

Corporate Governance Code for Asset Management Companies

Frankfurt, Germany, April 2005

**Published by the German Working Group on
Corporate Governance for Asset Managers**

Working Group Members:

Wolfgang Gerke, Chairman (University of Erlangen-Nuernberg), Theodor Baums (University of Frankfurt), Werner Brandt (SAP AG), Karl-Gerhard Eick (Deutsche Telekom AG), Reinhild Keitel (SdK – Schutzgemeinschaft der Kapitalanleger), Johannes Koendgen (University of Bonn), Peter Koenig (DVFA), Christian Strenger (German Corporate Governance Commission), Ruediger von Rosen (DAI)

I. Preamble

Companies which provide asset management services for third parties ("Company" or "Companies") pursue good corporate governance as an integral part of their activities. This applies to the internal corporate governance, i.e. the responsible control and administration inside the Companies as well as to the external corporate governance, i.e. the exercise of the voting and any additional shareholder rights by the Companies as institutional investors in the interest of their clients.

The Companies shall be organized in a way that the members of the management (the "Managing Directors"), the employees, the Supervisory Board and other bodies avoid conflicts of interest in the management of the assets entrusted to them. In case of unavoidable conflicts of interest, clearly defined procedures must ensure that investors' interest is not affected. Through considered use of shareholder and creditor rights associated with the portfolio investments the Companies shall ensure that the portfolio companies they invest in comply with acknowledged principles of good corporate governance.

The Companies act independently in the capital markets and ensure that all investment decisions and all other decisions related to the exercise of their investor rights will be taken solely in the interest of their clients, independent of any interest of the Companies' owners, any affiliated corporations or third parties.

The **recommendations** of this code (the "Code") are marked in the text by the word "**shall**". Companies can deviate from them, but are then obliged to annually disclose and explain any such deviation. The other parts of the Code reflect legal requirements.

The Code is primarily addressed to asset management companies according to the German Investment Companies Act ("Kapitalanlagegesellschaften" and "Investmentaktiengesellschaften"). It is recommended that other companies which provide collective asset management also observe the Code. In case of any outsourcing of asset management services, compliance with the Code has to be assured.

The Code will be periodically reviewed against the background of national and international developments and adjusted, if necessary.

II. Internal Corporate Governance

1 Management Board

1.1 Tasks and Responsibilities

- 1.1.1 In the management of the entrusted assets, the Company's Managing Directors are solely responsible to the interest of their investors. They act independently from the owners or the depositary bank.
- 1.1.2 The Managing Directors have to ensure compliance with all legal requirements and other regulations, including sufficient segregation of duties and functions.
- 1.1.3 The Managing Directors have to ensure appropriate risk management and risk controlling.
- 1.1.4 Appropriate compliance measures ensure the adherence to the rules on the avoidance of conflicts of interest.

1.2 Conflicts of interest

- 1.2.1 During their employment, the Managing Directors shall be subject to a comprehensive non-competition clause.
- 1.2.2 The Managing Directors shall disclose conflicts of interest to the Supervisory Board without delay, after having informed the other members of the Management Board.
- 1.2.3 All Managing Directors shall have the pre-approval of an independent compliance department for own transactions in financial instruments which could cause conflicts of interest due to the general business activities of the Company. They shall disclose these transactions after their completion to the compliance department without delay.
- 1.2.4 The Managing Directors shall only engage in other activities, especially Supervisory Board mandates, with the approval of the Supervisory Board.
- 1.2.5 The Managing Directors shall not, in connection with their work, demand or accept from third parties compensation or other unjustified advantages for themselves or grant third parties unjustified advantages. The Company shall ensure compliance with this requirement by internal guidelines and define criteria for exemptions (e.g. in bagatelle cases).

- 1.2.6 In setting the remuneration for the Managing Directors and the employees it shall be ensured that no incentives are given for any investment behavior that is not aligned with the investors' interests.

2 Supervisory Board (resp. equivalent committee)

2.1 Tasks and Composition

- 2.1.1 The Supervisory Board ensures that the Managing Directors comply with the legal requirements and other regulations relevant to the interests of the investors including appropriate risk management and risk controlling. The Supervisory Board shall provide for compliance with this Code by the Managing Directors.
- 2.1.2 All members of the Supervisory Board shall ensure the protection of the investors' interests by their personality and relevant expert knowledge.
- 2.1.3 The composition of the Supervisory Board shall support the protection of the investors' interests. The Supervisory Board shall therefore consist of an appropriate number (at least one) of members that are independent of the Company's owners, any affiliated entities or business partners.
- 2.1.4 The Supervisory Board shall set up an Audit Committee, composed in accordance with 2.1.3. This Audit Committee shall deal with issues of accounting and risk management, the independence required of the auditor, the issuing of the audit mandate to the auditor, the determination of focal audit points and the fee agreement. The Chairman of the Audit Committee shall be independent in the meaning of 2.1.3 and in particular should not be a former Managing Director of the Company.

