

BAKER & MCKENZIE

DIWOK HERMANN PETSCHKE

Doing Business in Austria



2007/2008 Edition

Foreword

This publication has been prepared for clients and professional associates of Baker & McKenzie • Diwok Hermann Petsche Rechtsanwälte GmbH. It is intended to provide only a summary of immigration and labor law issues of doing business in Austria. For this reason, the information contained in this publication should neither form the basis of any decision as to a particular course of action, nor should it be relied upon as legal advice or regarded as a substitute for detailed advice in individual cases. In each instance, services of a competent professional adviser should be obtained to verify applicability of relevant legislation or other legal developments to the particular fact.

This publication is copyrighted. Apart from any fair dealing for the purpose of private study or research permitted under applicable copyright legislation, no part may be reproduced or transmitted by any means without prior written permission of the Editors.

Table of Contents

1.	AUSTRIA.....	1
1.1.	Geography.....	1
1.2.	History.....	1
1.3.	Politics.....	2
1.4.	Economy.....	3
1.5.	International Organizations.....	4
1.6.	Membership in International Organizations.....	4
1.7.	European Union and European Economic Area.....	5
1.8.	The Austrian Legal System.....	5
2.	INVESTMENT FRAMEWORK.....	6
3.	DIRECT INVESTMENT.....	7
3.1.	Investment Methods.....	7
3.2.	Types of Companies.....	7
3.2.1.	Incorporation.....	7
3.2.2.	Partnerships.....	8
3.3.	Equity Ownership and Registration.....	8
3.4.	No Restrictions on Foreign Investment.....	9
4.	INCORPORATION.....	10
4.1.	Corporate Forms with Limited Shareholder Liability.....	10
4.2.	Foreign Ownership.....	11
4.3.	Corporate Seat within Austria.....	12
4.4.	Management.....	12
4.5.	Squeeze Out Act.....	13
4.6.	Business Trusts and the Austrian Private Foundation.....	13

5.	BRANCHES	14
5.1.	Branch Office of a Foreign Enterprise	14
5.2.	Permits for Business Conduct and Licenses	14
5.3.	Tax Aspects: Branch vs. Subsidiary	15
5.3.1.	Subsidiary Subject to Unlimited Taxation	15
5.3.2.	Branch Subject to Limited Taxation	15
5.3.3.	Calculation Methods	15
6.	BANKING	16
6.1.	Market Situation	16
6.2.	Regulatory Bodies	16
6.3.	Statutory Regulations	17
6.4.	Austrian Banking Act.....	17
6.5.	Banking License.....	18
6.5.1.	Requirements.....	18
6.5.2.	Treatment of Foreign (Non-EEA) Banks.....	19
6.5.3.	Treatment of EU Residents.....	19
6.5.4.	Appeal.....	19
6.5.5.	Legal Consequences of Conducting a Banking Business without a License	20
6.5.6.	Revocation of a Banking License	20
6.6.	Banking Secrecy.....	20
6.7.	Anti-Money Laundering Rules.....	20
6.8.	KYC Provisions	21
6.9.	Capital Requirements	21
6.10.	Deposit and Investor Guarantee Scheme.....	21
6.11.	Change of Ownership.....	22
6.12.	Supervision of Banks	22
6.12.1.	Reporting Requirements.....	22
6.12.2.	Bank Auditing	22
6.12.3.	State Commissioner.....	22
6.12.4.	Government Commissioner	23

7.	REAL ESTATE TRANSACTIONS.....	24
7.1.	Civil Law Aspects.....	24
7.1.1.	Land Register	24
7.1.2.	Rights Concerning Real Property.....	25
7.1.3.	Lease Contracts.....	26
7.1.3.1	Regulatory Regimes for Tenant Agreements	26
7.1.3.2	Austrian Tenant Protection Act.....	26
7.1.4.	Real Estate Agents	27
7.2.	Public Law Aspects	27
7.2.1.	Real Estate Transaction Laws	27
7.2.2.	Land Transfer Tax.....	28
8.	AGENTS, DISTRIBUTORS AND FRANCHISERS.....	29
8.1.	Agency	29
8.2.	Distributorship.....	30
8.3.	Franchise.....	31
8.4.	Antitrust Act.....	31
9.	EXCHANGE CONTROLS	32
10.	TAX	33
10.1.	Taxation of Companies	33
10.1.1.	Taxes on Formation.....	33
10.1.1.1.	Taxes on Capital	33
10.1.1.2.	Real Estate Transfer Tax.....	33
10.1.2.	Recurring Taxation	33
10.1.2.1.	Corporation Tax	33
10.1.2.2.	Municipal Tax.....	35
10.1.3.	Taxation of Mergers and Splittings.....	35
10.2.	Value-Added Tax.....	35
10.3.	Taxation of Partners and Shareholders	36
10.4.	Taxation of Private Foundations (“Privatstiftung”)	36
10.5.	Inheritance and Gift Tax	38

