Digital Global Certificates in Austria—A Gamechanger for Securities Issues

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Abstract

Until recently, the issue of securities in Austria required the issue of certificates in paper form. This historic principle has proven to be outdated in today's times of increasing digitalisation. To address this, Austria introduced the concept of a so-called "Digital Global Certificate". Thus, the Austrian Securities Deposit Act (SDA) was amended accordingly and now provides a legal basis for the fully digitised issue of debt securities and investment fund certificates. By allowing the issue of these securities on a completely digital basis, Austria managed to set up a promising legal framework for national and international market participants.

Introduction

In Austria—as in most jurisdictions—until recently there was no security without paper, as the German term for security (*Wertpapier*) already indicates.[1] In times of advancing digitalisation and the ever-increasing speed of capital markets, however, it appeared questionable whether it was still appropriate to require the physical signing and delivery of securities certificates into the custody infrastructure, given that securities certificates subsequently remain usually untouched in a safe anyway. All this in mind, Austria initiated a review of the legal basis for securities issues back in 2018.[2]

One of the questions raised in the course of this review targeted today's purpose of securities certificates in paper form. Were they more than a historically conditioned anchor for the fiction of physical transfer of the securitised rights? And could this fiction not also be based on a somewhat more modern and practicable basis? Considering these questions, among others, it quickly became apparent that Austrian securities law was in need of modernisation. Austria responded to said need with amending the Austrian Securities Deposit Act[3] (SDA) by introducing Digital Global Certificates for debt securities (bonds) and investment fund certificates. By doing so, the fundamentals for a legal framework governing digital securities in Austria were outlined. However, in addition to the amendment of the SDA, the legal concept for digital securities chosen by the Austrian legislator required a "second layer" that takes into account the specific requirements of the Austrian custody infrastructure in which the digital securities shall be created and managed.[4] Thus, as will be explained in more detail later, a huge portion of the implementing rules for the creation of digital securities in Austria is determined by the Austrian Central Securities Depository (CSD).

The resulting legal framework for digital securities issues in Austria is therefore characterised not only by its simplicity, but due to the CSD's influence also by the fact that the issuing procedures can to a certain extent be adapted to market situations and the needs of market participants. For these and other reasons, the current legal environment for digital securities issues in Austria is promising and, in particular, attractive to international issuers as it may easily be adapted to their different securitisation needs. In the following, we will therefore first outline the legal framework before describing the digital issue procedure in more detail.

Legal framework for digital securities issues in Austria

As already indicated above, the legal framework of digital securities issues in Austria consists of two layers: first, the statutory provisions set forth in the SDA; and second, the requirements of the CSD in whose infrastructure the creation and issuance of the securities takes place. Both layers supplement each other, as the respective CSD rules build on and complete the SDA baseline provisions. In the following, these two statutory layers as well as the underlying approach are explained and compared with similar regulations on digital securities issues in Germany and Switzerland.

The Austrian Securities Deposit Act

The SDA contains rules on the safekeeping of securities and the associated legal effects. It is the legal basis for the recording of securities in book-entry form by the Austrian CSD.[5] Until recently, the SDA exclusively

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[1] G. Zinner and M. Kollik, "Die digitale Sammelurkunde bringt neue Dynamik in Österreichs Kapitalmarkt" (*Der Standard*, 2021), *https://www.derstandard.at/story/2000124464290/die-digitale-sammelurkunde-bringt-neue-dynamik-in-oesterreichs-kapitalmarkt*.

[2] M. Kollik, "Das Verwahrsystem der OeKB CSD GmbH" in *Depotgesetz Kommentar* (C.H. Beck, 2024), para.6.

[3] Depotgesetz, Federal Law Gazette 1969/424 as amended (Securities Deposit Act—SDA).

[4] As mentioned earlier, said requirements of the infrastructure operators are based on the statutory outline provided for in the SDA.

