

**Principles of Good Corporate Governance**  
**for Indirect or Direct Holdings**  
**of the Federation**

**Part A. Public Corporate Governance Code of the Federation**

**Part B. Guidance Notes on Good Corporate Governance of  
Corporations in which the Federation holds an Equity Share**

**Part C. Appointment Guidelines**

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## Part A

### Public Corporate Governance Code of the Federation

#### 1. Preamble

##### **1.1 Content and objectives of the Federation's Public Corporate Governance Code**

The Public Corporate Governance Code of the Federation sets out the essential provisions of applicable law governing the management and oversight companies in which the Federal Republic of Germany is a shareholder, while outlining the internationally and nationally acknowledged principles of good and responsible corporate governance.

The objective is to make the management of companies and oversight over them more transparent and easier to understand, and to establish more precisely the role of the Federation as a shareholder of such companies. Concurrently, the intention is to increase awareness of good corporate governance.

The fact that the Federation owns equity shares in companies is based on, and legitimated by, the circumstance that the Federation must fulfil specific tasks (these being the tasks conferred upon it by the public (*öffentlicher Auftrag*)). This objective, which is pursued by the Federation taking out a shareholding in such corporations, is reflected in the purpose or object of the company concerned (*Unternehmensgegenstand / Gesellschaftszweck*); if other legal forms are selected, the Federation's objective is reflected by the purpose allocated to the entity responsible for that company (*Unternehmenszweck*). This purpose or object is the guideline for all actions taken by members of the management and the supervisory body.

The standards of good and responsible governance are intended to serve as a basis for improving the management and oversight of companies by their representative and supervisory bodies. Likewise, the objectives pursued by the Federation in holding such equity shares are to be achieved more efficiently and with better economic results. Finally, the Public Corporate Governance Code of the Federation is established in the interests of ensuring a greater degree of transparency, responsibility, and control while enhancing public trust in companies in which the Federation holds a share and in the Federation as a shareholder.

In those cases in which the state has established entities, the corporate structures of which are governed by private law, in order to better perform its tasks, and with better economic results, it is to be regarded as a private owner. Most companies in which the Federation holds an equity share are corporations under private law, such as limited liability companies (*Gesellschaft mit beschränkter Haftung, GmbH*) or stock corporations (*Aktiengesellschaft, AG*). These corporations are strategically guided and controlled by their management and supervisory bodies (such as the supervisory board or the board of directors) in accordance with the stipulations of the law or their statutes. Should the statutes not have provided for a

supervisory body, the task of supervising the management is incumbent on the meeting of the company's shareholders.

The rights of the shareholders who have made available the required capital are safeguarded at the meeting of shareholders or annual general meeting. The Federation observes its rights based on the equity share it holds.

The management is responsible for leading the company. For a limited liability company (GmbH), the leadership consists of the managing directors, while a board of management heads a stock corporation (AG). In this regard, the members of the management are jointly responsible.

The supervisory body provides advice to the management and monitors its actions. Whenever major decisions of fundamental import to the company are to be taken, the supervisory body is directly involved.

Companies established in the form of a legal entity under public law (such as an *Anstalt öffentlichen Rechts*, a corporation under public law) are established by law, or as a result of statutory provisions. Their specific organisational structures are based on the determinations of the law and differ from the forms of business organisation available under private law. Due to their legal form, they are supervised by the state.

## 1.2 Structure of the Federation's Public Corporate Governance Code

The Public Corporate Governance Code of the Federation sets out *recommendations*, *suggestions*, and provisions reflecting applicable law.

The *recommendations* made in the Public Corporate Governance Code are characterised as such by using the verb "shall". The recommendations were developed based on the legal relationships given for companies limited by shares. They are to be applied analogously to companies having a different legal form as far as such recommendations can be brought in line with the corporate structures and relations of the different representative supervisory bodies amongst each other. In taking account of the needs specific to the legal form and the corporation concerned, the Code enables a greater degree of flexibility and self-regulation. While companies may deviate from the recommendations, they are under obligation to disclose such non-compliance in their annual corporate governance reports.

Furthermore, the Public Corporate Governance Code of the Federation provides *suggestions*, from which deviations are permissible without any disclosure being required; the verbs used in this regard are "should" or "may".

The other parts of the Public Corporate Governance Code using other than these verbs address provisions that must be observed by corporations since they are applicable law.

The notes do not form part of the Public Corporate Governance Code of the Federation; they are intended to explain the content and objectives of the Code's provisions, in particular its recommendations and suggestions, and to provide some background information.

### 1.3 Scope

In terms of the purpose and objective of the Public Corporate Governance Code of the Federation, the term “corporation” or “company” is to be interpreted broadly. First and foremost, it refers to companies limited by shares. In addition, other legal entities under private law and under public law, the purpose of which is to operate a commercial or other economic business, or the main purpose of which is to so operate a business, are also “corporations” or “companies” within the sense of these terms as used in the Code. The term “equity share” refers to any capital, membership or similar participation by the Federation, for example in foundations, which is intended to establish a permanent relationship with the respective foundation. In this regard, no minimum share is required.

The Public Corporate Governance Code of the Federation is not applicable to any companies in which the Federation holds an equity share that are listed on a stock exchange and are thus subject to the German Corporate Governance Code.

The Public Corporate Governance Code of the Federation is intended to provide guidance to corporations under private law in which the Federation owns a majority interest. Should the Federation not have corporate control over such a private-law enterprise, it is recommended that this corporation comply with the Public Corporate Governance Code.

It is recommended that corporations under public law likewise observe the Public Corporate Governance Code of the Federation unless statutory provisions (such as requirements of the law concerning the structure of the corporation’s representative supervisory bodies) stipulate otherwise.

Should a corporation over which the Federation has corporate control operate a holding company under uniform leadership, the Public Corporate Governance Code of the Federation also addresses this group’s management.

The Federal Ministry of Finances (BMF) will review the Public Corporate Governance Code of the Federation in terms of its content and scope at regular intervals against the backdrop of national and international developments and shall adjust the Code as needed.

### 1.4 Commitment

The Federal Ministry responsible for the corporation in which the Federation holds an equity share ensures compliance with the Public Corporate Governance Code established by the Federal Government, and also safeguards that the Code is incorporated into the body of rules and regulations for the enterprise under private law. The commitment shall be put into practice by the management and the supervisory body declaring each year that the corporation they are responsible for has complied with the recommendations of the Public Corporate Governance Code of the Federation and continues to so comply with them. Any deviations from the recommendations must be explained and justified. This declaration is to be made permanently available to the public (either on the corporation’s website or in the electronic version of the Official Gazette (*Bundesanzeiger*)) and is to be published as part of the corporate governance report. The audit of the annual financial statement also is to review whether the declaration regarding the Public Corporate Governance Code of the Federation was made and published.

The same applies for corporations under public law, unless statutory provisions stipulate otherwise.

## **2. Shareholders and meetings of shareholders**

### **2.1 The Federation as a shareholder**

The Federation observes its rights as a shareholder at the meeting of shareholders.

#### Notes:

The stockholders of a stock corporation will exercise their rights at the annual general meeting. It takes decisions by passing resolutions on the matters accordingly defined by the law and the stock corporation's statutes (Section 119 (1) of the Stock Corporation Act (*Aktiengesetz*, AktG)). As a general rule, the shareholders of a limited liability company (GmbH) will exercise their rights at a meeting of shareholders.

For the Federation to safeguard its interests, this may also require that it enforce statutory minority rights, in particular as provided for by Sections 50, 93 (4), Section 117 (4), Section 120 (1), Sections 122, 147 (2), Section 265 (3) of the Stock Corporation Act, Section 50 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG), Section 291 (3) and Section 318 (3) of the Commercial Code (*Handelsgesetzbuch*, HGB), as well as the right of a minority of shareholders to demand a special audit (Section 142 (2), Section 258 of the Stock Corporation Act). The same applies for the rights granted by Section 131 of the Stock Corporation Act and Section 51a of the Limited Liability Companies Act.

### **2.2 General shareholders' meeting**

The management shall submit to the meeting of shareholders the annual financial statement/group financial statement and the report on the corporation's/group's economic status for the preceding fiscal year within the first six months of the ongoing fiscal year, unless otherwise provided for by law or the corporation's statutes. The meeting of shareholders shall resolve on the distribution of profits.

The meeting of shareholders shall resolve on the appointment and removal from office of members of the management and of the supervisory body, unless otherwise provided for by the law or the corporation's statutes. Furthermore, the meeting of shareholders shall approve the activities by the management and the supervisory body.

As a general rule, the meeting of shareholders shall also appoint the auditor.

The meeting of shareholders shall resolve in particular on the statutes and the purpose of the company, as well as on any modifications of the statutes and major entrepreneurial action that is to be taken.

Notes:

## - Determination of the annual financial statement

The annual general meeting of a stock corporation may establish the annual financial statement only if this is done based on a proposal made by the board of management and the supervisory board, or if the supervisory board has not approved the annual financial statement (Section 173 (1) of the Stock Corporation Act (*Aktiengesetz*, AktG)). It shall resolve on the distribution of the unappropriated profits on the basis of the annual financial statement so established (Section 174 of the Stock Corporation Act). The annual general meeting is to take place within the first eight months of the subsequent fiscal year (Section 175 (1) of the Stock Corporation Act).

As a matter of principle, the shareholders of a limited liability company (GmbH) are to resolve on the approval of the annual financial statement and the distribution of profits prior to the expiry of the first eight months of the subsequent fiscal year (Limited Liability Companies Act).

## - Appointment, removal from office and approval of actions taken

Other than is the case for stock corporations, and in some instances also for companies subject to co-determination provisions, the meeting of shareholders of a limited liability company (GmbH) has the authority to appoint the members of the management and of the supervisory body and to remove them from office. It should not transfer these competencies to any other representative bodies of the company.

Section 120 (2) of the Stock Corporation Act stipulates that in approving the actions taken by the management, the annual general meeting of a stock corporation thus approves the administration of the company by the members of the board of management and the supervisory board. Pursuant to Section 46 number 5 of the Limited Liability Companies Act, the shareholders of a limited liability company (GmbH) grant approval to the members of the company management for their actions taken; a corresponding stipulation regarding the members of the supervisory body should be included in the shareholders' agreement of the company.

For a stock corporation, the approval of actions granted in accordance with Section 120 (2) of the Stock Corporation Act does not comprise any waiver of claims to compensation vis-à-vis the members of the board of management and of the supervisory body. In the case of a limited liability company (GmbH), the approval of actions taken by the members of the company management will have the effect of a waiver to the extent any claims to compensation were recognisable at the time such approval was granted

## - Appointment of an auditor

Both for a stock corporation and for a limited liability company (GmbH), the meeting of the company's owners (annual general meeting or shareholders' meeting) resolves on the appointment of the auditor pursuant to Section 119 (1) number 4 of the Stock Corporation Act, Section 318 (1) of the Commercial Code (*Handelsgesetzbuch*, HGB). The contract for such audit is awarded by the supervisory board of a stock corporation (Section 111 (2) third sentence of the Stock Corporation Act); for a limited liability company (GmbH), the shareholders' agreement shall allocate this task to the supervisory body unless it has already been given this responsibility by the stipulations of Section 52 (1) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG) in conjunction with Section 111 (2) third sentence of the Stock Corporation Act.

- Fundamental responsibilities

The shareholders/stockholders define the company purpose. The company purpose is to reflect the objectives pursued by the Federation in taking out an equity share in the entity concerned and should therefore be given as precise a wording as possible. It is the guideline directing all action by the management and the supervisory body.

Part of the fundamental responsibilities of the annual general meeting of a stock corporation have been established by Section 119 (1) of the Stock Corporation Act (*Aktiengesetz, AktG*), others have been provided for in further stipulations of the Stock Corporation Act and of the Commercial Code.

Most of the rights enjoyed by the meeting of shareholders of a limited liability company (GmbH) are set out in the shareholders' agreement (Section 45 of the Limited Liability Companies Act), with the Limited Liability Companies Act being a subsidiary source, in particular Sections 46 through 51. In determining the company's strategic direction, the meeting of shareholders shall be involved within a reasonable scope.

Matters concerning the company's management may be decided on by the annual general meeting of a stock corporation only if the board of management so demands (Section 119 (2) of the Stock Corporation Act (*Aktiengesetz, AktG*)). This is different for a limited liability company (GmbH), whose shareholders may issue instructions to the managing directors by passing the corresponding resolutions at their meeting (cf. Section 37 (1) of the Limited Liability Companies Act); such instructions shall be issued solely in writing. However, they should not be the rule since the entrepreneurial freedom established in the governing documents of the company is one of the factors based on which the Federation has taken out the equity share in the company concerned, and is instrumental for achieving better economic results in pursuing the Federation's objective.

### **2.3 Preparation and implementation of the general meeting of shareholders**

The meeting of shareholders shall be convened by the management at least once a year, with the agenda being set out in the convening notice. The agenda shall set out, in terms as precise as possible, the items to be deliberated on. The shareholders shall be given sufficient time to prepare for the discussion and the votes.

A record is to be prepared of the meeting of shareholders. Likewise, any resolutions adopted by shareholders outside of the meeting shall be recorded.

Notes:

- Preparation of the meeting of shareholders

The annual general meeting of a stock corporation is to be convened at least thirty days prior to the date of the meeting or the registration deadline for attendees (Section 123 (1) and (2) of the Stock Corporation Act); the agenda is to be published in the Official Gazette (*Bundesanzeiger*) and in the newspapers authorised to publish company announcements (Section 124 (1) of the Stock Corporation Act).

Where a limited liability company (GmbH) is concerned, the convening notice for the meeting of shareholders shall be issued, in writing, at least two weeks prior to the date of the meeting, and

shall set out the agenda and the proposals for resolutions to be passed by the shareholder's meeting. In the instances set out in Section 48 (2) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG*), no such meeting need be held.

- Record

A record is to be prepared of the meeting of shareholders also in those cases in which the law does not require any record to be kept (Section 130 of the Stock Corporation Act, Sections 53, 55 of the Limited Liability Companies Act). In addition to the resolutions passed, the record shall also outline the general course of the meeting; this shall apply in particular in those cases in which no supervisory body exists.

### **3. Collaboration of the management with the supervisory body**

#### **3.1 Principles**

3.1.1 The management and the supervisory body collaborate closely with each other on the basis of their reciprocal trust and in the best interests of the corporation. This trust is engendered in particular by their compliance with the transparency, disclosure, and confidentiality obligations set out in the present Code. The observance of these duties is an essential obligation vis-à-vis the corporation and its representative bodies.

Based on the company purpose or object (*Unternehmensgegenstand, Gesellschaftszweck*) or on the purpose allocated to the entity responsible for the company (*Unternehmenszweck*), the management coordinates the corporation's strategic direction with the supervisory body and meets with it at regular intervals to discuss the status attained in implementing the strategy.

Notes:

- Collaboration of the representative bodies of the company

By instituting the Public Corporate Governance Code, it is intended to promote close collaboration between the said two corporate representative bodies in the areas for which the law stipulates their cooperation, and to thus ensure that they fully and completely perform the tasks allocated to them. The details of such collaboration will depend on the individual case.

However, this collaboration between the management and the supervisory body may not in any way lead to the competences of the corporate representative bodies shifting from one to the other.

- Important interests of the Federation and the company's best interests

The pre-requisite for the Federation to take out an equity share in a corporation is that it must have an important interest in doing so since this will serve to fulfil major tasks of the Federation. This limitation to specific circumstances is reflected by the company purpose or object (*Unternehmensgegenstand, Gesellschaftszweck*) or, in the case of other legal forms, by the purpose allocated to the entity responsible for the company (*Unternehmenszweck*). It is the

basis and the guideline directing all action of the members of the corporate representative bodies and their collaboration in the company's best interests.