2.2 Conflicts of interest

- 2.2.1 Supervisory Board members must protect the investors' interests when performing their duties. They may not pursue personal interests or use business opportunities of the investors or the Companies for their personal benefit.
- 2.2.2 All members of the Supervisory Board shall disclose conflicts of interest to their chairman.
- 2.2.3 Members of the Supervisory Board may not, in connection with their work, demand or accept from third parties compensation or other unjustified advantages for themselves or for any other person, or grant third parties unjustified advantages. The Company shall ensure compliance to this requirement by internal guidelines and define criteria for exemptions (e.g. in bagatelle cases).

- 2.2.4 Advisory and other service agreements and contracts between a member of the Supervisory Board and the Company shall require the Supervisory Board's approval.

2.3 Examination of efficiency

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

3 Employees

- 3.1 All employees shall obtain pre-approval from an independent compliance department for own transactions in financial instruments (including funds managed by the Company) which may lead to conflicts of interest with the general business activities of the Company. They shall disclose these transactions immediately after their execution to the compliance department.
- 3.2 Employees shall only assume other activities outside the Company with the approval of the Managing Directors.
- 3.3 Employees may not, in connection with their employment, demand or accept from third parties compensation or other unjustified advantages for themselves or for any other person, or grant third parties unjustified advantages. The Company shall ensure compliance with this rule by internal guidelines and define criteria for exemptions (e.g. in bagatelle cases).

III. External Corporate Governance

1 Exercising shareholder and creditor rights

- 1.1 The Company must exercise any shareholder or creditor rights of the entrusted assets independently and exclusively on behalf of the investors. The Company shall define own guidelines for the protection of investors' interests.
- 1.2 The Company must make arrangements to ensure the considered exercise of shareholder and creditor rights for domestic as well as international portfolio companies, especially for the voting rights. Standardized procedures must be developed, set out in writing and implemented.
- 1.3 The exercise of any of these shareholder or creditor rights shall only be omitted if the cost relevant to all investments managed by the Company materially exceeds the benefit for the investors.

2 General meeting attendance and exercise of voting rights

- 2.1 The Company shall not vote on proposed resolutions without checking these proposals in the investors' interests.
- 2.2 As a general rule, the Company itself shall exercise the voting rights attached to domestic portfolio companies. In individual cases voting rights may be exercised by a proxy who then must be provided with voting instructions. An independent proxy agent may be empowered to vote on a permanent basis and without special instructions but this does not relieve the Company of its duty to protect the investors' interests nor of its obligation to exercise diligence.
- 2.3 It is at the Company's considered discretion to actively participate in shareholder meetings of the portfolio companies in addition to the exercise of the votes.
- 2.4 If a Company speaks at a shareholder meeting, it shall point out the number of shares represented.

3 Additional forms of pursuing of investors' interests

- 3.1 In case of one-on-one-meetings with portfolio companies, the legal insider requirements must be respected. Any information obtained shall be used only on behalf of the investors.
- 3.2 In the case of takeovers or takeover-bids for portfolio companies, the Company shall take every legally permissible action that, after exercising due care fulfils the interests of the investors.
- 3.3 The guiding principle for a Company's conduct in takeover situations is the investors' interest in a sustainable value enhancement of the portfolio companies and the managed investments. Due to the possible substantial consequences of such a decision, particular due diligence requirements have to be met.

IV. Corporate Governance and Disclosure

1 Disclosure of internal corporate governance

In the annual report and on the Company's website, both the Managing Directors and the Supervisory Board shall annually report on the internal corporate governance as well as on possible conflicts of interest resulting from the Company's ownership structure. This includes a reasoned explanation for any deviation from the recommendations of this Code.

2 Disclosure of external corporate governance

The Company shall annually inform the investors about the external corporate governance in the annual report and on its website, especially on the following:

- its own guidelines on corporate governance policy (including the conduct for the exercise of voting rights) and communication with portfolio companies,
- reasoned explanations for any deviation from those guidelines,
- rules for share voting and, in special cases like counter motions, a reasoned description and the voting details,
- any specific corporate governance matters that occurred in portfolio companies.

3 Disclosure of performance measurement

3.1 The Company shall comply with acknowledged industry standards on publishing performance data. This relates particularly to:

- the calculation method,
- the appropriate period (1, 3 and 5 years as well as from the fund's founding date) which shall extend as far as practicable to the reporting date, and,
- if relevant, the choice of suitable benchmark indices.

3.2 The Company shall provide information about the chosen standards and about each change in the underlying benchmark indices concerning the presentation of performance data.

V. Audit

The Supervisory Board shall arrange for the auditor to note in the auditor's report if, during the performance of the audit, the auditor comes across facts which show a deviation of the statement given by the Managing Directors and Supervisory Board relating to this Code.

VI. Acceptance of the Code

The Company shall disclose its acceptance of the Code at least in its annual report and on its website as well as annually report on any deviation thereof including the reasons for the divergence.