GETTING THE DEAL THROUGH

Corporate Governance

Board structures and directors' duties in 39 jurisdictions worldwide

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Sources of corporate governance rules and practices

1 What are the primary sources of law, regulation or practice relating to corporate governance?

The corporate governance legal framework for German stock corporations (*Aktiengesellschaften*) is set out in various corporate and securities statutes, the most important being the Stock Corporation Act (*Aktiengesetz*, AktG). The AktG contains a detailed statutory framework of principal rules for the establishment, constitution and governance of stock corporations. In November 2005, the AktG was amended by the Act on Corporate Integrity and the Modernisation of Rescission Rights (UMAG), which introduced, inter alia, the business judgement rule into German statutory law, provided for improved rights for shareholders to claim damages from members of the management board and limited the rights of shareholders to speak and ask questions at a general meeting (*Hauptversammlung*).

Other important laws for corporate governance in Germany include:

- the Commercial Code (*Handelsgesetzbuch*), which establishes basic governance rules and accounting principles for commercial companies;
- the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz*, WpÜG), which contains rules on voluntary and mandatory takeover bids;
- the Securities Trading Act (*Wertpapierhandelsgesetz*), which establishes rules on insider trading and disclosure obligations;
- the Co-determination Act (*Mitbestimmungsgesetz*), which provides for the participation of employee representatives in the supervisory boards of large companies with more than 2,000 employees;
- the Act on One-Third Participation (*Drittelbeteiligungsgesetz*), which provides for co-determination rights for employees of medium-sized companies (between 500 and 2,000 employees).

In addition to these mandatory statutory rules, the Corporate Governance Code (CGC) defines corporate governance best practice rules, in particular for listed stock corporations. The CGC is a non-binding set of recommendations prepared by a commission of experts appointed by the German government. Among other things it recommends improved control rights for the supervisory board and shareholders, improved reporting and transparency obligations as well as strict requirements regarding the independence of auditors. Due to a 'comply or explain' provision in the AktG, listed stock corporations are obliged to state publicly whether and to what extent the company complies with the recommendations of the CGC.

2 What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder activist groups whose views are often considered?

The principal statutory rules on corporate governance in Germany are adopted and enacted by the Lower House of German Parliament (Deutscher Bundestag). In addition, certain auxiliary regulations are made directly by governmental agencies, such as the Ministry of Finance.

There is no central agency for the enforcement of corporate governance rules in Germany. Instead, most of the mandatory corporate governance rules are enforced through private litigation in civil courts. The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht), however, has certain powers of enforcement in the context of securities trading and the disclosure obligations of listed companies.

There are a number of shareholder groups which represent the interests of shareholders in public debate, at general meetings and in court proceedings. These include the Association for the Protection of Minority Shareholders (Schutzverein der Kleinaktionäre), the German Association for the Protection of Security Holders (Deutsche Schutzvereinigung für Wertpapierbesitz) and the Association of Institutional Shareholders (Vereinigung Institutioneller Privatanleger).

The rights and equitable treatment of shareholders

3 What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action?

Shareholders of a German stock corporation only have indirect influence on the appointment or removal of the management board members. The shareholders elect the members of the supervisory board at the general meeting. The supervisory board in turn appoints and removes the members of the management board and controls the management of the corporation. During the term of his or her appointment, however, a member of the management board may only be removed where there is 'good cause'. This will be the case, eg, where the shareholders resolve by a majority vote that they have lost confidence in the person.

Members of the supervisory board can be removed at any time by a shareholders' resolution at the general meeting. The articles of association may reduce the statutory requirement of a 75 per cent majority for such resolution to a simple majority.

In companies which are subject to employees co-determination (ie, companies with more than 500 employees), up to half of the members of the supervisory board will be employee representatives. Special rules relating to the appointment and removal of these representatives exist (see question 28).

4 What decisions are required to be reserved to the shareholders?

Mandatory provisions of the AktG reserve certain important decisions to the shareholders. These include:

- the appointment and removal of the members of the supervisory board (except for those members appointed by the employees under the co-determination regime);
- the allocation of the distributable annual profit;
- the amendment of the articles of association, including capital increases and reductions;
- the routine discharging of members of the supervisory board and management board;
- the approval of restructuring measures under the Reorganisation Act (*Umwandlungsgesetz*), such as mergers, demergers, spin-offs and changes of legal form;
- the approval of the transfer of all or substantially all of the assets of the company to a third party; and
- the approval of any affiliation agreement, such as domination and profit-pooling agreements.

