M&A AND GOVERNANCE PRACTICE AREA REVIEW

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DEAL ACTIVITY AND STATISTICS

According to a recent study in *M&A Review* (issue 1-2/2017), Austria saw approximately 390 deals in 2016, an 18 per cent increase on 2015. It's one of the 10 biggest years in deal volume since 1988 – a list topped by the 2000–2007 period, which peaked in 2005 with over 500 deals. Both public and private M&A levels have seen an increase for 2016 as well as early 2017 (against the same period last year). According to the EY M&A–Index Austria 2016 report, the deal volume doubled from 2015 to 2016 and in total exceeded €10 billion, with two mega-deals coming in at €2.9 billion (*Conwert/Vonovia*) and €1.2 billion (*Magnesita/RHI*), respectively.

The statistics published in M&A Review show that more than one-third of all 2016 deals were domestic (although EY's report puts this figure at 27 per cent), and that in cross-border deals the number of foreign investors acquiring Austrian targets (EY's report puts this at one-third by German investors and one-third by non-German EU-investors) was less than half of the number of Austrian investors buying into the foreign markets. According to the EY report, inbound and outbound investments were even, and approximately 80 per cent of the Austrian investments were made within the EU.

As in recent years, the most sought-after targets in 2016 were from the general service, electrical and medical engineering, and IT and telecoms sectors. It was also a strong year for the construction and building materials industry, which saw the number of deals rise by 50 per cent.

Deal activity in the real estate sector was particularly noteworthy in 2015 and 2016, and this trend continued in early 2017. In private equity, deal activity was good and some major deals were concluded; this remains the case in 2017. Due to the limited number of big-ticket transactions, the major private equity funds are not seen in Austria as frequently as mid-cap funds but, as the transactions mentioned below show, the market does have certain targets that attract their attention.

Important sources for the deal volume were distressed situations and the continued restructuring of banks; these sources are expected to maintain their relevance, even though many of the affected banks have sold substantial assets over the past few years.

Local fundraising hit an all-time low of approximately €13 million in 2014; in 2015 this rose to approximately €111 million, as reported by the Austrian Private Equity and Venture Capital Organisation (AVCO) (figures for 2016 were not available at the time of writing). It should be noted, however, that the great bulk of this was secured by Austria-based Speedinvest, which is focused on early-stage investments and will likely source investors for a new fund later this year. Vienna is establishing itself more and more as one of the major European start-up hubs for entrepreneurs in Austria and also in neighbouring countries. In addition, business-angels activity is steadily increasing, enhanced by such institutional programmes as the €32.5 million aws Business Angel Funds Austria programme (EAF Austria), aimed at co-investments with business angels. This is a joint initiative of the European Investment Fund and the Austrian federal promotional bank Austria Wirtschaftsservice Gesellschaft mbH, which was rolled out in 2013 and increased its funds in 2016.

REAL ESTATE

In 2016 and early 2017, activity in the real estate sector remained remarkably busy. International investors have shown interest in listed Austrian real estate companies already for some time. In recent years, however, local players often outbid international investors; but the opposite has been seen recently. Deals around the major listed real estate companies in most cases did, however, not involve private equity or hedge funds, but rather other real estate investors.

The take-over bid of Conwert by the German real estate company Vonovia, which valued the target at approximately €2.93 billion, has been the largest announced transaction in Austria in 2016. The takeover offer was accepted by over 90 per cent of the shareholders by early 2017, so that Vonovia accomplished to exceed the statutory squeeze-out threshold in the target.

Listed real estate companies CA Immo and Immofinanz are also in the spotlight. Russia's O1 Group sold its entire 26 per cent stake to Immofinanz for approximately €604 million. The acquisition of the CA Immo stake is a first step towards a planned full combination of Immofinanz and CA Immo by way of a statutory merger. Prior to such merger, Immofinanz is expected to sell its Russian asset portfolio. Owing to a delay in the sale, the merger is now scheduled to be implemented in 2018 instead of 2017. Former Immofinanz subsidiary BUWOG, which had a successful IPO in 2014, has been a good investment for financial investor Sapinda, which acquired approximately 19 per cent and sold, with a substantial profit, after a few weeks.

PRIVATE TRANSACTIONS

Unicredit sold Bauträger Austria Immobilien (BAI Group) to a 50-50 joint venture of Austria-based real estate investors Signa and Investers United Benefits for approximately €150 million. In another noteworthy deal, listed construction company Strabag entirely took over real estate developer Raiffeisen evolution for a total investment of approximately €100 million.

