Cross-Border Listings Guide - Vienna Stock Exchange

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# Quick Summary

## Initial financial listing requirements

[Last updated: 1 January 2024, unless otherwise noted]

Shares may either be listed on the Official Market (*Amtlicher Handel*) or the Vienna MTF of the Vienna Stock Exchange (VSE). The Official Regulated Market is an EU regulated market, whereas the MTF is operated and regulated by the VSE.

The VSE distinguishes among the following equity market segments:

prime market: Comprises shares listed on the Official Market that fulfill more stringent reporting, quality and disclosure requirements. EU regulated market with highest transparency requirements.

standard market: Contains all stocks admitted to listing on the Official Market that fail to meet the criteria for the prime market as well as other equities (such as participation certificates, profit-sharing rights, UCITS shares and so on) admitted to listing on the Official Market. The standard market is divided into the standard market continuous and the standard market auction.

direct market plus: Represents the market segment of Wiener Börse AG that as of 21 January 2019 offers companies with low capital requirements the option of raising capital through the capital market. The direct market plus contains stocks that are admitted to trading on the Vienna MTF and of those companies that have agreed to fulfill more stringent reporting, quality and disclosure requirements. An essential feature is the function of the Capital Market Coach, who supports the company.

direct market: Contains all stocks and other equities (such as participation certificates, profit-sharing rights, UCITS shares and so on) admitted to trading on the Vienna MTF that cannot be allocated to any other segment.

global market: Contains stocks admitted to trading on the Vienna MTF provided the stocks are already listed on at least one other stock exchange and the applicant itself or an exchange member appointed by the applicant assumes a market making commitment. It is desirable to have further commitments of market makers to increase liquidity.

With respect to all market segments, there are no particular financial requirements in terms of profits, revenues or cash flows to be met in order to obtain a listing.

Total nominal value of shares to be listed of at least €1 million (approx. US$1.11 million) is required for the Official Market. Additional requirements apply to listings on the prime market segment, which is the VSE's premium segment.

## Other initial listing requirements

[Last updated: 1 January 2024, unless otherwise noted]

*Prospectus*. Any public offer of shares in Austria and/or any listing on the Official Market requires the publication of a prospectus approved by the Austrian Financial Market Authority (FMA).

*Prime market segment*. The prime market rules of the VSE provide for certain additional criteria, including (i) generally, a minimum term of the issuer's corporate existence of three years and (ii) at least 25% of the common shares of the issuer listed on the VSE to be held by the free float with capitalization of the free float of at least €20 million (approx. US$22.10 million) and at least €40 million (approx. US$44.20 million) if the free float falls below 25%. These two thresholds are continuously adjusted corresponding to the development of the segment index (ATX Prime) but shall in any case not exceed €20 million (approx. US$22.10 million) and €40 million (approx. US$44.20 million).

*Application; third party involvement*. The admission application for the Official Market must be co-signed by an exchange member of the VSE and must be accompanied by several documents. The application for an inclusion to trading on the Vienna MTF must be made by an exchange member, a credit institution, an investment firm, a law firm or by the issuer itself. For the direct market plus segment, a Capital Market Coach (CMC) must be appointed for at least one year after listing.

*Accounting standards.* For prime market and standard market segment listings, IFRS or, for non-EEA issuers, a national GAAP that was deemed equivalent by the European Commission must be complied with. For the Vienna MTF listings, IFRS or a national accounting standard must be complied with.

*Financial statements.* For the Official Market, the applicant must submit audited annual financial statements, including the company report for the last three business years and the auditor certificates and the interim financial statements if the balance sheet date of the last annual financial statements is older than nine months. If the applicant publishes semi-annual or quarterly financial statements, the latest interim reports must be included in the prospectus as well. For the Vienna MTF, those documents must only be provided for the last completed business year and only for listings in the direct market plus segment.

*Corporate history*. For the Official Market, a company must have a corporate history of at least three years. For the direct market plus segment, a one year corporate existence requirement applies. There is no corporate history requirement for the direct market.

## Listing process

[Last updated: 1 January 2024, unless otherwise noted]

The following is a typical process and timetable for a listing of a foreign or domestic company on the VSE in the prime market segment. The management board of the VSE has ten weeks to decide on the application for a listing on the Official Market.

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-stock-exchange---short-form---listing-process.pdf?sc_lang=en)

## Corporate governance and reporting

[Last updated: 1 January 2024, unless otherwise noted]

Categories of rules defined in the Austrian Corporate Governance Code (ACCG) include (i) L-rules referring to mandatory legal requirements, (ii) C-rules, which are not mandatory, but any deviation must be explained and reasoned in order to be in compliance with the ACCG, and (iii) R-rules, which are non-binding recommendations.

Non-compliance with R-rules requires neither a disclosure nor an explanation by the company.

The ACCG primarily addresses Austrian listed companies including listed European Companies (*Societas Europaea*) registered in Austria. All Austrian companies listed on the Official Market must publish a declaration of their commitment to the ACCG and are required to provide a corporate governance report including an explanation of any deviations from the ACCG according to the prime market rules.

Companies listed on the VSE that are subject to the company law of another EU or EEA Member State are called upon to commit themselves to adhere to a corporate governance code recognized in this economic area and to publish this commitment including a reference to the code complied with on their websites (internet link). Companies that are subject to the company law of a non-EU or non-EEA country and are listed on the VSE are called on to commit themselves to comply with the ACCG. In this case, non-mandatory L-rules of the ACCG are interpreted as C-rules.

