

## ドイツにおける監査役制度の概要と展開

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### I はじめに

#### ●上場会社を念頭

##### 1. ドイツにおける監査役会制度の沿革

##### 2. ドイツにおける監査役制度の近時の展開

「ドイツ・コーポレート・ガバナンス・コード」

監査役会制度についてのルールが同コードの中心であるといわれている。

なぜか？

上場会社に対し適用される、「ドイツ・コーポレート・ガバナンス・コード」の「遵守しているかどうかについての説明 (Erklärung zum Corporate Governance Kodex)」を電子官報にて行う義務 (ドイツ株式法161条)

##### 3. ドイツ法の日本法に与えた影響とその射程

### II ドイツにおける監査役会制度の沿革・概要等

#### 1. ドイツにおける監査役会制度の誕生と発展

##### (1) 1870年ドイツ普通商法

監査役会制度がはじめて導入され、株主総会における必置の機関とされる

株主により構成されるいわゆる「自己機関」

権限・任務＝取締役の業務執行をあらゆる方面にわたり監督し、当該目的のために会社の業務について報告を受けなければならない」

実際には、当時の監査役会は、監査役員と取締役との兼任が禁止されていないなど、監督機能と業務執行機能とが不分離

それどころか、監査役会においては実は監督機能よりもむしろ業務執行機能の方が中心

##### (2) 1884年改正ドイツ普通商法

- ①監査役の員数3名以上
- ②専門的能力をもつ人材の登用を可能にするために監査役の適格要件から株主に限るとい  
う条件の撤廃
- ③監査役の業務を他人に委託することの禁止
- ④取締役との兼任禁止
- ⑤取締役に対しいつでも業務執行に関する報告を徴求できる権利を付与
- ⑥会社の利益のために必要と認めるときは株主総会を招集する権利を付与  
→株主委員会としての性格を喪失し、監督機関として明確に位置付け  
もつとも、「ヤヌスの頭（こうべ）」と呼ばれていた

### （3）1897年ドイツ商法

1884年改正法の規定をほぼそのまま承継

- ①監査役の報酬の規定の新設
- ②責任の規定の若干の変更

### （4）1937年旧株式法

株式会社に関する規律は商法典から切り出され単行法化

- ①監査役会に対する業務執行権限の委託の禁止
- ②監査役会が必ず取締役を選任しなければならないこととする  
→現行の監査役制度がほぼ完成したと評価されている

### （5）1965年現行株式法

監査役制度について抜本的な改正はなされず

### （6）小括

<留意点>

- ①監査役会の監督機能が適法性の監督に限られるという議論はなく妥当性監査に及ぶのは当然
- ②学説・連邦通常裁判所の判例法理および1998年のKontraG（「企業経営に対するコントロールとその透明性の確保を目的とする株式法を改正する法律」）により、監査役会に助言機能が認められる等、監査役会は業務執行に一定の仕方に関与する範囲が再び拡大していること
- ③業務執行と監督の制度的分離といっても、第一義的には取締役自身が監督を行う義務があることは当然の前提であり、業務執行機関は監督機能を担わないかということのようなことはなく、他方、監査役会にはどの時代にも「業務執行」に関連する業務があり、②に述べたようにその範囲は近時拡大していること

## 2. ドイツにおける監査役会の概要・権限

### (1) 業務執行機関との関係

会社の指揮(Leitung)は、取締役(Vorstand)が自己の責任において行う(株式法76条1項)この義務の中には、当該取締役の職掌下にある従業員の監督はもちろん、他の取締役員をも監督する義務が含まれる

株式会社における監督の拠点は取締役

さらに、企業経営に対するコントロールとその透明性の確保を目的とする1998年の改正株式法により、会社の存続を危うくする展開を早期に察知するための適切な措置を講ずる義務が取締役に課された

「取締役は、会社の存続を危うくする展開(Entwicklung)を早期に認識するために適切な措置(geeignete Maßnahmen)を講じなければならず、とりわけ監督システム(Überwachungssystem)を構築しなければならない。」(株式法92条2項)

### (2) 監査役会制度の概要

#### ①選任・解任

共同決定制度(→本日は省略)

株主総会で選任

解任は、株主総会の特別決議(4分の3以上の多数決)により、重大な理由がなくとも、行い得る(株式法103条1項)。

#### ②任期

5年(株式法102条1項)

#### ③兼任禁止

取締役の地位を兼ねたり、継続的に取締役代行者になることはできず、また、支配人・当該会社の全事業について授権された商事代理人になることも禁止(株式法105条1項)。

### (3) 監査役会の権限

#### ①取締役業務規程(Geschäftsordnung für den Vorstand)の策定(★)

定款で、取締役業務規程の策定権限を監査役会に付与していれば、当然のこと、また、定款にはそのような規定がなくても、監査役会はそれを策定する権能を有する(株式法77条2項)。

