

Austrian Code of Corporate Governance

January 2006

Austrian Code of Corporate Governance

January 2006

Disclaimer: The English translation of the Austrian Corporate Governance Code serves information purposes only. The exclusively binding version shall be the German text.

Publisher:

Austrian Working Group for Corporate Governance
c/o Office of the Special Government Representative for
the Capital Market
Himmelfortgasse 9, A - 1010 Vienna

Vienna, January 2006



Preface

The Austrian Code of Corporate Governance presented to the public on 1 October 2002 has become an indispensable part of the Austrian corporate governance system and is viewed by investors as well as by issuers as an effective instrument for building confidence. This is also shown by the large number of declarations of commitment to the Code received within a short period of time especially from companies listed on the prime market of Wiener Börse. Since August 2004, the rules of the prime market of Wiener Börse have included the requirement to make a declaration stating compliance or non-compliance with the Austrian Code of Corporate Governance.

According to the preamble of the Austrian Code of Corporate Governance, the Code must be reviewed annually in the light of national and international developments and adapted, if necessary. After adapting the Code to the changed provisions of the Stock Exchange Act in February 2005, work was started on a major revision of the Code. The basis for the adaptations were the amendments to the Companies Act 2005 and the recommendations of the European Commission regarding the tasks of the supervisory board and the remuneration of directors. When revising the Code, attention was given to ensuring a broad and transparent discussion with the involvement of all interest groups. Our special thanks go to the capital market participants and institutions that sent statements and actively took part in the discussion process. At this point I would also like to thank the

members of the Austrian Working Group for Corporate Governance who worked with great commitment to the further development of the Austrian corporate governance system.

To ensure that the successful course steered in the past three years by the Austrian capital market continues, it is important for the Austrian Code of Corporate Governance to be constantly developed to match international capital market practices. The changes to the Code adopted create even greater transparency and strengthen the independence of supervisory board members.

Further improvement in the corporate governance of Austrian listed companies is to be achieved, above all, by the flexible voluntary self-regulation pursuant to the „comply or explain“ principle. In this context, for the practical application of the Code it must be stressed that also all those companies are in compliance with the Code even if they do not adhere to the rules but have good reasons to explain why they deviate.

The revised Code as amended in January 2006 will continue to be decisive for building confidence in the Austrian capital market.

Vienna, 14 December 2005

A handwritten signature in black ink, appearing to read 'R. Schenz', with a long horizontal stroke extending to the right.

DI Dr. Richard Schenz

Chairman of the Austrian Working Group for Corporate Governance
Special Government Representative for the Capital Market

Table of Contents

Preface	5
I. Preamble	9
Notes to the Code	11
II. Shareholders and the General Meeting	12
III. Cooperation between the Supervisory Board and the Management Board	14
IV. Management Board	16
Scope of Competence and Responsibilities of the Management Board	16
Rules Governing Conflicts of Interest and Self-dealing	17
Compensation of Members of the Management Board	20
V. Supervisory Board	22
Scope of Competence and Responsibilities of the Supervisory Board	22
Appointment of the Management Board	23
Committees	24
Rules Governing Conflicts of Interest and Self-dealing	26
Compensation of Members of the Supervisory Board	27
Qualifications of Members, Composition and Independence of the Supervisory Board	28
Co-determination	30
VI. Transparency and Auditing	32
Transparency of Corporate Governance	32
Financial Reporting and Disclosure	32
Investor Relations and the Internet	34
Audit of the Financial Statements	36
Annex 1	39
Annex 2	41

I. Preamble

The Austrian Code of Corporate Governance provides Austrian corporations with a framework for the management and control of enterprises. It covers the standards of good corporate management common in international business practice as well as the most important provisions of Austrian corporation law that are of relevance in this context. A general overview of Austrian corporation law is given in the Annex 2.

The Code aims to establish a system of management and control of companies and groups that is accountable and is geared to creating sustainable, long-term value. This objective best serves the needs of all parties whose well-being depends on the success of the enterprise.

The Code is designed to increase the degree of transparency for all stakeholders.

This Code primarily applies to Austrian stock listed companies. It is based on the provisions of Austrian corporation law, securities law and capital markets law, the EU recommendations on the tasks of supervisory board members and on the remuneration of directors as well as on the principles set out in the OECD Principles of Corporate Governance. It is also recommended that companies not listed on stock exchanges follow this Code to the extent that the rules are applicable.

Companies voluntarily undertake to adhere to the principles set out in the Austrian Code of Corporate Governance as amended.

All listed companies are therefore called upon to make a public declaration of their commitment to the Code and to have their adherence to the rules stipulated therein monitored by an external institution on a regular and voluntary basis, and to report the findings to the public. As help for the voluntary external evaluation, the Austrian Working Group for Corporate Governance developed a questionnaire¹.

Generally, the Code will be reviewed once a year taking relevant national and international developments into consideration, and will be adapted if required.

The English version of the Code is a translation from the German. However, the German version shall prevail in the event of a dispute.

¹ Published on www.corporate-governance.at

Notes to the Code

In addition to the most important statutory requirements under Austrian law, the Code also contains rules which are considered common international practice. Non-compliance with these rules must be explained and the reasons stated. The Code also contains rules that go beyond these requirements and should be applied on a voluntary basis. The Code comprises the following categories of rules:

1. Legal requirement (L): This rule refers to mandatory legal requirements².
2. Comply or explain (C): This rule is to be followed; any deviation must be explained and the reasons stated in order to be in compliance with the Code.
3. Recommendation (R): The nature of this rule is a recommendation; non-compliance with this rule requires neither disclosure nor explanation.

