

Austria

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Sources of corporate governance rules and practices

- 1** What are the primary sources of law, regulation or practice (company law, securities law and regulations, listing rules, voluntary codes) relating to corporate governance?

Rules on corporate governance are primarily contained in company law (Stock Corporation Act, Limited Liability Company Act), stock exchange law (stock exchange act, trading rules of the Vienna stock exchange) and the Austrian corporate governance code. According to Austrian company law, the articles of association of stock corporations (*Aktiengesellschaften*) and limited liability companies (*Gesellschaften mit beschränkter Haftung*) may provide for further rules on corporate governance, in particular more detailed rules on the compensation and obligations of the management board and the supervisory board. In practice, the supervisory board of stock corporations may pass rules of procedure for itself as well as for the management board. Such rules contain technical provisions as far as meetings are concerned as well as detailed provisions on reserved supervisory board or shareholder matters.

- 2** What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder activist groups whose views are often considered?

According to article 10/1/6 of the Austrian federal constitution, the republic is competent for the relation between private and legal persons. Wherefore, company law as well as stock exchange law regulating the affairs between private persons as state law (*Bundessache*). The Stock Corporation Act, the Limited Liability Company Act and all other acts in company law as well as the Stock Exchange Act have been passed by the Austrian federal parliament. Two houses of parliament exist, the national council (Nationalrat) and the federal council (Bundesrat). The national council consists of 183 members elected by the people in general, equal, direct, personal, free and secret elections taking place every four years. The federal council is regarded as a representative body of the federal states within the federal parliament. Its members are elected by the state council of the federal states. The responsible body for enforcing such rules are the ordinary courts. The ordinary courts have jurisdiction over all civil and commercial disputes unless such are referred to special courts or other authorities.

Austria has no specific tradition with shareholder activist groups. Unlike Germany where minority shareholders traditionally exercise certain influence in shareholders' meetings, Austria to date is nearly unaffected in that context.

Rights and equitable treatment of shareholders

- 3** What powers do shareholders have to (a) appoint or remove directors or (b) require the board to pursue a particular course of action?

Members of the management board are appointed by the supervisory board of the company for a maximum term of five years. There are no restrictions on their reappointment as members of the management board after expiration of the initial term in office. The appointment of a member of the management board may be revoked by the supervisory board for a good cause only. Gross negligence (*große Fahrlässigkeit*) in carrying out duties, inability to manage properly, or rescission of confidence (*Entziehung des Vertrauens*) by the shareholders' meeting, provided that the rescission of confidence was obviously the result of objective considerations, will generally constitute good cause. The revocation of appointment does not necessarily terminate the management board's members employment contract.

The supervisory board of a stock corporation consists of at least three members, although the articles of association may provide for a larger number of supervisory board members (capped by the Stock Corporation Act). The members of the supervisory board are appointed by a resolution of the shareholders' meeting. The appointment of members of the supervisory board is limited in time. Prior to the expiration of the period the appointment may be revoked by a resolution of the shareholders' meeting without cause. This resolution requires a three-quarters majority of the votes cast.

Apart from shareholders' basic rights to receive dividends and to dispose of their shares, according to the law and the articles of association shareholders have the right to take part in all shareholders' meetings, to participate in discussions and to vote with their shares. Shareholders do not have specific rights to intervene in management decisions. However, shareholders holding 10 per cent of the registered share capital or any other percentage provided for in the articles of association may request a shareholders' meeting in writing, indicating the purpose of the meeting. Shareholders representing 10 per cent of the registered share capital may also request that a certain matter be put on the agenda of a shareholders' meeting. The Stock Corporation Act provides for further minority rights.

- 4** What decisions are required to be reserved to the shareholders?

The following decisions require solution by the shareholders:

- appointment of the members of the supervisory board;
- amendment of the articles of association;
- filing of claims against the management board or the supervisory board or shareholders;

- approval of the annual financial statements, if the management and supervisory boards refer the matter to the shareholders' meeting or if the supervisory board does not approve the annual financial statements as submitted by the management board;
- distribution of profits and release from liability of the management board and supervisory board for a specific fiscal year;
- increase and decrease of the share capital; and
- reorganisation matters (spin-offs, mergers, etc).

