

Austrian corporate law 2023

Dear Ladies and Gentlemen,
Dear Friends and Colleagues,

There are some important changes in Austrian corporate law that we would like to report to you in the following.

Virtual shareholders' meetings

A few weeks ago, a federal law on virtual company meetings came into force. As you are probably aware, during the Corona pandemic legal measures were taken to enable the virtual holding of shareholders' meetings.

The practical and legal experience gained over the past three years with these temporary and provisional measures has now been put into a law on virtual shareholders' meetings.

The law allows corporations (joint stock companies – AG, companies with limited liability – GmbH), cooperatives, associations, mutual insurance societies, small insurance societies and savings banks to hold virtual shareholders' (and members) meetings. The law requires an acoustic and optical two-way connection in real time for the admissibility of such virtual general meetings. In addition, technical precautions must be taken in order to be able to establish the identity of the participants, to give the participants the opportunity to speak and to be able to vote.

The law distinguishes between simple virtual meetings, moderated virtual meetings and hybrid meetings. The latter are shareholder meetings in which one part of the shareholders is present in person at a meeting location and another part participates virtually. Further provisions apply to virtual general meetings of listed companies.

The use of the legal amendment will lead to an administrative simplification and to cost savings in the conduct of shareholders' meetings in the future.

However, it is necessary that the articles of association or bylaws of the legal entity provide that shareholders' meetings can be held virtually.

It is therefore advisable to amend the articles of association or bylaws of legal entities so that shareholders' meetings can also be held virtually.

Flexible corporation

Before the end of this year, a law is to come into force introducing a new form of company in Austria, namely the flexible corporation (FlexCo).

The flexible corporation is a variation of the limited liability company (GmbH). In addition to

the special provisions of the future law on the flexible corporation, the provisions of the law on limited liability companies are to be applied.

The main difference between a FlexCo and a GmbH is that a FlexCo can issue so-called enterprise value shares. However, the sum of the issued enterprise value shares may not reach 25% of the share capital of the FlexCo.

The difference between an enterprise value share and a normal business share is that the enterprise value share establishes a participation in the substance and profit of the company but does not allow the formation of a will in the company. This means that an enterprise value share does not grant voting rights.

For the transfer of an enterprise value share, the execution of a private deed will suffice. A notarial deed, as in the case of the transfer of a share in a limited liability company, will therefore not be necessary. This makes the transfer of enterprise shares easier and cheaper.

The law on the flexible corporation expressly provides that the holders of enterprise value shares have a tag-along right if the founding shareholders of the FlexCo sell their business shares.

A significant innovation compared to the currently applicable Law on Limited Liability Companies is also the fact that the minimum share capital of the FlexCo now only has to be € 10,000.

With the introduction of the law about the flexible corporation, the Law on Limited Liability Companies will also be amended in such a way that the previous requirement of a minimum share capital of € 35,000 will be reduced to € 10,000. The establishment of an Austrian GmbH will thus be further facilitated.

Conclusion

Austrian corporate law is thus evolving and trying to keep pace with rapidly changing economic circumstances and developments. The BMA LAW and TAX team is available for legal advice.