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amended by Federal Law Gazette I nos	
189/1999	
98/2001	2 nd Euro-related Amendment to Civil Legislation (<i>2. Euro-Justiz-Begleitgesetz – 2. Euro-JuBeG</i>) (Act governing the currency conversion to euro)
92/2003	Act Amending Company Law and Insolvency Law 2003 – (<i>Gesellschafts- und Insolvenzrechtsänderungsgesetz GIRÄG</i>) 2003
75/2006	Takeover Amendment Act 2006 – (<i>Übernahmerechts-Änderungsgesetz ÜbRÄG</i>) 2006
72/2007	Company Law Amendment Act (<i>Gesellschaftsrechts-Änderungsgesetz 2007 – GesRÄG 2007</i>)
71/2009	Act Amending the Stock Corporation Act 2009 (<i>Aktienrechts-Änderungsgesetz 2009 – AktRÄG</i>)
1/2010	Amendment to the Collecting Society Act (<i>Verwertungsgesellschaftengesetz 2006</i>) and the Takeover Act (<i>Übernahmegesetz</i>)
29/2010	Act amending the Insolvency Act (<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, as well as the amendment to the Banking Act, the Financial Market Authority Act, Insolvency Act, Takeover Act, Securities Supervision Act 2007, Alternative Investment Fund Manager Act, Act Implementing EU Legislation on Ratings Agencies and Bank Tax Act and the repeal of the Bank Intervention and Restructuring Act
68/2015	Accounting Amendment - Supplementary Act 2015 (<i>Rechnungslegungsänderungs-Begleitgesetz 2015 – RÄ-BG 2015</i>)
76/2016	Amendment to the Stock Exchange Act 1989, the Securities Supervision Act 2007, Investment Fund Act 2011 and Takeover Act
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 Manager 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>Bundesgesetzes zur Schaffung einer Abbaueinheit</i>)
	E-Money Act 2010 (<i>E-Geldgesetzes 2010</i>)

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	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 Industry Regulation Act 1994 (<i>Gewerbeordnung 1994</i>)
	Gambling Act (<i>Glücksspielgesetz</i>)
	Mortgage Bank Act (<i>Hypothekenbankgesetz</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 Ratings Agencies (<i>Ratingagenturenvollzugsgesetz</i>)
	Financial Reporting Enforcement Act (<i>Rechnungslegungs-Kontrollgesetz</i>)
	Resolution and Wind-up Act (<i>Sanierungs- und Abwicklungsgesetz</i>)
	SE Act
	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 (Unternehmensgesetzbuch)
	Insurance Supervision Act 2016 (<i>Versicherungsaufsichtsgesetzes 2016</i>)
	Payment Services Act (<i>Zahlungsdienstegesetz</i>)
	Central Counterparty Enforcement Act (<i>Zentrale Gegenparteien-Vollzugsgesetz</i>)
	Central Depository Enforcement Act (<i>Zentralverwahrer-Vollzugsgesetz</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:** The offeree company is a public limited company whose equities are the object of a bid;
3. **Offeror:** The offeror is any natural person, legal entity or partnership making a bid, intending to make such a bid or obligated to do so.
4. **Equities:** shares listed on a stock exchange and other transferable equity instruments listed on a stock exchange which entitle the holder to participate in the profits or in the assets upon winding-up; furthermore, transferable equities carrying the right to acquire such equity instruments 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:** This means 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:** individuals or legal entities 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 parties are acting in concert; the same applies if several parties reach agreement on the exercise of voting rights when electing the members of the Supervisory Board.
7. **Works council:** A works council established according to § 50 para 1 Labour Organisation Act or any similar body representing employees and workers. In the event 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 of a company issued by a public limited company having its registered office in Austria and admitted to a regulated market on an Austrian stock exchange.

General principles applicable to 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 have the same number of shares must be treated equally, unless otherwise provided for under this federal act. The obligation of equal treatment shall apply in particular to holders of shares of the same category.
 - 1a. The holders of equities must be protected when control is acquired over a company.
2. The addressees of a bid must have 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 interests of all shareholders or other holders of equities, also in the interests of employees and creditors, and in the public interest.
4. It is not permitted to create false markets in trading in the equities of the offeree company, of the offeror company or of any other company affected by the bid by artificially influencing securities prices or by distorting the normal functioning of the markets.
5. The takeover procedure must be conducted quickly; in particular, a bid may not hinder the offeree company in the conduct of its affairs for longer than is reasonably necessary.

Part Two

Voluntary Takeover Bids

General obligations of the offeror

§ 4. Throughout the takeover procedure, particularly in the preparation, drafting and making public of the bid as well as in other announcements, the offeror shall observe the following rules:

1. The offeror may only announce 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 execution of any other type of consideration.
2. Inside dealings and the creation of false markets (§ 3 no 4) must be prevented.
3. Information and declarations shall be prepared carefully, accurately and completely; incorrect or misleading information and statements are prohibited.

Obligations of confidentiality and disclosure to avoid the creation of false markets and the abuse of inside information

§ 5. (1) The offeror shall ensure confidentiality in order to prevent the premature and inequitable disclosure of its plans or its intention to make a bid; a similar obligation shall apply to its plans or intention to take steps resulting in an obligation on the offeror to make a bid. The offeror shall, in particular, notify all persons acting on its behalf in connection with the takeover procedure 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 rules; and take the appropriate organisational measures to prevent the dissemination and abuse of insider information.

(2) When the offeror is considering making a bid or intends to make a bid or to act in such a way that it will be under an obligation to make a bid, it shall immediately make public its plans or intention and inform the administrative bodies of the offeree company if there is a substantial movement in the price of the equities or rumours and speculations concerning the bid arise and there are reasonable grounds for assuming that these originate in the preparation of the bid, the offeror's plans to make such a bid or in the purchase of shares by the offeror.

(3) In any case, the offeror shall immediately make public 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 that trigger its obligation 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 the creation of false markets. 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 (§ 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 plans or its intention to make a bid before these are made public or announced and may enter into negotiations with them.

(2) The administrative bodies of the offeree company shall ensure confidentiality; § 5 para 1 of these provisions 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 matter in accordance with the first sentence of § 5 para 4, if there is a substantial movement in the price of the equities of the offeree company or rumours and speculations concerning a bid arise and there are reasonable grounds for concluding that these originate in the preparation of the bid or in the plans of the offeror to make such a bid.

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

Offer documents

§ 7 The offeror shall prepare offer documents that must contain at least the following information:

1. the terms of the offer;

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2. details of 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 as defined in §§ 130 et seq of the Stock Exchange Act 2018, and its affiliation to a group of companies;
3. the equities, which are the object of the bid;
4. the consideration offered for each security and the valuation method used to determine the consideration, and, in the cases mentioned in § 26, the basis of the calculation; in addition, details on the conduct of the bid and, in particular, on the agents authorized to receive acceptances and pay out the consideration;
5. where applicable, the maximum and minimum percentages or quantities of equities which the offeror agrees to acquire and a description of the rules of allocation as specified in § 20;
6. the shares of the offeree company already held by the offeror or by parties acting in concert with it or to which they are entitled or will be obligated 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 company as well as with regard to the safeguarding of the jobs of their employees and management, including any substantial changes to the conditions of employment, in particular, the offeror's strategic plans for the two companies and the expected repercussions on employment and the locations of the companies' place of business;
9. the period for acceptance of the bid and for the delivery of the consideration;
10. where consideration is offered in the form of securities, the details thereof as specified in § 7 of the Capital Market Act and §§ 46 et seq of the Stock Exchange Act 2018;
11. the conditions under which the offeror is to finance its bid;
12. information 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, names and registered offices and relationships with the offeror and, respectively with the offeree company; information on the 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 recipients of the bid;
13. information on the compensation offered when rights are withdrawn due the overcoming of barriers to takeover bids pursuant to § 27a as well as details on the form of payment of the compensation and the method according to which it is determined;
14. information on the national law that governs contracts concluded between the offeror and the holders of the equities of the offeree's company's by acceptance of the offer and the indication of the court of jurisdiction.

