

TAKEOVER ACT

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98/2001	2 nd Euro-Related Amendment to Civil Legislation (<i>2. Euro-Justiz-Begleitgesetz – 2. Euro-JuBeG</i>)
92/2003	Act Amending Company Law and Insolvency Law 2003 – (<i>Gesellschafts- und Insolvenzrechtsänderungsgesetz GIRÄG</i>) 2003
75/2006	Act Amending Takeover Law 2006 – (<i>Übernahmerechts-Änderungsgesetz ÜbRÄG</i>) 2006

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):** 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 equities;
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:** Equities are shares listed on a stock exchange and other transferable equities quoted 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 equities if they were issued by the offeree company or by an associated enterprise within the meaning of § 228 para. 3 of the Austrian Commercial Code;
5. **Trading day:** This means a day on which the trading system of Wiener Börse in its function as a securities exchange is open for trading;
6. **Parties acting in concert:** natural or legal persons who cooperate with the offeror on the basis of an agreement aimed at acquiring or exercising control over the offeree company, especially by concerting votes, or who cooperate with the offeree company to frustrate the successful outcome of a takeover bid. If a party holds a direct or indirect controlling interest (§ 22 para. 2 and 3) in one or more other parties, it is assumed that all of these parties are acting in a concerted manner; 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 Works Constitution 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 vis-à-vis the employees;

8. **Regulated market:** A market contained in the list of regulated markets pursuant to Art. 16 of Directive 93/22/EEA.

Scope

§ 2. Subject to Part Four, the provisions of this federal act shall apply to all public bids to acquire equities issued by a public limited company having its registered office in Austria and admitted to 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 are in the same position are to be given equal treatment, unless otherwise provided for under this federal act. The obligation of equal treatment shall apply mainly to holders of shares that belong to the same category.

1a The holders of equities must be protected when control is acquired over a company.

2. The addressees of a bid are to have sufficient time and adequate information to enable them to reach a properly informed decision on the bid.

3. The management and supervisory board of the offeree company are to act in the interests of all shareholders or other holders of equities and also in the interests of employees and creditors and in the public interest.

4. False markets must not be created in the equities of the offeree company, of the offeror company or of any other company affected by the bid by artificially influencing the prices of equities or by distorting the normal functioning of the markets.

5. The takeover 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 publication of the bid and in its other announcements, the offeror shall observe the following rules:

1. The offeror shall announce the intention to make a bid only after ensuring that the offeror can fulfill any cash consideration in full, if such is offered, and after taking all reasonable measures, secure the execution of another type of consideration.

2. Insider dealing and the creation of false markets (§ 3 fig. 4) are to be avoided.

3. Information and statements shall be prepared carefully, accurately and completely; incorrect or misleading information and statements shall be 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 of their obligations of confidentiality and of the prohibition of abuse of inside information (§ 48b, Stock Exchange Act); establish internal guidelines on the dissemination of information and supervise

the compliance with these rules; and take the appropriate organisational measures to prevent the dissemination and abuse of inside information.

(2) When the offeror is considering making or intending 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 disclose the matter and inform the administrative organs 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 concluding that these originate in the preparation of the bid, the plans of the offeror to make such a bid or in the purchase of shares by the offeror.

(3) In any case, the offeror shall disclose immediately 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 which trigger its obligation to make a bid.

(4) The disclosures according to §§ 2 and 3 shall be made in a manner so as to prevent as far as possible insider trading and the creation of false markets. Upon application 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 under para. 3 for a short period if doing so helps to avoid damaging the legitimate interests of the offeror or parties acting in concert (fig. 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 disclosed 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 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 shareholders who otherwise acquire knowledge of confidential facts from the offeror or from the offeree company.

The Offer Documents

§ 7. The offeror shall draw up the offer documents which shall contain at least the following information:

1. The terms of the bid;
2. Particulars of the offeror including, if the offeror is a company, its type, name and registered office; in addition, particulars of direct or indirect holdings in the offeror company as defined in §§ 91 et seq. of the Stock Exchange Act, 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 method of valuation used for determining said consideration and, in the cases mentioned in § 26, the base 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 undertakes to acquire and a description of the rules of allocation as specified in § 20;
6. The offeror's shares in the offeree company and those already held by the parties acting in concert or the shares they are entitled to or 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 in so far as it is affected by the bid, the offeror company and with regard to the safeguarding of the jobs of their employees and management, including any material change to the conditions of employment, in particular, the offeror's strategic plans for the two companies and the likely 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 equities, the particulars thereof as specified in § 7 of the Capital Market Act and §§ 74 et seq. of the Stock Exchange Act;
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 types, names and registered offices and relationships with the offeror and, where possible, with the offeree company; information on the legal entities controlled by the offeror (§ 1 fig. 6 second sentence) may be omitted if the controlling entity is not of significance for the decision of the recipients of the bid;
13. Information on the compensation offered for rights which might be removed as a result of the breakthrough rule 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 which will govern contracts concluded between the offeror and the holders of the offeree company's securities as a result of the bid and the competent courts.

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 does not depend entirely on the offeror's discretion.

Examination of the Bid, Commissioning of Experts by the Offeror

§ 9. (1) The offeror shall appoint a suitably qualified, independent expert to provide advice throughout the 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. It shall draw up a written report and summarize the results of its examination in a concluding finding which shall include a declaration that the offeror disposes of the funds to fulfil the consideration in full (§ 4 fig. 1).