For rules that apply not only to the listed company itself, but also to its associated group companies, the term „enterprise“ is used instead of „company“. The special rules applicable to banks and insurance companies shall not be affected by the Code. The rules of the Code do not require the disclosure of any company or business secrets.

² Certain legal provisions apply only to companies listed on the stock exchange in Austria. These rules are to be interpreted as a C rule for companies not listed on the stock exchange. The wording of the L rules does not necessarily match the exact wording of the respective laws, but has been adapted to match the terminology of the Code. It is not the intention of the authors to change the interpretation of statutory provisions.

II. Shareholders and the General Meeting

1. **All shareholders are to be treated equally under the same conditions. The requirement to treat all shareholders equally shall apply, in particular, to institutional investors, on the one hand, and to private investors, on the other hand.** L

2. Shares are to be construed in accordance with the principle of *one share – one vote*. C

3. In the interests of treating all shareholders equally, the articles of incorporation of a company shall contain a clause excluding the applicability of the maximum permissible reduction of 15% on the purchase price in the case of mandatory bids, which is allowed under the Takeover Act.³ R

4. A general meeting must be convened at least three weeks in advance. The invitation to the general meeting, the announcement of the agenda, the motions and documents to be presented to the shareholders, which must be made available from the date the meeting has been convened for inspection by the shareholders, as well as any other motions or countermotions from shareholders that have been brought to the attention of the company in a timely manner shall be made available on the company's website for downloading at least one week in advance. C

³ Pursuant to the EC Takeover Directive that must be implemented by 20 May 2006, a price markdown of 15% is not permissible. As soon as this Directive is passed into national law, the corresponding legal provisions shall apply.

5. The candidates for the supervisory board elections must be notified to the company in a timely manner so that these can be announced on the website of the company one week before the general meeting. C

6. The voting results of the general meeting as well as any changes to the articles of incorporation of the company are to be disclosed immediately on the website of the company. C

7. The company supports its shareholders in participating in general meetings and in exercising their rights as far as possible. This is to be considered when planning the venue and time of the general meeting, when defining the requirements of participation and the exercising of voting rights, and with respect to the right to be heard and receive information. R

8. **Acceptance or rejection of takeover bids shall be decided solely by the shareholders. The management board and the supervisory board are required to present a balanced analysis of the opportunities and risks of an offer to the persons addressed by the takeover bid.** L

III. Cooperation between the Supervisory Board and the Management Board

9. **The management board shall provide the supervisory board periodically and in a timely manner with comprehensive information on all relevant issues of business developments including an assessment of the risks prevalent and the risk management in place at the company and at group companies in which it has major shareholdings. If an event of major significance occurs, the management board shall immediately inform the chairperson of the supervisory board; furthermore, the supervisory board shall be immediately informed of any circumstances that may have a material impact on the profitability or liquidity of the company (special report). Ensuring that the supervisory board is supplied with sufficient information is a joint task of the management board and the supervisory board. Members of the boards and the staff members involved are obliged to maintain strict confidentiality.** L
10. **Under the principles of good corporate governance, an enterprise's management is conducted through open discussions between the management board and the supervisory board as well as within these bodies themselves.** C
11. **The management board shall agree on the strategic direction of the enterprise with the supervisory board and shall periodically discuss the progress made on implementing the strategy.** L

- 12.** The materials and documents required for a supervisory board meeting are to be made available generally at least one week before the respective meeting.

IV. Management Board

Scope of Competence and Responsibilities of the Management Board

13. The management board shall have sole responsibility for managing the enterprise and shall endeavour to take into account the interests of the shareholders, of the employees and the public good. L

14. Fundamental decisions shall be reached by the entire management board. Such decisions shall include, in particular, the concrete formulation of goals of the enterprise and the definition of the enterprise's strategy. In the case of significant deviations from projected figures, the management board shall immediately inform the supervisory board. L

15. The management board shall be responsible for the implementation of the decisions it takes. L

16. The management board shall be made up of several persons, with one member acting as the chairperson of the management board. Internal rules of procedure of the management board shall define the distribution of responsibilities and the mode of cooperation between management board members. C

17. The management board shall have overall responsibility for communications tasks that significantly impact the image of the enterprise as perceived by stakeholders, and may receive support in carrying out these tasks from the relevant departments of the enterprise. C

18. Depending on the size of the enterprise, a separate staff unit is to be set up for internal auditing, which shall report to the management board, or the task of conducting internal audits may be contracted out to a competent institution. At least once a year, a report on the auditing plan and any material findings is to be presented to the audit committee.

Rules Governing Conflicts of Interest and Self-dealing

19. **Persons who discharge managerial responsibilities at a company and persons having a close relationship to them must report to the Financial Market Authority and disclose all trades for their own account in the company's shares or equivalent securities that have been admitted to listing on a regulated market as well as any trades in related derivatives⁴ or pertaining to affiliated companies⁵ within five workdays as of the trade execution day. Trades executed with a total value of less than EUR 5,000 within one year do not need to be reported or disclosed. When calculating the total value of the trades executed the trades of all persons with**

⁴ Article 48a par. 1 fig. 8 Stock Exchange Act contains a definition of those persons who have managerial responsibilities at a company; these are persons who a) belong to an administrative, management or supervisory body of a company, or b) are a senior executive who is not a member of the bodies referred to in lit. a) but regularly have access to inside information relating, directly or indirectly, to the company and the power to take managerial decisions affecting the future developments and business prospects of the company. Article 48a par. 1 fig. 9 Stock Exchange Act contains a definition of those persons who have a close relationship to a person who discharges managerial responsibilities at an issuing company of financial instruments.

