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Austria

CORPORATE GOVERNANCE

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

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AUSTRIA
CORPORATE GOVERNANCE

1. What are the most common types of corporate business entity and what are the main structural differences between them?

In Austria, entities can roughly be divided into two different categories, corporations, and partnerships. The main difference between partnerships and corporations is that in partnerships the focus is on the partners involved, and in corporations on the capital contributed. The difference becomes apparent when it comes to change of shareholders. While a change of shareholders in corporations by means of a transfer of shares is in principle possible without any approval to be provided by other shareholders (except if there is a special clause in the shareholders' agreement), a change of shareholders in partnerships represents a fundamental change in the partnership, which usually requires an amendment to the partnership agreement. In both cases, the shareholders' agreement may provide otherwise. A characteristic feature of corporations is the limitation of liability of its shareholders. The contribution of shareholders of corporations is limited to their capital contribution only. Except under certain conditions, they in general can not become liable to creditors. The shareholders of partnerships, on the other hand, are directly liable to the company's creditors with their private assets in addition to the company. This liability is unlimited, at least as far as general partners (so-called *Komplementäre* or shareholders of General Partnerships, so-called *Offene Gesellschaft*) are concerned. The limited partners (*Kommanditisten*) of limited partnerships (*Kommanditgesellschaften, KG*), on the other hand, are only liable to a limited extent with their liability sum (so-called *Haftsumme*) registered in the commercial register, which can be set at EUR 1,00 at lowest. The most widely used corporation in Austria is the limited liability company (*Gesellschaft mit beschränkter Haftung*, *GmbH*). In addition, there is the stock corporation (*Aktiengesellschaft*, *AG*) and the occasionally used domestic European company (*Societas Europaea*, *SE*). While both, AG and SE are far less common than the GmbH, these are the only vehicles which are eligible to be listed on a stock exchange in Austria. The most common partnerships are the general partnership (*Offene Gesellschaft*, *OG*) and the limited partnership (*Kommanditgesellschaft*, *KG*). In addition, a hybrid type between a corporation and a partnership is often found, namely the GmbH & Co KG, which is in principle a KG, but which in turn has a GmbH (limited liability company) as its only general partner. Contrary to corporations which have specific minimum capital requirements (GmbH: EUR 35,000, AG: EUR 70,000) and follow a strict capital maintenance regime, partnerships have no minimal capital requirement. One exception is the already mentioned GmbH & Co KG, which because of its hybrid character falls under a similar strict capital maintenance regime as corporations. When it comes to corporate governance, the main difference between corporations and partnerships is the fact that partnerships are compulsory self-governed (by their general partners), and corporations can also be governed by external management. Between corporations the corporate governance differs insofar as (in addition to shareholders' meetings) AGs have a two-tier system consisting of a management board (*Vorstand*), which manages and represents the company, and a mandatory supervisory board (*Aufsichtsrat*), which appoints and supervises the management board, while GmbHs have only managing directors (*Geschäftsführer*), but no mandatory supervisory board. Only in the case of particularly large GmbHs (for example with an average of more than 300 employees) a supervisory board similar to an AG must be established. The GmbH can also set up a supervisory board voluntarily. While the management board of an AG acts independently and without being legally bound by instructions of the shareholders or the supervisory board, the managing directors of a GmbH are subject to legally binding instructions of the shareholders' meeting. The domestic SE may have either a single-tier (administrative board) or a two-tier (management and supervisory board) system. Shareholders have limited rights in either of the two systems. The SE with a single-tier system (also called a monistic SE) has an administrative board (*Verwaltungsrat*), which has the authority to appoint, issue guidelines for and control the management of the company and managing directors (*geschäftsführende Direktoren*) who are in charge of

representing the company and operating the business. The SE with a two-tier system (also called dualistic SE) corresponds to the AG management model and therefore has a management board and a supervisory board.

In the following, the focus is on corporations (rather than partnerships), as these are the entities typically used in business transactions.

