



German Panel on Corporate Governance

**Corporate Governance Rules
for
Quoted German Companies**

January 2000

Code of Best Practice for German Corporate Governance

I. General questions of Corporate Governance

The purpose of Corporate Governance is to achieve a responsible, value-oriented management and control of companies. Corporate Governance Rules promote and reinforce the confidence of current and future shareholders, lenders, employees, business partners and the general public in national and international markets. The Supervisory Board, Management Board and Executive Staff of the Company identify themselves with these Rules and are contractually bound by them. They are part of the general obligation to observe other interests related to the corporate activity.

The Rules of the Code serve as general guidelines for Corporate Governance for quoted German companies. Quoted companies are all enterprises whose shares are officially listed on a German stock exchange or traded over-the-counter. The Rules, their acceptance, implementation and respective adjustments to the specifics of the individual Company shall be communicated in the Annual Report.

Due to the various legal systems, institutional parameters and traditions, there is presently no internationally accepted universal model for Corporate Governance. The parameters for the Code are provided by codified law and leading cases, generally accepted national and international codes of good conduct and market practice. They include the directly relevant provisions of company and group law, in particular, the law governing stock corporations, financial accounting, banking supervision and the capital market as well as the Company's Memorandum and Articles of Association. From these derive the provisions, some of them detailed, with regard to the responsibilities and duties of the governing bodies: Supervisory Board (§§ 95-116 German Stock Corporation Act), Management Board (§§ 76-94 German Stock Corporation Act) and General Meeting (§§ 118-147 German Stock Corporation Act) as well as the code of conduct of the members of the governing bodies.

The essential points of the OECD Principles for Corporate Governance of May 1999 are covered as follows:

Protection of Shareholders' rights: Following the introduction of the German Act on Corporate Control and Transparency (KonTraG) in 1998, there are adequate provisions safeguarding the rights of shareholders through the comprehensive mandatory rules under the German Stock Corporation Act. In particular, the following OECD points are covered by mandatory law (§ 23 German Stock Corporation Act):

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- full voting right for each ordinary share (§ 12 German Stock Corporation Act)
- no impediments with regard to ownership or registration (§ 67 German Stock Corporation Act)
- transferability of shares at any time (§ 68 German Stock Corporation Act)
- participation, proxy and exercise of voting rights at General Meetings (§ 134 German Stock Corporation Act)
- election of members of the Supervisory Board (§ 101 German Stock Corporation Act)
- participation in company profits (§ 58 German Stock Corporation Act).

These points are mandatorily covered by German Law (§ 23 German Stock Corporation Act).

An authorization to increase the share capital with exclusion of shareholder participation rights in order to pursue either an acquisition or a share placement near the prevailing market price will only be exercised by the Management Board if the share capital increase does not exceed 10 % of the then existing share capital. In this calculation the re-utilization of any repurchased shares will be included.

Equal treatment of shareholders: The 'Equal treatment of shareholders' stipulated by the OECD is also in place for German companies. The precautionary measures against insider trading, self-dealing and disclosure of any personal interests in transactions or matters are extended beyond the legal requirements by the subsequent points 'II. Management Board' and 'III. Supervisory Board'.

Until the enactment of the German Takeover Law, the voluntary Takeover Code of the Capital Markets Expert Commission of the German Ministry of Finance applies. This Code is accepted by the Company.

In the case of repurchase of own shares according to § 71, subparagraph 1, No. 8 German Stock Corporation Act, the Company shall observe the principle of equal treatment of all shareholders.

Disclosure and transparency: The point 'Disclosure and transparency' of the OECD Principles is generally covered by law for German companies through the corresponding provisions on the obligation to provide and enclose information (§§ 20 - 22, 160, 328 German Stock Corporation Act; §§ 15, 25 German Securities Trading Act; §§ 285, 325 ff German Commercial Code; §§ 35, 39 German Antitrust Act; § 24 German Banking Act). In addition, the Management Board shall regularly and with due regard to equal treatment of all shareholders ('Fair Disclosure') report on all Company matters through Annual and Interim Reports, 'ad hoc' communications, analyst and press conferences. The OECD information requirements are covered by these publicity undertakings.

The Company shall adopt an accounting standard that is suitable for international comparison purposes.

