

# **Austrian Code of Corporate Governance**

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**January 2015**



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

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# Preface

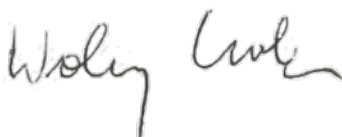
On 1 October 2002, the Austrian Code of Corporate Governance was presented to the public for the first time. This Code of Corporate Governance gave listed companies a set of voluntarily rules to help them establish good corporate governance and control systems. For more than a decade now, Austrian laws on stock markets and capital markets have been supplemented by a self-regulatory standard based on the principle of comply or explain. The Austrian Code of Corporate Governance has initiated a lot of positive changes and has helped strengthen the confidence of international and national investors in our market. It serves as a benchmark in the Austrian capital market for good governance and controls, and has become an essential component of the Austrian system of corporate governance.

One key feature of the Austrian Code of Corporate Governance is that it can be swiftly adapted to new national and international developments. It is standard good practice within the Working Group for Corporate Governance in Austria to ensure transparency by including all involved interest groups in the reviews of the Code. Our special thanks go to the capital market participants and institutions who have actively taken part in the discussion process by sending statements. Likewise, I would also like to thank the members of the Austrian Working Group for Corporate Governance for the great enthusiasm shown in their work on the further development of the Austrian corporate governance system.

The main amendments to the revised Code 2015 concern the implementation of the Recommendation of the EU Commission of 9 April 2014 on the quality of corporate governance reporting („comply or explain“) and take into account the new comment letter of AFRAC (Austrian Financial

Reporting and Auditing Committee) on the drafting and auditing of corporate governance reports pursuant to §243b Austrian Business Code (*Unternehmenshandbuch, UGB*). Therefore, the Austria Code of Corporate Governance has achieved its ambition to always be one of the most modern European standards. The new guidelines relating to the explanations and the statement of reasons for departures from the Code place a greater stress on the principle of *comply or explain*. This fundamental principle of self-regulation gives companies the flexibility they need to duly consider a company's specific features whilst ensuring the transparency required for investors. In this context, it must be stressed that companies are in compliance with the Code even if they do not adhere to the rules but instead state clearly, precisely and in detail the reasons for the deviation. The new recommendations on the layout of the Corporate Governance Report and the upgrade of the voluntary external evaluation to a C-Rule have further improved the quality of the information and make it easier to reach informed decisions.

The C-Rules of Code as amended in January 2015 apply to the financial years that start after 31 December 2014. The revised Code promotes sustainable corporate management and transparency and also serves to strengthen the trust placed by investors in exchange-listed companies.

A handwritten signature in black ink, appearing to read 'Wolfgang Nolz', written in a cursive style.

Dr. Wolfgang Nolz

Chairman of the Austrian Working Group for Corporate Governance

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# 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 4.

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 transparency for all stakeholders.

This Code is addressed primarily to Austrian exchange-listed companies including exchange-listed European companies (*Societas Europaea*) registered in Austria. In the case of European companies registered in Austria that have a one-tier system (administrative board), the C- and R-Rules of the Code relating to the management board shall apply accordingly to the managing directors; the C- and R-Rules regarding the supervisory board shall apply accordingly to the administrative board.

It is also recommended that companies not listed on stock exchanges follow this Code to the extent that the rules are applicable.

The Code 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.

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

All Austrian listed companies are therefore called upon to make a public declaration of their commitment to the Code. A declaration of commitment to the Austrian Code of Corporate Governance is mandatory for Austrian companies that want to be admitted to the Prime Market of the Vienna Stock Exchange.

Companies that are subject to the company law of another EU member state or EEA member state and are listed on the Vienna Stock Exchange are called on to commit themselves to adhere to a corporate governance code recognized in this economic area and to publish this commitment including a reference to the code complied with on their websites (link). Companies that are subject to the company law of a country that is not a member of the EU or EEA and are listed on the Vienna Stock Exchange are called on to commit themselves to comply with the Austrian Code of Corporate Governance. The non-mandatory L rules of the Code are interpreted in this case as C rules.

In the interest of the greatest degree of transparency, all foreign companies listed on the Vienna Stock Exchange are called on to publish on their websites the provisions of company law that applies to them, at least with respect to the rules mentioned in Annex 3, and to maintain this information up to date.

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

Companies have a responsibility toward society. Therefore, it is also recommended that appropriate voluntary measures and initiatives be taken such as to reconcile work and family life.

### ***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 defines the following categories of rules:

1. Legal requirement (L): This rule refers to mandatory legal requirements<sup>1</sup>.
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.

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<sup>1</sup> 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.

Guidelines for the explanations and the statement of reasons for deviations are contained in Annex 2b.

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.

## 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.**

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

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3. **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.**

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**The price of a mandatory bid or of a voluntary bid with the purpose of attaining a controlling interest pursuant to the Takeover Act shall not be below the highest monetary consideration paid or agreed-upon by the offeror or a party acting in concert with the offeror within the past twelve months prior to the announcement of the bid for the shares of the target company. Furthermore, the price must correspond at least to the average market price weighted by the respective trading volumes for the shares over the past six months prior to the day of the announcement of the intention to make a bid.**

4. **A general meeting must be convened at the latest on the 28<sup>th</sup> day before the ordinary general meeting, otherwise by the latest on the 21<sup>st</sup> day before the general meeting by an official announcement unless the by-laws prescribe other longer**

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**deadlines. The announcement convening the general meeting and the information stipulated by the Companies Act must be made available on the company's website as of the 21<sup>st</sup> day prior to the general meeting.**

