



**Please note that the English translation of the German Public Accountant Act (WPO) is intended to provide general information only and is not intended to be a literal translation. In cases where the exact wording of the WPO may become relevant, please refer exclusively to the German version.**

**To facilitate readability, this translation refers to the “Public Accountant” as “he”. This is meant abstract, not gender-related.**

### **Public Accountant Act (WPO)**

of 24 July 1961 (Federal Legislative Journal I p. 1049)  
taking into account amendments in

Article 12 No. 4 of the Law Amending the Code of Criminal Procedure and  
the Court Composition Act (StPÄG)  
of 19 December 1964 (Federal Legislative Journal I – hereafter referred to as FLJ – p. 1067),

Article 61 of the Introductory Act to the Administrative Offences Act (EGOWiG)  
of 24 Mai 1968 (FLJ I p. 503),

Article 14 Section 1 of the Act Amending Provisions authorizing the Levying of Fees, Social  
Security Regulations and other Regulations (Fee Levying Amendment Act)  
of 23 June 1970 (FLJ I p. 805),

Article 172 of the Introductory Act to the Criminal Code (EGStGB)  
of 2 March 1974 (FLJ I p. 469),

Article 14 of the Act to Amending the First Act Reforming the Code of Criminal Procedure  
of 20 December 1974 (FLJ I p. 3686),

Act on the Amendment of the Public Accountant Act and other Laws  
of 20 August 1975 (FLJ I p. 2258),

Article 3 Section 2 of the Act for Consolidating Commercial Legal Regulations  
of 27 February 1985 (FLJ I p. 457),

Article 6 of the Act for Implementing the Fourth, Seventh and Eight Directive  
of the Council of the European Community to Coordinate Corporate Law  
(Balance Sheet Directives Law - BiRiLiG-)  
of 19 December 1985 (FLJ I p. 2355),

Article 16 of the First Act on Consolidation of the Administrative Procedural Law  
of 18 February 1986 (FLJ I p. 265),

Article 6 on the First Legal Consolidation Act  
of 24 April 1986 (FLJ I p. 560),

Second Act on the Amendment of the Public Accountant Act  
of 20 July 1990 (FLJ I p. 1462),

Appendix I, Chapter V, Subject Area B, Section II of the Law on the Treaty of 31 August 1990  
between the Federal Republic of Germany and the German Democratic Republic  
on the Establishment of German Unity (Unification Treaty)  
and the Agreement of 18 September 1990  
of 23 September 1990 (FLJ II p. 885),

Art. 8 Section 9 of the Administration of Justice Simplification Act  
of 17 December 1990 (FLJ I p. 2847),

Art. 50 of the Act on Implementation of the Treaty of 2 Mai 1992 on the  
European Economic Area (EEA Implementation Act)  
of 27 April 1993 (FLJ I p. 512),

Third Act on the Amendment of the Public Accountant Act  
of 15 July 1994 (FLJ I p. 1569),

Art. 8 of the Act to Establish Partnerships and to Amend other Laws  
of 25 July 1994 (FLJ I p. 1747),

Act on the Agreement of 15 April 1994  
to create the World Trade Organization and to Amend other Laws  
of 30 August 1994 (FLJ II S. 1438),

The Introductory Act to the Insolvency Code (EG-InsO)  
of 5 October 1994 (FLJ I p. 2911),

Article 7 of Corporate Sector Supervision and Transparency Act (KonTraG)  
of 27 April 1998 (FLJ I p. 786),

Third Act on the Amendment of the Federal Notary Code and other Laws  
of 31 August 1998 (FLJ I p. 2585),

Act on the Amendment of the Federal Lawyer's Code,  
the Patent Lawyer's Code and other Laws of 31 August 1998 (FLJ I p. 2600),

Act on the Adoption of the Directive of the European Union on the  
amending Directive on annual accounts and consolidated accounts as regards the scope of those  
Directives (90/605/EEC), for Improved Disclosure of Annual Financial Statements and for  
Amending other Commercial Legal Provisions (Corporate Enterprise and Company Directives Act -  
KapCoRiLiG)  
of 24 February 2000 (FLJ I p. 154),

Act on the Amendment of Regulations governing the Profession of Wirtschaftsprüfer  
(Wirtschaftsprüfer's Amendment Act - WPOÄG)  
of 19 December 2000 (FLJ I p. 1769),

Act on Ending the Discrimination of Same-Sex Unions:  
Civil Union  
of 16 February 2001 (FLJ I p. 266),

Act for Modifying Provisions in Balance Sheet Law to the Introduction of the Euro, to Facilitate the  
Disclosure of Branch Offices of Foreign Companies as well as the Introduction of Quality

Assurance for Cooperative Audit Associations (Euro Balance Sheet Act - EuroBilG)  
of 10 December 2001 (FLJ I p. 3414),

Criminal Code of Procedure Amendment Act of 15 February 2002 (FLJ I p. 682),

Equal Opportunities Legislation for Disabled Persons and Amendments to other Laws  
of 27 April 2002 (FLJ I p. 1467),

Third Act on Amendment of Administrative Legal Regulations  
of 21 August 2002 (FLJ I p. 3322),

Act on Amendment of the Law for the Practice of European Lawyers in Germany and other legal  
regulations concerning Lawyers and Patent Lawyers, Tax Advisors and Wirtschaftsprüfer  
of 26 October 2003 (FLJ I p. 2074),

Eighth Jurisdiction Adjustment Directive  
of 25 November 2003 (FLJ I p. 2304),

Act on Reforming the Admission and Examination Procedure for the Wirtschaftsprüfer's  
Examination  
(Wirtschaftsprüfer's Examination Reform Act – WPreFG)  
of 1 December 2003 (FLJ I p. 2446),

Act on Modernizing the Costs Law (Costs Law Modernization Act - KostRMoG)  
of 5 May 2004 (FLJ I p. 718),

Act on Optional Ownership by Municipalities according to the Second Social Code  
(Municipal Option Act)  
of 30 July 2004 (FLJ I p. 2014),

Corporate Financial Statement Control Act  
(Financial Statement Control Act– BilKoG)  
of 15 December 2004 (FLJ I p. 3408),

Act for Simplification and Standardization of Procedural Regulations  
for the Election and Appointment of Honorary Judges  
of 21 December 2004 (FLJ I p. 3599),

Act on the Advancement of Professional Oversight of Auditors of Financial Statements in the  
Public Accountant Act (Auditor Oversight Act - APAG)  
of 27 December 2004 (FLJ I p. 3846),

Ninth Jurisdiction Adjustment Directive  
(9th ZustAnpV)  
of 31 October 2006 (FLJ I p. 2407),

Second Act on Judiciary Modernization  
(2nd Judiciary Modernization Act)  
of 22 December 2006 (FLJ I p. 3416),

Act on Strengthening Professional Oversight and Reform of the  
professional rules of practice in the Public Accountant Act  
(Professional Oversight Reform Act - BARefG)  
of 3 September 2007 (FLJ I p. 2178),

Act for Reforming Insurance Contract Law  
of 23 November 2007 (FLJ I p. 2631),

Act for Reforming the Prohibition on the Negotiation of  
Contingency Fees  
of 12 June 2008 (FLJ I p. 1000).

Act for Reforming the Procedure in Family Matters and  
in the Affairs of the Voluntary Jurisdiction  
(Voluntary Jurisdiction Reform Act – FGG-Reformgesetz)  
of 17 December 2008 (FLJ I p. 2586)

Law for Modernizing Accounting Law  
(Accounting Law Modernization Act - BilMoG)  
of 25 May 2009 (FLJ I p. 1102).

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## **Part One General Provisions**

### **§ 1**

#### **Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften**

(1) <sup>1</sup>Wirtschaftsprüfer [German public accountants] (members of the profession) are persons who are officially appointed as such. <sup>2</sup>The appointment is subject to proof of personal and professional qualification in admission and state examination procedures.

(2) <sup>1</sup>Wirtschaftsprüfer practice a [so-called] liberal profession. <sup>2</sup>The practice is non-commercial.

(3) <sup>1</sup>Wirtschaftsprüfungsgesellschaften [German public audit firms] must be licensed. <sup>2</sup>Licensing requires proof that the audit firm is run by Wirtschaftsprüfer responsibly.

### **§ 2**

#### **Scope of Practice**

(1) It is the professional duty of Wirtschaftsprüfer to carry out business examinations, especially those involving audits of annual financial statements of business enterprises, and to issue an auditor's opinion on the conduct of the audit and the findings.

(2) Wirtschaftsprüfer are authorized to advise and represent their clients in tax matters in accordance with existing regulations.

(3) Wirtschaftsprüfer are furthermore authorized,

1. to act officially as experts in the field of business management, under reference to their professional oath,
2. to advise on business matters and preserve third-party interests,
3. to act as trustees.

### **§ 3**

#### **Place of Professional Business**

(1) <sup>1</sup>Members of the profession must establish and maintain a place of professional business immediately upon appointment; if practice is established in a country which is not a member state of the European Union or treaty nation in the European Economic Area (third-party country) or Switzerland a German address for service must be maintained. <sup>2</sup>Independent Wirtschaftsprüfers' places of professional business are defined as their own place of business where they carry out their professional work most of the time. The place of professional business of Wirtschaftsprüfer who are exclusively employees according to § 43a Section 1 is defined as the location where they practice their profession most of the time.

(2) In the case of Wirtschaftsprüfungsgesellschaften, the registered location of the main office is considered company headquarters.

(3) Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften are allowed to establish branch offices according to the provisions of this act.

## **§ 4**

### **Wirtschaftsprüferkammer**

#### **[Chamber of Public Accountants]**

(1) <sup>1</sup>In order to fulfill self-governance responsibilities for the profession, a chamber of Wirtschaftsprüfer is established. It acts as an indirect state administrative body in the areas of professional examination, aptitude test, appointment, licensing, revocation and registration, disciplinary oversight and quality assurance, along with promulgation of practice rules (§ 57 Section 3, § 57c). <sup>2</sup>It is referred to as the "Wirtschaftsprüferkammer [Chamber of Public Accountants]".

(2) <sup>1</sup>The Wirtschaftsprüferkammer is a public corporation. <sup>2</sup>Its headquarters is specified in its statutes.

(3) The Wirtschaftsprüferkammer can establish regional offices.

## **Part Two**

### **Requirements for Professional Practice**

#### **Section One**

#### **Admission to the Professional Examination**

## **§ 5**

### **Examination Unit, Legal Protection**

(1) The Wirtschaftsprüferkammer establishes an "Examination Unit for the Professional Examination at the Wirtschaftsprüferkammer" (Examination Unit) to administer the duties specified in Part Two and Part Nine of this act regarding the admission and state examination procedure.

(2) <sup>1</sup>The Examination Unit is an independent administrative body at the Wirtschaftsprüferkammer. <sup>2</sup>The Examination Unit is headed up by one person, who must have qualifications for a judgeship (Head of Examination Unit). <sup>3</sup>The Examination Unit is autonomous in the fulfillment of its duties.

(3) The Examination Unit can involve the state regional offices of the Wirtschaftsprüferkammer in carrying out its duties.

(4) The Examination Unit supports the Task Commission, Examination Board and the Commission for Appeals.

(5) The Commission for Appeals makes judgments on appeals against decisions within the scope of the admission and examination procedure.

## **§ 6**

### **Definitive Statement**

Upon written request, the Examination Unit will issue a definitive statement concerning fulfillment of individual requirements for admission to the examination, the waiving of admission requirements and the accreditation of examinations already taken.

## **§ 7**

### **Application for Admission to the Examination**

The application for admission to the examination is to be submitted in writing to the Examination Unit.

## **§ 8**

### **Requirements for Admission (Previous Education)**

(1) It is a requirement for admission that candidates prove successful completion of university studies.

(2) Proof of university studies can be waived if applicants

1. have successfully worked at least ten years as employees of members of the profession, a Wirtschaftsprüfungsgesellschaft, vereidigte Buchprüfer [German sworn auditors], a Buchprüfungsgesellschaft [German firm of sworn auditors (licensed auditors in public practice authorized to perform only statutory audits of annual financial statements of mid-sized German limited liability companies (GmbH))], a genossenschaftlicher Prüfungsverband [Cooperative Audit Association] or in a Prüfungsstelle eines Sparkassen- und Giroverbandes [Cooperative Audit Office of an Association of Savings und Clearing Banks] and in a überörtliche Prüfungseinrichtung für Körperschaften und Anstalten des öffentlichen Rechts [Non-Local Audit Body for Corporations or other Institutions established under public law],
2. carried out at least five years of professional practice as a sworn accountant or as a tax advisor.
3. In case university studies have been completed outside the jurisdiction of this act, the final degree certificate must be equivalent.

## **§ 8a**

### **Recognition of University Degree Credentials, Statutory Regulations**

(1) University courses of study,

1. that encompass all disciplines according to § 4 of the Wirtschaftsprüfer's Examination Regulation,

2. that end with successful completion of a university examination or a state examination and
  3. in which examinations of individual disciplines, for which proof of completion was issued, correspond in content, form and scope to the Wirtschaftsprüfer's examination,
- can upon application by the university achieve recognition as being particularly well qualified for educating members of the profession by the specific entity mentioned in Section 3 of the statutory regulation.

(2) <sup>1</sup>Certificates provided according to Section 1 No. 3 can be used in lieu of corresponding parts of the Wirtschaftsprüfer's examination. <sup>2</sup>Certificates are to be presented to the Examination Unit.

(3) <sup>1</sup>The Federal Ministry of Economics and Technology, subject to approval by the Federal Council, determines by means of statutory regulation which authority is responsible for recognizing credentials.

<sup>2</sup>The regulation may also

1. further specify the requirements for recognition, in particular the procedures for determining whether disciplines studied at the university comply according to § 4 of the Wirtschaftsprüfer's Examination Regulation,
2. regulate individual elements of the recognition procedure, in particular the documents to be submitted along with the application, and the notification of recognition, as well as to
3. determine the requirements for early admission to the examination according to § 9 Section 6 Sentence 2, in particular as regards the materials to be submitted along with the application.

## § 9

### Requirements for Admission (Audit Practice)

(1) <sup>1</sup>Sufficient practical training (work experience) is a prerequisite for admission to the examination.

<sup>2</sup>Applicants who have completed their university studies must demonstrate at least three years of work experience at a position as specified in § 8 Section 2 No. 1. <sup>3</sup>If the normal course of studies is completed in less than eight semesters, this requirement is extended to four years; no additional work experience is required. <sup>4</sup>The work experience can only have begun once an initial university degree has been obtained, qualifying the holder for his profession, Section 6 Sentence 2 withstanding.

(2) <sup>1</sup>Of their entire duties, candidates must have worked primarily on auditing for at least two years and contributed to the preparation of audit reports (Auditing Practice). <sup>2</sup>During this time they shall have taken part in statutory audits in particular and contributed to the preparation of these audit reports. <sup>3</sup>The audit practice must

1. have been completed after the fifth year of employment in the case of § 8 Section 2 No. 1,
2. have been completed during or after professional employment as a vereidigter Buchprüfer or as a tax advisor in the case of § 8 Section 2 No. 2.

<sup>4</sup>The requirements of audit practices is fulfilled when the candidates can demonstrate that they have completed substantial audits of accounts and financial statements in third-party companies according to generally-accepted business principles. <sup>5</sup>Third-party means a company where the candidate is not currently, nor was previously, employed as a manager or worker.

(3) The audit practice shall have been completed in collaboration with members of the profession, a Wirtschaftsprüfungsgesellschaft, vereidigte Buchprüfer, a Buchprüfungsgesellschaft, a Cooperative Audit Association or in the Cooperative Audit Office of an Association of Savings and Clearing Banks or in the Non-Local Audit Body for Corporations or other Institutions established under public law, in which a member of the profession is employed.

(4) Proof of employment, along with the audit practice, may be waived for candidates who have practiced the profession of tax advisors or vereidigte Buchprüfer for at least 15 years; whereby up to ten years of work experience as tax accountant may be accredited.

(5) <sup>1</sup>Only up to one year can be accredited to the work experience requirement specified in Section 1 for work experience as a controller in a larger company or as a tax advisor or in an auditing association according to § 26 Section 2 of the Banking Act of the Federal Republic of Germany, or audit practice in connection with employment at the Wirtschaftsprüferkammer or in a partnership according to § 43a Section 4 No. 4. <sup>2</sup>The same applies to auditors employed in public service, to the extent that they can demonstrate having independently carried out audits at larger companies. <sup>3</sup>Work experience abroad is to be accredited according to the provisions in Section 1 if it was carried out with a person who is authorized or appointed as an expert auditor in that foreign country, and if the requirements for authorization and appointment essentially comply with the provisions of this act.

(6) <sup>1</sup>According to section 1, up to one year of employment, as specified in section 1, which is documented as part of a recognized university degree program according to § 8a, can be applied as credit.

<sup>2</sup>Furthermore, admission to the examination can also be granted at a date than the one specified in section 1.

**§ 10**  
**(Repealed)**

**§ 10a**  
**(Repealed)**

**§ 11**  
**(Repealed)**

**§ 11a**  
**(Repealed)**

**Section Two**  
**Professional Examination**

**§ 12**

**Examination Board and Structure of the Examination**

- (1) The examination is completed before the Examination Board.
- (2) The examination consists of a written and oral section.
- (3) All applicants must fulfill the same requirements irrespective of their professional background.

**§ 13**

**Abridged Examination for Tax Advisors**

<sup>1</sup>Tax advisors and applicants who have recently completed the examination for tax advisors can take the examination in an abridged form. <sup>2</sup>In case the abridged form of the examination is taken, the written and oral examination in tax law shall be waived.

**§ 13a**

**Abridged Examination for vereidigte Buchprüfer**

(1) <sup>1</sup>Vereidigte Buchprüfer can take an abridged version of the examination. <sup>2</sup>In case the abridged version of the examination is taken, the written and oral examination in Tax Law, Applied Business Studies, and Economics may be waived for vereidigte Buchprüfer who are tax advisors, and the written and oral examination in Business Law, Applied Business Studies, and Economics may be waived for vereidigte Buchprüfer who are lawyers.

(2) <sup>1</sup>Applications for admission to the abridged examination, which are not offered as a repeat examination, must be duly submitted in the proper form by 31 December 2007. <sup>2</sup>The examinations must be completed by 31 December 2009 at the latest. <sup>3</sup>The same deadline applies to examinations staged as a result of cancellation or repetition examinations according to §§ 21, 22, 32 and 33 of the Wirtschaftsprüfer's Examination Regulation; after expiration of this deadline according to Section 2, there is no more entitlement to take part in the exam.

**§ 13b**

**Abridged Examination upon  
Recognized Completion of Equivalent  
Examinations, Statutory Regulation**

<sup>1</sup>Examination results that were achieved as part of university studies, shall be recognized if, during the admission procedure, the Examination Unit determines that they are equivalent in content, form and scope pursuant to the requirements for the disciplines of Applied Business Studies, Economics or Business Law as specified in § 4 of the Wirtschaftsprüfer's Examination Regulation. <sup>2</sup>In case the abridged

version of the examination is taken, the written and oral examination may be waived in a particular discipline. <sup>3</sup>The Federal Ministry of Economics and Technology is authorized, by means of regulation, subject to approval by the Federal Council, to specify the requirements and procedures for determining the equivalence of such credentials.

## **§ 14**

### **Details of Examination Procedure**

<sup>1</sup>The Federal Ministry of Economics and Technology regulates by means of statutory regulation

1. the establishment of the Examination Board, the Task Commission and the Commission for Appeals, each chaired by one person who represents the state agency responsible for commerce, the formation and appointment of their members,
2. the minutiae of formulating examination questions, the examination and the examination procedure, in particular the materials to be submitted along with the application for admission to the examination, and the examination subjects,
3. the written and oral examination, withdrawal and exclusion from the examination, examination results, additional examination, repetition of the examination and reporting of the examination results.

<sup>2</sup>The statutory regulation does not require approval of the Federal Council.

## **§ 14a**

### **Admission Fee, Examination Fee**

<sup>1</sup>Fees are to be paid to the Wirtschaftsprüferkammer for all admission and examination procedures, as well as for unsuccessful opposition proceedings; the Wirtschaftsprüferkammer can specify how fees are collected, in what amount and when. <sup>2</sup>This is further specified in the Fee Code of the Wirtschaftsprüferkammer (§ 61 Section 2).

## **§§ 14b and 14c**

**(Repealed)**

## **Section Three**

### **Appointment**

## **§ 15**

### **Appointment Authority and Fees**

<sup>1</sup>After successful completion of the examination, the candidate is appointed a Wirtschaftsprüfer by applying for and receiving an official certificate by the Wirtschaftsprüferkammer. <sup>2</sup>Appointment by electronic means is not possible. <sup>3</sup>The Wirtschaftsprüferkammer is the responsible authority. <sup>4</sup>If the

application for appointment as a Wirtschaftsprüfer is not submitted within five years after successful completion of the examination, the appointment shall be governed by the regulations in § 23 Section 2 and 3. <sup>5</sup>Whoever has been appointed according to § 9 Section 6 Sentence 2 is to present proof of a total of three years' work experience according to § 9 Section 1, including the audit practice according to § 9 Section 2.

## **§ 16**

### **Refusal of Appointment**

(1) Appointment is to be denied

1. if the applicant has forfeited a basic constitutional right according to a decision of the Federal Constitutional Court,
2. if as a consequence of a criminal conviction, the qualification for serving a public office is not met,
3. as long as proof of provisional coverage pending an application for professional indemnity insurance has not been submitted, unless the appointment solely involves serving as the member of a body or employment according to § 43a Section 1,
4. if the applicant has been found guilty of conduct that would justify excluding him or her from the profession,
5. if due to health or other reasons, the applicant is not only temporarily impaired to duly practice his profession,
6. as long as a work activity is being practiced that is incompatible with the profession according to § 43 Section 2 Sentence 1 or § 43a Section 3,
7. if the applicant does not have an orderly financial standing, in particular if he is facing financial collapse; financial collapse is suspected to exist if insolvency proceedings are opened or if a registration has been made in the register kept by the insolvency court or the court competent for execution (§ 26 Section 2 of the Insolvency Code, § 915 of the Code of Civil Procedure).

(2) Appointment can be denied if the applicant has demonstrated behavior that casts doubt upon his ability to uphold the professional duties of a Wirtschaftsprüfer.

(3) The Wirtschaftsprüferkammer shall decide on the refusal of appointment.

## **§ 16a**

### **Expert Medical Opinion in Appointment Proceedings**

(1) <sup>1</sup>If it should become necessary in deciding on the grounds for refusal of appointment according to § 16 Section 1 No. 5, the Examination Unit may instruct the candidate to obtain by a certain deadline an expert medical opinion from a particular physician about the candidate's state of health. <sup>2</sup>The expert opinion must be based on an examination and, should the public health officer deem it necessary, a clinical observation of the candidate as well. <sup>3</sup>The candidate shall bear the cost of the expert opinion.

(2) <sup>1</sup>Instructions issued according to Section 1 are to include a justification and be dispatched to the candidate. <sup>2</sup>A motion for a court ruling against the instructions may be filed within one month of their dispatch.

(3) In case the candidate fails to fulfill the instructions of the Wirtschaftsprüferkammer without providing adequate explanation, the application for appointment is considered withdrawn.

## **§ 17**

### **Professional Certificate and Professional Oath**

(1) <sup>1</sup>Prior to handover of the official certificate, all candidates are to swear the professional oath before the Wirtschaftsprüferkammer or, in certain cases, one of its authorized offices.

<sup>2</sup>The oath reads as follows:

"I do solemnly swear to responsibly and diligently uphold the duties of Wirtschaftsprüfer, in particular to maintain confidentiality and to prepare audit reports and professional opinions conscientiously and without prejudice, so help me God."

(2) The oath may also be sworn without a religious affirmation.

(3) If the law permits members of a religious community to use other affirmations in lieu of the oath, the applicant who is a member of such a religious community may be sworn using that affirmation.

## **§ 18**

### **Professional Title**

(1) <sup>1</sup>In their professional business, Wirtschaftsprüfer may use their official professional title. <sup>2</sup>To the extent that the word for "Wirtschaftsprüfer" in the accountant's native language differentiates between genders, as is the case in German, female members of the profession may use the equivalent professional title of "Wirtschaftsprüferin". <sup>3</sup>If statements are issued during the course of duties according to § 2 Section 1 that are legally restricted to members of the profession, these statements may only be signed using the professional title and, in addition, with an official auditor's title obtained in a foreign country.