As the Management Board and Supervisory Board of German companies have the decisive functions for Corporate Governance, the relevant points are dealt with in detail below:

II. Management Board

1.) Responsibilities and duties

- a) In the management of the Company, the Management Board is bound by Corporate interest, Company policy and the Group's guidelines as well as the basic principles of proper management (§ 76 German Stock Corporation Act).
- b) The Management Board develops, in consultation with the Supervisory Board, the strategy for the Group and is responsible for its implementation.
- c) The Management Board is responsible for ensuring compliance with legal provisions within the Group and to ensure their observation by Group companies.

2.) Information and disclosure requirements

- a) The Management Board will publish without delay any new facts arising in the sphere of the Company's activities which are not yet publicly known and, due to their impact on their financial position of the Company or its general course of business, are likely to impact significantly on the price of the Company's listed securities (§ 15 German Securities Trading Act).

As part of its regular communication efforts, the dates of major regular publications (such as annual and quarterly reports, General Meetings) shall be published in a 'Financial Calendar' (at least one year) in advance.

The information published by the company shall also be available in the 'Internet'. This is to include the invitation to General Meetings, their agenda as well as shareholder initiatives and management comments hereto as well as voting results of such meetings. If possible, all publications are provided in the English language.

- b) The company shall pursue the principle of equal treatment of all shareholders in the matter of information dissemination.
- c) The regular financial reporting (annual and quarterly reports) will be timely. The quarterly reports contain segment reporting as well as results per share.
- d) The Management Board shall inform the Supervisory Board on a regular basis, in good time and comprehensively about all relevant matters regarding business development, risk exposure and risk management of the company and major group subsidiaries.
- e) Should the business trend or risk exposure of the Group change significantly against plan, the Management Board must immediately inform the Supervisory Board through its Chairman, who will call an extraordinary Supervisory Board meeting if so indicated.

- f) The Management Board shall list in the Notes to the Company Accounts the corporations in which the Company holds a minimum of 10% of the share capital. Exempt from this are participations that are of immaterial importance for the Company's asset, financial and profit situation.
Equally, any existing mutual shareholdings and any shareholdings in the Company which have been notified by third parties as well as the owner(s) of such shareholdings must be reported in the Notes to the Accounts.
- g) As soon as the Company is notified (§ 25 German Securities Trading Act), or becomes otherwise aware that another party has obtained, exceeds or no longer holds 5, 10, 25, 50 or 75% of the voting rights in the Company, this will immediately be published by the Management Board.
- h) In the Notes to the Company Accounts details with regard to the Management Board's interest in shares of the Company (including any existing option rights) and their changes in relation to the previous year have to be published.

3.) Remuneration

- a) The remuneration of the Management Board and the Executive Staff shall include sufficient motivation to ensure long-term corporate value creation. This includes share option programmes and performance-related incentives related to the share price development and the continuing success of the company. In connection with the granting of share options and similar rights to members of the Management Board and the executive staff the following points shall be observed:

The initial exercise of the rights arising from share option programmes shall not be possible before two years since the grant. To document the incentive character as well as to balance the surrender of the subscription right by the shareholders, the exercise shall depend on achieving or exceeding relevant and transparent benchmarks (e.g. the development of an industry index).

The structure, total amount, exercise prices and exercise periods as well as the allocations of share options and similar rights in the reporting period shall be published in the Notes to the Company Accounts, separately by members of the Management Board and Executive Staff. To ensure compliance with insider laws, suitable precautions like closed periods of time are implemented.

- b) The fixed and variable remuneration elements of the Management Board shall be detailed in the Annual Report.

4.) Rules governing conflicts of interest and own-account transactions

- a) In the running of the management of the company, the Management Board members must not pursue any own interest that could be in conflict with the interest of the Company.

