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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

Stock corporations (*Aktiengesellschaft*), SEs (*Societas Europaea*) ("**Company**" or "**Companies**") and partnerships limited by shares (*Kommanditgesellschaft auf Aktien*, KGaA) are German entities which can be listed on a stock exchange. The majority of listed German companies are stock corporations.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The German corporate governance sources can be divided into the following three categories:

General Regulatory Sources

a) Stock Corporation Act (*Aktiengesetz*) (last amended on 10 May 2016)

Governs all relations between shareholders including the annual general meeting ("**AGM**"; *Hauptversammlung*), the management board (*Vorstand*) and the supervisory board (*Aufsichtsrat*), as well as provisions on affiliated Companies (*Konzernrecht*). Most provisions are mandatory.

b) German Corporate Governance Code (*Deutscher Corporate Governance Kodex*, "**DCGK**") (last amendment decided on 7 February 2017)

The DCGK does not constitute law since it contains mainly recommendations for Companies to organise their corporate governance. The Code is therefore not binding in a legal sense. Under the Stock Corporation Act, however, listed Companies have to declare annually in the Electronic Federal Gazette (*Elektronischer Bundesanzeiger*) if and to what extent they have complied with the recommendations of the DCGK ("*comply or explain*").

c) Commercial Code (*Handelsgesetzbuch*) (last amended on 5 July 2016)

The Commercial Code contains provisions on accounting and annual financial statements of Companies and group Companies.

d) SE EU Council Regulation (EC) No. 2157/2001 of 8 October 2001 and also the German SE Act (*SE-Ausführungsgesetz*; last amended on 10 May 2016)

Regulatory Sources Related to Capital Markets

The regulatory sources related to capital markets have changed due to the implementation of the EU Transparency Directive Amending Directive (2013/50/EU).

a) Securities Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*) (last amended on 30 June 2016)

Governs all tenders for the acquisition of securities of listed Companies. Compliance with the Act's mandatory provisions is overseen by the Federal Agency for the Control of Financial Services (*Bundesanstalt für Finanzdienstleistungsaufsicht*, "**BaFin**").

b) Securities Trading Act (*Wertpapierhandelsgesetz*) (last amended on 30 June 2016)

Governs services relating to securities, trading of financial instruments on and outside of stock exchanges, conclusion of financial transactions, financial analysis and changes of voting rights in listed Companies.

Compliance of the Act's provisions is also overseen by the BaFin.

c) Stock Exchange Act (*Börsengesetz*) (last amended on 30 June 2016)

Governs the activities and organisation of stock exchanges, the admission of trading parties (*Handelsteilnehmer*), financial instruments, rights and assets for trading on stock exchanges and the assessment of stock exchange quotes.

d) Market Abuse Regulations, EU No. 596/2014 (*Marktmissbrauchsverordnung*) (entered into force 3 July 2016)

Governs the combat of insider trading and market manipulation on the European financial markets. Together with the Market Abuse Directive 2014/57/EU (*Marktmissbrauchrichtline*), it forms the European legal framework against market abuse.

Compliance of the Acts' provisions is overseen by the relevant Stock Exchange Control Agency (*Börsenaufsichtsbehörde*) for each German federal state (*Bundesland*).

Non-Regulatory Sources

a) Articles of Association (*Satzung*)

Govern all relations between shareholders including the AGM, the management board and the supervisory board, as well as provisions on affiliated Companies in addition to the Stock Corporation Act and in more detail.

b) Rules of Procedure (*Geschäftsordnung*) for the management board and the supervisory board.

Regulate the formalities of the meetings of the members of these bodies such as invitations, absences, proxies, adoption of resolutions, allocation of specific responsibilities, voting rights, etc.

Rules of procedure may also be established with regard to the AGM.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The **DCGK** has been amended to contribute to more transparency for a better assessment of corporate governance by stakeholders and incorporate international best practice into the German Code for listed companies.