(2) <sup>1</sup>Academic degrees and titles and suffixes indicating an officially accredited graduation may be used alongside the professional title. <sup>2</sup>Public and professional titles are additionally permitted if they involve official appointments and descriptions of an activity that is allowed to be pursued alongside the duties of Wirtschaftsprüfer (§ 43a); areas of legal specialty are also permissible. <sup>3</sup>It is also permitted to use professional titles legitimately obtained in foreign countries describing the activity of statutory auditor or an activity that is allowed to be practiced alongside the profession of Wirtschaftsprüfer.

(3) <sup>1</sup>Expiration, withdrawal or revocation of an appointment also includes waiver of the right to bear the professional title. <sup>2</sup>In addition, the professional title may not be used by way of reference to an earlier qualification.

(4) <sup>1</sup>The Wirtschaftsprüferkammer can grant the right to continue to bear the professional title to members of the profession who, due to old age or physical ailments, waive the rights that derive from the appointment and no longer engage in professional practice. <sup>2</sup>The Wirtschaftsprüferkammer can withdraw or revoke this permission if circumstances become known or ensue that would have led to the expiration, withdrawal or revocation of the appointment or the refusal of permission. <sup>3</sup>Prior to withdrawal or revocation of this permission, the person involved has the right to a hearing.

## **§ 19**

### **Expiration of the Appointment**

- (1) The appointment shall expire due to
1. death,
  2. waiver,
  3. legally binding exclusion from the profession.
- (2) Waiver is to be declared to the Wirtschaftsprüferkammer in writing.

## **§ 20**

### **Withdrawal and Revocation of the Appointment**

- (1) The appointment is to be withdrawn, effective going forward, if facts should be revealed which, had they been known at the time, would have been grounds for denying the appointment.
- (2) The appointment is to be revoked if the Wirtschaftsprüfer
1. does not carry out his duties on his own authority or engages in work activity that is incompatible with the profession according to § 43 Section 2 Sentence 1 or § 43a Section 3,
  2. has lost his entitlement to hold public office as a result of a criminal conviction,
  3. is incapable of practicing his profession in an orderly manner due to health or other reasons that do not constitute merely a temporary impairment,
  4. does not take out a mandatory professional indemnity insurance policy (§ 44b Section 4, § 54) or has repeatedly allowed his mandatory professional indemnity insurance policy to lapse for considerable periods over the past five years and it is feared that this noncompliance may persist in the future,
  5. does not have an orderly financial standing, especially if he faces financial collapse (§ 16 Section 1 No. 7),
  6. does not maintain a professional place of business according to § 3 Section 1 Sentence 1,
  7. has forfeited a fundamental right according to the Federal Constitutional Court.
- (3) <sup>1</sup>The Wirtschaftsprüfer is to notify the Wirtschaftsprüferkammer immediately
1. that he is carrying out a commercial activity (§ 43a Section 3 No. 1),
  2. that he is entering into an employment relationship or that there is a significant change in an existing employment relationship (§ 43a Section 3 No. 2),
  3. that he is serving on an ongoing or temporary basis as judge, civil servant, or professional member of the armed forces (§ 43a Section 3 No. 3).

<sup>2</sup>Materials relating to an employment relationship are to be presented to the Wirtschaftsprüferkammer upon request.

(4) <sup>1</sup>In the cases in Section 2 No. 1 and 4, a revocation is to be waived if it can be expected that the Wirtschaftsprüfer will be carrying out duties on his own authority in the future, will be permanently giving up the professional activity considered incompatible with § 43 Section 2 and § 43a Section 3 or will in future constantly maintain a mandatory professional indemnity insurance policy. <sup>2</sup>A reasonable deadline can be set for the Wirtschaftsprüfer to do so. <sup>3</sup>If he does not fulfill his obligation within the prescribed deadline, the appointment shall be declared revoked. <sup>4</sup>Revocation in the cases in Section 2 No. 5 can be waived if it can be demonstrated to the Wirtschaftsprüferkammer that the interests of third parties are not in jeopardy due to the non-orderly financial standing.

(5) (Repealed)

(6) <sup>1</sup>If the Wirtschaftsprüfer is incapable of representing his own interests in the proceedings due to a mental illness or a physical or mental disability, the Guardianship Court will name a legal guardian to represent the Wirtschaftsprüfer at the proceedings before the Wirtschaftsprüferkammer; all relevant legal regulations of the Act for Reforming the Procedure in Family Matters and in the Affairs of the Voluntary Jurisdiction shall apply where guardianship is ordered according to §§ 1896 et seq. of the German Civil Code. <sup>2</sup>The legal guardian shall be a Wirtschaftsprüfer.

(7) <sup>1</sup>If the suspensive effect of a legal challenge is not applicable, § 116 Section 2 to 4, § 117 Section 2 and § 121 shall apply *mutatis mutandis*. <sup>2</sup>A legal challenge against revocation on grounds in Section 2 No. 4 has no suspensive effect.

## **§ 20a**

### **Expert Medical Opinion in Revocation Proceedings**

<sup>1</sup>In proceedings involving revocation of the appointment according to § 20 Section 2 No. 3, § 16a Section 1 and 2 shall be used *mutatis mutandis*. <sup>2</sup>If the expert opinion is not submitted to the Wirtschaftsprüferkammer by the prescribed deadline and this for no adequate reason, it shall be assumed that the Wirtschaftsprüfer is not merely temporarily impaired in carrying out his duties in an orderly manner for the reason according to § 20 Section 2 No. 3 that was to be determined by the expert opinion.

## **§ 21**

### **Competency**

The Wirtschaftsprüferkammer shall decide on the withdrawal and revocation of appointments.

**§ 22**  
**(Repealed)**

**§ 23**  
**Reappointment**

- (1) A former Wirtschaftsprüfer can be reappointed if
1. the appointment according to § 19 Section 1 No. 2 has expired,
  2. in the case of an appointment that has expired according to § 19 Section 1 No. 3, a legally binding decision to exclude a Wirtschaftsprüfer from the profession has been repealed by way of pardon or a period of at least eight years has passed since the final exclusion from the profession,
  3. the appointment was withdrawn or revoked and the primary reasons for the withdrawal or revocation no longer exist.
- (2) <sup>1</sup>A repeated examination is not necessary. <sup>2</sup>On an individual basis, the Wirtschaftsprüferkammer can instruct the candidate to take the examination in part or in full, if it doesn't appear that orderly practice of the profession would be possible without it.
- (3) Reappointment is to be denied if the requirements for reappointment are not met in the spirit of § 16.

**§ 24**  
**(Repealed)**

**Part Four**  
**(Repealed)**

**Part Five**  
**Wirtschaftsprüfungsgesellschaften**

**§ 27**  
**Legal Form**

- (1) Incorporated companies, European companies (SE), associations limited by shares, limited liability companies, general partnerships, limited commercial partnerships and other partnerships can be recognized as Wirtschaftsprüfungsgesellschaften according to the regulations stated in this section.
- (2) General partnerships and limited commercial partnerships can be recognized as Wirtschaftsprüfungsgesellschaften if they are listed as trading partnerships in the commercial register on the basis of their fiduciary activities.

## § 28

### Requirements for Licensing

(1) <sup>1</sup>The requirement for licensing is that the majority of members of the management board, the managers, the personally liable partners, the managing directors or the partners (legal representatives) be members of the profession in Germany or auditors accredited in another member state of the European Union or treaty nation in the European Economic Area. <sup>2</sup>Personally liable partners can also be Wirtschaftsprüfungsgesellschaften in Germany or audit firms accredited in another member state of the European Union or treaty nation in the European Economic Area. <sup>3</sup>If a company has only two legal representatives, one of them must be a Wirtschaftsprüfer from Germany or an auditor accredited in another member state of the European Union or treaty nation in the European Economic Area. <sup>4</sup>At least one of the persons or firms in Items 1 to 3 must be domiciled at the headquarters of the company.

(2) <sup>1</sup>In addition to members of the profession, Wirtschaftsprüfungsgesellschaften and auditors accredited in another member state of the European Union or treaty nation in the European Economic Area, vereidigte Buchprüfer, tax advisors, as well as lawyers, are authorized to be the legal representatives of Wirtschaftsprüfungsgesellschaften. <sup>2</sup>Upon written request, the Wirtschaftsprüferkammer may authorize particularly qualified persons not mentioned in Sentence 1 and who practice a profession that is compatible with the profession of Wirtschaftsprüfer.

(3) <sup>1</sup>In addition to members of the profession and auditors accredited in another member state of the European Union or treaty nation in the European Economic Area, the Wirtschaftsprüferkammer can grant authorization to persons empowered or appointed as expert auditors in a third-party country to be the legal representatives of Wirtschaftsprüfungsgesellschaften, if the basic requirements for empowerment or appointment are met according to this act. <sup>2</sup>This does not apply to experts empowered or appointed as auditors in third-party countries who, as personally liable partners, are excluded from the management. <sup>3</sup>Sentences 1 and 2 also apply *mutatis mutandis* to lawyers, patent attorneys as well as tax advisors in other countries, if they are practicing a profession that complies with the education and powers that fall within the Federal Lawyers' Act, the Patent Attorney's Act or the Tax Advisor's Act.

(4) <sup>1</sup>An additional requirement for licensing is that

1. Shareholders are exclusively members of the audit profession, Wirtschaftsprüfungsgesellschaften who fulfill all the requirements of this section, or auditors accredited in another member state of the European Union or treaty nation in the European Economic Area, or audit firms or persons accredited there according to No. 1a,
- 1a. Shareholders are vereidigte Buchprüfer, tax advisors, representatives in tax matters, lawyers, persons authorized to jointly practice their profession according to § 44b Section 2, or persons whose duties as a member of the management board, manager, partner or personally liable partner have been approved according to Section 2 or 3, and at least half the number of persons named in this Number are employed by the company,
2. the shares in the Wirtschaftsprüfungsgesellschaft are not being held for the account of a third party,

3. in limited liability companies the majority of shares belongs to Wirtschaftsprüfer who fulfill the requirements of this Section or to auditors or audit firms accredited in another member state of the European Union or treaty nation in the European Economic Area,
- 3a. in limited liability companies, limited commercial partnerships and associations limited by shares, less than one quarter of the shares in the nominal capital or the paid capital of the limited partner entered in the commercial register belongs to persons outside of the company (simple minority interest),
4. in limited commercial partnerships, the majority of paid in capital of the limited partner is held by Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften or by auditors or audit firms accredited in another member state of the European Union or treaty nation in the European Economic Area who fulfill the requirements of this section,
5. Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften who fulfill the requirements of this section or auditors or audit firms accredited in another member state of the European Union or treaty nation in the European Economic Area, together hold the majority of voting rights of shareholders, limited partners, shareholders of a limited liability companies or limited partners and
6. it is specified in the company agreement that only shareholders who are members of the profession or auditors accredited in another member state of the European Union or treaty nation in the European Economic Area may be authorized to exercise shareholder rights.

<sup>2</sup>Once members of the profession, as defined in Sentence 1 No. 1, have entered into a partnership under Civil Law, the exclusive purpose of which is to hold shares in a Wirtschaftsprüfungsgesellschaft, their ownership in the Wirtschaftsprüfungsgesellschaft is figured as a proportion of their ownership in the partnership under Civil Law. <sup>3</sup>Foundations and registered associations are considered members of the profession as defined in Sentence 1 No. 1, if

- a) they serve exclusively as the pension fund for persons employed in the Wirtschaftsprüfungsgesellschaft and their survivors or exclusively to promote education, advance professional training or research and
- b) the bodies called upon to represent them consist in the majority of Wirtschaftsprüfer.

(5) <sup>1</sup>In incorporated companies and associations limited by shares, the shares must be registered in someone's name. <sup>2</sup>The transfer of shares must be subject to company approval. <sup>3</sup>The same applies to the transfer of shares in a limited liability company.

(6) <sup>1</sup>In the case of limited liability companies, the share capital must be at least twenty-five thousand euros. <sup>2</sup>In the case of incorporated companies, associations limited by shares and limited liability companies, proof must be furnished upon application that the value of the individual assets minus debts conforms to the legal minimum basic capital or share capital.

(7) Licensing must be denied as long as the provisional statement of minimum coverage is included on the application for taking out professional indemnity insurance.

## § 29

### Competence and Proceedings

- (1) The Wirtschaftsprüferkammer has competence of licensing Wirtschaftsprüfungsgesellschaften.
- (2) The application is to include an original or publicly notarized facsimile of the company agreement or articles of incorporation as well as proof that all the provisions for licensing in § 28 have been met.
- (3) <sup>1</sup>A certificate will be issued to the licensed Wirtschaftsprüfungsgesellschaft. <sup>2</sup>§ 3a of the Code of Administrative Procedure does not apply.

### **§ 30**

#### **Advice of Amendment**

<sup>1</sup>The Wirtschaftsprüferkammer is to be advised immediately in case of amendments to the company agreement or articles of incorporation or in the person of the legal representative. <sup>2</sup>This advice of amendment is to be accompanied by a publicly notarized copy of each official document. <sup>3</sup>In case the commercial register or partnership register are amended, this is to be followed up by a publicly notarized copy of the entry.

### **§ 31**

#### **The Term "Wirtschaftsprüfungsgesellschaft"**

<sup>1</sup>The licensed firm is obliged to take up the term "Wirtschaftsprüfungsgesellschaft" in its company name and to use it in its business dealings. <sup>2</sup>For partnerships, the requirement according to § 2 Section 1 of the Partnership Act of 25 July 1994 (FLJ I p. 1744) to include all professional descriptions of all professions represented by the partnership does not apply in this case.

### **§ 32**

#### **Auditor Opinions**

<sup>1</sup>Where Wirtschaftsprüfungsgesellschaften issue opinions on statutory audits, these are generally only allowed to be signed by Wirtschaftsprüfer; they can also be signed by vereidigte Buchprüfer, to the extent that they are authorized to issue auditor's opinions. <sup>2</sup>The same holds true for additional remarks in the course of activities legally restricted to members of the profession.

### **§ 33**

#### **Expiration of Licensing**

- (1) Licensing expires after
  1. dissolution of the firm,
  2. waiver of licensing.

(2) <sup>1</sup>Waiver is to be declared in writing to the Wirtschaftsprüferkammer. <sup>2</sup>The Wirtschaftsprüferkammer is to be notified immediately in case a licensed company is dissolved.

### **§ 34**

#### **Withdrawal and Revocation of Licensing**

(1) Licensing is to be withdrawn or revoked if

1. the appointment of a person to the management board, the position as manager, personally liable partner or partner has been withdrawn or revoked, unless every authority to represent the company and execute business has been immediately withdrawn or revoked,
2. if facts become known that would have resulted in licensing being refused or if the requirements for recognizing the company, also based on § 54 Section 1, are subsequently no longer met, unless the company creates the conditions that are in compliance with the law within a reasonable period to be determined by the Wirtschaftsprüferkammer, which is a maximum of two years in case the requirements in § 28 Section 2 Sentence 3 and Section 3 Sentence 2 are no longer met; the period must be a minimum of five years in case the requirements in § 28 Section 4 are not met due to a case of inheritance,
3. a member of the management board, a manager, a personally liable partner or general partner has been excluded from the profession by final disciplinary judgment or one of the persons named in § 28 Section 2 Sentences 1, 2 and Section 3 has been denied recognition as a suitable person to represent and manage a Wirtschaftsprüfungsgesellschaft, unless the Wirtschaftsprüfungsgesellschaft can prove to the Wirtschaftsprüferkammer that every representation and management authority of the convicted person has been immediately withdrawn or revoked.

(2) Licensing is to be revoked if the company is in a state of financial collapse, unless this does not harm the interests of clients and other third parties.

(3) The Wirtschaftsprüferkammer shall decide on the withdrawal and revocation of licensing.

### **§ 35**

**(Repealed)**

### **§ 36**

**(Repealed)**

## **Section Six**

### **General Provisions for Administrative Procedures**

### **§ 36a**

#### **Investigation Principle, Duty to Cooperate, Transfer of Personal Information**

(1) The Wirtschaftsprüferkammer shall investigate the facts ex officio.

(2) <sup>1</sup>The applicants, Wirtschaftsprüfer or firms involved in the proceedings must cooperate in investigating facts and, to the extent that it is required, give their consent to the use of evidence. <sup>2</sup>Their application for the granting of legal benefits shall be rejected if the authority responsible for the decision is unable to sufficiently clarify the matter as a consequence of refusal to cooperate. <sup>3</sup>The applicant, Wirtschaftsprüfer or firm is to be made aware of these legal consequences.

(3) <sup>1</sup>It may be necessary for

1. the Wirtschaftsprüferkammer, courts and public authorities to transfer data about natural and legal persons to the public authority responsible for making a decision, data which in the view of the transmitting party is necessary for the admission to or the completion of the examination or the aptitude test, for the issuing of a certificate of exemption according to § 28 Section 2 or 3 or for the withdrawal or revocation of this decision,
2. courts and public authorities transmit to the Wirtschaftsprüferkammer data about natural and legal persons that in the view of the transmitting agency is required for the appointment or reappointment, licensing, or withdrawal or revocation of a decision or which can substantiate the violation of professional duties,

to the extent that by doing so, the legitimate interests of the person or persons concerned or the public interest overrides the interests that an individual has in confidentiality. <sup>2</sup>The data transfer will be waived if it would contravene special legal provisions of use; this does not apply to tax confidentiality according to § 30 of the Fiscal Code, the obligation of secrecy according to § 64, the obligation of secrecy of the body members, delegates and employees of the professional chamber of another liberal profession in the territory to which this act applies and the obligation of secrecy for persons and agencies named in § 9 Section 1 of the Banking Act and in § 8 of the Securities Trading Act as well as in § 342c of the Commercial Code.

(4) To the extent that natural and legal persons are members of a professional chamber of another liberal profession in the territory to which this act applies, the Wirtschaftsprüferkammer is allowed to transmit data to other agencies, as defined in Section 3 and pursuant to these provisions, to the extent that in the view of the transmitting party, knowledge of this data is necessary for reaching a decision.

(5) The Wirtschaftsprüferkammer may transmit the personal data of its members to the pension fund for Wirtschaftsprüfer and vereidigte Buchprüfer, to the extent that they are required to determine membership status, as well as the type and liability to pay contributions or the pension benefits.

### **§ 37**

#### **Institution Maintaining the Public Register**

(1) <sup>1</sup> The Wirtschaftsprüferkammer maintains the public register of Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften. <sup>2</sup>Each member of the profession and Wirtschaftsprüfungsgesellschaft to be entered receives a registration number. <sup>3</sup>The public register is maintained in digital form in German and the most current data is electronically available to the public.

(2) The Wirtschaftsprüferkammer may publish a list of members that may contain additional information that goes above and beyond the voluntary details of members of the profession and professional firms provided in § 38.

(3) <sup>1</sup>Entry in the list of members must be stopped at the request of a member. <sup>2</sup>The Wirtschaftsprüferkammer is to instruct each member as to his right of objection.

### **§ 38**

#### **Entry**

The initial entries in the public register should consist of the responsible agencies for the admission, quality assurance system, disciplinary and public oversight according to § 66a (designations, addresses) of all members of the profession and Wirtschaftsprüfungsgesellschaften, followed by individual listings next to the respective registration number

1. Wirtschaftsprüfer, including
  - a) Last name, first name, date of birth, birthplace and name changes,
  - b) date of appointment and the issuing authority,
  - c) date when place of professional business was established, its address, in the cases of § 3 Section 1 Sentence 1 Half-Sentence 2 the German serving address and a history of changes by date,
  - d) type of professional activity according to § 43a Section 1 and 2 and all changes by date,
  - e) Last name, first name, professional titles or firm and the addresses of the professional offices of the members of the joint practice, the name of the joint practice and all changes by date; this applies to the announcement of a joint practice, even if the requirements are not met according to § 44b Section 1 Sentence 1,
  - f) Company, address, Internet address and registration number of the Wirtschaftsprüfungsgesellschaft where the Wirtschaftsprüfer is employed or otherwise active or to which he belongs as a partner or is affiliated in a similar manner,
  - g) Last name, first name, professional titles and addresses of the professional offices of the members of the partnership, the name of the partnership and all changes by date; this applies to the announcement of a partnership, even if the requirements are not met according to § 1 of the Partnership Act,

- h) Issuance of certification according to § 57a Section 6 Sentence 7 and expiration of period according to § 57a Section 6 Sentence 8 or expiration of period according to § 57a Section 1 Sentence 2 and all changes by date,
  - i) Registration as quality assurance reviewer according to § 57a Section 3,
  - j) all other registrations with the responsible agencies of other countries by name of the registration authority as well as the registration number,
  - k) any legal prohibitions of activities or professional practice, even temporary in nature, and for prohibitions of activity the area of activity, each by starting date and duration.
2. Wirtschaftsprüfungsgesellschaften, including
- a) Name and legal form,
  - b) Day of licensing as a Wirtschaftsprüfungsgesellschaft, along with the issuing authority,
  - c) Address of the main office, contact details, including a contact person, Internet address, and, to the extent that the Wirtschaftsprüfungsgesellschaft is integrated into a network, the companies and addresses in the network and their affiliates or a reference to where this information is publicly available,
  - d) Names, professional titles and addresses of the shareholders and of the members authorized to represent a legal entity and their shareholdings and share capital as well as the names, professional titles, birthdates and addresses of those authorized to represent the company and the remaining shareholders in partnerships and the amount of limited partners' investments in the partnership as listed in the Commercial Register,
  - e) Names, business addresses and registration numbers of the Wirtschaftsprüfer working on behalf of the firm
  - f) Issuance of certification according to § 57a Section 6 Sentence 7 and expiration of the period according to § 57a Section 6 Sentence 8 or expiration of the period according to § 57a Section 1 Sentence 2,
  - g) Registration as quality assurance reviewer according to § 57a Section 3,
  - h) all other registrations at the responsible authorities in other countries listed by the name of the registering agency and by registration number
- as well as all changes to letters a, c, d, e, f, g and h listed by date.
3. Branch offices of Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften, including
- a) Name,
  - b) Address of the branch office,
  - c) Names and addresses of executives at the branch office
- as well as all changes to letters a to c by date.
4. Auditors and statutory audit firms from third-party countries according to § 134; numbers 1 to 3 shall apply *mutatis mutandis*.

### **§ 39**

#### **Cancellation**

- (1) Entries in the public register are to be cancelled
1. for Wirtschaftsprüfer if their appointment has expired or has been incontestably withdrawn or revoked,

2. for Wirtschaftsprüfungsgesellschaften, if licensing as a Wirtschaftsprüfungsgesellschaft has expired or has been incontestably withdrawn or revoked,
3. for branch offices,
  - (a) if the branch office has been closed,
  - (b) if the branch office is no longer managed by a Wirtschaftsprüfer and an exceptional authorization has not been issued by the Wirtschaftsprüferkammer.

(2) <sup>1</sup>Entries of Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften and their branch offices are to be cancelled from the public register, in deviation from Section 1, if immediate enforcement of withdrawal or revocation of the appointment or licensing has been specially ordered. <sup>2</sup>If the suspensive effect of legal action is ordered or restored by final judgment, entry is to be restored according to § 38.

(3) <sup>1</sup>The details according to § 38 No. 1 Letter h and i and § 38 No. 2 Letter f and g are to be cancelled, if the certificate according to § 57a Section 6 Sentence 7, exceptional authorization according to § 57a Section 1 Sentence 2 or registration as quality assurance reviewer has been incontestably withdrawn or revoked or the term has expired. <sup>2</sup>The details in § 38 No. 1 Letter k are to be cancelled if the activity and professional prohibitions have expired.

## **§ 40 Proceedings**

- (1) Entries and cancellations are made ex officio by the Wirtschaftsprüferkammer.
- (2) <sup>1</sup>Members of the Wirtschaftsprüferkammer are obliged to disclose facts immediately that necessitate an entry, change, or cancellation in a form that complies with §§ 126, 126a of the Civil Code. <sup>2</sup>§ 62a applies *mutatis mutandis*.

