

Doing Business in Austria



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1. Introduction

This guide provides an overview of doing business in Austria. Although the text is informative, it is always necessary to obtain specific legal and tax advice if setting up a business in Austria.

2. Country Profile Austria

Austria is a federal, parliamentary, representative democratic republic with 9 Federal States (“*Bundesländer*”; Provinces). It has been a member of the European Union (“EU”) since January 1, 1995. EU rules provide freedom concerning free movement of workers, goods, services and capital for citizens and firms from EU member states. Austria has a solid economy and a stable political system.

2.1. General Information

Austria has a population of approx. 8.6 million and an area of 83.879 km². Its capital is Vienna. The official language is German. English is widely spoken.

The currency is the Euro and Cents, as Austria is part of the Euro zone. Per capita GDP amounts to EUR 35.710 per year. Austria uses the metric system and is on Central European Time CET (UCT +1), in summer CEST (UCT +2).

Regular working hours per week are between 38 and 40 hours.

2.2. Public Holidays

New Year’s Day:	1 st of January
Epiphany:	6 th of January
Easter Monday	
Labor Day:	1 st of May
Ascension Day (“ <i>Christi Himmelfahrt</i> ”)	
Pentecost Monday (“ <i>Pfingstmontag</i> ”)	

Corpus Christi (“Fronleichnam”)	
Assumption of Mary (“ <i>Maria Himmelfahrt</i> ”):	15 th of August
National Day:	26 th of October
All Saints (“ <i>Allerheiligen</i> ”):	1 st of November
Immaculate Conception (“ <i>Maria Empfängnis</i> ”):	8 th of December
Christmas:	25 th - 26 th of December

2.3. Legal System

The legal system is structured as a so-called “tier system” of law, with the Austrian Federal Constitution (“*Bundesverfassung*”), individual constitutional provisions and the EU Acts of accession at the top level. General federal law, and the law of the federal provinces are at the lower tiers. Statutory authorities at each level can enact regulations (“*Verordnungen*”) and individual administrative rulings (“*Bescheide*”), each solely on the basis of the law (“*Legalitätsprinzip*”; principle of legality).

Austria does not have a case law system. The judge is free to reach his own decision or ruling on the basis of applicable law, although the lower courts generally consider the rulings of the highest courts.

With its EU accession on 1st January 1995, Austria adopted the EU legal framework.

Austria is also a member of numerous international legal conventions such as the New York Arbitration Convention of 1958, and the 1980 Vienna Convention on Contracts (international UN purchasing law).

The federal government (Cabinet) is entrusted with the highest administrative duties of the Republic of Austria with regard to administrative matters of the federal state (“*Bundesverwaltung*”). The cabinet is composed of the Federal Chancellor, the Vice-Chancellor and the other federal ministers. The government and its members execute only those duties for which they have been expressly entrusted by law (principle of legality).

In addition to performing the function of the government and being the highest instance in the administration of federal law, the Cabinet's most important constitutional responsibility is to pass legislative proposals. The Cabinet passes its resolutions ("*Ministerbeschlüsse*") unanimously. There are no majority votes.

Equality, freedom of speech, freedom of religion, press freedom, and the protection of human dignity are some of the major principles of the Austrian constitution.

Besides the federal law ("*Bundesrecht*") and the federal government system a lot of matters fall into the competence of the Austrian provinces ("*Landesrecht*"), with the governments of the 9 provinces ("*Landesregierungen*") being responsible for its execution. However, the governor of a province ("*Landeshauptmann*") also administers substantial parts of the federal law (e.g., trade law) in the course of the so-called indirect federal administration ("*mittelbare Bundesverwaltung*"); his decisions can be appealed to the competent federal minister.

2.4. Infrastructure

Austria's infrastructure is highly developed. There are approx. 2.000 km highways and 100,000 km of ordinary roads. The railway transportation system is modern. The rebuilding of the central station in Vienna ("*Hauptbahnhof*") was completed in 2015.

The most important Austrian airport, Schwechat, (VIE) is located close to Vienna. It is an important hub particularly to Eastern European countries. Along the river Danube there are several harbours.

The public transportation system generally is of a high standard. Internet connections cover almost the entire area of Austria.

2.5. Foreign Relations

According to the Mercer Quality of Living Survey 2015 Vienna is the city with the world's best quality of living, followed by Zurich, Auckland, Munich and Vancouver. Almost all serious city rankings include Vienna in the top positions. Based on its political and economic stability in connection with a functioning judicial and administrative system, Austria is an attractive place to set up business.

Austria is considered to be a diplomatic and political stable country. Thus, Vienna hosts a number of international organisations, including but not limited to the headquarters of the Organization for Security and Cooperation in Europe (OSZE), the International Atomic Energy Agency (IAEA), the Organization of the Petroleum Exporting Countries (OPEC) and the third headquarters of the United Nations (UNO City).

2.6. Business Etiquette

Meetings start on time, as delays may not lead to successful results. Greetings with handshakes are common in Austria. It is important to shake hands with all attendees, to stand up and be sure that the handshake is firm and confident, with brief but friendly eye contact. The exchange of business cards is common and welcome at the beginning of a meeting. Questions about personal income level and very private matters should not be asked.

The use of academic titles is very common in Austria. Persons are named by Mr. or Mrs. XY rather than by the use first names, although the Anglo-American tradition to use first names becomes more and more usual in international contacts.

Austrians use minimal body language while talking, and appreciate personal space during any interaction. A loud voice may in some cases be detrimental, which might also be the case if somebody is approached in too friendly a manner. During meetings and negotiations, cell phones should not be placed on the table, and should be set to silent mode.

3. Business Entities

In Austria anybody can start a business, regardless of his nationality or the place of business (of course, Austria limits immigration for citizens outside the EU, see item 10.2.).

Austrian law recognizes sole proprietorships, partnerships (civil partnerships, general and limited partnerships) as well as corporations (limited liability companies, stock corporations and Societas Europaea).

