

Institut der Wirtschaftsprüfer in Deutschland e.V.

Attachment to “Assessment of the Regulatory and Standard-Setting Framework

Section 3 – General Information

Question 21

Annual Dues per Person:

Public auditors who are employees of an accounting firm: 120,- Euro/year

Public auditors and accounting firms: depends on the annual turnover:

Turnover up to:

7.500 Euro/year

25,00 Euro

Turnover	Annual dues
- 7,500 Euro/year	25,00 Euro
From 7,500 to 12,500 Euro/year	35,00 Euro
From 12,500 to 25,500 Euro/year	50,00 Euro
From 25,500 to 38,000 Euro/year	75,00 Euro
From 38,000 to 50,000 Euro/year	100,00 Euro
From 50,000 to 100,000 Euro/year	160,00 Euro
From 100,000 to 150,000 Euro/year	215,00 Euro
From 150,000 Euro for each further 50,000 - an increase of the annual dues of	75,00 Euro

Section 4 – Statutory Framework

Section 4A – The Companies Act or Commercial Code

Question 24 a), b) and c)

a) the Act or Code:	b) the enacting body	c) date of enactment
The main German laws in respect of commercial proprietors, commercial partnerships (general and limited), commercial corporations and limited liability partnerships are:		
HGB [„Handelsgesetzbuch“: German Commercial Code] for commercial proprietors, commercial partnerships (general and limited)	Parliament	May 10, 1897, last updated August 24, 2002

a) the Act or Code:	b) the enacting body	c) date of enactment
GmbHG [„Gesetz betreffend die Gesellschaften mit beschränkter Haftung“: German Limited Liability Companies Act]	Parliament	April 20, 1892 last updated July 19, 2002
AktG [„Aktengesetz“: German Stock Corporation Act]	Parliament	September 6, 1965, last updated July 19, 2002
PartGG [“Gesetz über Partnerschaftsgesellschaften Angehöriger Freier Berufe“: German Partnership Law for limited liability partnerships]	Parliament	July 25, 1994, last updated December 20, 2001
These are supplemented by certain provisions of the following, among others:		
PublG [„Publizitätsgesetz“: German Publicity Law]	Parliament	August 15, 1969 last updated December 10, 2001
RechKredV [„Verordnung über die Rechnungslegung der Kreditinstitute und Finanzdienstleistungsinstitute“: regulation for the accounting of the banking sector]	Issued by the Bundesministerium der Justiz [Federal Ministry of Justice]*	December 11, 1998 last updated December 10, 2001
KWG [„Kreditwesengesetz“: German Banking Act]	Parliament	September 9, 1998, last updated August 22, 2002
RechVersV [„Verordnung über die Rechnungslegung von Versicherungsunternehmen: regulation for the accounting of the insurance sector]	Issued by the Bundesministerium der Justiz [Federal Ministry of Justice]*	November 8, 1994 last updated December 10, 2001
VAG [„Versicherungsaufsichtsgesetz“: German Insurance Supervisory Law]	Parliament	December 17, 1992 last updated July 23, 2002
GenG [“Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften“- Cooperative Association Law]	Parliament	May 1, 1889 last updated December 10, 2001

a) the Act or Code:	b) the enacting body	c) date of enactment
KHBV [„Krankenhaus-Buchführungsverordnung“: Regulations for accounting for hospitals]. There are other regulations for care-homes and disabled workshops etc.	Issued by the Bundesminister für Arbeit und Sozialordnung, Norbert Blüm [Federal Minister for Labour and Social Affairs]*	March 24, 1987 last updated October 23, 2001
The Auditing profession is also regulated by:		
WPO [„Wirtschaftsprüferordnung“: German Law Regulating the Profession of Wirtschaftsprüfer]	Parliament	July 24, 1961 last updated Dec 2003
The statutory accountability of civil partnerships, incorporated associations, foundations, unincorporated joint ventures (that are not partnerships), etc. are governed by provisions of the document of incorporation (articles of association) but are subject to :		
BGB [„Bürgerliches Gesetzbuch“: German Civil Code]	Parliament	August 18,1896 last updated January 1, 2002
Statutory accountability at Governmental and State Level is prescribed by numerous laws and by-laws, including:		
BHO [„Bundeshaushaltsordnung“: Federal Budget Law]	Parliament	August 19, 1969 last updated June 17, 1999
Landeshaushaltsverordnung and Gemeindeordnungen: [Budget Regulations and Local Government Code]. There are 16 of each.	Promulgated by the federal states (state ministries).	
HGrG [„Haushaltsgrundsätze-gesetz“: Budget Principles Law“ – basic rules governing budget law, i.e. of the federal government and states, to be observed by wholly or partially government-owned enterprises when preparing their financial statements].	Parliament;	August 19,1996 last updated December 20, 2001
Stiftungsgesetze [law of foundations in individual states in the federation]	Promulgated by the federal states (state ministries).	
Parteiengesetz [Political Parties Act]	Parliament	January 31, 1994 last updated June 28, 2002

a) the Act or Code:	b) the enacting body	c) date of enactment
§ 342 German Commercial Code (HGB) [This authorises the Federal Ministry of Justice to form the German Accounting Standards Board to develop GAAP for consolidated financial statements, among other things.]	German Accounting Standards Board/Committee responsible for setting private sector accounting standards	

* A law may specifically empower another authority (Bundesregierung [Federal Government], Bundesminister [Federal Minister] or Landesregierungen [State Governments]) to issue regulations for specific purposes.

Question 26

We are not aware of any official translations of the above laws. Several of these acts have been translated on several occasions by varying authors. We are neither able to endorse such translations nor to provide a recommendation as to suitability for IFAC purposes. The German Law Archive: <http://www.iuscomp.org/gla/> provides links and some translations of certain statutes which are, however, of varying quality and may not be up-to-date. We reiterate that the German version constitutes the only official version.

