

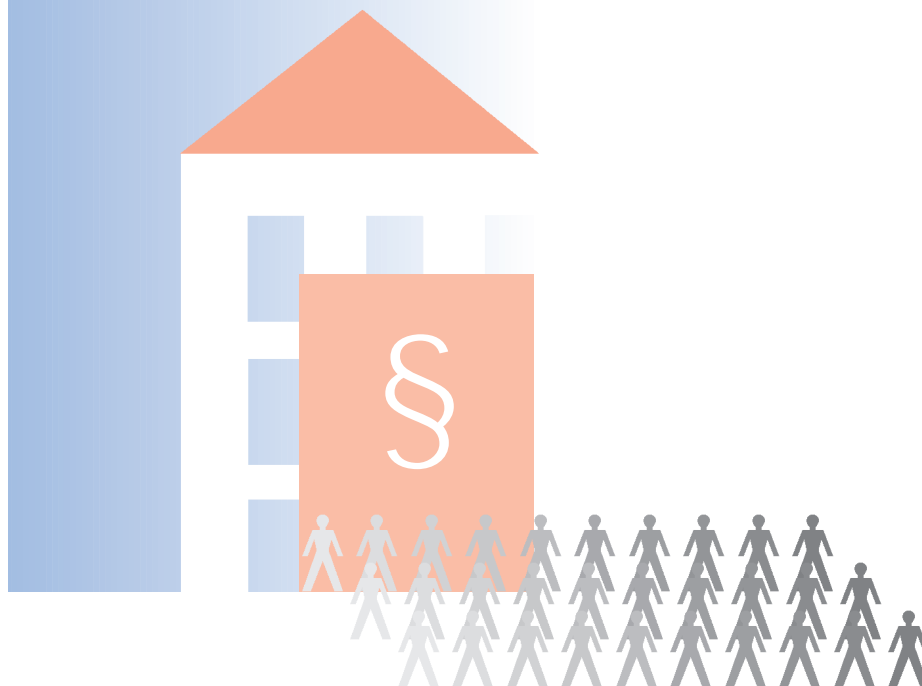
# Representing the workers' interest in the German industry

## Co-determination at establishment and board level

## Co-determination

**Co-determination** defines a set of rights that give employees the possibility of actively participating in the shaping of their working environment. This includes legally stipulated Co-determination rights, company-internal agreements devised in conjunction with union contracts as well as informal determination possibilities that have arisen from Co-determination practice.


The institutional core of Co-determination is the industrial constitution and corporate Co-determination.



# Representing the workers' interest in the German industry

## Co-determination at establishment level Works Councils (WC)

- ▶ Basic features
- ▶ Rights
- ▶ Special tasks



**Co-determination**  
**at establishment level**

[ **Works Councils (WC)**  
**Basic features**



# WORKS COUNCILS (WC) BASIC FEATURES

## TRADE UNION RIGHTS AT ESTABLISHMENT LEVEL

### ▶ Right of Action

▶ German Constitution,  
Art. 9 sec. 3

### ▶ Right of Access

▶ Works Constitution Act  
(WCA)