2. What are the current key topical legal issues, developments, trends and challenges in corporate governance in this jurisdiction?

For several years, efforts have been made by the Austrian lawmaker to introduce a capital light variant of the GmbH, similar to the model of the British LLC (*limited liability company*) or the German UG (*Unternehmensgesellschaft*), targeting in particular the domestic start-up scene. The current government program envisages a new company form, the so-called "Austrian Limited", which shall be less capital intensive, more internationalised and easier to set up than the regular GmbH. Key features of the envisaged Austrian Limited are an unbureaucratic formation through digital channels, under elimination of the notarial deed otherwise mandatory for a GmbH and the possibility to file articles of association and shareholder resolutions with the register also in English. In addition, it shall be possible to establish the Austrian Limited with little or no capital and to transfer its shares more easily. Also, the shareholders may be more flexible in generating different types of shares with different rights (especially regarding votes combined with each share). The ultimate goal is to strengthen Austria as a business location by offering an internationally attractive, easy-to-handle, and capital light new company form.

One trend in Austrian corporate governance is the focus on improving sustainability and diversity. Since 2017, certain state-owned companies and companies in the financial service and insurance industry are required to disclose detailed reports on their environmental impact according to the *Non-Financial Reporting Directive* (NFRD), which was implemented in Austria by the Sustainability and Diversity Improvement Act (*Nachhaltigkeits- und Diversitätsverbesserungsgesetz*, NaDiVeG). This reporting requirement has now been extended to SMEs, following the Corporate Sustainability Reporting Directive (CSRD). Another goal in terms of improvement of diversity is the equality of men and women in supervisory board and management positions. In 2018, the Equality of Women and Men on Supervisory Boards Act (*Gleichstellungsgesetz von Frauen und Männern im Aufsichtsrat*, GFMA-G,) was implemented, which demands a 30% quota of women on supervisory boards for listed and large companies if certain criteria are met.

During the pandemic, the lawmaker made it possible for corporations to hold virtual shareholders' meetings and/or board meetings. This exemption is still valid until 30 June 2023. The lawmaker also made it possible during the pandemic to carry out notarial certifications and authentications virtually using a video conference and a digital signature of the participants, only requiring a two-way real-time connection between the notary and the participants consisting of audio and video. The possibility of virtual certifications and authentications, which was initially intended to be temporary, has now been incorporated into permanent law.

3. Who are the key persons involved in the management of each type of entity?

In the AG and the dualistic SE, which are both governed by a two-tier system, the key persons are the members of the management board (*Vorstand*) and of the supervisory board (*Aufsichtsrat*). Both the management board and the supervisory board each elect a chairman. In the monistic SE the key persons involved in the management are the members of the administrative board (*Verwaltungsrat*) and the managing directors (*Geschäftsführende Direktoren*), while the latter mainly focus on the daily business. The GmbH is governed by the managing directors (*Geschäftsführer*), which in turn are subject to legally binding instructions by the shareholders' meeting. Only in certain cases, a supervisory board must be established in a GmbH. In partnerships, the key persons involved in the management are the general partners entrusted with the management of the company. The statutory model is that all general partners are authorised to manage and represent the company jointly, however, usually the partnership agreement stipulates certain partners as managing partners excluding all others. Further, it is possible and in certain types of businesses fairly common in Austria to establish an advisory board (*Beirat*), which advises the management. This body can either have a mere advisory function, or it can be equipped with rights and powers equal to those of a supervisory board.

4. How are responsibility and management power divided between the entity's management and its economic owners? How are decisions or approvals of the

owners made or given (e.g. at a meeting or in writing)

In the AG and the dualistic SE, the day-to-day operational business is carried out by the management board, whereas in the monistic SE, and the GmbH, the managing directors are responsible for the day-to-day business. It should be noted, however, that the managing directors of the GmbH are restricted and bound by the instructions of the shareholders' meeting and according to the prevailing view in legal literature, the managing directors of a monistic SE are subject to instructions by the administrative board. In the monistic SE, the shareholders' meeting has more power since it has a direct influence on the management through the appointment and dismissal authority of the administrative board. The shareholders of an AG and a dualistic SE have, apart from the limited statutory rights, no possibility of influencing the management decisions directly but only indirectly through the supervisory board, which is appointed by the shareholders.