Questions 27, 28

Act or Code	Entities covered	Annual statutory financial statement requirement (subject to size)
HGB	Kfm/ Kfr [Commercial Proprietor] OHG [Commercial Partnership] KG [Limited Partnership] KGaA [Master Limited Partnership] AG/ GmbH [Business Corporations]	Yes Yes Yes Yes Yes
GmbHG	GmbH [Limited Liability Company]	Yes
AktG	AG [Stock Corporation] KGaA [Master Limited Partnership]	Yes Yes
PartGG	PartG [Limited Liability Partnership]	As for BGB below
GenG	Gen [Cooperative Associations]	Yes

Act or Code	Entities covered	Annual statutory financial statement requirement (subject to size)
BGB	Geschäftsmann/-frau [non-commercial businessman/ woman] Freiberufler [sole public professional] GbR [Civil Partnership] e.V. [Incorporated Association] Stiftung* [Incorporated Foundation] Arbeitsgemeinschaft [Non-commercial Joint Venture] Treuhandverhältnis [Trust] Nachlaß [Estate] Nichtrechtsfähige Verein [Unincorporated Association]	There are general accountability requirements; however, court decisions have often led to a de facto requirement for some form of financial statements to be prepared for parties with a legitimate interest.
HGrG	Enterprises owned by Federal Government	Yes
BHO	Federal Government	Yes
16 special ordinances for own establishments (Eigenbetriebsverordnungen)	Enterprises owned by Local Government	Yes
16 Gemeindeordnungen (local government codes)	Local Government	Yes
16 Landeshaushaltsverordnungen (State Budget Laws)	State Government	Yes

*Yes, under state law there is a requirement for statutory financial statements

From 2005 onwards listed companies pursuant to the German Commercial Code (§ [Article] 315 HGB) will be required to prepare their consolidated accounts in accordance with (endorsed) IFRS. Currently, § 292a HGB provides an option for listed companies to apply the reporting requirements of the Commercial Code or internationally accepted accounting standards like IFRS or US-GAAP. Those listed companies currently applying US-GAAP will have until 2007 to apply IFRS. If listed companies prepare their consolidated accounts in line with the requirements of the Commercial Code they should also apply the standards of the German Accounting Standards Board (GASB).

The standards of the GASB provide recommendations on how to apply the accounting principles of the German Commercial Code and fill existing gaps within these accounting rules with respect to the consolidated financial statements. The standards issued by the GASB should be applied not only by listed, but by all companies which are required to

prepare consolidated financial statements. The Federal Ministry of Justice can recognise and publish standards issued by the GASB dealing with accounting issues with respect to consolidated financial statements. This “approval” by the Federal Ministry of Justice does not make the standards legally binding. However, there is a legal presumption that compliance with such standards implies compliance with the German principles of proper accounting for consolidated financial statements.

In respect of unlisted commercial businesses the accounting requirements are determined by the commercial code and other laws noted above, dependent on industry (see above).

There are no explicit rules for civil partnerships and other not-for-profit entities other than general accountability requirements (see above).

Question 29

Pursuant to § 316 HGB the financial statements and management report of listed entities and private companies other than those classified as small must be audited by an auditor. § 317 HGB stipulates the subject and scope of the audit, which includes the bookkeeping, annual financial statements and the management report and § 319, the selection of the auditor. §§ 321 and 322 HGB define requirements of the long-form audit report and the auditor’s report.

The WPO (German Law Regulating the Profession) contains provisions governing the persons able to undertake a statutory audit of financial statements.

IDW Auditing Standards conform to ISA and are general practice in Germany. They have a de facto binding effect. These standards cover statutory audits of financial statements.

There is no statutory requirement for unincorporated entities to be audited.

The scope of governmental audits is extended by additional legal requirements.

Auditing requirements for listed companies:

In principle, for an audit of financial statements of listed companies, the same requirements apply as applicable for other statutory audits. However, with the enactment of the Bilanzrechtsreformgesetz (Accounting Reform Act), which is envisaged for the end of 2004, the Commercial Code will contain additional independence requirements (including internal rotation) for listed companies aimed at strengthening the independence in appearance of the statutory auditor.

Question 30

Listed Entities: The auditor is appointed for each individual engagement.

Unlisted Commercial Corporations: The auditor is appointed for each individual engagement.

Public Sector: N/A, government auditors are employees of independent government agencies.

Government-owned businesses: the auditor is appointed for each individual engagement.

Other Entities: N/A

Question 31

In Germany, the “appointment” of the statutory auditor covers more than one action:

1. recommendation of the proposed auditor by the supervisory board,
2. election of the auditor by the shareholders meeting and\
3. engagement of the elected auditor by the supervisory board.

For mid and large-sized limited liability companies, this procedure applies only to the extent that a supervisory board exists.

Question 40:

See answer to question 30

Section 5 – Auditing Standards

Section 5A Statutory Framework

Question 43

In Germany there are two sources for auditing requirements with respect to both listed and other entities: **legislation** and auditing standards.

The general requirements in the German Commercial Code provide the basis for auditing standards; in addition, there are some other laws with industry-specific requirements respectively, depending on the legal form and size of entity. These laws form the auditing framework in respect of statutory audits only.

While these laws do not regulate details of the planning and conduct of audits and reporting, the **IDW as independent private auditing standard setter** promulgates detailed auditing and other assurance standards, practice statements and other guidance. The IDW AuS are also applicable to non-statutory audits.

If an auditor does not observe *IDW Auditing Standards* without having good reasons therefore, he or she should expect that such a departure from the views of the profession may not be interpreted in his or her favor in, as the case may be, claims for damages, proceedings brought before the professional supervisory body or criminal proceedings. This means, even though audit standards of the IDW have no legal authority as defined in section 2 of the assessment paper, they are considered as German generally accepted principles on auditing. Professionals must comply with them or explain any departure.

With respect to the public sector, the “Bundesrechnungshof and Rechnungshöfe” [General Auditing Office(s)] is responsible for pre-audit and post-audit of expenditure.

Also refer to Sections 4A and 4B and related comments in this Attachment.

Section 5B – Standard Setting

Question 44 (nature of body and name of standards):

1. Body responsible for setting audit and other assurance standards: Parliament
Nature of body: Government of the Federal Republic of Germany
Name of standards: Legislation, example: German Commercial Code
2. Body responsible for setting audit and other assurance standards: IDW
Nature of body: Independent private organisation established by the profession.
Name of standards: IDW Auditing Standards

All IDW Auditing Standards are drafted and approved in accordance with an established due process laid down by the Executive Board of the IDW.