5 To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

Each shareholder holding ordinary shares is entitled to vote his or her or its shares in the shareholders meeting. The articles of association can limit or exclude the voting rights of certain shareholders holding certain kinds of shares, in particular preferred shares (*stimmrechtslose Vorzugsaktien*). Preferred shares do not confer voting rights to the shareholders but a preferential right for dividends.

The articles of association can further provide for voting rights restrictions (*Höchststimmrechte*). The voting rights of all shareholders thereby can be limited to a certain percentage of the share capital in the shareholders' meetings. In practice, voting-right restrictions are not often used by a listed companies. In the past, for example, VA Technologie AG and Austria Tabak AG had restricted voting rights in their articles of association. Both companies have been taken over and are no longer listed on the Vienna stock exchange.

Austrian stock corporation law prohibits disproportionate voting rights (*Mehrstimmrechte*). Therefore, 'golden shares' are also prohibited (regarding golden shares also see ECJ C-463/00, C-98/01, C-367/98, C-483/99, C-503/99).

Rule 2 of the Austrian Corporate Governance Code, holds that the principle 'one share, one vote' is a comply-or-explain rule. Thus, restricted voting rights are excluded for listed companies.

6 Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?

The shareholders' meetings are called by the management board. The convocation must be published and must state the name of the company as well as the time and place of the meeting. At least 14 days must transpire between the last publication of convocation and the meeting. The articles of association may provide that voting rights may only be exercised if the shares are deposited with a notary public or a bank until a given date prior to the meeting. This is particularly important for shares. Further conditions may be contained in the articles of association, in particular a longer convocation period or a certain period for the deposit of the shares with a notary public or a bank. In practice, most shares are deposited with banks. For that reason, the banks regularly issue deposit confirmations.

7 Are shareholders able to (a) require meetings of shareholders to be convened and/or (b) require resolutions to be put to shareholders against the wishes of the board and/or (c) require the board to circulate statements by dissident shareholders?

A minority shareholder or a group of shareholders representing 5 per cent of the registered share capital of a stock corporation is entitled to:

- request the convocation of a shareholders' meeting or to call

the meeting if the management board does not comply with such request: the articles of association may provide for shareholders holding a lower percentage of the registered share capital being entitled to convene a shareholders' meeting;

- request that a certain matter be put on the agenda of a shareholders' meeting.

If neither the management board nor the supervisory board of a stock corporation complies with the request of the shareholders, the competent court may empower the shareholders who requested the convocation of a shareholders' meeting, or a certain issue being put on its agenda, to do so.

However, shareholders of Austrian stock corporations may not require the management board to circulate statements by dissident shareholders. Nevertheless, the shareholders of a stock corporation have the right to take part in shareholders' meetings, to request information and to vote with their shares. In particular, they may request information and have the right to file petitions regarding all issues of the agenda of the shareholders' meeting.

8 Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action against controlling shareholders for breach of these duties be brought?

Fiduciary duties (*Treuepflichten*) originally stem from the law of partnerships. Only recently, however, fiduciary duties have also been argued for stock corporations and limited liability companies. In particular, regarding limited liability companies, precedents not only acknowledge fiduciary duties between the company and its shareholders but also between the shareholders. For stock corporations, fiduciary duties exist, although there is no specific precedent and the Austrian supreme court has made no judgment in this respect.

Fiduciary duties are derived from the articles of association. The articles of association, as is the case with any other contract, have protective effects and contractual partners. Fiduciary duties not only bind controlling shareholders but also minority shareholders (which is explicitly acknowledged in the context of limited liability company). The content of fiduciary duties is not explicitly defined in the Stock Corporation Act. However, fiduciary duties materialise in different situations such as resolutions of the shareholders' meeting, management decisions, issues of specific shareholders' interest, excessive use of discretionary powers and the like. As a consequence of a breach of fiduciary duties, resolutions of the shareholders meeting can be enforced by an opposition action (*Anfechtungsklage*). A breach of fiduciary duties gives rise to a claim for damages against the stock corporation as well as its shareholders.

9 Can shareholders ever be held responsible for the acts or omissions of the company?

According to article 48 of the Austrian Stock Corporation Act, a stock corporation is liable to creditors for its assets only. However, personal liability of shareholders for debt of the stock corporation is not totally excluded. So-called 'break-through liability' (*Durchgriffshaftung*) in particular has been argued for cases of insufficient capitalisation of the stock corporation (*Unterkapitalisierung*), amalgamation of assets (*Vermögensvermischung*) as well in cases of controlling or de-facto management.

