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# Austria

## Summary of Current Shareowner Rights

*Percentages cited reflect information gathered by GMI Ratings about 24 companies in Austria as of 31 August 2012.*

Legally, shareowner rights in the Austrian market are considered strong. However, those rights are affected by the dual-board structure, which consists of both a supervisory board and a management board. Shareowners have no direct influence on the management board, which oversees the operational activities of a company. Supervisory boards are charged with oversight of the management board. According to the statutory “one-third parity rule,” employees of publicly traded companies reserve the right to seat one-third of all supervisory board members. This statute makes employees of Austrian companies more powerful stakeholders than employees in most other markets.

<b>Issue</b>	<b>Current Standard or Usual Practice</b>	<b>Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)</b>
What is the average percentage of independent board members on public company boards (% independent board members)?	47%	
What percentage of companies have fully independent audit committees?	4.2%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	45.8%	The government acts as the controlling shareowner relatively frequently.
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No, mostly	The 2009 Stock Corporation Amendment Act abolished share blocking. However, some companies appear to be slow in implementing the law.
Are there share ownership limitations in this market?	No, usually	Share ownership limitations usually do not exist.
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.

<b>Issue</b>	<b>Current Standard or Usual Practice</b>	<b>Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)</b>
Do companies adhere to majority voting in the election of board members?	Yes	Ordinary resolutions for an annual general meeting (AGM), including director elections, can be passed only with a majority.
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not allowed.
Are shareowners able to affect remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	No	
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	Yes	Share capital increases must be approved by shareowners. Incentive plans that require an increase in the company's authorized share capital also must be approved by shareowners.
Are shareowners able to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This is a standard right.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes, but only under certain conditions	5% of voting stock is required.
What percentage of companies include golden shares in their capital structure?	0%	
Are shareholder rights plans (poison pills) allowed in this market?	No	Shareholder rights plans are not allowed.
If shareholder rights plans are in use, do they have to be approved by shareowners?	na	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This is a legal requirement.
Do companies require a supermajority vote to approve a merger?	Yes	Typically, a 75% majority is required to approve a merger or to amend articles of association; however, companies have the right to adopt a higher threshold.

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are companies subject to a fair price provision either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	Suitors who attempt to acquire a controlling interest cannot make a bid that is lower than their highest bid within the last 12 months, whether or not that bid resulted in an actual purchase of shares. Furthermore, the price must correspond at least to the average exchange price weighted by the respective trading volumes of the respective shares in the past six months before the day on which the intention to make a bid was announced.
Are class action suits commonly used in this market?	Yes, but only under certain conditions	Civil law does not provide for a special proceeding for class action lawsuits; however, the supreme court has confirmed the legal admissibility of class action lawsuits brought by consumer organizations under the condition that all claims are essentially based on the same grounds.
Are derivative suits commonly used in this market?	No	In Austria, a single shareowner cannot file suit in the name of the company. Paragraph 196 of the Stock Corporation Act (§ 196 AktG), however, allows minority shareowners representing greater than 5% of share capital to pursue a claim for damages on behalf of the corporation. The shareowners can appeal against resolutions passed at the AGM in case of some breaches. Such an action can be brought by a shareowner at any time.

na = not applicable.

## Current Engagement Practices and Shareowner Rights Developments

In Austria, the shareowner engagement process has seen increased activity in recent years. At times, in conjunction with such associations as the Österreichische Interessenverband für Anleger (IVA), shareowners have been able to exert some influence at shareowner meetings of Austrian companies. IVA is Austria's largest independent association for private investors. The

association represents minority shareowners vis-à-vis lawmakers, majority shareowners, management and supervisory boards, and auditors. IVA is active at shareowner meetings and in court, and the association has lobbied Austrian lawmakers on behalf of minority shareowners.

A key limitation on shareowner rights arises from the dual-board structure at Austrian companies. Each company has a supervisory board (Aufsichtsrat) and a management board (Vorstand). The supervisory board's main task is to supervise the management board, including appointment and dismissal of management board members. Only the management board can make executive decisions. Shareowners have no direct means of influencing management board membership. Recently, however, Austrian companies have been allowed to reorganize as a *Societas Europaea* (European Company, or SE), which allows companies to eliminate the dual-board structure and to form a single board of directors. Because the formation of an SE must be approved by both management and employees, ordinary shareowners have limited influence in such cases.

Another issue is the large number of supervisory board members who are employee representatives. The Austrian Works Constitution Act (Arbeitsverfassungsgesetz) allows a company's work council to delegate one member to the supervisory board for every two members delegated by the shareowners; the work council is entitled to appoint at least two members to the supervisory board. If the number of shareowners' representatives is an odd number, an additional employee representative will be delegated. This requirement can present problems when shareowner interests conflict with the interests of employees. In case of a tie vote, however, the supervisory board chair, who is elected by shareowners, casts the tie-breaking vote.

