

STARTING BUSINESS IN AUSTRIA



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Foreword

This brochure will help investors found companies in Austria. Rather than containing a comprehensive depiction of Austria's legal codes, this brochure is comprised of briefings providing investors with the information needed to prepare them for their consultations with their attorneys and tax consultants.

The first part of this brochure provides an overview of the legal forms of commercial entities permitted in Austria and of the regulations applying to their founding. An in-depth look is taken at the limited liability company (Gesellschaft mit beschränkter Haftung--GmbH), which is the most important of these forms in Austria.

The second part contains a checklist. Using it will ensure that no important issues are forgotten when founding a company, and thus that this process will be as time and cost-efficient as possible.

The third is comprised of entries on agencies and other sources of information and services of use when founding a company.

Vienna, January 2009

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First part – founding a company

1. Legal Forms of Corporations

1.1 Overview

Austria's legal codes permit the following, major legal forms to be used when operating companies:

- Limited liability company (GmbH)
- Joint stock company (AG)
- European company (Societas Europaea – SE)
- General commercial partnership (OG)
- Limited commercial partnership (KG)
- Dormant partnership (stGes)
- Non-trading partnership (GesbR)
- Cooperative (Gen)
- Association

As Austria's legal codes do not permit the creation of a legal form, the selection has to be made from the above list.

As the most popular choice by investors and other entrepreneurs is the GmbH, this legal form will be presented in-depth, with the others being summarized.

1.2 Limited liability company (GmbH)

General remarks

The GmbH is a legal person. Its partners are not personally liable for the liabilities of either the company or of the other partners. The only (essential) obligation of each partner is to supply the proprietary contribution. The code applying to Austria's limited liability companies is the GmbHG (Gesetz über Gesellschaften mit beschränkter Haftung (GmbHG)) as of 1906.

Founding a limited liability company

A. Entry into corporate register

The GmbH comes into legal being upon its being entered into the corporate register. The application for the performing of the entry has to be signed by all partners. These signatures have to be witnessed and attested to by a notary. The application has to include the following items:

- Company name
- Legal form
- Headquarters

- Term of existence (unlimited or limited)
- Legal address
- Optional: short description of business sector
- Amount of share capital
- Balance sheet date for annual accounts
- The partners' powers of representation
- The date of the conclusion of the contract establishing the company (should the company be set up by a sole person, this contract is to be entitled the "declaration of the establishment of the company")
- Names, dates of birth and addresses of the managing directors, as well as the nature of their power of representation (single or joint party representation)
- Names, dates of birth or corporate register numbers, and addresses of the partners, and the amounts of the participating shares assumed by them, and of the in payments resulting from them.

Not obligatory and only to be made when so foreseen is the provision of the details of the authorized signatories, the supervisory board and branch offices:

- Names, dates of birth and addresses of authorized signatories and a detailing of their powers of representation (single or joint-party representation)
- If so required: names, dates of birth and addresses of the members of the supervisory board, and the detailing of who are its chairman and vice-chairman
- Branch offices in Austria and their addresses
- Detailing of the granting of any authorizations to conduct commercial operations

The following documents (in their original versions) have to be included in the application for entry into the commercial register:

- Articles of association (for a company being founded by a single person: declaration of the establishment of the company), with this to have been notarially attested to.
- Resolution by the shareholders on the appointment of a managing director (attested to by notary)
- Sample signatures rendered by managing directors (sample ways of rendering corporate signatures) (attested to by notary)
- In cases in which so stipulated by law (in, for instance, transactions with banks): the requisite governmental approvals;
- Confirmation by tax authorities that the company tax has been paid (certificate of non-objection);
- Confirmation by an Austrian bank that the participating shares have been paid in, at the stipulated amount, and in cash; and that these contributions can be freely disposed of by the managing directors, as their utilization is not curtailed by counterclaims;

- Declaration by the managing directors on the in payment of participating shares (as a rule, forming part of the application for entry into the corporate register) (attested to by notary);
- Any expert opinions rendered by the local chamber of commerce (or by such other responsible chambers as that of the attorneys) on the admissibility of the company's name;

In cases in which the company has a supervisory board and authorized signatories:

- Sample signatures by the authorized signatories (sample ways of rendering corporate signatures) (attested to by notary)
- Resolution by the shareholders on the selection of a chairman and a deputy chairman (attested to by notary)

B. Articles of association

The articles of association have to be entered into by at least two persons, and have to be attested to by a notary. For a company being founded by a single person, required are a declaration of the establishment of the company and the attestation of a notary.

A shareholder is not necessarily required to render his or her signature, but can rather issue a power of attorney. In such cases, a special-purpose and notarized power of attorney has to be submitted. This is to form part of the process of notarial attestation. In most cases, this has to be accompanied by a higher (and international) level authentication according to the precepts of the Hague agreement. The articles of association have to contain the following information:

- Name and headquarters of the company;
- Activities of the company;
- Amount of share capital and participatory contributions of the shareholders;
- In cases in which the company has a supervisory board: the maximum amounts of loans requiring the supervisory board's approval for securing and dispensing; and of investments.