# WORKS COUNCILS (WC) BASIC FEATURES

## RIGHTS OF TU MEMBERS

### - FREEDOM OF ASSOCIATION -

#### ▶ Collective Agreement

- ▶ Legal claim for TU members only

#### ▶ Works Constitution Act

- ▶ No restriction on TU members' activities

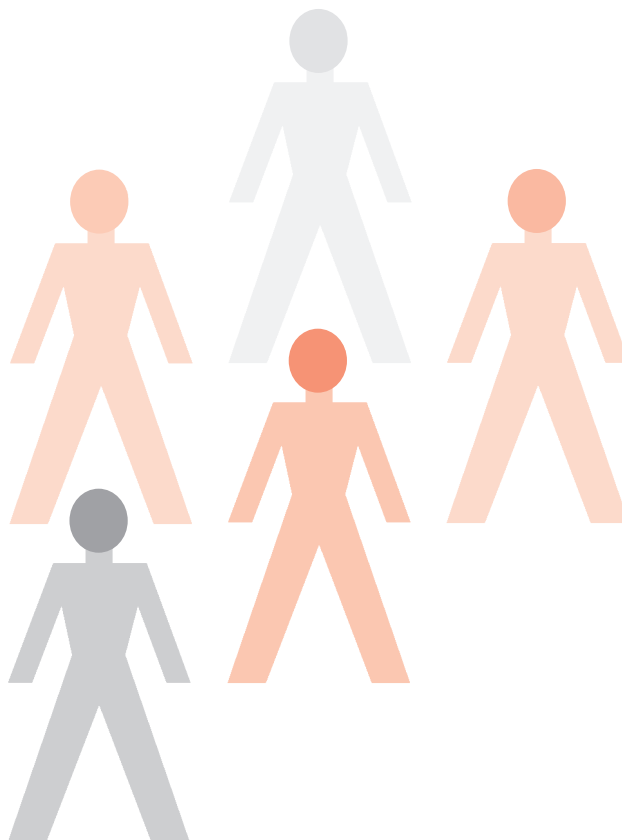


# WORKS COUNCILS (WC) BASIC FEATURES

## VERTRAUENSLEUTE

- ELECTED WORKPLACE UNION REPS -

- ▶ Nominate candidates for the WC
- ▶ Elect reps for other TU committees
- ▶ Communicate between WC and workforce
- ▶ Mediate between and advise workforce, WC and TU
- ▶ Possess no legal rights or duties



# WORKS COUNCILS (WC) BASIC FEATURES

## CO-OPERATION BETWEEN WCS AND TRADE UNIONS (1)

WCA

- ▶ **Right of Access (§ 2 (2) WCA)**
  - ▶ TU officers granted access to establishment
  - ▶ Employer must be notified in advance
- ▶ **Dereliction of statutory duties (§ 23 WCA)**
  - ▶ Application to Labour Court for:
    - ▶ Dissolution of WC for grave neglect of duties
    - ▶ Order for employer to cease certain acts



# WORKS COUNCILS (WC) BASIC FEATURES

## CO-OPERATION BETWEEN WCS AND TRADE UNIONS (2)

WCA

### ▶ Attendance at WC meetings (§ 31 WCA)

- ▶ TU officers may attend if WC members agree
- ▶ WC notifies TU of agenda in good time

### ▶ Attendance at work meetings (§ 46 WCA)

- ▶ TU officers entitled to attend in advisory capacity
- ▶ Written notification of date, time and agenda of meeting
- ▶ Collective bargaining policy may be discussed (§ 45 WCA)

# WORKS COUNCILS (WC) BASIC FEATURES

## CO-OPERATION BETWEEN WCS AND TRADE UNIONS (3)

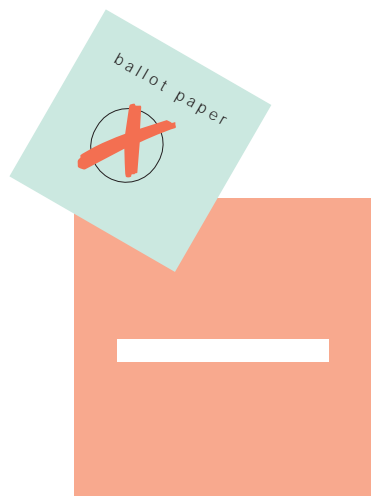
WCA

- ▶ **Conciliation committee assessors (§ 76 WCA)**
  - ▶ WC appointed assessors may be TU officers
- ▶ **Collective agreement monitoring (§ 80 (1) WCA)**
  - ▶ WC duty to ensure collective agreements are enforced
- ▶ **Experts (§ 80 (3) WCA)**
  - ▶ WC may call in experts (including TU officers)
- ▶ **Obstructing election/work of WC (§ 119 WCA)**
  - ▶ TU or WC may instigate legal proceedings against individuals

# WORKS COUNCILS (WC) BASIC FEATURES

## ELECTION OF THE WC (BETRIEBSRAT)

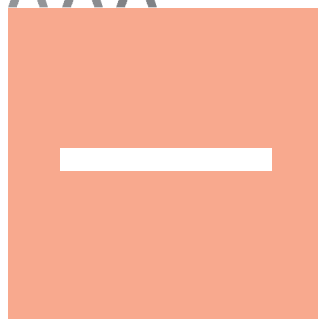
- ▶ WC elected by all employees at the establishment
- ▶ Number of employees determines WC size
- ▶ If there are 9 or more WC members – Plant Committee may be set up by WC
- ▶ Other committees may be established



# WORKS COUNCILS (WC) BASIC FEATURES

## WC MEMBERS

- ▶ Equal rights
- ▶ One person, one vote
- ▶ Perform duties free of charge
- ▶ Enjoy special protection e.g. against dismissal
- ▶ Elect chairperson & vice-chairperson