⁵ Art. 228 par. 3 Commercial Code

management positions and of all persons closely related to such persons shall be added. The disclosure may also be done through the Financial Market Authority.

- 20. To prevent insider dealings, the company shall issue internal guidelines governing the passing on of information, shall monitor compliance with said guidelines and keep a list of persons who are in the company's employ under a work contract or otherwise, and regularly or an ad hoc basis have access to inside information (list of insiders). The company shall apply the provisions of the Compliance Decree for Issuers issued by the Financial Market Authority.** L
- 21. The management board shall take measures to implement the provisions of the Compliance Decree for Issuers throughout the entire enterprise.** C
- 22. The management board shall make its decisions without being influenced by its own interests or the interests of controlling shareholders, on the basis of the facts and in compliance with applicable laws.** L
- 23. The members of the management board must disclose to the supervisory board any material personal interests in transactions of the company and group companies as well as any other conflicts of interest. Furthermore, they shall also immediately inform the other members of the management board.** L
- 24. All transactions between the company or a group company and the members of the management board or any persons** L

or companies with whom the management board members have a close relationship must be in line with common business practice. The transactions and their conditions must be approved in advance by the supervisory board with the exception of routine daily business transactions.

- 25. Without the approval of the supervisory board, members of the management board shall not be permitted to run an enterprise or assume a mandate on the supervisory board of another company unless such company is part of the group or it is associated by a business interest in such company⁶. Neither shall members of the management board be permitted without the approval of the supervisory board to engage in business dealings in the same branch of the company for their own account or for the account of third parties or to own other business enterprises as a personally liable partner.**
26. Any sideline business of senior management staff, especially any functions in bodies of other companies shall require the approval of the management board unless such company is part of the group or it is associated by a business interest in such company. Statutory non-competition clauses applicable to management board members and senior management staff are not repealed.

⁶ Art. 228 par. 1 Commercial Code

Compensation of Members of the Management Board

27. The compensation of management board members shall be determined by the scope of the member's tasks, degree of responsibility and the extent to which the company's performance targets have been achieved, as well as by the economic situation of the company. Compensation consists of a fixed salary and a performance-linked component. The performance-linked component shall be geared, above all, to long-term performance measurements. These principles shall also apply to the compensation paid to senior management staff accordingly. C
28. If a stock option scheme is proposed, the parameters of comparison to be applied shall be defined in advance and may include, for example, the performance of stock indices, share price targets or other suitable benchmarks. Retroactively changing performance goals (repricing) is to be avoided. All changes are to be disclosed and explained. Blocking periods and exercise periods as well as the timeframe for exercising stock options are to be defined. When defining a stock option scheme, the goal of achieving sustainable value creation by the enterprise shall be kept in mind. Decisions on the introduction of stock option schemes and any changes relating to such schemes shall be taken at the general meeting. C
29. **The number and distribution of the options granted, the exercise prices⁷ and the respective estimated values at the** L

⁷ This is a brief version of the provisions of the Austrian Commercial Code, § 239 Section 1 Figure 5. For precise details on the implementation, please refer to this provision.

time they are issued and upon exercise shall be reported in the annual report.

The total remuneration of the management board for a business year must be reported in the notes to the financial statements.⁸

30. In addition to the information required by law (L-Rule 29), the annual report shall contain the following information:

- The principles applied by the company for granting the management board performance-linked payments, especially regarding the performance criteria; moreover, any major changes versus the previous year must also be reported.
- The relationship of fixed to performance-linked components of total compensation of the management board.
- The principles of the company retirement plan for the management board and the conditions.
- The principles applicable to eligibility and claims of the management board of the company in the event of termination of the function.

31. The fixed and performance-linked remuneration components are to be disclosed for each individual member of the management board in the annual report.

⁸ Unless an exemption exists pursuant to Art. 241 par. 4 Commercial Code.

V. Supervisory Board

Scope of Competence and Responsibilities of the Supervisory Board

32. The supervisory board shall be responsible for overseeing the management board and shall provide support to the management board in governing the enterprise and, in particular, shall assist in making decisions of fundamental significance. L
33. The supervisory board appoints the members of the management board and has the right to terminate their employment. L
34. The supervisory board shall adopt internal rules of procedure for its work, which shall contain stipulations regarding the disclosure and reporting obligations of the management board, including subsidiaries, unless these obligations are defined in articles of incorporation or the internal rules of procedure of the management board. Furthermore, the internal rules of procedure shall define the establishment of committees and their scope of competence. The sections of the internal rules of procedure concerning these areas are to be disclosed on the website of the company. C
35. In accordance with the Austrian Stock Corporation Act, the supervisory board shall formulate in concrete terms a list of business transactions that are subject to its approval, and depending on the size of the enterprise, shall define the L

appropriate limits on amounts; this shall also apply to any major transactions concluded by subsidiaries that are of relevance to the group.

36. The statutory provisions according to which the supervisory board must meet at least once every three months shall be understood as a minimum requirement. Additional meetings must be held as required; if necessary, the items on the agenda may be discussed and decided by the supervisory board and its committees without the participation of the management board members. C
37. The chairperson of the supervisory board shall prepare the meetings of the supervisory board and shall regularly communicate with the chairperson of the management board in particular, and discuss the strategy, the course of business and the risk management of the enterprise. C

Appointment of the Management Board

38. The supervisory board shall define a profile for the management board members that takes into account the enterprise's business focus and its situation, and shall use this profile to appoint the management board members in line with a predefined appointment procedure. C
- Furthermore, the supervisory board shall also give due attention to the issue of successor planning. Nominations to the management board for the last time must be made before the age limit defined in the internal rules or in the articles of incorporation is reached.