業務規程には、①の一定の行為については監査役会の同意を要する旨等が定められる(年次計画の確定、投資、借入等)。

#### ②取締役の選任・解任、任用契約の締結(株式法84条)(★)

監査役会は、取締役を最長5年の任期で選任し(株式法84条1項)、重大事由が存在する

場合に限って解任できる（同条3項）。

取締役を複数選任したときは、取締役議長を指名することができる（株式法84条2項）。

③取締役報告の受領と請求（株式法90条）

④取締役に対する会社の代表（株式法112条）（★）

⑤年次計算書・状況報告書および利益処分案の検査（株式法171条）、および株主総会に対するそれらの結果および監査役会の義務履行に関する説明報告

●決算検査人と監査役会との関係

⑥年次計算書の確定への関与（株式法172条）

⑦認可資本制度の下での株式発行の条件確定への関与（株式法202条3項・204条1項）（★）

株主に持株割合に応じた新株予約権が認められるのが原則であるが、定款の定めに基づき基本資本の2分の1まで授權資本の登記から5年以内において払い込みに対する新株の発行権限を取締役に付与することができ、その場合には監査役会の承認を要する（株式法202条3項）。

株主権の内容や株式発行の条件についても、監査役会の同意を要する（株式法204条1項）。

判例法の積極的介入

判例法理の展開

（第1期）BGHZ 71, 40; BGHZ 83, 319; BGHZ 125, 239

（第2期）Siemens/Nold 判決（BGHZ 136, 133）

（第3期）Mangusta/Commerzbank I 判決（BGH Urteil v.10.1.2005, ZIP 2005, 220）およびMangusta/Commerzbank II 判決（BGH Urteil v.10.10.2005, ZIP 2005, 2207）

⑧従属報告書の検査（株式法314条1項）（★）

従属会社の取締役は、事業年度終了から3ヶ月以内に、当該事業年度の間当該会社が支配企業および結合企業との間で行ったすべての法律行為、またはこれらの企業の仕向もしくは利益のために行われたすべての法律行為その他の措置を記載すべき従属報告書を作成しなければならない（株式法312条1項）。

監査役は、従属報告書の監査を行う。法律行為については、給付と反対給付を記載し、措置については、それがとられた理由と当該会社にとっての利害得失を記載すべきこととされる（株式法312条1項）。

不利益に対し補償がなされたときはその具体的内容、当該会社のために付与された法的請求権の内容について記載しなければならない（株式法312条1項）。

取締役は、法律行為については対価が適正であったか、措置については不利益を被らなかったかどうかについて説明し、不利益については補償がなされたかどうかを記載する。

⑨帳簿等閲覧請求権・財産状況調査権（株式法111条2項）

⑩株主総会招集権（株式法111条3項）

⑪所定の業務執行上の措置に対する同意権（株式法111条4項）（★）

同意権の留保を認めた趣旨は、会社の戦略の策定および財務状態に特に大きな意味を有する取引につき、取締役が監査役会に経済的にみて十分に合理的な説明を行うようにするため

⑫敵対的企業買収の局面における防衛措置発動に対する承認

監査役会は、友好的買収においては取締役が企業の利益を図っているかどうかを監査し、敵対的買収においては許されない防衛措置をとらず中立義務を遵守しているかどうかを監査する義務を負う。ガバナンス・コードによると、取締役と監査役会は、公開買付がなされた場合には、株主に対し当該申し込みについての重要な事実に基づいて決定ができるように、それに対する見解を取締役と共同して理由を付して公表しなければならない（DCGK 3.7）。

⑬コーポレート・ガバナンス・コードの遵守状況と説明

上場会社においては、取締役および監査役会は、DCGKの遵守状況について説明しなければならない（前述）。

（★）は、単なる適法性監査を超えた機能

### 3. 委員会制度とりわけ監査委員会について

1998年改正株式法により、各種委員会制度について一定の規律をおく。

各種委員会は監査役会の決議を準備するために設置されるものであり、最終決定権を有しないものとの位置づけ（株式法107条3項2文）。

監査役会は株主総会に対し設置した委員会およびその会議について報告しなければならない（株式法171条2項）。

ただし、上場会社については監査委員会の設置が前提（株式法171条2項で、上場会社については必ず監査委員会による委員会設置の状況や開催の回数等を株主総会に報告しなければならないとされ、委員会の設置が前提とされているうえ、DCGKにおいては設置が義務付けられている（DCGK 5.3.2））。

