

Legal 500

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Austria

Investing In

Contributor



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

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Austria: Investing In

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

Despite ongoing geopolitical and economic challenges, the investment climate in Austria has remained rather resilient through 2023 and into 2024. Foreign direct investment (FDI) has continued to play a crucial role in Austria's economy. The aggregate value of FDIs stood at USD 203.9 billion in 2022, with expectations of gradual growth in 2023 and 2024 as investor confidence strengthens due to Austria's strategic location and robust industrial base. Key sectors attracting FDI include professional services, finance, trade, and pharmaceuticals. The government has introduced several incentives to maintain competitiveness, such as tax breaks for eco-friendly investments and a reduced corporate tax rate, which has been reduced to 23 % in 2024. Despite these measures, Austria faces challenges such as high energy costs and geopolitical tensions, which could impact FDI prospects moving forward.

In terms of mergers and acquisitions, geopolitical crises, high inflation and high interest rates have had a serious impact on the Austrian M&A market. In 2023, according to the Deloitte M&A Monitor: Austria 2024 (in German), the number of M&A transactions with Austrian participation dropped from 313 to 230 compared to the level of 2022, which corresponds to a decrease of 27 %. By contrast, the total volume of transactions almost tripled, from EUR 2.3 billion to EUR 6.6 billion. The most notable factor here is a statistical deviation in 2022, when there were no "mega deals". Nevertheless, the total volume of transactions in 2023 was significantly lower than in 2021, when a transaction volume of EUR 9.1 billion was recorded. This figure reflects significant activity by foreign players in the Austrian market, despite a slight decrease in the total volume of transactions compared to the previous year. This development continues to emphasise the interest of international investors in the Austrian economy, with acquisitions in the technology and industrial sectors dominating.

The following sectors were the most active in terms of transactions in 2023: Industry (47 transactions); technology, media and telecommunications (45 transactions) and services (43 transactions). The

following top three deals together accounted for almost 50 % of the total transaction in Austria in 2023:

- Nippon Express took over cargo-partner GmbH, which represented the biggest transaction of 2023, with a transaction volume of EUR 1.4 billion. This shows how strategic buyers are still the main actors on the Austrian market.
- One Rock Capital Partners purchased 61 % of Constantia Flexible Group for EUR 1.1 billion.
- Bain Capital purchased 20 % of IMS Nanofabrication GmbH for EUR 785 million.

As regards 2024, according to the EY M&A Index Austria, in the first half of 2024 there were 124 transactions with Austrian participation, eight fewer than in the same period of the first half of 2023 where 132 of such transactions were recorded. The general trend shows that the Austrian M&A market has been in decline for six consecutive quarters now. The number of domestic transactions decreased from 31 to 23. The inbound transactions decreased from 56 to 50. The remaining 51 outbound deals were the ones which accounted with EUR 1.6 billion for the biggest volume, which is an increase by EUR 1.1 billion.

However, the total volume of transactions fell by 32.5% from EUR 4 billion to EUR 2.7 billion, mainly due to the absence of mega-deals with Austrian participation in the first half of the year. The banking sector with EUR 0.9 billion accounted for the highest transaction value in the first half of 2024. This was followed by the industrial sector, life sciences and real estate.

The deal volume was driven essentially by the following top deals:

- Knab Bank was acquired by BAWAG for EUR 510 million.
- Resco Products was taken over by RHI Magnesita for EUR 400 million;
- Acquisition of a participation of 15 % in Lenzing by Suzano for EUR 230 million.
- Purchase of a real estate portfolio in the Czech Republic by S Immo for EUR 176 million.

It is also noteworthy that, with 113 transactions in the first half of 2024, the majority of transactions were strategic transactions. In comparison to the global market, private risk capital continues to play a

subordinate role in the Austrian market.

Germany is still the number one in inbound transactions. 18 % of all inbound transactions in the first half of 2024 were initiated by German investors. The rest is allocated as follows: Europe: 54 %, North America: 16 %, rest of the world: 12 %.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

In 2023, which is the year in relation to which reliable numbers published by the Austrian National Bank are available, there was a slight decrease in greenfield FDI projects. Nevertheless, Austria counted a healthy 32 greenfield investment projects.

While the EU Foreign Direct Investment Screening Regulation ((EU) 2019/452) as well as the COVID-19 pandemic had a significant impact on the FDI landscape of Austria, Austria remains an attractive investment country for foreign investors.