Shareholders' meetings of corporations were originally designed to be held in person. However, as already mentioned above in question 2., the possibilities to hold virtual meeting have been facilitated during the pandemic and these facilitations are still in effect until 30 June 2023. For the shareholders of a GmbH it was, in addition, already possible to pass a resolution in written form by circular or as a virtual meeting, if all shareholders agreed or if it is stipulated in the articles of association. By that, the shareholders do not all have to be present at the same time and at the same place. Shareholders of an AG/SE have the option of remote participation in the shareholders' meeting if a corresponding provision of the articles of association authorises the management board to convene such a meeting.

5. What are the principal sources of corporate governance requirements and practices? Are entities required to comply with a specific code of corporate governance?

In Austria, the main regulations for partnerships are set forth in the Austrian Commercial Code (*Unternehmensgesetzbuch*, UGB). The UGB also contains certain general principles that apply to all types of companies. The legal framework for corporations is mainly stipulated in the Austrian Limited Liability Companies Act (*GmbH-Gesetz*, GmbHG), and the Austrian Stock Corporation Act (*Aktiengesetz*, AktG). The regulations on the domestic SE can be found in the Austrian SE Act (*SE-Gesetz*, SEG).

The legislation on reorganisations, such as mergers, demergers and other corporate reorganisations is rather fragmented in Austria and can be found for example in the GmbHG, the AktG, the Austrian EU-Merger Act (*EU-Verschmelzungsgesetz*, EU-VerschG) and the Conversion Act (*Umwandlungsgesetz*, UmwG), all of which are, for the most part, implementing laws of European directives. Recently there has been some movement towards unification, as in response to the EU-Mobility Directive (*EU-Mobilitätsrichtlinie*), the lawmaker has published a draft of the Austrian EU-Reorganisation Act (*EU-Umgründungsgesetz*), which uniformly regulates cross-border conversions, mergers and demergers and replaces the previous EU-VerschG.

In addition, the Austrian Corporate Governance Code (*Österreichischer Corporate Governance Kodex,* ÖCGK) provides an additional regulatory framework for the management and supervision of companies. The ÖCGK contains three different categories of rules: Legal Requirement (L), Comply or Explain (C), or Recommendation (R). If the rule is an "L-rule", it is based on a mandatory legal requirement. For the "C-rule", an explanation must be given as to why this rule is not being followed. Finally, the "R-regulation" is a suggestion, which does not have to be complied with and which does not have to be explained in case of non-compliance. The ÖCGK aims primarily at Austrian listed stock corporations, including listed European stock corporations registered in Austria. The rules set out in the ÖCGK do not have the rank of mandatory laws and are merely recommendations to which companies may voluntarily adhere. However, a declaration of commitment to the ÖCGK is a prerequisite for being listed in the Austrian stock exchange. As a result, the ÖCGK has mandatory character for such companies.

6. How is the board or other governing body constituted?

The management board in a two-tier system, such as AG and dualistic SE, consists of one or more members, which have to be individuals. The same applies to the management in a GmbH and a monistic SE. Exceptions apply in certain sensible industries, for example banks or listed companies, which have to adhere to a "four-eyes principle" and thus require the management board to consist of at least two members. The number of management board members, including its maximum or minimum number, can be stipulated in the articles of association. The management board may appoint a chairperson from among its members. In a monistic SE, the administrative board is supposed to appoint a

chairperson among its midst and at least one deputy in accordance with the detailed provisions of the articles of association. The chairman and his first deputy may not at the same time be managing directors.

