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# Technology M&A 2023

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**Austria: Law & Practice**

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Schoenherr

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# AUSTRIA

## Law and Practice

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## Contents

# 1. Market Trends

## 1.1 Technology M&A Market

After a pandemic shock moment early in 2020, with the Vienna Stock Market crashing in Q1/2020 alongside other European indices, and an abrupt slowdown in deal activity, Austria experienced a rebound starting from mid-2020 that continued throughout 2021 until the start of the Ukraine war in February 2022. While public M&A activity continued to be focused on real estate transactions, including CPI Property's offers for IMMOFINANZ and SIMMO, the technology M&A landscape was dominated, until early 2022, by a high volume of technology-focused venture capital investments, technology start-up exits and other technology-related private M&A transactions. Key sectors include biotechnology, e-commerce applications and platforms, virtual/augmented reality applications and blockchain/distributed ledger service providers. Austria witnessed a slowdown of deal flow in 2022 (in particular in mid and large-cap deals) with valuations of technology businesses being under particular pressure. Mega-venture capital financing rounds and high value tech M&A transactions were scarce in 2022, compared to the previous year. Smaller financing rounds (pre-seed, seed and series A) were still quite active in 2022. Amongst Austrian M&A sectors, technology M&A is still amongst the most active, attracting investment in particular from international investors.

# 2. Establishing a New Company, Early-Stage Financing and Venture Capital Financing of a New Technology Company

## 2.1 Establishing a New Company

It is generally advisable for start-up entrepreneurs to incorporate in the jurisdiction in which they are located, to avoid adverse legal and tax consequences. Austrian entrepreneurs should therefore generally incorporate their company in Austria, and typically do so. The standard company form is the limited liability company (*Gesellschaft mit beschränkter Haftung*). An Austrian limited liability company can be established within two to three weeks, with the bottleneck typically being the opening of a bank account (which can be circumvented for the purposes of establishing the company). A limited liability company has a minimum share capital of EUR35,000, with EUR17,500 being paid-in in cash. Founders may opt for a so-called foundation privilege, in which case only EUR5,000 must be paid-in in cash. The foundation privilege must be terminated within ten years after establishment.

## 2.2 Type of Entity

For legal and tax reasons, entrepreneurs are typically advised to establish their company as a limited liability company (*Gesellschaft mit beschränkter Haftung*).

## 2.3 Early-Stage Financing

Seed investments are typically provided by government grants and government-sponsored funds, friends and family, angel investors and domestic seed-investment-focussed venture capital (including corporate venture capital) funds. International seed investors are also active in Austria but play a lesser role in practice.

### 2.4 Venture Capital

Typical sources for venture capital are venture capital funds, corporate venture capital investors/funds and government-sponsored funds. Austria has numerous active investors, being able to effectively provide venture capital financing until Series A to Austrian start-ups. Investments above Series A are typically led by international investors. Foreign venture capital funds are also very actively providing financing to Austrian start-ups.

### 2.5 Venture Capital Documentation

There are no standards for venture capital documentation comparable to, for example, the British Private Equity & Venture Capital Association (BVCA) standard. Venture capital transactions are typically documented in an investment agreement, shareholders' agreement and articles of association as main transaction documents. The investment agreement and shareholders' agreement are sometimes joined into an investment and shareholders' agreement (ISHA).

### 2.6 Change of Corporate Form or Migration

There is no typical scenario for start-up development. Growing firms sometimes change their corporate form to a joint-stock company in order to benefit from a more management (and less shareholder)-focused corporate governance style, more flexibility for share transfers and IPO readiness. Companies tend to stay in Austria, with more mature companies sometimes introducing international holding structures to attract international investors.

## 3. Initial Public Offering (IPO) as a Liquidity Event

### 3.1 IPO v Sale

If a liquidity event is envisaged, the process sometimes involves a dual-track approach. But dual-track processes are rare in Austria and cannot be seen as a trend. Private sales are primarily chosen for transactions involving companies from the industrial or services sectors. In the past, most dual-track processes conducted have led to private M&A sales/trade sales and only to a few IPOs involving Austrian companies. However, an IPO process may be an attractive option for mature technology and growth companies. For growth companies, being public may offer several benefits. Growth companies tend to access public capital markets not only once during an IPO but also in subsequent secondary offerings as a publicly listed company (eg, by means of rights issues). Accordingly, growth companies may have easier access to equity if they are in the spotlight as a listed entity. A recent example of a dual-track process in Austria involved a financial institution that went public in 2019.