# WORKS COUNCILS (WC) BASIC FEATURES

## COMPANY WORKS COUNCIL (GESAMTBETRIEBSRAT)

- ▶ Established in companies with 2 or more WCs
- ▶ Equal status with individual WCs
- ▶ Deals with matters affecting company as a whole or more establishments (no higher organ)
- ▶ Votes weighted according to number of employees in establishment



# WORKS COUNCILS (WC) BASIC FEATURES

## GROUP WORKS COUNCIL (KONZERNBETRIEBSRAT)

- ▶ Established (optional) by resolutions of WCs within group
- ▶ No hierarchical WC structure
- ▶ Deals with matters which CWC are unable to settle
- ▶ Votes weighted according to number of employees in company



# WORKS COUNCILS (WC) BASIC FEATURES

## CO-OPERATION BETWEEN WC AND EMPLOYER

- ▶ Trusting Co-operation (§ 2 (1) WCA)
- ▶ “Spirit of mutual trust”

- ▶ General Co-operation (§ 74 (1 and 2) WCA)
- ▶ Duty of information
- ▶ Industrial action ban
- ▶ Peace obligation



# WORKS COUNCILS (WC) BASIC FEATURES

## WORKS AGREEMENTS (BETRIEBSVEREINBARUNGEN)

- ▶ **Mandatory and directly applicable**

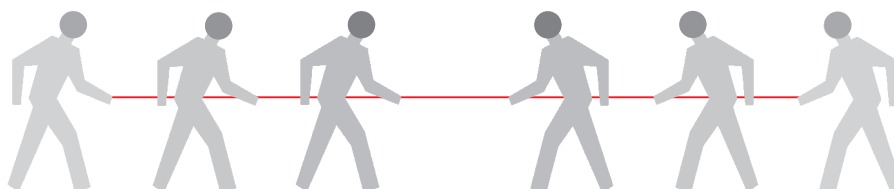
- ▶ **Waiving of rights only with WC agreement**

- ▶ **Enforceable Agreements**


- ▶ E.g. Co-determination in social matters  
(§ 87 WCA)

- ▶ **Voluntary Agreements**

- ▶ Other areas of WCA (§ 88 WCA)







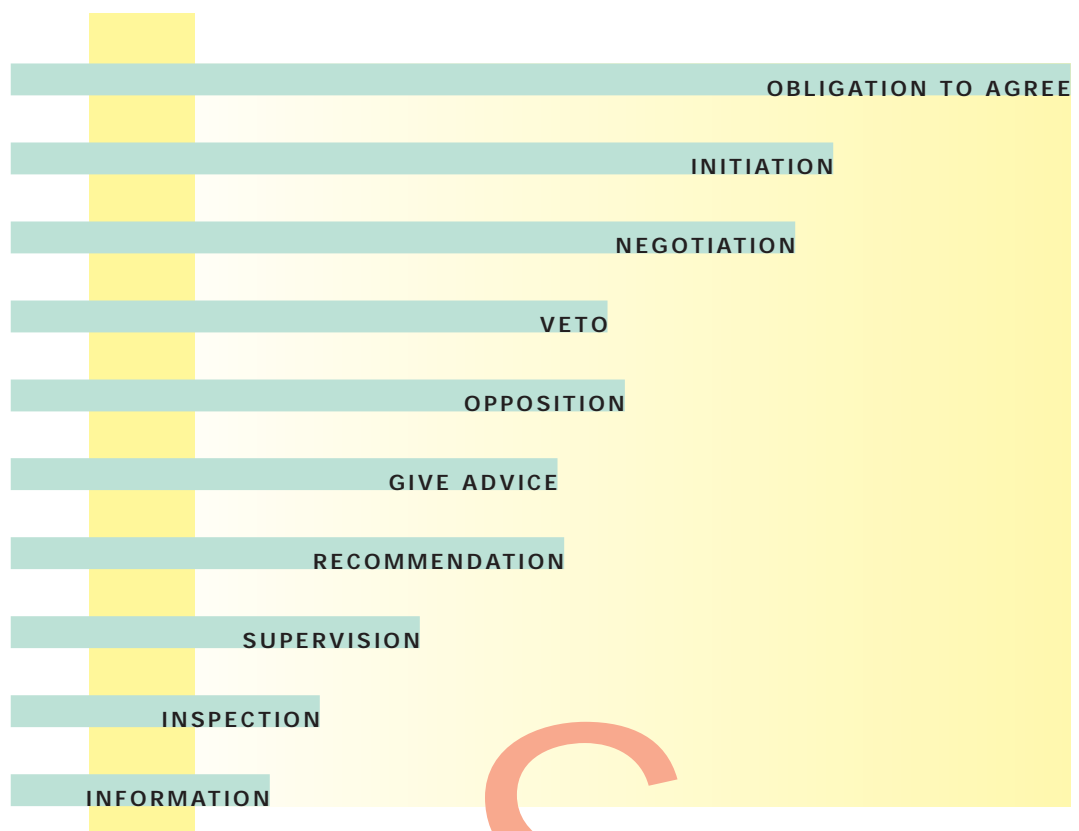
**Co-determination**  
**at establishment level**

