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OVERVIEW

No. RADAR

4501

Responsible level

Germany

Competent authority

Federal Ministry DE

Standard designation

Law to Strengthen Financial Market Integrity

Title of Standard

Act on strengthening the integrity of the financial market

Abbreviation (standard)

Financial Market Integrity Strengthening Act

Short Title

Financial Market Integrity Strengthening Act

Abbreviation (standard)

FISG

Abbreviation ******



FISG

Implementation status of the standard

published

Industry relevance

Banking, insurance

category

01. Banking and banking supervisory law

Document type

Law

Management Summary

With the Financial Market Integrity Strengthening Act (FISG, or "Wirecard Act"), the German government is responding to the Wirecard scandal, which revealed weaknesses in financial statement control and audit regulation. The overarching goal of the law is to ensure the functioning of the German financial market, which is essential for the economy and prosperity in Germany.

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According to this, accounting manipulation by capital market companies is to be prevented in the future by fundamentally reforming the accounting control process and fully regulating it in the Securities Trading Code (WpHG), as well as by stricter regulation of financial statement audits. In addition, BaFin's supervisory structures are to be adjusted and its direct powers of intervention, including in the case of outsourcing, are to be expanded in order to strengthen its rights of intervention (including extensive audit and information rights) vis-à-vis capital market companies. According to this, all ad hoc and suspicious transaction audits, which are also to be financed by the companies, are to be initiated solely by BaFin itself. In the area of financial statement audits, changes to the German Commercial Code (HGB) are to promote the independence of auditors. This will include, among other things, a rotation requirement every ten years, a separation of auditing and consulting to avoid conflicts of interest, and a tightening of civil liability, which is intended to improve the quality of financial statement audits. In insurance companies, the authority for selecting the auditor will be shifted from the supervisory board to the shareholders. In order to be able to consistently prosecute and sanction fraudulent activities in the future, the accounting criminal and administrative law will be tightened to define so-called false accounting oaths (false statements) as a separate criminal offense. Furthermore, all listed companies will be required to have an appropriate and effective internal control system and corresponding risk management system in the future.

Further changes include changes to investor and consumer protection for investments, strengthening the Financial Intelligence Unit (FIU) in preventing and combating money laundering, publishing sanctions, and making it easier to exclude issuers from the quality segments of stock exchanges in the event of violations. In addition to the laws already mentioned, this law also makes adjustments to the German Banking Act (KWG), the Payment Services Supervision Act (ZAG), and the Insurance Supervision Act (VAG).

Management Summary ******



With the present Financial Market Integrity Reinforcement Act (FISG or "Wirecard Act"), the German government is reacting to the Wirecard scandal, which revealed weaknesses in balance sheet control and the regulation of auditing. The overriding objective of this act is to ensure the functioning of the German financial market, which is essential for the economy and prosperity in Germany.

According to the act, balance sheet manipulation by capital market companies is to be prevented in future by fundamentally reforming the procedure for balance sheet control and fully regulating it in the Securities Trading Act (WpHG) and by stricter regulation of the audit of financial statements. In addition, the supervisory structures of the BaFin are to be adapted and its direct powers of intervention, eg in the case of outsourcing, extended in order to strengthen the rights of intervention (including extensive auditing and information rights) vis-à-vis capital market companies, according to which all investigations of ad-hoc and suspicions, which are also to be financed by the companies, will be carried out solely by the BaFin itself. In the field of auditing, amendments to the Commercial Code (HGB) are intended to promote the independence of auditors, introducing, among other things, a rotation requirement every ten years, a separation of auditing and consulting services to avoid conflicts of interest, and a tightening of civil liability, which is intended to improve the quality of audits. For insurance companies, the competence for the selection of the auditor will be shifted from the supervisory board to the shareholders. In order to be able to consistently pursue and penalise fraudulent acts in the future, the criminal and administrative offense provisions will be tightened up to the effect that the false assurances regarding financial statements will be defined as a separate criminal offense. In addition, all listed companies should in future have an appropriate and effective internal control system and a corresponding risk management system.

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Other changes include changes to investor and consumer protection in relation to investments, strengthening the Financial Intelligence Unit (FIU) in the prevention and combating of money laundering and the publication of sanctions, and facilitating the exclusion of issuers from the quality segments of stock exchanges in the event of infringements. In addition to the acts already mentioned, the present act makes adjustments to the Banking Act (*KWG*), the Payment Services Supervision Act (*ZAG*) and the Insurance Supervision Act (*VAG*).

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B. Essential content

I. Amendment to the Securities Trading Act (WpHG) (Article 1)

$\underline{\textbf{1. Organizational obligations; authorization to issue regulations (Section 80 of the German Securities Trading Act)}$

The obligation to comply with the organizational requirements for outsourcing pursuant to Section 25b of the German Banking Act (KWG) is expanded to include organizational obligations to comply with the notification obligation introduced by this law under the new Section 24 Paragraph 1 No. 19 KWG (see source for details).

2. Monitoring of reporting obligations and rules of conduct (Section 88 of the German Securities Trading Act)

The newly inserted paragraph 2a extends BaFin's powers to issue orders to companies with which an outsourcing agreement within the meaning of Section 25b of the German Banking Act (KWG) exists or previously existed. This extension also applies to persons employed by the outsourcing company to carry out its activities. As a result, orders issued on the basis of the new paragraph 2a are deemed to be immediately enforceable (see source for details).

3. Audit of company accounts and reports; ordering an audit of the financial statements and

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Investigative powers of the Federal Institute (Sections 106 and 107 of the German Securities Trading Act)

In the future, the balance sheet audit procedure for investment services providers will be regulated exclusively by the German Securities Trading Act (WpHG). Sections 106 and 107 of the WpHG will be amended accordingly. To enable effective balance sheet auditing, Section 107 (1) Sentence 2 clarifies that BaFin may audit annual financial statements or financial statements preceding the financial year if it has conducted or will conduct special audits in accordance with the industry-specific provisions of Section 44 (1) Sentence 2 of the German Banking Act (KWG), Section 14 Sentence 2 of the German Capital Investment Code (KAGB), or Section 306 (1) No. 1 of the German Insurance Supervision Act (VAG). Balance sheet auditing will thus be converted to a single-stage process with BaFin as the sole auditing body. BaFin's rights to information and disclosure under Section 107 (5) of the WpHG will be extended to "everyone" (i.e., also business partners, lenders, trustees, etc.). Section 107 (7) of the German Securities Trading Act (WpHG) creates a new, comprehensive search and seizure power to enforce BaFin's investigative powers, which also applies to "anyone." According to Section 107 (8) of the German Securities Trading Act (WpHG), BaFin is authorized to publish any findings obtained in the proceedings relating to financial statements on its website, including the company's disclosure. The prerequisite is that there is a public interest in the disclosure. The disclosure of the reason for the order may not contain any personal data (see source for details).

