THE PRIVATE EQUITY REVIEW

TENTH EDITION

Editor
Stephen L Ritchie

THE LAWREVIEWS

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PREFACE

The tenth edition of *The Private Equity Review* follows a turbulent year for dealmakers in 2020. Uncertainties created by the global covid-19 pandemic triggered a significant slowdown in deal activity in the first and second quarters. However, a combination of central bank interventions, fiscal stimulus, optimism about a vaccine and better virus management led to frenetic third and, especially, fourth quarters. The net result was that the number and value of global buyouts increased significantly over 2019's already robust activity, while there was a noticeable decline in private equity exits. The year 2020 also saw a flurry of IPO and merger and acquisition activity by special purpose acquisition corporations, or SPACs, some formed by private equity sponsors and others formed by other dealmakers. Fundraising activity was also strong, notwithstanding the pandemic, with aggregate capital of nearly US$1 trillion raised, as institutional investors remained extremely interested in private equity as an asset class because of its continued strong performance. As a result, private equity funds have record amounts – by one estimate, nearly US$1.5 trillion – of available capital, or dry powder. PE funds' dry powder (and the need to deploy it), together with competition from SPACs, sovereign wealth funds, family offices and pension funds, led to very competitive transactions being completed at increasing leverage levels and purchase price multiples. This has caused private equity firms to become even more creative as they seek opportunities in less competitive markets or in industries where they have unique expertise.

The year 2020 showed once again the resilience of the private equity market and the creativity of private equity dealmakers. Given PE funds' creativity and available capital, we are confident that private equity will continue to play an important role in the global economy, not only in North America and Western Europe, but also in developing and emerging markets in Asia, South America, the Middle East and Africa, and to further expand its reach and influence, even in the face of potential political, regulatory and economic challenges.

Private equity professionals need practical and informed guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. *The Private Equity Review* has been prepared with this need in mind. It contains contributions from leading private equity practitioners in 25 different countries, with observations and advice on private equity dealmaking and fundraising in their respective jurisdictions.

As private equity has grown, it has also faced increasing regulatory scrutiny throughout the world. Adding to this complexity, regulation of private equity is not uniform from country to country. As a result, the following chapters also include a brief discussion of these various regulatory regimes.

I want to thank everyone who contributed their time and labour to making this tenth edition of *The Private Equity Review* possible. Each of these contributors is a leader in their respective markets, so I appreciate that they have used their valuable and scarce time to share their expertise.

Stephen L Ritchie
Kirkland & Ellis LLP
Chicago, Illinois
March 2021

Part II

INVESTING

Chapter 2

AUSTRIA

Florian Cvak and Clemens Philipp Schindler[1]

I OVERVIEW

i Deal activity

General

Overall M&A activity posted a record low in 2020 as a result of the effects of the covid-19 pandemic. Majority deals declined by 25 per cent compared to 2019 and 33 per cent compared to the five-year average. With that, activity was even below levels from the peak of the financial crisis in 2009. While the first quarter showed a relatively modest decline of around 4 per cent, the following quarters showed declines of between 37 per cent and 26 per cent overall compared to 2019. Most closed transactions had a strategic element, at least in the large-cap segment, with the majority takeover of Borealis by OMV, to begin its transformation into a chemical business, being a perfect example. Domestic transactions (that is, transactions where the buyer and seller are based in Austria) even showed a slight increase compared to 2019 while cross-border transactions declined significantly. In terms of sectors, industrial and services, technology and finance did relatively well, while other segments showed more or less pronounced declines. Distressed M&A was not a factor so far, which is mainly a result of the state support programmes and covid-19-related insolvency legislation.

Inbound private equity activity also declined significantly, which was a result of almost all pending auctions being suspended until there was better visibility on the effects of the covid-19 pandemic on the business on sale. Also, with very few exceptions in Q4, no new auctions came to the market and on the other hand many players had to focus on stabilising their portfolios. Private equity activity picked up again at the beginning of Q4 but most of the deals that came to the market in Q4 have not yet closed and are thus not reported below. Of the (few) transactions that closed in 2020, most were either close to completion when the pandemic hit Austria at the end of Q1, resulted from pre-existing bilateral contacts or were completed in Q3 or Q4 and concerned unaffected businesses.

