Benedikt HIRSCHLER*

Admissibility and Tasks of the Advisory Board in Family Businesses Under Austrian Law

ABSTRACT: *The establishment of an advisory board is becoming increasingly popular in Austrian family businesses. Austrian company law, however, provides neither an explicit legal basis for the establishment of an advisory board nor a definition of what constitutes an advisory board. The permissibility of establishing additional bodies is a function of private autonomy and freedom of organisation in the articles of association. An advisory board constituted under the law of obligations can be distinguished from an advisory board as an optional body of the company. Rights and obligations differ depending on the basis on which the advisory board is established. Furthermore, depending on the tasks assigned, advisory boards close to the shareholders can be distinguished from those that are close to the directors and those that are close to the supervisory board. Certain tasks that can be assigned to an advisory board are particularly important in family businesses. Involving the advisory board in the company succession process at an early stage is essential, as the advisory board can support this emotional decision with its advice. In family businesses, disputes between shareholders can quickly escalate as they lead to emotional family disputes. To prevent such an escalation, an advisory board can serve as a moderator and mediator. However, it should be noted that not all tasks may be transferred to an advisory board. Depending on the type of company, some tasks are mandatory responsibilities of the respective body. In some cases, the composition of the advisory board is also decisive. This article discusses which tasks may be delegated to an advisory board in a GmbH (Gesellschaft mit beschränkter Haftung – private limited company) or in a partnership.*

KEYWORDS: *Advisory Board; Family Business; Optional Body; Mandatory Responsibilities.*

* Pre-Doctoral University Assistant, Institute for Business Law at the Vienna University of Economics and Business, benedikt.hirschler@wu.ac.at.

https://doi.org/10.62733/2025.2.191-219

1.
Introduction

Although Austrian companies frequently use the advisory board model, Austrian company law provides neither an explicit legal basis for the establishment of an advisory board nor a definition of what constitutes an advisory board.[1] However, it does not explicitly prohibit the establishment of additional bodies in the company. The permissibility of establishing additional bodies is a function of private autonomy and freedom of organisation in the articles of association. In addition to the mandatory bodies (general meeting, directors and possibly a supervisory board), optional bodies, such as an advisory board, can also be established.[2]

Advisory boards are particularly popular in family businesses. Various tasks can be assigned to an advisory board, including advising and monitoring the management, approving certain transactions, and settling disputes between shareholders. Shareholder conflicts can escalate quickly, especially in family businesses, as emotional family conflicts can spill over into the company. In this case, an advisory board composed of non-family members can be used to mediate between conflicting parties.

However, it should be noted that not all tasks may be transferred to an advisory board. This article discusses which tasks may be delegated to an advisory board in a GmbH (*Gesellschaft mit beschränkter Haftung*: private limited company) or in a partnership.

2.
Practical Importance of the Advisory Board

The practical importance of an advisory board in family businesses is illustrated by a 2024 study from Germany, which shows that almost 80% of family businesses have an advisory board (or a supervisory board).[3] In contrast, according to a 2019 study, around 18.5% of medium-sized companies in Austria have an advisory board.[4] The Austrian Code of Conduct for Family Businesses (*Österreichischer Kodex für*

1 Kalss, 2025, § 43 ref.n. 1-2; Kalss and Probst, 2025, ref.n. 14/151; Auer, 2024, pp. 275–276; Frotz, 2022, att. §§ 29-33, ref.n. 1-2; for the legal situation in Germany see Bayer, 2011, p. 76.

2 See Kalss, 2025, § 43 n. 1; Kalss and Probst, 2025, ref.n. 14/151; Frotz, 2022, att. §§29-33 n. 1-2; see also Auer, 2024, p. 276. http://doi.org/10.62733/2025.2.5-15

3 PwC Deutschland, 2024.

4 FH Wien der WKW, 2019.

Familienunternehmen)[5] from 2022 explicitly contemplates the possibility of and recommends establishing an advisory board for family businesses.

3. Legal Basis for the Advisory Board Under Austrian Company Law

The admissibility of establishing an advisory board for a GmbH follows from Section 20 (2) of the GmbHG (*GmbH-Gesetz*: GmbH-Act), which mentions 'further bodies' in addition to the director, the supervisory board, and the general meeting. It provides no further explanation.[6] Section 20 (2) of the GmbHG, therefore, expressly contemplates the existence of optional bodies in the GmbH.[7] While the admissibility of optional bodies, such as an advisory board, is not mentioned in other company forms, private autonomy and freedom of organisation in the articles of association provide the basis for the establishment of such bodies.[8]

An advisory board can be established in two ways: pursuant to the aforementioned 'further bodies' provision or under the law of obligations. For an advisory board to be established by the shareholders as a body, it must be stipulated in the articles of association.[9] It is also possible to establish an advisory board at a later date by amending the articles of association. However, the advisory board, which was established at the level of the articles of association, only has a corporate body function if it has been assigned sufficient monitoring and participation rights and has a certain degree of organisation.[10] The advisory board must also be assigned an explicit and comprehensible area of competence in the articles of association.[11]

If an advisory board is established without any basis in the articles of association, it is an advisory board under the law of obligations that has no rights or obligations as a corporate body.[12] Generally, depending on the tasks involved, these have an expert advisory function or serve as information-collection centres. An advisory board established under the law of obligations can be assigned various tasks despite not

5 Österreichischer Kodex für Familienunternehmen, 2022, p. 13.
6 Auer, 2024, pp. 276-277.
7 Kalss, 2025, § 43 ref.n. 27; Frotz, 2022, att. §§29-33 n. 2.
8 Nowotny, 2008, p. 700.
9 Kalss, 2025, § 43 ref.n. 14; Kastner, 1983, p. 99; Nowotny, 2008, p. 700; Reich-Rohrwig, 1981, p. 510; on the German legal position Priester, 2014, p. 524; Wiedemann and Kögel, 2020, p. 59.
10 Kalss, 2025, § 43 ref.n. 16; OGH 08.05.2013, 6 Ob 42/13i regarding the advisory board of the private foundation.
11 OGH 04.05.2004, 4 Ob 14/04v.
12 Reich-Rohrwig, 1981, p. 510; Frotz, 2022, att. §§29-33 ref.n. 57; Bayer and Hommelhoff, 2023, § 52 ref.n. 171.

having the status of a corporate body. These include advising the directors and shareholders, acting as a mediation instrument in shareholder disputes, or participating in company succession processes.[13] The regulations of the advisory board under the law of obligations apply equally to GmbHs and partnerships.[14] Breaches of the advisory board under the law of obligations, therefore, only trigger consequences under the law of obligations regarding the contractual partner.[15]

4.
Advisory Board Close to the Shareholders, the Directors, and the Supervisory Board

In addition to being categorised according to whether it was established based on articles of association or under the law of obligations, advisory boards can also be subdivided according to whether they are close to the shareholders, the directors, or the supervisory board. This classification follows the simple connection to each body. While the first type of subdivision is based on the form of organisation, the decisive distinguishing feature between advisory boards that are close to the shareholders, those that are close to the directors, and those that are close to the supervisory board is task assignment. The advisory board can be categorised according to the advisory board's task portfolio;[16] however, mixed forms are common.[17]

4.1. Advisory Board in the GmbH

4.1.1. Advisory board close to the shareholders

An advisory board close to the shareholders is an optional body to which functions are transferred that are exercised by the shareholders without a dispositive structure.[18] The advisory board is granted a right of approval regarding certain

13 Frotz, 2022, att. §§29-33 ref.n. 3, 57; Wiedemann and Kögel, 2020, pp. 38–40, 100-101.
14 Compare Kalss, 2025, § 43, ref.n. 30, 65.
15 Frotz, 2022, att. §§29-33, ref.n. 58; Bayer, 2011, pp. 78–79.
16 Kalss, 2025, § 43, ref.n. 3; Frotz, 2022, att. §§29–33, ref.n. 5; see also Heidinger, 1989, pp. 380–401; Fritz, 2005, p. 164.
17 Frotz, 2022, att. §§29-33, ref.n. 5.
18 Frotz, 2022, att. §§29-33, ref.n. 14; Heidinger, 1989, p. 398; Kalss, 2025, § 43, ref.n. 44-45.

shareholder decisions but can also be assigned tasks that are generally fulfilled by the shareholders.[19]

The permissibility of transferring tasks that are reserved for the shareholders without a special arrangement in the articles of association has a basis in Section 35 (2) sentence 1 of the GmbHG. It provides that the catalogue of competences of the general meeting can be both expanded and restricted by amending the articles of association.[20]

However, restrictions on admissibility must be observed, which means that not all tasks and competences may be transferred to an advisory board. In addition to the general limitation of admissibility of immorality (Section 879 ABGB; *Allgemeines bürgerliches Gesetzbuch* – Austrian Civil Code),[21] Section 4 (2) of the GmbHG must also be considered. Section 4 (2) of the GmbHG clarifies that agreements may not deviate from the mandatory provisions of the GmbHG.[22] No mandatory responsibilities of the general meeting may be transferred to another body by amending the articles of association.[23] These are a few core competences. Generally, in the case of mandatory responsibilities, no approval rights may be established in favour of the advisory board. If the advisory board had a right of approval, the shareholders would be bound to the involvement of the advisory board even in the case of mandatory shareholder responsibilities, which would restrict the shareholders' freedom of choice. Thus, the exclusive shareholder responsibility would be nullified.[24] Regarding the mandatory responsibilities of the general meeting, however, the advisory board may be used as a purely advisory body or to prepare the decision by the shareholders.[25] In the case of mere consultations or preparatory acts by the advisory board, the sole decision-making right of the shareholders is not affected, meaning that the decision-making power remains with the shareholders.[26]

19 Auer, 2024, p. 282; Koppensteiner and Rüffler, 2007, § 35, ref.n. 46, 48; Schneiderbauer and Krebs, 2018, pp. 286-287; see also Baumgartner, Mollnhuber and Torggler, 2014, § 35, ref.n. 38; Aburumieh, Arlt and Gruber, 2024, § 35, ref.n. 10, 16.

