

Company Law Amendment Act

With the new Company Law Amendment Act

(Gesellschaftsrechtsänderungsgesetz) Federal Law Gazette No. 304/1996, promulgated on June 28, 1996, 15 statutes were amended or newly enacted. The wording of the law comprises 51 pages. This has indeed been the most extensive reform of Austrian corporate law for five decades.

The new law seeks compliance with the relevant directives of the European Union with respect to corporate law; these are especially the directives on capital protection, mergers, division of public companies and single-member private limited-liability companies.

Emphasis of the law is therefore laid on the fields of accounting standards and transformation and restructuring of companies. However, the new law also comprises a variety of other amendments.

Please find in the following a rough overview on the major regulations of the new legal regime. We would of course be pleased to provide you with more detailed information upon request.

1. Accounting Standards Act

Besides changes in the valuation rules, the structure of the annual financial statement and the contents of the explanatory annex to the annual financial statement (Anhang), the new classification of corporations according to their size is of special interest. Until recently, companies were divided into large and small corporations. Large corporations were such which exceeded at least two of the three following criteria: balance sheet total: 200 million shillings (approx. US \$ 20,0 Mio), turnover: 300 million shillings (approx. US \$ 30,0 Mio), 300 employees.

From now on, it will be distinguished between small, medium-sized and large corporations. Small corporations are such which do not exceed at least two of the three following criteria:

- balance sheet total: 37 million shillings (approx. US \$ 3,7 Mio)
- turnover: 74 million shillings (approx. US \$ 7,4 Mio)
- 50 employees

Large corporations are such which exceed at least two of the three following criteria:

- balance sheet total: 150 million shillings (approx. US \$ 15,0 Mio)
- turnover: 300 million shillings (approx. US \$ 30,0 Mio)
- 250 employees

Medium-sized corporations are neither small nor large corporations.

It depends on the respective size category whether the financial statement shall be audited, published and notified to the commercial register. It also depends on the respective size category whether the report on the financial standing of the company (Lagebericht) shall be drawn up.

Unlike under the former legal regime small limited liability companies are to a certain extent obliged to Publish their financial statements and to notify the balance sheet and the explanatory annex to the annual financial statements to the commercial register; however, small limited liability companies may use a simplified balance sheet in accordance with a form the Austrian Federal Ministry of Justice will issue. In future, basically all corporations are obliged to notify the balance sheet to the company register. The court can enforce this notification requirement by penalties.

2. Stock Corporation Act

The amendments of the Stock Corporation Act are especially extensive. Therefore we can only enlist the most important ones:

- a) The name of the corporation must contain the phrase "Aktiengesellschaft" (stock corporation). In future, the designation "Aktiengesellschaft" may however be used in an abbreviated form.
- b) The principle of equal treatment of shareholders is now expressly incorporated in the Stock Corporation Act.
- c) The regulations concerning acquisition of own shares were substantially modified. Such transactions are now permissible to a larger extent. Now, own shares - subject to certain limitations - may also be acquired in order to offer them to the employees of the company or to affiliated corporations.

Additional legal opportunities for acquisition of own shares are available to financial institutions within the framework of trading in securities.

d) Under certain conditions the distribution of a dividend comparable to an interim dividend (Abschlagszahlung auf den Bilanzgewinn) is now permitted.

e) The law has been substantially changed in connection with capital increase, especially with respect to the exclusion of the right to subscribe. It has been clarified that the right to subscribe can also be excluded if shares are primarily issued to employees of the company in question or to affiliated corporations. The capital increase with contributions in kind has also been amended. The exclusion of the right to subscribe in connection with authorized capital is now subject to a stricter regulation.

f) The law of mergers has been completely modified. In future, the management board of each corporation involved is obliged to submit a merger report. An audit by the supervisory board and by a special merger auditor is required. It is no longer possible to challenge the shareholders' resolution adopting the merger based on the grounds that the basis of exchange is inadequate. Instead, a new procedure of judicial review of the basis of exchange has been introduced. The decision of the court is basically binding on all shareholders. If the court comes to the conclusion that the basis of exchange is inadequate it may charge the transferring company with a compensation in cash payable to the disadvantaged shareholders. Basically, in future the performance of a merger will be much more complicated and time consuming compared to the former legal regime. Under certain circumstances, however, it is provided for a merger under facilitated circumstances.

3. Limited Liability Company Act

a) Under the former legal regime at least two shareholders were required in order to establish a limited liability company. In future also one shareholder alone may establish a limited liability company. Instead of an agreement on the articles of association the single shareholder has to issue a declaration on the establishment of the company. It is therefore no longer required to establish a company together with a trustee. This was a very common method to establish a company with limited liability.

b) The minute book required under the former legal regime in order to enter all resolutions adopted by the shareholders is no longer necessary. Instead, it is sufficient to collect the resolutions in written form and to keep them with the company.

c) Transactions concluded by the sole shareholder and managing director in his own name on the one hand and in the name of the company on the other (agent and patient) have to be - with certain exceptions - recorded in a documentary way.

d) Mergers of limited liability companies were as well subject to major changes. It has to be emphasized that in future the shareholders' resolution adopting the merger requires a majority of 75 % (until recently, a unanimous shareholders' resolution was required except otherwise provided for in the articles of association). Under certain conditions, however, the additional approval of individual shareholders is required.

4. Division of companies

The law on the division of companies has been enacted in a completely new form. It now provides the possibility to divide a company to establish a new one as well to take over an already existing one. This means that the assets of the transferring company may be entirely or partly transferred to another - existing - company.

The formal requirements for division of companies were tightened. A division plan and a division report have to be drafted and an audit by a "division auditor" and by the supervisory board is required. On the other hand the shareholders' resolution adopting a division has been facilitated: Under the former legal regime a unanimous shareholders' resolution was required. Now, a majority of 75 % of the capital is sufficient. However, special approval requirements were introduced. The liability for obligations of the transferring company was also subject to a new regulation.

5. The Act on Transformation and Restructuring of Companies

This Act was subject to a complete review. However, the two possibilities of transformation - the transformation by a merger or by the establishment of a new company - still exist.

The regulations for transformation by a merger have been adapted to the merger provisions under the Stock Corporation Act. Especially the judicial review of the cash compensation has been newly amended and drafted similar to the provisions on judicial review of the basis of exchange of mergers.

6. Company Register Act

This act now provides that registrations can be entered electronically by attorneys at law and notary publics.

The above review of the new legal regime is only intended to give you a rough overview on the major changes. There are other changes we did not mention for reasons of conciseness.

The new regulations entered into force on July 1, 1996. However, the amendments concerning accounting standards are applicable for the first time to the business year, beginning after June 30, 1996;