SINGLE ASSETS AND PORTFOLIOS

A noteworthy property deal was the sale of IZD Tower (for an estimated price of €250 million–€300 million), by a joint venture of Signa Recap and the German insurance group R+V, to CBRE Global Investors, which shortly thereafter and together with Universal-Investment also purchased the retail and hotel complex Stafa Tower in Vienna. Conwert sold 34 commercial properties to a special fund of HanseMerkur Insurance group for €331 million, whereas Lonestar purchased a portfolio of 31 commercial properties from HETA Asset Resolution AG (the wind-down vehicle of the former Hypo Alpe Adria AG) for an estimated price of approximately €350 million. For €175 million CA Immo purchased the Millenium Tower office complex (measuring 70,400 square metres) in Budapest, whereas BUWOG sold over 1,100 apartments in Tyrol to Luxembourg-based real estate manager Jargonnant Partners for over €120 million. UBM Development AG sold the Doppio Offices complex (measuring 8,000 square metres) in Vienna to Union Investment Real Estate Austria.

HOTELS

In 2017, listed Thai investor U City purchased the hotel platform Vienna International Hotelmanagement, including 28 hotels, from private foundations managed by Warimpex, as well as a further eight hotels from Warimpex, for a total of €330 million. In 2016 French investor Eurazio purchased a portfolio of 85 IBIS, Mercure, Novotel and Pulman hotels, including four hotels in Austria, for over €500 million. Raiffeisen Zentralbank Österreich sold the Vienna Hilton am Stadtpark for an estimated purchase price of €200 million to private investors. In 2016 Starwood Hotels and Resorts sold the five-star Imperial Hotel to the Al Habtoor Group, a UAE-based investment company, for approximately €70 million, as well as Salzburg's five-star hotel Goldener Hirsch for €20 million to a German private investor. UBM Development AG sold a three-star Ibis Hotel and a four-star Novotel in Vienna to French asset manager Amundi Real Estate for approximately €85 million. Another expected transaction failed, as Austrian listed insurance company Uniqa tried to auction the Vienna Sofitel for an expected purchase price of approximately €100 million, but terminated such plans due to the lack of acceptable bids in early 2017. The building shall now become Europe's biggest start-up centre.

SHOPPING CENTRES AND RETAIL PARKS

Immofinanz purchased eight retail parks in the Slovak Republic and Hungary for €79 million. South African property investor Accelerate Property Fund bought a portfolio of specialty shopping centres – six of them in Austria and three in Slovakia. Leasinvest Real Estate SCA purchased the retail park Frunpark Asten, measuring 18,300 square metres and close to the city of Linz, from developers De Vlier Retail Development and Focus Real Estate. Also in the vicinity of Linz, local investors purchased the shopping centre UNO Shopping from Bank Austria Real Invest. Other prominent investors include Warburg Henderson, purchasing Vienna specialty shopping centre Gewerbeparkstrasse 13 for approximately €70 million, and Allianz Real Estate buying a significant minority stake in the shopping centre Fischapark Wiener Neustadt. In CEE/SEE, a large number of stores within the Austrian supermarket chain Billa, owned by German Rewe Group, were sold in 2016, with Austrian competitor Spar acquiring 62 stores in Croatia. Following the transaction both Rewe and Spar own approximately 100 stores each, and French competitor Carrefour acquired all stores in Romania for an estimated €100 million.

CONSTRUCTION

Austrian HABAU purchased Bilfinger MCE from German Bilfinger Berger in 2016, which in turn acquired MCE from Deutsche Beteiligungs GmbH in 2009 for €350 million.

CONSTANT PRIVATE EQUITY DEAL FLOW

There were some major private equity exits in 2016. Most notably, Swedish private equity firm EQT sold Automic to US-based software company CA Technologies for a reported price of €600 million; and Germany-based private equity fund Capiton sold Schur Flexibles to US-based private equity fund Lindsay Goldberg for an estimated €300 million–€400 million. Both exits followed a broad auction and attracted a lot of interest from strategic investors and financial sponsors alike. The third significant exit was completed by Franklin Templeton and GSO Blackstone-financed Ring International Holding, which sold its coating division to Tokyo-based Kansai Paint for about €570 million, after several earlier attempts to divest the coating division in 2014 and 2015 (those discussions involved bidders such as Advent and PIA (Goldman)).