20 Krebs, 2022, p. 44; Harrer, 2018, § 35, ref.n. 78-85; Koppensteiner and Rüffler, 2007, § 35, ref.n. 47-49; Enzinger, 2021, § 35, ref.n. 112-116; Auer, 2024, p. 282.

21 Koppensteiner and Rüffler, 2007, § 4, ref.n. 2; Schmidsberger/Duursma, 2018, § 4, ref.n. 2.

22 Koppensteiner and Rüffler, 2007, § 4, ref.n. 2; Krebs, 2022, p. 45.

23 Heidinger, 1989, pp. 398-401; Koppensteiner and Rüffler, 2007, § 35, ref.n. 45; Schneiderbauer and Krebs, 2018, pp. 285–286.

24 Krebs, 2022, pp. 113–115; for the permissibility of establishing a right of approval in favour of the advisory board in the case of exclusive shareholder responsibilities, see Koppensteiner and Rüffler, 2007, § 35, ref.n. 46; Aburumieh, Arlt and Gruber, 2024, § 35, ref.n. 10; Schneiderbauer and Krebs, 2018, p. 287; Auer, 2024, p. 282.

25 Heidinger, 1989, p. 398; Schneiderbauer and Krebs, 2018, p. 285; Krebs, 2022, p. 45.

26 Kalss, 2025, § 43, ref.n. 9; Reich-Rohrwig, 1996, ref.n. 4/504; Krebs, 2022, p. 45; Hölters, 1979, p. 11.

4.1.1.1. Mandatory Shareholder Responsibilities

4.1.1.1.1. General Meeting as the Supreme Body

The general meeting is the supreme body of the GmbH.[27] The authority over competence (*Kompetenzkompetenz*) is the expression of the general meeting as the supreme body of the GmbH. The general meeting decides which body performs which tasks and whether optional bodies are established or abolished. The authority over competence means that the general meeting can decide on the establishment of bodies and on the transfer of dispositive tasks to other bodies. In any case, the position of the general meeting as the supreme body must not be undermined by the establishment of an advisory board.[28] The authority over competence, therefore, remains with the general meeting. The general meeting can abolish the advisory board or withdraw the delegated tasks at any time due to its authority over competence.[29]

4.1.1.1.2. Amendment to the Articles of Association

According to Section 49 of the GmbHG, the articles of association may only be amended by the shareholders themselves. This is because parties outside the company do not pursue the same interests as the shareholders themselves, which means that the principle of autonomy of the association stipulates that key decisions affecting the company, for example, amendments to the articles of association or dissolution of the company, may only be made by the shareholders.[30] The exclusive competence may also not be restricted by the agreement of an additional approval by an advisory board. This would grant the advisory board an unauthorised veto over the general meeting when amending the articles of association.[31]

4.1.1.1.3. Appointment and Dismissal of Directors

The appointment and dismissal of directors as a mandatory responsibility of the general meeting is not regulated in Section 35 of the GmbHG. Nevertheless,

27 Koppensteiner and Rüffler, 2007, § 35, ref.n. 2; Aburumieh, Arlt and Gruber, 2024, § 35, ref.n. 1.
28 Frotz, 2022, att. §§29-33, ref.n. 15; Heidinger, 1989, p. 398.
29 Frotz, 2022, att. §§29-33, ref.n. 15; Lange, 2006, p. 899.
30 Hüffer and Schäfer, 2020, § 45, ref.n. 14; Krebs, 2022, p. 48.
31 Koppensteiner and Rüffler, 2007, § 35, ref.n. 46; Nowotny, 2017, ref.n. 4/514; Krebs, 2022, p. 48.

the prevailing opinion assumes that the appointment and dismissal of directors are mandatory responsibilities of the general meeting.[32]

Koppensteiner/Rüffler[33] and Arnold/Pampel[34] argue that there is no mandatory shareholder competence in the appointment and dismissal of directors, as the admissibility of the power of appointment (*Entsendungsrecht*) would contradict this and Section 15 (1) sentence 3 of the GmbHG does not contain any requirement for a shareholder resolution. Rather, the lack of mention of the appointment and dismissal of directors in Section 35 (2) of the GmbHG indicates a dispositive competence. Furthermore, the shareholders retain the authority over competence (*Kompetenzkompetenz*), which means that they can reassign the appointment and dismissal of directors at any time, and thus the sovereignty of the association (*Verbandssouveränität*) is not violated.[35] This opinion also holds that a transfer of responsibility to another body must be permissible, as shareholder powers of appointment are also recognised. Because of the permissibility of powers of appointment, mandatory responsibility cannot accrue to the general meeting.[36]

An initial counter to this minority opinion is to note that Section 35 (2) of the GmbHG does not provide an exhaustive list of the mandatory responsibilities of the general meeting.[37] In its decision 6 Ob 183/18g, the Austrian Supreme Court (OGH) invalidated the other arguments put forward by Koppensteiner/Rüffler and Arnold/Pampel regarding the permissibility of transferring the appointment and dismissal of directors to another body. On the one hand, the authority over competence (*Kompetenzkompetenz*) of the general meeting is not a sufficient means of ensuring the influence of the shareholders on the appointment of directors because of the legal and temporal requirements. Although the general meeting, as the supreme decision-making body of the GmbH, retains the authority over competence (*Kompetenzkompetenz*), a three-quarters majority of the validly cast votes is required to amend the articles of association in accordance with Section 50 (1) of the GmbHG. Because of these increased requirements, a withdrawal of the transfer of the right to appoint the directors is uncertain. Moreover, the right of the advisory board to appoint the directors cannot be equated with a power of appointment granted to a specific shareholder, as a shareholder with special rights is at least part of the 'shareholder community'.

32 Heidinger, 1989, p. 399; Nowotny, 2017, ref.n. 4/149; Reich-Rohrwig, 1983, p. 514; Reich-Rohrwig, 1996, ref.n. 4/516; Kalss and Eckert, 2004, p. 99; Zib, 2014, § 15 ref.n. 12; Ratka et al, 2020, § 15, ref.n. 40; Krebs, 2022, pp 71-74; Auer, 2024, p. 283; Harrer, 2024, p. 121.
33 Koppensteiner and Rüffler, 2007, § 15, ref.n. 14.
34 Arnold and Pampel, 2018, § 15 Rz, ref.n. 61.
35 Koppensteiner and Rüffler, 2007, § 15, ref.n. 14; Arnold and Pampel, 2018, § 15 Rz ref.n. 61; see also Enzinger, 2020, p. 871.
36 Ibid.
37 Baumgartner, Mollnhuber and Torggler, 2014, § 35,ref.n. 1.

Furthermore, in the opinion of the Austrian Supreme Court, a historical interpretation shows that the intention of the historical legislator explicitly provided for the appointment and dismissal of directors as a mandatory shareholder competence. The draft law for the GmbHG provided for the appointment of directors to be a mandatory competence of the shareholders in Section 35 (2) of the GmbHG, but this was removed before the law was submitted to the Imperial Council (*Reichsrat*), as the historical legislator assumed that this mandatory task would result anyway from Section 15 (1) of the GmbHG. Regulating the appointment and dismissal of directors as a mandatory shareholder responsibility is intended to strengthen the general meeting as the supreme decision-making body of the GmbH.[38] The fact that the shareholders can intervene in the operational business of the GmbH by appointing the directors distinguishes the GmbH from the *Aktiengesellschaft* (stock company).

Appointment and dismissal must be assigned to the same body, as dismissal is the *contrarius actus* to appointment.[39] A different distribution of appointment and dismissal powers leads to practical difficulties. For example, the body authorised to dismiss the director can dismiss a director it does not like at any time, while the body authorised to appoint, without having reached an agreement with the dismissing body in advance, does not know whether and for how long the appointed director will hold this position.

Thus, an advisory board is not allowed to appoint or dismiss the directors.