The Commission expanded the Code's preamble that the principles of the social market economy require not only legal but also ethically founded, self-responsible behaviour and points out to the leading image of the honourable merchant. Furthermore the Commission included that institutional investors are of particular importance to Companies. They are expected to exercise their ownership rights actively and responsibly on the basis of transparent and sustainability-based principles.

The Commission continues to rely on the use of reasonable transparency as a solid basis for assessing Corporate Governance. Among other things, Companies should therefore disclose the principles of the compliance management system so that investors, as well as the interested public, can gather their own impression of the Company's compliance efforts. The Commission also recommends greater transparency in the criteria for the composition of the supervisory board.

Even though it is often already practised in Germany, the Commission has also dealt with the question of whether the Chairman of the supervisory board should be available for dialogue with investors in accordance with international best practice. The Commission now suggests, that the Chairman of the supervisory board should be willing to talk to investors about supervisory board-specific issues within reasonable limits.

The most recent Market Abuse Regulations replaced the essential parts of the Securities Trading Act for *ad hoc* publicity, directors' dealings, and insider listings through their directly applicable regulations. The Market Abuse Regulations extends traditional information requirements of the regulated market to include multilateral trading systems, including free circulation and the entry standard, provided that the securities of the issuer have been incorporated into the multilateral trading system. As a result, not only listed stock corporations are required to keep an insider list, but smaller companies are also covered by this obligation. The Market Abuse Regulations also require smaller emitters to report certain transactions to the *BaFin* and to publish them on an *ad hoc* basis. Thus, the duty to publish insider information on an *ad hoc* basis, including self-exemption from the *ad hoc* obligation, now applies to all stock corporations, regardless of how and where their shares are traded. In addition, it is the responsibility of all parties to disclose and publicise directors' dealings.

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

Generally speaking, the shareholders have no influence on the management of a Company. However, for certain actions and transactions which are of major importance and which affect the rights of the shareholders, a shareholder resolution (*Hauptversammlungsbeschluss*) has to be adopted in order to allow the management to carry out such actions or transactions. These include:

- amendments of the articles of association (75% majority);
- acquisition of own shares by the Company;
- election of members of the supervisory board;
- use of profits;
- discharge (*Entlastung*) of the members of the management and the supervisory board;
- election of auditors;
- dissolution of the Company (75% majority);
- "say on pay" resolutions;
- capital increase and capital decrease (75% majority);
- sale of all or most of the Company's assets (75% majority);
- based on case law (*Holzmüller, Gelatine*), sale of substantial assets required for the Company's business activities as per the Company's purpose set forth in the articles of association (*satzungsmäßiger Zweck*);
- issuing of convertible or profit related bonds (*Wandelschuldverschreibungen*, *Gewinnschuldverschreibung*) (75% majority);
- entering into domination or profit pooling agreements (*Beherrschungs– oder Gewinnabführung*) (75% majority);
- amalgamation (*Eingliederung*) (75% majority);
- squeeze-out if 95% of the shares are held by one shareholder; and
- any transaction under the Transformation Act (*Umwandlungsgesetz*), such as a merger (*Verschmelzung*), spin-off (*Abspaltung*), split-up (*Aufspaltung*), etc.

Shareholder resolutions generally require a simple majority, unless a higher majority is required by law or by the articles of association.

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

Shareholders of Companies can exercise their rights as provided for under statutory law and the articles of association, subject to the observance of their general fiduciary duties *vis-à-vis* the Company and the other shareholders.

2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

a) The AGM for Companies must be held within eight months of the end of the financial year. In such AGM the shareholders usually adopt resolutions on the:
   - use of the balance sheet profit;
   - discharge of the members of the management board and the supervisory board;
   - election of members of the supervisory board; and
   - election of auditors.