Buyouts

In the large-cap segment (comprising deals with values above €100 million), there was a sharp decline in deal count and total deal value of closed deals, with the acquisition by Royal DSM of Erber Group, an Austrian-based food and feed safety business (which also attracted significant interest by several private equity players (including EQT)), the acquisition by Apollo of a majority stake in Sazka Group, a Czech based gaming business holding (including

1 Florian Cvak and Clemens Philipp Schindler are partners at Schindler Attorneys.

an indirect majority stake in Austrian-based casino and lotteries business CASAG), and the acquisition of Austria-based cloud-based customer engagement platform Emarsys by SAP (which also attracted significant interest by major private equity houses before being ultimately sold to SAP) being the most prominent transactions.

In the mid-cap segment (comprising deals with values of between €10 million and €100 million), there was an even steeper decline in deal count and total deal value of closed deals compared to 2019. Examples of the few closed mid-market deals include the acquisition by Apollo-controlled Neuraxpharm of Austria-based consumer healthcare company Easypharm, the acquisition by Lafayete Mittelstand Capital of the elevator business of Gebauer & Griller Kabel und Metallwerke and the acquisition by VR Equity-controlled APZ of Ihr Autoputzmeister GmbH.

Venture and growth capital

Venture and growth capital activity (comprising deal values of €4 million and above) overall was less affected by the covid-19 pandemic. Examples of closed transactions include a large Series A financing round for Austrian-based fintech business Bitpanda led by New York-based Valar Ventures, a growth capital transaction led by Bregal for Austrian-based bicycle company Woom, as well as a smaller financing round for Austrian-based femtech startup Carbomed Medical Solutions led by aws Gründerfonds. In addition, there were several follow-on financing rounds and bridge financing rounds. Examples include Holo-Light, Playerhunter or Bonrepublic, to name a few.

Exits

In the large-cap segment (comprising deals with values above €100 million), apart from transactions already mentioned above, the only noteworthy completed exit was the sale by Ardian of its stake in Gantner Electronic Austria Holding GmbH, an Austria based access, ticketing and billing systems business, to SALTO Systems.

In the mid-cap segment (comprising deals with values of between €10 million and €100 million), notable exits included the sale by Bamberger Invest, SK Capital and management of Websms, an Austrian based messaging solutions company (which also attracted significant interest by private equity players), to Link Mobility, the sale of Austrian-based vaccine developer Themis to US pharmaceuticals company Merk & Co and the sale by aws of its stake in SIE Solutions (which also attracted significant interest by private equity players), an Austrian-based provider of embedded technology solutions to customers in healthcare and security industries, to Paramit Corp.

ii Operation of the market

In buyout transactions, a private equity firm often involves future management in the due diligence process and the financial modelling. Typically, management is required (or at least given the opportunity) to acquire an interest in the target to ensure their commitment; however, foreign investors often find that local management is not as familiar with such arrangements as would be the case in other jurisdictions. Second-level senior management is sometimes also given the opportunity to invest in the same instruments (known as the 'institutional strip') acquired by the private equity firm to ensure that their interests are fully aligned. In the latter case, structuring options are, by definition, limited. Where management is required (or given the opportunity) to participate on target level, share options (in the case of stock corporations), restricted shares (for a description of the typical restrictions, see below), profit participation rights (a contractual arrangement that can be structured as equity or debt and, by contrast to shares, never confers voting rights), virtual shares (that is, a contractual arrangement giving the member a stock-like return) and phantom stock (that is, a contractual arrangement giving the member a bonus depending on operational performance) are the most common structures.