3.1. Corporations

Corporations have their own legal personality, possess rights and obligations in their own name and their shareholders are not liable for the debts of the corporation. Thus, an investor in a corporation can limit his financial exposure with the amount of his capital contribution.

Corporations are created when they are registered in the Company Register. They can be established by one or more shareholders. Shareholders can be individuals or legal entities, residents or non-residents, Austrian or foreign citizens. Corporations are categorized in small, medium-sized and large corporations, depending on the size of total assets, revenues and number of employees, with a number of consequences under commercial law as well as with regard to the extent of the public disclosure obligations for the annual financial statements.

The company's registered office must be in Austria. The costs for establishing a corporation depend primarily on the amount of share capital. Also it is cheaper to establish a limited liability company than a stock corporation.

3.1.1. Limited Liability Company (“GmbH”)

The most common form for doing business in Austria is the **limited liability company (LLC) (“GmbH”, “Gesellschaft mit beschränkter Haftung”)**. It can have a simple structure. The GmbH is particularly used for small and medium sized businesses and is often registered as an “Austrian subsidiary” of multinational companies. The GmbH can be used for nearly

all legal types of businesses, except for insurance businesses, mortgage banking, equity funds and political activities.

As a rule, the statutory minimum amount of share capital is 35,000 Euro. At least half of the stated share capital must be contributed in cash (for which a bank account at an Austrian bank is required). It is also possible to contribute the share capital in kind (“*Sachgründung*”), which, however, requires a special audit procedure in respect of the contribution in kind and, thus, is rather unusual. It is possible to form a GmbH with a so-called founding privilege, with a share capital of only EUR 10,000, of which only EUR 5,000 must be contributed in cash. This limits the business risk of the shareholders to EUR 10,000 for the first ten years. The founding privilege by law ends after ten years, or earlier if the articles of association are amended accordingly. When it does end, the statutory minimum cash contribution of EUR 17,500 must be provided.

The formation of a GmbH requires articles of association in the form of a notarial deed. The articles must contain at least the company name, registered office address, objects of the business, the amount of share capital, and the capital contribution of each shareholder.

The GmbH must have at least one managing director, to be appointed by shareholders’ resolution or in the articles of association. Neither the managing director(s) nor the shareholder(s) need(s) to be Austrian resident(s). The shareholders (with majority vote) can give binding instructions to the managing director(s). A supervisory board can be established in the articles of association (which is very unusual) or is mandatory, if certain criteria set forth by law are fulfilled (e.g., share capital exceeding EUR 70,000 with more than 50 shareholders, aggregate number of employees on average exceeding 300).

The annual shareholders’ meeting must be held at least once a year to review and to approve the annual financial statements, to distribute the company’s net profits and to give a strategic overview about the perspectives and the goals of the company for the subsequent financial year.

3.1.2. Stock Corporation (“AG”)

There are much fewer **stock corporations** (“AG”, “*Aktiengesellschaft*”) than limited liability companies in Austria.

The stock corporation is the most complex legal entity in Austria, suitable for businesses which require larger amounts of capital or which are listed at a stock exchange. The most important advantage of this business entity is the flexibility in transferring its shares and the ability to raise funds on the capital markets.

This type of company can have any object of activity. In some cases of business establishment, e.g. to establish certain banking business a stock corporation is mandatory.

A stock corporation is subject to a greater degree of statutory supervision than a limited liability company, with a mandatory supervisory board and audit requirements (by an independent auditor) for the annual financial statements. In addition, the members of the managing board and the supervisory board (and in some cases also a court-appointed formation auditor) must examine and report on the formation of the company. In certain cases, formation must also be examined by a court-appointed formation auditor.

The Austrian Stock Corporation Act is based on a two-tier management system (management board and supervisory board).

A stock corporation must have a share capital of at least EUR 70,000. As compared to a limited liability company, the transfer of shares in a stock corporation does not require the form of a notarial deed. The stock capital is divided into shares with a nominal value of at least EUR 1 or into stocks representing a percentage of the stock capital without a par value (quota shares).

At least one quarter of the par value and the full premium must be paid up prior to the registration in the Company Register. If the stock is not fully paid up, it must be issued in

the form of registered stock. Up to one third of the stock capital can be non-voting preferred stock, which grant a right to receive a preferred dividend, but has no voting rights.

The foundation of the stock corporation is more complex than the formation of a limited liability company, because two management stages are involved. The articles of association must be in the form of a notarial deed, including at least the company name, the registered office address, the objects of the business, the amount of share capital (listed companies also have to state whether bearer or registered shares are issued), whether the share capital is divided into par value shares or non-par value shares (par value of the individual shares, number of non-par value shares, class of shares), composition of the managing board, and the form in which company publications are made. The founders appoint the first supervisory board which itself appoints the managing board. The managing board is independent, i.e. cannot be bound to the instructions of the supervisory board or the shareholders, which is a major difference to the GmbH.

3.1.3. Societas Europaea

The **Societas Europaea** (“SE”) is based on the Council Regulation (EC) No. 2157/2001 on the Statute for a European Company. The structure and operational range is equal for all EU countries.

The main advantage to form this kind of business entity is to use synergy effects from a one tier operational business unit within the EU. The SE might have some advantages for large companies seeking for flexibility in terms of location and in view of uniform procedures for mergers, holding company formation and restructuring.

The SE is a special form of a stock corporation, with a minimum share capital of EUR 120,000. It is divided into shares which are eligible for listing on a stock exchange. The firm’s name must include the term “SE”. The “SE” is domiciled at the headquarters of the company, but is also registered in the domestic company register.

The SE can be established in the traditional central European two-tier-system with a management board and a supervisory board or in the Anglo-American single-tier-system combining both boards.

There are several ways available to form a SE. Existing public limited liability companies can merge to form an SE, provided that at least two of the involved companies come from different EU member states. Alternatively, two companies, both public and private limited liability companies can form a Holding SE, if more than 50% of the capital of each of the promoting companies is contributed, and at least two of the promoting companies are from different EU member states, or have had a subsidiary or branch in another member state for at least two years. Another method is to build an SE as a joint venture company. Finally, an existing public limited liability company can be converted into an SE, provided it has had a subsidiary in another member state for at least two years. One SE itself can establish subsidiaries of SE's.