Insufficient capitalisation means that the company has insufficient capital for its business operations and therefore is likely to affect its creditors interests. The insufficient capitalisation can

either exist at the time of establishment of the stock corporation or later in the course of business operations.

Amalgamation of assets means that the shareholder uses the stock corporation's assets for his, her or its private interest. In cases of controlling or de-facto management, a shareholder who is not a member of the management board or supervisory board of the stock corporation controls management of the company.

In all of the above cases, the shareholder negatively affects the interests of the stock corporation or its creditors and therefore can be held liable for their claims. The issues of insufficient capitalisation, amalgamation of assets and controlling of de-facto management are strongly disputed in Austria. In practice, the Austrian supreme court has only once held shareholders liable for insufficient capitalisation.

Corporate control

10 Are anti-takeover devices permitted?

The management board and the supervisory board of stock corporations are bound by a duty of neutrality in takeover proceedings. The management board and supervisory board of a listed stock corporation may not take measures likely to deprive their shareholders of the opportunity to make a free and informed decision on the takeover offer. From the point in time at which the management board or the supervisory board of a target company becomes aware of the offeror's intention to make a takeover offer until the publication of the results of a takeover offer (according to article 19 of the Austrian Takeover Act) – and if the takeover goes ahead – until the takeover offer has been conducted, the management board and the supervisory board of the target company must refrain from any act which might frustrate the takeover offer. This restriction does not apply where measures are based on a prior obligation of the management board or the supervisory board of the target company or on resolutions passed by the general meeting of shareholders after the intention of the offeror to make a takeover offer has become known.

11 Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

Shares of a stock corporation are not divisible, but they are inheritable and freely transferable. Whereas bearer shares are transferred by simple physical transfer, registered shares can only be transferred by endorsement. If a registered share is transferred, the company must be notified of the transfer and the share certificate must be presented to the company in order to prove the transfer. The company will then enter the transfer into the share register. In this respect, the company is under a duty to inspect the correctness of the endorsement clauses but not the validity of the respective signatures.

The articles of association may provide that the transfer of registered shares requires the prior approval of the company. Such approval is granted by the management board if the articles of association do not provide otherwise. For example, the articles of association may also provide that the transfer of shares requires a resolution by the shareholders' meeting. Approval may only be refused for good cause.

In practice, transfer restrictions are normally not contained in the articles of association of listed companies. Name registered shares currently cannot be traded at the Vienna stock exchange. Therefore, transfer restrictions in practice are only contained in shareholders' agreements.

12 Are compulsory share repurchase rules allowed?

Can they be made mandatory in certain circumstances?

A stock corporation may only acquire its own shares for limited reasons contained in the Stock Corporation Act, inter alia:

- if necessary to avoid imminent damage;
- if the acquisition has been made free of charge or by a credit institution in execution of a buying commission;
- by authorisation of the shareholders' meeting, valid for a period not exceeding 18 months, if the shares are to be offered for sale to employees, executives and members of the management board or supervisory board of the company or an affiliated enterprise;
- by authorisation of the shareholders' meeting valid for a period not exceeding 18 months, if the shares of the company are admitted to an organised stock market or a recognised, public, duly functioning stock market in a full member state of the OECD. Trading in its own shares shall be excluded as purpose of the acquisition. The shareholders' meeting may also authorise the management board to redeem the companies own shares without any further resolutions of the shareholders' meeting.

The principle of equal treatment of shareholders shall be applicable to the acquisition and sale of the companies own shares. Acquisition and sale by means of a stock exchange or a public offering shall meet this requirement. In certain cases, the amount of the nominal capital consisting of shares shall not, together with the company's shares that held by the company, exceed 10 per cent of the nominal capital. The company shall not be entitled to any rights arising from shares it holds in the company. A subsidiary or any other party holding shares for the account of the company or a subsidiary cannot exercise a voting right and a pre-emptive right from such shares. If a company has acquired its own shares in violation of Stock Corporation Act, they must be sold within one year of their acquisition. The creation of a pledge of own shares shall be considered equal to the acquisition of own shares.

