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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

In Austria, companies are generally organised as either capital companies (*Kapitalgesellschaften*) or partnerships (*Personengesellschaften*).

The capital companies covered below are stock corporations, as stock corporations (*Aktiengesellschaft*, "AG") are the most common entities listed on the Vienna Stock Exchange. In addition to stock corporations, SEs (*Societas Europeae*) can be listed; however, currently only one SE is listed on the Vienna Stock Exchange (prime market).

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

These include the Austrian Stock Corporation Act (*Aktiengesetz*), the Austrian Commercial Code (*Unternehmensgesetzbuch*, in particular, on accounting and financial statements), SE EU Council Regulation (EC) No 2157/2001, the Austrian SE Act (*SE-Gesetz*), as amended, and the Labour Constitution Act (*Arbeitsverfassungsgesetz*, in particular relating to employee representatives on Supervisory Boards).

Regulatory sources for listed companies

These include the Market Abuse Regulation EU No 596/2014, the Austrian Stock Exchange Act (*Börsegesetz*), the Austrian Takeover Act (*Übernahmegesetz*) and the Securities Supervision Act (*Wertpapieraufsichtsgesetz*).

Other key sources

These include the Austrian Corporate Governance Code ("ÖCGK"), the Articles of Association (*Satzung*), and the Rules of Procedure (*Geschäftsordnungen*) for the Management and Supervisory Boards.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

Currently, companies in Austria are dealing with recent developments in Environmental, Social and Governance ("ESG") issues and measures relating to Corporate Social Responsibility ("CSR"). EU Member States finally approved an updated text of the Corporate Sustainability Due Diligence Directive ("CSDDD") on 15 March 2024, forcing companies to reassess their supply chains and adapt their business accordingly. The CSDDD mandates that companies operating within the EU must conduct due diligence to identify and evaluate actual and potential adverse impacts on the environment and human rights throughout their chain of operations, and take steps to prevent and mitigate them.

In addition, the implementation of possibilities for virtual meetings remains an important topic following post-COVID-19 legislation that has made this option permanent in Austria for shareholders but not for board meetings.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short termism and the importance of promoting sustainable value creation over the long term?

Short-termism is on the European Commission's political agenda, especially as the proposal for a directive on the CSDDD was preceded by a study on short-termism (*Study on directors' duties and sustainable corporate governance*).

If discussed politically or in the business and legal context, short- *vs.* long-termism is largely seen in the context of Management Board remuneration. Requirements and limitations on management remuneration, say-on-pay, the variable remuneration components with multi-year assessment elements, and less frequently implemented clawback clauses are seen as the means to assure some long-termism in addition to the publicity created by respective disclosure requirements.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

Austrian stock corporations are predominantly controlled by core shareholders or shareholder syndicates. Still, in the two-tier system of Austrian stock corporations, the shareholders have only indirect influence on the strategy, operation and management of the company. The management and operation of a corporation is statutorily the responsibility of the Management Board, which is free from influence and binding instructions. The key to shareholder influence on strategy and the like will thus depend on whether shareholders are able to have their candidates elected, or in combination with registered shares delegated to the Supervisory Board who then constitute the majority of members or the most influential members of the Supervisory Board. The

Supervisory Board will then control and advise the Management Board but also exercise its influence by making a decision on contract terms, including on remuneration and the appointment and dismissal of Management Board members.

The Stock Corporation Act provides for the mandatory competences of the shareholders' meeting and partly for compulsory higher majorities (mostly 75% majority of the represented capital) rather than a simple majority; in certain matters, the Articles of Association could also provide for qualified majorities, though this is rare in listed companies. In the Annual General Shareholders' Meeting ("AGM"), shareholders vote on the appropriation of distributable profit, discharge of the members of the Supervisory and Management Boards, appointment of auditors, appointment of members to the Supervisory Board, and, in listed companies, on remuneration policies (at least every four years) and remuneration reports (annual basis). Other matters reserved for the shareholders' meeting include compensation of Supervisory Board members, capital measures including authorised capital (75%), decisions of major importance for the company such as major investments or divestitures, reorganisation matters like mergers, demergers (75%) and the authorisation to acquire treasury shares. Exceptionally, the shareholders' meeting will be called to decide on special audits, the amendment of the Articles of Association (75%), premature dismissal of Supervisory Board members (75%), capital decreases, or the issuance of convertibles (75%).