3.2. Partnerships

3.2.1. Civil Law Partnership

A civil law partnership (“**Gesellschaft bürgerlichen Rechts**”, “**GbR**”) does not have its own legal identity and cannot be registered in the company register.

The founders need to be at least two natural or legal persons. All the partners must fulfil the requirements and qualifications according to industrial law, and they have unlimited liability. It is recommended to draft a partnership agreement.

All partners are jointly liable for all debts and obligations of the partnership, also with their private assets.

This form is primarily used for short-term projects in the construction business.

3.2.2. Commercial Partnership

An investor can choose a business entity in the form of a commercial partnership, where the liability of all partners is unlimited and the partners are liable with their private assets (general partnerships) or with (a) general partner(s) and at least one limited partner (limited partnerships).

Commercial partnerships perform economic activities under a common trading name on the basis of an agreement between at least two partners, with no limitation of the number of partners to the upside. Partnerships do not have legal personality, although they can be registered as owners of real estate and can sue and can be sued and they have to be registered in the company register.

In a **general partnership** (“OG”, “*Offene Gesellschaft*”) all partners are fully liable towards the creditors of the company. Each of the partners has personal, unlimited, direct and joint liability to all partnership creditors for the debts of the partnership. They are personally liable for the firm’s liabilities. That means that a proprietor is not only liable with his business assets but also with his private assets.

In the event of a **limited partnership** (“KG”, “*Kommanditgesellschaft*”) at least one of the partners (the general partner) has unlimited liability.

Commercial partnerships are formed by articles of association without any formal requirements. The registration of the firm in the Company Register requires notarized signatures of all members. Partnerships cannot enter into relationships with third parties until they have been registered in the Company Register. The partners can be natural persons, partnerships and corporations.

Commercial partnerships are primarily used for professional services. The management (representation of the company) is conducted by the partners, in the event of a limited partnership by the general partner(s), who is/are the legal representative(s) of the company. The partners are not necessarily required to participate actively in the partnership’s daily management. Partners can name business managers and grant them

“Prokura” or special representative power. There are no minimum capital requirements and no audit requirements except for companies where the general partner is a corporation.

The income profit and loss of partnerships is apportioned to the partners directly in the proportion of their partnership percentage. The partnership itself is not subject to income tax.

There is no minimum capital required for OG’s. The proprietors do not have to contribute money. Thus, an “OG” may be set up without any initial capital requirements.

The limited partner(s) (“Kommanditist(en)”) of a KG only have limited liability in respect of the debts of the partnership. Therefore, the KG has a capital requirement in the form of the limited partnership share, the amount of which limits the liability of the limited partner.

3.2.3. Corporate Partnership (“GmbH & Co KG”)

The GmbH & Co KG is a limited partnership (KG), where the GmbH is the sole personal liable general partner. Typically, the shareholders of the GmbH are also limited partners of the KG.

The management power of the GmbH & Co KG is exercised by the GmbH, which operates the business as the general partner, represented by the managing director(s) of the GmbH. Thus, only the GmbH as the only general partner of the GmbH & Co KG is fully liable to the creditors, while it, as a consequence of its legal form as limited liability company, only has limited liability.

In practice, the GmbH & Co KG is usually established for tax considerations and to limit liability.

3.3. Branch Office/Permanent Establishment

It is also possible to have business in Austria in the form of a branch office or by simply creating a permanent establishment, i.e. with no separate Austrian corporate unit:

An Austrian **branch office** (“*Zweigniederlassung*”) of a legal entity resident outside Austria must be registered in the Company Register. The law does not define at what level of economic activity a branch office starts to exist. A branch office is independently managed, with the manager frequently having independent representation power in Austria, whereby it is not essential that the manager be bound by instructions from its headquarters. It is not necessary that the branch office have its own separate assets. In order to be classified as a branch office, a fixed establishment with a minimum level of permanent human and technical resources must be available. The branch office must conclude and process major transactions for the enterprise, rather than just ancillary transactions. A company that only concludes transactions, but does not process them, therefore, cannot be a branch office. Separate accounting is an indicator, but not a legal requirement, for the existence of a branch office.

For registration of the branch office in the Company Register the valid existence of the foreign legal entity must be evidenced, with notarized copies of the official documents and a German translation.

The branch has no share capital of its own. There is an obligation to have separate book keeping and to file tax returns in Austria.

A branch office has no legal capacity, i.e. the contracting party is the foreign entity, and not the branch office. Thus, the executive bodies of the foreign company represent the branch office and must be registered in the Austrian Company Register.

If a branch office is not created, Austrian activities of a foreign company could still create a **permanent establishment** for tax purposes (“*Betriebsstätte*”) to be taxed in Austria. The minimum requirements to create a permanent establishment are: owned or rented

base of business at the disposal of the enterprise, business to be carried out through this place of business, and permanent conduct (not just temporary).

4. Grants and Financial Assistance

Austria provides support and assistance to investors to establish their business in Austria. There is a wide range of support including initial financial support, the reimbursement of investment costs, and supporting information from local authorities.

4.1. Framework Conditions of Public Funding

Public funding in each case requires the fulfilment of certain criteria. In many cases public funding has its origin in EU regulations, or is granted in co-operation with the EU. The purpose of public funding is to ensure economic growth and the development of specific underperforming regions. So-called “convergence regions” will more easily get comprehensive funding support or EU subsidies.

4.2. Cash/Financial Assistance

The ***Austrian Business Start-Up Promotion Act*** (“*Neugründungsförderungsgesetz*”) facilitates several aspects of business start-ups and transfers of small and medium-sized companies. E.g., a variety of stamp duties and court fees for registrations in the company register and the land register can be waived under certain conditions. If real estate is contributed to a company in return for shares in the company, no real estate transfer tax is levied. The Act also provides tax concessions for non-cash labor costs.

