

# **Legal Aspects of Doing Business in Austria**

**Cross-Border Business Activities through the Vienna Hub –  
Best Location for your Holding**

**Mag. Ronald Frankl**

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# The speaker



## Mag. Ronald Frankl

- Head of Corporate, M&A and Capital Markets at Lansky, Ganzger + Partner Rechtsanwälte GmbH
- Attorney-at-law (admitted to Vienna Bar, Austria)

## Main fields of activities

- Commercial and Corporate Law
- International Transactions
- Mergers & Acquisition
- Private Equity / Venture Capital
- Banking & Finance
- Securities- and Stock Exchange law & regulatory process
- Commercial criminal law
- Civil procedure
- Foundation law

# The co-speaker



## **MMag. Oliver Stauber**

- Head of Tax & Compliance at Lansky, Ganzger + Partner Rechtsanwälte GmbH

## **Main fields of activities**

- International Tax & Compliance Law
- Civil Law
- Corporate Law

# About LANSKY, GANZGER + Partners

LANSKY,  
GANZGER  
+ partner

- Leading Central European law firm with offices in **Vienna** (Austria), **Bratislava** (Slovakia), **Baku** (Azerbaijan)
- **Connecting business** between Austria – CEE – SEE – CIS
- Austria's leading „**one-stop-shop**“ for clients from **Russia** and the **CIS** area
  - **10 native speaking** and trained **lawyers**
  - **Russian speaking support** staff
- Advanced „Best Friends System“ in CEE, SEE, CIS
- Co-operation partner of strong local service providers in 50 countries worldwide



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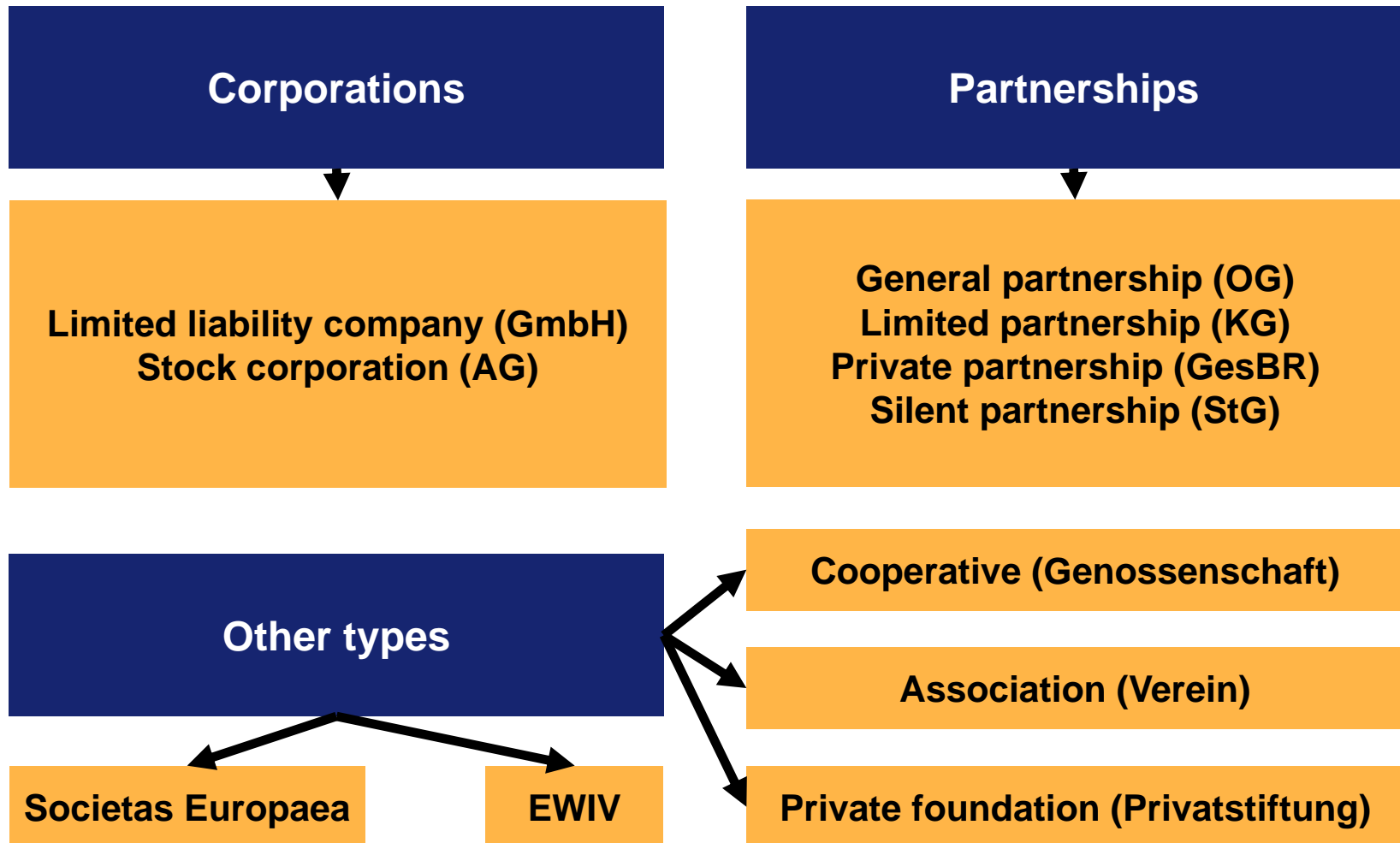
4. Intellectual Property and Legal Protection

