The Anti-Bribery and Anti-Corruption Review

Third Edition

Editor
Mark F Mendelsohn

Law Business Research

The Anti-Bribery and Anti-Corruption Review

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EDITOR'S PREFACE

This third edition of *The Anti-Bribery and Anti-Corruption Review* presents the views and observations of leading anti-corruption practitioners in jurisdictions spanning every region of the globe. The worldwide scope of this volume reflects the reality that anti-corruption enforcement has become an increasingly global endeavour, resulting in a challenging environment for anti-corruption practitioners and the clients they advise.

Over the past year, a growing number of countries enacted or amended significant anti-corruption and anti-bribery legislation and, perhaps more importantly, increased their enforcement of those laws. This volume touches upon a wide range of such legislative developments. A few highlights include: Latvia's May 2014 accession to the Organisation for Economic Co-operation and Development Anti-Bribery Convention, the German Federal Cabinet's May 2014 resolution to adopt the Act on the Ratification of the UN Convention against Corruption, and the European Parliament's April 2014 adoption of the Directive on Disclosure of Non-Financial and Diversity Information by Certain Large Companies and Groups, which will require covered companies to disclose information on their policies, risks and results regarding anti-corruption and bribery issues.

In the United States, enforcement authorities continue to vigorously enforce the Foreign Corrupt Practices Act (FCPA), with the past year's cases showing both an increase in the number of charges against individuals and a continued focus on corporate conduct. The investigation and enforcement focus cuts across a range of industries including: pharmaceutical and medical device companies, the financial, mining and aviation industries, and the energy sector. In January 2014, the Department of Justice (DOJ) and the Securities and Exchange Commission announced settlements with Alcoa Inc and its subsidiary Alcoa World Alumina LLC. These settlements, involving $384 million in criminal fines, administrative forfeitures and disgorgement, constitute the fifth largest FCPA settlement in US history. In September 2014, Marshall L Miller, Principal Deputy Assistant Attorney General for the DOJ Criminal Division, announced his office's intention to 'vigorously employ proactive investigative tools that may not have been used frequently enough in white-collar cases in past years: tools like wiretaps, body wires, physical surveillance and border searches'. These investigative tools appear to have

been employed during the recent investigations of French citizen Frederic Cilins and a group of executives at BizJet International, a US-based subsidiary of the Lufthansa Corporation. Companies and their counsel continue to struggle with the issue of whether or not to self-report potential violations of the FCPA in light of the enforcement climate and concerns regarding the risk/reward calculus. And, as in previous years, we have continued to see the uncovering of bribery in mergers and acquisition diligence as well as an increase in various forms of private litigation related to FCPA investigations.

The foreign bribery landscape grows increasingly complicated for multinational companies, as China, the United Kingdom, Norway and Canada, among other countries, have each launched significant investigations and brought a substantial number of corruption actions in the past year related to international business transactions. The growing number of enforcement actions around the world are supported by a significant trend toward greater international cooperation in anti-corruption enforcement efforts. In a 17 June 2013 keynote address, then DOJ Acting Assistant Attorney General Mythili Raman commented: 'Through our increased work on prosecutions with our foreign counterparts and our participation in various multilateral fora like the OECD and United Nations, it is safe to say that we are cooperating with foreign law enforcement on foreign bribery cases more closely today than at any time in history.'

I wish to thank all of the contributors for their support in producing this volume. I appreciate that they have taken time from their practices to prepare chapters that will assist practitioners in navigating the complexities of foreign and transnational business.

Mark F Mendelsohn
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Washington, DC
November 2014

Chapter 8

GERMANY

Thomas Richter[1]

I INTRODUCTION

According to the latest statistics on corruption investigations published by the German Federal Criminal Police, it appears that investigations in Germany reached an all-time peak in 2009. Investigations have since slightly decreased in number for the fourth year in a row, although the absolute numbers still remain rather high. Many cases involving 'classic' hard-core corruption are still uncovered each year, but at the same time a tendency has emerged among some prosecution agencies to vigorously investigate cases where it is difficult to draw a clear-cut line between legal behaviour and bribery, and which would probably not have raised eyebrows a few years ago. Among the most prominent of such 'grey area' cases was the investigation against the former Federal President after a close friend of his paid for expenses amounting to approximately €700 during a joint trip to the Oktoberfest in Munich. Although the Federal President was acquitted and cleared of all charges of bribery after a 14-day trial during which 26 witnesses were questioned, he was forced to resign as soon as the investigation became public.