Within the IDW the responsibility for issuing standards on auditing lies with the **Auditing and Accounting Board (HFA)** and specialised Technical Committees for particular industry sectors, e.g. banking, insurance, IT, etc. Committee members are Wirtschaftsprüfer [German public auditors]; in appropriate cases other individuals with special knowledge may be invited to participate in a Committee.

The answers to the following questions refer to IDW:

Question 45 (How many voting members does the standard-setting body have?):
16 members of the Auditing and Accounting Board = 15 German public auditors and 1 academic

Question 46 (Are the members of the standard-setting body involved on a voluntary basis or employed by the standard-setting body?)
Voluntary

Question 47 (What are the criteria considered in selecting members of the standard-setting body?):

- Technical knowledge and auditing experience (best person for the job)
- Publication of official material in the relevant area
- Previous IDW involvement (e.g. holding a presentation at an IDW event)
- Adequate representation of small, medium, large sized audit firms

Question 48 (Who appoints these members?):

The IDW. The Chairman of the Auditing and Accounting Board is elected by the Administrative Council. Other members are elected by the Board of Directors.

Question 49 (term of appointment for members)

2 or 4 Year(s) (2 years for the first session, re-election possible, four years for the following sessions)

Question 50 (For how many years has the standard-setting body been in existence?)

72 years

This body was not active between 1945 and 1948/49.

Question 51 (Please indicate the budget of the standard-setting body for the last fiscal year):

Not available (no budget, as there are only refunds for traveling costs and costs for external meetings; detailed work is completed on a voluntary basis with support from the IDW technical staff. It is not possible to estimate the total.

Question 52 (To what entity is the standard-setting body accountable?):

IDW Hauptfachausschuss (HFA) = supreme technical body (Auditing and Accounting Board) which is provided for in the IDW's Articles of Association; there is only disciplinary oversight (no technical oversight) by the IDW's Board of Directors

Question 53 (Describe the due process followed by the standard-setting body):

Special Task Forces are established by the HFA or the relevant Technical Committee to prepare the draft standards. The draft standards are submitted to the HFA for approval and are published for comment in IDW's technical journals and on the website of IDW, so that members and other interested parties may comment on the draft. This is followed by a public hearing, in which the leading business associations, unions, academics and other interested parties outside of the profession again have an opportunity to engage in an oral exchange of views on the IDW Auditing Standard before final approval of the IDW Auditing Standard by the HFA. Thus, in accordance with a long-held tradition the standards are approved after discussions, in which issues raised by the profession and other persons are taken into account by the appropriate Committee, to ensure that the views of the profession and other interested parties are adequately reflected.

Question 53a:

Draft standards are published within the profession and externally (technical journals, internet); a comment period (usually six months) is provided.

Question 53b:

Private, but information in the form of minutes is disclosed on the IDW homepage in section for IDW members.

Question 53c:

A simple majority vote is required to approve final standards. Historically, consensus has almost always been achieved.

Question 53d:

Public hearings concerning draft standards of those who have sent comment letters and other relevant parties.

Question 54 (Approximately how many days per year does the standard-setting body meet in full session?):

6 Days

Please note that technical drafting activities are carried out by working parties and subgroups on a voluntary basis with support from the technical department of the IDW. Thus, the above figure does not reflect this input. The HFA is concerned with both auditing and accounting issues.

Section 6A – Statutory Framework

Question 55:

Type of professional covered:

- Professional Accountants in Public Practice [Auditors] (only)
- Professional Accountants in Business and in the Public Sector are not within the scope of the Ethics Standards noted in the questionnaire.

Name of applicable legal authority:

- § 319 HGB (German Commercial Code)
- § 319a HGB (German Commercial Code on the basis of the Accounting Reform Act)
- WPO (German Law Regulating the Profession, especially §§ 43-49 WPO)
- Satzung der Wirtschaftsprüferkammer (By-laws Regulating the Profession)

Date of last amendment and name of body responsible for setting ethics standards:

- HGB (German Commercial Code)

- 08/2002
- Ultimately parliament - drafts are prepared by the Federal Ministry of Justice
- WPO (German Law Regulating the Profession)
 - 12/2003
 - Ultimately parliament - drafts are prepared by the Federal Ministry of Justice
- Satzung der Wirtschaftsprüferkammer (By-laws Regulating the Profession)
 - 11/2002
 - Wirtschaftsprüferkammer (Chamber of Public Auditors, WPK) upon approval by the Federal Ministry of Economics and Labour

Question 55b

We are not aware of any official translations of the above laws. Several of these acts have been translated on several occasions by varying authors. We are neither able to endorse such translations nor to provide a recommendation as to suitability for IFAC purposes. The German Law Archive: <http://www.iuscomp.org/gla/> provides links and some translations of certain statutes which are, however, of varying quality and may not be up-to-date. We reiterate that the German version constitutes the only official version. The WPO and the By-laws of WPK were translated about 8 years ago, but due to several amendments these translations] are no longer up-to-date.

Section 6B – Standard Setting

Question 56 (nature of body and name of the standards):

1. Body responsible for setting audit and other assurance standards: Parliament
Nature of body: Government of the Federal Republic of Germany
Name of standards: HGB, WPO
2. Body responsible for setting audit and other assurance standards: WPK
Nature of body: Self regulatory body
Name of standards: Berufssatzung für Wirtschaftsprüfer und vereidigte Buchprüfer (Professional By-Laws)

The answers to the following questions refer to WPK:

Question 57 (How many voting members does the standard-setting body have?):

Wirtschaftsprüferkammer (Chamber of Public Auditors): The Advisory Board of the WPK has 52 voting members.

Question 58 (Are the members of the standards-setting body involved on a voluntary basis or employees of the standard-setting body?):

Voluntary

The members of the Advisory Board of the WPK are volunteers. They are supported by technical staff of WPK.