The mechanism of a binding right of nomination is similar to a right of appointment, but it is also different in some respects. While the appointment of directors is made directly by the advisory board when the appointment authority is transferred, the appointment authority remains with the shareholders when a binding nomination right is introduced in favour of the advisory board.[40] However, the shareholders' freedom of choice is restricted, as they may only deviate from the proposed candidate for an important reason. According to prevailing opinion,[41] a binding nomination right cannot be transferred to another body, as the mechanism is similar to the transfer of appointment authority. A binding nomination right restricts the shareholders' freedom of choice with regard to the candidate.[42]

In contrast to a right of nomination, which binds the general meeting to a proposal, a non-binding right of proposal or right of recommendation has no binding effect on the general meeting. The freedom of choice of the general meeting is, therefore, not impaired, which means that the position of the general meeting as the supreme body

38 Krebs, 2022, p. 74.
39 Harrer, 2024, p. 122; Kalss, 2025, § 43, ref.n. 35.
40 Harrer, 2024, pp. 121-122, 124; Krebs, 2022, p. 76; Rüffler, 2021, pp. 228–231.
41 Heidinger, 1989, p. 399; Ratka et al, 2020, § 15, ref.n. 40-41; Krebs, 2022, pp. 76–77.
42 In general OGH 21.03.2019, 6 Ob 183/18g.

is not affected.[43] A non-binding right of proposal can be transferred to the advisory board.[44] This enables the advisory board in a family business to participate in the appointment of the director by recommending the most suitable external director or the most suitable director from among the family members.[45]

Contrary to case law and prevailing opinion in Austria, it is undisputed under German law that personnel competence can be transferred to a different body than the general meeting.[46]

4.1.1.1.4. Squeeze-Out of Shareholders

For the GmbH, the squeeze-out of shareholders is explicitly and exclusively regulated in the GesAusG (*Gesellschafter-Ausschlussgesetz* – Squeeze-out Act).[47] According to the GesAusG, a minority shareholder can be excluded at the request of the main shareholder, which entails the transfer of shares to the main shareholder, provided that a simple majority of the votes cast at the general meeting exists in accordance with Section 4 (1) of the GesAusG and the main shareholder agrees. The main shareholder is the individual or legal entity that owns at least 90% of the shares. Although the main shareholder will have the necessary majority for the squeeze-out resolution, the mandatory resolution requirement promotes shareholder information, legal clarity, and legal protection because of the possibility of contesting the resolution.[48] The mandatory participation of the shareholders in the decision is, therefore, a shareholder protection instrument.[49] Thus, a general meeting resolution is mandatory, and the transfer of responsibility to another body is also prohibited.[50]

According to Section 4 (1) of the GesAusG, the articles of association may provide for a larger majority or further requirements. Permissible further requirements are, in any case, rights of approval or attendance rights of certain shareholders.[51] The possibility of agreeing on a higher consensus quorum and further requirements for the admissibility of the squeeze-out in accordance with the GesAusG results from the protective purpose of the provision. Minority shareholders are to be adequately

43 Krebs, 2022, p. 77.
44 Heidinger, 1989, p. 399; Kalss, 2025, § 43, ref.n. 35; Krebs, 2022, p. 77.
45 See also on the personnel competence of the advisory board in the family business under German law Kormann, 2008, pp. 365–371.
46 Mehringer and von Thunen, 2021, p. 121, Wiedemann and Kögel, 2020, pp. 86–87; Kormann, 2008, pp. 365-371; Koeberle-Schmid, Groß and Lehmann-Tolkmitt, 2011, pp. 901-902.
47 Kalss and Probst, 2025, ref.n. 18/131; Artmann and Rüffler, 2024, p. 495.
48 Kalss, 2021, § 4 ref.n. 3, 10; Krebs, 2022, p. 62.
49 Kalss, 2021, § 4 ref.n. 3; see also Krebs, 2022, p. 62.
50 Krebs, 2022, p. 62.
51 Kalss, 2021, § 4 ref.n. 20.

protected by further agreements.[52] In principle, no rights of approval may be agreed in favour of the advisory board in the case of mandatory responsibilities of the general meeting, as this would otherwise interfere with the sole decision-making authority of the general meeting. In the case of a shareholder squeeze-out, however, minority shareholders should be protected. Minority protection is strengthened by the right of approval of an additional body without unduly interfering with the sole decision-making authorisation of the shareholders.[53] According to Section 1 (4) of the GesAusG, the squeeze-out of shareholders can also be excluded by a regulation in the articles of association,[54] whereby the right of approval of an advisory board does not disproportionately interfere with the rights of the majority shareholder.[55] An advisory board can, therefore, be granted a right of approval for the squeeze-out of shareholders under the GesAusG if there is an agreement in the articles of association.

4.1.1.1.5. Mandatory Responsibilities of the General Meeting According to Section 35 of the GmbHG

Those tasks of the general meeting that are regulated in Section 35 (1) in conjunction with (2) of the GmbHG may not be transferred to an advisory board, as these responsibilities are explicitly mandatory competences of the general meeting.[56] These include the adoption of the annual financial statements, a possible profit appropriation resolution, the discharge of the directors and the supervisory board members, the repayment of additional payments, the assertion of compensation claims to which the company is entitled against the directors and the supervisory board members, and the appointment of a legal representative if the company cannot be represented by either the directors or the supervisory board. Furthermore, a resolution of the shareholders must be obtained in the first two years after registration of the company, if the contract concerns agreements by which the company is to acquire existing or to-be-constructed assets or immovable property permanently intended for its business operations for an amount corresponding to more than 20% of the share capital.

52 Ibid.
53 Krebs, 2022, p. 117.
54 Kalss, 2021, § 1 ref.n. 38.
55 Krebs, 2022, p. 117.
56 Enzinger, 2021, § 35, ref.n. 109; Reich-Rohrwig, Kuhn and Rubin-Kuhn, 2021, ref.n. 1.172; Heidinger, 1989, pp. 399–400.

4.1.1.2. Dispositive Shareholder Responsibilities

4.1.1.2.1. Section 35 (2) of the GmbHG E Contrario

The other responsibilities regulated in Section 35 (1) of the GmbHG are dispositive. Those shareholder responsibilities are transferable.[57] These include demanding payments on the initial capital contributions, deciding on the admissibility of granting registered commercial power of attorney and power of attorney, and measures for auditing and monitoring the directors.

In addition to these dispositive responsibilities, which arise *e contrario* from Section 35 (1) in conjunction with (2) of the GmbHG, the advisory board can be assigned other tasks that are generally fulfilled by the shareholders. These include the right to issue instructions to the directors and to approve the transfer of shares.

4.1.1.2.2. Right to Issue Instructions to the Directors

By law, the shareholders have the right to issue instructions to the directors in accordance with Section 20 (1) of the GmbHG. This right to issue instructions enables the shareholders to take the initiative and intervene directly in the management of the company.[58] This ability to act on their own initiative distinguishes the right to issue instructions from a mere right of approval.[59] The instructions are binding and must be followed by the directors, as long as they are not illegal.[60] For an instruction to be binding, a resolution must be passed by the general meeting. It is not possible for the majority shareholder to directly instruct the director to carry out an action.[61] Only a sole shareholder can issue instructions informally.[62]

An advisory board may be granted the right to issue instructions to the directors.[63] This is because the explicit wording of Section 20 (1) of the GmbHG does not imply that

57 Heidinger, 1989, pp. 400-401; Schneiderbauer and Krebs, 2018, p. 291; Kalss, 2025, § 43 ref.n. 45.
58 Torggler, 2014, § 20, ref.n. 14; Enzinger, 2025, § 20, ref.n. 30-31; Koppensteiner and Rüffler, § 20 ref.n. 9; Rieder, 2024, § 20, ref.n. 9; Arnold and Pampel, 2018, § 20, ref.n. 25.
59 Krebs, 2022, pp. 127–128.
60 Enzinger, 2025, § 20, ref.n. 32; Koppensteiner and Rüffler, § 20, ref.n. 9; Rieder, 2024, § 20, ref.n. 12; Nowotny, 2017, ref.n. 4/179-4/180.
61 Koppensteiner and Rüffler, § 20, ref.n. 9; Rieder, 2024, § 20, ref.n.10; Enzinger, 2025, § 20, ref.n. 31; Nowotny, 2017, ref.n.. 4/179.
62 Nowotny, 2017, ref.n. 4/179; Enzinger, 2025, § 20, ref.n. 31.
63 Arnold and Pampel, 2018, § 20, ref.n.. 23, 27, 31; Koppensteiner and Rüffler, 2007, § 20, ref.n. 18, § 35, ref.n. 55; Aburumieh, Arlt and Gruber, 2024, § 35, ref.n. 16; Heidinger, 1989, p. 395; Kalss, 2025, § 43, ref.n. 45; Reich-Rohrwig, Kuhn and Rubin-Kuhn, 2021, ref.n. 1/176; Reich-Rohrwig, 1981, p. 512; Nowotny, 2017, ref.n. 4/179, 4/192; Schneiderbauer and Krebs, 2018, pp. 289–290; Krebs, 2022, pp. 129–131.

the general meeting has exclusive competence.[64] A right to issue instructions can also be transferred to a supervisory board and, therefore, to an advisory board.[65]

4.1.1.2.3. Approval of the Transfer of Shares

In addition to the regulation of the notarial deed obligation, Section 76 (2) sentence 3 of the GmbHG determines the possibility of binding the transfer of shares to other agreements set out in the articles of association. In general, the rights of approval are granted to certain shareholders or the company. This is known as *Vinkulierung*.[66] Furthermore, approval may only be required for the transfer of shares to non-family members[67] or for certain types of share transfer (e.g. only in the case of a gift).[68] If it is agreed in the articles of association, the transfer restriction has a proprietary effect, which means that a lack of approval makes the transfer invalid.[69]

According to prevailing opinion, the requirement for approval is not a mandatory responsibility of the shareholders and can be transferred to an advisory board.[70] The transfer of the approval requirement to an advisory board does not inadmissibly interfere with the rights of the shareholder willing to transfer, as the shareholder can apply for court approval to replace the approval of the advisory board in accordance with Section 77 of the GmbHG if the advisory board does not give its approval.[71] Although Section 77 of the GmbHG stipulates that approval can be granted by the court if the 'approval of the company is necessary for the transfer of the share' and this approval has been refused, this also includes the lack of approval of the advisory board.[72] The court may approve the transfer if the shareholder concerned has paid the initial capital contribution in full; there are no sufficient reasons for refusing the

64 Krebs, 2022, p. 129.

65 Arnold and Pampel, 2018, § 20, ref.n. 23, 27, 31; also Koppensteiner and Rüffler, § 20, ref.n. 18; Aburumieh, Arlt and Gruber, 2024, § 35, ref.n. 16; Reich-Rohrwig, Kuhn and Rubin-Kuhn, 2021, ref.n. 1/176; Nowotny, 2017, ref.n. 4/179, 4/192.