### 3.2 Choice of Listing

The Vienna Stock Exchange, operated by Wiener Börse AG, is the main market for Austrian issuers and a few other issuers from abroad. As a home market, it is the primary listing venue for Austrian companies. In a global context and with a few exceptions, Austrian issuers listed in Vienna are, according to market capitalisation, small to mid-size issuers.

In the past, there was a trend for primary and secondary listing. In several cases, Austrian issuers chose the Frankfurt Stock Exchange as the second listing venue for their shares to enhance the liquidity of the stock. In addition, there are some examples of listings of Austrian companies in the USA or in Amsterdam through the implementation of a new holding company going public on these markets; eg, in the biotech/life sciences sector.

Main listings take place on the Official Market (*Amtlicher Handel*) of the Vienna Stock Exchange and in the prime market segment. The prime market segment is the segment with the highest level of transparency and is considered the premium segment of the regulated market in Vienna.

### 3.3 Impact of the Choice of Listing on Future M&A Transactions

The Austrian squeeze-out regime applies to all Austrian joint stock corporations (*Aktiengesellschaften*) and limited liability companies (*Gesellschaften mit beschränkter Haftung*), irrespective of any listing either in Austria or abroad.

A divergence between the country of domicile and the country of listing results in a partial application of the takeover law regime. Whereas any takeover-related market rules – such as minimum price rules and offer proceedings – follow the rules of the country of listing, takeover-related corporate rules (eg, whether a mandatory offer is triggered) follow the rules of the country of domicile.

## 4. Sale as a Liquidity Event (Sale of a Privately Held Venture Capital-Financed Company)

### 4.1 Liquidity Event: Sale Process

Sales processes are typically run as an auction.

### 4.2 Liquidity Event: Transaction Structure

Typically, all shareholders except active founders exit a company following its sale, with active founders typically being required to stay on board for at least a transition period (of 18 to 36 months), sometimes in combination with a performance-related portion of the purchase price (earn-out).

### 4.3 Liquidity Event: Form of Consideration

Cash and (to a lesser extent) a combination of stock and cash are the predominant forms of consideration in Austria.

### 4.4 Liquidity Event: Certain Transaction Terms

This is heavily negotiated, but very often financial investors (successfully) refuse to give business representations and warranties, in which case founders and other shareholders need to assume their liabilities vis-à-vis the purchaser.

## 5. Spin-Offs

### 5.1 Trends: Spin-Offs

The spin-off culture in Austria is still quite underdeveloped. A private initiative has, however, set as its goal to “raise the awareness that entrepreneurship must be a third mission of Austrian universities, universities of applied sciences and research institutions next to research and teaching.”

### 5.2 Tax Consequences

Spin-offs may be structured as tax neutral at the corporate level and the level of the shareholder. Beside other prerequisites, only spin-offs of operative businesses (including operative partnerships and partial businesses thereof) or qualified shareholdings are covered by these provisions.

### 5.3 Spin-Off Followed by a Business Combination

It is possible to combine several different restructuring steps within one transaction.

### 5.4 Timing and Tax Authority Ruling

A typical spin-off requires four to six months, including the necessary preparation. Some spin-offs take longer to prepare and execute, depending on the complexity of the transaction.

## 6. Acquisitions of Public (Exchange-Listed) Technology Companies

### 6.1 Stakebuilding

Depending on the envisaged offer structure (partial, voluntary or mandatory offer) and to increase the chances of a successful transaction, the bidder can acquire an initial stake in a target prior to announcing a public offer. If a buyer acquires or sells, directly or indirectly, target shares and thereby reaches, exceeds or falls below 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% or 90% of the voting rights in the target company, the shareholding must be notified to the Financial Market Supervisory Authority (*Finanzmarktaufsicht*, or FMA), the Vienna Stock Exchange and the target, but the buyer is not required to disclose the purpose of the transactions. The target's articles of association may provide for a 3% triggering disclosure.

After the announcement of a public offer, a bidder may acquire further target shares but not at better terms than in the offer unless the bidder improves the offer terms.

A shareholder that holds between 30% and 50% must make a mandatory offer when acquiring more than 3% of voting rights within 12 months ("creeping in").

