

austria



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Professional Service, Personal Approach

The law firm of KRAFT & WINTERNITZ was established in 1987 and is based in Vienna. The firm provides a comprehensive range of services to corporate and private clients with national or international interests. Unlike large law firms, KRAFT & WINTERNITZ'S partners can ensure the sustained individual attention on which the successful solution to a case so often depends.

Through its expert contact in the world of business, KRAFT & WINTERNITZ has access to the specialist knowledge and experience required to respond more effectively to today's increasingly complex world. These strengths are further

reinforced by the firm's international network of law and accounting offices in the European Union, Central Europe and beyond - all of which share a belief in the importance and value of personal contact and responsibility in the practice of law.

In Austria, KRAFT & WINTERNITZ keeps in close touch with accountants, tax advisers, notaries public, real estate brokers and managers, insurance agents and the banking and financial institutions, as well as the numerous experts required to give evidence in court. As a member of the Austrian Bar Association, the firm can represent clients before all the Austrian Courts, including the Courts of Appeal and the Supreme Court. Such strengths allow KRAFT & WINTERNITZ's to respond to the most challenging tasks.

To represent and advise its national and international clients as effectively as possible, KRAFT & WINTERNITZ expertise is available in the following fields:

COMMERCIAL AND CORPORATE

- Formation of companies
- Acquisitions, mergers and takeovers
- Joint venture agreements
- Corporate restructuring
- Agency, distribution and franchising
- Unfair competition
- Advertising

FAMILY AND ESTATES

- Divorce and judicial separation
- Adoption
- Wills
- Probate
- Trusts
- Estate planning

EMPLOYMENT

- Employment agreements
- Work and residency permits

LITIGATION

- Commercial disputes
- Labor disputes
- Unfair competition
- Lease and property disputes
- Medical liability
- Trademarks
- Product liability
- Personal injury

REAL ESTATE

- Acquisition and disposal of property
- Condominium agreements
- Lease agreements

INTELLECTUAL PROPERTY

- Trademarks
- Model and design
- Licensing

CAPITAL MARKETS

- Supervision of capital markets
- Liability of investment counsels

DEBT COLLECTION

austria | corporate law

Regulations and Rules

The main statutes in corporate law are the Commercial Code (Handelsgesetzbuch, HGB), the Law on Limited Liability Companies (Gesetz über Gesellschaften mit beschränkter Haftung, GmbHG), the Stock Corporation Act (Aktiengesetz, AktG) and the Law on Registered Partnerships (Gesetz über eingetragene Erwerbsgesellschaften, EGG).

Other relevant statutes are the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB), the Law on Co-operative Societies (Genossenschaftsgesetz), the Law on the Commercial Register (Firmenbuchgesetz), the Law on Private Foundations (Privatstiftungsgesetz) and the Insurance Companies Supervision Act (Versicherungsaufsichtsgesetz).

Type of Companies

The most common types of companies in Austria are the General Partnership (Offene Handelsgesellschaft, OHG) the Limited Partnership (Kommanditgesellschaft, KG), the Company with Limited Liability (Gesellschaft mit beschränkter Haftung, GmbH), the Stock Company (Aktiengesellschaft, AG) and the Private Foundation (Privatstiftung).

The so-called professions (freie Berufe), as for example lawyers, accountants or architects, or small businesses, which are not allowed to found a General Partnership or a Limited Partnership, may found a Registered Partnership (Eingetragene Erwerbsgesellschaft). There are two different types of a Registered Partnership, a General Registered Partnership (Offene Erwerbsgesellschaft, OEG), which is similar to the General Partnership, and a Limited Registered Partnership (Kommanditerwerbsgesellschaft, KEG), which is similar to the Limited Partnership.

Further types of companies are the Civil Law Association (Gesellschaft nach bürgerlichen Recht, GesbR), the Cooperative (Genossenschaft) and the European Interest Grouping (Europäische wirtschaftliche Interessenvereinigung, EWIV).

Liability of Shareholders

The liability of the shareholders of a Company with Limited Liability and a Stock Company is limited to their capital contribution. Each partner of a General Partnership is fully and personally liable for the debts of the Partnership, the liability to creditors cannot be limited. A Limited Partnership consists of at least one general partner (Komplementär), who is liable like a partner of a General Partnership, and of at least one limited partner (Kommanditist), whose liability is restricted to the amount of his capital contribution (Einlage).

Share Capital

The minimum share capital (Stammkapital) of a Company with Limited Liability is EUR 35.000,--. In principle, at least one half of the capital must be paid in cash (but there are exceptions for contributions in kind). The minimum face value of one share is EUR 70,--.

The minimum stock capital (Grundkapital) of a Stock Company is EUR 70.000,-. At least 25 per cent of the stated capital stock (plus any premium) must be paid up prior to the registration. The minimum nominal value of the shares is EUR 1,00 unless the shares simply represent a percentage of the share capital (without a nominal value). It is possible to issue non-voting preferred shares which grant a right to a preferred dividend but are without voting rights

There is no minimum share capital for General Partnerships and Limited Partnerships.

Corporate Governance

All partners of a General Partnership (and all general partners of a Limited Partnership) are entitled and obliged to manage and to represent the partnership. The partnership agreement may stipulate other regulations.