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

The obligation to pay the agreed contribution is the main obligation of the shareholders. Further, the Articles of Association may provide for obligations of the shareholders (recurrent benefits in kind), however, with the exception of listed companies.

Besides that, the Stock Corporation Act does not provide for specific fiduciary duties of the shareholders. Although no specific court precedents exist for corporations, it is held that both controlling and minority shareholders must observe fiduciary duties deriving from the Articles of Association and must take fiduciary duties toward the company and the shareholders into account when exercising their shareholder rights to avoid abusive exercise of voting rights. Moreover, shareholders need to refrain from influencing board members to the detriment of the company (see also question 2.4).

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

Annual General Shareholder Meetings

The AGM is held within the first eight months of each year. The AGM decides on: the appropriation of the distributable profit; the discharge of the members of the Management and Supervisory Boards; the compensation of the members of the Supervisory Board; the election of the company's auditors; as well as – in listed companies – the remuneration policy (*Vergütungspolitik*) for the Management and Supervisory Boards (at least every four years); and the remuneration report (*Vergütungsbericht*; on an annual basis). Other agenda items put on the agenda by the company may include the election of the Supervisory Board, treasury share purchase programmes or capital measures.

Extraordinary General Shareholder Meeting

Any shareholders' meeting that is not the AGM is deemed to be an Extraordinary General Meeting ("EGM").

The convocation formalities for AGMs and EGMs are similar. The invitation to an AGM must be published at least 28 days prior to the AGM. The minimum publication term for an EGM is 21 days prior to the meeting, unless the Articles of Association provide longer terms. In an EGM, there are no mandatory items to be included in the agenda.

Information to be provided: Companies must generally publish resolution proposals by the Managing and Supervisory Board regarding every agenda item and documentary back-up, such as the annual accounts, at the registered seat of the company or on its website at least 21 days before the shareholders' meeting. Listed companies must also publish the invitation to the shareholders' meeting and forms of powers of attorney, in addition to postal or tele-voting, as well as certain reports, on their website.

Voting and other shareholder rights: Voting rights are often exercised by proxies, which may be financial institutions, institutional proxy advisors or proxies appointed by the company (*Stimmrechtsvertreter der Gesellschaft*). Shareholders have the right to speak at the shareholders' meetings and to request information on matters of the company and affiliates to the extent necessary for assessment of the agenda items. Shareholders can propose motions to agenda items and issue objections to be recorded at the meeting by the notary to be able to later challenge the resolutions in court. Depending on the shareholding quota, shareholders holding at least 1% of the corporation's share capital can submit resolution proposals or make requests for additional agenda items (5%).

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

Shareholder resolutions breaching fiduciary duties (see also question 2.2) may be contested and, in exceptional cases, may give rise to damage claims against the corporation and its shareholders.

Generally, shareholders will not be liable toward creditors of the company or other third parties.

Specific responsibilities for shareholders follow from the disclosure obligations under the Stock Exchange Act (*Börsegesetz*) and the EU Market Abuse Regulation as to share ownership and financial instruments and in the context of takeovers under the Takeover Act (*Übernahmegesetz*).

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

Actions of the Management and Supervisory Boards are not subject to direct shareholder claims; however, the company itself, represented by the Supervisory Board or a special representative, may file damage claims against board members for breach of duties.

The shareholders' meeting may resolve on actions against members of the Management Board and may also appoint a special representative of the company to conduct such proceedings. A minority of 10% may request damage claims

to be initiated, provided such claims are not considered to be evidently without merit. The court may then appoint a special representative.

Generally, shareholders who participated in a shareholders' meeting and objected to a certain resolution adopted at such meeting are entitled to file an action with the court to have the resolution declared void based on the violation of laws.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

If a buyer acquires or sells, directly or indirectly, listed target shares so its voting rights reach, exceed or fall below 4%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% or 90%, the shareholding must be notified to the Financial Market Authority ("FMA"), the Vienna Stock Exchange and the target according to the Austrian Stock Exchange Act. The target's articles may provide for a 3% triggering disclosure. Disclosure rules also cover derivatives and other financial instruments. Failure to disclose may lead to fines and suspension of voting rights.

