

Infoletter
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Latest developments in German Corporate Governance

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INTRODUCTION

Listed corporations shall comply with the German Corporate Governance Code. Although the German Stock Corporation Act („Aktiengesetz“) mentions in its Sec. 161 that the Management Board („Vorstand“) and the Supervisory Board („Aufsichtsrat“) must give a **yearly statement on the compliance** with the recommendations of the Corporate Governance Code, the Code as such has not been enacted by Parliament but by a Government Commission which published the first code in 2002.

LATEST DEVELOPMENTS IN GERMAN CORPORATE GOVERNANCE

The Government Commission is composed of high-ranking experts occupying either prominent positions in listed German corporations or relevant academic positions.

The Government Commission shall review the Corporate Governance Code once a year. In 2011 no modifications were considered necessary. In May 2012, however, the Government Commission published this year's amendments of the Corporate Governance Code which focus on the **independence of the Supervisory Board members on the side of the stockholders** (in Germany, the Supervisory Board members are appointed by the stockholders and by the employees in equal or different shares, depending on the size of the company).

The latest amendment of the Corporate Governance Code aims at improving transparency and it recommends that the Supervisory Board inform the stockholders' meeting **about personal and business relationships of the proposed candidates with the company, the Management Board or with a stockholder who owns a significant stake in the company**. The recommendation to disclose one of the aforementioned circumstances shall only apply if this circumstance is deemed to be relevant for the voting decision of a stockholder (in the opinion of the Supervisory Board). A stockholder owning more than 10 % of the shares entitled to vote is considered to have a significant stake in terms of such recommendation.



The Supervisory Board shall be composed of a **reasonable number of independent** members. Members who have a personal or business relationship with the company, the Management Board, a dominating shareholder or with an affiliate company which is likely to create a significant and not only temporary conflict of interest are regarded not to be independent.

Members of the Supervisory Board shall disclose any possible conflict of interest (for example, because they have consulting or executive functions in the company of a customer, supplier, credit grantor or other relevant third party).

Although the non-compliance with recommendations contained in the Corporate Governance Code has to be made public each year pursuant to Sec. 161 Stock Corporation Act, there may be good reasons for companies to deviate from such recommendations if they are consistently motivated.

The amendments of the Corporate Governance Code will enter into force upon its upcoming publication in the electronic Federal Gazette.

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