[5] See Kollik, "Das Verwahrsystem der OeKB CSD GmbH" in *Depotgesetz Kommentar* (2024), para.7.

covered the safekeeping of physical securities certificates. That changed as of 26 March 2021, when the latest amendment to the SDA became effective.[6] With this amendment, the new concept of a Digital Global Certificate (DGC) was introduced into the SDA. The idea behind this concept was to create a purely digital (fully dematerialised) category of securities without the previously required "crutch" of a physical embodiment. Until then, the securitisation of rights was not possible under Austrian securities law without the creation of an "embodiment" in a physical paper document. The physical connecting factor thus created made it possible to transfer rights outside of contractual forms of transfer by handing over the paper document from "hand to hand". Even though Austrian securities law enabled the transfer of securities to be legally effected via credits and debits to electronically managed securities accounts instead of the (meanwhile impracticable) physical handover of securities certificates, the basis for the acquisition of rights was always the custody of a physical securities document by the custodian bank (the CSD). The SDA amendment only partially reverses from this path to the quasi-property law principles as it still includes the requirement of an "embodying object". However, the SDA amendment created an alternative embodying object by means of a legal fiction. It now expressly provides that the securities law effects arising from the embodiment of rights in a physical instrument also arise when the rights are embodied by certain digital instruments—the newly introduced DGCs. Based on this legal fiction, DGCs are now able to "embody" the rights described therein in the same way as paper-based physical securities. Consequently, the newly introduced concept of DGCs allows for the fully dematerialised creation and issue of securities under Austrian securities law.

In order to ensure the legal equality of the digital and paper-based securities, DGCs were anchored as a legally equivalent alternative to the physical global certificate (*Sammelurkunde*) in the SDA.[7] Issuers are thus able to choose whether they wish for a physical certificate or a DGC to securitise their issued rights.[8] However, the scope of application of DGCs is limited to debt securities (bonds) and investment fund certificates (i.e. unit certificates in UCITS). Shares were deliberately excluded from the scope of application, as digital shares would have also involved issues under Austrian corporate law and correspondingly would have required more extensive legislative changes.[9] For them and other types of securities, physical securities certificates and thus the physical issuing procedure remain the only available option.

A key provision of the SDA amendment is the description of how DGCs are created, even though this description is (deliberately) very abstract: "Pursuant to sec.1 para.4 of the SDA, the creation of a DGC requires the creation of an electronic reference data record in the bookkeeping system of a CSD that provides its core services in Austria". The reference data for said record is to be submitted by or on behalf of the issuer to the CSD by electronic means. This is to be done partly in a structured form specified by the CSD. Regarding the information to be submitted in structured form, the SDA leaves the concrete specifications to the CSD who creates the record. The explanatory notes to the SDA-amendment indicate that the information to be submitted in structured form shall include all information required for the creation of a (digital) security from a securities law perspective (i.e. the minimum content a security of a certain type must have) and, in addition, any other information the CSD may require for the DGC's safe custody and administration.[10] All other information shall be transmitted by the issuer to the CSD in another format (e.g. PDF). The latter include, in particular, the terms and conditions of the securities or required confirmations, evidence or countersignatures (such as the trustee's certificate in the case of covered bonds). Once the required data is submitted, the DGC emerges to the extent of credits made to securities accounts maintained with the CSD based on the issuer's booking instructions.

The explanatory notes to the SDA-amendment indicate that the aforementioned procedure of creating a data record contains two steps: first, the data to be combined into a reference data record must be submitted electronically to a CSD, then the data must be granted a release.[11] However, the legislator has entrusted the more detailed specification of these two steps (especially regarding the release) to the record generating CSD. The legislator nevertheless clarified that the data transmission and the release together replace the issue of the securities certificate, i.e. its signing, and fulfil the corresponding functions under Austrian securities law.[12]

Accordingly, the new provisions introduced into the SDA contain only a rough outline of (i) the procedure of creating DGCs, (ii) the securities that can be digitally securitised, and (iii) the legal consequences associated with the creation of DGCs. By themselves, these provisions do not yet provide a self-sufficient legal framework for digital securities issues. Rather, the T&C of a CSD are required for "completing" such framework, since they concretise those points that were deliberately left unspecified in the SDA.

[6] Federal Act amending the Securities Deposit Act, Federal Law Gazette I, 51/2021.
[7] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1, pursuant to which the rights and functions under securities law associated with Digital Global Certificates are exactly the same as the rights and functions associated with physical global certificates.
[8] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1.
[9] See F. Ebner and S. Kalss, "Die digitale Sammelurkunde—ein erster Schritt zur vollständigen Digitalisierung des österreichischen Wertpapierrechts" (2020) *Der Gesellschafter* 369, 370; Kollik, "Das Verwahrsystem der OeKB CSD GmbH" in *Depotgesetz Kommentar* (2024), para.10.
[10] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1.
[11] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1.
[12] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1.