As regards share deals, based on the latest available data for the year 2023 companies on the Austrian market are to a large extent controlled by majority shareholders. The amount of majority shareholdings in Austrian companies is equally split between domestic and foreign majority shareholders, meaning that approximately 42 % of domestic investors hold majority shareholdings and approximately 43 % of foreign investors hold majority shareholdings. By the same token, approximately 58 % of domestic investors are minority shareholders and approximately 57 % of foreign investors are minority shareholders.

Although the proportion of majority and minority shareholdings is similar, there is a striking difference in the proportion of such majority shareholdings. For every foreign majority stake there are nine domestic ones. Almost every nine out of ten euros of equity (approximately 86 %) are held via majority shareholdings. As a result, less than one half of all equity investments make up the majority of the equity held. Conversely, the majority of investors hold a significantly smaller proportion of total equity. Foreign majority shareholdings tend to comprise higher percentages of equity than domestic ones. In total, however, equity held by domestic

majority owners is approximately four times that of their foreign counterparts.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Foreign investors can own 100 % in an Austrian company, and many Austrian businesses are wholly foreign-owned. Regarding foreign control, as of 2023, approximately 16 % of all Austrian companies were under foreign control, a slight increase compared to previous years. This includes entities across various industries, reflecting Austria's openness to international investment while maintaining safeguards in strategic areas. Notably, about 70.5 % of these foreign-controlled companies are under EU ownership.

While foreign ownership is unrestricted, investment control mechanisms apply in specific sectors deemed critical, such as energy, defense, and infrastructure, under the Austrian Investment Control Act (see Section 17). These regulations ensure that acquisitions in these sectors by non-EU investors undergo government approval to safeguard national interests.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

When it comes to the different classes of stock or rights and obligations in connection with an equity investment of a foreign company in an Austrian domestic company, there is no discrimination against foreign investors. This is the fact for both public and private companies.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

This question is not fully applicable to Austria. Unlike in other countries, it is not possible for Austrian companies to have entities as managing directors or members of the board. Managing directors must be natural persons.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is

preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Austrian commercial law essentially differentiates between two types of companies: private partnerships (most importantly general partnership and limited partnership) on the one hand and corporations (most importantly: limited liability companies and stock corporations) on the other. The limited liability company (GmbH) is by far the most used company by foreign and domestic investors alike. The reason for this is that the Austrian GmbH provides a great amount of flexibility when it comes to the content of its articles of association, allowing for tailor made solutions fitting the needs of the respective shareholders. At the same time, there are no issues of direct liability to third parties, as is the case with a partnership. Additionally, the managing directors are subject to the shareholders' instructions. In contrast thereto, an Austrian stock corporation is quite rigid and formal, requires a mandatory supervisory board and the board of directors acts independently and thus is not subject to instructions issued by the shareholders.

If the absolute number of newly founded companies is considered, it becomes clear how dominant the GmbH is in Austria. While several thousand GmbHs are founded each year, only a fraction thereof are new stock corporations. According to the statistics of the Austrian Federal Economic Chamber, which evaluates those newly founded companies that require a commercial license, only 5 stock corporations were founded in 2023.

With validity as of 1 January 2024, the Austrian government introduced new regulations concerning company law. For newly founded GmbHs the necessary minimum share capital was lowered to EUR 10,000 from EUR 35,000. Additionally, a new type of corporation was introduced, the so-called "Flexible Kapitalgesellschaft" ("flexible corporation") or "FlexCo", which essentially is based on the GmbH with the addition of certain provisions from the Austrian Stock Corporation Act ("AktG"), such as provisions on authorized capital, which up to that time only existed in relation to stock corporations. The FlexCo also requires a share capital of EUR 10,000, offers the possibility to issue shares with a nominal amount of just 1 Euro-Cent as compensation for employees (so called Enterprise Value Shares or "Unternehmenswertanteile") and benefits from lowered formal requirements (e.g. no notarial deed required for a transfer of shares, simplified voting procedure). The minimum share capital contribution of the individual shareholder for a FlexCo amounts to EUR 1, whereas this

amount equals at least EUR 70 in the case of a "traditional" GmbH, making very small shareholdings possible.

