

Bundesgesetzblatt (<i>Federal Law Gazette, FLG</i>) I No 127/1998	[Original version]
amended by Federal Law Gazette I No	
189/1999	Act Amending the Takeover Act (<i>Übernahmengesetz</i>)
98/2001	1 st Euro Conversion Act – Federal (<i>1. Euro-Umstellungsgesetz – Bund</i>)
92/2003	Act Amending Company Law and Insolvency Law 2003 (<i>Gesellschafts- und Insolvenzrechtsänderungsgesetz – GIRÄG 2003</i>)
75/2006	Takeover Amendment Act 2006 (<i>Übernahmerechts-Änderungsgesetz – ÜbRÄG 2006</i>)
72/2007	Company Law Amendment Act 2007 (<i>Gesellschaftsrechts-Änderungsgesetz 2007 – GesRÄG 2007</i>)
71/2009	Act Amending the Stock Corporation Act 2009 (<i>Aktienrechts-Änderungsgesetz 2009 – AktRÄG 2009</i>)
1/2010	Act Amending the Collecting Society Act (<i>Verwertungsgesellschaftengesetz</i>) 2006 and the Takeover Act (<i>Übernahmengesetz</i>)
29/2010	Act Amending the Insolvency Act 2010 (<i>Insolvenzrechtsänderungsgesetz 2010 – IRÄG 2010</i>)
190/2013	Act Amending the Administrative Jurisdiction Act (<i>Verwaltungsgerichtsbarkeits-Anpassungsgesetz – Justiz – VAJu</i>)
98/2014	Federal Act on the Recovery and Resolution of Banks (<i>Bundesgesetz über die Sanierung und Abwicklung von Banken</i>), as well as the amendment to the Banking Act (<i>Bankwesengesetz</i>), the Financial Market Authority Act (<i>Finanzmarktaufsichtsbehördengesetz</i>), Insolvency Act (<i>Insolvenzordnung</i>), Takeover Act (<i>Übernahmengesetz</i>), Securities Supervision Act 2007 (<i>Wertpapieraufsichtsgesetzes 2007</i>), Alternative Investment Fund Manager Act (<i>Alternativen Investmentfonds Manager-Gesetz</i>), Act Implementing EU Legislation on Rating Agencies (<i>Ratingagenturenvollzugsgesetz</i>) and Bank Tax Act (<i>Stabilitätsabgabengesetz</i>) and the Repeal of the Bank Intervention and Restructuring Act (<i>Bankeninterventions- und -restrukturierungsgesetz</i>)
68/2015	Accounting Amendment – Supplementary Act 2015 (<i>Rechnungslegungsänderungs-Begleitgesetz 2015 – RÄ-BG 2015</i>)
76/2016	Amendment to the Stock Exchange Act 1989 (<i>Börsegesetz 1989</i>), the Securities Supervision Act 2007 (<i>Wertpapieraufsichtsgesetz 2007</i>), Investment Fund Act 2011 (<i>Investmentfondsgesetz 2011</i>) and Takeover Act (<i>Übernahmengesetz</i>)
107/2017	Stock Exchange Act 2018 (<i>Börsegesetz 2018</i>) and Securities Supervision Act 2018 (<i>Wertpapieraufsichtsgesetz 2018</i>) as well as the Amendment to the Auditor Supervision Act (<i>Abschlussprüfer-Aufsichtsgesetzes</i>), Stock Corporation Act (<i>Aktiengesetz</i>), Alternative Investment Fund Managers Act (<i>Alternative Investmentfonds Manager-Gesetz</i>), Alternative Financing Act (<i>Alternativfinanzierungsgesetz</i>), Banking Act (<i>Bankwesengesetz</i>), Building Society Act (<i>Bausparkassengesetz</i>), Company Employees and Self-Employed Persons Pension Act (<i>Betrieblichen Mitarbeiter- und Selbständigenvorsorgegesetz</i>), Accountancy Act 2014 (<i>Bilanzbuchhaltungsgesetz 2014</i>), Federal Financing Act (<i>Bundesfinanzierungsgesetz</i>), Federal Act on the Creation of a Wind-Down Entity (<i>Bundesgesetz zur Schaffung einer Abbaueinheit</i>), E-Money Act 2010 (<i>E-Geldgesetz 2010</i>), Deposit Protection and Investor Compensation Act (<i>Einlagensicherungs- und Anlegerentschädigungsgesetz</i>), Energy-Control Act (<i>Energie-Control-Gesetz</i>), EU Merger Act (<i>EU-Verschmelzungsgesetz</i>), Financial Conglomerates Act (<i>Finanzkonglomeratengesetz</i>), Financial Market Authority Act (<i>Finanzmarktaufsichtsbehördengesetz</i>), Financial Market - Money Laundering Act (<i>Finanzmarkt-Geldwäschegesetz</i>), Trade, Commerce and

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	Industry Regulation Act 1994 (<i>Gewerbeordnung 1994</i>), Gambling Act (<i>Glücksspielgesetz</i>), Mortgage Bank Act (<i>Hypothekendarbankgesetz</i>), Real Estate Investment Fund Act (<i>Immobilien-Investmentfondsgesetz</i>), Insolvency Act (<i>Insolvenzordnung</i>), Investment Fund Act 2011 (<i>Investmentfondsgesetz 2011</i>), Capital Market Act (<i>Kapitalmarktgesetz</i>), Account Register and Inspection Act (<i>Kontenregister- und Konteneinschaugesetz</i>), Corporation Tax Act (<i>Körperschaftsteuergesetz</i>), Brokerage Act (<i>Maklergesetz</i>), Pension Funds Act (<i>Pensionskassengesetz</i>), Pfandbrief Act (<i>Pfandbriefgesetz</i>), Act Implementing EU Legislation on Rating Agencies (<i>Ratingagenturenvollzugsgesetz</i>), Financial Reporting Enforcement Act (<i>Rechnungslegungs-Kontrollgesetz</i>), Recovery and Wind-up Act (<i>Sanierungs- und Abwicklungsgesetz</i>), SE Act (<i>SE-Gesetz</i>), Securities Financing Transactions Enforcement Act (<i>SFT-Vollzugsgesetz</i>), Demerger Act (<i>Spaltungsgesetz</i>), Savings Bank Act (<i>Sparkassengesetz</i>), Takeover Act (<i>Übernahmegesetz</i>), Business Code (<i>Unternehmensgesetzbuch</i>), Insurance Supervision Act 2016 (<i>Versicherungsaufsichtsgesetzes 2016</i>), Payment Services Act (<i>Zahlungsdienstegesetz</i>), Central Counterparty Enforcement Act (<i>Zentrale Gegenparteien-Vollzugsgesetz</i>) and Central Depository Enforcement Act (<i>Zentralverwahrer-Vollzugsgesetz</i>)
63/2019	Act Amending the Stock Corporation Act 2019 (<i>Aktienrechts-Änderungsgesetz 2019 – AktRÄG 2019</i>)
57/2022	Act Amending the Recovery and Winding-up Act (<i>Sanierungs- und Abwicklungsgesetz</i>), the Takeover Act (<i>Übernahmegesetz</i>) and the Central Counterparty Enforcement Act (<i>Zentrale Gegenparteien-Vollzugsgesetz</i>)
124/2022	Takeover Act Amendment 2022 (<i>Übernahmegesetz-Novelle 2022 - ÜbG-Nov 2022</i>)
78/2023	Corporate Mobility Act (<i>Gesellschaftsrechtliches Mobilitätsgesetz</i>)

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TAKEOVER ACT

Part One

General

Definitions

§ 1. For the purposes of this Federal Act, the following terms have the meanings hereby assigned to them:

1. **Takeover bid (bid/offer):** a public offer made to the holders of the equities of a public limited company to acquire all or part of such equities by consideration in cash or in exchange for other securities.
2. **Offeree company:** a public limited company whose equities are the subject of a bid;
3. **Offeror:** any natural or legal person and any partnership making a bid, intending to make such a bid or is obliged to do so.
4. **Equities:** shares listed on a stock exchange and other transferable securities which entitle the holder to participate in the profits or in the assets upon winding-up; furthermore, transferable securities carrying the right to acquire such securities if they were issued by the offeree company or by an associated enterprise within the meaning of § 189a no 8 of the Austrian Business Code.
5. **Trading day:** a day on which the trading system of the Vienna Stock Exchange in its function as a securities exchange is available for the execution of trades.
6. **Parties acting in concert:** natural or legal persons who cooperate with the offeror on the basis of an agreement aimed at acquiring or exercising control over the offeree company, especially by concerting votes, or who cooperate with the offeree company to frustrate the successful outcome of a takeover bid. If a party holds a direct or indirect controlling interest (§ 22 para 2 and 3) in one or more other legal entities, it is assumed that all of these legal entities are acting in concert; the same applies if several parties reach an agreement on the exercise of voting rights when electing the members of the supervisory board.
7. **Works council:** a works council within the meaning of § 50 para 1 Labour Organisation Act or any similar body representing employees and workers. In case the offeror or the offeree company does not have a works council, the obligations shall apply directly to employees.
8. **Regulated market:** a market pursuant to § 1 no 2 Stock Exchange Act 2018, FLG I No 107/2017.

Scope

§ 2. Subject to Part Four, the provisions of this Federal Act shall apply to all public bids to acquire equities issued by a public limited company having its registered office in Austria and admitted to trading on a regulated market on an Austrian stock exchange.

General principles applicable to public takeover bids

§ 3. The provisions of this Federal Act are based on the following general principles:

1. All holders of equities of an offeree company who are in identical situations must be treated equally, unless otherwise provided in this Federal Act. The obligation of equal treatment shall apply in particular to holders of shares of the same class.
- 1a. The holders of equities must be protected when control is acquired over a company.
2. The addressees of a bid must be given sufficient time and adequate information to enable them to reach informed decisions on the bid.
3. The management and supervisory board of the offeree company must act in the interest of all shareholders and other holders of equities, as well as in the interest of employees, creditors, and in the public interest.
4. When trading in the equities of the offeree company, the offeror company or any other company affected by the bid, it is not permitted to cause market distortions, by artificially influencing securities prices or by distorting the normal functioning of the markets.
5. The takeover proceedings must be conducted quickly; in particular, a bid shall not hinder the offeree company in its business activity for longer than is reasonably necessary.

Part Two

Voluntary takeover bids

General obligations of the offeror

§ 4. Throughout the takeover proceedings, particularly when preparing, drafting and publishing the bid as well as in other announcements, the offeror shall observe the following rules:

1. The offeror may only disclose the intention to make a bid after ensuring that it can fulfil any cash consideration in full, and after taking all necessary measures to secure the fulfilment of any other type of consideration.
2. Inside dealings and market distortions (§ 3 no 4) must be prevented.
3. Information and statements shall be prepared carefully, accurately and completely; incorrect or misleading information and statements are prohibited.

