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Rechtsanwälte

Establishing a business in Austria



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1. Foundation of a company

1.1. Available legal forms

Basically, the following legal forms are available in Austria:

- *Gesellschaft bürgerlichen Rechts* (non-trading partnership)
- *Offene Gesellschaft* (OG) (general partnership)
- *Kommanditgesellschaft* (KG) (limited partnership)
- *Stille Gesellschaft* (silent partnership)
- *Aktiengesellschaft* (AG) (public limited company)
- *Gesellschaft mit beschränkter Haftung* (GmbH) (limited liability company)
- *Erwerbs- und Wirtschaftsgenossenschaft* (cooperative and industrial and provident society)
- Verein (association)
- European Public Company (Societas Europaea - SE)
- European Economic Interest Grouping (EEIG)

The legal form which is by far the most popular is the *limited liability company*, followed by the *limited partnership* and the *general partnership*. Therefore, the companies limited by shares (GmbH, AG) will be described in more detail in the following. The other types of companies only will be briefly outlined.

1.2 **Gesellschaft mit beschränkter Haftung (GmbH) [limited liability company]**

1.2.1 General

The law of the limited liability company is governed by the *Gesetz über Gesellschaft mit beschränkter Haftung* [Limited Liability Companies Act] of 6 March 1906 as amended.

The GmbH is a legal entity and has its own legal personality. The shareholders in general are not personally liable for the liabilities of the company. Exceptions exist with regard to the payment of the shareholders' own capital contribution and a joint liability for the contribution of the other shareholders, the refund of the contribution and in case of gross undercapitalisation in case of insolvency.

1.2.2 Foundation

1.2.2.1 Entry in the company register:

The company comes into existence upon entry in the company register of the respective *Landesgericht* (provincial court) having jurisdiction. The application for entry in the company register has to be signed by all managing directors and has to be notarised.

The following information is required:

- Company name
- Legal form
- Registered office and the business address relevant for deliveries
- A short description of the branch of business
- Day of conclusion of the articles of association (in case of *Einmann-GmbHs* [one-man GmbH] of the declaration of foundation)
- Name and date of birth of the managing director as well as start and type of their power of representation
- Name and date of birth of the chairman, the deputies and the other supervisory board members (if required or optional)
- The amount of the share capital and the resolutions in this respect
- Balance sheet day for the annual accounts
- Details of a business licence already granted

When applying for the entry, the following documents are to be attached:

- Articles of association (in case of one-man foundation the declaration on the foundation of the company)
- Notarised shareholders' resolution on the appointment of the managing directors (shareholders may be appointed as managing directors already in the articles of association, but only for the duration of their shareholding)
- Notarised specimen signature on behalf the company of the managing directors and any *Prokuristen* (persons holding a special commercial power of attorney)
- To the extent provided for by law, corresponding governmental approvals (banking licence, ...)
- Declaration on the calculation and payment of the company tax
- The confirmation of an Austrian bank that the initial contributions have been paid in to the agreed amount in cash and that they are at the free disposal of the managing directors and are especially not limited by counterclaims.
- Declaration of the managing directors on the payment of the initial contributions
- Expert opinion of the local Economic Chamber on the admissibility of

the wording of the company name (this is required in case of use of certain company name components)

- Resolution of the shareholders in notarised form regarding the election of the supervisory board and resolution of the supervisory board regarding the election of a chairman and the deputy chairman (only be required if a supervisory board is established by law or optionally).

1.2.2.2 Articles of association/declaration of foundation

The articles of association (at least 2 shareholders) or the declaration on the foundation of the company (in case of foundation of a company with only one shareholder who is the managing director at the same time) has to be established in form of a notarial deed. Representation is possible, but the representative has to present a certified and over-legalized (apostilled) special power of attorney for the foundation which is attached to the notarial deed. The minimum content of the articles of association/the declaration of foundation is as follows:

- Company name and registered office of the company
- Purpose of the company
- Amount of the share capital as well as the initial contribution of the shareholder
- If the company has a supervisory board, the caps on borrowings and granting of credits and investments requiring the consent of the supervisory board
- The fee of the notary public is governed by the Notariatstarifgesetz [Notaries Tariffs Act], with the initial contribution of the company basically being the calculation basis.