4.3. Public Loans

There are a lot of information guides about public sector loans, and every bank in Austria has its own programmes and conditions. It is not easy to get loans with low interest rates and favourable grace periods. In each case the borrowing company needs real estate securities or guarantees from the parent company.

The European Investment bank (EIB) issues loans for large and small companies. It is possible to get up to 50 percent of the investment project costs as a loan.

4.4. Labour-Related Public Benefits and Wage Subsidies

Austrian local authorities offer benefits, however, without any legal right to get such public benefits.

The Austrian Employment Agency (“AMS”) offers special training programs and free of charge recruitments of jobseekers.

Public benefits may be granted in the form of wage subsidies for employments for persons over 50 years old or long-time jobseekers.

In some cases wage labour costs do not have to be paid if an investor employs older jobseekers. The decision whether to grant any benefit and the amount of the benefit will be made by the local office of the “AMS”, on a case to case basis.

4.4.1. Recruitment Support

To recruit employees there are three possibilities: to search on its own (online or printed job postings), to use the cost free support of the “AMS”, or to pay for the services of recruitment agencies.

4.5. Research and Development (R&D) Grants

Research and development activities in Austria are on a high level. In 2015 approx. EUR 10 billion of the GDP will be spent on R & D, thereof 47,2% funded by enterprises (information of “Statistik Austria”).

Incentives to enterprises are provided in the form of grants, reduced interest loans, tax reliefs, and partnership programmes. There is a variety of institutions involved within the EU and Austria. In some cases more than one benefit can be generated at the same time.

The requirements/criteria for the participation in grants and benefit programs must be proven in the individual case.

Of particular interest is the Austrian research tax credit (“*Forschungsprämie*”):

Austrian tax law promotes research in Austria by a standard credit (“*Forschungsprämie*”) of **10 % (12% as from January 1, 2016 pursuant to the tax reform 2015) of expenses** which can be claimed for in-house research (“*Eigenforschung*”) as well as contract research expenses, with terms defined based on the OECD *Frascati Manual*. The tax credit is given, irrespective of whether the company makes a profit. The research tax credit is available if the research is performed in our outsourced by an Austrian firm or an Austrian permanent establishment.

The tax credit for the **in-house research** requires a report (opinion) from the *Austrian Research Promotion Agency* (“*Forschungsförderungsgesellschaft*” – “*FFG*”). As part of the request for the tax claim, the FFG must be provided with detailed descriptions of the research projects that are subject to strict formal requirements. The descriptions must include the project name, objective, methodology, innovation, share of total expenses and starting and finalization dates. The tax authorities have full discretion in evaluating the reports as evidence, and objections to the FFG assessment can be raised during the procedure.

To increase legal certainty, a research certification (“*Forschungsbestätigung*”) or ruling can be requested in advance. The application for a research certification can be filed with the tax authorities for each research project to certify that the requirements for claiming the research tax credits are fulfilled – as long as the research project has not yet been completed. The fee is EUR 1,000 for each project application, or EUR 200 if the application is rejected. The ruling certifies the size of the tax base for the research credit in a financial year and requires certification from an auditor. The research certification and ruling can be requested at the same time or separately.

The 10 % (12% as from January 1, 2016) tax for **contract research** is limited to expenses of EUR 1,000,000, i.e. the maximum research tax credit amounts to EUR 100,000; note that as from as January 2016 this figures increases to EUR120,000. The contract research does not require the above-referenced report from the *Austrian Research Promotion Agency*, however, must meet the following conditions:

- The company contracted must have its registered office in the EU or in the EEA (“*European Economic Area*”).
- The company contracted may not be controlled by the outsourcing company or a member of the same consolidated tax group.

5. Import and Export

Because of its well-established infrastructure and transportation system, Austria is a good connection between western, central, and eastern European countries. Import and export are almost completely free of control. No import permits or import declarations are required for Austrian companies operating within the EU.

There are some regulations in the form of customs duties and taxes with regard to some countries, especially overseas countries. In individual cases, it has to be checked whether import or export quotas are exhausted, or if import licences and surveillance documents can be obtained.

5.1. Customs

Within the EU, there is freedom of movement of goods, with no customs frontiers between the various EU countries.

5.1.1. European Customs Union

According to the freedom of movement within the EU, goods, services and capital can be freely transferred within the EU. If goods have legally entered the EU they cannot be subject to further customs fees, regulations or import taxes.

5.1.2. European Trade Agreements

Trade agreements are often older than the EU. Some trade agreements have their roots in the European Free Trade Association (EFTA), which was established in 1960 by the Stockholm Convention. The original purpose of this intergovernmental organization was to remove customs duties on industrial products in trade among its member states. So there are a lot of countries associated with the EU, like Switzerland, Liechtenstein, Iceland and Norway, with almost an equal status as compared to the EU member states for the execution of import and export documents.

5.2. Import Restrictions

Within the EU there are no limits. For goods imported from third countries (non-member states of the EU) there are common customs tariffs (CCT) for all kinds of goods and countries, which depend on the exporting country, the category of the product and the degree of completion of goods (e.g., raw materials, semi-finished products or finished products). The import of goods from third countries is always accompanied with the execution of customs documents and the payment of national value added tax and customs fees in addition to the amount of the imported goods and transportation costs.

5.3. Export Restrictions

EU regulations are in general quite liberal, and there are no substantial restrictions for export activities in Austria. Such restrictions, however, can arise from embargo decisions by international organizations like the UN or by the EU or the USA. Three kinds of embargos are possible: full embargo, partial embargo, or embargo for weapons.

The actual list of embargoes is provided by the Ministry of Science, Research and Economy (“*Bundesministerium für Wissenschaft, Forschung und Wirtschaft*”).

6. Regulatory Environment

There is not much regulatory environment in Austria. In particular, investors have a lot of freedom. The Austrian Chamber of Commerce (“*Wirtschaftskammer Österreich*”) promotes to achieve a „one-stop-shop“ to open a business in Austria. However, it is not straightforward, because several public institutions are involved in setting up a business. Thus, it is recommended to take advice from an expert to establish a business entity in order to save money and time. The costs and the time of registering depend on the character of business, the required trade permissions and the form of business entity.