The new Enterprise Value Shares are a special form of shares designed to enable a simplified form of employee participation. They intend to offer employees an opportunity to benefit from the profits of the company, without, however, gaining influence over the company. In principle, holders of Enterprise Value Shares are entitled to their share of the balance sheet profit, but they are not entitled to voting rights. The volume of Enterprise Value Shares which may be issued is, however, capped at a maximum of 24.99 % of the entire FlexCo's share capital. In addition, holders of Enterprise Value Shares benefit from a mandatory tag-along right which is granted to them by law, if founding shareholders, which need to be named in the articles of association and which at the time of the issuance of the Enterprise Value Shares need to hold more than 50 % in the share capital of the company, in one transaction or a series of transactions sell more than 50 % of the participation held by them.

All of this makes FlexCo highly attractive for both investors and start-ups. However, one of the drawbacks of the new FlexCo is that the obligation to have a supervisory board applies at an earlier stage as compared to traditional GmbHs. A FlexCo is obliged by law to establish a supervisory board if it exceeds two out of three of the following characteristics: EUR 5 million balance sheet total, EUR 10 million in annual turnover or more than 50 employees on an annual average. In contrast thereto, among other cases, a GmbH only needs a supervisory board if the share capital exceeds EUR 70,000 and the number of shareholders exceeds fifty or if the average number of employees exceeds 300. Regardless of this drawback, currently 70 to 80 FlexCos are being established per month.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

The core requirement for forming a company under Austrian law are its articles of association, which have to

be set up by the shareholders. The remaining requirements for forming a company differ with respect to each type of company.

- i. Which governmental entities have to give approvals:
As concerns the mere establishment of a company, no administrative or other governmental approval is required. However, if a company shall conduct business in a field that is subject to certain trade law regulations (e.g. section 94 of the Austrian Trade Law Act (*Gewerbeordnung 1994*) or other restrictions (such as operating a bank) an administrative approval for the conduct of such business is necessary. This, however, does not prevent the establishment of the company.
- ii. What is the process: The initial shareholders to a partnership have to conclude the articles of association and have the company entered into the commercial register. The effort needed to establish a company mostly depends on its type (private partnerships or corporation). For private partnerships there are no formal requirements regarding the articles of association, whereas the articles of association of a corporation are subject to a notarial deed and publication in the commercial register. For every corporation, the managing directors need to make the respective filings with the commercial register, whereas this needs to be taken care of by the shareholders with private partnerships. For corporations, the managing directors must be appointed and the payment of the share capital must be proven to the commercial court. In case of a stock corporation, also the appointment of the supervisory board needs to be proven. For specific limited liability companies, which have only one shareholder, it is possible to establish the company through a simplified electronic process via authorized banks.
- iii. What is a required capitalization for forming/incorporating a company: Regarding private partnerships, there is no minimum capitalization required. As of 1 January 2024, companies with limited liability require a share capital of EUR 10,000, half of which needs to be paid in cash. With the introduction of the FlexCo, as of 1 January 2024, this also applies to FlexCos. Stock corporations require a stock capital of at least EUR 70,000 out of which the full amount has to be paid in cash. In general, payment of the share capital needs to be evidenced by a bank certificate and is required to be submitted when applying for entry of the company in the commercial register.
- iv. How long does it take to form a domestic company:
The process from the first step to the finally registered company can be generally completed in less than two

weeks, provided that the company is a standard company with standard articles of association.

- v. How many shareholders is the company required to have: There is no minimum number of shareholders required for corporations; therefore, a single shareholder can form a company with limited liability, a FlexCo or a stock corporation. However, the establishment of a partnership requires at least two partners.
- vi. Is the list of shareholders publicly available: A list of shareholders for limited liability companies including the nominal value of the share held is publicly available in the commercial register as well as a list of ordinary shareholders of a FlexCo, excluding holders of Enterprise Value Shares; the same is true for private partnerships. In the case of Enterprise Value Shares, the managing directors must submit a share register (including the number and nominal value of the Enterprise Value Shares and the names of the shareholders holding them) to the commercial register when registering the company or when issuing Enterprise Value Shares for the first time. The respective lists must be updated no later than nine months after each balance sheet date. However, only the sum of the nominal value of all Enterprise Value Shares issued will be entered in the company register. In addition, the list of the holders of Enterprise Value Shares is publicly accessible, but not the individual share capital represented by each of Enterprise Value Shares held. Therefore, the public will only know the total nominal volume of Enterprise Value Shares issued and the identity of the individual holders, but not the individual split. No such publicity exists for stock held in stock corporations, unless a stock corporation only has a single shareholder, in which case the name or the company name of the single shareholder needs to be registered. In addition, companies such as private partnerships, limited liability companies and stock corporations must register their ultimate beneficial owner (UBO) pursuant to the Austrian Beneficial Owners Register Act.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