The supervisory board, as the controlling body of the management board, consists of at least three and a maximum of 20 members, which have to be individuals. The supervisory board may appoint a chairperson from among its members. In the GmbH, a supervisory board is only mandatory under certain preconditions. As a rule of thumb, this is the case when a GmbH has more than 300 employees on average or has a share capital of more than EUR 70,000 and over 50 shareholders. In addition, more specific provisions apply which can lead to the requirement of a supervisory board (for example if a GmbH acts as a holding company, which controls another GmbH, which in turn has a mandatory supervisory board). Other than that, a GmbH can always choose to set up a supervisory board voluntarily.

7. How are the members of the board appointed and removed? What influence do the entity's owners have over this?

Members of the management board of an AG and a dualistic SE are appointed and dismissed by the supervisory board and, in case of a monistic SE, the managing directors are appointed and dismissed by the administrative board. Members of the supervisory and administrative board in case of a monistic SE are appointed and dismissed by the shareholders' meeting. As the owners of the company control the supervisory board (considering that employee representatives make up only one third of the supervisory board members, see question 22), they can also indirectly exercise certain control over the management board. The GmbH is ultimately governed by its shareholders (the shareholders' meeting), which is the competent body for appointing and removing the company's managing directors and giving binding instructions to the managing directors.

8. Who typically serves on the board? Are there requirements that govern board composition or impose qualifications for board members regarding independence, diversity, tenure or succession?

Members of the management board generally require the necessary professional qualification in order to lead the business with due care of a prudent and diligent businessperson. Special regulations apply in certain sensitive industries, such as banks or insurance companies, where they have to prove their fit and properness. The management board of an AG/dualistic SE is appointed for a term of maximum five years and can be reappointed. For GmbH managing directors and administrative board members of a monistic SE, there is no time limit on the mandate, unless the articles of association provide otherwise. The managing directors of a monistic SE are in principle appointed for a term of five years, whereas reappointment is permissible. A women's quota does not have to be fulfilled for the management board in Austria. Corporations listed at an Austrian exchange and other companies which voluntarily submit to the ÖCGK, are required to prepare a Corporate Governance Report, which must include a diversity concept. This diversity concept must explain how the composition of the management board is determined and stipulate criteria, such as age, gender, and educational and professional background. The ÖCGK also touches on the remuneration of the members of the management board.

Regarding the composition of the supervisory board, please refer to question number 6. and question number 2. regarding the women's quota. Concerning qualifications, in theory the same principles as for the management board members apply. Thus, the supervisory board members require professional qualifications which fit to the industry in which the company's business operates in order to be able to effectively monitor and supervise the management board's conduct of business.

Certain statutory provisions on appointments must be observed when appointing members of the management board and supervisory board. For example, a member of the management board may at the same time not serve on the supervisory board. In addition, the supervisory board member which is also a member of the management board of the subsidiary and therefore indirectly supervises himself/herself is prohibited as well as so-called cross-involvement when a supervisory board and management board member act in reversed roles in other companies.

In addition, certain mandate limits must be observed. A maximum limit of ten mandates (eight for listed companies) applies to supervisory board members (in AG/SE/GmbH), with chairmanship mandates counting double. For listed companies, there is also a two years' cool-off-period during which a former management board member may not be appointed supervisory board member. For management board mandates in listed companies, the ÖCGK imposes the restriction that management board members may not hold more than four supervisory board mandates (chairmanship counts double) in non-group companies (C-Rule 26).

9. What is the role of the board with respect to setting and changing strategy?

In the two-tier system (AG/dualistic SE) the setting and changing of the company's strategy is in the sole discretion of the management board. The supervisory board has no influence on the company's strategy. In contrast to that, the administrative board of a monistic SE is entitled to set and change the corporate strategy and the managing directors are required to implement such strategy as well as to manage the day-to-day business. In the GmbH, outlining the corporate strategy is ultimately in the responsibility of shareholders.