Responsibilities of the board (supervisory)

13 Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The stock corporation has, without exception, a two-tier management system, composed of the management board (*Vorstand*) and the supervisory board (*Aufsichtsrat*). Unlike the Austrian stock corporation, the 'Societas Europea' (SE) can follow either a one-tier or a two-tier system. The shares of an SE may be listed on the Vienna stock exchange.

14 What are the board's primary legal responsibilities?

The supervisory board is bound to supervise the management of the company. At any time, the supervisory board can request a report from the management board concerning company matters, including the company's relations with other companies in the group. This request may be raised by a single member of the supervisory board. If the managing board refuses to grant the request, however, the request can only be sustained if another member of the supervisory board also requests a report. The supervisory board may also inspect and review all books and documents of the company, including its assets, in particular, cash accounts and stock in trade. Certain transactions can only

be effected by the management after approval of the supervisory board. The obligation of the management board to obtain prior approval from the supervisory board does, however, not affect the validity of the mentioned transaction vis-à-vis third parties, but may make the management board liable for any damages resulting therefrom.

The management board represents the stock corporation in all matters. This representative power extends to all contractual obligations of the company which are entered into by the management board on behalf of the company. Insofar as the articles of association or the supervisory board limit the scope of the representative power of the management board, the board is then bound by such limitations. Vis-à-vis third parties, any limitation of the management board's representative authority is invalid and without effect.

15 Who does the board represent and to whom does it owe legal duties?

The supervisory board and the management board are both administrative bodies of the stock corporation. According to the Stock Corporation Act, it is the responsibility of the management board to manage the company in the best interests of the company considering the interest of the shareholders and the employees as well as the interests of the public. The management board is free of any orders by shareholders or the supervisory board members and therefore is only obliged to safeguard the interest of the company. Although it is regularly the case in practice, the supervisory board members may not represent the interest of controlling shareholders. Although the Stock Corporation Act does not contain specific rules on who is eligible to be appointed a member of the supervisory board, the draft amendment to the Austrian Corporate Governance Code will contain specific rules on independence of supervisory board members from shareholders. The Austrian Corporate Governance Code is not mandatory.

16 Can an enforcement action against directors be brought on behalf of those to whom duties are owed?

According to section 84 of the Stock Corporation Act, the members of the management board must act with the care and diligence of a prudent manager when operating the business. The same provision applies to two members of the supervisory board. It is a general, objective requirement, not subjective or aimed at the personal qualifications of the members of the respective board. The members of the respective board cannot refer to his lack of qualifications as an excuse.

The management board members and the supervisory board members are only liable to the company. Normally, they are not liable towards third persons. Creditors are restricted with their damage claims to the company. Direct claims of creditors against members of the supervisory board of a stock corporation can only be based on the breach of a specific protective act or in the case of a specific legal relationship (*gesetzliches Sonderverhältnis*) exists. If, however, the member of the management board or the supervisory board acts to the detriment of the company or its shareholders for the purpose of gaining special benefits for him or her or for a person other than the company, the management board member or supervisory board member shall personally be liable for any damage resulting therefrom.

17 Do the board's duties include a care/prudence element?

The members of the management board must act with 'the care and diligence of a prudent manager' when operating the business. Provisions as to liability which are valid and binding on members of the management board also apply to members of the supervisory board. The degree of care and diligence required has been specified in more detail by decisions of the supreme court. A careful and prudent member of the supervisory board must have more experience in commercial and financial matters than the average businessman and must furthermore be able to understand complex legal and economic interdependencies and their effects on the company.

18 To what extent do the duties of individual members of the board differ (for example, if their skills and experience are different)?

The duties of individual members of the board do not differ. In particular, any member of the management board or the supervisory board may not refer to his lack of qualifications as an excuse. Each member of the management board and the supervisory board must safeguard the interest of the stock corporation and protect it from prejudice and damages. This duty also comprises the duty to observe any applicable statutes and regulations as well as the articles of association of the company.

19 To what extent can the board delegate responsibilities to management, a board committee or person?

The management board is responsible for the management of the company. However, the management board may grant special power of attorney to employees for certain cases of daily business. The *Prokura* is a most comprehensive authority entitling the special agent (*Prokurist*) to engage in all kinds of commercial transactions and legal acts in and out of court (which the operation of any kind of business may bring about). Without granting the full scope of power included in a *Prokura*, the owner of a business can appoint a person and grant him or her a commercial power of attorney (*Handlungsvollmacht*). This person's authority extends to the operation of the particular business and any transactions in the ordinary course of that business.

