



TRANSLATION - Audit report (short version)

**Appropriateness, implementation and  
effectiveness of the Compliance  
Management System  
as at 30 September 2011**

**ThyssenKrupp AG**  
Duisburg and Essen



## Contents

|          |                                                                                     |          |
|----------|-------------------------------------------------------------------------------------|----------|
| <b>1</b> | <b>Appointment of auditors .....</b>                                                | <b>1</b> |
| <b>2</b> | <b>Definition and delimitation of the Compliance Management System.....</b>         | <b>2</b> |
| <b>3</b> | <b>Subject, nature and scope of the audit.....</b>                                  | <b>3</b> |
|          | 3.1 Subject of the audit .....                                                      | 3        |
|          | 3.2 Nature and scope of the audit .....                                             | 3        |
| <b>4</b> | <b>Recommendations and findings regarding the compliance management system.....</b> | <b>6</b> |
| <b>5</b> | <b>Audit opinion .....</b>                                                          | <b>9</b> |

## Appendices

|                                                                          |          |
|--------------------------------------------------------------------------|----------|
| <b>Description of the ThyssenKrupp Compliance Management System.....</b> | <b>1</b> |
| <b>General conditions of assignment.....</b>                             | <b>2</b> |

To ThyssenKrupp AG, Duisburg and Essen:

## 1 Appointment of auditors

In letters dated 17 March 2011 and 10 November 2011, the Board of Directors of

### **ThyssenKrupp AG, Duisburg and Essen**

--hereinafter also referred to as "ThyssenKrupp" or "the Company"--

appointed us as auditors of the appropriateness, implementation and effectiveness of the description of its Compliance Management System for the prevention of antitrust violations and corruption (sub-sections) (hereinafter referred to as "CMS description") enclosed as Appendix 1. The compliance organisation at ThyssenKrupp is valid for all Group companies with the exception of subsidiaries domiciled in the USA and subsidiaries controlled by them, and of Canadian subsidiaries. Companies of which ThyssenKrupp does not hold a majority share or does not have operational control are likewise not covered by the Compliance Management System.

We have prepared a report concerning the nature, extent and result of our audit, which is addressed solely to the Company for its own internal use. The report covers more extensive content than this short version. A complete understanding of our mandate, our chosen audit procedure and our findings can routinely only be achieved after the lecture of our full report.

Our engagement to provide the aforementioned services on behalf of ThyssenKrupp AG was based on the General Conditions of Assignment for Auditors and Audit Companies of 1 January 2002 (Appendix 2). By noting and utilising the information contained in this report, the recipient confirms their awareness of the provisions contained in said Conditions (including the liability provision under No. 9 of the General Conditions of Assignment) and recognises the validity thereof in relation to ourselves.

## 2 Definition and delimitation of the Compliance Management System

A Compliance Management System (CMS) refers to the principles and measures applied by a company to ensure the compliant conduct of the company and its employees, and where applicable, third parties - in other words, to ensure compliance with the relevant regulations, and to prevent significant breaches of the regulations in defined sub-sections (legal violations).

The CMS concept is based on a number of carefully selected, widely recognised basic elements:

- Encouraging a favourable compliance culture,
- Developing the compliance organisation (structure and workflow organisation),
- Specifying the compliance objectives,
- The process of identifying and analysing compliance risks by the company,
- The process of preparing the compliance program,
- Developing the communications process and
- Procedures for monitoring and improving the CMS.

A CMS is considered appropriate provided it is capable of promptly detecting the risks of major violations of the regulations as well as preventing such breaches with an adequate degree of certainty. An appropriate CMS also incorporates the reporting of any violations that have already occurred to the competent office within the company, so that the necessary consequential improvements to the CMS may be implemented.

Even a CMS that has been based on an appropriate concept and effectively implemented cannot guarantee with absolute certainty that the regulations in the cited sub-sections are always observed or that all violations are identified and pursued by the system. The inherent limitations of such systems result from the fact that human judgement in decision-making processes can be flawed; that measures must be adequate and also commensurate with the costs; that faults can occur purely as a result of simple human mistakes or errors; and that controls may be circumvented by two or more people working together (so-called collusion).

## 3 Subject, nature and scope of the audit

### 3.1 Subject of the audit

The subject of our audit was the statement on the prevention of antitrust violations and corruption in the ThyssenKrupp Group, as contained in the CMS description. As per the terms of our engagement, our audit did not extend to subsidiaries domiciled in the USA and subsidiaries controlled by them, Canadian subsidiaries, and companies of which ThyssenKrupp does not have a majority shareholding or operational control.

Responsibility for the CMS, including documentation of the CMS and the content of the CMS description, as well as the development and implementation of corresponding principles and measures and the effectiveness thereof, lies with the company's legal representatives.

Our role, on the basis of our audit, is to give an assessment of the statements contained in the CMS description regarding the appropriateness, implementation and effectiveness of the Compliance Management System for preventing corruption and antitrust violations. As a system audit, our audit is not intended to identify individual breaches of regulations, and as such, is not designed to provide certainty regarding de facto compliance with regulations.

### 3.2 Nature and scope of the audit

We conducted our audit in accordance with the professional requirements as set out in the IDW audit standard "Generally accepted standards for the auditing of compliance management systems" (IDW PS 980). This states that the audit must be planned and implemented in such a way that we are able to assess, with an adequate degree of certainty, whether the statements contained in the CMS description concerning the outlined principles and measures of the CMS are appropriately represented in all key respects, that the outlined principles and measures are in conformity with the applied CMS principles, that both the risks of major corruption and significant antitrust violations are promptly detected with an adequate degree of certainty and such violations are also prevented, and that the principles and measures were implemented as of 30 September 2011 and were effective during the period 1 April 2011 to 30 September 2011.

The specific audit procedures were selected at our own discretion. Within the context of our audit, we took into account our knowledge of the legal and financial environment as well as the company's compliance requirements. We assessed the principles and measures outlined in the CMS description, as well as the documents presented to us, predominantly on the basis of random samples. We believe that our audit provides a reasonable basis for our assessment.

