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СПРАВКА ПО АВСТРИЙСКОМУ ПРАВУ (язык английский)

I assume that the questions should be answered with regard to corporations under private law (*Kapitalgesellschaften*) which qualify as legal persons. Therefore I shall in particular not deal with partnerships and – also with regard to references to the respective statutory provisions being requested – focus on the two most important types of corporations: the Austrian Limited Liability Company (GmbH) and the Austrian stock corporation (AG). However, the answers given to question 3, 4 and 6 would in principle also apply to the other types of corporations.

1. Является ли директор представителем по доверенности, закону или тут речь идет о некой особой форме представительства?

The function of the executive bodies of AGs and GmbHs as representatives of the corporation is dogmatically treated as a third form of representation (*organschaftliche Vertretung*) and as such differentiated from the representation by power of attorney (*rechtsgeschäftliche Vertretung*) and statutory representation (*gesetzliche Vertretung*; an example e.g. being the representation of minors by their parents).

2. Может ли директор избираться бессрочно или только на срок?

Please note beforehand that, as a general rule, the executive body of corporations has to be comprised of one or more natural persons. As well please note, that in Austrian law (unlike in Russian private law), there is no codification of general “company law” provisions applicable to all or a certain types of corporations.

In case of a GmbH, the members of the executive body (*Geschäftsführer*) can be appointed either for a limited period as well as for an unlimited period. It is also possible to appoint directors under a suspensive or resolutive condition (sec 15 GmbHG).

In case of an AG, the members of the executive body (*Vorstandsmitglieder*; the executive body is called *Vorstand*) can be appointed only for a limited period of maximum 5 years (sec 75 para 1 AktG). If appointed for an unlimited period of time, the respective members are deemed to be appointed for the maximum period of five years. However, it is in principle possible to be appointed repeatedly (leg cit).

3. Проблема истечения срока полномочий директора и судьба сделок, совершенных директором, остающимся в реестре, после этого

Entries in the commercial register (both as regards AG and GmbH) regarding

changes in the composition of the executive bodies or changes in the respective powers of representation have only declarative effect (so that upon dismissal the directors' powers of representation end irrespective of the time of the corresponding entry into the register). Third parties, who enter into legal relations/transactions with a company are, however, protected by the general rules on the protection of faith in the commercial register laid down in sec 15 UGB (*Unternehmensgesetzbuch, "Business Enterprise Act"*). If therefore e.g. a dismissed director, who is not yet deregistered and had been registered as director with sole power of representation, enters into a contract on behalf of the company with a third party, this party is protected and the contract is validly entered into by the company. This protection is granted even if the third party could be deemed gross negligent. Only in case of positive knowledge of the dismissal (or the changes in the powers of representation) would such protection not be granted. Sec 17 para 4 GmbHG and sec 73 para 4 AktG extend this protection to cases, where persons have been registered as members of an executive body although not duly appointed from the outset.

4. Судьба доверенностей, выданных директором до своего отстранения.

Any proxies that were granted by a director (in case of sole power of representation) or directors (in case of joint power of representation) are given in the name of the company so that their fate is in principle independent from the persons having issued the proxies. A removal of a director has therefore per se no effect on powers of attorney issued by a director on behalf of the company.

5. Могут ли быть по уставу предусмотрены безотзывные директора?

In case of a GmbH, the members of the executive body (*Geschäftsführer*) are in principle freely dismissible by the general assembly at any time (sec 16 para 1 GmbHG). There are only two exceptions to this, otherwise mandatory, provision: (i) the articles of association may provide that directors, who are at the same time shareholders, can only be dismissed in case of important grounds; (ii) individual shareholders can be granted a special right to be a director. Please note, however, that the articles of association can provide for a high consent quorum (up to unanimity) for passing a resolution to dismiss a director (sec 15 GmbHG). On the other hand, every director, even if granted a special right to be a director, can be dismissed on important grounds by a respective court decision (every shareholder has an individual right to submit a corresponding action).

In case of an AG, it is mandatory that members of the executive body can be dismissed (sec 75 para 4 AktG). However, the supervisory board may only dismiss members of the executive body in case of important grounds.

6. Судьба полномочий представителя по выданной директором доверенности, если после ее выдачи объем полномочий самого директора по уставу изменился.

See answer to question 4. Please further note, that the powers of representation of the executive bodies of an Austrian company cannot be restricted in the external relationship (sec 20 para 2 GmbHG; sec 74 para 2 AktG).