10. How are members of the board compensated? Is their remuneration regulated in any way?

Management board members are remunerated based on an employment contract with the company. Corporations which are subject to the ÖCGK (companies listed at an Austrian exchange and other companies, which voluntarily submit to the ÖCGK) have to adhere to certain rules when it comes to remuneration. As a general rule, it is recommended that the management remuneration should be appropriate and linked to long-term performance measures. According to Rule 27 of the ÖCGK ("Comply or Explain") the compensation system must be transparently disclosed in the notes to the annual financial statements. A "legal requirement" in Rule 50 of the ÖCGK stipulates that the annual remuneration of the supervisory board is determined by the shareholders' meeting or by the articles of association. The supervisory board should not receive performance-related compensation. According to the ÖCGK, the remuneration of each member of the supervisory board must be published individually. The supervisory board is supposed to ensure that the remunerations of the management board members are appropriate in relation to the tasks and performance of the individual board member, to the situation of the company and to the customary remuneration, and that long-term behavioural incentives are set for sustainable corporate development. In listed companies, the supervisory board has to establish a remuneration policy which must include the various fixed and variable remuneration components that may be granted to members of the management board, including all bonuses and other benefits in any form (including stock-based compensation), stating their respective relative proportions. The remuneration policy must also explain how the remuneration and employment conditions of the employees of the company have been taken into account in determining the remuneration policy.

11. Do members of the board owe any fiduciary or special duties and, if so, to whom? What are the potential consequences of breaching any such duties?

Members of the management board have a fiduciary duty towards the company and the shareholders and are thus required to manage the business and the affairs of the company with due care of a prudent and diligent businessperson. They are required to act in accordance with the provisions of the law, the articles of association and the bylaws. When it comes to their actions, the managers have to make informed decisions which are aligned with the company's best interest (Business Judgment Rule). If the members of the management board breach their duties and the safe harbour rules of the Business Judgment Rule do not apply, they may become liable for any damages that may occur towards the company. The same principles apply to the members of the supervisory board in case of a breach of their duties. Management boards and managing directors can protect themselves before making economic decisions by obtaining a resolution on instructions from the supervisory board or the shareholders' meeting and thus avoid personal liability towards the company if applicable.

12. Are indemnities and/or insurance permitted to cover board members' potential personal liability? If permitted, are such protections typical or rare?

Members of the management board and supervisory board are personally liable for acts of culpable breach of duty. They can, however, protect themselves from personal liability (vis-à-vis the company) with a D&O insurance. Usually, such D&O insurance is obtained by the company for the benefit of the management board members and executive employees, with the insurance premiums being borne by the company. In individual cases, however, management board members also purchase their own insurance policies. D&O insurance has become increasingly important in business life in Austria in recent years. According to industry estimates, more than 95% of the management boards of large corporations have D&O insurance, and small and medium-sized companies are also making increasing use of D&O insurance.

When it comes to indemnities, close attention must be paid to when a company indemnifies its board members for liabilities (for example administrative fines). A general indemnification for any liability given by the

company in advance is considered to against *bonos mores* and is therefore invalid. However, it may be legitimate for the company to indemnify the management board against liability after the damage has occurred.

13. How (and by whom) are board members typically overseen and evaluated?

The management board of an AG/dualistic SE is supervised by and has to report to the supervisory board. The shareholders' meeting on the other hand appoints, discharges and, if necessary, dismisses the members of the supervisory board. It also discharges the members of the management board. Discharge has the effect of releasing the board members from liability for known circumstances. The discharge may also be refused under certain circumstances.

In the monistic SE, the managing directors are overseen by the administrative board. The administrative board is appointed and dismissed by the shareholders' meeting. The managing directors are appointed and dismissed by the administrative board. In the GmbH, the shareholders' meeting monitors, appoints and dismisses the managing directors and usually grants them discharge at the end of the year, when the annual accounts are approved.