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5. **The candidates for the supervisory board elections including all declarations according to the Companies Act must be disclosed by the company at the latest on the 5<sup>th</sup> workday prior to the general meeting on the website of the company; otherwise the persons concerned shall not be included in the elections.**
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6. **The resolutions passed at the general meeting and the information required by the Companies Act shall be disclosed on the company's website at the latest on the 2<sup>nd</sup> workday after the general meeting.**
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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.**
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8. **The general meeting has the right to authorise the management board for a period not exceeding thirty months to buy back the company's own shares up to a maximum of 10% of the share capital in those cases permitted by law. The resolution and authorization for the buyback are to be published immediately before execution. The resolution and, immediately before implementation, the execution of this buyback authorization shall be disclosed.**

### **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 risk situation 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.**
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.
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.**

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- 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. The management board shall take the appropriate measures to secure compliance with any laws of relevance to the company.** 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. Names, date of birth, date of initial appointment and the end of the current period of tenure of the members of the management board as well as assignments of competence in the management board must be reported in** C

the Corporate Governance Report. Furthermore, any supervisory board mandates and comparable functions of members of the management board in other Austrian and foreign companies must be disclosed in the Corporate Governance Report unless these are included in the consolidated financial statements.

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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.
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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 are to be presented to the audit committee.
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- 18a. The management board reports to the supervisory board at least once a year on the measures taken to fight corruption at the company.

### ***Rules Governing Conflicts of Interest and Self-dealing***

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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 derivatives<sup>2</sup> or pertaining to affiliated companies<sup>3</sup> 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 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 on 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.**

**21. The management board shall take measures to ensure that the provisions of the Compliance Decree for Issuers are implemented throughout the entire enterprise.**

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<sup>2</sup> 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.

<sup>3</sup> Art. 228 par. 3 Business Code

- L 22. The management board shall take 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 of this.
- L 24. All transactions between the company or a group company and the members of the management board or any persons 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.
- L 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<sup>4</sup> is part of the group or it is associated by a business interest in such company . 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

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<sup>4</sup>Art. 228 par. 1 Business Code

**account or for the account of third parties or to own other business enterprises as a personally liable partner.**

26. Members of the management board shall not hold more than four supervisory board mandates (chairperson counts double) in stock corporations that do not belong to the group. Companies that are included in consolidated financial statements or in which the company has an investment with a business interest shall not be considered non-group companies.

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.

### ***Compensation of Members of the Management Board***

- 26a. **The supervisory board shall ensure that the total remuneration of the members of the management board (salaries, shares in profits, expense reimbursements, insurance premiums, commissions, incentive-linked remuneration commitments and any other type of payments) are commensurate with the tasks and performance of each individual member of the management board, the situation of the company, the usual level of remuneration, and must also take measures to create incentives to promote behaviour supportive of the long-term development of the company. This shall apply accordingly to pension payments, survivor's pensions and similar income.**

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**C 27.** When concluding management board contracts, the following principles shall also be observed:

The remuneration contains fixed and variable components. The variable remuneration components shall be linked, above all, to sustainable, long-term and multi-year performance criteria, shall also include non-financial criteria and shall not entice persons to take unreasonable risks. For the variable remuneration components, measurable performance criteria shall be fixed in advance as well as maximum limits for amounts or as percentage of the fixed remuneration components. Precautions shall be taken to ensure that the company can reclaim variable remuneration components if it becomes clear that these were paid out only on the basis of obviously false data.

**C 27a.** When concluding contracts with management board members, care shall be taken that severance payments in the case of premature termination of a contract with a management board member without a material breach shall not exceed more than two years annual pay and that not more than the remaining term of the employment contract is remunerated. In the case of premature termination of a management contract for material reasons for which a management board member is responsible no severance payment shall be made.

Any agreements reached on severance payments on the occasion of the premature termination of management board activities shall take the circumstances under which said management board member left the company as well as the economic situation of the company into consideration.

- 28.** If a stock option programme or a programme for the preferential transfer of stocks is proposed for management board members, then such programmes shall be linked to measurable, long-term and sustainable criteria. It shall not be possible to change the criteria afterwards. For the duration of such programmes, but at the latest until the end of the management board member's function on the management board, the management board member shall hold an appropriate volume of shares in the own company.

In the case of a stock option programme, a waiting period of at least three years must be fixed.

A waiting and/or holding period of a total of at least three years shall be defined in stock transfer programmes. The general meeting shall pass any resolutions and/or changes to stock option schemes and stock transfer programmes for management board members.

- 28a.** The principles of C-Rules 27 and 28 shall apply accordingly also in the case of new remuneration systems for senior management staff.

- 29.** The number and distribution of the options granted, the exercise prices<sup>5</sup> and the respective estimated values at the 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. The Corporate Governance Report shall contain the total remuneration of each individual member of the**

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<sup>5</sup>This is a brief version of the provisions of the Austrian Business Code, Art. 239 par 1 Figure 5. For precise details on the implementation, please refer to this provision.

**management board (§ 239 par. 1 fig. 4 lit. a Business Code) and disclose the principles governing remuneration policy.**

**C 30.** In addition to the information required by law (L-Rule 29), the Corporate Governance Report shall contain the following information:

- The principles applied by the company for granting the management board variable remuneration, especially for which performance criteria the variable remuneration components are linked pursuant to C-Rule 27; the methods according to which the fulfilment of the performance criteria is determined; the maximum limits determined for the variable remuneration; the shares held in the own company and periods planned pursuant to C-Rule 28; moreover, any major changes versus the previous year must also be reported.
- The ratio of the fixed components to the variable components of the 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.
- The existence of a D&O insurance, if the costs are borne by the company



- 31.** The fixed and variable performance-linked annual remunerations of each individual management board member are to be disclosed in the Corporate Governance Report for each financial year. This shall also apply if the remuneration is paid through a management company.

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## V. Supervisory Board

### ***Scope of Competence and Responsibilities of the Supervisory Board***

- L 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.
- C 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. The number and type of committees set up and their decision-making scope of competence are to be disclosed in the Corporate Governance Report.
- L 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 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.