(2) The following shall constitute suitably qualified experts:

(a) Sworn 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 that the insurance premium is paid before submission of the audit report; 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 fig. 3 of the Banking Act having own funds of no less than EUR 18.2 million and financial institutions within the meaning of § 1 para. 2 fig. 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 Member State of origin (§ 2 fig. 6 Banking Act), they are authorized to provide comparable services as detailed in § 1 para. 1 fig. 11 of the Banking Act and dispose of own funds or equity capital of no less than EUR 18.2 million.

Notification of the Bid

§ 10. (1) The offeror shall notify the Takeover Commission of the bid together with 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 fig. 1), the offeror shall notify the bid to the Takeover Commission within 10 trading days; the Takeover Commission may, upon application by 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 having 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 public.

(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 prohibit the publication of the offer documents and the execution of the bid.

Publication and Information of the Offeree Company

§ 11. (1) The offeror shall publish the offer documents and the expert's findings (§ 9 par.1) no earlier than the twelfth and not later than the fifteenth trading day after receipt by the Takeover Commission, unless the Takeover Commission has prohibited the publication of the bid. In the case of well-founded cases, the Takeover Commission may order the postponement of the publication, in particular, with a view to carrying out a more detailed examination of the offer documents; it may also shorten the period until publication by agreement with the offeror.

(1a) Publication shall be 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 bodies obligated to provide the payment (§ 7 fig. 4). If the documents are not published in full in the Official Gazette of *Wiener Zeitung*, the Official Gazette of *Wiener Zeitung* must publish where the documents can be obtained or are published. If the offer documents have been published in one or more newspapers with nationwide circulation, 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 in a manner that makes them easy to find.

(2) The offeror shall, before publication, 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 transmit 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 of the possibility of making a statement at the time it sends it the first notification and of the planned time of the announcement pursuant to § 14 para. 3 at the time it hands over the offer documents.

Prohibition of Attempt to Prevent Takeovers and Obligation of Objectiveness

§ 12. (1) The management board and supervisory board of the offeree company may not take measures likely to deprive their shareholders of the opportunity to make a free and informed decision on the bid; § 4 fig. 2, 3 and 4 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 and until the publication of the results, and if the takeover goes ahead, until the bid has been completed, the management board and supervisory board of the offeree company shall require the approval of the general shareholders' meeting for the concrete measures that might prevent the bid with the exception of the search for other competing bids. This applies especially to the issuance of equities by which the offeror can be prevented from acquiring a controlling interest in the offeree company.

(3) Decisions taken by the management board and if applicable by the supervisory board of the offeree company before the point in time stated in para. 2 and which had not even been implemented in part 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 had already been committed at the time mentioned in para. 2 shall not require any approval.

Commissioning an Expert by the Offeree Company

§ 13. The offeree company shall appoint a suitably qualified (§ 9 par.), 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 consent of the supervisory board.

Response of the Offeree Company, Audit and Publication

§ 14. (1) The management board and the supervisory board of the offeree company shall publish a response stating 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 probable 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 fate of the 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 or rejecting the bid, highlighting the most important features.

(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 publish its response together with any response of the supervisory board and works council as well as the and the report of the expert within ten exchange trading days of publication of the offer documents, but at the latest five exchange trading days prior to the expiry of the acceptance period taking into consideration § 11 para. 1a and § 18 of the Stock Corporation Act. The response shall be notified to the Takeover Commission and simultaneously sent to the works council before being disclosed to the public.

Improvements and other Changes to the Bid

§ 15. (1) During the bid period, the offeror may improve the consideration offered or otherwise change the bid 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 a competing bid exists or if the Takeover Commission has authorized an improvement on the bid.

(2) §§ 9, 10 and 11 shall apply mutatis mutandis; the offeror shall publish the improved or otherwise revised bid not earlier than four and not later than seven trading days after its

notification to the Takeover Commission. After publication of the improvement, at least eight exchange 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 refuse.

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 (§ 1 fig.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 significant reasons; in all cases, such declarations must be disclosed immediately (§ 11 para. 1a).

(2) If the offeror or parties acting in concert (§ 1 fig.6) make a declaration of improvement in violation of para. 1, this shall be deemed to be an improvement to the bid in favour of all addressees (§ 15).

(3) 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 (§ 1 fig.6) shall be prohibited from selling any equities of the offeree company.

(4) If the offeror or a party acting in concert with the offeror (§ 1 fig. 6) is a credit institution, then the credit institution shall be exempt from the ban on carrying out transactions in equities of the offeree company pursuant to para. 1 through 3 if the following conditions are met:

1. The object of the transactions must be the following holdings or banking deals:

a) Positions in the trading book (§ 2 fig. 35 Banking Act) including any obligations as market makers or specialists on an Austrian stock market or a similar function on a foreign equities exchange;

b) Asset management for individual customers and on collective accounts for groups of customers (§ 1 para. 1 fig. 19 b Austrian Banking Act)

c) Investment fund and equity fund transactions (§ 1 para. 1 fig. 13 and 14 Austrian Banking Act),

d) Securities dealings on a commission basis and custodian transactions (§ 1 para. 1 fig. 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 fig. Z 1 lit. b and d executed on the instructions and initiative of the customer.

3. There are no indications that the transaction would pose a risk to the assets of the equity holders unless it is a transaction described in fig. Z 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 all equities bought and sold broken down by individual type of equity and by type of transaction pursuant to fig. 1, the weighted average price of the buy and sell trades 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 instated state-of-the-art and effective compliance rules, especially a strict separation of banking transactions pursuant to fig. 1 from the equity management operations and investment advising activities of the bank; the correctness of this declaration shall be confirmed by the Compliance Officer.