The fees levied by the notary are determined by a dedicated schedule. As a general rule, the base of assessment is the company's share capital. In cases in which this is being raised, the applicable amount is that of the increase.

C. Company name and headquarters

The company's legal name has to foster the identification of the company, and has to have characteristics enabling it to be differentiated from others. A further requirement is that it should not lend itself to being mistaken. This restriction applies, however, only to the circles with and in which the company will be conducting business. The examination undertaken by the court associated with the commercial register restricts itself to exclud-

ing cases highly conducive to being misleading. The company's name has to include "Gesellschaft mit beschränkter Haftung" or an abbreviation of this, such as "GmbH" or "GesmbH" and "Ges.m.b.H."

The company's headquarters have to be in Austria, and in a community, as a general rule, in which the company maintains a facility, or its corporate management, or that of its administration.

D. Activities of the company

A GmbH can pursue any activity, with the exceptions of the provision of insurance and mortgages, the management of participatory funds, and the engaging in political activities. A special-purpose authorization has to be secured from Austria's finance ministry for the undertaking by a GmbH of banking operations.

E. Share capital and participatory shares

A company has to have share capital amounting to at least € 35,000. Each share has to amount to at least € 70. At least half of the share capital has to be in cash, with the remainder entitled to be in contributions in kind. At least a quarter of all of the participatory shares to be rendered in cash has to be paid in by the shareholders. Each shareholder has to pay in at least € 70. The shareholders are required to jointly pay in € 17,500 (this is the lowest acceptable amount). Exceptions to this rule arise from the existence of various preconditions (in cases in which the contributions in kind have been assessed or in which a company was founded at least five years previously and has been managed by the shareholders). In such cases, the share capital can entirely be comprised of contributions in kind. In this case, an official auditor has to be engaged to examine the contributions in kind being consigned to the company. Articles of association can foresee the demanding of supplemental payments by the shareholders on an ex post facto basis. Such demands are derived from a resolution passed at annual general meeting.

Shares in the company can be transferred to other living parties. Such transfers can also be occasioned by the shareholder's death. The former requires notarial attestation. Since October 1, 2000, such transfers are not subject to taxes on transactions (taxes on capital transfers).

F. The shareholders

Each physical or legal person can be a shareholder in a GmbH. Such persons do not have to be citizens or residents of Austria. A company can also be founded by a single shareholder.

G. Costs of founding—registration fees

The company tax levied upon the founding of a company amounts to one percent of the capital provided by the shareholders. In cases in which the capital amounts to € 35,000, the tax thus comes to € 350.

The court fees levied for the registration of a GmbH outfitted with a managing director and two shareholders come to some € 300.

The costs of founding may be assumed by the company. Limits on this are to be included in the articles of association (with such amounting to some 20% of the share capital).

After the process of signing the notarial attestation has been concluded, the entry of the GmbH in the corporate register takes one to two weeks. The GmbH comes into existence upon the entry's having been made. The GmbH is entitled to pursue business once the articles of association have been finalized. In this interim period, those pursuing such transactions are jointly and severally liable for liabilities incurred (this liability ceases upon the GmbH's being entered into the corporate register).

Forms to be observed during the company's life of operation

A. General meeting of shareholders.

The general meeting of shareholders is the GmbH's ultimate decision-making body. It is where the company's owners—the shareholders—convene to enact resolutions. The shareholders appoint and recall the managing directors, establish their remuneration, and conclude with them contracts of employment. The general meeting of shareholders is responsible for the approval of the annual accounts and of the operations of the managing directors. The general meeting is entitled to devote itself to any and all aspects of the GmbH's operations, and to give instructions to the managing directors on the pursuing of business operations which they are required to heed.

A general meeting has to be held at least once every financial year (within its first eighth months). It serves to examine and approve the annual accounts, to distribute the net income, and to approve the conduct of the managing directors and of the supervisory board, should such exist. The general meeting can also be staged to enact other resolutions, provided that such is required to assure the GmbH's well-being. General meetings of shareholders are to be convened by the managing directors.

In cases in which all shareholders approve such, resolutions can be passed in writing (voting by circulation). In cases in which

one or more shareholders does/do not accept the purpose of the resolution, all have to agree upon the nature of the voting procedure (written and through circulation). All resolutions passed by the shareholders are to be immediately relayed, via registered letters, to each of them.

B. The managing director

A GmbH can have one or more managing directors. No ceiling has been placed on the number. The managing director (as defined by the commercial codes) does not have to be a citizen or resident of Austria. In order to sign documents, it makes, however, sense for at least one of them to be a resident of the country, or to sojourn there on a regular basis.

Only physical persons capable of carrying out actions are entitled to be appointed managing directors. The appointment results from the shareholders passing a resolution. Shareholders are entitled to be appointed managing directors during their term of investment in the company. This can be so stipulated in the articles of association. The appointment can be rescinded at any time by a resolution passed by the shareholders. (This move does not have any effect upon claims arising from the contracts concluded with the managing directors.) In cases in which a shareholder is appointed managing director, the permissibility of the revocation can be restricted in the articles of association to important reasons. The appointment's forming part of the articles of association does, however, necessitate its having to be altered in cases in which, for instance, the managing director is removed from his or her position.