General terms and conditions of a CSD

Building on the SDA provisions just presented, the terms and conditions (T&C) of the CSD in whose infrastructure the issue takes place provide the final specifications of the legal framework for digital securities issues—and therefore breathe life into the abstract statutory requirements. In this respect, the SDA stipulates that a global certificate may only be created within the infrastructure of a CSD that provides its services in Austria. Currently, only one CSD provides such services in Austria: OeKB CSD GmbH (hereinafter OeKB CSD). Digital securities can therefore only be issued within the infrastructure of OeKB CSD and the T&C of OeKB CSD (hereinafter OeKB CSD T&C) are currently the only "second layer" of the legal framework for digital securities issues in Austria.

Like many other market participants and infrastructure operators, OeKB CSD was involved in the preparatory work for the SDA amendment. For this reason, OeKB CSD was able to begin amending its T&C and concretising the statutory procedures at an early stage. The resulting amendments regarded the detailed structure of a DGC, the detailed procedure of its creation and accompanying specifications.[13] These and other major changes in the OeKB CSD T&C form the skeleton of an issue workflow, which is enlivened and completed by the operational procedures implemented in particular on OeKB CSD's digital issuer platform. Since the resulting overall issuing process will be described in the third section of this article, reference is made to said section for a detailed description of the amendments made to the OeKB CSD T&C.

Conceptual approach of the newly introduced legal framework

Securities issues were previously inconceivable without the existence of a physical securities certificate. Therefore, the idea of completely digitising securities issues suggests extensive and, above all, fundamental legal changes to the existing statutory provisions. However, the amendment of only four SDA-provisions was enough to lay out the legal framework for digital securities issues.[14] The reason for this is the conceptual approach adopted by the legislator when developing the foundation of the legal framework for digital securities issues.

For starters, the legislator chose to intensively involve (i) the operators of the required infrastructure and (ii) the potential "users" of digital securities issues in the development of the legal outline right from the start. For instance, market participants were invited to get involved in a working group which focused on developing the legal framework for digital securities issues.[15] The involvement of market participants would not have been unusual per se—however, the assignment of regulating tasks between the legislator and the market participants was rather remarkable. This is because the legislator decided to stipulate only the absolute minimum in statutory quality and to leave the lion's share of necessary regulation to the market itself (by means of T&C of the infrastructure providers).[16] Another principle pursued by the legislator was the technology neutrality of the statutory framework.[17] For example, there are no statutory IT-requirements for registering the reference data records. Therefore, blockchain technologies could (in theory)[18] be used in digital securities issues without any further amendments of the statutory provisions becoming necessary.[19]

However, the perhaps most remarkable aspect of the newly created legal framework for digital securities issues is how seamlessly it fits into the existing system and mechanisms of securities law. This is because, despite fundamental structural differences from analogue issues, the legislator has succeeded in structuring digital securities issues in such a way that the central connecting factors of an issue to securities law remain the same but are only designed differently in technical terms. This becomes clear when, for instance, taking a closer look at the origination requirements for securities. Under Austrian securities law, most securities emerge when (i) an embodying instrument is created and subsequently (ii) the rights embodied in said object are initially assigned to one or several holders.[20] In a purely digital process, however, it is difficult, if not impossible, to create an embodying object—which is why a reversion from or a modification of the familiar two-act originating process would have been obvious. Nevertheless, the legislator decided to refrain from such disruptive statutory changes and instead simply chose to introduce digital equivalents to the previously known analogue originating acts. Thus, the legislator only needed to clarify that the digital creation of a specific reference record and corresponding credits to securities accounts held with the CSD maintaining the reference record is an equivalent of both the creation of an embodying instrument and the initial

