

Austria

Chamber of commerce:

Austrian Federal Economic Chamber
Wiedner Hauptstrasse 63
1045 Vienna
Austria
Tel: +43 1 501 053 701
Fax: +43 1 501 053 701
Email: icc@wko.at
Web: www.wk.or.at

Professional body:

Österreichischer Rechtsanwaltskammertag
Tuchlauben 12
1010 Vienna
Austria
Tel: +43 1 535 12 75 0
Fax: +43 1 535 12 75 13
Email: rechtsanwaelte@oerak.at
Web: www.oerak.or.at

A new takeover law in Austria

Albert Birkner and Clemens Hasenauer
Cerha Hempel Spiegelfeld Hlawati
Vienna

The Austrian Takeover Act (TA) came into force on January 1 1999. The Takeover Amendment Act (TAA) (*Übernahmerechtsänderungsgesetz*, ÜBRÄG) was passed shortly after the implementation period of the Takeover Directive 2004/25/EC had expired. The TAA was given retroactive effect as per May 20 2006. A revision of the TA was necessary not only because of the Takeover Directive but also due to constitutional restraints. In particular, the Austrian Constitutional Court challenged the authorisation of the Austrian Takeover Commission (ATC) to issue decrees as well as the definition of a floating “controlling interest” (Section 22 of the TA). In total, the TAA 2006 brings about several fundamental changes to Austrian takeover law.

ATC authorization to issue decrees

The TA in its previous version authorized or obligated the ATC to issue decrees. These authorizations to issue decrees are now under scrutiny by the Austrian Constitutional Court due to insufficient substantial definiteness of the TA and on grounds of too extensive transfer of normative contents into TC decrees. The TAA 2006 abandons the decrees and provides adequate rules without the discretion of the ATC.

Controlling interest and mandatory offer

The central amendment of the TAA 2006 concerns the definition of the “controlling interest”. According to the flexible definition of the old TA, a controlling interest was acquired by gaining the majority of the voting rights or the rights to appoint the majority of the board members, or by any other way of control. The controlling interest therefore was

independent from participation thresholds in the registered share capital or the voting rights of a company, although the old TA and the old First Takeover Decree contained a rebuttable assumption of a controlling interest at a participation of 30% in the voting rights of a company. The TAA 2006 applies strict thresholds defining the controlling interest and the qualified minority participation of 26% of a company’s voting rights.

Safe harbour

A controlling interest triggering a mandatory takeover offer is deemed to exist if the acquired shares provide more than 30% of the voting rights in the target (Section 22(2) of the TA). Due to the low presence of shareholders in the shareholders’ meeting in Austria it will be possible to exercise control over a company without being under an obligation to make a mandatory takeover offer.

Suspension of voting rights

Shareholders in control of between 26% and 30% of the voting rights are not obligated to make a mandatory offer but are obligated to notify the ATC of such an acquisition. The shareholders exceeding the 26% voting rights threshold are barred from exercising their voting rights. The ATC may rescind the suspension of the voting rights entirely or partly upon application of the affected shareholder. In such case, the ATC is entitled to define conditions and requirements as long as it provides equal protection for other shareholders.

Modified Articles of Association

The potential target companies can lower the threshold of a controlling interest in the Articles of Association.

Exceptions to the mandatory offer

In spite of reaching the 30% voting rights threshold the obligation to make a mandatory takeover offer shall not apply if the sharehold-

ing does not confer a dominant influence on the target, or if there is no change in ownership with dominant influence. A shareholding in the target company in which the voting rights are restricted in the Articles of Association to a maximum of 30% does not qualify as a controlling interest according to the TA.

Passive acquisition of control

A passive acquisition of control occurs without the acquirer actively purchasing shares or entering into voting rights agreements, or actively doing or causing action that confers further voting rights to him. According to the TAA 2006, the passive acquisition of a controlling interest is exempt from the obligation to make a mandatory offer unless the passive acquisition of the controlling interest at the time of such acquiring could have been expected by the shareholder. In this case the shareholder is barred from exercising its voting rights exceeding the 26% voting rights threshold. The ATC may rescind the suspension of the voting rights entirely or partly upon application of the affected shareholder, and define conditions and requirements as long as it provides equal protection for other shareholders.

Price

The price for a mandatory or a voluntary offer must be the higher of: (i) the highest consideration offered by the bidder or its related parties in the 12-month period preceding the submission of the offer to the ATC, or (ii) the volume weighted stock exchange price during the 6-month period preceding the publication of the intention to make an offer. In compliance with the Takeover Directive and according to the TAA, the formerly permissible 15% discount of the offer price compared to the highest consideration offered by the bidder is no longer provided for in the TA. This also complies with the Austrian Corporate Governance Code (R-Rule 3). Any higher

consideration paid for the shares in the target paid or promised by the bidder within the acceptance period of a takeover offer, or within a period of 9 months thereafter, obligate the bidder to pay the difference also to each shareholder who has (already) accepted the takeover offer.

Breakthrough of takeover limits

The TAA standardizes in the implementation of the Takeover Directive a breakthrough regulation. Limitations to the transferability of shares set out in the Articles of Association are not effective during the acceptance period, so that the bidder may validly acquire and the selling shareholders may validly sell their shares in the course of the takeover offer. The same applies in case of voting rights restrictions or transfer restrictions contained in shareholders' agreements if such restrictions or agreements have been implemented after March 30 2004 (i.e. the day of publication of the Takeover Directive in the Official Journal). The above rules can be applied only to mandatory and voluntary offers to all shareholders for the acquisition of all shares in the target.

International Applicability

The TAA defines the scope of international applicability of the TA regarding other EU or European Economic Area (EEA) countries. For shares listed on the stock exchange market of another EU or EEA country, the regulatory authority of that country is in charge of supervision over the share purchase offer. The regulatory authority of the company's seat country is in charge of corporate law questions. Reciprocally and contrary to the previous regulations of the old TA, the applicability of which was restricted to stock corporations with their registered seat in Austria and their shares listed on the Austrian Stock Exchange, the new regulation applies to all companies with their seat in, or their shares listed on a stock exchange situated in, the EU or the EEA.