   In addition hereto, the AGM may vote on any of the issues set forth under question 2.1 above.

b) If a certain resolution is urgent and the Company cannot wait until the next AGM, the management board of the Company may convene an extraordinary general meeting ("**EGM**") by observing the same formalities and time periods as provided for the AGM. EGMs may be held at any time if needed.

c) In addition to the voting rights of the shareholders stated above, the shareholders have further rights not directly related to their voting rights:
   - Shareholders who together hold at least 5% of the Company's registered share capital may request the convening of a general meeting by indicating the purpose of and the reasons for such general meeting.

- Shareholders whose shares constitute 5% of the Company's registered share capital or the equivalent of the amount of EUR 500,000 may request that certain topics are put on the agenda of the AGM.
- Shareholders who together hold at least 10% of the Company's registered share capital or the equivalent of the amount of EUR 1,000,000 may claim individual instead of collective discharge for each member of the management and/or the supervisory board.
- The AGM may resolve with a simple majority on the appointment of special auditors (*Sonderprüfer*) to review certain actions relating to the Company's incorporation or its management, in particular with regards to measures of capital increase or decrease. If such resolution is not adopted by the AGM the competent court has to appoint special auditors (i) upon the request of shareholders who together hold 1% of the Company's registered share capital or the equivalent of the amount of EUR 100,000, and (ii) if there are facts and circumstances that justify reasonable suspicion that substantial infringements of the law or the articles of association have occurred.
- Shareholders who together hold 1% of the Company's registered share capital or the equivalent of the amount of EUR 100,000 may request the competent court to appoint special auditors if there is cause for the assumption that certain positions in the Company's approved annual financial statements are substantially undervalued or if the notes (*Anhang*) thereto do not or not contain all of the required statements and the management board has not provided these statements in the AGM in spite of requests from shareholders to that respect.
- Any shareholder may file an opposition against a voting proposal of the management with respect to certain topics on the agenda. The Company has to communicate such opposition prior to the AGM to financial institutions and shareholder associations. The same applies to proposals of shareholders for the election of members of the supervisory board.
- Any shareholder has the right to speak in the AGM and to request information on matters concerning the Company to the extent that such information is required for the proper evaluation of a topic on the agenda. As the exercise of these rights has been abused by shareholder activists in the past, recent case law has reduced the exercise of these rights by granting the chairman of the AGM under certain circumstances the possibility to limit the speaking time (*Redezeitverkürzung*) and, in extreme cases, to terminate the discussions (*Schluss der Debatte*). Nevertheless, it is important that all questions by shareholders are properly answered as otherwise resolutions relating to such unanswered questions may be declared void by the competent court in case of subsequent court actions initiated by the shareholders.
- Any shareholder who disapproves of an adopted resolution may give notice of opposition to the notary who takes the minutes of the general meeting of listed Companies. Such filing usually is the pre-condition for any subsequent court action by a shareholder against such resolution.

d) Voting rights may be exercised by proxy. Such proxy is usually provided to banks and financial institutions. Proxies may be submitted electronically to the Company. Furthermore, voting rights can be exercised in writing (*Briefwahl*) or by electronic communication if the Company's articles of association allow for such possibilities. General electronic participation in the AGM is also possible if provided for in the articles of association.

e) Listed Companies have to publish an invitation to the AGM, as well as all documents and information relating thereto, on the Company's website and on EU-wide media forum.

2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Generally Shareholders cannot be held liable for acts or omissions of a Company; only in extreme exceptional cases (e.g., abusing the legal form to harm creditors) shareholders can be held liable.

2.5 Can shareholders be disenfranchised?

Firstly, shareholders can lose their voting rights if they are forced to transfer all of their shares to a majority shareholder. Such transfer, against consideration of all minority shares to a majority shareholder, can be enforced by means of so-called squeeze out proceedings which include a squeeze out resolution of the AGM. Such squeeze out proceedings are admissible if the respective majority shareholder owns at least 95% of the stated capital (reduced to 90% in case of a merger – *Verschmelzung* – under the Transformation Act).