[13] These accompanying specifications, inter alia, relate to the procedure of replacing physical certificates with global certificates (so-called migration) and certain disposals relating to securities (e.g. increasing or decreasing the amount of rights securitised in a Digital Global Certificate).
[14] This refers only to the statutory provisions in the SDA, which outline the legal framework and thus form its first or basic layer. As mentioned above, more extensive changes were indeed necessary for the overall legal framework—but these affected the OeKB CSD GTC in particular, and thus the second layer of the legal framework.
[15] One of the authors, Michael Kollik, served as a member of said working group and thus was involved in shaping the amendment of the SDA.
[16] The fact that the legislator actually followed through with this approach is evident from the extremely small number of amendments made to the SDA, as described above in the body text.
[17] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1.
[18] However, it should be noted at this point that the use of blockchain technologies in digital securities issues would be subject to different regulations due to the SDA's reference to the CSDR (which will be presented later in the body text) and Regulation (EU) 2022/858 of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations 600/2014 and 909/2014 and Directive 2014/65 [2022] OJ L151/1 (EU DLT Pilot Regime Regulation). Therefore, corresponding projects relating to "blockchain-securities" are currently still being developed in practice.
[19] See P. Raschner and J. Reheis, "Die Einführung der digitalen Sammelurkunde" (2021) ÖBA 456, 464.
[20] See H. Keinert, *Handbuch des Wertpapierrechts* (2014), para.113.

assignment of the embodied rights.[21] In addition, the legislator has also clarified that the creation and release of the reference data record is the digital equivalent of the signing of the securities certificate.[22] Such solutions have thus ensured that, on the one hand, securities law mechanisms continue to function as known and, on the other hand, digital and analogue issues are indeed equivalent alternatives to each other.

Another reason for the minimal disruption with existing legal principles relates to the infrastructure in which the reference data records are recorded and kept. Given that the DGC shall fulfil the same functions as physical certificates, certain requirements had to be imposed on the corresponding infrastructure.[23] The Austrian legislator could have provided for a completely new regulation of the digital securities infrastructure. However, as securities issues are almost always made via the infrastructure of a CSD, since securities that are to be traded on a MiFID trading venue must be recorded in book entry form with a CSD,[24] the Austrian legislator decided to refrain from providing separate regulations for the infrastructure of digital securities. Instead, the legislator stipulated that a DGC may only be created within the infrastructure of a licensed CSD—thus making the infrastructure for digital securities subject to the regulatory requirements of the CSDR. In this way, the legislator was able to ensure that, based on well-established regulations, capable and already regulated entities are entrusted with the operation of the digital securities infrastructure.

Similar legal frameworks in the DACH region

Not only Austria, but also other German-speaking countries have created statutory frameworks for digital securities. Germany introduced an Electronic Securities Act[25] (ESA) in June 2021. This regulation provides for a similar scope of application as the Austrian regulations. However, pursuant to the ESA not only CSDs but also ordinary custodian banks are entitled to record digital securities in Germany. Accordingly, the German digital securities infrastructure is governed primarily by the requirements set out in the ESA. In addition, the ESA also explicitly provides for crypto securities whose infrastructure is regulated by a specific set of rules. It may well be that the German legal situation explicitly allows for more technical issuing options (e.g. crypto tokens).[26] However, the regulation may bear inconsistencies and suboptimal parallelism in practice, especially with regard to CSDR and securities that are to be listed on a MiFID trading venue.

Further, Switzerland and Liechtenstein also established legal frameworks for digital securities. However, both the Swiss and the Liechtenstein regulation show a heavy focus on crypto assets and DLT-systems on the one hand and bear extensive additional infrastructure regulation on the other hand. The Liechtenstein regulation in particular is in general less aimed at classic securities issues, but much more at the overall regulation of crypto securities.

Overall, the other regulations on digital securities in the DACH region are significantly more technology-driven and invasive than the corresponding legal framework in Austria. This means that more technological aspects can be found explicitly in the legal texts (e.g. blockchain technology). Consequently, their regulatory approaches are not as holistic as the Austrian one. Further, the Austrian legal framework is clearly more integrated into existing laws and regulations, in particular with regard to CSDR and the provisions for paper-based securities in the SDA, while the regulations in Germany, Switzerland and Liechtenstein are more self-contained. Finally, the Austrian approach is characterised by its practicability and adaptability, which is essentially due to the fact that the legislator only provides a rough statutory outline leaving its detailed design to practice.

The procedure of a digital securities issue in Austria

From a practical perspective, the issue of securities requires several steps: the preparation and structuring of the issue, the preparation of the documentation and finally the placement of the securities. However, the now legally provided digitisation of securities issues does not capture all of these steps. It only comes into play once the documentation is finalised and the subscribers are waiting for their securities to be credited to their securities accounts. At this point, a securities certificate would have to be physically created if the securities were issued in an analogous manner. The digitised securities issue, however, must do without such physical act. As described above, the legal framework of digital securities issues therefore replaces the physical securities certificate with a DGC—which is essentially a data record. [27] Consequently, the process of creating a physical security certificate is also replaced by the creation of said digital data record.