Our audit procedures were carried out, firstly, at a central level, i.e. with activities at Group level. During the course of questioning central contacts, we obtained evidence of the structure, implementation and effectiveness of the Compliance Management System. In addition to verbal information, this also includes the inspection of random samples of correspondence, corporate communications and other documents, and the re-performance of control activities.

Other central audit procedures included, in particular:

- The forwarding of a questionnaire to the Compliance Managers of the ThyssenKrupp Group, and the evaluation thereof for any conspicuous facts. The questionnaire covered all the basic elements of a Compliance Management System;
- Critical appraisal and validation of the risk assessment performed within the framework of risk analysis in the Compliance Risk Profile, focusing on the structural risks of corruption and antitrust violations at operating unit level, as well as the risks associated with the respective business model;
- Evaluation of the work of internal and external auditors of compliance cases at ThyssenKrupp;
- Inspection of organisational documents, manuals and procedural policies;
- Inspection of reports by Internal Auditing and Compliance Officers to the statutory representatives or the supervisory body;
- Inspection and appraisal of the documents on antitrust law and corruption used for training purposes within the context of e-learning and classroom training courses;
- Inspection of records and compliance reports and of documents generated for anti-corruption purposes within the framework of the CMS (including documentation of identified and possible legal violations, and action taken against established breaches of regulations);
- Monitoring and evaluating company activities and operating procedures relating to the CMS for preventing corruption and antitrust violations;
- Inspection and appraisal of the internal compliance policy statements and guidance notes within the Group on the topics of anti-corruption and antitrust law.

In addition to this, at a decentralised level we also audited the implementation and effectiveness of the Compliance Management System on the basis of a random sample from selected subsidiaries of the ThyssenKrupp Group. Selection was made on the basis of a risk assessment of the affected Operating Unit by the Company, which we subsequently reviewed.

Our audit procedures among the individual companies essentially entailed questioning the Compliance Managers and senior executives in the Sales, Purchasing, Legal and Human Resources departments. Additionally, on a random sample basis, we also obtained evidence of the effectiveness of individual components of the Compliance Management System via the inspection, observation or re-performance of control activities.

We performed the audit in the months of April to November 2011 (with interruptions), finishing on 14 November 2011.

All the explanations and records we requested were supplied. The persons authorised to represent the company confirmed to us in writing the completeness and correctness of the CMS description and the explanations and documents submitted to us regarding the concept of the CMS and its appropriateness, implementation and effectiveness.

## 4 Recommendations and findings regarding the compliance management system

Without limiting our assessment, below are our recommendations regarding the audited sub-sections of the Compliance Management System at ThyssenKrupp AG:

### **1. Compliance culture and compliance objectives**

- Anchoring the aspects of "compliance" and "integrity" in the Group's future guiding principles, so as to further highlight the importance of the ThyssenKrupp Executive Board's Compliance Commitment.
- In addition to the guiding principles: Drafting a compliance-related code of conduct which articulates the Group's expectations of its employees vis-à-vis compliance.

### **2. Compliance risks**

- In order to further develop the TK Compliance Risk Profile: examination (review) of the necessity to survey the risks at Group company level (currently Operating Unit level).
- More detailed documentation of the process underlying the TK Compliance Risk Profile.

### **3. Compliance program**

- Regular, repeated participation in e-learning at shorter (e.g. two-year) intervals.
- Review, revise and, where applicable, supplement e-learning with other program elements not covered by attendance training to include missing aspects such as facilitating payments.
- Implementation of more stringent learning controls in e-learning to ensure successful assimilation.
- Definition and communication of binding, uniform Group-wide requirements to ensure maximum compliance conformity among suppliers.
- Application of the criterion of "integrity" within the context of HR development meetings, also at the level below Group management.
- Inclusion of the relevant compliance guidelines for employees as an appendix to their employment contract.

- Implicit consideration of compliance requirements, ensuring their explicit and traceable integration into the planning process.

#### **4. Compliance organisation**

- Greater central coordination of administrative activities in CC-LC and ensuring e.g. that the e-mail addresses of Compliance Managers are continuously updated.
- More detailed documentation of the principal compliance-related processes in risk-related process descriptions (workflow plans, work instructions).
- Review of the roles and responsibilities of individuals, including Compliance Executives, entrusted with compliance tasks, with the aim of ensuring the uniform formulation of such roles and responsibilities.

#### **5. Compliance communication**

- Encouraging networking among Compliance Managers and with Compliance Officers and employees of the Group companies.

#### **6. Compliance monitoring and implementation**

- Due to the current high workload at CC-LC, development of additional resources particularly in order to carry out short-term, event-related compliance audits.
- Review monitoring activities with regard to the documentation of requirement profiles e.g. when following up compliance violations.
- Regular employee surveys to gauge their perceptions of the compliance culture.

Again without limiting our assessment, we hereby report the following findings regarding the audited sub-sections of the Compliance Management System at ThyssenKrupp AG

- The current e-learning compliance training on antitrust violations and anti-corruption was rolled out across the Group in 2008, and completed by all relevant employees in the Group companies we audited. Employees who joined the company after 2008 or who were transferred into compliance-relevant duties from other roles were not always registered for participation in an e-learning compliance course by the audited Group companies. With this in mind, CC-LC should alert the Compliance Managers in the Group companies to their responsibility for ensuring the prompt registration for e-learning compliance training of new and transferred employees with compliance-relevant duties. In this connection, the Compliance Managers should be urged to review their current internal processes to ensure the prompt registration of employees with compliance-relevant duties.

- Regarding any contracts with sales intermediaries that have not yet been adjusted in line with the compliance requirements (contract clauses etc.), the Group companies should be resensitised to the need to amend the old contracts and obtain the relevant evidence. Reference should also be made to the need for comprehensive application of the formal documentation requirements (e.g. signatures, dates) in conformity with Group policies.

