Banking Regulation

Contributing editor
Richard K Kim

2019

GETTING THE DEAL THROUGH

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Contributing editor

Richard K Kim

Wachtell, Lipton, Rosen & Katz

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

Law Business Research

Published by
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87 Lancaster Road
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Fax: +44 20 7229 6910

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Banking Regulation 2019

Twelfth edition

Getting the Deal Through is delighted to publish the twelfth edition of *Banking Regulation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Sweden.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard K Kim of Wachtell, Lipton, Rosen & Katz, for his continued assistance with this volume.

GETTING THE DEAL THROUGH

London
February 2019

Austria

Christoph Moser and Angelika Fischer

Weber & Co

Regulatory framework

1 What are the principal governmental and regulatory policies that govern the banking sector?

Austrian governmental and regulatory policies for the banking sector primarily aim at maintaining a stable and robust financial system. Transparency and trust in the stability of the banking and financial system are indispensable for the smooth and efficient supply of funds to the corporate, private and public sectors and must be consistently upheld. To this end, the entire financial market must observe a strict rule-based framework.

The main goals of the regulatory framework for the banking sector are:

- increasing transparency, the financial stability and the financial institutions' loss-bearing capacity;
- ensuring the efficient supply of credit to businesses and individuals;
- strengthened harmonisation of bank supervision, securities, insurance and financial conglomerates; and
- requiring better and more effective institutional internal control by the management board.

2 Summarise the primary statutes and regulations that govern the banking industry.

As a member state of the European Union, the development of Austria's banking regulations is extensively connected with EU measures. The key Austrian legislation applicable to credit institutions includes:

- the Banking Act (BWG), including additional regulations (eg, relating to capital requirements, liquidity, ownership, notification duties, etc), provides for the fundamental framework applicable to credit institutions and financial institutions in Austria, including, inter alia, the licensing regime, supervision, capital and liquidity requirements, as well as receivership proceedings and penalties;
- the Payment Service Act 2018 (ZaDiG 2018), which is in force since 1 June 2018, and the E-Money Act 2010 (E-GeldG 2010) implement the Payment Service Directive (Directive 2015/2366) (PSD II) and the Electronic Money Directive (Directive 2009/110/EC). The Acts provide for the licensing and capital requirements for payment and e-money institutions. In addition, the Interchange Fee Regulation (Regulation (EU) No. 2015/751), which provides for requirements for card-based payment transactions, applies since 9 June 2015;
- the Bank Recovery and Resolution Act (BaSAG), which entered into force on 1 January 2015, implements the Bank Recovery and Resolution Directive (Directive 2014/59/EU (BRRD)) and provides for the obligation of credit institutions to draw up recovery and resolution plans. The implementation of the Single Resolution Mechanism (SRM) at EU-level required a revision of the BaSAG in 2015. Most of the amendments entered into force in January 2016 and strengthens the rights and duties of the Austrian Financial Markets Authority (FMA) as the national resolution authority. Directive 2017/2399/EU amending the BRRD with respect to the ranking of unsecured debt instruments in insolvency hierarchy was transposed into the BaSAG as well. The relevant amendments entered into force on 30 June 2018;
- the Securities Supervision Act 2018 (WAG 2018), including additional regulations, provides for licensing of investment service providers, customer protection provisions, disclosure and notification requirements, etc. The WAG 2018, which entered into force on 3 January 2018, implemented a substantial part of the Markets in Financial Instruments Directive (Directive 2014/65/EU (MiFID II). Further, the Act ensures that Austrian law is in line with the provisions of the Markets in Financial Instruments Regulation (Regulation (EU) No. 600/2014) (MiFIR), which has applied since 3 January 2018. The WAG 2018 implements organisational and product requirements and increases transparency and information requirements and supervising provisions;
- the Capital Markets Act (KMG), which primarily implements the Prospectus Directive (Directive 2003/71/EC), provides in particular for the prospectus framework relevant to securities offerings and offerings of investments in Austria. On 20 July 2017, the New Prospectus Regulation (Regulation No. (EU) 2017/1129) entered into force. The New Prospectus Regulation repeals and replaces the Prospectus Directive (Directive 2003/71/EC) with effect from 21 July 2019 (save for a few provisions which were repealed on 20 July 2017 and a few that were repealed on 21 July 2018);
- the Investment Fund Act 2011 (InvFG 2011), together with selected provisions of the BWG, is the main legal source governing activities of investment fund management companies;
- the Real Estate Investment Fund Act (ImmoInvFG) regulates the issuance of open-end real estate funds and the activities of investment fund management companies for real estate;
- the Alternative Investment Fund Manager Act (AIFMG) implements the AIFM Directive (Directive 2011/61/EU) and governs the activities of alternative investment fund managers;
- the Stock Exchange Act 2018 (BörseG 2018) and the Takeover Act (ÜbG) provide the legal framework relating to listing and trading of securities as well as public takeover offerings. The BörseG 2018 came into force on 3 January 2018, implements certain MiFID II provisions and introduces the possibility for a legal delisting of publicly traded stock companies from the Official Market, which is now the only regulated market in Austria;
- the Securities Deposit Act (DepotG) regulates the depositing and acquisition of securities;
- the Act on Deposit Guarantee Schemes and Investor Compensation (ESAEG) implements the Directive on Deposit Guarantee Schemes (Directive 2014/49/EU) and regulates the protection of all deposits and credit balances including interest on accounts and savings;
- the Act on the Financial Market Authority (FMABG), including additional regulations, governs the organisation of the FMA, the cooperation with other regulatory authorities and the applicable cost framework;
- the Mortgage Bond Act (PfandbriefG) applies to the issuance of mortgage bonds by credit institutions;
- the Financial Conglomerate Act (FinanzkonglomerateG) contains provisions regarding the additional supervision of financial conglomerates by regulatory authorities;
- specific other laws, inter alia, apply to Sparkassen, Bausparkassen and Hypothekenbanken;
- the Financial Markets Anti-Money Laundering Act (FM-GwG; Finanzmarkt-Geldwäschegesetz), in force since 1 January 2017, implements the revised Anti-Money Laundering Directive (2015/849/EU). Prior to that, anti-money laundering rules were provided in the BWG. On 19 July 2018 the 5th Anti-Money

Laundering Directive (2018/843/EU) has been published by the European Union. It stipulates further revisions of Directive 2015/849/EU and has to be implemented by member states by 10 January 2020; and
- the Ultimate Beneficial Owners Register Act (WiEReG) entered into force on 16 September 2017 and 15 January 2018, respectively, and implements the regulatory framework for a register of the ultimate beneficial owners of Austrian corporate and other legal entities.

