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Immigration to Austria

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A) Profile of our legal office

Our office - founded by **Dr. Klaus Kocher** in 1994 and run in partnership with **Mag. Wilfried Bucher** since 2004 - is considered as an all-round office, where we aim to cover as many every-day legal issues as possible.

We have a wide-range service portfolio and we represent not only private persons, but also enterprises, associations and public corporations. Many years of experience and our international-oriented approach ensure competent legal support and representation of our clients. We guide our clients through adoption procedures and civil-service-matters as well; we support them in trials and civil law suits as well as in negotiations outside court.

Nevertheless one of **our special focuses has always been the Austrian foreigners´ law**. Since he started his office in 1994, Dr. Kocher guided his clients through the different procedures to get a legal status or a residence permit in Austria. His commitment to this legal field was reinforced by Mag. Wilfried Bucher, who joined his office in 2004.

Mag. Bucher brought in **years of experience** in the field of the asylum-law and **the Austrian foreigners´ law**, since he was engaged in an Austrian NGO before, dealing with the legal problems of refugees, asylum seekers and foreigners willing to stay in Austria.

Our law firm communicates in various languages; in particular our focus lies on the eastern and the southeastern areas of Europe and we guide clients from the Middle East as well. Due to our legal competence and more than 25 years of experience in this field, we belong to the leading law firms in the field of **the Austrian asylum- and migration law**.

We are lawyers according to the Austrian law, we are subject to the Austrian and Styrian disciplinary law of lawyers.

Our team comprises two lawyers, one candidate and legal assistants. Our main office is situated in **Friedrichgasse 31, A-8010 Graz, Austria**.

In addition to our main office in Graz a conference room in **Kaiserstraße 7/III, A-1070 Vienna-Austria** is also available for sessions with our clients.

If you plan to visit us, we kindly ask you to arrange an appointment in advance:

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B) General Information about Austria:

Austria is a small Republic in the heart of Europe. It is a member-state of the European Union. Austria consists of nine independent federal states (Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tirol, Vorarlberg and Vienna) with their own provincial governments.

Austria comprises large mountainous territories as a part of the eastern Alps. So the country contains many forests, snowfields, glaciers as well as snow-covered mountain peaks, the highest of them is the "Grossglockner" (3,819 m). The river "Danube" ("Donau") is the main river in Austria.

With its well-developed economy and high standard of living, Austria is closely linked to other EU states. The sector of export is considered as fundamental for the Austrian economy. Main export commodities are machinery, parts for motor vehicles, paper and paperboard, metal goods, chemicals, iron and steel, textiles and foodstuff. The main part of Austria's exports goes to other EU countries.

Austria has a strong economy with machinery, metallurgical products and textiles being of particular importance. The country's most important industry, however, is tourism. Among the insiders of the wine business, and despite being only a small wine growing country, Austria has gained an excellent reputation for producing some top-scoring wines. It's the whites, that get most of the attention, but the reds are also excellent.

Austria is one of the world's best destinations for sustainable tourism, as recognized in the World Economic Forum's Travel & Tourism Competitiveness Report.

About one third of the Austria's energy consumption is covered by the national energy industry. Up to 70% of the energy comes from renewable sources such as water. Industry, which still is considered to be the national growth engine, is made up of mainly small and medium-sized enterprises. The services industry is Austria's fastest growing industrial sector.

Compulsory school-education lasts nine years in Austria. Upon completion of secondary school the Austrian education system offers additional educational opportunities, ranging from short-cycle tertiary education in the field of Vocational Education and Training to degree-level programmes at university colleges of teacher education, universities of applied sciences and universities.

Austria offers six general universities (in Vienna, Graz, Linz, Salzburg, Klagenfurt and Innsbruck), medical universities (in Vienna, Graz, Linz and Innsbruck) and universities of technology (in Vienna and Graz), a university of economics (in Vienna), veterinary medicine and natural resources and applied sciences (in Vienna), a university of mining (in Leoben/Styria) as well as universities of the arts (in Vienna and Graz). Furthermore there are universities of applied Sciences (the so-called “Fachhochschulen”), that offer an education that is both academic and practice-oriented.

The study programmes at the traditional comprehensive universities in Vienna, Graz, Innsbruck, Klagenfurt, Linz and Salzburg cover a broad spectrum of academic subjects. Austria’s technical and medical universities, on the other hand, concentrate on a range of highly specialized theoretical and applied disciplines. Research and teaching are seen as an inseparable entity at Austrian universities.