The fundamental elements of this creation process are laid out in the SDA. However, the actual procedures result from the T&C of the CSD in whose infrastructure the issue is to take place. As explained above, the only infrastructure currently available for this purpose is OeKB

[21] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII.GP), p.1.
[22] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1.
[23] See Ebner and Kalss, "Die digitale Sammelurkunde—ein erster Schritt zur vollständigen Digitalisierung des österreichischen Wertpapierrechts" (2020) *Der Gesellschafter* 369, 377.
[24] See art.3, para.2 of the Regulation 909/2014 of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26 and 2014/65 and Regulation 236/2012 [2014] OJ L257/1 (CSDR).
[25] Gesetz über elektronische Wertpapiere vom 2. Juni 2021, Federal Law Gazette 2021 I, p.1423 (Electronic Securities Act—ESA).
[26] At this point, it should be noted that the Austrian legal framework does not explicitly mention the technical issuing options mentioned in the body of the text but does not prohibit them either. Thus, all technical options mentioned in the German regulation would also be implementable under the Austrian legal framework.
[27] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.1.

CSD's infrastructure. In the following, the process of digitally creating the mentioned data record of DGCs that arises from both the SDA and the OeKB CSD T&C is described in more detail.

Appointing a Transfer Agent

As mentioned, the newly introduced process for digital securities issues ultimately ends with the creation of a specific data record and the initial assignment of the rights securitised therein. However, the initial start of the digitised issue procedure is the appointment of a so-called Transfer Agent by the issuer towards OeKB CSD. Said Transfer Agent is essentially responsible for structuring the information required for the data record and transmitting it to OeKB CSD.[28]

In general, the function of Transfer Agent may be performed either by the issuer itself or by a third party.[29] In case the issuer decides to perform the function of Transfer Agent itself, it shall file a corresponding declaration with OeKB CSD. If the issuer appoints a third-party Transfer Agent, it may do so for a specific securities category (ISIN) or for an unspecified number of securities categories of one or more types of securities.[30] The third-party Transfer Agent will be named to OeKB CSD by means of a power of attorney to be signed by the issuer and the respective third-party. In both cases, the issuer must use one of the standard declarations or powers of attorney provided by OeKB CSD on its website and submit it to OeKB CSD in duly signed form. This can be done by electronic means only so that no paper documents need to be submitted.

In case OeKB CSD receives a declaration from the issuer on the exercise of the function of Transfer Agent or a power of attorney with which the issuer authorises and instructs a third party as Transfer Agent, it first checks whether the document submitted complies with the required standard and covers all the tasks of the Transfer Agent and whether, in addition, the named issuer or third party is authorised to perform these tasks. If this check does not reveal any irregularities, the Transfer Agent will be connected to the electronic issuer platform of OeKB CSD. In addition to the connection to the issuer platform, the Transfer Agent must also be the holder of a securities account or a distribution account[31] at OeKB CSD. Once a Transfer Agent has been appointed, it shall continue to perform its function until the issuer appoints a new Transfer Agent and notifies OeKB CSD thereof.

Creating the electronic data record

Once the Transfer Agent is connected to the electronic issuer platform, it can start structuring the electronic data that will later form the reference data record and thus the basis of the DGC. This electronic reference data record essentially consists of data that must be recorded in a structure specified by OeKB CSD and additional data for which no specific recording structure is prescribed. The information to be recorded in a structured manner essentially covers information which is required for the creation of a (digital) securities certificate under securities law and would also be found on a physical securities certificate (e.g. name of issuer, issue amount, maturity, interest rate). Other required information serves the settlement and administration of the securities (e.g. ISIN, CFI-code, EFIC-code, holders of certain functions such as Transfer Agent). In order to record this information in the specified structure, the issuer platform of OeKB CSD provides for an electronic input mask in which the Transfer Agent fills in the respective information. Any information which is entered via this input mask will consequently form the reference data record called REDA-I.