14. Is the board required to engage actively with the entity's economic owners? If so, how does it do this and report on its actions?

Once a year, the management board/managing directors must convene an annual shareholders' meeting and report to the shareholders. In addition to that, the management board can also share information with its shareholders and investors during the year, as long as all shareholders are treated equally in terms of their information rights and as long as not sensitive data and/or business secrets are being released to the public. In addition, articles of association and investment agreements regularly contain clauses requiring the management to submit regular reports to shareholders and investors and providing for approval reservations or veto rights for the conclusion of certain transactions. In the case of extraordinary business measures, the consent of the shareholders of a GmbH must be obtained. According to established case law, this also applies to a limited extent to the AG, insofar as serious decisions are involved which interfere with the rights of the shareholders, such as the spin-off of a business unit, which constitutes the essential assets of the AG, to a subsidiary.

15. Are dual-class and multi-class capital structures permitted? If so, how common are they?

In the AG, it is possible to issue ordinary shares and preferred shares. Preferred shares can be non-voting shares and can be structured with special profit participation rights and are therefore typically suitable for employee share programs or for specific investor groups. Preferred shares without voting rights may only be issued up to one third of the company's share capital.

As regards the GmbH, the creation of multi-class capital structures is in principle not intended in Austria. However, with certain provisions in the company's articles of association, a similar effect can be achieved. The new corporate form of "Austria-Limited" intended by the lawmaker is designed to facilitate this matter, as already mentioned in question 2.

16. What financial and non-financial information must an entity disclose to the public? How does it do this?

Basic information regarding the company, like registered office, management etc can be found in the publicly accessible company register. This information includes the company's shareholders for some types of entities, foremost the GmbH and partnerships. The shareholders of an AG, for example, are not registered with the commercial register unless there is only one shareholder holding all the shares. In the commercial register, the financial statements of all corporations (AG/SE/GmbH) and other larger types of businesses which surpass certain turnover thresholds are also disclosed. Information regarding the company's ultimate beneficial owners must be disclosed in a separate publicly accessible register, although personal information can be anonymised under certain preconditions.

17. Can an entity's economic owners propose matters for a vote or call a special meeting? If so, what is the procedure?

There are certain minority rights to which the shareholders of the GmbH are usually entitled, from 10 % of the share capital (relevant minority thresholds for the AG/SE are 5 % and 10 %). The minority shareholders for example have the right to convene a shareholders' meeting and to add certain topics to the agenda of an already convened shareholders' meeting, in case of a

GmbH also to inspect the books of the company, and to have an auditor appointed who reviews the last financial statement of the company in course of a so-called "special audit" (*Sonderprüfung*).

18. What rights do investors have to take enforcement action against an entity and/or the members of its board?

In a GmbH the shareholders' meeting, as the ultimate governing body, can directly exert its influence on the management through binding instructions or through general frameworks such as rules of procedure (bylaws) for the managing directors. The majority of the shareholders' meeting can also dismiss the managing directors at any time also without cause. A minority shareholder or a minority of shareholders (not representing the required majority to dismiss the managing director ordinarily) can demand the dismissal of the management for cause by filing a lawsuit if a resolution to dismiss the management is not passed. The company (in such case represented by the supervisory board) can sue the management for damages, if he or she acts against the company's interests or the articles of association/bylaws. Investors with a 10 % minority can also apply for the appointment of a special auditor, see above question 2.

Similar provisions apply to the members of the supervisory board.

19. Is shareholder activism common? If so, what are the recent trends? How can shareholders exert influence on a corporate entity's management?

An increase in shareholder activism is visible in Austria, especially in the shape of funds, which try to exert certain influence on a listed company's management by acquiring a stake, which gives them a blocking minority and thereby assert their interests. In some cases, activists also pursue the goal of replacing the management with individuals convenient to them. Activist shareholders usually pursue the goal of unlocking value in the company through certain measures, such as cost reductions or changes in business strategy, and then returning this value to the shareholders in the form of dividends or share buyback programs. Shareholder activism is usually exercised by using (minority) shareholder rights in the shareholders' meeting and by exerting influence on the supervisory board, e.g. publicly made available letters addressing the performance of the board of listed companies.