C) The establishment of companies ltd. in Austria

One of the possibilities to be granted a residence permit in form of a “Rot-Weiß-Rot-Karte” is to establish a company in Austria. For example, a limited company (Gesellschaft mit beschränkter Haftung) can be founded by only one person with a minimum capital of € 35,000,--. For the first ten years after the establishment of the company, the minimum capital might be reduced to € 10,000,--, half of which has to be paid in advance (€ 5,000,--). This reduction has to be stipulated already in the contract of association.

There is no requirement for the directors or shareholders to be Austrian nationals. The company is a separate legal entity that limits the responsibility of the shareholders to the amount of share capital.

The company will be subjected to the Austrian tax system. That means, that the assets will be taxed with 25 % corporate tax (in German: “Körperschaftsteuer”).

The minimum corporate tax for the first five years is € 500,--, for the next five years € 1,000,-- (even if no profit has so far been achieved by your company).

Your company will be represented by a CEO. Your company must have at least one CEO, who will be registered in the commercial register. The CEO is nominated by the decision of the company members.

For activities subjected to the trade regulation act (“Gewerbeordnung”) your company needs a trade license (“Gewerbeberechtigung”), that has to be issued to the company as a legal entity (not to a sole member of the company). In these cases you will also have to nominate a CEO, who meets all the conditions of the trade regulation act (“gewerberechtlicher Geschäftsführer”).

D) The acquisition of real property in Austria:

The usual legal basis of the acquisition of real property in Austria is a contract of sale. This contract is usually prepared by your lawyer and legalised by a notary public. The new owner of the property will be registered in the Austrian Land Register (in German: "Grundbuch").

There are nine different provinces in Austria, each one having its own legislation about the conditions of acquisition of land by foreigners; these legal acts are called "Grundverkehrsgesetze". So in each of the nine federal countries of Austria the conditions for the acquisition are stipulated separately. Being well-informed about these legal conditions prior to the transaction is essential and indispensable.

Only EU-citizens are legally equated to Austrian citizens, so they do not need a special permission to obtain property in Austria. In contrast, foreigners from other countries outside Austria and the EU, who wish to buy real property in Austria, have to pass through a procedure to get the approval for the transaction from the local authority.

As mentioned above, each province of Austria has its own legislation on acquiring real estate, the approval procedures vary in the nine countries of Austria and also the conditions of authorization there. But the authority's approval is an essential condition to be registered as the new owner in the Land Register and - in the end - for the legal force of the whole transaction.

The acquisition of real property in Austria is subjected to the real estate transfer-tax ("Grunderwerbssteuer"), that is usually 3.5 % of the purchasing price. Additionally you will have to pay a fee for the registration as the new owner in the Land Registry; this fee is 1.1 % of the purchasing price.

For the acquisition of real property in Austria you do not need a residence permit or any other legal basis to stay here. On the other hand, the mere acquisition of real property in Austria does not entitle you to live here. To live in Austria as a foreigner (for more than 6 months), you have to apply for a residence permit in a separate procedure.

E) “Rot-Weiß-Rot-Karte” („Red-White-Red-Card“) as a key worker and the BLUE card

If you aim at getting a residence permit for Austria on grounds of the foundation of your company, you have various possibilities: the Austrian foreigners' law allows you either to apply for the “Rot-Weiß-Rot-Karte” as an **employed key worker**, e.g. as the director of the company, employed by the company as a legal entity.

Another residence permit for Austria ist the **EU Blue Card**. The big difference : There is no points system for applicants.

In both cases the „Rot-Weiß-Rot-Karte“ and the EU Blue Card will be issued for 24 months. Applications for a “Rot-Weiß-Rot-Karte” and the EU Blue Card must be submitted

a) **personally by the applicant** at the competent Austrian embassy or consulate in the home country or in the country of residence. But the decision will be taken by the authority in Austria, or

b) if a **power of attorney** is given from the applicant **to the lawyer** in Austria then the lawyer in Austria will be able to deal with all official matters.

1. employed key-worker

For **employed key-workers** the application may also be filed by their future employer directly at the authority in Austria.

For employed key-workers there is a point-based calculation scheme: points are granted for your vocational education (university, academy, tertiary education, training in your profession), for your language skills (English/German), your work-experience in Austria or abroad and your age). 55 points are the minimum-requirement you have to reach.