There were also a couple of interesting mid-market, mostly tech-related deals, notably French private equity investor Ardian buying Austria-based RFID firm Gantner; private equity-backed Scout 24 group buying Austria-based online properties platform Immodirekt; US-based private equity investor Greenbriar buying Austria-based Frauscher Sensortechnik; UK-based investor group Walstead buying Austria-based Leykam Let's Print; and Dubai-based Vis Mundi and Levent Capital buying a significant minority stake in Powerhorse, an Austria-based energy drink producer.

One of the most visible venture transactions was the €154 million investment of Insight Venture Partners in the Austrian software company Tricentis, with Kennet Partners and Harbert exiting the target. There were also a couple of noteworthy series A financing rounds, including a series A investment by Atomico, the VC vehicle of Skype founder Niklas Zennström; Austrian tech fund Speed Invest, Y Combinator and Dawn Capital investing in Bitmovin, an Austria-based videostreaming platform; and Austria-based private equity fund Cudos Capital's investment in Austrian optical tools specialist firm In-Vision Digital.

A target that had been in the spotlight of private equity investors was eventually sold to a strategic investor: British gaming software producer Playtech acquired 90 per cent in its Austrian competitor Best Gaming Technology for €138 million.

PUBLIC M&A AND TAKING PRIVATE TRANSACTIONS

In 2016 public M&A activity remained substantial. Among two large-cap deals, the increase in partial takeover bids and private transactions was notable.

The announced merger of the Austrian-listed refractory producer RHI and its Brazilian competitor Magnesita for €1.17 billion was the second largest deal in 2016, after Vonovia's above-mentioned €2.93 billion takeover of Conwert. The combined company RHI Magnesita shall be established in the Netherlands and listed in London. Once completed; such deal will be one of the rare examples of a merger of equals like transaction, which is envisaged for later this year.

Other noteworthy transactions include Taiwanese Foxconn, via its subsidiary Ennoconn, investing in the Austrian technology group S&T, which is listed on the Frankfurt Stock Exchange, to acquire 29.4 per cent and become its largest shareholder. The inflow of funds was used by S&T to increase its participation in Kontron AG to 29.9 per cent, of which it already owned approximately 5 per cent. S&T went on to purchase IT-Markt from Raiffeisen Informatik Group. Immigon, the bad bank of Österreichischen Volksbanken-AG (ÖVAG), sold approximately 3 per cent in the listed Raiffeisen Bank International, for approximately €208 million, to institutional investors.

Austria-based gambling company Novomatic made a substantial outbound investment by acquiring a majority in Australian listed Ainsworth Game Technology for approximately €320 million. Novomatic also played a major role in a very prominent domestic deal. In early 2017 Czech Sazka Group purchased, via its subsidiary Came Holding, an additional indirect stake (via Medial Beteiligungs GmbH) in Casinos Austria (Casag) from insurance company Uniqa and Leipnik Lundenburger, bringing its ownership to 34 per cent; however, in late 2016, Novomatic acquired a direct stake of 17.2 per cent from MTB Privatstiftung, after a failed attempt to acquire the indirect stake sold to Sazka Group, which had in fact not been granted merger control clearance. With a share of 33.2 per cent, government-controlled state holding company ÖBIB remains Casag's second largest shareholder. In a related transaction Novomatic reduced its indirect stake in Casag's subsidiary Österreichische Lotterien Gesellschaft to approximately half the original stake that it purchased in 2015, by selling 11.56 per cent of its indirect participation to Sazka.

Partial takeover bids, which have recently increased, aim to stay below the formal control threshold of 30 per cent (unless lowered in the articles of association as implemented by several Austrian companies), which triggers a mandatory bid obligation for all shares in the target, or are limited to only 26 per cent, which is the ex lege cap of exercisable voting rights (unless another shareholder holds voting rights in excess of that threshold or a bid is launched). Often, though, they are followed by subsequent bids, which usually trigger a mandatory offer. One deal, however, was different: in 2015 Airports Group Europe, an indirect subsidiary of IFM Global Infrastructure Fund, launched a voluntary partial bid to acquire 29.9 per cent in Flughafen Wien AG, the operator of Vienna International Airport, and successfully acquired shares just below the 30 per cent threshold. In 2016 it launched a voluntary partial bid to acquire a further 10 per cent for up to €210 million, which did not follow the rules of a mandatory bid. Their actions were based on the argument that, despite exceeding the formal control threshold of 30 per cent, no mandatory bid obligation is triggered since two shareholders were acting in a syndicate, which in total controls 40 per cent of the voting rights.