Capital markets

Recommended firms

Tier 1

Cerha Hempel Spiegelfeld Hlawati
Dorda Brugger Jordis
Wolf Theiss

Tier 2

Freshfields Bruckhaus Deringer
Weber Maxl & Partner

Tier 3

Binder Grösswang
Schönherr

Tier 4

Doralt Seist & Csoklich
Hausmaninger Kletter

Whether the Vienna exchange will fall victim to the trend towards the consolidation of national stock exchanges is far from certain. After acquiring a stake in the Budapest exchange in 2004, the Vienna stock market will make efforts to extend its reach into the wider region further by searching for greater collaboration with other exchanges in central, eastern and southeast Europe.

In recent years the domestic bourse has performed robustly, partly as a result of investment from overseas. Yet despite this there are relatively few Austrians with equity-based investments. Small and medium-sized enterprises form a large part of Austria's economy and they tend to look to bank loans for their financing. This inhibits the potential growth of the Austrian bourse and the Vienna exchange may come under pressure to form an alliance with a more substantial exchange. Frankfurt is a prime option considering the ties which already bind them.

Cerha Hempel Spiegelfeld Hlawati

At Cerha Hempel Spiegelfeld Hlawati the "outstanding" Edith Hlawati leads what many prominent players in the marketplace agree is the most renowned team in Austrian capital markets. The firm has consolidated its pre-eminent market position in recent times providing counsel in 2006 on over €2 billion of transactions and on four of the year's six initial public offerings (IPOs) of Austrian issuers.

One competitor said: "We like to have Hlawati on the other side of the deal because we know she is very competent." And it is for this reason that she consistently attracts big ticket work. Recently, for example, together with right-hand man Volker Glas, and rising star and newly promoted partner Philipp Spatz, Hlawati advised on the contemplated

€1 billion IPO of Strabag, one of the first companies using the *societas europaea* form to consider such a move. The proposed listing, which would have been the largest in volume ever on the Vienna Stock Exchange and one of the year's largest in Europe, was postponed shortly before the planned launch when shareholders agreed upon the participation of a new strategic investor in the company.

In another standout deal that was successful, the firm advised Goldman Sachs, Erste Bank and Raiffeisen Centrobank as joint bookrunners on the €650 million IPO of Österreichische Post back in May 2006. The transaction was the third (partial) privatization of a postal services company in Europe and the fourth-largest IPO in the history of the Vienna Stock Exchange.

Among the year's other highlights in equity capital markets, Cerha Hempel represented UBS Investment Bank, Morgan Stanley and Bank Austria as joint global bookrunners in the June 2006 €550 million offering of the global lighting provider Zumtobel, the largest IPO by a private industrial company in Austria. Austrian Airlines also elected to benefit from the team's expertise in relation to its €367 million capital increase via the issue of 51,680,000 new shares.

Cerha Hempel is better known for its equity capital markets work but the firm has also been involved in some impressive debt capital markets work. Peter Knobl, for example, advised Sal Oppenheim in its €92.6 million issue of dividend certificates in May 2006 and Commerzbank in its update for the €5 billion credit-linked note programme prospectus in April 2007.

But it is from the growth in the market of convertible bonds that the team is really benefiting, an area where Knobl has been teaming up with the "very personable" Volker Glas. Most notably the formidable duo advised JPMorgan as sole bookrunner for Immofinanz, and Nomura International and Deutsche Bank as joint lead managers for A-Tec Industries, in the respective €750 million and €180 million offerings of 2.75% convertible bonds in January and May 2007. The Immofinanz offering was the largest convertible bond issue ever by a European real-estate company and was oversubscribed by four times within only a few hours of its launch.

The pair has also been joining forces in the areas of structured finance and securitization. Their most conspicuous joint operation in 2006 saw them give counsel to European Investment Bank and European Investment Fund in connection with its role as credit enhancer in a Z1632 million (€167 million) securitization involving RZB group and Polish leasing receivables. In another eye-catching transaction in the same year, Glas

also advised JPMorgan in a €1.5 billion multicurrency revolving London Metal Exchange (LME) warrant and securities repo facility agreement for the Bear Sterns group. One client explained that the Cerha team did “a good job”, adding: “They answered the questions that were asked and tailored their services accordingly.”

Leading lawyers

Volker Glas
Edith Hlawati
Philipp Spatz

Dorda Brugger Jordis

According to one competitor: “Dorda Brugger Jordis stands out in capital markets because Andreas Mayr has managed to build a practice that is remarkable in terms of track record.” The firm has experienced losses in recent years although it seems to have dusted itself down and reconsolidated now.

Market commentators also note that Dorda has very little debt capital markets capability. But critics are not able to denigrate the considerable talent the practice has on the equity side. In particular Andreas Mayr is lauded as “one of the very best equity capital markets lawyers in the country” and Christoph Brogyányi also receives widespread praise.

In one standout transaction in May 2006, the firm advised Zumtobel in its €525 million IPO, the largest listing of a privately held industrial group on the Vienna Stock Exchange and one of the largest exits of a private-equity investor (KKR) in Austria. In the same month a team also advised Bank Austria Creditanstalt and Lehman Brothers International as underwriters in the €90 million IPO of Polytec Holding.

After these transactions it went a little quiet, leading one lawyer to suggest: “Dorda is out of it a bit at the moment – they get small bits and pieces”, and another to comment: “Andreas Mayr wasn’t surfing too much in the last year but he is one you always have to think about.” But at the time of writing a flurry of recent activity was flagging the return of a resurgent Dorda Brugger Jordis.

In April 2007 Dorda advised Conwert Immobilien Invest in its largest capital increase to date with a volume of €410 million. The team had advised the real-estate fund on eight previous capital increases since 2003 which, including the ninth, have a total volume in excess of €1.1 billion.

