

## UPDATE CORPORATE LAW 02/2023

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### Flexible Company (FlexCo) comes into force with the GesRÄG 2023 on 1 January 2024

Following the publication of the ministerial draft for the Corporate Law Amendment Act 2023 (*Gesellschaftsrechts-Änderungsgesetz 2023 - GesRÄG 2023*) on 26 May 2023, it took almost six months for the government bill to be published. This was finally done on 24 November 2023. The changes to the ministerial draft are rather limited.

In particular, the GesRÄG also introduces the new legal form of the **Flexible Company (FlexCo)**, which is intended to bring significant simplifications in terms of company law and taxes for young companies. Following the resolution in parliament on 15 December 2023, the new company form will come into force on 1 January 2024.

Further information on the FlexCo (status ministerial draft) can be found [here](#).

### GmbH: Minimum share capital to be lowered

The GesRÄG 2023 will also reduce the minimum share capital for limited liability companies (GmbH) from currently EUR 35,000 to **EUR 10,000** with effect as of 1 January 2024. This will also mark the **end of the GmbH with foundation privilege** (*gründungsprivilegierte GmbH*).

In case of GmbH for which the foundation privilege is registered in the companies register on 1 January 2024, the foundation privilege will not end due to the passage of time. In such a GmbH, an amendment to the articles of association that is filed with the companies register after 31 December 2024 can only be entered if the provisions on the foundation privilege have been removed in the amended articles of association.

### Corporate Law Digitalisation Act 2023

The Corporate Law Digitalisation Act 2023 (**GesDigG 2023**) is not a digitalisation offensive in corporate law, but rather the introduction of the "**disqualification**" of corporate bodies with the power of representation in Austrian corporate law. The "disqualification" affects managing directors of GmbH and management board members of stock corporations (including SEs) and cooperatives (including SCEs). In summary, "disqualification" means the following: If a person is sentenced legally binding to a prison sentence exceeding six months for certain (legally defined) criminal offenses, this person may **not be appointed** to such an office or continue to **hold such an office** for a period of three years.

This new regulation will come into force on 1 January 2024 and will apply to convictions that become final after 31 December 2023.

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### Virtual Shareholders' Meetings Act in force

The Virtual Shareholders' Meetings Act (*Virtuelle Gesellschafterversammlungs-Gesetz – VirtGesG*) came into force on 25 July 2023 and has now permanently implemented the initially temporary measure of holding shareholders' meetings without the physical presence of all or parts of the participants. Subject to the existence of a **provision in the articles of association**, the VirtGesG allows shareholders' meetings to be held virtually, moderated, or hybrid. The basic prerequisite for the possibility of virtual shareholders' meetings is therefore a corresponding amendment to the articles of association or partnership agreement.

Further information on the VirtGesG can be found [here](#).

### EU Reorganisation Act in force

On 1 August 2023, the legislator (slightly belated) implemented the so-called Mobility Directive into national law. The EU Reorganisation Act (*EU-Umgründungsgesetz – EU-UmgrG*) contains uniform regulations for **cross-border conversions, demergers, and mergers of corporations**.

Further information on the EU Reorganisation Act can be found [here](#).

### Supreme Court ruling on the interpretation of partnership agreements after a change of shareholders

The Supreme Court decision 6 Ob 211/22 was based on the question of how the partnership agreement of a limited partnership should be interpreted when a new shareholder joins. In general, the rights and obligations of partnerships are based on the **will of the shareholders**, meaning that **partnership agreements are interpreted subjectively**.

Between the **founding members** of a partnership, the **consensual** will of the parties is decisive even if it is not reflected in express declarations. If there is a **change of partners**, the subjective will of the founding shareholders can **only** be taken into account if (i) the new members were **aware** of it **and** (ii) they at least **implicitly agreed** to this subjective will of the parties. If this is not the case, the partnership agreement must be interpreted objectively.

### Supreme Court on the requirements for mandatory mediation clauses in articles of association

In the facts underlying the Supreme Court decision 6 Ob 229/22b, the following mediation clause was included in the jurisdiction clause of a partnership agreement of a general partnership: "*Before initiating legal proceedings, each shareholder is **obliged** to first endeavor to find an amicable solution and, at the request of the other shareholders, to attempt professional **mediation**. (...)*"

In this decision, the Supreme Court clarified that mandatory mediation agreements must fulfill **minimum content requirements** and must therefore have a **minimum degree of determination**. In addition to the **claims** to be settled, specifications regarding the **selection and appointment of the mediators**, the **place** of dispute resolution, and the

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duration of the pre-litigation dispute resolution attempts are to be regarded as a guideline for an effective mandatory dispute resolution clause. With this decision, the Supreme Court has also declared these minimum standards, which were previously mainly applied in labor law matters, to be applicable on **articles of association**.

If the **minimum requirements are not met**, a contractual provision on mandatory mediation is too vague and therefore **invalid**.

## Authors



### **Dr. Paul Schörghofer, LL.M. (Harvard)**

Attorney-at-law and Partner  
Schottengasse 10/12  
1010 Vienna  
T +43 1 890 85 90-10  
[p.schoerghofer@frra.at](mailto:p.schoerghofer@frra.at)



### **Mag. Florian Wünscher, LL.M. (QMUL)**

Attorney-at-law  
Schottengasse 10/12  
1010 Vienna  
T +43 1 890 85 90-10  
[f.wuenscher@frra.at](mailto:f.wuenscher@frra.at)



### **Laura Gottardi, LL.M. (WU)**

Associate  
Schottengasse 10/12  
1010 Vienna  
T +43 1 890 85 90-10  
[l.gottardi@frra.at](mailto:l.gottardi@frra.at)