The detailed structuring of incentive packages is usually driven by the tax treatment of the benefits in the jurisdiction of residence. For example, management will have a strong interest in ensuring that any gains in relation to interests acquired are taxed as capital gains (and not as employment income). In that context, it is important that economic ownership of the incentive interest passes at the time of the grant (which in Austria depends on the management members' entitlement to dividends (if any), voting rights and transfer restrictions). If economic ownership does not pass, the entire exit proceeds may be taxable as employment income. Management will typically also have an interest in limiting taxation at the time of the grant. Where economic ownership of the benefit concerned passes for arm's-length consideration (usually management is asked to invest up to one year's salary), there is no taxation of the grant (for Austrian tax residents). If there is no arm's-length consideration, the grant is taxed as employment income. Where the investor provides financing to the management, tax authorities may be more inclined to question whether economic ownership has passed for arm's-length consideration. Because the tax treatment of incentive programmes is often somewhat unclear, it is advisable to seek a tax ruling on the related tax issues before deciding on a particular incentive structure.

Where actual shares are held by management, they are usually pooled (e.g., through a partnership) so that the investor technically only has one co-investor, and they are restricted. Such restrictions typically include a drag-along right of the private equity firm upon an exit and compulsory transfer provisions if the employment with the target group terminates. The consideration due in the case of a compulsory transfer will typically depend on the reason for termination ('good' and 'bad' leaver provisions), although structuring has become less aggressive in that regard given recent developments in employment law.

Auction processes are relatively common on the Austrian market. A standard auction process will typically be organised by an investment bank (or M&A adviser). As a first step, the investment bank will propose a shortlist of potential bidders and discuss that shortlist with its client. The investment bank will then invite the selected bidders to submit an indicative bid on the basis of an information package (including limited commercial, financial and basic legal information about the target company). Following evaluation of the indicative bids, the investment bank will invite the most promising bidders to conduct Phase I due diligence, for a period of about two to six weeks, and to submit a binding bid (usually together with a markup to a sale and purchase agreement circulated in the middle of the Phase I due diligence). Following evaluation of the binding bids, the seller will engage in negotiations with two to three bidders, which are then granted access to the Phase II due diligence material and red files (if any). The time required for the entire process varies significantly depending on the appetite for the target and the number of bidders involved. It can range from as little as two to three months up to six months or even more.

II LEGAL FRAMEWORK

i Acquisition of control and minority interests

A typical acquisition structure for an Austrian private equity transaction involves a set of holding companies (holdcos) incorporated in Luxembourg, the Netherlands or another tax-favourable jurisdiction, and an Austrian acquisition vehicle (bidco) that enters into the purchase agreement and ultimately acquires the shares. The funds will typically try to maximise leverage on the transaction. Where junior debt (e.g., mezzanine) is used, senior lenders will often require junior lenders to lend to a level higher in the structure to achieve not only contractual subordination (which is achieved by entering into an intercreditor agreement) but also structural subordination. The gap between bank debt and the agreed purchase price is then financed by the fund through a combination of equity and institutional debt. The amount of institutional debt that can be deployed is determined by thin-cap rules. While the law does not provide any guidance in this respect, debt-to-equity ratios of 3:1 to 4:1 are generally accepted by Austrian tax authorities.

On or shortly after completion of the share purchase, the target company is usually asked to accede to the financing documents on an exclusive lender basis (to avoid structural subordination of the financing banks to existing lenders of the target company), and to grant guarantees and security interests securing the acquisition debt as well as refinanced target company debt (if any). To the extent such guarantees and security interests secure repayment of the acquisition debt, they are of little commercial value, as they are only valid to the extent:

a that the risk of default of the bidco and the risk of default of the target company (in cases where the security interest is enforced or the guarantee called) are acceptable, and that the granting of the security interest or guarantee will not put the target company at risk considering the risk of default of the bidco and the likelihood of recovery from the bidco based on the target company's recourse claims against the bidco, where the security interest is enforced or the guarantee is called; and

b the target company receives adequate consideration, which can either be a fee (in which case it should include a margin on top of the fee that would be charged by a bank in a comparable transaction) or an equivalent corporate benefit (e.g., access to financing that would otherwise not be available).