Secondly, shareholders have to comply with express voting restrictions under sec. 136 of the German Stock Corporation Act. These voting restrictions *inter alia* prevent a shareholder from resolving on his own formal discharge (*Entlastung*) as a member of the management board or as a member of the supervisory board. Sec. 136 also prohibits a shareholder from voting on release from his own liability, or on the question of whether the Company should invoke claims against him.

2.6 Can shareholders seek enforcement action against members of the management body?

While members of the management board are liable for damages *vis-à-vis* their Company if they breached any of their duties and obligations, this does not create a direct liability *vis-à-vis* the shareholders. Consequently, only the Company and not the shareholders may raise damage claims against members of the management board.

However, by means of a shareholders' resolution, the general meeting can request that the Company initiates an action against the members of the management bodies and nominates a special representative to represent the Company in this respect (see question 2.3 above lit. c).

In case of criminal actions by members of the management board, damage claims may be raised by shareholders under general statutory provisions of the German Civil Code (*Bürgerliches Gesetzbuch*).

2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

Notwithstanding merger control requirements the only additional limitation for the acquisition of shares (securities) in a Company is set forth in the Foreign Trade Act (*Außenwirtschaftsgesetz*). The German Federal Ministry of Economic Affairs (*Bundeswirtschaftsministerium*) has the right to restrict or prohibit an acquisition by a non-EU/EFTA investor of 25% or more of the voting rights in enterprises registered in Germany based on public order or security grounds.

The German Federal Ministry of Economic Affairs carried out about 335 test procedures between 2008 and October 2016, but the proposed acquisition was prohibited in any event. This changed last year. It involved Grand Chip Investment GmbH, a 100% indirect subsidiary Company to the Chinese Fujian Grand Chip Investment

Fund LP that made a voluntary public offer to take over all the shares of the German Aixtron SE. The German Federal Ministry of Economic Affairs suddenly withdrew the certificate of non-objection, although it had given permission for the acquisition at first. This was because the USA stated that the planned transaction could have an impact on the national security of the USA. After a veto by the US President regarding the sale of the US branch of Aixtron, the Chinese bidder withdrew from the transaction. Despite these developments, it is unlikely that there will be any significant restrictions on the acquisition of German companies by non-EU investors in Germany. Rather, the discussion focuses on the ability of the state to intervene if national security interests are concerned. In other cases, the existing possibility of the state to intervene will most likely be handled restrictively in the future.

Otherwise, investors are free to acquire shares (securities) in Germany. Such acquisitions, however, are subject to notification duties both *vis-à-vis* the Company and *vis-à-vis* the *BaFin*. Under the Stock Corporation Act, as soon as an enterprise has acquired more than 25% of the shares in a Company, this has to be immediately communicated to the Company in writing. The same applies if an enterprise has acquired a majority participation in a Company.

Under the Securities Trading Act anyone who reaches, surpasses or decreases 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of the (direct or indirect) voting rights in a listed Company has to notify such listed Company, as well as the *BaFin* without undue delay, but at the latest within four trading days. The same (with the exception of the 3% threshold) applies to the acquisition of financial instruments which grant the holder the right to acquire issued shares in a Company.

Furthermore, reaching the threshold of 30% of the voting rights triggers the obligation to launch a mandatory public offer to acquire all shares.

Not fulfilling the aforementioned duties may lead to a suspension of the rights attached to the affected shares (e.g., voting and, under certain circumstances, dividend rights). In cases of wilful misconduct or gross negligence this suspension may continue for another six months after all notification obligations are complied with.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

German Companies have a dual board system consisting of a management board and a supervisory board. The Company is managed by the management board. The management board is controlled by the supervisory board.

The members of the management board manage the Company collectively and they are jointly responsible. Usually, specific functions are allocated to the individual members of the management board (CEO, CFO, COO, etc.). Nevertheless, the entire management board remains generally responsible and liable for any acts and omissions of its individual members.

The delegation of functions to committees is not common for the management board but rather the supervisory board (personnel committee, audit committee, etc.).