In June the practice advised Kapsch TrafficCom, a telematics provider, on its €118 million IPO. In July the team advised Merrill Lynch International, as global coordinator and sole bookrunner, and Erste Bank and Sal Oppenheim, as managers, in the

€96.5 million capital increase of Austrian biotech company Intercell. At the same time the firm was providing company counsel to Austrian real-estate company ECO Business-Immobilien in its €100 million capital increase.

In other business, Tibor Varga led a team which advised Barclays in November 2006 as Austrian counsel in a receivables financing arrangement for an Austrian industrial group.

Leading lawyers

Christoph Brogyányi
Andreas Mayr

Wolf Theiss

One client put it simply: “Wolf Theiss is the best law firm in Austria.” The client added: “They are flexible, they understand our business and they have a regional network that corresponds to ours – so we only have to deal with one firm which is convenient.” These sentiments are matched in the rest of the feedback regarding the firm’s capital markets practice. Clients and competitors alike are impressed with the firm’s ability to consistently deliver at a regional level.

Richard Wolf and Markus Heidinger are two lawyers who command market-wide respect. Clients are always “very satisfied” with the “excellent services, prompt and competent support and wide know-how” and appreciative that “you get the senior guys”. Wolf, they all seem to agree, is “a very experienced and creative lawyer” who is “solution orientated”. One important customer added: “Richard Wolf is one of the senior capital markets lawyers in Austria and I really trust him – usually I don’t trust lawyers. He is pragmatic and I like his approach.” Clients keep coming back.

The directors at Immoeast were so impressed with the service they received in conjunction with their €2.75 billion capital increase in May 2006 that they had no hesitation in seeking the Wolf Theiss team’s advice on their €2.84 billion capital increase in May 2007. Involving public offers in five jurisdictions, this represented Austria’s largest-ever capital increase and the second-largest rights offering after Erste Bank’s €3 billion issuance in February 2006, on which Wolf Theiss also advised.

In other groundbreaking work the firm advised Erste Bank on the establishment of a €1 billion issuance of Tier I capital, one of the first hybrid Tier I capital issues set up in Austria to be accountable on a solo basis. In another notable affair the practice counselled Erste Bank on the implementation of a €500 million cross-border employee share ownership program, following its acquisition of a

majority shareholding in Banca Commerciale Romana.

The firm is recognized as doing “a good mix of equity and debt” and in the latter the firm has been highly visible, in no small part thanks to the extremely active Claus Schneider. In June 2006 the Wolf Theiss team acted as sole transaction counsel for Österreichische Volksbanken and Investkredit Bank on the first multi-issuer debt issuance programme in Austria ever. Under the €6 billion programme a wide array of notes can be issued in more than six jurisdictions. Two months later the practice advised Erste Bank on the update and restatement of its €20 billion debt issuance programme. Erste Bank brought the team back the following month to give guidance on the establishment of a €5 billion programme which allows the bank to issue its retail structured notes in Austria and several countries in central and eastern Europe.

The team also has considerable expertise in structured finance and securitization and in an extremely busy December 2006, along with Barclays Bank, loyal customer Erste Bank called the team back for further enlightenment in relation to several issues of notes regarding a €140 million constant-proportion portfolio insurance portfolio. Interestingly, in the same month the team was also advising Barclays, as arranger and lead manager, on the €545 million securitization of a European loan portfolio secured by mortgages, in one of the first pan-European commercial mortgage-backed securities transactions. This was all happening at the same time as Schneider and his team were advising Raiffeisenlandesbank Oberösterreich on the establishment of a €1.5 billion retail issue programme for highly structured notes specifically targeted at retail customers.

Leading lawyers

Markus Heidinger
Richard Wolf

Freshfields Bruckhaus Deringer

Freshfields is a visible and competent player on the Austrian capital markets, widely regarded as being stronger on the debt than the equity side of things. In particular the practice is viewed as a market leader in structured finance, not least because it is fortunate enough to count structured-products specialist Friedrich Jergitsch among its ranks. Described as “a very bright mind”, Jergitsch is renowned for his work in this area in which he is clearly one of Austria’s finest. The practice’s capacity has also been further boosted in this field by the poaching from Allen & Overy in

October 2006 of Attila Csongrady, “the star acquisition” according to a competitor.

In equity capital markets the firm has been giving advice to a number of underwriters, most notably in relation to the €213 million IPO of A-Tec Industries, the €56.3 million capital increase of Sky Europe and the €2.75 billion capital increase of Immoeast. It also provided counsel to DO & CO Restaurants & Catering on its €26.7 million capital increase.

In debt capital markets the team has continued to advise leading international banks in public offerings of debt instruments in Austria under their Euro medium-term note programmes. Also, after having received sound counsel on the previous two preferred pooled shares (Preps) transactions, Capital Efficiency Group called upon the services of Maria Theresa Pflügl and Michael Sedlaczek again in July 2006 for its fifth Preps transaction with a volume of €318 million. Preps is a financing platform that gives small and medium-sized enterprises the opportunity to join forces to raise funds on the capital markets via a securitization issue.

The securitization team has been cashing in on the desire of Russian banks to securitize in central and eastern Europe to free up regulatory capital, advising on the securitization of Raiffeisen Bank Moscow’s vehicle leasing receivables transferred to ROOF Poland, and giving counsel to the arrangers on a car loan securitization by Russian Standard Bank. The practice has also been kept busy advising transaction parties on a €600 million car loan securitization by Porsche Bank Austria and acting for a leading Austrian bank in relation to the securitization of car loans of its Hungarian subsidiary.

Leading lawyers

Freidrich Jergitsch
Maria Theresa Pflügl

Binder Grösswang

Better known for its work in banking, Binder Grösswang nevertheless has a capable capital markets team.