A notable increase in the taking of private transactions can be reported. Hirsch Servo, an Austrian producer of expandable polystyrene (EPS), reported the intended delisting of its shares from the Vienna Stock Exchange (furthermore, it purchased the EPS insulation segment of Arcon SRL, a producer of insulation and bituminous roofing membranes). Another expected delisting concerns the Austrian sparkling wine producer Schlumberger AG (which in 2016 acquired from American-Japanese liquor group Beam Suntory the Austrian chocolate spirits producer Mozart Distillerie). Schlumberger is majority-owned by the Swiss holding Sastre, belonging to entrepreneur Frederik Paulsen, which in 2016–2017 successfully completed a take-over offer for over 90 per cent, which is the statutory squeeze-out threshold. Also in 2016, Austria-based BioEnergy International announced its delisting from the Frankfurt Stock Exchange. Furthermore, listed Vienna-based asset manager C-Quadrat should have been delisted through a squeeze-out procedure as well, but such plans were aborted for tax reasons.

The largest ECM transaction reported in the past few months involved the sugar, starch and fruit company Agrana, which raised approximately €192 million. In 2016, Agrana was also in the news when it acquired all shares in the Argentinian fruit preparations producer Main Process SA.

OTHER NOTEWORTHY DEALS

Listed Austrian oil and gas giant OMV has been very active. In 2016 it sold all shares in its subsidiary OMV (UK) Limited to Scottish financial investor Siccar Point Energy Limited, for an amount of up to €1 billion. It also sold a 49 per cent minority stake in Gas Connect Austria to the consortium of Allianz and Snam, Italy's gas infrastructure operator. Recently, it announced the sale of all shares in its subsidiary OMV Petrol Ofisi to VIP Turkey Enerji AS, a subsidiary of Vitol Investment Partnership, for an overall transaction value of €1.368 billion. Likewise in 2017, it announced the purchase of 24.99 per cent interest in the Yuzhno Russkoye gas field in Western Siberia for US$1.850 billion.

In early 2017, Swiss ABB purchased Austria-based automation company Bernecker + Rainer Industrie-Elektronik for approximately US$2 billion, making it the largest inbound investment so far this year. Austria-based and Swiss-listed sensor and chip producer AMS acquired, for approximately US$570 million, Singapore-based Heptagon Advanced Micro-Optics (plus an earn-out of up to US$285 million), in one of the largest private outbound investments in 2016. AMS also acquired British noise-cancelling specialist Incus Laboratories and British sensor manufacturer Cambridge CMOS Sensors (the purchase price of each was not disclosed). Software developer XiTrust Secure Technologies acquired 21.24 per cent in IT-security provider A-Trust from Bank Austria, Schoellerbank and Immigon. Taiwan-listed Delta Electronics purchased an 85 per cent stake in building automation expert Loytec for €72 million from its founders.

TRAVEL AND TOURISM

Building on a majority ownership, Austria-based tourism group Verkehrsbüro acquired all shares in Jumbo Touristik via its subsidiary Ruefa. Austrian travel and transportation company Blaguss became sole shareholder in Austrian WESTbus GmbH, in which it already held 51 per cent, from Rail Holding AG. It also purchased Austrian bus and tourism company Vorderegger, as well as the Wiener Donauturm, an iconic tower and viewing platform – and, at 252 metres, Austria's tallest building. In the airline sector, Tuifly and Austria-based Niki have been bundled into a joint holding company in Vienna; the three main shareholders are Etihad Airways (25 per cent), Tui (24.8 per cent) and Niki Privatstiftung (50.2 per cent). The shares in Niki, which will contribute to the new joint venture, were purchased by Etihad for approximately €300 million from Air Berlin.

RETAIL

The real estate company Signa maintains its ambitions in the retail sector. In 2016 Signa Retail, best known for owning Germany's Karstadt, acquired 78 per cent in Tennis-Point; 100 per cent in an online outlet for designer fashions; 60 per cent in Outfitter; and 87 per cent in the bike and outdoor e-commerce company internetstores. In early 2017 the latter entered into a partnership with Probikeshop, to become the largest online bike retailer in continental Europe.