The supervisory board has to consist of at least three members. Subject to the co-determination rules, the maximum number varies between nine and 21, depending on the registered share capital of the Company and on the number of employees (for details see question 5.2 lit. a below). In co-determined supervisory boards of listed Companies at least 30% of the board members have to be female. Since the last amendment of the Stock Corporation Act the number of board members only has to be devisable by three if so prescribed by law in co-determined supervisory boards.

SEs may adopt either a dual board system as described above or a monistic board system with one administrative board (*Verwaltungsrat*) consisting of executive and non-executive directors.

3.2 How are members of the management body appointed and removed?

The members of the management board are appointed and can be removed by the supervisory board if there is just cause. Just cause can be a gross breach of duties, inability to adequately manage the Company in an orderly manner or a vote of no-confidence by the general meeting. The term of office can be up to five years. The supervisory board is also responsible for the negotiation and conclusion of their employment agreements.

The shareholder representatives in the supervisory board are appointed by the AGM. The employee representatives in co-determined Companies are elected by the employees.

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

The remuneration of the members of the management board is dealt with in the Stock Corporation Act and the DCGK.

The remuneration of the members of the management board must be proportionate to their duties and the situation of the Company. The compensation for the supervisory board members must be set up in the articles of association or approved by the general meeting.

The total remuneration paid to members of the management board and the supervisory board is to be disclosed in the annual report (*Geschäftsbericht*). Further, the individual remuneration of the management board members must be disclosed, unless the general meeting decided – with 75% of capital represented at the time of voting – to opt out of such disclosure.

The DCGK recommends that the remuneration of the management board members shall comprise fixed and variable elements to incentivise a sustainable entrepreneurial management. The DCGK further recommends determining limits for both the total amount of the remuneration and its variable elements. In service agreements with management board members severance payments inclusive of ancillary services in the case of premature termination should not exceed the value of two years' compensation and the remaining term of the service agreement.

The AGM may vote on the remuneration system of the management board. It may not, however, vote on the individual terms and conditions of the employment agreements of the members of the management board. A statutory right of the AGM to vote on the remuneration system was discussed within the last amendment of the Stock Corporation Act but was ultimately rejected. European legislators are planning modifications hereto.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

There is no limitation on the amount of shares that may be owned by members of the management bodies. However, the voting rights attached to those shares cannot be exercised on certain agenda items

(e.g., ratification of their own acts or the acts of the relevant member's board or waiver of such member's liability *vis-à-vis* the Company).

Members of the management board and the supervisory board have to report any transactions relating to shares or related financial instruments of their Company to the Company and the *BaFin* within five working days. The same applies to persons closely affiliated to members of the management board and the supervisory board.

Any such information has to be published immediately by the Company and such publication has to be reported simultaneously by the Company to the *BaFin*.

The use of insider information for any such transactions is strictly prohibited and constitutes a criminal offence.

3.5 What is the process for meetings of members of the management body?

The process for meetings of members of the management board is not stipulated by law but is usually set forth in the rules of procedure for the management board. In urgent cases, however, the members may convene informally or via telephone or video conferences.

The supervisory board of a listed Company has to convene at least twice every six months. The meetings of the supervisory board are convened by its chairman. Upon reasonable request of the management board or any member of the supervisory board, the chairman must convene a meeting. The rules of procedure may stipulate further requirements.

3.6 What are the principal general legal duties and liabilities of members of the management body?

The members of the management board are responsible for any and all business activities of the Company. In this capacity they have to apply the due diligence of a proper and diligent manager. Members of the management board are deemed to act in compliance with their obligations if, in case of an entrepreneurial decision, they can reasonably be assumed to be acting on the basis of adequate information and in the best interest of the Company (business judgment rule).

Members of the management board who violate their obligations are jointly and severally (*gesamtschuldnerisch*) liable *vis-à-vis* the Company for any damages resulting therefrom.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

The management board is responsible for the introduction, implementation and supervision of a risk management system within the Company in order to make sure that any material adverse changes to the economic and financial positions of the Company are identified at an early stage so that appropriate measures to avoid or mitigate the consequences of such material adverse changes can be adopted as quickly as possible.