11. LABOR	39
11.1. General.....	39
11.2. Statute Law, Collective Bargaining and other Agreements.....	39
11.3. Social and Unemployment Securities Agencies	40
11.4. Employment of Non-EU Citizens	40
11.5. General Regulations	40
11.5.1. Working Time.....	40
11.5.2. Wages and Salaries.....	41
11.5.3. Termination	41
11.5.4. Paid Holidays and Vacations	42
11.5.5. Special Protection	43
11.5.6. Equal Treatment.....	43
12. TRADE AND INDUSTRY LAW	44
13. DISPUTE RESOLUTION AND ARBITRATION	45
13.1. Court System.....	45
13.1.1. The District Court.....	45
13.1.2. The Regional Courts.....	45
13.1.3. Superior Courts.....	45
13.1.4. The Supreme Court	46
13.2. The Legal Profession.....	46
13.3. Litigation.....	47
13.3.1. Commencing Proceedings	47
13.3.2. Time Limit for Response	47
13.3.3. Default Judgment.....	48
13.3.4. Disclosure of Documents.....	48
13.3.5. Witnesses	48
13.3.6. Legal Costs	48
13.3.6.1. Court Fees	48
13.3.6.2. Recovering Legal Costs.....	48
13.3.6.3. Securing Costs.....	49
13.3.7. The Trial	49

13.4.	Remedies and Appeals.....	50
13.4.1.	Interim Injunctions	50
13.4.2.	Enforceable Judgments in Distraint Proceedings.....	50
13.4.3.	Recognition and Enforcement of Foreign Judgments	51
13.4.3.1.	Recognition.....	51
13.4.3.2.	Enforcement.....	52
13.5.	Arbitration in Austria	52
13.5.1.	Arbitration Agreements	54
13.5.2.	Arbitrators	54
13.5.3.	Procedure	55
13.5.4.	Costs	55
13.5.5.	Interim Injunction	55
13.5.6.	Enforcement	56
13.5.7.	Power to Appeal or Set Aside an Award	56
13.6.	Alternative Dispute Resolution – Mediation.....	56

1. AUSTRIA

1.1. Geography

The Republic of Austria is situated in the heart of central Europe having a total land area of 83,871 square kilometers. Its official language is German, which is spoken by 98 % of the citizens. The western and southern parts of the country are very mountainous and as a result they have a relatively low population density. Austria has a population of approximately 8.2 million (99 persons per km²). Vienna, the nation's capital and where nearly 1.6 million people live, is located in the eastern part of Austria.

Austria is a federal state comprised of nine provinces (*"Bundesländer"*): Burgenland, Carinthia, Lower Austria, Salzburg, Styria, Tyrol, Upper Austria, Vienna and Vorarlberg. The major cities are Vienna, Graz, Linz, Salzburg, Innsbruck, Klagenfurt, St. Pölten, Bregenz, and Eisenstadt.

1.2. History

The significance of Austria and its role in Europe can be traced back to chronicles recorded as early as 996. The Habsburg dynasty, which came to power in 1237, gradually extended the country's frontiers. Ruling as emperors virtually uninterrupted over the Holy Roman Empire until 1806, the power of the Habsburgs extended at times to present-day Germany, Austria, parts of Poland, the Czech and Slovak Republics, parts of Italy, Holland and Hungary, as well as Spain and its colonies Mexico and Peru.

The Holy Roman Empire came to an end, when Napoleon occupied Austria in 1806. The Emperor, Franz, was forced to renounce his claim to the throne as Emperor of the Holy Roman Empire and relinquish some territory. He remained the Emperor of Austria, which at that time encompassed modern day Austria, Hungary and parts of Germany, the Czech Republic, the Slovak Republic, Romania, Ukraine, Poland and Slovenia. In 1867, the Austro-Hungarian monarchy was founded as a union of two independent states under one ruler – Franz Josef I. This was the beginning of the so-called K&K monarchy, named after "Kaiser" meaning "emperor" and "König" which means "king". This monarchy embraced present-day Austria, Bohemia, Hungary, parts of Italy and the former Yugoslavia.

After the collapse of the K&K monarchy in 1918, Austria became a republic. After the Second World War, Austria was occupied by the Allied Forces until 1955, when it regained its independence by the State Treaty. Austria joined the European Union in 1995 and the European monetary system in 1999.

