



News on Management Board Members in Germany

Compensation of board members (*Vorstandsmitglieder*) of German stock corporations (*Aktiengesellschaft* or AG) must comply with the new Bill on Adequacy of Management Board Compensation (*Gesetz zur Angemessenheit der Vorstandsvergütung* or the *VorstAG*), which went into effect on 1 August 2009.

The Bill is the result of an intense discussion in Germany on management compensation and it increases the legal responsibility of a company's supervisory board (*Aufsichtsrat*) in regard to adequate compensation of board members. As the Bill calls for substantial changes, board members' existing remuneration structures must be analyzed and potentially modified in order to comply with the new law.

Major requirements of the Bill include:

- Supervisory board members (*Aufsichtsratsmitglieder*) become personally liable to compensate the AG for damages in case of inadequate compensation of a board member.
- Total compensation of any management board member (*Vorstandsmitglied*) must be "adequate" compared to the economic condition of the AG, the member's tasks and individual performance and may not exceed standard compensation without specific reasons.
- Compensation of any management board member of a listed AG must include long term incentives for the sustainable development of the listed AG.
- In case the AG's economic condition deteriorates after the compensation package of the

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management board member has been approved and the continued payment of the agreed compensation would be an undue burden for the AG, the supervisory board shall decrease the compensation of the management board member to an adequate amount.

- If the AG has directors and officers (D&O) liability insurance protection against damages caused by professional activities of a board member, this duty and D&O insurance shall contain a deductible amount (*Selbstbehalt*) payable by the board member of at least 10 percent of the damage, which may equal up to 1.5 times the annual compensation of the board member.
- Former board members may not become supervisory board members for two years after the end of their board member duties. This restriction does not apply if the election of the supervisory board member results from a proposal by a shareholder with at least 25 percent of voting rights of the AG.

For more information please contact Christian K. Berg, any of the Frankfurt-based lawyers listed in this alert or your primary Squire Sanders lawyer.

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