FINANCIAL SERVICES

In early 2017 Italian technology company SIA Group purchased a cards business (processing services for debit, credit and prepaid cards, etc) in Austria, Germany and Italy from Unicredit for €500 million. Prior to this, in 2016, French asset manager Amundi purchased, from Unicredit, its subsidiary Pioneer Investments for €3.5 billion, with approximately €11 billion of the total of €222 billion of assets under management located in Austria. Uniqa sold the entire 99.7 per cent stake in its Italian subsidiary Uniqa Assicurazioni to Italy-based Società Reale Mutua di Assicurazioni for €295 million. Heta sold its Italian leasing operations Heta Asset Resolution Italia, with a book value of €657 million, to Bain Capital Credit.

Smaller transactions in the banking sector included Wiener Privatbanken SE's acquisition of the Austrian banking operations of Valartis Bank (Austria) AG through an asset deal. Meanwhile Bawag PSK (the Austrian retail bank is majority-owned by private equity investor Cerberus, and for many years has been an ongoing candidate for purchase) bought from Start-Bausparkasse and Immo-Bank from the Volksbanken Group. The new merged receivables management giant GFKL Lowell, owned by private equity investor Permira, purchased the Austrian receivables management company IS Inkasso Service from Hannover Finanz for €23 million.

TELECOMS

Telekom Austria, which is majority-owned by telecoms giant América Móvil, completed two take-overs in Belarus and Croatia, by acquiring Atlant Telecom and TeleSet from Zubr Capital and EBRD respectively. Telekom Austria also acquired, via its Croatian subsidiary Vipnet, a majority share of fixed-line provider Metronet telekomunikacije.

MEDIA

One prominent management buyout was the purchase of 56 per cent of the Austrian publisher Verlagsgruppe News by Horst Pirker from the Bertelsmann subsidiary Gruner + Jahr. Additionally, the Austrian subsidiary of Germany's ProSiebenSat.1 Group purchased the private TV station ATV; and German media group WEKA purchased all shares in Wiener Industriemagazin Verlag GmbH.

LEGAL AND REGULATORY FRAMEWORK

Experience shows that certain restrictions under Austrian corporate law often come as a surprise to foreign investors structuring a deal – particularly financing and intra-group transactions after the transaction has been made. Austrian law generally prohibits the return of equity to shareholders (ie, upstream and side-stream transactions) of both a limited liability company and a stock corporation. Based on this principle, Austrian courts have established that a company cannot make any payments to its shareholders outside arm's-length transactions, except in the following instances:

- for the distributable balance sheet profit;
- in a formal reduction of the registered share capital; or
- for the surplus following liquidation.

The prohibition on return of equity covers payments and other transactions benefiting a shareholder where no adequate arm's-length consideration is received in return. To the extent a transaction qualifies as a prohibited return on equity, it is null and void between the shareholder and the subsidiary (and any involved third party, if it knew or should have known of the violation). It may result in liability for damages.

Austrian courts have developed case law suggesting that a subsidiary may lend to a shareholder, or guarantee, or provide a security interest for a shareholder's loan, if it receives adequate consideration in return; or if it has determined (with due care) that the shareholder is unlikely to default on its payment obligations, and that, even if the shareholder defaults, such default would not put the subsidiary at risk, and that the transaction is in the interest of the Austrian subsidiary (corporate benefit).

In addition, the Austrian Stock Corporation Act prohibits a target company from financing, or providing assistance in the financing of, the acquisition of its own shares or the shares of its parent company (irrespective of whether or not the transaction constitutes a return of capital). It is debatable whether this rule should be applied, by analogy, to limited liability companies. Transactions violating this rule are valid but may result in liability for damages.

Another area in which capital maintenance problems may arise is that of deal and management fees charged by private equity funds to the Austrian target or an Austrian acquisition vehicle. Again, the arm's-length standard is relevant to determine the compliance with Austrian law. The same applies to other intra-group transactions.

Another area of interest to investors, besides the relatively low merger control thresholds in Austria, is (foreign) ownership restrictions.

In regulated industry sectors (eg, banking, insurance, utilities, gambling, telecoms or aviation) the acquisition of a qualified or a controlling interest is typically subject to advance notification to, or approval of, the competent regulatory authority. Sanctions for failure to notify or obtain approval in advance include monetary penalties, a suspension of voting rights, and a partial or total shutdown.

The acquisition of ownership and certain lease interests in real estate by non-EEA nationals or the acquisition of control over companies owning such interests is subject to notification or approval by the local real estate transfer commission. Which interests are covered, and whether notification or approval is required, varies among the legislation of the nine states in Austria. Where the real estate is used for commercial rather than residential purposes approvals are usually granted.