We do not consider these findings to be material with respect to our unqualified audit opinion.

## 5 Audit opinion

Our audit opinion refers solely to the CMS description for the prevention of antitrust violations and corruption (sub-sections). The compliance organisation at ThyssenKrupp is responsible for all Group companies with the exception of subsidiaries domiciled in the USA and subsidiaries controlled by them, and of Canadian subsidiaries. Companies in which ThyssenKrupp does not hold a majority share or does not have operational control are likewise not covered by the Compliance Management System. Any transfer of this audit opinion to other aspects of compliance not covered by this sub-section of CMS is inadmissible.

In our opinion, based on our audit,

- The statements contained in the CMS description concerning the principles and measures of the CMS are appropriately represented in all key aspects;
- The principles and measures outlined in the CMS description in conjunction with the applied CMS principles are suitable both for the prompt detection, with an adequate degree of certainty, of the risks of significant antitrust violations and corruption, and for the prevention of de facto violations;
- The principles and measures were implemented as at 30 September 2011 and were effective during the period from 1 April 2011 to 30 September 2011.

The CMS description of the aforementioned, defined sub-sections at the company was prepared on 14 November 2011; our audit procedures to assess the effectiveness of individual principles and measures cover the period from 1 April 2011 to 30 September 2011. Any transposition of such information to a future date poses a risk of incorrect conclusions being drawn due to interim amendments to the CMS.

Any CMS, even if it is otherwise apparently effective, is subject to certain system-inherent limitations, and significant breaches of regulations may therefore still occur without being prevented or identified by the system. As a system audit, the aim of this audit is not to identify individual legal infringements, nor is it designed to obtain certainty regarding de facto compliance with regulations.

Düsseldorf, 14 November 2011

KPMG AG  
Wirtschaftsprüfungsgesellschaft

[Original German version signed by:]

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## Appendices



## **Description of the Compliance Management System at the ThyssenKrupp Group**

### **Introduction**

The ThyssenKrupp Compliance Management System (CMS) was introduced immediately following the merger of Thyssen and Krupp in 1999, and significantly updated in 2007, when certain elements of the CMS described in greater detail below were introduced, an explicit "Compliance organisation" was created, and activities in this field were combined under the heading of "Compliance". At the same time, Compliance efforts focussed on tackling corruption and ensuring Compliance with antitrust regulations, particularly preventing the formation of cartels. As such violations are considered a particular risk for ThyssenKrupp, both then and now, the term "Compliance" is generally used to refer to these sub-sections or legal fields. Naturally, ThyssenKrupp also follows Compliance policies in other areas/legal fields, although these duties are not performed by the Compliance organisation but rather by other departments within the Group. The system was further enhanced with effect from 31 October 2009 within the framework of the Group's reorganisation. Under the title "Committed to Compliance", on 9 May 2011 the Executive Board meeting adopted a three-year catalogue of measures to improve the CMS, which was presented to the Audit Committee on 11 May 2011 and to the Supervisory Board on 13 May 2011.

The ThyssenKrupp CMS is based on the three pillars "Inform", "Identify" and "Report & act".

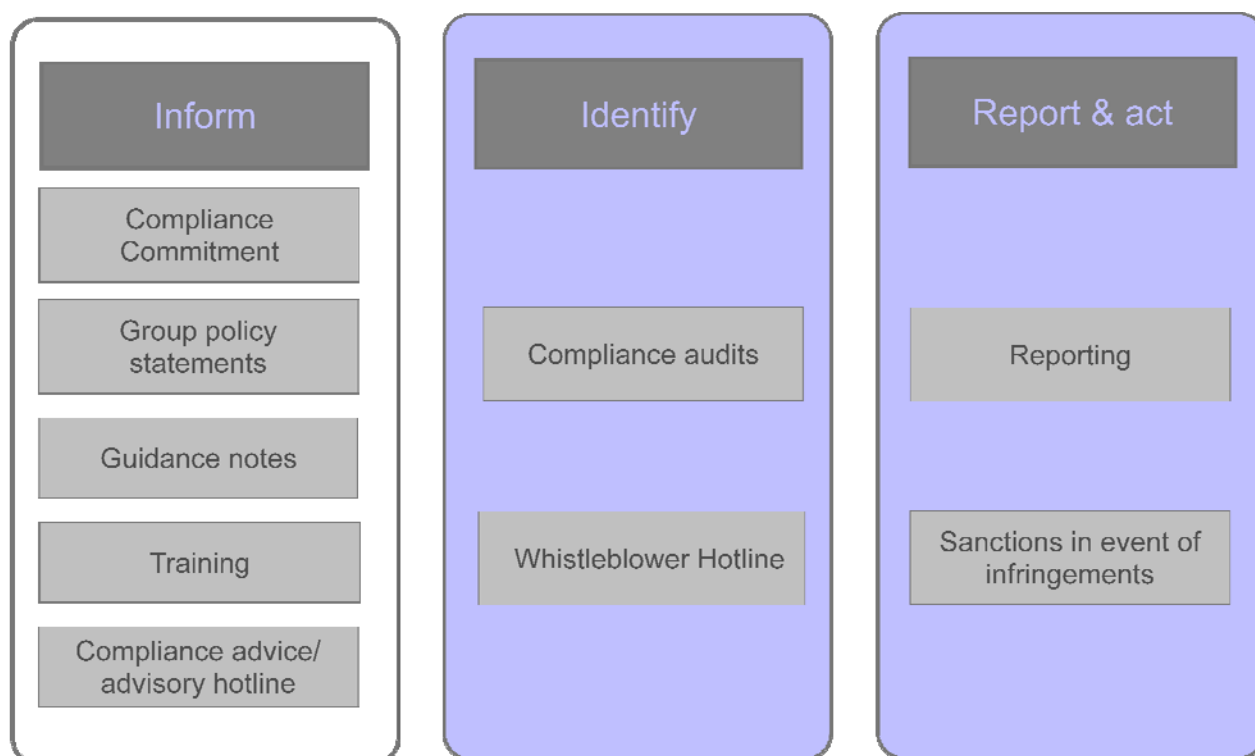


Fig.: The three pillars of the ThyssenKrupp CMS focus on anticorruption and antitrust laws

Below, we describe the ThyssenKrupp CMS for anti-corruption and antitrust violations, as per the basic elements of a Compliance Management System in accordance with IDW PS 980.