Obligations of confidentiality and disclosure to avoid market distortions and the abuse of inside information

§ 5. (1) The offeror shall ensure confidentiality in order to prevent the premature and uneven disclosure of its considerations and intention to make a bid; this obligation shall apply mutatis mutandis to considerations and the intention to bring about facts obliging the offeror to make a bid. The offeror shall, in particular, inform all persons acting on its behalf in connection with the takeover proceedings of their obligations of confidentiality and of the prohibition of abuse of insider information pursuant to Article 14 in conjunction with Articles 8 to 10 of Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ No L 173 of 12 June 2014 p. 1) establish internal guidelines on the dissemination of information and supervise compliance with these guidelines, and take the appropriate organisational measures to prevent the dissemination and abuse of insider information.

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(2) When the offeror is considering making a bid or intends to make a bid or to bring about facts obliging it to make a bid, it shall immediately disclose its considerations or intention and inform the administrative bodies of the offeree company if its price of the equities fluctuates substantially or if rumours and speculations concerning a forthcoming bid arise and there is reason to assume that these originate in the preparation of the bid or the offeror's considerations to make such a bid or in the purchase of shares by the offeror.

(3) In any case, the offeror shall immediately disclose and inform the administrative bodies of the offeree company of the fact that

1. its management and supervisory board have decided to make a bid, or
2. circumstances have arisen obliging it to make a bid.

(4) The disclosures according to paras 2 and 3 shall be made in such a manner so as to prevent to the extent possible insider trading and market distortions. Upon request of the offeror and with due consideration of the interests of the holders of equities, the Takeover Commission may release the offeror from its duty of disclosure pursuant to para 3 for a short period if doing so helps to avoid damaging the legitimate interests of the offeror or parties acting in concert with the offeror (§ 1 no 6) and the offeror certifies that confidentiality is guaranteed.

Negotiations with the offeree company

§ 6. (1) The offeror may inform the administrative bodies of the offeree company of its considerations and intention to make a bid before these are disclosed or published and may enter into negotiations with them.

(2) The administrative bodies of the offeree company shall ensure confidentiality; § 5 para 1 regarding the obligations of the offeror shall also apply to the administrative bodies of the offeree company. However, the management board of the offeree company must disclose the facts in accordance with § 5 para 4 first sentence, if price of the equities of the offeree company fluctuates substantially or rumours and speculations concerning a forthcoming bid arise and there is reason to assume that these originate in the preparation of the bid or in the considerations of it.

(3) The obligation of confidentiality shall also apply to shareholders of the offeree company with whom the offeror negotiates with reference to confidentiality concerning the acquisition of shares or with shareholders who otherwise gain knowledge of confidential facts from the offeror or from the offeree company.

Offer documents

§ 7. The offeror shall draw up offer documents that must provide at least the following information:

1. the terms of the offer;
2. details on the offeror; if the offeror is a company, in particular, its legal form, name and registered office; in addition, details on direct or indirect holdings in the offeror company within the meaning of §§ 130 et seq Stock Exchange Act 2018, and its affiliation to a group of companies;
3. the equities which are the subject of the bid;
4. the consideration offered for each equity and the valuation method used to determine the consideration, and, in the cases as specified in § 26, the basis of

- the calculation; in addition, details on the execution of the bid and, in particular, on the entities charged to receive acceptances and to provide the consideration;
5. where applicable, the minimum and maximum percentages or minimum and maximum quantities of equities which the offeror agrees to acquire and a description of the allocation rules within the meaning of § 20;
 6. the equities of the offeree company already held by the offeror or by parties acting in concert with the offeror or to which they are entitled or will be obliged to acquire in the future;
 7. all conditions and rights of withdrawal to which the bid is subject;
 8. the offeror's intentions regarding the future business of the offeree company, and, as far as affected by the bid, the business activities of the offeror both with regard to the continued employment of their employees and management, including any substantial changes to the conditions of employment; in particular, the offeror's strategic plans for these companies and the expected repercussions on employment and sites;
 9. the period for accepting the bid and for the receipt of the consideration;
 10. where consideration is offered in the form of securities, the details thereof pursuant to § 7 Capital Market Act and §§ 46 et seq Stock Exchange Act 2018;
 11. the conditions of financing the offer by the offeror;
 12. details on any parties acting in concert with the offeror, or if known to the offeror, with the offeree company and, in the case of companies, their legal form, name and registered office and relationship with the offeror and, respectively to the offeree company; details concerning legal entities controlled by the offeror (§ 1 no 6 second sentence) may be omitted if the controlled legal entities are not of significance for the decision of the addresses of the bid;
 13. details on the compensation offered when rights are withdrawn due to overcoming of barriers to takeover bids pursuant to § 27a as well as details on the form of payment of the compensation and the method used to determine it;
 14. details on the national law that governs contracts concluded between the offeror and the holders of equities of the offeree's company by acceptance of the offer as well as details on the court of jurisdiction.

Conditions, rights of withdrawal

§ 8. A bid may be made subject to conditions or rights of withdrawal if such are objectively justified, in particular, if they result from legal obligations of the offeror, or if the fulfilment of the condition or the exercise of the right of withdrawal is not entirely at the offeror's discretion.

Examination of the bid, commissioning of experts by the offeror

§ 9. (1) The offeror shall appoint a suitably qualified, independent expert to provide advice throughout the entire proceedings and to examine the offer documents. The expert shall verify that the offer documents are complete and in compliance with the law, in particular, regarding the consideration offered. The expert shall draw up a written report and summarize the results of the examination in a concluding confirmation which shall include a declaration that the offeror has the funds at its disposal required to fulfil the consideration in full (§ 4 no 1).

(2) Suitably qualified experts are:

- a) Certified auditors and auditing and accounting companies, which have taken out liability insurance with an insurance company authorized to operate in Austria which covers for risks arising from consulting and auditing activities in connection for takeover bids with at least EUR 7.3 million for a one-year insurance period, provided the insurance premium is paid up before the audit report is handed over; the insurer shall provide the Takeover Commission with written confirmation of the insurance cover and receipt of the premium;
- b) Credit institutions within the meaning of § 1 paras 1 and 3 of the Banking Act, which are authorized to operate within the meaning of § 1 para 2 no 3 Banking Act and which have eligible own funds of at least EUR 18.2 million and financial institutions within the meaning of § 1 para 2 no 3 Banking Act with own funds of at least EUR 18.2 million; and
- c) Credit institutions or financial institutions which operate in Austria under § 9, § 11 or § 13 Banking Act through a branch office or within the scope of the freedom to provide services, if they are authorized to provide comparable services as specified in § 1 para 1 no 11 Banking Act and have eligible own funds or own funds of at least EUR 18.2 million in their home member state (§ 2 no 6 Banking Act).

Notification of the bid

§ 10. (1) The offeror shall notify the Takeover Commission of the bid and submit the offer documents and the expert's report and confirmation pursuant to § 9. After disclosing its intention to make a bid (§ 5 para 2 and para 3 no 1), the offeror shall notify the bid to the Takeover Commission within ten trading days; the Takeover Commission may, upon request of the offeror, extend this period to no more than 40 trading days. The Takeover Commission shall confirm receipt of the notification, indicating the date of receipt.

(2) An offeror having its registered office, domicile or habitual residence abroad shall, upon making the notification, appoint an agent authorized to accept service of documents with its registered office, domicile or branch office in Austria. The agent must meet the requirements of § 9 para 2 or be a lawyer or notary.

(3) The Takeover Commission may give its opinion on the bid and the offer documents in writing and may supplement or amend its statement of opinion; it may declare the unlawfulness of the bid or of the offer documents by issuing an official notice and may prohibit the publication of the offer documents and the execution of the bid.

Publication and information of the offeree company

§ 11. (1) The offeror shall publish the offer documents together with the expert's confirmation (§ 9 para 1) no earlier than the twelfth and no later than the fifteenth trading day upon receipt by the Takeover Commission, unless the Takeover Commission has prohibited to publish the bid. In well-founded cases, the Takeover Commission may order the publication be temporarily postponed, in particular, where a more detailed examination of the offer documents is required; it may also shorten the period until the publication by agreement with the offeror.

(1a) The publication shall be made in a newspaper with nationwide distribution or in the form of a brochure made available free of charge to the investing public by the offeree company at its registered office and by the entities charged to provide the consideration

(§ 7 no 4). If the offer documents are not published in full in the Official Gazette of Wiener Zeitung (*Amtsblatt der Wiener Zeitung*), details of where the documents can be obtained or were published must be published in the Official Gazette of Wiener Zeitung. If the offer documents were published in one or more newspapers with nationwide distribution, all future publications on the part of the offeror concerning the bid shall be published in the same manner; if the offer documents were published in full only by way of a brochure, the publication in the Official Gazette of the Wiener Zeitung shall suffice for future publications. If the offeror or the offeree company have a website, the documents shall also be made available on the website immediately and clearly identifiable.

(2) Prior to publication, the offeror shall bring the offer documents specified in the first sentence of para 1 to the attention of the management board and the chairperson and the vice-chairperson of the supervisory board of the offeree company.

(3) The offeror and the management board of the offeree company shall immediately inform their respective works councils of the disclosures pursuant to § 5 and § 6 and forward the offer documents specified in the first sentence of para 1 immediately upon receipt. The management board of the offeree company shall inform its works council upon the first notification of the opportunity of issuing a statement of opinion and when forwarding the offer documents to its works council about the intended date of the publication pursuant to § 14 para 3.

Prohibition on frustrating actions and obligation to remain objective

§ 12. (1) The management board and supervisory board of the offeree company shall not take measures likely to deprive their shareholders of the opportunity to make a free and informed decision on the bid; § 4 nos 2 and 3 shall apply *mutatis mutandis*.

(2) As of the time at which the offeree company becomes aware of the offeror's intention to make a bid until the publication of the result, or in case the takeover concludes, up until execution of the bid, the management board and supervisory board of the offeree company shall require the approval of the general shareholders' meeting for all measures which might frustrate the bid, with the exception of the search for other competing bids. This applies especially to the issuance of securities if such may prevent the offeror from acquiring a controlling interest in the offeree company.

(3) Decisions taken by the management board or by the supervisory board of the offeree company prior to the time as specified in para 2 and which have not even been partially implemented by that time, shall require the approval of the general shareholders' meeting if the measures lie outside the ordinary course of business and their implementation could frustrate the bid. Measures to which the administrative bodies of the offeree company are already committed at the time as specified in para 2 shall not require the approval of the general shareholders' meeting.

Appointment of an expert by the offeree company

§ 13. The offeree company shall appoint a suitably qualified (§ 9 para 2) expert, who is independent of the offeree company, to provide advice throughout the proceedings and to examine the statements made by its administrative bodies (§ 14). The appointment of the expert shall require the approval of the supervisory board.