### 6.2 Mandatory Offer

A bidder or a group of concerted parties acting together that obtains voting rights exceeding 30% (controlling interest) triggers the obligation to launch a mandatory offer. Any shareholding below 30% of the voting right does not trigger a mandatory offer (safe harbour). However, voting rights between 26% and 30% are suspended from voting and must be notified to the Takeover Commission.

The Takeover Act provides for various exemptions from the mandatory offer obligation, inter alia, when a controlling interest is acquired in the course of an insolvency or another shareholder or group of concerted parties holds the same number of shares.

### 6.3 Transaction Structures

Under the Takeover Act three different offer types are available.

#### Mandatory Offers

These are triggered if a controlling shareholding (see **6.2 Mandatory Offer**) is acquired. Except for legal conditions such as regulatory approvals, a mandatory offer must not be made conditional.

#### Voluntary Offers

When aimed at control, these are triggered if a non-controlling shareholder (ie, one with a shareholding of less than 30%) makes an offer aimed at control. Voluntary offers are subject to a mandatory, statutory 50% minimum acceptance threshold whereby the launching pad (ie, shares already held by the bidder and concerted party prior to the announcement of the offer) is not to be included.

Mandatory offers and voluntary offers aimed at control are subject to minimum pricing rules and require a cash offer, but can have a paper alternative in addition.

**Voluntary Partial Offers**

These are offers that do not result in a controlling shareholding. Such offers have no minimum price rules, the consideration may be in cash or securities, and the offer may be conditional.

The acquisition of public listed companies by way of mergers has been the exception rather than the rule even though the EU Cross-Border Mergers Directive and its implementation in Austria also allows (reverse) takeovers through cross-border mergers.

## 6.4 Consideration; Minimum Price

Mandatory offers and voluntary offers aimed at control are subject to statutory minimum price rules; ie, the higher of the six-month value-weighted average price (VWAP) prior to the announcement of the offer and the 12-month reference price (ie, the highest price paid by the bidder or a concerted party for a single share during the 12 months prior to submitting the offer memorandum to the Takeover Commission). Furthermore, mandatory offers and voluntary offers aimed at control require a cash offer, but shares can be offered in addition.

In a merger transaction, the bidder must offer an adequate exchange ratio for its paper offer and is ultimately limited in offering cash as an alternative. Minority shareholders may initiate a subsequent review procedure of the adequacy of the exchange ratio.

## 6.5 Common Conditions for a Takeover Offer/Tender Offer

Except for legal conditions such as regulatory approvals, mandatory offers must not be made conditional. Voluntary offers aimed at control are subject to a statutory minimum acceptance threshold of 50% (see **6.7 Minimum Acceptance Conditions**).

In addition to legal conditions (regulatory approvals), voluntary offers aimed at control and partial offers often include:

- customised compliance conditions (eg, target management is not convicted or indicted for a criminal act);
- conduct of business conditions (eg, no transaction outside the ordinary course of business, no disposal of “crown jewels”);
- no leakage conditions and dilution protection (eg, no dividend payments, no issuance of new shares); and
- material adverse change (MAC) conditions relating to both the target itself (eg, company MAC clauses such as no reduction in earnings or no insolvency) and the market (eg, a MAC clause that a relevant index must not fall below a pre-defined threshold).

## 6.6 Deal Documentation

In recent years, business combination agreements have become popular in public M&A transactions that do not involve a selling core shareholder. Under such agreements the target usually agrees to support and recommend the offer but also to help the bidder post-closing with the integration of the target. A no-shop confirmation, conduct of business, waiver of management’s change of control (CoC) rights and the resignation of supervisory board members is usually accepted, whereas a no-talk agreement would violate the board neutrality rule.

Further representations and warranties as well as access to non-disclosed information prior to closing is usually not accepted.

### 6.7 Minimum Acceptance Conditions

In a voluntary offer aimed at control, the offer is successful only if the bidder receives acceptance declarations for more than 50% of the voting rights that are subject to the offer (statutory minimum acceptance threshold). Shares acquired in parallel to the offer; ie, off-market but at the same terms, count towards the threshold. However, a launching pad; ie, shares already held by the bidder and concerted party prior to the announcement of the offer, is not included. The bidder may also introduce a higher minimum acceptance threshold as a condition precedent (eg, 75% as the delisting threshold to pass material decisions for the target's business and implement corporate restructurings or 90% as the squeeze-out threshold) but in practice the threshold is usually set at the statutory acceptance threshold (50%).