# Your ideal access to all European Markets

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# Types of Companies





## Foundation and Registration

- Articles of Association (AoA) signed by the shareholders before a notary public as notarial deed.
- Requirements for the registration with the commercial court.
  - ✓ Notarized specimen signatures of all managing directors.
  - ✓ Certification about the payment of the minimum share capital.
  - ✓ Certification about the payment of the corporate tax.

## Share Capital

- Minimum share capital EUR 35.000 (17.500). No maximum share capital.
- Cash or contribution in kind.

## Shareholders

- One or more shareholder(s).  
Austrians and foreign natural persons or legal entities. There are no restrictions on foreign shareholders.
- Liability of foreign shareholders limited to the share capital.
- Transfer of shares  
A notarial deed is required for the assignment of shares. Transfer restrictions can be established by the shareholders in the AoA.

## Corporate Bodies

- Managing directors, shareholder's meeting (compulsory).
- Supervisory board (under specific conditions compulsory), advisory board (optional).

## Foundation

- Similar to the limited liability corporation.
- In addition the audit of the formation by the management board, the supervisory board and partially external auditors.

**The formation of a stock company is more complicated and takes considerably longer! The shares of an Austrian stock corporation can be listed on a stock exchange.**

## Share Capital

- Minimum share capital EUR 70.000 (EUR 17.500).
- Liability of shareholders is limited to the share capital.
- Stocks can be transferred easily (no notarial deed required).

## Shareholders

- One or more shareholder(s): Austrian and foreign natural persons or legal entities. There are no restrictions on foreign shareholders.
- For privately held stock corporation only registered shares possible (name, date of birth or incorporation and bank details have to be recorded in a stock register).
- Shareholders are not shown in the commercial register (exception: one-person-corporation).

## Corporate Bodies

- Compulsory: board of directors, shareholder's meeting, supervisory board, annual auditor.
- Optional: advisory board.

# Private Foundation

## Specifics

- A private foundation does not have any shareholders or proprietors, but beneficiaries.
- Purpose restricted by law:
  - it shall not carry on a trade or business,
  - it may operate as a holding company.

## Foundation

- Deed of foundation (*Stiftungsurkunde*) before a notary public as a notarial deed.
- Arrangements can be made in an additional agreement (*Stiftungszusatzurkunde*) not visible to the public.
- No share capital, but assets devoted by the grantor.
- Organisation and purpose are largely determined by the grantor.

## Corporate Bodies

- Compulsory: Management board (minimum 3 members, two must have permanent place of residence in the EU), certified accountant.
- Optional: supervisory board (under specific conditions compulsory), advisory board.

# Taxation of Private Foundations

- Private foundations are taxed in the same way as companies.
- Taxable income is subject to corporate income tax.
- Distributions to the beneficiaries are taxed at the same rate as dividend payments.

## → The differences are:

- Contributions to domestic and foreign private foundations and to trusts comparable to private foundations are subject to a 2.5% foundation entrance tax (*Stiftungseingangssteuer*).
- The rate is increased to 25%
  - if the foreign foundation is not comparable to a foundation under Austrian foundation law or to a charitable foundation;
  - if the relevant documents and by-laws of the foundation are not disclosed in time to the tax authorities or the country of residence of the foundation has no extensive administrative and enforcement agreement with Austria;
  - if Austrian immovable property is donated to a foundation or comparable trust, additionally the 3.5% real estate acquisition tax is levied.
- Dissolution of a private foundation leads to taxation of the beneficiaries only (hidden reserves in the assets of a private foundation are not subject to corporate income tax of the private foundation).