Conditions and rights of withdrawal

§ 8. A bid may be made subject to conditions or rights of withdrawal if these are objectively justified, in particular, if they result from legal obligations of the offeror, or if

the application 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 must appoint a suitably qualified, independent expert to provide advice throughout the 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 finding which shall include a declaration that the offeror has the funds at its disposal required to pay the consideration in full (§ 4 no 1).

(2) The following shall be deemed suitably qualified experts:

- a) Auditors and audit companies, which have contracted professional liability insurance with an insurance company authorized to operate in Austria that covers the risk arising from consulting and auditing activities in connection with takeovers for a value of 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 coverage 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 carry on business within the meaning of § 1 para 2 no 3 of the Banking Act having eligible own funds of no less than EUR 18.2 million and financial institutions within the meaning of § 1 para 2 no 3 of the Banking Act with own funds of no less than EUR 18.2 million.
- (c) Credit institutions or financial institutions carrying on business in Austria under §§ 9, 11 or 13 of the Banking Act through a branch office or within the scope of the freedom to provide services, if, in their home member state (§ 2 no 6 Banking Act) they are authorized to provide comparable services as detailed in § 1 para 1 no 11 of the Banking Act and dispose of eligible own funds or own funds of no less than EUR 18.2 million.

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 findings referred to in § 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 a maximum of 40 trading days. The Takeover Commission shall confirm receipt of the notification and indicate the date of receipt.

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

(3) The Takeover Commission may give its opinion on the offer documents in writing and may supplement or alter its opinion; it may determine the unlawfulness of the bid or of the offer documents by issuing an official notice and may prohibit the disclosure of the offer documents to the public and ban the execution of the bid.

Announcements and information of the offeree company

§ 11. (1) The offeror shall publish the offer documents and the expert's findings (§ 9 para 1) no earlier than the twelfth and no later than the fifteenth trading day after receipt by the Takeover Commission, unless the Takeover Commission has prohibited the announcement of the bid. In well-founded cases, the Takeover Commission may order the postponement of the announcement, in particular, with a view to carrying out a more detailed examination of the offer documents; it may also shorten the period until the announcement by agreement with the offeror.

(1a) The announcement shall be made through 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 with the task of providing the consideration (§ 7 no 4). If the documents are not published in full in the Official Gazette of Wiener Zeitung, the Official Gazette of Wiener Zeitung shall indicate where the documents can be obtained or are published. If the offer documents have been published in one or more newspapers with nationwide distribution, all further announcements on the part of the offeror concerning the bid shall be published in the same manner; if the complete offer documents have been published only by way of a brochure, the publication in the Official Gazette of the Wiener Zeitung shall be sufficient for further announcements. Should the offeror or the offeree company have a website, the documents shall also be placed on the website without delay and clearly identified.

(2) The offeror shall, before making them public, 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 with the first notification of the possibility of making a statement of opinion and when forwarding the offer documents about the intended date of the announcement pursuant to § 14 para 3.

Prohibition of attempt to frustrate bids and obligation of objectiveness

§ 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 announcement of the results, when the takeover is finalised 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 concrete measures that might prevent the bid with the exception of the search for other competing bids. This applies especially to the issuance of securities by which the offeror can be prevented 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 before the point in time stated in para 2 and which had not been implemented up to that time shall require the approval of the general shareholders' meeting if the measures are not part of routine business procedures and their implementation could serve to frustrate the bid. Measures to which the administrative bodies of the offeree company are already committed at the time mentioned in para 2 shall not require the approval of the general shareholders' meeting.

Examination of the bid, commissioning of experts by the offeree company

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

Response of the offeree company, audit and announcement

§ 14. (1) The management board and the supervisory board of the offeree company shall announce a response stating well-founded reasons on the bid immediately after the publication of the offer documents. The response shall contain, in particular, an assessment of whether the consideration offered and the other terms of the bid take adequate account of the interests of all shareholders and other holders of equities, and what the expected effects of the bid would be on the offeree company based on the strategic planning of the offeror regarding the offeree company, especially with respect to employees (jobs, working conditions and the continuation of the business locations), on creditors and the public interest. Should the management board or supervisory board be unable to give a final recommendation, they must in any case, outline the arguments for accepting as well as rejecting the bid, highlighting the most important aspects.

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

(3) The management board shall announce its response as well as the response of the supervisory board, response of the works council if given, and the report of the expert within ten trading days of the announcement of the offer documents, but at the latest five trading days prior to the expiry of the acceptance period with reference to § 11 para 1a and § 18 of the Stock Corporation Act. The response shall be notified to the Takeover Commission before the announcement to the public and simultaneously sent to the works council.

Improvements and other changes to the bid

§ 15. (1) During the offer period, the offeror may improve the consideration offered or otherwise change the offer to the benefit of holders of equities. An improvement is

not permitted if the offeror has declared that it would by no means make an improvement; this shall not apply if there is a competing bid or if the Takeover Commission has authorized an improvement on the bid.

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

(3) Improvements to the consideration and any other revisions to the benefit of holders of equities shall also apply to acceptances already given, unless the holders object.

Transactions in equities of the offeree company

§ 16. (1) From the date of disclosure of the intention to make a bid (§ 5 paras 2 and 3; § 6 para 2) or of a notification (§ 10 para 1), the offeror and any parties acting in concert with it (§ 1 no 6) shall refrain from making any declarations designed to achieve the acquisition of equities of the offeree company under more favourable conditions than those set out in the bid unless the offeror improves the bid (§ 15) or the Takeover Commission grants an exemption for compelling reasons; in all cases, such declarations must be made public immediately (§ 11 para 1a).

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

(3) From the date of the announcement of the intention to make a bid (§ 5 paras 2 and 3; § 6 para 2) or of a notification (§ 10 para 1), the offeror and any parties acting in concert (§ 1 no 6) shall be prohibited from selling any equities of the offeree company.

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

1. The object of the transactions must be the following holdings or banking transactions:
 - a) positions in the trading book (§ 2 no 35 Banking Act) including any market maker or specialist commitments on an Austrian stock market or a similar function on a foreign stock exchange;
 - b) asset management for individual customers (§ 3 para 2 no 2 Securities Supervision Act 2018 – Federal Law Gazette No. 107/2017);
 - c) investment fund and equity fund transactions (§ 1 para 1 no 13 and 14 Austrian Banking Act);
 - d) agency transactions in securities and custodian business (§ 1 para 1 nos 5 and 7 Austrian Banking Act).
2. The nature and scope of the transactions correspond to the business operations of similar credit institutions unless it is a transaction described in no 1 lit. b and d executed on the instructions and initiative of the customer.