Additionally, under takeover rules, specific notification thresholds apply including at 26% voting stock and 30% voting stock (Mandatory Offer Threshold).

Apart from merger notification and clearance requirements, notification and approval requirements apply under the Foreign Trade Act in case an acquirer who is not an EU or EFTA national intends to acquire an interest of 25% or more, or of a controlling interest in an Austrian enterprise engaged in specific protected industry sectors, including defence equipment, telecoms and energy. Certain notification and approval requirements apply in certain regulated industries including financial services, insurance, TMT and airlines.

Furthermore, the company must register the corporation's beneficial owners of more than 25% or otherwise controlling beneficial owners with the Register of Beneficial Owners (*Register der wirtschaftlichen Eigentümer von Gesellschaften*).

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

In the context of a public offer, both mandatory or voluntary, bidders must explain in the offer document their intentions and strategic planning with respect to the business activities of the target company, the retention of the target company's management and employees and changes, if any, to the conditions of employment.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Following the international example (e.g. ExxonMobil), the trend in Austrian stock corporations is also moving towards ESG-related shareholder activism. However, compared with shareholder activism on a global level, shareholder activism in Austria is still limited given that the overwhelming number of companies listed at the Vienna Stock Exchange are controlled by core shareholders or shareholder syndicates and the number of free float companies is limited. Still, an increase in shareholder activism is visible in Austria. In recent years, Elliott has been involved in one case of backend activism (squeeze-out) and Petrus Advisers has been running campaigns, in particular, on listed real estate companies. No specific regulation applies.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

Similar to, for instance, the German system, Austrian stock corporations have a two-tier board structure comprising the Management Board and the Supervisory Board. SEs may also opt for a one-tier board system with a single administrative board (which consists of both the management and the supervisors).

The Management Board represents the stock corporation in and out of court. It shall manage the company in such a way as is necessary in the company's best interests, taking into due account the interests of the shareholders and according to an explicit provision in the Austrian Stock Corporation Act, employees as well as the public interest. The Management Board carries out its activities on its own responsibility; the Supervisory Board and the AGM have no authority to issue instructions to the Management Board. However, if the Management Board seeks a resolution by the AGM on a management measure, it is bound by such resolution.

The Supervisory Board is responsible for monitoring the Management Board. The Supervisory Board shall adopt the annual financial statements together with the Management Board, unless the Supervisory Board does not approve the annual financial statements, or the Management Board and the Supervisory Board decide that the annual financial statements shall be adopted by the AGM.

The Supervisory Board consists of at least three natural persons, unless the Articles of Association stipulate a higher number, and a maximum of 20. In listed companies and in companies in which more than 1,000 employees are permanently employed, at least 30% of the Supervisory Board must consist of women and at least 30% of the Supervisory Board must consist of men, provided that the Supervisory Board consists of at least six (shareholder-appointed) members and at least 20% of the company's workforce consists of female or male employees, respectively.

Employees are entitled to delegate members to the Supervisory Board (so-called employee representatives in the Supervisory Board). They have the right to nominate one such employee representative for every two members appointed by the shareholders, and in the case of an uneven number of shareholder representatives, a further employee representative. A (co-determined) Supervisory Board therefore consists of at least five members, three of whom are appointed by the shareholders and two by the employees. See further at question 4.2.

Especially in larger Supervisory Boards, the establishment of sub-committees is common practice; public interest companies (including listed companies) and large stock corporations must establish an audit committee, which must include a financial expert.

3.2 How are members of the management body appointed and removed?

Members of the Management Board are appointed and removed by the Supervisory Board. The maximum term of office is five years, and reappointment is permissible. Appointment to the Management Board may only be revoked before the end of the term of office for good cause. This is the case, in particular, when there is a material breach of duties, the inability to conduct business properly, or a no-confidence vote by the AGM for reasons that are not obviously unjustified.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

The main sources are the Austrian Stock Corporation Act and the Corporate Governance Code.