## Fees

[Last updated: 1 January 2024, unless otherwise noted]

An issuer seeking to list on the VSE must pay both initial listing fees and annual fees. The VSE's initial listing fee for shares to be listed on the Official Market amounts to 0.01% of the market capitalization of the newly listed shares, with a minimum fee of €10,000 (approx. US$11,050) and a maximum fee of €50,000 (approx. US$55,250). For inclusions to trading on the Vienna MTF, the initial inclusion fee is €5,000 (approx. US$5,525) plus 0.05% of market capitalization up to a maximum fee of €10,000 (approx. US$11,050). The annual listing fee for shares listed on the Official Market amounts to 0.015% of the market capitalization at the end of the previous year, with a minimum fee of €5,000 (approx. US$5,525) and a maximum fee of €10,000 (approximately US$11,050). The annual fee for shares traded on the Vienna MTF is €2,500 (approx. US$2,762.50). Additional costs include fees charged by underwriters, lawyers and accountants involved in the transaction, as well as printing costs.

# Overview of exchange

## Overview of exchange

[Last updated: 1 January 2024, unless otherwise noted]

The Vienna Stock Exchange (VSE) is the only securities exchange in Austria. It is operated by Wiener Börse AG and is subject to supervision by the Austrian Financial Market Authority (*Finanzmarktaufsichtsbehörde* – FMA). Wiener Börse AG, an Austrian joint stock corporation, is a member and subsidiary of CEE Stock Exchange Group (CEESEG), which also operates the Prague Stock Exchanges.

Under the Austrian Stock Exchange Act (*Börsegesetz* – BörseG), shares may either be listed on the Official Market (*Amtlicher* *Handel*) or on the Vienna MTF of the VSE. The Official Market is a regulated market within the meaning of Directive 2104/65/EU on Markets in Financial Instruments (MiFID II), whereas the Vienna MTF is a multilateral trading facility (MTF) operated and regulated by the VSE.

Issuers admitted to the Official Market must comply with the transparency requirements provided by the relevant Austrian rules and regulations implementing the EU Transparency Directive (Directive 2004/109/EC, as amended). In comparison, the Vienna MTF is a simple, quick and cost-efficient way for issuers to include shares in exchange trading without full compliance with the framework provided by the EU Transparency Directive (but still with some elements of comparable transparency). The inclusion in trading on the Vienna MTF is recommended for small and medium-sized enterprises (SME) as well as expanding young companies. Following the entry into force of the new EU Market Abuse Regulation (Regulation No. 596/2014) and the implementation of the Market Abuse Directive on criminal sanctions (Directive 2014/57/EU), rules prohibiting market abuse (insider dealing, unlawful disclosure of inside information, and market manipulation) also apply in relation to the Vienna MTF.

In addition to the above statutory market framework, the VSE maintains different market segments. For a listing of shares the following segments are available:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2020-update-8th-edition/viennaoverview-of-exchange.pdf)

Shares may be listed on a regulated market in the:

*prime market segment* – which comprises shares (as well as Austrian Depositary Certificates (ADCs)) of companies that agree to fulfill more stringent reporting, quality and disclosure requirements.

*standard market* – which contains all shares admitted to listing on the Official Market that fail to meet the criteria for the prime market as well as other equities (for example participation certificates, profit-sharing rights, UCITS shares and so on) admitted to listing on the Official Market. The standard market is divided into the standard market continuous and the standard market auction.

As regards the Vienna MTF, shares may be traded on the following market segments:

*direct market plus* – which represents the market segment of Wiener Börse AG that offers companies with moderate capital needs the option of raising capital through the capital market. The direct market plus contains shares that are admitted to trading on the Vienna MTF and of those companies that have agreed to fulfill more stringent reporting, quality, and disclosure requirements. An essential feature is the function of the Capital Market Coach, who supports the company.

*direct market* – which contains all shares and other equities (for example participation certificates, profit-sharing rights, UCITS shares and so on) admitted to trading on the Vienna MTF that cannot be allocated to any other segment.

*global market* – which contains shares admitted to trading on the Vienna MTF provided the shares are already listed on at least one other stock exchange and the applicant itself or an exchange member appointed by the applicant assumes a market making commitment. It is desirable to have further commitments of market makers to increase liquidity.

A listing in the prime market segment is required in order to be eligible for inclusion in one of the two main Austrian stock market indices, the Austrian Traded Index (ATX) or the broader ATX Prime Index. Since 1991, the ATX has been the underlying index for options and futures contracts traded on the VSE in the past and on the EUREX Exchange today. The ATX tracks the share price development of 20 blue chips on the VSE in real time. The ATX Prime, which has been calculated since 2002, is designed as an all-share index and consists of all securities traded in the prime market segment of the VSE (shares admitted to listing on the Official Market meeting the additional requirements of this segment).

As of January 2024, 63 companies were listed on the Official Market (December 2021: 63 companies). Of these, 43 issuers maintained a listing on the prime market segment, two issuers on the standard market continuous segment and 18 issuers on the standard market auction segment. At the end of December 2023, the market capitalization of domestic companies listed on the prime market segment was €116 billion (approximately US$128.18 billion) (December 2021: €127.50 billion (approximately US$140.89 billion)). The aggregate market capitalization of all companies listed on the regulated market as of December 2023 was approximately €142,106.60 billion (approximately US$157,027.79 billion).

On the VSE, shares and other cash market securities are exclusively traded via the electronic trading system XETRA® T7 of Deutsche Börse AG, where orders are matched automatically. While shares listed in the prime market segment are traded continuously, the standard market provides for both continuous trading and auction trading with one intraday auction per day.

In connection with listings on the VSE, the relevant regulatory authorities are the VSE and the FMA (assuming Austria is the home Member State).

# Principal listing and maintenance requirements and procedures

## Principal listing and maintenance requirements and procedures

[Last updated: 1 January 2024, unless otherwise noted]

*Listing on a regulated market*

The listing requirements are primarily set forth in the Austrian Stock Exchange Act (*Börsegesetz* - BörseG). Further, in case of a public offering of securities in Austria and an admission of shares (as well as other securities) to the regulated market of the VSE, the EU Prospectus Regulation applies. The VSE provides for additional rules, including the "prime market Rules" (*Regelwerk prime market*), the "Rules for the Operation of the Vienna MTF" and the "direct market plus Rules" for companies having their shares listed on these market segments.