Corporate takeovers are primarily governed by the Austrian Takeover Act of 1998 (Übernahmegesetz 1998). Takeovers are both much less common and more difficult to accomplish in Austria than in some other developed markets. Also, mergers between Austrian and other European companies must be approved by the European Commission. The dual-board structure and the Works Constitution Act serve as effective structural devices for fending off hostile bidders, and suitors may be further deterred by the 75% supermajority required for approving mergers and amending a company's articles of association.

More than 45% of the Austrian companies researched for this manual have a controlling shareowner, and a large number of Austrian companies have at least one shareowner controlling more than 25% (a blocking minority) of the company. Under the 2006 Act on the Exclusion of Shareowners (Gesellschafter-Ausschlussgesetz), a group of shareowners must own at least 90% of the company before it can "squeeze out" the remaining minority shareowners.

The Austrian Code of Corporate Governance (Österreichischer Corporate Governance Kodex, or ACCG), published by the Austrian Working Group for Corporate Governance,

was last amended in 2012. The ACCG contains legal requirements (L-Rules), noncompliance rules (C-Rules), and recommendations (R-Rules).

The 2012 revision of the ACCG focused on the development of the diversity rule and the inclusion of new rules to improve cooperation between supervisory boards and auditors. The two measures address important approaches to increasing the effectiveness of supervisory boards and to strengthen investor confidence. The code adheres to the “comply or explain” principle, asking companies to explain why they do not adhere to the code if they choose not to do so.

## Legal and Regulatory Framework

The Stock Corporation Act (Aktengesetz, or AktG) is the primary law governing Austrian publicly traded companies. The AktG is administered by the Federal Ministry of Justice (Bundesministerium für Justiz) and contains a majority of the rules and regulations governing shareowner rights. In addition to the Takeover Act and the Works Constitution Act, the Securities Supervision Act (Wertpapieraufsichtsgesetz), the Stock Exchange Act (Börsegesetz), the Commercial Code (Unternehmensgesetzbuch), and the Civil Code (Allgemeines Bürgerliche Gesetzbuch) contain important provisions related to shareowner rights. Criminal enforcement is conducted by the Federal Ministry of Justice.

Shareowner engagement or activism in Austria is facilitated by a variety of mechanisms. Companies are required to abide by the one-vote-per-share standard. Nonvoting preferred stock may be issued, but it must not make up more than one-third of a company's share capital. Special meetings of shareowners may be called if shareowners owning an aggregate of at least 5% ask for one. Shareowners owning an aggregate of at least 1% or EUR70,000 of the share capital may also ask for items to be included in the published meeting agenda. If the meeting has already been convened, the 5% threshold applies for adding items to the agenda. Changes to the corporate charter or articles of association require the consent of at least 75% of the company's registered share capital represented at a shareowner meeting; however, companies may set a higher threshold. The supervisory board is not permitted to amend either document without shareowner approval.

Shareowners generally may exercise their voting rights by proxy without any restrictions. The 2009 Stock Corporation Amendment Act was designed to bring Austrian law into compliance with the EU Shareholder Rights Directive (2007/36/EC). Austrian law now stipulates that participation at the general meeting cannot be contingent on confirming the deposit of shares. In the case of bearer shares, a confirmation of the custodian bank must suffice to confirm shareowner status as of the end of the 10th day before the date of the

general meeting. A cornerstone of the directive is the abolishment of the share-blocking requirement. Shares can be traded after the record date. Nevertheless, in March 2010, a group of activist shareowners filed a complaint with the European Commission stating that share blocking continues to be practiced by some Austrian companies.

As in other markets and especially in light of the recent financial crisis, shareowners in the Austrian market recently have raised concerns about executive compensation levels and whether incentives are aligned with the interests of shareowners. The latest iteration of the ACCG was amended to reflect those concerns and to avoid false incentives, such as unreasonable short-term performance targets or excessive risk tolerance, in the remuneration structure. The ACCG stipulates that variable remuneration components should be linked to sustainable, long-term, multiyear performance criteria that should include nonfinancial criteria.

In Austria, supervisory board members can be removed without cause and are required to gain a majority vote at the AGM to continue serving on the board. Supervisory board members are elected to serve terms of varying lengths, which may exceed three years in certain cases. Furthermore, one-third of the supervisory board members are employee representatives who were voted in by the company employees. As a result, shareowners are relatively limited in their ability to influence board membership.

## Key organizations with information relevant to shareowner rights in Austria include the following:

Financial Market Authority ([www.fma.gv.at](http://www.fma.gv.at))

Federal Ministry of Justice ([www.bmj.gv.at](http://www.bmj.gv.at))

Federal Ministry of Finance ([www.bmf.gv.at](http://www.bmf.gv.at))

Austrian Working Group for Corporate Governance ([www.corporate-governance.at](http://www.corporate-governance.at))

Österreichische Interessenverband für Anleger ([www.anlegerschutz.at](http://www.anlegerschutz.at))

European Commission—Competition ([http://ec.europa.eu/comm/competition/index\\_en.html](http://ec.europa.eu/comm/competition/index_en.html))

European Corporate Governance Forum ([http://ec.europa.eu/internal\\_market/company/index\\_en.htm](http://ec.europa.eu/internal_market/company/index_en.htm))