Pursuant to the Austrian Stock Corporation Act, the Supervisory Board must ensure that the total remuneration of the members of the Management Board (comprising salary, profit share, fringe benefits, etc.) is commensurate with the duties of the individual members of the Management Board, the situation of the company and customary (i.e. market standard) compensation and sets forth adequate long-term incentives for a sustainable development of the company.

The ÖCGK contains considerably more detailed requirements. For instance, it sets forth that the compensation package must contain fixed and variable components, including non-quantitative criteria. Variable components must be determined on the basis of clear and transparent criteria and must be capped at a certain amount or percentage of the fixed remuneration. The overall goal shall be to discourage disproportionate risks and to incentivise long-term sustainable growth and development of the company.

The total remuneration of the Management Board must be disclosed in the notes to the annual financial statements and the corporate governance report must break down the annual remuneration by individual Management Board members.

The EU Shareholders' Rights Directive II (2017/828/EU), implemented into the Austrian Stock Corporation Act, introduced stronger "say-on-pay" rules for listed companies, requiring preparation, (non-binding) shareholder voting, and disclosure on the company's homepage of the remuneration policy and the remuneration report of the Management Board and the Supervisory Board. Such Directive was implemented with the aim of minimising the administrative burden on listed companies by avoiding any "gold plating". As for "say-on-pay", a board-friendly implementation is also prioritised by giving the shareholders a non-contestable advisory vote on the remuneration policy and the remuneration report.

Such disclosure rules on board recommendation and the requirement for boards to regularly put board remuneration (policy) on the agenda of shareholders' meetings allow activists to increase pressure on the management without having to request specific agenda items on these topics in such meetings.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Members of the Management Board and/or the Supervisory Board are not subject to limitations with respect to the number of securities they may hold in the company or the board on which they sit. Rather, shares and stock options typically form part of the remuneration packages of executives.

In listed companies, directors' dealings must be notified to the company and the FMA without undue delay and at the latest within three trading days once an annual (aggregate) threshold of EUR 5,000 has been met (all transactions added together, no netting). The FMA provides a notification form for download on its website at https://www.fma.gv.at/kapitalmaerkte/directors-dealings. Since 2016, the issuer is responsible for ensuring compliance with disclosure of directors' dealings.

The rules on (the prohibition of) insider trading of course in particular apply to members of the Management Board and the Supervisory Board. In addition, board members may not exercise the voting rights pertaining to their shares if they are subject to a conflict of interest (most importantly, in a vote on their own discharge at the AGM).

3.5 What is the process for meetings of members of the management body?

In general, the management board is responsible for managing the company. This also includes organisational responsibility. In contrast to the Supervisory Board, there is no statutory rule on meetings of the Management Board of an Austrian stock corporation. The Management Board may thus in principle determine the frequency, form, etc. of its board meetings itself at its reasonable discretion – thereby duly taking into consideration the type of business, the size, the structural organisation and the complexity of the particular company. However, if the Supervisory Board puts in place rules of procedure for the Management Board that set forth that certain (regular) Management Board meetings must be held, the Management Board would have to comply with such internal rules.

The Supervisory Board must meet at least four times annually and at least once per quarter for a (physical) Supervisory Board meeting.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Members of the Management Board are obliged toward the company to apply the standard of care and diligence of a prudent businessman in their management. This duty of care depends on the size, situation and industry of the company. If they violate their duties, they are liable to the company for the resulting damage. However, liability towards third parties such as creditors or shareholders is the very rare exception.

Generally, Management Board members may be released from liability if they can prove that they have taken the necessary care. The Austrian Stock Corporation Act, by way of example, contains a list of conduct which results in liability of the Management Board, e.g., returning contributions to shareholders contrary to the provisions of the Austrian Stock Corporation Act, making payments after insolvency, etc. There is no obligation to pay compensation to the company if a course of action is based on a lawful resolution of the AGM.

Further, the Austrian Stock Corporation Act contains a codified Business Judgment Rule ("BJR"). The BJR establishes a "safe harbour" for members of the Management and Supervisory Boards from liability for their actions when taking business decisions, provided that the following conditions are met: (i) they must act free from conflicts of interest; (ii) a decision must be based on all (material) information reasonably available; and (iii) they must have (justifiably) believed that the decision was in the best interests of the company.