The number of meetings of the supervisory board must be reported in the Corporate Governance Report.

The supervisory board shall discuss the efficiency of its activities annually, in particular, its organization and work procedures (self-evaluation).

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.

### ***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

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management board members in line with a predefined appointment procedure.

The supervisory board shall take care that no member of the management board has been convicted by law for a criminal act that would compromise the professional reliability as a management board member.

Furthermore, the supervisory board shall also give due attention to the issue of successor planning.

## ***Committees***

- C 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 majority of the committee members shall meet the criteria for independence of the C-Rule 53. The Corporate Governance Report shall state the names of the committee members and the name of the chairperson. The Corporate Governance Report must disclose the number of meetings of the committees and discuss the activities of the committees.

**40. Irrespective of the size of the supervisory board, it shall set up an audit committee in the case of exchange-listed companies. The audit committee shall be responsible for monitoring the preparations for the accounting procedures; for monitoring the work of the auditor; for the audit and preparation of the confirmation of the financial statements, of the proposal for the distribution of the profit, and of the report of the management board.**

**The audit committee shall also monitor the group accounting procedures, audit any consolidated financial statements and prepare a proposal for the selection of an auditor for the financial statements and shall report on this to the supervisory board.**

**Furthermore, the audit committee shall monitor the effectiveness of the company-wide internal control system, if given, of the internal audit system and of the risk management system of the company.**

**At least one person with special knowledge meeting the company's requirements 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 a member of the management board or as management-level staff or auditor of the company or has signed an auditor's opinion or for any other reason is not independent and free of prejudice.**

**41. The supervisory board shall set up a nomination committee. In cases of supervisory boards with no more than six members (including employees' representatives), the function may be**

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exercised by all members jointly. The nomination committee submits proposals to the supervisory board for filling mandates that become free on the management board and deals with issues relating to successor planning.

C 42. The nomination committee or the entire supervisory board shall present proposals to the general meeting for appointments to the mandates on the supervisory board that have become vacant. L-Rule 52 must be taken into account in this context.

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

The remuneration committee<sup>6</sup> shall deal with the contents of employment contracts with management board members, it shall ensure the implementation of the C-Rules 27, 27a and 28, and shall regularly review the remuneration policy applicable to management board members.

At least one member of the remuneration committee shall be required to have knowledge and experience in the area of remuneration policy. If the remuneration committee uses the services of a consultant, it must be ensured that said consultant does not at the same time provide services to the management board in matters relating to remuneration.

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<sup>6</sup> 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).

In the case of supervisory boards that do not have more than six members (including employees' representatives), this function may be assumed jointly by all members. The remuneration committee may be identical with the nomination committee.

The chairperson of supervisory board shall inform the general meeting once a year of the principles of the remuneration system.

### ***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 subsidiaries<sup>7</sup> 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**

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<sup>7</sup>Art. 228 par. 3 Business Code

**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.**

C 45. Supervisory board members may not assume any functions on the boards of other enterprises which are competitors of the company.

C 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.

L 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.**



49. The company shall disclose in the Corporate Governance 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.

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### ***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 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. The remuneration for the financial year to supervisory board members is to be reported in the Corporate Governance Report for each individual member of the supervisory board. Generally, there are no stock option plans for members of supervisory boards. Should stock option plans be granted in exceptional cases, then these must be decided in every detail by the general meeting.

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

52. **When appointing the members of the supervisory board, the general meeting shall take due care to ensure the expertise and personal qualifications of the supervisory board members and a balanced composition with respect to the structure and the business of the company. Furthermore, reasonable**

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**attention is to be given to the aspect of diversity of the supervisory board with respect to the representation of both genders and the age structure, and in the case of exchange-listed companies, also with a view to the internationality of the members. The general meeting shall also pay attention that no member of the supervisory board is considered for appointment who has been convicted by law for a criminal act that would compromise his or her professional reliability.**

C **52a.** The number of members on the supervisory board (without employees' representatives) shall be ten at most. New members of a supervisory board must inform themselves adequately of the organization and activities of the company as well as of the tasks and responsibilities of the supervisory board members.

C **53.** The majority of the members of the supervisory board elected by the general meeting or delegated by shareholders in accordance with the articles of incorporation shall be independent of the company and its management board. A member of the supervisory board shall be deemed 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 therefore suited to influence the behaviour of the member. The supervisory board shall define on the basis of this general clause the criteria that constitute independence and shall publish them in the Corporate Governance Report. 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

Corporate Governance 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 Corporate Governance Report must indicate which members of the supervisory board meet these criteria.
55. **No person may be a member of the supervisory board of an exchange-listed company who has been a member of the management board of said company in the last two years, unless the appointment is the result of a proposal by shareholders that hold more than 25 percent of voting rights in the company. However, no more than one person is permitted to be a member of the supervisory board for whom the two-year period has not yet expired. A member of the supervisory board of an exchange-listed company who has been a member of the management board of said company in the past two years cannot be appointed as chairperson of the supervisory board.**
56. **Members of the supervisory board shall not have more than eight mandates (function of chairperson shall count double) as supervisory board members for listed companies.**

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- C 57. Supervisory board members serving on the management board of a listed company may not hold more than four positions on supervisory boards (position of chairperson counts double) of stock corporations not belonging to the group. Companies that are included in consolidated financial statements or in which the company has an investment with a business interest shall not be considered non-group companies.
- C 58. The Corporate Governance Report shall state the chairperson and vice chairperson as well as the name, year of birth, the year 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 Corporate Governance 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 Corporate Governance Report.