In addition to the statutory approval requirements, the Federal Court of Justice (Bundesgerichtshof, BGH) has in its case law developed further approval requirements for specific situations. According to the so-called Holzmüller/Gelatine doctrine, certain management decisions of outstanding importance which substantially affect shareholders' participation rights require the approval of the general meeting. While some uncertainty remains, recent BGH judgments have been interpreted to restrict this approval requirement to cases in which (a) the effect of the proposed measure or transaction is similar to that which would be brought about by the amendment of the articles of association, and (b) a substantial part of the company's assets, turnover and earning capacity is affected.

5 To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

Usually, the 'one share, one vote' principle applies to German stock corporations. A company can issue non-voting preferential shares, however, for up to 50 per cent of its registered share capital in exchange for certain preferred dividend rights. Generally, rules relating to golden shares, such as multiple voting rights and maximum voting rights are no longer permitted with respect to listed stock corporations. The only remaining exception to this rule is the 'Volkswagen Act', which grants certain special rights regarding the partly state-owned carmaker Volkswagen AG to the Federal Republic of Germany and the State of Lower Saxony (*Niedersachsen*), inter alia, by limiting the voting rights of any other shareholders to a maximum of 20 per cent. This law has been held to be contrary to the freedom of establishment and free movement of capital by the European Commission and it is currently the subject of infringement proceedings before the ECJ.

6 Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?

Statute requires holders of bearer shares (*Inhaberaktien*) to establish their ownership to participate in the general meeting. A company's articles of association, however, may – and often do – provide for certain additional requirements.

The UMAG has ensured that these additional requirements are shareholder-friendly and practicable. In particular, the minimum period for a shareholder to notify the company of its intention to participate in the general meeting must not exceed seven days. The UMAG has also clarified that shareholders of listed companies may not be forced to 'block their shares' before the general meeting by formally placing them on deposit with the company or a bank. Moreover, listed companies may not require shareholders to file any ownership evidence with the company more than seven days before a general meeting. The UMAG further stipulates that a confirmation of the bank in charge is sufficient to prove the ownership of listed shares if it states that the shares have been held at the beginning of the 21st day before the general meeting.

The shareholders are entitled to exercise their voting rights either in person or to delegate them to an authorised proxy by written power of attorney. In certain cases, the right to vote may not be exercised, eg, if the respective decision would lead to a conflict of interests for a particular shareholder, or if the decision concerns a possible claim against that shareholder.

7 Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

The general meeting of a stock corporation is normally convened by the management board. A group of shareholders holding at least 5 per cent of the registered share capital, however, has the right to request, in written or electronic form, for the management board to hold a general meeting. Such a request must state the reasons for and the purpose of the proposed meeting and is only admissible if the minority shareholders provide evidence that they have continuously held the shares during the three months before the general meeting and at the time when the management board decides on their request (continuous ownership requirement). The articles of association may provide for a lower shareholding threshold, as well as for an easing of the form requirement, but cannot waive the continuous ownership requirement.

If the management board does not comply with the shareholders' request, a local court (*Amtsgericht*) can authorise the group of shareholders to convene the general meeting.

Shareholders holding at least 5 per cent or €500,000 of the registered share capital may also request that certain issues be put on the agenda for decision. There are no rules, however, to force the management board to circulate statements by dissident shareholders.

8 Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action against controlling shareholders for breach of these duties be brought?

Shareholders owe a general duty of loyalty to the company and to other shareholders. This duty follows directly from membership of the corporation; it is not expressly set out in statutory law and needs not be mentioned in the articles of association. In addition to the prohibition against causing harm to the company, the duty of loyalty relates primarily to voting conduct. Votes cast in a general meeting must therefore uphold this general duty of loyalty. Shareholders may challenge a resolution adopted at a general meeting by filing an action of rescission (Anfechtungsklage). The UMAG (see question 1), however, limits the possibility for shareholders to file frivolous actions.