As concerns acquisition of shares / assets in a private company, Austrian law provides that under certain requirements a mandatory FDI filing needs to be made, if the acquirer of the shares in the company is considered to be a foreign person pursuant to the Austrian

Investment Control Act. Investment control procedures are, however, only applicable towards foreign direct investments in target companies if the target company operates in a certain protected sector. The concrete prerequisites under which the acquisition of shares / assets of a private company is subject to an FDI approval are laid out in more detail in Section 17.

In addition, if a foreign investor intends to complete a share deal, whereby the company's assets comprise real estate, or if a foreign investor intends to acquire real estate in the course of an asset deal, such a transaction may be subject to regulations with respect to acquisition of land by foreigners (*Ausländergrundverkehrsgesetze*). There are nine of these laws (one for each of the nine provinces of Austria) which differ from each other and therefore need to be assessed in detail at the provincial level if a transaction includes real estate. If the filings required by such laws are not made, the legal transaction is invalid. The acquisition of land also requires an entry into the respective land registry. The land register will scrutinize the case at its own initiative and will not make the respective entry if no approval for the acquisition of the real property by the competent authority (*Ausländergrundverkehrsbehörde*) can be presented.

In all cases, whether the acquirer is a foreign or domestic investor, an anti-trust assessment needs to be made to determine whether a filing is required.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

As concerns the acquisition of shares in a public company on the domestic Austrian stock market as well as the acquisition of shares in the course of a private transaction, reference is made to Section 17, which deals with the necessary FDI approval in case the target company conducts its business in a field protected by the Austrian Investment Control Act. Austrian law in this respect does not differentiate between the acquisition of shares in a public or in a private company. Reference is also made to Section 8 with regard to the indirect acquisition of property of land by foreigners, which can be, depending on the provincial regulation, subject to prior approval.

10. Is there a requirement for a mandatory tender

offer if an investor acquired a certain percentage of shares of a public company?

The Austrian Takeover Act stipulates that a mandatory tender offer is to be made if a direct or indirect controlling interest is acquired in a listed entity. A direct controlling interest exists if the participation in a target company conveys more than 30 % of the permanent voting rights in the company. Participation of entities acting in concert need to be added together. This threshold can be lowered to 20 % in the articles of association of the company. There are, however, certain exceptions under which no tender offer needs to be made, *inter alia*, if there is a bigger shareholder or a bigger group of shareholders acting in concert. Further, a mandatory offer needs to be made if a shareholder, or a group of shareholders acting in concert, who already hold a controlling participation but less than the majority of the permanent voting rights in the company, acquires shares within a calendar year which provide for at least an additional 3 % of the voting rights, compared to the volume held on the last day of the preceding calendar year (creeping-in). Previous sales within the respective calendar year can be off-set against later acquisitions.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

Greenfield and brownfield projects as well as any other commercial facilities usually have to be approved under the Austrian Trade Law Act (*Gewerbeordnung 1994*) and a corresponding operation permit needs to be issued. This also applies to changes to existing approved facilities. The Trade Law Act distinguishes between different types of procedures depending on the nuisance or hazard potential of the facility. In general, the following types of procedures can be applied: (i) ordinary procedure for ordinary facilities; (ii) simplified procedure for minor facilities; (iii) IPPC procedure for certain particularly environmentally hazardous facilities; and (iv) Seveso provisions for hazardous facilities. The detailed procedure needs to be assessed on a case-by-case basis, whereby any stakeholder will have the opportunity to make use of their procedural rights. Oral hearings are not generally mandatory; however, oral hearings are common concerning larger projects. In addition, a building permit will be needed. Other permits may be needed as well, which will have to be reviewed on a case-by-case basis. Certain permits regarding compliance of specific projects with environmental protection regulations, such as an environmental impact assessment ("UVP"), can be difficult to obtain since the

potential impact of a project on the environment must be assessed in advance and is therefore an important legal requirement before the implementation of a project. To meet the requirements of a UVP, the strict environmental regulations set out by Austrian law and the European Union must be complied with.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

As concerns contractual payment obligations due to an acquisition of an investor, freedom of contract prevails, which means that, if agreed upon, such payments can be made in any currency. This also applies in relation to contractors. Otherwise, the legal currency in Austria is the Euro.