3. There are no indications that the transaction would be a risk to the assets of the equity holders unless it is a transaction described in no 1 lit. b and d 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 and the respective highest and lowest prices. For credit institution groups (§ 30 Banking Act), the reports shall be made jointly by the leading credit institution. Together with the first report, a declaration shall be submitted that the credit institution has implemented contemporary and effective compliance rules, in particular a strict separation of banking transactions pursuant to no 1 from the equity management operations and investment advisory activities of the bank; the correctness of this declaration shall be confirmed by the Compliance Officer.

5. § 5

. The expert shall examine, among other things, whether the persons charged with the transactions in question at the respective credit institution are aware of the requirements of no 1 through 4 and whether the clearing and recording mechanisms are appropriate for meeting compliance with these rules and ensuring the correctness of the summary reports.

(5) From the date the intention to make a bid is made public (§ 5 para 2 and 3; § 6 para 2) or a notification is made (§ 10 para 1), all parties having a specific interest in the outcome of the bid shall immediately notify the Takeover Commission of any acquisitions and sales of equities of the offeree company, and of options on equities of the offeree company. The foregoing shall also apply to equities and options on equities of another company, if the offeror has offered equities of such a company as compensation. Persons having a specific interest shall include the offeror, any parties acting in concert with it (§ 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 enterprises, advisers of such enterprises and holders of at least 2% of the voting share capital in such enterprises.

(6) The provisions of paras 1 through 5 shall apply until the end of the period for acceptance of the bid (§ 19 para 1), and in the event of a prolongation of the offer period pursuant to § 19 para 3, until the end of this period.

(7) If the offeror or any 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 the event of a prolongation of the offer period pursuant to § 19 para 3 within nine months of the end of this period, and the consideration paid or agreed on for the equities is higher than in the bid, the offeror shall have an obligation to pay the monetary difference to the shareholders who have accepted the bid; § 26 paras 2 and 3 shall apply *mutatis mutandis*. The exercise of a statutory pre-emptive right triggered by 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 are not deemed an acquisition. If a controlling interest in the offeree company is resold by the offeror within the period mentioned in the first sentence, a monetary consideration in the pro-rata amount of the profit gained shall be paid accordingly.

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(8) If the offeror or any 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 through 5 are met. The weekly notification and reporting obligations pursuant to para 4 nos 4 and 5 shall be replaced by a monthly notification and reporting obligation.

Legal consequences of competing bids

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

Further statements of the offeror and of the offeree company; instructions of the takeover commission with respect to informing the public

§ 18. The Takeover Commission may make a recommendation in a statement of opinion or may issue an official notice instructing the offeror or the offeree company to disclose to the public any additional statements or corrections to statements pursuant to § 11 para 1a or to make such statements or corrections to statements public 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 announcement.

Period for accepting the bid; publication of the outcome of the bid

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

(1a) If the offeree company can credibly argue that it has been unduly hindered in the pursuit of its business by the acceptance period defined by the offeror, the Takeover Commission may define a shorter acceptance period for the bid; a shortening of the period to less than six weeks shall only be permitted with the consent of the offeror. Should 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 evaluation of the bid in time, the Takeover Commission may define an acceptance period of three weeks.

(1b) The offeror has the right to prolong the original bid. A prolongation shall not be permissible if the offeror has declared that in no case would it prolong the bid; this shall not apply if there is a competing bid. The offeror must publish the prolongation at the earliest on the second trading day after the Takeover Commission has received the notification and at the latest three exchange trading days before the end of the original acceptance period; §§ 9 through 11 shall apply *mutatis mutandis*. If the offeree company credibly argues that the prolonged acceptance period is an undue hindrance for the operation of its business, the Takeover Commission may define a shorter period or ban the prolongation.

(1c) If a competing bid has been made, the acceptance period of such bid must be at least two weeks and shall not end before the expiry of the acceptance period of the

original bid. By submitting a competing bid, the acceptance periods are prolonged for all bids made until the end of the acceptance period for the competing bid unless the original offeror declares its withdrawal on the grounds of reservations for the event a more favourable competing bid is made.

(1d) The acceptance period for all bids for an offeree company must end at the latest ten weeks after the start of the period of acceptance of the first bid. If there are competing bids, the Takeover Commission may grant an appropriate prolongation of the acceptance period to more than ten weeks if the business of the offeree company is not unduly hindered in the operation of business.

(2) The offeror shall announce the outcome of the bid immediately after the end of the acceptance period of the bid; the offeror shall also indicate the legal consequences pursuant to para 3.

(3) The acceptance period is prolonged by three months for holders of equities who had not accepted the bid up until of the day of the announcement of the outcome in the following cases:

1. a mandatory bid has been made pursuant to Part Three of this federal act;
2. the offeror owns more than 90 percent of the voting share capital after 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 rules 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 submitted is higher than the number of equities the offeror wishes 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 the same 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) Should a bid to acquire equities fail, the offeror and parties acting in concert with it (§ 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 announcement of the outcome of the bid. They shall also be excluded from acquiring shares during the same period that could trigger an obligation to make a bid.

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

1. the offeror has disclosed plans or intentions to make a bid or to act in such a way that would trigger an obligation to make a bid (§ 5 para 2);
2. the offeror has announced the decision of its management board and supervisory board to make a bid (§ 5 para 3 no 1);

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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 declaration.

(3) Furthermore, the offeror shall be excluded from making a bid for a period of one year if it has publicly stated that it will not make a bid or is not considering any activities that would trigger the obligation 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 this is not harmful to the interests of the offeree company or to the shareholders 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 report this fact to the Takeover Commission, and must notify a bid for all of the 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 permanent voting rights.

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

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

(4) Should a person who already owns a controlling interest but not the majority of the permanent voting shares additionally acquire at least two percent of voting shares within a period of twelve months must immediately report this to the Takeover Commission and within 20 trading days notify a bid to the offeree company for all of the shares of the company in accordance with the provisions of this federal act.

(5) Acquiring a controlling interest is permissible – except for the cases mentioned in § 22b – only if the party making the bid has ensured in advance that it will be able to pay the cash consideration and if all appropriate measures have been taken 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 changes in a group of parties acting in concert

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

1. when a group of parties acting in concert is created that jointly acquires a controlling interest;
2. when a group of parties acting in concert is dissolved, thus making it possible for one legal entity alone or another group of legal entities to acquire a controlling interest;
3. when a change in the composition of a group of parties acting in concert occurs or an agreement is reached among these parties, which together hold a controlling interest, making it possible for them to control decisions in another group of legal entities or to control another group of legal entities.

Passive acquisition of a controlling interest

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

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

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

Aggregating shares and enlarging the offeror's obligations

§ 23. (1) In the case of parties acting in concert (§ 1 no 6), the mutually held shares in the other's company shall be aggregated when applying §§ 22 through 22b.

(2) A share shall be aggregated unilaterally to a legal entity when applying §§ 22 through 22b if the legal entity or a party acting in concert with it (§ 1 no 6) is able to exercise influence over the voting rights of third parties directly or indirectly. The unilateral 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 being the owner;
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*, 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 legal entity shall enjoy treatment equivalent to that afforded to the legal entities acting in concert.