In addition to Austrian law, certain EU regulations are directly applicable to Austrian credit institutions, including, inter alia, the Capital Requirements Regulation (Regulation (EU) No. 575/2013 (CRR)), the Regulations stipulating the Single Supervisory Mechanism (SSM) (Regulation (EU) No. 1024/2013 (SSM Regulation) and Regulation (EU) No. 17/2014 (SSM Framework Regulation)) as well as the SRM Regulation (Regulation (EU) No. 806/2014). The CRR is, to a large extent, based on the Basel III standards issued by the Basel Committee on Banking Supervision and includes most of the technical provisions governing the prudential supervision of Austrian credit institutions. The SSM creates a uniform European supervisory mechanism. The SRM provides for a single European resolution mechanism, if a systemically important bank fails.

3 Which regulatory authorities are primarily responsible for overseeing banks?

The European Central Bank (ECB), as the prudential supervisor of banks in the eurozone, the FMA and the Austrian National Bank (the OeNB together with the FMA) are the regulatory authorities primarily responsible for overseeing Austrian banks. Since November 2014, banking supervision is shaped by the SSM based on the SSM Regulation and the SSM Framework Regulation. Since then, banking supervision is performed by the ECB having extensive micro- and macroprudential powers. All credit eurozone credit institutions are under the SSM's remit; however, the ECB does not directly supervise all of them. Supervisory tasks and responsibilities are divided between the ECB and the national competent authorities and are allocated on the basis of the significance of the supervised credit institutions. Credit institutions are classified as 'significant' or 'less significant', based on criteria set forth in the SSM Regulation and the SSM Framework Regulation. The ECB directly supervises only the first category comprising approximately 120 credit institutions.

The following Austrian banks (including their subsidiaries or affiliates) are directly supervised by the ECB: BAWAG Group AG, Erste Group Bank AG, Volksbank Wien AG, Raiffeisenbankengruppe OÖ Verbund eGen, Raiffeisen Bank International AG and Sberbank Europe AG. UniCredit Bank Austria AG and Schoellerbank Aktiengesellschaft, as subsidiaries of UniCredit SpA, Deutsche Bank Österreich AG, as subsidiary of Deutsche Bank AG, Santander Consumer Holding Austria GmbH and Santander Consumer Bank GmbH, as subsidiaries of Banco Santander, SA, and FCA Bank GmbH, as subsidiary of Crédit Agricole SA, are also supervised by the ECB directly. The day-to-day supervision is conducted by joint supervisory teams (JSTs), comprising staff from both the ECB and the Austrian regulatory authorities.

Less significant banks remain under the supervision of the Austrian regulatory authorities, subject to the oversight of the ECB. The ECB may take on the direct supervision of less significant institutions if required to ensure the consistent application of the high supervisory standards. Austrian regulatory authorities have to report to the ECB on a regular basis about their supervisory activities. Banking supervision in Austria itself has been divided between the FMA and the OeNB since 1 January 2008.

The FMA is responsible for licensing, authorisation, notification and supervisory procedures, supervising intra-bank models, commissioning the OeNB to carry out on-site inspections, monitoring actions taken by credit institutions to remedy shortcomings, interpretation of the law with regard to banking supervision, collecting and analysing qualitative information, evaluating analysis results with respect to official measures and legislation related to banking supervision, sending departmental representatives to international bodies, supervising branches and representative offices of foreign credit institutions in Austria, as well as cross-border supervision. Furthermore, the FMA is the competent authority with respect to securities supervision.

The OeNB is responsible for the ongoing prudential supervision of credit institutions, including regular inspections as well as ad hoc inspections of credit institutions. Moreover, the OeNB obtains data on other financial intermediaries from the FMA to analyse financial conglomerates and also draws up off-site banking analyses. The OeNB notifies the FMA if the risk situation of a credit institution has changed significantly or if a violation of supervisory provisions by a credit institution is suspected. The OeNB provides the FMA with the findings of its inspections and analyses, which are the basis for official actions by the FMA.

Pursuant to the BWG, the Federal Minister of Finance has to appoint a state commissioner and a deputy state commissioner for each Austrian bank with total assets of more than €1 billion to assist in the supervision of such bank. State commissioners ensure that no decisions are taken by the credit institution's shareholder meetings and supervisory board meetings, which, in their view, violate federal laws, regulations or orders by authorities. If the state commissioner objects to any resolution proposed at a credit institution's shareholder meeting or supervisory board meeting, he or she must notify the FMA immediately. The effectiveness of such resolution is suspended until the FMA has determined the validity of the shareholders' or supervisory board's resolution.

The Austrian Ministry of Finance is responsible for drafting government bills and converting EU law into Austrian legislation.

4 Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

Deposit guarantee schemes are harmonised on an EU level. In 1994, the Deposit Guarantee Schemes Directive (Directive 94/19/EC) introduced the obligation to implement deposit guarantee schemes. However, in their national implementations of the Directive, the EU member states introduced significantly different schemes in view of the level of coverage, the scope of covered depositors and products and the payout delay.

The revised Directive on Deposit Guarantee Schemes (Directive 2014/49/EU) amended the legal framework for the protection of deposits and harmonises the legal situation in Europe. The ESAEG transposed the Directive into Austrian law in August 2015.

Any credit institution domiciled in Austria accepting deposits or providing specific investment services must belong to an investor compensation scheme. Otherwise, the FMA would render a decree declaring the credit institution's licence to be expired. Until 31 December 2018, the investor compensation schemes were established within the framework of the respective trade associations (the Austrian Bankers' Association, the Regional Mortgage Banks Association, the Rural Credit Cooperatives Association, the Savings Banks Association or the Credit Cooperatives' Association according to the Schulze-Delitzsch system).

As of January 2019, instead of five schemes from different trade associations, a single protection scheme will be in place. On the basis of the ESAEG, the Austrian Economic Chamber established a joint protection scheme in the form of a liability company as legal entity (Einlagensicherung AUSTRIA GmbH), which will operate from 1 January 2019. Nevertheless, by way of exception, individual banks may also set up an institutional protection scheme (IPS) provided that they meet certain preconditions, such as a minimum level of deposits, and subject to FMA approval.