- 3.1.2 The statutes establish that the supervisory body is to approve any transactions of fundamental importance. These include decisions or measures that may lead to a significant change in the business activities as defined by the shareholders' agreement, or to a substantial change of the assets, of the financial situation or revenue, or of the company's risk structure.

This does not affect the competence of the supervisory body to reserve its approval regarding any further matters.

The scope of transactions requiring such approval is to be defined such that in particular the management of stock corporations will be able to act on its own responsibility.

Notes:

- Defining the transactions requiring approval

The supervisory body may reserve its approval, if required in addition to the statutes, by establishing rules of procedure for the management or by adopting a separate resolution in this regard.

The factors for such approval may consist of the scope or the purpose of the transactions, or the risks that they may entail; for real estate companies, this may also cover any changes to appraisal procedures. For individual types of transactions, the consent requirement may be defined for instances in which a specified value threshold is exceeded. The supervisory body shall review the approval reservations it has instituted at regular intervals in order to establish whether they are still useful and practicable.

Only in exceptional cases shall the supervisory body avail itself of the option of revocably granting its approval in advance for a certain general group of transactions, or for the case that the individual transaction meets certain requirements, and shall do so only to the extent it has itself established the corresponding approval reservations.

- Time at which approvals are to be obtained

The management must obtain approvals prior to concluding the transactions requiring approval unless waiting for such prior approval entails the risk of serious disadvantages arising for the corporation; in such an event, retroactive approval must be obtained immediately upon the transaction having been concluded.

- Transfer to a committee of the competence to grant approvals

Within the limitations of Section 107 (3) of the Stock Corporation Act (*Aktiengesetz*, AktG), the supervisory board of stock corporations may transfer the competence to grant approvals to a committee of the supervisory board. The supervisory body of a limited liability company (GmbH) should likewise comply with these limitations.

The competence to grant approvals shall be transferred to a committee only for those cases in which it is to be expected that the approval of the supervisory body will cause the risk of serious

disadvantages arising for the corporation in view of the time generally required, in light of the supervisory body's size, for it to take its decision.

Should the supervisory body not grant its approval to a transaction, the management may demand approval by the meeting of shareholders. The resolution by which the meeting of shareholders so grants its approval must be passed by a majority of at least three quarters of the votes cast (Section 111 (4) third and fourth sentences of the Stock Corporation Act, under certain circumstances in conjunction with Section 52 (1) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG*)).

### 3.1.3 The management and the supervisory body must jointly ensure that the supervisory body is adequately informed.

The management is to inform the supervisory body regularly, in the near term, and comprehensively, of all issues relevant to the corporation in terms of planning, business development, the risk situation, risk management, and compliance, while also reporting on any changes to the economic environment that might seriously affect the corporation. The management is to address instances in which the course taken by the business deviates from the plans and targets established and is to provide the reasons therefor.

The content of the reporting obligations, and the intervals at which reports are made, shall be oriented by Section 90 of the Stock Corporation Act (*Aktiengesetz, AktG*) also for those companies that are not stock corporations.

The supervisory body shall define more exactly, in rules of procedure, the information and reporting obligations of the management. As a general rule, the reports of the management to the supervisory body are to be submitted in text form. Any documents required as a basis for decisions, in particular the annual financial statement, the group financial statement, the report on the corporation's/group's economic status, and the auditor's report, shall be provided to the members of the supervisory body in due time prior to the meeting.

The supervisory body works towards prompt and proper reporting.

#### Notes:

- Content of the reporting

The reports are intended to give to the supervisory body a sufficiently detailed overview of the development in the period reported on and are to address in detail any matters relevant for determining the situation of the corporation (assets, financial situation, and revenue). Depending on the structure of the corporation, these reports may also be filed as segment reports. Should the situation of a corporation's affiliated companies strongly influence that of the corporation, this fact likewise shall be reported. The reports are to provide information on the measures taken to detect risks early and the actions to mitigate them (cf. Section 91 (2) of the Stock Corporation Act (*Aktiengesetz, AktG*)). This includes any corruption prevention measures that may have been instituted. Compliance extends beyond this and covers all measures that are to ensure that the corporation, the management and the corporation's employees all act in line with justice and the law.

Only for smaller corporations having no particular economic weight may less comprehensive reports be sufficient that are smaller in scope than that demanded by Section 90 of the Stock Corporation Act (*Aktiengesetz, AktG*). In these cases, the management shall report at regular intervals, in text form, to the supervisory body on the course of the business, in particular on any deviations from the results projection, and on the situation of the corporation.

The entire management is responsible for the reports made by the management to the supervisory body. Should a member of the management not agree with the content of a report approved by a majority of the management, or should he or she not agree with a part of such report, this diverging opinion shall be provided to the supervisory body in writing or shall be recorded in the minutes.

#### - Reporting procedure

As a general rule, the report documents are deemed to have been submitted in due time if they are transmitted to the supervisory body or to one of its committees fourteen days prior to its session.

Reports on transactions that may have major impacts on the corporation are to be filed such that the supervisory body has the opportunity to state its position in due time prior to the implementation of the intended transactions.

Should a decision by the supervisory body be required, the supervisory body shall review – in the event that the report is not made in due time – whether the decision should be postponed or whether it should be taken, as an exception, in another form, for example by circular letter.

Should reports to be made at regular intervals not be submitted in due time, or should a report be inadequate in terms of the content addressed, measures securing proper reporting for the future are to be taken if required. Should this be necessary, the rights established in the sense of Section 90 (3) and Section 111 (2) of the Stock Corporation Act (*Aktiengesetz, AktG*) (as the case may be, in conjunction with Section 52 (1) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG*)) are to be exercised.

## 3.2 Confidentiality

3.2.1 Good corporate governance requires that the discussions between the management and the supervisory body be open, as must be the internal deliberations of these representative bodies. For this reason, it is of utmost importance that full and comprehensive confidentiality be maintained.

All members of the company's representative bodies are to ensure that any third parties they may involve shall comply with the confidentiality obligation in the same way.

#### Notes:

##### - Principle

In view of the task that the supervisory body has, of providing advice to the management and overseeing its activities, confidentiality is decisive. Regardless of this fact, the management is

under absolute obligation to provide full and comprehensive information to the supervisory body.

- Exception as provided for by Section 394 of the Stock Corporation Act (*Aktiengesetz*, AktG)

The members of a stock corporation's supervisory board who have been delegated to the said supervisory board, or who have been appointed as its members, on the initiative of a regional authority / local authority, are not under any confidentiality obligation regarding the reports they must make to the regional authority / local authority, as stipulated by Section 394 of the Stock Corporation Act. This exemption does not apply to confidential information and secrets of the company, such as company secrets or business secrets, if their knowledge has no impact on the purpose of the reports to be so made. Any procedures serving to ensure confidentiality shall not restrict this reporting in any way.

3.2.2 In supervisory bodies of corporations that are subject to co-determination rights of the workforce, the representatives of the shareholders and of the employees are to prepare the meetings of the supervisory body separately, as the case may be in collaboration with members of the management.

The supervisory body should convene sessions without the management as needed.

### 3.3 Accountability

3.3.1 The management and supervisory body observe the rules of proper corporate governance.

Should they negligently or intentionally violate the obligation to exercise the due care usually exercised by a proper and prudent member of the management or of the supervisory body, they shall be liable to the corporation for compensation of damages. No such breach of duty shall be given for entrepreneurial decisions if the member of the management or of the supervisory body could reasonably assume that he or she was acting on the basis of adequate information and in the company's best interests.

#### Notes:

The rules governing the proper management and governance of corporations also include, besides the relevant laws and other, mandatory regulations, knowledge of current insights in business administration and experience with regard to good and responsible corporate governance and oversight of corporations, as well as knowledge of the principles of the Public Corporate Governance Code.

The obligations that the members of the management and of the supervisory body are to meet have been provided for on the one hand by individual stipulations of the law, while on the other they are part of the general fiduciary duties and duties to exercise due care.

3.3.2 D & O liability insurance for the members of the management and of the supervisory body should be concluded only by corporations that are subject to increased entrepreneurial and/or operational risks. In the event a stock corporation takes out insurance in order to protect a member of the board of management against risks entailed by his or her professional activities, a deductible of at least 10 percent of the damage up to at least the amount of 1.5 times the fixed annual remuneration of that member of the board is to be

provided for; this type of deductible shall also be agreed for the members of the management of any corporations having a different legal form. An appropriate deductible shall be agreed for the members of supervisory bodies upon taking out such an insurance policy for them.

The decision to take out D & O liability insurance and the reasons for doing so shall be documented, in particular as regards the usefulness and expediency of such insurance.

Notes:

Agreeing a deductible is obligatory procedure only for the members of a stock corporation's board of management. Thus, the above stipulation is merely a citation of Section 93 (2) third sentence of the Stock Corporation Act in the version of the Act on the Appropriateness of Executive Remuneration (*Gesetz zur Angemessenheit der Vorstandsvergütung, VorstAG*). However, it is recommended that members of the management of corporations having a different legal form (in particular limited liability companies, GmbH) likewise agree this type of deductible.

According to statutory provisions, the deductible for members of the management is comprised of two values: a percentage-based quota referring to the individual damage event, and an absolute maximum applying to the aggregate of all damage events occurring in one year; in the case of greater damages, this latter amount may be reached already by one single damage event. The law does not provide for the amounts in any final and conclusive way; it solely stipulates the minimum amounts. In the end result, the provision thus caps the deductible – with a view to the damage events of one year – while also stating that such deductible may not be lower than 1.5 times the annual remuneration. It is possible to agree a higher deductible.

An appropriate deductible for members of supervisory bodies shall be oriented in like manner by the amount of the remuneration paid for their activities in the supervisory body. Concurrently, it is to be considered that in many corporations, no remuneration is paid to members of the supervisory board above and beyond the reimbursement of their expenditures, and that for some members of the supervisory board, a part of their remuneration is deducted by their employer, as stipulated, for example, by the laws governing the activities of officials. In the latter cases, the percentage quota refers to the remuneration then remaining for the members.

### **3.4 Extension of loans**

The corporation shall not grant any loans to the members of the management or of the supervisory body, nor shall such loans be granted to their relatives.

Notes:

In order to avoid any conflicts of interests, no extension of loans is envisaged at all.

## **4. Management**

### **4.1 Tasks and competences**

- 4.1.1 The management has the primary responsibility for managing the corporation, and in so doing is bound to the company purpose (*Unternehmensgegenstand*) or the purpose allocated to the entity responsible for the company (*Unternehmenszweck*).

On this basis, the management develops the strategic direction for the corporation, coordinates this with the supervisory body, and subsequently implements it.

Notes:

- Responsibility of the management

Neither the annual general meeting nor the supervisory board of a stock corporation are authorised to issue instructions to the board of management (Section 76 (1) of the Stock Corporation Act (*Aktiengesetz, AktG*)).

In the case of a limited liability company (GmbH), it is permissible to so issue instructions by shareholders' resolutions. The shareholders' agreement of a limited liability company (GmbH) may stipulate that a supervisory body is entitled to issue instructions to the management; however, in the interests of clearly separating these bodies' responsibilities, this provision should be used only sparingly. Instead, the supervisory body should review whether it might be sensible to establish a reservation of approval for specific management actions.

- Strategic direction

The strategic direction is intended to facilitate fundamental entrepreneurial decisions within the scope determined by the company purpose (*Unternehmensgegenstand*) or, in the case of other legal forms, by the purpose allocated to the entity responsible for the company (*Unternehmenszweck*). In particular, it concerns issues such as the company's entering into new business fields, the appurtenant capital expenditures, and financing. The management and supervisory body of controlling corporations are under obligation, moreover, to closely monitor the business administration of dependent corporations.

- 4.1.2 The management is to ensure compliance with the statutory provisions and internal guidelines and will promote compliance by the corporation's affiliated companies.

Notes:

In those instances in which the Federation allocates funds to the company (Sections 23, 44 of the Federal Budget Code (*Bundeshaushaltsordnung, BHO*)), the corresponding statutory provisions governing budgetary procedure shall apply.

- 4.1.3 The management shall ensure appropriate risk management and risk control within the corporation.

Notes:

The requirement of the laws governing stock corporations of instituting a monitoring system in order to recognise early on any developments posing a threat to the continued existence of the company is to be met by all holdings of the Federation, regardless of their legal form, since this statutory provision is of major significance.

Corruption prevention is part of risk management and risk control. The division responsible for corruption prevention shall report directly to the management.

## 4.2 Composition

### 4.2.1 As a minimum, the management shall consist of two persons.

Notes:

The members of the management are jointly responsible for managing the company. They are to inform each other of any significant events or processes within their scope of functions.

Should the management consist of several members, the statutes may provide for the statutory representation of the company by two members jointly (*Gesamtvertretung*). In such event, the statutes additionally may provide that one member of the management is authorised to represent the company jointly with an officer having full commercial power of representation (*Prokurist*). The position of the second member of the management, by which it is ensured that the “four-eyes-principle” is met, may be filled by a person acting in addition to their regular duties or acting in an honorary capacity. Should the management consist of only one person in exceptional cases, this principle of dual control is to be ensured by appropriate internal arrangements being made. Individual, full commercial power of representation (*Einzelprokura*), sole power of representation, and general power of representation shall be granted only in justified exceptional cases.

### 4.2.2 Rules of procedure to be approved by the supervisory body shall govern the allocation of duties and cooperation within the management. The supervisory body may appoint a speaker of the management.

Notes:

The rules of procedure shall address in particular provisions on the allocation of competences and on the decision-making process within the management, the cooperation and representation of the members of the management, information flow, and the collaboration between the management and the supervisory body. According to Section 77 (2) third sentence of the Stock Corporation Act (*Aktiengesetz, AktG*), any resolutions the management passes as to the rules of procedure must be adopted unanimously.

## 4.3 Remuneration

### 4.3.1. The remuneration paid to the members of the management shall be determined by the supervisory body, which shall take account of any emoluments paid within the group in deciding on an appropriate, performance-based amount; the criteria for determining whether or not remuneration is appropriate are formed in particular by the tasks the

member of the management concerned is to perform; his or her personal performance; the performance of the management as a whole and the corporation's economic situation; its prospects for the future; and the sustainability of the results achieved, taking into account comparable companies in the sector. Unless special reasons so require, this remuneration shall not be in excess of amounts usually paid.

The total remuneration paid to the members of the management is comprised of the monetary compensation; pension undertakings; other benefits, in particular benefits granted in the event their activity for the company ends; ancillary benefits of any kind; and performance by third parties either granted in the course of the fiscal year for the management activities, or undertaken to be so granted.

If the monetary compensation paid to the members of the management includes variable pay components in addition to a base salary, for example in order to keep up with the competitive market environment, the variable pay components shall include non-recurrent or annual components that are specifically tied to the sustainable success of the corporation, as well as components creating a long-term incentive that also include a risk factor (such as a system of bonuses and deductions for good or poor performance).

The entirety of the components making up the remuneration must be appropriate, both in and of themselves and taken as a whole. This also includes the option to reduce the remuneration, within the scope of what is legally possible, should the company's economic situation deteriorate.

Should the Federation allocate funds to the corporation, the relevant statutory provisions governing budgetary procedure shall be observed in determining the remuneration.

#### Notes:

Keeping up with comparable companies in the sector also includes an assessment of the extent to which a corporation is active in markets characterised by monopoly structures and thus experiences only a limited degree of competition. As a general rule, variable components of the monetary remuneration will be justified only in an environment characterised by competition.

#### 4.3.2 The remuneration is to be defined clearly in the employment contracts.

Variable remuneration components shall be set out at the beginning of each fiscal year in a performance plan agreed with the supervisory body, and shall be oriented by sustainable governance. In order to ensure that in the interests of sustainably developing the corporation, the variable components create long-term incentives for managerial performance, the performance of the managers shall be assessed over several years and the variable component of their salaries shall be paid out only following the end of the assessment period.