5. An expert that meets the criteria of § 9 para. 2 shall confirm to the Takeover Commission on a weekly basis that no breaches of the conditions set out in fig. 1 through 4 have been committed based on random audits. The expert shall examine, among other things, whether the persons charged with the transactions in question at the respective credit institutions are aware of the requirements of fig. 1 through 4 and whether the clearing and

recording mechanisms are appropriate for meeting compliance with these rules and ensuring the correctness of the collective reports.

- (5) From the date of disclosure of the intention to make a bid (§ 5 para. 2 and 3; § 6 para. 2) or of a notification (§ 10 para. 1), all persons having a specific interest in the outcome of the bid shall immediately notify to the Takeover Commission any acquisitions and sales of equities in the offeree company and 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 company as consideration. Persons having a specific interest shall include the offeror, any parties acting in concert (§ 1 fig. 6), the offeree company and associated enterprises within the meaning of § 228 para. 3 of the Commercial 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 undertakings.
- (6) The provisions of para. 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 fig. 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, then the offeror shall be under the obligation vis-à-vis the shareholders who have accepted the bid to pay the monetary difference; 2 und 3 shall apply accordingly. The exercise of a statutory subscription right based on 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 Act on Exclusion of Minority Shareholders (*Gesellschafter-Ausschlussgesetz, GesAusG*) 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-rated amount of the profit gained shall be paid accordingly.
- (8) If the offeror or a party acting in concert with the offeror (§ 1 fig. 6) is a credit institution, then transactions pursuant to para. 7 shall not entail the obligation to pay the difference if the conditions stated in para. 4 fig. 1 through 5 are complied with. The weekly notification and reporting obligations pursuant to para. 4 fig. 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 until at the latest four exchange 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 on, 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. In its statement of opinion, the Takeover Commission may make a recommendation or pass an official ruling instructing the offeror or the offeree company to disclose to the public any additional statements or corrections to statements according 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 publication.

Period for Accepting the Bid; Publication of the Outcome of the Bid

§ 19. (1) The period for accepting the bid shall be not less than two weeks and no longer than ten weeks after the publication of the bid documents.

(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 exchange-trading day after receipt of the notification by the Takeover Commission and at the latest three exchange trading days before the end of the original acceptance period; §§ 9 through 11 shall apply accordingly. 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 bar 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 already made until the end of the acceptance period for the competing bid unless the original offeror has declared that it will withdraw stating as reason reservations in 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 publish (§ 11 1a) the result of the bid immediately after the end of the period for accepting the bid; the offeror shall also indicate the legal consequences according to para. 3.

(3) The acceptance period is prolonged for those holders of equities who have not hitherto accepted the bid by three months as of the day of the announcement in the following cases:

1. A mandatory bid pursuant to Part Three of this federal act has been made;
2. The offeror owns more than 90 percent of the share capital with voting rights after a voluntary bid pursuant to Part Two of this federal act, or
3. A voluntary bid pursuant to Part Two or Three of this federal act is contingent on the attainment of a certain minimum number of equities and this condition is has been met.

Rules on Allocation 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 fig. 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. The offeror may in the offer documents 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 (§ 1 fig. 6) shall be excluded from making any further bids for the equities of the offeree company for a period of one year after the publication of the result of the bid. They shall also be banned 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 as to trigger an obligation to make a bid (§ 5 para. 2);

2. The offeror has disclosed the decision of its management board and supervisory board to make a bid (§ 5 para. 3 fig. 1);

3. The offeror has publicly stated that making a bid cannot be excluded.

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

(3) Likewise, 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 nor is it contemplating acting in such a manner so as to trigger an obligation to make a bid.

(4) The Takeover Commission may, upon application by the offeror and after consulting with the offeree company, shorten the exclusion period if this not detrimental to the interests of the company and of the holders of the equities of the offeree company.

Part Three

Mandatory Bids and Voluntary Bids to Acquire a Controlling Interest

Obligation to Make a Bid

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

(2) A direct controlling interest is a direct interest held in an offeree company that gives the holder more than 30 percent of the shares with 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 it also owns shares 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 any person acquiring a controlling interest who is not entitled to the majority of the permanent voting shares acquire additional shares within a period of twelve months that give him or her at least two percent additionally of the voting rights of the company, must immediately report this to the Takeover Commission and announce to the offeree company a bid for all of the equities of the company in accordance with the provisions of this federal act.

(5) Acquiring a controlling interest is permissible only – except for § 22b – if the party making the bid has ensured in advance that he or she will be able to fulfil the cash consideration

and if all appropriate measures have been taken to guarantee fulfillment of any other type of consideration.

(6) When calculating the percentages stipulated in this Part, voting rights that are suspended according to the principle of acquisition of own shares shall not be taken into account.

Creation, Dissolution and Changes to 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 acquire 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) Any person having acquired a controlling interest who has not caused this to occur by taking any action at a time close to the bid, in particular, by acquiring shares, is not under the obligation to make a bid if at the time of acquiring the shares he or she would not have had to expect the acquisition of a controlling interest. The acquisition of a controlling interest must be notified to the Takeover Commission immediately, but at the latest within 20 exchange 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 enlargement of the investment 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 restriction on the voting rights no longer applies.