Both domestic and foreign issuers may list their shares on the VSE. The issuer must have been validly incorporated in accordance with the laws of its statutory seat, and its constitutive documents must comply with the laws of this jurisdiction. In principle, there are no jurisdictions of incorporation or industries that would not be acceptable for a listed company.

Neither Austrian law nor the rules of the VSE provide for particular financial requirements in terms of profits, revenues or cash flows to be met in order to obtain a listing. However, the admission to listing on the Official Market is decided on the basis of the documents presented and the existing volume of tradable shares. The VSE decides on the admission to the Official Market by issuing an official notice on application. The admission application must be submitted in writing by the issuer, must be co-signed by an exchange member of the VSE and must be accompanied, among other things, by a current excerpt from the Companies Register, the current articles of association or company by-laws, the company's compliance guidelines and an approved prospectus, drawn up in accordance with the EU Prospectus Regulation.

Admission requirements for the prime market segment and standard market segment (both Official Market) pursuant to the Austrian Stock Exchange Act include the following:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-principal-listing_1.pdf?sc_lang=en)

In the case of a listing in the prime market segment of the VSE, the following additional criteria must also be met:

The issuer has to maintain an inclusion in the VSE's continuous trading system for the entire duration of the listing. Auction trading of prime market shares is not possible.

At least 25% of the common shares of the issuer listed on the VSE must be held by the free float and the capitalization of the free float has to amount to at least €20 million (approximately US$22.10 million). If the free float falls below 25% of the common shares, the free float requirement will be deemed to be fulfilled if the capitalization of the free float amounts to at least €40 million (approximately US$44.20 million). These thresholds are continuously adjusted corresponding to the development of the segment index (ATX Prime) but shall in any case not exceed €20 million (approximately US$22.10 million) and €40 million (approximately US$44.20 million).

Other than the prospectus, disclosures must generally be made available in German and in English.

The admission criteria are the same for foreign companies. The main issues for foreign companies result from the practical application of the normal criteria for Austrian issuers. A key issue is typically the way the shares are kept into central custody for clearing and settlement. An alternative would be to use Austrian depositary certificates (ADCs) representing shares. The simplest way to list foreign issuers would be the creation of an Austrian listing vehicle and depositing the shares with Clearstream. An Austrian listing vehicle also allows foreign companies to have a corporate governance framework that is familiar to Austrian investors. Of course, tax issues and additional compliance costs should be taken into account.

There are no ownership requirements specifically applicable to a listing of a foreign company's shares in terms of nationality or size of individual shareholdings. However, the Investment Control Act (*Investitionskontrollgesetz*) provides for certain approval requirements for foreign non-EU/EEA investors (companies as well as natural persons) when acquiring significant shareholdings in certain Austrian listed and non-listed companies.

A foreign investment approval requirement applies if the Austrian target company is active in one of the "critical" sectors, as defined in the annex to the Investment Control Act, such as the energy, information technology, transport, health, finance, food or telecommunication sector. The list is not exhaustive, meaning that other sectors which are not mentioned in the annex may also fall within the definition of "critical sector". It should also be noted that the authorities generally define these sectors very broadly. The authorities' approval is required in the following cases:

Acquisition of the Austrian target company as a whole;

Acquisition of a specific share of voting rights (10% - if the Austrian target company is active in a particularly critical sector, in all critical sectors: 25% or 50%);

Acquisition of a controlling interest ("decisive influence") in an Austrian target company; or

Acquisition of material assets, whereby a determining influence on part of an undertaking is acquired.

The foreign investor requirement is met, if the (indirect or direct) acquirer, in the case of a legal entity, has its seat or headquarters outside the EU, the EEA or Switzerland or, in the case of a natural person, has no citizenship in the EU, the EEA or Switzerland. In addition, the Investment Control Act provides for an exemption for micro-enterprises, specifically, if the Austrian target has/had less than 10 employees and revenues or annual balance sheet totals of less than €2 million (approximately US$2.21 million) in the two previous financial years.

There are no ongoing financial requirements that must be met to maintain listing on the Official Market.

There are no corporate governance requirements for a foreign company in order to qualify to list its securities on the VSE. However, if the foreign company is listed via a listing vehicle in the form of an Austrian AG or an Austrian domiciled European Company (*Societas Europeae* – SE), the Austrian Corporate Governance Code applies. Further, any listing of shares in the prime market segment requires a declaration of commitment to comply with the Austrian Corporate Governance Code. If an issuer is subject to the company law of another EU or EEA Member State, the prime market rules provide for an obligation to comply with the applicable rules of corporate governance recognized in the respective jurisdiction. Issuers subject to company laws of non-EU and Non-EEA Member states have to submit a declaration of commitment to comply with the Austrian Corporate Governance Code and disclose it on their websites, along with explanations of any deviations therefrom.

There is no automatic requirement to have a sponsor in order to obtain a listing. However, in terms of trading the VSE introduced a specialist system in 1999, which was designed in part as a supplement to the market maker system by introducing an additional broker function (specialist) with the aim of increasing liquidity in the market. The task of the specialists is to place firm, competitive buy and sell quotes into the system along with the market makers and, with the help of additional measures, to enhance market liquidity, thereby supporting the market making and marketing of securities and products. Specialists and market makers are under the obligation to place binding buy and sell quotes during a certain period in continuous trading, which must comply with market makers' minimum size and maximum spread. In the prime market segment, at least one specialist is required and additional market makers are desirable. For continuous trading in the standard market segment at least one market maker has to be appointed, whereas for mid-market auction trading liquidity providers are desirable.