Any retroactive modification of the performance targets or of the comparison parameters shall be excluded. The supervisory body shall provide for means of capping the variable remuneration in the event of exceptional and unforeseeable developments.

In concluding employment agreements, it should be ensured that if a member of the management terminates his or her activities early, without grave cause being given, the

payment then made including ancillary benefits does not exceed the value of two annual remunerations (settlement cap) and that such payment does not exceed the remuneration that would have accrued over the remaining term of the employment agreement. In calculating such payments, the total remuneration of the preceding fiscal year and, under certain circumstances, the foreseeable total remuneration for the ongoing fiscal year shall be used as a basis.

Notes:

Undertakings made for the case in which a member of the management terminates his or her activities for the corporation shall take into account whether the member of the management is leaving that position in accordance with normal procedure or for exceptional causes.

- 4.3.3 The supervisory body shall deliberate on the remuneration system established for the management, including the essential elements of the contract; it shall review the system at regular intervals, and shall adjust it as required.

The chairperson of the supervisory body shall inform the meeting of shareholders of the structure of the remuneration system in place for the management and also of any changes to the remuneration system.

Notes:

The information provided to the meeting of shareholders shall include the details of the composition of the overall remuneration and its structure. Should monetary components of the remuneration have been defined as variable pay, this shall also be addressed in detail, focusing on the incentive effect.

## **4.4 Conflicts of interest**

- 4.4.1 For the duration of their work for the corporation, the members of the management shall be subject to an encompassing prohibition of competition.

- 4.4.2 Members of the management are under obligation to pursue the object of the company.

The members of the management and the employees of the company may not demand or accept from third parties any gratuities or other benefits in connection with their activities, neither for themselves nor for other persons, nor may they grant unjustified benefits to third parties.

No member of the management may pursue personal interests in taking decisions for the company, nor may any such member exploit for himself or herself business opportunities opening up for the company.

- 4.4.3 Each member of the management shall immediately disclose to the supervisory body any conflicts of interest and shall inform the other members of the management thereof.

All transactions between the corporation on the one hand and the members of the management on the other hand, or persons related to them or companies or ventures with

which they are personally affiliated, must comply with standards usual to the industry. Related party transactions of a significant nature require the approval of the supervisory body, unless this body will represent the corporation in concluding the transaction and its approval can thus be implied.

Notes:

As regards potential conflicts of interest, related party transactions give rise to concerns that are to be concluded between the corporation on the one hand and the members of the management on the other, or persons related to them, or companies or ventures with which they are personally affiliated. For this reason, related party transactions shall be desisted from as a matter of principle. In order to proactively avoid conflicts of interest, they must be designed as transactions with third parties with whom the members of the management are not affiliated, in other words as transactions being entered into at conditions usual to the market. The group of persons regarded as related parties of the members of the management is comprised of the persons set out in Section 138 (1) of the Insolvency Code (*Insolvenzordnung*, InsO). The companies or ventures affiliated with the members of the management include those legal entities, in analogy with the stipulations of standard DRS 11 of the Accounting Standards Committee of Germany (Deutsches Rechnungslegungs Standards Committee e.V.), that are able to exert significant influence on a member of the management due to their connection under corporate law, as well as those legal entities that may be controlled by a member of the management or that are able to exert significant influence on a member of the management.

- 4.4.4 The members of the management shall pursue additional occupations only with the approval of the supervisory body; this shall apply in particular to memberships in supervisory bodies.

Notes:

This provision intends to proactively address potential conflicts of interests prior to their occurring. It shall be made clear in the contract whether, as resolved by the supervisory body, members of the management may pursue additional occupations that are in the interests of the company, and if so in which scope; whether and in which scope their income gained from such additional occupations will be deducted by their employer; and whether they must resign from such additional occupations taken on in the corporation's interest when they leave the corporation.

## **5. Supervisory body**

### **5.1 Tasks and competences**

- 5.1.1 It is the task of the supervisory body to at regular intervals advise the management in leading the company and to monitor the management's activities.

This supervision addresses the issues of whether the management decisions taken are proper, useful and expedient, and whether they ensure a cost-effective deployment of the funds available to the enterprise. This includes in particular the review of whether the corporation is pursuing activities in line with the tasks set out in its statutes.

The supervisory body is to be involved in decisions that are likely to fundamentally affect the corporation.

At regular intervals, the supervisory body and its committees shall review the quality and efficiency of their activities. The supervisory body shall monitor the implementation of the measures it has resolved be taken in this regard.

Notes:

- Scope and content of the monitoring tasks

The tasks provided for in the statutes are put in concrete terms by the resolutions adopted by the meeting of shareholders and by the supervisory body. The supervisory body's obligation to monitor and supervise the management also includes matters of future business policy and its advice to the management in this regard.

Each member of the supervisory body is responsible for ensuring that the supervisory body fulfils its supervisory obligations. The supervisory body also is to monitor the institution and implementation of a monitoring system (Section 91 (2) of the Stock Corporation Act (*Aktiengesetz*, AktG)) by the management. Within the strictures of the law, the supervisory body of a controlling corporation (Section 17 of the Stock Corporation Act) is to monitor that the management effectively safeguards the rights of the controlling corporation as the shareholder of the dependent corporations.

Should a limited liability company (GmbH) not have instituted a supervisory body, the shareholders are to take the measures required to oversee the management (Section 46 number 6 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG)). The appointment of a supervisory body does not release the shareholders from their obligation to so monitor the management.

- Monitoring tools

The supervisory body may demand at any time that the management report to it on the affairs of the corporation, on its legal and business relationships with affiliated companies, and on business processes within said affiliates, to the extent these factors may have a significant influence on the corporation's situation. An individual member of the supervisory body may also demand a report; however, such report may only be made to the supervisory body (Section 90 (3) of the Stock Corporation Act, Section 52 (1) of the Limited Liability Companies Act).

- Convening a meeting of shareholders

The supervisory body shall convene the meeting of shareholders if this is required in the company's best interests (Section 111 (3) of the Stock Corporation, Section 52 (1) of the Limited Liability Companies Act).

- Sessions of the supervisory body

The supervisory body shall meet once every calendar quarter.

Each member of the supervisory body may demand, citing the purpose and the reasons of such request, that the chairperson of the supervisory body immediately convene a meeting of the supervisory body.

- Efficiency assessment

The supervisory body shall provide for this self-assessment by a corresponding declaration.

- 5.1.2 To the extent it is incumbent upon the supervisory board to appoint the members of the management, the right to transfer this task to a committee shall not be exercised even in those cases in which such a transfer is possible.

Upon a member of the management being appointed for the first time, his or her appointment shall be limited to a term of three years.

Re-appointments during the period of the last year prior to the end of the appointment term, with the ongoing appointment being cancelled, shall be effected only for reasons absolutely requiring this to be done.

An age limit shall be set for the members of the management at which they must resign from the management.

The supervisory body shall work together with the management in making long-term plans for the succession within the management.

Notes:

The supervisory board of a stock corporation appoints the members of the board of management and removes them from office; this applies analogously to employment agreements (Section 84 (1) of the Stock Corporation Act). In a limited liability company (GmbH), this task is the responsibility of the meeting of shareholders (Section 46 number 5 of the Limited Liability Companies Act), unless this is contravened by provisions of the laws governing the co-determination of the workforce. The statutes of a limited liability company (GmbH) may provide for these rights to be transferred to the supervisory body by the (Sections 45, 52 of the Limited Liability Companies Act); in such event, the entire supervisory body shall vote on the corresponding resolutions.

The appointment as a member of a stock corporation's board of management may be revoked only for grave cause (Section 84 (3) first sentence of the Stock Corporation Act). The member of the management of a limited liability company (GmbH) may be removed from office at any time, notwithstanding any claims that may be given under the employment agreement (Section 38 (1) of the Limited Liability Companies Act). The option of limiting, in the shareholders' agreement, the permissibility of such revocation to grave cause (Section 38 (2) of the Limited Liability Companies Act) shall be made use of only in exceptional circumstances. In the event of the appointment being revoked, the possibilities of ending the employment relationship, in particular of terminating the employment agreement, are to be reviewed without undue delay, since notice of termination for grave cause may be issued only within a period of two weeks (Section 626 (2) of the Civil Code (*Bürgerliches Gesetzbuch*, BGB)).

Any additional term of a member of the management shall amount to a maximum of five years for all corporations, as is the case for stock corporations (Section 84 (1) of the Stock Corporation Act).

- 5.1.3 The supervisory body shall create and adopt rules of procedure for itself, unless the statutes have already established rules of procedure for the supervisory body.

Notes:

- Issues of organisation and coordination

The rules of procedure should include provisions as to the frequency of sessions and the election and voting procedures, in particular on the pre-requisites for adopting resolutions and on the appointment of chairpersons of the said body and their competencies. Moreover, the rules of procedure should provide for the establishment of committees and the work they are to do.

- Rules on the form of resolutions adopted and their documentation

A record is to be prepared of the sessions held by the supervisory body and its committees, which record is to be signed by the chairperson. An execution of the record is to be submitted to each member of the supervisory body. The records and the resolutions adopted shall be stored in the business files of the corporation in properly ordered form.

The supervisory board or its committees may adopt resolutions outside of its sessions in writing, also by telefax or e-mail, or by telephone, only if none of its members objects to this procedure. Adopting resolutions by telephone should be avoided. In the event of resolutions being adopted by telephone, they shall be recorded for documentation purposes in minutes setting out the subject matter addressed, the time at which the resolutions were adopted and their circumstances, the participants in the telephone conference, and the majorities.

- 5.1.4 The chairperson of the supervisory body coordinates the work done by the supervisory body, chairs its sessions and represents the supervisory body externally, safeguarding its interests.

The chairperson and the other individual members shall not have the right to take decisions alone for the supervisory body.

The chairperson of the supervisory body shall simultaneously act as the chairperson of the committee dealing with the agreements concluded with the members of the management.

- 5.1.5 The chairperson of the supervisory body shall regularly keep in contact with the corporation's management to discuss the corporation's strategy, its business development, and risk management.

The management shall immediately inform the chairperson of the supervisory body of significant events that are of essential import for assessing the situation and development and for managing the company. Thereupon, the chairperson of the supervisory body shall inform the supervisory body and shall convene an extraordinary session of the supervisory body should this be necessary.

- 5.1.6 Depending on the number of its members and on the specific economic circumstances of the company, the supervisory body may form expert committees with specific expertise that are to address specific technical issues. These issues include corporate strategy, capital expenditures, and finance.

The committees serve to increase the efficiency of the work done by the supervisory body and to deliberate on complex circumstances. The chairpersons of the respective

committees shall report to the supervisory body at regular intervals on the work done by the committees.

Notes:

The procedure by which members of committees are appointed shall ensure that the members of the supervisory body delegated to same by the Federation, or appointed at the Federation's initiative, are adequately represented in such committees.

- 5.1.7 Depending on the number of its members and on the specific economic circumstances of the company, the supervisory body shall in particular institute an audit committee that is to focus on issues of financial accounting and risk management; the required independence of the external auditor; the award of the audit contract to the auditor; the determination of audit focuses; and the fee agreement. The members of the audit committee must meet particularly high standards where their technical expertise is concerned.

The chairperson of the supervisory body shall not simultaneously act as chairperson of the audit committee. To the extent legally permissible, a member of the audit committee shall not have been member of the company management in the three years preceding his or her appointment to the said audit committee.

Notes:

Due to its significance, the formation of an audit committee may be justified even in corporations in which the institution of such a committee would seem inappropriate given the size of the supervisory body.

Should an audit committee have been instituted, it should make recommendations to the supervisory body concerning the auditor and the scope of the audit to be performed. The committee's recommendations should include whether the opportunity should be used to determine own focuses for auditing the annual financial statement and if so, how.

- 5.1.8 No use shall be made of the option of granting decision-making competencies to individual committees of the supervisory body. Instead, and as a general rule, resolutions shall be reserved for the plenary session of the supervisory body. To the extent the supervisory body is responsible for determining the remuneration of the members of the management, this responsibility shall not be transferred to a committee even in those instances in which such transfer is possible. Instead, the plenary session of the supervisory body shall continue to be responsible for this matter.

Notes:

In view of the increased significance and responsibility of the supervisory body, its plenary session, and thus the knowledge and competence of its members, shall benefit the corporation to the greatest extent possible. Were decision-making competences to be shifted to committees in any extensive way, this would contravene the above objective (cf. also Section 107 (3) of the Stock Corporation Act (*Aktiengesetz*, AktG)). For stock corporations, the resolution as to the remuneration granted to the members of the board of management is reserved to the plenary session of the supervisory board (Section 107 (3) second sentence of the Stock Corporation Act). It is recommended that corporations having other legal forms

proceed in like manner. This means that a committee responsible for human resources issues may have a solely preparatory function as regards the determination of such remuneration.

## 5.2 Composition

5.2.1 In proposing candidates for appointment as members of the supervisory body, due care shall be taken to ensure that only such persons are appointed as members of the supervisory body who have the required knowledge, abilities, and technical experience; who are sufficiently independent; and who, in view of their professional obligations, are able to perform the tasks of a supervisory body member; in this context, equal opportunities are to be granted to women. As a general rule, the members of the supervisory body delegated by the Federation or appointed at its initiative shall not be members of more than three supervisory bodies at the same time.

No-one shall be a member of a supervisory body who has business or personal relations with the corporation or its management that engender a serious and not merely temporary conflict of interests.

The members of a supervisory body shall not have any representative supervisory functions with major competitors of the company, nor shall they provide consultancy services to such competitors.

No more than two former members of the management shall be members of the supervisory body; for supervisory bodies having fewer than six members, no former member of the management shall become a member.

### Notes:

- Conflicts of interest

The stipulations of the laws governing stock corporations have been created on the assumption that membership in a supervisory board is in addition to the regular duties of that member, and that thus, each member of the supervisory board is tied to and aligned with other interests that may conflict with the activities on the corporation's supervisory board.

- Acting as a member of a supervisory body

In view of the significance of personally attending the sessions, the members of a supervisory body should ensure that they are able to personally attend all of the sessions.

5.2.2 An appropriate age limit shall be determined for members of the supervisory body.

5.2.3 The members of a supervisory body are to observe their duties in person; they may not have others perform their tasks for them. Absent members may take part in the voting of the supervisory body by issuing specific instructions to a proxy holder.

The members of a supervisory body shall themselves ensure that they have sufficient time available to observe their duties. Should a member of a supervisory body fully attend fewer than half of the sessions of the supervisory body within a fiscal year, this shall be noted in the report issued by the supervisory body.

Notes:

Members of the supervisory board may not have others perform their tasks as provided for by the laws governing stock corporations (Section 111 (5) of the Stock Corporation Act (*Aktiengesetz*, AktG)). Because such membership is designed as a personal office, the concept of representation is foreign to it. Should a member be unable to attend, a specific proxy may be issued, the holder of which will not make any declarations of his or her own, and will solely transmit the voting declaration intended by the absent member. This option should be used only in individual cases in which the member of the supervisory body is prevented from attending the session.

- 5.2.4 Former members of the management shall not assume the chair of the supervisory body or of one of its committees upon their activities as members of the management ceasing. Should this be intended nonetheless, the specific reasons shall be provided to the meeting of shareholders.

### 5.3 Remuneration

The remuneration paid to the members of the supervisory body shall be determined in the corporation's statutes or by resolution of the meeting of shareholders.