Question 59 (What are the criteria considered in selecting members of the standard-setting body?):

Members of the Advisory Board are elected by the General Assembly of all members of WPK. When appointing members to the Advisory Board it is ensured that regional representation and representation of small and medium-sized firms as well as major firms is guaranteed. When appointing members to Committees and Sub-Committees technical skills and experience are considered.

Question 60 (Who appoints these members?):

They are elected in ballots by the General Assembly of all members of WPK.

Question 61 (What is the term of appointment for members?):

3 Years

Question 62 (For how many years has the standard-setting body been in existence?):

43 Years

Question 63 (Please indicate the budget of the standard-setting body for the last fiscal year:

No budget, as there are only refunds for traveling costs and costs for meetings; detailed work is completed on a voluntary basis with support from the WPK technical staff. It is not possible to estimate the total budget only for standard setting purposes.

Question 64 (To what entity is the standard-setting body accountable?)

The Advisory Board is accountable to the General Assembly. In addition all committees and bodies within WPK are accountable to and supervised by the Federal Ministry of Economics and Labour.

Question 65 (Describe the due process followed by the standard-setting body.):

Question 65a:

Draft standards are not subject to public exposure or hearings. Final standards are published in the Federal Gazette.

Question 65b:

Meetings of the Advisory Board are not public. However, members of the Public Oversight Board on Quality Assurance (see 10C) and a standing committee of WPK with the Federal Chamber of Commerce can participate as observers with the right to speak and comment decisions.

Question 65c:

A simple majority and a quorum is required to approve final standards.

Question 65d:

Final standards have to be approved by the Federal Ministry of Economy and Labour and are published in the Federal Gazette.

Question 66 (Approximately how many days per year does the standard setting body meet in full session?):

2 Days

Please note that technical drafting activities are carried out by Committees and Sub-Committees on a voluntary basis with support from the technical department of the WPK. Thus, the above figure does not reflect this input. The Advisory Board of WPK is concerned with other issues like budgeting, nominations, administrative matters etc.

Section 7A – Education Requirements

Question 74

Final Exam: WPK; Education: IDW, universities and private organizations

Question 75

Yes, since members of the WPK and IDW have to be licensed officially as public auditors (see Section 7B).

Section 7B – Licensing

Question 76

German Public auditors (Wirtschaftsprüfer), i.e. professionals entitled to perform statutory audits, as well as public audit firms, have to be licensed officially by WPK. Licensing of individuals requires a final qualifying examination as described under section 7A. Licensing of public audit firms requires – in particular – a majority of owners and officers who are licensed as public auditors.

All Wirtschaftsprüfer are allowed to perform statutory audits of all kinds of entities of all sizes. However, there is a legal duty incumbent on the auditor to ensure that he or she possesses the necessary professional competence [§ 43 WPO]. All Wirtschaftsprüfer should comply with the IDW Auditing standards.

By law, a Wirtschaftsprüfer undertaking statutory audit engagements must obtain a certificate from the WPK verifying successful participation in the system of quality assurance. Without this certificate the Wirtschaftsprüfer will not be eligible to undertake statutory audits [§ 319 HGB – German Commercial Code].

Further details are supplied in Section 10.

Voluntary audits are not subject to these requirements and may be carried out by any individual or firm. However, in general – when not performed by public auditors – they are generally carried out by lawyers, or tax advisor or other experts.

Section 8 – Public Sector Accounting Standards

Section 8A – Statutory Framework

Question 82

Type of Entity	Name of legal authority	Date of last amendment	Name of body responsible for setting public sector accounting standard
Whole of government	N/A ¹		
Ministry/department	In most cases ministries or departments are either		

¹ To our knowledge there is no legal requirement to consolidate the different levels of governments to the whole of government in Germany.

Type of Entity	Name of legal authority	Date of last amendment	Name of body responsible for setting public sector accounting standard
	part of the local, state or federal government (see below)		
Statutory authority/agency	Depends on the statutory authority/agency.		
Profit entity owned by governments	<ul style="list-style-type: none"> • The accounting of government business enterprises (GBE) which are not a legal entity (Eigenbetriebe [own establishments]) is set by special ordinances depending on the states in which the GBE is located. • GBE which are limited liability corporations have to apply the German Commercial Code (Handelsgesetzbuch) for accounting. 	<ul style="list-style-type: none"> • Depends on the state • May 10, 1897, last updated August 2002 	<ul style="list-style-type: none"> • State legislator, but drafted by the state ministries of interior • Parliament
State governments	<p>16 Länder (states):</p> <ol style="list-style-type: none"> 1. Land Berlin 2. Freistaat Bayern (Bavaria) 3. Land Baden-Württemberg 4. Land Nordrhein-Westfalen (North Rhine-Westphalia) 5. Freistaat Sachsen (Saxony) 	<ul style="list-style-type: none"> • Haushaltsgrundsatzgesetz (Law on Budgetary Principles for Federation and States) August 19, 1969, last updated December 20, 2001 	<ul style="list-style-type: none"> • Parliament

Type of Entity	Name of legal authority	Date of last amendment	Name of body responsible for setting public sector accounting standard
	6. Land Niedersachsen (Lower Saxony) 7. Land Schleswig-Holstein 8. Stadtstaat Bremen 9. Stadtstaat Hamburg 10. Land Mecklenburg-Vorpommern (Mecklenburg-Western Pomerania) 11. Land Thüringen (Thuringia) 12. Land Sachsen-Anhalt (Saxony-Anhalt) 13. Land Brandenburg 14. Land Hessen (Hesse) 15. Land Saarland 16. Land Rheinland-Pfalz (Rhineland-Palatinate)	<ul style="list-style-type: none"> Landeshaushaltsverordnung (State Budget Law) – there are 16 	<ul style="list-style-type: none"> State legislator, but State ministries of finance
Local governments	There are about 14,000 local governments in Germany. They have to apply the Gemeindeordnung (local government code) of their state. There are 16 (one for each state).	Depends on the state	State legislator, but drafted by the state ministries of interior
Federal government	Bundesrepublik Deutschland [Federal	<ul style="list-style-type: none"> Grundgesetz (Basis 	<ul style="list-style-type: none"> Bundesregierung (German

Type of Entity	Name of legal authority	Date of last amendment	Name of body responsible for setting public sector accounting standard
	Republic of Germany]	Constitutional Law) May 23, 1949, last updated July 26, 2002 <ul style="list-style-type: none"> • Haushaltsgrundsatzgesetz (Law on Budgetary Principles for Federation and States) August 19, 1969, last updated December 20, 2001 • Bundeshaushaltsordnung (Federal Budget Law) August 19, 1969, last updated June 17, 1999 	Government) <ul style="list-style-type: none"> • Parliament • Parliament

Question 82b

We are not aware of any official translations of the above mentioned laws. Some of these acts have been translated on several occasions by varying authors. We are neither able to endorse such translations nor to provide a recommendation as to suitability for IFAC purposes. The German Law Archive: <http://www.iuscomp.org/gla/> provides links and some translations of certain statutes which are, however, of varying quality and may not be up-to-date. We reiterate that the German version constitutes the only official version.