Claims for compensation become time-barred three months after the other members of the Management Board and the Supervisory Board become aware of the act of misconduct. In any case, claims for compensation become statute-barred after five years.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

Under the Austrian Stock Corporation Act, the Management Board is responsible for setting up an accounting system and internal risk management and control system that is commensurate with the nature of the business, and the size and complexity of the organisation of the specific company. It must be ensured that the company is structured and run in a manner that guarantees that all conduct by or on behalf of the company complies with all applicable laws and regulations (legality principle).

The complexity of this task is increasingly daunting, particularly for companies active on an international level. It covers more "classical" areas such as anti-corruption and compliance with tax and antitrust laws, but may extend to sanctions compliance which is particularly relevant since the sanctions against Russia and the corresponding counter-sanctions, and "know your shareholder" questions, which may become relevant if politically exposed persons are involved, for instance. Also, cybersecurity questions ("CEO fraud") and data protection compliance are increasingly the boards' focus.

Apart from this, the most challenging current developments are increasing shareholder activism trends (see question 2.8) as well as the need for a thorough analysis of the compliance system due to new CSDDD rules (see question 1.3) and, more generally, the need to put in place even more stringent internal policies and processes to ensure the best possible documentation and protection of board members in case of potential liability claims.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Directors' and officers' insurance is customary for members of the Management and Supervisory Boards in Austria.

A waiver of claims against a member of the Management or Supervisory Board of a company is only permissible in very limited circumstances. In principle, claims must be enforced – unless it is in the best interest of the company not to pursue a claim. This needs to be interpreted narrowly. If at all permissible, a waiver requires the approval of the AGM (with no more than 20% of the statutory capital objecting to such resolution). Furthermore, five years must have passed since the claim has arisen.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

Setting and changing the strategy of the company is a core responsibility of the Management Board. Hence, the Management Board is responsible for determining and pursuing the overall strategy of the company – subject, however, to the approval of the Supervisory Board. In practice, strategic planning and alignment with the Supervisory Board is part of the annual budgeting and planning process but, in addition, takes place at regular intervals during the financial year.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

The Austrian Stock Corporation Act sets forth a pluralistic approach to the company's interests (see also question 3.1). The interests of the company are not restricted to the maximisation of shareholder value but include the interests of the employees as well as the public interest, e.g. social, charitable and environmental matters. As a result, the Management Board of a stock corporation would also need to evaluate the impact on other stakeholders in its management decisions.

The Austrian Sustainability and Diversity Improvement Act of 2017 (*Nachhaltigkeits- und Diversitätsverbesserungsgesetz*, NaDiVeG), which implemented the Directive 2014/95/EU, sets forth certain reporting standards as regards the corporate social responsibility of large companies. Such non-financial reports include, *inter alia*, assessments on environmental aspects, employment and social matters, human rights, corruption, and bribes. Further, on 5 January 2023, the Corporate Sustainability Reporting Directive ("CSRD") came into force. EU Member States must implement the new rules on sustainability reporting of the CSRD into national law by 6 July 2024.

Finally, on 15 March 2024, the EU Member States approved the CSDDD. The aim of the CSDDD is to foster sustainable and responsible corporate behaviour and to anchor human rights and environmental considerations in companies' operations and corporate governance.

In addition to these statutory requirements, the social responsibility of companies toward the wider public and the need for a sustainable and long-term management is also provided for in the preamble of the Austrian Corporate Governance Code.

4.2 What, if any, is the role of employees in corporate governance?

Supervisory Board representation

The works council is entitled to delegate one of its members to the Supervisory Board of the corporation for every two shareholder representatives elected or delegated, or in case of an odd number of shareholder representatives, one more works council delegate (see question 3.1). The rights and obligations of employee representatives at Supervisory Boards are generally the same as those of shareholder representatives. A special dual majority, being a required majority in both the Supervisory Board as a whole and the shareholder representatives, however, applies in the appointment and removal of members of the Management Board and the chairman and deputy chairman of the Supervisory Board; additionally, a committee of the Supervisory Board made up of only shareholder representatives may fix the terms of the Management Board employment contracts.

