

Excerpt from

Schlegelberger - Quassowski  
Aktiengesetz  
of 30 January 1937

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Page 387:                      Sec. 87  
Election and Removal.

(1) The members of the Aufsichtsrat shall be elected by the  
General Meeting.

Page 403:                      Sec. 90  
Prohibition of dual membership in the  
Vorstand and in the  
Aufsichtsrat

(1) The members of the Aufsichtsrat may not at the same time be  
members of the Vorstand or permanent representatives of members of the  
Vorstand. Furthermore, they may not, as officials of the company,  
conduct the affairs of the company.

Comment on Sec. 90  
Page 404:

... The regulations are substantially the same as under the old  
law (Sec. 248), Paragraphs 1 and 2, of the HBG (Commercial Law Code).

Page 407:                      Sec. 92  
Internal Organization of the Aufsichtsrat.

(1) The Aufsichtsrat shall elect from its members, pursuant  
to the particular regulations of the articles of incorporation, a  
chairman and at least one alternate chairman.

Page 427:                      Sec. 95  
Duties and Rights of the Aufsichtsrat.

(1) The Aufsichtsrat shall supervise the business management.  
(2) The Aufsichtsrat may at any time demand a report from the  
Vorstand on the affairs of the company, including its relation-  
ships with an enterprise of a Konzern (combine). Any individual member  
may also require a report, but only a report to the Aufsichtsrat  
as such. Should the Vorstand refuse to make such report, a demand  
for the report may only be made if the chairman of the Aufsichts-  
rat endorses the demand.

(Excerpt from the Aktiengesetz, page 2)

(3) The Aufsichtsrat may inspect and examine the books and correspondence of the company, as well as its assets, such as the company funds, securities and goods; it may also commission individual members for this purpose, or special experts for specific tasks.

(4) The Aufsichtsrat shall call a General Meeting if the welfare of the company demands such action.

(5) Measures pertaining to the business management may not be delegated to the Aufsichtsrat. However, the articles of incorporation or the Aufsichtsrat may specify that certain kinds of transactions shall require approval.

(6) The members of the Aufsichtsrat may not transfer their responsibilities to others.

Comments on Sec. 95:

Page 429:

... Since the members of the Aufsichtsrat are not under the obligation of giving all their attention to the (affairs of) the company, it is not to be expected that they shall inform themselves on all details, nor that they shall supervise every action taken by the business management. Such a course is impractical even in the case of small companies, to say nothing of large ones. As a rule it will be sufficient if the Aufsichtsrat obtains regular reports from the Vorstand, if it supplies advice on the important measures of business, and if it examines the annual balance sheet on the basis of the auditor's report. It is only responsible to the company if damages arise through its failure to take action, provided that it failed to take into account conditions which a conscientious manager of a business would have deemed important had he been in its position.

... Among the responsibilities of supervising the business management belongs the EXAMINATION OF ITS APPROPRIATENESS and ALVANTAGE for the company.

(Excerpt from the Aktiengesetz, page 3)

Page 430:

...According to Sec.81 the Vorstand shall submit, in the case of important matters, regular reports, at least once each quarter, orally or in writing, on the course of the business and on the situation of the enterprise to the Aufsichtsrat and to the chairman thereof or his deputy. Through this means the Aufsichtsrat is to be informed at regular intervals on the business conditions of the company and to be provided with the actual data on which to base its exercise of supervisory rights. The Court of Registration (Registergericht) may enforce upon application of the Aufsichtsrat the compliance with the duty of submitting reports, as provided in Sec.81, by the imposition of a fine (Ordnungsstrafe).

The duty to submit reports, as set forth in Sec.81, is not sufficient for an orderly supervision, however, since the Vorstand reports only what he deems necessary to be reported. In this respect the opinions of the Vorstand and the Aufsichtsrat may differ. For this reason the Aufsichtsrat must also have the right to demand from the Vorstand information on those matters which it deems important. Paragraph 2 is designed to assure it of this right.

Page 439/40:

Sec. 96  
Report to the General Meeting.

(1) The Aufsichtsrat shall examine the annual balance sheet, the proposal for the distribution of profits, and the annual report; and report on these to the General Meeting.

(2) In the annual report the Aufsichtsrat shall state the manner and extent of its examination of the business management of the company during the business year, it shall specify the agency which has examined the annual balance sheet and the annual report, and it shall state whether these examinations have given rise to any serious objections.

(Excerpt from the Aktiengesetz, page 4)

Page 453:

Sec. 99

Obligation to exercise due care  
and the responsibility of the members  
of the Aufsichtsrat.

Section 84, on the obligation to exercise due care and the  
responsibility of the members of the Vorstand, shall apply, mutatis  
mutandis, to the obligation to exercise due care and to the  
responsibility of the members of the Aufsichtsrat.

Comment on Sec. 99:

Page 453:

... The former law had already provided for corresponding  
regulations to a great extent concerning the obligation to  
exercise due care and the responsibility on the part of  
the members of the Aufsichtsrat and of the Vorstand.  
(See Sections 249 and 241 of the Commercial Law Code).

I hereby certify that the copy of the above document is  
literal and correct. The book referred to is in the Court  
Library.

Nuernberg, 18 March 1948.

signed: Dr. Alfred Schilf

Defense Counsel for the Defendant

Dr. Friedrich Janssen.