Shareholders' procedural rights at the general meeting have also been limited to make the meeting more efficient and to avoid purely provocative and unproductive actions. The chairperson at these meetings now has the right to limit the time for questions and answers in an appropriate manner without risking having the

shareholders' resolutions subsequently declared void by a court. Where the answers to (frequently asked) questions have been published on the company's website at least seven days before the meeting, they do not have to be repeated during the meeting. In general, it is now more difficult for shareholders to file rescission actions based on an alleged lack of information.

9 Can shareholders ever be held responsible for the acts or omissions of the company?

Shareholders of a stock corporation cannot generally be held responsible for the acts or omissions of the company. The company itself is only liable to third parties in the amount of its assets. Only in a few exceptional cases, such as where there is a major violation of good faith principles or the company's legal form has been used in an abusive manner to harm creditors, can an act or omission lead to the piercing of the corporate veil.

Corporate control

10 Are anti-takeover devices permitted?

Anti-takeover devices are generally permitted within the scope of the WpÜG. Before a takeover bid is published, the management may implement a number of measures based on shareholders' resolutions. These measures are designed to protect the company in the event of a hostile takeover and may include:

- converting ordinary shares into preference shares without voting rights (up to 50 per cent of the registered share capital);
- issuing new preference shares or convertible bonds to certain shareholders;
- repurchasing shares equalling up to 10 per cent of the registered share capital;
- providing for increased majority requirements for the removal of members of the management and supervisory boards;
- selling or locking up substantial or strategic assets of the company (the crown jewel defence); or
- acquiring a direct competitor of the offering company and thereby creating merger control problems (the merger control defence).

Once a takeover bid is published, the management of the target company is under an obligation of neutrality and may not take any actions which would prevent the success of the bid. The WpÜG, however, expressly provides three exceptions to this prohibition:

- taking measures that a prudent and reasonable manager of a company, which is not subject to a takeover bid, would have taken (business judgement rule);
- searching for competing takeover offers for the target company from third parties (the white-knight defence); and
- taking measures within the competence of the management board which have been approved by the supervisory board of the target company.

The European Takeover Directive (2004/25/EC), providing for more transparency and a level playing field for takeover offers throughout the EU was implemented into the WpÜG in July 2006.

11 Are restrictions on the transfer of fully paid shares permitted, and if so, what restrictions are commonly adopted?

Shares in a listed stock corporation are normally issued in the form of bearer shares and less frequently in the form of registered shares (*Namensaktien*). Fully paid bearer shares can be freely disposed of without requiring the consent of any third party.

Any transfer of registered shares must be notified to the company and registered in the company's stock register. To facilitate such a process, registered shares are increasingly entered in electronic transfer and clearance systems. The articles of association may also require the consent of the company's management board for the transfer of registered shares.

12 Are compulsory share repurchase rules allowed? Can they be made mandatory in certain circumstances?

Compulsory share repurchase rules are not allowed. The voluntary repurchase of shares equalling up to 10 per cent of its registered share capital of a stock corporation is, however, allowed in certain circumstances.

The responsibilities of the board (supervisory)

13 Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

German stock corporations have a mandatory two-tier or dual board system consisting of the management board (*Vorstand*) and the supervisory board (*Aufsichtsrat*).

14 What are the board's primary legal responsibilities?

The management board of a stock corporation is responsible for the operational day-to-day management of the company. It represents the company vis-à-vis third parties and in court. The management board is responsible for running the company and has wide discretion. It is not bound by instructions from the supervisory board or the shareholders.

The supervisory board is responsible for controlling and supervising the management board and for appointing and removing its members. It also represents the company as regards the members of the management board. Furthermore, the supervisory board can establish management rules (*Geschäftsordnung*) for the management board, allocating responsibilities to certain members and making certain decisions subject to supervisory board approval. Whilst the supervisory board is not entitled to instruct the management or to take executive decisions, the articles of association may provide for certain management decisions to be subject to supervisory board approval.

15 Whom does the board represent and to whom does it owe legal duties?

The management board represents the company as regards third parties and in court, whereas the supervisory board represents the company as regards its management board. All members of the management board are under a general duty to manage the company with the due care of a prudent and diligent manager and in the best interest of the company.

The supervisory board is also under a general duty to control the management, which it owes to the company and its shareholders.