### **Basic elements of the CMS Compliance culture**

The ThyssenKrupp Group's understanding of Compliance is reflected in its so-called Compliance Commitment of 16 April 2007, which encapsulates the Executive Board's policy on Compliance, while at the same time mandating all employees to observe the principles laid down therein.

#### **The key statements are:**

"Corruption and antitrust violations threaten the key success factors for ThyssenKrupp and will not be tolerated (zero tolerance). Bribes and cartel agreements are not a means of winning business for ThyssenKrupp. We would rather forego a contract and fail to reach internal goals than act against the law".

THYSSENKRUPP COMPLIANCESCHULUNG 2011 / 1 /

/ ThyssenKrupp Compliance Commitment /





Dr. Hiesinger (CEO of  
ThyssenKrupp AG)

Dr. Claassen  
(Board Member of ThyssenKrupp AG - Compliance)

Corruption and antitrust violations will not be tolerated (**zero tolerance**). For us, bribes and cartel agreements are not a means of winning business. We would rather forego a contract and fail to reach internal goals than act against the law.

All employees are required to actively cooperate in implementing the ThyssenKrupp Compliance Program within their individual areas of responsibility.

Wir entwickeln die Zukunft für Sie.



These statements elucidate the fact that ThyssenKrupp will not tolerate violations, does not merely pay lip service to Compliance, and is aware of the potential conflict between Compliance and the desire to win business. The Board has made a conscious decision to prioritise Compliance, and made it clear to employees that it will support the forfeiting of contracts for Compliance reasons. At the suggestion of the senior executives' representative, this statement was deliberately broadened to include the achievement of internal goals, and Compliance was also included as an integral component of operational planning in the business areas and Group Companies. Since the start of the current planning cycle in May 2011, those responsible for planning have been required to bear in mind that (a) unrealistic targets which create *de facto* incentives to use non-compliant conduct must not be set, neither on a top-down nor bottom-up approach, and (b), critical consideration must be given at the planning stage to potential indicators of Compliance risks (so-called red flags), with due regard for the respective business model. Implementation of these principles must be documented in the relevant planning templates (opportunities & risks) under the risk category "Legal & Compliance". In accordance with the planning cycle, the Compliance Executives and the responsible Compliance Officers hold feedback meetings on the planning process.

At ThyssenKrupp, the basic principle is that all Compliance breaches will be penalised on a case-by-case basis depending on the nature and severity of the violation, the degree of culpability, and whether the individual concerned cooperates or makes false statements/cover-up attempts. From the company's point of view, the extent to which the employee's cooperation is needed to clarify or put a halt to such violations will also be taken into account. A full range of sanctions may be imposed, through to immediate dismissal and demands for compensation. Concluding reports on Compliance investigations will contain recommendations on suitable sanctions in cases where violations have been discovered. Members of the Board and numerous executives at all levels of the Group regularly address the topic of Compliance on the basis of our Compliance Commitment at management forums and Compliance trainings.

## **Compliance objectives**

The CMS is designed to avoid, identify and penalize corruption and antitrust violations, particularly cartels. In this connection, corruption refers to the acceptance and granting of advantages, bribery and corruptibility in relation to government officials or commercial business partners under the German Penal Code and applicable international legislation. Within the meaning of the CMS, antitrust violations refer to horizontal competitive restrictions in the sense of agreements and agreed behaviour, vertical competitive restrictions, where applicable the provisions on collusive tendering (§ 298 of the German Penal Code (StGB)), and the misuse of a dominant market position under the Restriction of the Competition Act, the relevant European standards, and the applicable international legislation. They also include relevant procedural infringements (breach of seal, delays to proceedings etc.) in the sense of "interconnected offences punishable by fines". The Compliance program clearly states that violations in these areas will not be tolerated. In a large company with some 180,000 employees worldwide, ThyssenKrupp accepts that it will never be possible to exclude violations with absolute certainty, despite the existence of clear guidelines and programs. As such, the program must be designed to prevent such violations with a high degree of probability. Any violations that occur despite the Compliance program must be identified with an adequate degree of reliability, and suitable measures taken to stop them and limit the associated disadvantages for the company.

The CMS is described in depth in the presentations to the Executive Board meetings of 16 April 2007 and 26 October 2009.

## **Compliance risks**

ThyssenKrupp is aware of its exposure to potential breaches of the relevant anti-corruption and antitrust legislation and guidelines. With the aim of achieving a homogeneous understanding of risk throughout all levels of the Group, systematic risk analyses ("Compliance Risk Profiles") have been

practised since late 2010 / early 2011, which identify the structural risks of corruption and antitrust violations resulting from the respective business model and rate them using a traffic light system at Operating Unit (OU) level. In early 2011, the results of the assessments initially undertaken by the Compliance Officers were discussed with the Compliance Executives and responsible individuals at the OUs assigned to "Corporate".

The "Compliance Risk Profile" is an assessment of the individual, structural risk situation of the 39 OUs on the basis of defined, weighted criteria, incorporating individual considerations of the respective Group Companies in condensed form. The focus here is not on the activities and conduct of executives/employees, nor on Compliance issues in the past. Against this background, annual reviews are held to determine whether the current circumstances necessitate an update. Alongside other indicators, the review also includes additions and retirements under company law, amendments to the Group's strategic orientation, altered market conditions (CPI index, market shares etc.), and the results of monitoring meetings with the Compliance Executives.