6.1. Business Registrations

The above-referenced business entities must be registered in Austria in the Company Register. Also, depending on the business in many cases it may be necessary to register with the trade authority (“*Gewerbebehörde*”) responsible for the area in which the business is conducted.

6.1.1. Trade Permissions

For most businesses in Austria a **business registration** („*Gewerbeberechtigung*“, business permit) is required to start a business. A business permit is not required e.g. for companies involved in real estate. It depends on the type of business whether a duly filed trade law application is sufficient to start the business (e.g. for regular trading business), or whether the company has to await the permit issued by the trade authority.

The required permit depends on the character of business and the requirement for a professional qualification: In the case of doing business particularly in the public or health safety sector, approval of the trade authority is required to get a permit (regulated business; “*Reglementiertes Gewerbe*”). Trading can start as soon as such approval is granted. Regulated business include catering and hotels, insurance brokerage, real estate brokers, travel agencies, and many more.

The 'free businesses' ("*Freie Gewerbe*") is different in that no proof of qualification is required, and trading can start when a proper application of the business has been filed. The list of free businesses is long as compared to the list of regulated business. Free business include most of trading business, such as trade agencies.

Please note: "*Freie Gewerbe*" are totally different to "*Freie Berufe*", e.g., medical doctors, dentists, vets, pharmacists, architects and civil engineers, notaries and lawyers, tax auditors, and accounting specialists. These all need a highly specified qualification from their chamber, and this is equal to "*Gewerbeberechtigung*".

Trade law registration requires:

- Extract from the Company Register
- Certificate of good conduct from the land of origin for managing directors under trade law ("*Gewerberecht*") and all shareholders with significant influence over management who are not resident in Austria, or who have been resident in Austria for less than five years.
- Declaration of the non-existence of reasons disallowing operation of a business from all individuals with significant influence (managing directors or shareholders with management authority).

There has to be a statutory managing director under trade law who not necessarily must also be managing director registered in the company register. Regarding the managing directors under trade law the following needs to be filed:

- Passport
- Social security confirmation of registration as an employee, unless the individual is simultaneously a managing director under commercial law ("*Handelsrecht*")
- Proof of qualifications (e.g. master examination certificate)
- Declaration by trade law managing directors on their employment with the company (form)

In addition to the trade permit required for starting business, in some cases it is necessary to apply for special permissions, particularly for a technical operation called the business facility permit („Betriebsanlagengenehmigung“). Such permits may be required e.g. when opening a plant, a restaurant, a petrol station or similar. The *Betriebsanlagengenehmigung* must be granted before business activities can start.

In certain cases of starting businesses with regard to water protection matters, substantial waste production or substantial impact on the environment additional permits pursuant to such regulations are required (permits under water protection, waste control and environment law).

6.1.2. Company Register

The registration in the Company Register is mandatory for all businesses, with only a few exceptions. The registration will be made, if all required information and documentation including the firm name, name, date of birth and address of managing directors, percentage and name of shareholders, amount of stock capital, purpose of business with proven record and some more information, is filed.

The Company Register is also available in an electronic form and anyone can obtain information about companies for a small online fee.

6.2. Intellectual Property

Because research and development is important in Austria, intellectual property is protected. The founder of patents and trademarks can protect himself by registering the invention. Even without registration, corporate names and corporate logos are protected in Austria, at least on a regionally limited basis.

6.2.1. Registration of Patents

A patent protects a technical invention prohibits imitation of the invention to obtain profits for a long period of time. Only the owner of the patent who has the right for its sole and exclusive use is allowed to imitate the product or to grant a license for the production in order to get patent fees.

In general a patent provides the owner with benefits and protection of the invention for a period of 20 years. The registration is not easy and, thus, there are specialized patent lawyers available for such patent registration. It has to be decided for which country the protection will be granted. Therefore, the jurisdiction of the patent office varies accordingly.

Austria established the Austrian Patent Office (“*Österreichisches Patentamt*”). The European patent office is based in Munich (Germany) and provides intellectual property protection at the European level. Further, international protection for inventions can be obtained via the Patent Cooperation Treaty (“*PCT*”), with more than 120 member countries. The PCT enables simplified procedures for patent protection in other countries which are members of the PCT. Intellectual property protection is also granted for plant varieties under the Austrian Plant Variety Protection Act (“*Sortenschutzgesetz*”), copyright protection pursuant to the Austrian Copyright Act (“*Urheberrechtsgesetz*”) which provides protection for the creation of works of literature, sound art, visual art, cinematic art as well as software, and, finally, in respect of registered designs (“*Geschmacksmuster*”) which gives protection both for two-dimensional as well as for three-dimensional designs.

The owner of the intellectual property right (in particular of trademarks and patents), can grant licences to third parties in exchange for payment of a licence fee.

6.2.2. Registration of Trademarks

A trademark (“TM”) is a sign on a word or design base which is unique and is registered, in order to identify the goods and services of a particular firm. The design or wording is the form of the intellectual property and consists of name(s), word(s), phrase(s), logo(s), symbol(s), design and graphic art(s), image(s) or a combination of word and image as trademarks. The jurisdiction is the same as in the case of patent registration. The EU trademark law was harmonized by the Council Directive 2008/95/EC.

6.3. Property and Real Estate

Each building in Austria needs a building permit (“Baugenehmigung”). Several areas of law such as planning, zoning and building regulations, water laws and copyright /patent laws may be applicable in order to get a building permit.

6.4. Environmental Law

Ecology, pollutant emissions and sustainability have to be considered when starting a business in Austria. Consequently, production plants have to fulfil the requirements of environmental laws, especially regarding environmental pollution of water and air. Before opening a production plant all these aspects have to be considered.

6.5. Landlord-tenant Law

Like Austrians, foreigners are entitled to rent real estate of any kind including office space, production facilities, apartments etc. Should a lease contract be registered in the Land Register (which is not mandatory, and is usually not done) there might be an approval requirement for such registration arising from applicable foreigner land transfer restrictions.

