



Unqualified independent
assurance report on
the Self-assessment Report of
Clearstream Banking AG,
Frankfurt/Main
2009

Unqualified independent assurance report on the Self-assessment Report of Clearstream Banking AG, Frankfurt/Main

We have been engaged to provide assurance on the self-assessment report of Clearstream Banking AG, Frankfurt/Main, for the year ended 31 December 2009, attached herewith (Enclosure 1).

1. Respective Responsibilities of Directors and Reporting Accountants

The Board of Directors of Clearstream Banking AG, Frankfurt/Main is responsible for preparing the Self-assessment Report in accordance with the European Code of Conduct for Clearing and Settlement (“the Code”).

Our responsibility is to assess whether the Self-assessment Report has, in all material respects, been properly presented based on the Code (evaluation criteria) and to report our findings to you.

2. Basis of Statement/Report

Our assessment of the Self-assessment Report was based on our evidence-gathering procedures in accordance with the International Standards on Assurance Engagement (ISAE) “Assurance Engagements Other than Audits or Reviews of Historical Information” (ISAE 3000).

However, we have not performed an audit according to International Standards on Auditing (ISAs). Accordingly, we do not express an audit opinion.

Our evidence-gathering procedures included, for example:

- Obtaining an understanding of the allocation methodology for unbundling services as well as accounting separation
- Testing of allocation rules within the unbundling process on a sample base
- Reconciling of data streams to the source system
- Comparing of separated revenues and cost with figures in the financial data presentation



3. Statement/Report

Based on our work described in this report, nothing has come to our attention that causes us to believe that the Self-assessment Report is not properly presented, in all material respects, based on the European Code of Conduct for Clearing and Settlement. This report is intended solely for the information and use of the management of Clearstream Banking AG, Frankfurt/Main and the Bundesanstalt für Finanzdienstleistungsaufsicht, Bonn & Frankfurt/Main and is not intended to be relied upon and should not be used by anyone other than the specified parties.

We have provided the services described above on behalf of Clearstream Banking AG. We have carried out our engagement on the basis of the General Engagement Terms for Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften in the version of 1 January 2002 (Enclosure 2). By taking note of and using the information contained in this assurance report, each recipient confirms to have taken note of the terms and conditions stipulated in the aforementioned General Engagement Terms (including the liability limitations of No. 9 included therein) and acknowledges their validity in relation to us.

Frankfurt/Main, June 10, 2010

KPMG AG
Wirtschaftsprüfungsgesellschaft

Bernhard
Wirtschaftsprüfer

Hommel
Wirtschaftsprüfer

Enclosure 1

Self-assessment of the organisation's compliance with Code of Conduct commitments on service unbundling and accounting separation

Note: Information will not be made publicly available

Name of organisation	Clearstream Banking Frankfurt AG
Person responsible for the Service	Marcus Thompson (Accounting Separation)
Unbundling & Accounting Separation phase of the Code	Oliver Vossmann (Service Unbundling)
Code of Conduct services provided	<input type="radio"/> Trading <input type="radio"/> CCP services <input checked="" type="radio"/> <u>CSD services</u> <input checked="" type="radio"/> Account provision, establishing securities in book entry form, and asset servicing <input checked="" type="radio"/> Clearing and settlement <input type="radio"/> Credit provision <input checked="" type="radio"/> Securities lending and borrowing <input type="radio"/> Collateral management
Reporting period	01.01.2009 – 31.12.2009
Information provided	<input checked="" type="radio"/> Self-assessment report

Comment:

§ *Answers refer to cash equities only. Settlement provided for Deutsche Börse AG (XETRA) CCP service.*

General guidance when drafting report

The Self-assessment Report should be drafted bearing in mind the central purpose of the **Code of Conduct on clearing and settlement's** part on service unbundling and accounting separation. Service unbundling gives customers flexibility when choosing which services to purchase; accounting separation provides relevant information on the services provided.

The obligation to provide a Self-assessment Report arises from the "**Terms of Reference** for auditing compliance with the Service Unbundling and Accounting Separation and Assessing General Compliance", adopted by FESE, EACH and ECSDA on 1 September 2008. Section 2.4 of the Terms outlines the responsibilities of the engaging party and provides the following general principles that should be respected when drafting the Self-assessment Report:

- The engaging party shall each year prepare a Self-assessment Report where it outlines how it complies with the Code's part on service unbundling and accounting separation. The Report should be in writing and in English. (Article 18);
- The Self-assessment Report should be prepared by management on a "comply or explain" basis. The report should accordingly state in detail which provisions have not been complied with, for what period and the reasons for non-compliance and describe the measures and actions undertaken by the engaging party to implement the relevant Code commitments. (Article 19);
- The report should contain a description of the cost accounting methodology. Organisations should keep it consistent across different reporting periods, and should ensure that it represents a true and fair view of costs so that no parallel system for the same purpose is required. The report should also outline how the engaging party meets with the common guidance principles for the establishment of the cost accounting methodology (Article 20);
- The report should contain a central conclusion, with the engaging party clearly affirming the extent to which it complies with the Code (Article 21);
- The Self-assessment Report will be based on a standard template (to be developed by organisations in consultation with the MOG and external auditors) (Article 22).
- The Self-assessment Report and additional data disclosed as a result of Article 42 and 43 of the Code of Conduct will be supported by evidence provided to the external auditor in the frame of the assurance process (documentation and audit trail between the data provided and the accounting records) (Article 23);

This **Template** is a response to Article 22. It is structured in three parts:

1. Part I responds to Article 20 and describes of the cost accounting methodology, including how the engaging party meets the common guidance principles;
2. Part II responds to Articles 18 and 19 and presents in detail how the organisation complies with this part of the Code. The presentation follows the relevant articles of the Code of Conduct (i.e. 39, 40, 42 and 43);
3. Part III responds to Article 21 with the organisation clearly affirming the extent to which it complies with the Code.

The template below contains the main structure. Under most headings there are questions that serve as a guide to organisations. **The questions should be seen as suggestions and it is accordingly not compulsory to respond to all**, provided that the report responds to the reporting requirements contained in the Terms of Reference presented above.

Part I

Explanation of the methodology applied for allocating revenues and costs to Code of Conduct services

1. Explanation of the methodology for allocating revenues and costs

When drafting this section, the following topics would usefully be addressed:

- *Explanation of logic to assign revenues to services*
- *Explanation of cost allocation logic*
- *Explanation of keys used for allocating costs to services*
- *Explanation of allocation sequence*
- *Explanation of mapping from internal services to CoC services (if applicable)*
- *Provision of additional evidence and audit trail*
- *...*

General comments:

- ***Clearstream Banking AG provides a separate document explaining the principles of allocation which were applied for reporting on Code of Conduct services.***

2. Outline of compliance with common guidance principles for the establishment of the methodology

With reference to the Terms of Reference for auditing compliance with service unbundling and accounting separation page 3 footnote 6, Organisations shall use the following common guidance principles:

§	To use methodologies that are in line with the applicable accounting standards [GAAP, IFRS or other] (all).	ŷ
•	To allocate expenses that are directly linked to the provision of a service defined in the Code directly to that service whereas all other costs are allocated based on a true and reasonable basis (all).	ŷ
•	To use the published conversion table as a basis for revenue allocation across the five services defined in the Code (CSD only).	ŷ
•	To ensure that the results of the Accounting Separation show an allocation of the totality of their costs and revenues (with a category "Other" for those entries that do not belong to the five defined services) thereby allowing that the results can be reconciled back to the audited figures (CSD only).	ŷ

2.1. General comments:**None.****2.2. Specific comments:**

- State reasons and period for non-compliance with certain principles (if applicable):

None.

- State actions leading to completion of the non-compliant measures and timeline of implementing required changes (if applicable):

None.**Part II**

**Detailed presentation of the organisation's compliance with the Service
Unbundling and Accounting Separation part of the Code of Conduct**

3. Article 39: principles

Organisations shall unbundle prices and services at least as follows:

§ The services of trading venues, CCPs and CSDs will be unbundled from each other.	ý
§ Each CSD will unbundle the following services each from the other: a. Account provision, establishing securities in book entry form, and asset servicing; b. Clearing and settlement (including verification); c. Credit provision; d. Securities lending and borrowing; and e. Collateral management.	ý

(Check mark boxes if compliant)

3.1. General comments:

- ***At Clearstream Banking Frankfurt AG, we refer to service a. as "Custody"***

3.2. Specific comments:

- State reasons and period for non-compliance with certain principles (if applicable):

None.

- State actions leading to completion of the non-compliant measures and timeline of implementing required changes (if applicable):

None.**Useful questions when providing comments to the points above (for guidance only):**

- Are there certain services provided by your organisation which you could not assign without difficulties to one of the defined services in Article 39?
- How do you define the individual services that were unbundled from each other?

4. Article 40: unbundling

Unbundling means that:

§ The Organisations will allow any customer to purchase an unbundled service without compelling that customer to purchase also another unbundled service and	ý
§ Each unbundled service will be available at a price applicable to this service.	ý

(Check mark boxes if compliant)

4.1. General comments:

None.

