

Explanations to the amendments proposed by the Government Commission at its plenary meeting of 17 January 2012:

1. Recommendations and proposals:

Some of the previous recommendations and proposals have been abolished, other proposals have been converted into recommendations and a small number of new recommendations have been added:

- a. The previous proposal in Point 3.6 Para. 1 that the representatives of the shareholders and of the employees should prepare the supervisory board meetings separately has been deleted and is now designated only as possibility.
- b. The previous proposal contained in Point 3.6 Para. 2 that if necessary the supervisory board should meet without the management board has been converted into a recommendation.
- c. The previous proposals contained in Point 5.2 Para. 2 Sentence 2 that the chairman of the supervisory board should not be the chairman of the audit committee and in Point 5.3.2 Sentence 3 that the chairman of the audit committee should be independent and not be a former member of the company's management board whose appointment ended less than two years ago have been converted into recommendations.
- d. The recommendation contained in Point 5.2 Para. 3 on the matters on which the chairman of the supervisory board should regularly consult with the management board has been broadened with the addition of planning, the risk situation and compliance. As a result, this catalogue is now identical to the information duties of the management board towards the supervisory board described in Point 3.4 Para. 2.
- e. The following provisions are planned with respect to the independence of the members of the supervisory board:

The recommendation contained in Point 5.4.1 Para. 2 has been extended and now states that the supervisory board is to take account of the number of its independent members in the concrete objectives regarding its composition. The recommendation in Point 5.4.1 Para. 3 that the objectives of the supervisory board and the status of implementation are to be published in the corporate governance report will be extended in the future to additionally include the number of independent members of the supervisory board.

The previous recommendation in Point 5.4.2 Sentence 1 states that the supervisory board is to include "what it considers an adequate number of independent members." This wording is to be modified to read that the supervisory board is to have "a reasonable number of independent members".

The negative definition of independence contained in Point 5.4.2 Sentence 2 is also to be modified. In addition to business or personal relations with the company or its management board, such relations with third parties are also to be included in the future. However, they will only be deemed to have a detrimental effect on independence if they could give rise to a conflict of interests which - in accordance with a further modification - must be material.

Supplementary information will be added to the negative definition in the form of six types of situations in which it cannot normally be assumed that the member of the supervisory board concerned is independent. On the one hand, the catalogue is not exhaustive. On the other, a member of the supervisory board coming within the scope of one of the standard examples may under special circumstances still be independent.

- f. Point 5.4.6 now additionally states that members of the supervisory board are to receive compensation in accordance with their duties and responsibility. In contrast to the previous recommendation, performance-related compensation in addition to fixed compensation is now stated only as being a possibility. If performance-related compensation is granted, it is to "predominantly" (previously "also") contain components based on the long-term performance of the enterprise.

2. Editorial adjustments and supplementary details:

In addition, legislative amendments have been incorporated in the Code and the wording rendered clearer.

- a. The foreword has been revised to allow for the additional elements in the wording of Section 161 (1) Sentence 1 of the Stock Corporation Act.
- b. Point 2.2.1 (1) Sentence 1 concerns the submission to the general meeting of the annual financial statements and has been modified in the light of the wording used in Section 175 (2) Sentence 4 of the Stock Corporation Act.
- c. The wording has been modified in several places to make it clear that the provision in question is not a Code recommendation ("shall") or a proposal ("should" or "may") but a statutory provision. Such modifications can be found in
 - Point 2.2.1 Para. 2 Sentence 2 for a resolution of the annual general meeting permitted under Section 120 (4) Sentence 1 of the Stock Corporation Act on the authorisation of the remuneration system ("*say on pay*"),
 - Point 2.3.2 for notification of the convening of the general meeting together with the convention documents, and

- Point 4.2.4 Sentence 3 if the individual disclosure of the compensation to the management board in accordance with Section 286 (5) of the German Commercial Code has been dispensed with as the general meeting has passed a resolution to this effect by three-quarters majority.
- d. In practice, the previous recommendation in Point 2.3.3 Sentence 2 stating that the company is to assist shareholders in the use of postal votes was misconstrued as constituting an indirect recommendation to offer optional postal votes in accordance with Section 118 (2) of the Stock Corporation Act. In order to clarify this, only support in the use of proxies is now recommended.