[ **Works Councils (WC)**  
**Rights** ]



# WORKS COUNCILS (WC) RIGHTS

## FORMS OF PARTICIPATION



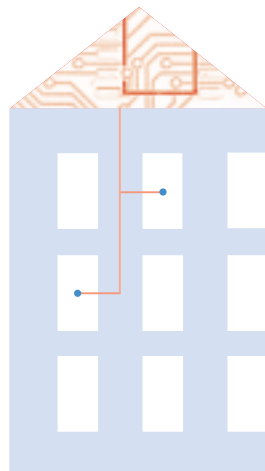
## EXTENT AND STRENGTH OF PARTICIPATION



# WORKS COUNCILS (WC) RIGHTS

## RIGHT TO INFORMATION

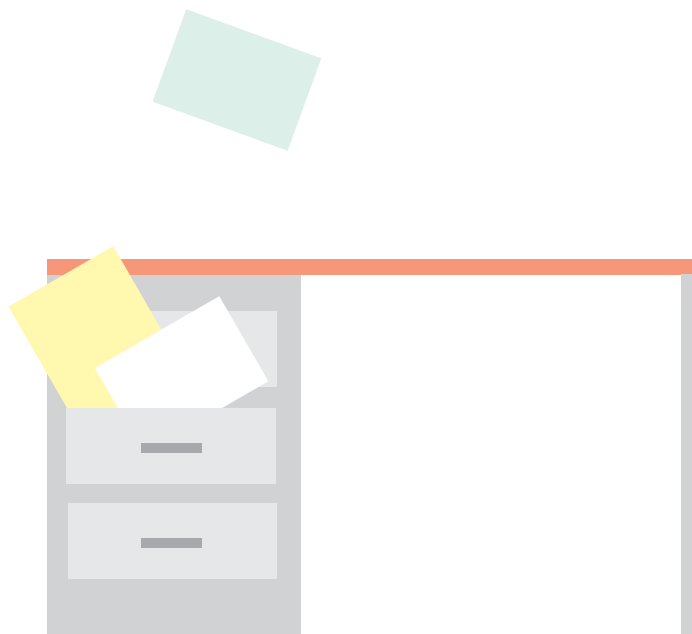
- ▶ **Monthly meeting with employer (§ 74 (1) WCA)**
- ▶ **Info from employer in good time (§ 80 (2) WCA)**
- ▶ Construction of works, working procedures and operations (§ 90 (1) WCA)
- ▶ Manpower planning (§ 92 (1) WCA)
- ▶ Recruitment, regrading and transfer (§ 99 (1) WCA)



## WORKS COUNCILS (WC) RIGHTS

### RIGHT TO INSPECT DOCUMENTS

- ▶ Access to any documentation (§ 80 (2) WCA)
- ▶ Any time
- ▶ Includes payroll and salary of employees



# WORKS COUNCILS (WC) RIGHTS

## RIGHT OF SUPERVISION

- ▶ Legal and equitable treatment of all employees (§ 75 (1) WCA)
- ▶ Acts and ordinances (§ 80 (1) WCA)
- ▶ Safety regulations
- ▶ Collective agreements
- ▶ Works agreements



# WORKS COUNCILS (WC) RIGHTS

## RIGHT TO MAKE RECOMMENDATIONS

- ▶ Duty to make recommendations for the benefit of establishment and staff (§ 80 (1) WCA)

- ▶ **Examples:**

- ▶ Smoking ban

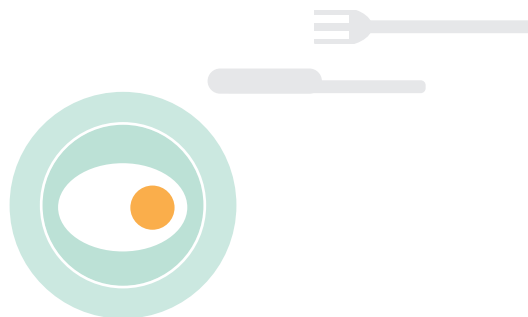


- ▶ Canteen

- ▶ Information and communication



- ▶ Health promotion etc ...