## Internal Liability

### Liability of managing directors towards the company

As a general rule, a managing director must reimburse the company for all damages caused by not applying the diligence of a prudent business manager.

Special provisions establishing, inter alia, liability of a director:

- distribution of assets to shareholders (except where allowed by the law, that is, the distribution of profits or the formal capital decrease);
- breach of non-competition duty;
- entering into a transaction with the company for his or her account or as an agent of a third party without having obtained the necessary prior approval of the shareholders.

## External Liability

### Liability of managing directors towards third parties

The external liability of a managing director is based on tort law and applicable if a provision of the law that aims to protect a third party against a particular loss is violated. An example of such provisions is:

- The managing directors' duty to initiate, in due time, insolvency proceedings.

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## When does the group typically seek to set up a European Holding Company?

Operations in Europe have reached a certain volume and complexity

For legal or tax reasons

## What is the best jurisdiction for a Holding Company?

Cross-border investments might result in double taxation of the same income.

### Reasons for double taxation:

- If a company conducts operations or investments internationally, always two or more jurisdictions are involved: the home country and the country abroad.
- In case that both jurisdictions levy taxes on the same transactions, international double taxation arises.

### The avoidance of double taxation requires precise information about:

- tax regime of the country of residence,
- tax regime of the source country, and
- methods to avoid double taxation.

- **Resident companies and permanent establishments** of non-resident companies are subject to corporate income tax on their worldwide profits at a **general rate of 25%**.
  - **Legal seat** – place which is designated as such in the **articles of association** or other basic documents. **All entities** established under Austrian commercial law **must have their legal seat in Austria**.
  - **Place of effective management** is the **centre** from which the **activities of the company** are effectively directed. The place of management is at the office of the principal officers or managers of the company.
- **Dividends** paid to individual shareholders and portfolio corporate shareholders are subject to a withholding tax (capital yield tax) at a **rate of 25%**.

## Directive vs. Treaty

- **EU Parent-Subsidiary directive:** Austria implemented these provisions as a EU Member State.

**Effect:** where an Austrian holding company controls at least 10 % of the shares of an EU subsidiary for a minimum period of 12 months any dividends remitted by the EU subsidiary to the Austrian holding company are free of withholding taxes.

- **Double Taxation Treaties:** where the provisions of the Directive do not apply (or anti-avoidance provisions are in place) Austrian holding companies can rely on an extensive network of **81 double taxation treaties**

**Effect:** to obtain a reduction in withholding tax rates on dividends remitted to Austria from the subsidiary jurisdiction (otherwise 25 % w/h tax).

# Double Taxation Treaty Austria – Israel

**aims to eliminate the double taxation of income or gains arising in one territory and paid to residents of another territory**

**works by dividing the right of each country to tax the same income and gains due to its domestic law**

# Double Taxation Treaty Austria – Israel

## Business Profits

- Profits of an enterprise of a Contracting State shall be taxable only in that State *unless* the enterprise carries on business in the other Contracting State through a permanent establishment.
- If the enterprise carries on business, as aforesaid, the profits of the enterprise may be taxed in the other State (only as far as attributable to the permanent establishment).

## Dividends

- Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- Maximum tax rate on dividends of 25%.
- Interest and royalties are exempt subject to usual limitations on treaty benefits.

# Double Taxation Treaty Austria – Israel

## Interest

- Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15% of the amount of interest.

## Capital Gains

- Derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.
- From alienation of movable property (forming part of the business property of a permanent establishment) which an enterprise of a Contracting State has in the other Contracting State may be taxed in that other state.

## Austrian Corporate Income Tax on Dividend Income

- Income received by Austrian holding companies from foreign subsidiaries in form of dividends is subject to the standard rate of Austrian corporate income tax of 25 %.
- **Unless:** the Austrian holding company meets the criteria known as the "**International Participation Exemption Rules**" – a special fiscal regime for EU subsidiaries.
- **Result:** Dividend income paid by a foreign subsidiary to an Austrian holding company, which meets the "international participation exemption rules", is treated in a way that **no further tax is payable in Austria on the dividend income** received irrespective of how much tax was paid in the foreign jurisdiction (exemption method).



## To qualify for the fiscal benefits an Austrian holding company must meet the criteria:

- **Corporate Form:** The foreign subsidiary must be a corporate body by definition of the EU Parent-Subsidiary Directive, the Austrian holding company must be a corporate body by definition of national law.
- **Direct Shareholding:** The Austrian holding company must directly own the shares in the foreign subsidiary. If the dividend income results from a subsidiary of the foreign subsidiary, then the international participation exemption criteria are not satisfied.
- **10% Shareholding:** The Austrian holding company must hold a minimum of 10 % of the shares of the foreign subsidiary (portfolio shareholding).
- **12 Months Time Period:** The Austrian holding company must hold its 10% shareholding in the foreign subsidiary for a minimum period of 12 months prior to the distribution of dividends.