16 Can an enforcement action against directors be brought on behalf of those to whom duties are owed?

Members of the management board who violate their legal duties by failing to apply the care of a prudent and diligent manager are jointly and severally liable to the company for damages caused, unless the respective action was approved by a valid resolution of the general meeting. Neither the management board nor the supervisory board, however, can be held liable for the poor performance of the company based on entrepreneurial business decisions taken with the due care of responsible managers, even if these decisions subsequently turn out to be failures.

Although the liability of the management is primary as regards the company, the general meeting may also resolve that actions be brought against members of the management board. The UMAG even allows shareholders holding at least 1 per cent or an amount of €100,000 of the registered share capital to claim damages from the company in their own name. To rule out frivolous or abusive shareholder litigation, such claims are, however, subject to an admissibility procedure as well as certain substantive and formal requirements.

17 Do the board's duties include a care or prudence element?

Members of the management and supervisory boards must perform their duties with the care of a prudent and diligent manager and supervisor, respectively, in accordance with the rules of proper corporate management. Taking recourse to the business judgement rule, the UMAG has introduced a safe harbour for board members. Accordingly, a board member is not in breach of his or her duties if, when taking an entrepreneurial decision, he or she could reasonably believe that they were acting on the basis of adequate information in the interest of the company.

18 To what extent do the duties of individual members of the board differ?

Formally, all members of the management board represent and manage the company collectively and are jointly responsible for all business areas, irrespective of individual skills and experience. Internally, however, the members of the management board are in most cases entrusted with different operational responsibilities, such as finance, marketing or engineering. These are often based on the specific training and expertise of the relevant manager.

The members of the supervisory board also have equal legal duties. In most cases, however, the specific experience of a particular individual will be the primary reason for the respective appointment.

19 To what extent can the board delegate responsibilities to management, a board committee or person?

Although it is standard practice to allocate certain operational responsibilities to individual members of the management board, this does not affect the collective responsibility of the entire management board for actions taken with respect to those operations.

It is still unusual for German stock corporations to form committees within the management board, but there have been some notable exceptions in recent years. These have come as means of attempting to adjust the internal governance structure of German stock corporations to international standards.

In contrast, the AktG expressly allows the establishment of subcommittees of the supervisory board. These committees, however, may only be made up of members of the respective supervisory board; third parties, including shareholders or employees who are not otherwise members of the supervisory board, may not participate in such subcommittees. A number of important tasks and responsibilities are still reserved for the supervisory board and cannot be delegated to subcommittees.

20 Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation, or listing requirement? If so, what is the definition of 'non-executive' and 'independent directors' and how do their responsibilities differ from executive directors?

The two-tier board system of a German stock corporation makes a strict distinction between the management board as the executive body and the supervisory board as the controlling body. This system does not, therefore, provide for executive and non-executive members.

The management board of a stock corporation may be made up of only one member, unless the company is subject to statutory co-determination. The supervisory board on the other hand must have at least three but no more than 21 members, though the actual number of members required by statute will depend on the size of the corporation.

21 Do law, regulation, listing rules or practice require separation (or joining) of the functions of board chairman and CEO? If flexibility on board leadership is allowed by law, regulation and listing rule, what is generally recognised as best practice and what is the common practice?

The dual board system of German stock corporations does not provide for the position of a CEO. In most cases, the management board is headed by a chair or spokesperson. The chairperson is appointed by the supervisory board, coordinates the work of the management board and assumes certain representative functions. The articles of association or management rules may also provide for additional rights and responsibilities, such as certain veto rights or a casting vote in case of a tie.

22 What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

Generally, as far as the supervisory board of a stock corporation is concerned, there are no mandatory committees. One exception applies to companies subject to the Co-Determination Act, which requires the establishment of a mediation committee (*Vermittlungsausschuss*) for certain personnel decisions. The CGC also recommends the establishment of an audit committee (*Prüfungsausschuss*) to deal with issues related to accounting, risk management, the appointment of the statutory auditor as well as ensuring the auditor's independence. According to the CGC, additional expert committees may be advisable for specific complex subject matters to improve the efficiency of the work of the supervisory board.

23 Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The number of management board meetings is not determined by law or regulation. The supervisory board of a listed stock corporation must meet at least twice every six calendar months. For unlisted companies, only one meeting every six calendar months is required, unless otherwise provided in the articles of association.