Credit institutions are obliged to pay into the fund of the respective protection scheme in advance, rather than retrospectively as was previously the case. This should guarantee the fund's ability to protect depositors against the consequences of the insolvency of a credit institution.

Deposit guarantees based on the ESAEG include:
- deposits and building saving deposits;
- credit balances that result from funds left in an account or from temporary positions in the course of banking transactions, the provision of payment services or the issuance of e-money that the credit institution must repay according to the applicable legal and contractual provisions, including a fixed-term deposit and a savings deposit; and

- any debt evidenced by a certificate issued by a credit institution, with the exception of mortgage bonds, municipal bonds and funded bank bonds of private persons, and undertakings are guaranteed in full up to an amount of €100,000.

In addition, the following deposits are protected up to an amount of €500,000, but for no longer than 12 months after the amount has been credited or from the moment when such deposits become legally transferable:
- resulting from real estate transactions relating to private residential properties;
- that serve social purposes laid down in national law and are linked to particular life events of a depositor such as marriage, divorce, retirement, dismissal, redundancy, invalidity or death; and
- serve the purposes laid down in national law and are based on the payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

The following deposits are not guaranteed:
- deposits by credit and financial institutions and investment firms;
- own funds;
- deposits related to money laundering;
- anonymous deposits;
- deposits by insurance undertakings and by reinsurance undertakings, collective investment undertakings and pension and retirement funds;
- deposits by public authorities and debt securities issued by a credit institution and liabilities arising out of own acceptances and promissory notes.

A payout event under the deposit guarantee scheme occurs when the FMA establishes that a credit institution is not in a position to repay deposits that are due and where there is currently no prospect that the credit institution will be able to do so again in the future, if bankruptcy proceedings are opened, in case of orders given by the supervisory authority for a supervised management procedure or when the competent authorities order the stopping of payments.

Additionally, liabilities of a credit institution arising from custody business, trading for one's own account or on behalf of others in certain instruments, third-party securities underwriting, severance and retirement fund business or the investment services portfolio management and reception and transmission of orders in relation to one or more financial instruments are covered by the investor compensation scheme and guaranteed in full up to €20,000. Regarding undertakings, such claims have deductables of 10 per cent.

In addition to deposit guarantee schemes, several sectors (eg, Sparkassen, Raiffeisen, Volksbanken) established a liability network providing for reciprocal liability of all members of the network for the liabilities of a single member. This liability is in excess of the statutory guaranteed amount of €100,000 and, therefore, offers additional security.

During the global financial crisis of 2008 and its aftermath, various Austrian banks had to be rescued, or at least supported, by the Austrian government. Kommunalkredit Austria AG, which later demerged into Kommunalkredit Austria AG and KA Finanz AG, and Hypo Alpe Adria International AG were fully taken over by the government. KA Finanz AG and Hypo Alpe Adria International AG (whose wind-down unit is now operating under the name Heta Asset Resolution AG) are bad banks and will be fully liquidated. Kommunalkredit Austria AG was privatised in 2015. Österreichische Volksbanken AG was restructured in 2015 and split into the bank Volksbank Wien AG and immigon portfolioabbau ag (Immigon). The Austrian government holds a 43.3 per cent stake of Immigon, which is a wind-down unit pursuant to section 162 of the BaSAG.

5 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

Pursuant to section 70a, paragraph 5 of the BWG, the FMA is entitled to supervise the transactions between the credit institutions, superordinate holding companies and its subsidiary undertakings when the parent undertaking of a credit institution is a mixed financial holding company, parent mixed financial holding company or a mixed activity holding company. For this purpose, a mixed financial holding company is a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity whose head office in the EU, and other entities, constitutes a financial conglomerate. This term is defined in article 4 (21) of the CRR in conjunction with article 2(15) of Directive 2002/87/EC.

Credit institutions must have adequate risk management processes and internal control mechanisms in place, including sound reporting and accounting procedures, so that the credit institution's transactions with the parent undertaking and its subsidiaries can be identified, measured, monitored and controlled appropriately. Intragroup transactions trigger particular reporting obligations towards the FMA. Credit institutions must report all material intra-group transactions, especially loans, guarantees, off-balance sheet transactions, cost-sharing agreements, reinsurance transactions, capital investment transactions and transactions concerning own funds, on at least a quarterly basis. Where intra-group transactions impose a threat to a credit institution's financial position, the FMA can take appropriate measures.

The affiliation of credit institutions (*Kreditinstitute-Verbund*) requires the conclusion of a contract between the central body and the affiliated credit institutions, the approval of the shareholders or general meeting of each participating credit institution and amendments of the articles of association. The formation of an affiliation of credit institutions is subject to an application to and approval by the FMA. The application must be accompanied by documents reflecting in particular the control, monitoring and risk management processes, the ability of the affiliation to permanently comply with the prudential requirements and other significant information. An affiliation of credit institutions is not a group of credit institutions, which is formed by a superordinate institution and its subsidiaries.

Various provisions of the BWG, for example, relating to licences, freedoms of establishment and to provide services, capital requirements and liquidity, or supervision, are not applicable to affiliated credit institutions. The affiliated credit institutions are subsequently exempt from those notification and reporting duties that are intended exclusively for the monitoring of these provisions.

Under the BWG, financial institutions are authorised to conduct one or more of the following activities for commercial purposes if they are conducted as the institution's main activities:
- conclude lease agreements (leasing business);
- provide advice to undertakings on capital structure, industrial strategy and related questions, as well as advice and services related to mergers and the purchase of undertakings;
- provide credit reporting services;
- provide safe deposit services;
- provide payment services pursuant to section 1, paragraph 2 of the ZaDiG 2018; and
- issue e-money pursuant to section 1, paragraph 1 of the E-GeldG 2010.

6 What are the principal regulatory challenges facing the banking industry?

Contributions to the resolution financing arrangements (eg, national resolution funds and the Single Resolution Fund) are a great challenge for the Austria banking industry. The relatively high, and therefore heavily criticised, bank levy of €640 million was reduced in January 2017 to €100 million in exchange for a lump sum of €1 billion. The main goal is to avoid competitive disadvantages.

