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Austria

Doing Business In

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Austria.

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Austria: Doing Business In

1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The legal system of Austria is based on civil law.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

There are four main legal forms in Austria:

- Partnerships (*offene Gesellschaft – OG*), where individuals share the profits, responsibility, and debts. The partners all share unlimited liability.
- Limited partnerships (*Kommanditgesellschaft – KG*) are defined by a differentiation in liability among the partners. Whereas at least one partner has unlimited liability, other partners are only liable to a certain amount. There are atypical limited partnerships (*GmbH & Co KG*) where the partner with unlimited liability is itself a limited liability company, thereby indirectly limiting the liability.
- Limited liability company (*Gesellschaft mit beschränkter Haftung – GmbH*) is the most common legal form in Austria and has few formal procedures and a high degree of flexibility. The company's assets are liable for all obligations of the company. The liability of the shareholders is limited to their initial capital contribution. An Austrian limited liability company may be established by one single shareholder or by several shareholders for any legal purpose. The shareholders may be natural or legal persons and may be domestic or foreign.
- Flexible Company (*Flexible Kapitalgesellschaft – FlexCo*) is a new legal form introduced to Austria on January 1, 2024. The GmbHG as the law regulating Austrian limited liability companies also regulates FlexCos. Additionally, a newly established law named FlexKapGG provides further benefits especially targeted at startups (such as easier transfer of shares no longer requiring notarial deeds; two classes of shares to facilitate easier employee participation, and more). Since this legal form is still relatively new as of the time of writing, only time will tell whether the FlexCo will attract founders and establish itself in Austria.
- Stock corporations (*Aktiengesellschaft – AG*) have more stringent requirements compared to Austrian limited liability companies, but may be listed on a stock exchange. The share capital is divided into shares. The company's assets are liable for all obligations of the company. The liability of the shareholders is limited, i.e., the shareholders are generally not personally liable for the company's liabilities.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

An overseas company may carry on business directly in Austria, but it must register with the Austrian Commercial Register (*Firmenbuch*) if it has some degree of physical presence in Austria, such as a place of business or branch where it carries on business. For most business operations, a respective trade license (*Gewerbeberechtigung*) has to be obtained.

4. Are there are any capital requirements to consider when establishing different entity types?

Capital requirements must be considered when establishing a GmbH, FlexCo, or an AG:

- For the GmbH and FlexCo the minimum capital is EUR 10,000.
- For stock corporations the minimum capital is EUR 70,000.

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

A partnership must choose its name, seat and address and be registered with the Austrian Commercial Register.

A limited partnership must, in addition to its name, seat and address, define the liability amount of the limited liability partners and be registered with the Austrian Commercial Register.

The limited liability company (GmbH) is the most common entity for investors to utilise. In the course of the

establishment of a limited liability company the following steps have to be taken:

- articles of association or deed of establishment (in case there is only one shareholder) concluded as notarial deed;
- shareholders' resolution for the appointment of one or more managing directors (notarized);
- specimen signatures (*Musterfimazeichnungen*) of all managing directors (notarized);
- shareholders' resolution for the appointment of the first supervisory board, if any (notarized);
- payment of the nominal capital or effecting of contributions in kind, if any, by the shareholders;
- if the shareholders make contributions in kind instead of a cash payment, the law requires an audit of the contributions in kind by court-appointed auditors; and
- application for registration of the company with the commercial register by all managing directors (notarized). The incorporation becomes effective with the entry into the Austrian commercial register.

A flexible company (FlexCo) is established the same way as a limited liability company (GmbH).

A stock corporation may be founded by one or more founders. The founders have to establish the articles of the company in the form of an Austrian notarial deed and have to subscribe to the shares. The articles have to, inter alia, determine the type of shares issued by the company. The founders have to resolve, inter alia, on the appointment of the members of the supervisory board and the auditor of the company. The supervisory board appoints the members of the board of directors. The founders have to prepare a written report on the course of the founding process. The members of the board of directors and the supervisory board have to examine the course of the founding. In case the company has been established by means of contribution in kind, an additional external audit report is required. The incorporation becomes effective with the entry into the Commercial Register.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Limited liability companies (GmbH) and flexible companies (FlexCo) are managed by their managing directors (*Geschäftsführer*) which are subject to instructions by the shareholders.