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

Adding Shares and Enlarging the Offeror's Obligations

§ 23. (1) In the case of parties acting in concert (§ 1 fig. 6), the mutually held shares in the other's company shall be added when applying §§ 22 through 22b.

(2) A share shall be credited to a legal entity when applying §§ 22 through 22b unilaterally if the legal entity or any party acting in concert with it (§ 1 fig.6) can exercise influence over voting rights of third parties directly or indirectly. The adding of shares shall apply to any interests held as follows:

1. Interests held by a third party for the account of the legal entity;

2. Interests over which the legal entity can exercise voting rights without being the owner;

3. Interests the legal entity has assigned to a third party as collateral if the legal entity can exercise the voting rights without requiring any explicit instructions by the transferee or if the legal entity can influence the exercise of the voting rights by the transferee;

4. Interests held by the legal entity, which has been assigned *usus fructus*, if the legal entity can exercise the voting rights without any explicit instructions of the shareholder or can influence the exercise of voting rights of the shareholder.

5. Interests which the legal entity can acquire by unilateral declaration if the legal entity can exercise the voting rights without any explicit instructions of the shareholder or can influence the exercise of voting rights of the shareholder.

In the cases pursuant to fig 1 through 5, the legal entity shall be treated equal to the parties acting in concert with it.

(3) The obligation to make a bid as well as all other obligations of an offeror shall apply to all parties acting in concert with it (§ 1 fig. 6). This applies to the parties of an agreement on the exercise of voting rights (§ 1 fig. 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 Obligation of Making a Mandatory Bid

§ 24. (1) The mandatory bid obligation does not apply if the share in the offeree company in the meaning of §§ 22 through 22b does not give a controlling influence over it or if the legal entity does not change that could exercise this influence when taking the principle of substance over form into account. In such cases, § 22b para. 2 and 3 do not apply. The facts of the matter must be notified to the Takeover Commission immediately, but at the latest within 20 exchange trading days as of the acquisition of the shares.

(2) The share in the offeree company does not transfer any controlling influence in the following cases:

1. Another shareholder together with the parties acting in concert (§ 1 fig. 6) hold at least an equal amount of shares with voting rights in the offeree company as the offeror;

2. The shares do not transfer 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 by-laws (§ 114 para. 1 second sentence Stock Corporation Act)

(3) The legal entity that ultimately has the right to exercise the controlling interest under the aspect of substance over form does not change, especially when

1. Shares are assigned to a legal entity in which the transferor has a direct or indirect controlling interest; if the shares were held up to now by a group of parties 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 other group of legal entities;

2. Shares are assigned to a legal entity which holds a direct or indirect controlling interest in the transferor; if the shares are transferred to several legal entities, this shall apply accordingly if the decisions of 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 parties having had the controlling interest up to then;

4. Entering into or dissolving an agreement on the exercise of voting rights 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 only the obligation to report the facts of a situation to the Takeover Commission in the following cases:

1. Upon the acquisition of an indirect controlling interest (§ 22 para. 3), the book value of the direct interest in the offeree company amounts to less than 25% of the book value of the net assets of the legal entity holding the direct interest;

2. Shares are acquired for the mere purpose of reorganization of a company or securing receivables;
3. The number of voting rights required to give rise to a controlling interest is exceeded only temporarily and if the situation is reversed immediately;
4. Shares given as gifts among relatives (§ 32 para. 1 Bankruptcy Act), inherited or separation of assets within the scope of divorce proceedings, the setting aside 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 Bankruptcy Act); the same applies to the transfer to a private foundation over the management of which the relatives can exercise a controlling interest;
6. The party involved excludes the other shareholders from the company within five months of the acquisition of the controlling interest according to the Act on Exclusion of Minority Shareholders if the compensation payment is not lower than the offer price to be put forth according to § 26 and also corresponds to the highest price that has been paid or agreed on the shareholders for the respective shares up to the time of entry into the Companies Register. The notification must be sent without delay, but at the latest within 20 exchange trading days as of acquisition of the controlling interest.

(2) The Takeover Commission may require a mandatory bid to be made to the shareholders of the offeree company in the cases mentioned in para. 1 fig.1 and 2 within one month as of the announcement 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 ordering a mandatory bid, it can 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 vis-à-vis the shareholders' meeting or the Takeover Commission.

(3) In the cases mentioned in para. 1 fig. 3 through 6, the Takeover Commission may impose those conditions that are necessary to avoid any damage to the financial interests of shareholders of the offeree company in the actual individual cases. The measures may include 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 dominant influence on the offeree company has been reliably and permanently established, whether the acquisition procedure was intended as a preliminary to securing a dominant influence on the offeree company, whether the acquirer, or a party linked to it through group membership, holds a direct or indirect interest in an enterprise in the same or a related business, whether a uniform management has been established or is planned, whether a premium over the average exchange price was paid (§ 26 par.1) and whether, in the case described in para. 1 fig. 1, the interest in the offeree company constitutes a significant part of the operating assets of the directly controlling legal entity.

Voluntary Bids to Acquire Controlling Interest

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

(2) Bids by which the offeror could acquire a controlling interest are subject to the conditions imposed by law 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 parties acting in concert (§ 1 fig. 6) constantly buy shares

with voting rights parallel to the bid, then these shares must be added to the acceptance declarations.