Other burdens include the rapid development of banking regulations and the resulting necessity for banks to react quickly. Provisions regarding the professional qualifications and necessary experience for operating the credit institution for both the executive and supervisory board of credit institutions have been tightened in recent years (eg, the fit-and-proper test, which provides assessment criteria of the management body of significant banks and wherever appointments are part of licensing or qualifying holding procedures). The EBA and the European Securities and Markets Authority (ESMA) have published joint guidelines to assess the suitability of members of management bodies and key function holders, which applied as of 30 June 2018. Such enhanced rules strengthen the overall confidence in the financial markets but are also likely to hinder effective governance, especially in smaller banks that cannot find appropriate board members easily. Further, the high number of credit institutions on the small Austrian market and the low margins in Austria may lead to a restructuring of the credit institution's business strategy, particularly driven by acts of risk minimisation.

In general, credit institutions will face challenges in banking supervision to different extents, based on whether they are designated a significant or a less significant credit institution. Nevertheless, all banks within the eurozone must comply with ECB-issued guidelines and use standardised templates for data collection and information requests, and this may temporarily cause multi-track processes in credit institutions and require organisational changes in a medium- to long-term perspective.

Another challenge is surely the continuing low-interest phase. The low-interest environment does have impacts on the credit sector. Banks are suffering from rising cost pressure, as the profit situation is worsening as a result of falling net interest income, while costs are by no means falling in the same proportion and are even rising sharply in some cases as, for example, in the case of higher costs as a result of regulatory tightening. On the one hand, banks must consistently realise opportunities in the area of earnings potential, while at the same time countering the pressure on earnings with equally consistent and sustainable cost management. It is important that banks reduce their dependence on interest rate business as well as decrease their interest rate risks and make further progress in building up equity and reducing debt levels.

7 Are banks subject to consumer protection rules?

Banking activities rendered towards consumers are subject to consumer protection rules, most of which are provided for in the Consumer Protection Act (KSchG), the Consumer Credit Act (VKrG) and the Remote Financial Services Act (Fern-FinanzdienstleistungsG). The BWG also provides for consumer protection rules (eg, section 33 of the BWG imposing special provisions for mortgage and real-estate credit contracts like the requirement that employees concerned with offering and concluding such contracts possess an adequate level of knowledge and skill, section 34 of the BWG relating to consumer current account agreements and stipulating that such account agreements must at least contain the annual interest rate applicable to credit balances, apart from the information required under the ZaDiG 2018, and section 37 of the BWG, which provides for specific value dates for money transactions with consumers in connection with savings deposits, credit accounts or current accounts).

In relation to credit agreements and credit transactions and when dealing with consumers as defined in the KSchG, banks must comply with the Consumer Credit Act. In addition, WAG 2018 obliges banks to apply the necessary expertise and diligence for the best interest of their clients when providing investment services (section 47 of WAG 2018).

The Consumer Payment Accounts Act (VZKG), which implements the rules of the Payment Account Directive (2014/92/EU) (PAD), has been applicable since September 2016. The VZKG provides for comparability of fees related to payment accounts, changing of consumer payment accounts and access to consumer payment accounts with basic functions.

Apart from regulatory authorities, other organisations (eg, Organisation for Consumer Protection, Chamber of Labour) monitor the conduct of banks towards consumers and make infringements of consumer protections rules public or bring them to court. Recent practices that have drawn intense scrutiny particularly relate to wrong or misleading investment advisory services (eg, shipping funds).

8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?

We expect that comprehensive legislative changes on a European level will continue, which will significantly influence the Austrian banking industry in the coming years.

On 30 September 2015, the European Commission published its Capital Markets Union Action Plan (CMU Action Plan), which provides for the establishment of a true single market for capital across all member states. The European Commission intends to support access to finance, to remove barriers to cross-border investments and to lower the costs of funding. The upcoming implementation of various EU Directives will tie up considerable resources in the banking sector. On 30 November 2015, the European Commission (COM (2015) 583 final) proposed revising prospectus rules to improve access to finance for companies and to simplify information for investors (eg, a prospectus for smaller companies (SMEs), simplifying secondary issuing for listed companies). In June 2017, the European Commission published a mid-term review of the capital markets union action plan, reporting on the progress in implementing the 2015 CMU Action Plan and setting the time frame for the next round of outstanding measures. The mid-term review updates and complements the original CMU agenda, with some selected new priority measures to respond to evolving challenges. The revised MiFID II with its accompanying MiFIR provides a new legal framework for securities trading, investor protection (including rules on advice and the sale of investment products) and reporting requirements; and strengthens supervisory powers for regulators. In Austria, MiFID II and the implementation measures for MiFIR were implemented in WAG 2018 and, to some extent, BörseG 2018, entering into force on 3 January 2018. In conjunction with MiFID II and MiFIR, delegated acts, guidelines, question and answers and further interpretation guides are published regularly. In a separate communication in November 2018, the European Commission called for renewed political engagement and efforts to complete key building blocks of the Capital Markets Union ahead of the EU Parliament elections in May 2019.

In response to the global financial crisis and the EU sovereign debt crisis and, in an effort to establish a EU banking union and strengthen the resilience of the EU banking sector, the EU and the Austrian legislature have both adopted a number of laws to increase regulatory requirements for EU banks. The EU banking union is based on three pillars: the SSM, the SRM and the European Deposit Insurance Scheme (EDIS), all of which rest on the foundation of the single rule book, which applies to every EU member state. While the SSM and the SRM are in place and fully operational, a common system for deposit protection has not yet been established. The proposal for the EDIS is based on a draft resolution published by the European Commission in November 2015, which has since been reinforced with a European Commission communication containing adjustments in November 2017.

Since 1 January 2016, the application of the SRM has provided for the establishment of a single resolution fund (SRF). The SRM aims to ensure the orderly resolution of failing banks without recourse to taxpayers' money. The SRF will be built up over a period of eight years with ex ante contributions from the banking industry and a target level of at least 1 per cent of the covered deposits of all the credit institutions authorised within EU member states (Austrian's credit institutions contributed €199 million in 2018. The amount of deposits covered by the SRF should be about €50 billion by the end of 2024).

In addition, we expect that Europe-wide cooperation with regard to the supervision of banks will still intensify, particularly between the ECB and the national competent authorities, but also closer cooperation among other EU institutions and bodies such as the European Systemic Risk Board and the European Banking Authority.

A new provision in the BWG (section 22b), in force since 1 July 2018, provides the FMA with the power to implement additional supervisory measures to control systemic risks in the real estate sector (eg, loan-to-value ratio, debt ratio, debt service ratio).