Committees

39. The supervisory board shall set up expert committees from among its members depending on the specific circumstances of the enterprise and the number of supervisory board members. These committees shall serve to improve the efficiency of the work of the supervisory board and shall deal with complex issues. However, the supervisory board may discuss the issues of the committees with the entire supervisory board at its discretion. Each chairperson of a committee shall report periodically to the supervisory board on the work of the committee. The supervisory board shall ensure that a committee has the authorisation to take decisions in urgent cases.

The committees shall be made up of a sufficient number of members in the opinion of the supervisory board, which meet the criteria of independence pursuant to C-Rule 53. The report of the supervisory board shall address the activities of the committees. The members of the committees shall be named in the annual report.

40. **In the case of listed companies, the supervisory board shall set up an audit committee irrespective of the size of the supervisory board. The audit committee shall be responsible for the auditing and preparation of the approval of the financial statements, for the proposal for the distribution of profits and for the directors' report. The audit committee shall also audit any consolidated financial statements and shall make a proposal for the appointment of an auditor and shall report to the supervisory board on its findings. A person with special knowledge and practical experience in the area of finance and accounting and reporting must belong to the audit committee (financial expert). The chairperson of the audit committee or financial expert may not be a person who**

in the past three years has served as member of the management board or as senior management staff or auditor of the company or has signed an auditor's opinion.

41. The supervisory board shall set up a nomination committee. In cases of supervisory boards with not more than 6 members (including employees' representatives) this function may be exercised by all members jointly.

The nomination committee submits proposals to the supervisory board for filling mandates that become free in the management board and deals with issues of successor planning.

42. The nomination committee or the entire supervisory board shall present proposals to the general meeting for appointments to the mandates in the supervisory board that have become free.

43. The supervisory board shall set up a compensation committee and the chairperson of this committee shall always be the chairperson of the supervisory board. Where supervisory boards have not more than 6 members (including employees' representatives) this function may be assumed jointly by all members.

The compensation committee may be identical with the nomination committee. The compensation committee shall deal with issues of compensation of the management board members and the contents of employment contracts with management board members.⁹

⁹ The co-determination rights of employees' representatives apply to all committees of the supervisory board except for committees that deal with the relations between the company and the members of the management board (see L Rule 59).

C

R

C

Rules Governing Conflicts of Interest and Self-dealing

- 44. Members of the supervisory board cannot be members of the management board or permanent representatives of management board members of the company or its subsidiaries¹⁰ at the same time. Neither are they permitted to manage the company as employees. No person can be a member of the supervisory board of a company who is the legal representative of another company whose supervisory board includes a member of the management board of the company unless such company is part of a group or it is associated by a shareholding in such company. When reaching decisions, supervisory board members must not act in their own interests or in the interests of persons or enterprises with whom they have close relationships if such behaviour conflicts with the interests of the enterprise or serves to attract business opportunities to the said member that otherwise would have gone to the enterprise. Before the elections, the persons proposed as members of the supervisory board must present to the general meeting their expert qualifications, their professional or similar functions and all circumstances that could give rise to cause for concern of partiality. The members of the supervisory board shall comply with provisions of the Compliance Decree for Issuers issued by the Financial Market Authority.**
- 45. Supervisory board members may not assume any functions on the boards of other enterprises which are competitors of the company.**

¹⁰ Art. 228 par. 3 Commercial Code

46. If a supervisory board member finds himself or herself in a conflict of interest, he or she shall immediately disclose this to the chairperson of the supervisory board.

If the chairperson of the supervisory board finds himself or herself in a conflict of interest, he or she shall immediately disclose this to his or her deputy.

C

47. The granting of loans by the enterprise to members of the supervisory board shall not be permitted outside the scope of its ordinary business activity with the exception of routine daily business transactions.

C

48. The conclusion of contracts with members of the supervisory board in which such members are committed to the performance of a service outside of their activities on the supervisory board for the company or a subsidiary for a remuneration not of minor value shall require the consent of the supervisory board. This shall also apply to contracts with companies in which a member of the supervisory board has a considerable economic interest.

L

49. The company shall disclose in the annual report the object and remuneration of contracts subject to approval pursuant to L-Rule 48. A summary of contracts of the same kind shall be permitted.

C

Compensation of Members of the Supervisory Board

50. The compensation of supervisory board members shall be fixed by the general meeting or shall be set out in the articles

L

of incorporation, and shall be commensurate with the responsibilities and scope of work of the members as well as with the economic situation of the enterprise.

51. A remuneration schedule for supervisory board members shall be defined and published in the annual report. C

Qualifications of Members and Composition, and Independence of the Supervisory Board

52. When appointing the supervisory board, the general meeting shall take due care to ensure a balanced composition of expert know-how on the supervisory board with respect to the structure and the business of the company as well as the adequate personal qualification of the supervisory board members. C
- The number of members on the supervisory board (without employees' representatives) shall be ten at most.

53. The members of the supervisory board elected by the general meeting or delegated by shareholders in accordance with the articles of incorporation shall include – in the opinion of the supervisory board – a sufficient number of members independent of the company and its management. A member of the supervisory board shall be deemed as independent if said member does not have any business or personal relations to the company or its management board that constitute a material conflict of interests and is therefore suited to influence the behaviour of the member. C
- The supervisory board shall define on the basis of this general clause the criteria that constitute independence and shall publish

them on the website of the company. The guidelines in Annex 1 shall serve as further orientation. According to the criteria defined, it shall be the responsibility of every member of the supervisory board to declare its independence vis-à-vis the supervisory board. The annual report shall clearly explain which members are deemed independent according to this assessment.