(3) The obligation to make a bid as well as all other obligations of an offeror shall apply to all legal entities acting in concert (§ 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 and do not exercise voting rights exclusively on the instructions of the involved parties.

Exceptions from the mandatory bid obligation

§ 24. (1) The mandatory bid obligation does not apply if the interest in the offeree company in accordance with §§ 22 through 22b cannot create a controlling interest, or, if there is no change in the party who, from an economic perspective, has a controlling influence over the offeree company. In these cases, § 22b para 2 and 3 do not apply. The matter must be reported to the Takeover Commission immediately, but at the latest within 20 trading days as of the acquisition of the interest.

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

1. another shareholder together with the legal entities acting in concert (§ 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 the other shareholders at the general shareholders' meeting;
3. the exercise of the voting rights is limited to 30 percent under provisions limiting voting rights in the articles of association (§ 12 para 2 Stock Corporation Act).

(3) The legal entity who from an overall economic perspective, may ultimately exercise this controlling interest does not change, in particular, when

1. shares are assigned to a legal entity in which the transferring company has a direct or indirect controlling interest; if the shares were held up to that time by a group of entities acting in concert, this shall apply accordingly if the decision of the legal entity to whom the shares have been transferred cannot be controlled by another legal entity or by another group of legal entities;
2. shares are assigned to a legal entity which holds a direct or indirect controlling interest in the transferring company; if the shares are transferred to several legal entities, this shall apply accordingly if decisions by the offeree company cannot be controlled by another legal entity or another group of parties acting in concert;

3. shares are assigned to a private foundation with a management subject exclusively to the controlling influence of the entities 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 another legal entity or another group of legal entities.

Obligation to notify a controlling interest

§ 25. (1) There is no obligation to make a mandatory bid, but the obligation to notify the matter to the Takeover Commission shall apply in the following cases:

1. upon the acquisition of an indirect controlling interest (§ 22 para 3), if the book value of the direct interest in the offeree company amounts to 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 through the separation of assets within the scope of divorce proceedings, the abrogation or nullification of a marriage;
5. shares are transferred to another legal entity in which only their relatives hold shares directly or indirectly in addition to the existing shareholders (§ 32 para 1 Insolvency Act); the same applies to the transfer to a private foundation with a management which is subject to the controlling influence of family members;
6. the party involved excludes the other shareholders from the company within five months of the acquisition of the controlling interest pursuant to the Squeeze-out Act if the compensation payment is not lower than the offer price to be made under § 26 and also corresponds to the highest price that has been paid or agreed by the shareholders for the respective shares up to the time this resolution is registered in the Companies Register.

The notification must be sent without delay, but at the latest within 20 trading days of acquisition of the controlling interest.

(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) The Takeover Commission may impose the obligation to make a mandatory bid to the shareholders of the offeree company in the cases mentioned in para 1 nos 1 and 2 within one month of the notification if this is necessary to avoid any risk to the financial interests of the shareholders of the offeree company in the specific cases. 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 supervisory board members or reporting obligations to the

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general shareholders' meeting or to the Takeover Commission. The Takeover Commission may not order a mandatory bid to be made when shares are acquired by applying resolution instruments, powers or mechanisms pursuant to §§ 48 et seq of the federal act on the Recovery and Resolution of Banks; however, it may impose conditions.

(3) In the cases mentioned in para 1 no 3 through 6, the Takeover Commission may impose the conditions necessary to avoid any risk to the financial interests of shareholders of the offeree company in the specific cases. The measures may include, in particular, those mentioned 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 established, whether the acquisition procedure was intended primarily to secure a controlling influence over the offeree company, whether the acquirer or an associated entity holds a direct or indirect interest in an enterprise (group company) having the same or a related object of business, whether a uniform management has been established or is planned, whether a premium exceeding the average exchange price was paid (§ 26 para 1) and whether, in the case described in para 1 no 1, the interest in the offeree company constitutes a significant part of the operating assets of the directly controlled legal entity.

Voluntary offers to acquire control

§ 25a. (1) If a controlling interest is acquired through a takeover bid that meets the provisions of this federal act and has been made for all equities of the offeree company, there will be no obligation to make any further bids pursuant to this Part of the federal act.

(2) Bids through which the offeror may acquire a controlling interest are subject to the conditions imposed by law stating that the offeror must receive acceptance declarations within the scope of the bid that account for more than 50 percent of the shares with permanent voting rights that are the object of the bid. If the offeror or any legal entities acting in concert (§ 1 no 6) buy shares with voting rights parallel to the bid, these shares must be added to the acceptance declarations.

Content of the offer

§ 25b. (1) Mandatory bids and voluntary bids to acquire a controlling interest are subject to the provisions of Part Two unless otherwise specified in this Part.

(2) Such bids must offer acquisition against a specific amount of money in cash payable at the latest ten trading days after the unconditional and binding acceptance of the bid. Offerors may additionally also include the option of an exchange for other securities. The 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 at the latest ten trading days after expiry of the extended acceptance period.

(3) A mandatory bid shall not be permitted to be subject to conditions unless the condition is stipulated by law.

Offer price

§ 26. (1) The price of a mandatory bid or of a voluntary bid to acquire a controlling interest shall not be lower than the highest consideration paid by the offeror or any entities acting in concert with it (§ 1 no 6) in cash or agreed for the shares of the offeree company within the preceding 12 months before the notification of the bid. This shall also apply to the consideration for equities which the offeror or any party acting in concert with it is entitled to or will be obliged to acquire in the future (§ 1 no 6). Moreover, the price shall correspond to at least to the average exchange price weighted by the respective trading volumes of the respective equities in the last six months before the day on which the intention to make a bid was announced.

(2) If the bid relates to equities other than ordinary voting shares and the offeror or any legal entities acting in concert with it have acquired ordinary voting shares within the last 12 months, the price offered for these equities must be equitable in relation to the consideration paid for the ordinary shares; the definition of equitable shall be determined with particular regard to the specific vested rights involved. This shall also apply to the consideration for ordinary voting shares which the offeror or any party acting in concert with it is entitled to or will be obliged to acquire in future.

(3) If the consideration was provided in a form other than cash, or only partly in cash, the total value of the consideration shall form the basis of the calculation of the price; when determining the total value, other payments effected or promised or other financial advantages shall be included if they have a bearing on the financial relation to the acquisition of the controlling interest. Furthermore, the price of the bid shall be determined equitably in compliance with the principle of equivalent treatment (§ 3 no 1) and taking into account paras 1 and 2, provided the

1. The obligation to make a mandatory bid arises through the acquisition of shares or other rights in a legal entity which owns, directly or indirectly, a controlling interest in the offeree company (§ 22 para 3) and this legal entity also holds assets other than the interest in the offeree company or has debts;
2. the consideration paid or promised by the offeror within the preceding 12 months was fixed taking into account special circumstances;
3. the circumstances have changed significantly in the preceding 12 months.

(4) The offeror and any parties acting in concert shall disclose all matters of relevance for the determination of the equitable price to the expert (§ 9) and to the Takeover Commission immediately on his or her appointment at the same time as the notification pursuant to § 10 para 1 is made.

