Defence-Sector M&A in Austria – What to Watch Out for

1. FDI Screening
2. Ownership and Licence Risk
3. Export Control
4. Dual-Use Classification
5. Management, Governance & Security Clearance

swipe to explore.

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1 FDI Screening

- **FDI screening is deal-critical in Austrian defence M&A.** Under the Investment Control Act, defence, military, dual-use and security-relevant activities are sensitive sectors – capturing not only share deals, but also asset deals and minority stakes (from 10%/25% upwards).

- **FDI clearance is substantive, not procedural.** Particularly in defence transactions, reviews often involve conditions and unpredictable timelines, with authorities assessing ultimate influence (investors, LPs, financing and governance) beyond formal shareholdings.

- **Deal structuring must reflect regulatory risk.** FDI approval is a true closing condition; long-stop dates, reverse break fees and risk-allocation mechanics are decisive, as remedies can affect valuation, governance and exit flexibility.

2

Ownership and Licence Risk

- **War Materials Act (KrMatG) goes beyond export control.** If a target is active in regulated "war materials", ownership and control changes can trigger a reassessment of licences and regulatory reliability – not just how the business operates, but who ultimately owns and influences it.

- **Licences may not travel automatically.** KrMatG approvals may be at risk; a change of control may require new approvals or explicit confirmations, with scrutiny extending to shareholders, management integrity and indirect foreign influence.

- **Deal risk is existential if overlooked.** Without ensured licence survivability, IP, production and customer contracts may become unusable – making early, licence-focused diligence essential to protect value and deal certainty.

3 Export Control

- **Export control is an ongoing constraint.** Outside the War Materials Act, the Foreign Trade Act (AußWG) may apply regulating exports, transfers and technical assistance relating to military goods, dual-use items and security-relevant technologies.
- **Ownership changes can affect more than operations.** AußWG risk is product and recipient focused, but a new owner – especially a foreign one – may trigger reassessments of exporter reliability and end use.
- **Export readiness is a value-preservation issue.** Buyers must assess not only existing licences, but their robustness under the future ownership structure, as export constraints can delay integration, restrict markets and complicate exits.

4

Dual-Use Classification

- **Dual-use risk is sometimes identified too late.** Many targets present as industrial, automotive or aerospace suppliers, yet their products or software frequently fall under EU dual use or Austrian export control rules – especially in advanced manufacturing and tech-driven sectors.

- **Dual-use classification reaches far beyond export compliance.** It can trigger export authorisations, elevate FDI sensitivity and impose enhanced compliance duties, with authorities focusing on actual functionality and end use rather than commercial positioning.

- **Late discovery can derail execution.** Unidentified dual-use relevance may trigger post-signing reviews, constrain valuation assumptions and delay integration – making early, technical classification analysis a deal-critical step.

5 Management, Governance & Security Clearance

- **Reliability and Integrity.** Authorities assess also the reliability and integrity of key managers and board members, including potential security clearances and scrutiny of “shadow control” through veto or information rights.

- **Minority stakes are not automatically safe.** Extensive governance rights or management incentive plans can trigger control concerns, even where shareholdings remain below thresholds.

- **Early governance design is critical.** Mapping decision rights and stress-testing vetoes before SPA finalisation can materially reduce execution risk and late-stage restructuring.

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