Section 8B - Standard Setting

Question 83

Name of body responsible for setting public sector accounting standard	Nature of body	Name of standards	Are the standards cash or accrual basis?
Parliament	Government ministry	<ul style="list-style-type: none"> German Commercial Code (Handelsgesetzbuch) Haushaltsgrundsätzegesetz (Law on Budgetary Principles for Federation and States) 	<ul style="list-style-type: none"> Accrual basis Cash basis
Parliament	Government ministry	Bundeshaushaltsordnung (Federal Budget Law)	Cash Basis
16 state ministries of interior	Government ministry	<ul style="list-style-type: none"> 16 special ordinances for own establishments (Eigenbetriebsverordnungen) 16 Gemeindeordnungen (local government codes) 	<ul style="list-style-type: none"> Accrual basis Predominately cash basis, but several states are just in the process of transition to accrual basis of accounting
16 state ministries of finance	Government ministry	16 Landeshaushaltsverordnungen (State Budget Laws)	Cash Basis

Question 84 to 93

The questions 84 and 93 are not applicable, as there is no one standard setting body in respect of Public Sector Accounting Standards in Germany. All the above-mentioned laws have to pass the federal parliament or state legislators (Bundestag or Landtag of the states). The size of the state legislators varies. The persons who prepare the draft law are mainly employees of the government or politicians.

The bills are publicly exposed. Only certain concerned organisations can comment on the exposure drafts. Most but not all meetings are accessible to the public. To pass the law a majority of more than 50% is required.

Other remarks for matters not covered elsewhere in the questionnaire

The IDW, a private organization, and the WPK, a professional regulatory body established under public law, represent the German audit profession of private sector entities and government business enterprises.

Traditionally, financial accounting and reporting of the private and the public sector in Germany is, to a large extent, governed by federal or state legislation. The persons who are involved in the accounting standard setting in Germany are not part of either of the above mentioned professional bodies.

The federal and state courts of audit are supreme state audit authorities. As independent bodies of government auditing they are subject only to the law. The audit courts primary task is auditing. The audit courts audit the budget account on the receipts and disbursements rendered by the Ministers of Finance for the previous financial year as well as the efficiency and whether they comply with relevant laws and regulations of the entire financial management including special assets and commercial undertakings. In contrast to other countries the auditors of the courts of audit are not part of the accountancy profession.

Section 9 – Private Sector Accounting Standards

Section 9A – Statutory Framework

Question 94

a) the Act or Code:	b) the enacting body	c) date of enactment
The main German laws in respect of commercial proprietors, commercial partnerships (general and limited), commercial corporations and limited liability partnerships are:		
HGB [„Handelsgesetzbuch“: German Commercial Code] for commercial proprietors, commercial partnerships (general and limited)	Parliament	May 10, 1897, last updated August 24, 2002
GmbHG [„Gesetz betreffend die Gesellschaften mit beschränkter Haftung“: German Limited Liability Companies Act]	Parliament	April 20, 1892 last updated July 19, 2002

a) the Act or Code:	b) the enacting body	c) date of enactment
AktG [„Aktengesetz“: German Stock Corporation Act]	Parliament	September 6, 1965, last updated July 19, 2002
PartGG [“Gesetz über Partnerschaftsgesellschaften Angehöriger Freier Berufe“: German Partnership Law for limited liability partnerships]	Parliament	July 25, 1994, last updated December 20, 2001
These are supplemented by certain provisions of the following, among others:		
PublG [„Publizitätsgesetz“: German Publicity Law]	Parliament	August 15, 1969 last updated December 10, 2001
RechKredV [„Verordnung über die Rechnungslegung der Kreditinstitute und Finanzdienstleistungsinstitute“: regulation for the accounting of the banking sector]	*issued by the Bundesministerium der Justiz [Federal Ministry of Justice]	December 11, 1998 last updated December 10, 2001
KWG [„Kreditwesengesetz“: German Banking Act]	Parliament	September 9, 1998, last updated August 22, 2002
RechVersV [„Verordnung über die Rechnungslegung von Versicherungsunternehmen“: regulation for the accounting of the insurance sector]	*issued by the Bundesministerium der Justiz [Federal Ministry of Justice]	November 8, 1994 last updated December 10, 2001
VAG [„Versicherungsaufsichtsgesetz“: German Insurance Supervisory Law]	Parliament	December 17, 1992 last updated July 23, 2002
GenG [“Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften“: Cooperative Association Law]	Parliament	May 1, 1889 last updated December 10, 2001
KHBV [„Krankenhaus-Buchführungsverordnung“: Regulations for accounting for hospitals]. There are other regulations for care-homes and disabled workshops etc.	* Issued by the Bundesminister für Arbeit und Sozialordnung, Norbert Blüm	March 24, 1987 last updated October 23, 2001