Notes:

The remuneration (including an expense allowance and attendance fee) shall take account of the economic role of the company and its economic situation; the expertise required; the time to be expended; and the risks that the obligations of a member of the supervisory body entail. For corporations that are not predominately active on the market or that are to be deemed as spun-off administrative units, it is to be assumed that no risk needs to be taken into account in determining the remuneration.

Regarding the scope in which a member of the supervisory board is to properly perform his or her obligations, it shall be irrelevant whether legal entities under public law directly or indirectly hold a major equity share in the corporation.

The remuneration of the members of the supervisory body should be reviewed at regular intervals as to whether it is appropriate and conforms to the performance by the members.

### 5.4 Conflicts of interest

- 5.4.1 Each member of the supervisory body is under obligation to pursue the object of the company. No member may pursue personal interests in taking decisions, nor may any such member exploit for himself or herself business opportunities opening up for the company.

Each member of a supervisory body shall disclose to same any conflicts of interest, in particular such conflicts that may arise due to consultancy provided to a customer, supplier, lender or other business partner, or due to the member having a representative supervisory function with that party.

In its report to the meeting of shareholders, the supervisory body shall disclose any conflicts of interest that may have arisen, also describing how they have been dealt with. Any major and not merely temporary conflicts of interest given in the person of a supervisory body member shall lead to their appointment ending.

Notes:

As a general rule, potential conflicts of interest do not prevent the appointment as member of a supervisory body and the activities therein; if concrete conflicts of interest are given permanently, the candidate shall not be appointed as a member of the supervisory body, or the member shall not continue his or her activities in the said body.

The provisions governing conflicts of interest should be recorded in the rules of procedure.

- 5.4.2 The corporation shall not conclude any consultancy agreements or other services agreements or work contracts with a member of a supervisory body.

Notes:

As a general rule, such service and consultancy agreements permissibly may be concluded with members of the supervisory body if they do not refer to the tasks to be performed by the member of the supervisory board in that capacity. However, although such agreements are permissible, they should be refrained from in order to prevent conflicts of interest. If they are concluded nonetheless, this shall be done only with the prior consent of the supervisory body and shall be remunerated separately.

## **6. Transparency**

### **6.1 Corporate governance report**

The management and the supervisory body shall annually issue reports on the corporate governance of the company (corporate governance report). The report shall in particular comprise the declaration that the recommendations of the Public Corporate Governance Code of the Federation have been complied with and continue to be complied with. The report shall also set out the number of women appointed to supervisory bodies. Any instances of deviations from the recommendations must be explained and justified. In this context, a statement of position may be made regarding the suggestions made in the Code.

Notes:

The Federal Ministry responsible for the corporation in which the Federation holds an equity share shall ensure that compliance with the Public Corporate Governance Code is effectively incorporated into the body of rules and regulations for the enterprise. As stated in the Code's preamble, the commitment shall be put into practice by the managing directors and the supervisory board (or, where the corporation has taken a different legal form, the corresponding bodies managing and overseeing the company) declaring annually that the recommendations of the Public Corporate Governance Code of the Federation have been complied with and continue to be complied with, or by stating which recommendations have not been or are not

being complied with, or were or are being complied with but with deviations, in each case citing the reasons for such deviation.

## **6.2 Remuneration for the members of the management and of the supervisory body**

- 6.2.1 The total remuneration for each member of the management shall be set out in the corporate governance report in a form understandable also to laypeople; individualised for each member and specifying the members' names; citing the component that is independent of performance; the performance-related component of the remuneration; and the components having a long-term incentive effect. This applies also to benefits granted to the member, or to a previous member of the management, in the context of their termination, or benefits granted in the course of the fiscal year.

In newly appointing or re-appointing members of the management, the supervisory body is to ensure that such members contractually declare their consent to such disclosure.

### Notes:

The total remuneration also comprises the ancillary benefits granted by the corporation. To the extent that third parties have undertaken to grant, or have granted in the fiscal year, benefits to individual members of the management with a view to their activities as members of the management, such benefits shall also be reported in order to avoid any potential conflicts of interest.

For any pension undertakings made, the contributions made to the pension reserves or the pension fund shall likewise be reported annually. In reporting the undertakings made with a view to the termination of a member's activities as a member of the management, these shall be presented in accordance with Section 285 number 9 lit. a eighth sentence of the Commercial Code (*Handelsgesetzbuch*, HGB); any material deviation shall be defined not on the basis of the absolute amount, but on the legal structure that the undertaking has.

- 6.2.2 The remuneration for each member of the supervisory body shall be set out in the corporate governance report in a form understandable also to laypeople, individualised for each member, and differentiated by components.

Likewise, the remuneration paid by the corporation to the members of the supervisory body or the benefits granted for their personal performance, in particular consultancy and brokerage services, shall be specified separately.

### Notes:

In many cases, the members of supervisory bodies will solely be reimbursed for their expenditures. Should any remuneration be granted above and beyond the pure expenditures, it is to be taken into account that any officials who are members of the supervisory body are under obligation, under the laws governing the activities of officials, to allow their employer to deduct any remuneration in excess of a certain defined amount.

## **6.3 Publications**

Information published by the corporation that concerns the corporation itself shall also be accessible via its website. This includes the corporate governance report and the annual financial statement with its annexes as well as, should this be required, the report on the corporation's economic status.

Notes:

The documents and information to be submitted, in accordance with Section 325 of the Commercial Code (*Handelsgesetzbuch*, HGB), to the operator of the electronic version of the Official Gazette (*Bundesanzeiger*) within twelve months for publication therein, in particular the annual financial statement as established by the meeting of shareholders and the report on the corporation's economic status, should be made accessible in the near term also on the company's website.

Independent of this fact, it is an obvious option for corporations in which the Federation holds an equity share to publish important updates in the course of the year via the internet in addition to the significant, regularly recurring information of the company. In this context, the significant events of the year may be shown in a report on the year, for example in the context of continuing public relations work.

This publication is not to divulge company secrets and business secrets or any confidential information; in particular, it shall not disclose any information concerning the company's competitiveness, nor shall it comprise any personal data. This exemption does not include the information on the disclosed, individualised remuneration published in accordance with the consent granted by the members of the management and of the supervisory body.

## **7. Financial accounting, audit of the annual financial statement**

### **7.1 Financial accounting**

- 7.1.1 Shareholders as well as third parties are informed in particular by the annual financial statement / report on the corporation's economic status and by the group financial statement / report on the group's economic status.

Unless otherwise stipulated by further-reaching provisions of the law, or statutory provisions or considerations as to the measures' usefulness and expediency contravene this, the annual financial statements / group financial statements and reports on the corporation's / group's economic status will be prepared in analogous application of the provisions made in Part Three of the Commercial Code (*Handelsgesetzbuch*, HGB) for large companies limited by shares and shall be audited in line with these provisions.

Notes:

According to Section 65 (1) of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO), it shall be ensured for holdings of the Federation that the annual financial statement and the report on the corporation's economic status are prepared and audited in analogous application of the stipulations of Part Three of the Commercial Code for large companies limited by shares.

Thus, and as a rule, a corresponding stipulation is to be included in the statutes or the shareholders' agreement unless the provisions of the Commercial Code apply directly without such provision being made. Accordingly, those corporations that are not a company limited by shares are to report on their economic status in accordance with the provisions of the Commercial Code.

The laws governing the allocation of funds (*Zuwendungsrecht*) may be among the statutory provisions contravening the corresponding application of the stipulations of Part Three of the Commercial Code. The considerations regarding the usefulness and expediency of such measures may also include the factor of whether the corporation concerned is a small company limited by shares as defined by Section 267 (1) of the Commercial Code. If, for reasons of such usefulness and expediency, preparing such reports and having them audited is forgone, this decision, which is to be taken newly each fiscal year, is to be justified and documented.

Group financial statements and reports on the group's economic status are to be prepared in the cases provided for by law; they are to be audited and disclosed (Sections 290 et seq., 316, 325 of the Commercial Code (*Handelsgesetzbuch*, HGB), Sections 11 - 15 of the Act on the Financial Accounting of Certain Corporations and Groups (*Gesetz über die Rechnungslegung von bestimmten Unternehmen und Konzernen*, PubiG).

The accounting must be organised such that a status report may be given at any time that sets out the factual situation in terms of the corporation's assets, financial situation, and revenue while also facilitating corporate planning as well as – based on appropriate cost-results accounting – controls of the cost-effective deployment of the funds available to the enterprise.

For larger corporations, parent companies and groups, the management should assign audit tasks to the internal audit department within the corporation (internal auditor) in order to obtain support for its tasks. The internal auditor shall report directly to the management or to the group leadership. The audit contracts should be awarded in writing. They should cover in particular the accounting and financial accounting; compliance with the regulations of significant import for the corporation; the instructions and guidelines of the management; as well as the cost-effective deployment of the funds available to the enterprise as regards the ongoing business and the measures taken. This also includes the evaluation of the reports issued by the internal auditors of subsidiary companies as well as the auditors' reports of all group member companies.

Should there be any doubts as to whether the institution of an internal auditing department is required for a corporation, or whether the internal audits correspond to the requirements, the management shall procure a statement in this regard from the auditor of the corporation's annual financial statements.

#### 7.1.2 The annual financial statement / group financial statement and the report on the corporation's / group's economic status shall be prepared by the management and shall be reviewed by the auditor and the supervisory body.

##### Notes:

The supervisory body is to review the annual financial statement, the report on the corporation's economic status and the proposal regarding the distribution of the unappropriated profits; for group holding companies, it is to review the group financial statement and the report on the group's economic status as well. It shall do so based on the audit prepared by the auditor. The

auditor shall be instructed to state his or her position in the auditor's report as to whether or not the management has properly and appropriately exercised the accounting and valuation options and whether its decisions regarding the allocation of funds to reserves or withdrawal from reserves were useful and expedient. In its review, the supervisory body is to particularly consider the presentation of the risks for the future development of the business.

Should a corporation be allocated public funds and should a report be prepared on the audit of such public funds granted, the supervisory body shall also include the content of this report in its evaluation.

The supervisory body shall report to the meeting of shareholders, in writing, its findings resulting from the audit.

- 7.1.3 The corporation shall publish a list of third party companies in which it holds an equity share in a greater than negligible scope. Should the corporation prepare an annual financial statement / group financial statement, the list shall be included as part of the explanatory notes attached to the financial statement / group financial statement as an annex.

Notes:

The following are to be provided: name and registered seat of the company as well as the amount of the share and scope of the holding. Any dealing inventory with financial services institutions based on which no voting rights are exercised shall not be considered in this regard.

- 7.1.4 The explanatory notes annexed to the annual financial statement shall discuss relationships with shareholders who are to be qualified as related parties within the meaning of the rules applicable to financial accounting.

## **7.2 Audit of the annual financial statement**

- 7.2.1 Prior to submitting a nomination for the auditor, the supervisory body or the audit committee shall procure a declaration from the nominated auditor in which he or she discloses any business, financial, personal or other relations existing between the auditor and the representative bodies of his or her company on the one hand and the corporation and the members of the company's representative bodies on the other, specifying their nature, that might give rise to doubts regarding his or her independence. The declaration shall also discuss the scope in which other services were provided to the company in the preceding fiscal year by the auditor, in particular in the field of consultancy services, or which have been agreed for the subsequent year. This declaration by the nominated auditor shall be filed with the business records.
- 7.2.2 To the extent provided for by law, the supervisory body awards the audit contract to the auditor and concludes a fee agreement with the auditor. The supervisory body shall agree with the auditor that the chairperson of the supervisory body or of the audit committee is to be informed without undue delay of any reasons for which the auditor might potentially have to withdraw from the audit contract or for which the auditor is not an impartial, independent party, unless such reasons are remedied immediately.

Notes:

For corporations without a supervisory body, the statutory representative shall award the audit contract to the auditor and shall conclude the fee agreement with same (Section 318 (1) fourth sentence of the Commercial Code (*Handelsgesetzbuch*, HGB)).

Should the shareholders exercise their rights as set out in Section 53 of the Act on Budget Principles (*Gesetz über die Grundsätze des Haushaltsrechts des Bundes und der Länder*, HGrG), the audit contract awarded to the auditor shall be correspondingly expanded. Pursuant to Section 68 (1) second sentence of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO), the Federal Ministry responsible shall exercise the rights of the Federation, by mutual consent with the Federal Court of Audit (*Bundesrechnungshof*), in nominating or appointing the auditors as stipulated by Section 53 (1) number 1 of the Act on Budget Principles.

Contracts with the auditor regarding additional consultancy services or other non-audit services should be concluded solely with the consent of the supervisory body.

In the interests of safeguarding the responsible auditor's independence, the auditor or, in the case of a firm of auditors having been involved, the partner responsible shall be rotated if that auditor or partner has already been responsible for auditing the annual financial statement of the corporation in seven or more instances, unless a period of at least three years has lapsed since the auditor's last involvement in the audit of the corporation's annual financial statement.

The selection of a new auditor shall be based on a competitive award procedure.

7.2.3 The supervisory body shall agree that the auditor is to report, without undue delay, any and all findings and events significantly affecting the tasks of the supervisory body that may be established or that may occur during the audit of the annual financial statement. The supervisory body shall agree that the auditor is to inform it, or is to record in the auditor's report, any instances in which the auditor establishes circumstances in the course of auditing the annual financial statement that would result in the declaration regarding the Public Corporate Governance Code of the Federation being incorrect that has been made by the management and the supervisory body. For corporations that do not have a supervisory body, the statutory representative shall agree the corresponding reporting and information obligations with the auditor.

7.2.4 The auditor shall attend the deliberations of the supervisory body or of the corresponding committee instituted by the supervisory body concerning the annual financial statement or the group financial statement and shall report on the essential findings of the audit at such meetings.

Note:

The supervisory body should request, as stipulated by Section 171 (1) of the Stock Corporation Act (*Aktiengesetz*, AktG), that the auditor attend the deliberations as to the annual financial statement and the group financial statement and that the auditor report on the essential findings obtained in the audit. It should be agreed that the auditor also attend when the meeting of shareholders discusses the annual financial statement.

## Part B

### Guidance Notes on Good Corporate Governance of Corporations in which the Federation holds an Equity Share

#### 1. Preamble

- 1 The Guidance Notes (including the annexes) are intended to contribute to good governance, based on uniform criteria, of the corporations in which entities of the Federation hold an equity share. They are to ensure the Federation's interests as a shareholder of such companies are properly looked after, and they are to facilitate the oversight of such corporations.

The term "holdings of the Federation" covers all private-law enterprises in whose capital the Federation either directly or indirectly holds an equity share; corporations that have the form of legal entities under public law; the companies that these corporations own or control; as well as companies in which an equity share is held in a form of trusteeship by third parties acting as *Treuhänder* for the Federation.

In this context, it should be noted that the responsible Federal Ministry exercises governmental supervision over corporations established in the legal form of a federal corporation (*bundesunmittelbare juristische Person*) under public law.

- 2 The Guidance Notes are intended to serve the departments within the Federation responsible for its holdings. They are a compilation of the most important legal provisions, regulations and administrative regulations as well as templates, recommendations and suggestions for good corporate governance of the entities of which the Federation is a shareholder.

The Guidance Notes take account of the most important legal provisions, the Public Corporate Governance Code of the Federation (Public Code), resolutions adopted by the *Bundestag*, resolutions passed by the Committee on Budgets (*Haushaltsausschuss*) and of the Federal Audit Committee (*Rechnungsprüfungsausschuss*), recommendations and notes of the Federal Court of Audit (*Bundesrechnungshof*) as well as experience gained in managing shareholdings.

- 3 The Guidance Notes are not intended for the corporations themselves in which the Federation holds an equity share.

These corporations are covered by the scope of the Public Code (cf. Preamble 1.3). The departments within the Federation responsible for its holdings work towards ensuring that the

compilation of rules and regulations instituted for the respective company effectively stipulate compliance with the Public Code established by the Federal Government.