20 Is there a minimum number of 'non-executive' and/or 'independent' directors required by law, regulation, or listing requirement? If so, what is the definition of 'non-executive' and/or 'independent' director and how do their responsibilities differ from those of executive directors?

The supervisory board of a stock corporation consists of at least three members, although the articles of association may provide for a larger number of supervisory board members. The maximum number of members is fixed by statute and depends on the registered share capital of the company. The maximum number is seven for companies with the registered share capital of €350,000 or less, 12 for companies with a registered share capital of more than €350,000 and 20 for companies with a registered share capital of more than €3.5 million. According to rule 51 of the Austrian Corporate Governance Code, the maximum number of supervisory board members shall not exceed 10 (without works council representatives). Companies with a free float of more than 25 per cent shall have at least one free-float representative as a member of the supervisory board. Rule 51 of the corporate governance code is a comply-or-explain rule. The Austrian corporate governance code is not mandatory.

Members of the management board and employees of the company or other entities may not become supervisory board members. Individuals who are already members of the supervisory board of 10 other stock corporations or limited liability companies are excluded (the function as chairman of the supervisory board counts double for the purpose of determining the maximum figure). Individuals holding more than eight supervisory board memberships in listed stock corporations are also excluded.

The function as supervisory board members is equal to the function as the member of the executive board of a *Societas Europaea*.

21 Do law, regulation, listing rules or practice require separation (or joining) of the functions of board chairman and CEO? If flexibility on board leadership is allowed by law, regulation and listing rule, what is generally recognised as 'best practice' and what is the common practice?

Members of the management board cannot become members of the supervisory board. Therefore, the management board member holding the position of a CEO may not, at the same time, be the chairman of the supervisory board.

22 What board committees are mandatory? What board committees are allowed? (Specify for what functions.) Are there mandatory requirements for committee composition (eg 'independence')?

The supervisory board may set up subcommittees to deal with special aspects of the board's duties. The supervisory board may appoint one or more committees from among its members, in particular for the preparation of its hearings and resolutions or the supervision of the execution of its resolutions. If the supervisory board consists of more than five members, a committee shall be appointed in any event for the audit and preparation of the approval of the annual financial statements. The same applies to stock corporations whose shares are listed on the stock exchange. The audit committee also has to audit the consolidated accounts and has to render a proposal for the auditor in its report to the supervisory board. Listed corporations must have a financial expert as a member of the audit committee. A person who has been a member of the management board or a key employee or the auditor of the corporation in the last three years is excluded from being the chairman of the audit committee or the finance expert. Members of the works council who have been delegated to the supervisory board pursuant to the Austrian labour relations act shall have the right to occupy at least one seat on the board and to vote in any committees. This shall not apply to meetings and votes regarding the relationship between the company and members of the management board, except for resolutions concerning the appointment or the dismissal of a member of the management board as well as the granting of company share options.

According to the Austrian Corporate Governance Code (rule 39 et seq), the supervisory board shall set up committees from among its members depending on the specific circumstances of the enterprise and the number of supervisory board members. A supervisory board shall set up an accounting committee (audit committee) irrespective of statutory regulations. The supervisory board shall further set up a human resources committee. The chairman of this committee shall always be the chairman of the supervisory board. Finally, the supervisory board shall set up a strategy committee. Compliance with the corporate governance code is not mandatory.

23 Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The supervisory board shall convene at least once every quarter of a calendar year.

24 Is disclosure of board practices required (committee structure, number of meetings, attendance, etc) by law, regulation or listing requirement?

The Austrian Stock Corporation Act does not contain any such requirement. According to the Corporate Governance Code, the candidates for election to the supervisory board shall be announced and presented one week prior to the shareholders' meeting (rule 5). A calendar of corporate financial event shall be posted immediately after completion of the current business year on the website of the company and shall subsequently also be published in the annual report. This shall contain all dates of relevance for investors and other stakeholders for the next business year (rule 70).

25 Is there any law, regulation, listing requirement or practice which affects (a) the remuneration of directors, (b) the length of directors' service contracts, (c) loans to directors, (d) other transactions between the company and any director?