Statements of the offeree company, examination and publication

§ 14. (1) Immediately after the publication of the offer documents, the management board and the supervisory board of the offeree company shall draft reasoned statements on the bid. The statements shall include, in particular, an assessment as to whether the consideration offered and the other terms of the bid take adequately the interest of all shareholders and other holders of equities into account, and what effects the bid is likely to have on the offeree company based on the strategic planning of the offeror regarding the offeree company, in particular with respect to employees (jobs, working conditions and the fate of sites), on creditors and the public interest. If the management board or the supervisory board do not see themselves capable to provide concluding recommendations, they must in any case, outline the arguments for accepting and rejecting the bid, emphasizing the most important aspects.

(2) The expert (§ 13) shall prepare an assessment of the bid, of the statement of the management board of the offeree company and of the statement of the supervisory board in writing.

(3) The management board shall publish its statement as well as the statement of the supervisory board, statement of the works council if given, and the assessment of the expert within ten trading days upon the publication of the offer documents, but at the latest five trading days prior to the expiry of the acceptance period in consideration of § 11 para 1a and § 18 Stock Corporation Act. Prior to publication, the statement shall be notified to the Takeover Commission and sent to the works council simultaneously.

Improvements and other changes to the bid

§ 15. (1) During the term of the offer, the offeror may improve the consideration provided for in its offer or otherwise amend the offer to the benefit of holders of equities. An improvement is not permitted if the offeror has declared that it will by no means improve the offer; this shall not apply in case of a competing bid or if the Takeover Commission grants an improvement on the bid.

(2) §§ 9 to 11 shall apply mutatis mutandis; the offeror shall publish the improved or otherwise amended bid no earlier than four and no later than seven trading days after notification of the Takeover Commission. After publishing the improvement, at least eight trading days must be available for acceptance.

(3) Improvements to the consideration and any other amendments to the benefit of holders of equities shall also apply to declarations of acceptance already made, unless the holder objects.

Transactions in equities of the offeree company

§ 16. (1) From the date the intention to make a bid (§ 5 paras 2 and 3, § 6 para 2) is disclosed or of a notification (§ 10 para 1), the offeror and any parties acting in concert with the offeror (§ 1 no 6) shall refrain from making any declarations aimed to acquire equities of the offeree company under improved conditions than those set out in the bid unless the offeror improves the public bid (§ 15) or the Takeover Commission grants an exemption for good cause; in any case, such declarations must be published immediately (§ 11 para 1a).

(2) If the offeror or parties acting in concert with the offeror (§ 1 no 6) make a declaration to purchase under improved circumstances in violation of para 1, this shall be deemed an improvement to the public bid in favour of all addressees (§ 15).

(3) From the date the intention to make a bid is disclosed (§ 5 paras 2 and 3, § 6 para 2) or of a notification (§ 10 para 1), the offeror and any parties acting in concert with the offeror (§ 1 no 6) must not sell any equities of the offeree company.

(4) If the offeror or a party acting in concert with the offeror (§ 1 no 6) is a credit institution, the credit institution shall be exempt from the prohibition regarding transactions in equities of the offeree company pursuant to para 1 through 3 under the following conditions:

1. The transactions must concern the following holdings or banking transactions:
 - a) positions in the trading book (§ 2 no 35 Banking Act) including obligations as a market maker or specialist on an Austrian stock market or a comparable function on a foreign stock exchange;
 - b) asset management for individual customers (§ 3 para 2 no 2 Securities Supervision Act 2018 – FLG I No 107/2017);
 - c) investment fund and equity fund transactions (§ 1 para 1 no 13 and 14 Banking Act);
 - d) commission-based transactions in securities and custodian business (§ 1 para 1 nos 5 and 7 Banking Act).
2. The transactions correspond in type and scope to the business operations of comparable credit institutions, unless it is a transaction concerning cases as specified in no 1 lit. b and d which is executed on the instructions and initiative of the customer.
3. There are no indications that the transaction would be a risk to the financial interests of the holders of equities, unless it is a transaction concerning cases as specified in no 1 lit. b and d which is executed on the instructions and initiative of the customer.
4. All transactions are reported immediately to the Takeover Commission at the end of every calendar week. These reports shall include the number of all equities bought and sold broken down by individual type of equity and by type of transaction pursuant to no 1, the weighted average price of the purchases and sales as well as the respective highest and lowest prices. For a group of credit institutions (§ 30 of the Banking Act), the reports shall be submitted jointly by the superordinate credit institution. Together with the first report, a declaration shall be submitted that the credit institution has implemented up-to-date and effective compliance rules, in particular a strict separation of banking transactions pursuant to no 1 from the bank's equity management operations and investment advisory activities; the accuracy of this declaration shall be confirmed by the Compliance Officer.
5. An expert who meets the requirements of § 9 para 2 shall confirm to the Takeover Commission on a weekly basis, based on at least random checks, that there is no violation of the conditions as specified in nos 1 to 4. The expert shall examine, among other things, whether the persons entrusted with the transactions concerned at the respective credit institution are familiar with the requirements pursuant to nos 1 to 4 and whether the mechanisms in settlement and recording are suitable to ensure compliance with these rules and the accuracy of the collective reports.

(5) From the date the intention to make a bid is disclosed (§ 5 para 2 and 3, § 6 para 2) or a notification is made (§ 10 para 1), all parties having a particular interest in the outcome of the bid shall immediately inform the Takeover Commission of any acquisition and disposal of equities of the offeree company, and of options concerning equities of the offeree company. The foregoing shall also apply to equities and options concerning equities of another company if the offeror has offered to exchange equities of such a company. Persons having a particular interest are especially the offeror, all parties acting in concert with the offeror (§ 1 no 6), the offeree company and associated enterprises of its group within the meaning of § 189a no 8 of the Business Code, members of the administrative bodies of such companies, advisers of such companies and shareholders holding shares of at least 2% of the voting share capital in such companies.

(6) The provisions of paras 1 to 5 shall apply until the end of the period for acceptance of the bid (§ 19 para 1), and in case of an extension of the acceptance period pursuant to § 19 para 3, until the end of this period.

(7) If the offeror or parties acting in concert with the offeror (§ 1 no 6) acquire equities in the offeree company within nine months as of the end of the period for acceptance of the bid (§ 19 para 1), and in case of an extension of the acceptance period pursuant to § 19 para 3 within nine months of the end of this period, and if the consideration granted or agreed on for the equities is higher than in the bid, the offeror shall be obliged to pay the monetary difference to the holders of equities who have accepted the bid; § 26 paras 2 and 3 shall apply mutatis mutandis. Exercising a statutory pre-emptive right due to an increase in the share capital of the offeree company and the payment of a higher consideration in the course of proceedings pursuant to the Squeeze-Out Act shall not be deemed an acquisition. If a controlling interest in the offeree company is resold by the offeror within the period as specified in the first sentence, a monetary consideration in the pro-rata amount of the capital gain shall be paid mutatis mutandis.

(8) If the offeror or a party acting in concert with the offeror (§ 1 no 6) is a credit institution, transactions pursuant to para 7 shall not entail the obligation of subsequent payment if the conditions stated in para 4 no 1 to 5 are complied with. The weekly reporting obligations pursuant to para 4 nos 4 and 5 shall be replaced by a monthly reporting obligation.

Legal consequences of competing bids

§ 17. When a competing bid is published, the holders of equities shall be entitled to revoke any previous declarations of acceptance of the original bid no later than four trading days before the end of the original acceptance period (§ 19 para 1). If several bids have been made and one of them has been improved, the shareholders also have the right to revoke previous declarations of acceptance of the other bids.

Further statements of the offeror and of the offeree company, instructions of the Takeover Commission concerning the information of the public

§ 18. The Takeover Commission may make a recommendation in a statement of opinion or may oblige the offeror or the offeree company by an official notice to publish any additional statements or corrections to statements pursuant to § 11 para 1a or to disclose such statements or corrections by other appropriate means or to refrain from taking certain measures designed to influence public opinion. The Takeover Commission may impose the obligation to be notified of any such statements prior to their publication.

Period for accepting the bid, publication of the result

§ 19. (1) The period for accepting the bid shall be not shorter than four weeks and no longer than ten weeks after the publication of the offer document.

(1a) If the offeree company credibly argues that its business activity would be unduly hindered by the acceptance period stipulated by the offeror, the Takeover Commission may set a shorter acceptance period for the bid; reducing the period to less than six weeks shall only be permitted with consent of the offeror. If the management board or the supervisory board of the offeree company credibly argue that an acceptance period of less than three weeks does not allow a proper assessment of the bid in time, the Takeover Commission may set an acceptance period of three weeks.

(1b) The offeror has the right to extend the original bid. An extension is permitted if the offeror has declared that it will by no means extend the bid; this shall not apply in case of a competing bid. The offeror must publish the extension no earlier than the second trading day after the Takeover Commission has received the notification and no later than three exchange trading days prior to the end of the original acceptance period; §§ 9 to 11 shall apply mutatis mutandis. If the offeree company credibly argues that its business activity would be unduly hindered by the extended acceptance period, the Takeover Commission may set a shorter period or prohibit the extension.

(1c) If a competing bid is made, the acceptance period of such bid must be at least two weeks and shall not end before the end of the acceptance period of the original bid. By making a competing bid, the acceptance periods are extended for all bids already made until the end of the acceptance period for the competing bid unless the original offeror declares its withdrawal due to reservations in case a more favourable competing bid is made.

(1d) The acceptance period for all bids for an offeree company must end no later than ten weeks after the period of acceptance of the first bid began. If there are competing bids, the Takeover Commission may grant an appropriate extension of the acceptance period to more than ten weeks if the business activity of the offeree company are not unduly hindered.

(2) The offeror shall publish the result of the bid immediately after the end of the acceptance period (§ 11 para 1a); in doing so, the offeror shall indicate the legal consequences pursuant to para 3.

(3) The acceptance period shall be extended by three months for holders of equities who have not yet accepted the bid up until of the day of the publication of the result if

1. a mandatory bid has been made pursuant to Part Three of this Federal Act,
2. the offeror holds more than 90 percent of the voting share capital following a voluntary bid pursuant to Part Two of this Federal Act, or
3. a voluntary bid pursuant to Part Two or Part Three of this Federal Act is contingent on the attainment of a certain minimum number of equities and this condition has been met.

(Note: para 4 was repealed by FLG I No 75/2006)

Allocation rule for partial bids

§ 20. If, in a partial bid involving the acquisition of a certain percentage or a certain number of the equities of the offeree company, the number of equities for which declarations of acceptance have been made is higher than the number of equities the offeror agreed to acquire (§ 7 no 5), declarations of acceptance shall be allocated on a pro rata basis. The declaration of acceptance made by each holder of equities shall be taken into account in proportion as the ratio of the partial bid to the total of acceptance declarations received. In the offer documents, the offeror may specify exceptions in order to avoid odd numbers of shares.