The Public Code including its notes serves as a standard for good corporate governance; therefore, it is to be complied with by the departments responsible for the Federation's shareholdings, regardless of whether or not the respective company in which the Federation is a shareholder has itself adopted the Public Code.

4 To the extent the Guidance Notes expressly refer to officials of the Federation, these provisions shall correspondingly apply for Federal ministers, parliamentary state secretaries, salaried government employees and persons who are not in the public service.

5 **Annexes to Part B:**

- Compilation of the most important statutory provisions, regulations, administrative regulations and further sources (Annex 1)
- Template of a shareholders' agreement for limited liability companies (GmbH) (Annex 2)
- Template of rules of procedure for supervisory boards of limited liability companies (GmbH) (Annex 3)
- Template of rules of procedure for the management (Annex 4)
- Suggested wording for an employment agreement with managing directors (Annex 5)
- Award principles established for the departments within the Federation responsible for its holdings for audit services contracts (Annex 6)

## **2. Equity shares held by the Federation in corporations**

### **2.1 Pre-requisites for the Federation to take out an equity share in a corporation**

#### **2.1.1 Direct shareholding**

6 The pre-requisites for the Federation to take out a direct shareholding in private-law enterprises have been set out in Section 65 (1) of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO) and the relevant administrative regulations.

For corporations that have the legal form of a federal corporation (*bundesunmittelbare juristische Person*) under public law, Section 112 (2) of the Federal Budget Code establishes which stipulations of the Federal Budget Code are to be applied analogously or directly. The following marginal numbers shall be applied *mutatis mutandis*, taking account of the special aspects resulting from Section 112 (2) of the Federal Budget Code.

### **Important interest of the Federation**

- 7 According to Section 65 (1) number 1 of the Federal Budget Code, one pre-requisite for the Federation to hold an equity share in a corporation organised under private law is that it must have an important interest for doing so. This is deemed to exist if such shareholding enables the Federation to fulfil significant tasks. This pre-requisite is not met, for example, in those instances in which the task concerned is one that is exclusively incumbent on the *Länder* or on municipalities; if the sole purpose is to generate income from investment; or if the administration intends to cover its information needs by taking out the shareholding.
8. In taking out an equity share in a corporation, the objectives that are to be achieved in so doing are to be determined as specifically as possible and are to be incorporated into the internal body of rules and regulations for the enterprise, such as the statutes, the rules of procedure of the supervisory body (Annex 3), or the rules of procedure for the management (Annex 4). The company purpose set out in the statutes or in the shareholders' agreement shall be defined as clearly as possible and is to take account of the objective pursued in taking out a shareholding.
- 9 The additional pre-requisite is that the objective pursued by the Federation cannot be more efficiently achieved by other means, nor with better economic results. This requires a review of whether it would not be sufficient for the Federation to take action in a manner that would bind it less strongly than the acquisition of an equity share in a corporation. In addition to the involvement of authorities, corporations or institutions under public law, further options include in particular the granting of sureties, guarantees or other warranties, granting loans, allocations of budget funds or cooperations governed by agreements under the law of obligations (economic assessment (*Wirtschaftlichkeitsuntersuchung*) as stipulated by Section 7 of the Federal Budget Code).

Prior to taking out an equity share, private service providers are to be granted the opportunity, wherever suitable, to state whether and to what extent they might be able to perform tasks of the state or pursue economic activities serving the public good just as well, or even better (proceedings for the indication of interest (*Interessenbekundungsverfahren*) as stipulated by Section 7 of the Federal Budget Code).

- 10 The amount and the term of the shareholding shall be commensurate with the objective pursued by it.

- 11 In assessing the question of whether a direct shareholding of the Federation continues to be required; or if the equity share is to be sold; or if the corporation is to be wound up or merged with other corporations, the pre-requisites set out in Section 65 (1) number 1 of the Federal Budget Code are also relevant, with Section 7 of the Federal Budget Code likewise being taken into account.

#### **Limitation of the obligation to make contributions**

- 12 Section 65 (1) number 2 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO) provides that the obligation to pay in a contribution shall be limited. Thus, as a matter of principle, it shall not be permissible for the Federation to be a shareholder of a general partnership (*offene Handelsgesellschaft*, OHG), of a partnership under the Civil Code (*Gesellschaft bürgerlichen Rechts*, GbR), or to act as the personally liable partner of a limited partnership (*Kommanditgesellschaft*, KG), of a partnership limited by shares (*Kommanditgesellschaft auf Aktien*, KGaA) or as the member of an association without legal capacity, or comparable entities governed by the laws of foreign countries or supra-national law (such as European Economic Interest Groupings - EEIG). According to Section 65 (5) of the Federal Budget Code, the Federation shall take out a participation in a cooperative (*Genossenschaft*) only if the liability of its members vis-à-vis the cooperative for the latter's debts is restricted to a fixed amount from the outset.

#### **Appropriate influence of the Federation**

- 13 The degree of influence as required by Section 65 (1) number 3 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO) as a pre-condition for the Federation to take out an equity share in a company is deemed appropriate if this influence is commensurate with the objective pursued by such participation and the amount and significance of the shareholding.

In addition to a number of votes corresponding to the equity share, such votes to be exercised at the annual general meeting or meeting of shareholders, this requirement shall be met in particular by an appropriate number of members appointed to the supervisory board or in a corresponding supervisory body of members, who are either elected upon having been nominated by the Federation or delegated by it (cf. Appointment Guidelines below and marginal number 68). In the case of corporations which are not obligated by law to form a supervisory board, the statutes or the shareholders' agreement shall provide for a supervisory body that shall be subject to an analogous application of the stipulations of the Stock Corporation Act (*Aktiengesetz*, AktG); cf. also Annex 2.

Additionally, it should be ensured that the supervisory bodies of major companies in which the Federation indirectly holds an equity share have members who are elected upon having been nominated by the Federation or who have been delegated by it.

- 14 An essential instrument serving to ensure that the Federation is able to exert appropriate influence is to establish an adequate catalogue of transactions requiring approval. The departments responsible for the Federation's shareholdings are to work towards the respective statutes or shareholders' agreements setting out those of the transactions requiring approval that will secure the said appropriate influence for the Federation with regard to the respective corporation.
- 15 Furthermore, it is to be ensured that the statutes, the shareholders' agreement or code of practice for the management do not contain any stipulations that would impair the appropriate influence of the Federation.
- 16 Moreover, the interests of the Federation may require that the Federation ensure – to the extent legally permissible – that the statutes or the shareholders' agreement grant a greater degree of influence to it, or that they include provisions that the Federation regards as worthy of inclusion.

### **Preparation and audit of the annual financial statement**

- 17 According to number 7.1 of the Public Code, the annual financial statements / group financial statements and reports on the corporation's / group's economic status are to be prepared, unless otherwise stipulated by further-reaching provisions of the law, or statutory provisions or considerations as to the measures' usefulness and expediency prevent this from being done, in analogous application of the stipulations of Part Three of the Commercial Code (*Handelsgesetzbuch*, HGB) for large companies limited by shares and shall be audited in line with these stipulations; cf. also Section 65 (1) number 4 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO).

### **2.1.2 Indirect shareholding**

- 18 Should a corporation in which the Federation, either directly or indirectly, holds a majority interest, have a claim to a participation in another company (indirect shareholding), the following principles shall apply *mutatis mutandis* (Section 65 (3) of the Federal Budget Code) should this indirect shareholding exceed 25 percent of the shares: Section 65 (1) number 3 of the Federal Budget Code (appropriate influence of the Federation) and Section 65 (1) number 4 of the Federal Budget Code (preparation and audit of the annual financial statement as well as of the report on the corporation's economic status) as well as Section 65 (2) second sentence of the Federal Budget Code.
- 19 In the case of indirect shareholdings, the responsible Federal Ministry shall work towards ensuring that the interests of the Federation are looked after to the greatest extent possible. By providing for the corresponding measures and instituting controls, indirect shareholdings are to be prevented from jeopardising the interests of the Federation and the objectives it pursues in taking out such equity shares, and from inappropriately reducing the Federation's influence on

the corporations in which it holds an equity share. The Federal Ministry responsible shall work towards the approval requirements, where the acquisition of indirect participations in accordance with Section 65 (3) of the Federal Budget Code is concerned, being incorporated where possible in the statutes or the shareholders' agreement, in the rules of procedure for the management or in the group corporate policy of the corporation in which the Federation holds a majority interest.

## **2.2 Tasks of the Federal Ministry responsible, involvement of the Federal Ministry of Finance (BMF) and the Federal Ministry responsible for the assets held by the Federation (*Bundesvermögen*)\*, participation of the legislative bodies and information of the Federal Court of Audit (*Bundesrechnungshof*)**

### **2.2.1 Involvement regarding direct shareholdings**

20 The rights of the Federal Ministry of Finance (BMF) and of the Federal Ministry responsible for the assets held by the Federation (*Bundesvermögen*) to be involved with direct shareholdings have been set out in Section 65 (2) and 4 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO) and the relevant administrative regulations.

#### **Transactions requiring consent by the responsible Federal Ministry**

21 In addition to the transactions expressly cited in Section 65 (2) of the Federal Budget Code and in administrative regulation number 2.1 on Section 65 of the Federal Budget Code, writing a sale or purchase option, exercising a sale or purchase option as well as creating an equitable lien on shares in a company shall require consent.

22 For example, in the event the nominal capital of a company is modified, this will change the influence exerted by the Federation if the Federation or a holding company in which the Federation holds an equity share does not take over new shares, or additional shares, in order to maintain the ratio of shares held in the company thus far. The Federation's influence will be changed also should resolutions be adopted as to the issuance of convertible bonds; or should the provisions of the statutes be modified that entitle the Federation to delegate members of the supervisory bodies; or that influence the voting rights in the meeting of shareholders; or that change the transactions requiring consent or the majority requirements.

23 In some instances, the statutes of corporations in which the Federation directly holds an equity share have been drafted such that they permit transactions to be entered into extending beyond the objective pursued in accordance with Section 65 (1) of the Federal Budget Code.

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\* The Federal Ministry of Finance (BMF) is the Federal Ministry responsible for the assets held by the Federation (*Bundesvermögen*) within the meaning of Sections 65, 68 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO).  
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In such cases, efforts are to be made to limit the purpose of the company.

However, if restricting the company's purpose is not deemed to be expedient or achievable, the Federal Ministry responsible shall procure the consent of the Federal Ministry of Finance and shall involve the Federal Ministry responsible for the assets held by the Federation (*Bundesvermögen*) if a corporation intends to branch out into new fields of business that – while they are permissible under the statutes – do not correspond to the purpose set out in Section 65 (1) of the Federal Budget Code (*Bundshaushaltsordnung*, BHO) and that have not hitherto been pursued by the company.

In such cases, the representatives of the Federation active in the meeting of shareholders shall inform the Federal Ministry responsible; the same shall apply *mutatis mutandis* for any members of the supervisory body elected upon having been nominated by the Federation or delegated by it.

24 Where shares are to be sold, the stipulations of Section 63 (2) through (3) of the Federal Budget Code are to be observed in all other regards. Such shares may be sold only at their full value. In accordance with administrative regulation number 2 on Section 63 of the Federal Budget Code, the full value is determined in particular by the price that would be achieved in a sale implemented in the ordinary course of business.

25 Any sale of shares at less than full value must previously be provided for in the budget.

If their value is low, or if the Federation has an urgent interest in the sale, the Federal Ministry of Finance (BMF) may grant an exception (Section 63 (3) of the Federal Budget Code).

#### **Procedure at the level of the company**

26 The representatives of the Federation active in the meeting of shareholders are to work towards the company management observing the stipulations of Section 65 (2) and (3) of the Federal Budget Code. This shall apply *mutatis mutandis* for the members of the supervisory body who are elected upon having been nominated by the Federation or who have been delegated by it.

27 The representatives of the Federation active in the meeting of shareholders are to inform the Federal Ministry responsible without undue delay as soon as they have become aware of any transaction requiring consent. This shall apply *mutatis mutandis* for the members of the supervisory body who are elected upon having been nominated by the Federation or who have been delegated by it.

#### **Procedure at the level of the Federal Ministry responsible for the shareholding**

28 The Federal Ministry responsible for the shareholding is to procure the consent (prior approval within the meaning of Section 36 of the Federal Budget Code) of the Federal Ministry of

Finance (BMF) and is to involve the Federal Ministry responsible for the assets held by the Federation (*Bundesvermögen*) before it takes any decision legally binding the Federation in a factual or legal way concerning a measure set out in Section 65 (2) of the Federal Budget Code (cf. also administrative regulation number 2.1 on Section 65 of the Federal Budget Code).

- 29 The consent by the Federal Ministry of Finance (BMF) and the involvement of the Federal Ministry responsible for the assets held by the Federation (*Bundesvermögen*) shall be procured by way of a request being filed with the responsible Federal Ministry to the Federal Ministry of Finance (BMF). The request shall be substantiated and must also provide an assessment of the planned measure in terms of the cost-effective deployment of the funds available to the enterprise. All of the documents required for the assessment of the measure planned are to be enclosed with the request. As a general rule, this will include the letter of request from the enterprise concerned, its statutes or shareholders' agreement and business administration records such as annual financial statements, report on the company's economic status and auditors' reports, valuations and legal opinions, business plans (in particular financial planning, investment planning and HR planning) as well as the corresponding documents for any of the corporation's affiliated enterprises.
- 30 The right to waive the exercise the powers set out in Section 65 (2) and (3) of the Federal Budget Code (cf. Section 65 (4) of the Federal Budget Code) serves to simplify procedure. The Federal Ministry responsible for the shareholding may not waive the right to exercise its powers.

#### **Allocation of budgetary funds**

- 31 Should budgetary funds of the Federation be required in order to acquire an equity share, these must be allocated separately.
- 32 In establishing corporations and in resolving on increases of capital, efforts shall be made to ensure, in keeping with the principles of managing companies economically and deploying the funds available to the enterprise in a cost-effective manner (Section 7 (1) of the Federal Budget Code), that budgetary funds of the Federation extending above the statutory minimum payments (Section 36 (2) of the Stock Corporation Act (*Aktiengesetz*, AktG), Section 7 (2) of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG)) are not called down at an earlier date, and are called down in each case only insofar as they are required for the purpose planned.
- 33 The fact that items have already been posted in the Federal Budget for holdings of the Federation may represent a preliminary decision in favour of contributing capital, which is a measure requiring consent. Therefore, as early as at the establishment of the budget, the Federal Ministry responsible is to review whether the pre-requisites set out in Section 65 of the Federal Budget Code have been met and shall involve its budget commissioner (*Beauftragter für den Haushalt*) (Section 9 Federal Budget Code).

### **Involvement of legislative bodies**

- 34 Should the Federation intend to sell shares in corporations of special significance in which it directly holds an equity share, and should their sale not have been budgeted, these shares, as a matter of principle, may be sold only with the consent of the *Bundestag* and of the *Bundesrat* (cf. Section 65 (7) of the Federal Budget Code and administrative regulation number 4 on Section 65 of the Federal Budget Code).

### **Information of the Federal Court of Audit**

- 35 The Federal Court of Audit (*Bundesrechnungshof*) is to be informed immediately of any and all measures that require consent by the Federal Ministry of Finance (BMF) in accordance with Section 65 of the Federal Budget Code (cf. Section 102 (1) number 3 of the Federal Budget Code and the administrative regulation on Section 102 of the Federal Budget Code).