54. In the case of companies with a free float of more than 20%, the members of the supervisory board elected by the general meeting or delegated by shareholders in accordance with the articles of incorporation shall include at least one independent member pursuant to C-Rule 53 who is not a shareholder with a stake of more than 10% or who represents such a shareholder's interests. In the case of companies with a free float of over 50%, at least two members of the supervisory board must meet these criteria. The annual report must indicate which members of the supervisory board meet these criteria. C
55. The chairperson of the supervisory board shall not be the former chairperson of the management board unless a period of two years has expired between the termination of the function as chairperson of the management board and the start of the function as chairperson of the supervisory board. C
56. **Members of the supervisory board shall not have more than 8 mandates (function of chairperson counts double) as supervisory board members for listed companies.** L
57. A person holding a position on the management board of a listed company may not hold more than 4 positions on the supervisory C

boards (position of chairperson counts double) of stock corporations not belonging to the group.

Major shareholdings are not considered non-group companies.

An appointment as supervisory board member must be made for the last time before the age limit defined in the internal rules or the articles of incorporation is reached.

58. The Annual Report shall contain the date of the first appointment of every supervisory board member and the end of the current period of office. Furthermore, other supervisory board mandates or similar functions in Austrian or foreign listed companies shall be published in the annual report or on the website of the company for every supervisory board member.

If a member of a supervisory board fails to personally attend more than half of the meetings of the supervisory board, this fact shall be stated in the report of the supervisory board.

Co-determination

59. **The co-determination rights of employees' representatives on the supervisory board form part of the statutory Austrian system of corporate governance in addition to the co-determination rights at the operational level in the form of works councils. The employees' representatives are entitled to appoint to the supervisory board of a stock corporation one member from among their ranks for every two members appointed by the general meeting (but not external members from the trade union). (Statutory one-third parity rule.) If the number of shareholder representatives is an odd**

number, then one more member is appointed as an employee representative. The one-third parity representation rule also applies to all committees of the supervisory board, except for meetings and votes relating to the relationship between the company and the management board members with the exception of resolutions on the appointment or revocation of an appointment of a member of the management board and on the granting of options on stocks of the company.

Employees' representatives shall exercise their functions on an honorary basis and their appointment may be terminated at any time only by the works council (central works council).

The rights and obligations of employees' representatives shall be the same as those of shareholders' representatives; this shall apply, in particular, to the right to receive information and to monitoring rights, to the obligation to act with due diligence and to maintain secrecy and to their liability for failure to comply. In the event of personal conflicts of interest, employees' representatives shall abstain from voting, the same being applicable to shareholders' representatives.

VI. Transparency and Auditing

Transparency of Corporate Governance

60. The obligation to comply with the Austrian Code of Corporate Governance shall be included in the annual report and disclosed on the company's website. A report shall be published once a year regarding compliance with the Code, including explanations on deviations from the Code. Every shareholder shall have the right at the annual general meeting to request information on such annual explanations.

The management board shall be responsible for reporting on implementation and compliance with the Code of Corporate Governance at the enterprise.

The individual bodies that are the addressees of the respective rules are responsible for compliance with the principles of corporate governance and for giving explanations on deviations therefrom.

Financial Reporting and Disclosure

61. **The company shall disclose – as soon as it gains knowledge thereof – any changes in the shareholder structure, if, as a consequence of the acquisition or disposal of shares in the company, the percentage of shares representing voting rights held by a shareholder reaches, exceeds or falls below the thresholds of 5 percent, 10 percent, 15 percent, 20 percent,**

25 percent, 30 percent, 35 percent, 40 percent, 45 percent, 50 percent, 75 percent or 90 percent.

62. The company shall disclose on its website and in the annual report – if it has knowledge thereof – the current shareholder structure broken down by geographical origin and type of investor, any cross-holdings, the existence of syndicate agreements, restrictions on voting rights, registered shares and their related rights and restrictions. Current changes in voting rights (according to L-Rule 61) shall be disclosed without delay on the website of the company. The articles of incorporation of the company shall be disclosed on the website of the company. C

63. The company shall draw up consolidated financial statements according to internationally recognised accounting standards.¹¹ L

64. The company shall draw up quarterly reports according to internationally recognised accounting standards. The management board shall give explanations in the annual reports and quarterly reports on the causes and effects of any material changes or deviations affecting the current and/or subsequent business year as well as information on any material deviations from previously released sales revenues, earnings and strategy targets. C

65. The enterprise shall establish communication structures that go beyond the legal mandatory requirements to meet information C

¹¹Pursuant to Art.245a par. 1 Commercial Code, listed companies shall prepare consolidated financial statements according to international accounting standards for the business years starting after 31 Dec. 2004 (International Financial Reporting Standards, IFRS).

needs in a timely and adequate manner. The company shall disclose any new facts communicated to financial analysts and similar addressees at the same time to all shareholders.

66. The company shall publish consolidated financial statements and the management's discussion and analysis of operations for the group within four months of the end of the reporting period, and quarterly reports within two months of the end of the reporting period, in German and English, and shall make these reports available on its website. The individual financial statements required by the Austrian Commercial Code shall be made available at the same time in German. C

67. The company shall include in the management's report in the consolidated financial statements an adequate analysis of the development of business and shall describe any significant financial and non-financial risks the company is exposed to such as sector risk, geographic risk, interest rate risk, currency risk, risks arising from derivatives dealings and off-balance sheet transactions, and shall moreover describe the principal risk management instruments applied by the company. C

Investor Relations and the Internet

68. **The company shall immediately disclose any inside information that directly relates to it as well as any substantial changes to such information (ad hoc disclosure). It shall also immediately disclose any relevant coming into existence of a set of circumstances or occurrence of an event – even if** L

these have not yet transpired. The company shall display all inside information, which it is under the obligation to disclose to the public, on its website¹² for an adequate period of time. A listed company may postpone the disclosure of inside information if such disclosure would be damaging to its legitimate interests, but only if the suppression of such inside information would not be misleading to the public and the listed company is in a position to guarantee the confidentiality of the information.