Exclusion period

§ 21. (1) If a bid to acquire equities failed, the offeror and parties acting in concert with the offeror (§ 1 no 6) shall not be permitted to make further bids for the equities of the offeree company for a period of one year after the publication of the result of the bid. During the same period, they shall also be prohibited from acquiring shares obliging them to make a bid.

(2) The same shall apply if the offeror does not make a bid although

1. the offeror has disclosed considerations or intentions to make a bid or to bring about facts obliging it to make a bid (§ 5 para 2);
2. the offeror has disclosed the decision of its management board and supervisory board to make a bid (§ 5 para 3 no 1);
3. the offeror has publicly stated that a bid cannot be excluded.

In such cases, the exclusion period shall begin 40 trading days after the disclosure or public statement.

(3) Furthermore, the offeror shall be prohibited from making a bid for a period of one year if it has publicly stated that it will not make a bid or will not consider any activities to bring about facts obliging it to make a bid.

(4) The Takeover Commission shall, upon request of the offeror and after consulting with the offeree company, shorten the exclusion period if such does not harm the interests of the offeree company or of the holders of equities of the offeree company.

Part Three

Mandatory bids and voluntary bids to acquire a controlling interest

Obligation to make a bid

§ 22. (1) Anyone who directly or indirectly obtains a controlling interest in an offeree company shall immediately inform the Takeover Commission thereof and must notify a bid for all equities of the offeree company in accordance with the provisions of this Federal Act within 20 trading days of obtaining a controlling interest.

(2) A direct controlling interest is a direct interest in an offeree company that gives the holder a share of more than 30 percent of the voting rights of the permanent voting shares.

(3) An indirect controlling interest is given when the share held in the offeree company pursuant to para 2 is

1. held by a listed stock company within the meaning of § 2 in which an interest is also held in the meaning of para 2;
2. not held by a listed stock company within the meaning of § 2 or held by a legal entity having another legal form and the share rights or other rights enable the holder to exercise a controlling influence over this legal entity.

(4) Anyone holding a controlling interest conferring a controlling influence but not the majority of the voting rights of the permanent voting shares who additionally acquires within one calendar year shares which, taking into account any previous disposals of shares, procure him in addition at least three per cent of the voting rights of the offeree company as compared with the last day of the preceding calendar year, must inform the Takeover Commission thereof immediately and notify a bid for all equities of the company in accordance with the provisions of this Federal Act within 20 trading days.

(5) Except for § 22b, acquiring a controlling interest is permissible only if the party making the bid has ensured in advance that it will be able to fulfil the cash consideration and only if it has taken all appropriate measures to guarantee fulfilment of any other type of consideration.

(6) Voting rights that are suspended in accordance with the principles of the acquisition of own shares shall not be taken into consideration when calculating the percentages stipulated in this Part.

Creation, dissolution and change in a group of parties acting in concert

§ 22a. The obligation to make a bid pursuant to § 22 para 1 shall also apply in the following cases:

1. when a group of parties acting in concert is formed that jointly obtains a controlling interest;
2. when a group of parties acting in concert is dissolved and thus one legal entity alone or a different group of legal entities obtains a controlling interest;
3. when as a result of a change in the composition of a group of parties acting in concert or in an agreement between these parties, the decision-making in this group can be controlled by a different legal entity or a different group of parties, provided the group as a whole holds a controlling interest.

Passive acquisition of a controlling interest

§ 22b. (1) Anybody who obtains a controlling interest without having actively caused this by any recent activities, such as, in particular, by acquiring shares, is not obliged to make a bid if at the time of acquisition of the shares, if obtaining control was not predictable. The Takeover Commission must be informed when obtaining of a controlling interest immediately, but at the latest within 20 trading days as from obtaining the controlling interest.

(2) In the case of para 1, not more than 26 percent of voting rights must be exercised. An increase in the holdings triggers the obligation to make a bid pursuant to § 22 para 1. After the settlement of a bid in accordance with this Part, the restriction on voting rights no longer applies.

(3) The Takeover Commission has the right to suspend the restriction on voting rights, in full or in part, on the request of the party involved and instead impose terms or conditions (§ 25 para 2 second sentence) insofar as these guarantee equivalent protection to the other holders of equities. The suspension of voting rights exceeding 30 percent cannot be repealed.

Aggregating shares and extending the offeror's obligations

§ 23. (1) When applying §§ 22 to 22b, the shares held by parties acting in concert (§ 1 no 6) shall be mutually aggregated.

(2) When applying §§ 22 to 22b, a share shall be aggregated unilaterally to a legal entity if the legal entity or a party acting in concert with this legal entity (§ 1 no 6) is able to influence the exercise of voting rights of third parties directly or indirectly. The aggregation of shares shall apply, in particular, to shares

1. held by a third party for the account of the legal entity;
2. over which the legal entity is able to exercise voting rights without owning them;
3. the legal entity has assigned to a third party as collateral if the legal entity is able to exercise the voting rights without requiring any explicit instructions from the transferee or if the legal entity is able to influence the exercise of the voting rights by the transferee;
4. held by the legal entity, which has been assigned *usus fructus (Fruchtgenussrecht)*, if the legal entity is able to exercise the voting rights without any explicit instructions of the shareholder or is able to influence the exercise of voting rights by the shareholder;
5. which the legal entity may acquire by unilateral declaration if the legal entity is able to exercise the voting rights without any explicit instructions from the shareholder or influence the exercise of voting rights by the shareholder.

In the cases pursuant to nos 1 through 5, the parties acting in concert with the legal entity shall be deemed to be equivalent to the legal entity.

(3) The obligation to make a bid as well as all other obligations of an offeror shall apply to all parties acting in concert with the offeror (§ 1 no 6). This applies to the parties of an agreement regarding the exercise of voting rights (§ 1 no 6 second sentence) only to the extent that they are involved in the acquisition of the controlling interest or, in the case of § 22 para 4, in the acquisition of additional shares, and only if they do not exercise voting rights exclusively on the instructions of the involved parties.

Exceptions to the obligation to make a bid

§ 24. (1) The obligation to make a bid does not apply if a share in the offeree company within the meaning of §§ 22 to 22b cannot confer a controlling influence, or, if there is no change in the party who, from an economic perspective, can ultimately exercise this influence over the offeree company. In these cases, § 22b para 2 and 3 do not apply. The Takeover Commission shall be informed immediately of such facts, but at the latest within 20 trading days as of the acquisition of the share.

(2) The share in the offeree company shall not be deemed a controlling influence, in particular if:

1. another shareholder together with the parties acting in concert with the offeror (§ 1 no 6) holds at least an equal amount of voting shares in the offeree company as the offeror;
 2. the shares do not grant a majority of voting rights due to the usual presence of other shareholders at the general shareholders' meeting;
 3. the exercise of the voting rights is limited to no more than 30 percent by the articles of association (§ 12 para 2 Stock Corporation Act).
- (3) The legal entity who may ultimately exercise the controlling influence from an economic perspective of view does not change, in particular, when
1. shares are transferred to a legal entity in which the transferor has a direct or indirect controlling interest; if the shares were previously held by a group of parties acting in concert, this shall apply accordingly if the decision of the legal entity to which the shares are transferred cannot be controlled by a different legal entity or by a different group of legal entities;
 2. shares are transferred to a legal entity which holds a direct or indirect controlling interest in the transferor; if the shares are transferred to several legal entities, this shall apply mutatis mutandis if decisions by the offeree company cannot be controlled by a different legal entity or by a different group of parties acting in concert;
 3. shares are transferred to a private foundation (*Privatstiftung*) with a management subject exclusively to the controlling influence of shareholders that held the controlling interest up to that point in time;
 4. entering into or dissolving an agreement on the exercise of voting rights which does not allow any controlling influence over the decisions of the offeree company by a different legal entity or a different group of legal entities.

Obligation to notify a controlling interest

- § 25.** (1) There is no obligation to make a mandatory bid, but there is an obligation to notify the facts to the Takeover Commission when
1. obtaining an indirect controlling interest (§ 22 para 3) and when the book value of the direct interest in the offeree company is less than 25% of the net asset value of the legal entity holding the direct interest;
 2. shares are acquired only for the purpose of financially restructuring the company or securing receivables;
 3. the number of voting rights required for a controlling interest is exceeded only temporarily or unintentionally, provided such situation is reversed immediately;
 4. shares acquired as gifts among relatives (§ 32 para 1 Insolvency Act), inherited or acquired through the separation of assets within the scope of divorce proceedings, the annulment or nullification of a marriage;
 5. shares are transferred to another legal entity in which, apart from the existing shareholders or partners, only their relatives hold shares, be it directly or indirectly (§ 32 para 1 Insolvency Act); the same applies to the transfer of shares to a private foundation with a management which is subject to the controlling influence of relatives;
 6. a shareholder excludes the other shareholders from the offeree company pursuant to the Squeeze-out Act within five months of acquiring a controlling interest if the compensation is not lower than the offer price to be offered under

§ 26 and also corresponds to the highest price paid or agreed upon by the shareholder concerned for the respective shares up until this resolution is entered in the Companies Register.

7. a case of § 22 para 4 applies and the respective legal entity or the parties acting in concert has or have already
 - a) held the majority of the voting rights of the permanent voting shares in the offeree company and has or have fallen below such majority only temporarily and without losing its or their controlling influence; or
 - b) made an offer pursuant to § 22 para 4 and, as a result of the current additional acquisition, has or have not acquired a majority of the voting rights of the permanent voting shares in the offeree company.

The exemptions from the obligation to make a mandatory bid pursuant to nos 1 to 6 shall apply *mutatis mutandis* to cases under § 22 para 4. The notification must be sent immediately, but at the latest within 20 trading days of the acquisition of the controlling interest or, in the case of § 22 para 4, of the additional shares.

(Note: The provisions applicable to spouses, relating to marriage and marital matters, as amended, shall apply accordingly to registered partnerships, partnership matters and affairs.)

(2) In the cases as specified in para 1 nos 1 and 2, the Takeover Commission may impose the obligation to make a mandatory bid to the holders of equities of the offeree company within one month of the date of notification if this is necessary to prevent any risk to the financial interests of the holders of equities of the offeree company based on the actual circumstances of the specific case. If the Takeover Commission refrains from imposing a mandatory bid, it may make its decision contingent on terms or conditions; this may include the prohibition of acquiring additional shares, selling shares, suspending voting rights, the appointment of a majority of independent members to the supervisory board or reporting obligations to the general shareholders' meeting or to the Takeover Commission. The Takeover Commission may not impose a mandatory bid when shares are acquired by resolution instruments, powers or mechanisms pursuant to §§ 48 et seq Federal Act on the Recovery and Resolution of Banks or pursuant to Title V of Regulation (EU) 2021/23 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and 2017/1132/EU, OJ No L 22 of 22. January 2021 p. 1; however, it may impose conditions.

(3) In the cases as specified in para 1 nos 3 to 7, the Takeover Commission may impose the conditions necessary to avoid any risk to the financial interests of the holders of equities of the offeree company based on the actual circumstances of the specific case. Such measures may include, in particular, those specified in para 2.