a) the Act or Code:	b) the enacting body	c) date of enactment
	[Federal Minister for Labour and Social Affairs]	
The auditing profession is also regulated by:		
WPO [„Wirtschaftsprüferordnung“: German Law Regulating the Profession of Wirtschaftsprüfer]	Parliament	July 24, 1961 last updated Dec 2003
The statutory accountability of civil partnerships, incorporated associations, foundations, unincorporated joint ventures (that are not partnerships), etc. are governed by provisions of the document of incorporation (articles of association) but are subject to :		
BGB [„Bürgerliches Gesetzbuch“: German Civil Code]	Parliament	August 18, 1896 last updated January 1, 2002
Statutory accountability at Governmental and State Level is prescribed by numerous laws and by-laws, including:		
BHO [„Bundeshaushaltsordnung“: Federal Budget Law]	Parliament	August 19, 1969 last updated June 17, 1999
Landeshaushaltsverordnung and Gemeindeordnungen: [Budget Regulations and Local Government Code]. There are 16 of each.	Promulgated by the federal states (state ministries).	
HGrG [„Haushaltsgrundsätze-gesetz“: Budget Principles Law“ – <i>basic rules governing budget law, i.e. of the federal government and states, to be observed by wholly or partially government-owned enterprises when preparing their financial statements</i>].	Parliament	August 19, 1996 last updated December 20, 2001
Stiftungsgesetze [<i>law of foundations in individual states in the federation</i>]	Promulgated by the federal states (state ministries)	
Parteiengesetz [Political Parties Act]	Parliament	January 31, 1994 last updated June 28, 2002

a) the Act or Code:	b) the enacting body	c) date of enactment
§ 342 German Commercial Code (HGB) [This authorises the Federal Ministry of Justice to form the German Accounting Standards Board to develop GAAP for consolidated financial statements, among other things.]	German Accounting Standards Board/Committee responsible for setting private sector accounting standards	

* A law may specifically empower another authority (Bundesregierung [Federal Government], Bundesminister [Federal Minister] or Landesregierungen [State Governments]) to issue regulations for specific purposes

Act or Code	Entities covered	Annual statutory financial statement requirement (subject to size)
HGB	Kfm/ Kfr [Commercial Proprietor] OHG [Commercial Partnership] KG [Limited Partnership] KGaA [Master Limited Partnership] AG/ GmbH [Business Corporations]	Yes Yes Yes Yes Yes
GmbHG	GmbH [Limited Liability Company]	Yes
AktG	AG [Stock Corporation] KGaA [Master Limited Partnership]	Yes Yes
PartGG	PartG [Limited Liability Partnership]	As for BGB below
GenG	Gen [Cooperative Associations]	Yes
BGB	Geschäftsmann/-frau [non-commercial businessman/ woman] Freiberufler [sole public professional] GbR [Civil Partnership] e.V. [Incorporated Association] Stiftung* [Incorporated Foundation] Arbeitsgemeinschaft [Non-commercial Joint Venture] Treuhandverhältnis [Trust] Nachlaß [Estate] Nichtrechtsfähige Verein [Unincorporated Association]	There are general accountability requirements; however, court decisions have often led to a de facto requirement for some form of financial statements to be prepared for parties with a legitimate interest.
HGrG	Enterprises owned by Federal Government	Yes
BHO	Federal Government	Yes

Act or Code	Entities covered	Annual statutory financial statement requirement (subject to size)
16 special ordinances for own establishments (Eigenbetriebsverordnungen)	Enterprises owned by Local Government	Yes
16 Gemeindeordnungen (local government codes)	Local Government	Yes
16 Landeshaushaltsverordnungen (State Budget Laws)	State Government	Yes

*Yes, under state law there is a requirement for statutory financial statements

Section 9B - Standard Setting

Question 100

Limited to a maximum of 4 years.

Question 104:

The German Accounting Standards Board (GASB) develops its accounting standards through a due process of public consultation in which all affected parties must be heard.

The consultation process must include the following material steps, whereby notices and announcements will be published on the GASC's homepage:

- a) publication of exposure drafts of standards with a call for comments to be submitted within a period of at least 45 days;
- b) publication of comments received unless this is expressly rejected by the party submitting the comments, and an analysis and discussion of material objections and proposed amendments;
- c) re-exposure of a revised draft with a call for comments to be submitted within a period of at least 30 days if, in the opinion of the GASB, the comments received warrant material amendment of the exposure draft;
- d) public discussion on the draft standards, which must be announced at least 14 days beforehand; minutes of the public discussions must be published within 30 days;

- e) adoption of the standards at meetings open to the public;
- f) publication of the adopted standards including, where applicable, dissenting votes, with a brief basis for conclusions.

Section 10 - Monitoring (Quality Assurance) and Enforcement

At the present time, the monitoring (quality assurance) and enforcement system in Germany is in the process of being restructured due to immanent revision of the Eighth EU Directive and the resultant changes to German law. In particular, it is to be expected that the monitoring and enforcement structure in Europe and Germany will be strengthened by incorporating greater public oversight so that ultimate responsibility for important monitoring and enforcement decisions no longer lies solely with the auditing profession. Since the detailed requirements for these contemplated changes have not yet crystallized, we have limited our description of the monitoring and enforcement systems to those currently in place.

Section 10H – Quality Assurance

Questions 124 and 125

Legal Background

A system of external Quality Assurance based on the EU Recommendation on Quality Assurance came into effect in Germany on January 1, 2001.

The current system was established by federal law amending the Law Regulating the Profession of Wirtschaftsprüfer (WPO = Wirtschaftsprüferordnung). Further provisions dealing with implementation aspects have been established through the By-laws Regulating the System of Quality Assurance, issued by the Wirtschaftsprüferkammer (WPK).

The regulatory body, the WPK, which operates the quality assurance system as part of its supervision of the profession, is a corporation established under public law, and is supervised by the Ministry of Economics and Labour.

The WPK has set up a commission on quality assurance that is responsible for monitoring the individual reviews.

In addition to this the Institut der Wirtschaftsprüfer (IDW) has issued a professional Standard on Quality Assurance Engagements, “IDW Auditing Standard: External Quality Assurance Reviews in Audit Firms (IDW AuS 140)”, which is supplemented by an “IDW Auditing Practice Statement: Checklists for the execution of External Quality Assurance Reviews (IDW AuPS 9.140)”

Prior to this, the Boards of Management of WPK and IDW had developed a Quality Control Standard VO 1/1995, which established standards and provided guidance on the individual Wirtschaftsprüfer's system of internal quality control. This remains valid within the current system.

All those carrying out statutory audits are subject to the quality assurance system.