(4a) Should the offeror or a legal entity acting in concert with the offeror be a credit institution, it shall not base the pricing on any consideration granted or agreed for equities of the offeree company if the conditions pursuant to § 16 para 4 no 1 through 3 are given. 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 in the meaning of § 16 para 4 were executed, and shall confirm that the conditions pursuant to § 16 para 4 no 1 through 3 were met.

(5) Holders of equities pursuant to § 33 para 2 no 4 shall be entitled to apply for verification of the lawfulness of the price offered within a period of three months of the announcement of the outcome of a takeover offer.

Exceeding the protected blocking minority

§ 26a. (1) Any person having acquired a direct or indirect share in an offeree company that exceeds 26% but not more than 30% of the shares with permanent voting rights must report this immediately to the Takeover Commission, but at the latest within 20 trading days of acquisition of the shares. § 22 para 3, § 22a and § 23 shall apply mutatis mutandis when determining whether such an interest exists.

(2) In this case, it shall not be possible to exercise the voting rights exceeding 26% of the permanent voting rights. After the bid has been settled in accordance with this Part, the restrictions on voting rights shall no longer apply.

(3) The legal consequences pursuant to para 2 shall not apply if another shareholder together with legal entities acting in concert with it (§ 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 restricted to a maximum of 26 percent by the articles of association (§ 12 para 2 Stock Corporation Act) or if the legal entity that may ultimately exercise the votes from the protected blocking minority does not change (§ 24 para 3).

(4) The Takeover Commission has the right to rescind the suspension of voting rights, in full or in part, on the request of the concerned shareholders and instead impose terms and conditions (§ 25 para 2 second sentence) on the condition the other shareholders are guaranteed equivalent protection.

Declaratory proceedings

§ 26b. (1) Anyone who directly or indirectly holds equities in an offeree company has the right to demand a declaratory decision in order to ascertain whether the obligation to make a mandatory bid applies.

(2) If the Takeover Commission ascertains that a mandatory bid is required, the offeror must either make a mandatory bid in departure from § 22 para 1 within 20 trading days of the day on which the official notification has been served regarding the obligation to make a mandatory bid or must proceed according to para 3. The time period for taking into account previously acquired shares pursuant to § 26 shall be prolonged by the duration of the proceedings.

(3) The offeror has the right to reduce its interest within 20 trading days to a maximum of 30 percent of the ordinary voting shares instead of announcing a mandatory bid or may reverse the attainment of a controlling interest in any other way; § 26a shall apply mutatis mutandis. The legal consequences of a violation of the obligation to make a bid do not take effect if

1. the application pursuant to para 1 is submitted immediately after the occurrence of the underlying situation, and
2. the offeror and any legal entities acting in concert with it 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) applies to it in its role as offeree company;

3. there is no obligation to make a mandatory bid for preference shares, convertible bonds, profit-sharing certificates and warrants yet to be issued.

(2) A resolution passed by the general shareholders' meeting as defined in para 1 and resolutions amending such resolutions shall require a majority comprising at least three quarters of the share capital represented when the decision is taken. In the articles of association, this capital majority may be replaced by a different majority.

(3) Resolutions to change the provisions of the articles of association regarding para 1 no 1 shall additionally require the consent of all holders of equities if the threshold pursuant to para 1 no 1 is increased.

Overcoming barriers to takeover bids

§ 27a. (1) The articles of association of a stock corporation may stipulate the application of the provisions stated in paras 3 through 6 to those bids subject to Part Three of this federal act. Should such a provision be introduced by an amendment to the articles of association, the approval of those shareholders who have the right to appoint members to the supervisory board pursuant to § 88 Stock Corporation Act shall be required.

(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 in the meaning of § 2 or § 27b, the Takeover Commission shall be informed whether the relevant provisions are contained in the articles of association. The Takeover Commission shall regularly publish, in a suitable manner, a list of the provisions applicable to the different companies and maintain it up to date.

(3) Restrictions on the transferability of shares contained in the articles of association of the offeree company shall not be effective if the shares are to be transferred to the offeror or a legal entity acting in concert with the offeror (§ 1 no 6) between the time of announcement of the offer documents (§ 11 para 1) and the point in time defined for the settlement of the bid. The same shall apply to restrictions on the transferability contained in a contract between shareholders of the offeree company or between the offeree company and its shareholders if such agreement has been reached after 30 March 2004.

(4) Restrictions on voting rights defined in the articles of association of the offeree company do not apply if decisions are taken at the general shareholders' meeting during the acceptance period that could prevent the bid (§ 12). The same shall apply to restrictions on rights defined in a contract between the shareholders of the offeree company or between the offeree company and its shareholders if such agreement has been reached after 30 March 2004.

(5) If the offeror holds at least 75 percent of the voting share capital after a bid, such offeror shall have the right to convene a general shareholders' meeting of the offeree company. The announcement convening the general shareholders' meeting must be made at the latest 14 days prior to the general shareholders' meeting. Restrictions on voting rights in the meaning of para 4 shall not apply to any general

shareholders' meeting held within the first six months after the point in time defined in the offer documents for the settlement of the bid if the articles of association are to be changed or if members of the supervisory board are to be appointed or withdrawn. Such general shareholders' meetings may withdraw members from the supervisory board appointed by individual shareholders or appoint new members to the supervisory board without individual shareholders having the right to appoint members; such rights to appoint members may be abolished by amending the articles of association without the consent of the concerned shareholder. The restrictions on transferability in 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 legal entity acting in concert with it (§ 1 no 6).

(6) Should the offeror acquire shares by which the contractually agreed restrictions on the transferability are breached, the contractual partner of the selling shareholder shall have the right to take recourse with a regular court of law against the offeror to claim adequate compensation in cash. The obligation to pay compensation applies analogously to all cases in which the contractually agreed voting right restrictions are breached. Stipulated 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 an exchange listing abroad

§ 27b. (1) The provisions stated in para 2 shall apply to public offerings 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 to a regulated market of another member state of the European Community or of a member state of the EEA.
2. The offer would be subject to Part Three of this federal act provided the shares could be admitted to trading on a regulated market in Austria.

(2) Apart from being governed by Part One and Part Six of this federal act, such offers shall be subject to the following provisions: on the notification of employees of the offeree company (§ 11 para 3 and § 14 para 3, provided these regulations refer to the notification of employees of the offeree company); on the prohibition of attempts to frustrate bids and on the obligation of objectiveness (§ 12); on the obligation to make an offer (§§ 22 through 23); on the exceptions from the obligation to make a bid (§ 24); on the notification obligation of a controlling interest (§ 25); on exceeding the protected blocking minority (§ 26a); provisions 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 an exchange listing in Austria

§ 27c. (1) The provisions stated in para 2 shall apply to public offers to buy 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 contingent on the following conditions:

1. The securities are admitted to trading on a regulated market in Austria, but not on a regulated market in the country of domicile of the stock corporation.
2. The securities have not already been admitted to trading on a regulated market in a third member state of the European Community or in a member state of the EEA before being admitted to trading in Austria and are still admitted to trading there.
3. The stock corporation has sent notification pursuant to § 119 para 11 Stock Exchange Act 2018 that Austria is to be responsible for the supervision of public offers if the securities are simultaneously admitted for the first time 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.
4. The offer would be subject to Part Three of this federal act provided the stock corporation is domiciled 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; specifically, §§ 4 through 11, §§ 13 through 21 (with the exception of § 11 para 3 and § 14 para 3, insofar as these provisions refer to the notification of the employees of the offeree company), as well as §§ 25a through 26.

