

## **sms.law.bites | Corporate: Disclosure Requirements to the Commercial Register**

**An article by sms.law Partner Stephan Schmalzl and sms.law Associate Nikolaus Rakos**

The 30<sup>th</sup> of September is approaching fast, and with it the deadline for complying with statutory

### **👉 Disclosure requirements**

According to Section 277 of the Austrian Business Code (UGB), legal representatives (managing directors or board members) have certain disclosure obligations to the commercial register.

The following must be submitted:

- The annual financial statements, which include the balance sheet, the income statement, and the notes pursuant to Section 222 (1) of the Austrian Business Code (UGB);
- The management report (except for small limited liability companies and equivalent partnerships);
- The audit opinion, which may contain an unqualified, qualified, or adverse audit opinion;
- The report of the supervisory board, if the company is obliged to have a supervisory board or if a supervisory board has been voluntarily appointed for a limited liability company (GmbH);
- The profit utilization resolution;
- The corporate governance report for listed public limited companies, which must include the remuneration of the management board and the principles of the remuneration policy;
- The report on payments to government agencies for large companies and "public-interest companies" operating in certain areas.
- Where applicable and no exemption exists, the non-financial statement pursuant to Section 243b of the Austrian Business Code (UGB).

The disclosure requirements also apply to a short fiscal year (Rumpfgeschäftsjahr). This also applies in cases where the company has not yet commenced operations.

The aforementioned documents must be submitted by the legal representatives to the commercial register at the company's registered office no later than nine months after the balance sheet date. It is crucial that the documents are received by the commercial register on the last day of the deadline! According to established case law, the managing director must do everything in his power to ensure that the company's statutory disclosure obligations are fulfilled in a timely manner and must take all appropriate organizational measures to achieve that.

In addition, the size category to which the company belongs in the relevant financial year must be stated at the latest when the annual financial statements are submitted. This information may also be provided in the annual financial statements themselves.

## 👉 Consequences of delayed disclosure

The penalties range from EUR 700 to EUR 3,600, and for micro-companies pursuant to Section 221 (1a) of the Austrian Business Code (UGB) from EUR 350 to EUR 1,800. Except for micro-companies, the size of the company is irrelevant when it comes to the amount of the penalty imposed for the first time. A threat of punishment is no longer provided for – the penalty order is (automated) to be issued immediately without prior proceedings if disclosure has not been made in time.

A penalty shall not be imposed if an obviously unforeseen or unavoidable event prevents timely disclosure. Once the hindering event has ceased to exist, the imposition of the penalty may be postponed for up to four weeks.

If the disclosure obligation is still not fulfilled within two months of the expiry of the original disclosure obligation, a further penalty will be imposed, which may be imposed at the earliest six weeks after the date of the previous penalty order.

The amount of further penalties is EUR 700 for small companies and EUR 350 for micro-companies. If the addressees of the penalty orders are legal representatives of medium-sized companies, this amount increases threefold (to EUR 2,100), and for legal representatives of large companies, it increases sixfold (to EUR 4,200).

The respective legal representative may file a reasoned objection to the penalty within 14 days. In this case, the penalty automatically ceases to be effective and a decision on the penalty shall subsequently be made in ordinary proceedings.

Penalties shall be imposed on both (every!) legal representatives and the company itself.

## 👉 Other things to consider

According to the ruling of the Higher Regional Court of Innsbruck, penalties may still be imposed on the company and the liquidators as long as a company in liquidation is subject to accounting requirements pursuant to Section 189 (1) no. 2 (a) and is referred to as a "hidden" company and has not submitted a final liquidation balance sheet to the commercial register.

The commencement of liquidation does not therefore release the company from its disclosure obligations. During this phase, the liquidator is still obliged to submit the annual financial statements, including for financial years prior to the dissolution.