Concerning the payment of employees, the collective labor agreements provide a minimum salary in a respective EUR amount. Therefore, employees cannot be forced to accept payments in a foreign currency. No general limit exists on the amount of foreign currency that can be transferred in the course of a transaction. Investors are also free to obtain domestic currency outside of Austria and use it to pay salaries, contractors or conclude transactions.

A limiting factor with respect to investors is that banks as well as most advisors, such as lawyers and tax advisors, are obliged to conduct KYC checks on a case-by-case basis with the aim to assess whether any intended transaction of the investor has a tendency towards money laundering or financing of terrorism. If a transaction has such a tendency, advisors are obliged to

scrutinize the investor with regard to origin of funds and the UBO of the respective party in case a legal entity is conducting the transaction.

Current sanction regimes also need to be taken into account. As a member of the EU, Austria and companies and persons operating within Austria are directly impacted in particular by the EU-Russian sanctions packages that have been adopted since the Russian invasion of Ukraine. The EU-Russian sanctions can prohibit dealings with, and payments to, listed Russian entities and persons.

Additionally, it should be noted that with respect to commercial business transactions the Austrian Trade Law Act (*Gewerbeordnung 1994*) stipulates that the identity of the customer must also be verified if the payment obligation for certain commercial transactions is made via cash deposit and exceeds the amount of EUR 10,000.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

There are no approval requirements in place in Austria with regard to transfer of any kind of currency out of Austria. This is the case for the transfer of currency via bank transactions.

If any currency in the amount of EUR 10,000 or EUR 10,000 equivalent is transferred to Austria from EU third party states or if such currency is to be transferred out of Austria to EU third party states, such currency must be registered with the customs office. This applies to cash and cash equivalents that are carried personally. With respect to transferring EUR 10,000 or EUR 10,000 equivalent in cash between the EU member states, such currency must only be verbally declared upon request of customs authorities.

Concerning all other bank transactions the general principle is that the local Austrian entities, e.g. commercial businesses, banks or legal or tax advisors are obliged by law to conduct KYC checks and assess on a case-by-case basis if a transaction that is to be conducted has a tendency towards money laundering. If

this is the case, the respective entity must scrutinize the process of the transaction in more detail and under certain circumstances report the same to the national supervisory authority.

14. Is there a tax or duty on foreign currency conversion?

Austrian tax law does not provide for the collection of taxes concerning the conversion of currency.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

Austrian tax law does not provide for collection of taxes on the basis that any person brings foreign or domestic currency into Austria. However, following regulations on the prevention of money laundering and financing terrorism, any person that enters into Austria from an EU third country or exits Austria to an EU third country is obliged to register cash if the currency exceeds the amount of EUR 10,000 or EUR 10,000 equivalent.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

The treatment of asset deals and share deals under Austrian law is quite complex and can have differing tax consequences at the buyer as well as at the seller level. In addition, Austrian tax law provides that in certain cases, irrespective of whether specific transaction requirements are fulfilled, a stamp duty falls due. This stamp duty is generally set within the range of 0.8 % and 2 % of the value of the respective transaction which is subject of the contract. However, the mere transfer of assets of a company or shares in a company as such is not subject to stamp duty. It should be noted, however, that for example the assignment of claims via a written agreement in the course of an asset deal and the entering into of suretyships (e.g. where a parent company stands in for obligations of a subsidiary) may trigger Austrian stamp duty (see below).

Austrian stamp duty falls due if certain types of contracts, such as lease contracts and commercial rental contracts, assignments and surety contracts (*Bürgschaften*) are concluded, amended or renewed in writing.

However, from a practical point of view this has become much less of an issue in recent years for asset deals since Section 38 of the Austrian Commercial Code

provides that in case of asset deals concerning a business all rights and obligations connected to such business are transferred by operation of law, rendering the stamp duty regime inapplicable.

In any event, it is highly advisable to carefully check the application of the stamp duty regime prior to any asset or share deal since the stamp duty regime follows highly formalistic rules (see also Question 17).

17. When is a stamp duty required to be paid?

Briefly speaking, under the Austrian Stamp Duty Act certain legal transactions are subject to stamp duty.