24 Is disclosure of board practices required by law, regulation or listing requirement?

Disclosure of management board practices is not required by law.

In contrast, the supervisory board must present a written report to the general meeting setting forth, inter alia, how and to what extent it has supervised the activities of the management board during the financial year. In the case of listed companies, the supervisory board report has to specify which committees have been established and state the number of board and committee meetings held.

25 Is there any law, regulation, listing requirement or practice which affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions between the company and any director?

The supervisory board determines the remuneration of the members of the management board in accordance with the principles set out in the AktG. The total remuneration package of the individual board member (including fixed salary, bonus, disbursements, etc) must be proportionate to their duties and the company's situation. This rule also applies to pensions and other benefits.

The compensation packages offered to members of the supervisory board are either set out in the articles of association of the company or are determined by a resolution of shareholders adopted at a general meeting. These packages should also take into account the duties of the relevant board member and the situation of the company.

Stock corporations are required to disclose as part of their annual financial statements the total remuneration granted to the management board as a whole and to the supervisory board as whole (group compensation disclosure). Listed stock corporations additionally have to disclose the individual remuneration provided to each member of the management board. This disclosure may form part of either the company's annual financial statements or the directors' report on the economic situation (*Lagebericht*) and must set out the non performance-related, performance-related and long-term incentive components as well as the promised severance awards granted to each identified member of the management board. Listed corporations can opt out of this specific individual disclosure obligation, however, by a shareholders' resolution adopted by a 75 per cent majority.

Listed stock corporations should also explain the basic elements of the remuneration system in the directors' report on the economic situation of the company. In addition, the CGC recommends that the corporate governance report of a listed corporation describe, in a generally understandable manner, the remuneration system for management board members, the value of stock option plans and of accrued liabilities under pension plans as well as the nature of any fringe benefits provided by the company.

Members of the management board are appointed for a maximum period of five years. Accordingly, the maximum term of their contract is five years.

Members of the supervisory board may be appointed for a maximum term ending at the general meeting resolving their discharge for the fourth financial year following the beginning of their term. As the year of the appointment is not counted for that purpose, the actual term in practice is roughly five years.

Agreements, including loan agreements, between the company and a member of either the management board or the supervisory board require a resolution of the supervisory board and have to comply with certain specific requirements set out in the AktG. For example, where a supervisory board member is affected by the agreement, he or she is normally excluded from any vote on this subject. The granting of loans to members of the management board is also subject to various restrictions. In particular, the resolution of the supervisory board approving the grant must not be taken more than three months before the grant of the loan and must specify the nature of the loan, the applicable interest rates as well as the relevant repayment formalities. Further specific limitations apply to management board members who are also shareholders of the company due to capital preservation rules.

26 How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice which affects the remuneration of senior managers, loans to senior managers or other transactions between the company and senior managers?

The management board is responsible for independently managing the enterprise and is ultimately accountable for senior management and employee compensation schemes. There are no specified and detailed statutory restrictions on senior management remuneration, however, the general rule is that in determining senior management remuneration the management board must act in the company's best interests with the objective of increasing the sustainable value of the enterprise. Exaggerated compensation for senior management may be considered a breach of fiduciary duty and thus may trigger civil and even criminal liability of the management board member(s) responsible for the decision.

Likewise, there are no specific restrictions on the grant of loans to senior management or on other transactions between the company and senior managers, provided that a general 'interest of the company' test, with its quite generous criteria, is met. Loans or transactions which are not at arm's length and which do not at all serve the company's interest, however, may trigger civil and criminal liability of the respective management board member. In addition, specific restrictions apply if the senior manager is a shareholder of the company. In this case, any loan or transaction that deviates from the arm's length standard in favour of a senior manager will be considered an undue repayment of contributions even if the loan or transaction still serves the company's interest.

27 In relation to directors and officers liability insurance: is it permitted or common practice; can the company pay the premiums?

Directors and officers liability insurance for members of the management board as well as the supervisory board is allowed in Germany and the company will normally pay the premiums. The CGC recommends that companies retaining directors and officers insurance provide for a reasonable excess. Such 'reasonable excess' provisions, however, do not yet appear to be standard practice in Germany.