1.2.2.3 Company name and registered office

The name of the company must be suitable for identifying the Company and must have a distinctive character. It must not contain any information suitable for being misleading regarding business conditions which are material for the relevant public. In any case, the company name has to include the term “mit beschränkter Haftung” (limited) or an abbreviation of it.

The place where the company has a site or where the management is located or where the company’s administration is located has to be determined as registered office of the company. A deviation from this prerequisite is only allowed for important reasons.

1.2.2.4 Purpose of the company

Basically, a GmbH may have any purpose. Insurance transactions, investment fund companies, pension fund companies, building societies, bonds issuing companies and savings and loan associations are exempted. The foundation of a GmbH for banking transactions requires a special approval by the Federal Minister of Finance.

1.2.2.5 Share capital and initial contributions

The minimum share capital amounts to € 35,000.- and consists of the initial contributions of the individual shareholders of which each has to amount to € 70.- at least. At least one half of the share capital has to be fully raised by initial contributions to be paid in cash, whereas the rest may consist of contributions in kind. At least one quarter, in any case an amount of € 70.-, has to be paid in to each initial contribution to be paid in cash. At least € 17,500.- have to be paid in to the contributions to be paid in cash. A deviation from this rule only shall be allowed by way of exception if a company is to be established for the sole purpose of continuation of a company which has existed for a minimum of five years and if only the last owner (co-owner of the entrepreneur), his spouse and children are to be the shareholders.

The articles of association may provide for additional payments (additional contributions) by the shareholders which can be called in by means of a shareholders' resolution.

Shares may be transferred inter vivos or mortis causa. A transfer inter vivos requires the form of a notarial deed.

1.2.2.6 Shareholders

Any individual or legal entity may be a shareholder of a GmbH. Neither Austrian citizenship nor a place of residence in Austria are required.

1.2.2.7 Foundation costs - registration fee

When founding the company, the company tax amounting to 1%, calculated based on the capital contributions of the shareholders paid in each case, is applicable.

The legal and publication fees for the registration of a GmbH with one managing director and two shareholders amount to approximately € 450.-.

The foundation costs may be borne by the company itself only up to the maximum amount determined for this purpose in the articles of association.

In total, foundation costs amounting to 10 - 15 % of the share capital are to be expected.

The entry of the GmbH in the company register approximately takes two weeks after signature of the notarial deed on the foundation and payment of the initial contribution to the account of the company. The persons acting as founders shall be jointly and severally liable for transactions carried out in the name of the GmbH prior to entry in the company register.

1.2.3 Legal requirements during the existence of the company

1.2.3.1 *The general meeting*

The general meeting of the shareholders is the supreme decision-making body of the GmbH. It consists of the entirety of the shareholders and is responsible for company matters which are not withdrawn from it or allocated to other bodies by law or the articles of association. The shareholders appoint the managing directors, remove them, determine their remuneration and conclude the employment contracts with them. *Inter alia*, the general meeting is responsible for the examination and determination of the annual accounts, the distribution of the balance sheet profit, the discharge of the managing directors as well as the supervisory board, if existing. They may deal with all affairs of the company and issue instructions to the managing directors regarding the management of the business of the company. Certain matters are expressly reserved for the general meeting.

The general meeting has to be held at least once a year within the first eight months of the fiscal year for the purpose of examination and determination of the annual accounts and distribution of the balance sheet profit as well as for the discharge of the management and of the supervisory board possibly existing. In addition, the general meeting is to be convened at any time by the managing directors if this is required for the welfare of the company.

Resolutions of the company may be adopted also in writing without a meeting (circular resolution) if all shareholders agree.

Shareholders' resolutions adopted are to be sent to each of the shareholders (as copy) immediately.

1.2.3.2 *Managing director*

A GmbH may have one or several managing directors. None of them has to be an Austrian citizen or has to have his place of residence in Austria, but at least one managing director should have his place of residence or usual place of abode in Austria for reasons of practicability. Only individuals with full legal capacity can be appointed as managing directors.

