WIRTSCHAFTSPRÜFERKAMMER
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Please note that the English translation of the Professional Charter for Wirtschaftsprüfer/vereidigte Buchprüfer (BS WP/vBP) is intended to provide general information only and is not intended to be a literal translation. In cases where the exact wording of the BS WP/vBP may become relevant, please refer exclusively to the German version.

Professional Charter of the Wirtschaftsprüferkammer on the Rights and Responsibilities of Wirtschaftsprüfer and vereidigter Buchprüfer in Exercising the Profession (Professional Charter for Wirtschaftsprüfer/vereidigte Buchprüfer - BS WP/vBP)

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Part 1:
General Professional Duties

§ 1
Principle

(1) [1]WP/vBPs are to practise their profession with independence, conscientiousness, confidentiality and on their own responsibility (§ 43 Section 1 Sentence 1 WPO). [2]They are to responsibly and diligently uphold their duties (§ 17 Section 1 WPO). [3]Within and outside the scope of their profession, they must carry themselves in a manner worthy of the trust and respect the profession demands (§ 43 Section 2 Sentence 3 WPO).

(2) [1]WP/vBPs must abstain from all activities which are incompatible with their profession or the reputation of their profession. [2]They must be particularly cognizant of the professional duties arising out of their entitlement to issue opinions on statutory audits (§ 43 Section 2 Sentence 1 and 2 WPO) and to use a seal (§ 18).

§ 2
Independence

(1) [1]WP/vBPs must not enter into any commitments that would or could jeopardise their professional freedom of decision-making. [2]They must maintain their personal and economic independence towards everyone.

(2) It is particularly against professional ethics,

1. to enter into an agreement according to § 2 Section 1 and 3 No. 1 and 3 WPO, by which the level of remuneration is made dependent upon the results of the work as WP/vBP (§ 55 Section 1 Sentence 1 WPO),
2. to enter into an agreement according to § 2 Section 2, by which the level of remuneration is made dependent on the outcome of the case or upon the success of the WP/vBP's activity or by which the WP/vBP receives a share of the anticipated tax reduction, tax savings or tax refund as a fee; this does not apply in certain cases to agreements 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 (§ 55a Section 1 Sentence 1, Section 2 WPO),
3. above and beyond No. 1, to make remuneration for statutory audits dependent upon further conditions; this also must not be influenced or determined by the rendering of additional services on behalf of the audited company (§ 55 Section 1 Sentence 3 WPO),
4. to distribute or receive any part of one's remuneration or other benefits in exchange for brokering engagements , whether on behalf of a WP/vBP or a third party (§ 55 Section 2 WPO),
5. to assume the risk of a client or
6. to accept pension commitments from clients.

§ 3
Prohibition of Representation of Conflicting Interests

[1]WP/vBPs are not allowed to work for a client if they are advising or representing or have advised or represented another client with conflicting interests in the same matter. [2]In addition, WP/vBPs are only allowed to advise or represent multiple clients in the same matter if they have been retained jointly or if all the clients involved agree. [3]It is permitted to act as a mediator on behalf of all parties involved.

§ 4
Conscientiousness

(1) In carrying out their duties, WP/vBPs are to uphold the law, to remain informed of the regulations governing professional practise, and to adhere to these provisions and professional rules.

(2) WP/vBPs are only allowed to offer services and accept engagements if they possess the required expertise and have the time necessary to complete them.

(3) Through efficient overall planning of all engagements, WP/vBPs are to create the preconditions for accepted and anticipated engagements being carried out in an orderly and timely manner in adherence to the principles of the profession.

(4) Should circumstances occur which would have caused an engagement to be refused, the client engagement is to be ended.

§ 4a
Ongoing Professional Training

(1) [1]WP/vBPs are obliged to continually engage in ongoing professional training (§ 43 Section 2 Sentence 4 WPO). [2]This ongoing training should maintain at a sufficiently high level their professional expertise, their ability to apply that expertise, as well as a cognizance of their professional duties. [3]WP/vBPs fulfil their ongoing training requirements by participating in ongoing training measures as lecture attendees or as instructors, as well as through independent studies.

(2) [1]Ongoing training measures include specialised events (lectures, seminars, discussion groups or similar events). [2]It makes no difference whether they are organised by third parties or by the auditing practise itself and whether they are open to the public or only to employees of the practise. [3]Ongoing training measures also include the completion of IT-assisted specialised courses (e-learning, Web-based training), if the length of participation can be documented. [4]Equivalent to participation in ongoing training measures are specialist literary work, serving on outside or in-house expert committees as well as teaching in academia.

(3) Independent studies include in particular the reading of specialised literature.

(4) [1]The ongoing training must be relevant to the scope of practise specified in §§ 2, 129 WPO and be suitable for improving the knowledge and skills named in Section 1 Sentence 2. [2]Its area of focus shall be the current or anticipated professional practise of the WP/vBP. [3]For WP/vBPs who carry out audits of financial statements, the ongoing training must be of sufficient scope in relation to audit practise (§§ 2 Section 1, 129 Section 1 WPO).

(5) [1]The ongoing training shall encompass no less than 40 hours per year. [2]Of this total, 20 hours must be dedicated to the ongoing training measures specified in Section 2; these are to be documented according to type and subject for proof of completion. [3]The minimum number of hours according to Sentence 2 can also be completed with ongoing training measures pursuant to § 57a Section 3 Sentence 2 No. 4 WPO.

§ 5
Qualification, Information and Commitment of Employees

(1) When hiring employees, WP/vBPs are to examine their professional and personal aptitude.

(2) According to their level of responsibility, employees are to be informed of the professional duties as well as the quality control system established in the practise.

(3) Prior to taking up employment, they are to be required in writing to commit to regulations regarding confidentiality, data protection and insider rules, as well as the provision concerning the quality control system; this is to be documented.

§ 6
Professional Training and Ongoing Training of Employees

(1) [1]WP/vBPs are to undertake to ensure that professional trainees receive adequate practical and theoretical training and that specialists undergo advanced professional training. [2]The professional training and ongoing training must be structured and bear relevance to the specialist's fields of activity.

(2) WP/vBPs are only allowed to delegate responsibility to their employees to the extent that they possess the necessary qualification.

(3) WP/vBPs are to evaluate the performance of their specialists at appropriate intervals.

§ 7
Assurance of Conscientious Professional Practise

In order to assure conscientious professional practise, WP/vBPs are to monitor adherence to professional duties in their practise at appropriate intervals and to correct any faults.

§ 8
Handling of Third-Party Assets

(1) [1]WP/vBPs are to keep consigned third-party assets separate from their own and other third-party assets and to administer them conscientiously. [2]Separate accounting documents are to be kept for third-party assets. [3]Cash and securities are to be administered either under the name of the principal or deposited into escrow accounts. [4]Third party-owned cash in transit is to be forwarded to the authorised recipient without delay.

(2) [1]WP/vBPs are only allowed to make use of third-party assets entrusted to them for specific purposes for covering their own billings (fees, advances and reimbursement of out-of-pocket expenses) if they have been expressly authorised to do so. [2]To the extent that off-setting and withholding are permissible, these rights shall remain unaffected.

§ 9
Confidentiality

(1) Unless authorised, WP/vBPs are not allowed to reveal facts and circumstances that are entrusted or become known to them in the course of their professional practise.

(2) [1]WP/vBPs shall undertake to ensure that facts and circumstances as defined in Section 1 will not become known to unauthorised parties. [2]They are to take appropriate precautions.

(3) The duties in Section 1 and 2 shall remain in force after the contractual relationship has ended.

§ 10
Prohibition on the Utilisation of Professional Secrets

[1]If in the course of their professional duties, WP/vBPs become privy to facts and circumstances, in particular business decisions or transactions concerning their clients or third parties, they may not make unauthorised use of this knowledge for themselves or third parties. [2]§ 9 Section 3 applies *mutatis mutandis*. [3]If a sensible third party could gain the impression that that secrets may be utilised, the circumstances providing grounds for this risk may only be brought about or upheld with the permission of the person protected by the prohibition on utilisation of secrets.

§ 11
Own Responsibility

(1) Regardless of their type of professional activity (§ 38 No. 1 d WPO), WP/vBPs are to determine their actions on their own responsibility and make their own judgements and decisions.

(2) It is not permitted to assume professional activities if the required professional responsibility cannot or is not intended to be upheld.

§ 12
Management of Employees

WP/vBPs must be in the position to monitor and evaluate the activities of employees in such a way that they can arrive at their own conclusions based on knowledge.

§ 13
Proper Professional Conduct

(1) WP/vBPs are to express themselves objectively.

(2) WP/vBPs are obliged to inform their clients of violations of the law they have discovered while carrying out their duties.

(3) WP/vBPs may only allow their names and/or their qualification to be used for promotional purposes by third parties if the promotion of the product or service is in a manner worthy of the profession.

(4) [1]WP/vBPs are only allowed to accept benefits in kind from clients or third parties acting on their behalf if the benefits in kind are obviously trifling in value and, from the perspective of a sensible third party in full knowledge of all relevant facts, would not have any influence on the decision-making process or the outcome of the activity. [2]For benefits in kind made by the WP/vBP to the client, his employees or third parties in connection with an engagement, Sentence 1 applies *mutatis mutandis*; for commissions, § 55a Section 2 WPO applies. [3]WP/vBPs are to undertake to ensure that their employees also adhere to these principles and to take appropriate measures to monitor this adherence.

§ 13a
Information Pertaining to Professional Status; Specialist and Other Professional Titles

(1) [1]Business letterheads, practise signage or other long-term information relating to professional status must include the details according to § 18 Section 1, § 128 Section 2 WPO or the company or name of the Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft respectively. [2]Persons capable of entering into a partnership may be named on the letterhead along with designation of their status; the naming of other persons is impermissible. [3]Practise signage may only be put up where the professional place of business or branch office is located.

(2) [1]WP/vBPs may only use designations of specialisation that are permissible by law. [2]It is permissible to make references to a public appointment as an expert. [3]If WP/vBPs are employed as bankruptcy trustees or in a similar capacity, they are allowed to bear the appropriate designation alongside their name and professional title.

§ 13b
Criteria For the Description of the Basic Scheme for Remuneration in the Transparency Report

[1]The information to be compiled in the transparency report regarding the basic scheme for remuneration of board of management and officers (§ 55c Section 1 Sentence 2 No. 7 WPO) shall clearly delineate whether and how the professional activity is influenced by financial incentives. [2]It must include details as to,

- whether remuneration is divided up into fixed and variable factors, including contingency components,
- which proportion of remuneration falls under the variable component,
- which type of variable remuneration is used and the basis by which it is calculated.

§ 14
Duties Towards Other WP/vBPs

(1) When a practise or part of a practise changes ownership for a fee, it is not permitted to exploit the dire situation of a professional colleague, his heirs or legatees.

(2) WP/vBPs are not permitted to hire away or to commission the hiring away of the employees of another WP/vBP.

(3) In establishing their own practise or changing employers, WP/vBPs are not allowed to induce the clients of their current employer to give them engagements.

§ 15
Contribution to Training

WP/vBPs shall to the best of their ability to contribute to the training of professional trainees as well as to the training of assistant tax consultants.

§ 16
Limitation of Liability

A statutory limitation of liability may not be waived.

§ 17
Professional Indemnity Insurance

(1) WP/vBPs are required to notify the Wirtschaftsprüferkammer immediately upon the end of term or cancellation of an insurance policy, any amendment to the insurance policy that impacts the mandatory insurance coverage according to the Wirtschaftsprüfer Professional Indemnity Insurance Act (WPBHV), any change of insurance companies, the beginning or end of the insurance requirement as the result of a change in professional practise and the withdrawal of proof of provisional insurance coverage (§ 1 Section 4 Sentence 2 of the Wirtschaftsprüfer Professional Indemnity Insurance Act (WPBHV)).

(2) The professional indemnity insurance policy to be taken out and maintained according to § 54 WPO shall exceed the minimum level of coverage if required based on the WP/vBP's type and scope of liability risks.

§ 18
Use of Seal

(1) [1]WP/vBPs are required to use a seal when issuing statements reserved to the statutory duties of WP/vBP (§ 48 Section 1 Sentence 1 WPO). [2]This also applies to the issuing of statements reserved to the statutory duties of WP/vBP based on a non-statutory activity.

(2) WP/vBPs are allowed to use a seal if in the exercise of their profession they issue statements on audits or expert opinions which are not reserved to the statutory duties of WP/vBPs.

(3) WP/vBPs are not allowed to use the seal in the scope of other miscellaneous professional activities.

(4) WP/vBPs are not allowed to use a seal-imitating round stamp.

§ 18a
Seal Design

(1) The seal of the WP/vBP must conform to the shape and size of the attached sample.

(2) Permitted for use are embossed seals (dry seals, varnish seals) made of metal, seal stamps and colour stamps made of metal or rubber.

(3) [1]The outer circle of the seal of a WP/vBP contains in circumscription in the upper half the first and last names of the WP/vBP, in the lower half the name of the place of professional business, in the inner circle in horizontal letters the professional title of "Wirtschaftsprüfer" or "vereidigter Buchprüfer" respectively and on the lower edge the word "seal". [2]If the WP/vBP is entitled to carry an academic degree or title, this may be added to the name. [3]Seals of WP/vBP that maintain a branch office may include after or below the place of the main office the place of the branch office and the supplement "branch office".

(4) [1]The outer circle of the seal of a Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft contains in circumscription in the upper half the name of the Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft, and in the lower half the place of the main office, in the inner circle in horizontal letters the title Wirtschaftsprüfungsgesellschaft" or "Buchprüfungsgesellschaft" and on the lower edge the word "seal". [2]Seals used for a branch office of a Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft, may include after or below the place of the main office the place of the branch office and the supplement "branch office". [3]If an alternative basic corporate identity is used for the branch office of a Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft, the outer circle of the seal of the branch office shall have in circumscription the name of the company of the branch office in the upper half, and in the lower half the name of the place of the branch office and below or after that name a supplement containing the words, "branch office of" along with the name of the Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft. [4]The inner circle of the seal contains the word "seal".

§ 19
Professional Places of Business and Branch Offices

(1) [1]Each organisationally-autonomous unit constitutes a professional place of business or branch office as defined in §§ 3, 47 WPO. [2]Each announcement of a professional address constitutes the existence of an organisationally-autonomous unit. [3]As an exception to Sentence 2, several professional addresses may constitute one organisationally-autonomous unit if they are in close proximity to one another and the services offered at the addresses are under one single management. [4]The announcement of several professional addresses for an organisationally-autonomous unit is only permissible to the extent that it is required for the public.

(2) [1]In a Wirtschaftsprüfungsgesellschaft at least one Wirtschaftsprüfer who is a member of the management board, a managing director, personally liable shareholder or partner, shall have his professional place of business in the main office or company headquarters. [2]In a Buchprüfungsgesellschaft, at least one vereidigter Buchprüfer or Wirtschaftsprüfer, who is a member of the board, a managing director, personally liable shareholder or partner, shall have his professional place of business in the main office or company headquarters.

(3) [1]Branch offices of Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften must each be managed by at least one Wirtschaftsprüfer whose professional place of business is the branch office or the domicile of the branch office. [2]Branch offices of vereidigte Buchprüfer and Buchprüfungsgesellschaften must each be managed by at least one vereidigter Buchprüfer whose professional place of business is the branch office or the city of the branch office.

Part 2:
Special Duties When Carrying Out Audits and Issuing Expert Opinions

§ 20
Impartiality

(1) [1]Particularly when issuing audit reports and professional opinions, WP/vBPs are to remain impartial (§ 43 Section 1 Sentence 2 WPO), i.e. they are not to disadvantage or favour any parties involved. [2]This requires carrying out a complete assessment of the case, making a professional judgement in light of all the essential aspects and issuing a report that includes a full account of all key aspects.

(2) [1]If the engagement calls for an assessment with arguments, this must be clearly stated in the engagement and in the report of the findings. [2]The term "expert opinion" may not be used.

§ 21
Unbiasedness and Suspected Bias

(1) WP/vBPs are to refuse to act in cases where they cannot carry out audits or issue expert opinions free from bias or where their unbiasedness is in doubt.

(2) [1]A party is considered unbiased if it makes judgements without being influenced by non-objective considerations. [2]Unbiasedness can be impaired in particular by own interests (§ 23), self-auditing (§ 23a), representation of interests (§ 23b) as well as a close personal relationship (§ 24).

[3]The existence of such circumstances does not lead to an impairment of unbiasedness if the circumstances themselves for making judgements are obviously insignificant or, combined with safeguards (§ 22), are on the whole insignificant. [4]Circumstances referred to in Sentence 2 may arise in particular out of business, financial, or personal relationships.

(3) [1]Suspected bias is a case where circumstances as defined in Section 2 Sentence 2 occur, which in the view of an judicious third party may be deemed sufficient to influence judgement in a non-objective way. [2]Suspected bias does not exist in cases where the threat to unbiasedness as defined in Section 2 Sentence 3 is insignificant.

(4) [1]Suspected bias may also be substantiated by the fact that

1. Persons with whom the WP/vBP jointly practises his profession,
2. Persons with whom the WP/vBP is associated in a network,
3. Persons, to the extent that they are employed when the engagement is carried out,
4. Spouses, living partners or direct relatives of the WP/vBPs or a representative acting on behalf of these persons or
5. companies over which the WP/vBP has significant influence,

meet the conditions defined in Section 2. [2]For Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften, suspected bias may be substantiated if they themselves, one of their legal representatives, a shareholder who can exercise significant influence or who is employed in a responsible position during the audit, or other persons employed who may influence the outcome of the audit, or companies in which the Wirtschaftsprüfungs-gesellschaft or Buchprüfungsgesellschaft have significant influence or persons with whom the WPG or vBPG is associated in a network, meet the conditions defined in Section 2. [3]The attribution of such conditions in networks is excluded when the member of the network can exercise no influence on the outcome of the audit; this does not apply to cases of prohibition of self-auditing (§ 23a).[4]The attribution of conditions that lead to an excessive dependency on revenues (§ 23 Section 1 No. 2) is excluded in the conditions of Sentence 1 No. 2 to 4.

(5) [1]Prior to accepting an engagement, as well as during the entire course of the engagement, it must be evaluated whether the circumstances may cause a threat to unbiasedness. [2]The measures taken for the evaluation and the critical factors thereby identified are to be documented in writing in the working papers.

§ 22
Safeguards

(1) [1]Safeguards are measures or procedures capable of mitigating the threat to unbiasedness on the part of the WP/vBP to a degree that from the perspective of a judicious third party the threat is considered on the whole as being insignificant. [2]These may include the following in particular, depending on the circumstances at hand from which the threat arises:

1. Discussions with the principal's supervisory bodies,
2. Discussions with oversight authorities outside the company,
3. Transparency provisions,
4. Involvement of persons in the auditing engagement who have not otherwise been involved in it,
5. Consultation with colleagues who have experience in issues of unbiasedness, and
6. Personnel and organisational measures that ensure that the auditor shall not become privy to information from the additional activity that could lead to bias as an auditor (firewalls).

(2) In documenting and evaluating the risks (§ 21 Section 5), individual safeguards implementted are also to be documented.

§ 22a
Definition of Absolute Grounds for Exclusion as Specified in §§ 319 Section 3, 319a and 319b Section 1 of the German Commercial Code (HGB)

(1) [1]WP/vBPs must refuse to act if they meet the conditions defined by §§ 319 Section 3, 319b Section 1 Sentence 2 of the German Commercial Code (HGB), and for all statutory audits according to § 49 Half Sentence 2 WPO. [2]For non-statutory audits of financial statements where an auditor‘s opinion is issued which is equivalent to the statutory auditor's opinion in § 322 of the German Commercial Code (HGB), Sentence 1 also applies *mutatis mutandis*.

(2) [1]If conditions are met as defined in §§ 319 Section 3, 319b Section 1 of the German Commercial Code (HGB), suspected bias is irrefutably presumed according to the Professional Charter. [2]In these cases, safeguards as defined in § 22 cannot be considered.

(3) If the constituent facts of § 319 Section 3 German Commercial Code (HGB) are not completely fulfilled, then suspected bias as defined in § 21 Section 3 can only exist if additional circumstances substantiate a not insignificant threat to unbiasedness.

(4) Sections 1 to 3 apply to the constituent facts of § 319a of the German Commercial Code (HGB) for the audits of financial statements covered there.

(5) Sections 1 to 4 are to be applied to the auditor of the consolidated financial statements *mutatis mutandis*.

§ 23
Own Interests

(1) Own interests of a financial nature may be present in the case of:
1. Capital or other financial ties to the company to be audited, on which an expert opinion is to be issued, or which is commissioning the engagement,

2. An excessive dependency on revenues from such a company,
3. Relationships involving performance of services above and beyond a normal exchange of business and services with third parties,
4. Claims against the client or the company on which an expert opinion is to be issued arising from a loan or bank guarantee,
5. Fee claims if they are due over a longer period of time and add up to a considerable amount.