66 Rauter, 2024, § 76, ref.n. 54, 102; Koppensteiner and Rüffler, 2007, § 76, ref.n. 4; Huf, 2024, § 76, ref.n. 12; Nowotny, 2017, ref.n. 4/310; Fantur and Zehetner, 2000, p. 429.

67 Rauter, 2024, § 76, ref.n. 70; Kalss, 2018, p. 1294; Hartlieb, Saurer and Zollner, 2024, pp. 124–125.

68 Rauter, 2024, § 76, ref.n.. 70; Hartlieb, Saurer and Zollner, 2024, p. 126.

69 Rauter, 2024, § 76, ref.n. 75; Koppensteiner and Rüffler, 2007, § 76, ref.n. 7; Schopper, 2018, § 76, ref.n. 26; Tichy, 2000, p. 201, Fantur and Zehetner, 2000, p. 430.

70 Reich-Rohrwig, 1981, p. 513; Koppensteiner and Rüffler, 2007, § 76, ref.n. 5; Rauter, 2024, § 76, ref.n. 101; Schopper, 2018, § 76, ref.n. 25; Heidinger, 1989, p. 401; Huf, 2024, § 76, ref.n. 18; Schneiderbauer and Krebs, 2018, p. 291; Fantur and Zehetner, 2000, pp. 428–429; Krebs, 2022, p. 100.

71 For Section 77 GmbHG see Rauter, 2025, § 77, ref.n. 1-47; Zollner, 2014, § 77, ref.n. 1-17; Hoffenscher-Summer and Hinteregger, 2024, § 77, ref.n. 1-35.

72 Hoffenscher-Summer and Hinteregger, 2024, § 77, ref.n. 6; Schopper, 2018, § 77, ref.n. 3; Zollner, 2014, § 77, ref.n. 9; Koppensteiner and Rüffler, 2007, § 77, ref.n. 3.

approval; and the transfer can take place without harming the company, the other shareholders, or the creditors.[73]

The provision on the transfer of approval for the transfer of shares to the advisory board must be formulated clearly as, if the wording is unclear, the company is responsible for approval in cases of doubt. In this case, the company is understood to be the general meeting.[74]

4.1.2. Advisory Board Close to the Directors

The transfer of management powers to the advisory board can also be flexibly organised. This only concerns the internal relationship of the company. Although it is permissible to transfer management powers to the advisory board, this must not paralyse the management or totally rule out the decision-making powers of the directors.[75] The mandatory responsibilities must remain with the directors. If management tasks are transferred to the advisory board, a supervisory board (that may exist) has a duty of monitoring.[76]

Instead of the direct transfer of management tasks, an advisory board can also be assigned rights of approval that go beyond negative control and consequently involve the advisory board members making their own entrepreneurial decisions. This results in an indirect change in decision-making authority from the directors to the advisory board.[77]

The limits of the permissible transfer of tasks are responsibilities that must be fulfilled by the directors. These may not be transferred to another body, either by an agreement in the articles of association or by a shareholders' resolution. These mandatory director tasks include the opening of bankruptcy proceedings and entries in the commercial register.[78]

In addition, the company must be represented by the directors in accordance with Section 18 (1) of the GmbHG. The directors, therefore, have a monopoly on representation.[79] The directors' monopoly on representation as a corporate body determined

73 Koppensteiner and Rüffler, 2007, § 77, ref.n. 3-4; Rauter, 2025, § 77, ref.n. 12-19; Hoffenscher-Summer and Hinteregger, 2024, § 77, ref.n. 10-18.

74 Rauter, 2024, § 76, ref.n. 103; Koppensteiner and Rüffler, 2007, § 76, ref.n. 5; Nowotny, 2017, ref.n. 4/310; Tichy, 2000, p. 75; Kalss, 2018, p. 1295; Fantur and Zehetner, 2000, pp. 428–429; Ley-Grassner and Hiermayer, 2020, p. 88.

75 Kalss, 2025, § 43, ref.n. 33; Heidinger, 1989, p. 396.

76 Heidinger, 1989, pp. 395–396; see also Reich-Rohrwig, 1981, p. 512.

77 Heidinger, 1989, p. 396; Schneiderbauer and Krebs, 2018, p. 287.

78 Heidinger, 1989, pp. 396–397; Schneiderbauer and Krebs, 2018, p. 287.

79 Enzinger, 2025, § 18, ref.n. 1, 5; Rieder, 2024, § 18, ref.n. 2; Koppensteiner and Rüffler, 2007, § 18, ref.n. 5; Arnold and Pampel, 2018, § 18, ref.n. 14.

by the GmbHG may not be undermined as it is a mandatory provision.[80] The advisory board may only represent the company externally if the shareholders have elected the advisory board as a special representative to conduct legal disputes against the directors in accordance with Section 30l (2) of the GmbHG. This also applies to the representation of the company in legal transactions with directors (Section 30l (1) of the GmbHG).[81]

4.1.3. Advisory Board Close to the Supervisory Board

According to prevailing opinion,[82] an optional body can also be established as an advisory board close to the supervisory board. The tasks assigned are similar to the tasks of the supervisory board or overlap with its tasks. It is questionable which tasks similar to those of the supervisory board can specifically be transferred to an advisory board, because employee participation as defined by Section 110 of the ArbVG (*Arbeitsverfassungsgesetz* – Labour Constitution Act) must not be undermined.[83] First and foremost, it is necessary to determine whether a supervisory board exists in the GmbH. This is because employee participation rights would only be undermined if the statutory minimum rights of the supervisory board were restricted by an additional body.[84]

4.1.3.1. Advisory Board Instead of a Supervisory Board

If neither a mandatory nor an optional supervisory board exists and an advisory board is established that has the core competences of a supervisory board, all mandatory provisions of the supervisory board are applicable to this advisory board, which is similar to a supervisory board.[85] The term 'supervisory board' must, therefore, be understood in a functional way. A body, regardless of its designation, that performs

80 Rieder, 2024, § 18, ref.n. 2.
81 Heidinger, 1989, p. 397; Kastner, 1983, p. 102; Reich-Rohrwig, 1996, ref.n. 4/507; Heidinger, 2018, § 29, ref.n. 65.
82 Kalss, 2025, § 43, ref.n. 36-43; Frotz, 2022, att. §§29-33, ref.n. 10-13; Heidinger, 2018, § 29, ref.n. 55, 59-64; Reich-Rohrwig, 1981, pp. 510-512; Schneiderbauer and Krebs, 2018, pp. 287-289; Heidinger, 1989, pp. 380-394; other opinion Kastner, 1983, pp. 99–101.
83 Frotz, 2022, att. §§29-33, ref.n. 10-13; Reich-Rohrwig, 1981, pp. 510-512; Kalss, 2025, § 43, ref.n. 36-38; Heidinger, 1989, pp. 383–394.
84 Heidinger, 1989, p. 386; Reich-Rohrwig, 1981, pp. 510–512; Schneiderbauer and Krebs, 2018, pp. 287–288; other opinion Kastner, 1983, p. 100.
85 OGH 27.09.2006, 9 ObA 130/05s; Reich-Rohrwig, 1981, pp. 511–512; Kalss, 2025, § 39, ref.n. 36; Nowotny, 2008, p. 700; Kalss and Probst, 2025, ref.n. 14/164.

the core tasks of the supervisory board is subject to the provisions applicable to a supervisory board.[86] Applying the regulations for the supervisory board to an advisory board similar to a supervisory board ensures that employee participation rights in accordance with Section 110 of the ArbVG are safeguarded and cannot be undermined. Otherwise, a potential would arise for deception of third parties, as a body is entrusted with the fulfilment of supervisory board responsibilities that does not have to comply with the mandatory statutory provisions.[87]

The statutory minimum competences of a supervisory board include monitoring the management, convocation of the general meeting for the benefit of the company, examination of the annual financial statements, the proposal for the distribution of profits and reporting to the next general meeting, reporting to the general meeting on self-dealing by the directors, and the rights of approval according to Section 30j (5) of the GmbHG.[88] If the statutory minimum competences of the supervisory board are transferred to an advisory board, the advisory board is to be qualified as a supervisory board and the mandatory provisions for the supervisory board are also applicable to the advisory board.[89] If only specific tasks of the supervisory board are transferred to the advisory board, this does not change its legal qualification.[90] Whether the rights and duties of the advisory board are congruent with the minimum competences of the supervisory board to such an extent that the advisory board is qualified as a supervisory board must always be examined on a case-by-case basis.[91]

4.1.3.2. Advisory Board Alongside a Supervisory Board

According to prevailing opinion, there is no risk of undermining the employee participation provisions if the GmbH has a supervisory board and if the articles of association or a shareholders' resolution do not transfer its minimum powers to the advisory board.[92] The minimum competences of the supervisory board may not be impaired by displacing the allocation of competences to the advisory board.[93] A reduction of responsibilities is not to be assumed if the responsibilities are