4. Results of the audit by the Federal Institute (Section 109 of the German Securities Trading Act)

- a) The amendment to Section 109 (2) Sentence 1 of the German Securities Trading Act (WpHG) will accelerate the publication of identified accounting errors. In the future, BaFin, rather than the company in question, will publish the error on its website, in the Federal Gazette, and in a supra-regional stock exchange publication. This is subject to a public interest. Furthermore, BaFin is also authorized to determine how the accounting would have appeared without the identified error.
- b) The notification of the reasons for the error identified shall not contain any personal data.
- c) BaFin may also order the company to correct the error in its next financial statements, taking into account BaFin's legal opinion. This requires a restatement of the financial statements or report for the financial year affected by the correction.
- d) If an audit by BaFin has been previously announced, it may also publish the fact that no objections were raised (see source for details).
- 5. Exchange of information, exemption from confidentiality obligations (Section 109a WpHG) The newly inserted Section 109a of the German Securities Trading Act (WpHG) releases BaFin, the Auditor Oversight Body, the Federal Ministry of Finance, the Federal Ministry of Justice and Consumer Protection and the Federal Ministry for Economic Affairs and Energy from any obligation of confidentiality or secrecy regarding the exchange of information between the aforementioned bodies (see source for details).

6. Criminal provisions (§§ 119a WpHG)

The newly inserted Section 119a closes a loophole in criminal liability for false statements in annual or semi-annual financial reports by members of the authorized representative body of issuers who are not required by commercial law to disclose the accounting documents included in the annual financial report pursuant to Section 114 (2) of the German Securities Trading Act (WpHG). In terms of content, the provision corresponds to Section 331a of the German Commercial Code (HGB). The penalty range is a fine or imprisonment of up to five years (see source for details).

7. Fines; authorization to issue regulations (Section 120 of the German Securities Trading Act)

In the future, failure to take BaFin's legal opinion into account in the next financial statements will also be considered an administrative offense under Section 109 (2) of the German Securities Trading Act (WpHG). Violations of orders under Section 109 (2) of the WpHG will in future be punishable by a fine of up to €200,000 (see source for details).

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8. Transitional provision to the Financial Market Integrity Strengthening Act (Section 141 WpHG)

- a) Section 141(1) contains transitional provisions for audits pending before the Enforcement Body and not completed by 31 December 2021. These audits will be continued by BaFin until their completion.
- b) Pursuant to paragraph 2, all previous audit documents submitted to the auditing body during an audit must be submitted to BaFin. The corresponding audit results may be reused.

c) For audits completed up to and including 31 December 2021, the German Commercial Code (HGB) grants a tax exemption up to and including 31 December 2021. As of December 31, 2021, an institution recognized by BaFin as an inspection body pursuant to paragraph 3 may inspect the documents upon request. The company concerned must consent to the inspection or there must be a predominant public interest in the inspection (see source for details).

II. Amendment to the Stock Exchange Act (BörsG) (Art. 2)

1. Parts of the regulated market with special obligations for issuers (Section 42 of the Stock Exchange Act)

The addition in paragraph 2 sentence 1 clarifies that exclusion is possible not only in the event of non-fulfilment of the additional obligations of the sub-area at the time of admission, but also in the event of subsequent non-compliance with information obligations (see source for details).

2. Announcement of measures (Section 50a of the Stock Exchange Act)

According to the newly added paragraph 3, the management of the stock exchange can publish measures and sanctions pursuant to Section 22 paragraph 2 sentences 1 and 2 of the Stock Exchange Act (BörsG) and Section 42 paragraph 2 sentence 1 BörsG on the stock exchange's website immediately after notification by the natural or legal person (see source for details).

III. Amendment to the Investment Act (VermAnlG) (Article

3) Scope and definitions (Section 1 VermAnlG)

A new provision, number 8, introduces a new definition of capital investment within the meaning of Section 1 of the German Investment Act (VermAnlG). According to this provision, investments in precious metals are also considered investments within the meaning of the VermAnlG if, after the end of the term, these are paid out or promised as financial compensation, together with interest payments in cash or other precious metals. This applies to precious metals with a financial or capital market connection, in particular gold, silver, platinum, palladium, copper, iridium, and rhodium, which are usually paid out in bars or coins.

In future, such transactions will be subject to the obligation to publish a prospectus and an investment information sheet (VIB) to be prepared on the basis of this prospectus (see source for details).

IV. Amendment to the Financial Services Supervision Act (FinDAG) (Article 4)

1. Tasks and cooperation (Section 4 FinDAG)

The new Section 4 Paragraph 1a expands BaFin's powers. For the purpose of consumer protection, BaFin may in future conduct covert test purchases of financial products or use financial services.

2. Separate reimbursement; authorization to issue regulations (Section 15 FinDAG)

In Section 15 (1) Sentence 1, the new No. 12 introduces a cost reimbursement obligation within the scope of balance sheet audits, also for the expanded intervention powers of BaFin regulated in Section 107 (1) and (7) of the German Securities Trading Act (WpHG). This affects the companies listed in Section 106 of the German Securities Trading Act (WpHG) (see source for details).

3. Allocation, cost determination by task areas and groups, allocation amount, allocation obligation and distribution key, balance sheet control area, creation of the allocation claim, determination of the allocation amount and due date, determination and due date of allocation advance payments, difference between the allocation amount and advance payment, late payment surcharges, collection (Sections 16, 16b, 16d and 16l to 16s FinDAG) The amendments to Sections 16, 16b, 16d, and 16l to 16s of the FinDAG are consequential changes to the conversion of the financial statement control procedure to a single-stage process and the exclusive assignment of responsibilities to BaFin. The costs for financial statement control must be allocated accordingly (see details).

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4. Transitional provisions on costs, budget and apportionment for the area of balance sheet control (Section 24 FinDAG)

The previous provisions of Sections 17a and 17d FinDAG and the provisions of the Balance Sheet Control Costs Allocation Ordinance shall apply for the last time to the allocation for the allocation year 2021. Section 17c shall apply for the last time to audit costs incurred in 2021. The new provisions of Sections 16 to 16m and 16o to 16s shall apply for the first time to the allocation year 2022 (see source for details).

V. Amendment to the German Banking Act (KWG) (Article 5)

1. Definitions (Section 1 KWG)

The new paragraph 10 adopts the previous legal definition of outsourcing companies in Section 44 Paragraph 1 Sentence 2 of the German Banking Act (KWG) and expands it. In the future, the distinction between "significant" outsourcing will no longer apply. Outsourcing companies are therefore those to which activities and processes typical for the conduct of banking transactions or financial services are outsourced. Furthermore, the new definition of "outsourcing company" also covers the further outsourcing of significant activities and processes to subcontractors (see source for details).

2. Advertisements (Section 24 KWG)

According to the newly inserted No. 19 in paragraph 1, the following facts relating to outsourcing must be reported to BaFin immediately:

- the intention to outsource significantly;
- the completion of a significant outsourcing;
- significant changes and serious incidents relating to existing outsourcing arrangements that may have a material impact on the institution's business activities.