The importance of compliance of the Company with regulatory provisions, in particular avoidance of any criminal offences of its managers and employees has dramatically increased in the light of recent corrupt practices and unauthorised use of personnel data detected and investigated in major German Companies. Therefore, it is now widely acknowledged that, also with respect to corporate compliance, sufficient and adequate measures have to be adopted or existing measures have to be improved and enhanced by the management board of Companies.

According to our perception, the risk of liability for board members has increased in recent years. This is due to changes to statutory law in recent years and, as a consequence, more intense shareholder activism which may result in special audits regarding management conduct (*Sonderprüfungen*) and the establishment of special external shareholder representatives who may have investigative powers and may, on behalf of the Company and/or shareholders, prepare damage claims against managers.

Since January 2016 listed Companies with co-determined supervisory boards are obliged to have a quota of female supervisory board members of at least 30%. Many German Companies traditionally have management bodies with a technical educational background, in which women are currently still underrepresented. Nevertheless, the percentage of women in supervisory boards has been continuously increasing in recent years and in 2016 for the first time reached 30% among the DAX 30 Companies.

3.8 What public disclosures concerning management body practices are required?

The business activities of the management board on behalf of the Company are usually described in and covered by the Company's annual report. The annual report contains information on the remuneration of the management board (see question 3.3 above) and any specific activities beyond the ordinary course of business transactions of the Company.

An annual declaration (*Entsprechenserklärung*) has to be issued and such declaration has to include disclosure as to whether the listed Company has complied with the rules of the DCGK, and if not, which recommendations have not been applied and why.

In the case of listed Companies it is the obligation of the management board to publish any insider information (i.e. non-public information that may have an influence on the stock exchange valuation of the shares of such listed Company).

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

If board members are held liable by third parties, the Company may only indemnify them if they are not liable to the Company for the same reason.

D&O insurance policies are common both for members of the management board and the supervisory board. D&O insurance policies taken out by the Company for members of the management board have to provide for a minimum deductible (*Selbstbehalt*) of 10% of the potential damage up to at least 150% of the annual fixed remuneration of the respective member of the management board. Management board members are able, however, to take out additional D&O insurance coverage to cover such potential damage, deductible at their own expense.

On the basis of a general meeting's resolution the Company can waive claims against the board members after a period of three years has lapsed since the breach of duty occurred, unless a minority of 10% of the share capital objects to such resolution.

4 Other Stakeholders

4.1 What, if any, is the role of employees in corporate governance?

Employee co-determination plays a substantial role in corporate

governance. Employees can exercise their rights in corporate governance in three bodies: the supervisory board; the economic committee (*Wirtschaftsausschuss*); and the works council (*Betriebsrat*).

a) Supervisory board

In Companies with at least 500 employees, one third of the members of the supervisory board has to consist of representatives elected by the Company's employees. If the Company has 2,000 or more employees, 50% of the members of the supervisory board are elected by the Company's employees, i.e. a co-determined supervisory board (*mitbestimmter Aufsichtsrat*).

Resolutions in a co-determined supervisory board are adopted by simple majority of the votes cast. In case of a deadlock, the chairman of the supervisory board has two votes, i.e. a casting vote.

b) Economic Committee

The role of the economic committee is to regularly discuss economic matters relating to the Company with the management and to inform the works council on any such matters. The management board has the obligation to regularly inform the economic committee on such matters. The members of the economic committee are elected by the employees.

c) Works Council

The works council oversees the compliance of general provisions on health, safety, working conditions, etc. with respect to employees. Furthermore, the works council has co-determination and information rights on various issues regarding the Company's workforce, its working conditions and any activities of the Company's management that might lead to mass dismissals.

The members of the works council are elected by the employees.