There is no requirement for any shares to be placed into escrow (or otherwise be restrained from trading, such as through "lock-in" or "lock-up" arrangements) in connection with a listing on the VSE. However, in order to avoid strong market reactions after public offerings the underwriters may ask for undertakings from existing shareholders not to sell their shares for a certain period of time and may also ask the issuer to agree not to issue further shares for a certain period of time.

There are no restrictions on the currency denomination of securities. However, share prices can only be quoted in Euro.

The securities to be listed or traded must be freely transferable. OeKB CSD GmbH acts as the Central Securities Depository (CSD) in Austria acts as depository for the securities of Austrian issuers on the VSE. In order to be able to deliver global certificates or physical securities for safekeeping in the CSD safe, a paying agent has to be appointed that also maintains a securities account with CSD. Ideally, the investment bank that accompanies the listing or the public offering also assumes the function of the paying agent.

An assignment of an ISIN (International Securities Identification Number) is required for the admission to listing on the VSE. The ISINs are assigned by Oesterreichische Kontrollbank AG - OeKB in its function as central ISIN body in Austria.

An issuer listed on the Official Market does not need any compliance adviser, whereas for the listing on the direct market plus segment, the issuer must appoint a Capital Market Coach (CMC). The CMC supports companies during the admission to listing or inclusion on the direct market plus in trading and is available for assistance afterwards as well. Investment and corporate finance service providers, accounting firms and attorneys-at-law may assume the function of a CMC. In the event certain tasks are delegated, the CMC is under the obligation to inform VSE to whom. After one year on the market, the support of the CMC is no longer mandatory. For issuers whose shares have already been listed on a regulated market for one year or are traded on another market with comparable quality standards such as the direct market plus segment, a CMC support is not required.

Secondary listings in principle follow the same rules as primary listings.

*Inclusion in trading on the Vienna MTF*

In addition to the possibility of admission to listing on the Official Market, shares may also be included in trading on the Vienna MTF. The inclusion of shares in trading on the Vienna MTF is governed by separate general terms of the VSE.

Trading in shares on the Vienna MTF does not require any formal admission procedures to exchange trading. The requirements of the Austrian Stock Exchange Act regarding financial instruments admitted to trading on a regulated market, in particular, the obligations imposed on issuers, do not apply to the financial instruments traded on the Vienna MTF.

For an inclusion in trading on the Vienna MTF, the legal status of the issuer and the issuance of the securities must comply with the laws of the country of the company's registered office or of whichever country the shares have been issued in.

The management board of the VSE decides on the inclusion in trading on the Vienna MTF. A written application of an exchange member, a credit institution, an investment firm, a law firm or of the issuer itself is a requirement. The application must be accompanied, among other things, by a current excerpt from the companies register or a certificate of incorporation (if any), the current articles of association, in the case of a public offering an approved prospectus pursuant to the EU Prospectus Regulation, the financial statements or an annual report.

*Direct market plus segment*

The direct market plus is a market segment of the VSE on which issuers that have signed agreements committing themselves to observe more stringent transparency, quality and disclosure obligations than those applicable under the "Rules for the Operation of the Vienna MTF" are traded. The direct market plus has been operated by Wiener Börse AG since 21 January 2019. The Rules for direct market plus apply in addition to the Stock Exchange Act and the "Rules for the Operation of the Vienna MTF". The statutory rules shall remain unaffected thereby.

Admission requirements for the direct market plus segment (Vienna MTF), pursuant to the general terms of the VSE, include the following:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-principal-listing_2.pdf?sc_lang=en)

# Listing documentation and process

## Listing documentation and process

[Last updated: 1 January 2024 unless otherwise noted]

*Public offer*

Any public offer of shares in Austria requires the issuer to publish a prospectus that has been approved by the FMA or the respective competent authority of an EU Member State (unless a prospectus exemption applies). When shares are listed on the Official Market for the first time, the prospectus must be published at least six banking days before completion of the public offer. When shares are already listed on a regulated market, the prospectus has to be published at least one banking day before the offer is completed.

Prospectuses drawn up by issuers from EU Member States may be used in Austria if they have been drawn up in accordance with the EU Prospectus Regulation.

Only one disclosure document is published for both the public offering and the admission of shares to a regulated market of the VSE.

The Austrian Capital Markets Act provides for Austrian law requirements in connection with public offers and the publication of prospectuses. Further, detailed requirements regarding the format and content of prospectuses are harmonized on a European level by Commission Regulation No. 809/2004/EC (the EU Prospectus Content Regulation). In particular, the prospectus must include disclosure relating to, among other things, the following information about the issuer and/or the issuer's group of companies:

A summary of the prospectus.

Details about the persons responsible for the prospectus.

Risk factors relating to the company, the industry and markets in which the issuer operates, the shares, the shareholder structure, the offering and the admission to trading, and regulatory and legal risks.

Details about the offering and the reasons for the offering.

Details about the dividend policy.

Details about the issuer's capitalization and indebtedness.

Selected financial information.

A description in narrative form of the issuer's financial condition, changes in financial condition and results of the operations for the periods covered by the financial statements and any significant factors affecting its operating results.

A description of the company's operations, principal activities, significant new products and services and principal markets.

Organizational structure of the issuer and, if applicable, the group.

Corporate governance.

Number of employees and their share options.

Major shareholders.

Transactions and legal relationships with related parties.

Legal and arbitration proceedings.

Details of the company's share capital, objects, articles of association or charter, rights attaching to shares, procedure for conducting general meetings of shareholders and other related information.

Details about the issuer's auditors.

Information about the underwriting of the offering.

Information about recent developments and the outlook.

The prospectus must include historical financial information in the form of consolidated financial statements for at least the last three preceding business years (if listing on the Official Market) or the last completed business year (if listing on the Vienna MTF). Audited financial statements have to be provided together with the auditor's attestation.