The corporate bodies of the Company with Limited Liability are the managing directors (Geschäftsführer), the shareholders assembly (Generalversammlung) and the supervisory board (Aufsichtsrat), which is compulsory for large Companies incorporated with Limited Liability (e.g. more than 300 employee) and optional for the others.

The shareholders' assemblies must meet at least once a year and are called by the managing directors. Shareholders resolutions can also be adopted by written consent, if all shareholders agree. The following decisions - inter alia - requires a resolution by the shareholders:

- the appointment and dismissal of managing directors
- approval of the annual report
- distribution of profits
- release from liability of the managing directors
- changes to the articles of association, including an increase or reduction of the share capital
- raising of claims against the managing directors
- liquidation of the company
- mergers

Generally shareholder resolutions of a Company with Limited Liability requires a simple majority of the shareholders present. Unanimous voting is required inter alia for a change of the object of business of the company. A majority of 75 percent is required inter alia for changes to the articles of the association (with a few exceptions) or the sale of the corporate assets as a whole. The articles of association may provide other rules.

The management board of a Company with Limited Liability consists of one or more managing directors, who are appointed and dismissed by the shareholders. The managing directors represent the company and do the day-to-day business. Usually the managing directors have an employment contract with the company which stipulates the remuneration of the directors. The managing directors are personally liable towards the company for exercising the care and diligence of a prudent businessman in performing their tasks. They are not personally liable towards creditors of the company in general but only if they violate specific rules of law (e.g. the requirement that they file for bankruptcy on a timely basis).

The corporate bodies of a Stock company are the board of directors (Vorstand), the shareholders meeting (Hauptversammlung) and the supervisory board (Aufsichtsrat).

A shareholders meeting is called by the board of directors and must be held at least once a year within eight months after the end of an accounting year. The following matters, inter alia, require a shareholders resolution:

- appointment of the members of the supervisory board
- appointment of the auditors
- changes to the articles of association, including an increase or reduction of the share capital
- approval of the annual report (unless the supervisory board approves it)
- distribution of profits
- release from liability of the board of directors and the supervisory board.

Shareholders' resolutions are in principle adopted by a simple majority. For certain fundamental decisions, in particular changes to the articles of association a qualified majority of 75 percent of the votes is required.

The board of directors consists of one or more members, represents the company and carries out the day-to-day business. The members of the board of directors are appointed by the supervisory board for a period of 5 years (reappointment is permitted). Usually the members of the management boards are employed with the company, and are regarded as free employees ("freie Dienstnehmer"), so they are not protected by labor laws. Profit shares are common. The members of the board of directors are personally liable towards the company for exercising the care and diligence of a prudent businessman in performing their tasks. If the company is not able to fulfill a claim of a creditor the creditor is entitled to assert the claim against the member of the board of directors.

The supervisory board members are appointed by the shareholders meeting (except the representatives of the employees). The number of members depends on the amount of the share capital, with a minimum of three members. The supervisory board must supervise the management board. A number of

transactions must be approved by the supervisory board, e.g. the acquisition, alienation and mortgaging of real estate, opening and closing of branches, determination of the general business policy etc. The liability of the members of the supervisory board is the same as the liability of the members of the management board.

Annual Accounts – Financial and Operating Results

The financial statements (Jahresabschluss) consist of the balance sheet, the profit and loss statement, an appendix and a position report.

The financial statements have to be prepared by management within five months of the end to the accounting year. They require the approval of the shareholders assembly in the case of a Company with Limited Liability and the supervisory board in the case of a Stock Corporation. Furthermore a statutory audit is required for Stock Corporations, large or medium sized Companies with Limited Liability, banks, insurance companies and investment funds.

The financial statements must be filed with the commercial register (except Partnerships which must only register if the general partner is a corporation) within nine month after the end to the accounting year. Large Stock Corporations, companies listed on the stock exchange, banks, insurance companies and investments funds must publish the financial statements in the "Wiener Zeitung."

Liquidating a Company

For Corporations such as the Company with Limited Liability and the Stock Corporation a formal winding-up procedure is provided by law. If the shareholders agree to dissolve the company or the company is dissolved for any other reason, the company enters into a liquidation period. During this period the company is represented by the liquidators (who may be the directors or third parties). The property of the company is sold and the debts are paid. The remaining funds are distributed to the shareholders. At the end of the procedure the company is struck from the register.

austria | tax law

CORPORATE TAXES

The Tax Reform 2005 introduced a number of new rules regarding corporate income tax which make Austria a more attractive place for establishing corporations. Most important are the reduction of the flat rate corporate income tax from 34 to 25 per cent and the new regulations on group taxation (details see below).

Taxes on corporate income

The profits of a corporation are taxed at the company level at a flat rate, while profits of individuals (and Partnerships) are taxed at a progressive rate (exceptions see below).

The rate of corporate income tax has been reduced by the Tax Reform 2005 to 25 per cent (from 34% per cent) for profits derived after December 31, 2004. Thus, the level of corporate income tax in Austria is now comparatively low.