Tibor Fabian is the acknowledged leader at the firm in equity capital markets and he frequently teams up with Florian Khol to represent clients in the highest-profile cases. The pair recently swung into action for the underwriters Goldman Sachs International, JPMorgan Securities, Wiener Privatbank Immobilieninvest and Kempen & Co in connection with a €556 million international offering and sale of no-par value ordinary bearer shares of Conwert Immobilien Invest. The pair also advised target Hypo- und Vereinsbank in regard of the public offer of

UniCredit for the bank, along with Bank Austria Creditanstalt.

On the debt side, Tibor Fabian has been advising Deutsche Bank as arranger and a number of Austrian banks with their medium-term note programmes. Meanwhile, Michael Binder has been advising Coöperatieve Centrale Raiffeisen-Boerenleenbank in relation to the public offering or private placement of several issues of structured notes in Austria, including €200 million of principal-protected credit index-linked notes and \$500 million of 5.125 % fixed-rate notes. He has also been giving counsel to Robeco Direct in relation to the public offering of structured notes in Austria, including Robeco private-equity certificates and €100 million Robeco clean-tech certificates.

Fabian is also a dab hand at securitization and has been advising Barclays, on a structured financing involving Austrian commercial real estate, and Deutsche Bank on a securitization related to an Austrian shopping centre. In the mean time Stefan Tiefenthaler has been advising Investkredit Bank on the securitization of trade receivables of both KTM Sportmotorcycle and Alpenmilch Salzburg.

Leading lawyers

Tibor Fabian
Stefan Tiefenthaler

Schönherr

While Schönherr is more renowned for its M&A work and is not particularly prominent in capital markets, it would be a mistake to write off its capabilities in this practice area.

In fact Martin Ebner is often noted for his work in structured finance. One high-profile client even said: “Martin is counted as one of the best lawyers in Austria in structured finance and securitization.” In December 2006 he appeared advising Unicredit, HVB and BA-CA (as joint lead managers) on the Austrian law aspects of a €4.5 billion synthetic securitization of small- and mid-cap loans by BA-CA and HVB using KfW’s Promise platform. This was the largest transaction to use the platform to date and was also innovative in that it combined the reference portfolios of two banks in two jurisdictions.

On the debt front, Ebner was also involved in August 2006 in giving advice to arranger BNP Paribas and managers JPMorgan and Merrill Lynch on the establishment of a Tier I issuance programme by an Austrian bank and the first issuance of €400 million subordinated debt (regulatory Tier I capital).

On the equity side of things, Christian Herbst notably advised Intercell on its €110 million secondary public offering in 2006. In

2007 Schönherr’s Vienna and Bucharest capital markets teams advised joint lead managers and bookrunners Meinel Bank Aktiengesellschaft and Raiffeisen Centrobank on the listing of shares of a Bucharest Stock Exchange-listed confectionary manufacturer on the Vienna Stock Exchange via depositary receipts. The transaction structure involved a pioneering approach to customary depositary receipts structures since precedents and established practice involving such structures over shares of a Romanian publicly traded company were practically non-existent.

Leading lawyers

Martin Ebner
Peter Feyl

Banking

Recommended firms

Tier 1

Binder Grösswang
Wolf Theiss

Tier 2

Cerha Hempel Spiegelfeld Hlawati
Dorda Brugger Jordis
Freshfields Bruckhaus Deringer
Schönherr

Tier 3

Dallmann & Juranek
DLA Weiss-Tessbach

Tier 4

Doralt Seist & Csoklich
Herbst Vavrovsky Kinsky
Saxinger Chalupsky & Partner

Austria has become something of a hub for investments into central and eastern Europe (CEE). Austrian companies have been making large acquisitions in the CEE area and, because of its favourable corporate tax regime, many foreign investors are using the country to channel investment into the region through local holdings.

At the same time, Austria’s banking and finance sector has had to adjust to greater international competition in a domestic context with few opportunities for growth. As a result Austrian banks have jumped aboard the bandwagon and have been expanding their operations into the CEE markets over the last decade. Austria’s three largest banking groups, BA-CA, Erste Bank and Raiffeisen, have established a strong presence in the region through a series of acquisitions of financial institutions, and this trend looks set to continue as the markets in southeast Europe increasingly catch the banks’ eyes.

Consequently, many Austrian law firms have been working on ever more transactions in the region and have been increasing their strategic focus in these areas. Wolf Theiss, Schönherr and DLA have been opening their own offices and a number of other firms have been forging regional alliances. Austrian banks and their legal counsel have been benefiting significantly from their positioning in a thriving region with hot property markets and an increasing demand for large acquisition financings.

However, from the hustle and bustle of the M&A commotion in the financial sector, no Austrian bank has emerged anywhere near to being a market leader in Europe. If they want to compete with these players in a global economy, the Austrian banks will need to seek out strategic investors. And potential partners may well find the networks that some of the country's top banks have assembled in this flourishing region rather alluring.

Binder Grösswang

The banking team at Sterngasse 13 gets enormous respect from rivals, many of whom opined that the firm should feature in the top tier. The practice has totted up a fine transaction list over the last year and has received unreserved praise from "very satisfied" clients in the process. For all of these reasons the firm climbs atop the apex in the rankings this year.

In particular, the "very responsive" Michael Binder and Stefan Tiefenthaler are highly valued by their clients. One articulated the general contentment felt with the lawyers' service: "What I liked the most was that these guys were very much thinking about what they were doing and came up with commercial, well considered solutions rather than reflex conservative answers." Given this solid reputation it came as no surprise to see Tiefenthaler recently advising Goldman Sachs and Lehman in connection with the acquisition finance for Bawag.

Another hugely esteemed member of the team is Tibor Fabian. He is said to "clearly benefit from his banking background" and was described by one rival as "probably the most dedicated banking lawyer in Austria". Over the last year he diligently represented Deutsche Bank on the €1.3 billion financing of Oleg Deripaska's acquisition of 33% of Strabag, and advised Bank Austria Creditanstalt on a €1.4 billion loan facility for Porsche.