3. Outsourcing of activities and processes; authorization to issue regulations (Section 25b KWG)

- a) The obligations regarding outsourcing are expanded in various respects in Section 25b. The new sentence 2 in paragraph 1 introduces an obligation for institutions to maintain an outsourcing register containing all material and non-material outsourcing transactions as part of their risk management. The register must be kept up to date.
- b) Paragraph 3 introduces an obligation for the outsourcing company, for significant outsourcing to companies in a third country, to appoint a domestic agent authorized to receive service of documents, who will serve as the contact for notifications and service of documents by BaFin. Compliance with this obligation must be ensured contractually.
- c) The new paragraph 4a introduces a direct authority for BaFin to issue orders to outsourcing companies to which essential activities and processes have been outsourced in order to counteract violations of supervisory provisions or malpractice.

4. Internal security measures (Section 25h KWG)

In paragraph 5, the BaFin's authority to issue orders with regard to outsourcing of money laundering-relevant processes pursuant to Section 25h paragraph 4 of the German Banking Act (KWG) and Section 6 paragraph 7 of the Money Laundering Act (GwG) is also limited to Outsourcing company expanded (see source for details).

5. Appointment of the auditor in special cases (Section 28 KWG)

In Section 28 (1) Sentence 2, the period within which BaFin may request another auditor is extended from one to two months from the notification of the appointment. In Section 28 (1) Sentence 3, for companies that are not within the meaning of Section

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316a sentence 2 no. 1 or 2 HGB are of public interest, it was clarified that the appointment of a different auditor to achieve the supervisory audit purpose is generally required if the auditor has already been reported to BaFin for at least 11 consecutive financial years. Section 28 paragraph 1 sentence 4 is editorially adjusted due to the repeal of Section 319a HGB. The changes to the appointment of auditors must also be observed by external capital management companies within the meaning of Section 17 paragraph 2 sentence 1 no. 1 KAGB, since Section 38 paragraph 2 KAGB refers to Section 28 KWG. The changes in paragraph 1 sentence 6, paragraph 2 and paragraph 3 are editorial consequential changes due to the provision of the new paragraph 1 sentence 3 (see source for details).

6. Information and audits of institutions, providers of ancillary services, financial holding companies, mixed financial holding companies and other companies (Section 44 of the German Banking Act)

- a) Paragraph 1, sentence 1, extends the obligation to provide information to BaFin to outsourcing companies, their board members, and employees. In this case, no distinction is made between material and non-material outsourcing.
- b) The BaFin's authority to order the conduct of special audits is extended in accordance with paragraph 2 sentence 2 to outsourcing companies that outsource essential activities and processes pursuant to section 25b paragraph 1 sentence 1 of the German Banking Act (KWG), as well as outsourcing of areas relating to money laundering pursuant to section 25h paragraph 4 of the KWG or section 6 sentence 7 of the GwG.

7. Measures in the event of organizational deficiencies (Section 45b KWG)

According to the new paragraph 3, BaFin's authority to issue orders to take measures to reduce risks is extended to outsourcing companies to which significant activities and processes have been outsourced (see source for details).

8. Immediate enforceability (Section 49 KWG)

Following the addition to Section 49, orders issued by BaFin against outsourcing companies pursuant to Section 25b (4a) KWG are immediately enforceable (see source for details).

9. Administrative offenses (Section 56 KWG)

Violations of the notification obligation pursuant to Section 24 No. 19 of the German Banking Act (KWG) and of the instructions to the outsourcing company pursuant to Section 45b Paragraph 3 of the KWG are newly included in the catalogue of fines (see source for details).

VI. Amendment to the Payment Services Supervision Act (ZAG) (Article 6)

1. Definitions (Section 1 ZAG)

The new paragraph 10a introduces a new legal definition of the term "outsourcing company." The legal definition is identical to the new definition contained in Section 1 paragraph 10 of the German Banking Act (KWG), but has been adapted to the services typically provided by payment and e-money institutions (see source for details).

2. Exceptions; authorization to issue regulations (Section 2 ZAG)

The provisions for the appointment of another auditor after 11 years pursuant to Section 23 (1) Sentence 3 of the Payment Services Act (ZAG) do not apply to payment institutions that exclusively offer account information services.

3. Immediate enforceability (Section 9 ZAG)

The amendment to Section 9 of the Payment Services Supervision Act (ZAG) declares that measures initiated by BaFin are immediately enforceable in the event of an impairment of the audit rights and control options in the case of outsourcing (Section 26 (3) ZAG) as well as measures that are directly directed against the outsourcing company (see source for details).

4. Duty to notify when appointing the auditor, appointment in special cases (Section 23 ZAG)

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Analogous to Section 28 (1) sentence 2 of the German Banking Act (KWG), paragraph 1 sentence 2 extends the period within which BaFin may request a different auditor from one to two months from the announcement of the appointment. Likewise, paragraph 1 sentence 3 extends the general presumption regarding the appointment of a different auditor for non-public interest entities.

Introduced in accordance with Section 316a, sentence 2, no. 1 of the German Commercial Code (HGB) if the same auditor was appointed for 11 consecutive financial years.

5. Outsourcing (Section 26 ZAG)

- a) Analogous to the new regulation in Section 25b of the German Banking Act (KWG), paragraph 1 introduces an obligation for the outsourcing company to appoint a domestic agent for service of documents, who will serve as the contact for notifications and deliveries from BaFin. Compliance with this obligation must be ensured contractually. Furthermore, payment institutions must maintain an outsourcing register as part of their risk management, which must be constantly updated.
- b) The newly inserted paragraph 3a also contains an authority for BaFin to issue orders, according to which orders can be issued directly to the outsourcing company.

6. Organizational obligations (Section 27 ZAG)

a) According to the newly added sentence in paragraph 3, BaFin's authority to issue orders also extends to the outsourcing company if violations of the organisational obligations are involved (see source for details).

7. Advertisements; authorization to issue regulations (Section 28 ZAG)

The existing obligation to notify the intention and implementation of a significant outsourcing pursuant to paragraph 1 no. 10 is clarified analogously to Section 24 paragraph 1 no. 19 KWG (see source for details).

VII. Amendment to the Capital Investment Code (KAGB) (Article 8)

1. Information and audits (Section 14 KAGB)

BaFin's rights to information and audits under Section 14 of the Capital Investment Code (KAGB) are being extended to outsourcing companies in line with the new provisions of Section 44 of the German Banking Act (KWG) (see source for details).

2. Outsourcing; authorization to issue regulations (Section 36 KAGB)

a) In the case of outsourcing activities and processes to a company in a third country, a domestic authorized service agent must be appointed by the outsourcing company in accordance with paragraph 1, sentence 1, no. 7, clause 2. The appointment must be contractually secured by the capital management company (KVG).

b) According to paragraph 2, the capital management company must notify BaFin of any significant changes to an outsourcing arrangement. According to paragraph 5a, BaFin is also authorized to impose measures directly against the outsourcing company (see source for details).