### **2.2.2 Involvement regarding indirect shareholdings**

- 36 The right of the Federal Ministry of Finance (BMF) and of the Federal Ministry responsible for the assets held by the Federation (*Bundesvermögen*) respectively to be involved in indirect shareholdings have been provided for in Section 65 (3) of the Federal Budget Code (cf. also administrative regulations number 2.2 and 2.3 on Section 65 Federal Budget Code).
- 37 The Guidance Notes under marginal numbers 14, 22, 23, 24, 26-30 are to be applied *mutatis mutandis*.

### **2.3 The Federation as a corporation**

- 38 In ruling on an individual case ("*Eingliederung Gelsenberg AG in VEBA*") (integration of Gelsenberg AG into VEBA), the Federal Court of Justice (*Bundesgerichtshof*) has held in its ruling handed down on 13 October 1977 - II ZR 123/76 (published in *Neue Juristische Wochenschrift* (NJW, New Judicial Weekly Journal) 1978 p. 104 et seq.) that the Federal Republic of Germany may also be the "controlling company" within the meaning of the stipulations of the laws governing stock corporations, provided that the corresponding pre-requisites are met. In this case, which concerned a dispute as to the form of a settlement payment to be made to private stockholders leaving the company, as stipulated by Section 320 (5) of the Stock Corporation Act (*Aktiengesetz*, AktG) (new: Section 320 b number 1 of the said Act), the Federal Court of Justice held that the Federation was a corporation, at least within the field of industrial shareholdings.

- 39 To avert any legal detriments, the following procedure should be followed:

As soon as the Federation holds a direct or (via its dependent enterprises) an indirect participation in a stock corporation, such shareholding being in excess of 25 percent (Section 20 (1) of the Stock Corporation Act) or 50 percent (Section 20 (4) of the Stock Corporation Act), the corporation should be informed of this fact in writing immediately "by way of exercising due precaution"; should this notice not be given, there is a risk that the rights granted by the shares may not be exercised for the period in which the corporation has failed to make such notification (Section 20 (7) of the Stock Corporation Act). Likewise, notice of any instance in which the equity share held by the Federation in the corporation falls to below the above thresholds should be given in the corresponding form (Section 20 (5) of the Stock Corporation Act).

As soon as the Federation obtains voting rights in a corporation listed on the stock exchange in the amount of 3 percent, 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, 30 percent, 50 percent or 75 percent, or exceeds these threshold values or falls below them, either by an acquisition of shares, a sale or by any other means, the corporation and the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, BAFin) must be notified of this fact immediately in writing, at the latest within four trading days (Section 21 (1) of the Securities Trading Act (*Wertpapierhandelsgesetz*, WpHG)). A corresponding notification shall be issued if the Federation is entitled to 3 percent or more of the voting rights in an issuer whose country of origin is Federal Republic of Germany at the time the shares of such issuer are admitted to trading on a regulated market for the first time (Section 21 (1) a of the Securities Trading Act). Should these notices not be made, rights granted by the shares may not be exercised for the period during which the notification requirements are not met (Section 28 of the Securities Trading Act).

According to Section 311 of the Stock Corporation Act, a controlling enterprise may not exert its influence to cause a dependent stock corporation (or a partnership limited by shares (*Kommanditgesellschaft auf Aktien*, KGaA)) to enter into a legal transaction that is detrimental for it, nor may it cause it to take measures or refrain from them if this results in detrimental impacts on the company, unless such disadvantages are compensated for. On the liability for damages caused by violations; cf. Section 317 of the Stock Corporation Act.

- 40 The Federal Ministry responsible shall ensure that stock corporations on which the Federation is able to exert, either directly or indirectly, controlling influence as set out in Section 17 (1) of the Stock Corporation Act, file a report on the company's dealings with affiliated companies (dependence report) in accordance with Section 312 of the Stock Corporation Act. Exemptions will be granted only if a control agreement (Section 312 of the Stock Corporation Act) or a profit and loss absorption agreement (Section 316 of the Stock Corporation Act) is given, or if the company in question is integrated into the controlling company (Section 323 (1) third sentence of the Stock Corporation Act).

## **2.4 The Federation as a shareholder**

- 41 The Federation shall safeguard its rights as a shareholder in the meeting of shareholders; cf. Number 2 of the Public Code.
- 42 To the extent this is legally permissible, useful and expedient, the Federation shall agree on the exercise of the voting rights with other shareholders (such as the *Länder* or municipalities).
- 43 Should, as an exception, no supervisory body have been provided for, the meeting of shareholders shall oversee the management; cf. also number 5.1.1 of the Public Code. In this context, the following must be observed in particular:

In such an event, the reports to the meeting of shareholders are to be made on the basis of reporting guidelines corresponding to the reporting principles applicable to reports to the supervisory body; cf. number 3.1.3 of the Public Code.

In such an event, the prior approval (consent) shall be obtained from the meeting of shareholders for transactions requiring approval (cf. Section 111 (4) second sentence of the Stock Corporation Act (*Aktiengesetz*, AktG), Section 52 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG)); cf. also number 3.1. 2 of the Public Code.

## **3. Collaboration of the management and supervisory body**

### **3.1 Structures of collaboration**

#### **3.1.1. Cooperation of the corporate representative bodies**

44. The management and the supervisory body collaborate closely in the company's best interests; cf. number 3.1.1 of the Public Code.

To cite an example, this means that a measure may be commenced only at that point in time at which full and complete plans (such as exact calculations of the costs, detailed and exact economic assessments and financial plans) have been submitted to the supervisory body for any significant capital expenditures, and that the projects have been approved by the representative supervisory body responsible. This also means that the corporation's supervisory body is to be kept regularly informed on the status of the implementation of the project, the development of the costs, and the rendering of accounts.

The expenditures incurred by the enterprise, for example for consultancy services or sponsoring activities, shall be reasonable and in keeping with a cost-effective deployment of the funds available to the enterprise.

### 3.1.2. Transactions requiring approval

- 45 For transactions of fundamental significance, reservations of approval are to be determined; cf. number 3.1.2 of the Public Code.

The catalogue of transactions requiring approval is dependent on the respective individual case. The list set out in the template for a shareholders' agreement (Annex 2) provides an orientation. To the extent this is useful and expedient for ensuring the appropriate influence of the Federation, the transactions listed therein are to be bound to the approval by the supervisory body; further types of transactions may be included in such an approval catalogue.

In particular where corporations receive budgetary funds or are in a difficult financial position, any grants of large loans, sureties, guarantees, warranties or any other similar acceptance of liability shall be bound to the prior approval the supervisory body (cf. Annex 2); similarly, holding companies shall establish the corresponding guidelines for these financial and liability instruments for the companies making up their group.

- 46 Should, in an exceptional case, a committee be authorised to finally and conclusively decide on transactions requiring approval (cf. number 3.1.2 of the Public Code), its members must include the chairperson of the supervisory body as well as a member either elected upon having been nominated by the Federation or delegated by it.
- 47 The approval pursuant to Section 111 (4) second sentence of the Stock Corporation Act, Section 52 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*, GmbHG) by the members of the supervisory board either elected upon having been nominated by the Federation or delegated by it, who are also officials, of a transaction requiring consent pursuant to Section 65 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO) is not deemed to replace the approval of the Federal Ministry responsible.

### 3.1.3. Information

- 48 The management and the supervisory body jointly have the task of providing sufficient information; on the details of the requirements cf. number 3.1.3 of the Public Code.

Providing sufficient information to the supervisory body is also of essential importance for the department responsible for the corporation in which the Federation holds an equity share (cf.

Section 394 of the Stock Corporation Act (*Aktiengesetz, AktG*) and for the Federal Court of Audit (*Bundesrechnungshof*) (cf. Section 69 Federal Budget Code).

- 49 The members either elected upon having been nominated by the Federation or delegated by it are to ensure that the presentations are submitted to the supervisory body in due time in order to facilitate diligent preparation and timely coordination with the desk officers of the respective Federal Ministry responsible for the corporation in which the Federation holds an equity share.

The said members of the supervisory board shall submit written reports on the meetings to the department responsible for Federation's shareholding. These reports shall inform the department in advance of the essential results of the meeting and shall provide background information for the minutes forthcoming a later time. The Federal Ministry responsible may forgo demanding such a report from a member of the supervisory body who works for a different Federal Ministry if the responsible Federal Ministry is informed by its own members of the supervisory body in writing; this shall apply also in those cases in which the member of the supervisory body is the chairperson of same and intends to issue a record within the near term that sets out all aspects essential for his or her ministry or department.

In terms of its focus, reporting shall be oriented by number 3.1.3 of the Public Code; in addition, the reports shall also address HR matters and appointments within the company and shall set out the reasons that have caused the members of the supervisory body, who have been either elected upon having been nominated by the Federation or delegated by it, to take the stance they did in voting on a resolution adopted by the supervisory body.

This shall not affect the report submitted by the member of the supervisory board to his or her own federal authority; cf. Section 394 of the Stock Corporation Act, Section 55 of the Act on Federal Civil Servants (*Bundesbeamtenengesetz, BBG*).

- 50 The Federal Ministry responsible is to transmit to the Federal Court of Audit (*Bundesrechnungshof*) the reports submitted to it by the members of the supervisory body (cf. Section 394 of the Stock Corporation Act) as stipulated by Section 69 number 2 of the Federal Budget Code.

### **3.2 Confidentiality**

- 51 Good corporate governance is based on open discussions between the management and the supervisory body, which also applies for the internal discussions within these representative bodies of the company. For this reason, it is of utmost importance that comprehensive confidentiality be maintained; cf. number 3.2 of the Public Code.

In the interests of safeguarding such confidentiality, the involvement of third parties, such as experts or persons providing information, shall be restricted to the scope required. They shall be involved only for specific, individual matters.

The members of a stock corporation's supervisory board who have been delegated to the said supervisory board, or who have been appointed as its members, on the initiative of a local authority / regional authority (*Gebietskörperschaft*), are not under any confidentiality obligation. This exemption does not apply to confidential information and secrets of the company, such as company secrets or business secrets, provided that knowledge of such secrets has no impact on the purpose of the reports to be so made (Section 394 of the Stock Corporation Act). Particular attention is drawn to the special provisions established for the confidentiality obligation of persons charged with managing the holdings of the Federation (Section 395 of the Stock Corporation Act).

### **3.3 Accountability**

- 52 The management and the supervisory body are to observe the rules of proper corporate governance; cf. number 3.3 of the Public Code.

If the question is in dispute, in the relationship with the corporation, of whether or not the members of the company's representative bodies have complied with their duty to exercise due care, the onus of proof shall be with the said members; cf. Section 116 in conjunction with Section 93 (2) of the Stock Corporation Act.

- 53 The members of the representative bodies of corporations listed on a stock exchange are insiders within the sense of Section 13 of the Securities Trading Act (*Wertpapierhandelsgesetz, WpHG*) and are subject to the prohibition of insider trading in accordance with Section 14 of the Securities Trading Act.

### **3.4 Extension of loans**

- 54 The corporation shall not extend any loans to the members of the management or of the supervisory body, nor shall such loans be granted to their relatives; cf. number 3.4 Public Code.

## **4. Management**

### **4.1 Composition**

- 55 The management shall consist of at least two persons; cf. number 4.2 of the Public Code and the template for a shareholders' agreement of a limited liability company (GmbH) attached hereto as Annex 2.

In this context, the statutes, the shareholders' agreement, or the rules of procedure for the management to be established by the supervisory body or the meeting of shareholders (cf. Annex 4) shall include in particular a provision stipulating that the management is to jointly decide on all matters of a fundamental nature or of financial import, and that it shall also do so in the event of differences of opinion between several members of the management who are responsible in the individual case.

It is not possible to appoint members of a stock corporation's board of management who have the right to adopt resolutions against the majority of the board members in the event of differences of opinion within the board of management (Section 77 (1) second sentence of the Stock Corporation Act). No provision deviating herefrom is to be made for corporations having other legal forms.

## **4.2 Remuneration**

- 56 The remuneration paid to the members of the management shall be determined by the supervisory body, which shall take account of any emoluments paid within the group in deciding on an appropriate, performance-based amount; cf. the details provided for under number 4.3 and number 4.4.4 of the Public Code.

- 57 In assessing whether or not the emoluments granted to the members of the management are appropriate, the income they receive as members of the representative bodies of other corporations as a general rule is to be taken into consideration as well, provided the members of the management have accepted this additional occupation in the interests of their company.

Subject to certain pre-requisites being met, Section 87 (2) of the Stock Corporation Act provides for the emoluments paid to the members of the board of management to be reduced.

Moreover, the employment agreements shall make arrangements for the use of company cars for private purposes by members of the management, and of privately owned vehicles for business purposes; they shall also provide for the remuneration for travel and relocation, and shall stipulate the amount of family separation allowance paid.

The members of the management shall not be compensated for additional work or vacation not taken, nor shall they be paid a Christmas allowance; likewise, no non-repayable supplements shall be disbursed to them (such as for the acquisition of real property).

## 5. Supervisory body

### 5.1. Tasks and competences

58 It is the task of the supervisory body to, at regular intervals, advise the management in leading the company and to oversee the management's activities; cf. the details set out under numbers 5.1 and 7.1 of the Public Code.

Should the supervisory body recognise that the management of the corporation is taking a wrong development, it is to intervene.

If the management has violated its obligation or has proven to be unfit for the task of managing the corporation, this may represent grave cause for their removal from office and the termination of their employment contract. Moreover, claims to compensation of damages are to be reviewed, and a decision is to be taken on whether to pursue such claims and if so, how (cf. ruling of the Federal Court of Justice (*Bundesgerichtshof*, BGH) published in New Judicial Weekly Journal (*Neue Juristische Wochenschrift*, NJW) 1997, p. 1926).

Even in those instances in which the management has not breached its duties, the supervisory body is to review which consequences are to be drawn if the corporation has suffered serious disadvantages as a result of significant deviations from corporate plans or intended capital expenditures, or if important advice has been ignored.

59 The supervisory body of a holding company likewise must monitor that the management properly safeguards its rights as a shareholder of a dependent company. This also includes the dependent company not entering into any transactions without the approval of the holding company's supervisory board if such transactions are bound to supervisory board approval within the holding company.

60 The principles applying to audits of corporations pursuant to Section 53 of the Act on Budget Principles (*Gesetz über die Grundsätze des Haushaltsrechts des Bundes und der Länder*, HGrG) (cf. the Annex to the administrative regulation number 2 on Section 68 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO)) may serve as a guideline for the issues that are to be focused on in overseeing the management, as may audit standard 720 published by the Institute of Public Auditors in Germany (*Institut der Wirtschaftsprüfer e.V.*). In any case, the supervisory body must obtain information on the situation and development of the company and also on the management of the business based on the reports and presentations made by the management, as well as based on the auditors' reports submitted in accordance with Section 321 of the Commercial Code (*Handelsgesetzbuch*, HGB).

The question of which supervisory measures are required and to which extent these measures must extend to the details of the management shall be commensurate with the circumstances of the respective corporation (such as the nature and effectiveness of its internal control systems). In addition to the supervisory board's competence to bind certain types of transactions to its approval, the supervisory board is entitled, according to Section 90 (3) and (5) of the Stock Corporation Act, Section 111 (2) and (4) of the Stock Corporation Act, Section 52 of the Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG*), to audit the books of the company, among other things; moreover, the supervisory board has the right to involve experts.

- 61 An essential aid in overseeing the management is the auditor's report (Section 321 of the Commercial Code, Section 313 of the Stock Corporation Act, Section 53 of the Act on Budget Principles, administrative regulation number 1 on Section 68 of the Federal Budget Code, Section 67 of the Federal Budget Code); cf. also number 7.2 of the Public Code.

Should concerns be raised about a report, the supervisory body must address them without undue delay, and must either itself perform audits in the scope required, or must have the auditor amend his or her report or involve special experts.

The supervisory body is to monitor the remediation of the deficiencies.