A stamp duty must be paid, if a document in writing is set up on certain legal transactions in Austria (irrespective of the nationality of the parties) or the original of a document or a certified copy thereof which has been set up abroad and which would trigger stamp duty in Austria had it been set up in Austria, is brought into Austria. If the documentation of the legal transaction is drawn up in Austria (domestic deed), in case of bilateral legal transactions the stamp duty is triggered when the deed is signed by both parties to the contract or, if the deed is only signed by one party to the contract, when it is transmitted to the other party. In addition, also written agreements concluded abroad trigger stamp duty if (i) both contracting parties qualify as "fee residents" in Austria, and (ii) the legal transaction relates to an item / asset located in Austria or (iii) one party is entitled or obliged to perform in Austria on the basis of the legal transaction.

However, not all legal transactions trigger stamp duty. The most important legal transactions that may trigger stamp duty are assignment agreements (2 % of the purchase price for the assigned claim), surety agreements (1 % of the value of the secured liability), business premises rentals (1 % of the triple annual lease in case of contracts with an indefinite duration and in case of leases with a definite duration 1 % of the lease for the complete term, but not for more than 18 years) and settlement agreements concerning disputed claims (1 % of the settled amount for matters already before a court and 2 % for out-of-court settlements).

In any event, stamp duty is a highly sensitive issue that needs to be dealt with on a case-by-case basis. In some instances, it is possible to legally avoid the stamp duty being imposed if the document is executed abroad and neither an original nor a notarized copy of the document is brought into Austria. One of the difficulties presented in practice is that for such documents executed abroad, any

future correspondence into or out of Austria that refers to such document may also trigger stamp duty (*Ersatzbeurkundung*).

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

Shares in a stock corporation, a company with limited liability or a FlexCo can be held outside the home jurisdiction. There are no specific formal requirements for a transfer of shares in a partnership or a stock corporation. In case of a transfer of shares in Austrian limited liability companies, the transfer requires that the parties draw up a notarial deed and execute the transfer document before a notary public (which now can also be done via videoconferencing). In the case of a FlexCo, no notarial deed is required, but the parties need to execute a private deed which is to be executed by a notary or lawyer. For the transfer of Enterprise Value Shares, a simple document in writing is sufficient.

The partners of a partnership need to be entered into the commercial register and updated. No further details concerning the scope of the transaction must be submitted. As regards the publicity of shareholdings in corporations, please see Section 7 (vi) for details. Only the direct shareholdings need to be registered. This means that shareholdings that are subject to trust constructions only reveal the direct shareholder but not the trustor.

Further, reference is made to Section 7 with respect to the registration of UBOs. Changes in UBOs need to be registered and an annual update needs to be filed, even if no change has taken place. As regards mandatory FDI filings, we refer to Section 19. Otherwise, the transfer of shares from Austrian to foreign shareholders and vice-versa is not limited.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a

governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

The Austrian Investment Control Act provides for a mandatory FDI filing under specific circumstances. According to the Austrian Investment Control Act, a "foreign direct investment" is subject to the approval of the Federal Minister for Digital and Economic Affairs (i) if the target company is active in one of the sensitive or systemically relevant areas listed in the Annex to the Austrian Investment Control Act and (ii) certain voting rights are reached or exceeded or a controlling influence is otherwise acquired or a controlling influence over these parts of the company is acquired through the acquisition of significant assets.

"Direct investments" are the direct or indirect acquisition of an Austrian company (registered office and head office in Austria), voting rights, a controlling influence or significant assets. The "direct investment" becomes "foreign" if at least one of the acquirers involved is a third-country national (no EU citizenship or citizenship of an EEA state or Switzerland or registered office or head office outside the EU, the EEA and Switzerland). The extension of the scope of application to indirect acquisitions therefore also covers acquisitions by a company based in the EU / EEA / Switzerland that is controlled by a third-country national.

The Austrian Investment Control Act lists defense goods and technologies, the operation of critical energy infrastructure and critical digital infrastructure, water, the operation of systems to ensure data sovereignty and – due to COVID-19 – research and development in the areas of pharmaceuticals, vaccines, medical devices and personal protective equipment as particularly sensitive areas. The term "other areas" covers areas in which there may be a threat to security or public order, including crisis management and services of general interest, whereby this exemplary list includes critical infrastructures, critical technologies, the security of supply of critical resources, access to or control of sensitive data and the freedom and plurality of media.