### ***Co-determination***

- L 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*

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60. The company shall prepare a Corporate Governance Report that contains at least the following information<sup>8</sup>:

- Designation of a Corporate Governance Code generally recognized in Austria or at the respective stock exchange;
- Information on where it is publicly available;
- in case it deviates from the Comply or Explain rules of the Code, an explanation of the items concerned and the reasons for the deviation<sup>9</sup>;
- If the company decides not to adhere to a code, then the reason why;
- The composition and working procedure of the management board and of the supervisory board and its committees.
- The total remuneration of each individual member of the management board and the principles governing remuneration policy
- The measures taken to promote women to the management board, supervisory board and to top management positions. The supervisory board shall review the Corporate Governance Report within two months of receiving it; the supervisory board shall give a statement on the Report to the management board and report on it to the annual general meeting.

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<sup>8</sup> Annex 2a contains a recommendation for a basic structure of the Corporate Governance Report.

<sup>9</sup> Guidelines for the explanations and the statement of reasons for deviations are contained in Annex 2b.

61. The commitment to comply with the Austrian Code of Corporate Governance (Corporate Governance Statement) shall be included in the Corporate Governance Report. The Corporate Governance Report must be published on the company's website. This website shall be mentioned in the management report. Every shareholder has the right to request information on the Corporate Governance Report at the annual general meeting. The management board is responsible for reporting on implementation and compliance with the principles of corporate governance within the company. Every corporate body addressed by a rule is responsible for compliance with the principles of corporate governance and must explain the reasons for the departures from the rule.
62. The company shall have compliance with the C-Rules of the Code evaluated periodically, but at least every three years, by an external institution and a report on the findings of the evaluation is to be published in the Corporate Governance Report.<sup>10</sup>

### ***Financial Reporting and Disclosure***

63. **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,**

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<sup>10</sup> As help for the voluntary external evaluation, the Austrian Working Group for Corporate Governance developed a questionnaire. Published under [www.corporate-governance.at](http://www.corporate-governance.at).

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

**C** 64. 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 63) 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.

**L** 65. **The company shall prepare the consolidated financial statements and the condensed set of financial statements contained in the half-yearly financial report in accordance with International Financial Reporting Standards (IFRS), as adopted by the EU.**

**Annual financial reports shall be published at the latest four months after the end of the reporting period, half-yearly financial reports at the latest two months after the end of the reporting period, and shall be publicly available for at least five years. If the company prepares quarterly reports for the first and the third quarter in accordance with IFRS, then these shall be published at the latest 60 days after the end of the reporting period.**

**In the case that the company does not prepare quarterly reports in accordance with IFRS, the interim management statements of the first and third quarter must be published at the latest six weeks after the end of the reporting period.**



66. The company shall prepare quarterly reports in accordance with International Financial Reporting Standards, as adopted by the EU (IAS 34).

The management board shall explain in the annual and interim reports the reasons for and effects of any material changes or deviations affecting the current and/or subsequent business year as well as any material deviations from previously released sales-revenues, earnings and strategy targets.

67. The enterprise shall establish external communication structures beyond legal mandatory requirements to meet information demands timely and adequately, in particular, by use of the company's website. The company shall disclose any new facts that it communicates to financial analysts and similar users to all of its shareholders at the same time.

68. The company shall publish annual financial reports, half-yearly financial reports and any other interim reports in English and German, and shall make these available on the company's website.<sup>11</sup> If the annual financial report contains consolidated financial statements, the financial statements in the annual report pursuant to the Business Code must only be published and made available in German.<sup>12</sup>

- 69. The company shall present an adequate analysis in the consolidated management report on the course of business and**

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<sup>11</sup> This shall not affect the language and third country provisions pursuant to Art. 85 Stock Exchange Act.

<sup>12</sup> This shall not affect the language and third country provisions pursuant to Art. 85 Stock Exchange Act.

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**shall describe the essential financial and non-financial risks and uncertainties the company is exposed to as well as the most important features of the internal control system and of the risk management system with respect to the accounting process.**

- C **70.** The company shall describe the main risk management instruments used with respect to non-financial risks in the consolidated management report.

### ***Investor Relations and the Internet***

- L **71.** 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 circumstances or occurrence of an event – even if not yet formally ascertained. The company shall display all inside information, which it is under the obligation to disclose to the public, on its website for an appropriate period of time<sup>13</sup>. 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.

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<sup>13</sup> Also refer to the Disclosure and Reporting Decree of the Financial Market Authority.

- 72.** 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
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- 73.** The management board shall immediately post any director's dealing<sup>14</sup> 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
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- 74.** A calendar of corporate financial events shall be posted at least two months before the start of the new business year on the website of the company and shall contain all dates of relevance for investors and other stakeholders such as the release of the annual and quarterly reports, annual general meetings, ex-dividend day, dividend payout day and investor relations activities. C
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- 75.** 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
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- 76.** The company shall disclose simultaneously on its website all financial information on the enterprise that has been published through R
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<sup>14</sup> Article 48d par. 4 Stock Exchange Act, see L-Rule 19

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.

### ***Audit of the Financial Statements***

- C 77. The supervisory board shall include in the contract on the audit of the (consolidated) financial statements the stipulation that the audit is to be conducted according to international accounting standards (ISAs).<sup>15</sup>
- L 78. **The independence of the (group) auditor is essential for conducting a thorough and unbiased audit, in particular, no grounds for exclusion or risk of partiality exist. The auditors shall ensure that any additional business relationships with the company to be audited, such as consulting contracts, do not constitute a hindrance to their economic independence. The principal auditors in the company responsible for the consolidated financial statements are not permitted to assume a function on any corporate body of the company or in a management position for two years after signing the audit opinion.**

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<sup>15</sup> International Standards on Auditing (ISAs), published by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC).