86 Heidinger, 1989, pp. 380–381; Kalss, 2025, § 43, ref.n. 36.
87 Heidinger, 1989, p. 384; other opinion Koppensteiner and Rüffler, 2007, § 35, ref.n. 54; Auer, 2024, pp. 280–281.
88 Heidinger, 1989, pp. 383–384; Reich-Rohrwig, 1981, p. 512; Schneiderbauer and Krebs, 2018, p. 289; Kalss, 2025, § 43, ref.n. 36, 38; Frotz, 2022, att. §§29-33, ref.n. 11-12.
89 Kalss, 2025, § 43, ref.n. 36, 38; Frotz, 2022, att. §§29-33, ref.n. 11; Reich-Rohrwig, 1981, p. 511.
90 Reich-Rohrwig, 1981, p. 512; Kalss, 2025, § 43, ref.n. 37; Frotz, 2022, att. §§29-33, ref.n. 12.
91 Frotz, 2022, att. §§29-33, ref.n. 12.
92 Heidinger, 1989, p. 386; Reich-Rohrwig, 1981, pp. 510–512; Koppensteiner and Rüffler, 2007, § 30j, ref.n. 28; Heidinger, 2018, § 29, ref.n. 63.
93 Koppensteiner and Rüffler, 2007, § 30j, ref.n. 28; Heidinger, 2018, § 29, ref.n. 63.

concurrent.[94] If both an advisory board and a supervisory board have the right of approval, the employee representatives are involved in the supervisory board's decision.[95]

In the case of concurrent competence connected with rights of approval in accordance with Section 30j (5) of the GmbHG, the approval of the supervisory board is also required in addition to the approval of the advisory board; if the advisory board approves but the supervisory board votes against, the transaction may not be carried out. An undermining of employee participation rights is, therefore, excluded.[96]

4.2. The Advisory Board in the Partnership

An advisory board can also be established in partnerships.[97] The permissibility of an advisory board as a corporate body is based on private autonomy and the freedom to organise the articles of association.[98]

In a partnership, as in a GmbH, a rough differentiation can be made – depending on the tasks assigned – between an advisory board close to the shareholders, an advisory board close to the directors, and an advisory board close to the supervisory board.

4.2.1. Advisory Board Close to the Shareholders

In a general partnership (*Offene Gesellschaft* – OG) or limited partnership (*Kommanditgesellschaft* – KG), an advisory board can be established in the same way as in corporations to fulfil the tasks of the shareholders. However, even in a partnership, certain decisions must be made exclusively by the shareholders. These limits initially correspond to those of the GmbH.[99] These include, in particular, the dissolution of the partnership[100] and the amendment to the articles of association.[101] For example, the decision to increase the liability of a limited partner (*Erhöhung der Haftsumme*

94 Koppensteiner and Rüffler, 2007, § 30j, ref.n. 28; Heidinger, 1989, pp. 390–392; Schneiderbauer and Krebs, 2018, p. 288.
95 Schneiderbauer and Krebs, 2018, p. 288.
96 Koppensteiner and Rüffler, 2007, § 30j, ref.n. 28; Heidinger, 1989, p. 392; Schneiderbauer and Krebs, 2018, p. 288.
97 Enzinger, 2022, § 114, ref.n. 30; Schopper and Walch, 2016, § 114, ref.n. 240; Kalss, 2025, § 43, ref.n.. 55; Nowotny, 2008, p. 700; Kastner, 1983, p. 104.
98 Kalss, 2025, § 43, ref.n. 55; Nowotny, 2008, p. 700; Reichert and Ullrich, 2024, § 19, ref.n. 57.
99 Buth and Hermanns, 1996, p. 598.
100 Buth and Hermanns, 1996, p. 598; Kalss, 2025, § 43, ref.n. 60.
101 Scheel, 2023, p. 76; Kalss, 2025, § 43, ref.n. 60.

eines Kommanditisten) may only be made by the shareholders of a limited partnership (KG).[102] In partnerships, the principle of self-organisation(*Prinzip der Selbstorganschaft*) must also be observed, as only the shareholders themselves may take management measures and influence the managing partners through instructions.[103]

4.2.1.1. Amendment to the Articles of Association

Amending the articles of association in a partnership is the exclusive responsibility of the shareholder.[104] According to the dispositive provision of Section 119 (1) of the UGB (*Unternehmensgesetzbuch* – Business Code), any shareholder resolution requires the consent of all shareholders authorised to participate in the resolution. An amendment to the articles of association can, therefore, only be made unanimously if there is no deviating provision in the articles of association.[105] According to Section 119 (2) of the UGB, the requirement of unanimity can be deviated from in the articles of association, and majority resolutions can be declared sufficient.[106] The possibility of introducing majority resolutions considers the (possibly existing) interest of the shareholders in adopting resolutions in a simplified manner.[107] The principle of sovereignty of the association (*Verbandssouveränität*), which is also acknowledged in partnership law, prohibits transferring the amendment to the articles of association to an advisory board.[108] This is because the amendment to the articles of association interferes with the structure of the company, which requires a shareholder resolution in which all shareholders can participate.[109] The sole responsibility of the shareholders to amend the articles of association must also be observed in partnership law as a mandatory restriction of private autonomy.[110]

102 Scheel, 2023, p. 76.
103 Schopper and Walch, 2016, § 114, ref.n. 240; Kalss, 2025, § 43, ref.n. 57, 61; Fritz, 2005, p. 166; Nowotny, 2008, p. 700.
104 Kalss, 2025, § 43, ref.n. 60; Kraus, 2019, § 119, ref.n. 10; Appl, 2023, § 119, ref.n. 14; Sanders, 2017, p. 967; Scheel, 2023, p. 76.
105 Kraus, 2019, § 119, ref.n.12; Appl, 2023, § 119, ref.n. 14, 30; Haglmüller, 2019, § 119, ref.n. 7, 12.
106 Kraus, 2019, § 119, ref.n. 13; Appl, 2023, § 119, ref.n. 33; Haglmüller, 2019, § 119, ref.n. 13; Thöni, 2016, § 119, ref.n. 6.
107 Appl, 2023, § 119, ref.n. 40; Haglmüller, 2019, § 119, ref.n. 13.
108 Weipert and Oepen, 2012, p. 603.
109 See Voormann, 1990, p. 89, who affirms this at least in the case of interventions in the core area of the shareholders' legal position.
110 Schäfer, 2019, § 109, ref.n. 30-31; Schauer, 2018, § 108, ref.n. 16.

4.2.1.2. Transfer of Shares

According to Section 124 (1) of the UGB – for the KG according to Section 161 (2) in conjunction with Section 124 (1) of the UGB – the shares (in the KG this also applies to limited partners (*Kommanditisten*))[111] are only transferable if all shareholders agree to the transfer of shares.[112] This provision is a dispositive legal restriction on transferability.[113] The articles of association may stipulate that a majority resolution is sufficient or that the approval of the shareholders is only required for certain transfers (e.g. transfers outside the family).[114]

It is questionable whether a right of approval for the transfer of shares can be transferred to an advisory board. It is sometimes assumed that a right of approval can be transferred to an advisory board, regardless of its composition.[115] The sovereignty of association (*Verbandssouveränität*) is not violated if the articles of association agree that the advisory board decision can be cancelled by a unanimous shareholder resolution, and thus the shareholder resolution 'overrules' the advisory board resolution.[116] In contrast, some authors assume that the composition of the group of shareholders is an exclusive concern of the shareholders and that this is an irrevocable shareholder right.[117] In a partnership, particular caution is required when transferring shares, as this decision carries considerable weight because of the personal liability of the shareholders.[118] However, an advisory board can, in my opinion, be assigned a right of approval irrespective of its composition, as the requirement of shareholder approval can also be completely waived in accordance with Section 124 (1) of the UGB by a regulation in the articles of association. In this case, the shareholders could, therefore, freely dispose of their shares. The implementation of a right of approval in favour of the advisory board protects the other shareholders more than a complete waiver of approval. Furthermore, the shareholder willing to transfer is not more restricted in free transferability than under the dispositive transfer restriction of Section 124 (1) of the UGB. In any case, the shareholder willing to transfer retains the possibility of cancellation in accordance with Section 132 of the UGB.

111 OGH 19.01.2016, 2 Ob 41/15s; Koppensteiner and Auer, 2020, § 124, ref.n. 3.
112 Koppensteiner and Auer, 2020, § 124, ref.n. 3; Eckert, 2019, § 124, ref.n. 3; Artmann, 2019, § 124, ref.n. 6; Zib, 2016, § 124, ref.n. 6.
113 Zib, 2016, § 124, ref.n. 6, 18; Koppensteiner and Auer, 2020, § 124, ref.n. 3.
114 Schauer, 2017, ref.n. 2/766; Eckert, 2019, § 124, ref.n. 3; Zib, 2016, § 124, ref.n. 19; Artmann, 2019, § 124, ref.n. 6.
115 Reichert and Ullrich, 2024, § 19, ref.n. 90.
116 See also Reichert and Ullrich, 2024, § 19, ref.n. 90.
117 Weipert and Oepen, 2012, p. 594; Voormann, 1990, p. 92.
118 Artmann, 2019, § 124, ref.n. 6; Weipert and Oepen, 2012, pp. 594–595.