(2) Own interests may also be involved especially in the case of:

1. Breaches of duty from previous audits, to the extent that there is a risk of occlusion,
2. Unresolved litigation regarding claims for damages or guarantee issues from previous engagements.

§ 23a
Self-Audit

(1) A self-audit is when the WP/vBP called upon to decide on a particular matter which he directly participated in bringing about and this participation was not only of minor importance.

(2) There is no self-audit as defined in Section 1 if, although the WP/vBP happened to be previously involved in the same matter, he did not participate in bringing it about as defined in Section 1, but he did audit or otherwise evaluate the same subject.

(3) [1]The collaboration on maintaining the books or in the preparation of the annual financial statements to be audited constitutes irrefutable grounds that there is a suspected bias, to the extent that the activity does not play a minor role. [2]This applies only to direct collaboration but generally not to advisory or other services impacting only indirectly on the financial statements. [3]Even collaboration within the scope of an audit through a preliminary evaluation of issues would not ordinarily be considered bias. [4]Whether additional collaborative actions of only minor significance may be considered damaging can be determined by weighing the general conditions for bias (§ 21 Section 3) in consideration of all circumstances, including safeguards.

(4) [1]The collaboration of the WP/vBP in carrying out an internal audit is grounds for suspected bias if the WP/vBP assumes a responsible position. [2]It is permissible, on the other hand, to collaborate on individual areas or duties, and, in particular, to also assume auditing tasks.

(5) [1]There is always suspected bias if the WP/vBP has assumed managerial functions in the company, regardless of whether these encompass the area of financial accounting. [2]The same holds true for the rendering of financial services pertaining to the investment of assets of the company to be audited or the takeover or brokering of equity shares or other financial instruments of the company subject to the audit.

(6) [1]Actuarial services and valuation services that are not only of marginal significance to the content of the annual financial statements to be audited may also be grounds for suspected bias if they involve independent services and the activity is not of minor significance. [2]Non-independent services are those for which collaboration by the WP/vBP is restricted to technical and mechanical assistance and the essential input for the assumptions to be made as well as for the methodology originate from the client.

(7) [1]When auditing companies as defined in § 319a of the German Commercial Code (HGB), suspected bias is irrefutably presumed based on the rendering of legal and tax advisory services if these go above and beyond pointing out accounting schemes that have a direct and significant effect on the portrayal of the asset, financial, and profit situation in the annual financial statements subject to the audit. [2]Consulting services that provide clues to the existing legal situation or are based on the assessment of already settled matters do not pose a threat to unbiasedness. [3]If services as defined in Sentence 1 are rendered to companies that are not registered at an organised market as defined in § 2 Section 5 of the German Securities Trading Act (WpHG), this does not constitute the irrefutable presumption of suspected bias, rather it ought to be evaluated in each individual case whether this is the case, given the occurrence of additional circumstances (§ 21 Section 3, § 319 Section 2 German Commercial Code (HGB)).

(8) When auditing companies as defined by § 319a of the German Commercial Code (HGB), there is an irrefutable suspected bias if in the business year to be audited, the WP/vBP contributed to the development, setup and introduction of accounting information systems, to the extent that the activity went above and beyond auditing and was not of minor significance.

§ 23b
Representation of Interests

(1) Unbiasedness may be at risk due to representation of interests if the WP/vBP was engaged for another matter to represent the interests for or against the company to be audited, on which an expert opinion is to be issued, or which is commissioning the engagement.

(2) Representation of interests for a company is manifest in particular when the WP/vBP becomes the partial and vocal advocate for this company, engages in promotion on behalf of the company or distributes its products, not, however, in the case of legal or tax representation.

(3) Representation of interests against a company is manifest in particular when a partial or vocal position is taken on behalf of third-party interests against the company or fiduciary duties are assumed on behalf of individual shareholders in such a company.

§ 24
Close Personal Relationship

A close personal relationship is where a WP/vBP has close personal ties to the company to be audited, on which an expert opinion is to be issued, or which is commissioning the engagement, the members of company management or persons who have influence on the subject of the audit.

§ 24a
Audit Planning

(1) From the time they accept an engagement, WP/vBPs are to ensure that the audit shall proceed in a reasonable and orderly manner with respect to materials, personnel and time, according to the actual circumstances of the company to be audited.

(2) WP/vBPs are obliged to determine and document the responsibility for carrying out the engagement.

(3) In selecting the members of the audit team, attention must be paid that they demonstrate sufficient practical experience, understanding of the professional rules, necessary industry knowledge as well as an understanding for the quality control system.

§ 24b
Audit Processing

(1) [1]WP/vBPs are to familiarise their staff with their tasks by means of audit instructions. [2]The audit instructions shall guarantee that the audit procedures will be carried out properly, documented sufficiently and in an orderly manner in the working papers, and that an orderly report can be issued. [3]Adherence to the audit instructions is to be monitored.

(2) [1]WP/vBPs are obliged, in case of significant doubts, to seek inside or outside professional advice, to the extent that this is necessary for the WP/vBP to make dutiful judgements according to the circumstances of each individual case. [2]The findings of the advice obtained and the resulting conclusions are to be documented.

(3) [1]WP/vBPs are to make an independent judgement as to compliance with legal and professional rules, on the basis of the work findings of the persons involved in the audit and their own knowledge gained during the audit. [2]This also encompasses the findings of audit-based quality control (§ 24d).

(4) [1]If a WP/vBP not engaged as the auditor of financial statements takes on the engagement of issuing an expert opinion concerning a specific issue regarding the company's financial accounting, prior to issuing the opinion he is to discuss the background and general parameters as well as details of the case which are relevant to his decision-making. [2]He is to arrange with the principal that the auditor be released from his obligation of confidentiality. [3]If the principal does not provide such a release or forbids establishment of contact, the engagement is to be declined or abandoned.

§ 24c
Complaints and Allegations

WP/vBPs are obliged to investigate complaints or allegations by associates, clients or third parties if they point to violations of legal or professional rules.

§ 24d
Audit-Based Quality Control

(1) [1]For audits where the professional seal must be used or is used voluntarily, it is to be determined prior to handing over the audit report whether the auditor has complied with professional rules; in this, it is to be determined whether the audit actions and audit findings presented in the audit report are coherent (report critique). [2]The report critique can only be waived if it is not deemed necessary in the dutiful judgement of the WP/vBP. [3]The evaluation may only be conducted by professionally-qualified and personally-capable individuals who themselves did not significantly collaborate on the preparation of the audit report and who were not significantly involved in the audit. [4]If such a person is not available in the practise, an outside person is to be engaged.

(2) [1]For statutory audits of companies of public interest according to § 319a of the German Commercial Code (HGB), each engagement is to be accompanied by quality control. [2]The subject is the judgement as to whether there are indications that the audit was not carried out according to statutory or professional rules, and whether material issues have been treated in an appropriate manner. [3]The quality control accompanying the engagement may only be conducted by professionally-qualified and personally-capable individuals who themselves did not collaborate on the execution of the audit. [4]Section 1 Sentence 4 applies *mutatis mutandis*. [5]A person is excluded from quality control accompanying the engagement if in seven instances he either was selected as responsible auditing partner for the company's financial statements according to § 319a Section 1 Sentence 5 of the German Commercial Code (HGB) or carried out quality control accompanying the audit of the company's annual financial statements.

[6]This does not apply if it has been more than two years since his last participation in the audit or quality control accompanying the audit of the company's annual financial statements. [7]For parent companies sentence 5 also applies to persons who at the level of significant subsidiaries have been selected as primarily responsible for the audit of their financial statements; the same applies to quality control accompanying the audit of the consolidated financial statements.

(3) For audits other than those mentioned in Section 2, it should be determined whether and under what circumstances quality control accompanying the audit is to be carried out as defined by Section 2.

§ 25
Designation of Details Taken From Other Sources in Auditor Reports and Expert Opinions

In auditor reports and expert opinions, WP/vBPs are to clearly designate any information taken from other sources.

§ 26
Duties When Changing the Auditor

(1) If an auditing engagement involving a statutory audit is ended through termination by the auditor pursuant to § 318 Section 6 of the German Commercial Code (HGB) or by revocation pursuant to § 318 Section 1 Sentence 5 of the German Commercial Code (HGB), the designated successor of the account may only accept the engagement if he has become informed about the reason for the termination or revocation and the findings of the audit to date.

(2) Becoming properly informed requires that the written termination (§ 318 Section 6 Sentence 3 of the German Commercial Code (HGB)) or the replacement judgement (§ 318 Section 3 of the German Commercial Code (HGB)), the notifications to the Wirtschaftsprüfer-kammer (§ 318 Section 8 of the German Commercial Code (HGB)) as well as the report on the findings of the audit to date (§ 318 Section 6 Sentence 4 of the German Commercial Code (HGB)) have been presented to the designated successor of the account.

(3) [1]The predecessor of the account is required upon written inquiry to explain to the successor of the account the documents specified in Section 2. [2]If no explanation is made, the successor of the account is to decline the account unless he is sure, based on other means, that there are no reasons not to accept.

(4) [1]In case of a change of auditors without revocation or termination for good cause of the auditing engagement, the account successor is to have the report on the findings of the previous audit presented to him. [2]The account predecessor is required to present these materials to the account successor upon written inquiry.

(5) Sections 1 to 4 apply *mutatis mutandis* to all prematurely-terminated, non-statutory audits of financial statements in which an auditor's opinion is to be issued equivalent to the statutory auditor's opinion in § 322 German Commercial Code (HGB).

§ 27
Remuneration

(1) [1]In negotiating and invoicing remuneration for audits and expert opinions, the WP/vBP is to ensure that the quality of professional work is upheld. [2]This generally requires adequate remuneration. [3]If there is a significant discrepancy between the service rendered and the negotiated level of remuneration for statutory audits, the auditor must be able to demonstrate to the Wirtschaftsprüferkammer upon request that adequate time and qualified personnel were dedicated to the audit.

(2) Flat-fee remuneration is only allowed to be negotiated for an audit or expert opinion engagement if there is a provision that the fee is to be increased in case of unforeseeable events surrounding the principal which lead to a considerable increase in the time and effort required.

§ 27a
Signature of Auditors' Opinions, Auditor Reports and Expert Opinions

(1) If Wirtschaftsprüfungsgesellschaften or Buchprüfungsgesellschaften issue statutory auditors' opinions, these, along with the accompanying auditor reports, must be signed by at least one of the persons responsible for performing the audit (§ 24a Section 2).

(2) [1]If a WP/vBP is commissioned to perform an audit not reserved to the statutory duties of WP/vBP, an auditor's opinion issued in this manner and the auditor report must be signed by at least one WP or vBP, to the extent that the seal is used; the same applies if a joint practise, in which non-WP/vBPs are partners, has been commissioned to perform the audit. [2]Sentence 1 applies *mutatis mutandis* to expert opinions.

Part 3:
Special Professional Duties in Professional Collaboration

§ 28
Joint Practise

(1) For professional practise in a joint practise, the members of the joint practise must be listed by their names and professional titles.

(2) As an exception to Section 1, a company or name-like designation may be used for a joint practise; a joint practise may only be listed under one uniform name.

(3) [1]All members of the joint practise are to be listed separately on the letterhead with their professional titles, and for joint practises with multiple locations, the locations where they practise. [2]If this is not technically possible or practical, a name as defined in Section 2 is permissible, listing all professional titles represented in the joint practise. [3]In this case, all details according to Sentence 1 are to be made available elsewhere.

(4) For accounting practise signage, Section 1 and 2 shall apply, and in case a name is used according to Section 2, Section 3 Sentence 2 shall apply *mutatis mutandis*.

§ 29
Professional Firms

(1) [1]The designations "Wirtschaftsprüfungsgesellschaft" ("German public accounting firm") or "Buchprüfungsgesellschaft" ("German bookkeeping firm") are to be included in the company entity or names of the professional firm following the denomination of the legal form. [2]Verbal conjunctions with other company entities or name components are not permissible.

(2) The company entity or name may not contain any references to companies or corporate groups not related to the profession.

(3) [1]In the case of partnerships, only the names of persons fulfilling the requirements of § 28 Section 4 Sentence 1 No. 1 WPO and those who are shareholders may be included in the company entity or the names of Wirtschaftsprüfungsgesellschaften. [2]The number of names of persons who do not possess the professional qualifications specified in § 28 Section 1 Sentence 1 and 2 WPO must not equal the number of persons who do; if the company entity or the name only consists of two shareholder names, the name of one person must be used who possesses the professional qualifications listed in § 28 Section 1 Sentence 1 and 2 WPO. [3]The company entity or name of a Wirtschaftsprüfungsgesellschaft may be continued following the resignation of the shareholder after whom the practise was named.

(4) Company entities permissible up to now shall remain unaffected.

(5) For Buchprüfungsgesellschaften, Sections 1 to 4 shall apply *mutatis mutandis*, whereby the requirements for vereidigte Buchprüfer and Buchprüfungsgesellschaften may also be fulfilled by Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften.

§ 30
Use Of the Company Entity
Or the Name of Professional Firms By Other Companies

(1) [1]A Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft is not allowed to tolerate the use of significant parts of its company entity or name by another company which is not a recognised Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft. [2]Sentence 1 does not apply if it is assured that the other company exclusively performs services as defined in §§ 2, 43a Section 4 WPO.

(2) Section 1 applies to Wirtschaftsprüfer and vereidigte Buchprüfer *mutatis mutandis*, if a company which is not a recognised Wirtschaftsprüfungsgesellschaft or Buchprüfungs-gesellschaft uses significant parts of their first or last name.

Part 4:
Special Professional Duties to Safeguard the Quality of Professional Work (§ 55b WPO)

§ 31
General

(1) [1]The quality control system according to § 55b Sentence 1 WPO is to encompass provisions which, according to the field of activity and means of practise, are necessary to ensure adherence to professional duties. [2]WP/vBPs are responsible for employees being informed about the quality control system. [3]They are to monitor its appropriateness and effectiveness.

(2) [1]WP/vBPs are required to assign areas of responsibility in the practise, in particular responsibility for quality control. [2]These areas, along with the assignment of the responsible auditor (§ 24a Section 2), are to be documented.

(3) [1]The quality control system is to be documented on paper or in digital form. [2]The documentation must allow a knowledgeable third party to make an assessment of the quality control system in a reasonable amount of time.

§ 32
Quality Control System For Duties According to § 2 Section 1 WPO, For Which a Seal Is Used

For audits on which the seal is used, the quality control system encompasses in particular rules

1. for ensuring adherence to professional duties, in particular the requirements for independence, impartiality and avoidance of suspected bias by the practise and employees assigned to process the audit; these provisions must entail a routine or ad-hoc survey of those employees involved as to their financial, personal or capital ties;
2. for accepting and continuing engagements which adequately ensure, given the risks to the practise associated with those engagements, that only accounts can be accepted or continued that can be carried out in an orderly manner in terms of expertise, personnel and time;
3. for prematurely ending engagements;
4. for hiring employees;
5. for providing initial and ongoing training for specialist employees;
6. for evaluating specialist employees;
7. for overall planning of all engagements;
8. for organising professional information;
9. for audit planning;
10. for audit processing (including briefing the audit team, seeking professional advice, supervision of audit processing and evaluation of the work results by the responsible WP);
11. for handling complaints and allegations;
12. for audit-based quality control and
13. for supervising the effectiveness of the quality control system (inspection).

§ 33
Inspection

(1) [1]WP/vBPs are required to carry out an inspection with the aim of evaluating the reasonableness and effectiveness of the quality control system. [2]The inspection is related to the practise organisation, including the question as to whether the practise rules for processing individual audit engagements have been adhered to. [3]The inspection must take place at adequate periodic intervals and due to circumstances.

(2) [1]The inspection of the processing of audit engagements is a comparison of the requirements for conscientious processing of audit engagements with how they are actually processed. [2]The type and scope of the inspection must stand in reasonable proportion to the audit engagements processed, whereby the findings of the quality control according to §§ 57a et seq. WPO may be considered. [3]In this, hereby all WP/vBPs working in the practise who are responsible for carrying out audits are to be included at least once per three-year interval.

(3) [1]The result of the inspection is to be documented. [2]The observations made during the inspection are the basis for further development of the quality control system.

Part 5:
Final Provisions

§ 34
Scope

(1) [1]The professional charter is valid for all members of the Wirtschaftsprüferkammer according to § 58 Section 1 Sentence 1, § 128 Section 3, § 131b Section 2 and § 131f Section 2 WPO. [2]Thus these rules apply to Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften to the extent that the legal entity does not constitute a special case.

(2) [1]To the extent that the abbreviations WP/vBP are used in the professional charter, the professional duties apply to all persons designated in Section 1. [2]For professional duties that only apply to certain groups of persons, these are individually specified.

§ 35
Publication

The professional charter along with its amendments is to be published in the Federal Gazette.

Grounds for Individual Rules

The following explanations are intended to facilitate the interpretation of the individual rules of the charter. They do not claim to be complete, however. The annotations are not a formal element of the professional charter. Therefore they were not subject to approval of the advisory board, but they were affirmatively recognised by it.

WP/vBPs are to be cognizant of the special professional duties pursuant to § 43 Section 2 Sentence 2 WPO in association with § 1 Section 2 Sentence 2 of the professional charter, deriving from their entitlement to issue opinions on statutory audits and use a seal. The express emphasis of the special professional duties does not mean, however, that the general professional duties are to be upheld to any lesser degree. Members of the profession are to also familiarise themselves with these general rules, using the aid of annotated texts.

Because the grounds for the individual rules in the professional charter cannot be exhaustive in answering all questions relating to the profession, attention must be paid to the additional comments made by the Wirtschaftsprüferkammer concerning the laws governing the profession. This applies particularly to statements issued by the board of management, which, even if they are restricted to individual topics, represent "general views on questions concerning practising the profession of Wirtschaftsprüfer and vereidigter Buchprüfer" and thus guidelines as defined in § 57 Section 2 No. 5 WPO.

Not least, anyone unsure about a certain question has the option of contacting the Wirtschaftsprüferkammer, whose duty pursuant to § 57 Section 2 No. 1 WPO is to advise and instruct its members in questions concerning professional duties. The members of the Wirtschaftsprüferkammer should take advantage of this opportunity in their own interest, especially in a concrete case where questions as to legal status cannot be answered unequivocally in the statute or the professional charter.

Part 1:
General Professional Duties

On Part 1:

Part 1 regulates the general professional duties to be observed by WP/vBPs, according to the charter authorisation pursuant to § 57 Section 4 No. 1 WPO. The rules governing professional places of business and branch offices in § 19, which are supported by the charter authorisation pursuant to § 57 Section 4 No. 4 b WPO, were adopted in Part One for reasons of topical relevance to the regulatory area of professional places of business as defined in § 3 WPO.

On § 1:

According to the Wirtschaftsprüferordnung, the rule specifies the fundamental requirements to which WP/vBPs must adhere in practising their profession as well as how to conduct themselves outside their professional practise. **Section 2 Sentence 2** has been expanded to include the use of the seal, because the entitlement to use the seal comes with heightened requirements for professional conduct.

On § 2:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 a WPO. **Section 1** defines the statutory professional duty of independence as freedom from commitments that jeopardise, or could jeopardise, professional freedom of decision-making, and codifies the prohibition of entering into any such commitments.

Section 2 lists examples of impermissible commitments, whereby the particularly significant cases already mentioned in § 55 Section 1 and 2 WPO are listed again – stating the provisions of the Wirtschaftsprüferordnung from which they were excerpted.

The prohibition of negotiating contingency fees **(Section 2 No. 1)** had long been regulated, first of all in § 55a Section 1 WPO. From the prohibition's scope, which originally encompassed a WP's entire field of professional practise and according to § 129 WPO also included the vBP, the 7th WPO Amendment which became effective on 6 November 2007 it now exempts consulting in business matters and advocacy (§ 2 Section 3 No. 2 WPO). In these activities the WB/vBP stands in competition to other professionals not subject to such a prohibition, and except for the area reserved to the profession, there are no apparent objective reasons for a restriction.

Section 2 No. 2 clarifies that the prohibition of negotiating contingency fees also basically applies to tax advisory services. As a result of the ruling of the German Federal Constitutional Court (BVerfG) dated 12 December 2006 – 1 Constitutional Complaint (BvR) 2576/04 (New Weekly Legal Newsletter (NJW) 2007, 979), with the law for revision of the prohibition of negotiating contingency fees in § 55a WPO however, which went into effect on 1 July 2008, a provision was created that, in exceptional cases, allows WP/vBPs to negotiate contingency fees when rendering assistance in matters of tax law (the provision corresponds to § 9a Tax Advisor's Act (StBerG) which was also newly created by the above legislation). The remaining provisions contained in § 55a WPO old version are now found in § 55 WPO. Section 2 No. 2 reflects this legal status.