VIII. Amendment to the German Commercial Code (HGB) (Article 11)

1. Obligation to prepare accounts; exemption, exemption of general partnerships and limited partnerships within the meaning of Section 264a from the application of the provisions of this section (Section 264 of the German Commercial Code)

a) The amendment to Section 264 (3) Sentence 1 of the German Commercial Code (HGB) clarifies that capital market-oriented corporations within the meaning of Section 264d of the HGB cannot make use of the exemption applicable to subsidiaries under Section 264 (3) Sentence 1 of the HGB from the provisions of the Second Section of Book III of the German Commercial Code (HGB) regarding the content, audit and disclosure of the annual financial statements and management report. Since most of the affected (subsidiary) corporations are domestic issuers within the meaning of Section 2 (14) of the German Securities Trading Act (WpHG), which already prepare and publish an annual financial report in accordance with current law, this does not have any material impact. However, the anchoring of the disclosure obligation in the HGB means that the obligation to disclose the annual financial report pursuant to Section 114 (1) Sentence 1 of the German Securities Trading Act (WpHG) no longer applies.

b) The amendment to Section 264 Paragraph 3 Sentence 1 of the German Commercial Code (HGB) applies analogously to limited liability companies according to Section 264d.

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Partnerships (see source for details).

2. Audit of public-interest entities (Section 316a of the German Commercial Code)

- a) The newly inserted Section 316a of the German Commercial Code (HGB) adopts in sentence 1 the regulatory content of Section 317 paragraph 3a HGB and clarifies that the *Regulation (EU) No. 537/2014 (Auditor Regulation, Dataset 652)*, which regulates the audit of all public-interest corporations, takes precedence over the provisions of the German Commercial Code (HGB).
- b) Sentence 2 contains a legal definition of the term "Public Interest Entity" (PIE). According to this, the following entities are considered PIEs:
 - capital market-oriented companies according to Section 264d HGB;
 - CRR credit institutions within the meaning of Section 1 (3d) Sentence 1 of the German Banking Act (KWG) (except institutions within the meaning of Section 2 (1) Nos. 1 and 2 of the German Banking Act and Article 2 (5) No. 5 *Directive 2013/36/EU (CRD IV, dataset 550)* mentioned);
 - Insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC.

Due to the reference to Article 2(5)(5) CRD IV, last amended by *Directive (EU) 2019/878 (CRD V, dataset 2238)*, it is clarified that in addition to KfW, other German promotional institutions are also exempt from the legal definition of the PIE (see source for details).

3. Appointment and dismissal of the auditor (Section 318 of the German Commercial Code)

- a) Paragraph 1a, which allowed for a maximum term of 24 years for audit mandates for PIEs that are not both credit institutions and insurance companies under certain conditions, is repealed. Thus, the maximum term of the mandate for PIEs is limited to ten years in accordance with the provisions of Article 17, paragraph 1, subparagraph 2 of the Audit Regulation (see source for details).
- b) The amendments to paragraph 3 contain several clarifications regarding the judicial replacement procedure for the auditor. The eligibility to apply in paragraph 3, sentence 1, will in future refer to 5% of the subscribed capital instead of the term "share capital" based on stock corporations. This clarifies that other corporate forms, such as GmbHs or partnerships, are also eligible to apply for the replacement procedure. Regarding the grounds for replacing the auditor, paragraph 3, no. 1 does not contain an explicit reference to Article 5, paragraph 1 of the Audit Regulation, since the question of when violations of this provision exist is already answered by Sections 319, paragraphs 2 to 5 and 319b of the German Commercial Code (HGB), which interpret the applicable law in accordance with European law. Thus, the provision of prohibited non-audit services by PIEs is also to be considered a ground for replacement (see source for details).
- c) The amendments to paragraph 3, sentence 3 clarify that a subsequent application for replacement is also possible in all cases mentioned in paragraph 3, sentence 1, i.e. at the discretion of the auditor.

4. Special grounds for exclusion for companies of public interest (Section 319a of the German Commercial Code)

The provisions of Section 319a of the German Commercial Code (HGB) implement two Member State options. Firstly, certain tax advisory and valuation services are not covered by the prohibition on non-audit services for the auditor of PIEs. Furthermore, in exceptional circumstances, exceeding the fee cap is permitted. To avoid conflicts of interest and strengthen the independence of the auditor of PIEs, the list of prohibited non-audit services contained in the Audit Regulation will be fully applicable in the future, and exceeding the fee cap will be prohibited. Therefore, Section 319a of the German Commercial Code (HGB) is repealed (see source for details).

5. Responsibility of the auditor (Section 323 of the German Commercial Code)

a) The amendment to Section 323 (1) clarifies that the statutory notification obligations, such as those under Section 107 (5) sentence 1 of the Securities Trading Act (WpHG) or Section 29 (3) of the German Banking Act (KWG), affect the auditor's duty of confidentiality.

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restrict (see source for details).

b) Pursuant to paragraph 2, the previous maximum liability limits of the auditor for non-intentional or grossly negligent conduct of EUR 1 million per audit, as well as the liability applicable to the audit of stock corporations, are abolished and replaced. In future, the auditor will be liable for capital market-oriented PIEs within the meaning of Section 316a Sentence 2 No. 1 of the German Commercial Code (HGB) up to a sum of EUR 16 million per audit. For non-capital market-oriented PIEs within the meaning of Section 316a Sentence 2 Nos. 2 and 3 of the German Commercial Code (HGB), which are CRR credit institutions or insurance companies, the maximum liability limit is EUR 4 million. For capital companies that are not PIEs pursuant to Section 316a Sentence 2 of the German Commercial Code (HGB), a maximum liability limit of EUR 1.5 million applies. The liability limits do not apply if the auditor acted intentionally or with gross negligence (see source for details).

6. Audit Committee (Section 324 of the German Commercial Code)

- a) According to paragraph 1, the obligation to establish an audit committee is also introduced for PIEs within the meaning of Section 316a, sentence 2 of the German Commercial Code (HGB). Previously, this obligation applied to capital market-oriented companies within the meaning of Section 264d of the HGB. The list of companies exempt from this obligation remains unchanged for certain corporations, credit institutions, and investment funds. The new paragraph 3 clarifies that companies exempt from establishing an audit committee, which are issuers of asset-backed securities within the meaning of paragraph 1, sentence 2, no. 1, must explain in the appendix why no audit committee has been established (see source for details).
- b) The addition of Section 100 (5) of the German Stock Corporation Act (AktG) to paragraph 2, sentence 2, clarifies that a member of the audit committee must have expertise in both financial reporting and auditing. This expertise can be ensured by two different members or by a single member who covers both areas (see source for details).
- c) The new paragraph 2, sentence 5, clarifies that the audit committee submits the proposal for the election of the auditor if there is no supervisory or administrative board. This also applies if the supervisory or administrative board is not responsible for preparing the proposal.

7. Incorrect representation, incorrect assurance, breach of reporting obligation (§§ 331, 331a, 332 HGB)

- a) The new Section 331 Paragraph 2 of the German Commercial Code (HGB) introduces a separate penalty framework for reckless, incorrect representation (imprisonment of up to one year or a fine) for the authorized representative body of a corporation (see source for details).
- b) The previous provisions regarding the criminal liability of false "accounting oaths" are transferred to the new criminal offense of "false insurance" under Section 331a of the German Commercial Code (HGB). Furthermore, by reference to Section 325 (2a) sentences 3 and 4 of the German Commercial Code (HGB) and Section 315e (1) of the German Commercial Code (HGB), it is clarified that insurance that refers to IFRS individual or consolidated financial statements can also constitute the criminal offense of false insurance. Furthermore, it is clarified that failure to provide insurance is not punishable (see source for details).
- c) The penalty for intentional conduct by the auditor in PIEs is increased from three years' imprisonment to five years. In addition, Section 332 (3) of the German Commercial Code (HGB) also introduces a criminal offense for reckless conduct (imprisonment of up to two years or a fine) by the auditor for issuing an incorrect audit report on the financial statements of a PIE (see source for details).