Works councils

Works councils made up of employee representatives elected by employees oversee compliance with employee protection regulations, including those for health and safety. They also have co-determination and information rights on the work force, working conditions and in the context of (intended) dismissals of employees. Works councils also negotiate and contract shop agreements, if any.

4.3 What, if any, is the role of other stakeholders in corporate governance?

As previously mentioned (see question 4.1), the Management Board of a corporation must manage the company considering the interests of the shareholders and employees as well as public interests. To some extent, this stakeholder interest is also reflected by the transparency rules to be followed under the ÖCGK and non-financial reporting (see question 4.4).

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility and similar ESG-related matters?

Entities of public interest (companies with more than 500 employees and a balance sheet total exceeding EUR 20m or a turnover exceeding EUR 40 million, which are focused on capital markets or act as financial service providers) must issue a non-financial statement as part of their management report (*Lagebericht*) or in a separate non-financial report.

The report must comprise details on non-financial issues, in particular, environmental protection, personnel and social issues, human rights, anti-corruption, and diversity. The companies must disclose their concepts and strategies, non-financial risks, and performance indicators as well as intended measures based on existing guidelines (e.g. GRI, UNGC or ISO 26000).

The non-financial statement must be reviewed by the Supervisory Board and verified, as to formal requirements, by the corporation's auditor.

In addition, EU Member States must implement the new CSRD rules on sustainability reporting into national law (see also question 4.1).

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency and what is the role of audits and auditors in these matters?

The Management Board is responsible for ensuring compliance with disclosure and transparency requirements. While the Management Board may resolve to allocate the specific responsibility to one or more of its members, at the same time the board needs to put in place appropriate processes within the company and the group to secure that sufficient information flows from lower management levels to the board level – at the right time.

In addition, it is absolutely common practice that the Management Board is supported by, e.g., investor relations, (capital markets) compliance and communication staff as well as internal and external legal counsel to evaluate what exactly needs to be disclosed, when, and in what manner. This does not, however, reduce the Management Board's responsibility to ensure compliance with disclosure rules.

The annual financial statements (comprising balance sheet and profit and loss account) as well as the management report and notes and – in the case of listed companies – corporate governance must be audited by an independent auditor. The auditor must be independent and is appointed by the shareholders' meeting. The Supervisory Board needs to make a proposal to the shareholders with respect to the appointment of the auditor.

The auditor's task is to assess whether the annual financial statements have been prepared in compliance with applicable rules and regulations and present a materially true and fair view of the assets, liabilities, condition, and results of the operation of the company. In light of several prominent cases in which auditors have potentially not (fully) complied with their duties and were held liable, we assume that increased attention will be paid to this area in the future.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

In every stock corporation, the Management Board must prepare and draw up the annual financial statements within the first five months of a business year and submit it to the Supervisory Board for review and approval. Following audit and discussion of the annual financial statements in the AGM, the audited accounts must be filed with the commercial register court and disclosed in the Austrian commercial register, at the latest nine months after the balance sheet date. As companies have often ignored this disclosure obligation in the past due to the negligible penalties, there are currently plans to increase the penalties for non-disclosure.

However, issuers, i.e. legal entities whose securities are admitted to trading on a regulated market, must publish their annual financial report no later than four months after the end of each financial year. The annual financial report must include: (i) audited financial statements; (ii) the management report; and (iii) statements by management that, to the best of their knowledge, the financial statements prepared in accordance with the applicable accounting standards give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer or of the group of consolidated companies and that the management report includes a fair review of the development and performance of the business, presents the business results or the position of all the companies included in the consolidation in such a way as to give a true and fair view of the issuer's net assets, financial position and results of operations and describes the principal risks and uncertainties to which they are exposed.

In addition, issuers of shares or debt securities are obliged to prepare and publish half-yearly financial reports and interim announcements.