II DOMESTIC BRIBERY: LEGAL FRAMEWORK

i Overview

Domestic anti-bribery and corruption provisions are laid down in the German Criminal Code (StGB). German criminal law distinguishes between:

a bribery in the public sector involving public officials (Sections 331 to 338 StGB)
b bribery in commercial business transactions (Sections 299 to 302 StGB); and
c electoral bribery (Sections 108b to 108e StGB).

1 Thomas Richter is an associate at HammPartner Rechtsanwälte.

In each of these three groups of anti-bribery provisions, 'active' and 'passive' bribery constitutes a criminal offence. As in many other jurisdictions, the offence of bribing another person by offering, promising or giving a financial or other benefit (active bribery) is mirrored by the offence of being bribed by requesting, allowing oneself to be promised or accepting a benefit (passive bribery).

In line with most other jurisdictions, the anti-bribery provisions of the StGB are aimed at preventing the giving of a benefit in exchange for past or future improper conduct. Unlike in some other European countries, however, the threshold in relation to domestic public officials is even lower than it is in relation to other bribery, and the risk of criminal liability thus starts at an early stage. This is because Section 333 prohibits offering, promising or granting (and, vice versa, Section 331 prohibits requesting, allowing oneself to be promised and accepting) any benefit for the mere (i.e., lawful) performance of the official's duties. This aims at preventing the so called 'grooming' of public officials, who may, as a result, become susceptible to improper influence.

Central to all bribery offences (public bribery, private commercial bribery and electoral bribery) is an 'agreement to break the law'; that is, an express or implied understanding between the person granting the benefit and the person accepting it that the benefit shall be reciprocal to the improper conduct or, in the case of Sections 331 and 333 StGB, to the mere performance of the official's duties.

The term public official has a broad scope. According to the definition in Section 11 Paragraph 1 No. 2 StGB, it includes civil servants, judges and persons who otherwise carry out public official functions or have otherwise been appointed to serve with a public authority or other agency or have been commissioned to perform public administrative services. That definition may also include employees of state-owned or state-controlled companies, such as public savings banks and public utility companies. However, mere state ownership of a company does not as such qualify an employee of such a company as a public official. Rather, the company must also perform tasks and services that would otherwise be performed by proper state agencies and therefore appear as an 'extended arm of the state'.

ii Gifts and gratuities

As a result of increased compliance awareness, the question frequently occurs regarding the extent to which gifts and gratuities as well as travel, meals and entertainment may be provided in connection with corporate events. In the absence of minimum value thresholds, all gifts, gratuities and invitations (even of low value) constitute a benefit within the meaning of German anti-bribery offences and should therefore be handled with caution. This applies in particular where public officials are concerned, because Sections 331 and 333 StGB already prohibit granting or accepting a benefit for the mere (lawful) performance of the official's duties. In the private sector the limits set by criminal law are slightly more generous.

German case law and legal writing recognise an exception when the benefit is deemed socially acceptable, which may depend on a variety of factors such as the nature of the gift, the occasion and the role and function of the recipient. Generally, a benefit worth not more than €30 is widely regarded as socially acceptable. Unlike in the United Kingdom, however, there is no official guidance that may serve as a point of orientation

for companies, and some prosecutors thus follow a rather (excessively) tough line. Recently, for example, we have seen prosecutors starting an investigation because one or two bottles of ordinary wine had been gifted to public officials as Christmas presents. In light of the legal uncertainty surrounding the anti-bribery offences, some companies decided to implement internal guidelines that strictly prohibit receiving or granting gifts or invitations (in particular to public officials) of any kind. As a consequence, it has become more and more difficult for sponsors of football teams, for example, to allocate their free ticket slots among business partners because of strict compliance guidelines.

