LEGAL ASPECTS OF STARTING BUSINESS IN AUSTRIA

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PHHV
WISSEN WAS RECHT IST
Overview

- What are my ideas?
- Where do I want to invest?
- How much could I invest?
- Do I want to work with any partners?
- Which business structure suits my idea the most?
- Do I want to have employees?
- Where am I going to make the investment?
- Do I need any permits or licenses?
Austrian Market

- Offers a broad range of investment possibilities to foreign investors
- Foreign citizens may establish companies
- Buy a business or all of the shares in existing companies
- Invest in the form of private foundations
PHHV – who are we?

- One of the leading commercial law firms in Austria
- We offer the highest levels of comprehensive legal and economic advice
- Find solutions which are tailored to our clients in content and structure
- Our service includes strategic advice, structuring and the execution of projects in connection with national and international investments in a wide variety of sectors
Topics

- Establishing a company in Austria
- GmbH
- GmbH light
- GmbH & Co. KG
- Private Foundation
- Taxes
Establishing a company in Austria

Foreign investors may choose between establishing:

- an **incorporated entity** (Kapitalgesellschaft)
  - Limited Liability Company (**GmbH**)
  - Limited Liability Company light (since 2013)
  - Stock Company (**AG**)

- a **partnership entity** (Personengesellschaft)
  - general partnership (**OG**)
  - limited partnership (**KG**)
  - Non-Trading partnerships (**GesBR**)

- a **branch office** of a foreign company

- **other types** of business
  - **GmbH & Co. KG**
  - Sole proprietorships
GmbH

- Has its own legal personality
- Is liable for its own debts
- Assets of the shareholders are separated from the assets of the corporation
- Shareholders do not bear liability for any obligations of the GmbH
- Individuals can set up a GmbH and become shareholders
Advantages of establishing a GmbH

- Can be set up by only one shareholder;
- Few formalities;
- Flexibility in drafting the Articles of Association (AoA);
- Best suited for wholly or closely owned subsidiaries;
- May be used for nearly all types of business;
- A single person may be appointed a managing director;
- Shareholders are entitled to give instructions to managing directors;
- “Small” GmbH are not obliged to appoint a supervisory board or to file audited financial statements;
- May be converted into a stock corporation at any time;
- Few formalities in the course of a winding up procedure.
Special features of the share deal in Austria

- § 1409 ABGB
  - regulates the liability for acquisition of assets
  - obligatory law liability

- Required by law / inevitable
  - no otherwise agreement possible

- Limited liability
  - pro viribus, to the amount of the acquired assets

- Liability only knew or had to know
  - no liability for case “did not know”
Escrow a corporation share

- Fiduciary has all the rights and obligations of shareholders
- Is registered in the companies register
- Exert all rights in his own name
- Legally dispose of the shares
- Possible evading
  - analogy application
Requirements to found a GmbH

- „Articles of association“ (AoA) or „declaration on establishment“ → notarial deed
- A corporate name, which must contain at least the abbreviation of the chosen entity form (e.g. GmbH)
- A minimum share capital of EUR 35,000,--
- At least the half of it (i.e. EUR 17,500,--) must be fully paid in cash
- Registration with the commercial register (*Firmenbuch*)
GmbH light

- Reformation becomes effective on July 1st 2013
- Adaption to EU circumstances
- Target is to increase the number of start-up enterprises
- Decrease of costs for formation and publication
  - minimum share capital to EUR 10,000,-- (before 35,000,--)
  - whereas a decrease of notarial charges
  - whereas a decrease of corporate tax to EUR 500,-- (before 1,750,--)
Comparison of Costs

<table>
<thead>
<tr>
<th>Possible variation of costs depending on GmbH</th>
<th>GmbH</th>
<th>GmbH light</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum share capital</td>
<td>€ 35.000</td>
<td>€ 10.000</td>
</tr>
<tr>
<td>Capital fully payable</td>
<td>€ 17.500</td>
<td>€ 5.000</td>
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<tr>
<td>Notarial charges for contract creation</td>
<td>€ 1.100</td>
<td>€ 600</td>
</tr>
<tr>
<td>Publication costs (Wiener Zeitung)</td>
<td>€ 150</td>
<td>-</td>
</tr>
<tr>
<td>Capital duty (1% of share capital)</td>
<td>€ 175</td>
<td>€ 50</td>
</tr>
<tr>
<td>Minimum corporation tax</td>
<td>€ 1.092</td>
<td>€ 500</td>
</tr>
<tr>
<td>Sum of foundation costs</td>
<td>€ 20.017</td>
<td>€ 6.150</td>
</tr>
</tbody>
</table>
GmbH light
Disadvantages

- Limitation of liability will have negative effects on suppliers, treasury and social security
- Disadvantage for founders: double accountancy (higher costs)
- Undercapitalisation in several cases
- Risk of a damage of creditors will increase (possible criminal proceedings as a consequence)
- Direct liability of shareholders and managing directors more likely (as a consequence of undercapitalisation)
GmbH & Co. KG

- Special form of the KG
- Advantages of both GmbH and KG in one structure
- The general and therefore the unlimited liable partner is in the form of a GmbH
- Structure is chosen because of tax reasons
- Austrian Code on Limited Liability Companies (GmbHG) is fully applicable
Acquiring assets or shares in a company

- Starting up a business by acquiring the existing business of sole proprietorships, corporations or partnerships
- Buy a business as a whole or part of it (asset deal)
- Buy shares of the corporation running the business (share deal)
Private Foundation (PSt)

- The Austrian private foundation is an entity, where the founder dedicates assets to a defined purpose.
- It is regulated
  - in a separate law (PSG) and
  - by the statutes (Declaration of Establishment)
- Assets: at least EUR 70,000.00
- Methods of formation by:
  - individuals
  - legal entities
- No members, only beneficiaries
Organization

**Founder**

**Private Foundation**
(established by founder)

- **The auditor**
  mandatory

- **Board of directors**
  mandatory

- **Supervisory board**
  non-mandatory

**Beneficiaries**
Formation

- Established by a notarized declaration of establishment
- Must contain:
  - the purpose of the foundation
  - the assets
  - the name
  - the seat and term
- Must not contain:
  - the beneficiaries (addendum to the declaration of establishment, which is not publicly known)
ATTENTION

- Any changes to the declaration of establishment or to the addendum can only be done, if the founder has reserved such a right

- Incognito aspects:
  - no regulatory authority
  - unknown identities of the beneficiaries
Advantages of a PSt in Austria

- Interests and desires of the founder can be easily considered in the flexible establishment documents
- Preservation of founder’s property for future generations and protection from the influence of third-parties
- Certain tax advantages
- Secure legal system of an onshore state
- Avoidance of any conflicts in case of succession
THANK YOU FOR YOUR ATTENTION!