(3) When 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, para 2 does not apply and the Takeover Commission may prohibit the publication of the offer documents if the publication would not be permissible in the country of the competent supervisory body. The Takeover Commission may demand inclusion of additional information in the offer documents, if this information is specific to the domestic securities and if it refers to formalities that must be observed when accepting the bid and to the receipt of the consideration due at the time the bid is closed, or if it refers to the taxation treatment of the holders of equities being offered a consideration; moreover, the Takeover Commission may demand the translation of the offer documents into German or into English.

International collaboration of supervisory bodies

§ 27d. The Takeover Commission and the Financial Markets Authority must collaborate with the supervisory bodies and other bodies charged with the supervision of the capital markets of the other member states of the European Community and member states of the EEA, in particular, with the responsible bodies pursuant to Directives 2001/34/EG, 2003/6/EG, 2003/71/EG and 2004/39/EG and must provide such bodies with any information required for the application of this federal act or under any other provisions adopted as a consequence of Directive 2004/25/EG, in particular, in those cases mentioned in § 27b and § 27c. Collaboration shall comprise the serving

of documents prepared by the responsible bodies as well as any other appropriate form of support.

Part Five

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

Offers to terminate admission to trading

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

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

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

(4) The offer document must also contain the statement that it intends 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 withdrawn and are not held by the offeror or by parties acting in concert with the offeror (para 3).

(6) In departure from § 25b para 3, it suffices 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 on the condition that the price corresponds to at least the average exchange price weighted by the respective trading volume during the last five trading days before the day on which the intention to terminate admission to trading is announced. If the price determined in this manner is, in fact, lower than the actual value of the company, an adequate offer price must be determined.

(8) If the offeror receives acceptance declarations within the scope of the offer for more than 50 percent of the equities, which were the object of the offer (para 5), a request for verification of the lawfulness of the price offered (§ 26 para 5) cannot be based on the alleged inappropriateness of the price.

Offers in the case of specific measures under company law

§ 27f. (1) For offers in the meaning of § 148 para 2a, § 225 para 2a and § 240 para 3 Stock Corporation Act, of Article 14 (2)a EU Merger Regulation and § 12 para 3 Demerger Act, § 27e shall apply as set out below.

(2) The company changing its articles of association, a transferring company or a company being transformed shall be deemed the offeree company.

(3) Individuals or legal entities collaborating with the offeror based on an agreement in order to achieve the respective change to the company (amendment to

the articles of association, merger, transformation or demerger) shall be deemed parties acting in concert. § 1 no 6 second sentence, first half sentence shall apply mutatis mutandis.

(4) The offer document must also contain the information that the offer is being made due to a relevant change under company law and the effects of these changes on the admission to trading of the offeree company.

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

(6) In departure from § 25b para 3, it shall suffice if the offer is no longer contingent on any conditions at the time the relevant change under company law is notified and entered into the Companies Register.

Application to foreign stock corporations

§ 27g. § 27e shall apply to issuers of equities with their registered office outside of Austria for which admission to trading on the Vienna Stock Exchange is to be terminated.

Part Six

Procedures and Penalties

The Takeover Commission

§ 28. (1) A Takeover Commission shall be established within the exchange operating company that manages and operates the Vienna Stock Exchange.

(2) The Takeover Commission shall consist of

1. one chairperson and two vice chairpersons;
2. three members appointed from the judiciary 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 and company valuation. The competent bodies that may propose members shall submit their proposals to the Federal Minister of Justice. The proposal for each member shall contain the names of at least three persons. The right to make proposals shall expire if it is not exercised within an adequate period of time as defined by the Federal Minister of Justice. The competent body that may submit proposals must present plausible grounds confirming that the persons they propose meet the requirements and are willing to accept the appointment to the positions in question.

(3) It shall not be possible to dismiss the members of the Takeover Commission from office, nor shall they be bound to follow any instructions when performing their duties. The Federal Minister of Justice shall have the right to obtain information on all matters relating to the management of the Takeover Commission. Unless otherwise stipulated by this federal act, the Takeover Commission shall decide in panels made up

of four members, with each panel having 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 areas shall be governed by the internal rules of procedure to be adopted by the Takeover Commission; in this context, the need to reach swift decisions must be taken into account. Until the relevant panel starts its work, the chairperson of the Takeover Commission with the support of the administrative office has the duty ex officio to monitor the market. The chairperson of the Takeover Commission may request information ex officio within the scope of its duty to monitor the market before the competent panel starts its work. The chairperson of the panel has the power to determine procedural rules for the panel's work, unless the panel decides otherwise in individual cases. The panel shall adopt decisions by simple majority and in the case of a tie, the chairperson of the panel shall have the casting vote.

(4) The Federal Minister of Justice in consultation with the Federal Minister for Financial Affairs shall appoint the chairperson, the vice chairperson and the other members for periods of office of five years each. All members shall be eligible for reappointment. If a member is unable to attend meetings for long periods or resigns prematurely, a replacement shall be appointed for the remainder of his or her period of 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 not reached the age of eligibility for election to parliament or are not eligible on the grounds of 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 successive convocations to meetings without presenting an appropriate excuse.

In the cases mentioned 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 internal 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 the 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 issues involving matters of principle or in cases in which the same issue has been decided differently even though no case involving any such issue is pending.

(8) The internal 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 exchange operating company of the Vienna Stock Exchange.

(9) The panel responsible for the legal matter shall decide on any doubts regarding the impartiality of a member of the panel without the presence of the concerned member unless such member has declared himself or herself to lack the impartiality required. The chairperson of the Takeover Commission shall call a meeting of the panel at which a decision is to be taken on the matter of impartiality of a member and appoint a substitute member as stipulated in the internal rules of procedure.

(10) Official notices pursuant to § 57 General Administrative Procedure Act may be passed by circular resolution if none of the members of the panel objects to this mode of 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 shall be under the obligation to support the efficacy of the work of the Takeover Commission within the scope of their statutory obligations and provide assistance and provide information.

Duties of the Takeover Commission; decisions on preliminary questions

§ 29. (1) Competence for all matters regulated in this federal act lies exclusively with the Takeover Commission. It supervises the application of this federal act and decides on all matters within the scope of applicability of this federal act. The Takeover Commission may decide by virtue of office to initiate proceedings at any time. It also has the powers to issue statements of opinion, provide advice and offer its good offices to achieve the amicable settlement of disputes concerning 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 not yet been reached, the court shall suspend proceedings and obtain a declaratory decision from the Takeover Commission on the preliminary question. The parties to the procedure in the declaratory proceedings shall be the parties in the civil procedure, namely, the offeror and the offeree company. The official notice on the decision regarding the preliminary question shall be binding on the court.

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 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 under § 35 shall be regulated by the Administrative Penal Act.

