Best Lawyers

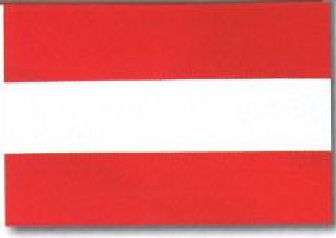
FALL 2017

BUSINESS EDITION

the GLOBAL ISSUE

+

- VIRTUAL AND AUGMENTED REALITY
- PARIS CLIMATE AGREEMENT



AUSTRIAN STOCK EXCHANGE AMENDMENT ACT 2018

By Albert Birkner

At the end of March 2017, the Austrian Federal Ministry of Finance issued a ministerial proposal to implement Directive 2014/65/EU on markets in financial instruments. The proposal aims to implement the Markets in Financial Instruments Directive II (MiFID II).

The implementation of MiFID II will make waves within the Austrian legal system by repealing the Stock Exchange Act 1989 (Börsegesetz 1989) and the Securities Supervision Act 2007 (Wertpapieraufsichtsgesetz 2007), replacing them with the Stock Exchange and General Commodity Exchange Act 2018 (Wertpapier- und allgemeinen Warenbörsen 2018) and the Securities Supervision Act 2018 (Wertpapieraufsichtsgesetz 2018), respectively. This will have a knock-on effect in other numerous regulated areas.

This amendment will help create a long overdue, transparent, and consistent framework for all investment service providers, starting January 2018. There will be numerous changes. Firstly, setting higher standards for existing multilateral trading facilities (MTFs) and the newly introduced obligation to obtain authorization from the appropriate national regulator to operate organized trading facilities (OTFs) will close supervisory gaps and improve the conditions for competition on regulated markets. It will also introduce specific growth markets, which should aid small- and medium-sized enterprises, giving them better access to the capital markets. Secondly, regulating data provision services will ensure greater transparency.

Another central aspect that will be introduced by the Stock Exchange and General Commodity Exchange Act 2018 is the option for stock companies to voluntarily delist from the market. The Viennese Stock Market currently consists of two regulated markets: the official market and the second regulated market. The amendment in view of the limited size of the Austrian capital market will abrogate

istock.com/William_Potter, Yozayo

with such differentiation and will unify the two regulated markets into one official market. The Stock Exchange and General Commodity Exchange Act 2018 will create the legal basis enabling listed companies to request that their stock and financial instruments be delisted from the official market. Until the law enters into force in 2018, stock companies will continue to be unable to voluntarily delist from the stock market and are compelled to find other ways to do so. At present the only means of achieving this is to create circumstances that disqualify the stock of the companies in question from being traded on the stock market; for example, a squeeze-out or by merging or splitting companies, or by changing the company's legal status through restructuring. With effect from January 2018, this gap in the law, which sets the Vienna Stock Exchange as the only stock exchange in Austria apart from other stock markets, will be rectified by bringing Austrian law in line with international standards. The lack of a regulated delisting process has often come in for criticism, with accusations that it has put Austrian companies at a competitive disadvantage. The amendment promises to eliminate this handicap and bring more flexibility for issuers of financial instruments.

Until the law enters into force in 2018, stock companies will continue to be unable to voluntarily delist from the stock market and are compelled to find other ways to do so.

The Securities Exchange and General Commodity Exchange Act 2018 lays down the conditions that must be met in order for the delisting process to be set in motion. First and foremost, the company in question must have been listed for a minimum of three years prior to an application being made for revocation of admission. Furthermore, delisting from the Vienna Stock Exchange must not jeopardize the protection afforded to investors. In order to safeguard investor protection, every shareholder is given the opportunity to withdraw from the corporation and sell his/her shares at a fixed price in accordance with rules laid down by statute prior to the delisting. This special case of a mandatory takeover offer is regulated by the Takeover Act (Übernahmegesetz). The pricing of these shares must comply with the mandatory pricing provisions of the Takeover Act that basically refers to a volume weighted average trading price of the stock. The amendment will introduce additional methods for calculating minimum prices. The average stock market price over the last five stock market days before the offer is announced should be used for the purpose of calculating the price, even though this will not always be representative of the price paid for the shares on the Austrian stock market. If these calculated values are below the actual value of the shares, the price must be amended upward appropriately.

However, if there is a second quotation on a different regulated market within the European Economic Area (EEA), such an offer can be dispensed with. •