Content of the Bid

§ 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 be for acquisition by cash purchase of a specific amount of money fixed at the latest ten exchange trading days after the unconditional and binding acceptance of the bid. The offeror may additionally also offer an exchange for other equities. The holders of equities who have taken advantage of the extended period pursuant to § 19 para. 3 shall have the right to demand cash payment or the exchange for other shares at the latest ten exchange trading days after expiry of the extended period.

(3) A mandatory bid shall not be permitted to be conditional unless the condition is imposed by law.

The Price of the Bid

§ 26. (1) The price of a mandatory bid or of a voluntary bid to acquire a controlling interest shall not be less than the highest consideration in money paid or agreed on for those shares of the offeree company or any parties acting in concert with it (§ 1 fig. 6) within the preceding 12 months before the announcement of the bid. This shall also apply to the consideration for shares which the offeror or any party acting in concert with it is entitled or obliged to acquire in the future. Moreover, the price shall correspond at least to the average exchange price weighted by the respective trading volumes of the respective equities in the past 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 shares and the offeror or any parties acting in concert with it have acquired ordinary shares within the last 12 months, the price offered for these equities must be commensurate with the consideration given for the ordinary shares; what is commensurate shall be determined with particular regard to the specific vested rights involved. This shall also apply to the consideration for ordinary shares which the offeror or any party acting in concert is entitled or obliged to acquire in future.

(3) If the consideration is provided in a form other than money, or only partly in money, 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 bear a financial relation to the acquisition of the controlling holding. Furthermore, the price of the bid shall be determined appropriately in compliance with the principle of equivalent treatment (§ 3 fig. 1) and having regard to paras. 1 and 2 if

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) where this legal entity holds assets in addition to the stake 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 relevant to the determination of the appropriateness of the price to the expert (§ 9) immediately on his or her appointment and to the Takeover Commission at the same time as the notification under § 10 para. 1 is made.

(4a) Should the offeror or a party acting in concert with the offeror be a credit institution, then the pricing shall not be based on any consideration granted or agreed on for equities of the

offeree company if the conditions pursuant to § 16 para. 4 fig. 1 through 3 are given. The expert pursuant to § 9 shall state in his or her expert opinion regarding the audit of the bidding documents the extent to which, if at all, transactions in the meaning of § 16 para. 4 were executed and shall confirm that the conditions pursuant to § 16 para. 4 fig. 1 through 3 were met.

(5) Holders of equities within the meaning of § 33 para. 2 fig. 4 shall be entitled to apply for verification of the lawfulness of the price offered within a period of three months after the publication of the outcome of a takeover bid.

Exceeding the Blocking Minority

§ 26a. (1) Any person having acquired a direct or indirect share in an offeree company that is greater than 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 exchange trading days as of acquisition of the shares. § 22 para. 3, § 22a and § 23 shall apply accordingly when determining whether such an interest exists.

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

(3) The legal consequences of para. 2 shall not apply if another shareholder together with the parties acting in concert (§ 1 fig. 6) holds at least as many voting rights in the offeree company as the concerned equity holder, if the exercise of the voting rights is restricted under provisions limiting voting rights in the by-laws (§ 114 para. 1 second sentence Stock Corporation Act) to a maximum of 26 percent or if the legal entity who ultimately may exercise the blocking minority does not change (§ 24 par.3).

(4) The Takeover Commission has the right to suspend voting rights fully or in part upon application by the concerned equity holder and instead impose conditions and terms (§ 25 para. 2 second sentence) if these guarantee equivalent protection to the other holders of equities.

Declaratory Proceedings

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

(2) If the Takeover Commission ascertains that a mandatory is required, the offeror must either make a mandatory bid in deviation from § 22 para. 1 within 20 exchange trading days as of receipt of the official declaration on the obligation to make a mandatory bid or proceed according to para. 3. The time period for taking into account shares acquired previously pursuant to § 26 is prolonged by the duration of the proceedings.

The offeror has the right to reduce its holdings within 20 exchange trading days to a maximum of 30 percent of the shares with voting rights instead of announcing a mandatory bid or it may reverse the acquisition of a controlling interest in any other way; § 26a shall apply accordingly. 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 situation and

2. the offeror and any parties acting in concert with it do not exercise their voting rights during the period of the controlling interest.

Divergent Provisions in the By-laws

§ 27. (1) In its articles of association and memorandum, 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 (Breaching Takeover Barriers) applies to it in its role as target 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 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 memorandum and the articles of association this capital majority may be replaced by a different majority.
- (3) Resolutions to change the provisions of the memorandum and the by-laws under para. 1 fig. 1 shall additionally require the consent of all holders of equities if they increase the threshold pursuant to para. 1 fig. 1.

Breaching Takeover Barriers

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

(2) The offeree company shall notify any amendment to the articles of association or memorandum to the Takeover Commission and the supervisory authorities 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 or memorandum. The Takeover Commission shall regularly publish in an adequate manner a list, which shall be kept up to date, of the provisions applicable to the different companies.