As in many other countries, Austria has a tenant protection system, with a lot of unique features regarding the tenant-landlord relationship, and in general with a complex legal framework. Thus, it is not advisable to enter into any lease contract without having specific legal advice.

7. Tax

The start of a business in Austria requires notification to the tax authorities about the commercial or business activities. The tax authority will then issue a questionnaire that has to be completed and returned to the tax authority.

7.1. Income Tax

Corporations have to pay corporate income tax (“*Körperschaftsteuer*”), individuals and partnerships have to pay personal income tax (“*Einkommensteuer*”).

7.1.1. Sole Proprietorship

- a) Natural persons with an Austrian place of residence (“*Wohnsitz*”) or habitual abode (“*gewöhnlicher Aufenthalt*”) have unlimited tax liability in Austria, with the consequence that their entire domestic and foreign income (global income) is taxable in Austria. Natural persons with no place of residence or habitual abode in Austria have limited tax liability in Austria in respect of their Austrian income.
- b) Income below EUR 11,000 is exempt from income tax. Progressive tax rates are applicable to income above EUR 11,000. Income above EUR 60,000 is taxed at a rate of 50 %. As from January 1, 2016 a new tax schedule comes into force with 6 tax levels (rather than 3 at the moment).

7.1.2. Partnerships

- a) Partnerships are not subject to income tax as they are not taxable entities. The profit or loss of a partnership is determined by a single separate assessment and attributed directly to the partners on a pro-rata basis. Thus, partnerships are considered transparent, i.e. no taxation on the partnership level. A loss can be offset against other income or carried forward if applicable in accordance with general provisions.

- b) Depending on whether the partner is a natural person or a corporation at the partner level either the progressive tax rates for natural persons (see above) or the corporate income tax of 25 % (see below) applies.

7.1.3. Corporations

- a) Corporations are subject to corporate income tax. All (domestic and foreign) income (world income) of corporations that have their management or registered offices in Austria (unlimited tax liability) is taxable, otherwise (limited tax liability) only Austrian income is taxable in Austria.

The income is taxable both at the company and the shareholder level.

The **corporate income tax** of 25 % is levied at the company level. There is an annual minimum corporate income tax for limited liability companies of EUR 1,750, for stock corporations of EUR 3,500 and for SE's of EUR 6,000.

The following relief is provided for a period of ten years for limited liability companies established after June 30, 2013: A minimum corporate income tax of EUR 500 per year during the first five years after formation of the limited liability company and the start of unlimited tax liability and EUR 1,000 per year for the next five years.

As a rule, if corporate profits are distributed to the shareholders, **investment income tax** (“Kapitalertragsteuer”) of 25 % (**27.5% as from January 1, 2016**) is withheld from the dividend distribution.

- b) **Group taxation** enables set-off within the group of profits and losses, including recognition of cross-border losses.

Parent companies are defined as corporations with unlimited tax liability, trade and industrial cooperatives, financial institutions and mutual insurance companies, EU

companies with limited tax liability, and companies comparable to corporations that have their management and registered office in the EEA.

The formation of a corporate group requires a financial affiliation of more than 50 % of the share capital or cooperative capital and voting rights.

The income of each group member is calculated as a first step in determining the consolidated profit or loss of the group. In the next step, this income is allocated to the entity at the next higher level, netted with its income and the resulting profit or loss in turn is allocated to the group member at the next higher level. In the end, the parent company is assessed the full income of the group.

In the case of foreign group members, only tax losses proportional to the interest held can be allocated (no allocation of foreign profits). However, foreign losses can only be claimed up to a maximum of 75 % of the total own income of all group members with unlimited tax liability and the group parent in the year the losses are allocated.

- c) In order to avoid double taxation, particularly in the case of corporate groups, **income from participations** of all kind is exempt from corporate income tax.

Income from participations includes profit shares of all kinds based on investments in Austrian corporations and cooperatives held in the form of corporate shares and cooperative shares, and profit shares of all kinds from profit participation rights for Austrian corporations are exempt. The exemption is granted regardless of the size of the participation or how long it has been held.

Exemption is also provided for income from foreign participations. Transposition of the Parent-Subsidiary Directive makes comparable profit shares from corporations in the EU listed in Annex 2 of the Austrian Income Tax Act exempt from corporate income tax for the parent company receiving the dividend.

If the participation is below 10%, investment income tax on the income is to be withheld by the distributing company, and the tax exemption for income from participations has to be claimed by means of deduction or refund.

d) Similar to the exemption for income from participations, profit shares of all kinds **from international controlling interests** are also exempt. The preferential treatment of profits earned by foreign affiliated companies requires:

- a parent company (corporation) that falls under § 7 (3) of the Austrian Corporate Income Tax Act
- an interest in a foreign subsidiary that is comparable to an Austrian corporation, or is an EU company as per Annex 2 of the Austrian Income Tax Act
- an interest of at least 10 % held for an uninterrupted period of at least one year.

The international controlling interest takes precedence over the exemption for income from foreign profit shares. This plays a particularly important role in the tax neutrality of the investment and the abuse provisions. The exemption applies not only to current profits, but also to **gains and losses on disposal** and other changes in value.

e) Operating losses that cannot be offset against positive income in the year in which they are incurred may be deducted as special expenses in the following years. This requires proper accounting in the year in which the loss was incurred. Losses of up to 75 % of the total income may be deducted each year. If any losses remain, they can be carried forward to the following years. This carry forward limit does not apply to certain types of income specified by law (e.g. restructuring gains, gains on the disposal and discontinuation of businesses, business units and partnership interests).

7.1.4. Branch Office/Permanent Residences

Branch offices will most likely be treated as permanent residences with the consequence of limited tax liability in Austria and a registration requirement with the Austrian tax authorities. Only the Austrian income is taxed in Austria.

7.2. Value Added Tax (“VAT”)

Goods and services provided by an entrepreneur in Austria in return for payment are subject to the regular 20 % VAT (“Umsatzsteuer”) tax rate (10 % applies e.g. to food, books, drugs, residential rentals) as well as Austrian imports from third countries (import VAT) are subject to VAT.