The Risk Profile also serves as a central tool for setting priorities under the Compliance Program, e.g. with training courses or when selecting companies to be audited. To this end, structured follow-up meetings are held with the Compliance Executives, where applicable with the involvement of relevant representatives from the OUs or OSUs on a case-by-case basis. These meetings culminate in the definition of focal points and priorities, together with specific Compliance measures. The results of the meetings and the derived measures are documented. The Compliance Managers are also notified of the risk status of their respective OU.

The Risk Profile is also incorporated into the risk-oriented planning of the Corporate Center Internal Auditing department's audit program.

An "Audit Map" was also prepared in 2010, showing which Group Companies have already been investigated for Compliance risks within the context of audits, which are a key element of the Compliance program outlined below. Together with the risk profile, this Audit Map helps us to selectively identify focal points when auditing potentially higher-risk areas.

Planned, ongoing and completed audits are filed in the Audit Map with a reference to the relevant reports, thus ensuring that the Audit Map is kept up-to-date at all times.

Cartel risks were identified by means of structured interviews. Exceptionally large numbers of individuals from the former Elevator segment were questioned as part of the cartel investigation. The memberships of Group Companies in associations were also identified, grouped into risk categories, and the potentially higher-risk memberships audited for antitrust risks. In addition to association membership, potential violation risks were also identified in selected areas with a view to possible coordinated conduct known as "signalling". The Group responded to this with targeted training measures, individual interviews, and monitoring statements also from competitors.

Further risks are identified from a systematic inspection of all audit reports prepared by Corporate Center Internal Auditing (CC-IA), copies of which are routinely sent to the Chief Compliance Officer. Any corruption and antitrust risks thereby ascertained are investigated by the Compliance Officers in close collaboration with CC-IA.

### **Compliance organisation**

ThyssenKrupp has a clearly delineated Compliance organisation with responsibility for all Group Companies except subsidiaries based in the USA and Canada, for which separate Compliance structures are in place under the auspices of the national holding ThyssenKrupp USA, which do not constitute part of this description and the related audit. Similarly, the description does not refer to companies in which ThyssenKrupp does not have a majority holding or operational control.

The Corporate Center Legal & Compliance, headed by the Chief Compliance Officer Dr. Kremer, has two departments currently with 9 full-time Compliance Officers, one of which ("Department Compliance Program & Investigation") is devoted to circumstantial Compliance audits, fundamental issues and investigations in case of suspicion, while the other ("Department Compliance Business

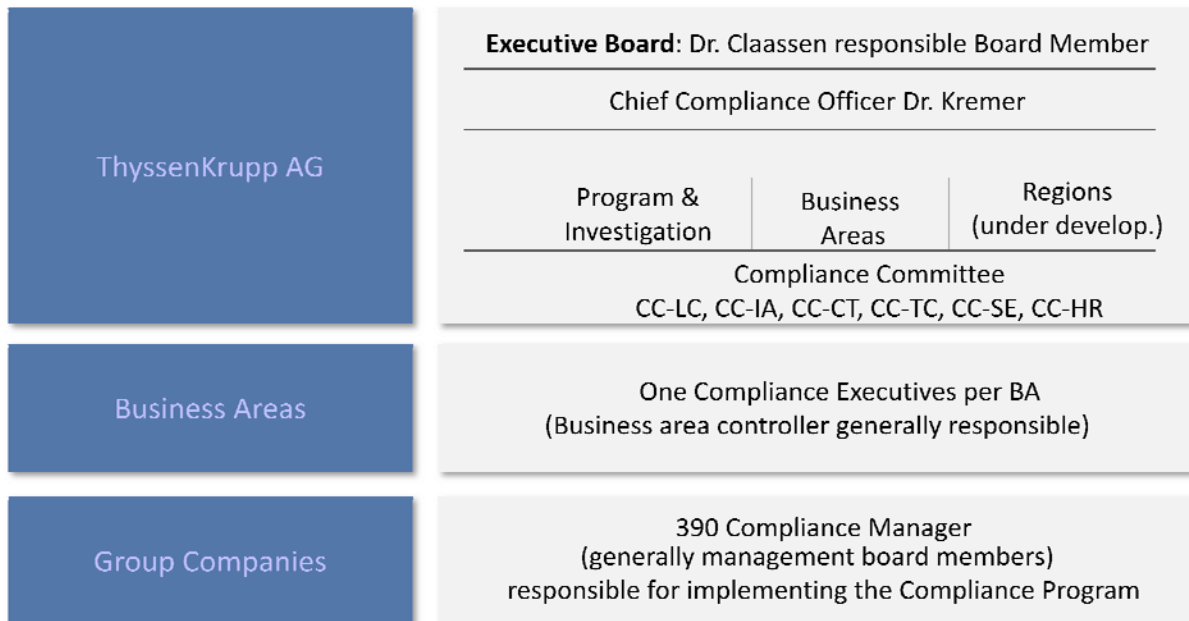
Areas") focuses on consultancy and training. In all Business Areas, one member of the Business Area Executive Board (generally the member responsible for finance) is appointed as a so-called Compliance Executive. He or she is regularly informed about the Compliance status of their Business Area and serves as a point of contact for the implementation of Compliance measures (such as investigating the training requirements, audit planning, required actions in case of Compliance investigations) in relation to their Business Area. The Compliance Officers and Compliance Executives hold regular meetings, at least once a quarter and additionally when needed.

All active Group Companies, i.e. those operating on the market, are required to appoint a so-called Compliance Manager, generally a member of the Executive Board, often the Director of Finance. He or she is responsible for implementation of the Compliance program in their company, such as introducing preventative measures, assisting with Compliance audits, determining training requirements, and distributing Group policies and guidance notes. As such, he or she reports directly to the Corporate Center Legal & Compliance, particularly when it comes to reporting suspected violations. The duties of Compliance Managers are explained in full in a detailed fact sheet, and further consolidated during target group-specific training courses.