If there is more than one managing director, in case of doubt, joint management applies, i.e., none of the managing directors alone may perform the acts pertaining to management, unless there is imminent danger. Deviating regulations may be provided for in the articles of association.

The managing directors represent the company. The power of representation is in principle unlimited and unrestricted. A restriction of the power of representation therefore has no legal effect vis-à-vis third parties. Joint representation applies, unless otherwise stipulated in the articles of association and the respective appointment resolution of the shareholders.

The managing directors may appoint authorized representatives (*Prokuristen*) or grant commercial powers of attorney (*Handlungsvollmachten*) to third parties.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

Limited liability companies (GmbH) and flexible companies (FlexCo) must have at least one managing director. The appointment as managing director is made by shareholders' resolution, the articles of association or by the court (in case of emergency). The managing directors must be natural persons with full legal capacity. They may not at the same time be members of the supervisory board (if such is established). At least one managing director must have his common place of residence in Austria. No specific qualifications are required to be appointed as managing director, although the person to be appointed should be aware of their responsibilities as a managing director before taking the position on.

A limited liability company may be established by one single shareholder or by several shareholders. The shareholders may be natural or legal persons and may be domestic or foreign. There are no requirements regarding residency.

Authorized representatives (*Prokuristen*) must be natural persons with full legal capacity. No specific qualifications are required to be appointed as representative.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your

jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

From a corporate law perspective, there are no restrictions in expanding business operations in Austria. Unless specifically noted in the articles of association, an entity or establishment is free to work with trade/commercial agents and resellers. However, in case of trade/commercial agents the mandatory provisions of the Austrian Commercial Agents Act (*Handelsvertretergesetz*), in particular the claim for compensation, have to be observed.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

The Austrian Code of Corporate Governance (*Österreichische Corporate Governance Kodex*) only applies to Austrian listed stock corporations and not to limited liability companies or flexible companies.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The shareholders of limited liability companies (*GmbH*) and flexible companies (*FlexCo*) may provide working capital by resolving on the increase of the share capital of the company and by paying in the respective additional capital contributions.

Working capital may also be provided via a loan. This could be from the shareholders, another entity within the same company group or from a third party. In case of inter-company loans the strict Austrian capital maintenance rules have to be observed. In addition to this, the company may consider overdrafts, revolving credit facilities, etc.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Limited liability companies (GmbH) and flexible companies (FlexCo) may return value to their shareholders in certain ways, as set out below. As a general rule, liability companies are bound by the strict Austrian capital maintenance rules and, only subject to certain exceptions, may return value to their shareholders.

Austrian capital maintenance rules

A rigorous system of capital protection of companies against undue distribution to its shareholders applies to both, Austrian limited liability companies and flexible companies (and stock corporations). The concept is based on the principle that the entire set of assets of the company should be protected to the benefit of the company's creditors and minority shareholders. This goal is reached by a set of capital maintenance rules, restricting the possibility of any direct or indirect distribution of benefits by the company to its shareholders and/or their affiliates. The most important exception is the right of the shareholders to receive dividend payments which are restricted to the amount of net profits as shown in the approved annual financial statement and not excluded from distribution by law or the articles of association.

Following this standard, a business transaction that provides for any up-stream value transfer to a direct or in-direct shareholder and/or a shareholder's affiliate or "close relative" must be concluded on arm's length terms supported by adequate consideration. In the absence of arm's length terms, such transaction constitutes an unlawful repayment of capital (*verbotene Einlagenrückgewähr*) and, thus, violates mandatory Austrian capital maintenance rules. Unlawful repayment of capital may be justified by specific corporate reasons (*betrieblich gerechtfertigt*) which are in the best interest of the company (a mere group interest is not sufficient), but courts generally apply a high threshold for such justifications.

All transactions violating said rules are null and void and may not be entered into by the company. This is qualified as an absolute and not merely a relative nullity, which means that there is no need for an objection by the company.

Dividends

The most popular method for a limited liability company or a flexible company returning value to its shareholders is a dividend. A dividend is a distribution of a company's post-tax profits to its shareholders. In order for a limited liability company to be able to lawfully pay a dividend, it must have sufficient distributable profits that are justified by reference to relevant accounts and not excluded from distribution by law or the articles of association. Dividends are usually paid in cash but can also be

satisfied by the transfer of non-cash assets (dividends in kind).