## **§ 40a Register for Cooperative Audit Associations, Cooperative Audit Offices of an Association of Savings and Clearing Banks**

- (1) The cooperative audit associations which carry out audits as defined in § 340k Section 2, Sentence 1 of the Commercial Code or Article 25 Section 1, Sentence 1 of the Introductory Act of the Commercial Code, as well as the cooperative audit offices of an association of savings and clearing banks, are also registered at the Wirtschaftsprüferkammer. § 37 Section 1 applies *mutatis mutandis*.
- (2) The following is to be entered in the register, along with each register number:
  1. Name and legal form of the audit association or name of the audit office as well as the name and legal form of the entity responsible for the audit office;
  2. Date on which the right to audit was conferred and the agency that conferred it or the legal authority of the audit office;

3. Address of the main office as well as contact details along with a contact person, an Internet address and, to the extent that the audit association or the audit office is a member in a network, the names and addresses of all members of the network and their affiliated companies or an indication of where this information is publicly available;
4. Addresses of additional offices in Germany;
5. Names and business addresses of all members of the board of management of the audit association or the head of the audit office;
6. Names and register numbers of Wirtschaftsprüfer working on behalf of the audit association or audit office;
7. all other registrations with the competent authorities of other countries, specifying the name of the register office as well as the register number;
8. Name and address of the competent oversight commission.

(3) <sup>1</sup>The audit associations and audit offices named in Section 1 are obligated to inform the Wirtschaftsprüferkammer of the facts specified in Section 2 as well as any amendments to these facts.

<sup>2</sup>The Wirtschaftsprüferkammer is to enter any facts disclosed as well as amendments.

(4) <sup>1</sup>The cooperative audit associations named in Section 1 are obligated to notify the Wirtschaftsprüferkammer, if they no longer carry out any audits of financial statements as defined by § 340k Section 2 Sentence 1 of the Commercial Code or Article 25 Section 1 Sentence 1 of the Introductory Act to the Commercial Code or if their right to audit has been uncontestably revoked. <sup>2</sup>The audit offices of an association of savings and clearings banks named in Section 1 are obligated to inform the Wirtschaftsprüferkammer, if their right to audit has been uncontestably revoked. <sup>3</sup>In these cases the Wirtschaftsprüferkammer is to erase the entry.

## **Section Eight**

### **Administrative Court Procedures**

#### **§ 41**

#### **Direct Appeal against Decisions by the Wirtschaftsprüferkammer**

It is not necessary to conduct a review in a preliminary hearing prior to an appeal being filed against decisions by the Wirtschaftsprüferkammer based on provisions in Sections Three and Five of Part Two and § 134a Section 1 and 2 of this act.

#### **§ 42**

**(Repealed)**

## **Section Three**

### **Rights and Duties of Wirtschaftsprüfer**

#### **§ 43**

#### **General Professional Duties**

(1) <sup>1</sup> The Wirtschaftsprüfer must practice his profession with independence, conscientiousness, confidentiality and on his own responsibility. <sup>2</sup> In particular he must remain impartial in his audit reports and professional opinions.

(2) <sup>1</sup> The Wirtschaftsprüfer must abstain from all activities which are incompatible with his profession or the reputation of his profession. <sup>2</sup> He has to be particularly cognizant of the professional duties arising out of his entitlement to issue opinions on statutory audits. <sup>3</sup> Also outside the scope of his profession, he has to carry himself in a manner worthy of the trust and respect the profession demands. <sup>4</sup> He is obliged to continually improve his professional skills.

(3) Whoever has been an auditor of a company as defined in § 319a Section 1 Sentence 1 of the Commercial Code or whoever was employed as responsible auditing partner as defined in § 319a Section 1 Sentence 5, Section 2 Sentence 2 of the Commercial Code for the auditing of financial statements of such a company, is not allowed to assume any key executive function there within two years following the end of the auditing activity.

#### **§ 43a**

#### **Rules for Practicing the Profession**

(1) Wirtschaftsprüfer may exercise their profession in practice on their own or jointly according to § 44b, as members of the management board, managers, personally liable partners or persons affiliated with a Wirtschaftsprüfungsgesellschaft as defined in the Partnership Act, or as representatives or employees with signing rights in the practices of Wirtschaftsprüfer, Wirtschaftsprüfungsgesellschaften, cooperative audit associations, cooperative audit offices of an association of savings and clearing banks or non-local audit bodies for corporations or other institutions established under public law.

(2) <sup>1</sup> Wirtschaftsprüfer may only be permitted to act as members of the management board, managers, personally liable partners or persons affiliated with a Buchprüfungsgesellschaft according to the Partnership Act, a law firm or tax advisory firm not licensed as a Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft if they continue to be entitled to accept engagements as statutory auditors which form part of the professional duties of a Wirtschaftsprüfer according to § 316 of the Commercial Code. <sup>2</sup> The same provisions in Sentence 1 apply to practicing the profession as a representative or employee with signing rights with a member of the foreign audit profession or foreign audit firm, as members of the management board, managers, personally liable partners or persons affiliated with a foreign audit firm according to the Partnership Act, if the requirements for practicing their profession

correspond substantially with those of this act. <sup>3</sup>Sentence 1 also applies to the activity as a member of the management board, managers, personally liable partners or persons affiliated with a foreign law firm or tax advisory firm, if the requirements for practicing their profession correspond substantially to those of the Federal Lawyer's Code and the Tax Advisor's Act.

(3) Wirtschaftsprüfer are not permitted to exercise

1. a commercial activity,
2. any activities as an employee except those in Section 1 and 2 as well as in Section 4 No. 2, 3, 4, 5 and 8; in exceptional cases the Wirtschaftsprüferkammer may consider temporary employment as trustee compatible if it is only temporary and the trust function can only be exercised in employee status,
3. any activities as civil servants or judges other than in honorary capacity with the exception of those referred to in Section 4 No. 2. § 44a remains unaffected.

(4) The following are compatible with the profession as Wirtschaftsprüfer:

1. practicing a liberal profession in the technical and legal areas and one which may be exercised in partnership in accordance with § 44b Section 1,
2. working at academic research institutes and as an instructor at universities,
3. working as an employee at the Wirtschaftsprüferkammer,
4. working as an employee at an institution recognized through statute by the Federal Ministry of Justice according to § 342 Section 1 of the Commercial Code, as an employee at an audit office recognized through statute by the Federal Ministry of Justice in consultation with the Federal Ministry of Finance according to § 342b Section 1 of the Commercial Code or as an employee of a non-commercial partnership, whose members in good standing include Wirtschaftsprüfer, Wirtschaftsprüfungsgesellschaften, vereidigte Buchprüfer or Buchprüfungsgesellschaften or persons and partnerships that fulfill the requirements of § 44b Section 2 Sentence 1, and whose exclusive purpose is to represent the concerns of Wirtschaftsprüfer or vereidigte Buchprüfer and in which Wirtschaftsprüfer, Wirtschaftsprüfungsgesellschaften and vereidigte Buchprüfer and Buchprüfungsgesellschaften have the majority,
5. manager status of a European Economic Interest Grouping whose members consist exclusively of individuals who may form partnerships,
6. staging of seminars and lectures for preparing Wirtschaftsprüfer, vereidigte Buchprüfer and tax advisors for examinations and for advanced training of members of the Wirtschaftsprüferkammer,
7. free-lance literary, academic, artistic and lecturing activities,
8. working as an employee of an audit association according to § 26 Section 2 of the Banking Act.

## **§ 44**

### **Exercise of Profession on own Responsibility**

(1) <sup>1</sup>The profession is not exercised on own responsibility if a representative or employee with signing rights is bound by directives which oblige him to sign audit reports and expert opinions, the contents of

which do not correspond with his own conviction. <sup>2</sup>Directives containing such obligations are not permitted. <sup>3</sup>Legal representatives and partners of a Wirtschaftsprüfungsgesellschaft, who are not Wirtschaftsprüfer and members of the supervisory board of a Wirtschaftsprüfungsgesellschaft, are not permitted to influence the conduct of audits in a manner which would prejudice the independence of the responsible Wirtschaftsprüfer.

(2) The agreement of a legal representative of a Wirtschaftsprüfungsgesellschaft or a Wirtschaftsprüfer in employment of another Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaft to accept joint signing rights does not preclude acting on one's own responsibility, and the same applies to cooperative audit associations, cooperative audit offices of an association of savings and clearing banks or non-local audit bodies for corporations or other institutions established under public law where there may be a representative authorized to sign on behalf of the audit association, the audit office or the audit institution.

#### **§ 44a**

##### **Wirtschaftsprüfer in Public Service or Public Office**

<sup>1</sup>If a Wirtschaftsprüfer enters into a public service relationship as a term-elected civil servant or accepts public office, he may not exercise the profession of Wirtschaftsprüfer unless he performs his duties on an honorary basis. <sup>2</sup>On application of the Wirtschaftsprüfer, the Wirtschaftsprüferkammer may appoint a representative as a substitute or permit him to exercise his profession himself, if compliance with his general professional duties is not endangered thereby.

#### **§ 44b**

##### **Joint Professional Practice, Implied and Disguised Partnership**

(1) <sup>1</sup>Wirtschaftsprüfer may practice their profession jointly locally and regionally in partnerships under the Civil Code (joint practice) with natural and legal persons as well as with partnerships that are in turn subject to professional supervision by a professional chamber of a liberal profession within the territory to which this act applies and who have the right to refuse to give evidence in accordance with § 53 Section 1 Sentence 1 No. 3 of the Code of Criminal Procedure. <sup>2</sup>A joint practice with lawyers who are also notaries is only allowed in terms of legal practice. <sup>3</sup>In addition, the collaboration with lawyers who are at the same time German notaries is regulated by the legal provisions and requirements of the notary profession.

(2) <sup>1</sup>Joint professional practice with natural and legal persons as well as with partnerships that are empowered or appointed in a foreign country as expert auditors is allowed if the requirements for their empowerment or appointment meet the essential provisions of this act and allow them to practice their profession in the foreign country jointly with Wirtschaftsprüfer. <sup>2</sup>Further, joint practice is allowed with lawyers, patent attorneys and tax advisors of other countries if their education and authority is comparable to the Federal Lawyer's Act, the Patent Attorney Act or the Tax Advisor's Act, and are allowed to jointly practice their profession in partnerships with lawyers, patent attorneys or tax advisors in the territory to which this act applies. <sup>3</sup>Section 1 Sentence 2 and 3 shall apply *mutatis mutandis*.

(3) <sup>1</sup>The Wirtschaftsprüferkammer has the right of inspection in contracts related to joint practice.

<sup>2</sup>Necessary information is to be provided upon request.

(4) Members of the profession are only allowed to practice their profession in partnerships with persons as defined in Section 1 Sentence 1, who themselves are not members of the profession or appointed as a vereidigte Buchprüfer or a Wirtschaftsprüfungsgesellschaft or a Buchprüfungsgesellschaft, if they can demonstrate to the Wirtschaftsprüferkammer that upon taking up such an activity, the total indemnity coverage of the mandatory insurance according to § 54 is available to the auditor in its entirety for each insurance case.

(5) Wirtschaftsprüfer must end their joint practice immediately if due to the conduct of a member of the partnership they are no longer able to uphold their professional duties without restriction.

(6) If a joint practice is announced as defined in Section 1, the provisions in Section 4 and 5 shall apply *mutatis mutandis*.

## **§ 45**

### **Authorized Officers**

<sup>1</sup>When employed by Wirtschaftsprüfungsgesellschaften, Wirtschaftsprüfer should have the legal status of authorized officers. <sup>2</sup>Employed Wirtschaftsprüfer are considered executives in the connotation of § 5 Section 3 of the Works Constitution Act.

## **§ 46**

### **Leave of Absence**

(1) Upon written request, Wirtschaftsprüfer who temporarily wish to take up an activity that is incompatible with the profession may be granted a leave of absence by the Wirtschaftsprüferkammer.

(2) <sup>1</sup>They are neither allowed to practice their duties as Wirtschaftsprüfer nor bear the title of "Wirtschaftsprüfer" during their leave of absence. <sup>2</sup>The leave of absence shall initially be granted for up to one year and be renewable for a maximum of one year. <sup>3</sup>The total time of the leave of absence shall not exceed three successive years.

## **§ 47**

### **Branch Offices**

<sup>1</sup>Branch offices must be managed by at least one Wirtschaftsprüfer whose professional place of business is the location of a branch office. <sup>2</sup>The Wirtschaftsprüferkammer may make exceptions in the case of branch offices of Wirtschaftsprüfer working in their own independent practice.

**§ 48**  
**Seal**

(1) <sup>1</sup>Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften are obliged to use a seal when issuing reports during the exercise of their statutory duties. <sup>2</sup>They may use a seal if in the exercise of their profession they issue reports on audits or expert opinions.

(2) The Wirtschaftsprüferkammer will issue more specific instructions concerning the design and use of the seal within the framework of the Professional Charter.

**§ 49**  
**Refusal to Act**

The Wirtschaftsprüfer must refuse to act if this leads to a breach of his professional duties or if there is reason to doubt his impartiality in performing an engagement.

**§ 50**  
**Duty of Confidentiality by Assistants**

Insofar as they are not already obliged to maintain confidentiality by law, the Wirtschaftsprüfer must commit his assistants and staff to confidentiality.

**§ 51**  
**Notification of Refusal to Accept an Engagement**

<sup>1</sup>A Wirtschaftsprüfer who refuses to accept an engagement must give prompt notification of his refusal.

<sup>2</sup>He is liable for damages resulting from negligent delay of this notification.

**§ 51a**  
**(Repealed)**

**§ 51b**  
**Files**

(1) The Wirtschaftsprüfer must keep files that accurately document the work performed.

(2) <sup>1</sup>The Wirtschaftsprüfer has to retain the files for a period of ten years after the end of the engagement.

<sup>2</sup>This obligation expires before the end of this period, however, if the Wirtschaftsprüfer has requested the client to take receipt of the files and the client has not complied with this request within six months of having received it.

(3) <sup>1</sup>The Wirtschaftsprüfer can refuse to hand over the files until his fee and reimbursement for any out-of-pocket expenses have been satisfied. <sup>2</sup>This does not apply to the extent that the withholding of files or individual documents would be inappropriate under the circumstances.

(4) <sup>1</sup>Files as referred to in sections 2 and 3 are only those documents which the Wirtschaftsprüfer has received from or on behalf of the client in the course of performing his professional duties, but not the exchange of correspondence between the Wirtschaftsprüfer and his client, the originals or copies which the client has already received, or the working papers prepared for internal purposes. <sup>2</sup>In the working papers that pertain to audits of financial statements as defined in § 316 of the Commercial Code, the Wirtschaftsprüfer is to also document in writing the steps taken to monitor his independence as defined in § 319 Section 2 to 5 and of § 319a of the Commercial Code, any circumstances jeopardizing his independence and the safeguards he has implemented.

(4a) <sup>1</sup>The Wirtschaftsprüfer who carries out an audit of consolidated group financial statements, is upon written request to hand over to the Wirtschaftsprüferkammer the materials concerning the work of auditors or auditing firms from third countries as defined in § 3 Section 1 Sentence 1, that audit the subsidiaries included in the group consolidation, to the extent that they are not registered pursuant to § 134 Section 1 or a cooperation agreement pursuant to § 57 Section 9 Sentence 5 No. 3 does not exist. <sup>2</sup>If the Wirtschaftsprüfer does not receive access to the materials concerning the work of auditors or auditing firms from third countries, the attempt to obtain them and the obstacles shall be documented and the reasons stated to the Wirtschaftsprüferkammer upon its written request.

(5) <sup>1</sup>Sections 1 to 4a apply mutatis mutandis to the extent that the Wirtschaftsprüfer makes use of electronic data processing in preparing the files. <sup>2</sup>Other legal provisions regulating the preservation of business records shall remain unaffected.

## **§ 52**

### **Advertising**

Advertising is permissible unless it violates fair practices.

## **§ 53**

### **Change of Client**

Members of the profession are not allowed to represent competing interests; in particular, they are only permitted to act on behalf of other clients in the same matter in which they or another person or partnership with whom they jointly practice their profession has been involved if the former and new client provide their consent.

## **§ 54**

### **Professional Indemnity Insurance**

(1) <sup>1</sup>Independent Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften are required to take out and maintain professional indemnity insurance, for as long as they are officially appointed or licensed, to cover financial damages arising out of the indemnity risks of exercising their profession. <sup>2</sup>The minimum coverage for each insured event must be equivalent to the level specified in § 323 Section 2 Sentence 1 of the Commercial Code. <sup>3</sup>The Wirtschaftsprüferkammer is the competent authority pursuant to § 117 Section 2 of the Law Governing Insurance Contracts.

(2) Upon written request, the Wirtschaftsprüferkammer may provide to third parties information concerning the professional indemnity insurance of a Wirtschaftsprüfer, to the extent that this is necessary in executing claims for damages and the Wirtschaftsprüfer has overriding legitimate interest in this information not being disclosed.

(3) Within the framework of the Professional Charter, the Wirtschaftsprüferkammer shall decide upon additional provisions concerning the insurance contents, regulations on permissible exclusions from liability such as damages for willful breach of duty, proof of insurance, notification procedure and monitoring of the legal obligation to insure.

#### **§ 54a**

#### **Contractual Limitations of Liability**

(1) Claims for damages due to negligence arising out of the contractual relationship between the client and the Wirtschaftsprüfer can be limited

1. through written agreement individually up to the minimum insurance cover specified in § 54 Section 1 Sentence 2,
2. through pre-formulated contractual terms of up to four times the minimum insurance cover specified in § 54 Section 1, Sentence 2, to the extent that insurance cover exists.

(2) The personal liability for damages of partners of a joint practice (§ 44b) can also be limited by means of pre-formulated contractual terms to the individually-named partners who are to perform the contracted service.

#### **§ 55**

#### **Remuneration**

(1) <sup>1</sup>A Wirtschaftsprüfer is not permitted to enter into an agreement according to § 2 Section 1 and 3 No. 1 and 3, by which the level of remuneration is made dependent upon the results of his work as Wirtschaftsprüfer. <sup>2</sup>This applies to services according to § 2 Section 2, unless otherwise specified in § 55a. <sup>3</sup>Remuneration for statutory audits may not be tied to conditions above and beyond those in Sentence 1 and must not be influenced or determined by the provision of additional services for the audited company. <sup>4</sup>If there is a considerable disparity between the services rendered and the contracted

remuneration, it must be demonstrable upon request to the Wirtschaftsprüferkammer that adequate time was spent on completing the audit and qualified personnel was assigned.

(2) The payment or receipt of part of the remuneration or other advantages for brokering engagements, whether between the Wirtschaftsprüfer or a third party, is forbidden.

(3) <sup>1</sup>The assignment of claims for remuneration or the transfer of their collection to members of the profession, professional firms or professional associations is permissible without the consent of the client; these persons are also sworn to confidentiality, as is the Wirtschaftsprüfer himself. <sup>2</sup>Sentence 1 also applies to the assignment or transfer to the members of other liberal professions who are likewise subject to a statutory obligation to maintain confidentiality. <sup>3</sup>The assignment of claims for remuneration or the transfer of their collection to other persons is permissible either on the basis of a legally binding judgment on claims for remuneration or with the consent of the client.

## **§ 55a**

### **Contingency Fee for Assistance in Tax Matters**

(1) <sup>1</sup>A Wirtschaftsprüfer is not permitted to enter into agreements by which the remuneration the Wirtschaftsprüfer receives for assistance in tax matters or the level of remuneration is made dependent upon the outcome of the case or upon the success of the Wirtschaftsprüfer's activity or by which the Wirtschaftsprüfer receives a share of the anticipated tax reduction, tax savings or tax refund as a fee (contingency fee), unless otherwise specified below. <sup>2</sup>Agreements are not permitted by which the Wirtschaftsprüfer is obliged to assume any court costs, administrative costs or third party expenses.

(2) A contingency fee may only be negotiated in certain cases and only if, due to the client's financial standing, from a judicious perspective, the client would otherwise be prevented from prosecuting his interests in absence of a negotiated contingency fee.

(3) <sup>1</sup>The agreement must be made in writing. <sup>2</sup>It must be designated or denoted as a remuneration agreement, kept clearly separate from other agreements with the exception of the order being awarded, and it must not be included in the power of attorney. <sup>3</sup>The agreement must include:

1. the level of non-contingent remuneration at which the Wirtschaftsprüfer would be prepared to take on the job, as well as
2. a statement as to the level of remuneration to be earned depending upon certain conditions.

(4) <sup>1</sup>The agreement is also to include the essential grounds that necessitate specifying a contingency fee. <sup>2</sup>Furthermore, a notice shall be included that the agreement shall have no bearing on any amounts owed by the client in the way of court costs, administrative costs, or any third party costs to be reimbursed by the client.

(5) <sup>1</sup>For any remuneration agreement not meeting the requirements in Sections 2 and 3, the Wirtschaftsprüfer shall receive remuneration no greater than that specified in the provisions of the Civil Code. <sup>2</sup>The provisions in the Civil Code concerning unjust enrichment shall remain unaffected.

### **§ 55b**

#### **Quality Control System**

<sup>1</sup>The Wirtschaftsprüfer is to create regulations for complying with the duties of the profession and to supervise and follow through with their implementation (quality control system). <sup>2</sup>The quality control system is to be documented.

### **§ 55c**

#### **Transparency Report**

(1) <sup>1</sup>Members of the profession in own practice and Wirtschaftsprüfungsgesellschaften carrying out at least one audit of a public-interest entity (§ 319a Section 1 Sentence 1 of the Commercial Code), are to publish an annual transparency report on their website at least three months following the end of the calendar year. This is to include the following minimum requirements:

1. a description of the legal structure and ownership,
2. to the extent a network is involved, a description of its organizational and legal structure,
3. a description of the internal quality control system along with a statement of the member(s) of the profession or the management bodies for implementing the internal quality control system,
4. the date of issue of the last certificate of participation (§ 57a Section 6 Sentence 7),
5. a list of entities in Sentence 1 for whom in the previous calendar year a statutory audit was performed;
6. a declaration of the measures taken to maintain independence, including certification that an internal examination was carried out to ensure compliance with requirements for maintaining independence,
7. Information on the basic scheme for remunerating members of the firm and its managers.

<sup>2</sup>Furthermore the transparency report of Wirtschaftsprüfungsgesellschaften according to Sentence 1 must include the following:

1. a description of the management structure (executive and supervisory bodies),
2. a statement as to how the Wirtschaftsprüfungsgesellschaft holds its members of the profession to fulfilling their requirements for ongoing training (internal policies and actions on ongoing training),
3. Financial information that reflects the Wirtschaftsprüfungsgesellschaft's significance, as specified in § 285 No. 17 of the Commercial Code the total turnover divided into fees.

(2) <sup>1</sup>The transparency report is to be signed by a member of the profession or by a Wirtschaftsprüfungsgesellschaft in a manner specified in §§ 126, 126a of the Civil Code. <sup>2</sup>The Wirtschaftsprüferkammer is to be notified of the electronic publishing by one of those bound by the provision according to Section 1 Sentence 1; in case it is not possible to publish the transparency report electronically, the transparency report will be archived at the Wirtschaftsprüferkammer and may be reviewed by third parties upon request.

## **§ 56**

### **Application of Provisions governing the Rights and Duties of Wirtschaftsprüfer at Wirtschaftsprüfungsgesellschaften**

- (1) § 43, § 43a Section 3 and 4, § 44b, §§ 49 to 53, § 54a, §§ 55a and 55b applies to Wirtschaftsprüfungsgesellschaften as well as to members of the management board, managers, partners and personally liable shareholders in Wirtschaftsprüfungsgesellschaften who are not Wirtschaftsprüfer.
- (2) Members of a firm's supervisory bodies, as provided by law, rules or company agreement are obliged to maintain confidentiality.