The profits of a corporation are taxed whether the profits are paid out to the individual shareholders or retained in the company. Dividends paid to individual shareholders are subject to a withholding tax of 25%. (Therefore profits of a corporation which are paid to their shareholders are taxed overall at a rate of 43,75 per cent). Beginning with the second year of unlimited tax liability a Company with Limited Liability has to pay a minimum corporate income tax of EUR 1.750,-, a Stock Corporation has to pay EUR 3.500,-. This minimum corporate income tax has to be paid even if there no profit is generated.

The taxation of a Private foundation differs from the taxation of other legal entities as some types of income are subject to a reduced tax rate of 12,5 % (interim tax), e.g. income from cash deposits with and other claims against

domestic and foreign banks, income from certain debt instruments etc. Dividends from a participation in an Austrian corporation and - under certain circumstances - from a participation in a comparable foreign corporation are tax exempt.

Corporate Residence

A company is resident in Austria if it has its legal seat (as designated in its statutes) or its place of effective management in Austria. A company with its residence in Austria is taxed on its worldwide income. A company with no residence in Austria is taxed on its income earned through the activities of a permanent establishment in Austria and its income from immovable property located in Austria, capital gains on the sale of shares in resident companies (if the shareholding has amounted at least 1 % at any time during the last 5 years) and royalties (see below).

Other Taxes

VALUE ADDED TAX

The rate is in general 20 %, 10 % for leases of land and buildings for residential purposes, services rendered by theatres, museums, etc, transport of passengers, foodstuff, books, etc.

REAL ESTATE TRANSFER TAX (Grunderwerbssteuer)

Rate 3,5 % (2 % if real estate is transferred between close relatives and/or spouses).

CAPITAL TRANSFER TAX (Kapitalverkehrssteuer; rate: 1%)

In particular for issuing shares in a domestic corporation,

STAMP DUTIES

E.g. for lease agreements, loan and credit agreements etc.

ENERGY TAXES ON NATURAL GAS, ELECTRICITY, COAL, PETROLEUM...

PROPERTY TAX

the possession of real estate is taxed at a rate of 1% of the assessed value (Einheitswert), which is generally lower than the actual value.

Branch Income

A company with its residence in Austria is taxed on its worldwide income (including the income of a foreign branch). A company with no residence in Austria is taxed on its income earned by a branch in Austria. Austria is a party to a number of tax treaties which seek to avoid double taxation.

Income Determination

Inventory generally must be valued at the lower of cost and market value. If inventory is valued according to cost, the FIFO method is generally accepted. The LIFO method is allowed only if it is in accordance with the company's actual practice.

Capital gains from the sale of business assets are generally included in taxable income and are taxed at the standard rate. Capital gains on the disposal of a substantial shareholding in foreign operating subsidiaries or intermediate holding companies are exempt from taxation (international participation exemption), if the parent company is subject to unlimited income taxation in Austria, the subsidiary has adopted one of specified legal forms (comparable to an Austrian Company), the parent company holds at least 10% in the capital of the sub-sidiary (directly or indirectly) and the shareholding exists for a minimum holding period of one year prior to the disposal of the shares.

Inter-Company domestic dividends constitute a tax exempt income. Dividends from a foreign company are exempt from taxation if the international participation exemption applies (see above).

Deductions

Generally all expenses that are necessary to generate income are deductible. The cost of business lunches are 50% deductible (for purposes of promotion). Costs related to passenger cars are deductible up to EUR 40,000.00

The basis for depreciation is the purchase price or production cost. Only the straight line method of depreciation is permitted by tax laws (progressive and diminishing balance depreciation are not allowed). The depreciation period is from 5 to 10 years for machines, 8 years for passenger cars, 15 years for the goodwill, 33 1/3 years to 66 years for buildings depending on the use of the building. Excess write down to the lower going concern value (= fraction of the total purchase price that a buyer of the whole company would pay for an certain asset assuming the buyer intends to continue the business) is only possible in case of technical or economic obsolescence. Some assets cannot be depreciated, in particular real estate.

Net profit losses may be carried forward without any time limit, but losses carried forwards can only be set off against 75% of the income of the current year (excess losses can be carried forward to the next year). To avoid misuse of losses carried forward in connection with a change in ownership of the company shares, certain circumstances, namely a substantial change of the shareholders (more than 75 per cent), a substantial change in the organization and a substantial change in the economic structure (so called "Mantelkauf"), lead to a loss of the ability to carry forward the net losses from the previous years.

Although there are no statutory provisions specifically dealing with transfer pricing, the arm's length principle is applied in Austria because of general rules of the Austrian tax law.

Income tax, corporate income tax, inheritance tax and gift tax are not deductible.

Group Taxation

Group taxation is a new construction under the tax reform 2005 and is in effect since January 1, 2005. A tax group requires a equity participation of more than 50 per cent (direct or indirectly) including the majority in voting rights, maintenance of the groups for at least three years and filing an application with the tax office. Irrespective of the participation held, 100 % of the profits and losses of Austrian group member will be attributed to the group parent, while losses of foreign group members will be attributed according only to the ownership percentage of the participation held.

Tax Incentives

There are several tax incentives in Austria, e.g. an invention allowance and an invention premium, an investment premium, an education allowance and an education premium, an apprentice allowance and a apprentice premium.