In other high-profile business, Thomas Schirmer advised Deutsche Bank on a €170 million bridge loan as well as the issuance of €170 million senior secured notes by Zlomrex International Finance to fund the

acquisition of a controlling interest in Voestalpine Stahlhandel.

The firm also has a solid presence in the field of regulation and gives counsel to a number of leading players. In the investment services industry these include JPMorgan Fleming Asset Management, Goldman Sachs International and Alliance Capital Management Corporation. Of note, Michael Binder recently advised Bank Austria Creditanstalt on highly complex regulatory matters in connection with mutual support systems of the savings bank sector. In other standout contracts Binder steered Allianz through the regulatory minefield surrounding its bid for Bawag Bank. He also guided Kommunalkredit Austria over the regulatory banking hurdles that arose in connection with its setting up of a CEE banking joint venture with Dexia Crédit Local.

Leading lawyers

Michael Binder
Tibor Fabian
Stefan Tiefenthaler

Wolf Theiss

Wolf Theiss sports Austria's largest banking practice and there is a consensus in the market that the firm is "exceptionally strong in finance". Over the last year the team has been reinforced with the hiring of two new partners: Thomas Krumhuber arrived from Freshfields in May 2006 and Marcus Benes joined the firm from DLA Piper at the beginning of 2007. But it is the young and extremely active Markus Heidinger who stands out as increasingly making a name for himself at the firm.

Over the last year Heidinger has appeared on a series of striking transactions. In July 2006 for instance he advised the banks on the €2 billion refinancing of the Prysmian Group. The busiest instalment came in December when he and newcomer Krumhuber gave counsel to a consortium of banks, consisting of Nordea Bank, Credit Suisse and Bank Danmark, on the refinancing of Nycomed Group and the acquisition financing of Altana Pharma – together the deals were valued at €5.7 billion. In the same month Heidinger also worked with a team giving advice to the Royal Bank of Scotland and UBS in connection with the eventually abandoned €500 million acquisition financing of Austrian Schneeketten Group by Thule Group.

In other eye-catching work, Claus Schneider acted for British real-estate investor Matrix Securities in connection with the €240 million acquisition financing of IZD Tower, the biggest skyscraper in Austria. A Wolf Theiss team advised on HVB Banque

Luxembourg's €500 million refinancing of Premiere, a pay-TV operator in Germany and Austria, and the Royal Bank of Canada's €354 million financing of Open Text Group.

The practice also gives guidance to a host of high-profile clients, such as the Bank of Australia, Deutsche Bank and Merrill Lynch, on a variety of financial services regulatory issues, including public offers and private placements, and participation in a variety of entities. In one novel episode a team advised the buyers of Bawag Bank on the unprecedented disclosure and notification procedure that arose from the acquisition for the first time of a controlling interest in an Austrian bank by a private-equity fund.

In another interesting case, the practice gave counsel to Kärntner Sparkasse and its Slovenian branch on the cross-border transfer of its banking business, including the incorporation of a new bank in Slovenia. Given that neither cross-border mergers nor cross-border spin-offs are possible under Slovenian and Austrian corporate law, Wolf Theiss had to develop a unique solution and then convince the regulatory authorities to approve the structure.

Leading lawyers

Markus Heidinger
Andreas Schmid
Richard Wolf

Cerha Hempel Spiegelfeld Hlawati

There is a danger that some market commentators, blinded by the firm's brilliance in capital markets, will underestimate the considerable clout of Cerha's banking practice. Still, clients remain "very satisfied with the service" they are getting, which one commented is "less expensive than Wolf Theiss but just as good". The firm's banking capacity has been extended further with the arrival of three new practitioners in this area over the last year.

Volker Glas is definitely a favourite of the firm's clients. One patron of the practice recounted his impressions: "Very competent, cooperative, prompt and punctual; he made my life a lot easier." The demand this reputation generates does not make for happy holidays however, and during the summer of 2006 Glas was kept busy with a string of significant deals.

In July Glas advised Telekom Austria in a €750 million revolving credit facility through its Dutch subsidiary involving 18 international and Austrian banks. Then in August he represented Bayerische Landesbank, the agent in a \$110 million term loan facility to Austrian DenizBank. And no respite arrived as the summer heat lifted: so impressed was Telekom Austria with the earlier job Glas had done

that, along with TFG, it recalled him to advise on a €300 syndicated loan with a refinancing by Oesterreichische Kontrollbank for the acquisition of shares in Bulgaria's MobilTel.

In another standout episode in an eventful year, Peter Knobl advised Vienna International Airport in its negotiations relating to two envisaged Oesterreichische Kontrollbank financings for the investments of the Bratislava and Kosice airports. Knobl is a character who is also fast earning a reputation in the regulatory arena. In September 2006 he was seen advising both Raiffeisenlandesbank Niederösterreich-Wien on the update of its €1.5 billion structured notes programme prospectus, and ING Bank on its passporting and Austrian tax disclosure of the €50 billion global issuance programme prospectus. In 2006 Total also benefited from Knobl's expertise in connection with its passporting of the base prospectus and of four supplements relating to its €9 billion Euro medium-term note programme into Austria. More recently Peter Knobl spent March 2007 giving counsel to HSH Nordbank on Austrian legal issues relating to the update to the prospectus of its €30 billion debt issuance programme.

Leading lawyers

Volker Glas
Peter Knobl

Dorda Brugger Jordis

Dorda's banking practice is very well regarded and the envy of many rivals for its "good deal flow".

Tibor Varga has been very visible in the last year, with one commentator saying: "He is really doing the work there". For instance, it was Varga who was selected to assist Aareal Bank with Austrian aspects of financing the €260 million acquisition of 24 hotels of InterContinental Hotels group in Europe. More recently, in June 2007, he could be seen acting as transaction counsel in the context of a €100 million facility backed by Oesterreichische Kontrollbank and arranged by Erste Bank.

In another noteworthy transaction the firm advised Westmont Hospitality Group, an international real-estate investment and management group, on negotiations with the banks financing its €260 million acquisition of a European hotel portfolio.