監査委員会の議長は、「会計原則の適用について特別の知識および経験を有すること」が要求される（DCGK）。

### 4. 監査役会の株主総会に対する報告

近時、監査役会制度に関連してドイツでもっとも議論されている論点の1つ。

●OLG Stuttgart, Urteil vom 15.3.2006, AG 2006, 379

「監査役会の書面による報告は、監査役会の監督機能の具体的なイメージを株主総会に提

示るものでなければならない」と判示

監査役会の株主総会に対する監査役会報告の機能

- ①自らを選任した機関である株主総会に対し年次の活動報告を行う
- ②株主総会に対しどのようにして自らの任務を果たしその際どのような考慮をしたのかについての情報を提供

5. ドイツにおける監査役会制度に対する批判と改正提案

### Ⅲ まとめに代えて：ドイツ法から日本法への示唆？

## [参考資料]

## I. ドイツ・コーポレート・ガバナンス・コード（英語訳抜粋）

## German Corporate Governance Code

## 3. Cooperation between Management Board and Supervisory Board

- 3.1 The Management Board and Supervisory Board cooperate closely to the benefit of the enterprise.
- 3.2 The Management Board coordinates the enterprise's strategic approach with the Supervisory Board and discusses the current state of strategy implementation with the Supervisory Board in regular intervals.
- 3.3 For transactions of fundamental importance, the Articles of Association or the Supervisory Board specify provisions requiring the approval of the Supervisory Board. They include decisions or measures which fundamentally change the asset, financial or earnings situations of the enterprise.
- 3.4 Providing sufficient information to the Supervisory Board is the joint responsibility of the Management Board and Supervisory Board.  
The Management Board informs the Supervisory Board regularly, without delay and comprehensively, of all issues important to the enterprise with regard to planning, business development, risk situation, risk management and compliance. The Management Board points out deviations of the actual business development from previously formulated plans and targets, indicating the reasons therefor.  
The Supervisory Board shall specify the Management Board's information and reporting duties in more detail. The Management Board's reports to the Supervisory Board are, as a rule, to be submitted in writing (including electronic form). Documents required for decisions, in particular, the Annual Financial Statements, the Consolidated Financial Statements and the Auditors' Report are to be sent to the members of the Supervisory Board, to the extent possible, in due time before the meeting.
- 3.5 Good corporate governance requires an open discussion between the Management Board and Supervisory Board as well as among the members

within the Management Board and the Supervisory Board. The comprehensive observance of confidentiality is of paramount importance for this.

All board members ensure that the staff members they employ observe the confidentiality obligation accordingly.

- 3.6 In Supervisory Boards with codetermination, representatives of the shareholders and of the employees should prepare the Supervisory Board meetings separately, possibly with members of the Management Board.

If necessary, the Supervisory Board should meet without the Management Board.

- 3.7 In the event of a takeover offer, the Management Board and Supervisory Board of the target company must submit a statement of their reasoned position so that the shareholders can make an informed decision on the offer.

After the announcement of a takeover offer, the Management Board may not take any actions outside the ordinary course of business that could prevent the success of the offer unless the Management Board has been authorized by the General Meeting or the Supervisory Board has given its approval. In making their decisions, the Management and Supervisory Boards are bound to the best interests of the shareholders and of the enterprise.

In appropriate cases the Management Board should convene an extraordinary General Meeting at which shareholders discuss the takeover offer and may decide on corporate actions.

- 3.8 The Management Board and Supervisory Board comply with the rules of proper corporate management. If they violate the due care and diligence of a prudent and conscientious Managing Director or Supervisory Board member, they are liable to the company for damages. In the case of business decisions an infringement of duty is not present if the member of the Management Board or Supervisory Board could reasonably believe, based on appropriate information, that he/she was acting in the best interest of the company (Business Judgment Rule).



If the company takes out a D&O (directors and officers' liability insurance) policy for the Management Board and Supervisory Board, a suitable deductible shall be agreed.

- 3.9 Extending loans from the enterprise to members of the Management and Supervisory Boards or their relatives requires the approval of the Supervisory Board.
- 3.10 The Management Board and Supervisory Board shall report each year on the enterprise's Corporate Governance in the Annual Report (Corporate Governance Report). This includes the explanation of possible deviations from the recommendations of this Code. Comments can also be provided on the Code's suggestions. The company shall keep previous declarations of conformity with the Code available for viewing on its website for five years.

## 5. Supervisory Board

### 5.1 Tasks and Responsibilities

- 5.1.1 The task of the Supervisory Board is to advise regularly and supervise the Management Board in the management of the enterprise. It must be involved in decisions of fundamental importance to the enterprise.
- 5.1.2 The Supervisory Board appoints and dismisses the members of the Management Board. Together with the Management Board it shall ensure that there is a long-term succession planning. The Supervisory Board can delegate preparations for the appointment of members of the Management Board to a committee, which also determines the conditions of the employment contracts including compensation.