Section 2 No. 3 first alt. is concerned with the rule in § 55 Section 1 Sentence 3 first alt., according to which above and beyond No. 1, remuneration for statutory audits may not be made dependent upon further conditions. This rule implements Art. 25 lit. b of the EU's 8th Directive. The rule applies only to remuneration of statutory audits – as opposed to Section 2 No. 1. Regardless of its general wording, which encompasses every possible condition, the rule deals primarily with safeguarding the independence of the auditor and thus the impermissibility of such conditions, which – as with a contingency fee – create an economic self-interest of the auditor in the result of his work. Although the wording also includes the prohibition on contingency fees, lawmakers decided to keep the concrete rule governing contingency fees in § 55 Section 1 Sentence 1 WPO in addition to adopting the broad wording from the directive in § 55 Section 1 Sentence 3 first alt. WPO.

Given that the various schemes for structuring a contingency fee already fall within § 55 Section 1 Sentence 1 WPO, Section 2 No. 1, there only remains a small relevant scope for the rule in § 55 Section 1 Sentence 3 first alt. WPO, **Section 2 No. 3 first alt.**; this clarifies the law with the wording, "above and beyond Sentence 1". This involves schemes by which the level of remuneration is made dependent upon a certain definition of success, which has no direct connection to the result of the WP/vBP's activity and therefore does not fall under Section 2 No. 1 (e.g. connection to a successful restructuring or the completion of a planned IPO). Whether or not the entire remuneration is subject to such a condition, or merely the payment of higher (additional) remuneration is made contingent upon this, is immaterial. Even if in the latter case reasonable basic remuneration should be negotiated which enables a qualitatively adequate audit anyway, it would constitute an unacceptable incentive to end the audit with a particular result. Such agreements would not have been dealt with in Section 1 No. 1, because remuneration does not directly depend on the result of the WP/vBP's professional activity. He could, however, be influenced in his judgement because by means of his audit result, he can indirectly influence the occurrence of this event.

Omitted on purpose, by contrast, are conditions that make remuneration dependent upon certain circumstances involving the completion of the engagement (e.g. processing of the engagement by a certain person as the lead auditor, the level or time of readiness to complete the audit). Agreements concerning a fee increase, which are struck after the audit has been completed, do not fall within this rule's scope. Questions regarding clear boundaries may occur here, however, if initially a low fee is negotiated and yet such an increase is promised. By contrast, ex-post audit-fee negotiations due to events occurring that make the audit more difficult or other special circumstances that may be necessary such as flat-fee remuneration, with an exemption clause (§ 27 Section 2), are not covered.

Section 2 No. 3 second alt. handles the regulation in § 55 Section 1 Sentence 3 second alt. WPO, by which Art. 25 lit. a of the EU's 8th Directive is implemented as German law. This rule also only applies to fees for statutory audits of financial statements but not for other activities, also to the extent that it involves duties reserved to the profession. This rule does not contain any prohibition of outside activities in addition to the carrying out of mandatory statutory audits, but it assumes their permissibility; it therefore confirms the compatibility of auditing and consulting.

The rule concerns certain relationships between the audit fee and fee arrangements for other activities performed on behalf of the audited company but not engagements that exist with other clients. It does not assume that the relationship derives from an explicit contractual agreement; the decisive factor is the actual existence of a relevant linkage. However, this tends to be difficult to determine in individual cases without an explicit agreement.

It is impermissible to make the level of remuneration for an audit contingent upon (the remuneration of) the rendering of additional services. An indication for the existence of such a dependency is when the negotiated remuneration is particularly low for one service and particularly high for another. If, for example, the remuneration for the audit of financial statements is particularly low, a particularly high level of remuneration for other services could be used to apply pressure on the auditor with regard to the result of the audit. With regard to the regulatory purpose of Art. 25 of the EU's 8th Directive (safeguarding the independence of the auditor), it may be assumed that there are indeed grounds for such potential threats. This would not tend to be the case, for example, if conversely a particularly high level of remuneration was negotiated. A violation of Section 2 No. 3 second alt. would also generally be ruled out if the remuneration for the audit engagement or additional services is in itself reasonable. For judging reasonableness, if the remuneration is not regulated by a statutory fee – such as assistance with tax matters – then it is necessary to determine the price paid for comparable services in the market.

Section 2 No. 4 specifically refers to § 55 Section 2 WPO. The prohibition on the referral of engagements for a fee in the form of partial remuneration or other benefits applies to the WP/vBP's entire professional practise – just as with No. 1 and as opposed to No. 3. Whether remuneration is measured in terms of a percentage of the fee to be charged or set as a fixed amount is immaterial. Gifts or vouchers are also strictly impermissible as "miscellaneous" benefits, whereby here, as in the case of monetary contributions to or by the principal (§ 13 Section 4) within certain bounds may still be regarded as socially adequate. Left out completely and thus harmless is the free referral of engagements, i.e. through recommendations as part of a cooperation agreement.

The prohibition also does not cover agreements on involvement in acquisition activities for example in tenders, but also overall customer recruitment activities, if collaboration is not aimed at prospecting or brokering engagements in the sense of exercising influence on clients but rather at collaboration in the WP/vBP's team, which is working on a tender or developing marketing activities. It is a pre-condition that remuneration appear reasonable in proportion to the activity (not its success). Within these parameters, it is permissible to offer success incentives alongside fixed remuneration. This pertains not only to the activity of employees but also to the engagement of freelance associates.

Also it is not considered a brokerage commission if an employee is called upon as part of his work to try to generate engagements and for these efforts receives reasonable remuneration, including a success bonus. Nor is it objectionable to enter into agreements with freelancers according to which they are only remunerated for hours that the principal can bill to customers, or according to which those hours may be billed at a higher hourly rate, as long as in the overall scope of business, remuneration for activity as such and not remuneration for the brokering of engagements is the main focus.

An impermissible assumption of client risk according to **Section 2 No. 5** – independent of the content of the engagement – is for example when sureties or guarantee agreements are assumed on the client’s behalf. This may also include participation in a client company. Concerning the question as to whether participation in client companies is not grounds for exclusion or constitutes a concrete conflict of interest based on explicit regulations, such as is the case with statutory audits of annual financial statements according to §§ 316 et seq. of the German Commercial Code (HGB), not every type of participation in client companies is categorically impermissible; rather, the overall circumstances of each individual case, and in particular the level of participation, are to be taken into consideration.

According to **Section 2 No. 6**, the acceptance of pension promises from clients is against professional ethics, because it involves – albeit future – salary-like payments and would thereby undermine the prohibition of employment by clients in a significant subsection.

On § 3:

The rule is based on the charter authorisation pursuant to § 57 Section 4 No. 1 c WPO.

§ 53 WPO specifies that professional duties exist between WP/vBPs and the client, even after ending the business engagement – in particular the duty of confidentiality. § 3 is intended to cover cases where conflicting interests exist due to work on the same matter.

Sentence 1 regulates the prohibition on representation of conflicting interests. The prohibition cannot be overridden through consent of the principals, because the substantiating prerequisites for breach of fiduciary duty cannot be eliminated through the consent of the parties involved. Sentence 1, however, only applies to the case where there is a direct representation of interests through one and the same WP/vBP. Whether in the case of a change of joint practise, the merger of auditing firms or the representation of opposing parties within the same joint practise, firm or group of firms, constitutes an impermissible representtation of conflicting interests, however, based on the ruling of the German Federal Constitutional Court dated 3 July 2003 concerning the unconstitutionality of § 3 Section 2 of the professional charter for lawyers (WPK Magazin 1/2004, 46 et seq.), is to be decided on the merits of the individual case, in which the opinion of the client to whom full disclosure has been made is also to be taken into consideration.

In cases where several principals are jointly seeking consultation, for example in drawing up a letter of incorporation for several shareholders, or in a consultation of a community of heirs, there is already no basis for a conflict of interest, so that according to **Sentence 2** several principals can be advised or represented in the same matter.

Sentence 3 clarifies that where a conflict of interest may exist, it is permitted to act as a mediator on behalf of all parties involved. It is indeed the task of the WP/vBP to resolve any conflicts of interest that may exist.

On § 4:

The rule is based on the charter authorisation of § 57 Section 4 No. 1 a WPO and more clearly specifies the codified professional duty of conscientiousness pursuant to § 43 Section 1 Sentence 1 WPO.

Section 2 first alt. is an illustration of the general prohibition on misleading advertising (§ 5 of the Act against Unfair Practises, (UWG)) and is intended to prevent the public from being mislead through the listing of services which, due to time or other reasons, cannot be provided at all or not in the manner advertised. The prohibition also applies to services which WP/vBPs are not authorised to provide due to legal restrictions. Such restrictions can be based among other things on the Legal Services Act.

The emphasis of particular services as main areas of practise is permissible. As is already evident from the term itself, however, it can only involve individual aspects of the profession, not its entire range of services or majority of services.

For the key forms of promotion, the Act against Unfair Practises (UWG) – which is now definitive in its own right for WP/vBP promotion pursuant to § 52 WPO – contains specific regulations. Accordingly, the following applies:

- Unsolicited direct mail promotion is generally acceptable, unless the recipient indicates in a manner easily apparent to the sender that he does not wish to receive it (§ 7 Section 2 No. 1 of the Act against Unfair Practises, UWG).
- Unsolicited telephone advertising is generally not acceptable. This does not apply to cases where consumers (§ 2 Section 2 of the Act against Unfair Practises, UWG) have given their express consent and for entrepreneurs (§ 2 Section 2 of the Act against Unfair Practises, UWG) where consent is assumed to exist based on concrete indications (§ 7 Section 2 No. 2 of the Act against Unfair Practises, UWG). The latter for example can exist in the case of a long-term client relationship.
- Unsolicited fax promotion is always unacceptable without the express consent of the recipient, both consumers and businesses (§ 7 Section 2 No. 3 of the Act against Unfair Practises, UWG).
- Unsolicited e-mail promotion is to be judged by the same criteria as unsolicited fax promotion. An exception, however, applies to those cases in which the promoter obtained the e-mail address from the client himself in connection with previously-rendered services and uses it for direct advertising of similar offers (§ 7 Section 3 Act against Unfair Practises, UWG).

The obligation to engage in overall planning of all engagements, as codified in **Section 3**, serves to ensure the quality of the professional work and therefore conscientious professional practise. The type and scope of the required overall planning are essentially dependent upon the special situation in each individual WP/vBP practise as well as the number, volume and degree of difficulty of the engagements to be completed.

Section 4 contains a provision for the case where only during an existing engagement, circumstances occur which – had they been known at the time the engagement was accepted – would have necessarily led to the engagement's being declined. By also referring to Section 1, it is clarified that Section 4 is to be followed with regard to all professional duties. § 26 contains a more specific rule for the audit procedure.

On § 4a:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 lit. l WPO. It provides a more concrete definition of the WP/vBP's professional duty, codified in § 43 Section 2 Sentence 4 WPO, to obtain ongoing professional training.

The rule takes into account the provisions in Section 130 of the IFAC Code of Ethics as well as the International Education Standard for Professional Accountants 7 "Continuing Professional Development" of the IFAC Education Committee (IES 7). Pursuant to **Section 1 Sentence 1** the professional training must involve at least 40 hours per year, not only of participation in ongoing training measures but also self-study.

In **Section 2** of the rule, the term "ongoing training measure" is further specified on the basis of examples. Its **Sentence 4** makes it clear that the duty to obtain ongoing training may also be fulfilled by teaching in academia. The qualification of a German higher learning institution as a university is defined by the laws of each German state.

Exhausting the latitude provided by law, the mandatory minimum scope of ongoing training according to **Section 5 Sentence 2 1st half-sentence** is 20 hours per year, whereby these must be dedicated completely to the ongoing training measures (= ongoing training events as defined by § 57 Section 4 No. 1 lit. l WPO) mentioned in Section 2.

According to **Section 5 Sentence 2 2nd half-sentence** it is necessary to regularly document in practise the ongoing training in the scope specified in Section 5 Sentence 2 1st half-sentence by describing the type and subject of the ongoing training measure. The documentation serves the purpose of verifying whether the professional duty of obtaining ongoing training has been fulfilled.

Section 5 Sentence 3 clarifies that ongoing training as a quality control auditor (§ 57a Section 3 Sentence 2 No. 4 WPO, §§ 20, 21 of the Quality Control Charter (SaQK)) may be applied to the required minimum number of hours according to Section 5 Sentence 2.

On § 5:

The rule is base on the charter authorisation in § 57 Section 4 No. 1 a WPO and contains individual rules concerning conscientiousness pursuant to § 43 Section 1 Sentence 1 WPO.

The duty of the WP/vBP with respect to be conscientiousness also includes the rules in § 5 with regard to qualification and informing of employees, in order to ensure the quality of professional work. In light of the high level of qualification required of employees, their professional and personal ability is to be examined at the time they are hired.

Employees are not only to be informed about the professional duties but also explicitly about the quality control system established in the WP/vBP practise.

The rule in Section 3 requiring that employees be committed to uphold regulations concerning confidentiality prior to assuming their duties has been expanded to include regulations concerning data protection, the Securities Trading Act and the provisions of the quality control system.

The safeguarding of the WP/vBP's conscientious professional practise requires that the WP/vBP's employees uphold these regulations. It is not mandatory for the documentation of the declaration of commitment to adhere to the written form as defined in § 126 German Civil Code (BGB). It is sufficient if the submittal of the declaration of commitment be documented in a traceable way, such as storing the submitted declarations electronically.

On § 6:

The rule based on the charter authorisation pursuant to § 57 Section 4 No. 1 a WPO contains individual rules concerning conscientiousness pursuant to § 43 Section 1 Sentence 1 WPO.

The duty to practise the profession conscientiously also includes the training of professional trainees and the ongoing training of specialist employees. Through § 6 Section 1 Sentence 2 it is clarified that conscientious professional practise requires structured ongoing training. The initial and ongoing training of specialist employees must conform to their area of activity. In this manner, WP/vBPs ensure that specialist employees will possess the latest knowledge in their areas of activity and thus contribute to ensuring the quality of work. § 6 does not regulate the minimum scope of training and ongoing training required by the rule. For experienced specialist employees, it is sufficient if the training is guaranteed to be within the scope specified in § 4a.

Section 2 clarifies that in order to conscientiously practise their profession, WP/vBPs must also fulfil the same requirements for proper professional knowledge with respect to their employees that they must fulfil themselves according to § 4 Section 2. The directive concerning evaluation in **Section 3** calls for substantive information to be collected concerning the employee's performance and subsequently used as a basis for evaluation. The type and scope of the evaluation depend on the special situation of each individual WP/vBP practise.

In some cases a systematic evaluation system may be useful in evaluating specialised employees, which specifies for example the area of responsibility, the frequency of evaluations and the evaluation criteria.

On § 7:

The rule is based on the charter authorisation pursuant to § 57 Section 4 No. 1 a WPO and more clearly specifies the professional duty of conscientiousness codified in § 43 Section 1 Sentence 1 WPO.

In order to ensure that the WP/vBP practises his profession conscientiously, he is to subject himself to an internal review on compliance with professional duties at reasonable intervals and in a reasonable manner. He is to ensure that the findings of the internal review are acted upon. The type, scope and intervals of the internal review are essentially dependent upon the special situation in each individual WP/vBP practise.

On § 8:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 g WPO and more clearly specifies the professional duty of conscientiousness codified in § 43 Section 1 Sentence 1 WPO.

According to **Section 1 Sentence 1** consigned third-party assets are to be kept separate from one's own and other third-party assets and be administered conscientiously. This guarantees a secure handling of third-party assets separate from other assets. A similar provision can also be found in § 12 Section 2 Official Regulations for Notaries (DONot). The handling of several assets in a joint account is therefore impermissible. It does not matter how the accounts are designated as long as they are managed separately; therefore it is permissible to manage several accounts under a joint number with sub-accounts, to the extent that the accounts are managed as separate accounts.

Section 2 Sentence 2 clarifies that the right of offset or retention, to the extent that they are permissible, shall remain unaffected by this provision. The permissibility of offset, according to long-standing legal precedent (Decisions of the Imperial Court in Civil Cases (RGZ) 160, 52, 59 et seq.; Decisions of the Federal Court of Justice in Civil Cases (BGHZ) 14, 342, 347; 71, 380, 383; 95, 109, 113; 113, 90, 93; Federal Court of Justice (BGH) New Weekly Legal Newsletter (NJW) 1993, 2041, 2042), is particularly dependent upon the principle of good faith.

Accordingly, offsetting is excluded above and beyond statutory cases expressly contractually regulated, to the extent that the particular content specifying the debtor relationship between the parties, the nature of the legal relationship or the purpose of the owed service make an offset appear incompatible with the good faith principle (§ 242 German Civil Code (BGB)). It has been derived from the nature of the fiduciary relationship that the meaning and purpose of the engagement can exclude offsetting with counterclaims which are not based on this legal relationship. This legal precedent does not mean a general prohibition of offsets for the disinterested fiduciary agent with respect to all counterclaims that are based on another legal relationship.

Accordingly, in individual cases, it is also possible to negate a generally-justified offset prohibition included in the typical body of a legal transaction pursuant to § 242 of the German Civil Code (BGB), if the case is seen to lack a legitimate interest of the principal normally worthy of protection. This is the case if he employs a fiduciary agreement in order to achieve an unlawful objective, because he himself is not acting according to good faith principles and therefore cannot invoke § 242 of the German Civil Code (BGB) (compare Federal Court of Justice (BGH) New Weekly Legal Newsletter (NJW) 1993, 2041, 2042 with further references) to avert an offset against his claim.

On § 9:

The rule is based on the charter authorisation pursuant to § 57 Section 4 No. 1 a of the WPO and more clearly specifies the professional duty of confidentiality codified in § 43 Section 1 Sentence 1 WPO.

Section 1 ensures that WP/vBPs do not wilfully violate the principle of confidentiality.

According to **Section 2** WP/vBPs are to ensure that no facts and circumstances as defined in Section 1 are divulged in any way. This means they are to ensure that third parties are not allowed to view the documents. This also means that the obligation according to Section 2 within the WP/vBP practise also applies to employees having no involvement with the account.

Section 3 takes into account the fact that the obligation of confidentiality is unlimited in time and also remains in force after the engagement is completed.

On § 10:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 k WPO and more closely defines the professional duties codified in § 43 Section 1 Sentence 1 WPO concerning confidentiality, conscientiousness and conduct worthy of the profession.

The rule has been incorporated into the professional charter parallel to the insider rules of the Second Financial Market Development Act, which pursuant to § 13 Section 1 No. 3 of the Securities Trading Act (WpHG) also included WP/vBPs as primary insiders, because a clear prohibition in the profession against utilising professional secrets is required to uphold the above-mentioned professional duties. The rule is concerned exclusively with knowledge that falls under the obligation of confidentiality. **Sentence 2** clarifies that the duties shall remain in force even after the engagement has been completed.

Sentence 3 is intended in particular to cover those cases in which a client is rejected due to a conflict of interest, yet later the same case is accepted on behalf of another principal. The acceptance of such an account can easily become problematic, if the WP/vBP prior to rejecting the case already gained an inside perspective into the "rejected" principal. § 3 does not handle such cases, because there it is assumed that the client relationship will be consummated. In light of the tendency of courts to view with scepticism any restrictions on professional practise on the basis of abstract threats, the acceptance of the account cannot be forbidden without exception. The WP/vBP is obliged, however, to inform the "rejected" client about the situation immediately and comprehensively. His evaluation as to whether or not his legal position is in jeopardy is to be weighed from the perspective of an objective third party.

On § 11:

The rule is based on the charter authorisation of § 57 Section 4 No. 1 a of the WPO and more clearly specifies the professional duties concerning responsibility codified in § 43 Section 1 Sentence 1 WPO.

If Wirtschaftsprüfer or vereidigte Buchprüfer practise their profession in several capacities – for example in their own practise and in auditing firms – this increases their level of responsibility. The principle of own responsibility is only upheld if they can actually organise and execute each of these activities. WP/vBPs violate the professional duty of own responsibility, for example, if they assume sole responsibility for the management of a professional firm, only in order to fulfil the professional statutory requirements, whereas in actual fact they are neither willing nor able to uphold the required professional responsibility; the same holds true for the professional management of branch offices.

On § 12:

The rule is based on a charter authorisation pursuant to § 57 Section 4 No. 1 a of the WPO and clearly specifies the professional duties concerning responsibility codified in § 43 Section 1 Sentence 1 WPO.

The principle of own responsibility, for example, requires that assistants be hired with great care and that their activities be supervised. The division of labour must be structured in such a way that the responsible Wirtschaftsprüfer or vereidigter Buchprüfer can reliably formulate his own judgement.

On § 13:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 b WPO and more closely defines the professional duty codified in § 43 Section 2 Sentence 3 WPO concerning conduct worthy of the profession, both within and outside professional practise.

Section 1 contains the principle of objectivity. **Section 2** more clearly defines this principle using examples for the area of professional practise and obliges the WP/vBP to make his principal aware of violations of the law. This duty – to this extent comparable to § 321 Section 1 Sentence 3 of the German Commercial Code (HGB) – does not encompass actively investigating for violations of the law but merely pointing out violations as they become apparent during the course of normal duties.