1.3. Politics

Austria is a democratic republic. Parliament is the legislative power and consists of two chambers, the National Council (“*Nationalrat*”) and the Federal Council (“*Bundesrat*”). Legislative power of the federal states is exercised by their provincial parliaments. The National Council is elected directly by the people and has 183 members. The Federal Council represents provinces according to their population and its members are delegated by the provincial parliaments.

The Federal President (“*Bundespräsident*”) and members of the federal government (“*Bundesregierung*”) headed by the federal Chancellor (“*Bundeschkanzler*”) are the supreme federal executive bodies. The supreme state executive bodies are the Provincial Governments, each headed by a Provincial Governor (“*Landeshauptmann*”).

After the last national parliamentary election on October 1, 2006, distribution of seats is currently as follows: 68 Social Democratic Party of Austria (SPÖ), 66 Austrian People’s Party (ÖVP), 21 Freedom Party of Austria (FPÖ) and

21 Greens (Grimme) and 7 Austrian Future League (BZÖ). The Chancellor of the Social Democratic Party of Austria (SPÖ) heads a coalition government with the conservative Austrian People’s Party (ÖVP).

Austria’s political system has been a model of stability since democracy was restored in 1945. In contrast to the interwar period, when domestic political rivalries and foreign intervention brought the system of government set out by the constitution of 1920 to a standstill, after World War II this reestablished parliamentary democracy functioned smoothly in what came to be termed the Second Republic.

As a neutral country since 1955, during the communist era Austria lay directly between the East and the West. As the easternmost country of the West and bordered to a great degree by the “Iron Curtain,” it developed a situation and practice in order to maintain economic relations with both sides. Since the fall of communism, Austria again lies at the very center of Europe. Austria is the ideal

bridge to doing business with the neighboring countries in Eastern Europe due to its historical, cultural and political ties and also because of its geographical location.

On January 1, 1995, Austria became a full member of the European Union (EU).

The former Austrian currency “Schilling” (ATS) was replaced by the common European currency “EURO” (€) on January 1, 2002. The exchange rate was fixed by Council Regulation No. 2866/98 of 31 December 1998 on conversion rates with currencies of Member States with a ratio of 1 € = 13.7603 ATS.

1.4. Economy

Austria, with its well-developed market economy and high standard of living, is closely tied with the other EU economies. Foreign investors find the legal setup in Austria quite conducive to investment. With its stable political, economic and social climate and its very high level of development, Austria offers an interesting domestic market. Austria is also particularly well-placed for expanding into central and eastern European countries. After joining the European Union, the Austrian government has created several new and different regulations in order to harmonize its economic, legal and tax structures with those of the European Community. This has led to a liberalization of Austrian commercial laws and as a consequence, Austria has become more attractive as a market for investors.

Based on calculations carried out by the Austrian Institute for Economic Research on behalf of Statistik Austria (national semi-governmental institute), the Austrian economy grew by 3.3 % in the year 2006. The average increase of the EU member states amounted to 3 % (Eurostat Database, Juni 2007).

The Austrian Gross Domestic Product at current prices increased by € 12.6 billion respectively 5.1 %, to about € 257.9 billion in 2006. The Gross Domestic Product per gainfully employed person amounted to € 31,140.--.

As an export-oriented country, Austria maintains a wide-ranging and highly diverse foreign trade system. It trades with some 150 countries. Countries of the European Union account for roughly 2 / 3 of Austria’s foreign trade. The export of goods and services amounted to 7.5 % (real) above the previous year’s level of GDP. The inflation rate was about 1.6 % in 2006. 1.7 % is expected for 2007.

At 4.7 % the unemployment rate was among the lowest in Western Europe in 2006.

1.5. International Organizations

Besides New York and Geneva, Vienna is where the third headquarters of the United Nations Secretariat is based. The “Vienna International Centre” is the seat of important offices of the United Nations, such as International Atomic Energy Agency (IAEA), Organization for Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) and Office for Drug Control and Crime Prevention (ODCCP), to name a few.

Austria has traditionally attached great importance to the United Nations’ activities and regards its UN policy as an integral part of foreign policy. Thus, it is one of the countries which make available the largest number of troops for peacekeeping operations. All in all, more than 50,000 Austrians to date have served in UN peacekeeping troops all over the world as soldiers, military observers, civilian policemen and civilian experts. (Visit the web site of the Austrian Foreign Ministry at <http://www.bmaa.gv.at> for further information).

Vienna is also home to a large number of other international organizations, which are located throughout Vienna and include, for instance, the Organization for Security and Cooperation in Europe (OSCE), headquarters of the Organization of Petroleum Exporting Countries (OPEC) founded in Baghdad in 1960, and a number of non-governmental organizations (NGOs).

