Corporate Finance/M&A - Austria

Austria Jumps to the Aid of Companies in Crisis

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In response to the tense situation on the financial markets and a deteriorating commercial environment, the Austrian legislature recently enacted the Act on Strengthening Company Liquidity as a measure to provide financial support to undertakings which have been affected by the financial crisis. Under the act, Austria may assume - against a certain consideration - liability in the form of guarantees for bank loans granted to certain companies. Therefore, the law provides the legal basis for state measures aimed at maintaining business activities and bridging temporary liquidity bottlenecks of companies whose major activities are in Austria. For this purpose, Austria has made €10 billion available.

Legal Requirements and Limitations

Companies that are eligible for financial support under the Act on Strengthening Company Liquidity are those that are considered to be 'national or regional pillars' of the economy. In order to qualify as a beneficiary company, the following requirements must be met:

- The company's corporate seat or one of its production sites must be in Austria;
- The company must have its principal operational activities in Austria. Thus, a mere holding company that has its seat in Austria but effectively operates abroad does not satisfy this requirement;
- The company must not belong to the financial sector; however, this refers only to the company as an independent undertaking and not to any potential affiliate companies;
- The company must not fall within the definition of a 'micro, small or medium-sized enterprise' as stipulated in European Commission Recommendation 2003/361 (see Article 2 of the Annex thereof);
- The company must have been in a healthy economic condition before July 1 2008;
- The company must be expected to be able to fulfil the guaranteed obligations in accordance with the terms of the loan; and
- The risk taken over by the state must be appropriate.

The specific loan must be used either for the financing of the company or for necessary investments, including loans for resources or for the repayment of bonds or other loans. However, the guarantee will not be granted for other forms of financing (eg, corporate bonds).

The reference to 'healthy economic conditions' before July 1 2008 emphasizes that the act aims to help companies to bridge a temporary liquidity bottleneck and not to provide money to companies that are in difficulties irrespective of the financial crisis. Consequently, companies that satisfy requirements under the Law on the Reorganization of Companies (ie, those companies whose equity ratio is below 8% and which are realistically expected to need more than 15 years in order to repay their debts) cannot be supported under the Act on Strengthening Company Liquidity. The same is true for companies that are considered to be in difficulties pursuant to the EU guidelines on state aid for rescuing and restructuring firms in difficulty (see Point 2.1 thereof).

In consideration of the guarantee, the beneficiary company must pay a fee that is appropriate in relation to the risk taken over by the state. Thus, the fee should correspond to regular market conditions - the determination of which is the major issue in the course of the application procedure. In certain circumstances the fee may amount to up to 9.8%, depending on the company's rating. Given that interest rates on the market are currently very low, it might often be cheaper for companies to look to different means of financing.

However, the guarantee is limited to €300 million per beneficiary company, including guarantees granted to affiliated companies, and the guarantee amount may not exceed 70% of the entire relevant loan amount. Further, the guarantee cannot exceed a period of five years, irrespective of whether the loan has been granted for a longer period. If the loan is increased, the five-year period will start again with respect to each increase.

Procedural Aspects

Guaranteed bank loans must have been granted by Austrian banks or Austrian branches of EU credit institutions with a proper banking licence.

Applications for the granting of guarantees must be submitted by the respective credit institution to *Oesterreichische Kontrollbank* AG by November 12 2010. The administrative effort involved in applying for such a guarantee is not to be underestimated and is rather burdensome. It usually takes up to six weeks (and, depending on the circumstances, even longer) for the beneficiary company to obtain a final decision on the application, which is issued by the minister of finance.

Comment

Originally, the Austrian legislature expected approximately 1,000 companies to be eligible for the benefits of the Act on Strengthening Company Liquidity. However, enthusiasm seems to be limited due to the potentially high fees that must be paid and the administrative burden. To date, Austria has granted guarantees of less than approximately 5% of the entire €10 billion fund that is available.

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