28 Are there any constraints on the company indemnifying directors in respect of liabilities incurred in their capacity as directors? If not, are such indemnities common?

Companies are not permitted to indemnify members of the management board or supervisory board. A shareholder may in some cases indemnify one or more members of the supervisory board, whereas members of the management board may only be indemnified in very exceptional cases.

Update and trends

Sparked by several recent corporate scandals in Germany, there is increasing political pressure to introduce restrictions on the practice of appointing former members of the management board as members or even the chairman of the supervisory board. Currently it is common practice in many German stock corporations for the chairman of the management board to be appointed chairman of the supervisory board upon his or her resignation from active management. This practice is particularly popular with large listed corporations. Currently the supervisory boards of 14 out of the 30 DAX-listed companies are headed by the former heads of the management boards. This can lead to severe conflicts of interest, especially when the head of the supervisory board is in charge of investigating past irregularities which occurred during his or her term as head of the management board. There may also be a danger that supervisory board members try to prevent their successors in the management board from correcting mistakes made by the previous management.

Currently no statutory rules exist on this point. Only the voluntary CGC recommends that members of the management board should not, as a rule, be subsequently appointed chairperson of the supervisory board or one of its committees. If such an appointment is to be made, the general meeting should be provided with specific reasons for this appointment. In addition, the CGC recommends that no more than two former management board members should be on the supervisory board. These voluntary rules have not been complied with by a number of major corporations. Therefore in December 2006, senior representatives of both governing parties (the CDU and the SPD) called for a statutory prohibition of the direct move of management board members into the supervisory board. Concrete proposals for statutory changes are expected to be presented early 2007. The details of such proposal are not yet clear. For example, whether such restrictions should apply only to the chairperson of the management board and the supervisory board or also to ordinary members of both bodies is still under debate. An adequate waiting (or cooling-off) period of four to six years is also being considered.

Whilst a number of high-level politicians have called for immediate legislative action, there is also intense political lobbying against statutory changes. It remains to be seen whether the political drive will actually sustain and lead to a swift implementation in the course of 2007 or whether self-regulation will prevail for the time being.

29 What role do employees play in corporate governance?

In companies subject to the co-determination regime, employees' representatives hold mandatory seats on the supervisory board.

For companies with more than 500 employees, one-third of the supervisory board members must be appointed by the employees pursuant to the Act on One-Third Participation (*Drittelbeteiligungsgesetz*). These representatives are elected by all employees in accordance with specific provisions.

For companies with more than 2,000 employees, the Co-Determination Act applies. This provides that the supervisory board must comprise at least 12 members, six of whom are employees' representatives. Employees directly elect some representatives, while others are appointed by the trade unions of the respective industry sector. Normally, resolutions of a fully co-determined supervisory board will be passed by simple majority. In case of a tied vote, the chairman, who is generally appointed by the shareholders, will have the casting vote. This ensures that the supervisory board is ultimately controlled by the shareholders.

In addition, a labour director must be appointed as a member of the management board to represent the employees' interests in this body.

Disclosure and transparency

30 Are the corporate charter (or articles of incorporation) and by-laws of companies publicly available? If so, where?

The deed of incorporation and the articles of association are publicly available in the commercial register (*Handelsregister*) in which the company has been entered. The relevant register will be held by the local court responsible for the area in which the company has its registered seat. Due to new legislation introduced in autumn 2006, the filing procedures are currently being

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transformed into electronic filing. The traditional paper filing is still admissible for a transitional period ending in 2009 at the latest. Electronic access to filed documents is the general principle since 1 January 2007.

31 What information are companies required to publicly disclose? How often is such disclosure required to be made?

The AktG and other statutory provisions contain a number of disclosure requirements for listed and non-listed stock corporations. The information and documents to be disclosed include, inter alia:

- the annual financial statements, the management reports and interim reports;
- the issuance of new shares as well as the payment of dividends;
- information on certain shareholding thresholds being exceeded by a single shareholder; and
- information about transactions entered into by members of the management board or the supervisory board or their close relatives with respect to the shares of the company (directors' dealing).

In addition, a listed company must immediately disclose any insider information, ie, all circumstances which are not yet public knowledge, but which may have a significant influence on the share price if they become public information (ad hoc disclosure).