If the balance sheet date of the last annual financial statements is older than nine months, interim financial statements must be provided. The last balance sheet date of the annual financial statements must not be older than 18 months. If the issuer publishes semi-annual or quarterly financial statements, the latest interim reports must be included in the prospectus as well. Pro forma and/or additional historical financial information may also be required if there has been a significant change in the issuer's position or if the issuer has a complex financial history.

For an issuer incorporated in an EEA Member State, the financial statements must generally be prepared under IFRS. For an issuer incorporated outside the EEA, the financial statements must be prepared either under IFRS or a national standard deemed equivalent to IFRS by the European Commission (currently, US, Japanese, Chinese, Canadian or South Korean GAAP).

The FMA is the competent authority for prospectus approvals in Austria. In reviewing the prospectus, the FMA investigates whether the prospectus is complete, comprehensible and free of ambiguity. The review period of the FMA is 10 banking days from submission of the prospectus. If the issuer has not yet issued any securities admitted to trading on a regulated market, the review period of the FMA is 20 banking days. Usually, several subsequent amendment rounds and new filings are required to incorporate the regulator's comments and amendment requests for the next filing of the prospectus document. In case of comments or amendment requests, the review period will start anew with each filing. For practical reasons, it is advisable to agree on a filing timetable with the FMA. Usually, the period from the initial filing until the date of prospectus approval takes about six to eight weeks for equity offerings if the issuer has already issued securities admitted to trading on a regulated market or, if the issuer has not yet issued any securities admitted to trading on a regulated market, about eight to twelve weeks.

The FMA-approved prospectus, which must be signed by the management of the issuer, must be filed with Oesterreichische Kontrollbank AG (OeKB) no later than on the day of its publication. In addition, a mandatory notification to the New Issue Calendar (*Emissionskalender*) maintained by OeKB has to be made for statistical purposes.

Any placement memorandum/offering circular for an offering exclusively targeted to qualified investors will not require an FMA approved prospectus, although it is recommended that the contents of the placement memorandum largely follow the disclosure requirements under the EU Prospectus Regulation framework.

*Primary listings*

For a listing on the VSE the issuer must file a written application for admission of the shares to the Official Market. In case of an intended inclusion in trading on the Vienna MTF, a respective application must be made by an exchange member, a credit institution or an investment firm, a law firm or by the issuer itself.

The admission application for the Official Market must be co-signed by an exchange member of the VSE and must be accompanied by:

A current excerpt from the Companies Register (not older than four weeks).

The current articles of association or company by-laws.

Any official authorization certificates if such are required for the establishment of the issuer's company, the pursuit of its business activities or the issuance of securities.

Proof of any other legal requirements for the issuance of securities.

Any proof of registration of the issuance in a register, if this is required for the issuance to be legally binding.

If shares are admitted for the first time to listing on the Official Market, the audited annual financial statements including the auditor's attestation and the financial statements for the preceding three business years.

The company's compliance guidelines.

The FMA approved prospectus. If the issuer is from another EEA Member State, the regulator of the home member state will have to review and approve the prospectus according to its law, which will be substantially identical as it will also be based on the EU Prospectus Regulation.

If securities or certificates are to be secured by a global certificate, a declaration of the issuer stating at which central depository for securities the global certificate shall be in custody.

Further, the issuer seeking a listing on the Official Market must provide the VSE with any further items that might be necessary to determine if the conditions for the admission to trading on the VSE are met.

The VSE is under the legal obligation to decide on the application within ten weeks after submission. In practice, a decision about the admission to listing is usually obtained within a few days. However, in any case a listing cannot take place until the shares to be listed have been validly issued and the prospectus has been approved.

In practice, issuers usually file a preliminary prospectus with the VSE. The preliminary prospectus does not yet provide for the final offer price and the final volume offered as these details will usually be determined in the book-building process. During the book-building process, investors have the opportunity to submit bids for buying the shares at prices that must be within a defined range. At the same time, marketing activities are usually undertaken to draw the attention of potential investors to the possibility of subscribing to the shares (these may include roadshows and press conferences). After the book-building phase, the price is fixed and the shares are allocated. The next step is the publication of a supplement to the listing prospectus, indicating the price of the shares, proceeds raised through the issuance and issuing costs.

The inclusion in trading on the Vienna MTF is resolved by the management board of the VSE. A written application of an exchange member, a credit institution, an investment firm, a law firm or of the issuer itself is required. The application must be accompanied, among other things, by a current excerpt from the Companies Register, the current articles of association or by-laws of the issuer and, in the case of a public offering, an FMA approved prospectus or, in the case of a private placement, a description of the issuer, the financial statements or an annual report.

*Secondary offerings and listings*

There is no difference between an application for a primary listing and a secondary listing. Further, in principle, any secondary listing is also subject to the prospectus requirements in case of a public offer (unless a prospectus exemption applies). However, the issuance of shares is privileged if a prospectus has been filed within the preceding 12 months by the same issuer. Any material changes have to be published in a supplement to the original prospectus. Further, the EU Prospectus Regulation provides for the possibility to list up to 20% of a listed issuer's share capital on the VSE within one year without publishing a prospectus (as long as no public offer is being made).

*Typical process and timetable for a listing on VSE*

The timetable for an equity offering and listing depends on its size as well as on whether a dual or a single listing is sought. Usually, the time period is four to six months. However, in the case of an IPO, the timetable is much longer (usually six to twelve months) because certain pre-IPO measures must be completed and an IPO/equity story must be prepared.

A typical process and timetable for an equity offering and a listing on the VSE (non-IPO scenario) is illustrated below:

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2020-update-8th-edition/viennalisting-doc-and-proc.pdf)

There are no major variations in the documentation required for an offering of shares between a domestic and foreign company.