The Financial Market Authority must be informed immediately of any postponement of the disclosure of inside information.

69. The company shall appoint a contact person for investor relations and shall disclose this person's name and contact numbers and address on the company's website. C
70. The management board shall immediately post any director's dealing¹³ reported on the company's website and shall keep such information on the website for at least three months. The announcement can also be done by making a reference to the corresponding website of the Financial Market Authority. C
71. A calendar of corporate financial events shall be posted immediately after completion of the current business year on the website of the company and shall subsequently also be published in the annual report. This shall contain all dates of relevance for C

¹² Also refer to the Disclosure and Reporting Decree of the Financial Market Authority.

¹³ Article 48d par. 4 Stock Exchange Act, see L Rule 19

investors and other stakeholders for the next business year; these may be, among others, the release of the annual and quarterly reports, annual general meetings, ex-dividend day, dividend payment day and investor relations activities.

72. The company shall regularly hold conference calls or similar information events for analysts and investors; if demand is high, also on a quarterly basis. As a minimum requirement, the information documents (presentations) used shall be made available to the public on the website of the company. Other events of relevance for the capital market such as annual general meetings shall be made accessible on the company's website, if the costs are reasonable, in the form of audio and video transmissions.

R

73. The company shall disclose simultaneously on its website all financial information on the enterprise that has been published through other media (e.g. printed reports, press releases, ad hoc reports). If additional information is available only on the Internet, this fact must be specifically pointed out. If only excerpts of published documents are made available on the website, this fact must also be stated and the source where the full document can be obtained must be indicated. The documents shall bear the date on which they were posted on the Internet.

R

Audit of the Financial Statements

74. The audit of the consolidated financial statements shall be conducted according to internationally recognised auditing principles (International Standards of Auditing, ISA).

C

- 75. The independence of the auditor is essential for conducting a thorough and unbiased audit, in particular, no grounds for exclusion or partiality are permitted. The auditors shall ensure that any additional business relationships with the enterprise to be audited, such as consulting contracts, do not hinder their economic independence.**
- 76. The auditor shall immediately inform the chairperson of the supervisory board of any reasons potentially constituting grounds for exclusion or partiality that become evident in the course of the audit unless these are immediately eliminated.**
- 77. Before presenting a proposal for the appointment of an auditor and before the appointment by the company, the auditor must confirm in a declaration the fact that he or she has the license to audit stock corporations and shall moreover, confirm in writing that no reasons for exclusion exist and shall present a list grouped by category of services of total revenues received in the past business year from the company and report on his or her inclusion in a statutory quality assurance system as well as on any circumstances that could give rise to cause for concern regarding partiality.**
- 78. The audit committee shall request the submittal of a written declaration by the designated auditor pursuant to L-Rule 77. The declaration shall moreover explain any services and their scope provided to the enterprise, especially consulting services that have been contractually agreed on for the current and the following year. The supervisory board shall only propose such auditors that**

L

L

L

C

have a valid certification pursuant to the statutory quality assurance system¹⁴ .

79. In addition to the statutory auditor's report and the obligation to make a statement, the auditor shall submit a management letter to the management board pointing out the weaknesses of the enterprise. The management letter shall be brought to the notice of the chairperson of the supervisory board. The chairperson shall be responsible for ensuring that the management letter is dealt with by the audit committee and reported on to the supervisory board.

C

80. In addition, the auditor shall make an assessment of the effectiveness of the company's risk management based on the information and documents presented and shall report the findings to the management board. This report shall also be brought to the notice of the chairperson of the supervisory board. The chairperson shall be responsible for ensuring that the report is dealt with by the audit committee and reported on to the supervisory board.

C

¹⁴ For the transition period pursuant to the Quality Assurance Act: Certification of a voluntary quality assurance system.

Annex 1

Guidelines for Independence

A member of the supervisory board shall be deemed as independent if said member does not have any business or personal relations with the company or its management board that constitute a material conflict of interests and is therefore suited to influence the behaviour of the member.

The supervisory board shall also follow the guidelines below when defining the criteria for the assessment of the independence of a member of the supervisory board:

- The supervisory board member shall not have served as member of the management board or as management-level staff of the company or one of its subsidiaries in the past five years.
- The supervisory board member shall not maintain or have maintained in the past year any business relations with the company or one of its subsidiaries to an extent of significance for the member of the supervisory board. This shall also apply to relationships with companies in which a member of the supervisory board has a considerable economic interest. The approval of individual transactions by the supervisory board pursuant to L-Rule 48 does not automatically mean the person is qualified as not independent.
- The supervisory board member shall not have acted as auditor of the company or have owned a share in the auditing company or have worked there as an employee in the past three years.

- The supervisory board member shall not be a member of the management board of another company in which a member of the management board of the company is a supervisory board member.
- The supervisory board member shall not be a closely related (direct offspring, spouses, life partners, parents, uncles, aunts, sisters, nieces, nephews) of a member of the management board or of persons who hold one of the aforementioned positions.