## **Part Four**

### **Organization of the Profession**

## **§ 57**

### **Functions of the Wirtschaftsprüferkammer**

- (1) The Wirtschaftsprüferkammer fulfills its statutory functions; it is to uphold the interests of all of its members and to supervise the fulfillment of all professional duties.
- (2) In particular, it is the responsibility of the Wirtschaftsprüferkammer:
1. to advise and instruct the members in questions concerning professional duties,
  2. upon request, to mediate conflicts amongst members,
  3. upon request, to mediate conflicts between members and their clients,
  4. to oversee members' compliance with their duties and to exercise the right to reprimand them,
  5. (Repealed),
  6. in all matters pertaining to members collectively, to bring forth the views of the Wirtschaftsprüferkammer vis-à-vis the competent courts, authorities and organizations,
  7. to submit professional opinions as requested by a court or an administrative agency or an entity involved in the legislative process at national or state level,
  8. to assume the tasks in the areas assigned to it by law in the field of occupational training,
  9. (Repealed),
  10. to promote the ongoing training of members and the education of future members of the profession,
  11. to submit proposals for honorary associate judges of the disciplinary courts to the State Departments of Justice and the Federal Ministry of Justice,
  12. to maintain the public register,
  13. to establish pension schemes for Wirtschaftsprüfer and vereidigte Buchprüfer and their surviving dependents,
  14. to maintain a quality assurance system,

15. to appoint Wirtschaftsprüfer as well as vereidigte Buchprüfer, to license Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften and to withdraw or revoke licensing,
16. to create and maintain an independent Examination Unit,
17. to carry out the statutory responsibilities conferred upon it as a professional chamber within the scope of the prevention of money laundering.

(3) <sup>1</sup>The Wirtschaftsprüferkammer may, after consultation with the working party on financial auditing [Arbeitsgemeinschaft für das wirtschaftliche Prüfungswesen], adopt a professional charter regulating the rights and duties in the exercise of the profession by Wirtschaftsprüfer and vereidigte Buchprüfer; the Professional Charter is adopted by the Advisory Board of the Wirtschaftsprüferkammer. <sup>2</sup>The charter comes into force three months after it has been filed with the Federal Ministry of Economics to the extent that the Federal Ministry of Economics does not annul the charter or parts thereof. <sup>3</sup>Amendments to the professional charter are subject to Sentence 1 and 2.

(4) The Professional Charter may further specify the provisions of this act:

1. General professional duties
  - a) independence, conscientiousness, confidentiality, acting on own responsibility,
  - b) proper professional conduct,
  - c) change of clients and prohibition of representation of conflicting interests,
  - d) compatible and incompatible activities,
  - e) content, scope and proof of professional indemnity insurance according to § 54 Section 3,
  - f) agreement and settlement of remuneration for professional services and its enforced collection,
  - g) handling of third party assets,
  - h) education of trainees for the profession as well as assistants of the tax advisory and business consulting professions,
  - i) seal design (shape, size, type and lettering) and use of seal according to § 48 Section 2,
  - j) prohibition of participation in unauthorized assistance in tax matters,
  - k) prohibition of utilization of professional secrets,
  - l) type, scope and proof of compliance with the general ongoing training requirement according § 43 Section 2 Sentence 4, whereby the scope of prescribed participation in ongoing training events must not exceed 20 hours in a given year.
2. Special professional duties in the performance of audit reports and rendering professional opinions
  - a) absence of bias, impartiality and refusal to practice,
  - b) exclusion as an auditor or expert.
3. Special professional duties
  - a) in connection with the acceptance, performance and termination of an engagement and in succession of an engagement,
  - b) the maintenance of files,
  - c) the joint exercise of the profession,
  - d) in the establishment and activity of professional firms,

- e) in cross-border activities,
  - f) in dealings with the courts authorities, the public authorities, the Wirtschaftsprüferkammer and other members of the Wirtschaftsprüferkammer.
4. The final provision of the criteria for describing remuneration scheme according § 55c Section 1 Sentence 2 No. 7.
  5. Special professional duties to ensure the quality of professional work (§ 55b).

(5) <sup>1</sup>The Wirtschaftsprüferkammer can transfer the duties specified in Section 2 No. 1 to 3 to individual members of the Board of Directors; additional duties can be assigned to departments according to § 59a.

<sup>2</sup>In the case of Section 2 No. 4, second alternative, the Board of Directors will decide on objections (§ 63 Section 5 Sentence 2).

(6) <sup>1</sup>To the extent that the Auditor Oversight Commission is not responsible according to § 66a Section 8, the Wirtschaftsprüferkammer shall offer administrative assistance to competent authorities in another member state of the European Union or treaty nation in the European Economic Area in the areas of appointment, licensing, disciplinary oversight and quality assurance system, as far as this is required on a case-by-case basis for the authority to carry out these duties. <sup>2</sup>If the completion of an inquiry is not possible within an appropriate period, the Wirtschaftsprüferkammer will notify the parties involved, stating the reasons. <sup>3</sup>The Wirtschaftsprüferkammer shall refuse to carry out its own investigations of an inquiry if

1. due to the same act, the same person is already facing professional disciplinary proceedings in Germany or
2. final judgment has been passed in Germany against the same person due to the same act.

<sup>4</sup>If the Wirtschaftsprüferkammer exercises its right according to Sentence 3 it will notify the inquiring competent authority immediately, stating the reasons and conveying more detailed information about the disciplinary proceedings or the final judgment.

(7) <sup>1</sup>Upon formal request, the Wirtschaftsprüferkammer may transmit information including personal data according to the authorities named in Section 6 Sentence 1, to the extent that knowledge of this information is required on a case-by-case basis for the competent authority to carry out the tasks named in Section 6 Sentence 1. <sup>2</sup>Information that falls within the duty to observe secrecy may only be transmitted if it can be assured that the receiving authority will likewise duly treat it confidentially. <sup>3</sup>When transmitting personal data, the purpose of its transmission is to be stated. <sup>4</sup>Information, including personal data, is not to be transmitted in cases where public law and order could thereby be endangered.

(8) <sup>1</sup>To the extent that the Auditor Oversight Commission is not responsible according to § 66a Section 10, the Wirtschaftsprüferkammer shall collaborate with the competent authorities responsible for appointment, licensing, disciplinary oversight and quality assurance system in countries other than those named in Section 6 Sentence 1, to the extent that this is necessary on a case-by-case basis for the responsible authority to carry out a given duty. <sup>2</sup>Section 6 Sentence 2 through 4 shall apply *mutatis mutandis*.

(9) <sup>1</sup>Upon formal request, the Wirtschaftsprüferkammer may transmit information, including personal data, to the authorities named in Section 8 Sentence 1, to the extent that knowledge of this information is required on a case-by-case basis for the agency to carry out the tasks named in Section 8 Sentence 1.

<sup>2</sup>Information that falls within the duty to observe secrecy may only be transmitted if it can be assured that the receiving authority will likewise duly treat it with confidentiality. <sup>3</sup>For the transmittal of personal data to the competent authority according to Section 8 Sentence 1, § 4b Section 2 to 6 and § 4c of the Federal Data Protection Act shall apply *mutatis mutandis*. <sup>4</sup>Information, including personal data, is not to be transmitted in cases where public law and order could thereby be endangered. <sup>5</sup>In case the competent authority presents a plausible argument that it is not satisfied with the way the procedure was completed by the Wirtschaftsprüferkammer, the Wirtschaftsprüferkammer can, provided the conditions in sentences 1 to 4 are met, release audit working papers and other documents to the competent authority at the request of such responsible authority if

1. these audit working papers and documents pertain to audits of companies that have issued securities in this third country or are part of a group that presents consolidated accounts in that country,
2. the competent authority fulfils the requirements referred to in Article 47 Section 3 of the Directive 2006/43/EEC of the European Parliament and of the Council of 17 May 2006 on Statutory Audits of Annual Accounts and Consolidated Accounts (Official Journal of the European Union No. L 157 p. 87) and have been deemed appropriate by the Commission of the European Union,
3. a working arrangement has been made between the Wirtschaftsprüferkammer and the responsible authority on the basis of reciprocity.

## **§ 57a**

### **Quality Assurance**

(1) <sup>1</sup>Members of the profession in their own practice and Wirtschaftsprüfungsgesellschaften are obliged to submit to a quality assurance review if they intend to carry out statutory audits, and, at the latest, upon accepting an audit engagement, present a required certificate of participation or a certificate of exemption according to § 319 Section 1 Sentence 3 of the Commercial Code. <sup>2</sup>In order to avoid hardship cases, upon formal request, the Wirtschaftsprüferkammer may grant certificates of exemption limited in time. <sup>3</sup>An exemption can be granted multiple times.

(2) <sup>1</sup>The quality assurance review serves the purpose of oversight to ensure compliance with quality control rules pursuant to the statutory provisions and the Professional Charter on the whole and when carrying out specific engagements. <sup>2</sup>It encompasses audits as specified in § 2 Section 1, which carry, or are to carry, an official seal.

(3) <sup>1</sup>The quality assurance review is to be carried out by Wirtschaftsprüfer working in own practice or Wirtschaftsprüfungsgesellschaften registered with the Wirtschaftsprüferkammer (Quality Assurance Reviewer). <sup>2</sup>A Wirtschaftsprüfer is to be registered upon formal request if

1. he has been appointed as a Wirtschaftsprüfer for at least three years and active in the area of auditing,

2. he has knowledge of quality control,
3. over the past five years he has not been found by a professional disciplinary court to be in breach of his professional duties, which would make him ineligible as a quality assurance reviewer,
4. after initial registration he is able to provide proof of ongoing special training in quality control. This proof must be provided at the latest by the time he accepts an engagement to carry out a quality assurance review.

<sup>3</sup>As a prerequisite to registration, a Wirtschaftsprüfer in his own practice must prove that he has a valid certificate according to Section 6 Sentence 7. <sup>4</sup>A Wirtschaftsprüfungsgesellschaft is to be registered upon formal request if at least one member of its management board, a managing director, a personally liable partner or partner according to Sentence 2 is registered and the Wirtschaftsprüfungsgesellschaft fulfills the requirement according to Sentence 3. <sup>5</sup>If a Wirtschaftsprüfungsgesellschaft is engaged to conduct a quality assurance review, the Wirtschaftsprüfer responsible for the quality assurance review must either belong to the group of persons according to Sentence 4 or be partner of a Wirtschaftsprüfungsgesellschaft and registered according to Sentence 2. <sup>6</sup>If members of the profession – who are registered as quality assurance reviewers but do not fulfill the requirements according to Sentence 3 – are active in their own practice or otherwise employed, they are not allowed to carry out quality assurance reviews in their own practice.

(4) <sup>1</sup>A Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaft may not become a quality assurance reviewer if he has capital, financial or personal ties to the Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaft to be reviewed, or if there are other circumstances that give reason to doubt his impartiality (§ 49, second alternative). <sup>2</sup>Further, it is not permissible to conduct reciprocal audits.

(5) <sup>1</sup>The quality assurance reviewer is to summarize the results of the quality assurance review in a report (reviewer's report). <sup>2</sup>The reviewer's report must contain

1. the name of the Commission on Quality Assurance and that of the person(s) being reviewed as recipients of the report,
2. a description of the subject, type and scope of the review,
3. the number of hours presented by review type,
4. the composition and qualification of the quality assurance reviewers and
5. an evaluation of the review results.

Additional provisions can be made with regard to content and standardization of the structure of the reviewer's report (§ 57c Section 2 No. 6). <sup>3</sup>If the quality assurance reviewer finds neither significant defects in the quality control system nor obstacles to carrying out the review, he is to declare that the quality control system is in compliance with legal requirements and that with sufficient certainty audit engagements according to § 2 Section 1, in which the professional seal is used, are conducted in an orderly manner. <sup>4</sup>If significant defects in the quality control system or obstacles concerning the performance of the review are discovered, the reviewer is either to present the report with qualifications according to Sentence 3 or to refuse it. <sup>5</sup>The qualification or refusal is to be explained. <sup>6</sup>In the case of qualifications due to defects detected in the quality control system, the quality assurance reviewer is to make recommendations as to how to remedy the defects.

(6) <sup>1</sup>The person to be reviewed recommends up to three quality assurance reviewers to the Commission on Quality Assurance. <sup>2</sup>The suggestions submitted must each be accompanied by a declaration of independence by each of the quality assurance reviewers according to the Charter for Quality Assurance (§ 57c Section 2 No. 7). <sup>3</sup>From among the suggestions, the Commission on Quality Assurance can, within a reasonable period of time and providing reasons for its decision, reject any or all of the recommendations; the person to be reviewed is to be notified of the intent to reject recommendations within four weeks of submission of the person to be reviewed, otherwise the recommendations will be considered accepted. <sup>4</sup>If all recommendations are rejected, the person to be reviewed can submit up to new three new recommendations; Sentences 2 and 3 shall apply. <sup>5</sup>The quality assurance reviewer is appointed by the person to be reviewed on his own responsibility. <sup>6</sup>After conclusion of the review, the quality assurance reviewer sends a copy of the reviewer's report to the Wirtschaftsprüferkammer without delay; this is to be done in electronic form. <sup>7</sup>Upon receipt of the reviewer's report, the Wirtschaftsprüferkammer will certify the participation in the quality assurance system to the Wirtschaftsprüfer in own practice or the Wirtschaftsprüfungsgesellschaft. <sup>8</sup>Certification is valid for six years and is to be limited to three years for members of the profession who perform statutory audits of public interest entities (§ 319a Section 1 Sentence 1 of the Commercial Code). <sup>9</sup>Certification will not be granted if the quality assurance review was performed in violation of Section 3 Sentence 1 and 5 or Section 4 or declaration has been refused according to Section 5 Sentence 3. <sup>10</sup>If the Wirtschaftsprüferkammer is aware that a certificate of participation should not be granted, the case is to be presented to the Auditor Oversight Commission prior to the decision has been made public. <sup>11</sup>The performance of annual audits procedure can, according to Section 1 Sentence 1; be waived at any time; in this case, any certificate of participation already received is to be returned.

(7) <sup>1</sup>A review engagement can only be cancelled for good cause. <sup>2</sup>Good cause does not include differences of opinion over the content of the reviewer's report. <sup>3</sup>The quality assurance reviewer is to report on the findings of his review thus far and the reasons for the cancellation. <sup>4</sup>In case of a subsequent quality assurance review, the report according to Sentence 3 is to be presented to the next quality assurance reviewer by the Wirtschaftsprüfer in his own practice or by the Wirtschaftsprüfungsgesellschaft.

(8) <sup>1</sup>The reviewer's report is to be destroyed seven years after receipt by the Wirtschaftsprüferkammer. <sup>2</sup>In case of a pending legal dispute on measures by the Commission on Quality Assurance, the period specified in Sentence 1 is extended until the judgment is final.

## **§ 57b**

### **Obligation of Confidentiality and Liability**

(1) The quality assurance reviewer and his assistants, the members of the Commission on Quality Assurance (§ 57e) and those employed at the Wirtschaftsprüferkammer are obliged, even after the end of their employment, to hold in the strictest of confidence all matters that became known to them within the scope of their quality assurance review.

(2) <sup>1</sup>For members of the Commission on Quality Assurance and employees of the Wirtschaftsprüferkammer, § 64 Section 2 applies *mutatis mutandis*. <sup>2</sup>Approval also requires the presentation or submission or surrender of written documents by the Wirtschaftsprüferkammer to courts or other authorities. <sup>3</sup>Approval in the case of sentences 1 and 2 shall be granted by the Commission on Quality Assurance. <sup>4</sup>It can only be granted if the respondent has been released from the obligation to confidentiality by the reviewed Wirtschaftsprüfer, reviewed Wirtschaftsprüfungsgesellschaft or quality assurance reviewer.

(3) As far as it is necessary to carry out a quality assurance review, the obligation to confidentiality is limited according to Section 1, § 43 Section 1 Sentence 1, § 64 Section 1 of this act and § 323 Section 1 Sentence 1 of the Commercial Code, as is the obligation to confidentiality of those persons who practice the profession together with the Wirtschaftsprüfer in own practice.

(4) § 323 of the Commercial Code applies *mutatis mutandis*, subject to the provisions in Section 3.

### **§ 57c**

#### **Charter for Quality Assurance**

(1) <sup>1</sup>The Wirtschaftsprüferkammer issues a Charter for Quality Assurance, the Charter is in turn adopted by the Advisory Board of the Wirtschaftsprüferkammer. <sup>2</sup>The Charter and amendments thereto require the approval of the Federal Ministry of Economics and Technology, in consultation with the Federal Ministry of Justice, to become effective.

(2) Within the scope of this act, the Charter for Quality Assurance regulates in more detail:

1. the requirements and the registration procedure for quality assurance reviewers according to § 57a Section 3 as well as according to § 63f Section 2 of the Business and Industrial Cooperatives Act,
2. reasons for exclusion of the quality assurance reviewers according to § 57a Section 4,
3. proceedings according to §§ 57a et seq. within the Wirtschaftsprüferkammer ,
4. the calculation of term according to § 57a Section 6 Sentence 8,
5. measures of the Commission on Quality Assurance,
6. additional provisions according to § 57a Section 5 Sentence 2,
7. provisions concerning the content and structure of the certificate of independence according to § 57a Section 6 Sentence 2,
8. scope and content of the special requirement for ongoing special training according to § 57a Section 3 Sentence 2 No. 4 as well as proof of fulfillment of this requirement.

### **§ 57d**

#### **Duty to Cooperate**

<sup>1</sup>Wirtschaftsprüfer in own practice, Wirtschaftsprüfungsgesellschaften, as well as persons with whom they practice the profession, are obliged to grant the reviewer entrance to the practice, to issue statements and

also to present requested documentation, to the extent this is necessary for performing the review with due diligence. <sup>2</sup>Such persons cannot be forced to cooperate by way of administrative enforcement according to § 57e Section 3.

### **§ 57e**

#### **Commission on Quality Assurance**

(1) <sup>1</sup>In the Wirtschaftsprüferkammer a Commission on Quality Assurance shall be established. <sup>2</sup>Members of the Commission on Quality Assurance are Wirtschaftsprüfer and vereidigte Buchprüfer, who are elected by the Advisory Board upon recommendation by the Board of Directors; at least one member shall be experienced and actively involved in cooperative auditing. <sup>3</sup>They are independent and not bound by instructions. <sup>4</sup>The Commission on Quality Assurance within the Wirtschaftsprüferkammer is responsible for all matters involving quality assurance according as specified in §57a, to the extent that the Auditor Oversight Commission is not responsible. <sup>5</sup>It is mainly responsible for:

1. Granting certificates of exemption according to § 57a Section 1 Sentence 2,
2. Registering quality assurance reviewers according to § 57a Section 3,
3. Receiving reviewer's reports,
4. Granting and revoking certificates of participation in the quality assurance system,
5. Deciding on measures according to Sections 2 and 3,
6. Arbitrating appeals against decisions involving quality assurance.

(2) <sup>1</sup>If deficiencies are found at members of the profession in own practice or Wirtschaftsprüfungsgesellschaften, if violations of professional rules of conduct have been determined that were based on deficiencies in the quality control system or if the quality assurance review was not carried out according to the provisions in §§ 57a to 57d and the Charter for Quality Assurance, the Commission on Quality Assurance can impose sanctions aimed at remedying the deficiencies or order a special review; if sanctions are imposed, they are to be implemented within the specified period by the Commission on Quality Assurance, and a written report is to be presented without undue delay by the member who has been reviewed. <sup>2</sup>The Commission can determine that for the special review another quality assurance reviewer be assigned. <sup>3</sup>If the Commission on Quality Assurance finds that the statement according to § 57a Section 5 Sentence 3 should have been refused, it will revoke the certificate according to § 57a Section 6 Sentence 7. <sup>4</sup>The certificate is also to be revoked if the review was carried out contrary to the prohibitions in § 57a Section 4. <sup>5</sup>If the statement according to § 57a Section 5 Sentence 3 was denied unjustly, the Commission on Quality Assurance can overrule § 57a Section 6 Sentence 9 and grant the certificate. <sup>6</sup>If the quality assurance review was carried out in serious breach of the provisions named in Section 1, the Commission on Quality Assurance shall determined that the duty according to § 57a Section 1 Sentence 1 was not fulfilled and shall revoke the certificate according to § 57a Section 6 Sentence 7. <sup>7</sup>The Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaft shall be heard prior to instituting measures according to Sentence 1 to 6. <sup>8</sup>If the Wirtschaftsprüferkammer determines that a certificate according to § 57a Section 6 Sentence 7 is to be revoked, the case is to be presented to the Auditor Oversight Commission prior to publicly announcing the decision.

(3) <sup>1</sup>If a Wirtschaftsprüfer or a Wirtschaftsprüfungsgesellschaft fails to comply with measures according to Section 2 including handing over the certificate according to § 57a Section 6 Sentence 7, the Commission on Quality Assurance can impose a fine of up to 25,000 euros. <sup>2</sup>If sanctions and other measures are not followed in a timely manner or not completely according to Section 2, despite repeated imposition of a fine, the certificate according to § 57a Section 6 Sentence 7 is to be revoked.

(4) <sup>1</sup>The Commission on Quality Assurance is to inform the Board of Directors of the Wirtschaftsprüferkammer if the revocation of the appointment of a Wirtschaftsprüfer or the licensing of a Wirtschaftsprüfungsgesellschaft is to be considered. <sup>2</sup>Facts reported may not be used in the course of disciplinary proceedings according to §§ 61a et seq. and Part Six of this act are not to be exploited.

(5) Violations of professional rules of conduct that have lead to measures being imposed according to Sections 2 and 3 cannot be the subject of a disciplinary proceeding.

(6) <sup>1</sup>Sections 2 to 4 apply *mutatis mutandis* if outside of a quality assurance review as defined in § 57a faults are indicated in the quality control system of a Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaft. <sup>2</sup>The Commission on Quality Assurance is bound to the determinations made in the proceedings according to § 62b.

#### **§ 57f (Repealed)**

#### **§ 57g Voluntary Quality Assurance Review**

§ 57a Section 2 to 6, §§ 57b to 57f apply *mutatis mutandis* in case a voluntary quality assurance review is carried out on Wirtschaftsprüfer in own practice and Wirtschaftsprüfungsgesellschaften.

#### **§ 57h Quality Assurance Review of Cooperative Audit Offices of an Association of Savings and Clearing Banks**

(1) <sup>1</sup>§ 57a Section 1 Sentence 1, Section 3 to 5, Section 6 Sentence 1 to 9, Section 7 to 8, §§ 57b to 57d § 66a Section 1 Sentence 1, Section 3 Sentence 1 to 3, Section 5 Sentence 1, Section 6 Sentence 5, § 66b and § 136 apply *mutatis mutandis* for quality assurance reviews at Cooperative Audit Offices of an Association of Savings and Clearing Banks, to the extent that these are members of the Wirtschaftsprüferkammer and national law does not have other provisions with regard to the obligation to carrying out quality assurance reviews. <sup>2</sup>The standards and scope of the quality assurance review are determined by the oversight authority as specified by national law and in compliance with § 57a Section 2. <sup>3</sup>§ 57e Section 2 shall be applied with the provision that the in Commission on Quality Assurance does not decide on punitive measures against the audit offices but rather informs the responsible oversight authority specified by national law immediately about the facts and conclusions that may be the basis for

such measures. <sup>4</sup>If the Wirtschaftsprüferkammer concurs that a certificate of participation according to § 57a Section 6 Sentence 7 shall be revoked or that a certificate of participation according to § 57a Section 6 Sentence 9 shall not be granted, then § 57a Section 6 Sentence 10 and § 57e Section 2 Sentence 8 are to be applied with the provision that the case is to be referred to the oversight authority as specified by national law for a decision.

(2) <sup>1</sup>Cooperative Audit Offices of an Association of Savings and Clearing Banks can also be quality assurance reviewers, as specified in Section 1. <sup>2</sup>An Audit Office is to be registered by application according to § 57a Section 3, if the head of Audit Office according to § 57a Section 3 Sentence 2 is registered and the audit office fulfills the requirement according to § 57a Section 3 Sentence 3. <sup>3</sup>If a Cooperative Audit Office of an Association of Savings and Clearing Banks is appointed to carry out a quality assurance review, the person responsible for the quality assurance review according to § 57a Section 3 Sentence 5 be the head of the Audit Office and be registered according to § 57a Section 3 Sentence 2.

## **§ 58**

### **Membership**

(1) <sup>1</sup>Members of the Wirtschaftsprüferkammer are Wirtschaftsprüfer who have been officially appointed in accordance with this act or have been recognized as such, and members of the Board of Directors, managers and partners with unlimited liability of Wirtschaftsprüfungsgesellschaften who are not Wirtschaftsprüfer themselves, as well as recognized Wirtschaftsprüfungsgesellschaften. <sup>2</sup>For Wirtschaftsprüfer on leave of absence, membership is in abeyance during their period of leave. <sup>3</sup>They continue to be subject to professional jurisdiction.

(2) <sup>1</sup>The Cooperative Audit Associations, Associations of Savings and Clearing Banks for their cooperative audit offices and non-local audit agencies for corporations under public law may become members of the Wirtschaftsprüferkammer. <sup>2</sup>The regulations in § 57 Section 1 to 4 do not apply to these members.

