since the commencement of the liquidation proceedings. This amount will be reduced by the proceeds of the liquidation proceedings of the Cayman Islands company to be distributed to its creditors under the Scheme of Arrangement, which provides for a dividend of 60 per cent. of the proceeds of the assets to be paid to the creditors of the Cayman Islands company out of the liquidation of the company's assets.
7. In December 2003, Guernsey-based Duferco Participants Holding Ltd. initiated arbitration proceedings against Bank Austria Creditanstalt in connection with a syndicated trade finance facility for the bankrupt company Sartid International S.A. (former subsidiary for distribution purposes of the Serbian steel company Sartid AD). The facility had been arranged by a subsidiary of Bank Austria Creditanstalt and in respect of which Duferco Participants Holding Ltd. had acted as guarantor. Duferco Participants Holding Ltd. claims total damages of approximately U.S.\$35 million plus interest, alleging that Bank Austria Creditanstalt's subsidiary failed to arrange adequate security for the facility. The arbitration proceedings are governed by Austrian law. The hearings were concluded in December 2004, but, as one of the arbitrators

passed away a few days later, the arbitration tribunal will have to decide now on how to proceed further. In any case, the outcome of the proceedings will depend very much on the consideration of the evidence by the arbitrators, and therefore the outcome is difficult to predict.

## **5. CLEARING**

The Preferred Securities have been accepted for clearance through Euroclear and Clearstream, Luxembourg. The following clearing codes have been assigned to the Preferred Securities:

Amsterdam Security Code: 15203.

ISIN: DE000A0DYW70.

Common Code: 021299707.

German Security Code (WKN): A0DYW7.

## **6. NO MATERIAL CHANGE**

Save as described herein, there has been no material adverse change in the financial position or prospects of Bank Austria Creditanstalt or the Group since 31 December 2003 or, in the case of the Issuer, since the date of its incorporation on 27 January 2005.

## **7. SUBSIDIARIES**

A list of Bank Austria Creditanstalt's material subsidiaries including Bank Austria's holdings of subsidiaries as at 31 December 2003 is set out in the consolidated financial statements of Bank Austria Creditanstalt for the year ended 31 December 2003.

## **8. DOCUMENTS AVAILABLE**

For so long as the Preferred Securities remain outstanding, copies of the following documents (together, if applicable, with an English translation thereof) will, upon request, be available during normal business hours free of charge at the registered offices of the Issuer and Bank Austria Creditanstalt and at the specified offices of the Paying and Transfer Agents shown on the back page of this Offering Circular:

- (a) the memorandum and articles of association of the Issuer;
- (b) the by-laws (*Satzung*) of Bank Austria Creditanstalt;
- (c) the consolidated audited annual financial statements of Bank Austria Creditanstalt for the financial years ended 31 December 2002 and 31 December 2003;
- (d) the Support Agreement; and
- (e) the Agency Agreement.

For so long as the Preferred Securities are listed on Euronext Amsterdam, the most recently published consolidated and non-consolidated audited annual financial statements and consolidated unaudited interim financial statements of Bank Austria Creditanstalt, and the first financial statements of the Issuer, will be available at the offices of the Paying and Transfer Agents, currently shown on the back page of this Offering Circular. Bank Austria Creditanstalt does not publish non-consolidated interim financial statements. The first financial statements of the Issuer are expected to be prepared for the period commencing on incorporation and ending on 31 December 2005.

## **9. AUDITORS**

The Auditing Board of the Savings Bank Auditing Association (Bank Auditors), Österreichische Wirtschaftsberatung GmbH Wirtschaftsprüfungs- und Steuerberatungsgesellschaft and KPMG Austria GmbH Wirtschaftsprüfungs- und Steuerberatungsgesellschaft have audited (a) the consolidated financial statements of Bank Austria Creditanstalt prepared in accordance with International Financial Reporting Standards and (b) the unconsolidated financial statements of Bank Austria Creditanstalt prepared in accordance with the Austrian Commercial Code (*Handelsgesetzbuch*) and the Austrian Banking Act (*Bankwesengesetz*) for the financial years ended 31 December 2002 and 31 December 2003. The auditors expressed an unqualified opinion on the financial statements of Bank Austria Creditanstalt for the financial years ended 31 December 2002 and 31 December 2003.

No financial statements of the Issuer have yet been prepared or audited. Deloitte & Touche have been appointed as auditors to the Issuer.

## **10. NOTICES**

All notices to the Holders of Preferred Securities will be given by the Issuer (i) for so long as any of the Preferred Securities is listed on Euronext Amsterdam, in a leading newspaper having general circulation in The Netherlands (which is expected to be the *Financieele Dagblad*) and, as long as the rules of Euronext Amsterdam so require, in the Euronext Daily official List (*Officiële Prijscourant*) and (ii) by mail to Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg and (iii) to the Euronext Amsterdam through the Paying and Transfer Agent.

In accordance with their published rules and regulations, each of Clearstream, Frankfurt, Euroclear and Clearstream, Luxembourg will notify the holders of securities accounts with it to which any Preferred Securities are credited of any such notices received by it.

## **11. ADDITIONAL OBLIGATIONS**

For so long as the Preferred Securities are listed on Euronext Amsterdam, the Issuer will comply with the provisions set forth in Article 2.1.20, sections a-g of Schedule B of the Listing and Issuing Rules of Euronext Amsterdam, as amended from time to time.

**REGISTERED OFFICE OF THE ISSUER**

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CREDITANSTALT**

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**PAYING AND TRANSFER AGENT  
IN FRANKFURT**

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 60311 Frankfurt am Main

**PRINCIPAL PAYING AND TRANSFER AGENT  
AND CALCULATION AGENT**

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 Trinity Tower  
 9 Thomas More Street  
 London E1W 1YT

**AMSTERDAM LISTING AGENT**

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 1017CA Amsterdam

**PAYING AND TRANSFER AGENT IN THE  
NETHERLANDS**

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*To the Issuer and Bank Austria Creditanstalt as to  
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*Of the Issuer*

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*Of Bank Austria Creditanstalt*

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Wirtschaftsprüfungs- und  
Steuerberatungsgesellschaft**  
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**Österreichische Wirtschaftsberatung GmbH  
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