**The Audit Committee shall monitor the independence of the (group) auditor, especially with respect to the additional services provided to the company being audited (audit-related and non-audit-related services).**

- 79. The (group) auditor shall immediately inform the chairperson of the supervisory board and the chairperson of the audit committee of any reasons potentially constituting grounds for exclusion or risk of partiality that may become evident in the course of the audit. Any protective measures taken to ensure an independent and impartial audit shall be reported to the audit committee.**
- 80. An auditor or an auditing firm who is to be included in a proposal for appointment must furnish a written report on the matters listed below before the supervisory board makes its proposal and before the election by the shareholders:**
- Valid registration in the public registry pursuant to §23 Annual Audit Quality Assurance Act (AQSG) as proof of inclusion in the statutory quality assurance system;**
  - No reasons for exclusion;**
  - Presentation of all circumstances that may indicate the risk of partiality and of measures taken to protect against such risk in order to ensure an independent audit;**
  - A list of the total fees broken down by category of services that were received from the company in the preceding financial year.**
- 81. Immediately after the vote, the supervisory board shall conclude the agreement with the (group) auditor elected on**

**the execution of the audit of the financial statements and on the fees to be paid. The fees must be commensurate with the tasks of the (group) auditor and the expected scope of the audit. The audit agreement and the amount of the fees agreed on shall not be made contingent on any requirements or conditions and shall not depend on whether the (group) auditor provides additional services to the audited company besides the auditing activities.**

C **81a.** The Chairperson of the Audit Committee (group) must invite the auditor in addition to the cases stipulated by law to a further meeting. At this meeting, the mode of communication between the (group) auditor and the audit committee shall be defined. Within the scope of these meetings, it must be possible for the audit committee to exchange views with the (group) auditor without the presence of the members of the management board. If necessary, the chairperson of the audit committee shall invite the (group) auditor to further meetings of the audit committee.

L **82.** **The supervisory board will be informed on the results of the (group) final audit in the form of the audit report stipulated by law and the mandatory oral report of the (group) auditor as well as by the report of the audit committee.**

C **82a.** After completion of the group audit, the management board shall present to the supervisory board a list that shows the entire costs of the audit for all group companies with a breakdown by expenses for the group auditor, for members of the network to which the auditor belongs and for other auditors working within the group.

- 83.** 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.

# 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 a 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, but not for exercising functions in the bodies of the group. 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.



- A supervisory board member may not remain on the supervisory board for more than 15 years. This shall not apply to supervisory board members who are shareholders with a direct investment in the company or who represent the interests of such a shareholder.
- 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 having one of the aforementioned relations.

## Annex 2a

### ***Corporate Governance Report***

The following basic structure is recommended for the Corporate Governance Report (corresponds to the AFRAC (Austrian Financial Reporting und Auditing Committee) statement)<sup>16</sup>:

1. Corporate Governance Statement
2. Names of the corporate bodies and remuneration
3. Information on the working procedures of the management board and of the supervisory board
4. Measures to promote women
5. Report on an external evaluation, if applicable.

The following sections present the specific information required for each item stated here, with the content being derived from legislation (§ 243b Business Code) and also from the C-Rules (comply or explain) of the Austrian Code of Corporate Governance.

#### **1. Corporate Governance Statement**

This section of the Corporate Governance Report must contain the following information (§ 243b para. 1 Business Code):

- Statement of commitment to the Austrian Code of Corporate Governance and information where it is publically available.

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<sup>16</sup> See statement on “Drafting and Audit of the Corporate Governance Report pursuant § 243b UGB”, [www.afrac.at](http://www.afrac.at), the new rules in the revised Code 2015 have been taken into consideration.

- Information from which C-Rules of the Austrian Code of Corporate Governance the company deviates. Every deviation must be explained and the reasons stated in order for the company to be in compliance with the Code.

## **2. Members of the Corporate Bodies and their Remuneration**

The Corporate Governance Report must contain the following information (cf. § 243b para. 1 Business Code) on the members of the management board:

- Name, date of birth and date of first appointment and end of the current period of office for every member of the management board as well as the name of the chair of the management board, and if applicable, of the vice chair (C-Rule 16);
- List of all supervisory board mandates or similar positions in other domestic and foreign companies, which are not part of the consolidated group of companies, for each member of the management board (C-Rule 16);
- The fixed and variable remuneration paid in the financial year to each member of management board; this also applies if the remuneration is paid via a management company (§ 243b para. 2 no. 3 Business Code and C-Rule 31).

The following information must be included in the Corporate Governance Report on the members of the supervisory board:

- Name, date of birth and date of first appointment and end of the current period of office for each member of the supervisory board (C-Rule 58);
- Chair and vice chair (C-Rule 58);

- The remuneration paid in the financial year to each member of the supervisory board (C-Rule 51);
- Membership in the committees of the supervisory board and the name of the chair of such committees (§ 243b para. 2 no. 1 Business Code);
- List of all supervisory board mandates or similar positions in other domestic and foreign listed companies for each member of the supervisory board (C-Rule 58);
- If applicable, object and remuneration of contracts subject to approval pursuant to § 95 para. 5 no. 12 Stock Corporation Act (C-Rule 49).

The following minimum information on the independence of the members of the supervisory must be included in the Corporate Governance Report:

- Presentation of the criteria for independence defined by the supervisory board (C-Rule 53);
- Presentation of the members that may be considered independent; a presentation of which members may not be considered independent is also sufficient (C-Rule 53);
- Presentation of those independent members of the supervisory board who do not own stakes of more than 10% or represent the interests of such a shareholder (C-Rule 54).