Supervision

9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

Four institutions supervise the financial markets in Austria:

- the ECB supervises banks under the SSM;
- the OeNB monitors the stability of the financial market at a macro level. It is responsible for the supervision of payment systems and is involved in the supervision of banks;
- the FMA monitors and checks the individual financial institutions and participants in the markets (micro level); and
- the Federal Ministry of Finance develops the legislative framework, which is then adopted by the Austrian parliament (legislative process).

The ECB is responsible for banking supervision in the eurozone under the SSM. The ECB cooperates with the FMA and OeNB in performing supervisory tasks. The division of supervisory tasks depends on

whether the supervised bank is deemed 'significant' or 'less significant.' This differentiation is based on:
- the size, economic relevance, scope of cross-border activities of the supervised bank; or
- if the bank has received funds from the European Stability Mechanism or the European Financial Stability Facility.

Nevertheless, the ECB can decide at any time to classify a bank as significant.

JSTs, whose size and organisation depends on the nature, complexity, scale, business model and risk profile of the supervised credit institution, carry out the ongoing supervision of the significant banks directly supervised by the ECB. Moreover, JSTs carry out on-site inspections (eg, in-depth risk investigations, risk controls and governance with a pre-defined scope, timeline and set of resources at the premises of a credit institution). These inspections are risk-based and proportionate. The need for an on-site inspection is determined by the JST in the context of the Supervisory Examination Programmes (SEPs), which are drawn up for each significant institution for a period of 12 months and discussed by the Joint Supervisory Team coordinator and the institution beforehand. In addition to these planned inspections, ad hoc inspections may be conducted in response to an event or incident that has emerged at a credit institution warranting immediate supervisory action.

The FMA and OeNB directly supervise less significant banks. The FMA remains the authority in charge of taking supervisory decisions concerning less significant banks. The OeNB continues to be responsible for the overall risk assessment.

The Austrian regulatory authorities supervise credit institutions by means of:
- on-site inspections (yearly and ad hoc);
- mandatory information to be submitted on a regular basis (annual reports, regular notification requirements, etc); and
- requests for other information and documents that seem necessary at any time.

The FMA monitors the adequacy of the capital and liquidity available for the quantitative and qualitative coverage of all significant risks arising from banking transactions and banking operations, the systemic risk emanating from a credit institution for the stability of the financial system and the risks as determined on the basis of stress tests. Moreover, the FMA supervises the exposure of credit institutions to the interest rate risk arising from non-trading activities and takes measures when the economic value of a credit institution declines by more than 20 per cent of its own funds as a result of a sudden and unexpected change in interest rates.

The FMA and OeNB jointly define an inspection plan for each calendar year, taking into account inspections of systemically important credit institutions, an appropriate frequency of inspections of institutions that are not systemically important, resources for ad hoc inspections, thematic focuses of inspections, and review of measures taken to remedy the defects identified. The Austrian regulatory authorities regularly publish and update directives and guidelines regarding supervision and how they will approach certain issues (see question 3).

10 How do the regulatory authorities enforce banking laws and regulations?

The FMA is authorised to exclusively enforce banking laws and regulations, including:
- requesting certain kinds of information or documents pursuant to section 70, paragraph 1 of the BWG;
- implementing certain measures pursuant to section 70, paragraphs 2, 4 and 4a of the BWG (eg, prohibition of profit distributions, complete or partial prohibition of the continuation of business operations, imposing additional capital requirements or fines and withdrawal of the banking licence);
- requesting reorganisation measures (receivership or insolvency proceedings) pursuant to section 81 et seq of the BWG;
- collecting penalty interest for violating capital requirements pursuant to section 97 of the BWG; and
- imposing fines owing to administrative offences stipulated in section 98 and 99 of the BWG.

The ECB may impose sanctions on significant banks if regulatory requirements have been breached. The ECB may impose administrative pecuniary penalties on these banks of up to twice the amount of the profits gained, or losses avoided, because of the breach where those can be determined, or up to 10 per cent of the total annual turnover in the preceding business year (article 18 of the SSM regulations).

11 What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

According to the FMA's annual report for 2017, the FMA conducted 107 management talks (the purposes of the meetings is to maintain contact with the management of credit institutions and to examine in greater detail their risk assessment and strategy), and 27 bank audit and early recognition meetings with bank auditors of the auditing associations of the decentralised sectors. The OeNB was commissioned to carry out a total of 30 on-site inspections. If there is a risk of a credit institution being unable to fulfil its obligations to creditors and customers, pursuant to section 70, paragraph 2 of the BWG, the FMA may prohibit distributions of capital or profits, appoint a government commissioner, relieve directors of their duties or prohibit the further pursuit of business activities. The FMA was not obliged to order such measures in 2017. But, the FMA ordered four credit institutions, under threat of a coercive penalty, to establish compliance with statutory provisions within an appropriate period of time. Furthermore, the FMA prescribed in 25 cases a minimum capital requirement that is higher than the statutory minimum and charged interest pursuant to section 97 of the BWG on seven occasions.

Resolution

12 In what circumstances may banks be taken over by the government or regulatory authorities? How frequent is this in practice? How are the interests of the various stakeholders treated?

Since 1 January 2015, the BaSAG provides the regulatory authorities with a wide range of powers (eg, the FMA may appoint a temporary administrator in a case where the replacement of managing directors, members of the supervisory board or members of the senior management (see question 13) is not sufficient to remedy the need for early intervention). This temporary administrator either replaces or acts jointly with the managing directors. Further, the FMA, as resolution authority, is entitled to take over a credit institution when applying the resolution tools or when arranging their application.

The BaSAG implemented the BRRD and therefore contains three provisions:
- requiring the production of recovery plans by banks and the production of resolution plans by the resolution authorities, including powers to remove obstacles to resolution (prevention);
- enabling supervisory authorities to intervene at an early stage, including related additional powers to intervene (early intervention); and
- forming the basis for the establishment of a national resolution authority and entrusting the authority with the necessary powers and tools (resolution).