For first time appointments the maximum possible appointment period of five years should not be the rule. A re-appointment prior to one year before the end of the appointment period with a simultaneous termination of the current appointment shall only take place under special circumstances. An age limit for members of the Management Board shall be specified.

- 5.1.3 The Supervisory Board shall issue Terms of Reference.

## 5.2. Tasks and Authorities of the Chairman of the Supervisory Board

The Chairman of the Supervisory Board coordinates work within the Supervisory Board and chairs its meetings and attends to the affairs of the Supervisory Board externally.

The Chairman of the Supervisory Board shall also chair the committees that handle contracts with members of the Management Board and prepare the Supervisory Board meetings. He should not be Chairman of the Audit Committee.

The Chairman of the Supervisory Board shall regularly maintain contact with the Management Board, in particular, with the Chairman or Spokesman of the Management Board and consult with him on strategy, business development and risk management of the enterprise. The Chairman of the Supervisory Board will be informed by the Chairman or Spokesman of the Management Board without delay of important events which are essential for the assessment of the situation and development as well as for the management of the enterprise. The Chairman of the Supervisory Board shall then inform the Supervisory Board and, if required, convene an extraordinary meeting of the Supervisory Board.

## 5.3 Formation of Committees

5.3.1 Depending on the specifics of the enterprise and the number of its members, the Supervisory Board shall form committees with sufficient expertise. They serve to increase the efficiency of the Supervisory Board's work and the handling of complex issues. The respective committee chairmen report regularly to the Supervisory Board on the work of the committees.

5.3.2 The Supervisory Board shall set up an Audit Committee which, in particular, handles issues of accounting, risk management and compliance, the necessary independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of auditing focal points and the fee agreement. The chairman of the Audit Committee shall have specialist knowledge and experience in the application of accounting principles and internal control processes. He should not be a former member of the Management Board of the company.

- 5.3.3 The Supervisory Board shall form a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the Supervisory Board for recommendation to the General Meeting.
- 5.3.4 The Supervisory Board can arrange for committees to prepare Supervisory Board meetings and to take decisions in place of the Supervisory Board.
- 5.4 Composition and Compensation
- 5.4.1 For nominations for the election of members of the Supervisory Board, care shall be taken that the Supervisory Board, at all times, is composed of members who, as a whole, have the required knowledge, abilities and expert experience to properly complete their tasks and are sufficiently independent. Furthermore, the international activities of the enterprise, potential conflicts of interest and an age limit to be specified for the members of the Supervisory Board shall be taken into account.
- 5.4.2 To permit the Supervisory Board's independent advice and supervision of the Management Board, the Supervisory Board shall include what it considers an adequate number of independent members. A Supervisory Board member is considered independent if he/she has no business or personal relations with the company or its Management Board which cause a conflict of interests. Not more than two former members of the Management Board shall be members of the Supervisory Board and Supervisory Board members shall not exercise directorships or similar positions or advisory tasks for important competitors of the enterprise.
- 5.4.3 Elections to the Supervisory Board shall be made on an individual basis. An application for the judicial appointment of a Supervisory Board member shall be limited in time up to the next annual general meeting. Proposed candidates for the Supervisory Board chair shall be announced to the shareholders.
- 5.4.4 It shall not be the rule for the former Management Board chairman or a Management Board member to become Supervisory Board chairman or the chairman of a Supervisory Board committee. If this is intended, special reasons shall be presented to the annual general meeting.
- 5.4.5 Every member of the Supervisory Board must take care that he/she has sufficient time to perform his/her mandate. Members of the Management Board of a listed company shall not accept more than a total of five Supervisory Board

mandates in non-group listed companies.

- 5.4.6 The election or re-election of members of the Supervisory Board at different dates and for different periods of office enables changing requirements to be taken into account.
- 5.4.7 Compensation of the members of the Supervisory Board is specified by resolution of the General Meeting or in the Articles of Association. It takes into account the responsibilities and scope of tasks of the members of the Supervisory Board as well as the economic situation and performance of the enterprise. Also to be considered here shall be the exercising of the Chair and Deputy Chair positions in the Supervisory Board as well as the chair and membership in committees.

Members of the Supervisory Board shall receive fixed as well as performance-related compensation. Performance-related compensation should also contain components based on the long-term performance of the enterprise.

The compensation of the members of the Supervisory Board shall be reported individually in the Corporate Governance Report, subdivided according to components. Also payments made by the enterprise to the members of the Supervisory Board or advantages extended for services provided individually, in particular, advisory or agency services shall be listed separately in the Corporate Governance Report.

- 5.4.8 If a member of the Supervisory Board took part in less than half of the meetings of the Supervisory Board in a financial year, this shall be noted in the Report of the Supervisory Board.