Legal transactions that require an FDI approval are deemed to have been concluded subject to the condition precedent that the corresponding approval is granted. In this respect, the Austrian legislator has chosen an approach for example from the merger control regime by not ordering the invalidity of the agreement per se as a sanction if parts of the agreement contradict the prohibition on implementation. Moreover, an implementing of the transaction prior to approval constitutes an offence punishable by imprisonment. Therefore, if an FDI approval has not been obtained, but would have been deemed necessary, the transaction is not null and void; the violating parties, however, may have to take responsibility under criminal law.

As concerns duration of FDI proceedings, an administrative order can be obtained in less than 3 months.

20. What are typical exit transactions for foreign companies?

The typical exit strategy is not dependent on whether a company is a foreign or domestic company. Common exit strategies include the sale of a company, a spin-off of the company, a split-off of parts of the company, a management buy-out, a management buy-in and an IPO.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

In the years 2023 and 2024, there was a trend for Austrian private companies to make an initial public offering (IPO) on the Vienna Stock Exchange (Wiener Börse) rather than on foreign stock markets. This preference can be attributed to several factors, including familiarity with local regulations, greater alignment with Austrian investor expectations, and a lower transaction complexity compared to foreign listings.

Nevertheless, a number of Austrian companies with aspirations of obtaining broader capital access and international investor visibility have investigated the possibility of listing on foreign stock markets. Among these, European hubs such as Euronext and the Frankfurt Stock Exchange have attracted attention due to their robust investor bases and more developed liquidity. In certain instances, companies targeting U.S.-based investors have contemplated Nasdaq or the NYSE, particularly those in the technology or biotechnology sectors seeking high valuations and dynamic market conditions.

However, due to its overall relatively small market size IPOs are still not a common corporate instrument to raise new funds.

In 2024, Austria has seen limited activity in the area of initial public offerings (IPOs). The Vienna Stock Exchange, a key venue for Austrian companies going public, noted no major IPOs so far in 2024. The market conditions, characterized by economic uncertainty and inflationary pressures, have likely contributed to a cautious approach by companies considering IPOs. Historically, Austria has seen relatively few IPOs annually, with sectors such as technology, renewable energy, and industrials showing occasional activity. Companies often rely on alternative funding mechanisms or private placements in such environments. While some firms are preparing for future listings, the broader IPO market remained essentially dormant in 2024.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

Whether M&A / Investment / JV agreements provide for dispute resolution in domestic courts or through international arbitration is generally dependent on who the parties are to the respective agreements. The practice shows that transactions that are concluded between local Austrian entities and especially smaller entities, the parties tend to opt for the local Austrian courts to have jurisdiction over the transaction. However, as soon as larger entities or foreign entities are involved in a transaction, the tendency is for arbitration tribunals to be agreed between the parties.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

As concerns local Austrian court proceedings, such proceedings generally are conducted in two or three court instances. In the first instance court the main focus lies on obtaining the facts of the case necessary for reaching a verdict, the second instance acts as an appeal body and scrutinizes the legal assessment, as well as, depending on the specific case, the facts of the case. If the legal assessment in question refers to a point of law of considerable importance, an appeal to the Austrian Supreme Court can be admissible. The duration of proceedings in the first instance generally lasts between 9 months to 1.5 years. The duration of appeal proceedings can usually be finished within 6 to 12 months.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Yes, they are. There is no bias towards domestic claimants or defendants. There are also specific commercial courts which have substantial experience in deciding commercial disputes.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

No, there are no such cases.

26. Are international arbitral awards recognized and enforced in your country?

Foreign arbitral awards can be enforced in Austria on the basis of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, of which Austria is a party.

27. Are there foreign investment protection treaties in place between your country and major other countries?

The Republic of Austria currently has bilateral investment protection treaties with 48 countries in place that are not EU-member states. In this context the "Achmea" decision of the European Court of Justice needs to be mentioned, on the basis of which arbitration clauses in international investment protection agreements between EU-member states are not compatible with EU law. In light of the ruling, Austria, together with other EU member states, has committed to terminating all bilateral investment protection agreements with EU member states. Major countries with which Austria has bilateral investment protection agreements in place are, inter alia, China, United Arab Emirates and Russia.

(<https://www.bmaw.gv.at/Themen/International/Handels-und-Investitionspolitik/Investitionspolitik/BilateraleInvestitionsschutzabkommen-Laender.html>).

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