4.2.1.3. Right to Issue Instructions

Because of the principle of self-organisation (*Prinzip der Selbstorganschaft*), only shareholders may issue instructions to the directors (who have to be shareholders) and thus influence the management of the company.[119] A right to issue instructions exercised by third parties would undermine the principle of self-organisation, as in this case, the right to make decisions would be transferred to non-shareholders. A right to issue instructions may, therefore, only be transferred to (and exercised by) an advisory board if it is composed exclusively of shareholders.[120] An instruction issued to a director by an advisory board composed of third parties must, therefore, be disregarded by the director, as being invalid.[121]

4.2.2. Advisory Board Close to the Directors

In a partnership, the principle of self-organisation (*Prinzip der Selbstorganschaft*) applies, which means that management authorisation may only be fulfilled by shareholders.[122] Decisions on management measures may, therefore, only be taken by shareholders who are entrusted with management and may not be transferred to non-shareholders.[123] Advisory boards that merely advise the shareholders do not affect the principle of self-organisation, as the management function remains the responsibility of the managing partners. This form of advisory board is, therefore, permissible, regardless of whether the advisory board is composed exclusively of shareholders or partially or even exclusively of external experts.[124]

Management authorisation may only be transferred to an advisory board close to the directors if it is composed exclusively of shareholders.[125] If management authorisation is transferred to an advisory board composed solely of shareholders, the principle of self- organisation is maintained. However, Section 114 (4) sentence 2 of the UGB permits the delegation of the exercise of management to third parties on the

119 Schopper and Walch, 2016, § 114, ref.n. 244; Weipert and Oepen, 2012, p. 592.
120 Kastner, 1983, p. 104; Schopper and Walch, 2016, § 114, ref.n. 244; other opinion Grunewald, 2011, pp. 284-285 (each advisory board, regardless of its composition, can be assigned a right to issue instructions if the general partner (Komplementär) is a legal entity); Weipert and Oepen, 2012, p. 592 (regardless of the composition of the advisory board, the transfer of a right to issue instructions is not permitted).
121 Schopper and Walch, 2016, § 114, ref.n. 244.
122 Schopper and Walch, 2016, § 114, ref.n. 242; Haglmüller, 2019, § 114, ref.n. 41; Enzinger, 2022, § 114, ref.n. 27.
123 For details see Enzinger, 2022, § 114, ref.n. 23–29; Schopper and Walch, 2016, § 114, ref.n. 159-211.
124 Schopper and Walch, 2016, § 114, ref.n. 241; Haglmüller, 2019, § 114, ref.n. 43; Kastner, 1983, p. 104.
125 Schopper and Walch, 2016, § 114, ref.n. 242; Enzinger, 2022, § 114 ref.n. 31; Kastner, 1983, p. 104.

basis of a provision in the articles of association.[126] The position as a (corporate) director is not transferred to the third parties because of the principle of self-organisation. Therefore, in the case of delegation of the exercise of management to an advisory board, the principle of self-organisation is maintained, as the shareholders retain ultimate decision-making power and can generally instruct and remove the advisory board at any time.[127]

4.2.3. Advisory Board Close to the Supervisory Board

Partnerships are not required by law to have their own supervisory bodies, but for reasons of private autonomy and the freedom to organise the articles of association, an optional supervisory body can also be established in a partnership.[128]

A distinction regarding the existence or non-existence of a supervisory board, as in the case of a GmbH, is therefore, not necessary.

The tasks can be similar to those of a supervisory board in a GmbH; in particular, monitoring functions and rights of approval can be transferred to such an advisory board in the partnership.[129] The articles of association must specify the measures for which a right of approval exists. The catalogue of approvals in Section 30j (5) of the GmbHG can be used here, which means that a more extensive right of approval exists than under the dispositive provisions of Section 116 (2) or Section 164 of the UGB, which grant the non-managing partners or limited partners (*Kommanditisten*) a right of approval for extraordinary transactions.[130]

An advisory board with rights of approval and monitoring tasks can be established in a partnership, regardless of whether the advisory board is composed of shareholders or non-shareholders.[131] However, managing partners may not themselves be members of a monitoring advisory board, as self-monitoring is not permitted.[132] In this case, the principle of self- organisation (*Prinzip der Selbstorganschaft*) is not impaired by the establishment of an advisory board composed of non-shareholders. A mere right to approve certain management measures does not undermine the managing partners' right of initiative and responsibility for the management of the

126 Schopper and Walch, 2016, § 114, ref.n. 183; Schauer, 2017, ref.n. 2/482.
127 Haglmüller, 2019, § 114, ref.n. 42; Schauer, 2017, ref.n. 2/482.
128 Kastner, 1983, p. 104.
129 Kalss, 2025, § 43, ref.n. 63; Enzinger, 2022, § 114, ref.n. 30; Reichert and Ullrich, 2024, § 19, ref.n. 72-73; Mutter, 2024, § 8, ref.n. 20; Scheel, 2023, pp. 181–182.
130 Kalss, 2025, § 43, ref.n. 63; see also Mutter, 2024, § 8, ref.n. 20.
131 Schopper and Walch, 2016, § 114, ref.n. 241; Enzinger, 2022, § 114, ref.n. 31; Haglmüller, 2019, § 114, ref.n. 43; Scheel, 2023, pp. 181-182; Mutter, 2024, § 8, ref.n. 19; see also Kastner, 1983, p. 104.
132 Mutter, 2024, § 8, ref.n. 19.

company.[133] A right of approval serves as an instrument of preventive supervision, which does not violate the principle of self- organisation.[134] The right of approval is not a decision-making power.

A reservation of approval would only be inadmissible if it constituted a comprehensive right of approval. This would be the case if almost every management measure required the approval of the advisory board. This would transfer the management function from the managing partners to the advisory board.[135] As rights of approval are already unproblematic in principle, which leads to preventative monitoring, general monitoring must also be permissible.[136]

5.
Special Tasks in the Family Business

5.1. The Advisory Board in Company Succession

In many cases, the shareholders first think about establishing an advisory board when planning the succession.[137] The passing generation should decide in good time who is responsible for the succession process and how it should be organised. The generational change is sometimes referred to as the 'Achilles heel' of the family business.[138] The advisory board can be entrusted with the often emotionally difficult decision of who, among several potential successors, is best suited to ensure the continuation of the company, based on their qualifications, knowledge, and experience.[139] However, there is no direct decision-making authority or right to issue instructions to the current shareholders as to who should take over the operational activities as a director, and this decision cannot be transferred to an advisory board.[140] The advisory board may, however, have a non-binding right to suggest who is best suited as a director from the perspective of the advisory board.

133 Scheel, 2023, p. 181.
134 Scheel, 2023, p. 181.
135 Scheel, 2023, p. 181.
136 Regarding the admissibility of monitoring, see Schopper and Walch, 2016, § 114, ref.n. 241; Scheel, 2023, p. 182; Mutter, 2024, § 8, ref.n. 19-22; Kastner, 1983, p. 104; Enzinger, 2022, § 114, ref.n. 31; Haglmüller, 2019, § 114, ref.n. 43; Kalss and Probst, 2025, ref.n. 14/170.
137 Sanders, 2017, p. 966; Mehringer and von Thunen, 2021, pp. 116-117; Wiedemann and Kögel, 2020, pp. 33–34.
138 Wiedemann and Kögel, 2020, p. 100.
139 Wiedemann and Kögel, 2020, pp. 33-34; Sanders, 2017, p. 966; see also Kalss, 2025, § 43, ref.n.5.
140 OGH 21.03.2019, 6 Ob 183/18g.

5.2. The Advisory Board as a Mediator and Moderator

As a rule, the 'senior director' and the 'junior director' work together during the transition phase in the company succession process. This overlap in management is intended to ensure a smooth change of directors.[141] This phase of joint management is characterised by an increased potential for conflicts between senior and junior directors because of their different approaches. A conflict between the predecessor and successor can be exacerbated by a close family relationship.[142] An advisory board composed exclusively or predominantly of experts from outside the family can act as an independent mediator between the parties and quickly put an end to any conflict that arises.[143]

The increasing number of shareholders, which is the result of succession processes, can lead to conflicts at the shareholder level. The interests of the shareholders can differ entirely, depending on whether they have an operational role in the family business.[144] The advisory board, which is composed exclusively of non-family members, is ideally suited as a conflict resolution instrument in the form of a mediation office (*Mediationsstelle*) to resolve the conflicts between the shareholders and prevent a stalemate at the shareholder level.[145]

In its capacity as a moderator or mediator, the advisory board has no decision-making powers. The advisory board draws up proposals for dispute resolution and mediates between the family members. However, the advisory board does not make any decisions.[146]

6.
Conclusion

Austrian company law provides neither a legal definition of an advisory board nor an explicit legal basis for its establishment. The admissibility of an advisory board results from private autonomy. Furthermore, 'other bodies' are mentioned in addition to the director, the general meeting, and the supervisory board in Section 20 (2) of the GmbHG.

141 Scheel, 2023, p. 61.
142 Scheel, 2023, p. 61.
143 Scheel, 2023, p. 61; Reich and Bode, 2017, p. 1800.
144 Sanders, 2017, p. 967.
145 Kalss, 2025, § 43, ref.n. 5; Kalss and Probst, 2025, ref.n. 14/152; Mehringer and von Thunen, 2021, p. 117, 122–123; Wiedemann and Kögel, 2020, p. 34; Scheel, 2023, p. 55.
146 Scheel, 2023, p. 55.