## 5.5 Conflicts of Interest

- 5.5.1 All members of the Supervisory Board are bound by the enterprise's best interests. No member of the Supervisory Board may pursue personal interests in his/her decisions or use business opportunities intended for the enterprise for himself/herself.
- 5.5.2 Each member of the Supervisory Board shall inform the Supervisory Board of any conflicts of interest which may result from a consultant or directorship function with clients, suppliers, lenders or other business partners.
- 5.5.3 In its report, the Supervisory Board shall inform the General Meeting of any

conflicts of interest which have occurred together with their treatment. Material conflicts of interest and those which are not merely temporary in respect of the person of a Supervisory Board member shall result in the termination of his mandate.

5.5.4 Advisory and other service agreements and contracts for work between a member of the Supervisory Board and the company require the Supervisory Board's approval.

#### 5.6 Examination of Efficiency

The Supervisory Board shall examine the efficiency of its activities on a regular basis.

## 7. Reporting and Audit of the Annual Financial Statements

### 7.1 Reporting

7.1.1 Shareholders and third parties are mainly informed by the Consolidated Financial Statements. During the financial year they are additionally informed by means of a half-year financial report and, in the first and second halves, by interim reports or quarterly financial reports. The Consolidated Financial Statements and the Condensed Consolidated Financial Statements in the half-year financial report and the quarterly financial report are prepared under observance of internationally recognised accounting principles.

7.1.2 The Consolidated Financial Statements must be prepared by the Management Board and examined by the auditor and Supervisory Board. In addition, the Financial Reporting Enforcement Panel and the Federal Financial Supervisory Authority are authorized to check that the Consolidated Financial Statements comply with the applicable accounting regulations (enforcement). The Consolidated Financial Statements shall be publicly accessible within 90 days of the end of the financial year; interim reports shall be publicly accessible within 45 days of the end of the reporting period.

- 7.1.3 The Corporate Governance Report shall contain information on stock option programmes and similar securities-based incentive systems of the company.
- 7.1.4 The company shall publish a list of third party companies in which it has a shareholding that is not of minor importance for the enterprise. The trading portfolios of banks and financial services companies, on which voting rights are not exercised, are disregarded in this context. The following shall be provided: name and headquarters of the company, the amount of the shareholding, the amount of equity and the operating result of the past financial year.
- 7.1.5 Notes on the relationships with shareholders considered to be "related parties" pursuant to the applicable accounting regulations shall be provided in the Consolidated Financial Statements.

## 7.2 Audit of Annual Financial Statements

- 7.2.1 Prior to submitting a proposal for election, the Supervisory Board or, respectively, the Audit Committee shall obtain a statement from the proposed auditor stating whether, and where applicable, which business, financial, personal and other relationships exist between the auditor and its executive bodies and head auditors on the one hand, and the enterprise and the members of its executive bodies on the other hand, that could call its independence into question. This statement shall include the extent to which other services were performed for the enterprise in the past year, especially in the field of consultancy, or which are contracted for the following year.

The Supervisory Board shall agree with the auditor that the Chairman of the Supervisory Board will be informed immediately of any grounds for disqualification or impartiality occurring during the audit, unless such grounds are eliminated immediately.

- 7.2.2 The Supervisory Board commissions the auditor to carry out the audit and concludes an agreement on the latter's fee.
- 7.2.3 The Supervisory Board shall arrange for the auditor to report without

delay on all facts and events of importance for the tasks of the Supervisory Board which arise during the performance of the audit.

The Supervisory Board shall arrange for the auditor to inform it and/or note in the Auditor's Report if, during the performance of the audit, the auditor comes across facts which show a misstatement by the Management Board and Supervisory Board on the Code.

- 7.2.4 The auditor takes part in the Supervisory Board's deliberations on the Annual Financial Statements and Consolidated Financial Statements and reports on the essential results of its audit.

## II. ドイツの監査役会報告書記載例（英語訳）

### Report of the Supervisory Board

In seven meetings during the 2006 financial year, the Supervisory Board dealt in detail with the business situation of DaimlerChrysler and the strategic development of the Group and its divisions. In addition to several personnel decisions, numerous special topics and issues requiring the consent of the Supervisory Board had to be examined and decided upon, which were also discussed and dealt with together with the Board of Management.

Cooperation between the Supervisory Board and the Board of Management. In its meetings, the Supervisory Board was regularly and fully informed by the Board of Management about the situation of the Group, particularly its business and financial developments, personnel situation, investment plans and questions of fundamental business policy and strategy. Outside the meetings, the Board of Management presented the Group's key performance figures to the Supervisory Board in the form of monthly reports, and submitted in good time those issues requiring the specific approval of the Supervisory Board.