(3) The restrictions on the transferability of shares contained in the articles of association and memorandum of the offeree company shall not be effective if the shares are to be transferred to the bidder or a party acting in concert with it (§ 1 fig. 6) between the time of publication of the bidding documents (§ 11 para. 1) and the point in time foreseen for the settlement of the bid. The same shall apply to restrictions to 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) The restrictions on voting rights stipulated in the articles of association and memorandum of the offeree company do not apply if decisions are taken at the shareholders general meeting during the acceptance period that could prevent the bid (§ 12). The same shall apply to restrictions to the voting rights contained 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 bidder holds at least 75 percent of the share capital with voting rights after a bid, such bidder shall have the right to call a general shareholders' meeting in the bulletins of the offeree company. It shall be permitted to hold the general shareholders' meeting at the earliest two weeks after the announcement; the period for depositing the bid for inspection pursuant to § 107 para. 2 Stock Corporation Act shall be calculated to give at least five exchange trading days for depositing the bid for inspection. The voting right restrictions 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 bidding documents for the settlement of the bid if the articles of association

and memorandum are to be changed or if a member of the supervisory board is to be appointed or such membership cancelled. Such general shareholders' meetings may dismiss members from the supervisory board appointed by individual shareholders or appoint new members to the supervisory board without individual shareholders having the right to appoint members; such rights to appoint members can be abolished by changes to the articles of association and memorandum 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 meeting is called and the time it ends if the shares are to be transferred to the bidder or to a party acting in concert with it (§ 1 fig.6).

(6) Should the bidder acquire shares by which the contractually agreed-on restrictions to transferability are breached, the contractual partner of the selling shareholder shall have the right to take recourse to a regular court of law against the bidder to claim adequate compensation in cash. The obligation to pay compensation applies mutatis mutandis to all cases in which the contractually agreed-on voting right restrictions are breached. Stipulated penalties for breaches of transferability restrictions and voting right restrictions 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 shares with voting rights issued by a stock corporation with its registered office in Austria if 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 bid would be subject to Part Three of this federal act if the shares are admitted to trading on a regulated market in Austria.

(2) Apart from being governed by Part 1 and Part 5 of this federal act, such bids shall be subject to the following provisions: provisions on the notification of employees of the offeree company (§ 11 para. 3 and § 14 para. 3, insofar as these norms refer to the notification of employees of the offeree company), provisions on the prohibition to block and the obligation to maintain objectivity (§ 12), provisions on the obligation to make a bid (§§ 22 through 23), provisions on the exceptions from the obligation to make a bid (§ 24), provisions on the notification obligations in the case of controlling interests (§ 25), provisions relating to blocking minority thresholds (§ 26a), provisions on declaration proceedings (§ 26b), provisions on changes to the articles of association and memorandum (§ 27 with the exception of para. 1 fig. 3) as well as provisions on breaches to restrictions (§ 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 offerings to buy shares 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 if the following conditions are met:

1. The equities 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 equities 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 § 82 para. 11 Stock Exchange Act that Austria is to be responsible for the supervision of public offerings if the equities 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 bid would be subject to Part Three of this federal act if the stock corporation were to be domiciled in Austria.

(2) In addition to Part One and Five of this federal act, such bids shall be subject to the provisions relating to the contents of the bid and the bidding procedure; specifically, §§ 4 through 11, §§ 13 through 21 (with the exception of § 11 para. 3 and § 14 para. 3, if these norms relate to the obligation to inform employees of the offeree company), and §§ 25a through 26.

(3) If the equities of a stock corporation with its registered office in another member state of the European Community or in a member state of the EEA are admitted to trading on a regulated market in Austria, but para. 2 does not apply, then the Takeover Commission can ban the publication of the bidding documents only if the publication is not permissible in the country of the competent supervisory body. The Takeover Commission may demand inclusion of additional information in the bidding documents, if this information is specific to the domestic equities market 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; furthermore, the Takeover Commission may demand the translation of the bidding documents into German or into English.

International Collaboration among 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 competent bodies pursuant to Directives 93/22/EEA, 2001/34/EC, 2003/6/EC and 2003/71/EC and shall provide such bodies with any information required for the application of this federal act or under any other provisions passed as a consequence of Directive 2004/25/EG, in particular, in those cases mentioned in § 27b and § 27c. The collaboration shall comprise the serving of documents prepared by the competent bodies as well as any other appropriate support in another form.

Part Five Procedures and Penalties

The Takeover Commission

§ 28. (1) A Takeover Commission shall be set up at the exchange operating company that manages and operates the exchange, Wiener Börse AG.

- (2) The membership of the Takeover Commission shall be as follows:
1. One chairperson and two vice chairpersons;
 2. Three members appointed from the judiciary;

3. Three members appointed on the proposal of the Federal Economic Chamber (*Wirtschaftskammer Österreich*);
4. Three members appointed on the proposal of the Federal Chamber of Labour (*Österreichische Bundesarbeitskammer*).

Members shall have the necessary knowledge of capital and equities markets, company law and the valuation of businesses. Bodies entitled to propose members shall submit their proposals to the Federal Minister for Justice. The proposal for each member shall contain the names of at least three persons. The right to make proposals shall be extinguished through failure to exercise it within an appropriate timeframe fixed by the Federal Minister for Justice. The bodies entitled to make proposals shall establish that the persons they propose meet the requirements for, and are prepared to accept appointment to, the functions 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 in the performance of said office. Unless otherwise provided for by this federal act, the Takeover Commission shall rule in panels of four members, each of which shall have one member from the groups listed in indents 1, 2, 3 and 4 of para. 2. The membership of the panels and the allocation of business shall be regulated by the internal rules of procedure to be adopted by the Takeover Commission; in adopting the internal rules of procedure regard shall be had for the need to adopt decisions quickly. Power to determine procedural matters may be reserved to the chairperson of each panel. The panels shall adopt a decision by simple majority and in the case of a tie, the chairperson of the panel shall have the casting vote.