(3) The Takeover Commission may dispense with the hearing if there are reasonable grounds to assume that the hearing would not result in other conclusions,

in particular, if the facts and the legal issue are clear, and the need for a swift decision were to render a hearing unreasonable. However, in administrative penal proceedings (§ 35) a hearing shall be held in any case; furthermore, when the parties have not waived their right to a hearing and the decision relates to one of the following matters:

1. determination of the unlawfulness of an offer or offer documents, a ban on the publication of the offer documents or execution of the offer (§ 10 para 3);
2. the obligation to make an offer or an announcement;
3. verification of the appropriateness of the price of a mandatory offer (§ 26 para 5);
4. sanctions under civil law (§ 34).

(4) Exchange-listed companies (§ 2, § 27b, § 27c), the offeror, any parties acting in concert with the offeror (§ 1 no 6), the management and administrative bodies of legal bodies mentioned as well as their direct or indirect partners including any associated companies, the experts (§§ 9 and 13) and all other advisers shall provide the panel of the Takeover Commission with all information relevant to the appraisal of the bid and shall at any time requested to provide all available information on the bid and make the particulars and documents available the Takeover Commission considers necessary for its investigation of the facts pursuant to §§ 5 ff and §§ 22 et seq. For the purpose of executing these duties, the obligation to maintain banking secrecy shall not apply when the credit institution in question is an expert pursuant to § 9 and § 13.

(5) All publications, announcements, opinions and other statements 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 these are subject to a notification obligation before being made public.

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

(7) The exchange operating company of the Vienna Stock Exchange shall be responsible for meeting the Takeover Commission's expenditure for materials and staff; it shall also provide a secretariat (administrative office) and an appropriately qualified staff in adequate numbers.

(8) The staff of the exchange operating company 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 for the sole purpose of carrying out these duties.

Appeal procedures

§ 30a. (1) Official notices of the Takeover Commission may be appealed by filing an appeal with the Supreme Court (*Oberster Gerichtshof*); complaints cannot be filed with the Federal Administrative Court. Official notices containing procedural orders can only be appealed in conjunction with the appeal against the decision on the matter.

(2) The provisions of the Austrian Non-contentious Proceedings Act regarding second complaints apply *mutatis mutandis* to appeals and to appeal procedures before the Supreme Court on the condition that the appeal is permissible in any case.

(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 Supreme Court. In this context, the Takeover Commission may make a statement on the appeal.

Reimbursement of expenses, costs and fees

§ 31. (1) Members of the Takeover Commission shall be entitled to reimbursement of appropriate travel costs and outlays, and to remuneration for their time and work. Such remuneration shall be defined in a regulation issued by the Federal Minister of Justice in mutual agreement with the Federal Minister for Financial Affairs, bearing in mind the significance and scope of the Takeover Commission's duties.

(2) The exchange operating company, shall be obliged to meet requests of the members of the Takeover Commission for reimbursement and remuneration pursuant to para 1.

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

(4) As regards general cash outlays, the offeror shall be treated as an applicant in the meaning of § 76 of the General Administrative Procedure Act.

Publication of opinions and decisions

§ 32. The chairperson of the Takeover Commission must publish, in a suitable manner, general statements of opinion (§ 28 para 7 last sentence) based on individual cases and on decisions (§ 29 para 1) if these are of significance beyond the scope of the individual case; in this context, due consideration must be given to the legitimate interests of the offeror, of the offeree company and of other involved parties in having their business secrets protected.

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

§ 33. (1) The Takeover Commission is empowered to initiate its own investigations ex officio, or upon request by a party, against or in favour of the offeror, parties acting in concert with the offeror (§ 1 para 6), the offeree company or the holders of equities to determine whether:

1. in the execution of a bid, the provisions of Part Two, Part Three or Part Five of this federal act were violation, in particular, whether a price offered in a mandatory bid was in violation of this federal act (§ 26);
2. unlawfully failed to make a mandatory bid or failed to issue an order to this effect or failed to submit the required report (§ 22 to § 25);
3. sanctions under civil law (§ 34) have been imposed.

In this procedure, 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 decision to this effect has been reached or the matter is the subject of pending proceedings;
3. the offeree company (except in a procedure under § 26 para 5);
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 face value exceeding ATS 1 million, provided they can make a prima facie case for meeting those conditions and – if more than one holder of equities is involved – they appoint one common representative. With the changeover of the denomination of the nominal value of shares to the euro, the sum of ATS 1 million shall be replaced by EUR 70,000.

(3) The Takeover Commission shall immediately announce to the public the initiation of the proceedings (§ 11 para 1a). This announcement shall contain the request to the offeror and to any persons acting in concert (§ 1 no 6) having their registered office, domicile or habitual place of residence abroad to appoint an agent for receipt of official mail as specified in § 10 para 2. In addition, the announcement shall also inform holders of equities that they may join the proceedings within a period of one month provided they satisfy the conditions specified in para 2 no 4. After this period expires no further applications shall be accepted from holders of equities; the announcement shall state this fact clearly.

(4) In order to safeguard the rights of holders of equities of the offeree company, the Takeover Commission shall take the decision for which the application has been made 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, they shall be imposed on the offeree company either in full or in part, on an equitable basis, if the 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, an order to pay the costs of the proceedings may be imposed on the holders of equities. The costs of legal counsel 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.

(6) To verify the appropriateness of the price in a mandatory bid, the Takeover Commission may request an expert opinion from the committee pursuant to § 225g of the Stock Corporations Act. § 225g and § 225h of the Stock Corporation Act shall apply mutatis mutandis. Nonetheless, the Takeover Commission may approve composition before such committee only if it adequately takes into consideration the rights of the holders of equities in the offeree company.

(7) If an offeror or any party acting in concert (§ 1 no 6) having its registered office, domicile or habitual place of residence abroad has failed – after the announcement pursuant to para 3 – to appoint an agent authorized to accept service of documents, the Takeover Commission may appoint such an agent and order the offeror to bear the costs.

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 end the suspension of voting rights as soon as a bid is made that meets the statutory requirements and respectively a payment has been made to compensate the violation of price determination rules or such payment is guaranteed to be paid shortly. The Takeover Commission may also rescind the suspension of voting rights in cases in which the breach of the law does not in fact threaten the assets of the equity holders of the offeree company in specific cases or if the threat can be eliminated by imposing terms and conditions.

(3) Should an offeror make a bid in violation of other provisions of this federal act, the Takeover Commission has the right to suspend the voting rights if this is necessary to protect the assets of the holder of the equities of the offeree company in the actual circumstances of the specific case. The Takeover Commission shall state under which terms and conditions, the suspended voting rights can be reinstated.

(4) Should one of the parties involved fail to make a statutory report or notification despite being requested to do so by the Takeover Commission, the Takeover Commission may suspend voting rights until the report or notification is made should this be necessary to clarify the facts of the matter.

(5) Apart from the measures mentioned in § 25 para 2, the terms and conditions pursuant to paras 2 and 3 may include the right of withdrawal of the addressee of the bid, the prolongation of the offer period or the re-opening of the bid for new acceptance declarations.