- b) Members of the Management Board must disclose to the Supervisory Board material personal interests in transactions of the Company and Group companies as well as other conflicts of interest. They must also inform their Management Board colleagues.
- c) All transactions between the Company or any Group company and Management Board members as well as associated persons or companies must comply with normal industry standards. The transactions and the terms and conditions thereof must be approved in advance by the Supervisory Board. They may not run counter to the interests of the Company or any Group company. The granting of loans to Management Board members must be approved by the Supervisory Board with advance notice to the Management Board. In all such transactions, the Company shall be represented by the Supervisory Board.
- d) Management Board members and senior Group executives may not exploit business opportunities available to the Company or Group companies for themselves or for the benefit of associated persons or companies.
- e) Management Board members and senior Group executives are also prohibited from conducting transactions, conflicting with the interests of the Company or any Group company, for themselves or for associated persons. This prohibition also extends beyond their business duties. Management Board members must disclose to the whole Management Board transactions (except daily life transactions) among themselves or with Supervisory Board members or senior Group executives. The transactions require the approval of the Supervisory Board.
- f) Management Board members and senior Group executives are during their employment subject to a comprehensive prohibition of competition (Members of the Management Board: § 88 German Stock Corporation Act).
- g) Any other activities of Management Board members, in particular the acceptance of Supervisory Board appointments, require the approval of the Supervisory Board. Any other activities of senior Group executives require the approval of the Management Board.
- h) The purchase and sale of Company shares, options or other share derivatives by members of the Management Board and senior Group executives are subject to special rules. It is generally welcomed that the Management Board and senior Group executives document their identification with the Company through a shareholder status.

However, they should refrain from frequent transactions and counter transactions which aim to achieve very short term gains (speculative deals). Appropriate measures such as closed periods for the purchase or sale of shares should ensure the observation of the provisions of the insider laws. The Management Board shall ensure the compliance through a Compliance Officer that shall report to the Supervisory Board at least once a year.

- i) Management Board members and Group employees may in connection with their activity neither request nor receive gifts or other advantages for themselves or third parties, if this could jeopardize the interests of the Group or the interests of customers.

III. Supervisory Board

1.) Composition

- a) The proposals for election of Supervisory Board members to the General Meeting shall ensure that the proposed candidates have both the required knowledge and skills as well as the relevant professional experience. To ensure efficiency, regard will be given to size and composition of the Supervisory Board. Board Members must make sufficient time available to exercise their activity in a diligent manner.
- b) The Supervisory Board shall ensure independent advice and monitoring of the Management Board through a sufficient number of independent persons who have no current or former business association with the Group. This shall also be taken into consideration for the composition of the Supervisory Board committees. The proposal for election to the Supervisory Board shall not include as a matter of course the election of retiring Management Board members.
- c) If a member of the Supervisory Board does not participate personally in more than half of the Board Meetings of any given fiscal year, this has to be notified in the Annual Report.
- d) The remuneration of the Supervisory Board shall appropriately reflect the responsibility, the work performed and the increase in the corporate value. The total remuneration shall be listed in the Notes to the Company Accounts.
- e) The Notes to the Company Accounts shall contain details of the share-ownership (including existing option rights) of the Supervisory Board members and their changes in relation to the previous year.

2.) Responsibilities and duties

- a) The Supervisory Board advises the Management Board on a regular basis regarding the management of the Company and the Group and monitors the achievement of the long term corporate goals (monitoring: § 111 German Stock Corporation Act). The Supervisory Board appoints the members of the Management Board and ensures an orderly long-term succession planning (§ 84 German Stock Corporation Act).
- b) The Supervisory Board can subject certain transactions to its approval (§111 German Stock Corporation Act). This refers in particular to investment projects, loans, the establishment of subsidiaries as well as the acquisition or disposal of shareholdings above a certain size.

- c) The members are bound to confidentiality with regard to all specific information and company secrets.
- d) The Supervisory Board issues its own Standing Rules and stipulates the information and reporting duties of the Management Board.
- e) The Supervisory Board mandates the Auditors to audit the Company and the Group annual accounts (§111 German Stock Corporation Act). Particular regard shall be given to:
 - that the mandated Auditor has not achieved during the last five years with the Audit and advice of the Company (or with corporations where the Company is a shareholder with more than 20%) more than 30% of his total revenue. This should also not be expected for the current fiscal year,
 - that no auditor is employed in the Audit that has issued the auditors' confirmation for the Annual Accounts or Group Accounts in more than 6 instances in the 10 years preceding the audit,
 - that no conflicts of interest exist for the Auditor.

All members of the Supervisory Board shall receive the Audit Reports in good time before the pertinent Supervisory Board meetings (§ 170 German Stock Corporation Act). Audit related meetings shall be held in the presence of the Auditors (§ 171 German Stock Corporation Act).

- f) Contracts, in particular consulting contracts of the company with members of Supervisory Board require the approval of Supervisory Board (except every day transactions).
- g) The Supervisory Board shall receive regularly (at least annually) a report by the Management Board with regard to donations exceeding an amount determined by the Supervisory Board.