# WORKS COUNCILS (WC) RIGHTS

## RIGHT TO BE CONSULTED

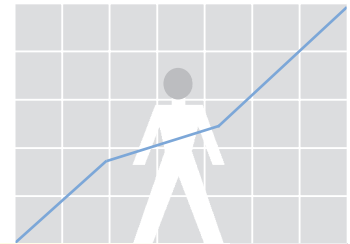
- ▶ **Consultation before every dismissal (§ 102 (1) WCA)**
- ▶ Information on reason for dismissal
- ▶ Dismissal without consulting WC is null and void
  
- ▶ **Consultation before every new employment (§ 99 (1) WCA)**



# WORKS COUNCILS (WC) RIGHTS

## RIGHT TO ADVISE

- E.G. MANPOWER PLANNING -



- ▶ **Employer notifies WC (§ 92 (1) WCA) about:**
  - ▶ Present and future manpower needs
  - ▶ Vocational training measures
  - ▶ Resulting staff movements
- ▶ **WC recommendations on introduction and implementation (§ 92 (2) WCA)**



# WORKS COUNCILS (WC) RIGHTS

## RIGHT OF OPPOSITION (1)

- E.G. DISMISSAL -

### ▶ Consultation before every dismissal

▶ Who, when and why

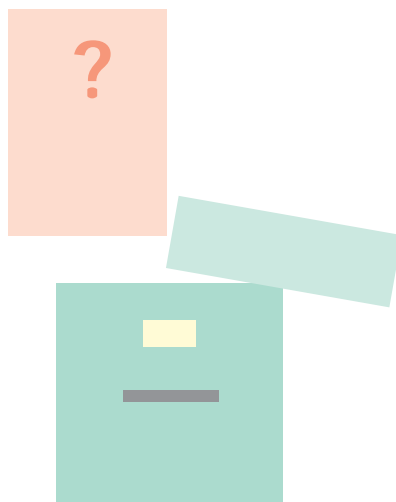
▶ Consideration of social matters

### ▶ WC objection to routine dismissal

▶ Written notification within one week

### ▶ WC objection to exceptional dismissal

▶ Written notification within three days

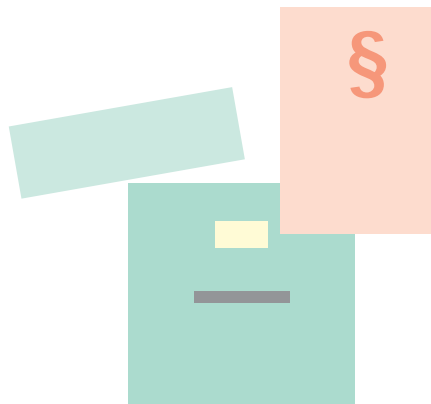


# WORKS COUNCILS (WC) RIGHTS

## RIGHT OF OPPOSITION (2)

### ▶ Grounds for WC opposition (§ 102 (3) WCA):

- ▶ Insufficient regard for social aspects
- ▶ Non-observance of selection guidelines
- ▶ Job transfer within company possible
- ▶ Re-training or further training possible
- ▶ Contractual change with agreement of employee

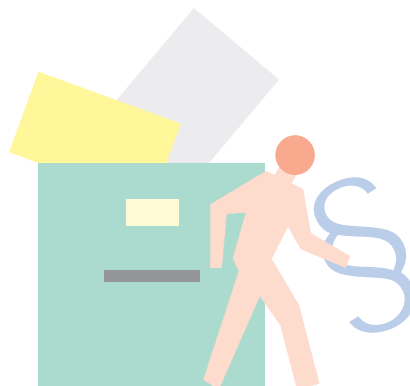


# WORKS COUNCILS (WC) RIGHTS

## RIGHT OF VETO (1)

- E.G. PERSONNEL MEASURES -

- ▶ Notification of intended measure
- ▶ Submission of appropriate documents
- ▶ Consent of WC sought
- ▶ WC discusses and passes a resolution



## WORKS COUNCILS (WC) RIGHTS

### RIGHT OF VETO (2)

- ▶ WC notifies employer in writing within one week of refusal/consent
- ▶ Measure carried out with WC consent
- ▶ Refusal of consent only if § 99 (2) 1-6 WCA is fulfilled
- ▶ Labour Court decision in lieu of WC consent