4.2. Specific comments:

- State reasons and period for non-compliance with certain principles (if applicable):
None.
- State actions leading to completion of the non-compliant measures and timeline of implementing required changes (if applicable):
None.

5. Article 42: disclosing annual non-consolidated accounts

§ Any group that includes one or more trading venue, CCP or CSD shall disclose to the National Regulators the annual non-consolidated accounts separately upon request from the National Regulator.	ý
§ Organisations which offer trading, clearing and/or settlement services in a single corporate structure shall disclose to the National Regulators the costs and revenues of these services separately upon request from the National Regulator.	ý

(Check mark boxes if compliant)

5.1. General comments:

- **We are in a position to present revenue and cost separately for individual CoC services (see checkbox above). However, we are not in a position to present annual non-consolidated accounts separately, given that the detail produced is not on an account basis (see “Useful questions” below).**

5.2. Specific comments:

- State reasons and period for non-compliance with certain principles (if applicable):
None.
- State actions leading to completion of the non-compliant measures and timeline of implementing required changes (if applicable):
None.

Useful questions when providing comments to the points above (for guidance only):

- Are you in a position to provide annual non-consolidated accounts for trading venue(s), CCP(s) and/or CSD(s) separately?

- Are you in a position to provide annual non-consolidated accounts for services separated according to the Code (this applies only to the first level of separation as described in article 42)?

6. Article 43: disclosing information on costs and revenues

§	Each Organisation shall disclose to the National Regulators its costs and revenues for each unbundled service, as outlined in paragraph 40, in order to make transparent potential cross-subsidies.	ý
§	Organisations will apply the relevant IFRS standards or any other relevant local standards, where IFRS is not mandatory.	ý

(Check mark boxes if compliant)

6.1. General comments:

- ***Clearstream Banking AG reports revenues and costs for the Code of Conduct services based on the principles of the German HGB (Handelsgesetzbuch) standards. The outcome would not differ significantly when applying IFRS standards.***
- ***For details about cost allocation methodology please see separate documentation***

6.2. Specific comments:

- State reasons and period for non-compliance with certain principles (if applicable):
None.
- State actions leading to completion of the non-compliant measures and timeline of implementing required changes (if applicable):
None.

Useful questions when providing comments to the points above (for guidance only):

- Are you in a position to report costs and revenues for each unbundled service?
- Explain the methodology/system applied for allocating costs to individual services.
- Which revenue and cost positions did you include in your report and how are they defined?
- Which valuation methods did you use for certain types of costs (e.g. current cost or historical cost for depreciation)?
- How large is the fraction of costs directly/indirectly allocable to CoC services in your organisation?
- Did you follow the “direct” approach for directly allocable costs?
- Which allocation methodology did you apply for allocating indirect costs? Do you regard it as being consistent over time?
- Is the employed cost allocation methodology aligned to the approach of internal decision making?
- Which accounting standards did you apply when reporting costs and revenues of individual services?

- In case IFRS standards were not applied, would outcome significantly differ when applying IFRS?
- Are your reported results on unbundled services consistent/reconcilable with external financial reporting?

Part III**Central conclusion**

Note: Information may be made publicly available in the General Implementation Report

The central conclusion should sum up the most relevant issues provided in Part I and II of this document. Furthermore, it should clearly state the extent of (overall) compliance.

Central conclusion:

The “European Code of Conduct for Clearing and Settlement” of cash equities regards service unbundling and accounting separation as important levers to strengthen further the transparency and efficiency of European capital markets. Service unbundling gives customers flexibility when choosing which services to purchase; accounting separation provides relevant information on the services supplied. Measures defined in the Code are designed to provide customers with choice regarding the services available to purchase and to enhance competition. The measures were put in place by 1 January 2008.

Based on the guiding principles set forth in the “European Code of Conduct for Clearing and Settlement” and in the “Terms of Reference for Auditing Compliance with Service Unbundling and Accounting Separation and Assessing General Compliance”, Clearstream Banking AG allocated cost and revenue

- § based on GAAP reporting figures*
- § while directly allocating costs which are directly related to the provision of services and while allocating on a true and reasonable basis the indirectly related costs (cost allocation according to cause)*
- § covering predefined Code of Conduct services according to the published conversion table while informing on “other services” in order to reconcile with audited financial figures.*

The Self-Assessment Report and the Assurance Report were disclosed together with the financial data to the national regulator within 160 days of the end of the reporting period i.e. later than the requested deadline of 120 days.

Clearstream Banking AG complied fully with all other requirements of the articles 39 – 43 of the “European Code of Conduct for Clearing and Settlement”.