(4) In the case of decisions pursuant to para 2 and 3, the Takeover Commission must pay special attention to whether the possibility of exercising a controlling influence on the offeree company has been reliably and permanently secured, whether the acquisition procedure was intended primarily to secure a controlling influence over the offeree company, whether the acquirer or an associated entity with the acquirer holds a direct or indirect interest in a business with a similar or a related commercial focus,

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whether a uniform management exists or is being pursued, whether a premium exceeding the average stock market price was paid to acquire control (§ 26 para 1) and in the case of para 1 no 1, whether the interest in the offeree company represents a significant portion of the operating assets of the legal entity holding a controlling interest.

Voluntary bids to obtain control

§ 25a. (1) If a controlling interest is acquired as a result of a takeover bid which complies with the provisions of this Federal Act and which is made for all equities of the offeree company, there shall be no obligation to make any further bids pursuant to this Part of this Federal Act.

(2) Bids which might result in the offeror obtaining a controlling interest are by law subject to the condition that the offeror must receive declarations of acceptance within the scope of the bid that account for more than 50 percent of the permanent voting shares which are the subject of the bid. If the offeror or parties acting in concert with the offeror (§ 1 no 6) acquire permanent voting shares parallel to the bid, these shares shall be added to the declarations of acceptance.

Content of the bid

§ 25b. (1) Unless otherwise provided for in this Part, the provisions of Part Two shall apply to mandatory bids and voluntary bids to obtain control.

(2) Such bids must offer acquisition against a specific amount of money in cash payable at the latest ten trading days after the bid becomes unconditionally binding. In addition, the offeror may offer an exchange for other securities. Holders of equities who have accepted the bid during the extended acceptance period pursuant to § 19 para 3 shall have the right to demand cash payment or the exchange for other securities no later than ten trading days after the extended acceptance period ends.

(3) A mandatory bid must not be subject to conditions unless such is required by law.

Offer price

§ 26. (1) The price of a mandatory bid or of a voluntary bid to obtain control must not be lower than the highest consideration paid by the offeror or any party acting in concert with the offeror (§ 1 no 6) in cash or agreed upon for the equities of the offeree company within the preceding 12 months prior to the notification of the bid. The same shall also apply to considerations for equities which the offeror or party acting in concert with the offeror (§ 1 no 6) is entitled to or has undertaken to acquire in the future. Furthermore, the price must correspond at least to the average stock market price weighted according to the respective trading volumes of the respective equities during the last six months prior to the day on which the intention to make a bid was disclosed.

(2) If the bid relates to equities other than ordinary voting shares and the offeror or party acting in concert with the offeror have acquired ordinary voting shares within the last 12 months, the price offered for these other equities must be appropriate in relation to the consideration granted for the ordinary shares; for the purposes of determining the appropriateness, the respective content of the securitized rights shall be taken into consideration in particular. The same shall apply with respect to the consideration for ordinary voting shares which the offeror or party acting in concert with the offeror is entitled to has undertaken to acquire in future.

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(3) If the consideration was not or only partly paid in cash, its total value shall be the basis for calculating the price; when determining the total value, other payments made or promised or other financial benefits shall be included if they are related to the acquisition of the controlling interest from a financial perspective. Furthermore, the price of the bid shall be determined appropriately in compliance with the principle of equivalent treatment (§ 3 no 1) and with regard to paras 1 and 2, provided

1. the obligation to make a mandatory bid is a result of the acquisition of shares or other rights in a legal entity which holds, directly or indirectly, a controlling interest in the offeree company (§ 22 para 3) and this legal entity also holds assets other than its interest in the offeree company or has debts;
2. the consideration granted or agreed upon by the offeror during the preceding 12 months was determined by taking into account special circumstances;
3. the circumstances have changed significantly in the preceding 12 months.

(4) The offeror and parties acting in concert with the offeror shall disclose all circumstances relevant to determining whether the price is appropriate to the expert (§ 9) and to the Takeover Commission immediately after its appointment at the same time as the notification pursuant to § 10 para 1.

(4a) If the offeror or party acting in concert with the offeror is a credit institution, the considerations granted or agreed upon by this credit institution shall not be taken as basis when determining the price if the conditions pursuant to § 16 para 4 nos 1 to 3 are met. The expert pursuant to § 9 shall state in his or her expert opinion on the audit of the offer documents if and to what extent transactions within the meaning of § 16 para 4 were executed and the expert shall confirm that the requirements pursuant to § 16 para 4 nos 1 to 3 were met.

(5) Holders of equities within the meaning of § 33 para 2 no 4 are entitled to request review of the lawfulness of the price offered within three months of the publication of the result of a takeover bid.

Exceeding the secured blocking minority

§ 26a. (1) If a person obtains a direct or indirect interest in an offeree company which gives this person more than 26% but not more than 30% of the voting rights of the permanent voting shares it must immediately inform the Takeover Commission thereof, but no later than 20 trading days of obtaining the shares. § 22 para 3, § 22a and § 23 shall apply mutatis mutandis when determining whether such an interest exists.

(2) In this case, no more than 26% of the voting rights of the permanent voting shares must be exercised. After a bid has been settled in accordance with this Part, the restriction on voting rights shall no longer apply.

(3) The legal consequences pursuant to para 2 shall not apply if another shareholder together with parties acting in concert with this shareholder (§ 1 no 6) holds at least as many voting rights in the offeree company as the other shareholder, if the exercise of the voting rights is limited to no more than 26 % by the articles of association (§ 12 para 2 Stock Corporation Act) or if the legal entity which can ultimately exercise the votes from the secured blocking minority does not change (§ 24 para 3).

(4) At the request of the party concerned, the Takeover Commission may repeal the suspension of voting rights, either in full or in part, and instead impose terms and

conditions (§ 25 para 2 second sentence), provided that this guarantees equivalent protection for the other holders of equities.

Declaratory proceedings

§ 26b. (1) Any person who directly or indirectly holds equities in an offeree company is entitled to demand a declaratory decision as to whether the obligation to make a mandatory bid applies to him or her.

(2) If the Takeover Commission declares that a bid is mandatory, the offeror must either notify a mandatory bid within 20 trading days of service of this declaratory decision, notwithstanding § 22 para 1, or must proceed in accordance with para 3. The period for considering previously acquired shares pursuant to § 26 shall be extended by the duration of the proceedings.

(3) Instead of notifying a mandatory bid, the offeror may reduce its interest within 20 trading days to a maximum of 30 percent of the permanent voting shares or may reverse its obtainment of a controlling interest in some other way; § 26a shall apply mutatis mutandis. The legal consequences of a violation of the obligation to make a bid shall take no effect if

1. the application pursuant to para 1 is submitted immediately after the underlying facts occurred, and
2. the offeror and any parties acting in concert with the offeror do not exercise their voting rights during the period the controlling interest exists.

Divergent provisions in the articles of association

§ 27. (1) In its articles of association, the offeree company may stipulate that

1. the threshold stated in § 22 para 2 be lowered for the company in its role as offeree company;
2. § 27a (overcoming barriers to takeover bids) shall apply to it in its role as offeree company;
3. there shall be no obligation to make a mandatory bid with regard to preference shares, convertible bonds, profit-participating certificates and options yet to be issued.

(2) A resolution adopted by the general shareholders' meeting within the meaning of para 1 and resolutions amending such resolutions shall require a majority of no less than three quarters of the share capital represented when the resolution is adopted. The articles of association may stipulate a different capital majority.

(3) Resolutions to amend the provisions of the articles of association within the meaning of para 1 no 1 shall additionally require the approval of all holders of equities if the threshold pursuant to para 1 no 1 is raised.

Overcoming barriers to takeover bids

§ 27a. (1) The articles of association of a stock corporation may stipulate that provisions specified in paras 3 to 6 shall apply to bids subject to Part Three of this Federal Act. If such a provision is to be introduced by amending the articles of association, this shall require the approval of those shareholders who are entitled to appoint members to the supervisory board pursuant to § 88 Stock Corporation Act.

(2) The offeree company shall notify any amendment to the articles of association to the Takeover Commission and the supervisory body of those member states in which its shares are admitted to trading on a regulated market; in the case of admission to trading on a regulated market within the meaning of § 2 or § 27b, the Takeover Commission must be informed whether there is a relevant provision in the articles of association. The Takeover Commission shall publish, in a suitable manner, a list of the provisions applicable to the various companies and keep it up to date.

(3) Restrictions on the transferability of shares stipulated in the articles of association of the offeree company shall have no effect if the shares are to be transferred to the offeror or parties acting in concert with the offeror (§ 1 no 6) between publication of the offer documents (§ 11 para 1) and the time for the settlement as stipulated in the offer documents. The same shall apply to restrictions on the transferability stipulated in a contract between shareholders of the offeree company or between the offeree company and its shareholders provided the agreement was concluded after 30 March 2004.

(4) Restrictions on voting rights provided for in the articles of association of the offeree company shall not apply if the general shareholders' meeting adopts measures during the acceptance period that could frustrate the bid (§ 12). The same shall apply to restrictions on voting rights stipulated in a contract between shareholders of the offeree company or between the offeree company and its shareholders if such agreement was concluded after 30 March 2004.

(5) If, following an offer the offeror holds at least 75 percent of the voting share capital, such offeror shall be entitled to convene a general shareholders' meeting of the offeree company. Convocation of the general shareholders' meeting must be announced no later than 14 days prior to the general shareholders' meeting. Restrictions on voting rights within the meaning of para 4 shall not apply to any general shareholders' meeting held within the first six months following the date of settlement as stipulated in the offer documents if the articles of association are to be amended or if members of the supervisory board are to be dismissed or appointed. Such general shareholders' meetings may dismiss members from the supervisory board appointed by individual shareholders or appoint new members to the supervisory board without individual shareholders being entitled to appoint members to the supervisory board; such rights to appoint members may be abolished by amending the articles of association without the consent of the shareholder concerned. The restrictions on transferability within the meaning of para 3 shall not apply between the time a general shareholders' meeting is convened and the time it ends if the shares are to be transferred to the offeror or to a party acting in concert with the offeror (§ 1 no 6).

(6) If the offeror acquires shares by which the contractual restrictions on the transferability are breached, the contractual partner of the selling shareholder shall be entitled to claim appropriate compensation in cash from the offeror before the ordinary courts. The obligation to pay compensation shall apply *mutatis mutandis* in all cases where contractual restrictions on voting rights are breached. Contractual penalties for breaches of restrictions on transferability and voting rights shall not apply in such cases.

Part Four

International scope of application

Stock corporations with their registered office in Austria and a listing abroad

§ 27b. (1) The provisions as specified in para 2 shall apply to public offers to buy voting shares issued by a stock corporation with its registered office in Austria when the following conditions are met:

1. The shares are not admitted to trading on a regulated market in Austria, but on a regulated market in another member state of the European Community or in a member state of the EEA.
2. The offer would be subject to Part Three of this Federal Act provided the shares were admitted to trading on a regulated market in Austria.