The profit shares can be freely regulated in the articles of association. In the absence of such a regulation, the total profits shall be distributed in proportion to the paid-in capital stock to the shareholders.

Capital reductions (Kapitalherabsetzung)

A reduction of capital occurs where a company reduces the amount of its share capital. This may be an option when the company has capital that is surplus to its requirements and that it wishes to return to shareholders.

The amount arising on a capital reduction is treated as a realized profit and, unless otherwise specified, will be credited to the profit and loss reserve of the company. The company may then be able to take further steps to return that value to its shareholders.

Loans

It is also possible for a limited liability company or flexible company to loan cash to its shareholders. The terms of such a loan should be closely examined to ensure they do not give rise to any tax or legal issues and do not violate the capital maintenance rules (e.g., hidden distributions). Generally speaking, such up-stream loans must be concluded on arm's length terms supported by adequate consideration.

12. Are specific voting requirements / percentages required for specific decisions?

For limited liability companies (*GmbH*) and flexible companies (*FlexCo*) resolutions may be passed in the general meeting (*Generalversammlung*) or outside the general meeting in writing (*Umlaufbeschluss*). Resolutions passed outside the general meeting in writing must be concluded unanimously or all shareholders must agree with the written decision-making. Regarding general meetings in writing of flexible companies, the AoA may provide for a clause that the shareholders may not agree with the written decision-making.

Generally, resolutions require a simple majority. However, certain resolutions require a 75% majority to pass:

- a change in the AoA;
- premature revocation of appointment as member of the supervisory board;
- realization of the company assets by sale as a whole in the course of liquidation; and
- mergers, conversions, demergers, etc.

For certain resolutions, there are deviating majority provisions (e.g., change of the object of the company requires unanimity and the exclusion of minority shareholders requires a simple majority of the votes cast and the consent of the principal shareholder, who must hold 90% of the share capital).

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Managing directors of limited liability companies (*GmbH*) and flexible companies (*FlexCo*) are obliged to comply with all restrictions set out in the articles of association or by resolution of the shareholders. The shareholders may therefore issue instructions to the managing directors by shareholders' resolution. In addition to instructions in individual cases, general instructions are also possible, for example in rules of procedure. In addition, the law or the articles of association may provide for approval requirements for certain activities.

The directors of a stock corporation are not subject to instructions by the shareholders.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

We have set out below a summary of the core employment law rights and protections that employees benefit from in Austria. This is not exhaustive but covers the core areas.

