

# **ABSCHLUSSPRÜFERAUFSICHTSKOMMISSION**

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## **AUDITOR OVERSIGHT COMMISSION**

### **Rules of Procedure of the Commission for the Oversight on Auditors in Germany (Auditor Oversight Commission)**

as adopted on March 11, 2005

*(Only the official German text is legally binding. The translation is only intended for better understanding of the German provisions. Even so, the translation has been prepared with due care following the original words and meaning of the official German text, the translator is not responsible for any misunderstanding or misinterpretation. In case of doubt, the reader should refer to the official German text. Words in square brackets are comments of the translator and therefore not part of the official German text.)*

#### **Recital**

By means of the *Law on Further Developing the Professional Oversight on Auditors according to the Public Accountant Act* (Auditor Oversight Law) of December 27, 2004 the German legislator has established the "Commission for the Oversight on Auditors in Germany" (Auditor Oversight Commission) with effect from January 1, 2005.

The Auditor Oversight Commission is a body sui generis formed by individuals without legal capacities and supervised by the Federal Ministry of Economics and Labour. It has at least six and at most ten honorary members appointed by the Federal Ministry of Economics and Labour for a four years term, who shall not be or have been personal members of the *Wirtschaftsprüferkammer* [*Chamber of Public Accountants*] over the past five years prior to their appointment.

They should be or have been active in the areas of accounting, finance, economy, academics or jurisdiction.

According to the Auditor Oversight Act (Article 1, No. 22 referring to Article 66a of the Public Accountant Act) the Auditor Oversight Commission is in charge of the public professional oversight towards the *Wirtschaftsprüferkammer* as far as the *Wirtschaftsprüferkammer* acts in areas according to Article 4, paragraph 1, 1st sentence of the Public Accountant Act with respect to professionals and firms who are entitled to perform statutory audits or who do so de facto without being entitled. The Commission acts independent and unbound by any instructions.

The oversight covers the areas of examination, aptitude tests for foreign auditors, licensing of individuals and firms, revocation of licenses and registration, the disciplinary oversight and quality assurance as well as the adoption of professional rules. In addition, the Commission is responsible for overseeing the adoption of international audit standards, as far as the responsibility is not taken by a Federal Ministry.

Within the oversight framework the Commission assesses whether the *Wirtschaftsprüferkammer* fulfils its obligations according to Article 4, paragraph 1, 1<sup>st</sup> sentence of the Public Accountant Act in a suitable, adequate and proportional manner.

Based on Article 66a, paragraph 6 of the Public Accountant Act the Auditor Oversight Commission adopts the following rules of procedure in order to fulfil its duties and responsibilities given by the law:

## **Article 1 Name**

- (1) The Commission uses the name "Commission for the Oversight on Auditors in Germany", the short form "Auditor Oversight Commission" or the abbreviation APAK [AOC].
- (2) On an international level the Commission will use the designation "Auditor Oversight Commission" (AOC).
- (3) The Commission is a body sui generis formed by individuals without legal capacities and supervised by the Federal Ministry of Economics and Labour.

## **Article 2 Acting in the Public Interest**

- (1) The members of the Commission are aware of fulfilling their duties and responsibilities connected to their honorary office in the public interest, independent and unbound by any instructions.

## **Article 3 Chairman**

- (1) The members of the AOC elect a Chairman and a Deputy Chairman. As an option, they may elect a second Deputy Chairman.
- (2) The Chairman manages the operations of the AOC and presides its meetings. Whenever he or she is unable to act the Deputy Chairman or – provided that the Deputy Chairman is unable to act – the second Deputy Chairman will assume the responsibilities.

## **Article 4 Meetings**

- (1) The AOC makes decisions at meetings. With a minimum of two week's notice, the Chairman invites to the meetings conveying the agenda. There shall be at least ten meetings per annum.
- (2) Meetings take place at the registered office of the Wirtschaftsprüferkammer (Berlin); if they take place elsewhere by way of an exception, this has to be announced in the invitation.
- (3) If accepted by all members, meetings can be held informally and without previous notice.
- (4) The Chairman determines the topics and the order of the agenda. As far as possible, the agenda papers and the relevant proposals for decisions shall be conveyed together with the agenda, but at least one week prior to the meeting. Each member of the AOC has the right to request amendments to the agenda. The AOC decides at the beginning of its meeting about any amendments to the agenda and changes of the order.
- (5) As a matter of routine, the agenda shall comprise a topic *Reports and Presentations of the Wirtschaftsprüferkammer*, presented by representatives of the Wirtschaftsprüferkammer. The Wirtschaftsprüferkammer has to be informed about the agenda accordingly.

- (6) Minutes have to be prepared for each meeting of the AOC. The minutes shall include the place and time of the meeting, participants, topics of the agenda, a summary of the discussions and the decisions made by the AOC. After being conveyed to the members, the minutes have to be approved at the next meeting of the AOC.
- (7) Decisions of the AOC can be recorded in writing at a meeting following the precise wording and shall be signed immediately by the Chairman as part of the minutes. If decisions are recorded that way, objections against the minutes can only be made during the same meeting.

## **Article 5 Participation of Third Parties at Meetings**

- (1) Meetings of the AOC are not public.
- (2) Representatives of the Wirtschaftsprüferkammer can be invited to participate at specific agenda items of meetings of the AOC. The invitation can allow for participation at the whole meeting.
- (3) Third parties, especially professionals and experts, can participate at meetings following an invitation.

