

## PRESS INFORMATION

### **bpv Hügel on capital market development: Austrian legislator paves the way for the delisting**

***For the first time the delisting is regulated in Austria – as from 2018 issuers may also delist from the regulated market segment (Amtlicher Handel) of the Vienna Stock Exchange.***

**Vienna/Mödling, 12 July 2017.** So far listing on the Vienna Stock Exchange was a one way street. The admission to the regulated market segment (*Amtlicher Handel*) could not be terminated voluntarily. Going private was only feasible by squeeze-out or via the unsecure indirect route as merger on a non-listed company (cold delisting).

As of 2018 issuers will be entitled to apply for a delisting, if prior to such delisting a tender offer is extended to the shareholders. Further, the shareholders' meeting has to resolve upon the delisting with qualified majority (three quarter majority). No shareholder resolution is required, if shareholders with together already 75% participation requests the delisting.

Pursuant to the delisting the stock exchange as trading venue will no longer be available. Therefore a tender offer to the shareholders has to be executed by a bidder (shareholder, third party or the issuer) in the six months period prior to the delisting (*Angebot zur Beendigung der Handelszulassung*). No tender offer is required, if the shares are also listed on another stock exchange within the European Economic Area with equivalent delisting requirements.

The minimum price for the tender offer – similar as for mandatory public takeover offers – has to correspond at least to the volume-weighted average market price of the share over a six months period and also must not be lower than the highest cash consideration paid by the bidder or any parties acting in concert with it during the last twelve months.

In addition the price has to correspond with the five day volume weighted average market price for the shares period prior to the announcement of the delisting attempt. *“With this price limit the statute addresses low offer prices by timing the delisting, where longer periods with lower share prices are having a stronger impact on the six months volume-weighted average share price”*, analyses Christoph Nauer, partner with bpv Hügel.

Primarily only the stock market price for the shares is relevant for the tender offer. Only in cases where such pricing apparently falls below the actual value of the company an adequate price for the tender offer has to be determined by an appraisal of the business. The Austrian Takeover Commission (*Übernahmekommission*) is competent for approving the tender offer and the revision of its price. Such revision is limited by a market test: in case the acceptance rate exceeds 50% of the shares subject to the offer the price revision shall not be based on an asserted inadequate price.

*“It is very positive that the price for a delisting offer is determined primarily by the market price of the shares combined with a market test based on the acceptance rate as only the stock exchange where the*

*market price is the relevant price falls away as trading venue. In principle a pricing by company valuation would not be the appropriate method”,* emphasizes Christoph Nauer, partner with bpv Hügel.

#### **About bpv Hügel**

bpv Hügel Rechtsanwälte GmbH is one of Austria's leading law firms. The firm is frequently called upon in matters that require specialized legal knowledge, an understanding of commercial matters and extensive experience. The full-service law firm is represented in Austria with offices in Vienna, Mödling and Baden. bpv Hügel operates an office in Brussels and is also member of the alliance “bpv Hügel” with law firms in Bratislava, Bucharest, Budapest and Prague.

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