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Corporate Governance 2016

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A practical cross-border insight into corporate governance

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Corporate Governance.*

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 30 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Bruce Hanton and Vanessa Marrison of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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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*) (hereinafter, "**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 22 December 2015)

     This governs all relations between shareholders including the annual general meeting ("**AGM**"; in German, *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 amended on 5 May 2015)

     The DCGK does not constitute statutory law. It does not constitute mandatory law either, since it mainly contains recommendations for Companies to organise their corporate governance. The DCGK 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*) whether, and to what extent, they have complied with the recommendations of the DCGK. If a listed Company has not fully complied, it must explain why and in which way a deviating corporate governance scheme has been used (this is known as "**comply or explain**").

  c) Commercial Code (*Handelsgesetzbuch*) (last amended on 11 March 2016)

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

- **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 20 November 2015)

     This 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 Control of Financial Services (*Bundesanstalt für Finanzdienstleistungsaufsicht*, "***BaFin***").

  b) Securities Trading Act (*Wertpapierhandelsgesetz*) (last amended on 20 November 2015)

     This 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 Securities Exchange Act's provisions is also overseen by the *BaFin*.

  c) Stock Exchange Act (*Börsengesetz*) (last amended on 20 November 2015)

     This 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.

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

- **Non-Regulatory Sources**
  a) Articles of Association (*Satzung*)

     These 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, specified in more detail.

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

     Such rules of procedure 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 German Federal Parliament (*Deutscher Bundestag*) has passed an amendment of the Stock Corporation Act on 12 November 2015. Core topics are the flexible funding of listed Companies and the increased obligations of transparency in terms of the shareholding structure of unlisted Companies. These amendments are so far perceived positively by the Companies and the legal practice. Finally, not implemented in the amendments but previously subject to major parliamentary debates was the implementation of a stricter control of the remuneration of the management board through the AGM ("**Say on Pay**"). A limit of management board remuneration is so far only mentioned in a recommendation of the DCGK. At EU level, the revision of the EU Shareholders' Rights Directive is currently being negotiated in the so-called "trilogue process", in which the topic of board remuneration and "Say on Pay" will also be discussed.

A further current topical issue is the future of the DCGK as a consequence of the increasing juridification of its recommendations. The "comply or explain" principle of the DCGK is increasingly undermined and surpassed by statutory law, which could jeopardise the acceptability of the recommendations by the Companies.

With regard to recent events within the German automotive industry, many Companies further discuss to strengthen their compliance structures.

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, on 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*, *Gewinnschudverschreibung*) (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 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 the AGM, the shareholders usually adopt resolutions on:
   - the use of the balance sheet profit;
   - the discharge of the members of the management board and the supervisory board;
   - the election of members of the supervisory board; and
   - the 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 a 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, as regards measures of capital increase or decrease. If such a resolution is not adopted by the AGM, the competent court has to appoint such 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 the 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 do not completely, contain the required statements, and the management board has not provided these statements in the AGM in spite of questions by the 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 the 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 a filing is usually 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 the invitation to the AGM, as well as all documents and information relating thereto on the Company's website and on EU-wide media.

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

Shareholders can generally not be held liable for acts or omissions of a Company. Only in extreme exceptional cases (e.g. abusing the legal form to harm creditors) can shareholders 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 the 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 further prohibits a shareholder from voting on the 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 the members of the management board.

However, by means of a shareholder resolution, the general meeting can request the Company to initiate an action against the members of the management bodies and nominate a special representative to represent the Company in this respect (see above, question 2.3, point c)).

In the 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.

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 a 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 it is common for 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, point 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 divisible 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 for just cause. Causes can include 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 (see question 5.2 below).

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 has 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 for 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 it was finally 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 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 own acts or the acts of the relevant member's board or waiver of such a 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 in 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 do act in compliance with their obligations if, in the case of an entrepreneurial decision, they can reasonably be assumed to be acting on the basis of adequate information and in the best interests 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, particularly avoidance of any criminal offences of its managers and employees, has dramatically increased in 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, in recent years, liability risks for board members have increased. 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 has already reached 26.9% among the DAX 30 Companies in 2015.

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, which must include disclosure as to whether the listed Company complies with the rules of the DCGK, and if not, which recommendations are not 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 quote of the shares of such a 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 have the possibility, however, to take out additional D&O insurance coverage for such a 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 Transparency and Reporting

4.1 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.

4.2 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.

4.3 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 revenues during the last five years were generated from the Company or companies in which the Company holds more than 20% of the shares, and if this percentage is also expected in the current business year. Further restrictions apply to listed Companies.

The auditors must comment on the way in which the accounts have been prepared in their auditor's report, 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.

4.4 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, point 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 as regards 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.

5 Miscellaneous

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

Germany is a highly regulated country, particularly 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.

There is no 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.

5.2 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. the co-determined supervisory board (*mitbestimmter Aufsichtsrat*).

Resolutions in a co-determined supervisory board are adopted by a simple majority of the votes cast. In the 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.

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The authors wish to thank their colleague Mario Weichel for his assistance in the preparation of this chapter. Mario Weichel is a Partner at BEITEN BURKHARDT's Munich office. His areas of activity include advising clients in M&A transactions and venture capital finance, as well as related litigation. In particular, he advises his national and international clients on issues relating to limited liability companies and joint stock companies, general contract law and private international law (Tel: +49 89 35065 1303 / Email: Mario.Weichel@bblaw.com).

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