# Withholding Taxes on Outgoing Dividends

## Standard rate for withholding taxes on outgoing dividends amounts to 25 %.

This amount can only be reduced:

- Where the parent corporation to which the dividends are remitted by the Austrian holding company is resident in another EU territory and **holds at least 10 % of the Austrian holding company's shares for a minimum period of 12 months prior to the dividend distribution.** (Austria has anti-avoidance provisions aimed at non-EU parties attempting to benefit from the terms of the directive, i.e. off-shore jurisdictions).
- When the ultimate parent corporation is located in a jurisdiction, with which Austria has a **double taxation treaty**, the rate is generally reduced to 0-15 %.

# Capital gains from the Sale of Shares in Austria

- **Capital gains** made by an Austrian holding company on the profitable sale of its shareholding in a foreign subsidiary are subject to the standard rate of Austrian **corporate income tax of 25 %**,

**Unless:** the Austrian holding company meets the criteria of the "International Participation Exemption rules" and meets the following 3 conditions:

- **Corporate Form / 10% Shareholding / 12 Months Time Period**  
If the structure does not satisfy to Austrian anti-avoidance legislation aimed at non-EU parties the exemption is suspended and capital gains would be treated as corporate income and taxed with 25%.

# Austrian Group Taxation - Benefits

**In Austria: total tax result pooling**

**Abroad: Balancing of profits by contemporary usage of losses of foreign company (cash effect)**

**Possibility of group taxation for Joint Ventures**

**Interest deduction in case of debt financing of acquisition, except acquisition of shares within one affiliated group**

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# Vienna Stock Exchange – an attractive market for your company

## Individual advantages for your company

- ✓ Listing in Euro
- ✓ VSE a member of CEESEG the largest Stock Exchange Group in the region
- ✓ 8% of Vienna Stock Exchange blue chip companies are generating sales in CEE-region
- ✓ 41 CEE-indices are calculated by Vienna Stock Exchange
- ✓ Over 80% of all CEE- structured products are based on these indices
- ✓ Trading on Xetra and liquidity support via market maker system
- ✓ Broad services offered only by Wiener Börse during and after IPO (e.g. international roadshows)
- ✓ Austrian financial experts focusing on CEE Region provide adequate expertise and are less expensive than in London
- ✓ Low number of delistings in comparison to LSE and WSE
- ✓ Attractive fee structure and clear market segmentation
- ✓ Prospectus can be written in English
- ✓ Visibility but also Liquidity

## Allocation

- Regulated Markets (Stock Exchange):
  - Official Market
  - Second Regulated Market
- Third Market as a Multilateral Trading System (MTF)  
(General Terms and Conditions of Vienna Stock Exchange)

## Market Segments

- Different transparency and disclosure requirements
- Different levels of market making

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## A range of laws safeguards the protection of intellectual property in Austria:

- Austrian Patent Act
- Austrian Registered Design Act
- Austrian Design Protection Act
- Austrian Trademark Protection Act
- Austrian Copyright Act

- Registration of a **patent** with the Austrian Patent Office gives the holder an exclusive right to the commercial production and general use of the invention. The patent right is limited to a period of 20 years.
- Registration as an **utility patent/model** with the Austrian Patent Office in case an invention does not fulfill the prerequisites required for the award of a patent (maximum duration of industrial design protection is 10 years).
- **Design protection** in order to protect a product against imitations and copies (lasts for 5 years and can be extended).
- Registration of a **trademark, service mark** or **brand name** (e.g. letters, words, numbers or images) with the Austrian Patent Office, maximum duration of trademark protection is 10 years.
- **Copyright:** exists upon creation of the work (no registration required); protection period is 70 years for works of literature, music and the arts; 50 years for broadcasts, sound carriers and photographs.

- **Patent**

In case of infringement, the holder can ask for preliminary injunctions (cease and desist order) and is also entitled to receive accurate consideration as compensation. The infringing party can also be ordered to disgorge profits made through infringement.

- **Trademark**

In case of infringement, the trademark holder can claim damages, compensation for unjust enrichment and also move for preliminary injunctions.

- **Copyright**

In case of a copyright infringement, the copyright holder can demand a cease and desist order, removal or destruction of plagiarism and counterfeit and damages or compensation for unjust enrichment.

## Thank you for your attention!



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