To preserve the validity of guarantees and security interests at least in part and avoid management (and supervisory) board liability, 'limitation language' is typically included in the financing documents that limits the obligations of Austrian obligors to an amount and terms that are compliant with Austrian capital maintenance rules.

At the same time, the private equity fund will seek to implement a tax offset structure, which is aimed at offsetting interest expense at the bidco level with profit generated at the target company level. In principle, there are two methods to achieve this. The first method is to establish a tax group between the bidco and the target company. In such a tax group, the fiscal result of the bidco and the target company is consolidated at bidco level. If the aggregated fiscal result of the bidco and the target company is negative, the loss can be carried forward by the bidco to future periods. The formation of such a tax group requires a tax allocation agreement and an application to the competent tax office. The required minimum period of a tax group is fulfilled when three full fiscal years have lapsed. If the tax group is collapsed prior to the lapse of the three-year period, the group members are retroactively taxed on a stand-alone basis. Austria introduced an interest barrier rule as of 1 January 2021 also applicable in the case of a tax group. A second method (which is sometimes discussed but rarely ever implemented because of the significant implementation risk it involves) is an upstream merger of the target company into the bidco. Based on past decisions of the Austrian Supreme Court, it is pretty clear that where the bidco carries the acquisition debt for the purchase of the shares of the target company, a downstream merger of the bidco into the target company will not be registered. In certain exceptional cases, however, an upstream merger of the target company into the bidco may be feasible. The result of such an upstream merger would be that the shares in the target company pass to the bidco parent, interest expense on the acquisition debt could be offset against profit, and guarantees and security interests granted by the merged entity (holding the cash-generating assets) would not be subject to limitations under the Austrian capital maintenance rules (see above) and thus would be of greater commercial value to the financing banks. In particular, the last point is often of great interest to the financing banks involved, which is why this route is sometimes explored when a particular case supports the necessary arguments.

In a buyout transaction, the key legal documents include the acquisition documents: that is, one or more share purchase agreements with the seller and the financing documents (including agreements governing equity contributions and institutional debt coming from the fund, a senior (and mezzanine) facility agreement governing the debt financing coming from the financing banks, security documents and an intercreditor agreement governing priority among the various layers of debt). In addition, where the fund does not acquire all the outstanding share capital, governance documents are required, including a shareholders' agreement, amended articles of association, and by-laws for the management board and supervisory board (if any). The main areas of concern in the governance documents are the fund's right to appoint sponsor representatives to the supervisory board (or an observer to the supervisory board, or both), sponsor representative liability (see Section II.ii), a list of matters requiring the consent of the fund or the sponsor representative (which should be tailored such that there is no undue influence on the day-to-day business), anti-dilution provisions, a liquidation preference for the fund, and information and exit rights for the fund.

In most cases, the fund will also insist that at least senior management enters into a management equity incentive arrangement (see Section I), and that the management and all key personnel enter into service agreements acceptable to the fund.

ii Fiduciary duties and liabilities

Duties owed by a shareholder

Austrian courts have consistently held that shareholders owe a duty of loyalty to the company and to other shareholders, requiring shareholders to consider the interests of the company and the interests of other shareholders in good faith and in line with *bonos mores*. As a general matter, the scope of the duty of loyalty is more pronounced for closely held companies than for widely held companies, and differs from shareholder to shareholder depending on the ability of the relevant shareholder to make a difference. A majority shareholder may, for instance, be exposed to liability for a failure to appear and vote on a matter under certain circumstances, whereas a minority shareholder will not because his or her appearance (or vote) is of no relevance to the outcome anyway. The duty of loyalty may require a shareholder to appear and approve a proposal of the management board where the implementation of the proposal is necessary for the survival of the company (e.g., a capital increase, a capital reduction or an asset sale in a restructuring). The duty of loyalty does not, however, require a shareholder to provide further financing to a company in financial distress.