Right / Protection	Details
National Minimum Wage	In Austria there is no general statutory minimum wage. Depending on the industry, the applicable collective bargaining agreement (CBA) determines the minimum wage for employees.
Holiday	The holiday entitlement is based on the Austrian Holiday Act (*Urlaubsgesetz – UrlG*). The holiday entitlement for full-time employees is · with a 6-day week 30 days of leave · with a 5-day week 25 days of leave per holiday year (i.e. in general the working year). After completing the 25th year of service, the holiday entitlement for full-time employees increases to 36 and 30 days respectively. The holiday entitlement accrues in the first six months of the first holiday year aliquot to the length of service completed, and after six months in full. From the second holiday year onwards, the entire holiday entitlement accrues at the beginning of the holiday year. The holiday entitlement shall lapse two years after the end of the holiday year in which it arose. The regular remuneration shall be due for the duration of the holiday.
Working Hours	Regular working time: In principle, the daily normal working time may not exceed eight hours and the normal weekly working time is 40 hours. Daily working time is the working time within a period of 24 hours, weekly working time is the working time within the period from Monday to Sunday. Limitations of working time: In principle, daily working time may not exceed twelve hours and weekly working time may not exceed 60 hours. The average weekly working time within a period of 17 weeks may not exceed 48 hours. An extension of the period by a CBA is possible.
Rest Periods	Breaks: If the total daily working time exceeds six hours, the working time must be interrupted by a rest break of at least half an hour. It is possible to divide the rest breaks into smaller units. Rest periods: At the end of the day's working time, employees must be given an uninterrupted rest period of at least eleven hours. Weekend rest: Employees are entitled to a weekly uninterrupted weekend rest of at least 36 hours, which must include Sunday.
Pension rights	The pension system in Austria essentially consists of a public pension scheme, which is mandatory under law, as well as voluntary company pension scheme (*Betriebspension*).
Discrimination	The general principle of equal treatment prevents an employer from treating an employee less favourably than the majority of employees in the workplace without objective justification. The general principle of equal treatment is mainly applied in jurisdiction in the areas of remuneration and company pensions. In addition, the Equal Treatment Act (*Gleichbehandlungsgesetz – GlBG*) must be observed, which protects against various types of discrimination.
Maternity Leave / Pay	The Act on the Protection of Mothers (*Mutterschutzgesetz – MSchG*) stipulates the following for pregnant and breastfeeding mothers · special employee protection regulations; · employment bans eight weeks before and eight weeks after birth (maternity leave); · prohibitions on night work, work on Sundays and public holidays and on overtime work; · special protection against dismissal during pregnancy and four months after birth. The maternity leave begins at the earliest eight weeks after the birth of the child (end of employment ban). During these eight weeks after birth, the employer must be notified of a subsequent parental leave. The entitlement to parental leave is limited to the second birthday of the child and should be notified to the employer in writing. It is possible to extend an already agreed duration, but this must be announced to the employer at least three months before the end of the agreed duration. During parental leave, the employer is released from the duty to pay a remuneration. As a substitute, there is an entitlement to childcare allowance (*Kinderbetreuungsgeld*).
Paternity Leave	In addition to the mother, the father may also be entitled to different types of paternity leave right after the child is born. The employer does not have to pay a salary during the paternity leave. However, fathers can apply for a family time bonus (*Familienzeitbonus*).
Shared Parental Leave	It is not possible that both parents be on parental leave at the same time. Parental leave can be divided between the parents twice, i.e. a total of three parts of parental leave are permitted (e.g. mother/father/mother), with each part lasting at least two months.
Statutory sick pay	An employee is entitled to continued payment of remuneration by the employer to the following extent according to the periods of service completed: · 1st year of service: six weeks 100% of the remuneration + four weeks 50% of the remuneration · 2nd to 15th years of service: eight weeks 100% of the remuneration + four weeks 50% of the remuneration · 16th to 25th years of service: ten weeks 100% of the remuneration + four weeks 50% of the remuneration · from the 26th year onwards: twelve weeks 100% of the remuneration + four weeks 50% of the remuneration. In cases where the employee is entitled to 50% of the remuneration or after they have exhausted their continued payment of remuneration, they are entitled to public sick pay (*Krankengeld*). The employee must file a respective application with the social security authorities in charge. If approved, they get directly paid (not via their employer).
Statutory Notice Periods	In the absence of a more favourable agreement for the employee, the employer may terminate the employment relationship at the end of any calendar quarter. The notice periods vary depending on the employee's length of service: · up to the 2nd year of service: six weeks · from the 3rd year of service: two months · from the 6th year of service: three months · from the 16th year of service: four months · from the 26th year of service: five months In case of termination by the employee, the notice period is one month to the last of the calendar month. This can be extended contractually to a period of six months. In any case, the relevant provisions of the applicable CBA or individual employment agreements must be observed. If the employment relationship is terminated by the employer without observing the notice period, the employee is entitled to compensation for the termination period.
Unfair dismissal	In any company with five or more employees, a termination has to be "socially justified" if an employment relationship has lasted longer than six months; otherwise, following an appeal by the works council or the employee, the labor court could set aside the termination (see below "legal means of employees").
Statutory Redundancy Payment	Employees may be entitled to receive a severance pay (*Abfertigung*). For all employment relationships beginning on or after 1 January 2003, the new severance pay regime applies, according to which the employer has to pay on a monthly basis 1.53% of each employee's gross salary to the Employee Provision Fund (*Betriebliche Vorsorgekasse*). On termination, the employee has the option to either have the accrued amounts paid out by this fund as severance pay (provided that the employee was employed for more than three years) or to leave the amounts in the fund. No employer liability for severance pay arises upon termination of employment. Employment relationships that date back longer may still be subject to the previous statutory regime. Under this regime, an employee having been employed for more than three years is entitled to a mandatory severance pay when the employment ends. The amount of the severance pay depends on the employee's seniority and ranges between two and twelve months' salary. The basis of calculation is the most recent monthly remuneration of the employee, including all regularly granted payments (pro rata bonuses, etc.). A change from the old to the new system is possible.
Statement of particulars	When hiring a new employee, the employer should hand out an employment contract or written statement of terms of employment (*Dienstzettel*) to the employee. The employer must provide the employee with a written record of the essential rights and obligations arising from the employment contract immediately after starting the employment relationship.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

