



Obligatory gender quotas for supervisory boards

The provisions that will be incorporated into company law as a result of this Act set a minimum quota for the proportions of men and women on a supervisory board: at least 30% of the members of a supervisory board must be men, and at least 30% must be women. However, these provisions do not apply for all joint-stock companies. Rather, they only apply to publicly listed companies and companies which have more than 1,000 permanent employees. In addition, the supervisory board must have at least 6 members and the workforce must be at least 20% male/female for these rules to apply. In this regard it is interesting to note that only certain companies are obliged to adhere to this quota.

This means that a limited liability company with 800 permanent employees, for example, does not have to heed the gender quota. While limited liability companies are in principle not obliged to appoint a supervisory board (which is only compulsory under certain conditions), a limited liability company with more than 300 employees, on average, must have a supervisory board (Section 29 Para 1 Line 2 of the Limited

The Act for the Equality of Women and Men on Supervisory Boards (Gleichstellungsgesetz von Frauen und Männern im Aufsichtsrat [GFMA-G]) comes into force at the start of January 2018, and amends the Stock Corporation Act, the Limited Liability Companies Act, the SE Act, the Cooperatives Act and the Labour Constitution Act with the aim of attaining equal representation of men and women on supervisory boards.

Liability Companies Act). This means that even though a company is obliged to have a supervisory board as a result of its having more than 300 employees, the gender quota will only have to be complied with when this company has more than 1,000 employees, as limited liability companies are never publicly listed.

In addition, two further conditions must be met before the minimum quota comes into play. Firstly, the supervisory board must have at least six members, based on shareholder representatives. If the supervisory board has

fewer than six positions to be filled, the quota does not apply, and, as before, a supervisory board composed solely of men or solely of women is permissible. Secondly, at least 20% of employees of the company must be male, and at least 20% must be female.

This means that a company in which only 15% of the employees are male, for example, does not have to adhere to the quota. If this quota obligation is breached, and the minimum percentage is not complied with for the election and secondment of members to the supervisory board, this voids the



election. Members elected to a supervisory board as a result of a violation of this nature are deemed not to have been elected. As a result, they do not hold voting rights.

It is also important to bear in mind that this minimum proportion is to be met by the supervisory board as a whole. This means that the quota does not need to be met separately by shareholders' representatives and employees' representatives. However, this only applies if neither side objects to this overall approach to filling the positions. An objection of this nature can be levied no later than six weeks prior to an election or secondment taking place. As a consequence, the minimum quota must be met separately by the shareholders' representatives and the employees' representatives for the particular election in question. The changes to the Austrian Stock Corporation Act (Aktiengesetz) come into effect on 1 January 2018, and apply to elections and secondments that occur after 31 December 2017. Existing supervisory board mandates remain unaffected by this.

The new regulation requiring a minimum quota on a supervisory board as detailed

above impacts the Stock Corporation Act, but can also be correspondingly applied to limited liability companies and cooperatives, with reference to the provisions under stock corporation law in the relevant acts. The Labour Constitution Act (Arbeitsverfassungsgesetz, abbr. ArbVG) will also undergo an amendment on the basis of the Act for the Equality of Women and Men on Supervisory Boards: employees' representatives seconded to a supervisory board must meet a minimum quota of 30 percent of each gender. Similarly, this minimum quota only applies under the Labour Constitution Act if certain conditions are met. As under the Stock Corporation Act, the company in question must be publicly listed, or have more than 1,000 permanent employees. Furthermore, there must be a requirement for at least three employees' representatives to be seconded to the supervisory board, and the overall workforce of the company must contain at least 20% men or women.

As a result of the limited scope of application of this Act ("publicly listed companies and companies with more than 1,000 permanent employees"), only time will tell what its

impact will be. However, the relevant public-facing impact on gender equality seems assured: without doubt, this Act represents an important step towards offering men and women equal opportunities. ■



Attorney-at-Law and Managing Partner

Mag. RONALD FRANKL

heads LGP's "Corporate, M&A and Capital Markets" practice. He specialises in compliance, commercial and corporate law, international transactions, mergers & acquisitions, private equity, venture capital, banking and financial law, capital markets law and stock exchange law, as well as regulatory proceedings.