# Continuing obligations/periodic reporting

## Continuing obligations/periodic reporting

[Last updated: 1 January 2024, unless otherwise noted]

The ongoing reporting obligations of an issuer depend very much on whether its shares are listed on the Official Market or included for trading on the Vienna MTF.

*Official Market*

Any issuer whose securities are listed on the Official Market must treat all shareholders that are in the same situation equally. All facilities and information needed for the exercise of the rights of a shareholder must be available in German if the registered seat of the issuer is in Austria - otherwise English is accepted. If shares are listed on a regulated market in Austria (home member state) and in another EEA Member State, any information must be made available in German and in a second language commonly used in financial circles. Security holder data must be protected. Shareholders must receive information about the place, time and agenda of general meetings as well as on the total number of shares and voting rights and the rights of shareholders to participate in general meetings. With each invitation to a general meeting, shareholders must receive a power of attorney form.

In addition, companies listed on the Official Market are subject to a number of ongoing disclosure obligations, some of which are periodic, while others are event-driven. These obligations include the publication of financial statements, ad hoc disclosures of inside information, notices of general meetings and certain related information, dividend distributions, the issuance of new shares and the agreement or exercise of exchange or conversion rights, warrants, redemption and subscription rights. These obligations apply if Austria is the home member state of the company, as well as to non-EEA companies whose shares are only listed in Austria. In the case of companies whose home member state is another EEA Member State, substantially similar obligations should apply under the law of that EEA Member State, since all obligations are based on EU directives/regulations.

A listed company whose home member state is Austria must report of any changes to shares held by members of corporate bodies (management board, supervisory board) and senior management (directors' dealings). The members of the management board (or comparable senior executives) and members of the supervisory board (or a comparable body) must report their own trades, as well as trades by certain relatives and entities controlled by them (for further details on transactions of managers please see below).

Issuers listed on the Official Market must publish all changes to major holdings, that is threshold notices received from their shareholders. Shareholders must notify the issuer within two trading days. Relevant shareholding reporting thresholds for voting shares are 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50% ,75% or 90%. Issuers are, in addition, entitled to include a further reporting threshold of 3% of the voting shares in their articles of association. Further, holders of certain financial instruments (such as call options or instruments that entitle or enable them to achieve a respective shareholding) must report their holdings within two trading days if the above thresholds are met. This information must then be published by the respective issuer.

An issuer must also report holdings of treasury shares if the 5% or 10% threshold is reached or crossed, and it must report the total number of voting shares at the end of every month in which the number of voting shares has changed.

A prime market company must publish a calendar of corporate events with the most important events within two months before the start of the respective financial year.

*Vienna MTF*

For an issuer listed on the Vienna MTF, the disclosure obligations are somewhat less strict. However, since the scope of the Market Abuse Regulation now also includes companies whose securities are traded on MTFs, issuers on the Vienna MTF must still immediately publish inside information that affects the company without undue delay, unless an exemption applies. Moreover, issuers must immediately provide the VSE with all information regarding the issuer and its securities as well as any material changes. Material changes include, among others, changes to the legal framework, changes to the company name, capital measures and insolvency. In light of this obligation, it is customary for the applicant that is the investment firm, credit institution or VSE exchange member signing the application, to enter into an agreement with the issuer that assures a prompt supply of information to the applicant.

*Overview of transparency and disclosure obligations by market segment*

The following tables summarizes the ongoing transparency and disclosure obligations for issuers listed in the prime market segment, the standard market segment and the Vienna MTF of the VSE.

Companies listed on the prime market are under the contractually agreed-on obligation to comply with the provisions of the Austrian Stock Exchange Act as well as with higher transparency, quality and disclosure criteria. This ensures greater recognition among investors:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-continuing-obligations_1.pdf?sc_lang=en)

The standard market segment includes all shares admitted to the Official Market that do not meet the criteria of the VSE’s prime market. A listing does not require any additional transparency or disclosure obligations beyond those set out in the Austrian Stock Exchange Act:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-continuing-obligations_2.pdf?sc_lang=en)

The Vienna MTF offers companies with low capital requirements the option of raising capital through the capital market. An issuer has a choice of admission to listing on the direct market plus segment or the direct market segment. Accordingly, their ongoing disclosure obligations differ:

[Link to Table](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2024-update-10th-edition/vienna-continuing-obligations_3.pdf?sc_lang=en)

*\*Pursuant to the Vienna MTF rules of the VSE.*

Most ongoing disclosure requirements under Austrian law apply to foreign companies only in certain instances. Where Austrian law does not apply, the European harmonized regime under the Transparency Directive should make sure that similar obligations would apply under the law of some other EEA country where the company is domiciled or where its shares are listed.

*Ad hoc disclosure of inside information*

All companies traded on the VSE are under the obligation to publish all inside information that affects the company without undue delay (ad hoc disclosure).

In relation to shares, the Market Abuse Regulation defines inside information includes information that:

Is of a precise nature.

Has not been made public.

Relates to one or more issuers or one or more financial instruments.

Would be likely to have a significant effect on the prices of those financial instruments (or related derivatives) if it were made public.

According to the Market Abuse Regulation, information would likely have a significant effect on the prices of financial instruments if a reasonable investor would be likely to use it as part of the basis of an investment decision. This definition includes all material non-public information that is price sensitive, including major agreements, acquisitions or divestitures, major losses, unexpected business interruptions or positive effects, insolvencies and loss of key personnel. Under certain circumstances, an issuer may postpone the ad hoc disclosure temporarily, such as in the case of pending negotiations.

*Financial information*

Companies admitted to trading on the Official Market must publish their accounted annual financial statements within four months after the end of the financial year. The annual financial statements must consist of the balance sheet including the income statement, the notes to the consolidated financial statements and the management report. For the presentation of the annual financial statements, the commercial law or the national requirements apply. If the company is a parent undertaking, the annual financial statements must also be compiled at the consolidated company level.