Thus the rule only includes cases in which the member of the profession recognises violations of the law, but not reckless non-recognition of such violations. Members of the profession are not allowed to simply look the other way in case of violations of the law that they notice over the course of carrying out their duties; according to the materiality principle, however, this does not apply to petty violations, but only to serious breaches of the law.

In contrast to § 321 Section 2 of the German Commercial Code (HGB) **Section 2** does not contain any written reporting requirement, but rather the member of the profession is called upon to simply make the principal aware of violations of the law.

Section 3 pertains to the use of the name and/or qualification of WP/vBPs for the promotional purposes of third parties. The rule allows WP/vBPs to permit third parties to conduct promotion of products or services having relevance to the profession using their name and/or professional qualification, for example computer programs for accounting practise organisation or audit planning. Promotion of products or services unrelated to the profession, for example quality endorsements of everyday consumer goods, are not compatible with the image of the profession and the standing that WP/vBPs enjoy in the public as statutory auditors.

The general criminal statutes already forbid the granting of undue benefits for the purpose of gaining a business advantage not only in general business transactions (§ 299 of the German Penal Code (StGB)) but also towards public officials in transactions with authorities (§§ 331 et seq. of the German Penal Code (StGB)). Additionally, under the professional charter, active bribery and passive corruptibility are considered conduct unworthy of the profession and therefore unacceptable. The acceptance of gifts may also constitute suspected bias as defined by § 21 of the professional charter for WP/vBPs.

Section 4 Sentence 1 contains an appropriate basic prohibition on accepting benefits from a principal. The prohibition not only applies when carrying out audits and preparing expert opinions, for which even greater requirements exist in terms of impartiality and unbiasedness, but also to the entire professional practise. The prohibition does not include negotiated fees, negotiated or customary fringe benefits (especially cost reimbursements) as well as any success bonuses, to the extent that they are allowed according to § 55a WPO.

Not included either are payments and benefits which are made and received exclusively for private reasons without any connection to the professional activity, as tends to be the case with relationships to family and close friends. However, if there is also professional contact, it tends to be difficult to draw a line between the two, so that in case of doubt the principles in Section 4 should be upheld.

Sentence 2 covers the prohibition of benefits by a WP/vBP to the principal. These may also lead to an unacceptable impairment of independence and unbiasedness. Particularly in connection with the assignment of engagements, they can also be a criminal offence.

Sentence 3 obliges the WP/vBP to uphold the same principles in his entire practise and to have his employees also submit to them. The adherence to the principles is to be monitored to an adequate degree.

Payments are not only cash benefits but may also include providing material benefits in kind or other material benefits. In addition to benefits granted by the principal himself, this also applies to benefits provided by third parties acting in his name, on his account or on his behalf.

Permissible are benefits that conform to normal customs in society. This includes gifts made on special occasions (birthdays, anniversaries, going-away parties), the type and scope of which bear a reasonable relationship to the current occasion and to the position of the recipient. The present must be confined to what is socially acceptable, and be construed as merely a thoughtful gesture and mustn't be aimed at creating a business obligation on the part of the recipient.

Occasional hospitality of business partners conforms to German social customs. This not only applies to hospitality bearing immediate business relevance (working meal) but also to hospitality during leisure time outside the business environment, as well as invitations to sporting or entertainment events. As with exchanging gifts, the type and value of the invitation or event must be in appropriate proportion with the occasion and the position of the recipient. Accordingly, invitations to vacation-like events, trips to far-flung destinations where the cost of travel and accommodations is paid for, along with events involving high costs, are not acceptable.

On § 13a:

This rule is based on the charter authorisations in § 57 Section 4 No. 1 a and b of the WPO and more clearly defines the professional duties concerning conscientiousness as well as conduct worthy of the profession codified in § 43 Section 1 Sentence 1 Section 2 Sentence 3 WPO.

Section 1 specifies in Sentence 1 the details required for all forms of long-term information concerning professional status.

The term "professional status" not only describes how one practises one's own profession (single practise, joint practise, partnership firm, professional firm), but also, for example, professional collaboration that does not involve jointly working on engagements (cooperation), or the joint use of personnel or shared materials (shared office).

The permissibility of the reference to various types of cooperation has been recognised for some time, whereby the circle of permissible cooperation partners is basically not restricted, as long as it is compatible with the standing of the profession of the WP/vBP.

When announcing a cooperation agreement, it is important to ensure that it is unambiguously portrayed. In particular, it must not create the appearance of a joint practise. The use of an identical letterhead etc. is therefore strictly impermissible. It is also misleading, however, if the name of the cooperation partner or merely his professional title appears in the letterhead, even if it is made clear that it only involves a cooperative relationship.

In all other ways, announcements of the cooperation must also conform to principles of competition law. Thus for example, what is merely project-related collaboration may not be promoted in such a way that it creates the misleading impression of long-term cooperation.

The above principles apply to the announcement of a shared office as well. The use of identical letterheads of those sharing the office is not made permissible through the use of the term "joint law practise" or "shared offices". A shared office does not involve a form of professional collaboration but rather exclusively the joint use of material or human resources. The reference to the shared office therefore does not belong among the information about the range of services offered by the practise. The shared office, however, also says something about the professional status, about which the client should be informed that the risk of breaches in confidentiality and potential conflicts of interest cannot be completely ruled out.

According to **Sentence 2 1st half-sentence,** persons working for the WP/vBP or the professional firm and capable of becoming partners in joint practise may be mentioned with a designation of their status. Through this rule it is clarified that tax advisors, for example, may be named not only in single practises/joint practises but also in auditing firms. In doing so, the status (for example, employee) is to be made clear.

If the status is not mentioned, there is a risk that for liability purposes, the salaried tax advisor will be treated the same as a partner (external partner). In terms of his professional legal status, the external partner thus also would have to show mandatory proof of insurance according to § 44b Section 4 WPO (§ 44b Section 6 WPO).

Independent of this, the announcement of an outside partner is impermissible if he does not have the authority of a partner within the firm. Therefore there must be a contractual basis defining the powers to autonomously take on new clients, terminate clients and the commitment to mutual representation.

Sentence 2 2nd half-sentence leaves untouched the disclosure requirements of company law (e.g. to specify the managing director according to § 35a Section 1 of the German Limited Liability Company Act (GmbHG) and to specify the members of the Board of Management and the Chairman of the Supervisory Board according to § 80 Section 1 of the Stock Corporation Act (AktG)), as it involves mandatory disclosures, and not the mention of them merely for purposes of an announcement. These persons must therefore be listed independently, whether they belong to a profession capable of joint practise or not.

Section 2 Sentence 1 clarifies that WP/vBPs may list not only their acquired area of specialties, in particular their titles of legal specialisation, but also other titles allowed by law, e.g. "mediator".

The rule primarily refers to WP/vBPs who are simultaneously lawyers and/or tax advisors. If a lawyer is allowed to list his area of specialty, this should not be impermissible by virtue of the fact that he is at the same time a WP/vBP. The prerequisite is, however, that the designation of another professional group must be clearly identifiable. For example, this is the case for the title "mediator", based on § 7a of the professional charter for lawyers.

Sentence 2 allows for unrestricted reference to a public appointment as an expert. Sentence 3 is intended to provide clarity. Up to now there has already been no doubt that members of the profession who are performing the specified duties may use the appropriate titles during the course of these activities.

On § 13b:

The rule is based on § 57 Section 4 No. 4 WPO. According to the legal authorisation it contains the determination of the criteria for the description of basic remuneration schemes for board members and executive employees in the transparency report.

The transparency report is to contain information about basic remuneration schemes for board members and officers pursuant to § 55c Section 1 Sentence 2 No. 7 WPO.

Basic remuneration schemes as defined in the rule are understood as the structures of individual remuneration of the persons specified. In order to determine them, it is necessary to examine the individual salaries of the board members/officers; § 55c Section 1 Sentence 2 No. 7 WPO does not require that individual salaries be listed. The mandatory disclosure rather pertains to information, "on the basis of which the public can make judgements as to the degree of personal interest the board member and the WP/vBP employed may have in the findings of the audit" (Bundestag printed matter No. 16/2858, p. 30). Therefore one should only list the remuneration structures according to the criteria regulated by **Sentence 2**. This differs from the regulation of §§ 285 Sentence 1 No. 9, 314 Section 1 No. 6 of the German Commercial Code (HGB) (Total level of compensation of Board Members in notes to the financial statements or notes to consolidated financial statements) as well as §§ 319 Section 3 Sentence 1 No. 5, 319a Section 1 Sentence 1 No. 1 of the German Commercial Code (HGB) (The amount of total compensation from professional practise).

The legal term of management employee derives from the provisions of the Works Constitution Act (§ 5 Section 3 of the Works Constitution Act (BetrVG)) and can thus also include other persons alongside WP/vBPs, for whom an appropriate clarification is contained in § 45 Sentence 2 WPO.

Starting from the regulatory purpose of § 55c Section 1 Sentence 2 No. 7 WPO, **Sentence 1** of the rule provides that the information stated should reveal whether and how the professional activity is influenced by financial incentives. A contingency fee for board member or employee remuneration, however, can only be significant in the realm of management audits. This is in contrast, however, to the strictly harmless – even major – contingency-based remuneration in the realm of interest-oriented business consulting, for which a contingency fee may be negotiated even in relationship to third parties (§ 55a Section 1 Sentence 1 WPO). This does not mean, however, that the basic remuneration schemes do not need to be disclosed. The presentation of the basic remuneration schemes shall include all remuneration for activity as board member or officer, regardless of the source from which it is drawn.

According to **Sentence 2** the transparency report is to include whether and to what proportion the remuneration of board members and officers is divided up into fixed and variable components. Pension promises are also components of remuneration as defined by the rule.

Further, the type of variable remuneration is to be stated. In this regard, this first of all and primarily involves monetary participation in the practise profit – once again as such, but without stating the actual amount –, and above and beyond this, also the granting of share options.

Finally, the base for determining variable remuneration is to be disclosed. Usually the level of the base for variable remuneration is evaluated dependent upon individual performance of a board member or a management employee for the success of the practise.

On § 14:

The rule is based on a charter authorisation pursuant to § 57 Section 4 No. 1 b WPO and more clearly specifies the professional duty to engage in conduct worthy of the profession as codified in § 43 Section 2 Sentence 3 WPO.

Section 1 clarifies that there are no professional legal reservations to transferring ownership in a practise or part of a practise, which may have only individual accounts, in exchange for a fee. Professional sanctions are only foreseen in particularly egregious cases where there are inappropriate conditions, such as the exploitation of the economic hardship of the heirs of a member of the profession. This provision of course assumes that the remaining requirements for transferring ownership of a practise, in particular the required approval of the principal for the transference of the client accounts due to the obligation of confidentiality, will be fulfilled.

Cases in which a practice is sold are to be distinguished from fee-based brokerage of engagements. Within the scope of a practice being sold, negotiating remuneration for the transfer of accounts does not meet the condition of § 2 Section 2 No. 3. Provided that it involves accounts that the transferor up to now has personally developed and managed, this also applies to the transfer of part of all accounts (partial sales of the practice) or the leasing thereof.

The provisions in **Section 2 and 3** more clearly delineate the principle of conduct worthy of the profession, according to which basic principles of collegiality are to be upheld. Particularly in **Section 3**, however, the basic freedom to advertise should also be taken into account for members of liberal professions. The rule cannot and therefore should not impair free competition for audit clients. Therefore, even to the extent that it involves the clients of a former employer, not every means aimed at recruiting these clients is impermissible *a priori*. This is the case when clients are lured away using unfair practises, for instance, by defaming one's former employer or by unauthorised removal of client data (comp. Düsseldorf Higher Regional Court (OLG), Ruling dated 26.9.2002, WPK Newsletter (WPK Mitteilungen) 2003, 65 et seq.). Even in the absence of such additional circumstances, it is considered unfair poaching of clients and a violation of fair competition for an employee to directly or indirectly approach his employer's clients on the subject of his future employment as a competitor or on behalf of a competitor still prior to ending his working relationship with the employer (comp. Federal Court of Justice (BGH), Decision dated 22.4.2004, New Weekly Legal Newsletter (NJW) 2004, 2385 et seq.).

On § 15:

The rule is based on a charter authorisation pursuant to § 57 Section 4 No. 1 h WPO.

The wording "according to their best abilities" makes it clear that the rule represents a general axiom, not a concrete obligation, however, that employment contracts or apprenticeship contracts be concluded.

On § 16:

The rule is based on a charter authorisation pursuant to § 57 Section 4 No. 1 e WPO.

The prohibition to exclude or limit liability to pay damages already derives from § 323 Section 4 of the German Commercial Code (HGB).

It runs counter to the professional ethics of WP/vBPs to negotiate a higher liability than the statutory limitation of liability. This prohibition is intended to protect WP/vBPs from cases where individual colleagues seek to gain a competitive advantage via expanded liability. Competitive advantage solely based on the offer of higher liability amounts would ultimately lead to considerable distortions within the profession, because only large operations would be able to take on larger engagements with proportionately higher amounts of liability.

On § 17:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 e WPO.

The rule in **Section 1** clarifies that § 6 of the Wirtschaftsprüfer Professional Indemnity Insurance Act (WPBHV), which was rescinded through the 7th WPO Amendment (Professional Oversight Reform Act (BARefG)), but which pursuant to § 137 WPO, however, shall remain in force until the appropriate rule in the professional charter Professional Indemnity Insurance Act (WPBHV) (notification of changes by the insurance company) has been changed, does not relieve the WP/vBP of his own duties to notify the Wirtschaftsprüferkammer. The codified duties to provide notification constitute professional duties.

According to **Section 2**, WP/vBPs are to maintain sufficient insurance coverage for reasons of protecting their clients, even in engagements that harbour the risks exceeding the statutory level of coverage. In case a risk can no longer be insured, the sufficiency requirement is met if the WP/vBPs obtain coverage alongside other types of existing insurance, for example individual case insurance.

On § 18:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 i WPO.

In accordance with § 48 Section 1 Sentence 1 WPO the duty to carry the seal according to Section 1 Sentence 1 includes all opinions reserved to the statutory duties of the WP/vBP. It has always been a well-known fact there are statutory audits not reserved to WP/vBPs but which other expert auditors may carry out. This includes, for example, incorporation and special audits related to stock corporations (§§ 33, 143 of the Stock Corporation Act (AktG)). In such audits, the seal may be used, but it does not have to be used.

Sentence 2 clarifies that the duty to use the seal for statements reserved to auditors also exists even if a statutory audit is not required. The previously-tacitly understood principle whereby the duties reserved to the WP/vBP must always be based on statutory audits no longer applies without exception.

Thus the review of the semi-annual financial report to be prepared by certain domestic underwriters as required by § 37w of the Stock Trading Act (WpHG) is not statutory. The company can therefore decide on its own accord whether it wishes to have such an audit performed or not. If it decides in favour of having it performed, however, the limited review is reserved to the WP, according to § 37w Section 5 Sentence 2 Stock Trading Act (WpHG), which also refers to the regulations concerning the appointment of an auditor of financial statements and thus also to § 319 Section 1 of the German Commercial Code (HGB).

(As opposed to certifications of what is also the non-statutory auditor's limited review of interim financial statements and interim management reports, which are part of quarterly reports according to § 37x Section 3 of the Stock Trading Act (WpHG): In Sentence 3 the rule – unlike § 37w Section 5 Sentence 2 of the Stock Trading Act (WpHG) – does not refer to the rules of the German Commercial Code (HGB) for appointing auditors, but rather only to §§ 320, 323 German Commercial Code (HGB) as being applicable *mutatis mutandis*. Limited review according to § 37x Section 3 of the Stock Trading Act (WpHG) is therefore not reserved to the WP or vBP by law and thus does not require the use of the seal.)

To the extent the parent company of a group not requiring an audit submits to a voluntary audit by a WP, in order to effect the discharging of obligations pursuant to §§ 291 Section 2 Sentence 1 No. 2, 292 Section 2 of the German Commercial Code (HGB) for a subsidiary, which in its own right is the parent of another subsidiary, this audit requires the use of the seal. The voluntary audit of consolidated financial statements is not in itself a duty reserved to WP/vBPs. Because the obligation-discharging effect allowed by law is only realised, however, if the audit is performed by an auditor accredited in Germany and hereby the voluntarily audited financial statements take the place of subsidiary consolidated financial statements that would otherwise mandate an audit and thus the use of the seal, this represents a duty reserved to WP/vBPs.

The seal is to be used for statements on audit findings according to §§ 14a Section 7, 15 Section 1 Sentence 1, 16 Section 2 Sentence 2 Renewable Energy Sources Act (EEG) by virtue of the fact that the audit is reserved to WP/vBP. The fact that the audit only takes place when it is requested or when the company decides it should be performed makes no difference in the duty to use the seal. It also makes no difference in the duty to use the seal whether it involves an audit or a limited review or whether the findings include an auditor's opinion or a certificate.

The rule that an audit is restricted to WP/vBPs may be contained not only in formal but also in material laws. Other – non-statutory – rules by which audits are reserved to WP/vBPs, e.g. the instructions by public agencies, official notices of approval or agreements by the client with third parties, do not entail the duty to use the seal. This also includes cases in which the duty to have an audit carried out by WP/vBPs is specified in the by-laws or articles of incorporation, and even if this duty specified in the articles of incorporation is in turn based on a statutory provision such as in the case of § 65 Section 1 No. 4 Federal Budgetary Regulations (BHO) and the appropriate state and municipal regulations. These regulations only create the preconditions for the participation of the public sector in private companies but do not regulate the requirement to carry out audits or the tasks reserved to auditors. The provision reserving duties to auditors is thus only contained in the rules in the articles of incorporation.

Section 2 offers WP/vBPs the option of voluntarily using of the seal for statements on audit findings as well as expert opinions that are not among the statutory duties reserved to auditors as defined in Section 1. The regulatory scope of the provision therefore encompasses only statements that are issued outside the tasks reserved to the WP/vBP and which – not necessarily as the main focus – contain a statement concerning the findings of a statutory audit or voluntary assurance audit as defined in § 2 Section 1 WPO. Certificates affirming accounts preparations are not allowed to bear the seal, unless as such they include preparation with comprehensive auditing steps or with plausibility judgements.

The prohibition in **Section 3** already derives from the rule in Section 2 but is being explicitly reiterated for the sake of clarity.

The prohibition in **Section 4** to use a seal-imitating round stamp already derives from the fair practises law (§§ 3 and 5 of the Unfair Practises Act (UWG)) and is based on the fact that it cannot be ruled out that it could be mistaken for the professional seal.

On § 18a:

The rule is based on the charter authorisation pursuant to § 57 Section 4 No. 1 i WPO.

The 7th WPO Amendment in 2007 supersedes the previous seal provision and instead charged the WPK with the task of more closely regulating the design and use of the seal in the WP/vBP Professional Charter. This task set out by lawmakers is implemented by § 18a. Sections 1 and 2 correspond to § 1 of the previous seal provision, Sections 3 and 4 correspond to § 2 of the seal provision. §§ 3, 4 of the seal provision had in the meantime become of no relevance and their adoption in the WP/vBP Professional Charter was therefore expendable. Until its integration in the WP/vBP Professional Charter, the seal provision was to continue to be used based on the transition rule of § 137 WPO.

§ 18a contains concrete instructions as to the size of the seal, the use of the scraggy border characteristic of the seal and the details that the seal is to include.

On § 19:

The rule is based on the charter authorisation of § 57 Section 4 No. 1 a and 4 b WPO.

Section 1 specifies – independent of business terms according to the commercial code – when a branch location exists in terms of the professional charter. The meaning and purpose of the rule – as Section 2 and 3 demonstrate – are to ensure responsible management of main and branch offices by a member of the profession. This does not necessarily mean that the main and branch location have to be under one single address. Rather, organisational divisions having their own address can be assigned to the main or branch location for practical reasons (access to the public).

The professional register is only to list one address each as the main and branch location. The limitation in the ability to list professional addresses in Sentence 4 is intended to prevent the appearance to public visitors of a divisible organisationally-autonomous unit in terms of legal status, when in fact this is not the case (e.g. archives).

Section 2 concerns the main locations of Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften and more clearly defines § 1 Section 3 Sentence 2 WPO in association with § 3 Section 2 WPO. The prescription pursuant to §§ 1 Section 3, 3 Section 2 WPO, that the professional offices of a Wirtschaftsprüfungsgesellschaft must be responsibly managed by Wirtschaftsprüfer and the professional offices of a Buchprüfungsgesellschaft must be responsibly managed by vereidigte Buchprüfer or Wirtschaftsprüfer, is based in the professional duties of conscientiousness and own responsibility. Responsible management presupposes that at least one Wirtschaftsprüfer as defined in § 28 Section 1 Sentence 2 WPO or a vereidigter Buchprüfer as defined in §§ 130 Section 2, 28 Section 1 Sentence 2 WPO has his professional offices in the branch office or at least at the headquarters of the company (§ 28 Section 1 Sentence 4 WPO). The headquarters are understood as the city in which the company is located.