- 62 Prior to important decisions to be taken by the supervisory board, the members of the supervisory body delegated by the Federation, or appointed at the Federation's initiative, shall come to an understanding as to a uniform view of the board (cf. also the administrative regulation number 3 on Section 65 of the Federal Budget Code).

Should representatives of the Federation in the supervisory board not share the view held by the majority in important matters, they shall have their views and their vote included in the record.

- 63 Should the pre-requisites in terms of budgetary law not be given at the time a resolution is passed by a corporation's supervisory body on a measure with budgetary effects on the Federation, the members of the supervisory body delegated to same by the Federation, or appointed at the Federation's initiative, shall indicate this fact and shall vote on the resolution only with a corresponding reservation.
- 64 The supervisory body shall convene a meeting of shareholders if the company's best interests so require (cf. Section 111 (3) of the Stock Corporation Act, Section 52 of the Limited Liability Companies Act).

- 65 Numbers 5.1.3 and 5.1.4 of the Public Code set out the principles of the internal organisation of the supervisory body. Particular attention is drawn to Annex 3 hereof.

The pre-requisites for a quorum to be given have been set out in Section 108 of the Stock Corporation Act, Section 28 of the Act on Employees' Co-Determination Rights (*Gesetz über die Mitbestimmung der Arbeitnehmer*, MitbestG), Section 11 of the Act Amending the Act on Employees' Co-Determination Rights in the Supervisory Boards and Boards of Management of Companies in the Mining, Iron and Steel Production Industry (*Gesetz zur Ergänzung des Gesetzes über die Mitbestimmung der Arbeitnehmer in den Aufsichtsräten und Vorständen der Unternehmen des Bergbaus und der Eisen und Stahl erzeugenden Industrie*, MitbestErgG), Section 10 of the Act on Employees' Co-Determination Rights in the Supervisory Boards and Boards of Management of Companies in the Mining, Iron and Steel Production Industry (*Gesetz über die Mitbestimmung der Arbeitnehmer in den Aufsichtsräten und Vorständen der Unternehmen des Bergbaus und der Eisen und Stahl erzeugenden Industrie*, MontanMitbestG). At any rate, a minimum of three members must participate in passing a resolution (cf. Section 108 (2) third sentence of the Stock Corporation Act).

The supervisory body and its committees shall take decisions by adopting resolutions - as a general rule in meetings (cf. Section 108 (2) of the Stock Corporation Act) – with a simple majority unless the statutes or rules of procedure stipulate a qualified majority for certain transactions (cf. Annex 3). However, the statutes should as a matter of principle only provide for resolutions to be passed by a simple majority unless the law stipulates different majorities; it may be determined that in the event of a tied vote, the vote of the supervisory body's chairperson shall be the casting vote.

To the extent the Act on Employees' Co-Determination Rights applies, the resolutions passed by the supervisory board shall as a matter of principle require the majority of the votes cast. In the event of a tied vote, the chairperson of the supervisory board shall have two votes subject to specific pre-requisites being met (Section 29 of the Act on Employees' Co-Determination Rights).

## 5.2 Composition

- 66 Due care shall be taken to ensure that the supervisory body shall only have members who have the required knowledge, abilities and technical expertise, who are sufficiently independent and who are able, in view of their professional obligations, to perform the tasks of a supervisory body member; in this context cf. the details set out under number 5.2 of the Public Code. Provisions as to the composition of the supervisory board have been set out in Sections 95 through 98 of the Stock Corporation Act, Section 52 of the Limited Liability Companies Act, Sections 6 and 7 of the Act on Employees' Co-Determination Rights, Sections 3 through 11 of the Act on Employees' Co-Determination Rights in the Supervisory Boards and Boards of

Management of Companies in the Mining, Iron and Steel Production Industry, Sections 5 and 6 of the Act Amending the Act on Employees' Co-Determination Rights in the Supervisory Boards and Boards of Management of Companies in the Mining, Iron and Steel Production Industry, and Sections 4 through 12 of the One-Third Co-Determination Act (*Gesetz über die Drittelbeteiligung der Arbeitnehmer im Aufsichtsrat*, DrittelbG).

As a matter of principle, unless the Acts on Employees' Co-Determination Rights provide otherwise, the members of the supervisory board of a stock corporation and of a limited liability company (GmbH) are appointed by the annual general meeting or by the meeting of shareholders (Section 101 (1) of the Stock Corporation Act, Section 52 of the Limited Liability Companies Act). According to Section 101 (2) of the Stock Corporation Act, the statutes may grant to certain stockholders, or to the holders of specific stock, the right to delegate members of the supervisory board. In appropriate cases, the statutes or the shareholders' agreement shall provide for a delegation right of the Federation.

While it is possible that the shareholders' agreements of companies that are not stock corporations and that are not subject to Section 77 of the Works Council Constitution Act (*Betriebsverfassungsgesetz*, BetrVG) of 1952, or to Section 1 of the One Third Co-Determination Act, or to the above Acts on Employees' Co-Determination Rights contain a provision deviating from Section 95 of the Stock Corporation Act (number of the members of the supervisory board), a provision of the statutes is to be strived for stipulating that the supervisory board shall have at least three members.

Because membership in a supervisory board is designed as a personal office, the concept of representation is foreign to it (cf. number 5.2.3 of the Public Code). For this reason, no representation and no performance by third parties of tasks of members of the supervisory body are to be stipulated for supervisory bodies to which Sections 101 (3) and 111 (5) of the Stock Corporation Act do not apply (for example to the optional supervisory body of a limited liability company (GmbH)).

- 67 The number of members of the supervisory body is to be restricted to the absolutely required minimum.
- 68 The Appointment Guidelines set out in Part C. apply to the selection of the members of the supervisory body and the appointment of members by the Federation.

Where members of the public service are appointed, primarily officials of the Federation shall be nominated as members of the supervisory board who are responsible for the holdings of the Federation. Officials of the Federation, or of other local authorities / regional authorities (*Gebietskörperschaften*), or other persons may be appointed as members of the supervisory board if they have special knowledge in fields that are important to the company and if it can be assumed of them that they will appropriately represent the interests of the Federation.

### 5.3 Remuneration

- 69 The remuneration for the members of the supervisory body shall be determined in the corporation's statutes or by resolution adopted by the meeting of shareholders; cf. number 5.3 of the Public Code as well as Section 113 of the Stock Corporation Act (*Aktiengesetz, AktG*).
- 70 Should solely the public sector hold a share in the equity of a corporation, either directly or indirectly, and should the expenditures of the company be borne wholly or to a significant extent by the public sector, no remuneration shall be granted in addition to the reimbursement of expenditures.
- 71 Regarding the conclusion of consultancy agreements and other services or work contracts with members of the supervisory body, reference is made to number 5.4.2 of the Public Code.

### 5.4 Conflicts of interest

- 72 No-one shall be a member of a supervisory body who has business or personal relations to the corporation or its management that engender a serious and not merely temporary conflict of interest; cf. also number 5.2.1 of the Public Code.

Officials of the Federation who are members of the supervisory body of a corporation shall not concurrently observe the rights of a shareholder, to which the Federation is entitled, at the annual general meeting, or at the meeting of shareholders, of the same company if there is the risk of a conflict of interest, such as regarding issues of the approval of actions taken. In addition to being granted a power of attorney to represent the Federation, in cases of doubt the member of the supervisory body must also be given voting instructions for the meeting of shareholders.

When members of the public service are appointed as members of supervisory bodies, this may give rise to special conflict situations. In particular, conflicts of interest will be given in the cases outlined under number II. of the Appointment Guidelines (Part C).

- 73 A member of the public service may not take action in an administrative procedure if he or she is also a member of the supervisory body of one of the corporations involved in the proceedings; therefore, this person shall refrain in particular from making any statements that could contribute to the formation of opinion within the responsible authorities as regards the proceedings or the decisions to be taken in the matter, and shall likewise refrain from issuing any instructions or from taking any measures similar to instructions. The provisions concerning

the reasons for which persons might have to withdraw from proceedings and are not deemed to be impartial, independent parties as set out in Sections 20 and 21 of the Administrative Procedures Act (*Verwaltungsverfahrensgesetz, VwVfG*) in the version as valid from time to time, which shall apply *mutatis mutandis* either if the persons concerned are directly involved in an administrative procedure within the meaning of Section 9 of the Administrative Procedures Act, or otherwise as a general statutory principle of maintaining objectivity in all actions taken by the public administration, shall be observed, just as the grounds of excluding such persons as provided for in special laws, such as Section 16 of the Ordinance on the Award of Contracts (*Vergabeverordnung*), are to be observed.

Should any special conflict situations be given when members of the public service are appointed to supervisory bodies, as described in the Appointment Guidelines, these Guidelines stipulate that the Federal Ministry responsible for the corporation is to transfer the decision making competence within the authority (Part C. number II.).

- 74 Should conflicts of interest arise following the appointment of a member of a supervisory body, this shall cause such appointment to end, provided such conflicts of interest as given in the member of this body are serious and not merely temporary; cf. the details set out under number 5.4.1 of the Public Code. In all other regards, the Appointment Guidelines (Part C. number II.) apply *mutatis mutandis* to conflicts of interest given with members of the public service.

## **5.5 Covenants with members of supervisory bodies**

- 75 The company purpose or object (*Unternehmensgegenstand und Gesellschaftszweck*), or the purpose allocated to the entity responsible for the company (*Unternehmenszweck*), are not only the basis for, and the guideline directing, all actions of the members of the corporation's representative bodies and their collaboration in the company's best interests; they also reflect the important interest of the Federation; cf. number 3.1.1 of the Public Code. The members of the corporation's supervisory body delegated to same by the Federation, or appointed at the Federation's initiative, accordingly shall take into account the interests of the Federation in their activities (cf. Section 65 (6) of the Federal Budget Code (*Bundshaushaltsordnung, BHO*)), such as in any decisions taken on the disclosure of earnings and distribution of profits.

Particular attention is drawn to the requirement to make corresponding arrangements in writing with the members of supervisory bodies delegated by the Federation, or appointed at the Federation's initiative (Annex 1 and 2 of Part C.). Such written covenants shall be made prior to the appointment.

- 76 Officials of the Federation who are delegated to the supervisory body of a corporation, in which the Federation directly or indirectly holds an equity share, or who have been elected to such office at the request, proposal or initiative of their authority or department, are to follow the instructions issued by their authority as a matter of principle.

In the internal relationship, such officials are to carefully weigh any instance in which they decide not to follow such instructions, and shall base their decision on the principles of the laws governing the activities of officials (duty of remonstrance; cf. Section 63 (2) of the Act on Federal Civil Servants (*Bundesbeamten-gesetz*, BBG)).

In the external relationship, instructions are not to be followed in those instances in which they contravene the best interests of the company and thus would be tantamount to a breach of the official's obligations in his or her capacity as a member of the supervisory body, or in those instances in which the actions for which instructions were issued are punishable by law. A member of a supervisory body will be liable to punishment under law in particular if he or she intentionally acts to the detriment of the company.

- 77 The members of the supervisory body delegated by the Federation, or appointed at the Federation's initiative, who are active in the administration of the Federation, shall inform their authority of any matters of special import at an early stage; the corresponding arrangements shall be made with them in this regard. Should, as an exception, such information not be possible, the members of the supervisory body shall work towards the decision being postponed.
- 78 Should members of the supervisory body be delegated by the Federation, or appointed at the Federation's initiative, who are not active in the administration of the Federation, the corresponding arrangements shall be made with them as well, in particular as concerns the information of the Federal Ministry responsible.

## **6. Transparency**

- 79 The department responsible for the corporation in which the Federation holds an equity share shall make efforts to ensure proper corporate governance reporting (number 6.1 of the Public Code) and to obtain the contractual approval by the members of the management to their remuneration being disclosed (number 6.2 of the Public Code).

## **7. Financial accounting and audit of the annual financial statement**

- 80 Regarding the requirements for financial accounting and the audit of the annual financial statement, reference is made to numbers 7.1 and 7.2 of the Public Code.
- 81 Should, for example, annual financial statements not be prepared within the period stipulated, should the auditors establish deficiencies in the accounting (such as transaction posting

backlogs), or should the accounting not enable interim statements to be made, this shall cause the supervisory body to take action.

## 8. Audit of the corporations

### 8.1. Audit rights and audit procedure for private-law enterprises

82 The audit rights concerning corporations the majority of whose shares are owned by the public sector are to be observed vis-à-vis corporations established under private law in accordance with Section 53 of the Act on Budget Principles (*Gesetz über die Grundsätze des Haushaltsrechts des Bundes und der Länder, HGrG*). Moreover, the Federal Ministry responsible shall make efforts to ensure that the Federal Court of Audit is granted the right to be directly informed, providing for such right in the statutes of the corporation or in its shareholders' agreement in accordance with Section 54 of the Act on Budget Principles (Section 66 of the Federal Budget Code (*Bundeshaushaltsordnung, BHO*)).

Should no majority interest exist within the meaning of Section 53 of the Act on Budget Principles, the Federal Ministry responsible shall make efforts to ensure that the statutes or the shareholders' agreement grant the rights set out in Sections 53, 54 of the Act on Budget Principles – this shall not apply to stock corporations, limited partnerships with share capital (*Kommanditgesellschaft auf Aktien, KGaA*) or cooperatives (*Genossenschaften*) (Section 67 first sentence of the Federal Budget Code).

In the case of indirect holdings through companies, the majority of whose shares are owned by the public sector, this shall apply only if their holding exceeds one quarter of the shares (Section 67 second sentence of the Federal Budget Code). If such a corporation has its registered seat abroad, the analogous application of Sections 53 and 54 of the Act on Budget Principles shall be agreed, unless this is expressly contravened by statutory provisions of the domicile state concerned; under certain circumstances, a corresponding provision is to be made in the shareholders' agreement.

The competence to exercise rights, the audit by the Federal Ministry responsible and the information of the Federal Court of Audit (*Bundesrechnungshof*) are governed by Sections 66 through 69 of the Federal Budget Code and the relevant administrative regulations.

83 The Federal Ministry responsible shall make efforts to ensure that in the course of auditing the annual financial statement, the principles applying to the audit of corporations in accordance with Section 53 of the Act on Budget Principles (cf. Annex on the administrative regulation number 2 on Section 68 of the Federal Budget Code) are complied with and that the catalogue of questions of the profession based on such principles, in the version as valid from time to time, is taken into account, and shall in particular ensure that logically understandable auditors'

reports are submitted that also include the concluding statements of the auditors. The Federal Ministry responsible shall ensure that in the context of auditing the individual financial statement of the holding company in accordance with Section 53 of the Act on Budget Principles, or the group financial statement, the audit shall also address the development of the group and whether it has been managed properly. Should the report not be made properly, the involvement of a different auditor shall be reviewed.