A private equity fund shareholder must also consider his or her duty of loyalty at the time of exit. As a general matter, an exiting shareholder must account for the legitimate interests of the company and its shareholders when exiting his or her investment and prevent unnecessary harm (e.g., by excluding unpromising bidders, restricting competitors' access to sensitive information and ensuring confidentiality). Accordingly, it is important that a professional process is put in place that complies with these requirements.

The private equity fund should also be aware that, in considering the duty of loyalty, Austrian courts have discussed concepts similar to the 'corporate opportunities doctrine', which, in essence, provides that whenever an opportunity falls within the scope of activity of the company, a shareholder is prohibited from exploiting that opportunity for his or her own advantage.

A violation of duties of loyalty may result in claims for damages, cease-and-desist orders or a challenge of the shareholder vote that violates those duties.

Duties owed by members of the management and supervisory boards

As a general matter, all members of the management and the supervisory board (if any) of an Austrian company, including any sponsor representatives, owe to the company (not the shareholders or any other constituents) the following duties:

a a duty of care, requiring members to exercise the level of care of a proper and diligent person in similar circumstances (which includes an obligation to be reasonably informed and articulate any concerns they may have);

b a duty of loyalty, requiring members to act in the best interest of the company and its shareholders and not in their own interest;

c a duty of confidentiality; and

d in the case of members of the management, a duty not to compete. Supervisory board members are not explicitly prohibited from competing with the company, but any competition will always be subject to scrutiny under the duty of loyalty.

Where a member of the management or the supervisory board is at fault, he or she is jointly and severally liable for any damages incurred by the company with all the other members at fault, unless the shareholders' assembly has approved the measure resulting in the damage. A stock corporation may waive or settle its damage claims with an affirmative shareholder vote of 80 per cent after five years, or even before that with an affirmative vote of all shareholders. A limited liability company may waive or settle damage claims at any time, provided the waiver or settlement does not affect recovery against it by its creditors. A company may also take out directors and officers liability insurance for the members of the management board, in which case the associated expenses are treated as part of the remuneration of the relevant members.

A private equity fund should be aware that creditors of a joint-stock company (or, where insolvency proceedings have been opened, the administrator in those proceedings) can bring damages claims on behalf of the company against a member of the management or supervisory board to the extent that they cannot recover damages from the company in the following circumstances:

a where the claim is based on provisions protecting the proper pay-in of share capital (including liability for unpaid capital contributions and liability for an unpermitted return of capital) or because of unpermitted payments made during insolvency (also in cases of slight negligence); and

b in other cases, only where the relevant member was grossly negligent.

A waiver by the company or shareholder approval of the relevant measure does not exempt the fund from liability towards creditors (or the administrator).

Other sources of potential liability for the private equity fund involve:

a piercing the corporate veil, which is possible in the following circumstances:
- factual management by a shareholder, or the exercise of control over the management board by a shareholder (where a shareholder, while not formally appointed, factually manages the company or substantially controls the management board);
- undercapitalisation (only where there is an obvious imbalance between the risks of the business and the equity that is likely to result in a default of the company damaging creditors);
- intermingling of assets (where, based on accounting records, the assets of the company cannot be separated from the assets of the shareholder); and
- shareholder action putting the company at risk (where a shareholder takes action resulting in insolvency (e.g., acceleration of loans resulting in illiquidity or termination of a necessary patent));

b liability based on a breach of provisions protecting the proper pay-in of share capital (including liability for unpaid capital contributions, liability for unpermitted returns of capital and breach of financial assistance rules); and

c liability up to the amount secured where a shareholder has granted a guarantee or security interest securing a loan of a portfolio company in financial crisis (as defined in the Company Reorganisation Act), in which case the portfolio company can request the shareholder to pay to the creditor the amount secured for as long as it is in financial crisis (in which case, the recourse claim of the shareholder is suspended until the financial crisis is over). If the portfolio company pays the creditor, the portfolio company can request reimbursement from the shareholder.