An invention allowance for example is granted for expenses incurred in the development or improvement of inventions valuable for the economy. The maximum invention allowance is 25% of the research and development expenses (35% to that portion of expenses which exceeds the average of such expenses in the last three years). An education allowance is granted for expenses incurred for the education and training of employees. It amounts to 20% of these expenses.

Withholding taxes

A withholding tax of 25% is levied on dividends distributed by a company which is resident in Austria, but takes the exemption for intercompany domestic dividends. A withholding tax of 25% is also levied on dividends distributed by a non-resident company, unless a reduced rate applies under a tax treaty. As to the international participation exemption see above.

Interest paid by an Austrian debtor is also subject to 25% withholding tax, if the income is derived from qualifying bank deposits or bonds. Interest income

from other sources is subject to standard corporate income tax (or individual income tax).

Royalties paid to non-resident companies are subject to a final withholding tax of 20% unless a reduced rate applies under a tax treaty.

Tax rate on dividends, interest and royalties according to tax treaties (selected countries):

Country	Dividends	Interest	Royalties
Argentina	15	0	15
Australia	15	0	10
Belgium	15	0	10 (0 in some cases)
Brazil	15	0	Up to 20
Canada	5 or 15	0	10 or 0
Denmark	10	0	10 (0 in some cases)
France	0 or 15	0	0
Germany	5 or 15	0	0
Italy	15	0	10 (0 in some cases)
Japan	10 or 20		0 10
Korea	5 or 15	0	2 or 10
The Netherlands	5 or 15	0	10 (0 in some cases)
Portugal	15	0	10
Russia	5 or 15	0	0
Spain	10 or 15	0	5
Suisse	0 or 15	0	5
United Kingdom	5 or 15	0	10 (0 in some cases)
USA	5 or 15	0	0 (on films 10)

Tax Administration

A company must file the annual corporate income tax return by April 30 (June 30 for electronic filing) of the subsequent calendar year (no matter when the

financial year ends). If the company is represented by a tax advisor the period for filing the return may be extended.

Prepayments of Corporate Income tax must be made in four equal payments by February 15, May 15, August 15 and November 15 in accordance with the assessment notice issued by the tax authorities (based on the tax payments for the previous year). If the Corporate Income Tax is more than the prepayments the difference must be paid within a month after receiving the tax statement. Excess prepayments are refunded, unless they do not exceed the minimum tax (see above).

INDIVIDUAL TAXES

Different from the Corporate Income Tax, the individual Income Tax is not a flat rate tax. The tax rate here is progressive (maximum rate 50%). The rates have been cut back by the Tax Reform 2005. The reduction was not as great as for the Corporate Income tax.

Partnerships as such are not a subject of taxation, but the partners are. The profits of the partnership are first calculated for the partnership as a whole and then shared amongst the partners. The partners pay income tax (or Corporate income tax if the partner is as corporation) with respect to their portion of the profit.

Territoriality and Residence

Individuals who are residents of Austria are required to pay Austrian Income Tax on their world wide income. A person is regarded as resident if he has a domicile (= place where he occupies a residence under circumstances, which indicates that he will retain and use it on a basis which is not merely temporarily) or his customary place of abode (= physical presence over an extended period) is in Austria. A person who remains for 183 or more during a year in Austria is considered to have his customary place of abode in Austria.

A Person with no residence in Austria is only subject to Austrian income tax for specific income sources or assets.

Gross Income

There are seven sources of income:

- Agriculture and forestry
- Trade or business
- Independent personal service (e.g. lawyers, tax advisors)
- Employment
- Investment of capital
- Rental and royalties
- Other income sources

The income from the first three sources (so called business income) is calculated in a manner similar to the treatment of income of a corporation (see above).

The taxable income from the four other sources is determined by deducting from gross income any expenses that are incurred to acquire, safeguard and maintain this income (so called Werbungskosten).

From The gross salary of an employee are deducted the social security contributions, kilometre and daily allowance (up to a certain limit) or distributions of the employer to a pension funds in favor of the employee. Non-recurring payment of salaries, in particular 13th and 14th salary enjoy a tax-free allowance of EUR 620,00 per year and excess amounts up to 1/6 of the current annual salaries are taxed at a reduced flat rate of 6%.

Capital gains from the sale transfer of non-business property are generally not taxed, but there are two exceptions:

- Gains for transactions seen as speculative (Spekulationsgeschäfte), i.e. real estate sold within ten years (with exceptions) or other property sold within 1 year after acquisition. The total net gains of such speculative transaction are taxed at ordinary rates if there amount exceeds EUR 440,00.

- Gain on the sale of a qualifying participation in an Austrian corporation (at least 1% of the share capital was held at any time in the last five years).

As a consequence of the restricted taxation of capital gains, capital losses reduce the taxable income only if from speculative transactions or the sale of a qualifying participation. Furthermore they can only be offset against gains from speculative transactions or sale of a qualifying participation (not against profits from other sources of income)

Deductions

As mentioned above expenses that are incurred to acquire, safeguard and maintain this income are deductible.

Furthermore taxable income is reduced by:

SPECIAL PERSONAL EXPENSES (Sonderausgaben)

E.g. premiums paid into voluntary health, accident and life insurance programs, payments incurred to finance private house building and improvement, purchase of newly issued shares or profit sharing certificates (flat annual allowance of EUR 60,00 per year; if there are higher payments 25% of the payments are deductible with limitation); contribution to churches, tax losses carried forward from previous years etc.