Please note, that during the first 21 months you will be restricted to the occupation at the employer mentioned in the initial application. If you loose your job or change your employer during the first year, you will have to file a new application for the “Rot-Weiß-Rot-Karte”.

After 21 months there is the possibility to change to a „Rot-Weiß-Rot-Karte **plus**“ offering free access to the Austrian labour market without restrictions.

Special conditions and required documents for the “Rot-Weiß-Rot-Karte”

- Minimum points in the calculation scheme for employed key workers (55 points required)
- Precontract for a job with a minimum income of € 3,402-- pre-tax per month (€ 2,835,-- pre-tax per month for persons under 30 years, 14x), your future employer has to show the details of the intended employment to the locally responsible “Arbeitsmarktservice” (AMS) in advance and in written form (“Arbeitgebererklärung”).
- The AMS has to check, if there is somebody else available for this specific job, who is already residing in Austria or who is Austrian citizen already
- Documents about your school-/university-education or your professional education must be submitted to the authority (Legalized/translated into German)
- Evidences concerning your knowledge of the German and/or English language (Deutsch A2/Englisch B2 oder Deutsch A1/Englisch B1)
- Documents about your professional experience in your field (in Austria or abroad, accurate list of professional experience, including details about the specific function and the field of experience
- Passports, still valid for more than 1 year
- Birth certificate, translated/legalized
- Marriage certificate (translated/legalized)
- Proof of an adequate accomodation in Austria (rental contract)
- Health insurance for Austria

Please note that all foreign documents have to be translated into German and legalized by the country that issued it.

The kind of legalization (Apostille, full legalization) depends on the country that issued the respective document.

Point-based calculation scheme

criteria	Points
Qualification	Maximum chargeable points: 30
Completed vocational education/training or special know-how or skills* in the prospective occupation	20
General eligibility for university admission	25
Completion of a programme of studies with a minimum duration of three years at an institution of tertiary education	30
Work experience matching one's qualification	Maximum chargeable points: 20
Work experience (per year)	2
Work experience in Austria (per year)	4
German language skills	Maximum chargeable points: 15
Elementary use of the German language on a basic level (A1 level)	5
German language skills for the intensified elementary use of the language (A2 level)	10
German language skills for the independent use of the language (B1 level)	15
English language skills	Maximum chargeable points: 10
English language skills for the intensified elementary use of the language (A2 level)	5
English language skills for the independent use of the language (B1 level)	10
Age	Maximum chargeable points: 15
Up to 30 years of age	15
Up to 40 years of age	10
Sum total of maximum chargeable points:	90
Bonus points for professional athletes and professional sports coaches	20
Required minimum points:	55

* Key workers with special know-how or skills do not have to furnish proof that they have completed formal training (e.g. musicians, designers or professional athletes).

2. EU Blue Card

The EU Blue Card is awarded if the applicant

- o has completed a course of **study** at a tertiary educational institution **with a minimum study duration of three years,**

- o has received a **binding job offer for at least one year** in Austria, whereby this corresponds to the training,
- o receives an **annual salary** for employment that is at least 1.5 times the average gross annual salary of full-time employees (€ 66.593.-) and
- o the AMS cannot provide the company with equally qualified workers who are registered as jobseekers with the AMS (job market examination).

These are special requirements that only have to be met when applying for the EU Blue Card. In addition, the general criteria must also be met by the applicant, the only exception being the legal entitlement to customary local accommodation.

The EU Blue Card is issued for two years, as long as the employment contract does not have a shorter duration. It is therefore a temporary residence permit with limited access to the labor market.

For EU Blue Card applicants there is no points system.

The application for the residence permit must be submitted at least 8 weeks before the start of employment, as the competent authority has a decision period of 8 weeks.

3. Red-White-Red Card (Particularly highly qualified)

For the Red-White-Red Card for particularly highly qualified people, the general requirements must also be met, with the exception of customary local accommodation. Qualified immigration is assessed here using Annex A of the Foreigners Employment Act.

The applicants must

- o achieve the required **minimum points for particularly highly qualified persons** according to Appendix A of the AuslBG (at least 70 points) and
- o have a **permanent job that corresponds to their qualifications** and is appropriately remunerated.

The residence permit is issued for two years. Here, too, the application must be submitted no later than eight weeks before the start of the employment relationship, due to the authority's eight-week decision-making obligation.

