Background Information

At the request of members, ISLA has prepared this standard form template clause to assist market participants when lending and borrowing Austrian securities, as a result of the publication of the ‘*Information on Levying and Refunding of Austrian Withholding Taxes on Dividends received by Taxpayers with Limited Tax Liability (Non-Resident Taxpayers) from Public Limited Companies’* by the Austrian Ministry of Finance in November 2022*.[[1]](#footnote-2)*

This template is for use with the [GMSLA 2010](https://www.islaemea.org/gmsla-title-transfer/gmsla-2010-agreements/) Title Transfer and the [GMSLA 2018](https://www.islaemea.org/gmsla-security-interest/gmsla-security-interest-agreements/) Pledge agreements. This wording was drafted by members of the ISLA Tax and Legal Steering Groups and reviewed by Freshfields Bruckhaus Deringer LLP. The wording can be used as an additional provision in new GMSLAs, or as an amendment to legacy ones.

Template clause

*‘’[Unless otherwise agreed in writing in relation to a particular Loan,] the Parties hereby agree that, in addition to the requirements of paragraph 6.2 of the Agreement, to the extent not already included in the amount of any payment under that paragraph, where Income in respect of Loaned Securities is subject to dividend withholding tax in Austria and the relevant Loan extends over any portion of the Income Approval Period, Borrower shall, on the date the relevant Income is paid by the issuer (or such other date as the Parties may from time to time agree), pay or deliver to Lender a sum of money as agreed between the  Parties or, failing such agreement, a sum of money equal to the amount that the Lender would have been entitled to claim as credit, benefit or other relief in respect of dividend withholding tax in Austria under Applicable Law had the Loaned Securities not been loaned to Borrower and had instead been retained and held by Lender over the Income Approval Period.*

*For the purposes of the foregoing, “Income Approval Period” means the date on which the resolution to distribute profits is adopted by shareholders of the issuer of the Loaned Securities and the business day in Austria immediately preceding such date.’’*

Disclaimer

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1. https://findok.bmf.gv.at/findok?execution=e100000s1&segmentId=c6e0e285-c1c9-49e1-af28-a92140f8147b [↑](#footnote-ref-2)