The managing director can be removed at any time from his or her position, should an important reason for doing such exist. Should this not be the case, the removal can still take place, provided that the deadline of 14 days is observed (except in those cases in which the appointment forms part of the articles of association and in which removals are restricted in it to important reasons). In cases in which a managing director resigns, this has to be accompanied by a declaration made to the general assembly of shareholders or to all shareholders. The other managing directors and the chairman of the supervisory board (should such exist) are to be notified of the resignation. The other managing directors have to apply for the deletion in the corporate register.

Unless otherwise stipulated by the articles of association or by a resolution passed by the shareholders, the company is always to be represented by all managing directors. Declarations and notifications addressed to the company take effect upon their being delivered to one of the managing directors.

It is possible to grant one or more managing directors the power of individual signature, or to grant a joint power of signature to two managing directors, or to one managing director and a staff member serving as a general authorized signatory.

C. Supervisory Board

A GmbH is not, as a general rule, required to have a supervisory board, except in those cases in which it is a company controlling other companies (group), in which the average total number of employees working for all the companies is greater than 300, or in which the GmbH itself has a workforce whose average size is greater than 300.

Other cases in which a GmbH is required to set up a supervisory board are of minor practical relevance. A GmbH is entitled to set up a supervisory board, should it so decide.

The supervisory board has to be comprised of three members. These are to be elected by the shareholders and are to be natural persons. The supervisory board is entitled to be comprised of representatives of the workforce. The works council is entitled to name one representative of the workforce to the supervisory board for each two representatives named by the shareholders. Should the number of supervisory board members named by the shareholders be uneven, a further representative of the workforce is to be named (principle of one third parity). The supervisory board monitors the operations of the company's senior management, and grants its approval to measures which are legally mandated as being in its scope of responsibility (these are such important measures as the shutting down of facilities, launching of new areas of business, and acquiring and disposal of participations). This catalogue of measures can be expanded by stipulating such in the articles of association. In contrast to the situation existing in joint stock companies, the supervisory board is not responsible for the appointment and removal of the managing director, or for the approval of the annual accounts.

The supervisory board has to be convened at least four times during the financial year, at three month intervals.

D. Accounting and auditing of the annual accounts

An Austrian GmbH is required by the country's commercial and tax codes to maintain accounts. GmbHs and other corporations (including such "hidden" corporations as partnerships in which no natural person is serving as a partner—GmbH & Co KG) whose annual sales exceed the € 400,000 mark in two successive financial years are subject to the provisions of Austria's corporate code (UGB) on the preparing and publishing of annual financial statements.

The managing directors are required to set up and maintain accounting and controlling systems capable of meeting the needs of their company, and to compile on an annual basis accounts for the previous financial year. These accounts are to be comprised of a balance sheet, an income statement and notes to the accounts. Also to be compiled is a review of business. Once these compilations have been completed, both the annual accounts and review of business (or, if such exist, consolidated annual accounts and review of group business) are to be sent without delay to each shareholder. Each shareholder is entitled to use the company's accounts in the examination of these documents. This is to take place prior to the annual general assembly of shareholders. The general assembly held to approve the annual accounts has to be convened within the first eight months of the following financial year. The annual accounts and review of business are to be examined by an independent official auditor (except in those cases in which the GmbH is considered to be "small". This is defined to be a GmbH meeting one of the following criteria—a balance sheet total of less than € 3.65 million, annual sales of less than € 7.3 million, an average annual workforce of 50 employees or less, and no supervisory board).

All corporations have to submit electronically to the corporate register their annual accounts and review of business within nine months after the end of the financial year. Small and medium-sized GmbHs are entitled to avail themselves of simplifications of publishing. These apply to the abridging of the annual accounts by combining items in them. Small GmbHs are only required to submit to the corporate register abridged balance sheets and notes to the accounts.

E. Dividends (shares of profits)

Dividends can be paid out only from the net unappropriated income reported in the annual accounts. Share capital and committed reserves are not to be employed for this purpose. Any disbursements of share capital require the immediate repayment of the funds. Shareholders are personally liable for such.

1.3 Joint stock companies (AGs)

Austria's Joint Stock Code of 1965 (AktG) applies to joint stock companies (AGs).

The AG has its own legal identity and is a legal person. As is the case with the GmbHs, the owners (shareholders) are not personally liable for the AG's liabilities. The AG's share capital is to amount to at least € 70,000. The AG comes into being upon its being entered into the corporate register. The AG can be founded by one or more natural or legal persons. In cases in which there are two or more shareholders, these are not to be listed by name in the corporate register. Should there be a single shareholder, his, her or its name and date of birth or corporate register are to be entered into the corporate register.

The AG's name has to accord to the same principles as those applying to the GmbH, and is to include "Aktiengesellschaft" or its abbreviation of "AG".

