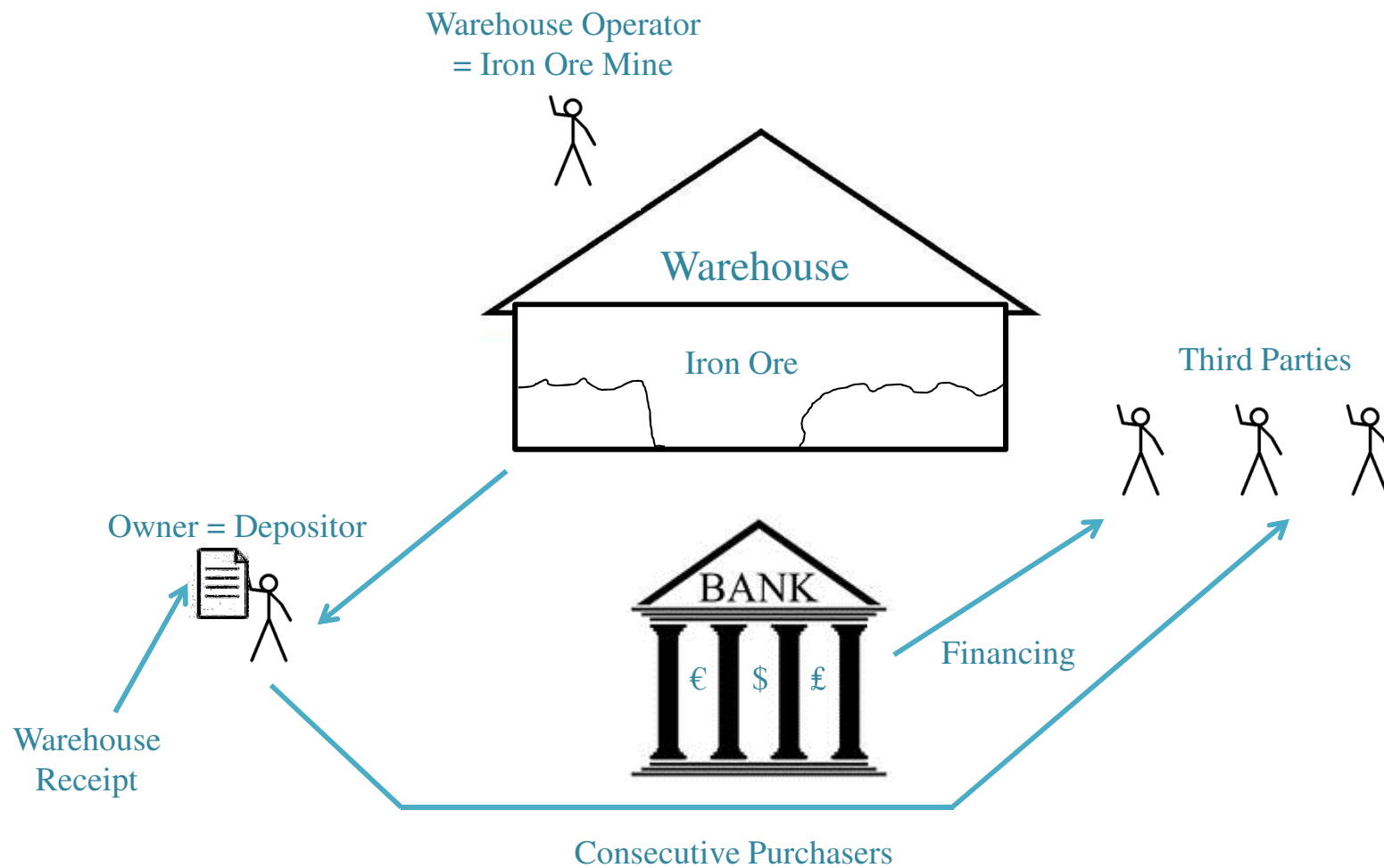




# Warehouse Receipts in Austria

Dr. Otto Wächter  
Graf & Pitkowitz Rechtsanwälte







## Applicable Law for Goods located in Austria

- **Transfer of Ownership („*Eigentum*“):**
  - Title
  - Modus
- **Security Interest:**
  - Title
  - Perfection (important: Publicity - „*Publizität*“)



## Applicable Law for Transfer of Goods resp. Security Interest located in Austria

- **Title: Subject to Agreement**
- **Modus / Perfection: Austrian Law**



## **Warehouse Receipt („*Lagerschein*“)**

- Paper Documentation providing proof of ownership of Goods to be stored in a warehouse
- Duty of Warehouse Operator to deliver to the Holder of the Warehouse Receipt

## **Rights and Obligations of Warehouse Operator**

## **Rights and Obligations of Depositors**



## Types of Warehouse Receipts

(1) Bearer Warehouse Receipt („*Inhaberlagerschein*“)

(2) Instrument not to order („*Rektalagerschein*“)

(3) Warehouse Receipt issued to Order („*Orderlagerschein*“)

→ Bearer Warehouse Receipt and Instrument issued not to Order discussed in literature, however in Austria currently not of any relevant practical use.