VAT charged to an entrepreneur can be deducted as input tax and, thus, is cost neutral.

The so-called reverse charge system applies: The liability for VAT on goods and services passes to the recipient, if the entrepreneur does not operate a business in Austria and has no permanent establishment in Austria that is involved in providing the services and an Austrian entrepreneur is the recipient of the services.

7.3. Taxation of Property

7.3.1. Real Estate Tax

The owner of every property in Austria has to pay a real estate tax (“Grundsteuer”).

Capital gains achieved by private persons or by businesses from the sale of real estate are subject to a flat rate income tax of 25%. As from January 1, 2016 the tax rate is increased to 30%. Capital gains from the sale of real estate achieved in the course of a business will be taxed with the applicable corporations tax rate (25 %) or the individual income tax rate.

7.3.2. Real Estate Transfer Tax

The acquisition of real estate in Austria triggers a 3.5 % land transfer tax. To get legal ownership the registration of the owner in the land register is required. The fee for

registering the ownership is 1.1 % of the price paid. The registration of a mortgage triggers a fee of 1.2 % of the registered amount.

If a buyer acquires 100% (at least 95% of the shares as from January 1, 2016) of the shares in a company which owns real estate, or if a shareholder acquires all of the remaining shares in such a company (at least 95% of the shares as from January 1, 2016) as unification of all shares in a single owner this will also trigger 3.5% land transfer tax (the tax basis as from January 1, 2016: market value of the property). This tax also applies as from January 1, 2016, if at least 95% of the participation in partnerships owning real estate is transferred to a new shareholder within 5 years.

Purchases by non EU/EEA citizens of real estate and agricultural or forestry property are subject to certain restrictions, and may require the approval from the land transfer authority. There are 9 Austrian provinces and each province has its own law for land transfer relating to foreigners and agricultural or forestry property.

8. Finance

Austria has a good reputation internationally as a finance centre. The confidentiality obligations of the banks are still above the average international level.

8.1. Banks

Austrian bank institutions are organised as private international corporations, public corporations, or private exclusively institutes.

8.2. Stock Exchange

Austria's stock exchange is located in Vienna. It is called the Vienna Stock Exchange ("Wiener Börse") and operates the only securities exchange in Austria as well as the Energy Exchange Austria ("EXAA") and the Central European Gas Hub AG ("CEGH").

It provides state-of-the-art infrastructure, market data and information to ensure the smooth and efficient execution of stock exchange transactions and facilitates the interactions among all market participants.

The core business of the Exchange is the operation of a cash market (equity market, bond market) as well as a market for trading in structured products. Additional services include data vending, index development and management and specialized financial market seminars and training courses. The Vienna Stock Exchange is focused on domestic and central and eastern Europe (CEE) transactions

8.3. Movement of Capital

Pursuant to the Austrian Foreign Exchange Act (“*Devisengesetz 2004*”) there are no restrictions on moving capital into and out of Austria. Thus, with regard to foreign exchange law, foreigners are entitled to establish and acquire businesses including shares and other participations in Austria, and to make capital contributions.

However, there are reporting requirements to the Austrian Central Bank with regard to certain transactions including real estate transactions, e.g. with regard to direct investments of at least EUR 100,000 or cross-border loans and bank deposits and other financial transactions exceeding certain thresholds.

Austria has transposed the EU Money Laundering Directives into national law, with particular examination and reporting obligations (on suspicious transactions) for banks, notaries, tax advisors and attorneys.

For mergers & acquisitions in Austria (in the form of share deals or asset deals), certain legal provisions may apply, including the Austrian Takeover Law (“*Übernahmegesetz*”), which is applicable for exchange-listed stock corporations, Austrian and EU merger control provisions, approval requirements for the purchase and the sale of shares in certain entities like banks, stock exchanges, gambling enterprises and private radio and tv companies .

Pursuant to the Austrian Foreign Trade Act (“Außenwirtschaftsgesetz 2011”) third country purchases (non EU/EEA) need an approval from the Ministry of Economics to (directly or indirectly) acquire companies and stakes regarding business entities with an annual turnover exceeding EUR 700,000 in certain sensitive sectors (“public security and order”) such as defence goods, security services, hospitals, energy providers, water providers, telecommunication, fire brigades and disaster management, public transport entities and universities.

9. Labour

The Austrian labour force is highly qualified, and well known for its high level of education and skills. A variety of universities guarantees highly educated employees with good language skills.

9.1. Employment Forms

There are several forms of employment or cooperation available, depending on the type of employment relationship. The particular situation/needs must be reviewed carefully before an employment relationship is established in order avoid unpleasant and unplanned liabilities.

9.1.1. Employment Contracts

The most common form of employment relationship is an employment agreement, which can be concluded in writing or orally. If it is an oral employment agreement, the employer must issue a notice of employment (“Dienstzettel”), which has to list the applicable working conditions and a number of agreed terms set forth by law.

Applicable law and collective bargaining agreements (“Kollektivverträge”) provide mandatory minimum standards (e.g., minimum wage, overtime supplements, maximum working time, annual leave) for the employees. The most important law with respect to individual employment is the Austrian Salaried Employee Act (“Angestelltengesetz”).

Usually a so-called trial month (“*Probemonat*”) is agreed, during which the employment contract can be terminated by each party at any time. There are restrictions that limit employment contracts to a certain period of time. Unlimited employment contracts are very common and can be terminated without an important reason, with a termination period of 6 weeks as at the end of each quarter. The parties can agree on a 6 weeks’ notice at the end of each month or the 15th of each month. For important reasons as set forth by law, an employment relationship can be terminated by each party with immediate effect.

Termination protection rules are applicable to businesses with at least 5 employees pursuant to Sec. 105 of the Austrian Works Constitution Act (“*Arbeitsverfassungsgesetz*”).