Since 2007, the Executive Board of ThyssenKrupp AG has assigned responsibility for Compliance to one of its members. Since 25 January 2011, this has been Dr. Jürgen Claassen. Prior to each Board meeting, Dr. Claassen receives a report from the Chief Compliance Officer on Compliance developments concerning the Group. At every Board meeting, Compliance issues are discussed under TOP 2.

Since the reorganisation of the ThyssenKrupp Group in 2009, the Compliance Committee serves as a platform to share experiences and coordinate with other Compliance Corporate Centers at ThyssenKrupp AG, as well as sharing best practices with the separate Compliance organisation in the USA once a year. Representatives of the Corporate Centers Taxes & Customs, Internal Auditing, Communication and Strategy, Controlling and Human Resources are regularly invited to the Compliance Committee meetings held several times a year, with representatives of other

Corporate Centers being invited as and when necessary. From the Compliance organisation, the Chief Compliance Officer, the heads of the two Compliance Departments as well as other Compliance Officers if necessary attend these meetings. The Compliance Committee has an advisory role. There are agendas and minutes of these meetings.



The structural and procedural organisation is regularly reviewed and amended where necessary.

On 9 May 2011, the Executive Board meeting adopted a three-year catalogue of measures to improve the CMS. The measures are based on the audit report and recommendations of the law firm Hengeler Mueller, as well as on the results of benchmark meetings focusing on best practice. Implementation began immediately after the Board meeting and follows a dedicated timetable.

Overview of measures:

- Strengthening the Compliance culture in the ThyssenKrupp Group
- Communications campaign: Intensification of internal Compliance communications and "Compliance marketing"
- Compliance conferences
- Internationalisation/regionalisation of the Compliance division to intensify Compliance advice for international Group Companies via the appointment of new Regional Compliance Officers (RCO). By gradually appointing a total of 16 new full-time RCOs for 15 regions in three phases until the financial year 2013/14, ThyssenKrupp is planning to step up the consultancy and prevention activities at regional level. To this end, as a preparatory measure, the Compliance Department "Business Areas & Regions" was divided into two units, "Business Areas" and "Regions".
- Implementation of Compliance in M&A processes and in the supply chain
- IT-based support for the auditing of consultancy agreements and Compliance advice
- Increasing the efficiency of Compliance audits, self audit tool
- Design and implementation of a 3rd cycle of e-learning
- Increasing Compliance personnel in Essen

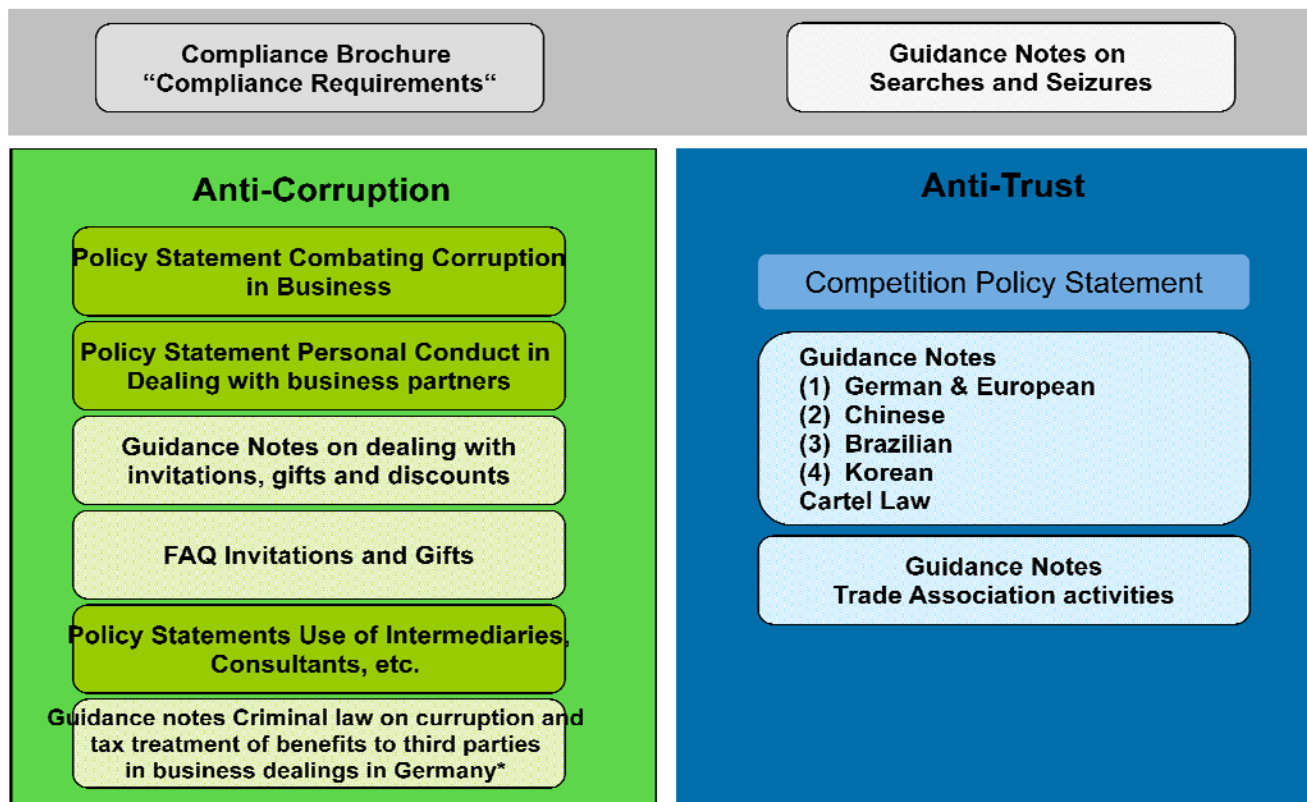
## **Compliance Program**



### **Group policy statements and guidance notes:**

At ThyssenKrupp AG, the main internal directives and prohibitions regarding anti-corruption and antitrust law are set out in Group policies. Selected segments/business areas have adopted their own supplementary policies on special topics (ThyssenKrupp Elevator Delegation Trip Policy). These policies are explained in greater depth in guidance notes. Policies, guidance notes and other employee information documents (Frequently Asked Questions) are available on the intranet, distributed to the Group Companies by the Compliance Managers, and discussed at length within the context of training.