A termination with notice usually does not require any reasons but is subject to specific notice periods (see above no 14). However, this principle is restricted in practice. In any company facility with five or more employees, a termination must be "socially justified" if an employment relationship has lasted longer than six months; otherwise, following an appeal by the works council or the employee, the labor court could set aside the dismissal (see below "legal means of employees").

In case of dismissal for serious cause (*Entlassung*), the employment agreement can be terminated by either party for "serious cause" with immediate effect where that party cannot reasonably be expected to continue employment under the given circumstances. The reasons why an employer may terminate the employment for serious cause are provided in a non-exhaustive list by the Austrian Act on Salaried Employees (*Angestelltengesetz – AngG*).

Accordingly, the employer may immediately terminate the employment relationship particularly in the following cases:

- If the employee is disloyal in his service, accepts bonus in connection with their service from third parties without informing the employer, or commits acts that make them unworthy of the employer's trust (e.g., theft, falsification of any employment or company records, disclosure of business and trade secrets);
- if the employee is incapable of performing the agreed services or for another reason cannot perform such services for a longer period of time;
- if the employee violates their duty of non-competition; or
- if the employee does not perform the agreed services for a considerable period of time (except due to illness or accident) or refuses to comply with orders of the employer.

Dismissal formalities

There are no formal requirements. Neither a termination with notice nor a dismissal for serious cause may be declared in writing or orally. There are, however, certain exceptions. The reasons do not need to be stated.

Special dismissal protection

Several groups of employees enjoy special protection against dismissal (*besonderer Kündigungs- und Entlassungsschutz*). The exact scope of the protection varies; however, such dismissals usually require a valid reason for dismissal. Moreover, the labor court or an administrative agency must usually approve the termination beforehand. The protected groups include members of (and candidates for) the works council, pregnant employees, employees having given birth between eight and (max) sixteen weeks afterwards, employees on parental leave, employees doing their military service, and employees with disabilities.

Legal means of employees

In general, the works council or the dismissed employee may contest a dismissal by way of filing a complaint with the labor court. If the works council has objected to the dismissal vis-à-vis the employer, it may, upon request by the employee, appeal against the dismissal within one week. If the works council does not comply with the employee's request within one week, the employee may file an action by her/himself within two additional weeks. If the works council did not comment on the dismissal within the period of a week, the employee may file an action within two weeks after receipt of the notice of dismissal. If the works council explicitly agreed to the dismissal, it cannot be challenged later on grounds of being socially unjustified (*sozialwidrig*).

The dismissal may be set aside by the court on one of the following two grounds: Either the dismissal was based on an unlawful motive (*verpöntes Motiv*; e.g., membership in a trade union) or the dismissal is socially unjustified, which means that it infringes substantially upon the interests of the employee and is not sufficiently justified by the employer when conducting a balance-of-interests test.

If the dismissal is set aside, the employment agreement continues to be in force, and the employee is entitled to back-pay.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

In every company in which at least five employees are permanently employed, a works council may be formed by the employees. The number of works council members depends on the number of employees in the company. The election period is five years.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Under Austrian law, corruption is understood as the abuse of entrusted power for private gain, while bribery consists of offering, promising, or granting a benefit to a public official or a third party for the performance or omission of an official act in breach of duty.

Such acts are considered criminal offences in the Austrian legal system. The most relevant provisions are recorded in the Austrian Criminal Code (*Strafgesetzbuch – StGB*).

In the public sector Sections 302-308 of the Austrian Criminal Code are relevant, pursuant to which any form of bribery and corruptibility for improper performance or omission of an official act is punishable. Demanding an advantage is prohibited in any case. Further, it is prohibited for a public official to accept or be promised undue benefits for the performance or omission of an official act in accordance with their duties. It is also prohibited to offer, promise, or grant an undue advantage to a public official for the dutiful performance or omission of an official act.