The appointment takes place by notarised resolution of the shareholders. Alternatively, shareholders of the company may be appointed as managing directors already in the articles of association for the duration of their function as shareholders. The appointment as managing director may be revoked at any time without prejudice to claims for compensation under existing contracts by means of resolution of the shareholders. In case that the appointment of the managing directors was made in the articles of association, the admissibility of the revocation may be restricted to important reasons. Managing directors may declare their resignation without prejudice to the claims for compensation of the company against them under existing contracts. If an important reason is given, the resignation may be declared with immediate effect, otherwise, the resignation shall take effect only after expiry of 14 days. The removed and/or resigned

managing director may apply for the deletion of his power of representation in the company register personally.

The company shall be represented by the managing directors in and out of court. Unless otherwise stipulated in the articles of association, all managing directors have to represent the company jointly. However, each declaration addressed to the company and each service on the company shall already be effective if they are made only towards one of the managing directors.

The articles of association may also appoint one managing director together with a Prokurist entitled to co-sign on behalf of the company to represent the company if there are several managing directors.

1.2.3.3 Supervisory board

A supervisory board has to be appointed if:

- The share capital exceeds € 70,000.- and the number of shareholders exceeds 50;
- The number of the employees exceeds 300 on average;
- If a company itself is the controlling company in a group whose subsidiaries are obliged to have a supervisory board and the number of the employees of all companies together exceeds 300;
- or if the company is the general partner of a Kommanditgesellschaft and if again more than 300 employees are employed altogether on average.

In addition, a supervisory board may be established voluntarily in a GmbH. For doing so, a corresponding provision in the articles of association/declaration of foundation is required.

The supervisory board has to consist of at least three members (individuals). The works council is entitled to be represented in the supervisory board.

The works council may delegate one representative each for two members of the supervisory board appointed by the shareholders. In case of uneven number of the supervisory board members appointed by the shareholders, another employee representative shall be delegated. The supervisory board is appointed for the purpose of controlling the management of the company as well as for other tasks provided for by law or possibly also in the articles of association.

The supervisory board has to meet at least four times in each fiscal year, with the meetings having to take place quarterly.

1.2.3.4 Accounting and audit

The GmbH is obliged to keep books and records under corporate and tax law. For the GmbH and other companies limited by shares as well as for all other entrepreneurs exceeding the turnover threshold of € 400,000.- in two consecutive fiscal years (and/or € 600,000.- in one fiscal year), the regulations of the *Unternehmensgesetzbuch* [Austrian Business Code] on accounting shall apply.

The managing directors shall be obliged to maintain an accounting system corresponding to the requirements of the company and an internal control system and each year to prepare the annual accounts for the past fiscal year. The annual accounts consist of the balance sheet, profit and loss statements as well as the notes. Furthermore, the management report is to be prepared. The annual accounts and the management report as well as the consolidated accounts and the consolidated management report are to be sent to each shareholder without delay after preparation. Each shareholder shall be entitled to inspect the books of the company for checking these documents prior to the ordinary general meeting. The ordinary general meeting for determination of the annual accounts has to take place within the first eight months of the subsequent fiscal year.

The annual accounts and the management report of large and medium-sized GmbH's as well as of GmbHs for which a supervisory board is mandatorily stipulated are to be audited by an independent auditor.

All companies limited by shares have to file the annual accounts and the management report at the latest within nine months as of the end of the fiscal year with the company register. For small and medium-sized GmbH's, there are forms of relief regarding the contents of the publication.

1.2.3.5 Shares in profits

As long as the company exists, shareholders only shall have a claim to the balance sheet profit resulting as surplus of assets over the liabilities according to the annual accounts. The share capital and the tied reserves must not be used for distribution.

1.3 Aktiengesellschaft (AG) [public limited company]

1.3.1 General

The law of the AG is governed by the *Aktiengesetz* (AktG) (Public Limited Companies Act) of 1965.

The Aktiengesellschaft is a legal liability, the members of which (shareholders) participate in the share capital divided into shares by means of contributions without being personally liable for the liabilities of the company.

1.3.2 Foundation

The company comes into existence as a legal entity upon entry in the company register of the court having jurisdiction. The application for entry in the company register has to be signed by all founders and members of the board of directors and the supervisory board in certified form.