The firm is also respected for its banking regulatory work and for this reason it has been hired to give counsel on financial services and regulatory matters by a number of high-profile financial institutions such as Citibank, Merrill Lynch, Credit Suisse and Franklin Templeton. In a remarkable matter at the turn of the year, a team advised on the first Austrian merger of a non-listed bank,

Wiener Privatbank Immobilieninvest, with a listed company, Kapital & Wert Vermögensverwaltung, creating a listed bank. The transaction involved complex corporate and regulatory banking issues as well as sophisticated issues relating to capital markets laws, and required close coordination with the Austrian Financial Market Authority and the Vienna Stock Exchange.

Leading lawyers

Tibor Varga

Freshfields Bruckhaus Deringer

Maria Theresa Pflügl heads the "very accomplished" finance team at Freshfields' 15-lawyer operation in Vienna. The practice put in another first-rate performance over the last 12 months and in market opinion it is rated as "one of the most of the accomplished finance practices in Vienna". Friedrich Jergitsch especially comes in for market-wide praise and is described by peers as "a leading figure" in the country.

In the most spectacular deal the firm was involved in, Pflügl led a team advising Porsche Holding on a €1.4 billion multicurrency revolving facility arranged by Bank Austria Creditanstalt, BNP Paribas, Calyon, Dresdner Kleinwort Wasserstein, Fortis Banque Luxembourg, Raiffeisen Zentralbank Österreich and Royal Bank of Scotland. The practice also advised Erste Bank and Wienerberger on a €160 million term facility for the acquisition of Baggeridge Brick. In another high-light, the firm acted for EVN, as borrower, on a €600 million revolving credit facility arranged by Barclays.

The practice is also prominent on the regulatory side, and advises a number of Austrian banks on regulatory matters. In one high-profile case the firm gave counsel to UniCredit on Austrian regulatory law in relation to the takeover of Bank Austria Creditanstalt. Freshfields also advises the leading Austrian banks on covered bonds law and its implementation.

Leading lawyers

Friedrich Jergitsch
Maria Theresa Pflügl

Schönherr

Schönherr is on the up. The consensus among rivals is that although the firm's banking practice is not yet on a par with its excellent corporate offering, it has been making good headway in this area and should rightly now be ranked in the second tier. Clients have also testified that they have been "thoroughly satisfied" with the service they have received and

impressed with Martin Ebner's "in-depth knowledge".

The firm is a large regional player and market perception is, as one client put it, that "Schönherr is one of the leading law firms for Austria and southeast Europe". Another client said: "I use Schönherr because they have an extensive eastern European network of offices", adding: "We have a preference for Schönherr and Martin Ebner [over Wolf Theiss] because we are confident we receive the same level of quality in all the different jurisdictions across the region."

A good example of the results this regional synergy can yield is the counsel a team from Vienna provided in cooperation with the Ljubljana office to Hypo Real Estate Bank International in an €85 million transaction. The financing was for Pramerica's acquisition of several Slovenian shopping malls and was one of the largest and most complex real-estate financing transactions concerning Slovenian property to date.

Back in Austria, the Vienna team is fast earning itself a reputation for getting results under pressure. In January 2007 it advised Morgan Stanley as arranger, agent and lender of a €410 million bridge facility to refinance existing debt of the Austrian Trade Union Federation. Working with Allen & Overy's Frankfurt office, Schönherr laboured at extremely short notice to negotiate and close the fully secured transaction within less than one week. Then, in April 2007, Schönherr worked at breakneck speed to close a €1.28 billion acquisition financing transaction for Rasperia Trading in less than a week.

In other standout work the practice acted in November 2006 for Lehman Brothers, the senior arranger and agent, and Calyon, as mezzanine arranger and agent, on the €1.1 billion financing of the acquisition by Permira of Unilver's frozen-foods business.

Leading lawyers

Martin Ebner

Dallmann & Juranek

In the market Dallmann & Juranek is looked upon as "a good solid boutique practice". Name partner Armin Dallmann is regarded by peers and clients as "a very competent lawyer" and Thomas Zivny is taking on more work and growing in profile.

One rival summed up the market perception: "Mr Dallmann has a small firm but a very firm banking practice." While the operation is smaller than fellow tier-three firm DLA Weiss-Tessbach, it is perceived to have similar capabilities, and this is indicative of the expertise at the firm.

The practice has been showing brightly on the radar as a result of some of the deals it has been privileged to work on. The counsel the firm has been giving Bawag on its €10 billion medium-term note programme is one that showcases its talents. This has gone down well with the client, which gave the firm further work in relation to its €180 million Allegro IT project. In another noteworthy transaction, Dallmann & Juranek advised Erste Bank on a €70 million financing in Poland.

Other clients of the firm include Western Union, Bloomberg and Raiffeisen Zentralbank Österreich.

Leading lawyers

Armin Dallmann

Mergers and acquisitions

Recommended firms

Tier 1

Freshfields Bruckhaus Deringer
Schönherr
Wolf Theiss

Tier 2

Binder Grösswang
Cerha Hempel Spiegelfeld Hlawati
Dorda Brugger Jordis

Tier 3

CMS Reich-Rohrwig Hainz
Fiebinger Polak Leon & Partner
Graf & Pitkowitz

Tier 4

DLA Weiss-Tessbach
Eiselsberg Natlacen Walderdorff Cancola
Saxinger Chalupsky & Partner
Skadden Arps Slate Meagher & Flom

The arrival of big private-equity funds in Austria was announced with a bang in 2005. European Directories, a Macquarie-led consortium, bought out the Yellow Brick Road telephone directories business from 3i Group and Veronis Suhler Stevenson for €1.83 billion. Since then private-equity activity has risen and risen, with funds happy to acquire stakes in companies where there is seemingly no potential. But while there have been a large number of small private-equity deals, big-hitting private-equity houses often lament that too few prime targets appear on the market.