The legal bodies of the AG are its executive and supervisory boards and general assembly of shareholders. The executive board is responsible for carrying out the company's business in its own right, and for representing it in its dealings. In contrast to the GmbH, no one--neither the supervisory board nor the general assembly of shareholders--is entitled to issue instructions to the executive board. The members of the executive board are appointed and removed by the supervisory board. The term of appointment for members of an AG's executive board is limited to five years. Such appointments can also be for shorter periods. Members can be appointed for further periods once their terms have expired.

The supervisory board is appointed by the general meeting of shareholders. In contrast to the GmbH, an AG is obliged to constitute a supervisory board. Its members' term of appointment is five years at most. Such appointments can also be for shorter periods. Also permissible is the reelection to the board of its members.

The AG's annual accounts and review of business have to be examined by an independent and official auditor. The annual accounts and review of business have to be submitted nine months after the end of the financial year to the corporate register. Large-sized AGs have to publish their annual accounts in the Amtsblatt (Official Journal) of one of Vienna's newspapers.

1.4 Differences between the AG and the GmbH

Here are the key differences:

	GmbH	AG
Organization	More strongly oriented towards the shareholders	High degree of organization, few ways for shareholders to exercise rights of participation in decision-making processes
Transfer of shares	Requires notarial attestation	As a rule, freely transferable—involving no stipulations
Supervisory board	Requisite only in certain cases (for instance: for companies with more than 300 employees)	Has to have a supervisory board
Senior management	Managing directors appointed by shareholders for indefinite periods of time, and can be removed at any time (without important reason)	Executive board members are appointed by the supervisory board for a maximum of five years. Removal requires important reasons.
Instructions	Shareholders are entitled to issue binding instructions to the managing director.	Shareholders or supervisory board are not entitled to issue instructions to executive board members.
Owners' resolutions	Passed at general assembly of shareholders or voting by written circulation	Resolutions passed at general assembly of shareholders. No voting by circulation. The minutes of each general assembly of shareholder have to be submitted to the corporate register, and are accessible by the general public.
Shares	Are only a stake in company, minimum participatory share amounts to € 70.	Shares can have nominal values (or, in the case of individual share certificates, a proportionate amount) of at least € 1 or a multiple of that. Shareholders can own two or more shares.
Voting rights	As a fundamental rule, each shareholder has to have at least one vote. The apportionment of voting rights and of profits can be laid down in the articles of association.	The amount of non-voting preference shares issued can comprise up to one third of the share capital. Shareholders of these shares can not vote. Rather, they receive preferential access to dividends.

1.5 European companies (Societas Europaea – SE)

Since 2004, the Societas Europaea – SE has been authorized for use in Austria. The use of this legal form requires the 'refounding' of an existing company (through a merger, or transformation of a national AG, or through the founding of an SE holding and subsidiary). This can not be undertaken by natural persons and requires a previously existing business unit. This fact makes the SE unsuitable for use by start-ups.

The advantage held by the SE vis-à-vis other corporate forms is its internationality. The SE removes all strictures—particularly the need to liquidate the company—upon the relocation of a company's central administration and of headquarters within

the European Union. The company can be managed by an executive board which is monitored by a supervisory board (dualistic system), or by a managing board (monistic system). The latter is comparable to the Anglo-Saxon board of directors.

1.6 General commercial partnership (OG)

The OG is comprised of two or more natural or legal persons who/which are jointly and personally liable for the company's liabilities. This personal liability of the partners vis-à-vis creditors can not be subject to limitations.

An OG can pursue any permissible business activity, with this including self-employment and those in the agricultural and forestry areas. The OG's name has to meet the requirements

placed upon those used in GmbHs, and has to bear the suffix “Offene Gesellschaft” or its abbreviation “OG”. While not mandatory, the conclusion of articles of association is to be recommended, based on practical experience. This contract does not have to adhere to a specific form, and can thus be drawn up without the assistance of a notary.

The OG comes into being upon being entered into the corporate register and is a legal person.

1.7 Limited commercial partnership (KG)

The stipulations applying to the OG also generally apply to the KG, with the exception of the KG’s having partners of limited and of unlimited liability. Each KG has to have a partner who is unlimitedly and personally liable for the company’s liabilities (general partner) and at least one partner whose liability is limited to a preset amount entered into the corporate register (limited partner). It is very often the case that the personally liable partner is a corporation—most of the time a GmbH. This hybrid form is called the “GmbH & Co KG” one, and its use is mandated by reasons of taxation, legal liability and organization. In such forms, there is no natural person who is personally and unlimitedly liable.

The name of a KG has to meet the stipulations applying to a GmbH, and has to bear the suffix “Kommanditgesellschaft” or “KG”. The personally liable partners are responsible for the running and representing of the KG.

1.8 Dormant partnership (stGes)

This partnership is the vehicle for the participation by a “dormant partner”—via the consignment of assets—in a company owned by another. (It can be a single-person company, a partnership, a GmbH or an AG). This partnership does not have a legal identity, or a name. It is not entered into the corporate register and does not act as a company when dealing with the outside world. The management and representation of the StGes are exclusively handled by the owner of the company. The dormant partner has a stake in the company’s profits and losses. The latter can be excluded.