Furthermore, companies admitted to trading on the Official Market are required to publish half-yearly financial reports, which consist of short-form financial statements, an interim company report and a certification by the management.

*ESG Reporting*

As of 1 January 2024, companies that meet two of the following three criteria, (1) revenue higher than €50 million (approximately US$55.25 million)), (2) balance sheet totals higher than €25 million (approximately US$27.63 million), (3) more than 250 employees (FY average), are considered "large" companies and ought to report in accordance with the CSRD for the 2024 financial year. The directive still needs to be transposed into national law. Such sustainability report needs to include all necessary information with respect to the company's business performance, its results of operations, its position and impact of its activities in relation to environmental, social and employee matters, human rights and the fight against corruption and bribery. As part of non-financial reporting, non-financial companies will have to report comprehensively on all six environmental objectives of the EU Taxonomy regulation for the first time.

*Abuse of inside information and market manipulation*

Shares of companies traded on the VSE (as well as other financial instruments, for example corporate bonds or derivatives) are subject to prohibitions on the abuse of inside information and market manipulation (market abuse). These prohibitions apply in relation to all issuers on the Official Market as well as to issuers whose shares are included in trading on the Vienna MTF.

The abuse of inside information is also a criminal offence punishable by a prison sentence of up to five years. Prohibited behaviors include using inside information in relation to:

Buying or selling financial instruments.

Amending, buying or selling orders.

Offering or recommending financial instruments to a third party.

Market manipulation is prohibited in Austria under the rules of the Market Abuse Regulation. In addition, market manipulation also constitutes a criminal offence pursuant to the Austrian Stock Exchange Act. The relevant prohibited market manipulation actions include transactions or buy and sell orders that:

Give false or misleading signals as to the supply of, demand for, or price of financial instruments.

Secure the price of one or several financial instruments at an abnormal or artificial level.

Further, market manipulation also includes trade or buy/sell orders placed under false pretenses or by any other deceitful actions or forms of deception with a volume of more than €1 million (approximately US$1.11 million) if such behavior may affect the price of the relevant financial instrument, as well as giving false or misleading information or making available false or misleading source data or the dissemination of information that gives false or misleading signals to the market related to financial instruments.

Market manipulation (including attempts) is punishable by a prison sentence of up to five years.

*Directors' dealings*

Persons discharging managerial responsibilities at an issuer must comply with certain reporting requirements according to the Market Abuse Regulation. These persons must generally report all trades that they have concluded for their own account with regard to shares (or securities equivalent to shares of the issuer) that are admitted to the Official Market or the Vienna MTF, as well as any related trades in derivatives or affiliated companies of the issuer. Reporting may be postponed until the total volume of the trades executed reaches the amount of €5,000 (approximately US$5,525). The FMA is authorized to raise the threshold set out in Art. 19 par. 8 of Regulation No 596/2014 to €20,000 (approximately US$22,100), if this serves the purpose of administrative simplification and is expedient to the investors' need for information. Should the threshold amount not be reached by the end of the calendar year, the reporting on these trades may be omitted. Relevant transaction must be reported to the FMA no later than three business days after the transaction.

*Short selling prohibition and reporting requirement*

The EU short selling regime came into force on 1 November 2012. The regime, which is established by the EU Short Selling Regulation (Regulation No 236/2012), contains disclosure requirements and restrictions on short selling. The Regulation provides that significant net short positions on shares, sovereign debts and uncovered positions in sovereign Credit Default Swaps (CDS) are reportable to the relevant competent authority.

The reporting must be made to the FMA by using an electronic reporting tool. A notification will be publicly disclosed if the short position reaches 0.5% of the share capital of an issuer concerned and every further 0.1% above this threshold.

# Corporate governance

## Corporate governance

[Last updated: 1 January 2024, unless otherwise noted]

Austrian provisions relating to corporate governance are set forth in the Austrian Code of Corporate Governance (ACCG) published by the Austrian Working Group for Corporate Governance. The ACCG covers the standards of good corporate management common in international business practice as well as the most important provisions of Austrian law relevant in this context. It is based on the provisions of Austrian corporation, securities and capital markets law, the EU recommendations on the tasks of supervisory board members and on the remuneration of directors, and on the principles set out in the OECD Principles of Corporate Governance.

Categories of rules defined in the ACCG include L-rules, which are rules that constitute mandatory legal requirements, C-rules, which are comply or explain rules, and R-rules, which are recommendations. C-rules must be complied with or any deviation must be explained and the reasons stated in order to be in compliance with the ACCG. Non-compliance with R-rules requires neither a disclosure nor an explanation by the company.

The ACCG primarily addresses Austrian listed companies including listed European Companies (*Societas Europaea*) registered in Austria. All Austrian companies listed on the Official Market must publish a declaration of their commitment to the ACCG and are required to provide a corporate governance report including an explanation of any deviations from the ACCG according to the prime market rules.

Companies listed on the VSE that are subject to the company law of another EU or EEA Member State are called on to commit themselves to adhere to a corporate governance code recognized in this economic area and to publish this commitment including a reference to the code complied with on their websites. Companies that are subject to the company law of a country that is not a member of the EU or EEA, and are listed on the VSE, are called on to commit themselves to comply with the ACCG. In this case non-mandatory L-rules of the ACCG are interpreted as C-rules.

In addition to the provisions of the ACCG, any foreign company listing through an Austrian joint stock corporation should familiarize itself with the numerous provisions in the Austrian Stock Corporation Act (*Aktiengesetz*) and the Austrian Business Code (*Unternehmensgesetzbuch*) that apply specifically only to listed companies. Most recent additions to this list of provisions include a prohibition for former members of the management board to be elected to the supervisory board during a cooling-off period of two years, unless at least shareholders holding 25% of the voting rights in the company consent.