1.6. Membership in International Organizations

Austria is a member of the United Nations (UN). As previously mentioned, Vienna is where the UN’s third headquarters is based -- after New York City and Geneva. The following UN organizations are headquartered in Austria: International Atomic Energy Agency (IAEA), United Nations Industrial Development Organization (UNIDO), United Nations Office for Outer Space Affairs (OOSA) and United Nations Office on Drugs and Crime (UNODC).

Furthermore, Austria is a member of numerous international organizations, including the World Trade Organization (WTO), Organization for Economic Cooperation and Development (OECD), International Monetary Fund (IMF), International Finance Corporation (IFC), International Development Association (IDA) and the World Bank.

1.7. European Union and European Economic Area

After becoming a part of the European Economic Area (EEA) on January 1, 1994, Austria joined the European Union (EU) on January 1, 1995. EEA membership has been maintained because of the wish of the three remaining countries – Norway, Iceland and Liechtenstein – to participate in a Single Market. Member countries of the EU have now increased to 15. At the last summit conference in Copenhagen, EU negotiations with the candidate countries (Lithuania, Latvia, Estonia, Poland, the Czech and Slovak Republics, Hungary, Slovenia, Malta and Cyprus) for their accession to the EU in 2004 were concluded. Those countries became members of the EU on May 1, 2004.

As a member country of the EU, Austria has, from its outset, taken part in the European Economic and Monetary Union (EMU).

1.8. The Austrian Legal System

In Austria, there are various categories of laws, which work within a hierarchical system. The main source of constitutional law is the Federal Constitution (“*Bundesverfassungsgesetz*”). Austrian constitutional law is subordinate to the law of the European Union (EU). Austrian law which conflicts with EU law is, though still in force, inapplicable. Subordinate to constitutional law are ordinary statutes (“*Gesetze*”). Based on and limited by statutes, administrative authorities may issue regulations (“*Verordnungen*”) which refer to matters within their area of competence. Decrees issued by administrative authorities, if addressing only officials, do not create general laws. Orders (“*Bescheide*”) are administrative decisions that address an individual. Judgments (“*Urteile*”) by Austrian courts of law as well as orders do not have a legal effect beyond the parties of disputes. However, judgments are commonly used in legal argument.

The most important legislative powers are enumerated in the Federal Constitution, are held by the Federation and exercised by Parliament. However, certain important legislative powers are vested in the Provinces, such as laws on acquisition of certain types of real estate (in particular by foreigners), building, environmental protection and land zoning.

2. INVESTMENT FRAMEWORK

The general investment climate in Austria can be characterized as very favorable and attractive to a substantial number of European and overseas investors. In addition to an economic environment, which is pro-investor, the labor situation is particularly suitable for investment compared to other EU countries. Labor costs in Austria reflect the EU norm, but work force skills are above-average and labor conflicts extremely rare. There are very few restrictions on foreign investments, with the official policy being one of invitation to foreign investors rather than one of restrictions. Investment is encouraged by the federal, provincial, and municipal governments, which may grant direct cash subsidies or contributions in kind to investors within the framework provided by EU rules. Furthermore, general public opinion tends to regard foreign investment as positive for the country and a factor that contributes to internationalization of the Austrian economy.

3. DIRECT INVESTMENT

3.1. Investment Methods

The primary method of investment in Austria is the creation of a subsidiary. This form of investment is also used by many European and overseas companies to establish their Eastern European interest in a Central European capital inside the EU. Due to its geographical location and its historic ties, Austria has a reputation of serving as a springboard for operations targeted towards new EU-member states and for countries with economies in transition, such as Candidate Countries to the European Union. Vienna's unique service and logistical resources, availability of personnel with specialized knowledge of Eastern Europe, and excellent air, road and train connections make it an ideal place to locate headquarters for these countries. Moreover, Austria boasts a modern infrastructure and enforces liberal cooperative foreign exchange regulations.

In general, investments in Austrian industrial companies are made through purchases of stocks or assets. Due to EU law, expansion within the European Union can be easily organized with the use of branches, as they provide for validity and recognition of home country licenses throughout the European Union.

3.2. Types of Companies

3.2.1. Incorporation

The major form of doing business in Austria through a corporate vehicle is a Limited Liability Company ("*Gesellschaft mit beschränkter Haftung*" - "*Ges.m.b.H.*"). This is the suitable corporate form for wholly-owned subsidiaries and any corporations in which shareholders wish to exercise direct influence over management. A second alternative is a Stock Corporation ("*Aktiengesellschaft*" - "*AG*"). This corporate form has a full corporate structure with a two-tier board system and access to stock exchange listings. The AG is the corporate form used by public companies and is also the norm in industrial branches, such as banking or insurance.

Since October 8, 2001-, companies have also been given the possibility to establish another form of public limited-liability company -- a Societas Europaea ("*SE*"). Structure and operating principles of an SE as well as the legislative system remain