However, the information recorded in REDA-I does not provide a sufficiently complete description of the securities. For this reason, the SDA provides that issuers shall be able to submit any supplementary information required for this purpose in non-structured form.[32] CSDs that receive such additional information shall record it in a way that establishes a link to the structured reference data set to which this additional information belongs.[33] OeKB CSD has accordingly reflected this in its digitised issue process on the issuer platform of OeKB CSD, Transfer Agents are able to create and upload additional information that is not explicitly specified or requested in the electronic input mask. Such information may include or regard, for example, the securities' terms and conditions, or any required confirmations verifications and countersignatures. All information uploaded to OeKB CSD's issuer platform outside REDA-I for a certain issue will be merged in a separate unstructured reference data record. This second part of the electronic data record is called REDA-II. Once the upload is complete, OeKB CSD establishes a unique reference link to any such additional information in PDF-format (this being REDA-II) within the structured data record (REDA-I).

Both REDA-I and REDA-II are necessary for the creation of DGCs, as the rights and obligations they represent can only be understood in their entirety through both reference data sets. However, as it is possible that

[28] More details on the Transfer Agent function, e.g. eligibly third-party Transfer Agents, can be found in the next section.
[29] In the authors' experience and assessment, issuers are generally well advised to appoint professional capital market participants as their Transfer Agent and not to perform this function themselves. The background to this is the infrastructure and resources associated with the tasks of the Transfer Agent—in this respect, professional capital market participants simply have scaling advantages. If the issuer is a professional capital market participant such as a credit institution or an investment firm, the function of Transfer Agent is more likely to be performed by the issuer itself.
[30] In this context, a category of securities refers to all securities with the same ISIN, while the security type refers to whether the securities are bonds or investment certificates.
[31] A distribution account is an account to which securities can be temporarily booked (especially in preparation for later booking), but which is not a securities account in the sense of the SDA.
[32] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.2.
[33] See the explanatory notes to the SDA-amendment introducing the possibility of digitally issuing securities (ErlRV 596 BlgNR XXVII. GP), p.2.

information from REDA-I and REDA-II may contradict each other, OeKB CSD has decided to stipulate that in such a case the information contained in REDA-I takes precedence over the information contained in REDA-II. This is intended to create legal clarity with regard to the management of securities by OeKB CSD.

Release of the reference data records

Filling in the REDA-I information and uploading the REDA-II information is in itself not yet enough for a DGC to be created. Rather, it is additionally necessary that the fully prepared REDA-I and REDA-II are verified and given a release by the Transfer Agent. For this reason, OeKB CSD has integrated a corresponding verification and release process into its issuer platform. After the Transfer Agent has submitted or uploaded all information for REDA-I and REDA-II, a validation of all information is conducted first. This validation takes place in the IT system of OeKB CSD, once the Transfer Agent clicks a corresponding validation button at the end of the already mentioned electronic input mask. Within the validation process, an automated plausibility check of all transmitted data is carried out. After validation, REDA-I and REDA-II are submitted for release. This release process is based on the four-eyes principle. Thus, a different user of the Transfer Agent than the one who has transmitted the data for both reference data records shall grant the release for REDA-I and REDA-II. This second user of the Transfer Agent can issue the release by clicking a corresponding button in the issuer platform of OeKB CSD. With the granted release of REDA-I and REDA-II, the DGC is finally created (but not yet issued) in the IT system of OeKB CSD.

As mentioned, the primary purpose of releasing REDA-I and REDA-II is to finalise the creation of the reference data record. However, there are some additional legal effects associated with granting the release of REDA-I and REDA-II. These effects primarily refer to the fact that, with the issued release, the Transfer Agent confirms certain characteristics of the created DGC. Among other things, the Transfer Agent confirms that the DGC is complete, corresponds to the issuer's intent that the information from REDA-I does not contradict the information from REDA-II, and that a corresponding power of attorney from the issuer covers the Transfer Agent's actions. Finally, the release by the Transfer Agent also includes an instruction for the initial assignment of the rights securitised in the DGC to the securities account or distribution account of the Transfer Agent specified in REDA-I.

Initial assignment/booking of the securities

In addition to the creation and release of the data records and in line with Austrian securities law, the issue of the DGC requires that the rights securitised therein are assigned to the initial subscribers or to an interim securities account (effectuation). For this reason, the release of REDA-I and REDA-II also includes an instruction on the initial assignment of the securitised rights. Based on this instruction, the DGC is credited to the securities or distribution account specified in REDA-I. The DGC is then validly issued to the extent of the respective credits registered in securities settlement system (SSS) of OeKB CSD.