iii Reform of electoral bribery

Regarding electoral bribery, a draft bill aimed at broadening the scope of the offence of electoral bribery (Section 108e StGB) was passed by a wide majority of the German parliament in spring 2014. The amended law has come into force as of September 2014. Under the former Section 108e StGB, only the undertaking by a member of a parliamentary assembly in Germany or in the European Parliament to buy or sell a vote for an election or ballot was illegal. Because of its narrow wording, this provision had little practical relevance. The amended version of Section 108e StGB has been broadened significantly. Section 108e Paragraph 2 StGB (as amended) makes it now a criminal act to offer, promise or give an undue benefit to a member (or a third party) of a parliamentary assembly, a representative body at the municipal level, the European Parliament, the parliamentary assembly of international organisations or the legislature of a foreign country, so that such a member should act or abstain from acting according to an order or instruction. In addition, Section 108e Paragraph 1 StGB makes it unlawful for a member of the parliamentary assembly to request, allow oneself to be promised or accept an undue benefit for such a purpose. Because of its broad wording, Section 108e StGB (as amended) may well conflict with certain legitimate aspects of the practical life of a member of a parliamentary assembly. Therefore, the German legislator has provided for an important qualification: the benefit must be 'unjustified' to be treated as criminal. Section 108e Paragraph 4 StGB states that this is not the case if the benefit is compatible with provisions relevant to the legal status of the member. Beyond that rather narrow wording, legislative history shows that 'parliamentary customs' shall also be taken into account. Moreover, Section 108e Paragraph 4 StGB provides that benefits related to a mandate or a function within a political party are not unjustified for the purposes of criminal liability under Section 108e StGB. The same applies to donations permitted by law (e.g., permissible donations to political parties in accordance with the Act on Political Parties).

III ENFORCEMENT: DOMESTIC BRIBERY

i Institutional framework

To understand the particularities of enforcement, one should take into account that Germany is a federal republic consisting of 16 member states. Whereas the anti-bribery and corruption provisions of the StGB are federal law and apply equally in each of the 16 states, enforcement of the StGB generally lies within the responsibility of each individual state. Accordingly, each state has its own courts and its own prosecution agencies, which

are usually located in larger cities. Currently, there are 115 regional courts throughout Germany, each of which has its own prosecution. This large number of prosecution offices sometimes results in diverging prosecution trends, which makes it difficult to predict how a specific case will be regarded by the competent prosecution. Accordingly, we have recently seen comparable cases regarding gifts and hospitality where the prosecution in one state took a rather rigorous approach, whereas the prosecution in another state quickly dropped all charges and terminated the investigation.

ii Plea-bargaining

Following a number of decisions of the Federal Constitutional Court and the Federal Supreme Court, plea-bargaining has recently been in the centre of public attention. Although German law does not formally recognise a guilty plea as understood in some common law jurisdictions,[2] for a long time there had been *de facto* bargains that were not regulated by a specific set of rules. To contain this informal and widespread bargaining 'culture', Germany introduced specific provisions in Section 257c of the German Code of Criminal Procedure (StPO) in 2009. Section 257c StPO envisages an agreement between the court and the other parties to the proceeding based upon a proposal made by the court. The agreement may not address the verdict of guilty or not guilty but only the penalty to be imposed on the defendant. As part of the bargain, the defendant is typically required to make a confession. According to the law, any discussions and negotiations regarding such an agreement that have taken place among the court, the prosecution and the defence must be recorded and made public. However, a number of courts ignored the new requirements under Section 257c StPO. Therefore, in March 2013 the Federal Constitutional Court held that bargains that violate the duty for transparency and documentation will generally render illegal a plea bargain that has nonetheless been concluded.[3] Furthermore, the Federal Constitutional Court pointed out that the principle of individual guilt prohibits a conviction being solely based on a formal confession. Instead, criminal courts must verify whether the confession is consistent with other available evidence. Recently, the Federal Constitutional Court has further specified the requirements for bargains.[4]

As the transparency and documentation duties under Section 257c StPO may be burdensome, there is a tendency among some courts to conclude trials by reverting to Section 153a StPO, which allows for termination of a trial without a judgment subject to certain conditions, such as making restitution or paying a certain amount of money (which is technically not a criminal fine). While this provision is mostly applied with respect to lower-scale offences, it acquired a questionable fame in August 2014 when the

2 Bohlander, *Principles of German Criminal Procedure*, 2012, p. 120.

3 Federal Constitutional Court, Judgment of 19 March 2013, 2 BvR 2628/10 et al. For a detailed discussion of the impact and practical implications of this judgment see the articles contained in (2014) *German Law Journal: Special Issue – Plea Bargains in Germany* (Safferling and Hoven eds.), Vol. 15 No. 01, 1-106.