8. Fines (Section 334 of the German Commercial Code)

- a) According to paragraph 2, sentence 2, the issuance of an audit opinion issued by the auditor despite a violation of the prohibition on providing non-audit services will also be sanctioned in the future. The now two-tiered fine for auditors for audit opinions issued contrary to the provisions set out in paragraph 2 amounts to up to €500,000 for PIEs; for other corporations, it remains at the previous level of €50,000 (see source for details).
- b) The amendment in paragraph 2a clarifies that the provisions on fines only apply to violations of

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Members of an audit committee of a corporation established pursuant to Section 324 (1) Sentence 1 of the German Commercial Code (HGB) are subject to the fine provisions of Section 334 of the German Commercial Code (HGB) according to Section 335b Sentence 1 of the German Commercial Code (HGB) for the partnerships listed therein (see source for details).

- c) The amount of the fine for the fine offenses under Section 334 (2a) of the German Commercial Code (HGB), which concern members of an audit committee of a PIE established pursuant to Section 325 (1) sentence 1 of the HGB, is increased from the current level of EUR 50,000 to up to EUR 500,000 in accordance with paragraph 3.
- d) A new sentence is added to paragraph 3a. This provides that, in the event of violations of paragraph 2 by the auditor, an association fine may be imposed on the audit firm appointed as auditor pursuant to Section 30 paragraph 1 of the Administrative Offences Act (OWiG) if the company's management issued the audit opinion. The maximum fine in this case is five million euros (see source for details).
- e) Section 334 (4) clarifies that, in the case of capital market-oriented corporations within the meaning of Section 264d of the German Commercial Code (HGB), BaFin is responsible for setting the fine for violations by members of the management or the supervisory board, and in certain cases, the Federal Office of Justice and the Auditor Oversight Body are also responsible.

f) Pursuant to paragraph 5, the fine provisions of paragraphs 1 to 4 do not apply to credit institutions within the meaning of Section 340 paragraph 1 sentence 1 of the German Commercial Code (HGB), financial services institutions within the meaning of Section 340 paragraph 4 sentence 1, institutions within the meaning of Section 340 paragraph 4 sentence 1, institutions within the meaning of Section 340 paragraph 4 sentence 1, institutions within the meaning of Section 341 paragraph 1 of the German Commercial Code (HGB) and pension funds within the meaning of Section 341 paragraph 4 sentence 1 of the German Commercial Code (HGB). The equivalent special fine provisions of Sections 340 paragraph 1 of the HGB apply to these institutions.

9. Applicable provisions (Section 340a HGB)

Paragraph 2, sentence 1, adds that the provisions of Sections 264, paragraph 3, and 264b of the German Commercial Code (HGB) do not apply to credit institutions. This means that credit institutions, regardless of their legal form, cannot claim the exemptions from disclosure obligations applicable to subsidiaries regulated therein (see source for details).

10. Section 340k HGB

a) Paragraph 1, sentence 1, clarifies that the Audit Regulation also applies primarily if the credit institution is a PIE within the meaning of Section 316a, sentence 2, no. 1 of the German Commercial Code (HGB), i.e., capital market-oriented according to Section 264d of the HGB. This applies accordingly to financial services institutions within the meaning of Section 340, paragraph 4, sentence 1 of the HGB and payment institutions or e-money institutions within the meaning of Section 1, paragraph 3 of the German Payment Services Supervision Act (ZAG).

b) Instead of the previous requirement for CRR credit institutions, the amended paragraph 5 sentence 1 now establishes an obligation to establish an audit committee for credit institutions that are PIEs. This also applies if they are not operated in the legal form of a corporation or a partnership within the meaning of Section 264a paragraph 1 of the German Commercial Code (HGB). For credit institutions in the legal form of a cooperative, however, the corresponding provisions are contained in Sections 36 paragraph 4 and 53 paragraph 3 of the Cooperative Societies Act (GenoG), with the proviso that it is sufficient if at least one member has expertise in the areas of accounting or auditing. The increased fine provisions of Section 334 paragraph 3 sentence 1 do not apply to credit institutions in the legal form of a cooperative, to savings banks, and to other public-law credit institutions under state law (see source for details).

11. Fines (Section 340n of the German Commercial Code)

The amendments to the fine provisions for credit institutions in paragraph 2 sentence 2 no. 1 align with the amendments to Section 334 paragraphs 2, 3 and 3a of the German Commercial Code (HGB). Furthermore, by reference to Section 340 paragraph 4 sentence 1 of the German Commercial Code (HGB) and Section 1 paragraph 3 of the German Payment Services Supervision Act (ZAG), it is clarified that the fine provisions also apply to members of an audit committee established pursuant to Section 324 paragraph 1 sentence 1 of the German Commercial Code (HGB) in conjunction with Section 340k paragraph 5 sentence 1 of the German Commercial Code (HGB), a payment and e-money institution pursuant to Section 1 paragraph 3 of the German Payment Services Supervision Act (ZAG), and a securities institution within the meaning of Section 340 paragraph 4a sentence 1.

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HGB are applicable (see source for details).

12. Auditing Authority for Financial Reporting, confidentiality obligation, financing of the auditing authority, fine provisions (§§ 342b to 342e HGB)

The sixth section of the third book (§§ 342b to 342e HGB), which regulated the framework conditions of the Financial Reporting Enforcement Authority, is repealed and transferred to the WpHG (see source for details).

IX. Amendment to the Introductory Act to the Commercial Code (EGHGB) (Article 12)

- 1. According to paragraph 1 of a newly inserted article in the new section "Transitional provision to the Financial Market Integrity Act", the amendments to Sections 318 (3), 319b, 323 (2), 334 (2) to (3a), 340k (1) sentence 1, (2) sentence 3, (3) sentence 2 and Sections 340m (2), 340n, 341k (1) sentence 2 as well as Sections 341m (2) and 341n of the German Commercial Code (HGB) are to be applied for the first time to all statutory audits relating to the financial year beginning after 31 December 2021.
- 2. Paragraph 2 contains a transitional period limiting the maximum term of the audit engagement. If the requirements of Section 318 Paragraph 1 of the German Commercial Code (HGB) in conjunction with Article 79 Paragraph 3 are met, the auditor's audit engagement may be extended until June 30, 2021, for the financial year beginning after June 30, 2021, and the financial year following that date.
- 3. The amendments to Sections 324 (1) and (3) and 340k (5) and 341k (3) of the German Commercial Code (HGB) are to be applied for the first time from 1 January 2022 in accordance with paragraph 3. With regard to the new requirements for the members of the audit committee under Section 324 (2) sentence 2 of the German Commercial Code (HGB), reference to Section 12 (6) of the Introductory Act to the Stock Corporation Act (EGAktG) ensures that these are only to be applied to the next subsequent appointment after the entry into force of this Act.
- 4. The amendments to Sections 264 (3), 264b and 340a of the German Commercial Code (HGB) in the version applicable from 1 July 2021 shall be applied for the first time to annual financial statements and management reports for the financial year beginning after 31 December 2020.