1.9 Non-trading partnership (GesbR)

This partnership is not, strictly speaking, a company. Its only business use is for the realization of short-term objectives, such as the forming of a working circle comprised of two or more companies. The GesbR is not entered into the corporate register

and can not engage in transactions or acquire property in its own name.

1.10 Branch offices of non-Austrian companies

GmbHs and AGs headquartered outside Austria are entitled to set up branch offices in the country. This has been rarely resorted to. The establishment of such offices by non-Austrian GmbHs and AGs has to adhere to the following precepts:

The non-Austrian company is entered into the corporate register responsible for the headquarters of the branch office.

Companies not headquartered in a country belonging to the EEC have to appoint a representative of the branch office. This representative has to customarily reside in Austria. His term of service is that of the operation of the branch office. This representative is authorized to represent the company in court and elsewhere. A limitation of scope of the representative’s power of representation vis-à-vis third parties is not permissible. A limitation of this power to the management of the office is, however, possible. Also possible is the naming of two or more representatives collectively responsible for the representing of the company.

Companies headquartered in the EEC are entitled but not required to appoint a representative.

The application by the non-Austrian company for entry into the corporate register is to include the publicly notarized copy of the valid version of the corporate contract. Should this contract not be in German, a notarized translation into German is to be included. Once the entry of the non-Austrian company into the corporate register has been accomplished, applications for entries into the corporate register can also be undertaken by the company’s representative(s). The branch office does not have a legal identity.

The branch office does not have any proprietary share capital. The capital consigned to the office is subject to the levying of a corporate tax whose rate amounts to one percent. This does not apply to non-Austrian companies which have their headquarters or seat of management in the EU, as these are exempted from such rules. The branch office is obliged to maintain its own books.

1.11 Cooperative (Gen)

The cooperative is a special-purpose association. It has its own legal identity. Its number of members is not limited. The coop-

erative serves to promote its members' acquisitions or business activities. It has no preassigned capital. It can not be a for-profit enterprise. Cooperatives' activities are governed by the Cooperative Act.

1.12 Association

The association is a form which not used very often for business activities, as it has to pursue the realization of an ideal.

2. Laws Applying to Foreign Exchange

Austria's National Bank is responsible for controlling all transfers of capital involving foreign exchange and taking place between a resident (as defined for currency purposes) of the country and a foreigner (as defined by the Foreign Exchange Act).

The National Bank largely exercises this power by authorizing all transactions by official announcements. This practice has basically eradicated the obligation to secure authorizations for individual transactions. Certain kinds of transactions are still, however, subjective to very extensive reporting obligations. According to these, within one month after funds having been consigned to Austria (via, for example, the purchase of a company in Austria by a non-Austrian body), a report has to be sent to Austria's National Bank.

3. Purchase of Property by Foreigners

Regulations stipulate that official approval is required for the purchase by natural or legal persons who are not Austrians, or by Austrian companies with non-Austrian owners, of property in Austria, or rights deriving from it. Austria's states have their own regulations, but these have been adapted for citizens of EEC countries to allow the exercising of the four freedoms in the Community. This implies that legal transactions with them are to be treated as if they were between citizens of Austria.

4. Taxation

Taxation of companies

A. Taxation of the founding of companies

Taxation of the capital committed

The founding of a company (AG, GmbH) or a partnership having a company as a personally limited partner (for instance: GmbH & Co KG) gives rise to a company tax amounting to one percent of the value of the amounts of capital agreed upon or supplied by all of the (non-personally liable) partners. The founding of a GmbH whose share capital amounts to € 35,000 gives rise to a company tax of € 350. Also subject to this taxation of one percent are companies increasing their share capital or that provided by the shareholders, and the equipping of branch offices in Austria with capital stemming from its non-Austrian parent (except in those cases in which the corporate parent is headquartered in the EU).

Property acquisition taxes

The transferring of properties on a payment basis between living persons and the transferring of all shares of companies holding property or the procurement of all shares by a single party give rise to property acquisition taxes amounting to 3.5% of the *quid pro quo*. In the latter of the above cases, this 3.5% is levied upon the assessed value. Certain kinds of changes of legal form cause the levying of property acquisition taxes amounting only to 3.5% of two times of the assessed value. The entering of the new owner in the official real estate register causes the levying of an official court fee of one percent of the base of assessment of the property acquisition taxes.

B. Taxes levied upon operating companies

Corporate income tax

The profits realized by corporations (primarily AGs and GmbHs) are subject to a non-progressive corporate income tax of 25%. Its levying is not influenced by whether or not this tax-liable income was distributed among the partners. Fully tax-liable GmbHs have to pay—regardless of whether a profit was earned or not—an annual minimum tax of € 1,750 (AGs: € 3,500). A lower rate of taxation is applied to a corporation during its first four quarters of operation.