EXTRAORDINARY EXPENSES (außergewöhnliche Belastungen)

Payments incurred by a taxpayer because of extraordinary circumstances (e.g. natural catastrophes, children's tuition away from home, etc)

Several deductible amounts stipulated by law (Absetzbeträge), e.g.:

- Sole earners: EUR 364,-- (depends on the number of children)
- Sole earners with children and no spouse or partner: EUR 494,-- (depends on the number of children)

Employers: EUR 54,00

Tax Credits

Some of the deductible amounts stipulated by law reduce the income tax even if they exceed the tax. Therefore a negative income tax is possible and the taxpayer is granted a tax credit which is paid to him.

Other Taxes

Social security distributions are mandatory, but these are not regarded as taxes in Austria. There are no local taxes on income, but the employer has to pay a local tax (Kommunalsteuer) on basis of the sum of wages he pays to his employers (tax rate is 3 %).

austria | foreign investment

Registration with Government, Authorities and Permits

There are in general no restrictions on converting or transferring funds related to foreign investments. All cross-border capital transactions for non-residents and residents, including the acquisition of Austrian securities, debt instruments, the repatriation of profits, interest payments, dividends and proceeds from the sale of investment are unrestricted.

However, the Austrian Central Bank (Nationalbank) is entitled to enact restrictions pursuant to EU-law under certain circumstances, e.g. major difficulties in international relationships, where the security of Austria is endangered, etc. In these cases certain transactions require the permission of the Austrian Central Bank.

Furthermore various transactions related to foreign countries, e.g. foreign direct investments, must be notified to the Austrian Central Bank for statistical purposes.

The nine provinces have established regulations (Grundverkehrsgesetze) under which the acquisition of real estate (and certain rights related to real estate) by foreigners (in some cases also by Austrians) is subject to approval by the provincial authorities. These restrictions concern primarily real estate for agricultural use and real estate in tourist regions. The regulations differ from province to province.

Most business activities in Austria require a business license (Gewerbeberechtigung). If the business is conducted by a corporation, a partnership or a branch of a foreign company, a individual person must be named who is responsible for the correct conduct of the business. This person is commonly called the "gewerberechtllicher Geschäftsführer", who must be resident in Austria or in a country where decisions of Austrian administrative authorities can be executed. As a result, in most cases a "gewerberechtllicher Geschäftsführer" must be nominated who is resident in Austria.

Transfer of Dividends, Interest and Royalties Abroad

Austria does generally not restrict the transfer of dividends, interest and royalties abroad. The exemptions are mentioned above.

The taxation of these transfers is discussed in the article on taxation.

Repatriation Procedures and Restrictions

Austria applies no repatriation procedures or restrictions.

Foreign Personnel

There are restrictions on employment of foreign employees.

Citizen of the "old" EU member states are entitled to work in Austria without a work permit. Special transitional rules apply to the citizens of most of the new member states (the CEE-countries as Poland, Hungary, Slovakia etc).

Employees from others countries need a work permit to work legally in Austria. The work permit is valid for a certain job in a certain company for a maximum period of one year, and a prolongation is possible. There are stipulated maximum numbers for foreign employees (who are not citizens of the EU) for Austria as a whole and for the individual provinces. For highly qualified workers (Schlüsselarbeitskräfte) it is possible to obtain a exemption (even if the quoted for foreign employees is already met), if there is a lack of such personnel in Austria.

Beside a work permit, under certain circumstances foreign employees may obtain a certificate of exemption (Befreiungs-schein) which allows them to work generally in Austria (without being restricted to a certain job as is the case with the work permit) for a period of 5 years. This is possible for employees who worked legally for 5 of the last 8 years in Austria or juvenile employees if at least one parent lived legally in Austria for 5 years and the juvenile spent half of his live (or half of his school career) in Austria.

Foreign companies who perform services in Austria with foreign personnel have to consider that some rules of Austrian labor law apply, e.g. the minimum salaries stipulated in collective bargaining agreements, restrictions of working time etc.

austria | labor law

Austrian labor law is characterized by high standards of protection of the employees rights and the importance of collective bargaining (company agreements are less important). Therefore the possibility to govern the labor conditions by individual contracting is restricted.

Employment Contracts

The most important distinction is drawn between white-collar workers (Angestellte) and blue-collar-workers (Arbeiter). White-collar workers are employed in commercial, higher non-commercial or clerk services, all other employees are blue-collar-workers. Since this distinction is commonly seen as antiquated, in recent years the legal rules for white-collar-workers and blue-collar-workers have been adjusted, but there are still some differences, e.g. notice periods in the event of cancellation still differ. Furthermore, in many sectors there are different collective bargaining agreements for white collar workers and blue-collar-workers.

In addition to the usual labor contract, it is possible to enter into a free labor contract (freier Dienstvertrag). In a free labor contract the "employee" is not personally dependent on the "employer" (e.g. he can set his working time by himself, he works with his own equipment etc.). Only a few labor laws apply to free labor contracts.