The Financial Market Stability Act (FinStaG) entitles the Federal Minister of Finance to take measures for the recapitalisation of credit institutions to which the provisions of the BaSAG are not applicable and insurance undertakings (relevant entities) in order to remedy a considerable disruption within Austria's economy, in order to ensure the macroeconomic balance, and for the protection of Austria's national economy. Apart from monetary measures (eg, assumption of liabilities or provision of facilities and own funds), the Minister of Finance is entitled to acquire shares in a relevant entity and, if performance of a relevant entity's obligations as regards its creditors is jeopardised, may, as a final remedy, take over the relevant entity for reasonable consideration. The shares acquired in accordance with the provisions of the FinStaG have to be privatised upon the achievement of the intended purpose, taking into consideration the prevailing market conditions. The Federal Minister of Finance is entitled to set forth further conditions and requirements for the measures specified in the FinStaG. In this context, additional conditions and requirements were imposed, in particular, with regard to the following aspects:

- the business focus (the pursuance of sustainable business policies);
- the application of the funds received;
- the remuneration of managers;
- the tier 1 requirements;
- the dividend policy (payment of dividends only to the extent reasonable in consideration of the profit situation);
- measures for safeguarding jobs;
- measures for the prevention of distortion of competition; and
- the legal consequences of non-compliance with the aforementioned conditions and requirements.

The Austrian government has taken over, or has supported, several banks pursuant to the FinStaG (see question 4).

13 What is the role of the bank's management and directors in the case of a bank failure? Must banks have a resolution plan or similar document?

Managing directors of a credit institution are responsible for defining and supervising the internal principles of a proper management to ensure due diligence in managing the credit institution, and for providing for an organisational segregation of duties and the prevention of conflicts of interest. The effectiveness of these principles has to be regularly verified and appropriate steps to correct any deficiencies have to be taken. Managing directors and members of the supervisory board have to observe statutory, regulatory, organisational and capital requirements, as well as specific rules of conduct.

If a credit institution's management and directors consider that their credit institution is failing or likely to fail, they are obliged to notify the FMA pursuant to section 114 of the BaSAG. A credit institution is deemed to be failing or likely to fail in one or more of the following circumstances:

- the credit institution infringes or will infringe the law or the requirements for continuing authorisation in a way that would justify the withdrawal of the banking licence;
- the assets are or will be less than the liabilities;
- the credit institution is or will be unable to pay its debts or other liabilities as they fall due; or
- extraordinary public financial support is required.

Further, pursuant to the BaSAG, the FMA (either as regulatory authority or as resolution authority):

- is entitled to demand that a specific or all managing directors, members of the supervisory board or members of the senior management resign or are being replaced in the stage of early intervention; and
- is obliged to do so when applying the resolution tools and exercising the resolution powers.

Pursuant to the BaSAG, every credit institution (in the case of a group, only the superordinate institution, central organisation or central institution) is obliged to draw up a recovery plan and has to provide information for a resolution plan drawn up by the FMA. The FMA reviews the recovery plan and the resolution plan as to mandatory content and compliance with all requirements set by law. In this regard, the FMA also requests an expert opinion from the OeNB. In case of financial problems, the supervisory authorities are entitled to intervene at an early stage and have related additional powers to intervene (see question 18).

14 Are managers or directors personally liable in the case of a bank failure?

Managing directors and members of the supervisory board are subject to the liability scheme of general civil and corporate law. Subsequently, a managing director or a member of the supervisory board can be held liable for the failure of a credit institution, when acting deliberately or without the required diligence (see question 13). If managing directors do not comply with their obligation to notify, pursuant to section 114 of the BaSAG, they can be punished with an administrative fine of up to €5 million or up to twice the amount of the benefit derived from the infringement where that benefit can be determined. The BaSAG also threatens this administrative penalty for other violations (eg, information obligations). The company itself can also be held liable for violations of the BaSAG by their managing directors, with an administrative fine of up to 10 per cent of the total annual net turnover in the preceding business year.

15 Describe any resolution planning or similar exercises that banks are required to conduct.

Banks are obliged to produce recovery plans in which they explain what measures they would take if their financial situation were to deteriorate. Planning using the possible financial support of public funds is not allowed. The competent authorities review and assess these recovery plans. If they detect any deficiencies, the credit institution is required to change the recovery plan accordingly.

The resolution authorities (FMA) draw up resolution plans in which they describe how an institution can be resolved or restructured in an orderly way. Banks have to provide the resolution authorities with information for the production of resolution plans. If the resolution plans reveal potential obstacles to successful resolution, the institution concerned will be requested to take measures to remove them (eg, by changing its legal or operational structure, selling off certain assets, limiting certain activities).

The recovery plan and the resolution plan must be updated at least once a year, or immediately, if a material change to the credit institution's legal or organisational structure, its business activity or its financial position could have an impact on the recovery plan or the resolution plan.

Capital requirements

16 Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

Directive 2013/36/EU (CRD IV) and the CRR implement the Basel III guidelines and harmonise EU banking supervision.

As to capital requirements, the amendments of the BWG implementing the CRD IV and the CRR provide for a change in the structure and quality of own funds. Tier 1 capital was divided into common equity tier 1 capital (CET 1 capital) and additional tier 1 capital. In addition to CET 1 capital and additional tier 1 capital, eligible capital also includes supplementary capital (tier 2). Banks must satisfy the requirement of:

- at least 4.5 per cent CET 1 capital;
- 6 per cent tier 1 capital; and
- a total capital ratio of 8 per cent of own funds in relation to the total risk exposure amount.

Further, the CRD IV and CRR implemented various capital buffers, such as:

- a capital conservation buffer of 2.5 per cent of CET 1 capital;
- a countercyclical capital buffer, which is calculated for each bank individually and amounts to up to 2.5 per cent of CET 1 capital; or
- a systemic risk buffer of up to 2.5 per cent CET 1 capital.

Also, higher capital requirements for counterparty credit risk exposures arising from derivatives, repurchase transactions and specific securities financing activities were implemented.

On liquidity requirements, the CRD IV and CRR provides for a harmonised system with regard to quantitative liquidity standards. Regarding liquidity measures, the liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR) are applicable. The LCR is a short-term liquidity measure equal to the ratio of high-quality liquid assets to net cash outflows during a 30-day stress period. The NSFR is based on a long-term horizon, during which available stable funding must exceed required stable funding. Finally, a leverage ratio, calculated as the ratio between tier 1 capital and the sum of the exposure values of all assets and off-balance sheet items, was also implemented to improve the system stability.