4 Federal Constitutional Court, Decisions of 26 August 2014, 2 BvR 2048/13, 2 BvR 2172/13, 2 BvR 2400/13.

regional court of Munich terminated a corruption trial against Bernie Ecclestone, the chief of Formula One, pursuant to Section 153a StPO against a record-setting payment of $100 million. Ecclestone had originally been accused of having bribed a former executive of the State Bank of Bavaria by paying more than €30 million in connection with the sale of a majority stake in Formula One, which was at that time held by the State Bank of Bavaria. In a previous criminal proceeding that took place in 2012, the bank executive who accepted the money had been convicted and sentenced to more than eight years in prison. Although there may have been valid reasons for the court to terminate the trial against Ecclestone pursuant to Section 153a StPO, the scale of the amount paid by Ecclestone sparked a debate on the legitimacy of settlements pursuant to Section 153a StPO.

IV FOREIGN BRIBERY: LEGAL FRAMEWORK

In Germany, the offences of active and passive bribery of foreign public officials are regulated in a number of different laws.[5] The EU Bribery Act (EUBestG) deems public officials of other EU Member States and of the European Commission to be equal to German public officials for the application of the offences of passive bribery and active bribery (Sections 332 and 334 StGB). The EUBestG addresses active and passive bribery but is limited to the territory of the EU. In addition, the scope of its provisions is restricted to bribery for future (but not for past) actions.

The Act on Combating International Bribery (IntBestG) deems foreign public officials to be equal to domestic public officials for the application of the offence of active bribery (Section 334 StGB). While the IntBestG is not limited to EU territory, it only addresses active not passive bribery in connection with international business transactions. Under the IntBestG, bribery of foreign public officials (including those who work for international organisations), judges and soldiers is an offence if made for the purpose of obtaining business or an improper advantage in international business transactions. While facilitation payments (intended to facilitate or accelerate an official act to which the payer is legally entitled) to domestic officials are illegal, the IntBestG does not forbid such payments to foreign officials.

Regarding international electoral bribery, the IntBestG penalises active bribery of members of foreign parliaments and members of parliamentary assemblies of international organisations for the purpose of obtaining an improper advantage in international business transactions. Finally, bribery in the private sector is addressed by Section 299 Paragraph 3 StGB.

5 See Wessing, Ahlbrecht and Dann, 'US Corruption Proceedings in Germany', (2014) *Business Law International*, Vol. 15 No. 3, 183-200.

V ASSOCIATED OFFENCES: FINANCIAL RECORD KEEPING AND MONEY LAUNDERING

Like those in most developed countries, German companies must adhere to comprehensive accounting and financial reporting rules, the scope of which depends on factors such as the size, legal form or whether the company is listed on a stock exchange. Tax laws also oblige companies and commercial traders to keep accounts and records that are relevant for taxation.

In practice, corruption is often uncovered during tax audits conducted by German revenue authorities. During such tax audits, the taxpayer is obliged to cooperate with the revenue authorities and to provide books and records, accounts, business documents and other information according to Section 200 of the German Fiscal Code. When the revenue authorities find facts that give rise to the suspicion of corruption, they must report such facts to the competent prosecution.[6] Sometimes the revenue authorities make such reports merely because some bookkeeping items in the financial statements have inaccurate and misleading headings, which may give rise to the suspicion of bribery. Therefore, due attention should be paid to an accurate and precise bookkeeping system.

In addition, if assets are placed in 'concealed funds' in a company to be used for bribery or buying influence, removing and keeping these assets in reserve is punishable as a breach of trust towards the company in accordance with Section 266 StGB. This liability is triggered regardless of whether the use of the money is punishable as such and whether the offender intends to use the money in the alleged best economic interest of the company.

VI ENFORCEMENT: FOREIGN BRIBERY AND ASSOCIATED OFFENCES

Gathering evidence is a particular problem in cases of foreign bribery, not only for German prosecution agencies but even more for individuals accused of bribery. Furthermore, the standards of bookkeeping and accounting are sometimes poor in developing countries and there is scant documentation of business transactions. As a result, it may be difficult or even impossible to prove that service or consultancy agreements (alleged to have been set up to conceal bribery) had a legitimate purpose and that the services owed under such agreements had in fact been performed by the other party. In these situations, some prosecution agencies tend to shift the 'burden of proof' on to the accused by arguing that foreign bribery is established as long as the accused fails to show the legitimate purpose of the payments at hand.