A labor contract may be concluded for a definite or indefinite period of time. A contract for indefinite time can always be terminated by an ordinary termination (Kündigung) by both of the parties, provided they comply with certain notice requirements (termination periods and dates). The termination period the employer must comply with depends on the years of service: in the case of white collar workers, it may run from 6 weeks (in the first two years of service) to 5 months (after 25 years of service). A white collar worker must comply with a

termination period of one month. The statutory termination period may be lengthened but not shortened by the individual contract. The period the employee must comply with must not be longer than the period the employer must comply with. The employer of a white collar worker may terminate the contract at the end of each quarter, the white collar employee may terminate employment to the end of each month. This rule can be changed by contract, so that both parties may terminate the contract on the 15th or the last day of the month. In the case of blue collar workers, the applicable termination period is two weeks for both parties, there are no certain termination dates. The period may be lengthened or shortened by collective bargaining or by contract. In enterprises where a work council is actually established the work council must be informed by the employer before giving notice to the employee of the termination.

An ordinary termination may be challenged by the employee if he works in a plant where establishment of a work council is required (see below). A termination can be challenged because of a proscribed reason of the termination (e.g. union activity, activities in organizing the election of a works council) or because it was socially unjustified (important for elder employees). For some protected groups as members of the work council, pregnant employees, handicapped people or apprentices terminations are restricted.

Besides ordinary termination, contracts (whether for a definite or indefinite period of time) may be terminated with immediate effect if there are important reasons that make the continuation of the employment unacceptable for one of the parties. The employer may immediately terminate the labor contract if the employee is disloyal in his service, incapable of performing his services, refuses to comply with order of the employer etc. If the dismissal is not justifiable because there is no important reason, the employment may nevertheless end immediately, but the employee will be entitled to full pay as if the employer would have ordinarily terminated the employment.

A employee, whose employment has lasted for at least three years, is entitled to severance payment (Abfertigung) in the event of ordinary termination by the employer, termination by mutual consent, justified immediate resignation by the

employee and unjustified dismissal by the employer. The severance payment depends upon the time of service and ranges from 2 months salary to 12 months salary. The new Act on Statutory Corporate Employment Retirement Scheme (Betriebliches Mitarbeiterversorgungsgesetz) applies to contracts beginning after December 31, 2002 (there is a opt-in-possibility for older contracts). Under this new legislation the employer must pay 1,53 % of monthly remuneration to a fund which pays the severance payment.

The members of the managing board of a Stock Corporation are excluded from the protective provisions of the labor law. However, labor law may apply to managing directors of a Company with Limited Liability depending on the rights and duties they have. Shareholders holding a majority or a blocking minority of shares will not be regarded as employees if they serve as managing directors of that company.

EMPLOYEE REPRESENTATIVES AND UNION REPRESENTATION

In Austria there is only one trade union, the Austrian Trade Union Federation (Österreichischer Gewerkschaftsbund, ÖGB). The trade union traditionally has enjoyed significant influence but this has declined in recent years in particular since the instauration of the actual conservative government. The influence of the trade union is still significant since the Austrian Trade Union Federation concludes collective bargaining agreements (see below).

Members of the staff of companies having at least five employees are entitled to establish a work council (Betriebsrat). The number of work council members depends on the number of employees. The members of the work council need not be members of the trade union. The work council therefore is formally independent from the trade unions although in fact there are often connections. A work council may conclude company agreements with the owner of the company (see below).

The members of the work council enjoy certain privileges and the law provides them with specific protection (e.g. protection against termination). If their duties as members of the work council require them to perform such activities

during normal working hours, their salary may not be reduced. In companies with a large number of employees (more than 150) one or more members (2 if there are more than 700 employees, 3 if there are more than 3000 employees) of the work council are entitled to be totally released from their duties under their employment contract. Members of the work council must not be discriminated against.

There are no specific privileges for members of the Trade Union but a termination because of union activities is not justified (see above)

Collective Bargaining Agreements, Company Agreements

The parties to collective bargaining agreements are the Austrian Trade Union Federation and statutory employer organizations, in particular the chamber of commerce (Wirtschaftskammer) and its sub-organizations. Generally collective bargaining agreements are concluded for a specific sector or branch, in most of the cases they apply to the whole territory of Austria, but there are also collective bargaining agreements applicable only in a certain province. The collective bargaining agreements apply to all employees in the specific branch, no matter if they are members of the trade union or not. Collective bargaining agreements govern the main aspects of the employment like wages, working conditions, working time etc. They apply to all employment relations, overriding the individual contract, except where the terms of the individual contract are more favorable to the employee. Collective bargaining agreements are thus of great significance in Austria.

Company Agreements are concluded between the owner of the company and the work council (if there is no work council, no company agreement can be concluded). Only specified matters can be governed by a company agreement, e.g. establishing of a piece-work system, regulation of the daily work hours, etc. Company Agreements are less important than collective bargaining agreements.

Wages and Other Types of Compensation

There is no statutory minimum salary in Austria, but minimum salaries are stipulated in the collective bargaining agreements. The minimum salaries depend on the duties and the years of service. It is important that usually collective bargaining agreements grant 14 payments a year (so called 13th and 14th salary or Christmas and vacation pay, these payments are subject to a reduced income tax at a 6 per cent rate).