Furthermore, according to Article 243b para. 2 no. 3 Business Code, a statement must be made on the principles of the remuneration policy; the principles must cover the following as a minimum (C-Rule 30):

- Principles according to which the stock option plans of the company are established;
- The principles applied by the company for the variable remuneration of the management board, especially the performance-linked criteria

of the variable remuneration components; the methods according to which fulfilment of the performance criteria is determined; the maximum thresholds determined for variable remuneration; the shares held in the own company and periods applicable to stock options and transfer programmes; likewise, any material changes versus the previous year must be reported;

- The ratio of fixed to variable components of the total remuneration of the management board;
- The principles of the company retirement plan for the management board and the conditions;
- The principles of eligibility and claims of the management board in the event of termination of the function;
- The existence of any D&O insurance if the costs are borne by the company.

If the company is a European stock corporation (S.E.) which follows the monistic system with an administrative board, the information that would be required for members of a management board and of a supervisory board must be given for the members of the administrative board.

### **3. Information on the working procedures of the management board and supervisory board**

Pursuant to § 243b para. 2 no. 1 Business Code, the Corporate Governance Report must inform on the working procedures of the management board. Pursuant to C-Rule 16, this information must state as a minimum the assigned areas of competence. Additionally, it may report on transactions and measures which, for example, would exceed the scope defined in § 95 para. 5 Stock Corporation Act and require

the approval of the supervisory board pursuant to the by-laws or the internal business rules.

Furthermore, § 243b para. 2 no. 1 Business Code requires information on the working procedure of the supervisory board as well as its committees and must contain at least the following information:

- Number and type of committees and their decision-making powers (C-Rule 34);
- Number of meetings of the supervisory board in the financial year and report on the supervisory board's main activities (C-Rule 36);
- Number of meetings of the committees in the financial year and report on their activities (C-Rule 39);
- A note stating if a member of the supervisory board fails to personally attend more than half of the meetings of the supervisory board in a financial year (C-Rule 58).

#### **4. Measures to promote women**

As regards the promotion of women, the Corporate Governance Report must contain at least the following information pursuant to § 243b para. 2 no. 2 Business Code:

- Information on the share of women on the supervisory board and in management positions (§80 Stock Corporation Act);
- Description of the measures taken to promote women to the management board, supervisory board and to management positions in the company during the reporting year.

#### **5. Information on the external evaluation**

- Report on the findings of the last external evaluation (C-Rule 62)

## **Annex 2b**

### ***Guidelines for explanations and reasons for departures from the Code***

The company shall give information from which C-Rules of the Code it deviates and for each deviation.

- (a) explain how it deviates;
- (b) present the reasons for the deviation;
- (c) describe how the decision on a deviation was reached within the company;
- (d) if the deviation is limited in time, explain when the company plans to comply with the rule concerned;
- (e) if applicable, describe the measures taken instead of compliance with the rule and explain how this will contribute to the achievement of the underlying objective of the rule concerned or of the Code in general or clarify how these measures contribute to good corporate governance.

The information mentioned above should be sufficiently clear, precise and comprehensive to enable shareholders, investors and other stakeholders to assess the consequences of any departure from a specific rule.

These explanations should describe the specific characteristics and situation of the company such as size, company structure and ownership or any other relevant features.

The reasons for departures from the rules should be presented in the Corporate Governance Report in in such a way so that they are easy to find for shareholders, investors and other stakeholders.



## Annex 3

In the interest of the greatest degree of transparency, all foreign companies listed on the Vienna Stock Exchange are called on to publish on their website the provisions of the company law that applies to them, at least with respect to the rules mentioned below, and to publish this information on their websites and keep it up to date.

### ***No subscription to own shares***

The company shall not be permitted to subscribe to own shares.

A subsidiary, as a founder or subscriber to shares or when exercising subscription rights, shall not be permitted to acquire shares of the company. The effectiveness of such an acquisition shall not be affected by a breach of this rule.

Any person with the function of founder or subscriber or exercising subscription rights having acquired shares for the account of the company or of a subsidiary shall not be able to claim that he or she has not acquired shares for their own account. Such person shall be liable for the full amount paid in irrespective of any agreement with the company or with a subsidiary. Such person shall not be entitled to any rights granted by the share before the acquisition of the shares for his or her own account.

### ***No repayment of paid-in amounts***

No repayment of amounts paid in by shareholders shall be permitted; for as long as the company exists, shareholders shall only have the right to claim a share in the net profit reported in the financial statements unless distributions are ruled out by law or by the company's articles of association. The payment of the acquisition price in the case of permissible acquisitions of own shares shall not be considered repayment of paid-in amounts.

### ***Profit distribution to shareholders***

The share in the profit claimed by shareholders is defined by the percentages they hold in the share capital of the company.

If the paid-in amounts on the share capital have not been paid in on all shares in equal proportions, then the shareholders shall receive an amount in advance of the distributable profit of four percent of the amount paid in; if the profit is not sufficient, the amount to be paid out shall be fixed according to a lower rate. Paid-in amounts that have been effected in the course of a business year are taken into account proportionally according to the time expired since the payment.

The articles of association may define another type of profit distribution.

## ***Changes to the articles of association***

Any change to the articles of association shall require a resolution by the general shareholders' meeting. The right to make changes, which refer only to the version, may be delegated by the general shareholders' meeting to the supervisory board.

The resolution may only be reached if the intended change to the articles of association has been explicitly notified with respect to its material content and announced in a timely manner.

The legal validity of any definitions regarding special privileges, foundation expenses, contributions in kind and acquisitions in kind may be changed only after a period of one year has expired.

The resolution by the general shareholders' meeting shall require a majority of at least three-quarters of the share capital represented at the time the resolution is reached. The articles of association may replace this majority by another majority of the share capital represented, but the object of business of the company can only be changed by majority that represents a higher share in the capital. The articles of association may also define other conditions.

If the effective distribution proportion applicable to several classes of shares is to be changed to the disadvantage of one class of shares, the resolution of the general shareholders' meeting shall require the approval of the disadvantaged shareholders by a separate vote of said shareholders for the resolution to become effective; the provisions of sentence 1 and 2 of the preceding paragraph shall apply to these shareholders. The disadvantaged shareholders may only reach such

resolution if the separate vote has been explicitly notified and announced in a timely manner.