→ Issuer: Warehouse Operator („*Lagerhalter*“)



## Warehouse Receipt issued to order

- Transferable by Endorsement
- Creation only by „Establishments officially authorized to issue such documents“
- Legal Basis:
  - OLSchV („*Orderlagerscheinverordnung*“)
    - repealed by *BRBG* („*Bundesbereinigungsgesetz*“), *BGBl I 1999/191*
    - No legal basis anymore for issuing a Warehouse Receipt to Order
    - Dispute in Doctrine (Dispute): whether every Business („*Unternehmen*“) may still issue Warehouse Receipts issued to Order, despite repeal by OLSchV
    - In Practice: Of no relevance (never)



## Who is entitled to ask for Delivery of Goods?

### (1) Bearer Warehouse Receipt

- Person presenting Warehouse Receipt
- „Limping“ Bearer Warehouse Receipt („*hinkender Inhaberlagerschein*“)

### (2) Warehouse Receipt not to Order

- Person Recovery Claim was assigned to

No Transfer of Ownership of Goods, only Transfer of Right to Recover Possession („*Herausgabeanspruch*“)

### (3) Warehouse Receipt issued to order

- Person shown in the Document (endorsement)
- Certifies Right to Receive Goods - Negotiable:
  - Transfer of Warehouse Receipt issued to Order = Transfer of Goods
  - Condition: Good is (still) stored in Warehouse





## International Trading Documents in Austria

CT-Documents of the International Chamber of Commerce (Paris) for combined transport and documents of the **Fédération Internationale des Associations de Transitaires et Assimilés** (FIATA)

- (1) **FIATA-FBL**      *negotiable FIATA Multimodal Transport Bill of Lading*
- (2) **FIATA-FCT**      *Forwarders Certificate of Transport*
- (3) **FIATA-FCR**      *Forwarders Certificate of Receipt*
- (4) **FWL**              *FIATA-Warehouse Receipt*

(1) to (4) negotiable

Austrian Supreme Court: only re: FBL (SZ 65/69 = wbl 1992, 336 = RdW 1992-402)



**Transfer of Goods**

**Hand-over / Delivery**

**Symbolic Delivery**

**Delivery by Order to a Third Party in Possession**

**Constitutum Possessorium**



## Delivery by Order to a Third Party in Possession

- Delivery by issuing an order to a Third Party in Possession („*Besitzanweisung*“)
- To Hold the Goods which are located neither on the transferrers nor the transferees premises but will rest with a Third Person (e.g. a Warehouse Keeper).
- Transfer: Order to the Third Person that the latter shall possess the Goods for the Acquirer.
- Transfer of Ownership:
  - upon Third Party receiving order
  - at a later point in time if this is stated in the order (anticipated order („*Antizipierte Besitzanweisung*“))



## Constitutum Possessorium

- The current owner [here: Iron Ore Mine / Warehouse] agrees to hold the property for the new owner and the physical control of the assets remains with him.
  - Strict publicity required for pledges over movables
- Constitutum Possessorium is generally assumed to be insufficient for creating security right such as pledges or transfers of ownership for security purposes.



## Ownership Transfer for Security Purposes („*Sicherungseigentum*“)

- Borrower is transferring (by physical or symbolic transfer) ownership of the Goods to the creditor for security purposes:
- Ownership expires when all claims have been paid
- Deemed to be ownership with all of ownership's external effects, but modified in certain respects due to the fiduciary nature of the transfer \*

\* *Schuhmacher* in Straube/Ratka/Rauter, UGB 14 § 363; *Peter Csoklich*, Festschrift, S. 72; 4 Ob 209/04w.



## Transfer of Goods

Form of Transfer	Ownership	Security Rights
Hand-over / Delivery	yes	yes
Symbolic Delivery	yes	yes (?)
Delivery by Order to a Third Party in Possession	yes	yes
Constitutum Possessorium	yes	no



## Specific Issue: Retention of Ownership („*Eigentumsvorbehalt*“)

- Conditional seller is still owner but seller's ownership is subject to the condition of receiving full Payment.
- Ownership passes to Purchaser when the purchase price has been paid in full.
- There is no express statutory regulation under Austrian Law, however serving as a Security for the purchase price is generally accepted.
  - Conditional buyer („*Vorbehaltskäufer*“) has a special expectant right („*Anwartschaftsrecht*“) until full payment
  - Reserved Ownership of the conditional seller („*Vorbehaltsverkäufer*“)

Both Rights may be transferred to Third Parties.



**Certificate of Ownership  
by Instruction to Hold Possession / “Besitzanweisung”**

This is to certify ownership of [NAME OF OWNER] of [ADDRESS OF OWNER] on [MATERIAL] (the “Material”) by Instruction to Hold Possession (“*Besitzanweisung*”).

[NAME OF THIRD PARTY, REGISTERNUMBER, NAME OF REGISTER, ADRESSE] (the “Seller”) sold the Material to the [NAME OF OWNER] pursuant to a purchase agreement dated and effective as of [DATE] (the “Purchase Agreement”).

The Material is held in possession for the Seller by [NAME OF DEPOSIT KEEPER], registered with the [COMPANY REGISTER, FN [COMPANY REGISTER NUMBER], [ADDRESS OF DEPOSIT KEEPER] (the “Deposit Keeper”). The Material is stored at/in [the premises of the Deposit Keeper / IF POSSIBLE MORE DETAILED DESCRIPTION OF LOCATION] at the address [ADDRESS LOCATION] (the “Location”).

Seller now, per [DATE OF EFFECTIVENESS OF THE PURCHASE AGREEMENT] irrevocably and unconditionally instructs the Deposit Keeper to hold the Material in possession for [NAME OF OWNER], the new owner of the Material.

By countersigning this Certificate of Ownership, the Deposit Keeper (i) acknowledges instructions of Seller to hold the Material in possession for [NAME OF OWNER] and (ii) declares towards Bank that it holds the Material in possession for [NAME OF OWNER] at/in Location.

[NAME OF OWNER] acknowledges that Deposit Keeper holds the Material in possession for [NAME OF OWNER] at the Location.

The English version of this Certificate of Ownership by Instruction to Hold Possession prevails.

SIGNED [THIRD PARTY]

.....  
Signature of Authorized Representative

Date:

.....  
Name of Authorized Representative



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ERROR: undefined
OFFENDING COMMAND: ~
STACK:
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