The following of information is to be provided:

- Company name
- Legal form
- Registered office and the business address relevant for deliveries
- A short description of the branch of business
- Branches with their location, the business address relevant for deliveries and their company name if deviating from the company name of the headquarters
- The day of establishment of the memorandum of association
- Name and date of birth of the members of the board of directors as well as start and type of their power of representation
- *Prokuristen*, their names and dates of birth as well as start and type of their power of representation
- Name and date of birth of the chairman, the deputies and the other supervisory board members
- Amount of the share capital and the resolutions in this respect as well as the type of shares (par-value share or no-par share and the numbers of shares in case of no-par shares)
- The day of the annual accounts and consolidated accounts

The following documents are to be attached to the application for entry in the company register:

- The notarial minutes of the meeting of the founders including memorandum of association
- The documents on the appointment of the board of directors and the supervisory board
- The foundation report and the audit reports of the board of directors and the supervisory board as well as of the foundation auditors
- The decree of approval if the official approval is required for the purpose of the company
- Notarised specimen signatures (specimen signatures on behalf the company) of the members of the board of directors and *Prokuristen* possibly existing
- Declaration on the calculation of the company tax (alternatively a tax clearance certificate)

- The confirmation of an Austrian bank that the initial contribution in has been paid in to the agreed amount in cash and that it is at the free disposal of the board of directors and is especially not limited by counterclaims.
- Declaration of the board of directors on the payment of the amounts of the share capital contribution
- Expert opinion of the local Economic Chamber on the admissibility of the wording of the company name (this is required in case of use of certain company name components)

1.3.2.1 Memorandum of association

One or several persons subscribing shares have to be involved in the establishment of the memorandum of association. The memorandum of association has to be established by notarial deed. If one of the founders does not sign personally, his representative has to present a certified and super-legalized special power of attorney which is attached to the notarial minutes of the meeting (and/or the notarial deed).

The memorandum of association has to determine at least:

- The company name and the registered office of the company
- The purpose of the company
- The amount of the share capital, whether bearer shares or registered shares are issued
- Whether the share capital is divided into par-value shares or no-par shares, in case of par-value shares the par value of the individual shares, in case of no-par shares their number and, if there are several classes, the classes of the individual shares
- The composition of the board of directors
- The form of publication of the company
- The fee of the notary public is governed by the Notariatstarifgesetz. Basically, the share capital of the company is the assessment basis.

1.3.2.2 Company name and registered office

The name of the company must be suitable for identifying the company and must have a distinctive character. The company name must not contain any information suitable for being misleading regarding business conditions which are material for the relevant public. The company name of the Aktiengesellschaft has to include the term "Aktiengesellschaft", the term may be abbreviated (AG).

The place where the company has a site or the place where the management is located or the administration are located is to be determined as registered office of the Aktiengesellschaft. This regulation may be deviated from for important reason.

1.3.2.3 Purpose of the company

An AG may have essentially any purpose, only a couple of certain sectors of business are exempted (e.g. lawyers). The foundation of an AG for bank transactions requires a special approval by the Federal Minister of Finance.

1.3.2.4 Share capital

The minimum share capital amounts to € 70,000.-, with each share amounting at least to a value of € 1.- or a multiple of it (no-par shares have no nominal amount. The portion is determined depending on the number of the shares issued, the proportionate amount of the share capital attributable to the individual share at least has to amount to € 1.-). The amount contributed has to cover at least one quarter of the lowest par value and in case of issuing the shares at a premium, also the additional amount. Under certain prerequisites, the share capital can be raised completely and/or in parts by contributions in kind and/or transfers of assets (audit of the contribution kind and/or transfer of assets by an auditor appointed by the court).

Bearer shares may be transferred inter vivos without form requirements. Registered shares are transferred by means of endorsement and entry in the share register of the company.

1.3.2.5 Foundation costs - registration fee

When founding the company, the company tax amounting to 1%, calculated based on the capital contributions paid in, is applicable.

The court fees for the entry of an Aktiengesellschaft with one member of the board of directors and three supervisory board members amounts to approximately € 650.-.

For publishing costs, an additional fee currently amounting to approximately € 350.- is to be paid.

The foundation costs may be borne by the company only up to the maximum amount determined for this purpose in the memorandum of association.

Altogether, foundation costs of 10-15% of the share capital are to be expected.