### ***Exclusion of subscription rights***

In the case of a capital increase, every shareholder must be allotted upon his or her request a percentage of the new shares that corresponds to the share held in the share capital of the company up to that time.

The right to subscribe to new shares may be excluded in full or in part only in the resolution on the increase of the share capital. In such case, the resolution shall, in addition to the requirements of the law or articles of association regarding capital increases, require a majority of the votes that corresponds to at least three-quarters of the share capital represented at the time of passage of the resolution. The articles of association may replace this majority by a larger majority in the share capital and also define other requirements.

### ***Acquisition of own shares***

The issuer shall disclose the applicable national laws regarding the acquisition of own shares. The following information shall be provided:

- For which purposes the acquisition of own shares is permitted
- The maximum amount of the permissible share in the share capital of the company when acquiring own shares according to national law
- Provisions regarding the duration of a stock buyback programme

- The required resolutions including those of the competent bodies pursuant to national law and the percentage majority needed for the required resolutions
- The mandatory disclosures relating to the acquisition of own shares

The same shall apply accordingly to the selling of own shares.

## Annex 4

### ***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, the Council Regulation on the Statute for a European Company has been in force in Austria. Ever since, it has been possible – with certain restrictions – to also establish the one-tier system (administrative council) by amending the corresponding articles of incorporation. However, as the Code does not address this specialty, this option is not discussed here further. Basically, in exchange-listed *Societas Europaea* (SE), the rules applicable to the management board members apply to the managing directors, and the rules applicable to the supervisory board apply to the administrative council.

The Austrian Stock Corporation Amendment Act 2009 and the Austrian Company Law Amendment Act 2011 have widened the differences between exchange-listed and „private“ (unlisted) stock corporations. This concerns, above all, the convening of general shareholders' meetings and participation in such meetings as well as the obligation to hold bearer shares of exchange-listed companies only in securities custody accounts. Bearer shares that are held in the form of a document directly by the shareholder must be entered into a securities custody account at the latest by the end of 2013. These regulations implement the requirements of the Financial Action Task Force to prohibit anonymous

securities transactions due to the risk of money laundering. Registered shares are still permitted in the case of exchange-listed companies, but the information in the shareholders register must be extended (especially trustee relations). As of this time, the fact of an exchange listing as well as the website of the company must be entered into companies register. The main regulations applicable to exchange-listed companies are explained below

### ***The Organisation of a Stock Corporation under Austrian Law***

The organisational structure of Austrian stock corporations rests on three bodies: the general shareholders 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 (which may be reduced to a simple majority by the articles of incorporation). Upon a petition of a minority of 10%, a court can prematurely remove from office members elected by the general meeting and members delegated by shareholders for material reasons. 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 or equity interests 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 shareholders' meeting. At least once a year, an annual general shareholders' meeting must be held (at the latest eight months after the end of the preceding business year). An extraordinary general shareholders' meeting may be convened at any time by the management board, the supervisory board or by minority shareholders owning 5% of the shares.

The convening of the annual general meeting must be published at the latest on the 28<sup>th</sup> day before the date of the ordinary general meeting, and in the case of an extraordinary general meeting, by the latest on the 21<sup>st</sup> day before the date. The announcement convening the meeting must be published in the Austrian daily newspaper, Wiener Zeitung, and also be disseminated via an appropriate medium (e.g. Reuters, Bloomberg) for capital market announcements pursuant to the Stock Exchange Act (Art. 86 par.3). Furthermore, information on the general shareholders' meeting must be published on the website of the company given in the companies register. By the latest on the 21<sup>st</sup> day before the



annual general meeting, all proposals for resolutions of the management board and/or supervisory board must be posted at the company for inspection. A minority of 5% has the right to add items to the agenda of a general shareholders' meeting already convened. The request must be sent to the company at the latest on the 21<sup>st</sup> day before the date of the meeting in the case of the ordinary general meeting, and on the 19<sup>th</sup> day before the date of the meeting in the case of any extraordinary general meeting. Moreover, the proposals for resolutions and the essential information and materials for the general meeting must be accessible to shareholders on the website of the company on the 21<sup>st</sup> day before the date of the general meeting. The right to participate in the general shareholders' meeting is founded in the case of bearer shares on the bearer being a shareholder at the close of the 10<sup>th</sup> day prior to the general shareholders' meeting (cutoff date as proof) that must be proven by a confirmation of the custodian bank. The registration for participation and the confirmation of the custodian bank must be sent to the company at the latest on the third workday before the general meeting. The confirmation of the custodian bank can be a document in text format. The document that must be issued shall contain the minimum information stipulated in the Austrian Stock Corporation Act, with the confirmation document in English also being acceptable as sufficient proof. It is planned to use SWIFT for sending the confirmation of the custodian bank. However, during a transition period until 31 Dec. 2016, the company may grant permission to transmit said confirmation document by fax by stating this fact when it convenes the general meeting. Every shareholder also has the right to be represented by written proxy. If not specified in the by-laws of the company, it shall suffice to send the proxy by telefax or by e-mail. In the case of a proxy assigned to the custodian bank, a confirmation of the bank that it has been assigned the proxy shall suffice. Anonymous

participation via a shareholder furnishing proof of identity (“third party owner”) is not permitted.

The implementation of the Shareholders’ Rights Directive has significantly widened the participation options for shareholders. Instead of the classical general meetings with physical attendance, the by-laws may permit a general meeting to take place simultaneously at different locations in the country or abroad (satellite general meetings) or it may permit shareholders to take part via an acoustic, if applicable, also optical two-way communication line, and to also vote electronically. Apart from electronic voting, the by-laws may also permit voting by mail. If the by-laws do not specify the format of remote participation, but simply leaves this option open, then the management board with the consent of the supervisory board shall decide on the type of participation. The invitation to the general meeting shall contain detailed information on the different forms of participation.