Eligibility criteria for very highly qualified persons	Points
Special qualifications and skills	Maximum chargeable points: 40
Graduation from an institution of higher education, minimum duration of programme: four years	20
- in the subjects mathematics, informatics, natural sciences or technology (MINT subjects)	30
- Post-doctoral qualification (habilitation) or PhD	40
Gross salary of previous year earned in a senior management position with a company listed on the stock exchange or a company for which the Austrian foreign trade office in charge issued a positive report about its activities or business segment:	
- €50,000 to 60,000	20
- €60,000 to 70,000	25
- More than €70,000	30
Research and innovation activities (Patent applications, publications)	20
Awards (recognised prizes)	20
Work experience (adequately reflecting applicant's qualification or senior management position)	Maximum chargeable points: 20
Work experience (per year)	2
Six months of work experience in Austria	10
Language skills	Maximum chargeable points: 10
German or English language skills for the elementary use of the language on a basic level – (A1 level)	5
German or English language skills for the intensified elementary use of the language – (A2 level)	10
Age	Maximum chargeable points: 20
Up to 35 years of age	20
Up to 40 years of age	15
up to 45 years of age	10
Studies in Austria	Maximum chargeable points: 10
Second part of diploma programme (Diplomstudium) or half of the required total ECTS points	5
Completed diploma programme (Diplomstudium) or Bachelor's and Master's degree programme	10
Sum total of maximum points:	100
Required minimum:	70

4. Family members, relatives

Family members of foreigners who have the "Rot-Weiß-Rot-Karte" as a key employee will get another type of visa for the purpose of family reunification.

The so called “Rot-Weiß-Rot-Karte **plus**” („Red White Red card **plus**“) will be granted to them, allowing them to live and work in Austria (free access to the Austrian labour market). Also the „Rot-Weiß-Rot-Karte **plus**“ is initially valid for one year.

With any of these residence permits (“Rot-Weiß-Rot-Karte” und “Rot-Weiß-Rot-Karte plus”) you have the opportunity to change to a permanent residence permit (“Daueraufenthalt”) after five years.

F) Students and pupils

1. Pupils residence permit

Residence permits are issued to third-country nationals who do not intend to settle for a permanent stay.

In principle, the general requirements must be met for the student/pupils residence permit. In addition, the applicants must

- regular students at a public school or
- Regular student at a private school with public status or
- Pupils of a statutory school with public status or
- Students at a certified non-school educational institution or
- Extraordinary students at a public school or a private school with public status, insofar as a residence permit is being issued for the first time or
- be regular "students" of a public school or a school for professionals with public status
- and have reached the age of six.

2. Student residence permit

With the student residence permit, the general requirements must be met with the exception of customary local accommodation. Furthermore, the applicants

o a degree from a university, technical college, accredited private university or public or private teacher training college in accordance with the Higher Education Act 2005, or

o Extraordinary studies as part of a university course in accordance with Section 56 of the 2002 Universities Act, a course for further education in accordance with Section 9 of the Fachhochschule Studies Act, a university course in accordance with Section 3 (4) of the Private Universities Act or a university course in accordance with Section 39 of the 2005 Higher Education Act, with the course at least 40 ECTS credit points and does not exclusively serve to teach a language, or prepares the course for the supplementary examination prescribed in the admission decision, or

o an extraordinary course of study to establish the equivalence of a foreign degree in accordance with Section 90 (4) Universities Act 2002, Section 6 (6) Fachhochschule Studies Act or Section 68 (4) Higher Education Act 2005, or

o Extraordinary studies to attend individual courses from scientific subjects, provided that the above-mentioned extraordinary studies have been successfully completed and the admission or aptitude procedure can only be completed in the following semester for reasons for which the third-country national is not responsible, or

o to complete professional training, which is legally required for the practice of the profession, following a regular course of study at a university, technical college, accredited private university or public or private teacher training college in accordance with the Higher Education Act 2005.

For third-country nationals who are taking part in a mobility measure or for whom an agreement has been concluded between two or more universities, the residence permit must be issued for two years. For all other students, however, only for one year.

Residence permits are issued in the form of a card.

G) Conclusion

Especially for foreigners willing to engage in the economic field in Austria the “**Rot-Weiß-Rot-Karte**” or the **EU Blue Card** offers the possibility to get a residence permit in Austria, to bring your family members with you and to transfer the center of one’s life to the heart of Europe providing you with large scale business opportunities.