## **§ 59**

### **Institutions**

(1) The institutions of the Wirtschaftsprüferkammer are

1. the General Assembly,
2. the Advisory Board,
3. the Board of Directors,
4. the Commission on Quality Assurance.

(2) <sup>1</sup>The Advisory Board is elected by the General Assembly of Wirtschaftsprüfer and the Board of Directors is elected by the Advisory Board. <sup>2</sup>Only individuals who are members of the

Wirtschaftsprüferkammer are eligible for election to the Advisory Board or Board of Directors. <sup>3</sup>The President of the Wirtschaftsprüferkammer and Chairman of the Advisory Board must be Wirtschaftsprüfer.

(3) <sup>1</sup>Members of the Advisory Board are elected separately according to groups. <sup>2</sup>The group of Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften elects a number of Advisory Board members, as specified in the by-laws, proportionate to the number of members of the Wirtschaftsprüferkammer who belong to this group on the first day of the month prior to that in which the invitation to the general meeting is issued. <sup>3</sup>The group of the other members eligible to vote elects a number of members of the Advisory Board proportionate to the number of voting members of the Wirtschaftsprüferkammer belonging to this group on the day named in Sentence 2. <sup>4</sup>At least one more than one half of the total members of the Advisory Board must be elected from the group of Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften. <sup>5</sup>Sentences 1 to 4 apply *mutatis mutandis* to the election of the Board of Directors; the President of the Wirtschaftsprüferkammer is elected by the entire Advisory Board.

(4) (Repealed)

### **§ 59a**

#### **Departments of the Board of Directors and of the Commission on Quality Assurance**

(1) <sup>1</sup>The Board of Directors can set up several departments if the Charter of the Wirtschaftsprüferkammer allows. <sup>2</sup>It can delegate to the departments certain business tasks which they carry out independently.

(2) <sup>1</sup>Each department must comprise at least three members of the Board of Directors. <sup>2</sup>The members of the department choose from their ranks a department head and a deputy.

(3) <sup>1</sup>The Board of Directors determines the number of departments and their members, delegates certain business tasks to the departments and chooses the members in each department. <sup>2</sup>Each member of the Management Board can belong to multiple departments. <sup>3</sup>The instructions can only be issued or amended during the period of office when deemed necessary due to excessive workload on the Board of Directors or department, or as a result of a change or permanent incapacitation on the part of individual members of the department.

(4) Within their area of competence, the departments have all the rights and duties of the Board of Directors.

(5) The Board of Directors can made decisions in lieu of the department if it is deemed necessary or if the department or the department head so moves.

(6) <sup>1</sup>The Commission on Quality Assurance can create departments. <sup>2</sup>The responsibilities of the departments are to be specified in the Process Regulation for the Commission on Quality Assurance. <sup>3</sup>Section 1 Sentence 2 and Section 2 to 5 apply *mutatis mutandis*. <sup>4</sup>Appeals (§ 57e Section 1 Sentence 5 No. 6) against decisions of departments are decided by the Commission on Quality Assurance.

**§ 60****Charter, Budget**

(1) <sup>1</sup>The organization and management of the Wirtschaftsprüferkammer and in particular the establishment of local offices within Germany shall be regulated in the Charter of the Wirtschaftsprüferkammer adopted by the General Assembly. <sup>2</sup>The Charter and amendments thereto require the approval of the Federal Ministry of Economics and Technology to become effective.

(2) <sup>1</sup>Prior to approval of annual accounts, the Wirtschaftsprüferkammer submits to the Federal Ministry of Economics and Technology the budget for the following calendar year. <sup>2</sup>The parts of the budget that refer to the quality assurance system, the disciplinary oversight and the Auditor Oversight Commission require the approval of the Federal Ministry of Economics and Technology.

**§ 61****Dues and Fees**

(1) <sup>1</sup>Members are obliged to pay dues on the basis of the dues schedule; the dues schedule may provide for different dues depending upon a member's field of activity. <sup>2</sup>The dues schedule and amendments thereto require approval of the Federal Ministry of Economics and Technology to become effective. <sup>3</sup>The dues schedule shall be determined by the Advisory Board of the Wirtschaftsprüferkammer.

(2) <sup>1</sup>The Wirtschaftsprüferkammer is entitled to charge fees, based on a fee schedule, for the provision of special facilities or services, in particular in the admission to examination, examination and appeal proceedings, as well as in quality assurance and disciplinary proceedings, for the appointment and reappointment as Wirtschaftsprüfer, the licensing as Wirtschaftsprüfungsgesellschaft and the granting of certificates of exception according to § 28 Section 2 and 3. <sup>2</sup>The fee schedule and amendments thereto are subject to approval by the Federal Ministry of Economics and Technology.

(3) <sup>1</sup>The claim of the Wirtschaftsprüferkammer to the payment of dues and fees is subject to the statute of limitations. <sup>2</sup>§ 20 of the German Administrative Expenses Act applies *mutatis mutandis*. <sup>3</sup>Dues and fees are collected according to the provisions of the Administrative Enforcement Act.

**Part Five****Disciplinary Oversight****§ 61a****Competence**

<sup>1</sup>The Wirtschaftsprüferkammer has the competence for disciplinary oversight. <sup>2</sup>It investigates  
1. to the extent that concrete evidence exists for a breach of professional duties and

2. randomly and without indication of misconduct (§ 62b) in cases of member of the profession and Wirtschaftsprüfungsgesellschaften that have conducted statutory audits of public interest entities according to § 319a Section 1 Sentence 1 of the Commercial Code and decides whether reprimand proceedings shall be initiated (§ 63) or whether the proceedings shall be handed over to the professional jurisdiction (§ 84a). <sup>3</sup>Statements by the Financial Reporting Enforcement Panel according to § 342b Section 8 Sentence 2 of the Commercial Code or the Federal Financial Supervisory Authority according to § 37r Section 2 Sentence 1 of the Securities Trading Act are to be taken into consideration. <sup>4</sup>If the Board of Directors or the responsible authorized department of the Wirtschaftsprüferkammer intends to close proceedings according to Sentence 2, because there has been no breach of professional conduct or the behavior does not need to be sanctioned, it will first present the case to the Auditor Oversight Commission prior to making the decision public.

## § 62

### **Duty of Personal Appearance before the Wirtschaftsprüferkammer; Duty to Provide Oral Information and Documents; Right of Entry and Inspection**

(1) <sup>1</sup>If summoned for a hearing, individual members of the Wirtschaftsprüferkammer are obliged to appear in person before the Wirtschaftsprüferkammer on disciplinary or complaint matters. <sup>2</sup>Upon request they are obliged to furnish oral information or produce their files or other materials that may be relevant to the disciplinary and complaint proceedings to the Board of Directors, a department as defined in §59a, the Advisory Board or a delegate of the Board of Directors, of the Advisory Board or of a committee.

(2) <sup>1</sup>Oral information can be withheld and the presentation of materials can be refused if this would violate the duty of confidentiality. <sup>2</sup>Oral information may be withheld if disclosure would subject the member to the danger of prosecution due to a crime, a misdemeanor or a breach of professional conduct; the member must invoke this right. <sup>3</sup>The member shall be instructed of his right to refuse to provide oral information. <sup>4</sup>If the provision of information or materials has not been refused, the member is obliged to provide correct and complete oral information and present correct and complete materials.

(3) <sup>1</sup>Correct and complete provision of oral information and the presentation of materials cannot be refused by individual members of the Wirtschaftsprüferkammer who are entitled to carry out statutory audits or those who de facto carry out such audits without authorization if the oral information and presentation of materials have a bearing on the audit of a company obliged to carry out a statutory audit.

<sup>2</sup>Section 2 Sentences 2 and 3 apply *mutatis mutandis*.

(4) <sup>1</sup>Employees of the Wirtschaftsprüferkammer, as well as additional persons retained by the Wirtschaftsprüferkammer to conduct disciplinary oversight, are allowed to enter and visit the property and premises of members of the profession and Wirtschaftsprüfungsgesellschaften during normal business and office hours as well as review documents and make transcripts and copies. <sup>2</sup>The members of the profession and Wirtschaftsprüfungsgesellschaften are to tolerate these measures.

(5) Information and documents provided according to Section 1 to 4 are only to be used in investigating disciplinary and complaint proceedings; as soon as these materials are no longer needed, they are to be returned immediately.

## **§ 62a**

### **Fines for Violation of Duty to Cooperate**

(1) <sup>1</sup>In order to hold individual members of the Wirtschaftsprüferkammer to fulfilling their duties according to § 62 Section 1 to 3, the Wirtschaftsprüferkammer can impose fines, even multiple times. <sup>2</sup>Individual fines may not exceed 1,000 euros.

(2) <sup>1</sup>The fine must be preceded by a written warning. <sup>2</sup>The warning and the imposition of the fine must be served to the parties involved.

(3) <sup>1</sup>A court order against the warning and imposition of a fine can be requested within one month of being served (§ 72 Section 1). <sup>2</sup>The request is to be submitted in writing to the Wirtschaftsprüferkammer. <sup>3</sup>If the request is found justified by the Wirtschaftsprüferkammer, it is to be granted; otherwise the Wirtschaftsprüferkammer is to submit the request to the court without delay and in compliance with § 66a Section 5 Sentence 2. <sup>4</sup>The provisions in the Code of Criminal Procedure regarding complaints are to be applied *mutatis mutandis*. <sup>5</sup>Any counter request is to be submitted by the Wirtschaftsprüferkammer. <sup>6</sup>The public prosecutor is not to take part in the proceedings. <sup>7</sup>The decision of the court cannot be contested.

(4) <sup>1</sup>The fine flows into the budget of the Wirtschaftsprüferkammer. <sup>2</sup>They are collected on the basis of a facsimile of the fine order accompanied by a certificate of enforceability provided by the Wirtschaftsprüferkammer pursuant to § 61 Section 3 Sentence 3.

## **§ 62b Inspections**

(1) <sup>1</sup>Disciplinary oversight investigations conducted randomly and without indication of misconduct, in accordance with § 61a, Item 2, No. 2, involving members of the profession and Wirtschaftsprüfungsgesellschaften that carry out statutory audits of public interest entities, as defined in § 319a Section 1, Sentence 1 of the Commercial Code, pertain to those professional duties that are to be upheld in statutory audits of companies as specified in § 319a Section 1, Sentence 1 of the Commercial Code (Inspections). <sup>2</sup>In case of objections, the inspections may also be expanded to include other statutory audits.

(2) § 62 Section 1 to 5 and § 62a shall apply *mutatis mutandis*.

(3) Findings gained from the inspections can be taken into account in discharging other oversight procedures according to guidelines established by the Wirtschaftsprüferkammer in agreement with the Auditor Oversight Commission.

## § 63

### Right of Reprimand by the Board of Directors

(1) <sup>1</sup>The Board of Directors may reprimand a member subject to its professional jurisdiction whose conduct has resulted in the breach of duties incumbent upon him and, if necessary, pursuant to § 68a, demand that he cease the behavior causing the breach of duty; a motion to initiate disciplinary proceedings is only necessary if the violation is severe and disciplinary measure is to be expected. <sup>2</sup>§ 67 Section 2 and 3, § 69a und § 83 Section 2 apply *mutatis mutandis*. <sup>3</sup>The reprimand may be accompanied by a fine of up to 50,000 euros. <sup>4</sup>§ 61 Section 3 Sentence 3 applies *mutatis mutandis*. <sup>5</sup>Fines flow into the budget of the Wirtschaftsprüferkammer.

(2) <sup>1</sup>The Board of Directors is no longer entitled to issue a reprimand once disciplinary proceedings have been initiated against a Wirtschaftsprüfer or if more than five years have passed since the breach of duty; for the beginning, suspension and interruption of the period, § 70 Section 1 Sentence 2 and Section 2 apply *mutatis mutandis*. <sup>2</sup>No reprimand may be issued if proceedings on the application of the Wirtschaftsprüfer are pending in accordance with § 87.

(3) Prior to the issue of a reprimand the member must be heard.

(4) <sup>1</sup>The Board of Directors' notification that reprimands the member's misconduct must specify the reasons. <sup>2</sup>It is to be served to the member. <sup>3</sup>A copy of the notification is to be submitted to the public prosecutor.

(5) <sup>1</sup>The member may object to the Board of Directors against the notification within one month of it being served. <sup>2</sup>The Board of Directors shall decide on the objection; Section 4 shall apply *mutatis mutandis*.

(6) At least once annually, the Wirtschaftsprüferkammer publishes in an appropriate manner a summary of the sanctions imposed by the Wirtschaftsprüferkammer and by the disciplinary courts.

## § 63a

### Application for Decision by Disciplinary Court

(1) <sup>1</sup>If the Board of Directors of the Wirtschaftsprüferkammer rejects the objection against the reprimand, the member may within one month of the decision being served upon him apply for a decision by the Regional Court [Kammer für Wirtschaftsprüfersachen]. <sup>2</sup>The competent Regional Court is that located at the seat of the Wirtschaftsprüferkammer. <sup>3</sup>The composition of the court shall be governed by § 72 Section 2 Sentence 2.

(2) <sup>1</sup>The application to the Regional Court is to be filed in writing. <sup>2</sup>The regulations of the Code of Criminal Procedure shall apply to the complaint *mutatis mutandis*. <sup>3</sup>The counter-declaration (§ 308 Section 1 of the Code of Criminal Procedure) is delivered by the Board of Directors of the Wirtschaftsprüferkammer. <sup>4</sup>The public prosecutor's office is not involved in the proceedings. <sup>5</sup>A court hearing will take place if the member requests it or the Regional Court deems it necessary. <sup>6</sup>The Board of Directors of the

Wirtschaftsprüferkammer, the member and his defense counsel are to be notified of the time and place of the court hearing. <sup>7</sup>The nature and scope of the hearing of evidence is determined by the Regional Court. <sup>8</sup>In order to ascertain the truth, the hearing of evidence must, ex officio, be extended to all facts and evidential matters which are relevant for arriving at a decision.

(3) <sup>1</sup>The notification of reprimand cannot be set aside because the Board of Directors of the Wirtschaftsprüferkammer wrongly assumed that the member's guilt was marginal and that the application for the institution of disciplinary proceedings was not deemed necessary. <sup>2</sup>If the conditions that preclude instituting disciplinary measures according to § 69a or initiating or continuing disciplinary proceedings according to § 83 Section 2 arise after the Board of Directors has issued a reprimand, the Regional Court will annul the notification of reprimand and, if necessary, the injunction. <sup>3</sup>Reasons for the decision are to be given. <sup>4</sup>The decision cannot be contested.

(4) <sup>1</sup>The Regional Court where an application for disciplinary proceedings is filed shall immediately forward a copy of the application to the public prosecutor's office at the Higher Regional Court. <sup>2</sup>The public prosecutor's office is also to be provided with a copy of the decision on the application.

(5) <sup>1</sup>In the event of the public prosecutor instituting disciplinary proceedings against a member for the same misconduct for which the Board of Directors of the Wirtschaftsprüferkammer has issued a reprimand prior to the decision on the application for a decision against the notification of a reprimand has been made, the proceedings on the application shall be suspended until the final conclusion of the disciplinary proceedings. <sup>2</sup>In case of § 69 Section 2, the Regional Court shall declare the reprimand ineffective after the expiration of the period of suspension.

## **§ 64**

### **Duty of Confidentiality of the Members of the Board of Directors, the Advisory Board and Committees**

(6) <sup>1</sup>Members of the Board of Directors, the Advisory Board, the departments and the committees are bound to absolute confidentiality towards all persons in relation to matters which became known to them during their activity as members of the Board of Directors, Advisory Board, department or committee about members of the Wirtschaftsprüferkammer, candidates or other persons; this also applies after their retirement from the Board of Directors, Advisory Board, department or committees. <sup>2</sup>The same applies to members who participate in the work of the Board of Directors, Advisory Board, departments or committees and for members summoned according to § 62 to provide information during proceedings, within the scope of a disciplinary or complaint matter as well as in revocation proceedings or in non-public hearings according to § 99, along with employees and other delegates of the Wirtschaftsprüferkammer.

(7) Without prior permission, the persons referred to in Section 1 above may not give evidence or render information in any court proceedings or to any authorities on matters concerning members of the

Wirtschaftsprüferkammer that became known to them during their activity on the Board of Directors, the Advisory Board or in any departments or in committees.

(8) <sup>1</sup>The Board of Directors of the Wirtschaftsprüferkammer shall give its permission at its own discretion after due and careful consideration. <sup>2</sup>Permission shall only be withheld if deemed absolutely necessary out of consideration of the position or duties or the legitimate interests of persons imperative in view of the position or duties of the Wirtschaftsprüferkammer or any interests of persons about whom facts have become known. <sup>3</sup>This does not affect § 28 Section 2 of the Law Governing the Federal Constitutional Court.

(9) In order to carry out investigations in disciplinary or complaint matters, as well as revocation proceedings, persons in Section 1 working for the Wirtschaftsprüferkammer in an honorary or professional capacity are authorized to request information of persons that are not members of the Wirtschaftsprüferkammer; the latter are not obliged to provide information.

## **§ 65**

### **Working Party on Financial Auditing**

(1) For the handling of questions relating to financial auditing and trusteeship matters which involve the common interests of the business community and the profession of Wirtschaftsprüfer and vereidigte Buchprüfer, the Federation of German Chambers of Industry and Commerce and the Wirtschaftsprüferkammer shall form a joint Working Party on Financial Auditing (Working Party) [Arbeitsgemeinschaft für das wirtschaftliche Prüfungswesen] having no formal legal status and with a joint office.

(2) The working party shall draw up its own rules.

## **§ 66**

### **State Supervision**

<sup>1</sup>The Federal Ministry of Economics and Technology supervises the Wirtschaftsprüferkammer, including the Examination Unit and the Auditor Oversight Commission. <sup>2</sup>It is to supervise that the Wirtschaftsprüferkammer, the Examination Unit and the Auditor Oversight Commission fulfill their duties within the scope of existing law and by-laws.

## **§ 66a**

### **Auditor Oversight**

(1) <sup>1</sup>The "Commission for the Oversight of Auditors in Germany" (Auditor Oversight Commission) performs a public professional oversight function over the Wirtschaftsprüferkammer, as far as it fulfills tasks according to § 4 Section 1 Sentence 1 for which it is responsible towards members of the profession and firms that are authorized to carry out statutory audits and those that carry out statutory audits without

being authorized to do so; § 61a Sentence 4 shall remain unaffected. <sup>2</sup>Prior to issuing regulations regarding professional practice (§ 57 Section 3, § 57c), the Wirtschaftsprüferkammer is to seek the opinion of the Auditor Oversight Commission and present them to the Federal Ministry of Economics and Technology.

(2) <sup>1</sup>The Auditor Oversight Commission comprises at least six and a maximum of ten honorary members. <sup>2</sup>Prior to their appointment, the members may not have been individual members of the Wirtschaftsprüferkammer in the past five years. <sup>3</sup>In particular, they shall be employed or shall have been employed in the field of accounting, finance, economics, academia or jurisdiction. <sup>4</sup>The members of the Auditor Oversight Commission are appointed by the Federal Ministry of Economics and Technology for a period of four years; premature recall by the Federal Ministry of Economics and Technology is possible in well-founded exceptions. <sup>5</sup>Members of Auditor Oversight Commission elect a chairman and a deputy chairman. <sup>6</sup>Members of the Auditor Oversight Commission are independent of the Wirtschaftsprüferkammer and are not bound by instructions.

(3) <sup>1</sup>The Auditor Oversight Commission oversees the Wirtschaftsprüferkammer to ensure that it fulfills the tasks named in Section 1 Sentence 1 in an appropriate, adequate and commensurate manner. <sup>2</sup>For this purpose, the Auditor Oversight Commission participates in meetings of the Wirtschaftsprüferkammer and has the right to request information and access to documents. <sup>3</sup>The Auditor Oversight Commission may take part in quality assurance reviews. <sup>4</sup>The Auditor Oversight Commission can instruct the Wirtschaftsprüferkammer to carry out disciplinary investigations according to § 61a Sentence 2 No. 2 where there are reports of breaches of professional duties, in case of inquiries within the scope of collaboration according to Section 8 and 9 and randomly without indication of misconduct according to § 61a Sentence 2 No. 2. <sup>5</sup>The Auditor Oversight Commission may take part in investigations of the Wirtschaftsprüferkammer.

(4) <sup>1</sup>The Auditor Oversight Commission can return decisions of the Wirtschaftsprüferkammer, citing reasons why they should be reevaluated (second evaluation); it can, in cases where the Wirtschaftsprüferkammer does not correct its decision, overrule the decision of the Wirtschaftsprüferkammer and issue instructions (ultimate decision). <sup>2</sup>The Wirtschaftsprüferkammer is obliged to conclude the matter by following the instructions. <sup>3</sup>If the Wirtschaftsprüferkammer considers the instructions to be unlawful, it submits the case to the Federal Ministry of Economics and Technology.

(5) <sup>1</sup>The Wirtschaftsprüferkammer is obliged, upon request of the Auditor Oversight Commission on a case-by-case basis or on its own accord, based on general criteria set down by the Auditor Oversight Commission, to report in a timely and adequate manner on individual, oversight-related matters, once the facts of the case have been ascertained. <sup>2</sup>A matter is considered relevant for oversight when it has been finalized by the Wirtschaftsprüferkammer and a decision with immediate legal effect is to be made. <sup>3</sup>Direct or indirect relevance to the statutory audit engagement is not necessary.

(6) <sup>1</sup>The Auditor Oversight Commission provides rules of procedure, the adoption and amendment of which requires approval by the Federal Ministry of Economics and Technology. <sup>2</sup>In addition to the criteria

according to Section 5 Sentence 1, the rules of procedure may particularly include the creation of committees with decision-making powers. <sup>3</sup>The Auditor Oversight Commission and the committees reach their decisions with a simple majority; § 59a applies *mutatis mutandis*. <sup>4</sup>The Auditor Oversight Commission and its committees may turn to the Wirtschaftsprüferkammer for assistance in fulfilling its duties. <sup>5</sup>The Auditor Oversight Commission publishes an annual work program and activity report.

(7) Costs incurred by the Auditor Oversight Commission are to borne by the Wirtschaftsprüferkammer.

(8) <sup>1</sup>With respect to the tasks named in Section 1 Sentence 1, the Auditor Oversight Commission collaborates with competent authorities in member states of the European Union, to the extent that this is required on a case-by-case basis to perform the competent authority's duties. <sup>2</sup>§ 57 Section 6 Sentence 2 to 4 shall apply *mutatis mutandis*.

(9) <sup>1</sup>If the Auditor Oversight Commission receives concrete indication that a member of the profession from another country has violated law of the European Community on statutory audits of annual accounts and consolidated accounts, it will inform the competent authority in that other member country. <sup>2</sup>If the Auditor Oversight Commission likewise receives indications from the competent authority of another member state regarding German members of the profession, the Auditor Oversight Commission shall take appropriate action and may inform the competent authority of the other member state of the outcome. <sup>3</sup>Furthermore, the competent authority of another member state may make a request via the Auditor Oversight Commission that the Wirtschaftsprüferkammer launch an investigation within the scope of § 61a Sentence 2, in which representatives of the competent authority may participate if they are sworn to confidentiality. <sup>4</sup>§ 57 Section 7 Sentences 2 to 4 apply *mutatis mutandis*.

(10) <sup>1</sup>The Auditor Oversight Commission collaborates with the competent authorities in other countries than those named in Section 8 Sentence 1, to the extent that this is necessary on a case-by-case basis for the competent authority to carry out its tasks or if these authorities have requested that special inspections or investigations be launched. <sup>2</sup>§ 57 Section 6 Sentence 2 to 4 apply *mutatis mutandis*.

(11) <sup>1</sup>§ 57 Section 9 applies *mutatis mutandis*. <sup>2</sup>In derogation of § 57 Section 9 Sentence 5 members of the profession and Wirtschaftsprüfungsgesellschaften under the requirements of § 57 Section 9 Sentences 1 to 4 may provide audit working papers and other documents directly to these competent authorities at the request of other responsible authorities if they have informed the Auditor Oversight Commission about the inquiry and the conditions specified in § 57 Section 9 Sentence 5 have been fulfilled.