A minority of 1% shall have the right to have its proposals for resolutions made accessible on the website of the company. This does not rule out the possibility of putting forth counter-proposals to the scheduled items of the agenda at the general meeting. Only in the case of elections to the supervisory board it is required that the proposed candidates be displayed on the website of the company at the latest on the 5<sup>th</sup> day before the general meeting.

Shareholders have the right to ask questions and submit motions for approval at general meetings regarding all items on the agenda.

The unjustified refusal to give answers may result in a resolution being contestable.

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 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. Only persons may be elected to the supervisory board for which the proposal for election, and the related information and declarations have been made accessible on the website of the company at the latest on the 5th day before the general meeting. The general meeting passes resolutions on changes to the by-laws (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).

If the by-laws do not prescribe a proportional vote, a vote shall be carried out for every single member of the supervisory board. If at least three members must be elected, a minority of 1% may request the election of opponents. If an opponent receives at least one-third of all votes at each voting round (except for the last one), then this candidate is elected in last place.

To ensure transparency as regards suitability and independence of the supervisory board members, the following must be presented before the election: expert knowledge of the candidate; professional experience, and any circumstances that might constitute grounds for fearing a conflict of interest.

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. Furthermore, the chairperson as a rule leads the general meeting.

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 also audit the consolidated financial statements and approve them. The supervisory board may request experts to take part in its meetings.

The conclusion of contracts by the company or by subsidiaries with members of the supervisory board by which such members act on behalf of the company or group outside of the supervisory board activities shall require the approval of the supervisory board. The obligation to obtain approval also applies to contracts with companies in which the supervisory board member has a material economic interest.

Exchange-listed stock companies must set up an audit committee of the supervisory board of which one member is a financial expert.

This audit committee shall be charged mainly with the tasks of auditing and preparing the approval of the annual financial statements to be passed by the entire supervisory board and of preparing a proposal for the appointment of the auditor for the financial statements. The chairperson of the audit committee and the financial expert shall not be permitted to have served as a member of the management board or as top management staff or auditor of the company or have signed an auditor's opinion in the past three years.

The audit committee must hold at least two meetings per financial year. The auditor must be invited to the meetings that deal with the preparation of the approval of the financial statements and their audit. The audit committee tasks include the monitoring of the accounting procedures, the monitoring of the effectiveness of the internal control system, and if applicable, the internal audit and risk management system as well as the process of the auditing of the annual accounts and consolidated financial statements. The tasks of the committee consist of taking care that the corresponding processes are set up properly at the company and its subsidiaries from the standpoint of the group. Furthermore, the audit of the Corporate Governance Report is one of the tasks of this committee.

### ***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 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 shall also apply to the issuance of convertible bonds.

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 a subscription right 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 according to the provisions of the Stock Exchange Act.



## ***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. This also includes the preparation and publication of the Corporate Governance Report. 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).

For companies with their registered office in the EU/EEA listed on the Vienna Stock Exchange, a mandatory takeover bid is required as part of the implementation of the Takeover Directive when a change in the control of the company occurs. The requirement of a mandatory bid is assumed to apply in the case of the direct or indirect (active) acquisition of a share of 30% (alone or jointly with another legal person). In the case of investments of more than 26% that do not yet trigger a mandatory bid, it is required to report this to the Takeover Commission and the voting shares exceeding the secured blocking minority of 26% are suspended. The mandatory bid that must be made in the case of a change in the controlling interest in a company must be in cash and must correspond as a minimum to the weighted 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, if the price is higher than the aforementioned average.

In the event of a takeover bid, the management board and the supervisory board are strictly prohibited from preventing the bid and are under the 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% acquires 2% additional 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](http://www.takeover.at). Sections of the Takeover Act also apply to voluntary takeover bids even if there is no change in controlling interest. If a bidder reaches 90%, the bidder has the right to exclude the remaining shareholders at the offer price and takes over their shares.

## ***Groups and Company Transformations***

Although Austrian company law does know the concept of the group company, but unlike German law it does not contain a closed legal framework applicable to 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 automatic obligation to make a tender offer to outside shareholders unless the provisions of the Takeover Act apply. The mere presence of a majority of, for example, a “core shareholder” holding 25% does not yet trigger the obligation to make a tender offer according to the Takeover Act. In the case of combinations or split-ups of enterprises, special rights are granted to shareholders, in particular, every shareholder has the right initiate an examination by a court of law of the appropriateness of the conversion ratio or cash settlement. In the case of split-ups that change the proportions of shareholdings, every shareholder that did not consent

to the split-up has the right to exit. Upon request of the exiting shareholder, the tender offer is to be examined in a special court procedure. Any ex post improvements to the offer shall benefit all shareholders.

The 2006 Act on the Squeeze-out of Shareholders makes it possible for a shareholder owning 90% of the stock to squeeze out the remaining minority shareholders by offering them an adequate cash tender offer. In this case as well, the cash compensation is subject to an examination by the courts, with all shareholders having the right to initiate an examination procedure (irrespective of any objection at the general meeting). Other former squeeze-out mechanisms are no longer permitted.

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. In the case of a takeover bid, the goal is usually to attain a stake of 90% of the share capital so that based on the Act on the Squeeze-out of Shareholders the remaining minority can be excluded and by the position of sole shareholder thus attained the delisting from the exchange can be achieved. The reporting obligations under the Stock Exchange Act for additions and disposals of equity interests have been adjusted to the Takeover Act.

Further information and relevant links are available at:  
[www.corporate-governance.at](http://www.corporate-governance.at)





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