Code of Conduct for Clearing and Settlement

Part I of Self Assessment Report for Accounting

Separation – Description of Allocation Model

Clearstream Banking AG

– CONFIDENTIAL –

Version 1.1

Status **final**

Author Anne Guebels, JM Sindic

Date 8 June 2010

Review L1 M. Thompson

CONFIDENTIAL

Abstract

The purpose of this document is to ease the understanding for the cost and revenue allocation model which was set up in order to generate a Code of Conduct Report for Clearstream Banking AG.

Keywords

EOS, Code of Conduct, Accounting Separation, CoC attributes, DBG Services, EOS Simulation Model

CONFIDENTIAL

Contents

1	Documented model	4
2	Allocation basis and master data	5
2.1	Organizational view	5
2.1.1	Granular entities used in allocation process	5
2.1.2	Delimitation of scope and reconciliation with audited figures	5
2.2	Service view	5
2.2.1	Granular entities used in allocation process	5
2.3	Revenue and cost / cost element view	6
2.3.1	Delimitation of scope and reconciliation with audited figures	6
2.3.2	Granular entities used in allocation process	6
3	Allocation principles	7
3.1	Use a clear and precise data model	7
3.2	Use best allocation key available	7
3.3	Get management sign-off to ensure allocation keys are reasonable	7
4	Allocation sequence	8
4.1	Revenue allocation	8
4.2	Direct / indirect cost allocation	8
4.3	Center cost allocation / Code of Conduct service allocation	8
5	Data processing and audit trail	9

CONFIDENTIAL

1 Documented model

Based on the guiding principles set forth in the Code of Conduct and in the Terms of Reference, the allocation methodology was designed to allow for cost and revenue allocation

- based on GAAP reporting figures (alternatively HGB or IFRS)
- while directly allocating costs which are directly related to the provision of services and while allocating on a true and reasonable basis the indirectly related costs (cost allocation according to cause)
- covering predefined Code of Conduct services according to the published conversion table while informing on "other services" in order to reconcile with audited financial figures.

2 Allocation basis and master data

2.1 Organizational view

2.1.1 Granular entities used in allocation process

In order to allow for a reasonable allocation, the Code of Conduct cost allocation is based on the cost element AND center / project detail of audited financial figures.

2.1.2 Delimitation of scope and reconciliation with audited figures

Clearstream Banking AG provides the following services subject to Code of Conduct Reporting:

- Custody or "Account provision, establishing securities in book entry form, and asset servicing"
- Settlement
- Lending and Borrowing

2.2 Service view

2.2.1 Granular entities used in allocation process

Code of Conduct cost allocation uses the fee schedule (invoiced services) plus additional detail of asset class (cash equities / others) in order to map these to the published conversion table of Code of Conduct services.

Given that invoicing usually takes place on the level of services, no allocation is necessary to provide the service detail of revenues. However, an allocation is usually necessary in order to provide the information on asset class level.

CONFIDENTIAL

2.3 Revenue and cost / cost element view

2.3.1 Delimitation of scope and reconciliation with audited figures

In order to allow for reconciliation with audited financial figures, cost element detail down to EBIT level is used as a basis for cost allocations.

Revenue is defined as revenue according to the Profit and Loss statement.

The capitalization of project cost is treated as revenue. This is for the following reason: While DBG has a fairly stable administrative body with a high degree of fixed cost, the cost proportion subject to capitalization is subject to massive changes year on year. This is because due to GAAP requirements depending on the phase of large projects, project cost may either have to be capitalized or to be treated as period cost. In order to avoid that the cost of the organization changes dramatically period-on-period due to negative cost resulting from capitalization, it has been decided to treat capitalization as revenue.

Furthermore, interest income and expense is netted, where applicable.

2.3.2 Granular entities used in allocation process

While reporting is only on revenue and cost, cost allocation requires distinguishing at least between direct and indirect cost. This split is done as follows:

Sales revenues
Other Operating Income
Other Net Interest Income
Total Income
Direct costs:
Sales related costs
Operation Clearstream
Product Management and Design
TEC (Information Technology)
Indirect costs:
Sales, Marketing and Network
Other Operating expenses (claims, other costs..)
Total Costs

For direct costs, the allocation of costs to the different Code of Conduct activities is based on allocation key's given and validated by the business owner or the manager of the relevant unit.

Indirect costs are allocated on the basis of what has already been allocated directly (in direct costs) to the different Code of Conduct activities.