X. Amendment to the Publicity Act (PublG) (Art. 13)

1. Companies obliged to prepare financial statements (Section 1 PublG)

The newly added paragraph 3 stipulates that companies which are considered to be capital market-oriented on the balance sheet date in accordance with Section 264d of the German Commercial Code (HGB) must always prepare their accounts in accordance with the first section of the Disclosure Act (PublG), regardless of whether they meet the size criteria under paragraphs 1 and 2 (see source for details).

2. Commencement and duration of the obligation to provide financial statements (Section 2 PublG)

The newly added paragraph 4 clarifies that the obligations under paragraphs 1 to 3, which depend on the fulfilment of the size criteria, do not apply to companies under Section 1 paragraph 3 PublG (see source for details).

3. Preparation of annual financial statements and management report (Section 5 PublG)

Paragraph 2a, sentence 1, clarifies that companies that are considered capital market-oriented in accordance with Section 264d of the German Commercial Code (HGB) must also prepare an annual report in accordance with Section 289 of the HGB. For domestic issuers, this obligation already arises from Section 114, paragraph 2, no. 2 a) of the German Securities Trading Act (WpHG).

4. Audit by the auditors (Section 6 PublG)

a) The reference in paragraph 1 sentence 2 to Section 317 paragraph 3a of the German Commercial Code (HGB) clarifies that companies that issue securities as domestic issuers without meeting the requirements of Section 327a of the German Commercial Code (HGB) must include the audit of the annual financial statements and the audit of the reproduction of the annual financial statements and the management report in the uniform European electronic format (ESEF). Furthermore, it is clarified that there is an obligation to audit the individual financial statements in accordance with Section 9 paragraph 1 sentence 1 of the German Publication Act (PublG) in conjunction with Section 325 paragraph 2a of the German Commercial Code (HGB).

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5. Examination by the Supervisory Board (Section 7 PublG)

The revised paragraphs 5 and 6 also require capital market-oriented PIEs within the meaning of Section 316a, Sentence 2, No. 1 of the German Commercial Code (HGB) that have a supervisory board to establish an audit committee. The requirements of Section 107, Paragraph 4 and Paragraph 3, Sentences 2 and 3 of the German Stock Corporation Act (AktG) apply to this committee (see source for details).

6. Incorrect representation, violation of reporting obligations (§§ 17, 18 PublG)

The criminal offenses of the legal representatives of a company or the auditor are adjusted in Sections 17 and 18 of the Publication Act (PublG) in accordance with the amendments to Sections 331 and 332 of the Commercial Code (HGB) (see source for details).

7. Fines (Section 20 PublG)

- a) Section 20 of the PublG is amended in order to align, in particular, the provisions for fines relating to company officers and auditors under Section 334 of the HGB with regard to the audit opinion and the amount of the fine with Section 334 of the HGB.
- b) As in Section 334 (2) of the German Commercial Code (HGB), paragraph 2 distinguishes between PIEs and other companies. The amendments to paragraphs 2a to 2c are consequential amendments to Section 7, sentences 5 and 6 of the German Publication Act (PublG).
- c) According to paragraph 3, violations by company officers, auditors, and audit committee or supervisory board members of PIEs can be punished more severely, as under Sections 334 and 340n. d) Paragraph 3a is intended to align with Section 334 Paragraphs 3a and 3b of the German Commercial Code (HGB). According to paragraph 4, as under Section 334 Paragraph 4 of the HGB, BaFin, as the competent administrative authority, determines the fine for PIEs (see source for details).

8. First-time application of amended provisions (Section 22 PublG)

- a) The amendments to Sections 1, 2 and 5 of the PublG apply to annual financial statements and management reports relating to the financial year beginning after 31 December 2021.
- b) To the extent that Sections 6 and 14 of the PublG refer to the HGB, the applicable transitional provisions of the EGHGB must be observed. To the extent that Section 7, Sentence 5 refers to Section 100 (5) of the AktG and Section 107 (4) of the AktG, the transitional provisions of Sections 12 (6) and 26 of the EGAktG must be observed.
- c) The amendments to Section 20 PublG apply for the first time to audits for the financial year beginning after 31 December 2021 (see source for details).

XI. Amendment to the Transformation Act (UmwG) (Art. 14)

1. Position and responsibility of the merger auditors (Section 11 UmwG)

With the addition of the new sentence to Section 11 (1) of the German Transformation Act (UmwG), the prohibition on non-audit services pursuant to Article 5 of the Audit Regulation also applies to merger auditors of PIE. This means that all non-audit services listed in Article 5 (1) a) to k) of the Audit Regulation will in future lead to the exclusion of the merger auditor from PIE (see source for details).

2. Transitional provision for the implementation of the Shareholders' Directive, the Third Act amending the

Transformation Act and the Financial Market Integrity Act (Section 321 of the Transformation Act)

In addition to the addition of the heading, the new paragraph 4 specifies the date of application for the amendments to Section 11 of the German Transformation Act (UmwG). These amendments are to be applied for the first time to the audit of mergers whose merger agreement was concluded after December 31, 2021 (see source for details).

XII. Amendment to the Stock Corporation Act (AktG) (Article 15)

- 1. Organization; accounting, duty of care and responsibility of the board members (§§ 91, 93 AktG)
- a) With the addition of the new paragraph 3 of Section 91, the obligation to establish both an appropriate and effective internal control system and a corresponding risk management system for listed public limited companies is prescribed by law.
- b) The exception to the board's duty of confidentiality under Section 93 (1) sentence 4 of the German Stock Corporation Act (AktG) vis-à-vis the auditing body is repealed as a result of the change in the financial statement audit procedure.

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2. Personal requirements for supervisory board members (Section 100 AktG)

Paragraph 5 of Section 100 of the German Stock Corporation Act (AktG) refers to the legal definition of PIEs in Section 316a of the German Commercial Code (HGB). Furthermore, supervisory board members must have expertise in both financial reporting and auditing. This expertise must be met by two members, each representing a specific area of expertise (see source for details).

3. Internal organization of the Supervisory Board (Section 107 of the German Stock Corporation Act

- a) The addition to paragraph 3, sentence 2 clarifies that the Audit Committee is also responsible for monitoring the quality of the final audit.
- b) The revised paragraph 4 introduces the requirement for PIEs to establish an audit committee, which must meet the requirements of Section 100 paragraph 5. Following the simplification provided in paragraph 4 sentence 2, the supervisory board of a public-interest entity consisting of only three members also serves as the audit committee. Furthermore, paragraph 4 establishes a right to information for each member of the audit committee, which can be exercised through the chair of the audit committee. The chair of the committee must communicate the information obtained to all committee members (see source for details).

4. Participation in meetings of the Supervisory Board and its committees (Section 109 of the German Stock Corporation Act)

Paragraph 1 adds that the Executive Board is generally excluded from participating in a Supervisory Board meeting in which the auditor is called in as an expert. This does not apply if the Executive Board's participation is absolutely necessary.