Annex 2

Brief Overview of the Austrian Corporation Act

The following section contains a brief, and thus incomplete, overview of the main provisions of the Austrian Stock Corporation Act. The section has been written with the intent to make the Code easier to understand. This overview is not suitable for answering questions related to legal issues.

Since October 2004, a Regulation on the European Company has been in force. This Regulation permits the one-tier system (administrative council) with certain restrictions by adopting the corresponding articles of incorporation. However, this option is not discussed here further due to the lack of significance in practice up to now.

The Organisation of a Stock Corporation under Austrian Law

The organisational structure of Austrian stock corporations rests on three bodies: the general meeting, the supervisory board and the management board. This organisational structure is designed to ensure the separation of powers. The annual general meeting elects a supervisory board for a maximum period of five years, but may prematurely terminate this appointment by a qualified majority (the articles of incorporation may reduce this requirement to a simple majority). Upon a petition of a minority of 10% a court can prematurely remove from office for material reasons members elected by the

general meeting and members delegated by shareholders. The supervisory board elects a chairperson for a maximum period of five years; it is possible for the supervisory board to call for the resignation of the chairperson prematurely for material reasons (violation of duties, vote of no confidence by the general meeting). The management board is solely responsible for running the company and shall not be subject to instructions from the annual general meeting nor from the supervisory board.

Certain transactions specified by law shall be subject to the prior approval of the supervisory board; monetary limits may be defined in the articles of incorporation or in the internal rules of procedure. The management board may present of its own accord, or, in the case of transactions subject to approval, the supervisory board may present motions for approval to the general meeting; this is a step usually taken in cases of fundamental restructuring of the enterprise (e.g. disposal of major divisions of the company).

Shareholders and the General Meeting

Shareholders are to be treated equally unless there are legitimate reasons justifying a differentiation, which may be the case, for example, in certain relationships between group companies. The rights of shareholders are exercised at the general meeting. At least once a year, an annual general meeting must be held (at the latest eight months after the end of the preceding business year).

An extraordinary general meeting may be convened at any time by the management board, the supervisory board or by minority shareholders owning 5% of the shares.

Shareholders have the right to ask questions and submit motions for approval at general meetings regarding all items on the agenda. Currently, there is no statutory obligation to announce in advance the motions prepared by the management board for the approval of the general meeting.

Basically, the general meeting shall decide by a simple majority of the votes cast. The law prohibits shares with more than one voting right. So-called non-voting preferred shares may be issued for which voting rights are suspended as long as preferred dividends are paid out in full (including any subsequent payments). In cases where the subscription rights of holders of preferred shares are to be altered, a special vote must be taken by the holders of preferred shares. Furthermore, the articles of incorporation may also limit the maximum voting rights that a single shareholder may have, regardless of the percentage of shares he or she holds in the company. In recent years, a clear tendency has emerged towards the principle of one share – one vote. At ordinary general meetings, the management board reports on the situation of the enterprise (and questions may be asked in this context) and submits the motion to distribute the profits as approved by the supervisory board. The shareholders are bound by the net profit reported on the balance sheet when deciding the profit distribution, thus the management board and the supervisory board ultimately have the final say in the dividend policy. Furthermore, the approval of the reports and activities of the management board and of the supervisory board are items on the agenda of annual general meetings, though such approval constitutes only an expression of trust and does not release the board members from potential liability. The general meeting elects the members of the supervisory board and the auditor of the financial statements. The general meeting passes resolutions on changes to the articles of incorporation (generally by a three-quarter majority) and company transformation measures (e.g. mergers, split-ups, also generally by a three-quarter majority).

The Supervisory Board

The number of members on the supervisory board is defined in the articles of incorporation; the supervisory board must consist of at least three members (exclusive of employees' representatives); the articles of incorporation can define a maximum number as well as a framework. Moreover, employees' representatives (group employees' representatives) are entitled to (but not obliged to) delegate one employees' representative for every two shareholders' representative to the supervisory board. Apart from this, the law prohibits members of the management board or employees from holding positions on the supervisory board as shareholders' representatives (except in connection with the co-determination rights of employees' representatives).

Decisions of the supervisory board are reached by a simple majority, and the employees' representatives do not have a special status.

A major role is played by the chairperson of the supervisory board who is responsible for the organisation of the supervisory board, its meetings and its collaboration with the management board.

The supervisory board must meet on a regular basis (at least four times a year). The annual projections and quarterly reports as well as special reports in cases of looming crises must be presented to the supervisory board. The supervisory board may at any time conduct exhaustive audits itself or may commission experts to conduct such audits. The supervisory board decides the approval of the annual financial statements and thus indirectly decides the amount of the dividend to be distributed. The supervisory board must audit the consolidated financial statements and approve them. The supervisory

board may request experts to take part in its meetings. Listed companies and companies, whose supervisory boards (excluding employees' representatives) consist of more than five persons, must install an audit committee; there must be at least one financial expert on this committee. The committee shall be charged with the tasks of auditing and preparing the approval of the financial statements by the entire supervisory board and of preparing a proposal for the appointment of an auditor for the financial statements. The chairperson of the audit committee or financial expert may not be a person who in the past three years has served as member of the management board or as management-level staff or auditor of the company or has signed an auditor's opinion.

To ensure transparency and the independence of supervisory board members, their professional qualifications and experience must be presented before the elections, and furthermore, all circumstances must be explained that could give rise to concern of partiality.

Furthermore, approval must be obtained for contracts of the company or of its subsidiaries with members of the supervisory board for activities on behalf of the company or group outside of the supervisory board responsibilities. This shall also apply to contracts with companies in which a member of the supervisory board has a considerable economic interest.