III YEAR IN REVIEW

i Recent deal activity

See Section I.i.

ii Financing

The financing environment for buyout transactions more or less remained unchanged and is quite different for domestic market participants, who typically seek financing from domestic banks, and international financial sponsors, who are able to tap international banks (at least on large-cap deals). In the large-cap segment, debt-to-equity ratios are in the range of 50 to 60 per cent. In the mid-cap segment, debt-to-equity ratios tend to be more conservative, but this depends on the type of business acquired. Smaller deals are usually financed with equity only.

Where leverage is employed on mid-cap transactions, there is usually only senior and institutional debt, as adding junior debt tends to add another layer of complexity that is often not supported by the limited transaction size. On large-cap transactions, layers of junior debt are often added to the mix. High yield is of little significance in Austrian leveraged buyout practice as the time and cost involved tends to be disproportionate to the gains on the pricing side. With an increased relevance of debt funds, new financing structures are being employed more often.

iii Key terms of recent control transactions

See Section I.i.

iv Exits

See Section I.i.

IV REGULATORY DEVELOPMENTS

Domestic funds typically qualify as alternative investment funds (AIFs); as such, managers require a licence issued by the Austrian Financial Market Authority (FMA) under the Austrian Alternative Investment Manager Act (AIFMG). Most domestic funds qualify for the *de minimis* exception for managers of small AIFs with assets of less than €100 million (where leverage is used) or less than €500 million (where no leverage is used), and as such do not require a licence but are only required to register with the FMA. Another benefit is that they are only subject to a very limited number of regulations under the AIFMG.

Licensed AIFMs do not require any additional licences or permits for their investment activities. Registered AIFMs may require a trade permit for asset managers.

i Licensing processes

Licensed AIFMs

To obtain a licence under the AIFMG, managers need to fulfil certain requirements.

A licensed AIFM must have a minimum capital of €125,000 if it is an external manager of an AIF. If the AIFM is an internal manager of an AIF, the minimum capital requirement is €300,000. In addition, the AIFM must have sufficient equity to cover 25 per cent of its annual running costs. Increased equity requirements apply if the assets under management exceed €250 million; in any case, the maximum capital requirement is €10 million. The persons tasked with the management of the AIFM must be sufficiently experienced and must pass an FMA 'fit-and-proper' test if requested to do so.

The AIFM must appoint at least two individuals as its managers.

In the application to the FMA, the AIFM must provide information on:

a shareholders holding qualified participations in the AIFM (i.e., shareholdings exceeding 10 per cent);
b any closely related entities (i.e., a third party that holds a stake of more than 20 per cent of the AIFM or that controls the AIFM, or is controlled by the AIFM or in which the AIFM holds a stake of more than 20 per cent);
c its business plan;
d its remuneration, risk management, valuation, internal audit and conflict-of-interest policies;
e its investment strategies;
f a description of any competences delegated to third parties; and
g information on the contractual basis on which it manages its AIFs.

A decision by the FMA regarding the licence must be passed within three months of the applicant having provided all required information. If the AIFM intends to register an AIF as a European long-term investment fund, it has to apply to the FMA for prior approval.

Small AIFMs

Registered AIFMs may require a trade licence. A trade licence for asset managers requires an application to the competent trade authority. In making such an application, the AIFM has to prove that he or she employs in a management function a person that has the necessary qualifications to supervise the business operations of an asset manager (typically, a university education or practical experience, or both).

ii Ongoing obligations

Licensed AIFMs are subject to the disclosure requirements under the AIFMG, which require, inter alia, the submission of an annual report to the investors and the FMA, as well as the submission of a quarterly overview of all AIFs under management.

Under the terms of the trade licence, there are no material ongoing reporting obligations for small AIFMs (except that they have to report if a person in a management function mentioned in the application leaves the AIFM).

V OUTLOOK

The year 2021 promises to be a relatively busy one.

With better visibility on the effects of the pandemic, we expect several of the suspended auctions coming to the market. We also expect distressed M&A activity to play a significant role in 2021. Many businesses will have to undergo restructuring, which is always an opportunity for private equity investors, in particular, special situations funds but also generalist funds with a broader mandate. In terms of sectors, technology, industrial and services, as well as real estate, should be hot again. We expect venture and growth capital activity also to pick up again.