CONFIDENTIAL

3 Allocation principles

3.1 Use a clear and precise data model

Allocation rules and their sequence define the general cost flow to be modeled by the allocation system. This part of the allocation model is fairly stable and only changes when the organizational structure or the service structure changes.

Organizational master data consists of cost centers, projects, cost elements and services as well as groupings of these and their mapping to the Code of Conduct reporting structure. Usually a small part of the organizational master data may change period on period, which will be handled by the corresponding Controller.

3.2 Use best allocation key available

As a general rule, always the most direct cost allocation key which is available for a specific allocation is to be used. Therefore, usually revenues and direct costs are allocated based on direct allocation keys such as volume drivers and revenue splits. Indirect costs will always be allocated based on indirect allocation keys. However, it might be necessary to use indirect cost allocation keys also for direct costs in case there is no better allocation key available.

For Clearstream Banking AG, the following allocation keys are used:

CBF	number of transactions
	securities deposited
	management estimate of appropriate allocation key
	number of personnel
	direct cost incurred (for indirect costs)

3.3 Get management sign-off to ensure allocation keys are reasonable

Allocation keys largely depend on technology, efficiency and processes. Therefore, they may significantly differ on a yearly basis, depending, for instance, on the product mix provided by the legal entity as well as conditional on new technologies and new processes used. As a result, allocation keys are to be revisited each time the cost allocation process is carried out and have to be signed off by line management in a separate process.

CONFIDENTIAL

4 Allocation sequence

4.1 Revenue allocation

Revenues can usually be directly allocated to sold products. Where the CoC Service schedule is more detailed than the fee schedule of sold products – as for example in the case of asset class - an allocation to asset class level needs to take place in a first step.

In certain cases, revenues are completely specified by the cost element on which they are posted. In this case, there will be a direct allocation of revenues on certain cost elements to the Code of Conduct service concerned.

As a result, a complete picture of revenue detail is provided before cost allocation is performed. Thus, the revenue split can be used for cost allocation in case no other allocation key is available.

4.2 Direct / indirect cost allocation

In a first step, allocation of direct cost takes place. In a second step, allocation of indirect is performed. As a consequence, it is possible to allocate indirect cost based on the actual split of direct cost, where applicable. In the absence of more detailed allocation keys this allocation method reflects the fact that usually the provision of additional direct services brings with it also a (proportional) additional amount of indirect work/cost.

4.3 Center cost allocation / Code of Conduct service allocation

Both direct and indirect cost may originally be collected on resource pooling centers. Therefore, in a first phase, cost is allocated from indirect centers (for example the center collecting cost of a given building) to functional centers (for example centers collecting the cost for providing a given service). In a second phase, cost is allocated from functional centers to products / CoC services (for instance, the combination of a the CoC service "Trading" and the asset class "Cash equities").

5 Data processing and audit trail

Revenue and cost allocation is done based on data downloads from Clearstream Banking AG's ERP and data warehouse system (SAP). The original data basis as well as the data download and the results of each individual processing step are retained for auditing purpose. The system allows to monitor the allocation logic on a meta level and supports monitoring the continuity of applied allocation methods over time.

Code of Conduct - Accounting Separation

Data on Revenues and Costs per Code of Conduct Service

Reporting unit	Clearstream Banking AG
Reporting period	January 2009 - December 2009
Date of submission	31.05.2010
Receiving unit	Bundesanstalt für Finanzdienstleistungsaufsicht

Code of Conduct Service	Cash Equities							Others	Total
	Trading	Clearing	Settlement	Custody	Credit Provision	Securities lending & borrowing	Collateral management		
Total Revenues (mn EUR)			30,01	12,19		7,46		252,77	302,43
Total Costs (mn EUR)			10,68	7,58		7,99		148,44	174,69
EBIT (mn EUR)			19,33	4,61		-0,53		104,33	127,74
EBIT (in %)			64%	38%		-7%		41%	42%

Enclosure 2

General Engagement Terms

for
Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
[German Public Auditors and Public Audit Firms]
as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

1. Scope

(1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.

(2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

(1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.

(2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.

(3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.

(4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

(1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.

(2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statement

(1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to transmit to a certain third party does not result from the engagement terms.

The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.

(2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

(1) Where there are deficiencies, the client is entitled to subsequent fulfillment [of the contract]. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfill [the contract]; if the engagement was awarded by a person carrying on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfill [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.

(2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.

(3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

(1) *The liability limitation of § ["Article"] 323 (2) ["paragraph 2"] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.*

(2) *Liability for negligence; An individual case of damages*

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) *Preclusive deadlines*

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence.

The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
- b) examination of tax assessments in relation to the taxes mentioned in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
- e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the afore-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurring tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for ten years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.