## § 66b

### Confidentiality; Protection of Privacy

(1) <sup>1</sup>Members of the Auditor Oversight Commission are to observe confidentiality; § 66a Section 9 and Section 11 shall remain unaffected. <sup>2</sup>§ 64 applies mutatis mutandis, and the required approval shall be granted by the Federal Ministry of Economics and Technology.

(2) Members of the Auditor Oversight Commission, even after they terminate their activity, are not allowed to reveal or exploit third-party secrets, specifically business or trade secrets to which they became privy during their activity.

**Part Six**  
**Professional Jurisdiction**

**Section One**  
**Measures of Professional Jurisdiction in Respect of Breach of Duty**

**§ 67**  
**Measures in Respect of Breach of Duty**

(1) A Wirtschaftsprüfer who willfully breaches his professional duty shall be subject to disciplinary measures.

(2) Any misconduct of a Wirtschaftsprüfer not connected with his profession constitutes a breach of duty punishable by a disciplinary court, if according to the individual circumstances this misconduct is particularly likely to be detrimental to the respect and trust in a way significant for the exercise or the reputation of the profession.

(3) Disciplinary measures may not be taken if at the time of commitment the Wirtschaftsprüfer was not subject to professional jurisdiction.

**§ 68**  
**Disciplinary Measures**

(1) The disciplinary measures are

1. fine of up to 500,000 euros,
2. prohibition from certain types of activity for the duration of one to five years,
3. employment ban from the profession for one to five years,
4. final exclusion from the profession.

(2) The disciplinary measures of a fine, an exclusion from activity and the employment ban can be imposed simultaneously.

**§ 68a**  
**Injunction, Proceedings**

(1) <sup>1</sup>If a disciplinary measure is imposed on a member of the profession due to a breach of duty which is not finished at the time the measure is imposed, the court, in addition to imposing the measure, can also enjoin the continued behavior that is in breach of duty. <sup>2</sup>In the case of measures already being imposed after the breach of duty has been completed, the court can also enjoin the member from engaging in the same type of behavior in the future, if due to such a breach of duty, disciplinary measures or a reprimand have already been imposed, or the member has already been instructed by the Wirtschaftsprüferkammer

about the fact that their behavior is in breach of conduct. <sup>3</sup>If the disciplinary proceedings are dismissed according to § 153a of the Code of Criminal Procedure, Sentence 1 and 2 shall apply *mutatis mutandis*.

(2) <sup>1</sup>If a member willfully violates an enjoinder, each violation shall be punishable by a fine, ordered by resolution initiated through a motion by the public prosecutor at the disciplinary court in the first instance. <sup>2</sup>Each individual fine may not exceed the amount of 100,000 euros. <sup>3</sup>The resolution must be preceded by an appropriate warning which, if it is not a part of the judgment, will be passed by the public prosecutor's office upon resolution by the disciplinary court in the first instance.

(3) <sup>1</sup>Decisions to be handed down pursuant to Section 2 may proceed without an oral hearing. <sup>2</sup>A hearing must be granted prior to a decision.

(4) <sup>1</sup>An immediate appeal may be filed against the motion by which the court imposes or threatens to impose an administrative fine. <sup>2</sup>The appeal has no suspensive effect. <sup>3</sup>The public prosecutor's office may file an immediate appeal against the motion by which the court refuses to impose or threaten to impose an administrative fine.

## **§ 69**

### **Reprimand and Disciplinary Measures**

(1) <sup>1</sup>The initiation of disciplinary proceedings against a Wirtschaftsprüfer is not precluded by the fact that the Board of Directors of the Wirtschaftsprüferkammer has already reprimand him (§ 63) for the same conduct. <sup>2</sup>If the Regional Court has annulled the notification of reprimand (§ 63a) because it has not found a culpable breach of duties, disciplinary proceedings for the same conduct can only be instituted in respect of those facts and evidential matters which were not known to the Regional Court when it handed down its decision.

(2) <sup>1</sup>The reprimand becomes ineffective with a final decision of the disciplinary court against the Wirtschaftsprüfer on account of the same conduct, the decision being one of acquittal or disciplinary measure. <sup>2</sup>The caution also becomes ineffective if the initiation of trial proceedings is refused because a culpable breach of duty cannot be found.

## **§ 69a**

### **Other Measures**

<sup>1</sup>If in the event that a court or a public authority imposes a penalty, disciplinary or other professional or administrative measures, no additional disciplinary measures are to be instituted on account of the same conduct unless they are deemed necessary to compel the Wirtschaftsprüfer to fulfill his duties and to protect the reputation of the profession. <sup>2</sup>Exclusion is not prevented by penalties or measures imposed elsewhere.

## **§ 70**

### **Statute of Limitations in the Prosecution of Breach of Duty**

(1) <sup>1</sup>Prosecution of a breach of duty that does not justify measures pursuant to § 68 Section 1 No. 2, 3 or 4, becomes statute-barred after five years. <sup>2</sup>§ 78 Section 1, § 78a Sentence 1 as well as §§ 78b and 78c Section 1 to 4 of the Criminal Code apply *mutatis mutandis*; the first hearing by the Wirtschaftsprüferkammer (§ 63 Section 3) is equivalent to a hearing pursuant to § 78c Section 1 Sentence 1 No. 1 of the Criminal Code.

(2) If according to Section 1 Sentence 1 criminal proceedings are initiated due to the same matter before the statute of limitations expires, the statute of limitations shall be suspended for the duration of the criminal proceedings.

## **§ 71**

### **Provisions for Members of the Wirtschaftsprüferkammer who are not Wirtschaftsprüfer**

<sup>1</sup>The provisions in Part Five and Part Six apply *mutatis mutandis* to members of the Board of Directors, managers and partners with unlimited liability of Wirtschaftsprüfungsgesellschaften who are not themselves Wirtschaftsprüfer. <sup>2</sup>Instead of final exclusion from the profession, they forfeit the right to represent and manage a Wirtschaftsprüfungsgesellschaft.

## **Section Two**

### **Courts**

## **§ 72**

### **Court for Wirtschaftsprüfer Matters [Kammer für Wirtschaftsprüfersachen]**

(1) In disciplinary proceedings a division of the Regional Court (Court for Wirtschaftsprüfer Matters) in the district in which the Wirtschaftsprüferkammer has its seat shall decide in the first instance.

(2) <sup>1</sup>Except in the main trial the Court for Wirtschaftsprüfer Matters decides in the composition of three members, the chairman included. <sup>2</sup>In the main trial it is composed of the chairman and two Wirtschaftsprüfer as associate judges.

**§ 73****Senate for Wirtschaftsprüfer Matters at the Higher Regional Court  
[Senat für Wirtschaftsprüfersachen beim Oberlandesgericht]**

- (1) A Senate of the Higher Regional Court (Senate for Wirtschaftsprüfer Matters at the Higher Regional Court) decides in the second instance disciplinary proceedings.
- (2) <sup>1</sup>Except for the main trial, the Senate for Wirtschaftsprüfer Matters at the Higher Regional Court decides in a composition of three members, including the chairman. <sup>2</sup>In the main trial two additional Wirtschaftsprüfer participate as associate judges.

**§ 74****Senate for Wirtschaftsprüfer Matters at the Federal Court of Justice  
[Senat für Wirtschaftsprüfersachen beim Bundesgerichtshof]**

- (1) <sup>1</sup>The third instance of the disciplinary proceedings is a Senate at the Federal Court of Justice (Senate for Wirtschaftsprüfer Matters at the Federal Court of Justice). <sup>2</sup>It is considered a criminal court as defined in § 132 of the Judicature Act.
- (2) The Senate for Wirtschaftsprüfer Matters at the Federal Court of Justice comprises a chairman as well as two members of the Federal Court of Justice and two Wirtschaftsprüfer as associate judges.

**§ 75****Wirtschaftsprüfer as Associate Judges**

- (1) The associate judges selected from the ranks of the Wirtschaftsprüfer are honorary judges.
- (2) <sup>1</sup>For the courts of first and second instance the honorary judges are appointed by the State Ministry of Justice and for the Federal Court of Justice by the Federal Ministry of Justice to terms of five years. <sup>2</sup>They may be re-appointed on the expiry of their term of office.
- (3) <sup>1</sup>The honorary judges shall be selected from the lists of recommendations submitted by the Board of Directors of the Wirtschaftsprüferkammer to the State Ministry of Justice for the courts of first and second instance and to the Federal Ministry of Justice for the Federal Court of Justice. <sup>2</sup>The State Ministry of Justice and the Federal Ministry of Justice shall determine the number of associate judges required for each court; the Board of Directors of the Wirtschaftsprüferkammer must first be consulted. <sup>3</sup>Each list of recommendations shall contain at least double the number of Wirtschaftsprüfer to be appointed.
- (4) In the event that an honorary judge retires before the expiry of his term of office, a successor shall be appointed for the remaining term of office.
- (5) § 6 of the Introductory Act of the Judicature Act shall apply mutatis mutandis.

(6) The State Ministry of Justice and the Federal Ministry of Justice can on his application release an honorary judge appointed by them in the event that he is unable to exercise his office properly in the foreseeable future on account of illness or infirmity.

(7) The office of an honorary judge who is appointed honorary judge to a court of higher instance expires with his appointment.

## **§ 76**

### **Requirements for the Appointment as an Associate Judge and the Right of Refusal**

(1) <sup>1</sup>Only a Wirtschaftsprüfer who is eligible for election to the Board of Directors of the Wirtschaftsprüferkammer may be appointed as an honorary judge. <sup>2</sup>He may only be appointed as an associate judge for the Court of Wirtschaftsprüfer Matters, Senate for Wirtschaftsprüfer Matters at the Higher Regional Court or Senate for Wirtschaftsprüfer Matters at the Federal Court of Justice.

(2) The honorary judges shall not be at the same time members of the Board of Directors or Advisory Board of the Wirtschaftsprüferkammer or be in employment of the Wirtschaftsprüferkammer on a full-time or part-time basis.

(3) Acceptance of appointment as associate judge may be refused,

1. by a person who has completed the 65th year of his life,
2. by a person who within the last four years has been member of the Board of Directors of the Wirtschaftsprüferkammer,
3. by a person handicapped on account of illness or infirmity.

## **§ 77**

### **Removal of an Associate Judge from Office**

(1) On application of the Ministry of Justice that has appointed him, an honorary judge shall be removed from office,

1. if it subsequently became known that he should not have been appointed,
2. if subsequently circumstances arise which preclude his appointment as an associate judge,
3. if the Wirtschaftsprüfer grossly violates his official duties as associate judge.

(2) <sup>1</sup>A Senate for Civil Matters of the Higher Regional Court shall decide on the application of the State Ministry of Justice and a Senate for Civil Matters of the Federal Court of Justice shall decide on the application of the Federal Ministry of Justice. <sup>2</sup>Members of the Senate for Wirtschaftsprüfer Matters shall not take part in the decision.

(3) <sup>1</sup>Before the decision, the honorary judge is to be heard. <sup>2</sup>The decision is final.

**§ 78****Status of the Honorary Judges and their Duty of Confidentiality**

(1) In court sessions in which they participate, the honorary judges have the status of a professional judge.

(2) <sup>1</sup>The honorary judges shall keep all matters which become known to them during their activity in the strictest of confidence. <sup>2</sup>§ 64 Sections 2 and 3 apply *mutatis mutandis*. <sup>3</sup>Authorisation to testify is given by the president of the court.

**§ 79****Order of Participation in Court Sessions**

(1) The honorary judges shall be called upon to participate in individual court sessions in the sequence of a list prepared at the beginning of the court year by the chairman of the court after consulting the two oldest honorary judges.

(2) For the release of an honorary judge from service on certain days of session § 54 of the Judicature Act shall apply *mutatis mutandis*.

**§ 80****Compensation of Honorary Judges**

The honorary judges are compensated in accordance with the Law Governing the Compensation of Honorary Judges at the Courts.

**Section Three****Process Regulation****1. General****§ 81****Procedural Provisions**

Disciplinary proceedings are subject to the provisions set out below as well as in § 62 *mutatis mutandis*.

**§ 82****No Arrest of the Wirtschaftsprüfer**

<sup>1</sup>For the implementation of the disciplinary proceedings the Wirtschaftsprüfer cannot be taken into temporary custody, arrested or arraigned. <sup>2</sup>He cannot be sent to a psychiatric hospital for the preparation of a medical report on his mental health.

**§ 82a****Defense**

(1) In addition to the persons mentioned in § 138 Section 1 of the Code of Criminal Procedure, Wirtschaftsprüfer are eligible to act as defending counsel in disciplinary proceedings before the Regional or Higher Regional Courts.

(2) § 140 Section 1 No. 1 to 3, 6 and 7 of the Code of Criminal Procedure does not apply to the defense in disciplinary proceedings.

**§ 82b****Inspection of Files; Involvement of the Wirtschaftsprüferkammer**

(1) <sup>1</sup>The Wirtschaftsprüferkammer and the person charged are entitled to inspect all files submitted to the court or which would be required to be submitted in the event of a charge being made, along with articles of evidence held in official custody. <sup>2</sup>§ 147 Section 2, 3, 5 and 6 of the Code of Criminal Procedure apply mutatis mutandis.

(2) <sup>1</sup>The Wirtschaftsprüferkammer is to be informed of the time and place of the trial; persons asked to appear there shall be heard upon request. <sup>2</sup>§ 99 Section 2 Sentence 1 remains unaffected.

**§ 83****Relationship of Disciplinary Proceedings to Criminal or Administrative Fine Proceedings**

(1) If in court proceedings a Wirtschaftsprüfer is cleared of a criminal offence or an administrative offence, the facts that formed the basis of the court decision may only be used to initiate or continue disciplinary proceedings if those facts, while not representing a breach of a criminal or an administrative code, still constitute a breach of the duties of a Wirtschaftsprüfer.

(2) <sup>1</sup>For the decision in disciplinary proceedings, the actual findings on which a court decision is based in criminal or administrative fine proceedings are binding. <sup>2</sup>In disciplinary proceedings a court can, however, determine that such findings where the majority of members have reservations about their accuracy can be reviewed; this is to be expressed in the findings of the disciplinary proceedings.

### **§ 83a**

#### **Relationship of Disciplinary Proceedings to Proceedings in Other Professional Jurisdictions**

(1) Disciplinary proceedings shall only decide on a breach of duty of a Wirtschaftsprüfer who is at the same time subject to the disciplinary or professional jurisdiction of another profession if the breach of duty occurred predominantly while carrying out the profession of a Wirtschaftsprüfer or if due to the severity of the breach of duty, disciplinary proceedings have been initiated with the objective of exclusion from the profession.

(2) <sup>1</sup>If the public prosecutor's office intends to initiate disciplinary proceedings against such a Wirtschaftsprüfer, it shall inform the public prosecutor's office or agency that would be responsible for initiating proceedings against him as the member of another profession. <sup>2</sup>If the public prosecutor's office responsible for the other profession or the initiating public authority intends to initiate proceedings against the Wirtschaftsprüfer, it shall instruct the public prosecutor's office that would be responsible for initiating disciplinary proceedings (§ 84).

(3) If the court having disciplinary or professional jurisdiction has by final ruling previously declared itself as being responsible or not responsible for deciding on the breach of duty of a Wirtschaftsprüfer, who at the same time is subject to disciplinary, honorary or professional jurisdiction of another profession, other courts are bound by this decision.

(4) Paragraphs 1 to 3 do not apply to Wirtschaftsprüfer whose employment status is regulated by public law and who are not allowed to exercise their profession as Wirtschaftsprüfer (§ 44a).

### **§ 83b**

#### **Suspension of Disciplinary Proceedings**

Disciplinary proceedings can only be suspended if

1. a decision has yet to be reached on a matter or legal question in other legal proceedings, without which a decision in the disciplinary proceedings is not possible or not practical or
2. the final legal conclusion of other legal proceedings in which a matter or legal question is to be decided, the ruling on which is significant for the decision in the disciplinary proceedings, is expected within six months.

### **§ 83c**

#### **Resumption of Disciplinary Proceedings**

<sup>1</sup>The resumption of legally concluded disciplinary proceedings is permissible if the actual findings on which the conviction or acquittal in disciplinary proceedings were based, contradict the findings of criminal proceedings concerning the same behavior. <sup>2</sup>The public prosecutor's office or the members of the profession involved can file for resumption of proceedings within one month following the final legal conclusion of a ruling in criminal proceedings.

## **2. The Procedure in the First Instance**

### **§ 84**

#### **Participation by the Public Prosecutor's Office**

The public prosecutor's office at the Higher Regional Court where the Senate for Wirtschaftsprüfer Matters has its seat, assumes the duties of the public prosecutor's office in proceedings before the Court for Wirtschaftsprüfer Matters.

#### **§ 84a**

##### **Notification of the Public Prosecutor's Office and the Wirtschaftsprüferkammer**

(1) <sup>1</sup>Should facts become known to the Wirtschaftsprüferkammer, courts or public authorities that substantiate the suspicion that a member subject to professional jurisdiction has committed

1. a willful breach of duty that justifies disciplinary measures according to § 68 Section 1 or
2. a criminal offense while carrying out professional duties,

they shall report these facts to the public prosecutor's office responsible according to § 84 immediately or after investigating (§ 61a Sentence 2). <sup>2</sup>The report can also be accompanied by a professional evaluation.

<sup>3</sup>§ 57e Section 5, § 62 Section 5 and § 63 Section 4 Sentence 3 shall remain unaffected.

(2) Should facts become known to the public prosecutor's office that substantiate the suspicion of a willful breach of duty by a member of the Wirtschaftsprüferkammer subject to professional jurisdiction that justifies disciplinary measures according to § 68 Section 1, the public prosecutor's office shall inform the Wirtschaftsprüferkammer and provide an opportunity to respond prior to initiating disciplinary proceedings.

### **§ 85**

#### **Initiation of Disciplinary Proceedings**

Disciplinary proceedings are initiated by the public prosecutor's office, which brings the allegations before the regional court.

### **§ 86**

#### **Court decisions on Initiation of Proceedings**

(1) If the public prosecutor's office refuses act on a petition by the Board of Directors of the Wirtschaftsprüferkammer to initiate disciplinary proceedings against a Wirtschaftsprüfer or decides to dismiss proceedings, it is to inform the Board of Directors of the Wirtschaftsprüferkammer of its decision and state the reasons for this action.

(2) <sup>1</sup>The Board of Directors of the Wirtschaftsprüferkammer can petition the Higher Regional Court for a court ruling against the order of the public prosecutor's office within one month of its being made public.

<sup>2</sup>The petition must state the facts substantiating the initiation of disciplinary proceedings and any evidence.

(3) The proceedings in Section 2 are to be conducted according to §§ 173 to 175 in the Code of Criminal Procedure.

(4) § 172 of the Code of Criminal Procedure is not to be applied.

## **§ 87**

### **Petition of the Wirtschaftsprüfer to Initiate Disciplinary Proceedings**

(1) <sup>1</sup>If a member of the Wirtschaftsprüferkammer subject to the professional jurisdiction wishes to clear his name from the suspicion of breach of duty, he must petition the public prosecutor's office to initiate disciplinary proceedings against him. <sup>2</sup>It is not possible to submit a petition pertaining to behavior for which an assessment or a warning for a punitive fine has been issued or for which the Board of Directors of the Wirtschaftsprüferkammer has imposed a reprimand.

(2) <sup>1</sup>If the public prosecutor's office does not act on the petition of the Wirtschaftsprüfer or acts to dismiss the proceedings, it is to inform the Wirtschaftsprüfer of its decision and the findings. <sup>2</sup>If based on the findings a willful breach of duty is determined, but disciplinary proceedings are not initiated, or if it is left open as to whether a willful breach of duty has occurred, the Wirtschaftsprüfer can petition the Higher Regional Court for a court ruling. <sup>3</sup>The petition must be submitted within one month after the decision of the public prosecutor's office has been made public.

(3) <sup>1</sup>Proceedings before the Higher Regional Court are to be conducted according to § 173 Sections 1 and 3 of the Code of Criminal Procedure. <sup>2</sup>The Higher Regional Court shall issue a decision as to whether the Wirtschaftsprüfer has committed a willful breach of duty. <sup>3</sup>The decision is to be accompanied by findings. <sup>4</sup>If the Higher Regional Court determines that there is reasonable suspicion that the Wirtschaftsprüfer has committed of a breach of duty that warrants disciplinary measures, the Court shall decide to initiate disciplinary proceedings. <sup>5</sup>The public prosecutor's office is obliged to act on this decision.

(4) In case the Higher Regional Court does not deem that a willful breach of duty has occurred, a petition to initiate disciplinary proceedings can be submitted by the Board of Directors of the Wirtschaftsprüferkammer only on the basis of new facts and evidence related to the same behavior or reprimand.

## **§§ 88 - 93 (Repealed)**

## **§ 94**

### **Contents of the List of Allegations**

<sup>1</sup>The list of allegations (§ 85 of this act as well as § 207 Section 3 of the Code of Criminal Procedure) is to name the Wirtschaftsprüfer's alleged breach of duty and include any substantiating facts (statement of

allegations).<sup>2</sup>Further, any evidence to be submitted during the main trial is to be listed.<sup>3</sup>The list of allegations includes the petition to initiate main trial before the Court for Wirtschaftsprüfer Matters.

## **§ 95**

### **Decision to Open Main Trial**

(1) In the decision to open the main trial, the Court for Wirtschaftsprüfer Matters at the Regional Court provides for presenting allegations at main proceedings.

(2) The decision to open the main trial cannot be contested by the Wirtschaftsprüfer.

(3) <sup>1</sup>The decision rejecting the opening of the main trial must be supported by findings. <sup>2</sup>The public prosecutor's office is permitted to immediately file a complaint against the decision.

## **§ 96**

### **Final Legal Effect of a Rejection Decision**

If the opening of the main trial is rejected on the basis of a decision that cannot be contested, the petition to initiate disciplinary proceedings can only be filed again on the basis of new facts or evidence and only within five years since the decision became legally final.

## **§ 97**

### **Service of the Decision to Open Proceedings**

<sup>1</sup>The decision to open main trial is to be served to the Wirtschaftsprüfer at the latest with the summons.

<sup>2</sup>This applies *mutatis mutandis* in the cases in § 207 Section 3 of the Criminal Code of Procedure where the list of allegations can be submitted later.

**§ 98****Main Trial despite the Absence of the Wirtschaftsprüfer**

<sup>1</sup>The main trial can be carried out against a Wirtschaftsprüfer who is absent if he was summoned in an orderly manner and was instructed in the summons that the proceedings may be carried out in his absence. <sup>2</sup>A public summons is not permissible.

**§ 99****Non-public Main Trial**

(1) <sup>1</sup>The main trial is not open to the public. <sup>2</sup>Proceedings may, upon a motion by the public prosecutor's office, and must, upon a motion of the members of the profession involved, be open to the public.

<sup>3</sup>Furthermore, the main trial is always public if the alleged breach of duty is in relation to the carrying out of an audit according to § 316 of the Commercial Code. <sup>4</sup>In cases of public trials according to Sentence 2 or 3, the provisions on public trials in the Judicature Act are to be applied *mutatis mutandis*.

(2) <sup>1</sup>Persons authorized to enter non-public trials include the President of the Higher Regional Court or his delegate, officials of the public prosecutor's office at the Higher Regional Court, representatives from the Federal Ministry for Economics and Technology, and representatives of the highest state agency, representatives of the Wirtschaftsprüferkammer and the Wirtschaftsprüfer. <sup>2</sup>The Court for Wirtschaftsprüfer Matters may, after hearing those involved, admit other persons as observers.

**§ 100****(Repealed)****§ 101****Hearing of Evidence by the Requested Judge**

<sup>1</sup>The Court for Wirtschaftsprüfer Matters may ask a local court to question witnesses or experts. <sup>2</sup>The witness or expert is, however, to be questioned during the the main trial upon request of the public prosecutor's office or the Wirtschaftsprüfer, unless he will presumably be prevented to appear in the main trial or an appearance would be unreasonable due to the long distance.

**§ 102****Reading of Protocols**

(1) The Court for Wirtschaftsprüfer Matters decides according to its best judgment whether to allow the reading of the testimony of a witness or an expert who has already been questioned in disciplinary proceedings or other orderly legal proceedings.

