# Expert Chapters



# Q&A Chapters

# Austria



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## 1 Setting the Scene – Sources and Overview

### 1.1 What are the main corporate entities to be discussed?

The companies covered below are stock corporations, given that stock corporations (*Aktiengesellschaft*, "AG") are the most common entity listed on the Austrian stock exchanges. In addition to stock corporations, SEs (*Societas Europeae*) can be listed; however, currently, only one SE is listed on the Vienna stock exchange.

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

**Basic corporate and commercial law regulation**
These include the Austrian Stock Corporation Act, the Austrian Commercial Code (in particular on accounting and financial statements), SE EU Council Regulation (EC) No 2157/2001 of 8 October 2001, the Austrian SE Act (*SE-Gesetz*), as amended, and the Labour Constitution Act (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 and the Securities Supervision Act.

**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 board and the supervisory board.

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

In the context of COVID-19 measures implementing social distancing, the rules relating to board and shareholder meetings in Austrian companies were relaxed and statutory terms for completing and filing annual accounts and holding shareholder meetings extended (now 12 instead of eight months from the balance sheet date). The most important change relates to the possibility of virtual shareholders' meetings, important in particular for listed companies. The COVID-19 rules modify the rights and scope of shareholders to participate, to intervene by questions and information requests and provide for special rules on voting through four proxies to be provided by the company to allow for shareholder voting. The changed measures have a sunset clause, expiring 31 December 2020.

In Q3 2019, EU Shareholders' Rights Directive II (2017/828/EU), on the encouragement of long-term shareholder engagement covering know your shareholder/say-on-pay/third party transactions, was implemented into Austrian law. This has been realised by amendments (i) to the Stock Corporation Act relating to the remuneration of members of the Management Board and the Supervisory Board and related party transactions, and (ii) to the Stock Exchange Act relating to identification of shareholders, transmission of information and facilitation of exercise of shareholder rights, which will require financial intermediaries/custodians to provide shareholder-related information to companies and disclosure requirements on institutional investors, asset managers and proxy advisers. Under the new rules, at least every four years the shareholders' meeting will vote on a remuneration policy for the management and supervisory boards, the vote being recommendatory only, and annually vote on a remuneration report provided by the boards. Additionally, the supervisory board will have to approve material (5% of balance sheet total) transactions with related parties and such transactions are subject to new disclosure and publication requirements.

### 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?

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?

In the two-tier system of Austrian stock corporations, the shareholders have indirect influence only on strategy, operation and management of the company. The management and operation of

a corporation is statutorily with the management board. 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 but also exercise its influence by its decision on contract terms, including on remuneration and the appointment and dismissal of management board members. The EU Shareholders' Rights Directive II (2017/828/EU) (see question 1.3 above) will strengthen but not substantially change shareholder influence. The Stock Corporation Act provides for the mandatory competences of the shareholders' meeting and partly for compulsory higher majorities (mostly 75% majority) 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. On a regular basis, shareholders will vote in the Annual General Meeting 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, as from 2020, 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 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 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 controlling and minority shareholders need to observe fiduciary duties deriving from the articles of association and must take fiduciary duties towards 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 Shareholder Meetings**: The Annual General Shareholders' Meeting ("AGM") is held within the first eight months of each year. The AGM resolves 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 – from 2020 – at least four years of the remuneration policy for the management and supervisory boards and annually for the remuneration report. Other agenda items put on the agenda by the company include the election of the supervisory board, treasury share purchase programmes or capital measures.

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

The convocation formalities for AGM and EGM 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, on their website at least 21 days before the shareholders' meeting. Listed companies must also publish the invitation to the general meeting and forms of powers of attorney, in addition to postal or tele-voting, as well as certain reports on their website.

The company's boards must issue resolution proposals on each agenda item and will make an election proposal on supervisory board members and auditors.

**Voting and other shareholder rights**: Voting rights are nowadays 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 towards creditors of the company or other third parties.

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

### 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 specific representative, may file damage claims against board members for breach of duties. Such claims may not be waived or compromised by the company prior to a consenting vote by the shareholders' meeting.

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 shareholder meetings 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 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, the Vienna Stock Exchange and the target. 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.

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 non-public Register of Beneficial Owners.