EU Shareholders' Rights Directive II (2017/828 EU), implemented into Austrian law by amendments to the Stock Corporation Act, introduced further disclosure requirements in relation to related-party transactions for listed companies. Directive 2017/628/EU on the encouragement of long-term shareholder engagement was implemented with the aim of minimising the administrative burden on listed companies by avoiding any "gold plating". On material related-party transactions, the amendment law makes extensive use of the exceptions provided by the Directive, subjecting disclosure only of certain material related-party transactions and leaving approval of relevant transactions with the Supervisory Board rather than the shareholders' meeting. Materiality thresholds as to approval and publication requirements differ: 5% for approval; and 10% for publication, of the balance sheet total. Listed companies must thus approve and disclose material transactions with related parties that cross a materiality threshold of 5% (approval) and 10% (publication), respectively, of the balance sheet total of the company under the annual accounts of the previous year, to be published no later than upon the conclusion of the transaction.

Additional corporate governance-related disclosure obligations may arise, for instance, if the relevant information constitutes insider information and an *ad hoc* disclosure obligation pursuant to Art. 17 of the MAR is triggered.

Information to be disclosed on a company's website includes the current Articles of Association, information and materials relating to shareholders' meetings (such as invitation notice, agenda, proposed resolutions, etc.), *ad hoc* announcements, disclosure of directors' dealings and confirmation regarding compliance with the Austrian Corporate Governance Code.

5.3 What are the expectations in this jurisdiction regarding ESG- and sustainability-related reporting and transparency?

Numerous companies are embracing sustainability and investments in "green bonds" and ESG-compliant sectors are on the rise (https://www.wienerborse.at/en/about-us/sustainability-social-responsibility/investing/).

Many companies participate in ESG rankings, publish detailed information about the sustainability goals and disclose remuneration of the Management Board members to ensure direct exposure (https://iclg.com/practice-areas/environmental-social-and-governance-law/austria).

However, it is hard to compare Austrian companies in ESG and sustainability matters due to the lack of comparable information. Therefore, Austrian legislators are continuously trying to improve the relevancy and consistency of data in relation to ESG and sustainability. Now it is up to the Austrian legislator to create uniform standards in order to improve the comparability of data through consistency and relevance. A type of seal of quality (*Gütesiegel*) or common standards to highlight ESG or sustainable companies would be beneficial as well.

In the long term, the Russian attack on Ukraine and the subsequent EU sanctions have brought the problem of Austria's dependence on Russian natural gas into focus. As a result of these developments, new momentum has been brought not only into the debate about CSR, but corporate political responsibility as well. From an EU and Austrian perspective, regulatory pressure on companies to be ESG-aware is continuously increasing. ESG issues must be sufficiently taken into account in governance structures, reporting standards, strategies and stakeholder interests. With the recent adoption of the CSDDD, this development will enhance dramatically.

Due to the strong environmental focus of the government and recent developments worldwide, a trend toward more reporting and transparency regarding ESG and sustainability can be clearly identified. European development is already apparent with the CSRD and CSDDD (see question 4.1).

5.4 What are the expectations in this jurisdiction regarding cybersecurity and technology-related reporting and transparency?

The EU and Austrian legislators are planning several initiatives in relation to cybersecurity and technology-related reporting and transparency. Hence, current expectations are driven by the outcome of such new legal initiatives.

On 15 September 2022, the EU Commission presented the long-awaited draft of the Cyber Resilience Act ("CRA"), which aims to ensure the cybersecurity of digital products for the benefit of consumers and businesses. The CRA will introduce mandatory cybersecurity requirements for hardware and software. Furthermore, the Digital Operational Resilience Act ("DORA"), in force since 16 January 2023 but not yet implemented in Austria, sets out rules for managing ICT risks, reporting incidents, testing resilience, and monitoring third-party risks in information and communication technology. In addition, the Critical Entities Resilience Directive ("CER"), which has also been in force since 16 January 2023, aims to ensure the resilience of critical facilities against cybersecurity threats. The new NIS-2 Directive (measures for a high common level of cybersecurity in the EU) has been in force since 16 January 2023 and grants far-reaching cybersecurity legal requirements and obligations. The NIS-2 Directive is to be implemented in the EU Member States by 17 October 2024. Meanwhile, the Austrian government has already published the implementation act of the NIS-2 Directive, providing for strict notification and reporting obligations to the authority.

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