5. Selection of special auditors, underlying balance sheet, appointment of special auditors (§§ 143, 209, 258 AktG)

- a) Section 143 (2) of the German Stock Corporation Act (AktG) is amended to state that the prohibition on providing certain non-audit services pursuant to Article 5 of the Audit Regulation for PIEs must be observed when selecting the special auditor.
- b) The regulations regarding special audits pursuant to Section 209 (4) Sentence 2 and the appointment of special auditors pursuant to Section 258 (4) of the German Stock Corporation Act (AktG) will be adjusted accordingly. Article 5 of the Audit Regulation for PIEs must also be observed in this regard (see source for details).

6. Selection, position and responsibility of the contract auditors (Section 293d AktG)

For PIEs, in addition to the requirements of sentence 1, the prohibition on providing certain non-audit services pursuant to Article 5 of the Audit Regulation must also be observed when selecting the auditor of corporate agreements (including profit transfer and control agreements) (see source for details).

7. Violation of duties in audits (Section 404a AktG)

In paragraphs 1 and 2, the legibility of the criminal offenses for members of the supervisory board or the audit committee is improved by adopting the legal definition of PIEs in Section 316a of the German Commercial Code (HGB). Furthermore, the criminal offenses in paragraph 2, numbers 1 and 2, are adapted to the amendments to Section 405, paragraphs 3b and 3c of the German Stock Corporation Act (AktG).

8. Administrative offenses (Section 405 AktG)

- a) The administrative offenses for members of the supervisory board or the audit committee in paragraphs 3b to 3d are aligned with the legal definition of PIEs in Section 316a of the German Commercial Code (HGB). Since the establishment of an audit committee is mandatory, the administrative offenses in paragraph 3c no longer apply. The content of the previous paragraph 3d becomes paragraph 3c (see source for details).
- b) The fine framework for violations of the publication obligation under Section 111c Paragraph 1 Sentence 1 of the German Stock Corporation Act (AktG) (publication of transactions with related parties) as well as Paragraphs 3b and 3c is increased to up to EUR 500,000 in accordance with Section 343 Paragraph 3 of the German Commercial Code (HGB) (see source for details).
- c) Paragraph 5 also incorporates the legal definition of PIEs in Section 316a of the German Commercial Code (HGB). Furthermore, an editorial error from the Act Implementing the Second Shareholders' Directive (ARUG II, dataset 3320) is corrected.

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The offenses under Section 405 (1) to (3a), including the offenses newly inserted under (2a), are thus again subject to the general jurisdiction provision of Section 36 (1) No. 2 OWiG and no longer to BaFin.

9. Coercive fines (Section 407 AktG)

The amendment to Section 107 (4) of the German Stock Corporation Act (AktG) provides the possibility of enforcing the establishment of an audit committee with the imposition of a penalty payment against the members of the supervisory board.

XIII. Amendment to the Introductory Act to the Stock Corporation Act (EGAktG) (Article 16)

1. Supervisory Board (Section 12 EGAktG)

The required expertise for supervisory board members pursuant to Section 100 (5) AktG and the obligation to form an audit committee pursuant to Section 107 (4) sentence 3 AktG that meets the requirements of Section 100 (5) AktG does not apply as long as all members of the audit committee have been appointed before July 1, 2021 (see source for details).

2. Transitional provision to the Financial Market Integrity Strengthening Act (Section 26

EGAktG) The amendments to the AktG must be observed for the following regulations:

- Criminal liability and administrative offenses (Sections 404a, 405, 407a AktG) apply to all audits relating to the financial year beginning after December 31, 2021;
- Members of the supervisory board, establishment of an audit committee and coercive fines (Sections 107 (4), 209 (5) and 407 (1) AktG) are to be applied for the first time from 1 January 2022;
- Selection of special auditors, special audit, appointment of special auditors (Sections 143 (2), 256, 209 (4), 258 (4) AktG) shall apply for the first time to the financial year beginning after December 31, 2021;
- Selection of the contract auditor (Section 293d AktG-E) applies to the audit of intercompany contracts concluded after December 31, 2021.

XIV. Amendment to the SE Implementation Act (SEAG) (Article 17)

- 1. Duties and rights of the Administrative Board, internal organization of the Administrative Board (Sections 22 and 34 SEAG)
- a) The new added sentence 3 in Section 22 (3) of the SE Implementation Act (SEAG) introduces, in parallel with Section 91 (3) of the German Stock Corporation Act (AktG), the obligation to establish both an appropriate and effective internal control system and a corresponding risk management system for companies in the legal form of an SE (see source for details).
- b) The new paragraph 5 of Section 34 SEAG introduces a mandatory audit committee for PIEs with corresponding information rights, in accordance with the amendments to Section 107 paragraph 4 AktG. This committee must also meet the requirements of Section 100 paragraph 5 AktG (see source for details).

2. Transitional provision to the Financial Market Integrity Strengthening Act (Section 57 SEAG)

The changes to Section 53 (penalty and fine provisions) referring to the new provisions of Section 405 (3c) AktG must be observed for financial years beginning after December 31, 2021. The changes to Section 34 apply for the first time from January 1, 2022 (see source for details).

XV. Amendment to the Law on Limited Liability Companies (GmbHG) (Article 18)

1. Requirements for the balance sheet (Section 57f GmbHG)

The new version of Section 57f of the German Limited Liability Companies Act (GmbHG) clarifies that the grounds for exclusion under paragraph 5 of the Audit Regulation for PIEs must also be observed when auditing a special balance sheet, such as the interim balance sheet for capital increases.

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2. Violation of duties in audits, fines (§§ 86, 87 GmbHG)

a) In Section 86 of the German Limited Liability Companies Act (GmbHG), the previous criminal offense for violations by a member of the supervisory board or a member of the audit committee during financial statement audits is replaced by a corresponding criminal offense expressly applicable to PIEs (see source for details).

b) The administrative offenses under Section 87 of the GmbHG will also be aligned with PIE. The maximum fine in Section 87 (4) of the GmbHG will be increased from €50,000 to up to €500,000 (see source for details).

XVI. Amendment to the GmbHG Introductory Act (EGGmbHG) (Art. 19) <u>Transitional provision to the Act to Strengthen</u>
<u>Financial Market Integrity (Section 9 EGGmbHG)</u> The amendments to the criminal and administrative offenses for supervisory board and audit committee members under Sections 86 and 87 of the German Limited Liability Companies Act (GmbHG) apply to statutory audits relating to the financial year beginning after December 31, 2021. The amendments to Section 57f (3) of the German Limited Liability Companies Act (GmbHG) apply for the first time to auditors appointed for the financial year beginning after December 31, 2021 (see source for details).

XVII. Amendment to the Cooperatives Act (GenG) (Art. 20)

1. Mandatory audit (Section 53 GenG)

Paragraph 3 of Section 53 of the Cooperative Societies Act (GenG) is being revised. First, paragraph 3, like many other provisions of the GenG, is being aligned with the legal definition in Section 316a of the German Commercial Code (HGB). Furthermore, cooperatives that are private cooperatives (PIEs) must comply with the requirements regarding the expertise of supervisory boards pursuant to Section 324 Paragraphs 1 and 2 of the HGB. Unlike Section 324 Paragraphs 1 and 2 of the HGB, it is not necessary for the supervisory board to possess expertise in both areas. It is sufficient if at least one supervisory board member possesses expertise in either accounting or auditing.