Pursuant to Article 57a, para. 1, s. 1 WPO both, public auditors operating as sole practitioners (*Wirtschaftsprüfer*) and public audit firms (*Wirtschaftsprüfungsgesellschaften*) that offer statutory audit services have to submit to an external Quality Assurance Review every three years.

Exemptions to the mandatory participation in the Quality Assurance System can be permitted on request, in cases of hardship (Article 57a para.1 s. 2 WPO). Cases of hardship include, e.g. cases where the Quality Assurance would lead to “unreasonable” burdens on an individual practice. For example, a temporary exemption is intended in the case where a practitioner has been asked to undertake his first audit engagement. Without this, he would be unable to accept any audit engagements. Exemptions are not permitted for longer than 3 years.

Successful participation [resulting in Certification] in the system of external Quality Assurance is a prerequisite for the appointment as a company's statutory auditor (Article 319, para. 2, s. 2 no. 2 and para. 3 no. 7 HGB [German Commercial Code]).

In addition, professionals not providing statutory audit services may participate on a voluntary basis and are then subject to the same rules (Article 57g, para. 2, s. 1 WPO).

Disciplinary sanctions

The Commission on Quality Assurance can impose measures in order to eliminate identified deficiencies in the quality control system or impose a special review. As ultimo ratio, a Certificate of Participation previously granted can be revoked; without this certificate, the practitioner will no longer be authorised to provide statutory audit services.

A Certificate of Participation previously granted has to be revoked if – even contrary to the reviewer - the Commission concludes, based on existing deficiencies in the quality control system of the reviewed practice, that the reviewer should have given an adverse opinion.

The Commission is responsible for ensuring that all the quality assurance requirements pursuant to Article 57a - d WPO (with respect to independence, etc.) and the By-laws Regulating the System of Quality Assurance are complied with. Where there is a serious contravention of these requirements, the quality assurance review is deemed to be invalid.

A serious contravention is deemed to have occurred in particular where the quality assurance review was carried out by a quality reviewer, who - according to Article 57 a, para. 4 WPO- was not eligible to act as a reviewer, due to equity, financial or personal relationships with the firm under review. Furthermore, a Certificate of Participation already granted can be revoked if the reviewed practice does not comply with measures taken by the Commission.

A coercive fine can be imposed if - in defiance of measures imposed – the deficiencies in the quality control system of the reviewed practice are not eliminated, if a special review is not carried out, or if a Certificate of Participation already granted that has been revoked by the Commission on Quality Assurance is not returned to the WPK (Article 57e, para. 3, s. 1 WPO).

All measures taken by the Commission on Quality Assurance are addressed towards the reviewed practice. This even applies in cases where the reviewer has not observed his obligations, e.g., provisions regarding his independence. In these cases, the reviewed practice is obliged to ensure that the violation is eliminated.

Pursuant to Article 57e, para. 4, s.1 WPO and Article 13 of the By-laws Regulating the System of Quality Assurance, if the Commission on Quality Assurance discovers any facts resulting from a review proceeding that may justify the revocation of the practitioners official license as public auditor or revocation of the license of a public audit firm, it has to inform the Board of Management of the WPK. The obligation to inform the Board exists whatever the reasons for revocation are.

In cases where significant deficiencies have been found, and/or to control whether measures required by the Commission on Quality Assurance have been adopted or satisfactorily implemented by the practitioner, the Commission can order a special review, thus automatically shortening the review period (Article 57e para. 2, s. 1 WPO). In addition, a special review may be undertaken if differences of opinion between the Commission and the quality reviewer are evident.

Specific parts or aspects of the practitioner's system of internal quality control may be subject to a special review. This does not alter the requirement for a full review every three years.

The Commission on Quality Assurance can stipulate that the special review be conducted by another reviewer, particularly when the reviewer to date has not carried out the Quality Assurance Review in compliance with the legal requirements (Article 17 para. 2 of the By-laws Regulating the System of Quality Assurance). Upon completion of the special review, the reviewer who was engaged for the Special Quality Assurance Review must, promptly forward a copy of the Special Review Report to the WPK. The results of the Special Quality Review can lead to a revocation of the Certificate of Participation that had been previously issued to the reviewed practitioner.

The Role of the Public Oversight Board on Quality Assurance

The Public Interest is represented by the Public Oversight Board on Quality Assurance. The Public Oversight Board on Quality Assurance consists of five members who shall not be members of WPK or IDW (i.e. not public auditors and not involved in the WPK Commission on Quality Assurance) and who are, or have been, in particular, active in the fields of accounting, financial reporting, science or jurisdiction. The members of the Board are elected for a four-year period by the Advisory Board following proposal by the Management Board of the WPK. The election has to be approved by the Federal Ministry of Economy and Labour.

The Board is responsible for establishing its own rules of procedure. The members are independent and not subject to any directions.

The German Public Oversight Board on Quality Assurance is entitled to participate in any review, and may request the necessary clarifications and documents from the reviewer (Art. 57 f, para. 3 WPO).

During the evaluation of the reviewer's report the WPK (in the form of the Commission on Quality Assurance) is entitled to demand further information and documents from the reviewer and the reviewed practice (Art. 10, para. 1, s. 5 By-laws Regulating the System of Quality Assurance).

The Board monitors the adequacy and effectiveness of the system of quality assurance and issues statements thereon. It produces recommendations pertaining to the further development of, and improvements to the system and also prepares an annual report covering these matters. In exercising their duties, the members of the POB are required to maintain confidentiality regarding all information linked to a specific client of the auditor. In order to be able to perform its task, the Board may request the necessary clarifications and documents from the WPK and from the reviewer. The members are entitled to take part in Quality Assurance Reviews and in the meetings of the Commission on Quality Assurance.

WPK and IDW have set up a high-level Working Group ("Vorstandsarbeitskreis") to examine adequate measures in response to the recommendations of the Public Oversight Board on Quality Assurance relating to the German Quality Assurance System. This Group intends to prepare an Exposure Draft for a new Quality Control Standard, which will replace the VO 1/1995. A first proposal is in development at an advanced stage. The ED is expected to be issued in 2004. This Standard is intended to encompass the requirements of both ISQC 1 and ISA 220 revised as well as the recommendations of the Public Oversight Board on Quality Assurance.