Dividends and other kinds of stakes in profits accruing to a domestic corporation from its holding of stakes in a domestic AG or GmbH are exempt from corporate income taxes. The same applies to dividends, stakes in profits and proceeds from dispos-

als and liquidations of assets received by a domestic corporation from a non-Austrian corporation which is comparable to a domestic AG or GmbH, in those cases in which the domestic corporation has directly held for at least one year a 10% stake in the non-Austrian company (“international intercorporate stockholding”).

The dividends paid out by a company to its shareholders are subject to a withholding tax of 25% (capital gains tax). For natural persons which are tax liable in Austria, this satisfies the need to pay taxes on this income. No further encumbrances ensue (final taxation).

Austria has concluded double taxation agreements with a considerable number of countries. Most of these contracts are adaptations of the models issued by the OECD. These contracts foresee a reduction of Austria’s withholding tax. The relationships with corporations based elsewhere in the EU are governed by the corporate parent-subsidiaries directive.

Local tax

Local tax is paid by every company with employees in Austria. It amounts to 3% of the total remuneration. This tax can be reported as a corporate expenditure and is thus a deduction. This, in turn, can be applied to the calculation of corporate or other kind of income taxes.

Similar to the local tax is the contribution to the funds for the compensation of family encumbrances. The latter amounts to 4.5% of the total remuneration.

Turnover taxes

The turnover tax is levied upon taxable proceeds arising from companies’ undertaking in Austria of transactions. Whether or not the company is located in Austria is immaterial. These taxable proceeds generally arise from the supplying by companies of goods and services, and from proprietary consumption and from the importing of goods into the country.

The rates of taxation amount to 10% or 20% (in exceptional cases: 12%), with the latter being the normal rate.

Companies whose revenues are subject to turnover taxes are entitled to deduct, as a pretax, the turnover taxes which other companies have invoiced along with their supplying of products and services. This deduction is not permitted, as a general rule, in those cases in which the products and services received were employed to carry out transactions exempt from taxes.

Deduction of earnings taxes

In Austria, the taxes to be paid by employees on their remuneration (taxes on their income) are retained by the employer, who then transfers it to the taxation authorities.

Taxation of corporations

Income earned by physical persons is subject to a progressive income tax whose maximum amount is 50%. Depending upon whether the partner is a natural or legal person, the stakes in the profits held by partners in partnerships are subject either to person-based or corporate income taxes.

Income arising from interest paid upon funds invested or upon other receivables held vis-à-vis banks; earnings upon capital invested in certain kinds of Austrian receivables-based securities; and dividends distributed by domestic corporations (GmbHs and AGs) are subject to a final tax of 25%. The application of most of the double taxation avoidance agreements results in the reduction of capital gains taxes to 5% to 15%. Income earned by partners in partnerships (OG, KG) is not taxed at the corporate level (no corporate income tax). Rather, it is taxed at the level of the partners.

5. Trade Law

Trading regulations

As a general rule, a company can only be operated in those cases in which it has secured the appropriate authorization. A trading operation is defined by the trading regulations (GewO) to be an activity undertaken on one’s own on a regular basis for purposes of achieving an economic advantage.

The trading regulations do not apply to agriculture or forestry, to the arts, and to the kinds of professions and transactions which are regulated by special-purpose acts (for instance: banking and legal counsel).

Kinds of trading operations

The GewO distinguishes among non-regulated, regulated and ‘sensitive’ trades. The former two categories have to be registered with the appropriate authorities. Once this has been taken care of, the trades can be pursued. The latter require the securing of a legally-applicable notice from the trades authorities. The sensitive trade can not be pursued until this notice has been secured. Pursuers of non-regulated trades have to satisfy generally-applicable stipulations prior to their launching of their activities.

Regulated trades require a certificate of qualification. Pursuers of sensitive trades have to prove their reliability.

Legally-responsible managing director

To pursue business, a GmbH, AG, OG, KG and the branch office of a non-Austrian company have to secure an authorization to conduct their trade, and have to employ a managing director who lives in Austria (except in those cases in which the services of process and enforceability of penalties levied by courts of administration are secured by inter-state agreements, with this also applying to areas outside Austria), possesses the qualifications needed to undertake his or her position, and is legally capable of ensuring the adherence to the regulations applying to the company's trade.

The managing director responsible for adhering to trading regulations does not necessarily have to be the same as the managing director as defined by commercial codes and as appearing in the commercial register as being empowered to represent the company, or as a shareholder. It suffices for the former to be an employee (in the sense that he or she works on at least a half-time, social accounts-paying basis) for the company.

All managing directors—with this applying to those as defined by the commercial codes and those appointed by the shareholder with a controlling stake in the company—have to satisfy the applicable criteria of trustworthiness and integrity.

6. Employment Law

Employment contract

Each employer is required to provide its employers immediately upon their beginning their relationship of employment with it with a written list of the essential rights and duties deriving from this relationship. As a rule, these rights and duties are detailed in the contract of employment. In cases in which this relationship has been concluded via a verbal agreement, the employee is to be provided with a so-called “notice of employment”. It is to contain all requisite information, with this including:

1. Names and addresses of the employer and the employee,
2. Date of beginning (for limited term contracts: and of ending) of the relationship of employment,
3. Term and dates of termination of employment,
4. Customary place of work,

5. Applicable collective bargaining agreement and level at which employer has been placed in the scheme of remuneration,
6. Starting remuneration and dates of payment,
7. Amount of annual vacation,
8. Hours of work agreed upon on a daily or weekly basis
9. Name and address of the providential fund set up for employees.