Under the Foreign Trade Act, the acquisition of an interest of 25 per cent or more, or a controlling interest in an Austrian business by a foreign investor (for purposes of this law, that is an investor domiciled outside of the EU/EEA and Switzerland; if the investor is resident in that region, no advance approval is required, but ex officio investigations can be initiated without time limit) is subject to advance approval by the Austrian minister of economic affairs where that business is involved in internal and external security (for example, defence and security services) or public order and security, including public and emergency services, such as hospitals, emergency and rescue services, energy and water supply, telecommunications, traffic or universities and schools. Transactions subject to approval cannot be completed pending approval. Failure to obtain approval is subject to imprisonment and criminal penalties.

Another recurrent topic is the access to documents and information to conduct due diligence. In this context, certain differences depend on the legal form in which the target is established.

As a general rule, third parties do not have a right to obtain information from the stock corporation besides those that are publicly available. The board is thus not obliged to disclose confidential information to a prospective buyer. Even shareholders have very limited information rights. They can request the financial statements, including the management report, as well as the supervisory board report. Furthermore, shareholders have an individual information right at the shareholders' meeting in relation to the agenda, and to the extent such information is necessary to properly assess an agenda item. Given that such information will usually not suffice for purposes of a due diligence by a potential investor, shareholders will often request the management to disclose additional information. The decision on the disclosure of confidential information, and thus the decision on the admission or refusal of a due diligence, is a management measure, and thus generally does not require the consent of the supervisory board or the shareholders. The management has to avoid any damage to the company and to consider all potential advantages, risks and disadvantages. Positive impacts may include, for example, new or cheaper means of financing, access to new customers or markets, access to product or technical know-how, advantages for the company's production or procurement, etc. Negative impacts could arise if, for example, a competitor or a major supplier or customer of the target can access the information. The decision to allow due diligence is not necessarily an "all-or-nothing" decision; the greater the interest of the company in due diligence, the more sensitive the data that can be disclosed. The interest of shareholders also has to be taken into account by the management, whereby shareholders should generally be treated equal in equal situations. Another aspect to consider is the time frame. The more advanced the stage of the acquisition process, the more comprehensive and detailed the information that can be made accessible to the buyer. Due diligence will mostly only be permitted if the buyer's intention to a purchase has become more concrete, for example by signing a letter of intent. At the same time, the prospective buyer should also sign a non-disclosure agreement.

The legal situation for limited liability companies is generally comparable to that of stock corporations. Although its shareholders have only limited access to information rights, the Austrian Supreme Court states that every shareholder has to be granted a comprehensive information claim. Therefore, the managing directors are, in general, obliged to provide requested information to shareholders. However, this information claim does not apply without restriction. The purpose of the comprehensive information right is to monitor managing directors; to control the business situation of the company; and to prepare for general meetings. This information claim should thus only be used for these objectives. Accordingly, there is some legal argument in Austria that the information claim would not include a due diligence for the sale of shares; meanwhile others argue that managing directors may not deny access to documents or information for purposes of a due diligence. Overall, a due diligence claim by a shareholder of a limited liability company must be honoured, if and to the extent that it is essential for selling the shares to a potential buyer, and the shareholder's request is not a misuse of the law (eg, if the shareholder intends to avoid disclosure of the information to a prospective buyer); but only to the extent that is necessary to sell the shares, and only insofar as the interests of the company are not negatively affected. Regarding the question of what information the seller is allowed to share with a potential buyer, the company's confidentiality interests must be carefully weighed against the shareholder's interests in the dissemination of information, and will often require a shareholder resolution (at least in scenarios in which the sale of the shares is subject to shareholders' approval). The shareholders of a limited liability company are subject to the demands of their loyalty to the company and to the other shareholders. The nature of such loyalty among the shareholders means paying due regard to the legitimate interests of the other shareholders even when exercising their voting rights.

FUTURE DEVELOPMENTS

It is rather difficult to predict the future course of 2017, due to macroeconomic developments (eg, Brexit) that may change the current investment environment in Europe and internationally. Generally, the first quarter of 2017 was active, based on the assumption that the economy remains stable; the Austrian M&A market should continue its strong performance. This outlook is also supported by the fact that private equity firms hold substantial cash reserves to be invested, and many of their portfolio companies are overdue to be sold again.