So the announcement that an auction would be held for Austria's fourth-largest bank sent many of these players and their legal counsel into a flurry of excited activity. American private-equity firm Cerberus would eventually emerge victorious with its €3.3 billion bid.

There is no doubt that the acquisition of Bawag was the deal that everyone was talking about in 2007. It represented the first big private-equity investment both into Austria and into a financial institution in Europe.

Meanwhile the Austrian government signalled its unwillingness to relinquish its grip on the utilities sector in a spectacular U-turn, blocking OMV's intended €13.1 billion merger with the country's biggest utility group, Verbund. Martin Bartenstein, Austria's Economy Minister, had been preparing legislation that would have allowed the federal government's stake in Verbund to fall below 51%. But he was forced to shelve these plans after resistance from the governors of Austria's nine federal states led the opposition Social Democrats to withdraw their support for them. Whether the plans will be revisited after the autumn elections is as much a political matter as an economic one.

Freshfields Bruckhaus Deringer

Freshfields is regarded as something of an M&A powerhouse by Austrians and received an overwhelming number of positive comments – on the whole the firm is regarded as being on a par with local stars Schönherr and Wolf Theiss. Acknowledged by competitors as “one of the top lawyers in Austria”, Willibald Plesser heads a powerful M&A team comprising five other partners. He is also the firm's managing partner for central and eastern Europe (CEE) and he has been central to Freshfields' expansion into the region and in building up the offices in Budapest, Prague and Bratislava. Lately he has been advising EnBW on its proposed acquisition of Turkish mining and power generation assets. He also advised Siemens Austria on the sale of its water division, Wabag.

Thomas Zottl has gained quite a reputation in the market over the last few years for his involvement in some of the highest-profile transactions in Austria such as UniCredit's €15.4 billion stock-funded acquisition of Hypo- und Vereinsbank in 2005, which was awarded M&A deal of the year by *Euromoney*, and OMV's aborted takeover of Verbund the following year. He received nothing but acclaim from competitors and clients alike and this is reflected in his listing in the *IFLR1000* as a leading lawyer. Of late Zottl has been giving counsel to UPC Austria, a member of the Liberty Group, on the €93.9 million acquisition of Inode Telekommunikationsdienstleistungs, an Austrian broadband provider.

In other striking business, Maria Theresa Pflügl put to good use her renowned capital markets expertise when representing leading

Austrian bank Raiffeisen on the sale of 100% of its shares in JSCB Raiffeisenbank Ukraine to OTP Bank, a Hungarian institution.

Leading lawyers

Willibald Plesser
Thomas Zottl

Schönherr

There is a consensus emerging in the market that “Schönherr is the top M&A firm in Austria, both in terms of capability and in terms of the volume and magnitude of the transactions they are involved in”.

It therefore came as no surprise to see the Schönherr team representing Austrian bank Bawag in the country's largest M&A deal of the past year. The €3.2 billion sale to Cerberus was the biggest banking industry transaction in Austria ever, and required an innovative approach because of the complexity of the transaction which had to take into account the Refco Settlement, EU state aid procedures and government guarantees. The transaction was conducted as a tender by AVB, the seller of the shares in Bawag. AVB is a subsidiary of the Austrian Trade Union Federation.

Under the stewardship of managing partner Christoph Lindinger, the firm's tentacles have extended steadily further into the CEE region and there are now branch operations in Belgrade, Bucharest, Kyiv, Ljubljana, Sofia and Zagreb. The firm's credentials as a regional player were emphatically underlined in late 2006 when Lindinger led a squad advising Barr Pharmaceuticals on the biggest international takeover in Croatian history and one of the largest in the CEE in the last year. Barr's \$2.5 billion acquisition of Pliva created the world's third-largest generic drugs manufacturer with annual sales of more than \$2.4 billion.

There is a consensus among market observers that Christian Herbst is a standout lawyer who is really leading the pack of M&A lawyers in Austria at the moment. As one competitor said: “Christian Herbst is Mr M&A in Austria.” Targets and acquirers alike clamour to hire him and his colleagues because of this enviable reputation and because they invariably find that “their advice is of high quality and very efficient – and successful”.

At the time of writing the latest headline transaction Herbst was advising on was the €1.3 billion acquisition of a 30% stake in Strabag, Austria's largest and Europe's fifth largest construction group, by Rasperia Trading, a subsidiary of Russian industry conglomerate Basic Element Group. The team, led by Herbst and Gudrun Stangl, moved the

transaction (which included financing arrangements) forward at a blistering pace in order to conclude negotiations, draft the documentation and get it signed within a demanding three-week timeline. The deal structure involved a capital increase in Strabag for €1.05 billion, a separate purchase of secondary shares and the setting up of a corporate governance structure for a shareholders' syndicate. The deal was signed in April 2007 and was scheduled to close in the third quarter of 2007 subject to merger control approvals being obtained in the EU, Russia and other non-EU jurisdictions.

In another notable deal, the eminent Sascha Hödl represented France's largest private-equity house, Pai, in its €800 million acquisition of the Lafarge Roofing Division from Lafarge Group with a strategic re-investment of Lafarge Group into this division. Hödl advised with respect to the Austrian participations which constitute a substantial part of the overall activities of the acquired division.

Leading lawyers

Stefan Frotz
Christian Herbst
Sascha Hödl
Christoph Lindinger

Wolf Theiss

Described by peers as being "dynamic and pushy", Wolf Theiss has expanded aggressively under Richard Wolf to become one of the most formidable practices in Austria and the region. The practice has a fine array of talent at its disposal and those in the M&A market concede that along with Christian Herbst of Schönherr "probably the most prestigious deals are done by Richard Wolf". This is because the firm has a reputation among clients as being "the sharpest in Austria".