(4) The Federal Minister for Justice in conjunction 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 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 membership in the Takeover Commission:

1. Members of the federal or regional governments and secretaries of state;
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 be terminated by:

1. Death;
2. Relinquishment of office;
3. Attainment of the end of the period of office;
4. Inability to discharge the duties properly;
5. Gross dereliction of duty or other behaviour incompatible with the honour of the office;
6. Failure to respond to three successive convocations to meetings without presentation of an appropriate excuse.

In the cases mentioned in indents 4, 5 and 6, membership shall be terminated after the Takeover Commission adopts a decision concerning the member who shall be granted a hearing.

(7) The adoption of the internal rules of procedure (par 3), termination of membership (para. 6 fig. 4, 5 and 6) and the opinion on the schedule of fees (§ 31 par.3) shall be taken by simple majority of the full 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 fully 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 rules of internal procedure of the Takeover Commission shall be adopted after consulting the Federal Minister for Justice, the Federal Minister for Financial Affairs and the exchange operating company, Wiener Börse AG.

(9) The panel responsible for the legal dispute 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 invite such member's substitute in accordance with the internal rules of procedure.

(10) Decisions on official notices according to § 57 General Administrative Procedure Act may be passed by circular 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 tasks of the federal government, the provinces and the municipalities shall be under the obligation to effectively support the work of the Takeover Commission within the scope of their statutory obligations to provide assistance and give 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 shall supervise the application of this federal act and issue all official notices containing rulings under this federal act. It may at any time initiate proceedings of its own motion. It shall also have the power to draw up opinions, provide advice and offer its good offices in 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 been made, the court shall suspend proceedings and obtain a declaratory decision on the preliminary question from the Takeover Commission. The parties to the procedure in the declaratory decision shall be the parties in the civil procedure, namely, the offeror and the offeree company. The decision on the preliminary question shall be binding on the court.

Procedure

§ 30. (1) The decisions of the Takeover Commission shall be adopted as quickly as possible and at the latest within one month, rulings under § 33 within reasonable time; this does not apply to rulings under § 35. Decisions of the Takeover Commission shall not be set aside or amended by administrative action.

(2) The procedure before the Takeover Commission shall be conducted in accordance with the General Administrative Procedure Act of which the Second Division of the Fourth Part (Special provisions applicable to procedure before independent administrative tribunals) shall apply *mutatis mutandis*. Criminal proceedings under § 35 shall be regulated by the Administrative Penal Act.

(3) The Takeover Commission may dispense with the oral procedure if there are reasonable grounds to assume that on the basis of the procedure no other result could be obtained, in particular, if the facts and the legal issue are clear and the need for a decision to be reached fast, manifestly precludes the oral procedure. Nevertheless, the oral procedure shall be followed in administrative penal proceedings (§ 35) if the parties have not waived their right to the oral procedure and the ruling relates to the following matters:

1. Determination of the unlawfulness of a bid or offer documents, the prohibition of the publication of the offer documents or the implementation of the bid (§ 10 para. 3);
 2. The obligation to make a bid or notification;
 3. Verification of the appropriateness of the price in a mandatory bid (§ 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 fig. 6), the management and administrative organs 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 Takeover Commission with all information relevant to the appraisal of the bid and shall provide upon application at any time all available information on the bid and make such particulars and documents available as the Takeover Commission considers necessary for the investigation of the facts pursuant to §§ 5 f and §§ 22 et seq. For the purposes of said duties, the obligation to maintain banking secrecy shall not apply, if the credit institution in question is an expert under §§ 9 and 13.
- (5) All publications, responses and other statements disclosed to the public by the offeror, the administrative organs of the offeree company, experts or any other advisers shall be immediately brought to the attention of the Commission unless there is a notification obligation before being made public.
- (6) The Takeover Commission may publish its opinions and rulings if this is appropriate for informing the holders of equities of the offeree company.
- (7) The exchange operating company, Wiener Börse AG, shall be responsible for meeting the Takeover Commission's expenditure for materials and staff; it shall also provide a secretariat and the necessary appropriately qualified staff.
- (8) The staff of the exchange operating company, Wiener Börse AG, involved with work for the Takeover Commission shall be bound by the obligation to maintain confidentiality; any information of which said staff may gain knowledge of in the line of duty under this federal act shall be used for the sole purpose of discharging of such duties.

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 determined in a decree adopted by the Federal Minister for Justice in conjunction with the Federal Minister for Financial Affairs, having regard to the significance and scope of the Takeover Commission's duties.

(2) The exchange operating company, Wiener Börse AG, 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, Wiener Börse AG, 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 in § 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 adoption of the Schedule of Fees. The Schedule of Fees shall be published in the Official Bulletin of the exchange operating company, Wiener Börse AG.

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

Publication of Opinions and Decisions

§ 32. The chairperson of the Takeover Commission shall publish in an appropriate manner general opinions (last sentence of § 28 par.7), rulings (§ 29 par.1) and the interpretation of a

legal point at issue on which an individual decision was based insofar as such opinions are of general significance; in so doing, the proper interests of the offeror, the offeree company and any other parties involved in the procedure regarding the conservation of business secrecy shall be observed as far as possible.

Special Rules on the Mandatory Bid, Price Formation and Civil Law Penalties

§ 33. (1) Acting of its own motion or upon the application by a party, the Takeover Commission may determine whether

1. in the execution of a bid, the provisions of Part Two or Part Three of this federal act were infringed upon, in particular, whether a price offered in a mandatory bid was in breach of this federal act (§ 26);
2. a mandatory bid or the order to make such bid failed to be done, or a required notification was not submitted (§§ 22, 23, 24 and 25);
3. civil law sanctions under § 34 are applicable.