(2) In addition to Part One and Part Six of this Federal Act, such offers shall be subject to the provisions on the notification of employees of the offeree company (§ 11 para 3 and § 14 para 3, insofar as these provisions refer to informing employees of the offeree company), on the prohibition on frustrating actions and on the obligation to remain objective (§ 12), on the obligation to make an offer (§§ 22 to 23), on the exceptions from the obligation to make a bid (§ 24), on the obligation to notify a controlling interest (§ 25; on exceeding the secured blocking minority (§ 26a); on declaratory proceedings (§ 26b); on amendments to the articles of association (§ 27 with the exception of para 1 no 3), as well as on overcoming barriers to takeover bids (§ 27a).

Stock corporations with their registered office abroad and a listing in Austria

§ 27c. (1) The provisions stated in para 2 shall apply to public offers to acquire securities with voting rights issued by a stock corporation with its registered office in another member state of the European Community or in a member state of the EEA, provided the following conditions are met:

1. The securities are admitted to trading on a regulated market in Austria, but not on a regulated market in the country of residence of the stock corporation.
2. Prior to being admitted to trading in Austria, the securities were not already admitted to trading on a regulated market in a third member state of the European Community or in a member state of the EEA and the securities are still admitted to trading there.
3. The stock corporation has notified pursuant to § 119 para 11 Stock Exchange Act 2018 that Austria shall be responsible for supervising of public offers if the securities are simultaneously admitted to trading on a regulated market in Austria and in a third member state of the European Community or in a member state of the EEA for the first time.
4. The offer would be subject to Part Three of this Federal Act if the stock corporation were to have its registered office in Austria.

(2) In addition to Part One and Part Six of this Federal Act, such offers shall be subject to the provisions relating to the contents of the offer and the bidding procedure; in particular, this shall include §§ 4 to 11, §§ 13 to 21 (with the exception of § 11 para 3

and § 14 para 3, insofar as these provisions refer to informing employees of the offeree company) and §§ 25a to 26.

(3) If the securities of a stock corporation with its registered office in another member state of the European Community or in a member state of the EEA are admitted to trading on a regulated market in Austria, but para 2 does not apply, the Takeover Commission may prohibit the publication of the offer documents only in cases where such publication is not permissible in the country of the competent supervisory body. The Takeover Commission may require that additional information be included in the offer documents, if such information is specific to the domestic securities and if it refers to formalities that must be observed when accepting the bid and which concern the receipt of the consideration due when the bid is closed, or if it refers to the tax treatment of the consideration offered to the holders of equities; moreover, the Takeover Commission may require the translation of the offer documents into German or English.

International collaboration of supervisory bodies

§ 27d. The Takeover Commission and the Financial Markets Authority shall cooperate with the supervisory bodies and other bodies supervising the capital markets of the other member states of the European Community and member states of the EEA, in particular, with the competent authorities pursuant to Directives 2001/34/EG, 2003/6/EG, 2003/71/EG and 2004/39/EG and shall provide them with any information required for the application of this Federal Act or under any other provisions adopted due to Directive 2004/25/EG, in particular, in those cases as specified in § 27b and § 27c. Such cooperation shall include the service of documents drawn up by the competent authorities as well as any other form of appropriate support.

Part Five

Offers to terminate admission to trading and for specific measures under company law

Offers to terminate admission to trading

§ 27e. (1) For bids within the meaning of § 38 paras 6 to 8 Stock Exchange Act 2018, the provisions applicable to mandatory bids shall apply as set out in the following paragraphs.

(2) The issuer of equities whose admission to trading on the Vienna Stock Exchange is to be terminated shall be deemed the offeree company.

(3) Parties acting in concert are natural or legal persons cooperating with the offeror based on an agreement with the aim of terminating admission to trading of the offeree company. § 1 no 6 second sentence, first half of sentence shall apply mutatis mutandis.

(4) The offer document must also include the statement that it is intended to terminate admission to trading of the offeree company.

(5) The offer must refer to the acquisition of all equities whose admission to trading is to be revoked and which are not held by the offeror or by parties acting in concert with the offeror (para 3).

(6) In deviation from § 25b para 3, it shall suffice if the offer is no longer contingent on any conditions at the time the application is submitted pursuant to § 38 para 6 Stock Exchange Act 2018.

(7) The offer price shall be subject to § 26 with the provision that the price must furthermore at least correspond to the average stock market price weighted by the respective trading volume during the last five trading days prior to the day on which the intention to terminate admission to trading was disclosed. If the price thus determined is lower than the actual value of the company, the offer price shall be set appropriately.

(8) If the offeror receives declarations of acceptance within the scope of the bid for more than 50 percent of the equities, which were subject to the bid (para 5), a request for review of the lawfulness of the price offered (§ 26 para 5) may not be based on an alleged inappropriateness of the price.

Offers for specific measures under company law

§ 27f. (1) For offers within the meaning of § 148 para 2a, § 225 para 2a and § 240 para 3 Stock Corporation Act, of Article 21 para 5 EU Restructuring Act and § 12 para 3 Demerger Act, § 27e shall apply as set out in the following paragraphs.

(2) The company amending its articles of association, a transferring company or a converting company shall be deemed the offeree company.

(3) Parties acting in concert are natural or legal persons cooperating with the offeror on the basis of an agreement with the aim to bring about the respective change to the company (amendment to the articles of association, merger, transformation or division). § 1 no 6 second sentence, first half sentence shall apply *mutatis mutandis*.

(4) The offer documents must also provide the information that the offer is being made due to the respective measure under company law and the effects of this measure on the admission to trading of the offeree company.

(5) The offer must refer to the acquisition of all equities which are not held by the offeror or by parties acting in concert with the offeror (para 3).

(6) In deviation from § 25b para 3, it shall suffice if the offer is no longer contingent on any conditions at the time of filing the respective measure under company law with the Companies Register.

Application to foreign stock corporations

§ 27g. § 27e shall also apply to issuers of equities with their registered office abroad whose admission to trading on the Vienna Stock Exchange is to be terminated.

Part Six

Proceedings and Penalties

The Takeover Commission

§ 28. (1) A Takeover Commission shall be established at the operating company managing and operating the Vienna Stock Exchange.

(2) The Takeover Commission shall consist of

1. one chairperson and two vice chairpersons,
2. three members who must be judges,
3. three members appointed on the proposal of the Austrian Federal Economic Chamber,
4. three members appointed on the proposal of the Austrian Federal Chamber of Labour.

Members must have the necessary knowledge of capital markets and securities, company law or company valuation. The competent bodies entitled to propose members shall submit their proposals to the Federal Minister of Justice. In their proposal, they shall propose at least three persons for each member. The right to make proposals shall expire if it is not exercised within a reasonable period of time as stipulated by the Federal Minister of Justice. The body entitled to make proposals must present plausible grounds that the persons proposed meet the requirements and are willing to accept the appointment to the position.

(3) The members of the Takeover Commission cannot be removed from office and are not bound to follow any instructions when performing their duties. The Federal Minister of Justice has the right to obtain information on all matters concerning the management of the Takeover Commission. Unless otherwise stipulated by this Federal Act, the Takeover Commission shall decide in panels of four members, with each panel comprising at least one member from each of the groups listed in para 2 nos 1 and 2. Furthermore, membership in the panels and the assignment of business shall be governed by the rules of procedure to be adopted by the Takeover Commission; in doing so, the need to reach swift decisions must be taken into account. Until a panel takes action, the chairperson of the Takeover Commission shall supervise the market ex officio with the assistance of its administrative office. The chairperson of the Takeover Commission may request information ex officio within the scope of its duty to supervise the market before the competent panel takes action. Within the scope of panel proceedings, the chairperson of the panel has the power to issue procedural orders unless the panel decides otherwise in individual cases. The panel shall adopt decisions by simple majority and in case of a tie, the chairperson of the panel shall have the casting vote.

(4) The Federal Minister of Justice shall, in agreement with the Federal Minister for Financial Affairs, appoint the chairperson, the vice chairpersons and the other members for a period of five years each. All members can be reappointed. If a member is permanently prevented from serving or resigns prematurely, a replacing member shall be appointed for the remainder of his or her period in office.

(5) The following persons shall not be eligible for functions in the Takeover Commission:

1. members of the federal government or a regional government and state secretaries;
2. persons who have yet not reached the age of eligibility for election to parliament or who are excluded from eligibility due to criminal convictions.

(6) Membership in the Takeover Commission shall terminate by:

1. death,
2. relinquishment of office,
3. expiry of the period of office,
4. inability to discharge the duties properly,

5. gross dereliction of duty or other behaviour incompatible with the reputation of the office,
6. failure to respond to three consecutive convocations to meetings without presenting a sufficient excuse.

In the cases as specified in nos 4 to 6, membership shall be terminated only after the Takeover Commission reaches such a decision after hearing the concerned member.

(7) The rules of procedure (para 3), termination of membership (para 6 nos 4 to 6) and the statement of opinion on the schedule of fees (§ 31 para 3) shall be adopted by a simple majority vote of the plenary meeting of all members; the presence of half of all members shall constitute a quorum. In case of a tie, the chairperson shall have the casting vote. The same rules apply when the plenary meeting decides to give a general opinion on legal issues of principle or legal issues that have been decided differently even though no case involving any such issue is pending.

(8) The rules of procedure of the Takeover Commission shall be adopted after hearing the Federal Minister of Justice, the Federal Minister for Financial Affairs and the operating company managing and operating the Vienna Stock Exchange.

(9) The panel responsible for the legal matter shall decide on the possible impartiality of one of its members without the concerned member being present, unless such member has declared himself or herself to lack the impartiality required. The chairperson of the Takeover Commission shall appoint the substitute member of the person concerned as stipulated in the rules of procedure to the meeting of the panel at which the decision on impartiality is to be made.

(10) Official notices pursuant to § 57 General Administrative Procedure Act may be adopted by circular resolution if no member of the panel objects to this procedure.

(11) All bodies of the federal government, the provinces and the municipalities as well as all bodies charged with sovereign tasks of the federal government, the provinces and the municipalities are within the scope of their statutory obligations obliged to provide assistance and information to the Takeover Commission in order to support the Takeover Commission in its efficacy.

Duties of the Takeover Commission; decisions on preliminary questions

§ 29. (1) Competence for all matters governed by this Federal Act lies exclusively with the Takeover Commission. It shall supervise the application of this Federal Act and decide on all matters which are to be assessed under this Federal Act. The Takeover Commission may decide to initiate proceedings *ex officio* at any time. It is also responsible for issuing opinions, providing advice and offering its good offices to settle disputes amicably in the application of this Federal Act.