In the private sector, Section 309 of the Austrian Criminal Code stipulates that demanding, accepting, allowing oneself to be promised, or offering, promising, or granting an advantage in return for a breach of duty to perform or refrain from performing a legal act by a staff member or agent of a company in the course of business is a criminal offence.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

In certain circumstances, there may be an obligation to report money laundering to the relevant Austrian authorities or law enforcement agency. In general terms, the obligation applies to individuals and organizations operating in certain regulated sectors, such as banks, law firms, notaries, and accountancy practices.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

Both money laundering and terrorist financing are criminalized in Austria.

With the implementation of the 4th EU Money Laundering Directive in Austria, the provisions on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing for credit and financial institutions were combined for the first time in one law, the Austrian Financial Market Money Laundering Act (*Finanzmarkt-Geldwäschegesetz*), which has provided the Austrian Financial Market Authority with a uniform and clear legal basis for its supervisory activities. In addition, there are provisions in, among others, the Austrian Trade Regulation Act (*Gewerbeordnung*), the Gaming Act (*Glücksspielgesetz*) and the Lawyers' and Notaries' Act (*Rechtsanwalts- und Notariatsordnung*). These provisions place great emphasis on the "know your customer" principle, which is intended to deprive money launderers of the advantage of anonymity.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Austria currently has no specific rules regulating compliance in the supply chain.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Companies subject to accounting requirements must prepare annual financial statements for the previous financial year. Corporations (i.e., limited liability companies, flexible companies, stock corporations, Societas Europaeas and GmbH & Co KGs) must, in the first five months of the financial year for the previous financial year, prepare the annual financial statements extended by the notes, a management report and, if applicable, a corporate governance report (e.g., large stock corporations) and submit them to the members of the supervisory board, if such board exists.

Generally, corporations must have their annual financial statements and management report audited by an auditor. Small limited liability companies are exempt from this obligation unless they are required by law to have a supervisory board.

The financial statements must be approved by the shareholders within the first eight months of the financial year (in case this is not done by the supervisory board of stock corporations).

Corporations are required to file the annual financial statements, including notes and management report, and, if applicable, the corporate governance report with the auditor's opinion, with the Austrian Commercial Register no later than nine months after the balance sheet date.

22. Please detail any corporate / company secretarial annual compliance requirements?

Within the first eight months of the financial year, the ordinary shareholders meeting of limited liability companies, flexible companies and stock corporations has to be held, in particular for the approval of the financial statements for the previous financial year (in case this is not done by the supervisory board of stock corporations).

The financial statements have to be filed with the Austrian Commercial Register within the first nine months of the financial year.

There is an annual reporting requirement of the Austrian UBO register (confirmation of the filed data or filing of changes to the register) for all legal entities, which are not exempt from the reporting requirement.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

An ordinary shareholders meeting must be held at least once a year within the first eight months, in particular to review and approve the financial statements. Other resolutions may include the distribution of the balance sheet profit, if any, the discharge of the management and the supervisory board or the appointment of the auditor.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

Yes, generally all legal entities must report their beneficial owners with the Austrian UBO register (*WiEReG-Register*). Furthermore, legal entities are obliged to conduct an annual review of the data reported to the register by

collecting appropriate, precise and up-to-date information and documents about their beneficial owners, including precise details about the beneficial interest and to check whether the individuals reported to the register as beneficial owners and the respective data are still up-to-date.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

- Corporate income tax (federal level only): levied on profits; current rate 23%.
- Withholding taxes on various payments, e.g., dividends (27.5% rate on dividends to individuals, 23% on dividends to corporates, exemptions apply for certain settings).
- Value added tax: levied on gross sales receipts; standard rate is 20% (differing rates and exemptions for specific supplies and services)
- Global minimum taxation (Pillar 2): (Multi)national groups of companies with consolidated revenues of at least EUR 750 million are subject to an effective tax burden of at least 15% worldwide. If the effective tax falls below 15% a primary supplementary tax (IIR) or secondary supplementary tax (UTPR) is levied. In addition. Austria has also implemented the domestic minimum top-up tax (DMTT) for all low-taxed business units located in Austria. The minimum tax will be applied for financial years beginning after 31 December 2023.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