Other types of compensation common in Austria are the provision of a company housing or a company car, contributions to a pension funds or meals at a reduced price. Since collective bargaining agreements usually stipulate a salary paid in cash (transferred to the bank account of the employee) remuneration in kind is not of great importance in Austria. If a employer repeatedly grants additional benefits (e.g. a bonus at the end of the year) the employee is entitled to receive these benefit in the future. The employer can avoid this by explicitly reserving the right to terminate the practice at will.

The normal statutory working time is eight hours a day and 40 hours a week. Many collective bargaining agreements stipulate shorter working-times (38 hours a week are common). Overtime hours must be paid at the normal hourly rate plus 50 % (collective bargaining agreements may stipulate higher overtime pays in particular for overtime hours on Sundays). It is permissible to agree on a lump-sum for overtime hours or an all-inclusive salary as long as the lump-sum or the all-inclusive-salary exceeds the minimum payment for overtime hours set by the applicable collective bargaining agreement. Besides payment for overtime hours it is also possible that the employee takes a compensatory time off whereby one overtime hour is equal to at least one and a half hours of extra free-time.

Employment Regulations

Austrian labor law is split up to many different Statutes. For white-collar-workers the Act on white collar workers (Angestelltengesetz) is of great importance. Other important Statutes are the Labor Relations Act (Arbeitsverfassungsgesetz), the Vacation Act (Urlaubsgesetz) and the Working Time Act (Arbeitszeitgesetz).

Social Security Costs

The employer must notify the beginning and the end of an employment to the social insurance agency. The employer is liable for the payment of the social security costs. The contributions must be paid monthly by the last day of the month. The social security contributions consist of an employee's contribution which is deducted from the salary and an employer's contribution which must be paid in addition to the salary. The employer is liable for the payment of the employer's contribution and the employee's contribution.

The employee's contribution is currently (2005) 18,00 per cent of the salary for white collar workers and 18,20 per cent of the salary for blue-collar workers

The employer's contribution is currently (2005) 23,43 per cent of the salary for white collar workers and 23,23 per cent of the salary for blue collar workers.

There is a ceiling on the basis for contribution (Höchstbeitragsgrundlage) of EUR 3.630,00 a month (in the year 2005) which means no social insurance contributions have to be paid for the part of the salary exceeding this ceiling.

Generally all parts of the remuneration (including remuneration in kind and overtime payments) are the basis for the social insurance contribution, but there are a few exception, e.g. work clothes, meals at a reduced price, contributions to a pensions fund.

Health and Safety

Austrian labor law includes detailed provisions on occupational safety and health which the employer must comply with. The employer has the duty to take measures to protect the life, the health and the morality of his employees at their work place. These regulations cover the size, lightning and ventilation of rooms, fire prevention, first aid, compulsory safety instructions etc. Compliance with these provisions is monitored by the Work Inspection Authority (Arbeitsinspektorat) Depending on the numbers of employees one or more person responsible for safety (Sicherheitsvertrauensperson) have to be appointed.

Important statutes in these field are the Act on Safety and Protection of Health at work (Arbeitnehmerinnenschutzgesetz) and the Act on Work Inspection (Arbeitsinspektionsgesetz).

Contracting and Outsourcing of Work or Services

If work is outsourced this may be deemed as transfer of business (Betriebsübergang) and the corresponding regulations apply (liability of the old owner, position of the employee must not deteriorate).

If freelancers are engaged it is important to formulate a contract which is not deemed as illegal avoidance of labor law. Therefore the freelancer must not be personally dependent on the employer (see above). If the contract is deemed as illegal avoidance of labor law, labor law nevertheless applies.

austria | real estate

The following statutes regulate real estate in Austria:

- General Civil Code (Allgemeines Bürgerliches Gesetzbuch - ABGB);
- General Land Register Act (Allgemeines Grundbuchsgesetz);
- Real Estate Transaction Laws (Grundverkehrsgesetze) of the nine provinces of Austria;
- Rent Control Act (Mietrechtsgesetz).

Types of Ownership

OWNERSHIP - CO-OWNERSHIP - CONDOMINIUM

Ownership in the sense of Austrian law is generally defined in § 354 ABGB. Consequently ownership of real estate means, as in all Central European States, the right, on the one hand to make use of the substance of and the proceeds from a property, principally without any restriction, and on the other hand to exclude other people therefrom.

It is also possible, that more than one person is owner. In the case of joint ownership (Miteigentum) each owner has the right to participate proportionately on the earnings of the property and to request dissolution of the co-ownership. This is however not allowed, if the dissolution would be detrimental to at least one other co-owner.

Condominium is a special form of the co-ownership and means, that each co-owner has the exclusive right to use a certain Apartment in a building, existing on the purported property.

“USUS FRUCTUS”

“Usus fructus” means the right to use a certain piece of real estate whose owner is someone else and consume all earnings of this property.

CONSTRUCTION RIGHT (Baurecht)

A construction right principally means the right to construct a building on the surface of a property owned by another one. This right is transferable and has to be constituted by a contract with the owner of the real estate. Furthermore it is limited for certain time.

Closely related to the Construction Right is the “superaedifikat”.