Partial offers may have maximum or minimum acceptance conditions.

### 6.8 Squeeze-Out Mechanisms

Under the Squeeze-Out Act, which applies for both listed and unlisted companies, a majority shareholder that holds at least 90% of the outstanding share capital of the target may resolve on the squeeze-out of the remaining minorities, which cannot block the squeeze-out but can request a review of the adequacy of the cash compensation.

If the squeeze-out follows a public offer no later than three months after the end of the acceptance period and 90% of the offer addressees accepted that offer, there is a rebuttable presumption that the offer price qualifies as adequate compensation for the squeeze-out.

### 6.9 Requirement to Have Certain Funds/Financing to Launch a Takeover Offer

A bidder may announce a public offer only if financing will be available at settlement date. An independent expert appointed by the bidder must confirm to the Takeover Commission that the bidder has the financial means to fully fund the offer.

In practice, the expert's requirements as to bank documentation will depend on the size and structure of the offer and the bidder's financial strength. In case of a financially strong bidder, the balance sheet and the bidder's statement can be sufficient to allow the expert to issue a confirmation, whereas other bidders may also require a legally binding bank funding commitment letter.

The settlement of a public offer (ie, availability of the cash consideration) may not take place later than ten trading days after the unconditional effectiveness of the offer.

### 6.10 Types of Deal Protection Measures

Break fees are not forbidden but are not common in public M&A transactions as they could hinder competing offers and would need to be disclosed in the offer memorandum.

A no-shop agreement between a bidder and target is possible. The management would be prevented from actively looking for an alternative bidder. However, if the target is approached, it must nevertheless evaluate the competing offer.

### 6.11 Additional Governance Rights

A domination arrangement to give instructions to the management board, similar to that in Germany, is not available under Austrian law. However, a core shareholder holding of at least 75% could enter into a profit and loss transfer agreement or delist the shares from the stock market and subsequently transform a stock corporation into a limited liability company.

### 6.12 Irrevocable Commitments

Irrevocable tender commitments from exiting core shareholders are quite common in the Austrian market. However, such undertakings oblige the seller only to tender its shares into the offer, not to sell and transfer its shares directly to the bidder. Therefore, bidders normally prefer to enter into share purchase agreements (SPA) prior to the announcement of an offer with economic terms similar to the offer and closing of the SPA in parallel to the settlement of the offer. Other than a tender commitment, the SPA offers a direct claim against the exiting shareholder to sell its shares directly to the bidder. A top-up agreement protects the seller from any price increase granted during the offer to the other shareholders.

### 6.13 Securities Regulator's or Stock Exchange Process

An offer document that contains detailed information for the target's shareholders needs to be prepared and filed with the Takeover Commission within at most 40 trading days after the announcement of an offer (20 trading days in a mandatory takeover offer). Such an offer memorandum must include a brief expert statement on the completeness of the offer, the compliance of the offer with the Takeover Act and the bidder's ability to finance the offer. It must also include, inter alia, the terms and conditions of the offer, background information regarding the bidder and its future plans, the offered consideration as well as the valuation method used.

The Takeover Commission has a two-week review period and may prohibit the publication of the offer memorandum. If the Takeover Commission does not prohibit the publication, the bidder must publish the offer memorandum between the 12th and 15th trading day after filing with a minimum of four weeks and a maximum of ten for acceptance.

In the case of a competing offer, the timeline is extended and both offers are aligned ex lege so that both end on the same day.

### 6.14 Timing of the Takeover Offer

The acceptance period for a public offer is a minimum of four weeks and a maximum of ten. Following the initial acceptance period, a subsequent three-month sell-out period applies in mandatory offers as well as for bidders in voluntary offers aimed at acquiring control, which successfully fulfil the statutory 50% minimum acceptance.

The offer condition must normally be fulfilled within the initial acceptance period. However, for regulatory approval requirements, the Takeover Commissions accepts a longer timeline of up to 90 trading days starting with the launch of the offer.