Section 3 is concerned with branch offices of WP/vBPs and more clearly defines § 47 WPO. The prescription that a branch office must be responsibly managed by a Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaft or that a branch office of a vereidigter Buchprüfer or Buchprüfungsgesellschaft must be responsibly managed by a vereidigter Buchprüfer or a Wirtschaftsprüfer, is based in the professional duties of conscientiousness and own responsebility. Responsible management presupposes that the Wirtschaftsprüfer or vereidigter Buchprüfer has his professional location in the branch office or at least in the city of the branch office (§ 47 Sentence 1 WPO).

The place of the branch office is understood as the city in which the branch office is located. If main offices and branch offices are within the same city, the WP/vBP can also be the manager of his own branch office, to the extent that his conscientious and own responsible practise of the profession is not impaired.

The Wirtschaftsprüferkammer can make exceptions to § 47 Sentence 1 WPO for branch offices of Wirtschaftsprüfer and vereidigte Buchprüfer in their own practise. In the past the Management Board of the Wirtschaftsprüferkammer has only seldom granted an exception, and only on a temporary basis.

Part 2:
Special Professional Duties in Performing Audits

and Preparing Expert Opinions

On Part 2:

Pursuant to § 57 Section 4 No. 2 WPO the professional charter can more closely specify special professional duties in conducting audits and preparing expert opinions.

Based on the authorisation in § 57 Section 4 No. 2 lit. a and b WPO, Part 2 of the professional charter contains more detailed specifications on the requirement of impartiality (§ 43 Section 1 Sentence 2 WPO) and on the duty to refuse to act if there is suspected bias in the performance of an audit (§ 49 half-sentence 2 WPO). In addition, Part 2 regulates additional special professional duties, which are based on the authorisation in § 57 Section 4 WPO, to the extent that they also cover professional duties that exclusively pertain to the performance of audits or the preparation of expert opinions.

In more closely defining the term suspected bias from § 49 second half-sentence WPO, it had to be taken into account that the same term is used in the commercial legal rules governing grounds for exclusion in statutory audits of annual financial statements according to §§ 316 et seq. of the German Commercial Code (HGB). In differentiating between the two, it is assumed that the definition of bias in § 49 second half-sentence WPO and §§ 319 Section 2, 318 Section 3 of the German Commercial Code (HGB) is identical, so that the substantiating facts according to § 319 Section 3 and 4 as well as § 319a of the German Commercial Code (HGB) are significant in interpreting the professional duties (comp. § 22a).

There is a difference in the target group of the two standards, however: Whereas § 49 second half-sentence WPO only addresses the members of the profession, §§ 319, 319a of the German Commercial Code (HGB) target the company required to be audited, but they also have an indirect relevance to members of the profession (see above).

Therefore, in the new version of §§ 20 et seq. particular attention has been paid to the revised provisions of §§ 319, 319a German Commercial Code (HGB) contained in the Accounting Law Reform Act of 4 December 2004 - (BilReG) – (Federal Legislative Journal (BGBl.) I p. 3166).

In addition – to the extent possible under the current legal framework – recent developments at the international level were considered for the more detailed provisions (IFAC Code of Ethics dated 13 June 2005; EU recommendations on the independence of the auditor dated 16 May 2002). Unlike §§ 319, 319a of the German Commercial Code (HGB), the EU recommendations have no legally-binding character, however.

While EU recommendations are classified as secondary community law, according to Art. 249 Section 5 of the Treaty Establishing The European Community (EGV), they are not binding. With regard to the Code of Ethics, while there is no national obligation, there is an obligation based on membership of the WPK in IFAC, to implement these standards, to the extent they do not conflict with national law.

The consideration of these sources also led to a restructuring of the rules. The rules of the professional charter up to now, and also those in the §§ 319, 319a German Commercial Code (HGB), addressed certain life circumstances that can jeopardise independence. By contrast, the following rules of the professional charter, in coordination with the EU recommendation, represent the interdependencies that may jeopardise unbiasedness (threats). These are then assigned to the individual life circumstances.

Also adopted from the EU recommendation was the principle whereby the severity of threats identified can be mitigated by adequate safeguards to the extent that overall, it is no longer absolutely necessary to refuse to act because unbiasedness is no longer impaired (for a recognition of this principle also within the scope of § 319 Section 2 of the German Commercial Code (HGB), see the grounds for the Accounting Law Reform Act (BilReG), Bundestag printed matter 15/3419 dated 24 June 2004, p. 38). This basic structure also corresponds to the approach in the IFAC Code of Ethics. The professional charter further specifies this in § 22.

On § 20:

The rule is based on § 57 Section 4 No. 2 WPO.

In addition to the duty to maintain personal and economic independence (compare § 2) the professional charter requires impartiality in conducting audits (whereby this include not only audit reports as defined in § 321 German Commercial Code (HGB)) and the preparation of expert opinions in § 43 Section 1 Sentence 2 WPO.

This is reflected in **Section 1 Sentence 1**. If the WP/vBP is not impartial, he must refuse to act as auditor or expert as defined by Section 1. For the required portrayal of all key factors according to **Section 1 Sentence 2**, it is necessary to conduct a complete analysis of all circumstances for or against the findings. In this, critical aspects must not be withheld. For the preparation of expert opinions, however, this duty is restricted to expert opinions according to Section 1 (for a differentiation, see Section 2).

Section 2 clarifies that it is not forbidden for a WP/vBP to accept an engagement to prepare a position paper, in which the positive or negative aspects of the subject to be evaluated are to be emphasised (e.g. company valuation from the seller's or buyer's side).

In these cases, however, it is not permitted to create the impression of an impartial expert opinion. In particular, such engagements may not be referred to as “expert opinions”. In addition, the seal is only allowed to be used for expert opinions as defined in Section 1, not position papers as defined in Section 2.

On § 21:

The rule is based on § 57 Section 4 No. 2 WPO.

The duty according to the professional charter to refuse to act in case of suspected bias is regulated in § 49 second half-sentence WPO. **Section 1** deals with this topic, and goes on to mention for systematic reasons the basic case for actual bias, in which case the auditor is to refuse to act in any case.

WP/vBPs are not allowed to work when their unbiasedness is in doubt, not even with the consent of the contracting body. This is an issue of public trust in the function of the WP/vBP.

If the self-auditing prohibition has been violated, it is no longer permissible to issue an audit opinion, if the WP/vBP prepared the accounts to be audited himself. This not only applies to audits but also to plausibility judgements and is independent of whether the audit opinion is submitted in an opinion in a manner as defined in § 322 of the German Commercial Code (HGB), whether a certificate is issued or the audit results are expressed in a report. In engagements for compilation of financial statements with examination of the documents on which the financial statements are based or for preparing a plausibility judgement, an opinion can therefore only be issued for the portions for which the WP/vBP was not significantly involved. In these cases the necessity to refuse to act originates from the incompatibility of preparing and auditing financial statements and also applies when there is an explicit disclosure of biasedness.

In **Section 2 Sentence 1** the term “unbiasedness” is defined. Unbiasedness allows audit judgements to be made, upholding objectivity and integrity and with the necessary basic critical attitude. The concept of unbiasedness is based on the inner attitude of the auditor or expert (independence in mind). The factors named in **Sentence 2**, which jeopardise unbiasedness (threats), are guided by the EU recommendation (whereby the same issue can involve several threats). "Intimidation" as additional grounds for bias mentioned in the EU recommendation is not explicitly regulated in the professional charter, because the safeguarding of attempts of intimidation is covered by § 318 Section 1 Sentence 5 of the German Commercial Code (HGB), thus the grounds for bias are already neutralised by provisions in commercial law. The possibility of not being appointed to audit next year's financial statements, by contrast, is the consequence of a basic decision by lawmakers and therefore cannot be grounds for bias.

Section 3 defines suspected bias. Because a threat to unbiasedness in terms of the WP/vBP's inner attitude, regulated in Section 2, cannot be determined on a regular basis, it is necessary to use the external circumstances as a guide, which allow one to deduce this threat. Therefore it does not depend upon what was going on in the auditor's mind but rather on the evaluation of a third party, derived from objective criteria. In association with the arguments in the Accounting Law Reform Act (BilReG) (Bundestag printed matter 15/3419 dated 24 June 2004, p. 78 et seq.) the wording "judicious third party" was chosen. At the same time, the evaluation by this third party must be weighed against the grounds for bias named in Section 2.

Section 4 Sentence 1 clarifies that suspected bias may not only exist if the WP/vBP himself fulfils the conditions for bias as defined in Section 2. If certain relationships exist to persons or companies which would be excluded as auditors or experts due to suspected bias, this can carry over to the WP/vBP. These relationships can be not only of a professional but also a private nature. Behind the points listed in No. 1 to 5 are aspects such as consideration for persons closely associated with the auditor, similarly aligned professional interests or the possibility of exerting influence. Whether suspected bias can actually be confirmed in such cases can only be determined on a case-by-case basis, whereby the overall circumstances are to be taken into account.

A network as defined in Section 4 Sentence 1 No. 2 is existent when persons, in carrying out their professional duties, work together for a certain length of time in the pursuit of joint commercial interests. This corresponds to the legal definition of § 319b Section 1 Sentence 3 of the German Commercial Code (HGB), which in its own right implements the network criteria from Art. 2 No. 7 of the EU 8th Directive. Accordingly, a network is "the larger structure which is aimed at cooperation and which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality-control policies and procedures, a common business strategy, the use of a common brand-name or shares a significant part of professional resources."

The network's legal framework and national affiliation of the members of the network are not important. In particular, a (corporate) shareholding is not required. If such shareholdings fulfil the network criteria, however, for instance through common quality control measures or procedures, they (also) qualify as a network; of primary consideration, however, are the more particular qualifying grounds for biasedness specified in the Professional Charter (for example, see Section 4 Sentence 1 No. 5, Sentence 2 – companies over which significant influence can be exercised) or the German Commercial Code is to be applied (for example, see § 319 Section 4 Sentence 1 – affiliated company). In practice, network structures can be seen on the basis of joint memberships in legal entities with coordinating duties, but also based on contracts governed by the law of obligations. De facto behaviour would also be sufficient, if it continues over a certain period of time and is outwardly apparent.

Cooperation that does not fulfil the network criteria does not qualify as grounds for biasedness; it no longer matters whether it is openly expressed or not. The qualifying criteria concerning announced cooperation used up to now in Section 4 Sentence 1 No. 2 of the Professional Charter is being abandoned.

Decisive is the manner in which the members of the network cooperate. One-time or only occasional cooperation is as little cause for assuming a network as is a form of collaboration that does not pertain to professional work. Therefore a mere shared office, which involves material and possibly personnel, but not professional resources, does not apply. The same holds true for joint use of standard software or IT tools. Even professional collaboration in individual cases, such as joint work on audits or collaborative preparation of expert opinions therefore does not warrant the assumption of a network. The membership in professional associations does not lead to the assumption of a network either, because this kind of cooperation does not pertain to concrete professional work but rather only general aspects relating to professional policy or expertise and because it does not directly involve the pursuit of joint commercial interests.

According to a government statement on § 319b of the German Commercial Code (HGB) the pursuit of joint commercial interests may regularly be assumed if the members of the network fulfil the network criteria named in Art. 2 No. 7 of the EU 8th Directive. Thereby the sharing of profits or costs need not involve the entire professional activity but can also pertain to particular areas. Mere cost participation and contributions to material resources – as in the case of a shared office – are harmless, unlike, however, the allocation of professional resources (specialists, for example) in a significant scope. based on joint costs.

While structures in which a professional partnership takes on certain engagements, yet in which the work is actually performed by WP/vBPs or professional firms having a participating interest in that partnership, do not lead to profit or cost sharing, if they do involve joint quality control measures and procedures or the use of a common brand, they will regularly fulfil the definition of a network.

According to the government statement on §319b of the German Commercial Code (HGB), the use of a common brand fulfils the criteria of shared commercial interests when the external image of the persons using the brand is determined by the common brand. This shall be assumed when the brand – perhaps also in abbreviated form – is used as part of the name of the company or practice. In other uses, it is important to consider the overall image, which can be gleaned not only from the letterheads of those involved but also from their websites. If a common brand predominates, i.e. through the consistent use of a brand name or a hereby derived logo, this indicates the assumption of a network. The placement of the brand on the letterhead (letterhead in connection with the practice designation, footnote), along with the graphic design, may reveal certain, albeit secondary, circumstantial clues. If it becomes clear, based on the use of the brand, however, that the cooperation does not extend to collaboration in terms of the other network criteria, but is instead limited to mutual referrals of clients or close consultation on the completion of individual engagements, then the use of a common denomination does not constitute a network. The decisive factor is always the overall impression in business transactions.

According to the wording in Section 4 Sentence 1 No. 2, a certain member of a network who is subject to the Professional Charter may be held accountable for issues caused by (another) member of the network. In addition, it may also be assumed that the accountability measures in the remaining provisions may be applied not only to the member of the network involved but also to the (other) member of the network, so that, for example, it would also be detrimental if the financial statements to be audited were not prepared by the member of the network himself but by a company on which the (other) member of the network exerts significant influence (Sentence 1 No. 5). If the (other) member of the network is a firm, the accountability measures of Sentence 2 shall apply here.

For No. 4 the degree of affiliation is an initial indication for the possibility of greater or lesser consideration. However, such indication does not specify decisive criteria as grounds for a particular judgement.

Section 4 Sentence 2 is aligned with § 319 Section 4 of the German Commercial Code (HGB). It can hereby be assumed, that any employee assigned to an audit can influence the findings, independent of whether and to the extent that his has the authority to instruct. This also applies to persons with whom the professional firm is associated in a network. It may thereby involve natural or also legal persons and firms. The remarks on Sentence 1 help interpret the definition of a network. For further accountability on the part of the person concerned, the accountability measures in Sentence 2 apply, as they do also on the part of the (other) member of the network, if it is a firm.

Section 4 Sentence 3 invokes the concept from § 319b Section 1 Sentence 1 second half-sentence of the German Commercial Code (HGB). Accordingly, the accountability issue through consideration of members of the network is suspended when it is determined that the (other) member of the network can not exert any influence on the audit results. An ability to influence is always assumed when the (other) member of the network is legally and contractually authorised to issue the WP/vBP instructions concerning his auditing activity. The opportunity of de facto considerations only constitutes a possible exertion of influence only if special reasons exist which go far beyond common membership in a network and normal collaboration.

These mitigating facts, on the other hand, are not admissible when they involve the accountability of matters substantiating biasedness originating from the prohibition on self-audit (§ 23a). As the government statement on the parallel rule in § 319b Section 1 Sentence 2 of the German Commercial Code (HGB) illustrates, an objective, sensible, and informed third party, when rendering preparation services as well as consulting and valuation services which would have direct bearing on the financial statements to be audited, would always reach the conclusion that the WP/vBP is biased in evaluating the performance of (another) member of the network. Therefore these cases call for the irrefutable conclusion of biasedness according to the Professional Charter (§ 22a Section 2).

After German lawmakers excluded the accountability of persons employed for audits (§ 319 Section 3 Sentence 1 No. 4 of the German Commercial Code (HGB)), spouses or living partners (§ 319 Section 3 Sentence 2 of the German Commercial Code (HGB)) as well as those in networks (§ 319b Section 1 Sentence 1 of the German Commercial Code (HGB)) due to dependency on revenues (§ 319 Section 3 Sentence 1 No. 5, § 319a Section 1 Sentence 1 No. 1 of the German Commercial Code (HGB)), it is to be assumed that this also applies to those involved in regulating professional practice. This is clarified by Section 4 Sentence 4. The remaining accountability measures (Section 4 Sentence 1 No. 1 and 5), however, remain applicable also for dependency on revenues.

The duty in **Section 5** to ensure proper documentation is intended to make the process of judging the threat to unbiasedness or suspected bias more transparent. In terms of content, this obligation fulfils the duty of documentation pursuant to §§ 31 Section 3, 38 No. 1. It is not necessary to prepare a comprehensive "check list". Rather, it is sufficient to document the facts of the assessment of threats as well as any occurring risks (comp. § 21 Section 2 Sentence 2).

On § 22:

The rule is based on § 57 Section 4 No. 2 WPO.

The basic option of mitigating threats to unbiasedness through adequate safeguards so that

they are no longer considered relevant is also the express intention of lawmakers, if only within the scope of § 319 Section 2 of the German Commercial Code (HGB) (comp. the supporting arguments on the Accounting Law Reform Act (BilReG), Bundestag printed matter 15/3419 dated 24 June 2004, p. 38). The content of the safeguards specified in **Section 1 Sentence 2** are aligned with the EU recommendation. The safeguards there also include such measures which *a priori* (are intended to) prevent grounds for bias, thus in an extreme case would lead to declining an engagement, or those implemented by third parties, especially by the principal. § 22 by contrast only focuses on safeguards that the WP/vBP himself can and must implement against latent threats, in order to enable an evaluation of the threats according to § 21 Section 2 Sentence 3 as being immaterial. It ultimately also contains, however, all the safeguards foreseen by the EU recommendation. Moreover, the catalogue is not exhaustive. At any rate, to the extent that more stringent requirements are not prescribed by the German Commercial Code (HGB), the entire set of rules does not go above and beyond the EU recommendation.

Supervisory bodies as specified in **Section 1 No. 1** are to be construed in particular as the supervisory board. Possible supervisory authorities as defined **Section 1 No. 2** are the Federal Financial Supervisory Authority (BAFin) or the national auditing authorities (Rechnungshöfe). The term supervisory authorities used here is thus to be construed in a broader sense and not limited to supervisory agencies in an administrative sense.

A safeguard as defined in **Section 1 No. 3** can be the publishing of fees.

When involving third parties **(Section 1 No. 4 and No. 5)** the obligation of confidentiality is in force; however, it may be permissible to consult outside parties in order to carry out the audit, even without express release from the obligation of confidentiality.

The establishment of firewalls as defined in **No. 6** can in borderline cases allow the risk of bias appear immaterial. It therefore depends on the entire set of circumstances (type of risk; degree of compartmentalisation; size of the practise), comp. also the decision of the Federal Constitutional Court (BVerfG) dated 3 July 2003, Betriebsberater 2003, p. 2199, 2201.

The duty of documentation for safeguards specified in **Section 2** supplements the safeguards according to § 21 Section 5 BS WP/vBP, and thus only becomes relevant if there are any grounds for bias at all, which make it necessary to implement safeguards.

On § 22a:

The rule is based on § 57 Section 4 No. 2 WPO.

Section 1 Sentence 1 clarifies that if the facts are met under § 319 Section 3 of the German Commercial Code (HGB), there is also an obligation to refuse to act under the professional charter. This is based on the conforming definitions of suspected bias in § 49 half-sentence 2 WPO and the definition in § 319 Section 2 of the German Commercial Code (HGB), which is more clearly specified by the facts as defined in § 319 Section 3 German Commercial Code (HGB).

In terms of the professional charter, the grounds for exclusion in § 319 of the German Commercial Code (HGB) apply not only to statutory auditing of annual financial statements but also to code reviews falling within the areas reserved to WP/vBP and required by law (e.g. audits under the German brokers' and commercial developers' ordinance (MaBV)) in the field of private and public enterprise as well as certain institutions, to the extent that this is not already prescribed by the relevant regulations. According to **Sentence 2** this necessity to refuse to act also extends to planned non-statutory audits for which an auditor's opinion is issued equivalent to an auditor's opinion as defined in § 322 of the German Commercial Code (HGB). The expansion is justified in terms of the necessary unified perspective of activity according to § 2 Section 1 WPO, to the extent that they are lead to a similar safeguarding of public trust. A further expansion of the scope of absolute grounds for exclusion is not necessary because there is no expectation that special requirements for unbiasedness would be upheld in these cases.

Among the absolute grounds for exclusion, in addition to the facts in § 319 Section 3 of the German Commercial Code (HGB), are now the substantiation of facts associated with networks. According to § 319b Section 1 Sentence 2 of the German Commercial Code (HGB), however, this only applies to grounds for exclusion in connection with the rendering of preparation as well as consulting and valuation services which have more than a minor bearing on the financial statements to be audited and which are not only of minor importance (§ 319 Section 3 Sentence 1 No. 3, § 319a Section 1 Sentence 1 No. 2 and 3 of the German Commercial Code (HGB)). In these cases the mitigating facts that the member of the network cannot have any influence on the result of the audit (§ 21 Section 4 Sentence 3) is inadmissible, and no other safeguards can avoid suspected bias and thus the exclusion as auditor. In the cases of § 319b Section 1 Sentence 1 of the German Commercial Code (HGB), however, there remains the possibility of mitigating facts with respect to the member of the network's lack of ability to have influence on the results of the audit, but not the mitigating facts with regard to the risks in § 319 Section 3 Sentence 1 No. 1, 2 and 4 and Section 3 Sentence 2 of the of the German Commercial Code (HGB) mentioned in § 319b Section 1 Sentence 1 of the German Commercial Code (HGB) itself. Thus if a member of the network fulfils one of these risks, they can only be mitigated by proving a lack of opportunity to exert influence; otherwise safeguards may be disregarded here as well.