2. Violation of the reporting obligation (Section 150 GenG)

The provisions of Section 150 are aligned with the provisions regarding breaches of the auditor's reporting obligation under Section 332, Paragraph 2 of the German Commercial Code (HGB). Furthermore, Paragraph 3 also introduces a penalty for negligence (up to two years' imprisonment or a fine) (see source for details).

3. Fines (Section 152 GenG)

The maximum fine for violations by supervisory board members or audit committee members will be increased from €50,000 to €500,000, analogous to Section 334 (3) Sentence 1 of the German Commercial Code (HGB). For cooperatives that are PIEs within the meaning of Section 316a Sentence 2 No. 2 of the HGB, BaFin is the administrative authority responsible for setting the fines; in other cases, the Federal Office of Justice (see source for details).

4. Transitional provision to the Act to Strengthen Financial Market Integrity (Section 173 GenG)

- a) The amendments to Sections 55, 151a and 152 of the German Cooperatives Act (GenG) shall apply to all statutory audits relating to the financial year beginning after 31 December 2021.
- b) The amendments to Section 53 (3) of the GenG shall apply from 1 January 2022.

XVIII. Amendment to the Ordinance on the Collection of Fees and the Allocation of Costs under the Financial Services Supervision Act (FinDAGKOstV) (Article 24)

The fees according to fee number 5.6 of the fee schedule in the appendix to the regulation on the collection of fees and the allocation of costs under the Financial Services Supervision Act (FinDAGKOstV) for the publication of errors identified by BaFin or the review body on the Internet, in the Federal Gazette and in the supra-regional stock exchange gazette according to Section 53 KWG or Section 109 WpHG are set at 420 euros.

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Previously, there was a fee for ordering publication, which ranged from €500 to €5,000. In addition, the fee for deciding on a request to waive the ordering of publication has been abolished (see source for details).

XIX. Amendment of other laws (Article 26)

a) The newly added paragraph 8 in Section 157 of the Trade Regulation Act (GewO) provides for a transitional arrangement until 31 December 2021 for traders who provide investment advice or investment brokerage within the meaning of Section 1 Para. 1 a KWG for investments within the meaning of Section 1 Para. 2 No. 8 Asset Investment Act (VermAnlG) and do not have the necessary authorization under the KWG.

b) The remaining amendments to the law are consequential changes (see source for details).

CATEGORIZATION

Keywords

Auditor, audit, investment advice, investment brokerage, audit on specific occasions, authority to issue orders, notification, notification obligation, outsourcing, outsourcing register, outsourcing company, Outsourcing agreement, audit opinion, valuation service, balance sheet oath, balance sheet control procedure, fine, CRR credit institution, e-money institution, fee cap, financial services institution, fees, judicial replacement procedure, trader, profit transfer agreement, internal safeguards, annual financial statements, corporation, capital market-oriented company, credit institution, reporting obligation, member state option, non-audit service, public interest, administrative offense, organizational obligation, partnership, personal data, PIE, prospectus, auditing body, accounting auditing body, audit committee, audit documents, public interest entity, accounting, risk management, expertise, sanction, immediate enforceability, special audit, tax advisory service, criminal offense, subcontractor, parts of the regulated market with special obligations for issuers, auditor independence, misrepresentation, false assurance, public interest entity, prohibition on providing non-audit services, investment, investment information sheet, Merger auditor, auditor's duty of confidentiality, insurance company, contract auditor, investment services company, payment institution, authorized representative

Legal and information bases

- Act Implementing the Second Shareholders' Directive (ARUG II) (Data Set 3320)
- Directive (EU) 2019/878 (CRD V) (Dataset 2238)
- Regulation (EU) No. 537/2014 (Auditor Regulation) (Dataset 652)
- Directive 2013/36/EU (CRD IV) (Dataset 550)
- Directive 91/674/EEC
- Stock Corporation Act (AktG)
- Stock Exchange Act (BörsG)
- Introductory Act to the Stock Corporation Act (EGAktG)

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 - Introductory Act to the Commercial Code (EGHGB)
 - Financial Services Supervision Act (FinDAG)
 - Money Laundering Act (GwG)
 - Cooperatives Act (GenG)
 - Law on Limited Liability Companies (GmbHG)
 - GmbHG Introductory Act (EGGmbHG)
 - Law on Administrative Offenses (OWiG)
 - Commercial Code (HGB)
 - Capital Investment Act (KAGB)
 - Banking Act (KWG)
 - Publicity Act (PublG)
 - SE Implementation Act (SEAG)
 - Transformation Act (UmwG)
 - Investment Act (VermAnlG)
 - Insurance Supervision Act (VAG)
 - Securities Trading Code (WpHG)
 - Payment Services Supervision Act (ZAG)
 - Regulation on the allocation of balance sheet control costs pursuant to Section 17d of the Financial Services Supervision Act (Balance Sheet Control Cost Allocation Regulation - BilKoUmV)
 - Regulation on the collection of fees and the allocation of costs under the Financial Services Supervision Act (FinDAGKOstV)
 - Trade Regulation Act (GewO)

Related Standards

- Securities Trading Act (WpHG)
- Commercial Code (HGB)
- Banking Act (KWG)
- Payment Services Supervision Act (ZAG)
- Act on the Supervision of Insurance Undertakings (VAG)

Target group – credit institutions

Yes

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Target group – financial services institutions

Yes

Target group – Other companies in the financial sector

Yes

Target group - payment institutions

Yes

Target group – insurance companies

Yes

Target group – supplement

Comments ******

Statement by (date)

Implementation status Explanation

Status – Further Details

Date of entry into force/publication

01.07.2021

Entry into force estimated?

No

Date of first application

01.07.2021

Application appreciated?

No

Date Standard repealed

Remark (Entry into force/Publication)

The law comes into force on 1 July 2021.

Article 1 No. 1b), c), e) and Nos. 4 and 6 to 16, Article 4 No. 9, Article 5 Nos. 3, 4 a) and b) and No. 6, Article 6 Nos. 2, 4, 5 a) and No. 7 a), Article 7 Nos. 2 and 4 a) bb), b) and c), Article 8 No. 3 b) and c), Article 11 Nos. 15 and 26, Article 15 No. 2 and Article 21 Nos. 2, 4, 13 a) bb) and 14 shall enter into force on 1 January 2022.

Comments ******



This act shall enter into force on July 1, 2021.

Art. 1 No. 1b), c) and e) and 4 and 6 to 16, Art. 4 No. 9, Art. 5 No. 3, 4 a) and b) and No. 6, Art. 6 No. 2, 4, No. 5 a) and No. 7a), Art. 7 No.2 and 4a) bb), b) and c), Art. 8 No. 3 b) and c), Art. 11 No. 15 and 26, Art. 15 No. 2 and Art. 21 No. 2, 4, 13 a) bb) and 14 shall enter into force on January 1, 2022.

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Sources

The sources are not shown in this working paper.