6 See Section 4 (5) No. 10 of the Law on Income Tax.

VII INTERNATIONAL ORGANISATIONS AND AGREEMENTS

In addition to various bilateral and multilateral agreements, Germany has signed a number of international anti-corruption conventions:

a the OECD Anti-Bribery Convention;
b the United Nations Convention against Corruption (UNCAC);
c the United Nations Convention against Transnational Organized Crime (CTOC); and
d the Council of Europe Criminal Law Convention on Corruption.

Although Germany was among the initial signatories of the UNCAC back in 2003, the UNCAC had not been ratified until 2014 because Germany had not amended the criminal offences of electoral bribery in accordance with the UNCAC. This has only changed following the enactment of stricter anti-bribery laws in relation to electoral bribery as of September 2014. The UNCAC has now been ratified.

Germany is a member of the Group of States against Corruption that was established in 1999 by the Council of Europe to monitor states' compliance with the organisation's anti-corruption standards.

VIII LEGISLATIVE DEVELOPMENTS

i Corruption in health care

For a long time, some pharmaceutical companies and their sales representatives followed a rather questionable habit of granting benefits, such as technical equipment, travel or cash awards, to self-employed doctors who in return promised to prescribe that company's pharmaceutical products. The question arose whether this violated the anti-corruption provisions of Section 299 and Sections 331 et seq. StGB, respectively. In a landmark decision of the Superior Senate within the Federal Supreme Court of March 2012, the court ruled that doctors in private practice neither qualify as 'agents' within the meaning of Section 299 StGB, nor as 'public officials' within the meaning of Sections 331 et seq. StGB, even if the doctors are under contract with the public health insurance companies. Accordingly, the court held that granting personal benefits by pharmaceutical companies to doctors in private practice does not fall within the scope of Section 299 StGB nor of Section 333 StGB. To close this perceived gap of criminal liability, a draft bill was introduced to the German parliament in early 2013; however, it was not adopted before a new parliament was elected later that year. There have, therefore, been a number of initiatives reattempting to introduce anti-bribery offences specifically addressed at the health-care sector.

ii 'Revolving doors'

The transition of politicians and senior officials from public service to private sector is another matter that has been closely watched recently. Whereas 'revolving doors' between the civil service and the private sector are common in countries such as the United States and, to a lesser extent, the United Kingdom, they have traditionally been a rare occurrence in Germany and have been perceived as dubious and endangering

the integrity of public service. To date, there is no binding revolving-door policy. As a reaction to corruption allegations in the wake of a number of high-profile politicians taking up corporate jobs, the German government has indicated its willingness to present a draft bill aimed at preventing potential conflicts of interest, notably by providing for a mandatory cooling-off period (12 months, and in exceptional cases 18 months) between leaving public service and taking up private employment.

iii Reform of private sector bribery offences

The current wording of Section 299 StGB regarding private sector bribery has been criticised from different angles for certain (alleged) shortcomings, in particular for failure to fully comply with Articles 7 and 8 of the Criminal Law Convention on Corruption of the Council of Europe, to which Germany is a signatory. To address these concerns, in June 2014 the Ministry of Justice presented a draft bill that provides for an amendment of Section 299 StGB and certain other provisions. Under the current version of Section 299 StGB it is illegal to offer, promise or grant (and vice versa regarding passive bribery) an employee or agent of a business a benefit for herself or himself or for a third person in a business transaction as consideration for such an employee or agent giving him or her or another an unfair preference in the purchase of goods or commercial services. Thus, Section 299 StGB currently only covers bribery in situations of market competition.

The new draft bill provides for an amendment of Section 299 StGB such that – in addition to situations of market competition – it shall likewise be punishable to offer, promise or grant (and vice versa regarding passive bribery) an employee or agent of an enterprise a benefit for himself or another 'for violating his duties vis-à-vis the enterprise' while purchasing goods or commercial services. The benefit of this amendment may be questioned because the German criminal code – unlike that of many other jurisdictions, and the United States and the United Kingdom in particular – already provides for a general offence of embezzlement and breach of trust in Section 266 StGB. Over decades this statute has been applied very broadly by German courts, and many situations that the proposed amended Section 299 StGB aims to prevent would be likely to qualify as an offence under Section 266 StGB. It is thus likely that an amendment of Section 299 might cause unnecessary friction and incoherence between it and Section 266.

iv Corporate criminal liability

German law does not (yet) formally recognise criminal liability of corporations. In late 2013, however, a draft bill to introduce corporate criminal liability was proposed by the German state of North Rhine-Westphalia. The draft bill has been subject to criticism from several angles. Apart from fundamental academic objections, it is questionable whether it is necessary to introduce corporate criminal liability, because German law already provides for a liability mechanism under the Administrative Offences Act (OWiG) that can lead to similar results as a criminal law statute. The OWiG contains provisions for fining an enterprise in cases where a person in a management position commits a criminal offence that benefits the enterprise, or if management intentionally or negligently fails to comply with its necessary supervisory duties to prevent criminal

offences by its employees (Sections 30 and 130 OWiG). The fines can be severe, in addition to confiscation or disgorgement of profits.