17 How are the capital adequacy guidelines enforced?

The capital adequacy guidelines are enforced through the ongoing supervision by the Austrian regulatory authorities, in particular through the FMA's authority to enforce banking laws and regulations (see questions 10, 18 and 19). Additionally, credit institutions are obliged to submit certain monthly, quarterly, half-yearly and yearly reports to the Austrian regulatory authorities, especially stating qualitative and quantitative information on their own funds, capital adequacy and the risks they have incurred and their risk-management procedures. Such reports are analysed by the OeNB and the results are provided to the FMA.

18 What happens in the event that a bank becomes undercapitalised?

Credit institutions should have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons to ensure that credit institutions maintain adequate levels of liquidity buffers. If a credit institution does not comply with the capital and liquidity requirements or appears likely to violate these requirements, the FMA shall intervene.

The specific measures for early intervention by the FMA include:
- the implementation of one or more recovery measures contained in the recovery plan;
- specific improvements of the risk management;
- the convening of a general meeting, particularly to introduce capital measures, or inclusion of certain items on the general meeting's agenda or the proposal to adopt certain decisions; the FMA may also call the general meeting itself, if necessary;
- the preparation of a negotiation plan that provides for a voluntary restructuring of the credit institution's obligations towards its creditors; and
- an on-site inspection by the OeNB to assess the assets and liabilities of the institution.

In the event of there being a danger of a credit institution not being able to fulfil its obligations towards its creditors, the FMA can order temporary measures pursuant to article 70 paragraph 2 of the BWG by means of an administrative decision (full or partial prohibition of withdrawals of capital and earnings as well as distributions, the appointment of expert supervisors, prohibition of transactions that increase the risk for the creditors to fully or partially prohibit directors from managing the credit institution, full or partial prohibition of the continuation of business operations).

In the event of violations against banking supervision laws, the FMA shall issue an instruction for restoring legal compliance within an appropriate time frame pursuant to article 70 paragraph 4 of the BWG, in the case that a repeated or continued violation will completely or partially prohibit the directors from managing the credit institution, or if other measures are not able to ensure the credit institution's ability to function, to revoke the credit institution's licence.

If a violation of the terms of the BWG or the CRR leads to an inappropriate limitation of risks arising from banking transactions and banking operations of the credit institution and the group of credit institutions, then the FMA may prescribe, regardless of other measures pursuant to article 70 paragraphs 4 and 4a of the BWG, a higher minimum capital requirement for the credit institution or the group of credit institutions over and above the capital requirements or particular liquidity requirements.

19 What are the legal and regulatory processes in the event that a bank becomes insolvent?

Austria implemented the BRRD by adopting the BaSAG. The BaSAG aims to ensure an orderly market exit of banks without causing substantial negative repercussions for financial stability while protecting depositors and other customers. If prevention measures and early intervention prove ineffective, institutions can be resolved instead of undergoing normal insolvency proceedings. These specific resolution tools are available for the resolution authority concerning:
- sale of businesses;
- bridge institutions;
- asset separation; and
- bail-in.

Pursuant to section 49 of the BaSAG, a resolution is only possible under the following circumstances:
- the credit institution is failing or likely to fail;
- no private sector solution is planned;
- the resolution is in the public interest.

If these conditions are not met, the credit institution must be wound up under normal insolvency proceedings.

Either the credit institution that is over-indebted or insolvent itself, or the FMA may request receivership from the competent court if it appears likely that the credit institution's over-indebtedness or insolvency can be remedied. Receivership can only be granted for one year and has various specific consequences determined in section 83 et seq of the BWG. During the receivership, with regard to liabilities established prior to the arrangement of receivership and being subject to statutory deferment of payment, neither insolvency proceedings over the assets of the credit institution can be initiated nor can a court-ordered lien or right to satisfaction be obtained. The receivership ends by order of the court or opening of insolvency proceedings.

In general, only the FMA may file for the opening of insolvency proceedings. During receivership, only the receiver may file such a request. The substantive insolvency requirements are determined according to section 66 et seq of the Insolvency Act (IO). The court must consult the FMA before appointing or dismissing a receiver or a liquidator. The insolvency proceedings follow the IO, with the exception that recapitalisation proceedings cannot be initiated.

20 Have capital adequacy guidelines changed, or are they expected to change in the near future?

The most recent changes of capital adequacy guidelines relate to the CRD IV and CRR and its implementation in the BWG. CRD IV and CRR provide for the adoption of a large number of delegated and implementing acts in order to give full effect to the single banking rule book. These acts will specify the detail of how competent authorities and institutions should comply with the obligations laid down in CRD IV and CRR.

At the end of 2016, the European Commission published the 'CRR Review Package' with changes of CRD IV, CRR and BRRD. The changes concern:
- equity requirements (eg, a binding 3 per cent leverage ratio, binding detailed net stable funding ratio, requirement to have more risk-sensitive own funds for institutions that trade in securities and derivatives, following Basel's work on the 'fundamental review of the trading book', tier 2 add-ons, liquidity and capital waivers);
- recovery (eg, implementation of new standards on the total loss-absorbing capacity of global systemically important institutions, minimum requirement for own funds and eligible liabilities); and
- proportionality.

Currently, the proposals are being discussed within the European Council, the European Parliament and the European Commission.

Ownership restrictions and implications

21 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

There is no limit to the type of entities and individuals that may own a controlling interest in a credit institution or a financial institution. The FMA, however, may prohibit an acquisition of a qualifying holding in case specific criteria are not met (see question 26).

The BWG, in connection with the CRR, distinguishes between:
- participation means the ownership, direct or indirect, of 20 per cent or more of the voting rights or capital;
- qualifying holding means a direct or indirect holding, which represents 10 per cent or more of the capital or voting rights or entitling to exercise a significant influence;
- control means the relationship between a parent undertaking and a subsidiary or a similar relationship between any natural or legal person and undertaking; and
- close links means a situation in which two or more natural or legal persons are linked (eg, by participation of ownership or via a third party).

A qualifying holding is already sufficient to trigger notification requirements (see question 26).

22 Are there any restrictions on foreign ownership of banks?

Foreign ownership of an Austrian bank is neither prohibited nor restricted under Austrian law. Nevertheless, the FMA may prohibit the acquisition or increase of a qualifying holding after examination of the necessary criteria (see questions 26, 27 and 29).

