

# Austria

## 1. Aktiengesellschaft

*Brief overview: Establishment and structure of company*

### Statutory basis

Aktiengesetz of 1965 (AktG)

### Requirements for establishment

- Establishment by at least 2 people
- Company agreement
- Notary's certificate
- Written record of establishment
- Recorded in company register

### Minimum capital

70,000 euro

### Organisation

#### 1) General meeting (of shareholders)

Tasks include

- Capital increase/reduction
- Merger with other company
- Conversion into different company form
- Dissolution of the company
- Election and de-selection of stockholder representatives on Supervisory Board
- Discharge of Board of Management and Supervisory Board
- Decisions on disposal of profits
- Selection of auditor
- Amendments to statutes and other basic decisions

Meetings: 1x year; extraordinary meetings are possible

#### 2) Board of Management

Tasks include

- Managing the business
- Representation of the company internally and externally
- Quarterly obligation to report to Supervisory Board
- Preparation of year-end financial statement
- Convening of General Meeting
- Proposals for disposal of profits

Number: one or more people,

Term of office: 5 years, re-election possible

### 3) Supervisory Board

Tasks include

- Scrutiny of management
- Approval of particularly important management measures (incl. acquisition and sale of shares in companies, acquisition, sales, closure of companies and plants, creations and closure of branches, commencement and termination of business branches-types of production, assignment of signatory powers)
- Nomination and deselection of Board of Management
- Scrutiny of year-end financial statement
- Approval of year-end financial statement
- Convening an Extraordinary General Meeting if this is necessary for the good of the company

Number: at least 3 people, term of office: ca. 4 years

### 4) Auditor

Examination of year-end financial statement

<i>Brief overview: Employee participation at board level</i>
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**Yes**, Supervisory Board is mandatory.

**Nomination of employee representatives:** see § 110 Company Constitution Act (ArbVG); employee representatives on Supervisory Board must be members of the works council and have active rights of election to the works council. For this reason no full-time union officials can be seconded to the Supervisory Board, as they are not members of the works council and do not have active rights of election to the works council.

**Number of employee representatives on Supervisory Board:** 1 employee representative for every 2 representatives of the shareholders (“one-third participation”; minimum number of representatives of shareholders: 3, otherwise depends on equity capital (up to 350,000 euro, maximum of 7).

**Rights and obligations of employee representatives on Supervisory Board:** as those of shareholder representatives, with the following exception: No right to Supervisory Board salary, only reimbursement of reasonable costs; no decision-taking rights, for example, in the case of Board of Management contracts

**Term of office:** ca. 4 years

**Duty of confidentiality:** Yes, in the case of confidential material. Confidential material: information that is only available to a limited circle and whose divulgence to outsiders could be detrimental to the interests of the company. Passing on of such information to employee representatives (works council members) is regarded as permissible, keeping in mind the interests of the company.

**Decision-taking on Supervisory Board:** simple majority system

## 2. Gesellschaft mit beschränkter Haftung

*Brief overview: Establishment and structure of company*

### Statutory basis

GmbHG

### Requirements for establishment

- Establishment by one or more people
- Affiliation agreement (= statutes)
- Recorded in company register
- Certificate of nonobjection from financial authorities for fees and transaction taxes

### Minimum capital

35,000 euro

### Organisation

#### 1) General Meeting of shareholders = highest executive body

Tasks include

- Nomination and deselection of Managing Director
- Right to instruct and control Managing Director
- Examination and approval of year-end financial statement
- Discharge of management and Supervisory Board
- Decision on disposal of profits
- Amendment of company agreement

#### 2) Managing Director

Tasks

- Management of the company
- Representation of the company internally and externally
- Preparation of year-end financial statement
- Duty of information to shareholders

#### 3) Supervisory Board

Mandatory:

- in case of share capital of 70,000 euro and more than 50 shareholders  
or
- if the average number of employees exceeded 300 during the last calendar year (for limited-liability companies within a group, other employee figures apply under some circumstances)

Tasks include

- Monitoring of management; right to inspect written records of decisions made by partners
- Examination of year-end financial statement
- Approval of important planned management measures
- Convening of an extraordinary General Meeting

*Brief overview: Employee participation at board level*

**Yes**, i.e. not only when the establishment of a Supervisory Board is mandatory (see left-hand column) but also when the company agreement provides for a Supervisory Board to be established.

**Nomination of employee representatives:** see § 110 Company Constitution Act (ArbVG); employee representatives on Supervisory Board must be members of the works council and have active rights of election to the works council. (i.e. no full-time union officials - see Aktiengesellschaft)

**Number of employee representatives on Supervisory Board:** at least 3 shareholder representatives; 1 employee representative for every 2 representatives of the shareholders (“one-third participation”)

**Right to participate in General Meetings** only when these are convened by the Supervisory Board of the auditor is being elected.

Otherwise see above under Aktiengesellschaft – employee participation

Source: Büggel, A. (2003) *Company law and existing legislative provision for employee participation in the EU Member States*, in R. Köstler and A. Büggel, *The European Company and Company law and existing legislative provision for employee participation in the EU member states*, Brussels: ETUI. Report 79 (to order the whole report, please send an e-mail to [etui@etuc.org](mailto:etui@etuc.org); price: €20).