In August 2014, the German Institute for Compliance, a private association of many important corporations and legal advisers, came forward with a proposal that instead of introducing corporate criminal liability, the OWiG should be amended as an incentive for corporates to implement effective compliance mechanisms. Under the proposed amendment of the OWiG, corporations should be exempted from sanctions for offences, or sanctions should be reduced, if the corporation had implemented an effective compliance system that is generally suitable to prevent such offences.[7] This approach would to some extent resemble the US Federal Sentencing Guidelines and the concept of 'adequate procedures' under the UK Bribery Act 2010, but it remains to be seen whether it has a chance of being implemented in the near future.

IX OTHER LAWS AFFECTING THE RESPONSE TO CORRUPTION

During the past years, a trend has emerged among larger corporations to conduct internal investigations, often with the assistance of external counsel, when incidents of corruption are uncovered. A number of questions may arise in this context, some of which are still unresolved. For example, due attention should be paid to German and European data privacy legislation, which may restrict the admissibility for processing personal data of employees and other persons (e.g., searching and forwarding electronic files and emails). If the limits of data privacy law are not complied with, the corporation and its managers and advisers involved in the internal investigation may themselves become criminally liable. Another much debated issue is whether information gathered during the investigation by external counsel (e.g., interview minutes and reports) is legally privileged from seizure by the prosecution. A number of recent court decisions have denied legal privilege,[8] which should be taken into account when preparing reports or interview minutes.

X COMPLIANCE

Compliance systems in the private sector have become ever more elaborate during recent years, especially in global companies dealing with international business transactions. Some of these programmes are now even considered as international benchmarks. Naturally, this raises the question as to how small and medium-sized enterprises with a smaller budget can set up an effective and yet cost-efficient compliance system.

Until some years ago, compliance was more of a practical matter and less the focus of legal research and theory, let alone of case law. This has, however, changed rapidly in recent years, and (criminal) compliance has likewise begun to become the

7 For more details see Dierlamm, CCZ 2014, 194.

8 For example, Landgericht Bonn, judgment of 21 June 2013 – 27 Qs 2/12, NZWiSt 2013, 21 (with a comment by Jahn and Kirsch).

subject matter of case law.[9] Recently, for example, the regional court of Munich ordered a former Siemens chief financial officer to pay civil damages of €15 million for failing to set up an adequate compliance organisation and for inadequate compliance monitoring activities.[10] This was the first decision by a German court on civil liability resulting from inadequate compliance measures for prevention of corruption. According to the court, the defendant had failed to set up an adequately effective compliance organisation to prevent corruption and a system of concealed (slush) funds. Nor had he checked, according to the court, the effectiveness of the existing system despite having received repeated reports of suspicious cases involving the payment of bribes. The court stated that every board member must ensure that a company is organised and supervised so that the violation of national and foreign laws is prevented, particularly where serious violations of law are at risk. According to the court, it was irrelevant whether the defendant himself knew about the system of concealed funds or even about the payment of bribes. Nor could he invoke his restricted departmental responsibility or state in his own defence that responsibility for ensuring comprehensive compliance measures was not clearly allocated at board level. Rather, complying with supervisory and organisational obligations was the duty of each individual board member, and cause for serious suspicions required each individual board member to take suitable action.

XI OUTLOOK AND CONCLUSIONS

German public prosecutors (sometimes in cooperation with foreign authorities) will continue to vigorously enforce anti-corruption laws. Companies and employers doing business in Germany should thus pay attention to increased compliance awareness and to the limits set by Germany's anti-corruption laws.

9 Federal Supreme Court, judgment of 17 July 2009 – 5 StR 394/08, BGHSt 54, 44.

10 Landgericht München, judgment of 10 December 2013 – 5 HK O 1387/10, ZWH 2014, 195 (the judgment is not final because an appeal has been filed).

Appendix 1

ABOUT THE AUTHORS

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