Accordingly, Point 2.3.1 Sentence 2 only mentions the publication of postal vote forms on the company's internet site in accordance with Section 124a Sentence 1 No. 5 of the Stock Corporation Act if postal votes are offered.

- e. The information to be submitted by the management board to the supervisory board in accordance with Point 3.4 Para. 2 Sentence 1 has been extended with the addition of strategic matters.
- f. Point 3.7 Para. 2 states that the management board's duty of neutrality in the event of takeover offers in accordance with Section 33 (1) Sentence 1 of the Securities Acquisition and Takeover Act is contingent upon the applicability of any other statutory provisions. This takes sufficient account of the statutory exceptions provided for in Section 33 (1) Sentence 2 (old) 1 and 2 (2) of the Securities Acquisition and Takeover Act.
- g. The Accounting Modernisation Act has introduced in Section 289a of the German Commercial Code the duty for capital-market-oriented companies to prepare a corporate governance declaration, which must be included in the management report but does not have to be audited by the statutory auditor in accordance with Section 317 (2) Sentence 3 of the German Commercial Code. The recommendation previously included in Point 3.10 of the Code has been deleted for the sake of simplification and conciseness. The previous recommendation has been reworded and now states that the management board and the supervisory board are to report annually on the enterprise's corporate governance in the corporate governance declaration. This will permit enterprises to report on the matters prescribed by law and recommended by the Code in the same place of their management report.

Corresponding incidental amendments also relating to the corporate governance declaration are to be found in Point 5.4.1 Para. 3 Sentence 2 (for the publication of the objectives and the status of implementation in the composition of the supervisory board) and in Point 6.6 Para. 2 (for the disclosures of directors' dealings going beyond the scope of the statutory disclosures provided for in Section 15a of the Securities Trading Act).

- h. The previous recommendation contained in Point 4.2.2 Para. 1 that the full supervisory board is to pass resolutions on and regularly review the compensation system for the management board has been deleted as this is already a statutory duty imposed on the supervisory board under Section 87 (1), 120 (4) Sentence 1 of the Stock Corporation Act and Section 289 (2) No. 5 of the German Commercial Code. The recommendation that the committee dealing with management board contracts is to submit proposals to the full supervisory board for determining the total compensation has been retained.
- i. Point 4.2.3 Para. 4 clarifies that the severance payment cap refers to payments made to a member of the management board in the event of the premature termination of his or her service contract (and not his or her office on the management board).
- j. Point 4.2.3 Para. 5 clarifies that the chairman of the supervisory board is not to outline the basic elements of the compensation system (again) at each general meeting but only the material changes to the compensation system.
- k. Point 4.2.5 Sentence 1 clarifies that the total compensation for each member of the management board must be disclosed either in the notes in accordance with Section 285 No. 9 of the German Commercial Code or in the management report in accordance with Section 289 (2) No. 5 Sentence 2 of the German Commercial Code.

Point 4.2.5 Sentence 2 refers to the statutory provision in Section 289 (2) No. 5 Sentence 1 of the German Commercial Code stating that the management report should also outline the basic elements of the compensation system and - in line with standard practice - refers to this as the compensation report. This remains linked with the separate Code recommendation that the basic elements of the compensation system be described in a generally understandable manner.

Corresponding incidental amendments referring to the compensation report are to be found in Point 5.4.6 Para. 3 (for the disclosure of compensation to the supervisory board and additional compensation, particularly for advisory services) and in Point 7.1.3 (for details of stock option programmes etc.).

- l. Point 5.3.2 revises the catalogue of duties of the audit committee in the light of the statutory wording in Section 107 (3) Sentence 2 of the Stock Corporation Act.
- m. The recommendation in Point 5.4.5 Sentence 2 to the effect that no more than three supervisory board mandates should be accepted in non-group listed companies has been modified to make it clear that these should only count towards the maximum if they are also held with non-group companies which additionally impose comparable requirements.