## 7. Overview of Regulatory Requirements

### 7.1 Regulations Applicable to a Technology Company

In addition to typical regulatory compliance with public laws and orders (eg, GDPR/data protection obligations), setting up and starting new tech companies that operate in regulated sectors such as banking or insurance can be subject to regulation and may also require certain licences (eg, a fintech payment solution provider would require a banking licence). Regulatory control provisions also apply to the utilities, gambling and telecommunications industries and may affect the process of an acquisition. In these sectors, changes in the target ownership of existing companies will usually require advance notification to the relevant government agencies in cases where certain thresholds of stake ownership are reached or exceeded.

### 7.2 Primary Securities Market Regulators

The primary market regulator for public M&A transactions is the Takeover Commission.

### 7.3 Restrictions on Foreign Investments

In Austria, foreign investments are subject to a screening under the Austrian Foreign Investment Screening Act (ICA), which entered into force in July 2020, tightening the regulatory framework for foreign investment in tech companies. The ICA covers foreign direct investments by a non-EU, non-EEA and non-Swiss person or legal entity and includes the direct/indirect acquisition of (i) an Austrian undertaking, (ii) voting interests in such an undertaking (10%, 25% and 50% of the voting rights), (iii) a controlling influence over such an undertaking, and (iv) the acquisition of the essential assets of such an undertaking.

The ICA applies to an investment in an undertaking which is active in a sector listed in the Annexe to the ICA that covers a wide range of industries and sectors including critical digital infrastructure, critical technologies and dual-use items as defined in Regulation (EC) No 428/2009, artificial intelligence, robotics, cybersecurity, quantum and nuclear technology, nano and biotechnology and media.

A mandatory filing is triggered if a foreign investor (ie, non-EU, non-EEA, non-Swiss individual/entity) intends to carry out an investment in a target that operated in a relevant sector.

### 7.4 National Security Review/Export Control

Except for the requirement for ICA approval (see **7.3 Restrictions on Foreign Investments**) and save for limited restrictions in the defence equipment/defence technology sector, there are no direct Austrian inward investment restrictions in the tech sector.

### 7.5 Antitrust Regulations

Antitrust filing requirements generally depend on the turnover of the undertakings involved. The Austrian Cartel Act generally provides for the following turnover thresholds:

- combined turnover of more than EUR300 million worldwide;
- combined turnover of more than EUR30 million in Austria, with at least two undertakings having a domestic turnover of more than EUR1 million; and
- at least two undertakings having a combined turnover of more than EUR5 million worldwide.

Exemptions and special rules for smaller target companies and media companies apply.

In addition to a turnover test, an alternative jurisdictional test based on the size of a transaction has been introduced. The test aims to cover cases with respect to the acquisition of start-ups in the digital economy, where the target has little to no current turnover and is bought primarily because of its potential growth. It sets out three cumulative conditions: (i) the combined turnover of the undertaking must be at least EUR300 million worldwide and EUR15 million domestically, (ii) the “value of consideration” for the transaction must be above EUR200 million (the new transaction value element), and (iii) the target must be active in Austria to a significant degree.

### 7.6 Labour Law Regulations

There are no particular concerns from an Austrian labour law perspective. Investors should note, generally, that Austrian labour law provides for a rather employee-friendly environment, including minimum wages, working hours restrictions and restrictions on termination of certain employees or groups of employees. In the context of an M&A transaction, notification of or consultation with the works council may be required. The works council's opinion/advice is not binding on the board and does not need to be disclosed.

### 7.7 Currency Control/Central Bank Approval

In-bound M&A transactions are neither subject to central bank approval nor limited by a currency control regime. However, for statistical purposes, cross-border investments of at least EUR500,000 must be notified by the Austrian target company to the central bank.

## 8. Recent Legal Developments

### 8.1 Significant Court Decisions or Legal Developments

The introduction of the amended and tightened regulatory framework on foreign direct investments (FDI) is one of the most significant legal developments in Austria in the past three years related to technology M&A.

## 9. Due Diligence/Data Privacy

### 9.1 Technology Company Due Diligence

In most public M&A transactions, including those that are recommended by the target management, the bidder regularly conducts a due diligence based on publicly available data. This is because the management needs to balance the bidder's need for disclosure against its fiduciary duties towards other shareholders as well as regulatory and contractual secrecy obligations. In a competing bid situation, the target company is ultimately required to provide all bidders with the same level of information, given that the target's management must remain neutral and objective in relation to all bidders. Due diligence in transactions involving privately held companies can be and in practice is quite extensive, including non-public information – with staggered access to sensitive information depending on the progress of the transaction. Typical areas of review include: intellectual property rights (registered and non-registered), protection of trade secrets and know-how, review of licensing agreements, use of free and open source software, GDPR compliance, review of material agreements, review of employment agreements and employment relationships, legal disputes, and classic corporate, commercial and finance matters.