The Management Board

The supervisory board takes decisions autonomously on the election and thus the selection of management board members, and on the establishment of the position of chairperson of the management board.

If a chairperson is appointed to the management board, the chairperson shall have the casting vote unless a different procedure has been defined in the articles of incorporation for decisions of the management board in the event of a tie. Unlike German law, Austrian law does not prescribe the appointment of an employees' representative to the management board.

The management board is a collective body, meaning that by law responsibility for governing the business of the company is borne equally by all members of the management board. Differentiated assignment of responsibility is possible and is common practice (usually defined by the supervisory board). This is done by defining the areas of responsibility for each of the board members in the internal rules of procedure. If the areas of responsibility are divided among the members of the management board, each board member shall bear primary responsibility for his or her assigned area, although the other members shall still be under the obligation to constantly monitor and address any deficiencies they perceive in the other areas of responsibility. In the case of measures having a material impact as, for example, business transactions that must be presented to the supervisory board for approval, the collective responsibility of the management board shall be mandatory and indivisible.

Capital Increases and Subscription Rights

In the case of capital increases and the issuance of rights to new issues (bonds with attached warrants, convertible bonds), existing shareholders shall have subscription rights, which the general meeting may only exclude by a three-quarter majority vote if this move is justified by the facts of the case (e.g. in the case of contributions in kind).

This resolution shall be announced separately and shall require a written statement by the management board explaining the reasons and shall also be presented to the court that keeps the commercial register of companies.

The management board may be authorised to increase the share capital of the company within a defined scope with the approval of the supervisory board without requiring the prior approval of the general meeting (authorised capital).

This authorisation shall be limited to a period of five years, but may be prolonged repeatedly by the general meeting. Here as well, special reporting obligations apply if subscription rights are to be excluded. It may be assumed that relevant reasons exist for excluding subscription rights in the case of new issues for stock option schemes for employees, management-level staff or members of the boards of the company. It is also possible to authorise the issue of options on new issues exclusively to this group of persons with the prior authorisation of the general meeting. In this case, the management board shall be subject to extensive reporting obligations.

Share Buybacks

The acquisition of own shares is subject to substantial restrictions. The law permits the general meeting of a listed company to authorise the management board for a period of 18 months to repurchase up to 10% of the company's own shares. If this repurchase option is exercised, extensive disclosure requirements apply.

The Capital Market

Austrian capital market law has implemented the EU legislation regarding the prohibition of insider dealings, the prevention of market manipulation and ad hoc reporting obligations and the reporting of transactions in the stocks of the company by managing employees or persons or institutions closely related to them.

Furthermore, the EU Prospectus regime applies to public offerings of stocks and derivatives adjusted to the amendments of Directive 2001/34/EC. The approval of the prospectus is the competence of the Financial Market Authority (FMA).

Moreover, companies listed on the Vienna Stock Exchange are subject to the obligation to make a mandatory bid in cases in which the controlling interest in a company changes. This is assumed to be the case if shares amounting to 30% of a company's share capital are acquired. The mandatory bid that must be made after this change in the controlling interest in a company must correspond as a minimum to the average stock market price of the share during the last six months or to the highest price of the last 12 months paid by the party gaining the controlling interest less a discount of 15%, if the price is higher than the aforementioned average. In the course of the implementation of the EC Takeover Directive, the price markdown of 15% will be abolished. Further changes are being prepared.

The 15% discount may be excluded in the articles of incorporation and a number of listed companies have made use of this option. In the event of a takeover bid, the management board and the supervisory board are under the strict obligation to act impartially. The takeover procedure is accompanied and monitored by the Takeover Commission, an independent public authority. A mandatory bid is also required if a shareholder owning a percentage of between 30% and

50% buys 2% or more of the shares of a company within one year (creeping in). Further information is available on the website of the Takeover Commission, www.takeover.at. Sections of the Takeover Act also apply to voluntary takeover bids even if there is no change in controlling interest.

Groups and Company Transformations

Although Austrian company law does mention the concept of the group company, unlike German law it does not have a detailed legal framework applicable to all aspects of groups. The formation of a group does not automatically lead to the liability of the parent company for the entire group. Likewise, when forming a group company, there is no statutory obligation to make a tender offer to outside shareholders unless the provisions of the Takeover Act apply. In the case of combinations or split-ups of enterprises, special rights are granted to minority shareholders, in particular, a minority shareholder owning 1% or EUR 70,000 in par value stock, has the right to demand that the appropriateness of the conversion ratio (in the case of split-ups) offered in the tender offer be examined by a special court procedure. If the decision to correct the offer is reached, all shareholders benefit.

Austrian company law does not contain provisions explicitly regulating attempts to „squeeze out“ minority shareholders. However, various mechanisms exist that allow a shareholder owning 90% of the stock to squeeze out the remaining minority shareholders by offering them a cash tender offer within the scope of a transformation of a company. In this case as well, the cash tender offer is subject to an examination by the courts. In the course of the implementation of the EC Takeover Directive, a „squeeze out“ procedure will be installed that will replace existing techniques.

The Austrian Stock Exchange Act does not have any provisions for the delisting of a company. In practice, a company may be delisted on the grounds that it no longer fulfils trading requirements, in particular, that the required minimum amount of tradable shares no longer exists. A delisting currently does not call for a mandatory offer to outside shareholders.

Further information and relevant links are available at:

www.corporate-governance.at

Austrian Working Group for Corporate Governance
c/o Office of the Special Government Representative for
the Capital Market
Himmelfortgasse 9, A - 1010 Vienna
e-mail: info@corporate-governance.at,
www.corporate-governance.at