Penalty clauses

§ 35. (1) Where an offence does not fulfil the grounds for an offence punishable by criminal law, the following acts shall constitute administrative offences:

1. if the offeror, a member of the administrative body empowered to represent the offeror and any parties acting in concert with the offeror (§ 1 no 6) or a member of the administrative body entitled to represent a party acting in concert with the offeror (§ 1 no 6) acts in violation of one 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 para 1, 3, 5 and 7, § 19 para 2; § 21 para 1 and 2; § 22 para 1 and 4, § 22a, § 23 para 3 and § 30 para 5;
2. a member of an administrative body entitled to represent the offeree company acts in violation 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 one of the legal entities stated in § 30 para 4 or as an offeror, parties acting in concert, indirect and direct partners of the offeror or exchange-listed companies, experts or other advisors gives incorrect or incomplete information or fails to give information in time or not at all in violation of § 30 para 4 or presents documents incompletely, late or not at all;

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4. anyone who wilfully provides incorrect information pursuant to § 28 para 3;
5. a party being 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 being 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 at least EUR 5,000 up to a maximum of EUR 50,000.

(3) The Takeover Commission has jurisdiction over the criminal proceedings in the first instance; in departure from § 30a, the Federal Administrative Court decides on complaints.

(4) In the case of administrative offences pursuant to para 1, the statute of limitation shall be 18 months instead of the period stated 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 through § 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 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 no 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.

Implementation of the Takeover Directive

§ 38. This federal act enacts into national law Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 regarding takeover bids, Official Journal 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 domicile 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 announce which of the supervisory bodies is to be responsible on the first trading day after expiry of this period. This decision or announcement shall be disclosed by publication 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 acts committed after 1 August 2001.

Applicability

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

(2) The provisions governing mandatory bids shall apply when the circumstance triggering a mandatory bid (Art. I § 22) occurs 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 the entry into force of this federal act, pass 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 controlling interests and parties acting in concert with the acquirer (Art. I § 23 para 1).

(2) The resolution passed by the general shareholders' meeting shall require a majority that comprises at least three quarters of the share capital represented at the time the resolution was passed; the articles of association may replace this majority by a larger majority of the share capital. An appeal against the resolution may not be based on § 195 para 2 Stock Corporation Act. A simple majority of the share capital represented at the general shareholders' meeting shall suffice to pass 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 have up to now been quoted on the Official Market of the Vienna Stock Exchange must send to the exchange operating company of the Vienna Stock Exchange a counterpart of the resolution of the general shareholders' meeting certified by a notary regarding the amendment to the articles of association in the meaning of para 1. The exchange operating company does this by issuing an official notice that switches the company from the Official Market (§ 66 Stock Exchange Act) to the Second Regulated Market (§ 68 Stock Exchange Act). It will only be permitted to register this amendment to the articles of association pursuant to para 1 in the Companies Register when this official notice has been presented. It is not possible to appeal this official notice.

Regulations

§ 4. (1) Regulations to be issued in accordance with 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 must issue the regulations 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. Already before the entry into force of this federal act, the members of the Takeover Commission may be appointed and other personnel and organizational measures taken in connection with the establishment of the Takeover Commission.

Implementing clause

§ 6. Responsible for implementation of Art. I § 9 para 2 lit. a is the Federal Minister of Justice in agreement with the Federal Minister of Finance and the Federal Minister of Economic Affairs; responsible for implementation of Art. I § 35 is the Federal Minister of Finance, furthermore, implementation of Art. I is the responsibility of the Federal Minister of Justice in agreement with the Federal Minister of Finance; responsible for

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implementation of Art. II is the Federal Minister of Finance; responsible for implementation of Art. III is the Federal Chancellor.

Article 1

Notes on the implementation

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

The federal law passes the following legal acts of the European Union into national law:

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 law 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 1

Notes on the implementation

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

The federal law passes the following legal acts of the European Union into national law:

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.

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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.

Glossary	
Aktiengesetz, AktG	Stock Corporation Act
Allgemeines Verwaltungsverfahrensgesetz, AVG	General Law on Administrative Procedure
Angestelltengesetz, AnG	Act on Salaried Workers
ATS	Austrian schillings
Ausschreibungsgesetz	Act on Tendering Procedures
Bankwesengesetz, BWG	Banking Act
Bundesgesetzblatt, BGBl	Federal Law Gazette, FLG
Bundeskriminalamt-Gesetz	Criminal Intelligence Service Act
Bundeskriminalamt-Gesetzes – BKA-G	Criminal Intelligence Service Act
Bundesverwaltungsgericht	Federal Administrative Court
Datenschutzgesetz	Data Protection Act
Depotgesetz	Securities Depository Act
deutsches Reichsgesetzblatt, dRGBl.	Law Gazette of the German Reich
Drittland	third country = any country that is not a member of the European Union
Einführungsgesetz zur Zivilprozeßordnung, EGZPO	Act Introducing the Code of Civil Procedure
Finanzmarktaufsicht	Financial Markets Authority, FMA
Finanzmarktaufsichtsbehördengesetz – FMABAG	Financial Market Authority Act
Finanzmarkt-Geldwäschegesetzes – FM-GwG	Financial Markets Anti-Money Laundering Act
Finanzprokuraturgesetzes	Act on the Federal Financial Agency
Finanzstrafgesetz, FinStrG	Fiscal Penalties Act
Geldwäschemeldestelle	Financial Intelligence Unit
Gerichtsorganisationsgesetz GOG	Court Organization Act
German	English
Gewerbeordnung, GewO	Trade Code
Handelsgesetzbuch, HGB	Commercial Code
Investmentfondsgesetz, InvFG	Investment Fund Act
Kapitalmarktgesetz, KMG	Capital Market Act
Kapitalverkehrssteuergesetz	Capital Transactions Tax Act
Konkursordnung, KO	Bankruptcy Act
Konsumentenschutzgesetz	Consumer Protection Act
Kreditwesengesetz, KWG (until 1994)	Banking Act
MTF	multilateral trading facility, MTF
Oberlandesgericht Wien	Higher Regional Court of Vienna
Oesterreichische Nationalbank (=Austrian central bank, name also used in English)	Oesterreichische Nationalbank (=Austrian central bank, name is used in English)
Pensionskassengesetz	Pension Plans Act
Reichsgesetzblatt, RGBl	Imperial Gazette (of the Austro-Hungarian Empire)
Sicherheitspolizeigesetz, SPO	Law Enforcement Bodies Act
Strafprozeßordnung, StPO	Code of Criminal Procedure
Unternehmenshandbuch, formerly Handelsgesetzbuch	Business Code (formerly Handelsgesetzbuch - Commercial Code)
Verordnung (der FMA)	Regulations (issued by FMA)
Versicherungsaufsichtsgesetz, VAG	Insurance Supervision Act
Versicherungsvertragsgesetz, VersVG	Insurance Policy Act
Verwaltungsgerichtsverfahrensgesetz, VwGVG	Proceedings of Administrative Courts Act
Verwaltungsstrafgesetz, VStG	Administrative Offenses Act
Verwaltungsvollstreckungsgesetz	Administrative Enforcement Act

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Verwaltungsvollstreckungsgesetz, VVG	Law on Administrative Enforcement
Wertpapieraufsichtsgesetz, WAG	Securities Supervision Act
Wiener Börse AG	Name of the exchange operating company of the Vienna Stock Exchange
Wiener Börsekammer (bis 2.4.1998)	Council of the Vienna Stock Exchange (until 2 April 1998)
Zivilprozeßordnung, ZPO	CCP - Code of Civil Procedure