Appendix 1

ABOUT THE AUTHORS

FLORIAN CVAK

Schindler Attorneys

Florian Cvak is a founding partner of Schindler Attorneys. Before establishing the firm, he was a partner at Schoenherr, where he co-headed the private equity practice. His track record includes some of the largest and most prestigious Austrian transactions, including the acquisition by a consortium of France Telecom and Mid Europa of Orange Austria, and the subsequent sale to Hutchison and Telekom Austria. Private equity and hedge fund clients include Goldman Sachs (MBD), Carlyle, EQT, Bridgepoint, Mid Europa, Deutsche Private Equity, Riverside, PPF, DBAG, Findos Investors, HIG, OpCapita, VR Equitypartner, Lion Capital, Mezzanine Management, Darby, FirTree and LPC Capital.

Mr Cvak's practice focuses on corporate and corporate finance transactions in Austria and the CEE, with a particular focus on the areas of mergers and acquisitions, private equity, venture capital and LBO financings. Furthermore, he specialises in US lease and project finance transactions involving various types of utility assets. His practice is complemented by restructuring, general corporate and contracts work.

Mr Cvak holds law degrees from the University of Vienna and New York University Law School (LLM), and he has attended extracurricular classes on private equity, corporate finance, investment banking and accounting at the New York University Stern School of Business.

Mr Cvak is ranked by international legal directories such as *Chambers Global*, *Chambers Europe*, *The Legal 500*, *IFLR1000* and *Who's Who Legal*. He was named Austrian private equity lawyer of the year in the ACQ5 Law Awards for three years consecutively, and is featured in *The Best Lawyers in Austria*. As well as being included in the listings for the Austrian market, Mr Cvak is acknowledged in a special ranking by *Chambers Global* for his Polish expertise.

Mr Cvak is admitted to the Austrian and New York Bars. He regularly authors articles on private equity, M&A, corporate finance and restructuring in major international and national publications, and he is a frequent speaker at conferences and seminars on private equity and corporate and M&A matters.

CLEMENS PHILIPP SCHINDLER

Schindler Attorneys

Clemens Philipp Schindler is a founding partner of Schindler Attorneys. Before establishing the firm, he spent six years as a partner at Wolf Theiss after practising with Haarmann Hemmelrath in Munich and Vienna, and with Wachtell Lipton Rosen & Katz in New

York. His track record includes some of the largest and most prestigious Austrian and Austria-related transactions, such as the initial investment of América Móvil into Telekom Austria or Infineon's sale of its wireless business to Intel, as well as many private equity deals for international funds such as ARES, ARDIAN, Apax, DBAG, EQT, HIG, Internos, Kennet, Melrose, MDP, OpCapita, Riverside, Sankaty, Triton and TVM Capital.

Mr Schindler's practice focuses on corporate and tax law advice in relation to public and private M&A, private equity and corporate reorganisations (including mergers, spin-offs and migrations), most of which have a cross-border element. Furthermore, Clemens is specialised in international holding structures. His practice is complemented by private client work (e.g., as counsel to families owning stakes in large companies).

Mr Schindler is ranked by leading international legal directories, including *Chambers Global*, *Chambers Europe*, *The Legal 500*, *IFLR1000* and *Who's Who Legal*. The German legal directory *JUVE* singles him out as one of Austria's top 20 corporate and M&A lawyers, while the Austrian business journal *Trend* named him among the country's top 10 corporate law experts. In addition to the listings for the Austrian market, both *Chambers Global* and *Chambers Europe* acknowledge his Brazilian expertise in a special ranking.

Mr Schindler is admitted in Austria both as an attorney-at-law and a certified public tax adviser, holding law degrees from the University of Vienna and New York University (LLM in international taxation) as well as a degree in business administration from the Vienna University of Economics and Business Administration. He has authored and co-authored more than 50 articles, books and commentaries in his fields of expertise, where he is also a much sought-after speaker at conferences and seminars.

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