### 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?

Shareholder activism is still limited given most companies listed at the Vienna Stock Exchange are controlled by core shareholders or shareholder syndicates and the number of true free float companies is limited. Elliott has been involved in one case of backend activism (squeeze-out) and Petrus Advisers has been running campaigns, in particular on the listed real estate companies. No specific regulation applies.

## 3 Management Body and Management

### 3.1 Who manages the corporate entity/entities and how?

Comparable 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.

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 employees as well as the public interest. The Management Board carries out its activities on its own responsibility; the Supervisory Board and the Annual General Meeting have no authority to issue instructions to the Management Board. However, if the Management Board seeks a resolution by the Annual General Meeting 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 Annual General Meeting.

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 shall consist of women and at least 30% of the Supervisory Board shall 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. They have the right to nominate one 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; 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, in case of a material breach of duties, the inability to conduct business properly or a no-confidence vote by the Annual General Meeting 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 § 78 AktG, 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 member 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 Austrian Corporate Governance Code 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 in Q3 2019, 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 to minimise the administrative burden on listed companies by avoiding any "gold plating". As for "say-on-pay", the implementation again opts for a board-friendly implementation by giving the shareholders a non-contestable advisory vote on the remuneration policy and the remuneration report.

The new disclosure rules on board recommendation and the requirement for boards to regularly put board remuneration (policy) on the agenda of shareholders' meeting will allow activists to increase pressure on the management without having to request specific agenda items on these topics in shareholders' 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 Austrian Financial Markets Authority ("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 Annual General Meeting).

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

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. If the Supervisory Board puts in place rules of procedure for the Management Board which set forth that certain (regular) Management Board meetings must be held, the Management Board would have to comply with such internal rules, however.

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 towards the company to apply the standard of care and diligence of a prudent businessman in their management. If they violate their duties, they are liable to the company for the resulting damage.

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 Annual General Meeting.

Since 2016, the Austrian Stock Corporation Act further contains a codified Business Judgment Rule. 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 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 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 needs to 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, in particular for companies active on an international level. It covers more "classical" areas such as anti-corruption, compliance with tax and antitrust laws but may extend to sanctions compliance and "know your shareholder" questions, which may become relevant if politically exposed persons are involved, for instance. Also, cyber-security questions ("CEO fraud") and data protection compliance are increasingly in the focus of the boards.

Apart from this, the most challenging current developments are increasing shareholder activism trends and 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?

D&O insurance is customary for members of the Management Board and the Supervisory Board in Austria. In contrast to the rules in Germany, the Austrian Stock Corporation Act does not require a deductible to be personally borne by the individual board member.

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 Annual General Meeting (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?

The Management Board is responsible for determining and pursuing the overall strategy of the company and the group – 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 interest. 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 when reaching their 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.

In addition to these statutory requirements, the social responsibility of companies towards 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?

**Board level 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. 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?

Under the Stock Corporation Act, 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 Austrian Corporate Governance Code and the requirement under Directive 2014/95/EU implemented in Austrian law, under which listed companies must publish a non-financial report.

### 4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Entities of public interest (companies with more than 500 employees and a balance sheet total exceeding EUR 20m or a turnover exceeding EUR 40m, which are focused on capital markets or act as financial service providers) have to 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, also by the corporation's auditor.

## 5 Transparency and Reporting

### 5.1 Who is responsible for disclosure and transparency?

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.

### 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 comprising balance sheet, profit & loss account, management report and notes and – in the case of listed companies – the corporate governance report 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 Annual General Meeting, the audited accounts must be filed with and disclosed in the Austrian commercial register, at the latest nine months after the balance sheet date.

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 shall include: (i) the 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 in Q3 2019, introduced further disclosure requirements in relation to related party transactions for listed companies. The rules will take effect in the 2020 AGM season. 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, as to publication no later than upon the conclusion of the transaction. If several transactions are concluded with the same related party within a financial year, the values of such transactions need to be aggregated to determine materiality. Members of the supervisory board qualifying as a related party to the transaction are excluded from the vote.

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, directors' dealings disclosures and confirmation regarding compliance with the Austrian Corporate Governance Code.

### 5.3 What is the role of audits and auditors in such disclosures?

The annual financial statements (comprising balance sheet and profit and loss account) as well as the management notes 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.

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