Question 126:

An External Quality Assurance Review can only be performed by a practitioner who is registered as a quality reviewer with the WPK (Article 57a, para. 6, s. 1 WPO). In order to apply for registration, quality reviewers have to demonstrate sufficient experience in the field of statutory audits and quality control (Article 57a, para. 3 WPO). At present about 2700 quality reviewers are registered with the WPK, however only a narrow margin of that number have already undertaken a review.

According to IDW AuS 140 an engagement to conduct a Quality Assurance review may only be accepted if the quality reviewer has sufficient knowledge and experience to perform the engagement properly. Special knowledge and experience is required if the external Quality Assurance review is performed at an audit firm which audits banks, insurance companies, trusts or hospitals, or for instance, whose clients use internationally recognized accounting principles (e.g. IFRS/IAS or US GAAP), or where audits are carried out in accordance with internationally recognized auditing standards (e.g. International Standards on Auditing or US GAAS).

The results of the reviews are communicated by means of a long-form report addressed to the Commission on Quality Assurance, representing the WPK. This enables the Commission to review the evaluation of the reviewer. The Commission on Quality Assurance has the right to overrule the opinion of the reviewer and thus revoke any Certificate of Participation, thereby preventing the practitioner from performing statutory audit engagements.

Quality review report

In statute, Article 57a, para. 5, WPO sets out the basic principles for reporting on Quality Assurance reviews:

“If no material deficiencies in the system of quality control or any limitations of scope concerning the performance of the review were found by the reviewer, he must confirm that the system of quality control implemented in the reviewed firm complies with the requirements set up by law and the By-laws of the WPK and that the quality control system implemented ensures with reasonable assurance a proper performance of assurance services as defined in Article 2, para. 1 WPO, where the professional seal is used. If material deficiencies in the system of quality control or limitations of scope concerning the performance of the review were found, the reviewer must qualify his report or give an adverse opinion. He must give reasons for the qualification or adverse opinion. In the case of a qualification due to material deficiencies found out in the system of quality control, the reviewer is required to recommend measures to eliminate the deficiencies.”

IDW AuS 140.79 - 94 together with the five pro-forma examples of reports in the appendices provide more detailed guidance for reporting on Quality Assurance Reviews.

Section 10I – Investigation and Discipline

Disciplinary oversight of the audit profession in Germany

Question 134 (What is the term of appointment for members?)

IDW Ehrenrat: 4 years

Question 135 (For how many years has the body been in existence?)

WPK 42 years. The forerunner of the IDW was established in 1930.

Questions 130, 132, 133, 134, 135 and 138

Disciplinary oversight governed by the profession on its own authority is one of the main characteristics for professional self-regulation of the public audit profession in Germany. Subject to disciplinary oversight are violations of professional rules of conduct laid down in the law regulating the profession. The rights and duties imposed by those rules are supplemented by further regulations in the by-laws of the Wirtschaftsprüferkammer (WPK). Principles like independence, professional competence and due care, confidentiality and integrity form a core set of professional rules of conduct. Further duties derive from those principles.

Violations of professional rules of conduct are investigated within disciplinary procedures. Sanctions may be imposed where such violations have been proved. The sanctions imposed correspond to the legal status and duties of the professional. They are imposed in order to urge an auditor to observe professional rules and to assure integrity and order of the profession. Violations of professional rules may affect the profession's image in public. Therefore disciplinary oversight is a main component of professional self-regulation.

Due to the Law Regulating the Profession (WPO – Wirtschaftsprüferordnung), disciplinary oversight of the audit profession in Germany is organised into a two-tier system:

(1) Minor violations of professional rules

As far as minor violations are concerned, disciplinary oversight is first carried out by WPK. Minor violations of professional rules can be sanctioned by WPK imposing *reprimands*. Reprimands can be combined with a **fine up to 10,000 €** WPK investigates such cases on its own. WPK may start investigations ex officio, on complaints by third parties or on notifications by authorities or courts. Indications for professional misconduct may also arise from WPK's regular check of financial statements and audit

opinions, especially those disclosed in the Federal Gazette. Annually, WPK checks about 14.000 publicly disclosed audit opinions.

Before reprimanding a professional, the management board of WPK will hear the accused professional. If the professional is reprimanded, a notification will be sent to the chief public prosecutor's office at the Berlin District Court. The professional may appeal against the reprimand. WPK has to decide on the appeal. If the appeal is dismissed the professional can apply for a final decision by the Berlin District Court (Landgericht Berlin) where a division formed by a judge of the court and two professionals will take a final decision.

(2) Severe violations of professional rules

The oversight carried out by WPK should be distinguished from *disciplinary court procedures*. Severe violations of professional rules are sanctioned by special divisions of criminal courts. A division of the Berlin District Court (Landgericht Berlin) is responsible for all cases in Germany. The division is formed by a judge of the district court and two professionals. For appeals against verdicts, a panel of the Higher Regional Court of Berlin (Oberlandesgericht Berlin) is responsible. It is formed by three judges of the court and two professionals. Further appeals will be decided by a panel of the Federal High Court in Leipzig (Bundesgerichtshof) formed by three federal judges and two professionals.

In court procedures the following sanctions may be imposed: *reprimands, severe reprimands, fines up to 100,000 €, bans on performing specific services for a limited period of time, or expulsion from the profession*; severe reprimands can be combined with fines. Furthermore, in case of conviction, the professional has to carry the costs of the proceedings.

The charge is brought to the court by the chief public prosecutor's office at the Berlin District Court after its own investigations. Investigations by the prosecutor have priority over those started by WPK, i.e. responsibility for a specific case must be conveyed by the WPK to the prosecutor's office, if the violation of a professional rule is suspected as being more than minor. In most cases the prosecutor's office starts investigations upon application by WPK. Besides that the prosecutor's office - like WPK - may start investigations ex officio, on complaints by third parties or on notifications by authorities or courts. If the prosecutor's office finds sufficient evidence for a charge, the charge will be brought to court.

The number of days is not available.

Overview on the German disciplinary oversight on public auditors