Termination of the relationship of employment

A relationship of employment can be concluded for an undefined or limited term. In both cases, the first few months of employment can be defined as being a trial period. In it, each side can end at any time the relationship (without having to adhere to a term). A relationship of employment not subject to limitations of term has a term of termination amounting to between six weeks and five months (depending on how many years the employee has been working for the employer). An ahead-of-term termination of limited term employment is possible only in exceptional cases.

Collective bargaining agreement

A collective bargaining agreement is an agreement concluded by the entities representing the interests of the employers and employees, and containing dedicated categories detailing the supplemental rights and duties of employers and employees to each other. Which collective bargaining agreement applies to a company depends on the employer's trade or on the sector in which the employer operates. The contract of employment is not to exclude or limit the stipulations of the collective bargaining agreement. A contract of employment may, however, contain regulations which are more advantageous to the employee as those foreseen by the collective bargaining agreement.

Social security

An employer is required to register the employee with the social security system, and to withhold from the employee's wages earnings taxes and social accounts contributions. These are then to be transferred to the respective authorities. An employer is also required to transfer the employer's share of social security payments to the social security system. This amounts to some 23% of the employee's gross remuneration.

Non-Austrian employees

Residence permits

Persons who are not citizens of an EEC member countries require to reside in Austria a residence permit (a residence visa or

a permanent residence permit). The application for the granting of such a permit is to be undertaken by the person, in person, at the Austrian embassy in the person's country of residence, and prior to his or her entry into Austria. There are exceptions to this rule. These applications can be made in Austria, to provide examples, in those cases in which the foreigner is entitled to travel into Austria on a non-visa basis, and in which the application is made during his or her legally-permissible stay in the country. Applications for the extending of permits can, as a rule, be made with the authorities responsible for such in Austria. This does, however, have to be undertaken prior to the expiry of the residence permit.

Austria's federal government sets every year the quotas (numbers) for the residence permits it is prepared to give to 'key professionals' (managers and holders of specialized skills).

Part of the application for a permanent residence permit is the foreigner's committing himself or herself to entering into an agreement of integration. This stipulates that he or she will acquire a basic proficiency in German within five years.

The granting of a permanent residence permit releases the key professionals from obligations to secure other approvals for employment.

Citizens of third party countries not planning on staying in Austria require a residency approval for their time in the country. This kind of permit is of special interest to professionals subject to being rotated (executives working for international groups whose employment at a group company in Austria is of limited term) and to non-Austrian companies which do not have operating headquarters in Austria, and which second their employees to the country so as to fulfill contractual obligations entered into with an Austrian commissioning party. A residence permit application has to be accompanied by the granting of a work permit, or by a commitment rendered by Austria's labor market service authority to grant such.

Work permit

As a general rule, required for the employment of citizens from third party countries is the employer's securing a work permit from Austria's labor market service authority. Austria has exercised the option arising from the accession of countries to the EU of establishing regulations of transition. These stipulate that citizens of the 'new' EU member countries—Bulgaria, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, the Czech Republic and Hungary—still require a work permit. Excepted from this rule are, however, persons who had been

permitted for a long period of time to work in Austria, as well as those who have established residency in Austria, who are self-employed, and who can prove that they have a regular source of income.

A residence permit is requisite for the granting of a work permit. The converse also holds true. To receive both, a so-called "certification of securing" can be applied for at Austria's labor market service authority. The issuing of this certificate takes up to six weeks. The certificate of securing enables the foreigner for whom employment is envisioned to apply for a residence permit. Upon the provision of the residence permit and certificate of securing, the granting of the final work permit is then only a formality taking, as a rule, not more than a week or two.

The Foreigner Employment Act does not apply to service contracts. This means that no work permit is required. Important in such cases is that the facility in question has been stipulated, and that the contract does not exhibit the features of an employment contract, such as economic dependency, requirement to observe instructions, and regularity of performance.

Second Part – Checklist for the Founding of a Company

I. Founder / Investor

- 1) Name (company name)
- 2) Location and address
- 3) Other partners participating in the founding of the company (financial and strategic partners)

II. Corporate activities

- 1) Production/trading/distribution/provision of services
- 2) Kind of goods/services
- 3) Import/export
- 4) Special kinds of distribution (such as mail order trading, operating of outlets)
- 5) B2C or B2B

III. Corporate headquarters

- 1) Address
- 2) Addresses of the branch offices
- 3) Office, production and other business and sales facilities and premises
- 4) Sale/rental/leasing
- 5) Approval by (foreign) property regulation authorities
- 6) Approval to operate corporate facilities
- 7) Construction permits
- 8) Environmental protection permit
- 9) Other permits
- 10) Access ways
- 11) Employee protection