(2) <sup>1</sup>Before a court ruling is made, the public prosecutor or the Wirtschaftsprüfer can petition to question the witness or expert during the main trial. <sup>2</sup>Such a petition is to be granted unless the witness or expert will presumably be prevented to appear in the main trial or it would be unreasonable to expect the witness or expert to appear in the main trial due to the long distance. <sup>3</sup>If the petition is granted, the protocol of the earlier questioning may not be read.

(3) <sup>1</sup>If the witness or expert has been questioned by the requested judge (§ 101), the reading of the protocol cannot be contested. <sup>2</sup>The public prosecutor or the Wirtschaftsprüfer, however, can contradict the reading, if a petition has been denied according to § 101 Sentence 2 and there are no longer reasons for denying the petition.

### **§ 103**

#### **Decision**

(1) The main trial concludes with deliberation, followed by pronouncement of the judgement.

(2) The decision shall be acquittal, conviction, or dismissal of the proceeding.

(3) The disciplinary proceeding is to be dismissed, with the exception of the case specified in § 260 Section 3 of the Code of Criminal Procedure,

1. if the appointment of a Wirtschaftsprüfer has expired, has been withdrawn or revoked (§§ 19, 20),
2. if according to § 69a disciplinary measures are not deemed necessary.

### **3. Legal Redress**

### **§ 104**

#### **Complaint**

Complaints are to be adjudicated and decided by the Senate for Wirtschaftsprüfer Matters at the Higher Regional Court.

### **§ 105**

#### **Appeal on Fact and Law**

(1) It is permissible to submit to the Senate for Wirtschaftsprüfer Matters an appeal on fact and law against a judgment by the Court for Wirtschaftsprüfer Matters.

(2) <sup>1</sup>The appeal on fact and law must be submitted in writing within a period of one week of judgment being pronounced by the Court for Wirtschaftsprüfer Matters. <sup>2</sup>If the judgment was not pronounced in the presence of the Wirtschaftsprüfer, the period begins with service of the judgment.

(3) Materials supporting the appeal on fact and law can only be submitted in writing.

(4) In addition to the provisions in the Code of Criminal Procedure relating to appeals, §§ 98, 99, 101 to 103 of this act are to be applied *mutatis mutandis*.

### **§ 106**

#### **Participation by the Public Prosecutor's Office before the Senate for Wirtschaftsprüfer Matters**

The duties of the public prosecutor's office in proceedings before the Senate for Wirtschaftsprüfer Matters are exercised by the public prosecutor's office at the Higher Regional Court where the Senate has its seat.

### **§ 107**

#### **Appeal on Points of Law**

(1) It is permissible to appeal a judgment by the Senate for Wirtschaftsprüfer Matters at the Higher Regional Court by filing an appeal on points of law to the Federal Court of Justice,

1. if the judgment calls for exclusion from the profession,
2. if the Senate for Wirtschaftsprüfer Matters at the Higher Regional Court decided against exclusion contrary to a petition by the public prosecutor's office,
3. if the Senate for Wirtschaftsprüfer Matters at the Higher Regional Court allowed for appeals on points of law in its judgment.

(2) The Senate for Wirtschaftsprüfer Matters at the Higher Regional Court may only allow an appeal on points of law if it decided on issues of law or questions of professional duties that are of basic significance.

(3) <sup>1</sup>The non-admission of an appeal on points of law can be independently contested by filing a complaint within one month after judgment has been served. <sup>2</sup>The complaint is to be filed at the Higher Regional Court. <sup>3</sup>The basic point of law must be explicitly stated in the complaint petition.

(4) The complaint suppresses the legal effect of the judgment.

(5) <sup>1</sup>If a complaint is not satisfied, the Federal Court of Justice shall decide by ruling. <sup>2</sup>The ruling does not require reasons if the complaint was unanimously struck down or dismissed. <sup>3</sup>With the rejection of the complaint by the Federal Court of Justice, the judgment becomes final. <sup>4</sup>If the complaint is sustained, the period for an appeal on points of law begins with the service of the notice of complaint.

### **§ 107a**

#### **Filing an Appeal on Points of Law and Proceedings**

(1) <sup>1</sup>An appeal on points of law must be submitted in writing to the Higher Regional Court within one week.

<sup>2</sup>The period begins with the pronouncement of judgment. <sup>3</sup>If the judgment is not pronounced in the presence of the Wirtschaftsprüfer, the period begins with service of the judgment.

(2) On the part of the Wirtschaftsprüfer, petitions of appeal on points of law and their supporting arguments can only be brought forth in writing.

(3) <sup>1</sup>For proceedings before the Federal Court of Justice, in addition to the provisions in the Code of Criminal Procedure relating to appeals on points of law, § 99 and § 103 Section 3 of this act shall apply *mutatis mutandis*. <sup>2</sup>Cases specified in § 354 Section 2 of the Code of Criminal Procedure are to be remanded to the Senate for Wirtschaftsprüfer Matters responsible according to § 73 at the Higher Regional Court.

### **§ 108**

#### **Participation of the Public Prosecutor's Office before the Federal Court of Justice**

The duties of the public prosecutor's office in proceedings before the Federal Court of Justice are performed by the Federal Public Prosecutor.

## **4. Securing Evidence**

### **§ 109**

#### **Judicial Order to Secure Evidence**

(1) <sup>1</sup>If disciplinary proceedings against the Wirtschaftsprüfer are dismissed because his appointment as a Wirtschaftsprüfer has expired or has been revoked, the decision may also contain instructions upon petition of the public prosecutor's office to secure evidence, if it can be expected that the verdict would have called for exclusion from the profession. <sup>2</sup>This order cannot be contested.

(2) <sup>1</sup>The pieces of evidence are received by the Court for Wirtschaftsprüfer Matters at the Regional Court.

<sup>2</sup>The Court for Wirtschaftsprüfer Matters can instruct one of its disciplinary judges to handle the taking of evidence.

### **§ 110**

#### **Proceedings**

(1) <sup>1</sup>The Court for Wirtschaftsprüfer Matters at the Regional Court is charged *ex officio* with the collection of evidence that may support a decision of whether dismissed proceedings would have led to exclusion

from the profession. <sup>2</sup>The Court for Wirtschaftsprüfer Matters at the Regional Court decides on the scope of the proceedings after duly assessing the circumstances, without being bound by petitions; to this extent, the Court's instructions cannot be contested.

(2) Unless exceptions are prescribed or permitted, witnesses are to be heard under oath.

(3) <sup>1</sup>The public prosecutor's office and the former Wirtschaftsprüfer are to be involved in the proceedings. <sup>2</sup>The former Wirtschaftsprüfer is only entitled to notification of the times scheduled for the securing of evidence if he is present in Germany and has provided the Regional Court with his current address.

## **5. Provisional Prohibition on Exercising and Practicing the Profession**

### **§ 111**

#### **Prerequisites for Prohibition**

(1) If there are ample grounds to assume that a Wirtschaftsprüfer may be prohibited from practicing the profession, a provisional prohibition may be issued by ruling on exercising and practicing the profession.

(2) <sup>1</sup>Prior to initiating disciplinary proceedings, the public prosecutor's office can petition for a provisional prohibition on exercising and practicing the profession. <sup>2</sup>The petition is to list the breach of duty that the Wirtschaftsprüfer is alleged to have committed, along with any evidence.

(3) The court that is to decide on the opening of main trial against the Wirtschaftsprüfer or before which the disciplinary proceedings are pending is also competent for proceedings and the decision on this matter.

### **§ 112**

#### **Court Hearing**

(1) The ruling by which a provisional prohibition on exercising and practicing the profession is imposed can only be based on a court hearing.

(2) The adjudicating court shall apply the provisions concerning the composition of the court, the summons and the verbal proceedings that are valid for main trial, unless otherwise specified in the following provisions.

(3) <sup>1</sup>In the first summons, the Wirtschaftsprüfer's alleged breach of duty is to be named by specifying the substantiating facts of the case; any evidence is also to be listed. <sup>2</sup>This is not necessary, however, if the Wirtschaftsprüfer has already received the list of allegations.

(4) The scope of evidence admitted is up to the court to determine according to its best judgment, without being bound to the public prosecutor's office or the Wirtschaftsprüfer.

**§ 113****Voting on the Prohibition**

It requires a two-thirds majority to impose a provisional prohibition from exercising or practicing the profession.

**§ 114****Prohibition immediately following the Main Trial**

<sup>1</sup>If the court has found for exclusion from the profession, it can also deliberate and decide upon the imposition of a provisional prohibition on exercising the profession immediately following the main trial.

<sup>2</sup>This also applies even if the Wirtschaftsprüfer did not appear at the main trial.

**§ 115****Service of the Ruling**

<sup>1</sup>The ruling is to be accompanied by supporting opinions. <sup>2</sup>It is to be served to the Wirtschaftsprüfer. <sup>3</sup>If the Wirtschaftsprüfer was not present during pronouncement of the ruling, the ruling without supporting opinions is to be served immediately following pronouncement.

**§ 116****Effects of the Prohibition**

(1) The ruling takes effect with its pronouncement.

(2) The Wirtschaftsprüfer against whom an exclusion from the profession has been imposed, is not allowed to practice his profession.

(3) The Wirtschaftsprüfer against whom a provisional prohibition on exercising or practicing the profession has been imposed, is allowed, however, to handle his own business affairs, the business affairs of his spouse, partner or minor children, to the extent that this does not involve the issuing of an audit opinion.

(4) <sup>1</sup>The validity of legal transactions carried out by the Wirtschaftsprüfer is not affected by the provisional prohibition on exercising or practicing the profession. <sup>2</sup>The same applies to legal transactions that are carried out towards him.

**§ 117****Violations against the Prohibition**

(1) Any Wirtschaftsprüfer who knowingly violates a provisional prohibition on exercising or practicing the profession shall be excluded from the profession unless there are extenuating circumstances that would warrant a less severe disciplinary measure.

(2) Courts or public authorities shall turn away a Wirtschaftsprüfer who appears before them despite a provisional prohibition on exercising or practicing the profession.

**§ 118****Complaint**

(1) <sup>1</sup>It is possible to immediately file a complaint against a ruling by which the Regional Court or Higher Regional Court imposes a provisional prohibition on exercising or practicing the profession. <sup>2</sup>The complaint has no suspensory effect.

(2) The public prosecutor's office has the option of filing an immediate complaint against the ruling by which the Regional Court or the Higher Regional Court rejects a provisional prohibition on exercising or practicing the profession.

(3) <sup>1</sup>The immediate complaint shall be decided by the Higher Regional Court if the ruling was issued by the Regional Court, or by the Federal Court of Justice if the ruling was issued by the Higher Regional Court. <sup>2</sup>For the proceedings, § 112 Section 1, 2 and 4 as well as §§ 113 and 115 of this act shall apply, in addition to provisions in the Code of Criminal Procedure pertaining to complaints.

**§ 119****Suspension of the Exclusion**

(1) The prohibition shall be suspended if the judgment does not call for exclusion or if the opening of main trial is rejected by the Court for Wirtschaftsprüfer Matters.

(2) The provisional prohibition on exercising or practicing the profession shall be suspended if judgment is handed down that calls for a disciplinary fine, a limited prohibition on exercising the profession or a limited prohibition on practicing the profession, or if the opening of the main trial before the Court for Wirtschaftsprüfer Matters is abandoned.

**§ 120****Repeal of the Prohibition**

(1) The provisional prohibition on exercising or practicing the profession shall be repealed if it turns out that the preconditions for imposing it are not or are no longer fulfilled.

(2) The court competent according to § 111 Section 3 shall decide on the repeal of the prohibition.

(3) <sup>1</sup>If the Wirtschaftsprüfer petitions to have the prohibition repealed, new verbal proceedings can be ordered. <sup>2</sup>The petition cannot be filed as long as an immediate complaint of a Wirtschaftsprüfer according to § 118 Section 1 has not yet been decided. <sup>3</sup>It is not permissible to file a complaint against the ruling by which a petition has been refused.

### **§ 120a**

#### **Notification of the Prohibition**

(1) Notification of the ruling by which a provisional prohibition on exercising or practicing the profession is imposed shall be sent out at once as a notarized facsimile to the Wirtschaftsprüferkammer.

(2) If the provisional prohibition on exercising or practicing the profession is suspended or repealed, Section 1 shall apply *mutatis mutandis*.

### **§ 121**

#### **Appointment of a Representative**

(1) <sup>1</sup>If necessary, the Wirtschaftsprüferkammer may appoint a representative for the Wirtschaftsprüfer against whom provisional prohibition on exercising or practicing the profession has been imposed. <sup>2</sup>Prior to appointment, the Wirtschaftsprüfer facing provisional prohibition on exercising or practicing the profession is to be heard; he can nominate an appropriate representative.

(2) The representative must be a Wirtschaftsprüfer.

(3) <sup>1</sup>A Wirtschaftsprüfer who is named as a representative may only refuse for good cause. <sup>2</sup>The Wirtschaftsprüferkammer shall decide on refusal.

(4) <sup>1</sup>The representative carries out his office under his own responsibility, however by order and for account of the person being represented. <sup>2</sup>He shall not be bound by the instructions of the person represented.

(5) <sup>1</sup>The person represented is to remunerate the representative appropriately. <sup>2</sup>Upon request of the person represented or the representative, the Board of Directors of the Wirtschaftsprüferkammer will stipulate the level of remuneration. <sup>3</sup>The representative is entitled to receive an advance on the negotiated or stipulated amount of remuneration. <sup>4</sup>For stipulated remuneration, the Wirtschaftsprüferkammer is liable as a guarantor.

## 6. Provisional Injunctions

### § 121a

#### Prerequisites of Proceedings

(1) If there are ample grounds for presuming that the members of the profession will be prevented from continuing or carrying out behavior that is in breach of duty, a provisional injunction can be invoked against them by simple ruling.

(2) For further proceedings, § 111 Section 2 to § 120a shall apply *mutatis mutandis*.

### Section Four

#### Costs of Professional Disciplinary Proceedings and Proceedings in Connection with Applications for Disciplinary Court Decisions concerning reprimand.

##### Enforcement of Disciplinary Measures and Costs.

##### Erasure

### § 122

#### Court Costs

In disciplinary proceedings, in proceedings dealing with the petition for a decision of the Regional Court concerning reprimand (§ 63a Section 1) and in proceedings dealing with the petition for a decision of the regional court against the warning or imposition of a punitive fine (§ 62a Section 3), fees are collected according to the fee schedule included as an attachment to this act. Furthermore, costs in criminal cases are to be applied according to prevailing provisions in the Court Fees Act.

### § 123

#### Costs of Petitions to open Disciplinary Proceedings

(1) A Wirtschaftsprüfer who has petitioned for a court decision on a resolution by the public prosecutor's office (§ 87 Section 2) but has withdrawn the petition, shall bear any costs incurred by this process.

(2) If a petition by the Board of Directors of the Wirtschaftsprüferkammer for a court decision in the case of § 86 Section 2 is dismissed, any costs related to the petition process are to be imposed on the Wirtschaftsprüferkammer.

### § 124

#### Cost Obligations of the Disciplined Member

(1) <sup>1</sup>A Wirtschaftsprüfer who is convicted in disciplinary proceedings shall be responsible for part or all of the costs resulting from the proceedings. <sup>2</sup>The same applies if disciplinary proceedings concerning

expiration, withdrawal or revocation of an appointment are dismissed and, based on the results of the proceedings thus far, the imposition of disciplinary measures would have been justified; the costs of the disciplinary proceedings in this case also include costs that could occur in supplementary proceedings for the purpose of securing evidence (§§ 109, 110). <sup>3</sup>If proceedings are dismissed according to § 103 Section 3 No. 2, the court can impose part or all of the costs incurred during the proceedings on the Wirtschaftsprüfer, if it deems this appropriate.

(2) <sup>1</sup>A Wirtschaftsprüfer who has withdrawn a legal remedy or filed an unsuccessful appeal shall bear the costs involved in this process. <sup>2</sup>If the remedy was partly successful, the Wirtschaftsprüfer shall bear an appropriate share of these costs.

(3) For costs resulting from a petition to resume proceedings that have already been concluded by final judgment, Section 2 is to be applied *mutatis mutandis*.

### **§ 124a**

#### **Cost Obligations in Proceedings involving Petitions for Disciplinary Court Decisions concerning a Reprimand**

(1) <sup>1</sup>If the petition for a disciplinary court decision concerning a reprimand is dismissed as being unfounded, § 124 Section 1 Sentence 1 shall be applied *mutatis mutandis*. <sup>2</sup>If the Regional Court determines that the reprimand due to the imposition of a disciplinary measure is invalid (§ 63a Section 5 Sentence 2), or if it suspends the reprimand order according to § 63a Section 3 Sentence 2, part or all of the costs from the proceedings can be imposed upon the Wirtschaftsprüfer, if deemed appropriate by the court.

(2) If the Wirtschaftsprüfer withdraws the petition for a disciplinary court decision or if the petition is dismissed as being invalid, § 124 Section 2 Sentence 1 shall apply *mutatis mutandis*.

(3) If the reprimand order, with the exception of the case in § 63a Section 3 Sentence 2, is suspended or the reprimand is found to be invalid due to the acquittal of the Wirtschaftsprüfer in the disciplinary proceedings or due to reasons specified in § 69 Section 2 Sentence 2 (§ 63a Section 5 Sentence 2), any necessary expenses incurred by the Wirtschaftsprüfer are to be imposed upon the Wirtschaftsprüferkammer.

### **§ 125**

#### **Liability of the Wirtschaftsprüferkammer**

Expenses that can be imposed neither on the Wirtschaftsprüfer nor on a third party or cannot be collected from the Wirtschaftsprüfer shall be borne by the Wirtschaftsprüferkammer.

**§ 126****Enforcement of Disciplinary Measures and Costs**

(1) <sup>1</sup>Exclusion from the profession becomes effective when judgment is final. <sup>2</sup>The person convicted shall be cancelled from the public register on the basis of a notarized copy of the judgment, with an attached attestation that the judgment is final.

(2) <sup>1</sup>The fact that after the final legal conclusion of the proceedings the Wirtschaftsprüfer is no longer a member of the profession shall not impede the enforcement of the fine and the collection of any costs. <sup>2</sup>If the cost of the proceedings is collected together with a punitive fine, the rules governing the enforcement of the fine also apply to the costs.

**§ 126a****Erasure**

(1) <sup>1</sup>Entries of disciplinary measures according to § 68 Section 1 No. 1, 2 or 3 in the personal records of Wirtschaftsprüfer are to be erased after ten years. <sup>2</sup>Any records concerning these disciplinary measures shall be removed from the personal files of the Wirtschaftsprüfer and destroyed. <sup>3</sup>Once this period has elapsed these measures may not be taken into consideration in connection with in any further disciplinary measures.

(2) The period begins on the day on which the disciplinary measure has become uncontestable.

(3) The period does not expire as long as criminal proceedings, disciplinary court proceedings or disciplinary actions are pending, another disciplinary court measure may be taken into account or a judgment imposing a fine has not yet been enforced.

(4) After the period has expired, the Wirtschaftsprüfer is considered free of any disciplinary measures.

(5) <sup>1</sup>Sections 1 to 4 apply *mutatis mutandis* to reprimands by the Board of Directors of the Wirtschaftsprüferkammer. <sup>2</sup>The period lasts for five years.

(6) <sup>1</sup>Entries of criminal convictions or other decisions from proceedings involving criminal offences, breaches of administrative regulations or breaches of professional duty that did not lead to disciplinary measures or reprimands, as well as cautions by the Wirtschaftsprüferkammer are to be erased upon written request of the Wirtschaftsprüfer after five years. <sup>2</sup>Section 1, Sentence 2, Section 2 and 3 apply *mutatis mutandis*.

**Section Five**  
**Applicable Provisions**

**§ 127**

For disciplinary jurisdiction the Judicature Act and the Code of Criminal Procedure are to be applied *mutatis mutandis*.

**Part Seven**  
**Vereidigte Buchprüfer and Buchprüfungsgesellschaften**  
**[German Sworn Auditors and Firms of Sworn Auditors]**

**§ 128**

**Professional Membership and Professional Title**

(1) <sup>1</sup>Vereidigte Buchprüfer are persons who according to the provisions of this act are recognized or appointed as such; if a vereidigter Buchprüfer is appointed as a Wirtschaftsprüfer, the appointment to vereidigter Buchprüfer expires automatically. <sup>2</sup>Buchprüfungsgesellschaften are those that are recognized as such according to the provisions of this act; if a Buchprüfungsgesellschaft is appointed as a Wirtschaftsprüfungsgesellschaft, its recognition as a Buchprüfungsgesellschaft expires automatically.

(2) <sup>1</sup>In their professional practice, vereidigte Buchprüfer use the professional title of "vereidigter Buchprüfer", and Buchprüfungsgesellschaften carry the title of "Buchprüfungsgesellschaft". <sup>2</sup>Female members of the profession may bear the professional title of "vereidigte Buchprüferin".

(3) <sup>1</sup>Vereidigte Buchprüfer and Buchprüfungsgesellschaften are members of the Wirtschaftsprüferkammer. <sup>2</sup>Furthermore, § 58 Section 1 applies *mutatis mutandis*.

**§ 129**

**Scope of Practice**

(1) <sup>1</sup>Vereidigte Buchprüfer have the professional duty of performing audits of accounting records and, in particular, accounts and balance sheets. <sup>2</sup>They may issue an auditor's opinion upon completion of audits. <sup>3</sup>Auditor's opinions include attestations and approvals, which vereidigte Buchprüfer issue on the basis of statutory requirements. <sup>4</sup>The professional duties of a vereidigter Buchprüfer include, in particular, the auditing of annual financial statements of mid-sized limited liability companies and partnerships as defined in § 264a of the Commercial Code (§ 267 Section 2 of the Commercial Code) according to § 316 Section 1 Sentence 1 of the Commercial Code.

(2) <sup>1</sup>Vereidigte Buchprüfer are authorized to advise and represent their clients in tax matters in accordance with existing regulations. <sup>2</sup>In matters relating to taxation in foreign states, they are authorized to assist in routine tax matters; this does not affect the rights of third parties.

(3) Vereidigte Buchprüfer are furthermore authorized:

1. to appear as experts in the field of accounting matters by virtue of their professional oath,
2. to advise on business matters and protect third-party interests,
3. to act as trustees.

### **§ 130**

#### **Application of Provisions of this Act**

(1) <sup>1</sup>§ 1 Section 2 and § 3 as well as the provisions in Sections 3, 6, 7 and 8 in Part 2 and Parts 3, 5, and 6 shall apply *mutatis mutandis* to vereidigte Buchprüfer. <sup>2</sup>In disciplinary proceedings against vereidigte Buchprüfer, both vereidigte Buchprüfer and Wirtschaftsprüfer may be appointed as associate judges.

(2) <sup>1</sup>§ 1 Section 3 and § 3 as well as the provisions in Sections 3, 5, 6, 7 and 8 in Part 2 and Part 3 shall apply *mutatis mutandis* to vereidigte Buchprüfer. <sup>2</sup>If the number of legal representatives (§ 28 Section 1) who are members of the profession exceeds the number of legal representatives who are vereidigte Buchprüfer, the application shall be submitted for licensing as a Wirtschaftsprüfungsgesellschaft, as long as the other requirements for licensing are met according to § 28. <sup>3</sup>Licensing as a Buchprüfungsgesellschaft is to be withdrawn or revoked if despite the requirements being fulfilled in Section 2 Sentence 2, no application is submitted for licensing as a Wirtschaftsprüfungsgesellschaft.

(3) <sup>1</sup>§§ 57a to 57g apply *mutatis mutandis* to quality assurance reviews for vereidigte Buchprüfer in their own practice and Buchprüfungsgesellschaften. <sup>2</sup>Quality assurance reviewers can also be vereidigte Buchprüfer or Buchprüfungsgesellschaften; but they can only carry out quality assurance reviews for vereidigte Buchprüfer and Buchprüfungsgesellschaften. <sup>3</sup>For licensing of vereidigte Buchprüfer or Buchprüfungsgesellschaften § 57a Section 3 applies *mutatis mutandis*.