The fact that the safeguards are not substantial in the cases in **Section 2** already derives from their character as absolute grounds for exclusion, which as a whole within Section 1 is also adopted into the professional charter.

Through **Section 3** it is clarified that the professional charter does not go beyond the judgements of lawmakers, as far as lawmakers established clearly-defined bounds for particular issues. On the other hand, the cases described in § 319 Section 3 of the German Commercial Code (HGB) are not exhaustive as such, so that the occurrence of further circumstances according to § 21 Section 2 Sentence 2 may give cause to believe that unbiasedness is jeopardised. Such further threats may arise out of other facts or special extenuating characteristics (e.g. of special business significance) concerning the particular issue at hand.

Section 4 applies the principles specified in Sections 1 to 3 to substantiating facts in § 319a German Commercial Code (HGB) for the scope of regulations covered by this rule (audits of financial statements of companies of public interest).

The rules are applied to Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften (comp. § 34 Section 1 Sentence 2), to the extent conditions are met for §§ 319, 319b or - in its scope - for § 319a German Commercial Code (HGB).

Section 5 corresponds to § 319 Section 5 of the German Commercial Code (HGB) and serves clarification, that the requirements of § 22a also apply to (statutory and voluntary) audits of consolidated financial statements.

On § 23:

The rule is based on § 57 Section 4 No. 2 WPO.

In evaluating whether there is a commercial dependency as defined in **Section 1 No. 2**, the threshold value specified in § 319 Section 3 No. 5 of the German Commercial Code (HGB) is to be applied, for audits of companies defined in § 319a of the German Commercial Code (HGB) the value specified in that rule is to be applied.

To the extent that the WP/vBP receives goods and services from the audited company **(Section 1 No. 3),** it is considered benign if these transactions are as if conducted among unaffiliated third parties, not however, if they represent one-sidedly favourable conditions for the WP/vBP. Discounts are benign if they are also offered to third parties.

Providing credit **(Section 1 No. 4)** to the audit client can lead to the risk that the WP/vBP will be influenced in his auditing judgement, because he fears that his auditing opinions may have negative repercussions on the solvency of his debtor.

In evaluating whether there is a threat to unbiasedness, one has to consider factors such as the client's type of business activity (e.g. bank) and the significance of the amount for the asset situation of the WP/vBP, along with collateral (collateral provided; obligations to secure collateral).

Receiving a loan from the client, on the other hand, only leads to a threat to unbiasedness if the creditor, due to unusual circumstances (e.g. unspecified terms), can exert considerable economic pressure on the WP/vBP. Dependency due to a bank guarantee by the WP/vBP on behalf of a client has already been covered in § 2 Section 2 No. 4, however it is once more explicitly mentioned here for clarification purposes.

Outstanding fee receivables **(Section 1 No. 5)** are generally considered benign. Only if an amount has accrued over a longer period of time and is significant to the economic standing of the WP/vBP, is this considered tantamount to providing a loan as defined by No. 4. In this, it makes no difference whether an explicit extension agreement has been negotiated.

Section 2 deals with risks to the unbiasedness of the WP/vBP which may occur in association with past breaches of duty. As a general risk that cannot be excluded, the abstract possibility that the WP/vBP breached his duties in a past audit and is liable for this does not lead to suspected bias. It is much more relevant to examine the particular circumstances that provide grounds for suspected bias in an individual case.

According to **Section 2 No. 1** there may be suspected bias if the WP/vBP does not disclose a defect he has discovered in the accounting and thus a breach of duty in a previous audit, as here there is the risk that he may withhold his discovery during the current audit, in order to avoid a claim, a loss in a pending damages suit against him or considerable damage to his reputation (risk of occlusion). However, this does not apply to cases of insignificant material value.

By contrast, accounting defects that were not discovered by the auditor in the previous audit, but which in the meantime have become known to the auditor and the principal, do not provide grounds for bias if they are eliminated or avoided in the subsequent financial statements.

Section 2 No. 2 is based on No. 9 of the EU recommendation, whereby already the probability of a lawsuit may provide grounds for evaluating unbiasedness. In such cases, suspected bias may result from the company being audited threatening to prosecute the alleged claims in case the WP/vBP does not concur with the company’s view on other, perhaps critical, points.

Whether legal disputes create such coercive means is to be evaluated according to the circumstances of each individual case. In this, it depends upon the nature of the allegations, their substance, as well as the extent of possible negative consequences for the WP/vBP (claims for damages, damaged reputation). If such legal disputes have been settled up to the end of the audit, there is generally no longer any reason to suspect bias. If court proceedings are pending, it must be taken into account in the evaluation that no influence can be brought to bear on the decision, so that the ability to exert pressure is significantly diminished.

On § 23a:

The rule is based on § 57 Section 4 No. 2 WPO and deals with aspects of commercial law that are regulated in particular by § 319 Section 3 No. 3 and § 319a Section 1 Sentence 1 No. 2 and 3 of the German Commercial Code (HGB).

Section 1 contains the principle that self-auditing is prohibited. It does not meet the requirements of an impartial audit if it is conducted by persons who were involved in preparing materials to be audited or contributed to the occurrence of events and this was not inconsequential. The reason for the prohibition of self-auditing is the concern that in cases which the WP/vBP himself shaped, he will either not discover the defects during the audit (professional bias) or if he discovers defects, he will seek to not dutifully disclose them in the course of the audit in order to avoid disadvantages (self-protection).

Thus it primarily covers risks from previous activity in which one was directly involved concerning the audit or expert opinion. But even if the previous involvement had to do with an auditing activity and therefore the condition for self-auditing is not met **(Section 2),** the risk cannot be completely eliminated that in a subsequent audit previously-overlooked defects will be discovered and, due to possible liability claims, will not be disclosed. This risk is unavoidable, because an annual change of auditors would not be practical, and can also be accepted because the discovery of an objective defect as part of a subsequent audit does not generally indicate the risk of occlusion (see above § 23 Section 2 No. 1 along with annotations). Decisive for applying Section 2 is not the formal designation of the activity but rather the function of the WP/vBP.

Section 3 corresponds to § 319 Section 3 No. 3 a) of the German Commercial Code (HGB). Significant contribution to the subject of the audit which would lead to exclusion from the audit is to be differentiated from measures that in their functional context are part of the auditing activity.

The WP/vBP shall dutifully point out to the client any objections or defects discovered (corrective function of the auditor). In this, he must not limit himself to abstract objections but can and shall provide concrete instructions for an accurate treatment of the issues. This is unobjectionable as long as after an assessment of the overall situation, the processing of the accounting materials remains within the company. Under this precondition, advising the company on a larger number of corrections is not objectionable.

According to **Section 4,** suspected bias is founded if the WP/vBP assumes a decision-making role in carrying out the internal audit. By contrast, suspected bias is not triggered if the WP/vBP merely makes comments on the possible or legally appropriate handling of issues or business transactions in the accounting system, be it during the current audit (advisory accompanying the audit), be it prior to taking up the auditing activity (advisory in preparation of the audit), the decision, however, remains within the client's area of responsibility. The same applies for advisory services in the area of balance sheet management (e.g. the consequences of different valuation methods) or with respect to the design of the accounting system. The participation in the completion of accounting and group consolidation guidelines or other booking procedures is permissible if the activity of the WP/vBP is restricted to the description of general principles and the clearer definition of options or discretional latitude as well as concrete implementation of the guidelines are left up to the client.

If the WP/vBP assumes executive functions at an audited company **(Section 5),** this irrefutably constitutes suspected bias, as it cannot be ruled out that due to his alignment with the interests of the company as part of his executive duties, he would ignore the duty to maintain required independence. In particular, he would not be able to audit without prejudice the ramifications of measures or decisions for which he himself was responsible. Because WP/vBPs cannot enter into employment contracts with commercial enterprises, the basis for employment could only be an agreement on the rendering of free-lance services. A board member function is not assumed in this context.

The assumption of executive duties is detrimental not only if it pertains to the fiscal year to be audited but also if it is commenced in the subsequent year, yet prior to the completion of the audit or if it indeed was ended prior to he beginning of the fiscal year to be audited, but has a direct impact on matters in the fiscal year to be audited that involve the executive function.

According to the general accountability rules (comp. § 21 Section 4) the WP/vBP is still excluded even if persons with whom he jointly practises his profession or who are working on the audit are serving or have served as executives in the company to be audited. This accountability does not extend, however, to persons who are employed by the WP/vBP, if this relationship is inactive and if the contractual relationships on which the assumption of executive responsibility are based are exclusively between the employee on leave and the company. In this case the WP/vBP is liable neither for any breaches of duty in the exercise of executive function nor is he affected by the success of this activity.

If a person employed thus far on the audit changes jobs to assume a long-term executive function at that company, this does not trigger the prohibition of activity from § 319 Section 3 No. 3 lit. c of the German Commercial Code (HGB), because by ending the activity, the accountability issue becomes moot for the auditor.

Whoever was himself an auditor or responsible auditing partner at a company as defined in § 319a Section 1 Sentence 1 of the German Commercial Code (HGB), must, however, adhere to the prohibition of activity in § 43 Section 3 WPO; the cooling-off period lasts two years from completion of the auditing activity. For the rest it should be examined whether based on other aspects (e.g. close personal relationship; comp. § 24), there is suspected bias on the part of the auditor.

The rendering of financial services as defined in Section 5 is cause for suspected bias especially if it involves investing assets of the company to be audited, because then negative findings over the course of the audit could lead to liability consequences for the service rendered or at least to a damaged reputation for this activity. In acquiring or brokering shares or other financial instruments of the company to be audited, the WP/vBP has a direct financial interest in the economic situation of the audited company, so that he cannot submit his evaluation as an auditor free from conflict of interest.

Actuarial services are excluded according to **Section 6** if they have an impact on the content of the financial statements to be audited, in particular the valuation of provisions for pensions, and for insurance companies also the calculation of actuarial reserves. If the development and implementation of the actuarial methodology is substantially in the hands of the WP/vBP responsible for making these calculations, and if he thus arrives at predictions that have a de facto significance for the valuation, then suspected bias exists even if the decision to use the calculated figures in the financial statements formally lies with the management of the company issuing the financial statements.

Valuation services with ramifications on the content of the financial statements to be audited (Section 6) pertain particularly to the valuation of affiliates included in the financial statements to be audited.

Thus the valuation of a certain affiliate earmarked for sale generally does not constitute suspected bias because the affiliate, if it has not been sold by the key date, will continue to be listed at book value and even if it has already been sold by the key date, the valuation will only have an indirect effect on the financial statements because the purchase price is definitively determined not by the valuation but by the contract. To the extent that there is a need for a write-down in the valuation and the affiliate is not yet been sold, the valuation corresponds to the asset value necessary for the auditor's assessment anyway, if the company ultimately determines the value of the write-down independently; this is already routinely the case due to the different valuation key date.

On the other hand, if an affiliate share to be acquired is valued by the WP/vBP, suspected bias could occur for the subsequent financial statements if the purchase price is agreed in the amount stated in the expert opinion, because the WP/vBP as auditor, in judging the need to write down assets on the key date, would indirectly judge his own opinion and could possibly face liability risks if he arrived a lower value without any substantial change in the circumstances. This self-auditing risk is substantially lower or even excluded if the result of the valuation is not a particular amount but rather a broader range that has been determined; this is particularly the case if instead of a valuation only an investigation is made on key parameters for the valuation or if only a broad, indicative valuation is to be made which has no binding character. In such cases the irrefutable suspicion of bias in § 22a Section 2 does not apply.

Valuation services necessary for the audit are not grounds for suspected bias. Such an evaluation by the auditor is particularly necessary in the case of impairment review of asset values included in the financial statements (impairment test) and the client does not submit his own valuation that can be understood by the auditor. If there is the need for a write-down of assets, corrective entries may lead to suspected bias if they are based on uncritical adoption of the auditor's findings but not made on the basis of own considerations and decisions by the company – even though they are precipitated and influenced by the findings of the auditor.

The partitioning of the total purchase price paid for a company into individual assets and liabilities by the WP/vBP would be considered an independent evaluation service and lead to suspected bias, even if in these cases the total purchase price does not fall within the influence of the WP/vBP and a defective evaluation of individual asset classes in case of doubt leads to a higher value of another asset or to a higher company valuation. Because the type of asset is relevant to the continued valuation of acquisition costs, this has a material impact on the financial statements to be audited. If the engagement only involves support in how to classify the asset, however (explanation of methods; discussion of questions in doubt), but the concrete valuation and decision on implementation remains with the company, this does not substantiate any suspected bias.

An impairment audit of non-cash contributions (comp. §§ 33 et seq., 183 Section 3 of the Stock Corporation Act (AktG) basically does not lead to suspected bias, because it has to do with an auditing activity. As in two successive financial audits, the auditor cannot be found biased because he issued an opinion on the same asset on a previous occasion. Moreover, the value of the contribution and the acquisition costs are often assessed at a much lower amount than the current market value. It would be unacceptable, however, if the auditor had set the fair market value himself and this had been the basis for preparing the balance sheet. For the shareholder making the contribution, however, this would only be the case if he didn't treat the transaction as a swap resulting in neither profit nor loss, but rather used the fair market value determined by the WP/vBP, because when the book value is carried over, the valuation has no effect on the contents of the financial statements to be audited.

If valuation services are performed to determine asset values during a change of legal form, yet they do not have a direct effect on the balance sheet of the audited company, because for example, the company opts to keep the book value, this does not constitute any suspected bias. While the amount of shareholder's equity stated in the balance sheet is indeed determined by the amount of the capital increase and thus indirectly by the derived conversion ratio, because the amount of capital is not subject to an auditor's material evaluation, however, rather he is to evaluate the formal derivation from shareholder transactions, to that extent there is no risk of self-auditing. When the book value is used, the assets on the balance sheet are not listed on the balance sheet at values determined by the auditor, thus there is no material relationship between the two.

The auditing of the adequacy of exchange ratios, as is the case with a merger auditor, generally does not lead to suspected bias, because it does not involve an asset valuation but rather an auditing activity; conducting an audit generally does not substantiate suspected bias for the successive audit, as long as no other circumstances come into play (e.g. risk of occlusion). The same applies to audits of adequacy of compensatory payments or severance packages, for example as a contract auditor (§§ 293b et seq. of the Stock Corporation Act (AktG)) or in the squeeze-out of minority shareholders (§ 327c Section 2 Sentence 2 of the Stock Corporation Act (AktG)).

The question as to whether the ramifications for the audited financial statements are merely immaterial can only be answered uniformly for all valuation services rendered to a company in a fiscal year by the WP/vBP having an impact on the financial statements. For this reason and because the basis for comparison can only be derived from the financial statements to be audited themselves, it is problematic in practise to assume valuation services that may lead to bias only under the premise of the materiality threshold.

Section 7 clarifies the fact that only in exceptional cases do tax advisory services lead to the irrefutable suspicion of bias when auditing companies that are participating in an organised market as defined by § 2 Section 5 German Securities Trading Act (WpHG). Such an exception only occurs when the WP/vBP contractually renders concrete suggestions or recommendations, the implementation of which would have direct and significant ramifications for the portrayal of the asset, financial or profit situation in the annual financial statements to be audited. When such measures are implemented according to the input of the WP/vBP, he assumes liability for the success and thus for the occurrence of the effects that will alter the financial statements. Conversely, there is no suspected bias if the WP/vBP explains the (fiscal) legal status either in abstract terms (e.g. when there are amendments to the law or in legal precedent) or certain issues, the judgement of which is the subject of the audit.

The supporting activity or representation of the client within the scope of an internal audit or in legal remedy proceedings in and out of court is generally acceptable. If the engagement includes presenting several alternative constructs for portraying the legal situation, even an evaluation of pro's and con's by the WP/vBP does not pose the risk of self-auditing. It is something different entirely if the client does not have even a rudimentary comprehension of the arguments or complexity of the constructs and thus loses not only the functional but also material power of decision-making.

According to **Section 8,** the collaboration on the development, installation or introduction to accounting information systems in the function of someone involved in the system design is grounds for suspected bias under the aspect of the risk of self-auditing. This needs to be differentiated from consulting services, which have an immediate impact on the financial statements as well as collaboration as part of auditing duties (see Section 3 above). Not considered irrefutable grounds for suspected bias are therefore auditing services in association with application development or implementation of standard software and its adaptation on the basis of IDW Accounting and Auditing Board PS 850. This applies to new developments, changes and expansions of the IT system. In this, the activity can also accompany the project in parallel in each phase of development and implementation, in order to ensure that the newly-developed, modified or expanded IT-based bookkeeping system as an integrated part of an advanced information and communication system fulfils all the criteria for truth and fairness and to this extent ensures that the preconditions for orderly bookkeeping are in place. The auditing activity accompanying the project is limited to the audits of the solutions designed by the systems developers according to guidelines for truth and fairness and controlling aspects, but does not exclude providing hints or suggestions for adherence to truth and fairness guidelines or for introducing additional accounting controls. Within this scope, the definition of the system and program requirements for supporting the auditing of financial statements is permissible, as long as the activity of the WP/vBP is restricted to the presentation of general inputs and more detailed processing as well as implementation are left up to the client.

On § 23b:

The rule is based on § 57 Section 4 No. 2 WPO.

In **Section 1** basic examples of representation of interests are illustrated that can lead to suspected bias. Accordingly, this includes not only representation of interests of companies to be audited, for which an expert opinion is to be issued or which commissions the engagement, but also the representation of interests of third parties against these companies. The precondition in each case is that representation of interests is not of minor significance but rather carries some significance.

Sections 2 and 3 provide indications of the circumstances under which the basic cases specified in Section 1 may occur.

There are problematic cases as defined in **Section 2** where the WP/vBP acts as, or similar to, a fully authorised representative of the company or offers company shares or products and therefore substantiates personal profit or fee interests. This creates the impression that the auditor has entered into a particularly close professional interrelationship with the company.

According to **Section 3** the assumption of fiduciary duties on behalf of shareholders is only problematic if the interests of individual shareholders or shareholders groups are represented. Conversely, it is benign if the fiduciary activity is on behalf of all shareholders. The same applies if merely supplemental control functions have been or are being carried out on behalf of (also individual) shareholders and all other shareholders have consented to this. The supplementary control function involves in particular access to books and accounts according to § 166 German Commercial Code (HGB) and § 51a of the German Limited Liability Company Act (GmbHG) or the audit of the use of deposited funds.

On § 24:

The rule is based on § 57 Section 4 No. 2 WPO.

As in the case of representation of interests (§ 23b) not all cases constituting close personal relationships are covered here, but only those of considerable significance. Close personal relationships as defined in § 24 can lead to suspected bias if according to the full assessment of the situation, they may lead to the assumption that because of these relationships an excessive trust exists between the WP/vBP and the specified persons, which can affect the ability to make judgements. In addition to the nature of the relationship (e.g. close relatives or mere friendship, facilitated, for example, through common membership in a club), its length and intensity, it also has to do with the function of the other party in the company or the audit subject. According to § 21 Section 4 No. 4 such relationships can also be relevant if they are maintained by a close relative of the WP/vBP. In the case where one of the employees of the WP/vBP leaves to work for a client, it depends upon the previous function of the employee (WP responsible for the audit, member of the audit team, employee in an executive function working for the WP/vBP, or another miscellaneous employee), the circumstances that led to the change, the position the person in question will be assuming on behalf of the client (e.g. executive function in the accounting department) along with the time that has passed since the change. Existing risks may be minimized through safeguards such as inspection of the audit findings of the person who changed jobs, if he was a member of the audit team, or the assignment of persons without close personal relationships to the audit team.

When the auditor or responsible WP changes jobs to his previous auditing client and this is a

company as defined in § 319a Section 1 Sentence 1 of the German Commercial Code (HGB), according to § 43 Section 3 WPO he may not carry out any vital executive functions there for a period of two years. Upon expiry of this period, safeguards are no longer required. If the person changing jobs carries out any other function in the area of accounting during the cooling-off period, safeguards are required, just as they are also necessary if despite sanctions as a misdemeanour (§ 133a WPO) a vital executive function is assumed prior to expiry of the cooling-off period.

On § 24a:

The rule is based on a charter authorisation pursuant to § 57 Section 4 No. 5 WPO and supplemental to the general rules in § 4 Section 2 and 3.

To ensure adherence to professional duties in § 24a, rules of the quality control system of the WP/vBP practise are to be developed according to § 32 No. 9 for processing assurance audits for which the seal is used.