- The international participation exemption regime provides for a 100% exemption of qualifying dividends and capital gains from investments in foreign subsidiaries.
- Austrian corporations may be able to offset non-Austrian losses against their income in certain circumstances, e.g., for non-Austrian members of an Austrian tax consolidation or non-Austrian permanent establishments.
- Certain tax treaties that Austria has entered into include beneficial provisions, e.g., tax credits for certain types of foreign-sourced income.
- Qualifying employee equity participations benefit from a payroll tax exemption for qualifying benefits up to EUR 3k per year.
- A cash tax premium of 14% is available for qualifying R&D expenses.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

No restrictions are imposed on the import or export of capital. Repatriation payments may be made in any currency. Both residents and nonresidents may hold bank accounts in any currency. Withholding taxes apply to certain types of outbound payments, e.g., dividends.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

- Real estate transfer tax is levied on the transfer of real property as well as on the transfer of shares in corporations and partnerships that own real property.
- Stamp duties apply to certain types of transactions, e.g., transfers of rights and receivables, leases, sureties, etc.

29. Are there any public takeover rules?

The public takeover rules in Austria are mainly regulated by the Austrian Takeover Act (*Übernahmegesetz*).

The Austrian Takeover Act stipulates, for instance, the information that must be included in the offer documents and the minimum offer period. The Takeover Act also defines measures to prevent potential insiders from taking advantage of inside information. The management of the offeree company must generally behave in a neutral manner, must not frustrate the bid and must give the shareholders an assessment as to the reasonable nature of the bid.

Anyone who obtains a controlling interest in a listed company (e.g., by acquiring the majority holding from the previous majority shareholder) must also submit a bid to the other shareholders; i.e., no one should be forced to remain with the company under a new management. Thus, when there is a change in control, any existing shareholder may opt to sell shares (for cash). The law provides for exceptions to such mandatory bids, in particular, in cases in which control is taken over for the purpose of restructuring or in similar circumstances.

The Takeover Act is based on five principles, which not only clearly reflect the underlying intentions, but also have to be taken in consideration when applying the Act:

- equal treatment of all shareholders of the offeree company
- sufficient time and information for the addressees of public bids
- the officers and bodies of the offeree company must show neutral and objective conduct
- no distortions of the equity market in respect of the companies involved
- speedy completion of the takeover procedure

The purpose of such measures is to make Austrian companies listed on the Vienna Stock Exchange more attractive to investors from Austria and from abroad and to ensure that the legal framework for the Austrian capital market is in line with the relevant best international practices as expected by private and institutional investors.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

The merger control regime in Austria is mainly regulated by the Austrian Cartel Act (*Kartellgesetz*).

In general, all mergers (as defined in the Austrian Cartel Act) exceeding certain thresholds pursuant to the Austrian Cartel Act have to be filed for clearance prior to implementation. Intra-group mergers do not have to be notified.

The following are regarded as mergers within the meaning of the Austrian Cartel Act:

- the acquisition of a company or a substantial part of it, by an entrepreneur, especially by way of merger or conversion;
- the purchase of a right of an establishment by a contractor, for example by management agreements;
- the direct or indirect acquisition of shares in a company to reach an ownership interest of more than 25% or 50%;
- the effecting of equality of at least half of the members of the board or the supervisory boards of two or more companies;
- any other combination of companies where one company has dominant influence over another company; and
- the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

Notifiable mergers must be notified to the Austrian Federal Competition Authority (*Bundeswettbewerbsbehörde – BWB*). The Federal Competition Authority notifies the Federal Cartel Prosecutor (*Bundeskartellanwalt – FCP*). These two institutions are referred to as the Official Parties (*Amtsparteien*). If one of the Official Parties requests an in-depth examination (within four weeks of receiving the notification), the Higher Regional Court of Vienna (*Oberlandesgericht Wien*) as the Cartel Court (*Kartellgericht*) opens Phase II proceedings. In case the Official Parties do not see competition concerns, the notified merger is cleared upon expiration of the Phase I period or receipt of the Official Parties' waivers of their right to request Phase II proceedings.