## ThyssenKrupp Compliance Commitment



\* Available only in German and English

Fig.: Compliance policies and guidance notes.

The Corporate Centers Internal Auditing and Legal & Compliance are also responsible for a Group Policy on the Dual Control Principle. It does not refer directly to antitrust law or corruption, but is instead designed to counteract violations of the internal control system which are often ascertained when investigating suspected cases of corruption, even if the accusations of corruption could not be proven.

Training courses: ThyssenKrupp offers an extensive curriculum of e-learning and classroom training courses.

(A) E-learning: All employees deployed in certain functions (such as sales staff, procurement, marketing) are required to participate in an e-learning program. In order to correctly identify participants, a catalog of mandatory participants for the training modules on antitrust law and anti-corruption have been drawn up by CC-LC and distributed to the Compliance Managers. The Compliance Manager ensures that the employees in his Group Company attend the annual e-learning Compliance program on antitrust law and/or anticorruption. To this end, he/she ensures that the Group Company appoints a so-called Training Manager who selects the mandatory participants for the e-learning Compliance program and also ensures that newly recruited employees are included. Attendance rates are monitored and have remained constant at 97 % of reported mandatory participants. Selected e-learning participants who have not yet begun or not completed the courses are automatically reminded by the system every 4 weeks until they have done so. Compliance Managers can obtain a current overview of course completion figures at any time via their Training Managers. The Compliance Manager also has the option of sending out additional reminders. Overall, in the second cycle of e-learning that is currently ongoing, some 20,104 employees have been trained in antitrust law and 25,573 in anti-corruption. The third cycle of the e-learning program will begin in December 2011/January 2012.

(B) Attendance training: As the second component of the training concept, the Compliance Officers hold classroom training courses at Group Companies across the world, and may enlist the support of local attorneys where necessary for legal or linguistic reasons. The training requirements are requested annually from the Compliance Executives and/or Compliance Managers. A training plan is then prepared with due regard for the risk profile. Following a corresponding request by the advising Compliance Officer, the respective Compliance Manager draws up a list of participants for classroom trainings on antitrust law and anti-corruption. Unless the Compliance Officers specify particular selection criteria, the Compliance Manager will generally list Board members/managing directors, senior executives, sales and purchasing staff, plus any other employees who come into contact with corruption or antitrust matters, as classroom training candidates. If the Compliance

Manager feels there is a need for training in his Group Company, he or she notifies the Compliance Officer responsible for their Business Area. On this basis, in the financial year 2010/11, some 3,556 employees received training in antitrust law and anti-corruption. By arrangement with the Compliance Executives and Compliance Managers, the training requirements for the financial year 2011/12 have been identified. Based on a very high demand, the Compliance Officers are planning attendance courses for some 3,330 employees.

Audits: Within the framework of the Compliance Program, Compliance audits take place at certain Group Companies according to an audit plan determined on an annual basis. These follow documented Compliance audit concepts for corruption or antitrust law. In the area of corruption, the main emphasis is on reviewing relationships with sales intermediaries, since these are considered a potential risk in certain countries, especially in the project business. In the area of corruption, a so-called “two-pronged approach” is followed, with the audit integrating both forensic and legal aspects. Audits in the area of antitrust law naturally focus on the legal analysis. Concluding reports are prepared on the outcome of the Compliance audits, whose executive summary is incorporated into quarterly or annual reporting. The results of antitrust audits are documented by the participating external law firms. Any findings are backed up with measures, and the Compliance Officers ensure that they are implemented.

Monitoring and approval of business relationships with sales intermediaries: In the area of corruption, a major risk is seen in the involvement of sales intermediaries who may pass some or all of their fee onto decision-makers at the customer’s end. ThyssenKrupp believes that in many countries, the involvement of sales intermediaries is important, and in some cases even vital, to the successful market presence of Group Companies. With this in mind, ThyssenKrupp has adopted a Group policy on the involvement of intermediaries, consultants and other such individuals to prevent violations of anti-corruption law and the Compliance program, with the aim of preventing corruption associated with advisors/intermediaries or the mere appearance of wrongdoing associated, thus minimising the risk for the respective Group Company and its employees as far as possible. The policy also contains detailed provisions on the required consents, which are elaborated in the policies of the individual Business Areas. There is also a binding requirement for the screening of consultants/intermediaries based on certain criteria prior to their engagement.

The policy sets out requirements on the formulation of consultancy agreements, and the auditing and settlement thereof.

Advisory Hotline: There is an advisory hotline at Corporate Center Legal & Compliance in the form of a telephone number and e-mail address, which employees can use to ask direct questions to the Compliance Officers at head office where necessary.

Whistleblower hotline & investigations: The law office Simmons & Simmons runs a so-called whistleblower hotline on behalf of ThyssenKrupp AG, which is separate from the advisory hotline. Attorneys around the globe (with the exception of the USA), who are selected according to linguistic and geographical aspects, accept phone calls and e-mails from employees or third parties alerting them to suspected Compliance cases. These reports are collated centrally at Simmons & Simmons in Düsseldorf and forwarded - in anonymous form if the reporting individual so requests – to the Compliance Department Program & Investigation, which investigates such cases, together with reports of suspected Compliance cases from other sources, such as anonymous letters, often in collaboration with CC-IA. The cases as well as the investigation procedures are documented and concluding standardized reports are prepared on the outcome of an investigation. Completed investigations are incorporated in the next quarterly reporting. In cases concerning the Executive Board as well as in a case concerning possible antitrust violations separate defined reporting lines exist. In suspected cases concerning the Executive Board, the Chief Compliance Officer does not report to the Board Member responsible for Compliance, but instead reports directly to the Chairman of the Supervisory Board. In the event of antitrust violations, the advising law office prepares a document on the basis of which the Chief Compliance Officer verbally informs the Board Member responsible for Compliance. If notifications are received via the whistleblower hotline or by some other route containing allegations not related to corruption or antitrust laws, these are submitted to the competent operational entity or technical department. In such cases, measures are taken to ensure that the case is investigated and duly documented. The Compliance Department Program & Investigation also follows up on the implementation of any recommended actions from audits or case-specific investigations.