Through objective overall planning of audit engagements, the conditions are to be created so that the audit engagements which have been accepted and those anticipated can be carried out in an orderly and timely manner while upholding professional duties. The type and manner, along with details of audit planning depend upon the size and complexity of the company to be audited, the level of difficulty of the audit, the auditor's experiences with the company and the knowledge about the business activity as well as the company's commercial and legal environment.

In planning each audit, regardless of whether it is an initial or subsequent audit, all of the key accounting issues are to be newly evaluated. In a follow-on audit, it is already possible to refer back to the knowledge and experience gained from the previous year's audit. Audit planning is a process that guides the audit from start to finish. It is to be adjusted during the audit, if this is necessitated by the scope of the audit.

Sections 2 and 3 more clearly define conscientious professional practise according to § 43 Section 1 Sentence 1 WPO. The explicit mention is intended to clarify the determining responsibilities.

Evaluations of employees at regular intervals may serve to facilitate upholding this professional duty according to § 6 Section 3.

This ensures that the professional requirements for carrying out the audit are reflected in the composition of the auditing team. In selecting the members of the auditing team, care should be taken as to the qualification of the employees, the continuity and/or routine rotation in personnel assignments, the availability of time and independence of employees towards the client as well as the experience in managing the employees. An understanding for the practise's quality control system must exist so that tasks assigned to the employees in the auditing team can be fulfilled while also upholding the quality control standards.

On § 24b:

The rule is based on the charter authorisation in § 57 Section 4 No. 5 WPO.

To ensure adherence to professional duties in § 24b, rules of the quality control system of the WP/vBP practise are to developed for processing assurance audits for which the seal is used according to § 32 No. 10.

Section 1 Sentence 1 obliges members of the profession to familiarise staff assigned to audit activities in a reasonable and sufficient manner with the tasks necessary to process individual auditing engagements and to instruct them concerning their responsibility. WP/vBPs meet this obligation to inform staff by providing written and verbal audit instructions. The audit instructions shall ensure that the audit can be conducted objectively and in ways cognizant of the risk factors, guaranteeing sufficient and orderly documentation of the audit routines in the working papers as well as reasonable and timely completion of the reference file. Moreover, the audit instructions provide the basis for completing an orderly report. The audit instructions are to be adapted to circumstances that develop over the course of the audit. Supervision is also necessary to ensure that the WP/vBP can form his own independent audit opinions.

The principle of conscientious professional practise requires that WP/vBPs submit their independent audit opinions only after resolving any reservations material to their audit opinion. This is clarified by **Section 2**.

The seeking of professional advice in case of reservations, i.e. in questions that cannot be resolved by the WP/vBP without consultation, serves to uphold the professional duties of conscientiousness and own responsibility.

The resolution of these questions should be completed as early as possible, so that their consequences may be taken into account in further audit procedures. If an adequate consultation partner is not available in the practise, outside advice is to be sought. This may include in particular professional colleagues or professional organisations. The findings of the consultation are to be weighed upon one’s own responsibility. This means that the consultation does not release the auditor from his own responsibility in making judgements. The significance of the professional advice obtained requires that the findings of the professional advice and the conclusions drawn from it are to be documented.

Section 3 clarifies that the WP/vBP responsible for the engagement (§ 24a Section 2) is to participate in carrying out the audit at a level that enables him to reliably reach his own judgements. For this purpose, prior to completing the audit, the WP/vBP is to evaluate the work of those involved in the audit as well as the documentation of the audit routines and findings with respect to adherence to statutory and professional rules (four-eyes principle). Section 3 Sentence 2 makes it clear that audit-based quality control according to § 24d is also subject to judgement based on own responsibility.

Section 4 more clearly defines the requirements for normal professional diligence for issuing so-called “second opinions” and thus in such cases supplements the existing duty from Section 2 to seek professional advice in cases where there are doubts as to key issues. As opposed to Section 2, however, the objective of the rule in Section 4 is not to seek out additional professional expertise but rather to obtain information on the subject which the expert needs concerning the operating environment of the company and in particular on accounting questions which may be of significance to the auditing exercise.

The rule only applies to engagements requiring expert opinions, which are aimed at judging the accounts on concrete issues and measures. This may involve isolated individual questions on accounting, on valuation or on the scope of disclosure requirements, in addition to opinions as to the accounting ramifications of already completed or pending transactions, for example in the area of company acquisitions or contracts involving structured financial products.

Engagements which require an evaluation with arguments are not covered by the rule.

The same applies to engagements for abstract opinions on instruments that a financial services company may wish to offer its customers and examine their potential accounting impact on customers. For such cases (so-called “generic opinions“) it is not possible to establish contact to the auditor of the future customers, because these customers are not yet known.

The problem scenario, where the expert has no knowledge about the concrete situation of the future customer and company issuing financial statements, must be taken into account by clearly pointing out in the expert opinion that due to the missing information about the concrete implementation in each individual case and the situation surrounding the company issuing the financial statements, only a preliminary evaluation may be issued from an accounting perspective, and in a concrete case a different judgement may be reached.

Not covered by the rule in Section 4 either are engagements for preparing statutory annual financial statements which are subject to a compulsory audit. Here the function of preparer has the automatic effect that findings of the evaluation by the engaged WP/vBP are presented to the auditor in the form of the prepared financial statements or the previously submitted materials are presented to the auditor for evaluation. Establishing prior contact with the auditor outside normal auditing routines is not necessary, especially because the WP/vBP hired to prepare the statements has comprehensive information himself about the company's operating environment. That is the same reason why Section 4 is not applicable either if the third-party WP/vBP has been engaged by the company for ongoing assistance in preparation of financial statements, which may be the case particularly when switching over to internationally accepted accounting standards.

The rule in Section 4 is actually not to be applied if an expert opinion is to be issued after the financial statements have been audited and ultimately is intended to evaluate the financial accounting.

Section 4 Sentence 1 requires that the expert engage in a conversation with the auditor of the company. The purpose of this rule is that a written inquiry followed by a written response is not considered sufficient. This would not only considerably handicap the transmittal of partially sensitive information but would also greatly limit the scope of information. A conversation is also necessary in order to respond to the information obtained and to be able to follow up with questions.

The topics to be addressed in the conversation with the auditor depend upon the situation of each individual case. The subject involves the implementation, substance, and background of the subject or planned transaction. Conceivably there could also be supplements to the subject being evaluated, details of the planned transaction, explanations about the legal and overall operating environment of the company, comments on the economic causes and effects or also remarks concerning ramifications of the company's using particular accounting principles (e.g. questions regarding consistency). Even if it is not the main objective of the discussion with the auditor, the professional judgement of the subject and the opinion of the auditor ought to be regularly addressed in this context.

Because both the expert and the auditor are sworn to confidentiality, the establishment of contact presupposes that the company has released the auditor from his obligation to confidentiality and that the principal consents to the establishment of contact. In order to ensure the establishment of contact, **Section 4 Sentence 2** provides that consent to the establishment of contact and the release of the auditor from confidentiality already be agreed upon when the expert opinion is being contracted. If the company is not willing to do this, according to **Sentence 3** the engagement is to be declined or abandoned. The auditor himself will not be able to decline such a discussion if the company has released him from confidentiality.

On § 24c:

The rule is based on the charter authorisation in § 57 Section 4 No. 5 WPO.

In order to ensure adherence to professional duties in § 24c in processing assurance reports for which the professional seal is used, rules are to be devised for the quality control system of the WP/vBP's practise according to § 32 No. 11.

In the WP/vBP practise responsibilities (§ 31 Section 2) are to be specified for handling complaints and allegations. Professional practise upholding the professional duty of conscientiousness is intended to underscore that information indicating violations of legal or professional rules of WP/vBPs will be consistently investigated.

On § 24d:

The rule is based on the charter authorisation in § 57 Section 4 No. 5 WPO.

In order to ensure that the professional duties in § 24d are fulfilled, the WP/vBP practises are to devise sufficient rules for the quality control system for which the professional seal is or must be used, according to § 32 No. 12.

The report critique regulated in **Section 1**, which due to its significance for engagements where the use of the seal is mandatory, is intended to provide an additional safeguard with respect to audit findings and their portrayal in the audit report, in that the activity of the responsible WP/vBP is subject to the "four-eyes principle". The report critique is therefore to be carried out prior to delivery of the audit reports.

The content of the report critique is described in the rule itself. It first of all serves to check whether the prevailing professional rules that apply to the preparation of audit reports have been upheld.

In addition, on the basis of the audit report, it should be determined based on a plausibility check that the remarks on the essential audit procedures did not uncover any violations of professional rules, whether the insights portrayed in the report were derived from accurate conclusions and judgements from the audit and, to that extent, whether the audit findings were derived in a logical manner. Only when the opinion in the audit report gives rise to queries are the working papers to be consulted or further information to be requested.

According to Section 1, the report critique is generally necessary and also binding on engagements for which the seal is used. The report critique can only be waived in exceptional circumstances if this is justified based on objective grounds concerning the current audit. Thus the decision as to whether the report critique may be waived does not lie within the full discretion of the WP/vBP. Rather, the decision should be guided by whether the quality of the audit procedures in an individual case is still guaranteed even without adhering to the four-eyes principle.

The determination that the quality of the audit procedures are guaranteed even without the completion of a report critique may be possible particularly if the audit risk for the given engagement is considered particularly low. For this, some of the possible criteria may be considered:

- Company size and sector;
- Complexity and transparency of the company's structure;
- Complexity of the accounting system;
- Continuity or significant changes in the company's status;
- Initial or subsequent audit.

In deciding whether a report critique can be waived, it should also be taken into account whether in the WP/vBP practise the organisational steps have been implemented to ensure that changes in the legislation, legal precedent and auditing standards are reflected in a timely manner in audit planning documents, the interpretation of the audit findings and the preparation of the audit report.

Within the scope of fully evaluating all factors, which can only be completed once the essential circumstances are known, inside or outside professional advice may have to be consulted (§ 24b Section 2). In borderline cases, a report critique should be completed, to the extent that this is not unacceptable given the circumstances of the individual case. The grounds which from the perspective of the WP/vBP justify not conducting a report critique are to be adequately documented.

The person conducting the critique must be professionally and personally capable of carrying out such a report critique. The professional ability may include specialised knowledge (e.g. industry knowledge) necessary for each engagement. The personal ability presupposes a minimum of professional experience as well as the report critic's objectivity and independence towards the subject being evaluated. In order to avoid self-auditing, the report critic cannot have worked on the preparation of the audit report. Participation in conducting the audit does not *a priori* exclude one's aptitude as a report critic, however, to the extent that the participation was not material to the overall evaluation of the audit procedure and findings. If no one is available in the practise who meets these requirements, a qualified outside expert must be consulted on the report critique according to Section 1 Sentence 4.

The quality control accompanying each engagement according to **Section 2** is mandated by the professional charter for statutory audits of companies of public interest according to § 319a of the German Commercial Code (HGB). It is conducted throughout the entire audit procedure, thus from audit planning up to the reporting stage. The inclusion of the report critique according to Section 1 is mandated.

This does not mean that the quality control measures accompanying each engagement, along with the report critique, have to be carried out by one and the same person. The responsible WP (§ 24a Section 2) is to undertake to ensure that the quality control accompanying each engagement is carried out according to the rules prevailing in the practise. Quality control accompanying each engagement is to determine whether there are clues to suggest that the engagement was not carried out according to the regulations and professional rules, and whether essential issues were sufficiently addressed. The responsible WP (§ 24a Section 2) is to make a judgement on his own responsibility, taking into account the observations of the quality control officer.

The quality control officer accompanying each engagement must be adequately qualified both professionally and personally. For an audit of companies of public interest according to § 319a of the German Commercial Code (HGB), the quality control officer will thus typically be a WP. In order to do justice to his task, he must have the proper distance to audit processing. He therefore cannot participate in carrying out the audit. Objectivity must not be impaired by other factors (e.g. influence of the responsible WP on the selection of the quality control officer accompanying the engagement). If objectivity is jeopardised, another quality control officer must be named. To the extent that no other person meeting the requirements is available in the practise to carry out quality control accompanying the engagement, a qualified outside person must be engaged.

Sentence 5 contains a rule for rotation of the quality control officer, which supplements the internal rotation according to § 319a Section 1 Sentence 1 No. 4 and 5, Section 2 of the German Commercial Code (HGB). If the conditions are met for a rotation, **Sentence 6** enables the repeat assignment of the quality control officer accompanying the audit only after the cooling-off period has expired. **Sentence 7** details the facts regulated in Sentence 5 and 6 in terms of audits of consolidated financial statements.

Because quality control for each audit contributes to a large degree to overall quality control, **Section 3** provides that WP/vBP practises are to explicitly regulate whether for audits other than those specified in Section 2, they intend to conduct quality control for each audit for the processing of these engagements and cases for which this is to apply. Criteria may arise, among other things, from special risks of a sector or job.

On § 25:

The rule is based on the charter authorisation in § 57 Section 4 No. 1 a and 2 a WPO.

The question of taking over or using the findings of third parties occurs not only with audits but also when preparing expert opinions. Such findings may originate from national or also international sources. Essentially it involves audit findings of other auditors or an internal audit as well as investigative findings of other institutions or experts.

The principle of acting on one's own responsibility requires that the WP/vBP formulate his own judgements and make his own decisions. This does not rule out that under certain conditions he might use the audit findings and investigations of other auditing institutions or other entities. Even if the responsibility of the WP/vBP is not restricted by his taking over or using the findings of third parties, it should be clearly indicated to others that the WP/vBP relied on the information of third parties for making his own judgement.

This means that the type and scope of use of third-party findings in all cases depends on whether and to what extent the third party fulfils the professional and personal prerequisites for taking over his work results and to what extent in a concrete case the findings of the third party – at least in terms of their essential steps – are verifiable.

On § 26:

The rule is based on the charter authorisation of § 57 Section 4 No. 3 a WPO.

Section 1 states the duty of the auditor when taking over an audit, in case an engagement to audit annual financial statements has been terminated for good cause by the previous auditor or such an engagement has been revoked by the client due to the appointment of a new auditor according to § 318 Section 3 of the German Commercial Code (HGB), to become instructed on the reason for the termination or the revocation and the findings of the audit thus far. Otherwise, important facts for carrying out the audit engagement may remain concealed from the auditor to be newly engaged. According to § 318 Section 6 Sentence 4 German Commercial Code (HGB), the auditor terminating the engagement has been obliged to report on the findings of the audit to date. Additionally, § 320 Section 4 of the German Commercial Code (HGB) commits the previous auditor to reporting on the findings of the previous audit to the new auditor upon written inquiry, also in all other cases of change of auditor. The auditor taking over the audit is to familiarise himself with these findings.

Section 2 more clearly defines the content of an orderly instruction with reference to the key provisions of the German Commercial Code (HGB).

Section 3 requires that the engagement predecessor explain the specified materials to the account successor upon request. If the account successor is unable to obtain sufficient information about the grounds for the termination either from the account predecessor or the findings of the audit thus far, he is to decline the engagement. The company to be audited is at liberty to submit the necessary materials.

Section 4 seeks to ensure that the account successor, even in case of a regular change of auditors, has the report on the previous audit presented to him in the following year. Even after a regular change of an audit engagement it is necessary that the WP/vBP obtain sufficient information on the client. An essential means for doing so is the report on the previous audit. It is up to the account successor whether he turns to the client or the account predecessor to obtain the audit report. To the extent that he turns to the account predecessor, the latter has the duty to present information to the account successor.

Section 5 expands the existing duties for statutory audits of annual financial statements where the audit engagement is ended to include all ended, non-statutory audits, for which an auditor's opinion is to be issued equivalent to the statutory auditor's opinion in § 322 of the German Commercial Code (HGB). This conforms to the principle that for voluntary audits of financial statements, basically no other professional duties may exist for the member of the profession than for statutory audits.

On § 27:

§ 27 of the professional charter is supplemental to § 55a WPO and is based on the charter authorisation pursuant to § 57 Section 4 No. 1 f and 2 a WPO. The rule concerning the level of remuneration is supplemental to the prohibition on contingency fees and conditional remuneration (§ 2 Section 1 No. 1 and 3) and applies to audit and expert opinion engagements.

Section 1 Sentence 1 clarifies the close relationship between the performance and the quality of professional practise when carrying out audits and preparing expert opinions. A reasonable quality in particular requires sufficient time for completion of each order as well as the assignment of qualified employees. For remuneration which is too low, there is generally the risk that the work will not do sufficient justice to these requirements. This may lead to deficiencies in the quality of the findings and therefore ultimately to breaches of duty to practise the profession conscientiously. The rule is thus closely related to § 4 Section 2 second alt. This risk also exists when reasonable remuneration has been negotiated but is not charged when the services are billed. This does not exclude customary discounts or credits in case of less time and effort required, however.

Section 1 Sentence 2 clarifies that due to the relationship demonstrated in Sentence 1, the norm requires the negotiation of reasonable remuneration. Remuneration is generally considered reasonable when it is based on a calculation that reflects the time and deployment of personnel of the necessary scope required to complete the engagement. There are no legal prescriptions for basing the calculation on a certain hourly billing rate, however. Under business considerations, a fee that does not cover all costs can sometimes be useful if it helps attain a marginal profit contribution that would otherwise not be achieved. If no other aspects come into play that make such an agreement appear in violation of fair competition and therefore impermissible according to the provisions of the Act against Unfair Practises (UWG), such fee agreements are not absolutely forbidden; which means that this regulation primarily represents an appeal to professional ethics. Nonetheless, negotiating a fee which is very low by comparison may lead to the concern as to whether the engagement received proper due diligence. The negotiation of reasonable fees thus also helps to avoid such doubts and the subsequent time and effort needed to provide justification.

The WPK is obliged to investigate concerns about auditing quality, which occur in the case of especially low fee arrangements. According to § 55a Section 1 Sentence 3 WPO in association with Section 1 Sentence 3, the WP/vBP is to provide documentation to the WPK upon request that a reasonable amount of time was dedicated to the audit and qualified personnel were assigned. The WPK has both the right and the obligation to request such proof if there is a considerable discrepancy between services rendered and remuneration negotiated. This rule applies to all statutory audits, but as opposed to Section 1 Sentence 1 and 2, not to other audits and expert opinions, however.

Establishing the criteria for taking action (considerable discrepancy) is not easy, because there are no prescribed fee schedules (see above) and the necessary scope of services cannot be readily recognised either. According to the meaning and purpose of the rule, this proof can only be demanded in extraordinary cases. This might include an hourly rate which for example falls below normal average rates for personnel costs, or a considerable reduction in the audit fee compared to the previous audit, especially when there is a change in auditors. The WPK investigates such cases based on tips from third parties, conclusions during the review of audits (amount of the audit fee compared to the time) or conclusions gained from ad-hoc special investigations; such cases can also be determined and investigated within the scope of a quality control audit.

The member of the profession involved first of all has the opportunity to convince the WPK that despite the fulfilment of one of the above criteria for investigation, the concrete case at hand does not involve a considerable discrepancy as defined in the rule. With a reduction of the audit fee compared to the time required, for example, it can be proved that the quantity structure had changed accordingly or that efficiencies were realized. If the considerable discrepancy still persists, the WP/vBP must provide proof to the WPK by submitting the audit planning schedule and records of the actual performance of the audit, that he invested enough time and dedicated enough personnel to carry out the engagement.

Risks for the application of proper due diligence for audit and expert opinion engagements can also occur when a flat fee is negotiated. That is why **Section 2** puts forth special requirements for this case. Normally the scope of necessary tasks cannot be ascertained at the time the engagement is commissioned, because while the audit is being performed, facts may come to light that were not recorded during audit planning and which may require supplemental auditing steps or further expert opinions. Nonetheless, the negotiation of a flat fee is not ruled out here, especially for predominantly standardised auditing routines in clear-cut cases. The negotiation of a flat fee is not uncommon, as seen for example in the Contracting Rules for the Award of Contracts in Liberal Professions.

In order to avert these risks, the negotiation of a flat fee for engagements involving auditing and expert opinions always presupposes the agreement that in case of unforeseen circumstances which lead to a considerable increase in a WP/vBP's time and effort, the fee is to be increased accordingly (adjustment clause). To the extent that an adjustment clause is at odds with binding regulations under public law or at the European level, the collision of laws – also with respect to the basic right of occupational freedom (Art. 12 of the Basic Law of the Federal Republic of Germany (GG)) – is to be resolved in favour of the regulations bound by public law or European law. Where a public entity, citing procurement regulations (e.g. § 15 Section 1 VOL/A), requires a fixed-price bid without an adjustment clause, the WP/vBP may thus submit a corresponding bid.

The general provisions concerning remuneration contained in Section 1 also apply to flat fees as defined in Section 2, so that when there is a considerable discrepancy between the service rendered and the flat fee negotiated, the quality of the performed audit must be proven.

On § 27a:

§ 27a is supplemental to § 32 WPO and is based on the charter authorisation of § 57 Section 4 No. 1a and 2a WPO.