The entry of the AG in the company register takes approximately two weeks after signature of the notarial minutes of meeting and the notarial deed on the foundation and after payment of the share capital. However, the AG may act as of establishment of the memorandum of association, however with the persons acting being jointly and severally liable for the liabilities incurred.

1.3.3 Legal requirements during the existence of the company

1.3.3.1 General

The organisation of the *Aktiengesellschaft* is based on the principle of the third-party participation in executive organs. The *Aktiengesellschaft* has four obligatory bodies:

- Board of directors
- Supervisory board
- General meeting
- Auditor

1.3.3.2 General meeting

The general meeting is the meeting of the shareholders. The shareholders basically may exercise their rights only in the general meeting.

The ordinary general meeting is to be held annually for presentation of the annual accounts and the management report as well as for adoption of a resolution on the distribution of the profit and the discharge of the board of directors and the supervisory board. Extraordinary general meetings are meetings which are convened for other causes.

The general meeting is chaired by the chairman of the supervisory board. He puts to vote the agenda items. He ascertains the result of the voting and announces the resolutions adopted. The general meeting constitutes a quorum without consideration of the number of the shareholders present. Minutes of the meeting are to be taken by a notary public pursuant to the regulations of the Notariatsordnung (Notaries' Code of Conduct). All shareholders are entitled to participate.

The voting right in the general meeting depends on the par-value in case of par-value shares and on the number of shares in case of no-par shares. There are exceptions for shares without voting rights and/or restrictions of the voting rights stipulated in the memorandum of association.

In the absence of other rules provided for by law or in the memorandum of association, the simple majority of the votes cast shall suffice. However, most of the changes of the memorandum of association require a three-quarter majority.

The most important subjects of resolutions are the following:

- Distribution of the profit and discharge of the board of directors and supervisory board, determination of the annual accounts, the election of the supervisory board members and the auditors;
- Adoption of resolutions on matters presented by the board of directors or supervisory board;

- Appointment of special auditors, changes of the memorandum of association (such as for example capital increases - reductions, change of the purpose of the company);
- Assertion of claims for compensation against board of directors and supervisory board.
- Defect Resolutions of the general meeting can be set aside, if they are not void due to the severity of the interference, by means of action for avoidance.

1.3.3.3 Board of directors

The board of directors is appointed by resolution of the supervisory board for a maximum of five years. It has to consist at least of one member. This member may not be a member of the supervisory board at the same time.

A member of the board of directors once elected may only be revoked by the supervisory board if an important reason is given (gross violation of duties, incapacity for proper management or withdrawal of confidence by the general meeting).

The board of directors is responsible for the management of the business in its own responsibility. They are not exposed to the instructions of another body. They have to manage the businesses safeguarding the welfare of the company while taking into account the interests of the shareholders, the employees of the company and public interests. In addition, they have to ensure that an accounting system and an internal control system corresponding to the requirements of the company are maintained.

If several members of the board of directors have been appointed, joint conduct of the business according to the principle of majority vote applies unless otherwise provided for by the memorandum of association. The board of directors has the representation monopoly in the AG. However, the consent of the supervisory board is required regarding certain cases stipulated by law.

Finally, the consent of the general meeting is to be obtained in case of certain legal transactions (e.g. post-formation acquisitions and mergers, issuing of convertible bonds and profit participating bonds and in case of contracts on a profit pool).

The members of the board of directors are subject to a duty to maintain secrecy and a prohibition of competition.

The members of the board of directors have to apply the diligence of a proper and prudent business manager. In case of distribution of fields of responsibility in the management, primarily the competent member of the board of directors and then the other members of the board of directors shall be liable if the monitoring duties have been violated. The liability exists towards the company and towards the creditors of the company to the extent that they cannot obtain satisfaction of

their claims from the company. (The contingent liability only applies in case of intent or gross negligence).

1.3.3.4 *The supervisory board*

The supervisory board has to consist of three members at least. The first supervisory board is appointed by the founders, the subsequent supervisory boards are appointed by the general meeting.

The works council is entitled to be represented in the supervisory board. The works council may delegate one representative each for two members of the supervisory board appointed by the shareholders. In case of uneven number of the supervisory board members appointed by the shareholders, another employee representative shall be delegated.

The supervisory board is appointed for the purpose of controlling the management of the company as well as for other tasks provided for by law or possibly also in the memorandum of association.