According to section 78 of the Austrian Stock Corporation Act, the supervisory board shall ensure the total remuneration of the members of the management board (salaries, profit participations, insurance payments, commissions and ancillary considerations) be proportionate to the duties of each member of the management board and to the situation of the company. The same shall be applied *mutatis mutandis* to pensions, payments to surviving dependants and services of a similar kind.

The supervisory board appoints members of the management board for a maximum term of five years. An appointment of a member of the management board for a specific longer period or for an indefinite period shall be effective for a period of five years. An appointment may be renewed. However, such renewed appointment shall require a written confirmation by the chairman of the supervisory board to become legally effective. These provisions apply *mutatis mutandis* to the employment contract.

A loan may be granted to members of the management board and executives of the company only if explicitly approved by the supervisory board. The members of the management board and operations managers who are entitled either to employ or to dismiss other employees in the enterprise or division thereof or to whom a power of procurator or a general power of attorney has been granted, shall be deemed executives. The company may grant loans to legal representatives or executives of controlled or controlling enterprise only after explicit approval by the supervisory board of the controlling company. Such approval may be granted in advance for certain loans but not for a period of more than three months. The approving resolution shall also regulate interest and repayment of any loan. The granting of a loan shall be deemed equal to an approved withdrawal exceeding the amount of reimbursement, in particular the approval of withdrawals of advances on reimbursements to which the withdrawer has a right. The above does not apply to loans the amount of which do not exceed one month's salary.

According to new section 95/5/12 of the Austrian Stock Corporation Act, the conclusion of agreement between members of the supervisory board and the company or subsidiaries of the company for a non-insignificant consideration require the approval of the supervisory board.

26 In relation to directors and officers liability insurance, (a) is it permitted and/or common practice, (b) can the company pay the premiums?

Insurance is permitted. As far as listed companies are concerned, members of the management board and sometimes also members of the supervisory board have directors' and officers' insurance protection. Unlike the German corporate governance code, the Austrian Corporate Governance Code does not contain a disclosure requirement regarding directors' and officers' insurance.

The company can pay the insurance premium. Premiums paid by the company, however, count as consideration to the respective board member and increase the taxable income.

27 Are there any constraints on the company's indemnifying directors in respect of liabilities incurred in their capacity as directors? If not, are such indemnities common?

In all regular cases, the liability of members of the management board and the supervisory board are liabilities towards the company. The company can only waive such liability claims against members of the respective board and can only conclude a settlement agreement in that respect:

- five years after the claim arose;
- the shareholders' meeting accepts such waiver or settlement; and
- no objection by a minority of 20 per cent or more of the registered share capital.

Under these same conditions, the company may indemnify a board member.

28 What role do employees play in corporate governance?

The works council is entitled to nominate one third of the members of the supervisory board. The members of the supervisory board nominated by the works council have the same rights as the other members, except that in order to protect the interests of the shareholders, appointment and removal of the members of the management board or the chairman and deputy chairman of the supervisory board require a 'dual majority', ie, the majority of (i) the supervisory board as a whole and (ii) the capital representatives. This provision prevents members nominated by the works council from playing a key role in the appointment of the chairman of the supervisory board and the members of the management board in instances where the capital representatives are deadlocked.

Disclosure and transparency

29 Are the corporate charter (or articles of incorporation) and by-laws of companies publicly available? If so, where?

All stock corporations and limited liability companies are registered in the commercial register. The commercial register is open for public inspection without the need to show a specific legal interest or reason. The articles of association are available in the commercial register. Any other by-laws are not available.

Each Austrian superior court and, for the state of Vienna, the commercial court of Vienna, keeps a commercial register.

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30 What information are companies required to publicly disclose?
How often is such disclosure required to be made?

Within the first five months of the fiscal year, the management board has to prepare the annual balance sheet together with the report on the state of the company, the profit and loss statement and the proposal for profit distribution which are to be presented to the supervisory board. The supervisory board approves the reports, the annual financial statements are formally confirmed. The management board without delay has to deposit the finan-

cial statements together with the audit certificate with the commercial register. The management of a large stock corporation (as defined by law) is required to publish without delay the financial statements and the audit certificate in the official gazettes. Similar obligations exist with regard to consolidated financial statements and consolidated reports on the state of the group.

All entries on the commercial register are publicly disclosed. The Austrian Corporate Governance Code obliges corporations to disclose all financial information via the internet.