### **§§ 131 to 131d**

**(Repealed)**

### **Part Eight**

**(Repealed)**

**Part Nine**  
**Aptitude Test for the Qualification as Wirtschaftsprüfer**

**§ 131g**  
**Admission to the Aptitude Test as Wirtschaftsprüfer**

(1) A citizen of a member state of the European Union or another treaty nation in the European Economic Area or of Switzerland, who has earned a diploma from a member state of the European Union or treaty nation in the European Economic Area or Switzerland that confers upon the holder all the requirements necessary to immediately carry out audits of financial statements as defined by Article 2 No. 1 of the Directive 2006/43/EEC of the European Parliament and of the Council of 17 May 2006 on Statutory Audits of Annual Accounts and Consolidated Accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Official Journal of the European Union No. L 157 p. 87) in this member state or in another treaty nation in the European Economic Area or Switzerland, can be appointed as Wirtschaftsprüfer in deviation from the provisions of the Sections One and Two in Part Two, if he has completed an aptitude test as Wirtschaftsprüfer.

(2) <sup>1</sup>Diplomas as referred to in Section 1 are diplomas, certificates of passed examinations or other evidence of competence within the meaning of Article 1 Letter a of the Council Directive of 21 December 1988 generally regulating the recognition of higher education diplomas that conclude at least a three-year professional education (89/48/EEC) - Official Journal of the European Communities No. L 19 (1989), p. 16 -. <sup>2</sup>A diploma granted for a course of studies that was not completed predominantly in the European Union or in a treaty nation in the European Economic Area or Switzerland, entitles the holder to take the aptitude test, if the holder has actually and lawfully completed at least three years of professional experience as a statutory auditor and this is confirmed by the member state that issued or recognized the diploma, as specified in Section 1.

(3) <sup>1</sup>The Examination Unit decides on admission to the aptitude test; and the application is to be submitted in writing. <sup>2</sup>§§ 13 to 13b shall be applied *mutatis mutandis*.

**§ 131h**  
**Aptitude Test as Wirtschaftsprüfer**

(1) Applicants who have been admitted shall complete the aptitude test before the Examination Board.

(2) <sup>1</sup>The aptitude test only examines the applicant's professional knowledge and seeks to evaluate the ability of the applicant to practice the profession of Wirtschaftsprüfer in the Federal Republic of Germany. <sup>2</sup>The aptitude test must take into account that the applicant possesses the professional qualifications in a member state of the European Union or in another treaty nation in the European Economic Area or Switzerland that are required to be admitted to carry out statutory audits of annual financial statements and other accounting documents in that state.

(3) <sup>1</sup>The test is comprised of a written and oral examination. <sup>2</sup>The examination is taken in German.  
<sup>3</sup>Examination subjects to be specified by statutory regulation relate to legal provisions of statutory audits (statutory regulations), commercial law, tax law and the regulations governing the profession of Wirtschaftsprüfer.

(4) (Repealed)

**§§ 131i and 131j  
(Repealed)**

**§ 131k  
Appointment**

<sup>1</sup>Section Three in Part Two applies to the appointment of persons as Wirtschaftsprüfer who completed the test according to § 131h.

**§ 131l  
Statutory Regulation**

<sup>1</sup>The Federal Ministry of Economics and Technology is authorized to issue by statutory regulation relating to the examinations in accordance with § 131h concerning the composition of the Examination Board and the appointment of this members, the details of the examination, the subjects of examination and the examination procedure, in particular the matters referred to in § 14, the exemption from examination procedures as well as the admission to the aptitude test of candidates who fulfill the requirements of Article 3 Letter b of the Directive (§ 131g Section 2 Sentence 1). <sup>2</sup>The statutory order does not require approval by the Federal Council.

**§ 131m  
Attestations of the State of Origin or Member State**

In as far as the decision on the official appointment as Wirtschaftsprüfer requires the submission of or request for

1. attestations or documents certifying that there exist no serious professional misconduct, criminal offenses or other circumstances that would cast doubt on the suitability of the candidate for the profession of Wirtschaftsprüfer,
2. attestations or documents certifying that the applicant is not bankrupt,
3. attestations to physical or mental health,
4. certificates of good conduct

issued by the state of origin or member state, it is sufficient to submit an attestation or document as defined in Article 6 of the Council Directive of 21 December 1988 (§ 131g Section 2 Sentence 1).

**§ 131n  
(Repealed)**

**Part Ten  
Provisions on Criminal and Punitive Fines**

**§ 132  
Prohibition of Misleading Professional Titles; Counterfeit Seals**

(1) It is forbidden to

1. use the professional title of "Buchprüfer“, "Bücherrevisor" or "Wirtschaftstreuhänder“ or
2. to bear the professional title according to the law of another country for the professions of "Wirtschaftsprüfer“, "Wirtschaftsprüferin", "vereidigter Buchprüfer“ or "vereidigte Buchprüferin" without specifying the other state.

(2) Seals are only allowed in business transactions if they fulfill the provisions concerning the design of seals as specified in the professional code according to § 48 Section 2.

(3) It is an administrative offence to

1. bear a professional title contrary to Section 1 No. 1 or 2 or
2. use a seal contrary to Section 2.

(4) This administrative offence is punishable by an administrative fine of up to 5,000 euros. The administrative authority as defined in § 36 Section 1 No. 1 of the law concerning administrative offences is the Wirtschaftsprüferkammer.

**§ 133  
Protection of the Designation "Wirtschaftsprüfungsgesellschaft" and  
"Buchprüfungsgesellschaft"**

(1) It is an offence to use the designation "Wirtschaftsprüfungsgesellschaft" or "Buchprüfungsgesellschaft" or a similar misleading designation for a firm although it has not been recognized as such.

(2) <sup>1</sup>This offence can lead to the imposition of an administrative fine of up to 10,000 Euros. <sup>2</sup>§ 132 Section 4 Sentence 2 shall apply.

**§ 133a**

**Unauthorized employment in an executive position in an audited company**

- (1) It is a misdemeanor to be employed in an important executive position in violation of § 43 Section 3.
- (2) <sup>1</sup>This misdemeanor can be punished with a fine of up to fifty-thousand Euros. <sup>2</sup>§132 Section 4 Sentence 2 shall apply.

**§ 133b**

**Unauthorized utilization of third-party professional and trade secrets**

- (1) Utilizing a third-party secret in violation of § 66b Section 2 is punishable by imprisonment of up to two years or a punitive fine.
- (2) This offence is only investigated upon petition.

**§ 133c**

**Unauthorized Revealing of Third-party Professional or Trade Secrets**

- (1) Revealing a third-party secret in violation of § 66b Section 2 is punishable by imprisonment of up to one year or a punitive fine.
- (2) If the perpetrator acts with the motive of remuneration or with the intent of realizing a financial gain for himself or for others or for the purpose of damaging a third party, the penalty shall be imprisonment of up to two years or a punitive fine.
- (3) This offence is only investigated upon petition.

**§ 133d**

**Utilization of Administrative Fines**

- (1) An administrative fine as specified in § 132 Section 3 and § 133 Section 1 as well as § 133a Section 1 flows into the budget of the administrative authority that imposes the fine order.
- (2) <sup>1</sup>The responsible budget specified in Section 1 bears any necessary expenses in deviation from § 105 Section 2 of the Administrative Offences Act. <sup>2</sup>It is also liable for damages as specified in § 110 Section 4 of the Administrative Offences Act.

**Part Eleven**

**Transitional and Final Provisions**

## § 134

### Application of Provisions of this Act on Auditors and Audit Firms from Third-Party States

(1) <sup>1</sup>Auditors and audit firms from third countries are obliged, even if no appointment or licensing exists according to this act, to be registered according to the provisions of Section Seven in Part Two if they intend to provide an audit report for the statutory audit of annual financial statements or consolidated financial statements of a company with headquarters outside the European Union, whose transferable securities offered for trading in a regulated market as defined in Article 4 Section 1 No. 14 of Directive 2004/39/EEC are licensed in Germany. <sup>2</sup>This does not apply to audit reports for companies that exclusively offer licensed debt instruments in a regulated market of a member state of the European Union as defined in Article 2 Section 1 Letter b of the Directive 2004/109/EEC of the European Parliament and the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EEC (Official Journal of the European Union No. L 390 p. 38) with a minimum denomination of 50,000 euros or – with debt instruments denominated in another currency – with a minimum denomination that is the equivalent of at least 50,000 euros on the date of issue.

(2) Audit firms according to Section 1 Sentence 1 can only be registered if

1. they fulfill the requirements that are equivalent to those in Section Five in Part Two,
2. the person who is carrying out the audit in the name of the third-party country audit firm fulfills the requirements equivalent to those in Section 1 Part 2,
3. the audits are carried out according to international auditing standards and conform to the requirements of independence or according to equivalent standards and requirements and
4. they publish an annual transparency report on their website which contains information as specified in § 55c or equivalent disclosures.

(2a) If the conditions in Sections 1 and 2 are met, the Wirtschaftsprüferkammer will issue the registered auditor or auditing firm a certificate of registration.

(3) <sup>1</sup>With respect to their activity, the registered persons and firms according to Sections 1 and 2 are subject to professional disciplinary oversight according to §§ 61a to 66b, the provisions of professional jurisdiction according to §§ 67 to 127, as well as the provisions of quality assurance according to §§ 57a to 57g. <sup>2</sup>A quality assurance review may be waived if a quality assurance review has been performed on the registered person or firm in another member state of the European Union within the past three years. <sup>3</sup>Sentence 2 applies *mutatis mutandis* if within the past three years a quality assurance review has been performed in a third country, if the quality assurance system of that country was recognized as being equivalent based on an evaluation according to Section 4.

(4) <sup>1</sup>Registration and its consequences according to Section 3 are to be waived on the basis of reciprocity if the persons and firms named in Section 1 Sentence 1 are subject in their third-party country to a public authority, quality assurance as well as professional disciplinary oversight that fulfill the requirements equivalent to the regulations named in Section 3 or if the European Commission provides for this in a

transitional period according to Article 46 Section 2 Sentence 3 of the Directive 2006/43/EEC of the European Parliament and of the Council of 17 May 2006 on Statutory Audits of Annual Accounts and Consolidated Accounts (Official Journal of the European Union No. L 157 p. 87). <sup>2</sup>The equivalency named in Sentence 1 is evaluated and certified by the Commission of the European Communities in collaboration with the member states. <sup>3</sup>As long as the Commission of the European Communities still has not issued a transitional decision according to Sentence 1 or certification according to Sentence 2, the Federal Ministry of Economics and Technology may evaluate and certify the equivalency itself. <sup>4</sup>In its evaluation, it will take into account the evaluations and certifications of other member states. <sup>5</sup>If the Federal Ministry of Economics and Technology conducts such a certification, it will announce this by publishing it in the Federal Legislative Journal. <sup>6</sup>If the Federal Ministry of Economics and Technology rejects the equivalency according to Sentence 1, it may allow the persons and firms named in Section 1 Sentence 1 a reasonable transition period to continue their audit activity in conformance with the relevant German regulations. <sup>7</sup>The Auditor Oversight Commission shall be informed of certification and rejection of equivalency, in order that it may consider this decision according to § 66a Section 11. <sup>8</sup>If according to the provisions in this section no entry is made pursuant to Section 1, the Wirtschaftsprüferkammer will notify the auditor or auditing firm of this in writing upon request.

(5) If the requirements for registration as defined in Sections 1 and 2 are not longer met, registration shall be erased ex-officio.

### **§ 134a**

#### **Transitional Provisions**

(1) <sup>1</sup>Wirtschaftsprüfer and vereidigte Buchprüfer who were officially appointed as of 31 December, 1989, retain their official appointments even if they do not fulfill the requirements of Article 6 of the Bilanzrichtlinien-Gesetz (Accounting Directives Act) of 19 December, 1985 (Federal Law Gazette part I page 2355) which became effective on 1 January 1990. <sup>2</sup>The same applies to Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften who were recognized as of 31 December, 1989. <sup>3</sup>The recognition of a Wirtschaftsprüfungsgesellschaft or a Buchprüfungsgesellschaft is to be revoked, however, if the requirements of § 28 Sections 2 and 3 in the version effective as of 1 January 1990, have not been met after 31 December 1994.

(2) <sup>1</sup>Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften which were recognized at the time Article 6 No. 6 Letter b of the Accounting Directives Act came into force shall continue to be recognized. <sup>2</sup>The recognition of such Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft is to be revoked by the Wirtschaftsprüferkammer if after 31 December, 1987, the composition of the shareholders or partners or their relative participations or voting rights are changed by legal transaction or hereditary succession and the provisions of § 28 Section 4 are not met. § 34 Section 1 No. 2 applies *mutatis mutandis*.

(3) (Repealed)

(4) (Repealed)

### **§ 135**

#### **Transitional Provision for § 14a**

§ 14a is to be applied in the version effective as of 1 January 2004, as long as the first section of the test or a supplementary test was completed after the Act on Reforming the Admission and Examination Procedure for the Wirtschaftsprüfer's Examination went into effect.

### **§ 136**

#### **Transitional Provision for § 57a Section 6 Sentence 8**

(1) <sup>1</sup>Members of the profession in private practice and Wirtschaftsprüfungsgesellschaften who were granted a certification of participation prior to 5 September 2007 according to § 57a Section 6 Sentence 7, can apply for an extension of the validity of their certification of participation for a total of six years, to the extent that they do not carry out statutory audits of public interest entities (§ 319a Section 1 Sentence 1 of the Commercial Code). <sup>2</sup>The same applies to certificates of participation according to § 57a Section 6 Sentence 7, which were granted after 5 September 2007.

(2) If the certificate of participation has been limited to six years, members of the profession in private practice or Wirtschaftsprüfungsgesellschaften who carry out audits for a public interest entity (§ 319a Section 1 Sentence 1 of the Commercial Code) for more than three years after the certificate of participation has been issued, have six months from the time they accept the auditing order to have a quality assurance review performed.

### **§ 136a**

**(Repealed)**

### **§ 137**

#### **§ 137 Transitional Provision for § 57 Section 4 No. 1**

**Letters e and i**

As long as the Wirtschaftsprüferkammer has not adopted the provisions regarding seals and provisions regarding professional indemnity insurance according to § 57 Section 4 No. 1 Letter e and i, the law effective on 5 September 2007 shall apply.

### **§ 137a**

**(Repealed)**

### **§ 138**

#### **Treatment of Pending Petitions and Proceedings**

<sup>1</sup>The jurisdiction of petitions and proceedings that were not yet decided on 1 January 2002 and the jurisdiction of which, according to this act, would be transferred from the highest state authorities to the Wirtschaftsprüferkammer, shall remain with the highest state authorities until they have been decided.

<sup>2</sup>Following adjudication, the cases are to be turned over to the Wirtschaftsprüferkammer.

### **§ 139**

#### **Transitional Provision for Treating Pending Petitions and Proceedings within the Scope of a Change of Jurisdiction on 1 January 2004**

(1) <sup>1</sup>Admission and examination cases which have not yet been concluded on 31 December 2003 are to be resumed by the Wirtschaftsprüferkammer after the transfer of responsibility on 1 January 2004. <sup>2</sup>For this the highest state authorities thus far responsible shall make data and documents available in a timely manner.

(2) <sup>1</sup>Ongoing written and verbal examinations that have not yet been concluded on 31 December 2003 shall remain in the current jurisdiction of the highest state authorities until the examination procedure has been completed. <sup>2</sup>The organizational units, in particular the examination committees, shall remain in effect until the examination procedure has been completed. <sup>3</sup>Sentence 1 does not apply to subsequent supplementary examinations or those staged as a result of withdrawals according to §§ 19, 21 and 32 of the Wirtschaftsprüfer's Examination Regulation; these are carried out by the Wirtschaftsprüferkammer.

(3) In content, the examination procedures according to Section 1 as well as examinations according to Section 2 Sentence 1 shall continue to be conducted according to the law in effect until 31 December 2003; this does not apply to admission applications that were delivered up to 31 December 2003, but were first decided upon after 31 December 2003, and for examinations according to Section 2 Sentence 3.

(4) This shall not affect the agreement of 5 July 2001 between the State of North-Rhine Westphalia and the Wirtschaftsprüferkammer regarding the transfer from the highest state authority to the professional chamber the responsibility of carrying out admission and examination procedures for Wirtschaftsprüfer and vereidigte Buchprüfer.

### **§ 139a**

#### **Transitional Provision for Treating Pending Petitions and Proceedings within the Scope of the Admission and Examination Process according to §§ 131 to 131d and §§ 131i and 131j remaining in Effect until 31 December 2003**

(1) <sup>1</sup>Petitions for admission to the examination as vereidigter Buchprüfer or vereidigte Buchprüferin according to §§ 131 to 131d, valid until 31 December 2003 and admission to the aptitude test according to §§ 131i und 131j, valid until 31 December 2003, which are not made available for a repeat examination,

must be duly submitted by 31 December 2004; they are to be treated according to the law in effect until 31 December 2003. <sup>2</sup>The jurisdictions according to § 139 shall remain unaffected by this; for admission and examination cases beginning after 1 January 2004, the jurisdictions according to § 5 shall apply *mutatis mutandis*.

(2) The examinations following admission procedure according to Section 1 are to be conducted according to the law in effect until 31 December 2003.

(3) <sup>1</sup>The examinations must be completed by 31 December 2006 at the latest. <sup>2</sup>The same deadline applies to examinations that follow normal examinations as a result of withdrawal or repetition according to §§ 20 and 21 of the examination code for Wirtschaftsprüfer in effect until 31 December 2003 and according to §§ 11 and 12 of the examination code for the aptitude test in Part Eight of the Public Accountant Act in effect until 31 December 2003; there is no longer any entitlement to this test being conducted after the deadline has expired.

(4) <sup>1</sup>If a person has completed the examination as vereidigter Buchprüfer or vereidigte Buchprüferin but has not yet received an appointment, an application for appointment must be filed up to one year after completion of the examination at the latest. <sup>2</sup>In hardship cases, the Wirtschaftsprüferkammer may consider certain petitions as an exception.

### **§ 139b**

#### **Transitional Provision for § 51a remaining in effect until 31 December 2003**

(1) The regular statute of limitations according to § 195 of the German Civil Code shall be applied to a petitioner's claims for damages resulting from a contractual agreement between the petitioner and a Wirtschaftsprüfer and existing on 1 January 2004 when the statute of limitations has not run out.

(2) <sup>1</sup>The regular statute of limitations according to § 195 of the German Civil Code shall begin on 1 January 2004. <sup>2</sup>If, however, the statute of limitations according to § 51a in effect up until this day is shorter than the regular statute of limitations according to § 195 of the German Civil Code, the statute of limitations is therefore complete if it has reached the date in effect according to § 51a.

### **§ 140**

#### **Transitional Provision for § 43 Section 3, §133a**

§ 43 Section 3 and § 133a do not apply to persons who gave up their auditing activity among the companies prior to the Law for Modernizing Accounting Law dated 25 May 2009 taking effect (FLJ I p. 1102).

### **§ 141**

#### **Ratification**

(1) This act shall come into effect on the first calendar day of the fourth month following its promulgation.

(2) §§ 14, 48, 54, 131 Section 4 shall come into effect on the day of its promulgation.

**List of Fees**

**Structure**

**Section 1      Proceedings before the Regional Court**

- Subsection 1      Professional Disciplinary Proceedings in the First Instance
- Subsection 2      Petition for a Court Decision on a Reprimand
- Subsection 3      Petition for a Court Decision on the Warning or Assessment of a Punitive Fine

**Section 2      Proceedings before the Higher Regional Court**

- Subsection 1      Appeal on Points of Law
- Subsection 2      Complaints

**Section 3      Proceedings before the Federal Court of Justice**

- Subsection 1      Appeal on Points of Law and Procedure
- Subsection 2      Complaints

**Section 4      Reprimand due to violation of the right to state one's case**

No.	Fee Schedule	Fee amounts or Unit Factor for each Type of Fee 110 to 133
<p><i>Introductory Remark:</i></p> <p>(1) In disciplinary proceedings, with the exception of Section 2, the court fees are for each instance based on the final disciplinary measure imposed.</p> <p>(2) If a legal remedy or a petition for a disciplinary court decision is only partially dismissed or rejected, the court shall reduce the fee, to the extent that it would be inequitable to burden the member of the profession with it.</p> <p>(3) For final legal injunctions (§ 68a Section 1 of the Public Accountant Act), a fee is levied separately for all instances. If a legal remedy is restricted to an injunction order, the fee for the legal proceedings shall only be levied for the injunction order. Sentence 2 applies <i>mutatis mutandis</i> if the case is reopened.</p>		

No.	Fee Schedule	Fee amounts or Unit Factor for each Type of Fee 110 to 133
<p>(4) If proceedings are reopened, the same fees shall apply for the reopened proceedings. If however, according to the order by which proceedings are reopened the earlier judgment is repealed, the fees shall be calculated such that each new instance of the new proceedings together with the corresponding instance of the earlier proceedings shall count collectively as one instance. Fees shall also be levied for instances that were only adjudicated in earlier proceedings.</p>		
<p><b>Section 1</b></p>		
<p><b>Proceedings before the Regional Court</b></p>		
<p>Subsection 1 Disciplinary Proceedings in the First Instance</p>		
110	Proceedings with judgment resulting in the imposition of a disciplinary fine .....	240.00 EUR
111	Proceedings with judgment resulting in the imposition of a prohibition according to § 68 Section 1 No. 2 of the Public Accountant Act or a prohibition to practice the profession .....	360.00 EUR
112	.....	
113	Proceedings with judgment resulting in exclusion from the profession .....	480.00 EUR
	Injunction to refrain from the behavior in breach of duty or from a similar breach of duty in the future (§ 68a Section 1 of the Public Accountant Act) .....	60.00 EUR
<p>Subsection 2 Petition for a Court Decision on a Reprimand</p>		
120	Petition for a court decision on the reprimand according to § 63a Section 1 of the Public Accountant Act: The petition is rejected .....	160.00 EUR
<p>Subsection 3 Petition for a Court Decision on the Warning or Assessment of a Fine</p>		
130	Petition for a Court Decision on the warning or assessment of a fine according to § 62a Section 3 of the Public Accountant Act: The petition is dismissed or rejected .....	160.00 EUR

No.	Fee Schedule	Fee amounts or Unit Factor for each Type of Fee 110 to 133
<b>Section 2</b>		
<b>Proceedings before the Higher Regional Court</b>		
Subsection 1		
Appeal on Points of Law		
210	Appeal on points of law with judgment .....	1.5
211	Completion of the appeal proceedings on points of law without judgment ..... The fee shall be waived if the appeal on points of law is withdrawn prior to the due date for submitting supporting arguments.	0.5
Subsection 2		
Complaints		
220	Proceedings on complaints in disciplinary court proceedings which according to other provisions are subject to fees: The complaint is dismissed or rejected .....  A fee shall only be levied upon members of the profession if a final legal disciplinary measure has been imposed or an injunction (§ 68a Section 1 of the Public Accountant Act) has been ordered.	50.00 EUR
<b>Section 3</b>		
<b>Proceedings before the Federal Court of Justice</b>		
Subsection 1		
Appeal on Fact and Points of Law		
310	Appeals on fact and points of law with judgment or with a ruling according to § 107 Section 3 Sentence 1 of the Public Accountant Act in connection with § 349 Section 2 or Section 4 of the Code of Criminal Procedure.....	2.0
311	Completion of the appeal proceedings on fact and points of law and without judgment and without a ruling according to § 107a Section 3 Sentence 1 of the Public Accountant Act in connection with § 349 Section 2 or Section 4 of the Code of Criminal	1.0

No.	Fee Schedule	Fee amounts or Unit Factor for each Type of Fee 110 to 133
	<p>Procedure.....</p> <p>The fee shall be waived if the appeal on fact and points of law is withdrawn prior to the due date for submitting supporting arguments.</p>	
	<p style="text-align: center;"><b>Subsection 2</b> <b>Complaints</b></p> <p>320   Proceedings on complaints against the non-admission of an appeal on points of law: The complaint is dismissed or rejected .....</p> <p>321   Proceedings on other complaints in disciplinary court proceedings which according to other provisions are subject to fees: The complaint is dismissed or rejected .....</p> <p>A fee shall only be levied upon the member of the profession if a final legal disciplinary measure has been imposed or an injunction (§ 68a Section 1 of the Public Accountant Act) has been ordered against him.</p>	<p style="text-align: center;">1.0</p> <p style="text-align: center;">50.00 EUR</p>
	<p style="text-align: center;"><b>Section 4</b> <b>Reprimand due to Violation of the Right to a Legal Hearing</b></p> <p>400   Proceedings on reprimand due to violation of the right to a legal hearing: The reprimand is completely dismissed or rejected.</p>	<p style="text-align: center;">50.00 EUR</p>