## **Article 6 Decision Making**

- (1) The AOC makes decisions by simple majority.
- (2) The Commission has a quorum only if more than half of its members are present in person.
- (3) On request of a member decisions are made by secret ballot.
- (4) If a member is concerned to be biased with respect to a specific topic of the agenda and the decision making hereto, he has to declare this in advance and abstain from further participation at the discussion and decision making for this topic. The judgement about the existence of concerns on bias is made considering all circumstances of the individual case from an objective third party's point of view. The AOC decides whether the concerns on bias of a member are given in an individual case.

## **Article 7 Conference Calls, Decision Making by Correspondence**

- (1) The AOC can make decisions at conference calls, summoned by one week's notice in writing conveying the agenda items and papers unless the members do not agree anonymously on another procedure. Minutes have to be prepared about the discussions and decisions made, that will be presented at the next meeting of the AOC for approval.
- (2) Decisions can be made by correspondence provided that no member disagrees [*with the procedure*]. Article 7, paragraph 1, 2<sup>nd</sup> sentence applies mutatis mutandis.

## **Article 8**

### **Departments with Own Decision Making Power**

- (1) The AOC can establish departments with own decision making power. They must comprise at least three members of the AOC. The departments have a chairperson appointed by the AOC. The Chairman of the AOC is entitled to participate at meetings of the departments with voting right.
- (2) By special resolution, the AOC decides on the assignment of tasks to the departments that they fulfil autonomously. The tasks assigned to a department can be retracted any time.
- (3) Unless otherwise decided in accordance with paragraph 2, the departments have the rights and responsibilities of the AOC within its remits. The chairperson of the department signs on behalf of the department and is responsible for duly fulfilling the tasks assigned to the department and providing adequate information to the AOC about decisions made; whenever the chairperson is unable to act his or her deputy will assume the responsibilities.
- (4) Matters of fundamental relevance have to be referred to the AOC for decision; this applies also where the department intends to diverge from the previous interpretation of the law by the AOC or previous decisions.

## **Article 9**

### **International Cooperation**

- (1) Within the remit of the AOC according to Article 66a, paragraph 1 of the Public Accountant Act, the AOC cooperates with the competent authorities in the Member States of the European Union, in other contract states to the agreement on the European Economic Area and in third countries.
- (2) The AOC can invite third parties, especially representatives of the Wirtschaftsprüferkammer and experts, to participate at meetings relevant to the international cooperation or delegate third parties to such meetings.

## **Article 10**

### **Support by the Wirtschaftsprüferkammer**

- (1) In order to perform their duties and responsibilities the AOC and its department can request for technical and personal support by the head office of the Wirtschaftsprüferkammer.
- (2) The support can include especially the preparation, realisation and postprocessing of meetings of the AOC and its departments as well as providing the AOC and its departments with information needed for performing their duties and responsibilities. For this purpose, an "Office of the Auditor Oversight Commission" is installed at the Wirtschaftsprüferkammer.

## **Article 11**

### **Criteria for Information by the Wirtschaftsprüferkammer**

- (1) The AOC stipulates procedures established at the Wirtschaftsprüferkammer in all areas relevant to the oversight that guarantee timely and adequate information on proceedings relevant to the oversight.
- (2) The members of the AOC have the right to participate in an advising role at meetings of bodies of the Wirtschaftsprüferkammer, their departments with own decision making powers as well as committees dealing with issues related to the remit of the AOC. For this purpose, the AOC has to be informed by the Wirtschaftsprüferkammer about the agendas - on request also about agenda papers – and the minutes prepared for documentation of the meetings. The AOC and the Wirtschaftsprüferkammer agree on what meetings are affected in detail and how participation can be guaranteed. The members have the right to request agenda papers and minutes irrespective of their participation at the meeting.

## **Article 12**

### **Work Plan and Annual Report**

- (1) At the beginning of a calendar year, the AOC compiles, adopts and publishes a work plan.
- (2) Shortly after the calendar year has ended, the AOC compiles and adopts an annual report covering the progress made with respect to the work plan and the findings of the oversight. Amongst other issues, the report includes a comprehensive assessment to what extent the Wirtschaftsprüferkammer fulfils its functions in the areas according to Article 66a, paragraph 1, 1<sup>st</sup> sentence of the Public Accountant Act in a suitable, adequate and proportional manner. If required the report shall include recommendations for the further development of the auditor oversight system according to Article 66a of the Public Accountant Act.

## **Article 13**


### **Confidentiality**

- (1) The members of the AOC must observe confidentiality; Article 64 of the Public Accountant Act applies mutatis mutandis, a permission required is given by the Federal Ministry of Economics and Labour. They have to keep information gathered from the quality assurance in confidence to those representatives of the Wirtschaftsprüferkammer who are involved directly in disciplinary procedures. The 2<sup>nd</sup> sentence applies vice versa with respect to information gathered from disciplinary procedures in relation to representatives of the Wirtschaftsprüferkammer who are involved directly in quality assurance proceedings.
- (2) Persons not covered by the confidentiality rules in Article 64, paragraph 1 of the Public Accountant Act, who participate at meetings and discussions of the AOC and its departments have to be sworn to confidentiality, as well as persons collaborating in the area of international cooperation or persons drawn on for collaboration in this area in a specific case.

**Article 14**  
**Term, Amendments of the Rules of Procedure**

- (1) The rules of procedure come into effect at the date of approval by the Federal Ministry of Economics and Labour. The rules are effective for an unlimited period of time. They can be amended anytime.
- (2) Amendments of the rules of procedure have to be approved by the Federal Ministry of Economics and Labour.

Adopted at the meeting of the Auditor Oversight Commission on March 11, 2005.



Dr. h.c. Volker Röhrich  
(Chairman of the Auditor Oversight Commission)

Approved by the Federal Ministry of Economics and Labour by letter of April 28, 2005.