### 9.2 Data Privacy

There are no particular restrictions in excess of general data privacy restrictions under the GDPR, which restricts the ability of a target company to share certain personal data.

## 10. Disclosure

### 10.1 Making a Bid Public

A bidder may prepare an offer in secret and has the option to build a stake in advance. However, a public offer must be announced if (i) the bidder has decided to launch an offer, (ii) market rumours occur due to the preparation of an offer ("put-up or shut-up"), or (iii) the bidder obtained a controlling interest (ie, more than 30% of the voting rights).

### 10.2 Prospectus Requirements

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered (Prospectus Regulation) also applies in Austria. Article 3 of the Prospectus Regulation provides for a need to publish a prospectus in several instances of share offerings (including stock-for-stock offerings), unless an exemption applies. Article 1 (4) of the Prospectus Regulation provides a list of prospectus-exempt offerings, including for securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the public in accordance with the arrangements set out in Article 21 (2) of the Prospectus Regulation, containing information describing the transaction and its impact on the issuer. From a prospectus law point of view, no listed buyer's shares are required as a consideration. Also, non-listed shares might be offered as a consideration.

### 10.3 Producing Financial Statements

In relation to cash-only offer documents, there is no mandatory requirement to provide the bidder's financial information in the offer memorandum.

If for a stock-for-stock offer a document is made available to the public in accordance with the arrangements set out in Article 21 (2) of the Prospectus Regulation, containing information describing the transaction and its impact on the issuer, and is published in order to avoid a fully-fledged prospectus document, such a document will also need to provide the historical financial information of the bidder/issuer of the share contribution.

### 10.4 Disclosure of Transaction Documents

The offer memorandum for a public takeover must be filed with the Austrian Takeover Commission and is published on the websites of the bidder, the target company and the Takeover Commission.

In the case of a merger transaction, the merger agreement together with ancillary documents is published by that target in advance of the shareholders' meeting that resolved on the merger transaction.

## 11. Duties of Directors

### 11.1 Principal Directors' Duties

In principal, all management decisions must be made in compliance with the business judgement rule; ie, the management resolves without any conflict of interest, based on adequate information and to the benefit of the company and its stakeholders.

In public M&A transactions, the target's management also needs to comply with the board neutrality rule. After the target becomes aware of a bidder's intention to launch an offer, any measure that could prevent the target shareholders from making a free and informed decision or any action that could likely frustrate the offer requires prior approval by the target shareholders (eg, sale of core assets, issuance of new shares).

### 11.2 Special or Ad Hoc Committees
The corporate governance of public listed companies usually provides for the possibility to form ad hoc committees in the supervisory board to react quickly in case of unexpected events (eg, unsolicited announcement of an offer). The supervisory board may delegate issues to special committees for further evaluation and decision. In case of a conflict of interest of one (or more) supervisory board members, the governance usually provides that the respective members need to disclose such circumstances to the board and to refrain from voting. In sensitive cases, such members should also not participate in the preceding discussions.

### 11.3 Board's Role
Immediately after the intention to launch an offer is made explicit, the target management board and supervisory board must stay objective towards the potential offer and may not prevent the offer (board neutrality rule). The search for a white knight is explicitly permitted.

After the publication of the offer memorandum the management's main task is to prepare and publish a reasoned statement that includes an assessment of the offer, inter alia regarding the offered consideration and the impact on the target and its workforce.

Depending on the offer and its complexity, the target management could also involve financial advisers, which usually prepare a fairness opinion that serves as a basis for the management's decision to either support or reject the offer. If the management issues a neutral statement, the pro and cons for accepting the offer shall be included.

### 11.4 Independent Outside Advice
Depending on the size, complexity and required financing of the offer, bidders as well as target companies regularly involve financial, tax and legal advisers in connection with a takeover. A trend in past years was to also engage public relations agencies as well as proxy advisers in contested, hostile and unsolicited situations.

Furthermore, the Takeover Act obliges bidders and targets to nominate an expert (usually a certified public accountant) who confirms the compliance of (i) the offer memorandum and (ii) the target management's statement to the offer with applicable Takeover Law rules.

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