The Supervisory Board approved these issues after reviewing various documents, making inquiries with the Board of Management and holding intensive discussions with the members of the Board of Management. The Supervisory Board was also kept fully informed of specific matters between its meetings, and in urgent cases it was requested to pass its resolutions in writing. In addition, the Chairman of the Board of Management informed the Chairman of the Supervisory Board in regular individual discussions about all important developments and upcoming decisions.

#### Issues discussed at the meetings in 2006

In the meeting held in January 2006, the Supervisory Board dealt with the Board of Management's plans for a new management model within DaimlerChrysler AG, as well as the related adjustments to various areas of responsibility of the members of the Board of Management. The effects and consequences of these changes were discussed intensively.

In the meeting held in February 2006, the Supervisory Board dealt with the audited 2005 financial statements of DaimlerChrysler AG, the 2005 consolidated financial statements, the 2005 management report of DaimlerChrysler AG, the 2005 Group management report and the proposal made by the Board of Management on the appropriation of earnings; personnel issues were also dealt with.

An extraordinary Supervisory Board meeting was convened in March 2006 to discuss the development and current business situation of the smart unit. The Supervisory Board was provided with documentation describing the project, including possible opportunities and risks and the background considerations. The Supervisory Board dealt in particular with the fundamental options



for further procedure against the backdrop of the relevant conditions and the required negotiations with employee representatives in Germany and the Netherlands. As a result, the Supervisory Board approved the funds required for the discontinuation of the smart forfour, as well as the unit's focus on the production of the smart fortwo and its full integration into the Mercedes-Benz organization.

In April 2006, the Supervisory Board decided on financial transactions connected with the Group's equity interest in EADS. In connection with the new management model, it also dealt with the current status of integration of the functional areas, the reduction of administrative costs by creating more streamlined management structures, and the release of funds for the implementation of the new management model. Another issue discussed at this meeting was the initiative for marketing diesel vehicles in all the federal states of the USA (Clean Diesel), as well as the importance of biofuels and BLUETEC technology. In line with the principle of dealing with strategic issues in each meeting, the Board of Management presented its strategy for the Truck Group to the Supervisory Board. In addition to the regular reporting of the Audit Committee, in this meeting the Supervisory Board also received a report on the main provisions of the US Foreign Corrupt Practices Act (FCPA) and on the progress of the investigation by the SEC and the Department of Justice (DoJ). It also discussed personnel and communication activities, the development of a compliance organization and the work of the sales practices hotline, and related training activities.

The meeting held in July focused on personnel issues, the interim report on the first half of the year, and an intensive discussion of the Mercedes Car Group's strategy. The Supervisory Board also received a status report on the progress of business in China and dealt with ongoing legal proceedings.

The main item on the agenda of the Supervisory Board meeting in October was the situation at the Chrysler Group. On the basis of specific market and product analyses, there was a detailed discussion of the course of business, inventory developments, and the opportunities and risks facing the Chrysler Group compared with its national and international competitors. The discussion focused on the current development of raw-material and fuel prices and the resulting impact on the structure of demand in the United States. In addition, the Supervisory Board dealt with personnel issues and approved the sale of the former headquarters buildings in Stuttgart-Möhringen. The Supervisory Board also received reports on procurement strategy as well as strategic and operational topics of human-resources work in 2006.

In December, the operative planning for the period of 2007 through 2009 and the financing limit for the 2007 financial year were dealt with in depth and decided upon, with the proviso of a planning adjustment relating to the Chrysler Group. The planning data was backed up by extensive documentation. In this context, the Board of Management also reported to the Supervisory Board in detail on the company's risk-monitoring system and the results thereof. Furthermore, the Supervisory Board received a detailed report on business development at the Financial Services division and

granted its approval to the acquisition of an interest in Foton, a Chinese manufacturer of commercial vehicles.

#### Corporate governance

In several meetings, the Supervisory Board dealt with various corporate governance issues. At one of the meetings in the second half of 2006, the Rules of Procedure for the Supervisory Board were amended so that members of the Board of Management will only be reappointed for a period of three years in the future. This period had previously only applied to the original appointment. In the December meeting, pursuant to Section 161 of the German Stock Corporation Act, the 2006 declaration of compliance with the German Corporate Governance Code as amended on June 12, 2006 was approved.

Potential conflicts of interest were avoided by the affected members of the Supervisory Board disclosing them to the entire Supervisory Board and not participating in the relevant discussions or voting on the topics concerned.

Mr. Nate Gooden attended fewer than half of the meetings held in the first half of 2006 due to ill health. It is a matter of great sorrow to the Supervisory Board that Mr. Gooden passed away in November 2006.