Different roles and tasks in the issuing process

Issuer

Although the issuer is the "driver" of the issue procedure, it is only marginally involved in the actual creation of the digital securities,[34] as most of the key tasks are reassigned to other involved functions, in particular to the Transfer Agent. Nevertheless, the issuer has two important tasks to fulfil. On the one hand, it appoints all necessary function holders and names them to OeKB CSD. The number of function holders which the issuer needs to appoint depends on the security type to be created and issued. A Transfer Agent and a Paying Agent must, however, be appointed in any case. On the other hand, the issuer must stipulate all information on the basis of which the Transfer Agent proceeds with the creation of the digital securities. Said information includes all data which will later be registered in REDA-I and REDA-II.

Transfer Agent

The Transfer Agent is probably the most important function in the course of creating the digital securities, since it is the major point of contact for OeKB CSD. The tasks of the Transfer Agent include the collection of all information that is to be integrated into REDA-I and REDA-II. Subsequently, the Transfer Agent is responsible for transmitting all this information to OeKB CSD via the issuer platform. Once the transmission is completed, the Transfer Agent must confirm the release of REDA-I and REDA-II and issue an instruction for the initial booking of the securities which are securitised in the created DGC. In addition, the Transfer Agent has other functions that are not relevant for the immediate creation of the DGC, but relate to dispositions of the global certificate after its creation, e.g. increasing or decreasing the outstanding nominal amount.

According to the requirements of OeKB CSD, only certain persons can act as Transfer Agent. As briefly discussed above, the issuer may choose to perform the Transfer Agent function itself for its own issues. In this case the issuer only needs to have a securities account or a distribution account at OeKB CSD. Alternatively, the issuer may—as is usually the case—also appoint a third party to act as Transfer Agent. In this case, only certain

[34] For the sake of completeness, it should be mentioned that the issuer—as already briefly explained above—can also perform the function of Transfer Agent for its own issues. In this case, the issuer is also a Transfer Agent and must therefore also perform the corresponding tasks, as described in the following section.

persons may be appointed. Pursuant to the OeKB CSD T&C, the function of Transfer Agent may only be performed by credit institutions and investment firms having their registered office in a Member State of the EEA or the OECD. In addition, the function holder must dispose of a business identifier code (BIC) and be authorised to participate in the issuance of securities of third parties and to provide services in this respect. In addition, public bodies charged with or involved in the management of public debt in an EU Member State (e.g. the Austrian Treasury) are also entitled to act as Transfer Agents with regard to the debt securities and money market instruments they manage.

Paying Agent

The task of the Paying Agent is essentially to execute dividend or interest payments on behalf and for the account of the issuer for its securities. These payments are usually made to OeKB CSD and then forwarded by it via the custody chain to the ultimate holders of the securities. This function may only be performed by duly authorised credit institutions and investment firms having their registered office in the EEA or the OECD and, in case it fulfils this requirement, also by the issuer.

Other agents

In addition to the two agents mentioned above, the T&C of OeKB CSD provide for further functions in connection with securities issues. These agents are called Information Agent, Corporate Action Agent, General Meetings Agent and Disclosure Agent. However, they are not of any significance for the issuing procedure, but only become relevant once the issue has already taken place. For this reason, they are not further presented in this article.

Conclusion

With the introduced legal framework for digital securities, Austria created a promising environment—especially for issuers. One of the reasons for the introduced framework being promising is that only a part of it originates from the pen of the Austrian legislator, but the lion's share of regulation was assigned to the operators of the infrastructure required for digital securities issues (CSDs). Within the introduced statutory provisions, the legislator refrained from comprehensively regulating digital issues as a separate form of issue. Instead, it only addressed "digital issues" where the existing systematics of securities law made this absolutely necessary. This ensures the adaptability and practicability of the overall legal framework. In addition, the statutory regulations were designed to be technology neutral in order to offer the widest possible scope for application and design in practice. Within the described statutory outline that the legislator set out, CSDs can specify many components of digital securities issues themselves, in particular the respective procedures. As a result, the operational procedures can be very lean and straightforward—and in practice OeKB CSD, currently the only CSD operating in Austria, has designed them to be exactly that. In this way, the promising environment mentioned previously has been established. Now the market just has to take advantage of it.