If it is unclear whether a merger has to be registered, the parties involved may contact the Federal Competition Authority in advance of the notification with the objective of facilitating further proceedings.

31. Is there an obligation to negotiate in good faith?

There is no express obligation on parties to conduct negotiations in good faith. However, pre-contractual obligations may already be established by entering into negotiations, which give rise to duties of clarification, protection and care. If these duties are culpably breached, obligations to pay damages are triggered; this is referred to as *culpa in contrahendo*. Since the rules of contractual liability are applied to *culpa in contrahendo*, it is usually more advantageous for the injured party than a tortious claim.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

If a business is transferred (partly) to another owner by way of an asset deal, the latter shall take over the employment relationships existing at the time of the transfer as the employer with all rights and obligations by operation of law ("Transfer of Business").

The employee may object to the transfer of his employment relationship if the acquirer does not take over the termination protection in a CBA or possible company pension commitments. Furthermore, the employee has a special termination right if working

conditions are worsened.

If there is no works council established in the company, the transferor or the acquirer shall inform the employees affected by the transfer of the business in advance in particular about:

- the time or the planned time of the transfer,
- the reason for the transfer,
- the legal, economic and social consequences of the transition for the employees, and
- the measures envisaged with regard to the employees in writing.

If a works council is established in the company, it must be informed instead of the individual employees. The works council may submit comments on the planned measures. At the request of the works council, the owner of the company must also consult with the works council on the implementation of the measure.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

In Austria, the legislation on screening of foreign direct investment is based on the Austrian Federal Act on the Control of Foreign Direct Investments (*Investitionskontrollgesetz – InvKG*) at national level, in force since 25 July 2020. At EU level, the legislation is based on Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union (FDI-Screening-Regulation).

A (mandatory) filing requirement is triggered in case a foreign investor (natural persons or legal entities of third state origin (i.e., outside EU, European Economic Area, Switzerland) intends to carry out an investment (directly/indirectly) in an Austrian undertaking. This includes (i) the acquisition of shares reaching/exceeding 10%, 25% and 50% (voting rights), (ii) the acquisition of control, and (iii) the acquisition of material/all assets of an undertaking (asset deals), provided that (a) the undertaking is active in a critical sector, and (b) the undertaking is Austrian, i.e., has its seat or its central administration in Austria.

An authorization is not required if the undertaking targeted by the acquisition is a micro enterprise, including start-up enterprises, with fewer than ten employees and an annual turnover or an annual balance sheet total of less than two million Euros.

In case of an authorization obligation, the application for authorization shall be submitted by the acquiring person or acquiring persons respectively. The targeted Austrian undertaking will be informed about this application. The targeted undertaking has a subsidiary obligation to notify the transaction upon becoming aware of the intended acquisition requiring an authorization if it has not been informed by the Federal Ministry of Digital and Economic Affairs that an application has been launched. The application shall be submitted in principle immediately after conclusion of the contract for the acquisition of the undertaking.

If it is concluded that the acquisition does not lead to a threat to security or public order, an authorization is granted. An authorization is deemed to be granted if no decision is issued within the one-month period in the first phase of the procedure or within the two months' period of the in-depth investigation. If it is concluded that the acquisition leads to a threat to security or public order the authorization must contain all conditions necessary to eliminate this threat. If conditions are not sufficient to eliminate the threat the authorization has to be denied.

34. Does your jurisdiction have any exchange control requirements?

According to the Austrian Foreign Exchange Act (*Devisengesetz*), capital and payment transactions with foreign countries are generally not subject to any restrictions.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

Most commonly Austrian entities (limited liability companies) are dissolved by a shareholders' voluntary liquidation.

- The liquidation procedure is initiated by a respective resolution of the shareholders to dissolve the company.
- The liquidators must publish the dissolution of the company in the official gazette of the Wiener Zeitung and therein call upon the creditors of the company to report to the liquidator and assert their claims against the company. Creditors personally known to the company have to be notified directly.
- The liquidators shall be responsible for the realization of the company's assets and the termination of current business.
- After a three-month waiting period following the

publication of the dissolution, the remaining assets after satisfaction of all creditors may be distributed to the shareholders.

- After the liquidation is completed, the company is deleted from the commercial register. The company is deemed to have been fully terminated when it is deleted and when there are no longer any assets.

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