

## **IMMOFINANZ Group launches defence against lack of objectivity in legal proceedings by investors**

**IMMOFINANZ Group sees itself confronted with a growing lack of objectivity on the part of the responsible judges in a number of legal proceedings initiated by investors and believes its right to due process has been violated. The company has now taken various steps in its defence.**

On the one hand, IMMOFINANZ Group has called on the European Court of Human Rights (ECHR) to raise the issue of bias on the part of an involved member of the Austrian Supreme Court in domestic proceedings because Austrian law does not provide any further alternatives for action. The bias in this particular case was evident and also confirmed by a decision of the Austrian Supreme Court. On the other hand, IMMOFINANZ Group has filed a challenge on grounds of impartiality against a judge from the Vienna Commercial Court, claiming subjective conduct and anticipatory consideration of the evidence in legal proceedings.

“IMMOFINANZ Group has far more than 70,000 private investors in Austria – more than any other company in this country. Given this large group of shareholders, IMMOFINANZ investors can be found in all segments of the population and professional circles – the company is, so to speak, a mirror of our society. We can therefore assume that a number of Austrian judges and their relatives and/or friends also include (former) IMMOFINANZ shareholders who incurred losses on real estate shares during the financial crisis. These judges are considered to be biased. In our opinion, it is really necessary to exercise greater sensitivity in evaluating the issue of whether a judge should be viewed as biased in the legal proceedings initiated by investors against IMMOFINANZ Group“, commented Eduard Zehetner, CEO of IMMOFINANZ Group.

### **Detailed information:**

#### **Complaint filed with the European Court of Human Rights**

IMMOFINANZ Group sees itself deprived of the constitutional right to due process because a biased member of the Austrian Supreme Court was involved in a decision and there are no further possibilities for defence in Austria.

On the background: The involved Supreme Court judge purchased shares in IMMOFINANZ and IMMOEAST through AWD (now: Swiss Life Select) prior to 2007 and was therefore personally affected by the decline in the price of these securities. In 2009 he assigned all claims against IMMOFINANZ to a litigation financing company. On several occasions in the past he therefore declared himself as biased in proceedings by investors in connection with cases related to the “IMMOFINANZ/IMMOEAST share purchase“. This bias was confirmed by the Supreme Court in several decisions. At a later date the judge decided against the

further pursuit of these possible claims. He interpreted this step as meaning there was no further reason to declare himself as biased in subsequent cases and participated in a 2013 decision in which the Supreme Court attributed false advising by an external investment consultant (AWD) to a bank (note: in this case, Aviso Zeta AG).

IMMOFINANZ Group only learned of the composition of the Supreme Court Senate and the involvement of this apparently biased judge when it received the final judgment and immediately filed an action for annulment. This action was rejected by the Supreme Court for formal reasons because applicable legislation does not accept the bias of a judge as grounds for annulment after a judgment has become legally binding (in contrast to the exclusion of a judge). The composition of a senate is generally not announced to the parties in advance. That not only creates substantial legal uncertainty, but also (as in this specific case) leads to a violation of the right to due process. “The real issue at stake here is trust in the court system in a democratic society“, explained Zehetner.

“We are therefore calling on the ECHR to demonstrate that these proceedings were not conducted fairly and to initiate a discussion over this gap in the law“, added Zehetner. “This case cannot be reopened, but our aim is at least to obtain compensation for the costs incurred to date.“

### **Applications of challenge for bias against a judge in the Vienna Commercial Court**

IMMOFINANZ Group has rejected as biased a judge who serves on the Vienna Commercial Court and is responsible for numerous legal proceedings initiated by investors. The respective applications were filed during the past days.

“In similar proceedings initiated by investors against IMMOFINANZ Group, the involved judge acted and made a number of statements that lead to massive doubts over his impartiality“, said Eduard Zehetner. “For example, the judge issued a judgment against us in two proceedings even though the plaintiff and the defendant had agreed, and informed him, that a settlement would presumably be reached in both cases immediately. The straw that finally broke the camel’s back involved several decisions by this judge in which he indicated in the summonings for a hearing that the proceedings in this case were closed, even before all parties and witnesses were heard“, added the IMMOFINANZ CEO. “We are therefore quite concerned that motives other than the actual facts could play a role in a decision by this judge. It is an apparent case of anticipated consideration of the evidence, which is contrary to the most elementary principles of the Austrian Code of Civil Procedure and the rights of all parties – also the defendant – to fair legal proceedings.“

“For the above-mentioned reasons, we do not believe this judge is in a position to issue an impartial decision and we have rejected him as biased“, added Zehetner in conclusion. Hundreds of cases initiated by investors against IMMOFINANZ Group are currently pending before the Vienna Commercial Court. The involved judge is responsible for roughly 80 of these cases.

## Annex

### *When is a judge biased?*

According to judicial theory and court decisions, a judge is considered biased when the objective examination and evaluation of circumstances lead to doubts over his/her objectivity.

In evaluating whether a judge is biased, it is in the interests of the judiciary's standing to generally apply stricter standards; alone the impression that a judge allows his/her decision to be influenced by issues other than the facts of the case must be avoided.

Bias is different from the exclusion from performing judicial duties (these instances are defined by legal regulations, e.g. when the judge is a party in legal proceedings or when certain family members are involved).

### **On IMMOFINANZ Group**

*IMMOFINANZ Group is one of the leading listed property investors and developers in Europe. The company is included in the leading ATX index of the Vienna Stock Exchange and also trades on the Warsaw Stock Exchange. Since its founding in 1990, the company has compiled a high-quality property portfolio that now comprises more than 1,600 investment properties with a carrying amount of approx. EUR 10.1 billion. As a "real estate machine" the company concentrates on linking its three core business areas: the development of sustainable, specially designed prime properties in premium locations, the professional management of these properties and cycle-optimised sales. IMMOFINANZ Group concentrates its activities in the retail, office, logistics and residential segments of eight regional core markets: Austria, Germany, Czech Republic, Slovakia, Hungary, Romania, Poland and Russia.*

*Further information under: <http://www.immofinanz.com> | <http://blog.immofinanz.com> | <http://properties.immofinanz.com>*

**For additional information please contact:**

## **MEDIA INQUIRIES**

### **Bettina Schragl**

Head of Corporate Communications | Press Spokesperson

IMMOFINANZ Group

T +43 (0)1 88 090 2290

M +43 (0)699 1685 7290

[communications@immofinanz.com](mailto:communications@immofinanz.com)