4.2 What, if any, is the role of other stakeholders in corporate governance?

Nowadays the whole stakeholder-concept (the identification, the analysis and the handling of stakeholders) has a huge impact on corporate governance.

Companies show great interest in potential opportunities on the one hand and risks on the other hand as stakeholders have an influence on the company, the market and the general conditions.

This applies not only to the stakeholders already mentioned above, but, for example, also to suppliers, clients, competing companies, society in general and the state. All individual groups of stakeholders pursue their own interests and approach the company accordingly.

On the basis of a stakeholder-concept, every company must practise stakeholder-management in order to minimise risks. It might be useful for companies in order to focus their purpose, their objectives and strategy on meeting the interests, expectations and demands of key and influential stakeholders. Therefore it is important for a company to know the relevant stakeholders and to analyse their expectations, interests and requirements.

4.3 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Germany is a highly regulated country, in particular concerning environmental protection, labour law and social security issues, and Companies have to operate within this tight legal framework. Nonetheless, many Companies voluntarily sponsor and assist various charity organisations and charitable purposes which fit into the Company's specific profile. Such sponsoring activities cover a wide range of areas such as culture, sports, healthcare, scientific research and development, handicapped persons, etc.

In addition to the above-mentioned laws and regulations, there is no specific mandatory law on corporate social responsibility ("**CSR**"). In practice, however, Companies align with national and international initiatives that are dedicated to corporate responsibility and sustainability. Usually, reports on the Company's activities in the area of CSR are published on the Company's website.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The management board has a general obligation for due and timely disclosure and transparency. It may, however, delegate this obligation to specific departments within the Company which report to the management board.

5.2 What corporate governance related disclosures are required?

Companies have to publish their annual financial statements together with the reports of the management board (*Lagebericht*) and the supervisory board (*Bericht des Aufsichtsrats*). Furthermore, half-yearly and quarterly financial reports have to be published. The annual financial statements as well as substantial additional information on the Company or the group of Companies is contained in the annual report published by all listed Companies.

As for further information duties, reference is made to questions 2.3, 2.7, 3.4 and 3.8 above.

5.3 What is the role of audit and auditors in such disclosures?

The annual report, as described in question 4.2 above, also contains the certificate of the auditors. Auditors are appointed by resolution of the AGM (see question 2.1 above). The details and conditions of their instruction are dealt with by the supervisory board (usually the audit committee). Thus, the supervisory board is the contractual partner of the auditors with respect to their engagement.

As regards the independence of the auditors, the Commercial Code provides that an audit cannot be carried out by auditors who:

- hold shares or other financial interests in the Company;
- are members of the management board or the supervisory board or employees of the Company or any of its affiliates; or
- have assisted the Company in its accounting or preparation of the annual financial statements to be audited, responsibly carried out internal control measures within the Company, provided management or financial services assistance or actuarial or valuation services which have a substantial effect on the annual financial statements to be audited; these restrictions do not apply if these activities are only of minor importance.

Auditors are also barred if more than 30% of their professional revenue during the last five years was generated from the Company or companies in which the Company holds more than 20% of the shares or if this percentage is expected in the relevant business year.

Further restrictions apply to listed Companies.

The auditors must comment in their auditor's report on the way in which the accounts have been prepared and state whether the financial accounts have been prepared in line with the applicable

rules and regulations, and whether the annual accounts give a "true and fair" view of the state of affairs of the Company.

5.4 What corporate governance information should be published on websites?

As regards a Company's obligation to publish corporate governance information on its website, reference is made to the last paragraph of question 2.3 lit. e above. Furthermore: (i) *ad hoc* disclosures; (ii) a corporate action timetable; and (iii) the annual declaration of the management board and supervisory board regarding the compliance with the recommendations of the DCGK, have to be published by listed Companies. There are no further statutory publication requirements with regards to the Company's website. Most listed Companies, however, voluntarily report corporate governance issues that need to be published in the Electronic Federal Gazette (*Elektronischer Bundesanzeiger*) and on their website.

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