Cross-Border Listings Guide - Vienna Stock Exchange

Listing documentation and process

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# 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.

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