The supervisory board has to meet at least four times in each fiscal year, with the meetings having to take place quarterly.

1.3.3.5 *Auditor*

Auditors are mandatory in case of the AG. They are elected by the general meeting. (Exception: the auditor is appointed by the founders). The annual accounts and the management report are to be audited, the accounting is not to be included. The audit has to cover the question as to whether the statutory regulations on accounting and the provisions of the memorandum of association have been taken into account. The audit ends with the presentation of a written audit report and the issuing of the auditor's opinion.

1.3.3.6 *European Public Company (societas europaea - SE)*

The SE is a company with legal personality the capital of which is divided into shares. It constitutes a supranational legal form of a company. The regulation aimed at facilitating cross-border mergers within the European Community. Therefore, an SE can only be established by "transformation" of an existing company but not by individuals. For this reason, this legal form of a company is unsuitable for a start-up. Its advantage compared to other legal forms is its internationality. The relocation both of the administrative centre as well as the registered office within the European Union is possible without restriction. Due to that the management of the company is enabled to react flexibly to relevant changes of the conditions regarding the location within the EU.

1.4 **Offene Gesellschaft (OG) [general business partnership]**

Offene Gesellschaften are companies managed under an own name in case of which the partners are jointly and severally liable. The partners are liable towards the creditors of the company without restriction (with their entire assets). *Offene*

Gesellschaften have legal capacity and the purpose of an OG may include any purpose of a company including freelance and agricultural and forestry activities.

The company name has to be suitable for identifying the partnership and must have a distinctive character and must not contain any information suitable for being misleading regarding business conditions which are material for the relevant public. What is mandatory is the term “*Offene Gesellschaft*” or a generally understandable abbreviation.

Offene Gesellschaften come into existence upon entry in the company register.

1.5 Kommanditgesellschaft (KG) [limited commercial partnership]

A *Kommanditgesellschaft* is a company managed under an own name where the liability towards the creditors of the company is limited to a certain amount (liability amount) for a certain part of the partners (*Kommanditist* [limited partner]), but where the liability is unlimited for the other part (*Komplementär* [general partner]). The material provisions regarding the OG also apply to the *Kommanditgesellschaft*.

The name of a KG has to meet the same prerequisites as the name of an OG with the requirement that the legal form affix “*Kommanditgesellschaft*” or a generally understandable abbreviation of this term, especially “KG”, is used.

Management and representation of the company are incumbent on the general partners.

1.6 Stille Gesellschaft [silent partnership]

Whoever participates with a capital contribution in a company operated by another person is a silent partner. The silent partnership neither has a legal personality nor a company name and does not appear as a company towards third parties. The management and the representation are solely incumbent on the owner of the company. The silent partner has a share in the profit and loss of the company. The loss sharing may be excluded.

1.7 Gesellschaft bürgerlichen Rechts (GesbR) [non trading partnership]

A GesbR mainly serves purposes which are not entrepreneurial and/or is not created to exist permanently. It is not entered in the company register and may not transact businesses under a company name and/or purchase real property etc., as it is no separate legal entity.

1.8 Branch of foreign companies

GmbHs and AGs with the registered office abroad may establish branches in Austria.

- The foreign company is entered in the company register, namely in the company register competent for the registered office of the branch.

- Companies established under a jurisdiction which is not the jurisdiction of a member state of the European Union or a contracting state of the Treaty on the Creation of the European Economic Area (EEA) have to appoint at least one person for the entire business operation of the branch who is authorised to represent the company permanently in and out of court and has his usual place of abode in Austria. The power of representation may also be granted to several persons jointly.

Companies established under the jurisdiction of a Member State of the European Union or the European Economic Area may appoint such permanent representative.

A publicly certified copy of the articles of association/memorandum of association in the register's version and, if the memorandum of association is not drafted in German language, a certified translation into German are to be attached to the application.

The duty of separate accounting applies to the branch.

1.9 Cooperative

Cooperatives are associations with an indeterminate number of members mainly serving for promoting the income or the economy of its members. The law of the cooperatives is governed by the *Gesetz über Erwerbs- und Wirtschaftsgenossenschaften* [Act on Cooperative and Industrial and Provident Societies] of 9 April 1873.