IV. Legal form of company

- 1) Representative office
- 2) Branch office of a foreign company
- 3) Dormant participation in a non-affiliated company
- 4) Takeover of an existing company through purchase or leasing
- 5) Single-owner company (single-person company)
- 6) Limited liability company
- 7) Joint stock company
- 8) General commercial partnership
- 9) Limited commercial partnership

V. Capital required

- 1) Amount of capital
- 2) Own or outside funds
- 3) Participatory relationships among two or more partners

VI. Company name

- 1) Name derived from activity or from person's name
- 2) Are there trademarks registered nationally or internationally bearing the name?
- 3) Are there any similar names?
- 4) Expert audit from chamber of commerce on the permissibility of the component parts of the company's name and (if necessary) such suffixes as "Österreich" or "Austria"

VII. Managing directors and authorized signatories

- 1) Name, date of birth
- 2) Profession
- 3) Place of residence and of customary sojourning
- 4) Nature of power of representation (individual/collective)
- 5) Corporate bylaws

VIII. Other authorized agents

- 1) Name, date of birth
- 2) Profession
- 3) Place of residence
- 4) Scope of authorization
- 5) Nature of power of representation (individual/collective)
- 6) Written power of authorization

IX. Other employees

- 1) Number
- 2) Self-employed/permanently-employed employees
- 3) Workers/salaried employees
- 4) Professionals (lawyers, tax consultants)
- 5) Austrians/non-Austrians

X. Employment law

- 1) Collective bargaining agreement?
- 2) Notice of employment/written contract of employment?

- 3) Flexible/preset times of work; normal times of work/overtime
- 4) Employee protection regulations
- 5) Requirement to form works council?
- 6) Social insurance
- 7) Work/residence permits

XI. Supervisory board

- 1) Voluntary/required
- 2) Number of members
- 3) Names, dates of birth, professions, places of residence of members
- 4) Bylaws

XII. Trading regulations

- 1) Nature of trade
- 2) Managing director satisfying trading regulations
- 3) Qualifications of managing director
- 4) Name, date of birth, profession, place of residence of managing director
- 5) Launching of exercising of trade

XIII. General terms and conditions

- 1) To be assumed from non-Austrian company / corporate parent, or to be formulated
- 2) Conditions of procurement/sale
- 3) Invoice forms
- 4) Order forms
- 5) Delivery forms
- 6) Other forms or standard contracts
- 7) Product liability
- 8) Consumer protection

XIV. Trademarks

- 1) Which international-level trademarks already exist?
- 2) Are trademarks to be transferred?
- 3) Which trademarks are to be registered?
- 4) Which goods/services are to be included in the listing of goods and services?
- 5) Who is to be the owner of the trademarks?
- 6) Are licenses to be granted? Are licenses for non-corporate trademarks to be procured?

XV. Models

- 1) Which national/international models already exist?
- 2) Are models to be transferred?
- 3) Which models are to be registered?
- 4) Who is to be the owner of the patterns?
- 5) Are licenses to be granted? Are licenses for non-corporate models to be procured?

XVI. Patents

- 1) Which national/international patents already exist?
- 2) Are patents to be transferred?
- 3) Which patents are to be registered?
- 4) Who is to be the owner of the patents?
- 5) Are licenses to be granted? Are licenses for non-corporate patents to be procured?
- 6) Are there utility patterns ("small" patents)?

XVII. Copyrights/knowhow

- 1) Are works whose copyrights are owned by others being used? Is outside knowhow required?
- 2) Is a contract foreseeing the utilization of non-corporate works or knowhow to be concluded? Are rights of utilization for proprietary works or knowhow to be granted?

XVIII. Website

- 1) Is a Website to be maintained?
- 2) Which domain will be selected (so as to observe non-corporate rights of identification and trademark and name ownership)?
- 3) In which markets is/will the company be active? – which TLDs (such generic ones as .com or such country ones as .at or .de) will be thus required?
- 4) Observation of the obligations to provide information laid down in Austria's E-Commerce Act and in the EU's long-distance sales directive, which has been implemented in Austria by its Consumer Protection Act.

XIX. Working relationships

- 1) Contracts of cooperation
- 2) Anti-trust limitations
- 3) Forming of group
- 4) Merger

XX. Data protection

- 1) Is data stemming from persons gathered/processed/ utilized/relayed?
- 2) Any special kinds of data protection (for example: bank secrecy) required?

XXI. Labeling of goods

- 1) Do special-purpose regulations (for instance: those imposed by food processing acts) exist?
- 2) Have anti-trust authorities issued permissions to use the labeling

XXII. Accounting

- 1) Proprietary/outsourced
- 2) Auditing

XXIII. Taxes and charges

- 1) Income tax/corporate income tax
- 2) Local tax
- 3) Turnover tax
- 4) Double taxation

XXIV. Term of operation

- 1) One-time/limited term/unlimited term of operation
- 2) Trial run
- 3) Plans for expansion

Third Part – Addresses

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www.investinaustria.at

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portal.wko.at

Office of the Federal Chancellery

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www.bka.gv.at

Ministry of Economy, Family and Youth

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