3.) **Establishment of Committees**

The Supervisory Board shall establish in line with its Standing Rules various committees to deal with complex business matters. With regard to the composition of such committees, the Supervisory Board shall ensure the requisite professional experience. Incorporation and duties of committees are subject to the specific circumstances and the size of the Company. The following committees could be instituted:

- **General Committee:** The General Committee shall advise the Management Board and prepare the decisions to be taken by the Supervisory Board. The General Committee deals with general policy matters for the Group. It discusses the strategy and planning for the Group and its business segments submitted by the Management Board on the basis of different scenarios and their feasibility. The General Committee assesses the internal state of the Group with regard to its operating strength, efficiency and potential to achieve the formulated targets. It reviews the Corporate Governance Rules and their compliance on a regular basis (generally once a year).

- **Accounts and Audit Committee:** The Accounts and Audit Committee is responsible for matters pertaining to the accounting and auditing for the Company and the Group. The Committee evaluates the Auditor's reports and reports to the Supervisory Board on its assessment of the comments in the audit report, particularly with regard to the future development of the Group. It verifies the Management Board's assumptions on the budget figures for the Group and its business segments. Important other documents issued to shareholders shall be presented before publication to the Committee.

The tasks of the Accounts and Audit Committee regularly comprise:

- the preparation of the selection of the Auditor, the determination of major auditing issues, even if exceeding the legally required points and content of the Audit, as well as the determination of the Auditors' fee,
- the preparation of the audit of the Annual and Group Accounts by the Supervisory Board, including the relevant business reports on the basis of the results of the audit and additional points raised by the Auditor,
- the preparation of a report by the Management Board with regard to corporate donations exceeding an amount determined by the Supervisory Board,

and, if applicable,

- the discussion of partial auditing results during the year (e.g. of the internal control system),
 - the discussion of Interim Accounts and the results of any audits performed therefor.
- **Personnel Committee:** The Personnel Committee deals with the personnel issues of the Management Board (including its succession planning). The Personnel Committee shall recommend with regard to the content of the employment contracts of the Management Board including their remuneration. In addition, the Committee is responsible for the approval of paid for outside company work by members of the Management Board. The granting of loans to members of the Management Board and the Supervisory Board shall also be dealt with by the Committee.
 - **Nomination Committee:** The Nomination Committee is in charge of the composition, size and balance of the Supervisory Board and the proposals for election to the General Meeting.
 - **Market- and Credit Risk Committee:** This Committee supervises the handling of market risks and credit matters of the Group. It handles loans and other transactions requiring its approval and is informed of loans requiring its notification. For urgent matters, decisions can be delegated to nominated Committee members.

- **Mediation Committee:** German Stock companies that are subject to codetermination by law, are legally required to establish a Mediation Committee (§ 27 subpara 3 Co Determination Act of 1976). This Committee delivers proposals for the appointment of Management Board members if the required two thirds majority for the appointment or termination of Management Board members has not been achieved.

4.) **Rules governing conflicts of interest and own-account transactions**

- a) The Supervisory Board members must disclose any conflicts of interest to the Chairman of the Supervisory Board or his deputy unless they retire for cause. In the event of conflicts of interests, the Chairman of the Supervisory Board or his deputy shall decide to whom the information should be forwarded and whether the member of the Supervisory Board in question shall participate in meetings.
- b) In their decisions Supervisory Board members must not pursue their own interests or those of associated persons or companies, which are in conflict with the interests of the Company or any Group company. They may not pursue for their own benefit business available to the Company or its Group companies. In the event of possible conflicts of interest, the interests of the Company and its Group companies must take priority and the Supervisory Board members concerned must abstain from voting.
- c) All transactions between the Company, any Group company and Supervisory Board members as well as associated persons or companies must comply with normal industry standards. The transactions (except: daily life transactions) and their terms must be approved in advance by the Supervisory Board. They may not run counter to the interests of the Company or any Group company.
- d) The granting of loans to Supervisory Board members by the Company or Group companies require the agreement of the Management Board and the Supervisory Board.
- e) Supervisory Board members may, in conjunction with their activity, neither request nor receive gifts or other advantages for themselves or third parties, if this could jeopardize the interests of the Group or customers.