1.10 Association

An association is a voluntary association of two persons created to last permanently and organised based on by-laws for pursuing a certain, idealistic purpose. The association has a legal personality. It must not be profit-making. Therefore, the association basically is not usual by used for business purposes.

2. Trade law

In Austria, numerous business activities are subject to trade law. If an activity is performed which is subject to trade law, a special trade licence is to be obtained. Trade licence holder may be the company if it meets the prerequisites required by law.

In addition, a managing director under trade law is to be appointed. This managing director under trade law has to be an individual having his place of residence in the European Union. The managing director under corporate law may at the same time also be the managing director under trade law if he meets the prerequisites required for pursuing the trade. If the managing director under trade law is not identical with the managing director under corporate law, it is required that the managing director under trade law is employed by the company for a minimum of 20 hours per week so that he is able to comply with the obligations regarding the monitoring functions. In principle, the managing director

under trade law is responsible that the company meets its obligations pursuant to the *Gewerbeordnung* [Trade, Commerce and Industry Regulation Act] and ancillary laws.

3. Residency in Austria

Please note that all types of residency permits are bound to the existence of a quota slot. For each federal state, a quota is determined for each purpose of the residency in form of an ordinance. If the quotas for any purpose of the residency in any federal state are exhausted, an application for granting of a permanent residency permit is rejected and is to be filed again in the next year.

For any type of residency permit the applicant has to show proof of accommodation in Austria customary in the place (legal title for example due to: lease, rent, ownership), has to have a valid health care insurance and has to have sufficient income/assets in order to cover the costs of his stay.

3.1 Permanent residency permit as independent key person

Any person who operates a business in Austria independently as an individual or participates in an Austrian company as a majority shareholder and who strives for a permanent residency permit for exercising this activity is considered as an independent key person.

The prerequisite for granting of a permanent residency permit is that the activity *“is in Austria’s interest in terms of economic and labour market policy aspects”*. This criterion can be met for example if exercising the activity in Austria leads to an inflow of investment capital to Austria or if jobs are created or secured in Austria due to such activity.

3.2 Permanent residency permit as employed key person

Any person who wishes to work for a company in Austria within the framework of an employment relationship and who has skills and abilities for which there is a demand on the labour market in Austria is considered an employed key person.

If a person has completed his studies at a university, this shall generally be deemed as sufficient skills within the meaning of the key person qualification.

Another prerequisite is that the employed key person receives a monthly salary in Austria which at least amounts to 60% of the social security payroll tax cap. Currently, this means a gross monthly salary of approximately EUR 2,400.- (multiplied by 14 months).

3.3 Private permanent residency permit

The private permanent residency permit is merely linked to the condition that the applicant has a legal title to an accommodation in Austria which is customary in the place, that he has health care insurance to an extent comparable with social security and that he has sufficient income or saving deposits in order to cover the costs of his stay in Austria.

3.4 Application procedure

In case of independent key persons and for the purpose “Private”, the application has to be filed with the competent Austrian Embassy at the present place of residence of the applicant. For this purpose, the applicant has to appear personally at the embassy with all documents. The representation then forwards the file to the competent authority in Austria.

In case of employed key persons, the application may be filed by the Austrian employer in Austria.

It is of importance that the applicant does not have his place of abode or residence in Austria at the time of filing the application.

4. Land acquisition in Austria

In principle, any individual and legal entity having full legal capacity can acquire land in Austria.

However, with regard to the acquisition of agriculturally used areas and the acquisition by foreigners, there are specific regulations in each federal state.

Individuals not having Austrian citizenship, legal entities with their registered office abroad or legal entities with their registered office in Austria the majority interest in which is held by foreigners are deemed as foreigners within the meaning of the relevant laws of the federal states.

What applies to foreigners in general is that the acquisition of property only may be carried out after obtaining a permit.

The granting of a permit pursuant to the *Ausländergründerwerbgesetz* (Act on Land Acquisition by Foreigners) requires that there is an economic or social interest in the legal transaction. An economic interest may be justified *inter alia* in case of creation of jobs or with the inflow of investment capital. Social interest exists if the object of the purchase serves for satisfying personal requirements of accommodation of the applicant or his family if they have a valid permanent residency permit for Austria.