Such a ruling will be binding upon the offeror, any parties acting in concert (§ 23 par.1), the offeree company and the holders of equities of the offeree company.

In this procedure, the provisions of para. 2 through 6 shall apply.

(2) Parties to the proceedings are:

1. The offeror;
2. A person acting in concert with the offeror (§ 1 fig. 6) if the party acknowledges that it has acted in this capacity, a finding to that effect has been made or the issue is the subject of the pending proceedings;
3. The offeree company (except in a procedure under § 26 par.5);
4. Holders of equities of the offeree company who alone, or jointly with other holders of equities, dispose of shares with a nominal or pro rata value exceeding 1% of the stated 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 a common representative. When the denomination of the nominal value of shares changes to the euro, the sum of ATS 1 million shall be replaced by EUR 70,000.

(3) The Takeover Commission shall make the initiation of the proceedings public immediately (the third sentence of § 11 par.1a). In this publication it shall require the offeror and any persons acting in concert (§ 1 fig 6) having their registered office, domicile or habitual place of residence abroad to appoint an agent for service as specified in § 10 para. 2). In addition, the publication shall also inform holders of equities that they may join the proceedings within a period of one month provided that they satisfy the conditions as specified in para. 2 fig. 4. After this period, no further applications shall be accepted from holders of equities; the publication shall indicate these consequences.

(4) In order to safeguard the rights of holders of equities in the offeree company, the Takeover Commission shall pass 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. Nevertheless, they shall be imposed upon the offeree company either wholly or in part, on an equitable basis, if the company has lodged an application or a counter-application and could have foreseen either throughout the proceedings or with effect from a certain point in time that its application would result in incommensurate costs; similarly, an order to pay the costs of the proceeding may be imposed on the holders of equities. The costs of proper legal representation of the offeree company and of holders or equities may be imposed either wholly or in part on the offeror in an equitable manner, in particular if their applications have been granted.

(6) In order to verify the appropriateness of the price in a mandatory bid, the Takeover Commission may commission an expert report from the committee specified in § 225g of the

Stock Corporations Act. §§ 225g and 225h of the Stock Corporation Act shall apply *mutatis mutandis*. Nevertheless, the Takeover Commission may approve a 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 (§ 23 para. 1) having its registered office, domicile or habitual place of residence abroad has failed, after the publication pursuant to para. 3 has taken place, to appoint an agent authorised to accept receipt of documents, the Takeover Commission may appoint 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-building rules (§§ 16 or 26) in a bid, 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 or a payment has been made to compensate the violation of price-building rules or such payment is guaranteed to be paid shortly. The Takeover Commission may rescind the suspension of voting rights also in cases in which the breach of the law does not in fact threaten the assets of the holder of the equities of the offeree company in specific cases or if the threat can be eliminated by imposing conditions and terms.

(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 conditions or terms, the suspended voting rights can be reinstated.

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

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

Penalty Clause

§ 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. The offeror, a member of organs empowered to represent the offeror and any parties acting in concert with the offeror (§ 1 fig. 6) or a member of an organ entitled to represent a party acting in concert with the offeror (§ 1 fig. 6) acts in violation of the following provisions: the last part of indent 3 of § 4; § 5 paras 1, 2 and 3 and both 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 par.4, § 22a, § 23 para. 3 and § 30 para. 5;

2. A member of an organ entitled to represent the offeree company acts in violation of the following provisions: the second part of indent 3 of § 4 in conjunction with § 12, § 6 para. 2, § 11 para. 3, § 12, § 14 paras. 1 and 3, and § 30 paras. 4 and 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 on time or not at all in violation of § 30 para. 4 or presents documents incompletely, late or not at all;

4. Anyone who gives information pursuant to § 28 para. 3 incorrectly on purpose;
5. A party being a member of an administrative body of the shareholder, a party acting in concert with said shareholder (§ 1 fig.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 shareholders, a party acting in concert with it (§ 1 fig. 6) or a member of the administrative body of such a legal entity exercises voting rights in violation of the provisions of § 22b para. 2 or § 26a para. 2 or instigates another party to do so.

(2) The offence shall be punishable by a fine of at least EUR 5,000 to a maximum of EUR 50,000.

(3) The Takeover Commission has jurisdiction over criminal proceedings in the first instance; appeals are heard by the Independent Administrative Tribunal in Vienna according to § 51 of the Administrative Penal Act.

(4) In the case of administrative offences pursuant to para. 1, the statute of limitation shall be 18 months instead of the six months pursuant to Art. 31 para. 2 Administrative Offences 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 Six

Entry into Force, Final Provisions and Transitional Provisions

Entry into Force

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

Implementation of the Takeover Directive

§ 38. This federal act passes 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 into national law.

Transitional Provisions

§ 39. If on 20 May 2006, a stock corporation has been admitted to the Official Market or the Semi-official Market of an Austrian exchange as well as having been admitted 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, if these admissions were done simultaneously and none of these countries is the domicile of the company, the Takeover Commission shall decide jointly with the supervisory bodies of the other concerned member states which supervisory body is to be the competent one for supervising public offerings for this offeree company within four weeks. 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 the expiry of this period. This decision or announcement shall be disclosed by publication in the Official Gazette, *Wiener Zeitung*.