

## Lawyers from RBI and Wolf Theiss give a quick snapshot over the planned amendment to the Austrian Deposit Act which shall allow for dematerialized securities certificates

On 2 December 2020, the Austrian Council of Ministers (*Ministerrat*) resolved the ministerial proposal (the "Government Bill") for an amendment to the Austrian Deposit Act (*Depotgesetz* – "DepG"). After the publication of a draft law on the introduction of electronic securities in August 2020 in Germany, the Austrian Government Bill paves the ground for the entry into a new world of digital global certificates (*Digitale Sammelurkunden*, § 1 (4) of the Government Bill, each a "Digital Global Certificate") in dematerialized form for bonds (*Schuldverschreibungen*) and investment certificates (*Investmentzertifikate*) in Austria.

Unlike in certain other European countries, the current Austrian legal requirement for securities issuers to produce and sign a physical global certificate in paper form and have it countersigned by a paying agent and a securities controller before it has to be physically delivered to the OeKB CSD GmbH ("OeKB CSD", the Austrian Central Securities Depository which is established with the *Oesterreichische Kontrollbank AG*) prior to the value date, was a main burden for issuers on the Austrian securities market. The introduction of the Digital Global Certificate is an important step to eliminate potential competitive disadvantages in international capital markets.

According to the Government Bill, the creation of such Digital Global Certificate requires issuers to electronically transmit certain information to the OeKB CSD on the rights which should be attached to the book-entry on the relevant securities accounts with the OeKB CSD in a specific structured format. On the basis of such information, an electronic data set will be established at the OeKB CSD. By establishment of such electronic data set, the Digital Global Certificate will be issued. Co-ownership interests in such issued Digital Global Certificate shall convey the same securities law functions as co-ownership interests in a physical global certificate.

Refraining from securities in physical form is also a contribution to the green footprint of issuers of securities in accordance with their ESG activities. In 2019 around 7756 securities in paper form have been delivered to the OeKB CSD. The creation of a "digital global certificate" simplifies the process of issuing securities by eliminating both the logistical procedure of transfer to the respective central securities depository and the storage of physical global certificates. In the interest of sustainability, the Digital Global Certificate therefore also saves paper and contributes to reducing carbon dioxide emissions.

The amendment of the Austrian Deposit Act is a technological-neutral minimalistic approach for the digitalization of securities. Provisions regarding detailed rules for blockchain technologies or crypto assets are not contained in the Government Bill. In order to create a fully harmonized law book for the modern world of digital assets it is still a long way to go. Nonetheless, the dynamics which are partially also due to the COVID crisis as a catalysator for modernization are very welcome in the market and we see a lot of digital initiatives in the area of the securities business these days such as digital platforms (Yellowe; vc trade) or use cases for digital bonds.

The new DepG shall enter into force on the day following its publication in the Official Gazette (*Bundesgesetzblatt*). Please note that the Governmental Bill may still be subject to changes following the discussions in the parliament.



Jörg Liesenfeld, LL.M. (Univ. of Sydney)  
Raiffeisen Bank International AG  
Head of Transaction Management -  
Investment Banking



Alexander Haas,  
Wolf Theiss Rechtsanwälte  
Rechtsanwalt, Partner  
Certified Stock Exchange Trader