#### Report on the work of the committees

The Presidential Committee convened five times in 2006, and dealt with various Board of Management matters as well as compensation issues. At the beginning of 2006, the Committee was involved in the plans for the new management model and the related plans to alter the distribution of responsibilities among the members of the Board of Management. In addition, the Committee dealt with several personnel issues of the Board of Management, prepared the plenary meetings of the Supervisory Board, and dealt with questions of corporate governance.

The Audit Committee met eight times in 2006. Details of these meetings are given in a separate report of this committee (see here).

The Mediation Committee, a body required by the provisions of the German Codetermination Act, had no occasion to take any action in 2006.

The Supervisory Board was continually informed about the committees' work, and especially their decisions.

#### Personnel changes in the Supervisory Board

Following the expiry of Mr. Robert Lanigan's period of membership of the Supervisory Board on the day of the Annual Meeting in April 2006, the Annual Meeting voted in favor of the proposal to elect Dr. Manfred Bischoff as a member of the Supervisory Board representing the shareholders for a period of five years. In July 2006, Mr. Nate Gooden, Vice President of the US trade union United Automobile, Aerospace and Agricultural Implement Workers (UAW), resigned from his position. He was succeeded by Mr. Ron Gettelfinger, President of the UAW, by way of a court successor appointment.

Personnel changes in the Board of Management. During the year 2006, the Supervisory Board made decisions on various Board of Management matters.

In February 2006, the Supervisory Board resolved to reappoint Mr. Bodo Uebber for a period of five years as of December 16, 2006 with unchanged responsibility for the area of “Finance & Controlling / Financial Services”.

Effective March 1, 2006, the Board of Management area of Mr. Rüdiger Grube was renamed as “Corporate Development”. Also with effect as of March 1, 2006, the areas of responsibility of Mr. Andreas Renschler and Mr. Thomas Weber were redefined. Since that date, Mr. Renschler has been responsible for the “Truck Group” and Mr. Weber has been responsible for “Group Research & Mercedes Car Group Development”.

In July 2006, Mr. Thomas W. LaSorda was reappointed for another five years as of May 1, 2007 with unchanged responsibility for the “Chrysler Group”.

In October 2006, the Supervisory Board decided on two reappointments. Firstly, Mr. Rüdiger Grube was reappointed for the period of September 20, 2007 until 30. September 2010 with unchanged responsibility for the area of “Corporate Development”. Secondly, Mr. Andreas Renschler was reappointed for another three years as of October 1, 2007 with unchanged responsibility for the “Truck Group”.

#### Audit of the 2006 financial statements

The DaimlerChrysler AG financial statements and the management report for 2006 were audited by KPMG Deutsche Treuhand-Gesellschaft Aktiengesellschaft, Wirtschaftsprüfungsgesellschaft, Berlin and Frankfurt am Main, and were given an unqualified audit opinion. The same applies to the consolidated financial statements prepared according to US GAAP, which were supplemented with a group management report and additional notes. Pursuant to Sections 57 and 58 of the Introductory Law of the German Commercial Code (EGHGB), the US GAAP consolidated financial statements presented in this report grant exemption from the obligation to prepare consolidated financial statements in accordance with German law.

The financial statements and the appropriation of earnings proposed by the Board of Management, as well as the auditors' reports, were submitted to the Supervisory Board. They were thoroughly inspected by the Audit Committee and the Supervisory Board and discussed in the presence of the auditors, who reported on the results of their audit. The Supervisory Board has declared itself to be in agreement with the results of the audit and has established that there are no objections to be made. The Supervisory Board has approved the financial statements presented by the Board of Management. The financial statements are thereby adopted. Finally, the Supervisory Board has examined the appropriation of earnings proposed by the Board of Management and is in agreement with this proposal.

#### Comments on the management report

The Supervisory Board provides the following information in connection with the management report, with regard to the composition of subscribed capital, regulations on the appointment and dismissal of the members of the Board of Management, amendments to the Articles of Incorporation, authorization for the Board of Management to issue shares or purchase treasury shares, and important agreements entered into by the company that are subject to change-of-control conditions.

The company's capital stock as of December 31, 2006 amounted to €2,673,225,752.60. It is divided into 1,028,163,751 registered shares of no par value. All shares confer equal rights. Each share has one vote and an equal share of the distributable profit.

By resolution of the Annual Meeting on April 12, 2006, the company was authorized, until October 12, 2007, to acquire treasury shares for certain purposes, whereby these shares' proportion of the capital stock may not exceed €264 million.

By resolution of the Annual Meeting on April 9, 2003, the Board of Management was authorized, until April 8, 2008, with the consent of the Supervisory Board to increase the capital stock by up to €500 million by issuing new registered shares of no par value against cash contributions and by up to €500 million by issuing new registered shares of no par value against non-cash contributions. In addition, the Board of Management is authorized to increase the capital stock by up to €26 million for the purpose of issuing employee shares.