# Specific situations

## Specific situations

[Last updated: 1 January 2024, unless otherwise noted]

There are no additional requirements, or any changes in the normal requirements, that would specifically apply to very large Austrian companies. In practice, these companies are all listed on the prime market segment, in order to provide the highest quality reporting and to be included in the ATX or the ATX Prime indices. The five companies with the highest-weighted shares in the ATX form the ATX five.

Similarly, there are no special requirements for smaller companies. Smaller companies that want to operate under a less stringent regime may apply for a listing on the standard market or the Vienna MTF.

# Presence in the jurisdiction

## Presence in the jurisdiction

[Last updated: 1 January 2024, unless otherwise noted]

Pursuant to the Austrian Stock Exchange Act, foreign (and domestic) companies listed on the Official Market are required to appoint a payment agent. Otherwise, foreign companies are not required to maintain offices in Austria or to have directors resident in Austria. Further, there is no requirement to keep corporate records within Austria.

# Fees

## Fees

[Last updated: 1 January 2024, unless otherwise noted]

An issuer seeking to list on the VSE must pay both initial listing fees and annual fees. The VSE's initial listing fee for shares to be listed on the Official Market amount to 0.01% of the market capitalization of the newly listed shares, with a minimum fee of €10,000 (approximately US$11,050) and a maximum fee of €50,000 (approximately US$55,250). For inclusions to trading on the Vienna MTF, the initial inclusion fee is €5,000 (approximately US$5,525) plus 0.05% of market capitalization up to a maximum fee of €10,000 (approximately US$11,050).

The initial listing fee for shares listed on the Official Market amounts to 0.01% of the market capitalization at the end of the previous year, with a minimum fee of €10,000 (approximately US$11,050) and a maximum fee of €50,000 (approximately US$55,250). The initial listing fee for shares traded on the Vienna MTF is €5,000 (approximately US$5,525). The annual participation fee for issuers of securities traded on the Official Market amounts to 0.01% of the market capitalization at the end of the previous year ranging from €6,000 (approximately US$6,630) to €12,000 (approximately US$13,260). If traded on the Vienna MTF, the fee amounts to €3,000 (approximately US$3,315) per security without a minimum or maximum fee.

Additional costs include fees charged by underwriters, lawyers and accountants involved in the transaction, as well as printing costs.

# Additional Information

## Additional Information

[Last updated: 1 January 2024, unless otherwise noted]

All information for registration with the VSE and correspondence with the FMA is usually made in German or English. For issuers listed in the prime market segment, all communications to investors must be made in German and English. Except for the Vienna MTF, it is normally not possible for issuers with their registered office in Austria to limit communication to the English language.

However, the prospectus for the listing and/or public offering may be prepared exclusively in English.

Most parts of the VSE's website ([www.wienerborse.at](https://www.wienerborse.at/)) are also available in an English version, including documents required in connection with a listing. The website of the Austrian regulator ([*www.fma.gv.at*](http://www.fma.gv.at)) also contains many useful materials and guidance in the English language. An English language version of the Austrian Corporate Governance Codex is available at [*www.corporate-governance.at*](http://www.corporate-governance.at/).

*Listing debt securities on Vienna MTF*

Listed companies in Vienna also benefit from a streamlined process to list their debt where traditionally a large portion of listed debt originates in the domestic market. Recently there has been a prominent increase in international debt listings from both listed and non-listed companies where in 2019 they surpassed domestic listings for the first time.

Nowadays, a large variety of debt securities are commonly listed in Vienna, such as securitizations, asset-backed securities, convertible bonds and high yield bonds. The Vienna Stock Exchange also hosts a dedicated market segment for green and social bonds. At the end of 2024, the voluntary European Green Bond Standard will come into force.

Key features of the Vienna MTF:

Simplified documentation for listing (such as an information memorandum instead of Prospectus).

Limited filing requirements.

Ongoing requirements limited to requirements under the Market Abuse Regulation.

An experienced and responsive team at the VSE ensures short turnaround times.

The listing of a debt issuance programme on the Vienna MTF is a preferred option for financial institutions. The VSE have automated the process of listing tranches by offering the use of a load-file for wholesale transactions.

*Key differences in requirements for domestic companies*

Admission criteria for domestic companies are generally the same as those for foreign companies. The main difference, however, results from the practical application of the general admission criteria to Austrian issuers. A key issue is typically the way the shares are kept in central custody for clearing and settlement. For listings by Austrian companies, the clearing and settlement procedures do not have to take into account the particularities of foreign jurisdictions.

Austrian issuers of shares must publish a prospectus that has been approved by the FMA. Pursuant to the EU Prospectus Regulation, the obligation to publish a prospectus also applies to foreign issuers. However, prospectuses drawn up by issuers from EU Member States and approved by another EU Member State authority may be used in Austria if they are passported for Austria in accordance with the requirements set forth in the Prospectus Regulation.

Finally, applicability of the ACCG, which contains provisions related to corporate governance and is further described in section 5, differs between domestic and foreign issuers. The ACCG primarily addresses Austrian listed companies, including listed European Companies (*Societas Europaea*) registered in Austria. All Austrian companies listed on the Official Market or the Vienna MTF must publish a declaration of their commitment to the ACCG. Further, all companies listed in the prime market segment of the VSE are required to provide a corporate governance report and to include a declaration on any deviations from the ACCG according to the prime market rules. Companies that are subject to the company law of another EU Member State or EEA Member State and are listed on the VSE are called on to commit themselves to adhere to a corporate governance code recognized in this economic area and to publish this commitment, including a reference to the code complied with on their websites. Companies that are subject to the company law of a country that is not a member of the EU or EEA and are listed on the VSE are called on to commit themselves to comply with the ACCG.

# Contacts

## Contacts within Baker McKenzie

Eva-Maria Segur Cabanac in the Vienna office is the most appropriate contact within Baker McKenzie for inquiries about prospective listings on the VSE.

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