Section 1 is based on the implementation of Art. 28 (1) of the EU's 8th Directive and prescribes that for statutory auditor's opinions and respective audit reports issued by an auditing or bookkeeping firm, at least one of the auditors defined by § 24a Section 2 as being responsible for carrying out the audit must provide a signature. Previously this was already normal practise; however, neither the commercial code nor professional regulations had prescribed a binding rule to this effect. § 32 WPO is based exclusively on the issue as to the cases in which professional groups are allowed to sign for a Wirtschaftsprüfungsgesellschaft.

The rule does not change the fact that it involves the act of representing the Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft appointed as the auditor of financial statements. In addition to the requirements regulated here, the prerequisites for legal representation must also be fulfilled. In this, the rule in Section 1 does not assume that the responsible WP/vBP has been granted a sole power of attorney.

If auditor's opinions and audit reports are co-signed by other persons, it must be documented in the practise that holds the position of responsible auditor. By giving a signature, this need not be expressly stated, because the concern of the EU's 8th Directive to be able to identify a responsible natural person is fulfilled anyway. It is customary for the responsible auditor to sign on the right-hand side.

Section 2 clarifies that for assurance reports as defined in § 2 Section 1 WPO, which are not within the areas restricted to the WP/vBP, but in which the seal, however, is used voluntarily, the auditor's opinion and the audit report must be signed by at least one WP or vBP. The same requirements apply to expert opinions, as these also contain assurance reports.

For opinions that are restricted to the WP/vBP and which are therefore strictly subject to the use of the seal (comp. § 18 Section 1), it is only permissible for them to be signed by members of the profession anyway.

Through the rule in § 27a it should moreover be guaranteed that even with audits that are not subject to restrictions, the participation of WP/vBPs in the audit exercise can be documented if the authority to use a seal, restricted to the WP/vBP, is used and hereby additional trust is gained.

Conversely, it does not matter whether the assurance report not subject to restrictions is prescribed by law, as is for example the incorporation audit according to § 33 of the Stock Corporation Act (AktG), or whether it involves a voluntary audit.

The rule applies to all forms of practising the profession. If the seal is used, an individual WP/vBP may not be represented solely by a tax accountant, rather he must also be represented by at least one WP or vBP, to the extent that representation is even acceptable or otherwise permissible. The same applies if an interdisciplinary joint practise is hired to complete an audit. At least one partner with WP/vBP qualifications or another WP or vBP capable of representing him must sign the auditor's opinion and report. Also in the case of professional firms, at least one WP/vBP authorised to represent the firm must co-sign.

Part 3:
Special Professional Duties in Professional Collaboration

On Part 3:

The charter authorisation gives the charter author in § 57 Section 4 No. 3 WPO the opportunity to regulate special professional duties related to the acceptance, performance and completion of engagements and client follow-up, in keeping reference files, jointly practising the profession, establishing and running auditing firms and becoming active beyond national borders as well as duties concerning conduct towards courts, public authorities, the Wirtschaftsprüferkammer and other members of the Wirtschaftsprüfer-kammer.

Because there is no apparent need for more specific rules, this charter authorisation is intended to be exercised in Part 3, with regard to joint professional practise and the establishment and running of auditing firms. Other rules are found in previous sections due to their material relevance.

The rules in Part 3 have the heading "special professional duties for professional collaboration", because not only joint professional practise as defined in § 44b Section 1 WPO (joint practise) but also the activity of members of the profession in auditing firms can be subsumed under the term "Professional Collaboration".

On § 28:

According to § 28 joint practises appear only under the names and titles of their partners. It is permissible, however, to use a company or company-like name, whereby through the use of the supplement "and Partners" or similar additions one can allude the existence of a partnership, but this is not necessary. It is further permissible, alongside such a name, to also include one or several professional qualifications existing in the partnership, which are identical to the equivalent descriptions of their activity.

If the details from **Section 3 Sentence 1** are not included on the letterhead, all of the professions and fields of activity occurring in the partnership are to be listed. In addition, in this case all the partners must be listed in the appropriate place along with their professional titles, or all this information must be disclosed in other ways via legal relations, i.e. by sending the current list of shareholders.

For joint practises with more than one location, the individual partners must be named with the professional place of business, because the occurrence under more than one place creates the impression that the individual partners have more than one office location.

On § 29:

From § 31 WPO it follows that the term "Wirtschaftsprüfungsgesellschaft" is to be used "in its entirety". According to **Section 1** the designations for the professional firms are to be included in the corporate entity after the description of the legal entity, because otherwise the incorrect impression would be created that it was a "Wirtschaftsprüfungsgesellschaft mbH" ("Auditing Limited Liability Firm"), although in case of breach of duty, the professional firms offer much higher liability cover than would be the case with the statutory share capital of a Germany "GmbH" (limited liability company). Moreover, this makes it clear that the auditing firm is a special corporate entity (professional firm). In the case of dual recognition, i.e. if the company is also recognised as a tax accounting firm, the order in which the designations "Wirtschaftsprüfungsgesellschaft/Buchprüfungsgesellschaft" and "Steuerberatungsgesellschaft" occur makes no difference.

The rule in **Section 2** is intended to prevent the corporate entity or names of auditing firms from creating a link to companies or corporate groups that could become clients of the auditing firm, and thereby create the impression of lack of independence. This rule does not exclude joint company names and name components with such companies whose company purpose is at least partially compatible with the activity of a professional firm, as these are not outside the profession.

Section 3 Sentence 1 is intended to ensure that only natural persons who are allowed to be shareholders shall give their names to Wirtschaftsprüfungsgesellschaften (partnerships). The further stipulations in **Sentence 2** correspond to the rules in § 28 Section 1 WPO for the activity of non-members of the profession as managing directors and extend these to the naming procedure. From a professional regulatory standpoint, **Sentence 4** allows for the continuation of a name without a time restriction after the resignation of a shareholder who started the practise under his name.

Section 4 clarifies that from a professional regulatory perspective, auditing firms shall enjoy the right of continuance to keep their permissible company entity or name under existing law.

According to **Section 5,** the Sections 1 to 4 shall be applied to Buchprüfungsgesellschaften *mutatis mutandis*. In adherence to the rule introduced with the Third WPO amendment in § 130 Section 2 WPO, the requirements of vereidigte Buchprüfer and Buchprüfungsgesellschaften may also be fulfilled by Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften. This means, for example, that the Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften may also be the sole name givers of Buchprüfungsgesellschaften. Through the rule now carried over into the charter, it does justice to the fact that the qualification of a vereidigter Buchprüfer is included in the comprehensive qualification of the Wirtschaftsprüfer, and the qualification of a vereidigter Buchprüfer also overlaps with that of a Wirtschaftsprüfer.

On § 30:

The rule has been taken up in Part 3, as here it discusses the relationship to companies in the vastly predominant number of cases in which Wirtschaftsprüfungsgesellschaften/Buchprüfungsgesellschaften and/or Wirtschaftsprüfer and vereidigte Buchprüfer collaborate with one another.

Section 1 regulates the use of the company entity or name of an auditing firm by other companies with regard to Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften. In the exceptional case that another company, with which the professional firm has no working relationship whatsoever, uses significant elements of the corporate entity or name of the Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft, the professional firm, already in its own interest, shall exercise its legal options, in particular according to fair competition laws, in order to forbid the other company from using that company entity or name.

The rule becomes significant when auditing firms are legally, contractually or de facto "connected" or there is otherwise very close collaboration between them.

In this case, it should be avoided that through participation in a commercial enterprise with an identical or similar name, by exploiting this name, its profits from commercial activity will accrue to the professional firm. Moreover, the commercial activity of third parties should not be brought into association with auditing firms and thus damage the reputation of the profession.

From the objective of the rule, it follows on the one hand, that there is only an obligation to exhaust all available legal possibilities. Moreover, the rule is not to be applied if the commercial company is not active within the WPO’s area of application.

Section 2 explains that Section 1 is applicable for Wirtschaftsprüfer and vereidigte Buchprüfer *mutatis mutandis*.

Part 4:
Special Professional Duties for Assuring the Quality of Professional Practise (§ 55b WPO)

On Part 4:

§ 57 Section 4 No. 5 WPO authorises the Wirtschaftsprüferkammer to regulate special professional duties to ensure the quality of professional practise. The rules now established in Section 4 serve to ensure the quality of professional practise, as they prescribe professional duties for the creation, monitoring and enforcement of a quality control system. According to § 55b WPO, Wirtschaftsprüfer and vereidigte Buchprüfer are to establish rules for adhering to the professional duties and monitor and enforce their implementation. While § 31 provides general guidelines for a quality control system, in § 32 minimum requirements are spelled out for a quality control system, if WP/vBPs carry out assurance reports. The professional duty to carry out inspections is regulated in § 33.

Through international requirements, as contained in the principles for ensuring audit quality developed by the IFAC (ISA 220: quality control for audit work and ISQC 1: Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, an Other Assurance and Related Services Engagements), which establish an international standard for quality control also in the services sector, service professions such as Wirtschaftsprüfer and vereidigte Buchprüfer are called upon to submit to quality control in practising their liberal profession.

The rules contained in this section regulate the minimum requirements for a quality control system.

On § 31:

The rule is based on the charter authorisation of § 57 Section 4 No. 5 WPO. The objective of the rule is to ensure that through the creation of a quality control system, its supervision and implementation, WP/vBP practises uphold a high quality of professionalism in the interest of the public. It deals with the professional duty to establish a quality control system according to § 55b WPO.

The establishment of a quality control system according to § 55b WPO is a general professional duty. It applies to the entire profession, regardless of size and activity of the WP/vBP practise. § 31 makes it clear that the professional regulatory necessary of a quality control system is to be guided by the field of activity and the individual status of the WP/vBP practise. To that extent, the quality control system of a single WP/vBP has to meet different professional regulatory standards than the quality control system of a large international auditing firm. The head of the practise shall decide on his own responsibility which rules are to be introduced in the practise.

The professional duty to introduce, monitor and enforce the rules for the quality control system is the duty of the practise owner. He can delegate these tasks to qualified persons with appropriate authority to act. In this case he is obliged to ensure through supervision that the professional duties according to § 55b Sentence 1 WPO, **§ 31 Section 1 Sentence 1** are fulfilled.

A quality control system can only be effective if the employees working for the WP/vBP are informed of the rules. The significance of the duty to instruct employees about the quality control system is once again clearly spelled out in **Section 1 Sentence 2**.

In **Section 1 Sentence 3** it is made clear that the WP/vBP's obligation to monitor the quality control systems, which is already stated in § 55b Sentence 1 WPO, includes the adequacy and effectiveness of the quality control system. If defects are found in this context, care should be taken to eliminate the defects and fulfil the professional duties. Monitoring is normally carried out within the scope of an inspection according to § 33.

Section 2 serves to clarify the professional duty to clearly delegate responsibilities in the WP/vBP practise according to § 43 Section 1 Sentence 1 WPO (e.g. responsibility for accepting engagements, hiring and evaluating employees or for processing the individual engagements). Clear responsibilities also need to be established for quality control in the WP/vBP practise.

The importance of establishing responsibilities is followed by the duty to document the responsibilities once established.

Through the rule in **Section 3** it is ensured that the rules for the quality control system can be easily understood. This not only applies to the ability of the individual user to understand them but also to that of the quality control auditor.

The scope and content of the documentation of the quality control systems are to be guided by the individual situation (e.g. organisational structure) of each individual WP/vBP practises.

On § 32:

The rule is based on the charter authorisation of § 57 Section 4 No. 5 WPO.

This rule clearly delineates the provisions the quality control system must contain if the WP/vBP practise performs assurance reports and uses the professional seal. The decision as to which concrete provisions are to be introduced shall be made dependent on the requirements of the WP/vBP practise. It is up to the practise to decide how it wishes to guarantee adherence to the professional duties it is observing.

The obligation to set up a quality control system in the WP/vBP practise is an expression of conscientious professional practise according to § 43 Section 1 Sentence 1 WPO, as is clarified in § 55b WPO.

Through § 32 no new professional duties are created. It is, however, a professional duty to create a quality control system. It should be taken in to consideration that in case of material or legal changes, the rules of the existing quality control systems are to be adapted within a reasonable timeframe.

The WP/vBP practise is to devise rules for ensuring adherence to professional duties. The professional duties for which rules are to be devised are regulated in Part 3 of WPO and in Part 1 (General Professional Duties) and 2 (Special Professional Duties in Performing Audits and Preparing Expert Opinions) of the WP/vBP professional charter. The WP/vBP practise is only to create rules for these professional duties if this is necessary based on the WP/vBP practise's structure and field of activity. The rules must be reasonable.

Of special importance is the safeguarding of the independence, impartiality and avoidance of suspected bias (§§ 1 to 3 and 20 to 24). The rules must ensure adherence to these professional duties for practise management. Rules are necessary for employees to the extent that they are assigned to the processing of engagements. For these employees, it is recommended that they implement a routine survey. It can be assumed that an annual employee survey would normally be sufficient.

Rules are to be established for surveying employees on an ad-hoc basis. Ad-hoc surveys of employees are to be included in the planning of the processing of audits or for other matters in order to safeguard the professional duties of independence, impartiality and avoidance of suspected bias.

To safeguard these professional duties, rules are to provide that a person be designated to clear up any detailed queries, instruct employees on the professional duties or the rules in case they these duties are jeopardised.

Provisions are to be introduced which ensure that engagements will only be accepted or continued for which there is adequate expertise and required time for completion, as well as qualified employees (§ 4 Section 2 and Section 3). The provisions much also sufficiently ensure that engagements will only be accepted or continued if they do not jeopardise the reputation or the economic standing of the practise.

On § 33:

The rule is based on the charter authorisation pursuant to § 57 Section 4 No. 5 WPO.

Inspection is an integral element of quality control. In order to ensure compliance with professional duties arising from § 33, when handling assurance audits, for which the professional seal is used, provisions in the quality control system of the WP/vBP practise are to be established according to § 32 No. 13.

The inspection is to ensure that the quality control system conforms to the statutory requirements and professional standards required of the WP/vBP's practise and if necessary make required modifications **(Section 3).**

The inspection is to be carried out at appropriate intervals. It is to be carried out when there is cause to do so or if the conditions of the WP/vBP practise have changed such that the quality control system is to be adapted to the changed conditions.

It is to be carried out a minimum of every three years. The inspection is to be conducted by sufficiently experienced, skilled, and personally qualified persons. Within the scope of the audit inspection, no persons may be involved who were directly responsible for these engagements or assigned to accompany them as quality control officers. It does not have to involve a WP/vBP.

If no qualified persons are available and depending upon the type and scope of the engagements handled by the WP/vBP, it would not be reasonable to call in an outside expert, the WP/vBP may also perform the inspection as part of a "self-assessment". The performance of the inspection by way of self-assessment requires a proper time interval for processing the individual engagement. The grounds for carrying out the inspection by way of self-assessment are to be documented. Self-assessment is not sufficient, however, in practises that audit a company of public interest as defined by § 319a of the German Commercial Code (HGB). In these cases if necessary, external WP/vBPs are to be assigned to handle the inspection. Whereby it should be ensured that these WP/vBPs are sufficiently experienced, professionally and personally, to assume this task. For practises with several locations it is appropriate to seek persons outside the practise to perform the inspection.

Normally the engagements that have been completed in the inspection period are to be included in the inspection. Relevant engagements within the WP/vBP practise's area of specialty are to be included. The WP/vBP responsible for the processing of each individual engagement is to be informed of any faults discovered in the processing of each individual engagement.

As a result of the inspection, any faults discovered are to be documented according the adequacy and effectiveness of the quality control program. The documentation must also include recommendations on how to correct the discovered faults. The WP/vBP practise has to decide which measures are to be taken.

Part 5:
Final Provisions

On § 34:

Section 1 circumscribes the professional charter's scope. The member groups are fully covered by the provisions of Section 1 WPO. The voluntary members according to § 58 Section 2 WPO are not subject to the application of the professional charter.

The term employee is used in various places in the professional charter (comp. §§ 5, 6, 32). Unless otherwise stated in the provisions, this includes all employees hired by the WP/vBP.

For Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften, Section1 p. 2 corresponds to § 56 Section 1 WPO. Members of the management board, managing directors or partners with unlimited liability of a Wirtschaftsprüfungsgesellschaft or Buchprüfungsgesellschaft are included through § 58 Section 1 p. 1 WPO.

As a rule, the provisions of the professional charter apply to all members of the Wirtschaftsprüferkammer pursuant to § 58 Section 1 WPO. There are special cases within the provisions that pertain exclusively to Wirtschaftsprüfungsgesellschaften and Buchprüfungsgesellschaften.

For WP/vBPs who are at the same time tax advisors, lawyers and/or notaries, as a consequence of a ruling by the German Federal Administrative Court, there is a restriction of the application of the professional charter also in substantive terms. In this decision (WPK Mitteilungen 2001, 70 et seq.) the WPO and the professional charter were declared inapplicable if a member of the profession, who is simultaneously a tax advisor, runs a branch office, to the extent that he exclusively practises as a tax advisor in the branch office and makes this clearly known by solely acting as a tax advisor. According to the view of the Wirtschaftsprüferkammer, the decision is based on a general legal precept that has ramifications for all professional statutes and thus for the applicability of the professional charter overall.

Subsequently, in particular the separation between the activity in a WP/vBP single practise and the activity in a single-practise tax office/law firm is generally possible. The same applies to other forms of practising the profession. Members of the profession with multiple qualifications can therefore on the one hand, for example, practise in a joint practise as a tax advisor or a lawyer and on the other hand as a WP/vBP in a single practise or as an employee hired by one of the auditing/bookkeeping firms.

The possibility of separation only exists under the condition, however, that the separation of professional activities vis-à-vis third parties, in particular towards clients, is made unmistakably clear. This applies in particular to the area of announcements. A sufficiently-clear announcement of the separation should proceed in such a way that the announcement within the scope of the activity as a tax advisor or lawyer (whether in a single practise or in a joint practise etc.) shall not make any direct reference to the additional qualification as WP/vBP (in business records, practise signage, practise brochures, directories, Internet, etc.).

A reference to the special professional practise as WP/vBP according to the principles of cooperation, i.e. in the footer of the official letterhead, is not excluded by this. In any case it must be made clear that within the scope of activity as tax advisor or lawyer, no reserved duties can be performed by the WP/vBP.

Moreover, the separation, as it is announced, must also be implemented by an appropriate practise organisation, especially with regard to the processing of clients engagements. The organisational separation will not be questioned, however, solely on the basis of the various professional activities being performed in close proximity to one another. Even if the activities are being carried out at the same address, this will not be challenged based on the professional charter. On the other hand, a physical separation underscores efforts to achieve organisational separation.

These principles are to be applied to professional firms *mutatis mutandis*. Whereby the use of the complete company entity for the separated area remains permissible according to the professional charter. The use of a different branch office firm according to § 31 WPO must also include the term "Wirtschaftsprüfungsgesellschaft" or according to § 128 Section 2 WPO the term "Buchprüfungsgesellschaft". Also in the case of so-called "dual-track" audit firms, the sole use of the term "Steuerberatungsgesellschaft" while leaving out the title WPG/BPG is impermissible. The separation of professional activities must then be made clear in another way (e.g. by including an explanatory addendum to the letterhead of the branch or in miscellaneous materials).

The ramifications of the permissibility, according to the professional charter, of the separation of certain activities from the professional practise of WP/vBP, along with the risks in terms of liability and insurance, still have not been completely resolved.

As opposed to the complete separability of true second professions, the permissible activities for Wirtschaftsprüfer according to § 2 WPO and vereidigte Buchprüfer according to § 129 WPO are also essentially subject to the provisions of WPO and the professional charter even if they do not work in the restricted field.

This was expressly ruled by the Federal Court of Justice (BGH) in its decision dated 12 October 2004 for the activity of bankruptcy trustee (WPK Magazin 2005, 48 with annotations). In particular, with respect to occupational freedom (Art. 12 of the Basic Law of the Federal Republic of Germany (GG)) and the proportionality principle, however, the application of certain regulations can be excluded in individual cases. In the court decision in question, in applying the WPO, the court repudiated the qualification of an additional office of a member of the profession in which exclusive bankruptcy trustee activities were carried out and for which there was no indication of practise as a Wirtschaftsprüfer as a branch office pursuant to §§ 38 No. 3 and 47 WPO. Therefore, the office neither has to be entered in the professional register nor does a branch office have to be occupied by a member of the profession as branch office manager.

On § 35:

A regulation concerning when the charter will go into effect is already provided in § 57 Section 3 Sentence 2 WPO. Accordingly, the charter goes into effect three months after it has been put before the Federal Ministry for Economics and Technology, to the extent that the Federal Ministry of Economics and Technology does not rescind the charter or parts thereof.

The rule regulates that the charter as well as its amendments are to be published in the Federal Gazette. The Federal Gazette – in addition to the Federal Legislative Journal, which is reserved exclusively to laws and legal regulations – is the official journal of the German Federal Government and therefore the proper publishing platform.