Integrity as the key feature of ThyssenKrupp's management competency: ThyssenKrupp firmly believes that Compliance must be practised by managers whose core values are guided by integrity, and implemented in their respective areas of responsibility, as one of the fundamental requirements for the effectiveness of a Compliance program. Accordingly, integrity is top of the list of nine management competencies which are assessed annually among the 2,000 or so managers by their superiors, using an assessment sheet. ThyssenKrupp therefore values integrity as a basic pre-requisite for the acceptance of leadership responsibility within the Group.

### **Compliance communication**

Prior to every Board meeting (generally every 14 days), the Chief Compliance Officer reports to the Board Member responsible for Compliance on any relevant Compliance developments for the ThyssenKrupp Group that have arisen in the meantime. In particular, these include the introduction of or material changes to official investigations concerning the Group or its employees. The receipt of, and any interim stages in the investigation of, whistleblower and other reports is not usually reported; instead, the completion of the investigation is documented in the quarterly or annual report. Once a month, an appendix is enclosed with the report containing information on the current status of ongoing audits, particularly audits lasting more than three or six months respectively.

Reports are submitted to the Executive Board and addressed at every Board meeting under TOP 2 "Compliance". CC-LC receives a copy of an excerpt from the minutes.

At the end of every quarter, the Chief Compliance Officer gives a comprehensive report on Compliance work during the past quarter, and the 4<sup>th</sup> quarter report simultaneously serves as the annual report. It is divided into sections on "Compliance measures" and "selected Compliance cases that are the subject of official proceedings".

The section on "Compliance measures" essentially deals with activities previously described under  
Appendix 1/16

the headings of “Compliance organisation” and “Compliance program”. It also reports on the results of Compliance audits and investigations of suspected Compliance cases from the Whistleblower Hotline or other sources. The section on “selected Compliance cases that are the subject of official proceedings” reports on the status of all official proceedings, including civil law cases where applicable, concerning Compliance-related allegations. The report is submitted to the audit committee at least once a year (annual report) and discussed there, regularly in the presence of the Chief Compliance Officer.

The general section and the case reports on individual Business Areas are made available to the Compliance Executives and discussed at the quarterly meetings between Compliance Executives and Compliance Officers.

The Compliance Officers generally meet every 14 days for a Compliance Jour Fixe. As well as sharing experiences and reporting on current cases, these meetings also help to ensure the uniformity of Compliance advice and, where applicable, auditing. For example, any content- or procedure-related issues concerning the interpretation of policies are discussed here. New and revised guidelines, guidance notes etc. are also discussed in this group, and text wording is agreed.

For major new developments such as changes of responsibility in the Executive Board, the adoption of new policies and guidance notes, a circular e-mail is sent out to Compliance Managers. Additionally, at irregular intervals (roughly once a quarter), CC-LC prepares a so-called “Compliance Update” which is distributed to the Compliance Managers by e-mail. Recent developments are described or announced in smaller articles. The Compliance update also contains an anonymous, instructive case from the Group.

### **Compliance monitoring and improvement**

Compliance monitoring among the Group Companies is based on the aforementioned Compliance audits, the inspection of other audit reports, the regular sharing of experiences with Compliance

Executives, and training events and interviews at which the Compliance Officers not only give presentations, but also receive information on problematic developments and suspicious cases. In recent years the Compliance program has been subjected to regular external reviews from a number of aspects:

In 2007 and 2010, the law firm Hengeler Mueller audited the Compliance program as a whole. In 2007 and 2008, KPMG audited selected Compliance aspects as part of its audit of the annual financial statement. A further audit was conducted by attorney Dr. Hart-Hönig in 2008. This was followed in 2011 by an external audit within the framework of auditing the Compliance Management System to IDW PS 980 by KPMG. Reviews focussing on various aspects, some legal and some commercial/audit-based, have proven effective and will be continued. Based on the findings of the audits, the auditors are requested to compile an overview of their recommended actions as part of their concluding report. These recommendations are picked up by the Compliance Departments and analysed. The implementation or (in certain cases) non-implementation of selected recommendations are reported.

Inspiration for improving the Compliance program is also taken from other sources, such as the Executive Board or Supervisory Board, or suggestions by the Compliance Committee, Compliance Executives or individual Compliance Managers. Benchmark meetings are also held with highly regarded German companies, and best practice suggestions derived. The company also makes a point of meeting representatives from the relevant authorities in order to obtain suggestions for improving the Compliance program. For example, meetings have been held with representatives of the EU Commission and individual public prosecutors. Such meetings will be continued in future.

The Chief Compliance Officer and Compliance Officers are often invited as guest speakers at expert seminars. As well as communicating the ThyssenKrupp Compliance program, these also serve to derive best practices and suggested improvements from the contributions of other speakers.

## Appendix 2

### General Conditions of Assignment



# General Engagement Terms

for

## Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

[German Public Auditors and Public Audit Firms]  
as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

### 1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

### 2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

### 3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

### 4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

### 5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

### 6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

### 7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

### 8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

### 9. Liability

(1) The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.

(2) Liability for negligence; An individual case of damages

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) Preclusive deadlines

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

## 10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

## 11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
- b) examination of tax assessments in relation to the taxes mentioned in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
- e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

## 12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

## 13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

## 14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

## 15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for ten years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

## 16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.