An advisory board can be established under the law of obligations, but also as an optional body. Only an advisory board that is established as a corporate body can assume corporate body functions. The functions assumed by an advisory board depend on the specific provisions in the articles of association. Important decisions, such as amendments to the articles of association or appointments of directors, may only be made by the shareholders themselves because of the principle of autonomy of association. In the case of partnerships, the principle of self-organisation (*Prinzip der Selbstorganschaft*) must also be observed. In any case, preparatory actions and advisory activities are permitted even if the respective bodies fulfil mandatory responsibilities.

In family businesses, the succession process must be well planned. An advisory board should also be involved in this process to advise on the selection of the most suitable successor. However, the advisory board must not be assigned a binding right of nomination or the authority to appoint. An advisory board in a family business is also often entrusted with the task of acting as a mediator in shareholder disputes. This function is highly relevant, as disputes regarding the company can escalate in family businesses thanks to equally emotional conflicts within the family. In its capacity as a mediator, the advisory board does not make any decisions itself, but only mediates between the parties to a dispute.

Bibliography

- Aburumieh, N., Arlt, M. and Gruber, E. (2024) '§ 35' in Foglar-Deinhardstein, H., Aburumieh, N. and Hoffenscher-Summer, A. (eds.) *GmbHG – Gesetz über Gesellschaften mit beschränkter Haftung*, 2nd edn. Wien: Verlag Österreich.
- Appl, C. (2023) '§ 119' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum Unternehmensgesetzbuch*. Wien: MANZ Verlag Wien.
- Arnold, N. and Pampel, F. (2018) '§ 15' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag.
- Arnold, N. and Pampel, F. (2018) '§ 18' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag.
- Arnold, N. and Pampel, F. (2018) '§ 20' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag.
- Artmann, E. (2019) '§ 124' in Artmann, E. (ed.) *Unternehmensgesetzbuch: Kommentar – Band 1*, 3rd edn. Wien: Verlag Österreich.
- Artmann, E. and Rüffler, F. (2024) *Gesellschaftsrecht*, 3rd edn. Wien: MANZ Verlag Wien.
- Auer, M. (2024) 'Beirat – Aufgaben und Grenzen' in Fleischer, H., Kalss, S. and Vogt, H. (eds.) *Aufsichtsrat – Verwaltungsrat – Beirat*, 1st edn. Tübingen: Mohr Siebeck, pp. 275–286.
- Baumgartner, A., Mollnhuber, T. and Torggler, U. (2014) '§ 35' in Torggler, U. (ed.) *GmbH-Gesetz Kommentar*, 1st edn. Wien: MANZ Verlag Wien.
- Bayer, W. (2011) 'Die Haftung des Beirats im Recht der GmbH und der GmbH & Co. KG' in Burgard, U., Hadding, W., Mülbert, P., Nietsch, M. and Welter, R. (eds.) *Festschrift für Uwe H. Schneider*, 1st edn. Köln: Verlag Dr. Otto Schmidt, pp. 75–87.
- Bayer, W. and Hommelhoff, P. (2023) '§ 52' in Lutter, M. and Hommelhoff, P. (eds.) *GmbH-Gesetz Kommentar*, 21st edn. Köln: Verlag Dr. Otto Schmidt.
- Buth, A. and Hermanns, M. (1996) 'Unternehmenspolitische Erwägungen zum Beirat in der GmbH und der KG' *DStR Deutsches Steuerrecht*, 1996(15), pp. 597–602.
- Eckert, G. (2019) '§ 124' in Torggler, U. (ed.) *Unternehmensgesetzbuch Kommentar*, 3rd edn. Wien : Linde Verlag.
- Enzinger, M. (2020) 'Zur Zuständigkeit des Aufsichtsrats für Vorstandsangelegenheiten einer mitbestimmten GmbH' in Brameshuber, E., Friedrich, M. and Karl, B. (eds.) *Festschrift für Franz Marhold*, 1st edn. Wien: MANZ Verlag Wien, pp. 869–881.
- Enzinger, M. (2021) '§ 35' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum GmbH-Gesetz*. Wien: MANZ Verlag Wien.
- Enzinger, M. (2022) '§ 114' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum Unternehmensgesetzbuch*. Wien: MANZ Verlag Wien.
- Enzinger, M. (2025) '§ 18' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum GmbH-Gesetz*. Wien: MANZ Verlag Wien.

- Enzinger, M. (2025) '§ 20' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum GmbH-Gesetz*. Wien: MANZ Verlag Wien.
- Fantur, L. and Zehetner, J. (2000) 'Vinkulierte Geschäftsanteile (Teil I)' *ecolex*, 2000(6), pp. 428–434.
- Fritz, C. (2005) 'Der Beirat in der österreichischen Gesellschaftspraxis' *SWK Steuer- und WirtschaftsKartei*, 2005(28), pp. 164–168.
- Frotz, S. (2022) 'Anhang zu §§ 29–33: Beirat' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum GmbH-Gesetz*. Wien: MANZ Verlag Wien.
- Grunewald, B. (2011) 'Grenzen der Gestaltungsfreiheit bei der Einrichtung von Beiräten und der Schaffung von Vertreterklauseln im Recht der Kommanditgesellschaft' *ZEV – Zeitschrift für Erbrecht und Vermögensnachfolge*, 2011(6), pp. 283–287.
- Haglmüller, T. (2019) '§ 114' in Artmann, E. (ed.) *Unternehmensgesetzbuch: Kommentar – Band 1*, 3rd edn. Wien: Verlag Österreich.
- Haglmüller, T. (2019) '§ 119' in Artmann, E. (ed.) *Unternehmensgesetzbuch: Kommentar – Band 1*, 3rd edn. Wien: Verlag Österreich.
- Harrer, F. (2018) '§ 35' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag. https://doi.org/10.33196/ges202403012101
- Harrer, F. (2024) 'Die Kompetenz zur Bestellung der Geschäftsführer bei der GmbH', *GES – Zeitschrift für Gesellschaftsrecht und angrenzendes Steuerrecht*, 2024(3), pp. 121–128.
- Hartlieb, F., Saurer, U. and Zollner, J. (2024) *Anteilsübertragung bei der GmbH*, 1st edn. Wien: MANZ Verlag Wien.
- Heidinger, M. (1989) *Aufgaben und Verantwortlichkeit von Aufsichtsrat und Beirat der GmbH*, 1st edn. Wien: Ueberreuter – Wirtschaft.
- Heidinger, A. (2018) '§ 29' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag.
- Hoffenscher-Summer, A. and Hinteregger, M. (2024) '§ 77' in Foglar-Deinhardstein, H., Aburumieh, N. and Hoffenscher-Summer, A. (eds.) *GmbHG – Gesetz über Gesellschaften mit beschränkter Haftung*, 2nd edn. Wien: Verlag Österreich.
- Hölters, W. (1979) *Der Beirat der GmbH und GmbH & Co. KG*, 1st edn. Köln: Centrale für GmbH Dr. Otto Schmidt.
- Huf, T. (2024) '§ 76' in Foglar-Deinhardstein, H., Aburumieh, N. and Hoffenscher-Summer, A. (eds.) *GmbHG – Gesetz über Gesellschaften mit beschränkter Haftung*, 2nd edn. Wien: Verlag Österreich.
- Hüffer, U. and Schäfer, C. (2020) '§ 45' in Habersack, M., Casper, M. and Löbbe, M. (eds.) *GmbHG – Gesetz betreffend die Gesellschaften mit beschränkter Haftung: Großkommentar Band 2*, 3rd edn. Tübingen: Mohr Siebeck.
- Kalss, S. (2018) 'Nachfolge im Kapitalgesellschaftsrecht' in Gruber, M., Kalss, S., Müller, K. and Schauer, M. (eds.) *Erbrecht und Vermögensnachfolge*, 2nd edn. Wien: Verlag Österreich, pp. 1264–1311.

- Kalss, S. (2021) '§ 1 GesAusG' in Kalss, S. (ed.) *Verschmelzung Spaltung Umwandlung*, 3rd edn. Wien: MANZ Verlag Wien.
- Kalss, S. (2021) '§ 4 GesAusG' in Kalss, S. (ed.) *Verschmelzung Spaltung Umwandlung*, 3rd edn. Wien: MANZ Verlag Wien.
- Kalss, S. (2025) 'Der Beirat' in Kalss, S. and Kunz, P. (eds.) *Handbuch für den Aufsichtsrat*, 3rd edn. Wien: Facultas Verlag.
- Kalss, S. and Eckert, G. (2004) *Zentrale Fragen des GmbH-Rechts*, 1st edn. Berlin: Linde Verlag.
- Kalss, S. and Probst, S. (2025) *Handbuch Familienunternehmen*, 2nd edn. Wien: MANZ Verlag Wien.
- Kastner, W. (1983) 'Beiräte im österreichischen Gesellschaftsrecht', *RdW Österreichisches Recht der Wirtschaft*, 1983(4), pp. 98–104.
- Koeberle-Schmid, A., Groß, J. and Lehmann-Tolkmitt, R. (2011) 'Der Beirat als Garant guter Governance im Familienunternehmen', *BB Betriebs-Berater*, 2011(15), pp. 899–906.
- Koppensteiner, H. and Auer, M. (2020) '§ 124' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum Unternehmensgesetzbuch*. Wien: MANZ Verlag Wien.
- Koppensteiner, H. and Rüffler, F. (2007) *GmbH-Gesetz Kommentar*, 3rd edn. Wien: LexisNexis ARD ORAC.
- Kormann, H. (2008) *Beiräte in der Verantwortung*, 1st edn. Berlin: Springer Verlag. https://doi.org/10.1007/978-3-540-85150-9
- Kraus, S. (2019) '§ 119' in Torggler, U. (ed.) *Unternehmensgesetzbuch Kommentar*, 3rd edn. Berlin: Linde Verlag.
- Krebs, V. (2022) *Der Beirat im Gesellschaftsrecht*. Dissertation Graz.
- Lange, K. (2006) 'Der Beirat als Element der Corporate Governance in Familienunternehmen', *GmbHR Zeitschrift für Gesellschaftsrecht, Unternehmensrecht und Steuerrecht*, 2006(17), pp. 897–904.
- Ley-Grassner, S. and Hiermayer, D. (2020) 'III. Übertragungsbeschränkung: Vinkulierung' in Frenzel, M. (ed.) *Handbuch Gesellschafterwechsel bei der GmbH*, 1st edn. Berlin: Linde Verlag, pp. 83–93.
- Mehringer, C. and von Thunen, S. (2021) 'Flexible Beiratsgestaltung in Familienunternehmen', *DStR Deutsches Steuerrecht*, 2021(2), pp. 116–123.
- Mutter, S. (2024) 'Fakultativer Beirat der Kommanditgesellschaft' in *Münchener Handbuch des Gesellschaftsrechts, Band 2: Kommanditgesellschaft, GmbH & Co. KG, Publikums-KG, Stille Gesellschaft*, 6th edn. München: C.H. Beck.
- Nowotny, C. (2008) 'Beirat – Aufsichtsrat – Ausschuss', *RdW Österreichisches Recht der Wirtschaft*, 2008(11), pp. 699–705.
- Nowotny, C. (2017) 'GmbH' in Kalss, S., Nowotny, C. and Schauer, M. (eds.) *Österreichisches Gesellschaftsrecht*, 2nd edn. Wien: MANZ Verlag Wien.