20. Are shareholder meetings required to be held annually, or at any other specified time? What information needs to be presented at a shareholder meeting?

The management is obliged to hold a shareholders' meeting once a year, within the first eight months of the financial year, whereas in a GmbH such requirement can be omitted if all shareholders agree or if there is a certain provision in the articles of association. For partnerships, there is no such statutory requirement. The agenda containing the topics to be discussed must be enclosed before the meeting. The usual recurring topics of the annual shareholders' meeting are the adoption of the financial statements, the distribution of profits and the discharge of the board members.

21. Are there any organisations that provide voting recommendations, or otherwise advise or influence investors on whether and how to vote (whether generally in the market or with respect to a particular entity)?

Occasionally there are proxy advisors, such as Glass Lewis, ISS, or Industriellenvereinigung (*Federation of Austrian Industry*) offering advice to shareholders on issues when making decisions.

22. What role do other stakeholders, including debt-holders, employees and other workers, suppliers, customers, regulators, the government and communities typically play in the corporate governance of a corporate entity?

The interests of the employees are taken into account through mandatory co-determination on the supervisory board. In Austria, so-called one-third parity (*Drittelparität*) prevails, which means that one employee representative must be appointed to the supervisory board for every two shareholder representatives. Furthermore, employees can form a worker's council (*Betriebsrat*) if more than five permanent employees are employed, which has certain consulting and approval functions in various areas.

Generally speaking, debtholders, consumers, and suppliers have no direct influence on the governance of the company. The government has influence on the corporate governance of state-owned companies and companies in certain sensitive sectors.

23. How are the interests of non-shareholder stakeholders factored into the decisions of the governing body of a corporate entity?

Creditors, most notably banks and other external capital providers, regularly secure their influence in companies by means of so-called covenants, according to which they secure information and inspection rights and reserve approval or veto powers in certain areas. With regard to the influence of employee representatives, see question 22.

24. What consideration is typically given to ESG issues by corporate entities? What are the key legal obligations with respect to ESG matters?

The most recent development in ESG is the Supply Chain Directive, which will be in force with the beginning of the year 2023 and has not yet been incorporated into Austrian law. The directive deals with due diligence, risk management and reporting obligations in relation to human rights and the environment. In this context, numerous changes to the ÖCGK are expected with regard to ESG.

25. What stewardship, disclosure and other responsibilities do investors have with regard to the corporate governance of an entity in which they are invested or their level of investment or interest in the entity?

Investors are required to disclose the (direct or indirect) acquisition and sale of shares in listed companies to the company, the Austrian Stock Exchange and the Financial Market Authority (FMA) at short notice when certain participation thresholds are met (i.e. 4%, 5%, 10%, 15%, 25%, 30%, 35%, 40%, 45%, 50%, 75% and 90% of voting shares).

There is also an obligation to disclose to the Austrian Takeover Commission once a shareholder

i. directly or indirectly holds more than 26 % and less than 30 %, or
ii. directly or indirectly holds more than 30 % (“controlling shareholder”)

of the voting rights attributable to the permanent voting rights in a listed company, while in the latter case (ii) an obligation of the “controlling shareholder” to make a cash compensation offer to all shareholders of the listed company under the Austrian Takeover Act arises.

26. What are the current perspectives in this jurisdiction regarding short-term investment objectives in contrast with the promotion of sustainable longer-term value creation?

In Austria, long-term and sustainable investments are incentivised by the lawmaker in different ways. Apart from tax regulations that put short-term “speculative” versus long-term investments at a disadvantage, there are various subsidy and grant programs which favour long-term and sustainable investments, for example in the area of electronic vehicles, renewable energies or digitalisation.

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