9.1.2. Temporary Employment

Temporary employment (“*Arbeitskräfteüberlassung*”) provides a very flexible form of employment. Temporary employment agencies offer this kind of service. The firm has the contract with the temporary employment agency, not with the employee. The contract can be designed to be very flexible, without termination periods. The temporary employment agency is responsible for the hiring of the employee, if necessary with special skills, and to adhere to notice periods and to pay the salary to the employee.

The firm pays the agency on an hourly or a daily base for the provided employee.

9.1.3. Marginal Employment

Marginal jobs (“*geringfügige Beschäftigung*”) are below approx. EUR 400 per month, e.g. for hiring part-time students for jobs with timelines. The firm has no obligations for social security payments, except for accident insurance.

9.1.4. Freelancer

Freelance employees act independently and are hired for a special project or special success. They operate with their own equipment, most of the time from home or their

offices, and are independent. Therefore, the firm does not pay social security contributions or wage taxes for freelancers. The freelancer has to take care of his taxes and social insurance himself.

9.2. Payment and Other Working Conditions

Minimum Payment for fixed employers with working contracts is subject to the collective bargaining agreements. The minimum wage depends on the education, the working experience in years, and the job role profile (worker, employee or management). The collective bargaining agreement stipulates all the details of the working relationship, such as number of regular working hours, annual leave, etc.

Employees are entitled to 30 business days (Monday until Saturday) annual leave, which equals a period of 5 weeks.

9.3. Working Hours

The normal daily working time amounts to 8 hours. Per week the normal working time may not exceed 40 hours. The normal working time is regulated in the various collective bargaining agreements. E.g., for retail workers and IT workers the weekly normal working time amounts to 38.5 hours.

10. Visa, Residence Permits and Foreign Employees

Except for citizens of the EU and the EEA foreigners need to have a **residence permit** to stay in Austria for a limited period of time or on a permanent basis and, also, should they work in Austria, a **work permit**. For short term stays there are **visa** requirements (except for tourists coming from certain countries for which no visa requirements exist). For some countries 3 months visas are available (“*Schengen Visa*”).

As regards the employment of foreigners, the main legal source is the Employment of Foreigners Act (“*Ausländerbeschäftigungsgesetz*”). The regulations with regard to residence permits of foreigners in Austria are set out in the Residence Act (“*Niederlassungs- und Aufenthaltsgesetz*”).

10.1. Citizens of the EU and the EEA

Freedom of movement exists for all people within the EU. For all citizens of the EU and the EEA (e.g. Switzerland) no visa, no working permit and no residence permit are required.

In addition, spouses and children of Austrians or EU/EEA citizens, of certain management staff, of employees in diplomatic or consular missions or foreigners with the so-called “person eligible for subsidiary protection” status are in particular exempted from the need to have a work permit.

If the stay does exceed 90 days, the person must register with the local registration office (“*Zentrales Melderegister*”), which is the local community (“*Gemeindeamt*”) or in certain cities the *Magistrat* (in Vienna: municipal department 35).

10.2. Other Citizens

Austrian law enables the employment of **key workers** (with a particular education needed on the Austrian labour market or with special knowledge, skills and experience) up to a maximum of one year.

Immigration (with a residence permit on a permanent basis) is possible for qualified workers from outside the EU as well as their family members, on the basis of a **red-white-red card** if certain required qualification, personal experience, age, language skills, a firm job offer from a specific employer and a minimum level of compensation are available. The red-white-red-card entitles the holder to temporary residence and employment for a twelve-month period. The red-white-red-card is available specifically for highly qualified persons, specialists in jobs with short supply, other key workers, graduates from Austrian universities and self-employed key workers.

A person who is in receipt of the red-white-red card can apply for a **red-white-red card plus** which gives residence authorisation and unlimited access to the labour market (irrespective of a specific employer). Preconditions for the red-white-red-card plus are

employment for at least 10 months during the last twelve month subject to applicable conditions to the grant of authorisation and a review by the AMS (labour market service) and the foreigner residents authority (district council authority or municipal authority in certain cities like Vienna, for which the municipal department 35 is competent). Under the same conditions also family members of holders of a red-white-red card, blue EU card and family members of foreigners who are already permanent residents are entitled for the red-white-red card plus.

Foreign employees of employers with no office in Austria (e.g. construction sites workers) require employment authorization. If such work is not to last longer than 6 months, a secondment authorization (granted up to 4 months) is required. Neither an employment authorization nor a secondment authorization is required for short-term works, for which it is not possible to use employees from Austria (e.g., business meetings, conferences, trade fair events).

11. Useful contacts

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Austrian Business Agency
Österreichische Industriensiedlungs- und WirtschaftswerbungsgmbH:
A-1010 Wien, Opernring 3
Phone: +43 1 588 58-0

Company Register Vienna:

Handelsgericht Wien, Firmenbuch
A-1030 Wien, Marxergasse 1a
Phone: +43 1 515 28

First Information („Gründerservice“):

WKÖ - Wirtschaftskammer Österreich
A-1040 Wien, Wiedner Hauptstraße 63
Phone: +43 59 0900

„AMS” (main office in Vienna):

AMS Wien Landesgeschäftsstelle
A-1030 Wien, Ungargasse 37
Tel: +43 1 87 871

„WAFF“ - Training subsidies to employees:

Wiener ArbeitnehmerInnen Förderungsfonds
A-1020 Wien, Nordbahnstraße 36
Phone: +43 1 217 48

Export when goods entering Austria:

Central Information Office/Customs Office Villach
Zollamt Klagenfurt Villach
A-9500 Villach, Ackerweg 19
Phone: +43 1 51 433-564053

Actual List for Embargos:

Bundesministerium für Wissenschaft, Forschung und Wirtschaft
A-1010 Wien, Stubenring 1
Phone: +43 1 711 00-0

Registry patents and trademarks:

Österreichisches Patentamt
A-1200 Wien, Dresdner Straße 87
Phone: +43 1 534 24-0

Entry and working visa:

Bundesministerium für Europa, Integration und Äußeres
A-1010 Wien, Minoritenplatz 8
Phone: +43 50 11 50-0