Furthermore, the Board of Management was authorized, until April 5, 2010, with the consent of the Supervisory Board to issue convertible bonds and/or warrant bonds in a total nominal amount of up to €15 billion with a maximum term of 20 years, and to grant to the owners of those bonds conversion rights or option rights to new shares in DaimlerChrysler with a proportionate amount of the capital stock of up to €300 million, in accordance with the defined conditions.

The Board of Management manages the company and represents it vis-a-vis third parties. The Board of Management must have at least two members, who, pursuant to Section 84 of the German Stock Corporation Act, are appointed by the Supervisory Board for a period of office of a maximum of five years. Reappointment or the extension of a period of office is permissible, in each case for a maximum of five years. However, during the second half of 2006, the Supervisory Board of DaimlerChrysler AG decided to limit such first appointments and reappointments of members of the Board of Management to three years as a rule in the future. These appointments and reappointments can only be made by a resolution of the Supervisory Board; reappointments may not be decided upon more than one year before the end of the current period of office.

The Supervisory Board appoints one of the members of the Board of Management as the Chairman of the Board of Management. The Supervisory Board can revoke the appointment of a member of the Board of Management and of the Chairman of the Board of Management if there is an important reason to do so. Such a reason could be, for example, gross neglect of duty, lack of ability to conduct the management in a proper manner, or a vote of no confidence by the Annual Meeting.

The general purpose for which the company is organized is defined in Article 2 of the Articles of Incorporation. Pursuant to Section 133 of the German Stock Corporation Act, the Articles of Incorporation can only be changed by a resolution of the Annual Meeting. In accordance with Article 19, Paragraph 1 of the Articles of Incorporation, resolutions of the Annual Meeting are passed with a simple majority of the votes cast unless otherwise stipulated by the provisions of applicable law, and with a simple majority of the capital stock represented at the Annual Meeting if this be required. Pursuant to Section 179, Subsection 2, Sentence 2 of the German Stock Corporation Act, any amendment to the purpose of the company requires a 75% majority of the capital stock represented at the Annual Meeting.

DaimlerChrysler AG has concluded various material agreements that include clauses regulating the possible occurrence of a change of control given below. One of the issues involved is a number of non-utilized syndicated credit lines in a total amount of US \$12 billion, which the lenders are entitled to terminate if DaimlerChrysler AG becomes a subsidiary of another company or is controlled by one person or several persons acting jointly. Furthermore, DaimlerChrysler AG is a party in a joint venture for the development of fuel cell systems. This joint venture can be terminated by either of the contracting parties if the other party is subject to a change of control. A change of control is defined here as the right to give instructions to the Board of Management and to determine the company's guiding principles, the possibility to elect the majority of the members of the Supervisory Board or possession of at least 40% of the voting rights. In addition, DaimlerChrysler AG is a party to an agreement concerning the intellectual property rights in connection with a joint venture for the development of a hybrid drive system, which in the case of a change of control of one of the partners involved, allows the other partners to terminate the agreement. A change of control as defined by this agreement refers to the beneficial ownership of the majority of the voting rights in the company, and with a stock-exchange listed company the beneficial ownership of at least 20% of the voting rights in the company if within 18 months after this limit is exceeded the majority of the members of the Supervisory Board representing the shareholders consists of persons who were proposed by the owner of the 20% of the voting rights; a change of control is also understood as a merger or amalgamation with another company, unless in the case of a stock-exchange listed company after the merger the majority of the votes are held by the previous owners and no-one has beneficial ownership of more than 20% of the voting rights; a change of ownership is also understood as the transfer of all or nearly all of the assets. Finally, DaimlerChrysler AG is a party to an agreement regulating the exercise of voting rights in EADS N.V. In the case of a change of control, this agreement stipulates that DaimlerChrysler AG is obliged, if so requested by the French party to the agreement, to make all efforts to dispose of its shares in EADS under appropriate conditions to a third party that is not a competitor of EADS or of the French contracting party of DaimlerChrysler AG. In this case, the French party has the right of preemption under the same conditions as were offered by the third party.

A change of control can also lead to the dissolution of the voting consortium. According to the EADS agreement, a change of control has taken place if a competitor of EADS N.V. or of the French contracting party either appoints so many members of the Supervisory Board of DaimlerChrysler AG that it can appoint the majority of the members of the Board of Management or holds an investment that enables it to control the day-to-day business of DaimlerChrysler AG.

#### Appreciation

The Supervisory Board expresses its gratitude to the Management and the departing members of the Supervisory Board.

The Supervisory Board also thanks the employees of the DaimlerChrysler Group for their outstanding personal commitment and their achievements during the year 2006.

Stuttgart, February 2007

The Supervisory Board



Hilmar Kopper

Chairman