- 84 In the event of the Federation holding a majority interest, the audit in accordance with Section 53 of the Act on Budget Principles shall also comprise a report on the emoluments of the supervisory board, the management, and the executives ("report on emoluments").
- 85 In the report submitted to the Federal Court of Audit pursuant to Section 69 of the Federal Budget Code, it is to be noted if the report pursuant to Section 53 of the Act on Budget Principles does not comply with the requirements set out in the Annex to the administrative regulation number 2 on Section 68 of the Federal Budget Code (principles for the audit of corporations in accordance with Section 53 of the Act on Budget Principles).
- 86 Section 69 of the Federal Budget Code establishes a direct responsibility of the Federal Ministry responsible for the shareholding to perform proper audits, and does so regardless of whether or not the administration of a company in which the Federation holds an equity share has been transferred to a subordinate authority. The Federal Ministry responsible may involve other parties to assist with the audit.
- 87 The officials of the Federation charged with the audit are responsible for ensuring that their direct supervisors are made aware of all significant deficiencies established in the course of the audit. The supervisors are to inform the leadership of the Federal Ministry wherever required.
- 88 The officials of the Federation who are members of a representative body of the corporation or who represent the Federation in the corporation's annual general meeting or in its meeting of shareholders are to refrain from exercising any influence on the result of the audit. They may not sign any letters in which the Federal Ministry informs the Federal Court of Audit of the results of the audit; their supervisors shall take their stead in so signing the document. Should the supervisors likewise be members of a representative body of the corporation, the letter shall be signed by the next highest supervisor or by their deputy in accordance with Section 6 of the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*, GGO). Officials of the Federation who are members of a corporation's supervisory board shall be given the opportunity, prior to the information notice being sent to the Federal Court of Audit, to inspect the same and state their position in that regard; however, they may not under any circumstances co-sign this document.
- 89 For the annual audits prepared pursuant to Section 69 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO), the records of those corporations shall be audited initially in

the audit of which there is a particular interest, for example because the management or the economic situation of a corporation give rise to concerns, such as based on the reports prepared within the meaning of Section 90 of the Stock Corporation Act (*Aktiengesetz*, AktG) or the auditor's report, or because a corporation is granted benefits by the Federation, or because there is reason to assume that the profits distributed do not correspond to the corporation's actual economic situation.

90 The documents to be sent to the Federal Court of Audit in accordance with Section 69 of the Federal Budget Code include in particular the following:

- a) Auditor's report (including the determinations made in accordance with Section 53 of the Act on Budget Principles as well as the reports of interim and supplemental audits), and any statement of position that may be made by the company management and the supervisory board;
- b) Presentations to the supervisory board and its committees as well as records of meetings that shall reflect the course of deliberations and the voting results;
- c) Reports by members of the supervisory bodies;
- d) Records, with the appurtenant annexes, of general meetings or meetings of shareholders held in the fiscal year audited in accordance with normal procedure (*ordentlich*) or outside the regular course of business (*ausserordentlich*);
- e) Shareholders' agreement as well as the code of practice for the management, the supervisory board and its committees, unless these documents have already been sent in the version valid for the respective fiscal year;
- f) Notices to the supervisory board or the chairperson of the supervisory board as to the audit of certain fields (such as organisation, capital expenditures, cash, emoluments of the members of the corporation's representative bodies);
- g) Reports on interim audits and special audits;
- h) Reports on the corporation's economic status;
- i) Reports within the sense of Section 90 of the Stock Corporation Act (*Aktiengesetz*, AktG).

91 These documents are to enable the Federal Court of Audit to assess the activities of the Federation in the respective companies.

- 92 The Federal Court of Audit is to be informed immediately if direct shareholdings of the Federation or indirect shareholdings in corporations within the meaning of Section 65 (3) of the Federal Budget Code are established, substantially changed, or relinquished (Section 102 (1) number 3 of the Federal Budget Code and administrative regulation on Section 102 of the Federal Budget Code).

## **8.2. Audit rights and audit procedure for corporations having legal forms under public law**

- 93 The audit rights and audit procedure for corporations under public law are governed by Section 55 (2) of the Act on Budget Principles and Section 111 of the Federal Budget Code.
- 94 Should a legal entity under public law that is subject to the stipulations of Section 55 (1) of the Act on Budget Principles receive subsidies from the Federation or from a *Land* that are stipulated by law, both in terms of their merits and of their amounts, or if a guarantee obligation of the Federation or of a *Land* is justified by law, the budgeting and economic management of this legal entity shall also be subject to audit by the Federal Court of Audit in those instances in which it is actually eligible for an exemption from Section 111 (1) of the Federal Budget Code (cf. Section 48 (2) of the Act on Budget Principles, Section 111 (2) of the Federal Budget Code).

## Part C

### Appointment Guidelines

Guidelines for the appointment of personalities to supervisory boards and other supervisory bodies as well as to the boards of management/the management of corporations, in which the Federation (including Special Funds) owns an equity share, and other institutions, to the extent the Federation may influence the appointment (Appointment Guidelines)

#### I. Composition of supervisory boards and other supervisory bodies\*

1. It is to be ensured that the Federation has appropriate influence on the composition of supervisory boards and other supervisory bodies (Section 65 (1) number 3 of the Federal Budget Code (*Bundeshaushaltsordnung*, BHO)).
2. Persons shall be appointed to the supervisory board who are suited for such appointment in view of their knowledge and experience.\*\* This is to be documented wherever required.

Moreover, they shall be able, in view of their professional obligations, to perform the tasks of a supervisory body member. For this reason, the members of the supervisory body delegated by the Federation or appointed at its initiative shall not be, as a general rule, members of more than three supervisory bodies at the same time.

The individual Federal Ministry responsible for the respective company in which the Federation owns an equity share shall be represented in each case by only one, at the most by two of its officials. In the interests of the Federation and of the corporation, persons with the corresponding expertise who are not members of the public service (such as persons active in the economy) shall be appointed as members of supervisory bodies. For affiliated companies of a corporation, as a general rule, a maximum of two representatives of the owners' side are to be appointed to the supervisory body.

The department responsible for the corporation in which the Federation holds an equity share shall moreover ensure, by mandatory training programmes, that the members of the supervisory body delegated by the Federation or appointed at its initiative will have the required

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\* including state commissioners (*Staatskommissare*)

\*\* According to the adjudication handed down by the courts (Rulings of the Federal Court of Justice in Civil Law Matters (*Entscheidungen des Bundesgerichtshofes in Zivilsachen*, BGHZ) 85, p. 293), a member of a supervisory board must have the minimum knowledge and expertise, or must acquire them, that are needed in order to, without requiring the help of others, understand all business procedures normally accruing and appropriately assess them.

knowledge and state-of-the-art expertise in order to perform their duties as members of the supervisory board.

3. No persons shall be appointed whose withdrawal from public service or from their public office (including the office of a member of parliament) is imminent.
4. Members of the public service and holders of public office (including members of parliaments) shall resign from their appointment as member of the supervisory board if they leave the function based on which they were appointed, or whenever the Federal Ministry that has appointed or delegated them demands that they do so.
5. To the extent members of supervisory boards and other supervisory bodies are not members of the public service, they shall, as a general rule, withdraw from their office at the end of the annual general meeting or meeting of shareholders following the date on which they have reached the statutory age limit within the sense of Section 7a of the Social Security Code (*Sozialgesetzbuch*, SGB), volume II.

## II. Conflicts of interest

1. In order to avoid any conflicts of interest, persons shall not be appointed to supervisory boards or other supervisory bodies of corporations or corporations under public law if
  - a) They are already a member of the supervisory board or of any other supervisory body of a corporation with which the corporation concerned is competing on the market, or with which it is in the process of initiating transactions, or with which it is implementing such transactions; or if
  - b) They are involved in the legal and supervisory control (*Rechts- und Fachaufsicht*) of the corporation under public law concerned and are able to influence the latter's legal and business relationships as a result; or if
  - c) In the context of their activities in the public service, they are responsible for allocating funds to the corporation, should the intended use stipulated for such benefits in the budget not only concern benefits granted to holdings of the Federation, but also to other entities outside of the administration of the Federation; or if
  - d) They are responsible, as part of their activities in the public service concerning the corporation to be supervised, in particular for granting loans, making available the means for an increase of equity capital, for granting sureties, guarantees or other warranties, and for the payment of compensation amounts, or if they are involved in award procedures or procedures entailing the award of public contracts.

Lit. b) shall apply mutatis mutandis to those cases in which a person involved in the legal and supervisory control of the corporation under public law concerned is to be appointed to the supervisory board or to another supervisory body of a corporation maintaining legal and business relations with the corporation under public law concerned.

2. In each individual case, potential conflicts of interest are to be reviewed prior to the appointment being made. In the course of selecting appropriate candidates, the interests of the Federation must be taken into account in ensuring effective performance of the duties as a member of the supervisory board, by appointing a person with the required expertise, while the need to avoid conflicts of interest, which is called for in particular by reasons of the law, must likewise be observed.
3. If in the cases set out under lits. b) through d), a person affected shall be appointed nonetheless due to factual considerations, the Federal Ministry responsible for the corporation must ensure that the required decisions are taken by other persons having the authority to so take decisions. In this context, the provisions of Sections 20 and 21 of the Administrative Procedures Act (*Verwaltungsverfahrensgesetz, VwVfG*), in the version as valid from time to time, concerning the reasons for which persons might have to withdraw from proceedings and are not deemed to be impartial, independent parties are to be observed; these provisions shall apply directly should the persons concerned be involved in an administrative procedure within the meaning of Section 9 of the Administrative Procedures Act; otherwise they shall apply as the expression of a general statutory principle.
4. Members of the public service and holders of public office (including members of parliaments) shall resign from their office as members of the supervisory body if, following their appointment, conflicts of interest arise and such resignation seems imperative in order to prevent the conflict of interest, or if the Federal Ministry that has appointed or delegated them demands that they so resign. Should the Federal Ministry responsible decide that the member of the supervisory body is to remain in office in spite of the conflict of interests, Item II. number 3 hereof shall be observed regarding the transfer of decision-making responsibilities.

To the extent members of supervisory boards and other supervisory bodies are not members of the public service, reference is made to number 5.4 of the Public Code as regards retroactively arising conflicts of interest; should these persons be removed from office by the Federal Ministry that has appointed or delegated them, they shall comply with such removal from office (cf. Annex 2).

### **III. Members of boards of management/the management of corporations in which the Federation (including Special Funds) holds an equity share**

Members of boards of management/the management of corporations in which the Federation (including Special Funds) holds an equity share as a general rule shall withdraw from the management on the date on which they have reached the statutory age limit within the meaning of Section 7a of the Social Security Code (*Sozialgesetzbuch, SGB*), volume II.

#### **IV. Procedure**

1. The Federal Ministry responsible for the corporation is to ensure compliance with the stipulations of the Act on the Appointment and Secondment of Women and Men to Bodies within the Remit of the Federation (*Bundesgremienbesetzungsgesetz*) (published in the Federal Law Gazette (*Bundesgesetzblatt*, BGBl.) I 1994 p. 1406) as valid from time to time, and is to likewise ensure compliance with the above principles. Compliance with Clause I.3 shall be ensured by internal provisions, compliance with Clauses I.4 and II. shall be ensured by the corresponding arrangements, agreements, or contracts being made.
2. The Federal Ministry responsible for the corporation shall inform the Federal Cabinet of its intention to appoint persons for the first time, or to re-appoint them, to supervisory boards and other supervisory bodies of the corporations listed in Annexes 1 and 2\*\*) for the Cabinet's information.
3. The Federal Ministry responsible for the corporation is to inform the Federal Cabinet of its intention to appoint as a member of the board of management / managing director of one of the corporations listed in Annexes 1 and 2\*\*), for the first time, a member of the public service, or a member of the Bundestag or of a Landtag (or of a city parliament or chamber of deputies).

#### **V. Appointments to other committees and institutions to the extent the Federation can influence such appointments**

For the committees and institutions set out in Annex 3<sup>\*\*\*</sup>, the above regulations are to be applied mutatis mutandis.

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\*\*\* Annexes updated annually are not included herein.

## Annexes \*\*)

1. Direct shareholdings of the Federal Republic of Germany in corporations under public and private law, in which the Federation (including Special Funds) holds an equity share of 25 % and more.
2. Corporations in which an equity share is directly held by entities of the Federation (annual sales from EUR 500 million upwards).
3. Other committees and institutions, to the extent the Federation can influence such appointments.

**Template for the Declaration by Members of Supervisory Bodies,  
who are Members of the Public Service**

With effect as per [date], I was appointed as a member of the [name of the supervisory body] of [name of the corporation / the institution]. I hereby accept such appointment.

I assure that I will not exceed the maximum number of supervisory board appointments as stipulated by Section 100 (2) of the Stock Corporation Act (*Aktiengesetz, AktG*) and that I will comply with the upper limit that may have been defined by my employer in accordance with Clause I.2. third sentence of the Appointment Guidelines concerning the number of appointments to a supervisory board.

With reference to marginal numbers [75] through [77] of the "Guidance Notes on Good Corporate Governance of Corporations in which the Federation holds an Equity Share" (MinBIFin ....., p. ....) I hereby declare that I am ready and willing to promptly inform the department responsible for holdings of the Federation in [name of the delegating division] on the sessions of the [name of the supervisory body] of [name of the company/of the institution], to deliberate with the department responsible for holdings of the Federation in [name of the delegating division] on how I am to cast my vote, to take account of the special interests of the Federation in addition to the interests of the corporation, and to transmit, immediately following the sessions, the reports to the department responsible for holdings of the Federation.

I am aware that in the context of my activity as a member of the above supervisory body, I must myself review the possibility of conflicts of interest being given with my function in [name of official's employer] for each individual case. To the extent that I believe a conflict of interest to be possible, I shall procure that the decisions required in this context within [name of official's employer] will be taken by other persons authorised to take such decisions in accordance with the stipulations of the Appointment Guidelines (Guidelines for the appointment of personalities to supervisory boards and other supervisory bodies as well as to boards of management/the management of corporations, in which the Federation (including Special Funds) owns an equity share, and other institutions, to the extent the Federation may influence the appointment), specifically Clauses II. 1. b) – d) and Clause II..

**Option 1** (Employee is a member of the delegating department)

I am aware that I have been appointed on the initiative of my employer as a member of the [name of the supervisory body] and I accept that should the [name of the delegating division] remove me from this office, I am to comply with this immediately.

**Option 2** (Employee is not a member of the delegating division)

I am aware that I have been appointed on the initiative of my employer as a member of the [name of the supervisory body] and I accept that should the [name of the delegating division] and the [name of the employee's employer] decide to remove me from this office, I am to comply with this immediately.

I have received the principles of good corporate governance for indirect and direct holdings of the Federation, consisting of the Public Corporate Governance Code of the Federation, the Guidance Notes on Good Corporate Governance of Corporations in which the Federation holds an Equity Share, as well as the Appointment Guidelines.

.....  
(Place, date)

.....  
(Signature)

**Template for the Declaration by Members of Supervisory Bodies,  
who are not Members of the Public Service**

With effect as per [date], I was appointed as a member of the [name of the supervisory body] of [name of the corporation / the institution]. I hereby accept such appointment.

I assure that I will not exceed the maximum number of supervisory board appointments as stipulated by Section 100 (2) of the Stock Corporation Act (*Aktiengesetz, AktG*).

With reference to marginal numbers [75] through [77] of the “Guidance Notes on Good Corporate Governance of Corporations in which the Federation holds an Equity Share” (MinBIFin ....., p. ....) I hereby declare that I am ready and willing to promptly inform the department responsible for holdings of the Federation in [name of the delegating department] on the sessions of the [name of the supervisory body] of [name of the company/of the institution], to deliberate with the department responsible for holdings of the Federation in [name of the delegating division] on how I am to cast my vote, to take account of the special interests of the Federation in addition to the interests of the corporation, and to transmit, immediately following the sessions, the reports to the department responsible for holdings of the Federation.

I am aware that in the context of my activity as a member of the above supervisory body, I must myself review the possibility of conflicts of interest being given in connection with my other professional / commercial / scientific and research activities, and that I must do so for each individual case. I shall immediately inform the [name of the delegating division] and the [name of the supervisory body] of any conflicts of interest arising for me.

I am aware that I have been appointed on the initiative of my employer as a member of the [name of the supervisory body] and I accept that should the [name of the delegating division] remove me from this office, I am to comply with this immediately.

I have received the principles of good corporate governance for indirect and direct holdings of the Federation, consisting of the Public Corporate Governance Code of the Federation, the Guidance Notes on Good Corporate Governance of Corporations in which the Federation holds an Equity Share, as well as the Appointment Guidelines.

.....  
(Place, date)

.....  
(Signature)