23 What are the legal and regulatory implications for entities that control banks?

In case the influence exercised by the entity having a qualifying holding imposes a risk for the sound and prudent management of the credit institution, the FMA must take required measures, including:

- prohibition of profit distributions, appointment of a government commissioner, completely or partly prohibition of the continuation of business operations, etc;
- sanctions completely or partly prohibiting the directors to manage the credit institution; or
- submission of a motion with the competent court to suspend the voting rights controlled by entity in question during the risk prevails or until the shares are purchased by a third party (see question 26).

Depending on its legal form, an entity having a qualified holding in a credit institution may become subject to consolidated group supervision, including group financial statement requirements.

24 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

Any person controlling a credit institution shall, in particular:

- notify the FMA of any intention to increase, sell or reduce the holding in a way that it exceeds, reaches or falls below certain thresholds (see question 26);
- make available information and documents that the FMA needs to fulfil its duties; and
- not prevent effective and efficient supervision by the Austrian regulatory authorities.

Transactions between a credit institution and its shareholder or other entities controlled by the shareholder have to be at arm's length in order to avoid breaches of Austrian capital maintenance rules. Transactions between the credit institution and certain individuals or entities (eg, managing directors, members of the supervisory board and board members of controlling or controlled entities) require unanimous resolution by all managing directors and are subject to the consent of the supervisory board or any other supervisory body competent according to applicable law or the articles of association.

25 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

Under Austrian law, a credit institution may only be established in the legal form of a corporation, a cooperative society or a savings bank. In general, only cooperation members of a credit institution organised as cooperative society may be held liable for the liabilities of the institution in case of insolvency.

Changes in control

26 Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

The current intention to directly or indirectly hold a qualifying holding (ie, 10 per cent of the voting rights or capital) in a credit institution, or to increase such a qualifying holding in order to reach or exceed the thresholds of 20 per cent, 30 per cent or 50 per cent of the voting rights or capital, or in such a way that the credit institution becomes a subsidiary of that party, must be pre-notified to the FMA (see question 29). To ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the potential acquirer on the credit institution, the FMA shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition based on the following criteria:

- the reliability of the potential acquirer;
- the reliability, professional qualification and experience of any person who will direct the business of the credit institution as a result of the proposed acquisition;
- the financial soundness of the potential acquirer, in particular in relation to the type of business pursued and envisaged by the credit institution;
- whether the credit institution will be able to comply and continue to comply with regulatory requirements, in particular, whether the group it will become a part of has a structure that may jeopardise effective supervision; and
- whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of article 1 of Directive 2015/849/EU is being or has been committed or attempted, or that the potential acquisition could increase such risk.

Based on this appraisement, the FMA prepares a draft decision for the ECB to oppose or not to oppose the acquisition. The ECB decides on the basis of the appraisement and the FMA's draft decision. If the ECB does not prohibit the intended acquisition within 60 days after the FMA received the notification, the acquisition shall be deemed approved. If an application is to be rejected or additional conditions need to be imposed, it will become subject to a hearing procedure.

27 Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

In principle, there is no difference in the regulatory process for a foreign acquirer. If the FMA requests additional documents from a non-European Economic Area proposed acquirer or a proposed acquirer not subject to supervision under CRD IV, Directives 2013/36/EU, 2009/65/EC, 2009/138/EC or MiFID II, the 60-day period can be suspended for up to 30 days (see questions 26, 29 and 30).

28 What factors are considered by the relevant regulatory authorities in an acquisition of control of a bank?

The FMA will review and assess all information provided by the proposed acquirer in connection with the notification, focusing on the criteria set by law (see questions 26 and 29).

29 Describe the required filings for an acquisition of control of a bank.

Specific information to be filed is provided for in the Ownership Control Regulation of the FMA, including information about:

- the identity of the proposed acquirer, bylaws, management board, economic beneficiaries, etc;
- the reliability of the acquirer with regard to criminal or administrative offences, insolvency proceedings, etc;
- the participations with a group of companies as well as other possible ways to exercise influence;

Update and trends

Changes in supervision

A reform of the supervision of the financial market is planned in order to make the overall system more efficient and service oriented. In future, the supervision of the financial market by the authorities should be bundled in the FMA. To this end, the OeNB should transfer its current tasks regarding official review and analysis in the field of banking supervision to the FMA and retain the competence to monitor financial stability (macro-prudential analysis) as well as the competences in the field of statistics, supervisory reporting and supervision of the payment system. It is planned to establish a competence centre for financial market strategy and development within the OeNB. In addition, the FMA should transfer the competence for accounting control to the auditor supervisory authority (*Abschlussprüferaufsichtsbehörde*). Furthermore, the areas of regulation and supervision are to be more separated from each other. To this end, regulatory matters should be increasingly carried out by the Federal Ministry of Finance. Memoranda of understanding are to be concluded by the end of 2019:

- between the Federal Ministry of Finance and the OeNB to coordinate all financial market agendas; and
- between the FMA and the OeNB concerning cooperation, the exchange of information and the provision of resources to fulfil the respective competencies.

- the relevant business relationships, family ties or other relevant relationships, as well as acquisition interests;
- the financial situation and credit standing of the acquirer;
- the funding of the intended acquisition, including disclosure of all relevant agreements; and
- the business plan, including a description of strategic objectives and plans, if the acquirer gains control.

If the bank is an Austrian stock exchange listed entity, an acquirer must also comply with the provisions of the BörseG 2018 and the Takeover Act (eg, filing and notification obligations, mandatory takeover bid, etc).

Similar requirements must be fulfilled if the proposed acquirer intends to acquire a qualified holding in an insurance company pursuant, an investment firm, an investment service provider or a payment institution.

30 What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

In order to acquire a qualifying holding, the FMA has to confirm the receipt of the notification within two working days. Within five working days after the acknowledgement of the receipt, the FMA notifies the ECB of the intended acquisition. The FMA verifies the completeness of the application and prepares its draft decision for the ECB at least 15 working days before the expiry of the assessment period of 60 days (see question 26). The authorities have 60 days to examine the intended acquisition and to prohibit it. With regard to the FMA requesting additional documents, the 60-day period is extended for up to 20 days (in some cases up to 30 days). If the ECB does not prohibit the acquisition within 60 days (or 80 or 90 days), the acquisition shall be deemed approved.

WEBER & CO.

RECHTSANWÄLTE

Christoph Moser **c.moser@weber.co.at**
Angelika Fischer **a.fischer@weber.co.at**

Rathausplatz 4 Tel: +43 1 427 2000
1010 Vienna Fax: +43 1 427 2010
Austria www.weber.co.at

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