Land Register

In Austria, rights over real estate, especially the ownership, “usus fructus”, mortgages (Hypotheken), easements (Dienstbarkeiten) and Construction Rights (Baurecht), are recorded in the Land Register, administrated by the District Courts (Bezirksgerichte).

The Land Register is divided into the main register (Hauptbuch) and the document collection (Urkunden-sammlung). Each piece of real estate has a lot number (Einlagezahl). The register maintains three schedules for each lot number:

- Schedule A is the schedule of estate (Gutbestandsblatt)
- Schedule B is the schedule of the ownership (Eigentumsblatt)
- Schedule C is the Schedule of encumbrances. (Lastenblatt). This schedule especially shows mortgages and easements.

The Austrian land register is a public data bank, so that everyone is entitled to inspect all documents. Furthermore the land register is subject to the principle of priority, which means that a right registered first prevails over all rights which have been registered subsequently, and the principle of confidence which means, that everyone can rely on the assumption that the registered information concerning the ownership and especially the encumbrances is right and complete.

Transfer Formalities

It is not necessary that a contract to establish rights and encumbrances on real estates be constituted in the form of a notarial deed. Only the declaration of the

registered owner that he agrees to the registration of the right which is subject matter of the concerning contract in the land register (Aufsandungserklärung) needs a certification by a notary public.

Mortgages

A mortgage is the right of a creditor to obtain satisfaction of a debt from a certain piece of real estate if the obligation is not fulfilled as agreed. The mortgage depends on the existence of the secured debt and comes into existence with its registration in land register schedule C.

A registration is only allowed where the document which is the basis for the mortgage contains a certain sum of money or a reference to a maximum amount of money (Höchstbetragshypothek). Furthermore it is possible that more than one mortgage is registered on one piece of real estate. In this case the ranking between the mortgages depends on the day of registration in the land register (principle of priority).

Where the secured debt is not repaid as agreed, the creditor has the right to initiate a public sale of the property by court order.

Restrictions on Acquisition

All nine provinces of Austria have enacted Real Estate Transaction Laws (Grundverkehrsgesetze) which contain various restrictions. Since Austria became member of the EU many restrictive provisions in these laws have been liberalized, so that all EU citizens are equally treated.

The existing restrictions are to be split up in two parts: On the one hand there are constraints for real estates used for agricultural purposes and on the other hand there are restrictions on properties in certain areas which are of special interest for tourism.

In both cases the acquisition of real estate and certain other rights is subject to approval by the Land Transfer Authorities (Grundverkehrsbehörden).

Special Legal Protections for Parties

Where a consumer concludes an agreement to become owner or tenant of a property, he has the special right to withdraw from this contract within one week, if the contract was signed on the day of the first examination of the subject matter of the contract.

Construction and Use Restrictions

A number of restrictions concerning the use of real estate can be found in public law. Not all of them can be mentioned here. The most important are:

- If it is planned to build a house or other type of building on a certain property, it is necessary to obtain a building license (Baubewilligung);
- It is not possible to obtain a building permit over every piece of real estate. It is important to know that there is a land development plan (Flächenwidmungsplan) for every piece of Austria. This plan divides the relevant area into different zones, for example agricultural or building land. It is forbidden to build on agricultural land.

Leasehold Types

The Austrian civil law differentiates between two kinds of leases. One is named "Miete" and the other "Pacht". The difference is very important, as legal consequences differ. In a "Miete" the lessee (Mieter) has the right to use the object of lease. In the case of a "Pacht" the lessee (Pächter) has not only the right to use but also to participate in the earnings of the relevant property.

In the case of a "Miete" the lessee is highly protected by the provisions of the Rent Control Act (Mietrechtsgesetz, MRG). Especially restricted is the right of the lessor (Vermieter) to terminate the lease contract and to determine the amount of rent.

Of certain interest are the following limitations on the rights of the lessor:

TEMPORAL LIMITATIONS

It is only possible to place a contract of lease under temporal limitation, if this agreement was settled in written form. Moreover not every temporal limitation is possible, as the Rent Control Act appoints minimum respites.

REASONS FOR THE LESSOR TO TERMINATE THE CONTRACT

Generally the lessor is only allowed to terminate the contract for important reasons. The Rent Control Act enumerates several important reasons. It is for example possible to terminate the contract, if the lessee does not use the property for the purpose under the contract or does not pay the rent punctually.

UPPER LIMIT FOR THE RENT

Generally the lessee and the lessor can stipulate an adequate rent. For certain kinds of apartments, especially if they are of a lower category, the Rent Control Act provides low upper limits for the rent.

All of the provisions of the Rent Control Act (Mietrechtsgesetz) are mandatory (ius cogens) and cannot be (with some exceptions) changed by contract to the disadvantage of the lessee. Where a contract includes some less favorable provisions, the lessee is not bound by these contractual obligations and can rely on the provisions of law.

§ 1 MRG regulates the appliance of the Rent Control Act. Not all leases are subject to the Rent Control Act. In particular, leases which fall under the category of "Pacht" are not regulated by Rent Control Act. In this case the lessee consequently cannot rely on the protections of the Rent Control Act.

Lease Formalities

Generally there are no formalities for lease contracts in the Austrian law, albeit there several exceptions to this tenet. Most of these exceptions are provided in the above mentioned Rent Control Act.