- Priester, H. (2014) 'Konfliktmanagement durch Beiräte in der Familien GmbH' in Dauner-Lieb, B., Freudenberg, G. and Werner, G. (eds.) *Familienunternehmen im Fokus von Wirtschaft und Wissenschaft – Festschrift für Mark K. Binz*, 1st edn. München: Verlag C.H. Beck, pp. 523–535.
- Ratka, T., Stöger, K., Straube, M. and Völkl, C. (2020) '§ 15' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum GmbH-Gesetz*. Wien: MANZ Verlag Wien.
- Rauter, R. (2024) '§ 76' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum GmbH-Gesetz*. Wien: MANZ Verlag Wien.
- Rauter, R. (2025) '§ 77' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum GmbH-Gesetz*. Wien: MANZ Verlag Wien.
- Reich, M. and Bode, C. (2017) 'Family Business Governance – Beirat als Erfolgsfaktor im Familienunternehmen', *ZIP – Zeitschrift für Wirtschaftsrecht*, 2017(38), pp. 1798–1802.
- Reichert, J. and Ullrich, K. (2024) 'Aufsichtsrat, Beirat' in Reichert, J. (ed.) *GmbH & Co. KG*, 9th edn. München: C.H. Beck.
- Reich-Rohrwig, J. (1981) 'Der Beirat in der GmbH', *ÖJZ Österreichische Jurist:innenzeitung*, 1981(19), pp. 509–515.
- Reich-Rohrwig, J. (1996) *GmbH-Recht I*, 2nd edn. Wien: MANZ Verlag Wien.
- Reich-Rohrwig, J., Kuhn, J. and Rubin-Kuhn, A. (2021) 'Die Generalversammlung als oberstes Organ der GmbH' in Reich-Rohrwig, J., Ginthör, O. and Gratzl, M. (eds.) *Handbuch Generalversammlung der GmbH*, 2nd edn. Wien: MANZ Verlag Wien.
- Rieder, B. (2024) '§ 18' in Foglar-Deinhardstein, H., Aburumieh, N. and Hoffenscher-Summer, A. (eds.) *GmbHG – Gesetz über Gesellschaften mit beschränkter Haftung*, 2nd edn. Wien: Verlag Österreich.
- Rieder, B. (2024) '§ 20' in Foglar-Deinhardstein, H., Aburumieh, N. and Hoffenscher-Summer, A. (eds.) *GmbHG – Gesetz über Gesellschaften mit beschränkter Haftung*, 2nd edn. Wien: Verlag Österreich.
- Rüffler, F. (2021) 'Sonderrechte hinsichtlich der Bestellung von Geschäftsführern', *GES – Zeitschrift für Gesellschaftsrecht und angrenzendes Steuerrecht*, 2021(5), pp. 227–234. https://doi.org/10.33196/ges202105022701
- Sanders, A. (2017) 'Der Beirat als Instrument der Family Business Governance in der Entwicklung des Familienunternehmens', *NZG Neue Zeitschrift für Gesellschaftsrecht,* 2017(25), pp. 961–968.
- Schäfer, C. (2019) '§ 109' in Habersack, M. and Schäfer, C. (eds.) *Das Recht der OHG*, 2nd edn. Berlin: De Gruyter. https://doi.org/10.1515/9783110624076-202.
- Schauer, M. (2017) 'Offene Gesellschaft' in Kalss, S., Nowotny, C. and Schauer, M. (eds.) *Österreichisches Gesellschaftsrecht*, 2nd edn. Wien: MANZ Verlag Wien.
- Schauer, M. (2018) '§ 108' in Straube, M., Ratka, T. and Rauter, R. (eds.) *Wiener Kommentar zum Unternehmensgesetzbuch*. Wien: MANZ Verlag Wien.

- Scheel, R. (2023) *Der Beirat in mittelständischen Unternehmen*, 1st edn. Baden-Baden: Nomos Verlag.
- Schmidsberger, G. and Duursma, D. (2018) '§ 4' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag.
- Schneiderbauer, B. and Krebs, V. (2018) 'Die Reichweite der Delegierbarkeit von Gesellschafterkompetenzen an einen Beirat' *GesRZ Der Gesellschafter – Zeitschrift für Gesellschafts- und Unternehmensrecht*, 2018(5), pp. 285–291.
- Schopper, A. (2018) '§ 76' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag.
- Schopper, A. (2018) '§ 77' in Gruber, M. and Harrer, F. (eds.) *GmbHG Kommentar*, 2nd edn. Wien: Linde Verlag.
- Schopper, A. and Walch, M. (2016) '§ 114' in Zib, C. and Dellinger, M. (eds.) *UGB Unternehmensgesetzbuch Kommentar – Band II*, 1st edn. Wien: LexisNexis ARD ORAC.
- Tichy, M. (2000) *Syndikatsverträge*, 1st edn. Wien: MANZ Verlag Wien.
- Thöni, W. (2016) '§ 119' in Zib, C. and Dellinger, M. (eds.) *UGB Unternehmensgesetzbuch Kommentar – Band II*, 1st edn. Wien: LexisNexis ARD ORAC.
- Torggler, U. (2014) '§ 20' in Torggler, U. (ed.) *GmbH-Gesetz Kommentar*, 1st edn. Wien: MANZ Verlag Wien.
- Voormann, V. (1990) *Der Beirat im Gesellschaftsrecht*, 2nd edn. Köln, Berlin, Bonn, München: Carl Heymanns Verlag.
- Weipert, L. and Oepen, K. (2012) 'Der Beirat in Organersatzfunktion bei der Kommanditgesellschaft', *ZGR Zeitschrift für Unternehmens- und Gesellschaftsrecht*, 2012(4), pp. 585–605. https://doi.org/10.1515/zgre-2012-0585
- Wiedemann, A. and Kögel, R. (2020) *Beirat und Aufsichtsrat im Familienunternehmen*, 2nd edn. München: Verlag C.H. Beck.
- Zib, C. (2014) '§ 15' in Torggler, U. (ed.) *GmbH-Gesetz Kommentar*, 1st edn. Wien: MANZ Verlag Wien.
- Zib, C. (2016) '§ 124' in Zib, C. and Dellinger, M. (eds.) *UGB Unternehmensgesetzbuch Kommentar – Band II*, 1st edn. Wien : LexisNexis ARD ORAC.
- Zollner, J. (2014) '§ 77' in Torggler, U. (ed.) *GmbH-Gesetz Kommentar*, 1st edn. Wien: MANZ Verlag Wien.

Austrian Supreme Court (OGH) decisions

- OGH 04.5.2004, 4 Ob 14/04v.
- OGH 27.9.2006, 9 ObA 130/05s.
- OGH 08.5.2013, 6 Ob 42/13i.
- OGH 19.1.2016, 2 Ob 41/15s.
- OGH 21.3.2019, 6 Ob 183/18g.

Other sources

- Österreichischer Kodex für Familienunternehmen (2022), Bankhaus Spängler; [online] Available at https://www.spaengler.at/bankhaus/presse/neuer-oesterreichischer-kodex-fuer-familienunternehmen-sorgt-fuer-klarheit-22/, (Accessed: 10 March 2026).
- Beiräte in Familienunternehmen sind heute noch zu sehr von gestern für ein erfolgreiches Morgen; [online], Available at: https://www.pwc.de/de/pressemitteilungen/2024/beiraete-in-familienunternehmen-sind-heute-noch-zu-sehr-von-gestern.html, (Accessed: 11 March 2026).
- Beiräte Österreichischen Mittelstand, [online], Available at: https://ibes.fh-wien.ac.at/wp-content/uploads/2020/03/Studie_Beira%CC%88te-im-o%CC%88sterreichischen-Mittelstand.pdf, (Accessed: 12 March 2026).