Furthermore, the quality of the Wolf Theiss outfit was suitably illustrated when it was announced that the victorious bid to acquire Bawag in the most talked-about takeover bid for years came from none other than a consortium led by the firm's regular client Cerberus. The consortium also included Generali, Wüstenrot and Austrian Post and the prize, for €3.3 billion, was Austria's fourth-largest bank. Led by Horst Ebhardt, Eva Fisher and Claus Schneider, a dedicated team of 35 lawyers had applied itself to beat stiff opposition in a showdown of industry heavyweights.

Wolf Theiss is also adept at representing clients on the seller side. In July 2006 the firm advised Bank Austria Creditanstalt (UniCredit Group) on its €1 billion sale of Croatia's fourth-largest bank, HVB Splitska

Banka, to Société Générale. Wolf Theiss handled the share sale and purchase agreement and all related legal aspects, in particular regulatory and merger clearance filings. The decoupling of HVB Splitska Banka from Bank Austria's portfolio of CEE banks, into which it had been closely integrated, raised many complex issues concerning trademarks, IT licences and service level agreements.

In other highlight M&A work, a Wolf Theiss team advised Berlin & Co Investment Luxembourg in March 2007 on every legal aspect of its €650 million acquisition of a minority stake of more than 25% in Austria's sixth-largest bank, Hypo Alpe Adria Bank International, including financing and regulatory issues. Also in spring 2007, the firm gave counsel to Zlomrex, a Polish producer and distributor of metallurgic products, on the legal implications in seven countries of its €100 million acquisition of a stake of 74.9% in Austria's largest steel trading group, Voestalpine Stahlhandel.

Leading lawyers

Horst Ebhardt
Markus Heidinger
Richard Wolf

Binder Grösswang

Six partners, supported by 14 associates, practise at a well respected M&A department that has historically focused on international incoming M&A transactions. Reputedly it employs a more relaxed, classical model than some of the other Vienna firms which led one competitor to comment: "They are moving out of the magic circle, so to say... It is a question of mentality." The group is fortunate enough to include Michael Kutschera, who is widely respected by peers, and Thomas Schirmer, who is also increasingly making a name for himself. The firm has recently acted in a number of key transactions.

Together with a team from Shearman & Sterling's Düsseldorf office, Kutschera and Schirmer were highly visible in advising Allianz in its bid for Bawag. Again, the market witnessed the firm advising Voestalpine in its successful public takeover bid for stainless-steel producer Böhler-Uddeholm, which has formed the third-largest company in Austria.

In another grandstand performance, Andreas Hable and Thomas Schirmer advised Abu Dhabi's International Petroleum Investment Company on the corporate and tax restructuring of its joint venture with OMV in Borealis, Europe's second-largest plastics manufacturer. The pair also gave counsel on the relocation of Borealis's headquarters from Copenhagen to Vienna, which makes it the fourth-biggest industry group in Austria. In

other business Michael Binder and Florian Khol advised the successful bidder Andritz in the acquisition of the worldwide VA Tech Hydro Group from Siemens Österreich.

Leading lawyers

Michael Kutschera
Thomas Shirmer

Cerha Hempel Spiegelfeld Hlawati

Cerha Hempel Spiegelfeld Hlawati's M&A team comprises some extremely talented lawyers and is widely respected by legal peers and industry figures and it should be noted that the practice sits only fractionally outside tier one. In fact there is very little that separates the firms in the top two tiers while there is something of a chasm standing between the top six firms and the rest.

Cerha Hempel's esteemed corporate offering is headed by Albert Birkner who is widely regarded as "an excellent lawyer – one of the best". He took over as managing partner from Edith Hlawati in early 2007 on a mandate to expand the firm's international presence. The practice already has branch offices in Bratislava, Brussels, Budapest and Warsaw, and is a member of Lex Mundi.

Birkner's new managerial appointment has not kept him out of the fray however, and in April 2007 he aided Austria Tabak in relation to the €2.2 billion sale of its shares by Gallaher Group in the course of the takeover of Gallaher by Japan Tobacco International. This involved a complex restructuring of the Austria Tabak group preceding the sale. In another conspicuous corporate seizure, Birkner steered Germany's third-largest utility company, Energie Baden-Württemberg, through its €1.1 billion acquisition of a 35% stake in Vienna-listed EVN, Austria's second-largest utilities company. The transaction finally closed in October 2006, but its planning and execution had taken more than six years and involved a complex multi-layer option and forward-sale structure.

Another transactional highlight for the firm came early in the last financial year when "up-and-coming" Clemens Hasenauer provided OMV, a listed company, on its \$1.1 billion acquisition of a 34% stake in the fuel marketing company Petrolofisi from Dogan Holding, a Turkish conglomerate, back in May 2006. This was the largest outgoing M&A transaction the Austrian market had seen in a year.

Leading lawyers

Albert Birkner
Edith Hlawati

Dorda Brugger Jordis

Christian Dorda and Martin Brodey are the leading lights in a solid M&A team. Both lawyers are highly regarded by both peers and clients, although there is a feeling that, in the words of a competitor: “Christian Dorda is more the eminent statesman, but Martin Brodey is doing the job.” Market perception is that the team is very capable but that it tends to focus on smaller deals.

The exception is the firm’s recent work for Verbund. The energy company, which has a market capitalization of €12.5 billion, is certainly a prominent client. Recently the team helped Verbund in the negotiations and execution of a cooperation agreement to form a jointly controlled partnership targeting the Turkish electricity market. Verbund will participate jointly with Sabanci in the privatization of the industry in Istanbul and Ankara, so there should be plenty of instructions to come.

The firm was also very visible advising Bayerische Landesbank on the bidding process in the structured auction to acquire Bawag. Even though the client’s bid was unsuccessful, it did not hesitate to recall the team to provide counsel on the €1.63 billion acquisition of a majority stake of 50% plus one share in Hypo Alpe Adria Bank International.

The firm also recently advised on the \$424 million sale of a majority stockholding in Aton Capital, as well as on the €185 million sale of Citec Immobilien in Deutschland and Citect Realitäten, with a portfolio of about 2200 apartments.

Leading lawyers

Martin Brodey
Christian Dorda