(2) If a decision in civil proceedings depends on a decision relating to a preliminary question under this Federal Act which has yet to be taken, the court shall suspend proceedings and obtain a declaratory decision from the Takeover Commission on this preliminary question. Parties to the declaratory proceedings are the parties in the civil proceedings, the offeror and the offeree company. The court shall be bound by the official notice regarding the preliminary question.

Proceedings

§ 30. (1) The decisions of the Takeover Commission shall be adopted as quickly as possible, but at the latest within one month; in proceedings pursuant to § 33, within a reasonable period of time; this does not apply to decisions pursuant to § 35.

(2) The proceedings before the Takeover Commission shall be conducted in accordance with the General Law on Administrative Procedure; with respect to oral proceedings, §§ 24 and 25 Act on Proceedings of Administrative Courts shall apply *mutatis mutandis*. Criminal proceedings pursuant to § 35 shall be governed by the Administrative Penal Act.

(3) The Takeover Commission may dispense with oral proceedings if there is reason to assume that the oral proceedings cannot result in other conclusions, in particular, if the facts of the case and the legal issue are clear, and the need for a swift decision were to render oral proceedings unreasonable. However, in administrative penal proceedings (§ 35) oral proceedings shall be held in any case; furthermore, when the parties have not waived their right to oral proceedings and the decision concerns one of the following matters:

1. declaration of the unlawfulness of a bid or offer documents, the prohibition of the publication of the offer documents or execution of the offer (§ 10 para 3);
2. the obligation to make a bid or to inform;
3. review of the appropriateness of the price of a mandatory offer (§ 26 para 5);
4. sanctions under civil law (§ 34).

(4) Listed companies (§ 2, § 27b, § 27c), the offeror, any parties acting in concert with the offeree company or the offeror (§ 1 no 6), the management and administrative bodies of legal entities mentioned as well as their direct or indirect shareholders or partners including any associated companies, the experts (§ 9 and § 13) and all other advisers shall provide the competent panel of the Takeover Commission with all information relevant to the assessment of the bid and shall at any time requested disclose and provide all available information on the bid and make the particulars and documents available to the Takeover Commission which are necessary for the Takeover Commission to perform its duties; in particular, the obligation to provide information shall also apply to the investigation of facts pursuant to §§ 5 et seq and §§ 22 et seq. For the purpose of fulfilling these duties, the obligation to maintain banking secrecy shall not apply when the credit institution in question within the meaning of §§ 9 and 13.

(5) All publications, disclosures, statements and other comments made by offeror, the administrative bodies of the offeree company, the experts or other advisers disclosed to the public shall be immediately brought to the attention of the Takeover Commission unless they have to be notified to the Takeover Commission prior to their publication.

(6) The Takeover Commission may publish its statements of opinion and official notices if this is appropriate for informing the holders of equities of the offeree company.

(7) The operating company managing and operating the Vienna Stock Exchange shall bear the material and personnel expenses of the Takeover Commission; it shall also provide for a secretariat (administrative office) and an appropriately qualified staff in adequate numbers.

(8) The staff of the operating company managing and operating the Vienna Stock Exchange who are involved with work for the Takeover Commission shall be bound by the obligation to maintain confidentiality; any information the staff may gain knowledge

of in the line of duty under this Federal Act shall be used solely for the purpose of performing these duties.

Appeal proceedings

§ 30a. (1) Official notices of the Takeover Commission may be appealed by filing an appeal with the Higher Regional Court of Vienna (*Oberlandesgericht Wien*); complaints cannot be filed with the Federal Administrative Court (*Bundesverwaltungsgericht*). Procedural orders may only be appealed by way of an appeal against the decision on the matter. The Takeover Commission may exclude the suspensive effect of an appeal in analogous application of § 64 para 2 General Law on Administrative Procedure.

(2) The provisions of the Non-contentious Proceedings Act on appeals apply *mutatis mutandis* to appeals and to appeal proceedings before the Higher Regional Court of Vienna.

(3) Insofar as the appeal is not rejected on the grounds of having been filed too late, the Takeover Commission must present it including all files to the Higher Regional Court of Vienna. In doing so, the Takeover Commission may make a statement on the appeal.

(4) The order issued in the course of the appeal proceedings may be appealed to the Supreme Court (*Oberster Gerichtshof*) in accordance with the provisions of the Non-contentious Proceedings Act.

Reimbursement of expenses, costs and fees

§ 31. (1) Members of the Takeover Commission shall be entitled to reimbursement of appropriate travel costs and cash outlays as well as to remuneration for their time and work. The amount of remuneration shall be specified in a regulation issued by the Federal Minister of Justice in agreement with the Federal Minister for Financial Affairs, taking into account the importance and scope of the Takeover Commission's duties.

(2) The operating company managing and administering the Vienna Stock Exchange shall be obliged to meet claims of the members of the Takeover Commission for reimbursement and remuneration pursuant to para 1.

(3) The operating company managing and administering the Vienna Stock Exchange may adopt a schedule of fees for the proceedings before by the Takeover Commission; the fees provided for in the schedule of fees and payable by the offeror and the offeree company shall cover the expenses pursuant to para 1 and § 30 para 7. The schedule of fees shall provide for the payment of appropriate advances on costs and fees. The Takeover Commission shall be consulted before the schedule of fees is adopted. The schedule of fees shall be published in the official bulletin of the operating company operating and managing the Vienna Stock Exchange.

(4) As regards cash outlays, the offeror shall be deemed to be an applicant within the meaning of § 76 of the General Administrative Procedure Act.

Publication of statements of opinions and decisions

§ 32. The chairperson of the Takeover Commission shall publish, in a suitable manner, general statements of opinion (§ 28 para 7 last sentence), legal opinions based on a statement of opinion issued in individual cases and on decisions (§ 29 para 1) if these are of significance beyond the scope of the individual case; in this context, the

legitimate interests of the offeror, the offeree company and any other parties involved in having their business secrets shall be considered as far as possible.

Special rules for mandatory bids, price determination and civil law sanctions

§ 33. (1) The Takeover Commission may declare ex officio, or upon request by a party, with effect for and against the offeror, the parties acting in concert with the offeror (§ 1 para 6), the offeree company or the holders of equities whether:

1. a bid was executed in violation of the provisions of Part Two, Part Three or Part Five of this Federal Act, in particular, whether, in the case of a mandatory bid, a price offered did not comply with the legal requirement Federal Act (§ 26);
2. a mandatory bid was unlawfully not made or the obligation to make a bid was unlawfully not imposed or a required information was not given (§§ 22 to 25);
3. sanctions under civil law (§ 34) became effective.

In this proceedings, the provisions of para 2 through 7 shall apply.

(2) Parties to the proceedings are:

1. the offeror;
2. parties acting in concert with the offeror (§ 1 no 6) if the party acknowledges that it has acted in this capacity, a declaratory decision to this effect has already been established or this matter is the subject of the pending proceedings;
3. the offeree company (except for proceedings pursuant to § 26 para 5);
- 3a. persons to whom the Takeover Commission grants party status by procedural order, in order to be able to rely on the relevant declaratory decision, if necessary, as grounds for criminal proceedings against such persons pursuant to § 35;
4. holders of equities of the offeree company who alone, or jointly with other holders of equities, hold shares with a nominal value or pro rata value exceeding 1% of the share capital or hold equities with a pro rata value exceeding ATS 1 million, provided they can credibly demonstrate that this requirement is met and – if more than one holder of equities is involved – that they have appointed a joint representative. Once the currency used for the nominal value of shares changes to the euro, the sum of ATS 1 million shall be replaced by EUR 70,000.

(3) The Takeover Commission shall immediately publish the initiation of the proceedings (§ 11 para 1a). This publication shall include the request to the offeror and to any parties acting in concert with the offeror (§ 1 no 6) having their registered office, domicile or habitual residence abroad to appoint an authorized agent as specified in § 10 para 2. In addition, the publication shall inform holders of equities that they may join the proceedings within a period of one month provided they meet the requirements as specified in para 2 no 4. Upon expiry of this period, applications from holders of equities shall be inadmissible; this shall be stated in the publication.

(4) For safeguarding the rights of holders of equities of the offeree company, the Takeover Commission shall take the requested decision even if all the parties specified in para 2 have withdrawn their applications.

(5) The costs of the proceedings, including fees charged by experts, shall be borne by the offeror. Nonetheless, such costs shall be imposed on the offeree company either in full or in part, on an equitable basis, insofar as the offeree company has lodged an application or a counter-application and it was able to reasonably expect in general or as of a certain point in time that its application would result in time-consuming

proceedings with incommensurate costs; under the same conditions, the costs of the proceedings may be imposed on the holders of equities. The costs of legal representation of the offeree company and of holders or equities may be imposed either in full or in part on the offeror in an equitable manner, in particular, if their applications are granted.

(Note: para 6 repealed by Art. 3 no 1, FLG I No 63/2019)

(7) If an offeror (any party acting in concert with the offeror pursuant to § 1 no 6) having its registered office, domicile or habitual residence abroad has failed to appoint and name an agent authorized to accept service of documents following a publication pursuant to para 3, the Takeover Commission may appoint such an agent at the expense of the offeror.

Suspension of voting rights

§ 34. (1) If an offeror fails to publish a mandatory bid or violates the price determination rules in a bid (§ 16 or § 26), its voting rights shall be suspended.

(2) The Takeover Commission shall repeal the suspension of voting rights as soon as a mandatory bid meeting the statutory requirements is made or as soon as a payment is made to compensate the violation of price determination rules or such payment is guaranteed to be paid shortly. The Takeover Commission may also repeal the suspension of voting rights if the breach of the law does not put the financial interests of the holders of equities of the offeree company at risk based on the actual circumstances of the specific case or if the risk can be eliminated by imposing terms and conditions.

(3) If an offeror made a bid in violation of other provisions of this Federal Act, the Takeover Commission may suspend its voting rights if this is necessary to protect the financial interests of the holders of equities of the offeree company based on the actual circumstances of the specific case. The Takeover Commission shall state under which terms and conditions, the suspension of voting rights shall be repealed.

(4) If, despite being requested to do so by the Takeover Commission, a party fails to inform the Takeover Commission, when such is legally required, or to make a statutory notification, the Takeover Commission may suspend its voting rights until the Takeover Commission is informed or a notification is made if this is necessary to determine the facts of the matter.

(5) Apart from the measures as specified in § 25 para 2, the terms and conditions pursuant to paras 2 and 3 may include granting a right of withdrawal to the addressees of the bid, extending the acceptance period or re-opening the bid for new declarations of acceptance.

Penalty clauses

§ 35. (1) Provided that the offence does not constitute an offence punishable by criminal law, the following acts shall constitute administrative offences:

1. as the offeror, a member of the administrative body of the offeror as well as any parties acting in concert with the offeror (§ 1 no 6) or a member of the administrative body of a party acting in concert with the offeror (§ 1 no 6) violates any of the following provisions: the second part of § 4 no 3; § 5 paras 1, 2 and 3 and both of the last-mentioned paras in conjunction with the first sentence of para

- 4; § 7, § 11, § 16 paras 1, 3, 5 and 7, § 19 para 2; § 21 para 1 and 2; § 22 paras 1 and 4, § 22a, § 23 para 3 and § 30 para 5;
2. as a member of an administrative body of the offeree company violates any of the following provisions: the second part of § 4 no 3 in conjunction with § 12, § 6 para 2, § 11 para 3, § 12, § 14 para 1 and 3, § 27a para 2 and § 30 para 5;
 3. as a member of an administrative body of an legal entity stated in § 30 para 4 or as an offeror, as a party acting in concert with the offeror, indirect and direct shareholders or partners of the offeror or listed companies, experts or other advisors in violation of § 30 para 4 gives incorrect or incomplete information or fails to give information in time or not at all or makes particulars and documents available incompletely, late or not at all;
 4. anyone who wilfully provides incorrect information pursuant to § 28 para 3;
 5. a party, a member of an administrative body of the party, a party acting in concert with it (§ 1 no 6) or a member of the administrative body of such a legal entity violates the obligation to notify the Takeover Commission pursuant to § 22b para 1, § 24 para 1, § 25 para 1 or § 26a para 1;
 6. a party, a member of an administrative body of the party, a party acting in concert with it (§ 1 no 6) or a member of the administrative body of such a legal entity exercises voting rights or induces or provokes others to do so, in violation of the provisions of § 22b para 2 or § 26a para 2.
- (2) The offence shall be punishable by a fine of EUR 5,000 to EUR 50,000.
- (3) The Takeover Commission has jurisdiction over the criminal proceedings in the first instance; in deviation from § 30a, the Federal Administrative Court decides on complaints.
- (4) The limitation period for administrative offences pursuant to para 1 shall be 18 months instead of the limitation period stipulated in § 31 para 1 Administrative Penal Act.

References

§ 36. Where this Federal Act refers to the provisions of other Federal Acts, such references shall be construed as references to those acts as currently amended.

Part Seven

Entry into force, final provisions and transitional provisions

Entry into force

§ 37. (1) § 1 nos 6 to 8, § 2, § 3 nos 1, 1a and 4, § 4 nos 1 and 2, § 5 paras 1 to 4, § 7 nos 6, 8 and 12 to 14, § 11 paras 1, 1a and 3, § 12, § 14 to § 19, § 21 para 1, § 22 to § 27d, § 28 paras 7 and 8, § 30 paras 3 and 4, § 31 para 3, § 33 paras 1 to 3 and 7, § 34, § 35 paras 1 and 2 and § 37 to § 39 as amended by the Act on the Amendment of the Takeover Act 2006, FLG I No 75/2006, shall take effect as of 20 May 2006.

(2) § 1, § 16 and § 27d as amended by Federal Act FLG I No 72/2007 shall enter into force on 15 December 2007.

(3) § 24 para 2, § 26a para 3 and § 27a para 5 Act Amending the Stock Corporation Act, as amended 2009, FLG I No 71/2009, shall enter into force on 1 August 2009. § 27a para 5 applies to general shareholders' meetings convened after 31 July 2009.

(4) § 30 paras 1 and 2, § 30a and § 35 para 3 as amended by Federal Act FLG I No 190/2013 enter into force on 1 January 2014. § 30a as amended by this Federal Act shall apply to official notices of the Takeover Commission issued after 31 December 2013. Official notices issued up until this date shall continue to be subject to the provisions applicable until then.

(5) § 1 no 4 and § 16 para 5 as amended by Federal Act FLG I No 68/2015 enter into force on 20 July 2015.

(6) § 1 no 8, § 7 nos 2 and 10, § 16 para 4 no 1 lit. b, § 19 para 1, § 27b para 2, § 27c para 1 no 3 and para 2, §§ 27e to 27g; the renumbering of Part Five to Part Six and Part Six to Part Seven as well as § 33 para 1 as amended by Federal Act FLG I No 107/2017 shall enter into force on 3 January 2018.

(7) § 33 para 6 shall cease to have effect at the end of July 31, 2019.

(8) § 25 para 2 as amended by FLG I No 57/2022 shall enter into force on 12 August 2022.

(9) § 22 para 4, § 23 para 3, § 25 para 1 and 3, § 30a paras 1 to 4 and § 33 para 2, as amended by FLG I No 124/2022, shall enter into force on July 1, 2022. § 22 para 4, § 23 para 3 and § 25 paras 1 and 3 shall apply to facts occurring after 30 June 2022. § 30a paras 1 to 4 shall apply in appeal proceedings concerning decisions of the Takeover Commission issued after 30 June 2022. § 33 para 2 shall also apply in proceedings of the Takeover Commission initiated before July 1, 2022.

(10) § 27f para 1 in the version of the Corporate Mobility Act, Federal Law Gazette I No. 78/2023, shall enter into force on August 1, 2023.

Implementation of the Takeover Directive

§ 38. This Federal Act implements Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ No L 142 of 30 April 2004, p. 12.

Transitional provisions

§ 39. If, on 20 May 2006, a stock corporation is admitted to the Official Market or the Second Regulated Market of an Austrian stock exchange as well as to listing on a regulated market in one or more other member states of the European Union or in a member state of the EEA, and if these admissions were done simultaneously and none of these countries is the country of residence of the company, the Takeover Commission shall decide within four weeks jointly with the supervisory bodies of the other concerned member states which supervisory body is to be the competent one for supervising public bids for this offeree company. If no supervisory body is named within this period, the stock corporation shall inform which of the supervisory bodies is to be responsible on the first trading day after expiry of this period. This decision or notification shall be published in the Official Gazette of Wiener Zeitung.

Article IV

Entry into force, final and transitional provisions, implementing clause

Entry into force

§ 1. (1) This Federal Act shall enter into force on 1 January 1999.

(2) § 9 para 2, § 28 para 3 and paras 9 to 11, § 30 para 4 and para 7 as well as § 35 para 1, para 2 and para 4 as amended by Federal Act FLG I No 98/2001 shall enter into force on 1 August 2001. § 35 paras 1, 2 and 4 shall apply to criminal offences committed after 1 August 2001.

Applicability

§ 2. (1) The provisions of this Federal Act shall apply to voluntary takeover bids made after its entry into force.

(2) The provisions governing mandatory bids shall apply when the fact triggering a mandatory bid (Art. I § 22) happens after this Federal Act has entered into force.

Exemptions from the obligation to make an offer based on articles of association (opting-out)

§ 3. (1) The general shareholders' meeting may, up until one year after this Federal Act entered into force, adopt a resolution amending the articles of association to the effect that the provisions of Art. I Part Three (mandatory bids) do not apply to acquirers of a controlling interest and parties acting in concert with the acquirer (Art. I § 23 para 1).

(2) The resolution adopted by the general shareholders' meeting shall require a majority of at least three quarters of the share capital represented when the resolution is adopted; the articles of association may stipulate a different capital majority. The resolution may not be contested based on § 195 para 2 Stock Corporation Act. A simple majority of the share capital represented when the resolution is adopted by the general shareholders' meeting shall suffice to adopt a resolution repealing a provision of the articles of association pursuant to para 1.

(3) Equities of such companies shall not be admitted to trading on the Official Market (§ 66 Stock Exchange Act). The management board of a company whose equities are listed on the Official Market of the Vienna Stock Exchange must send a notarised, certified copy of the resolution of the general shareholders' meeting regarding the amendment to the articles of association within the meaning of para 1 to the operating company operating and managing the Vienna Stock Exchange. The operating company shall issue an official notice declaring the switch from the Official Market (§ 66 Stock Exchange Act) to the Second Regulated Market (§ 68 Stock Exchange Act). The amendment to the articles of association pursuant to para 1 may only be entered in the Companies Register when this official notice has been presented. No appeal against this official notice shall be permissible.

Regulations

§ 4. (1) Ordinances provided for in this Federal Act may be issued as of the day following the promulgation of this Federal Act, but they may only enter into force as of 1 January 1999.

(2) The Takeover Commission shall issue the ordinances pursuant to Art. I § 16 para 4, § 19 para 4, § 22 para 5, § 23 para 2 and § 24 para 2 by 1 March 1999.

Establishment of the Takeover Commission

§ 5. Prior to the entry into force of this Federal Act, the members of the Takeover Commission may be appointed and other personnel and organizational measures may be taken in connection with the establishment of the Takeover Commission.

Execution clause

§ 6. In agreement with the Federal Minister of Finance and the Federal Minister of Economic Affairs, the Federal Minister of Justice shall be entrusted with executing Art. I § 9 para 2 lit. a; the Federal Minister of Finance shall be entrusted with executing Art. I § 35 is; otherwise, the Federal Minister of Justice, in agreement with the Federal Minister of Finance, shall be entrusted with executing Art. I. The Federal Minister of Finance shall be entrusted with executing Art. II is; the Federal Chancellor shall be entrusted with executing Art. III.

Article 1

Notes on the implementation

(Note: from FLG I No 107/2017, to §§ 1, 7, 16, 19, 27b, 27c, 27e to 27g, 28 and 33, FLG I No 127/1998)

This Federal Act implements the following legal acts of the European Union:

1. Directive 2014/65/EU on Markets in Financial Instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ No L 173 of 12 June 2014 p. 349, last amended by Directive (EU) 2016/1034, OJ No L 175 of 23 June 2016 p. 8, in the amended version, OJ No L 64 of 10 March 2017 p. 116, and
2. Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, OJ No L 87 p. 500.

Furthermore, this Federal Act serves to ensure the effective enactment of the following legal acts of the European Union:

1. Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ No L 173 of 12 June 2014 p. 84, last amended by Regulation (EU) 2016/1033, OJ No L 175 of 23 June 2016 p. 1,
2. Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ No L 87 p. 1, and

3. Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No 600/2014 with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, OJ No L 87 p. 90.

Article 5

Notes on the implementation

(Note: from FLG I No 63/2019, on § 33, FLG I No 127/1998)

This Federal Act passes Directive 2017/828/EU amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, OJ No L 132 of 20. May 2017 p. 1, into national law.

Article 1

Notes on the implementation

(Note: from FLG I No 98/2014, on § 25, FLG I No 127/1998)

This Federal Act implements:

1. Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, OJ No L 173 of 12 June 2014 p. 190, and
2. Article 92 of Directive 2014/65/EU on markets in financial instruments and amending Directives 2002/92/EG and 2011/61/EU, OJ No L 173 of 12 June 2014 p. 349.

Article 11

Final provisions

(Note: from FLG I No 71/2009, on §§ 1, 16, 24, 26a and 27a, FLG I No 127/1998)

§ 2. This Federal Act implements Directive 2007/36/EC of the European Parliament of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, OJ No L 184 of 14 July 2007, p. 17.

(Note: from FLG I No 190/2013, on §§ 30, 30a and 35, FLG I No 127/1998)

§ 6. In accordance with standard practice in English, this publication uses gender-inclusive language.