# WORKS COUNCILS (WC) RIGHTS

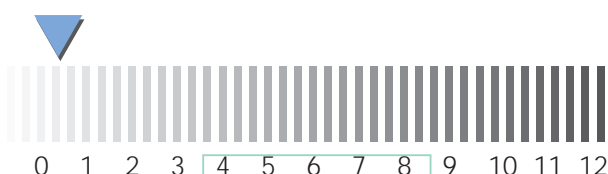
## RIGHT TO NEGOTIATE

- E.G. SOCIAL MATTERS -

### ▶ Consent of WC required (§87 WCA):

#### ▶ Examples

- ▶ Order and operation of establishment and employee conduct
- ▶ Working time, breaks and distribution of working hours
- ▶ Time, place and payment form of remuneration
- ▶ Protection of health and accident prevention
- ▶ Principles of leave arrangements and schedules
- ▶ Form, structure and administration of pension schemes



# WORKS COUNCILS (WC) RIGHTS

## RIGHT TO INITIATE MEASURES

### ▶ Selection Guidelines (§ 95 (2) WCA) in establishments with 1000 plus employees:

- ▶ Recruitment
- ▶ Transfer
- ▶ Regrading
- ▶ Dismissal

### ▶ No agreement: Conciliation Committee decides


# WORKS COUNCILS (WC) RIGHTS

## OBLIGATION TO AGREE

- E.G. COMPANY CHANGE -

- ▶ **WC informed of proposed company changes (§ 111 (1-5) WCA)**
- ▶ **Reconciliation of Interests and establishment of Social Compensation Plan (§112 WCA)**
- ▶ **Enforceable agreement on SCP (restricted by § 112a WCA)**
- ▶ Info and negotiation: implementation of change
- ▶ No agreement: Conciliation Committee (§112 (4) WCA)





**Co-determination**  
**at establishment level**

[ **Works Councils (WC)**  
**Special Tasks**





# WORKS COUNCILS (WC) – SPECIAL TASKS –

## CO-DETERMINATION IN SOCIAL MATTERS (1) (§ 87 WCA)

### Operation of the Establishment

#### Technical Devices

for Employee Performance  
Monitoring

**Suggestion Schemes**  
in the Establishment

### Distribution

of Working Hours

#### Establishment

of Leave Arrangements

**Form and Structure**  
of Social Services

**Temp. Reduction or Extension**  
of Normal Working Hours

**Company-owned**  
Housing

**Remuneration arrangements**  
in the establishment

**Time, Place & Form**  
of Payment of Remuneration

**Health and Safety**  
Arrangements

**Fixing**  
of Bonus Rates



## WORKS COUNCILS (WC) – SPECIAL TASKS –

### CO-DETERMINATION IN SOCIAL MATTERS (2)

#### ▶ **Negotiation between WC and employer:**

▶ “ Spirit of mutual trust”

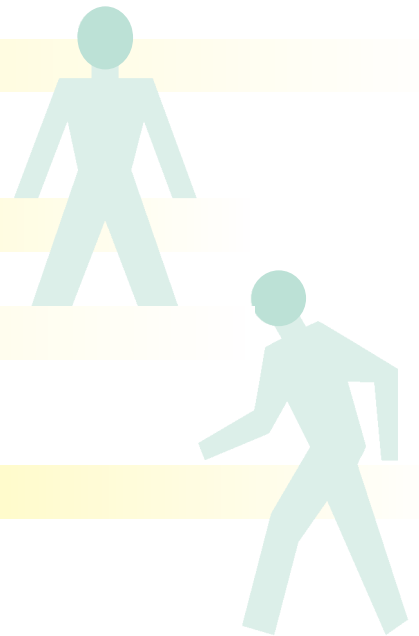
▶ “ Earnest desire to reach agreement”

#### ▶ **Agreement:**

▶ Works Agreement (§ 77 WCA)

#### ▶ **No agreement:**

▶ Decision of Conciliation Committee



## WORKS COUNCILS (WC) – SPECIAL TASKS –

### FINANCE COMMITTEE (1)

- ▶ Established in companies with 100 plus permanent employees (§ 106 (1) WCA)
- ▶ Members appointed and removed by WC or CWC (§ 107 (2) WCA)
- ▶ Members must be company employees
- ▶ Monthly meeting with employer
- ▶ Access to documents and consultation of experts
- ▶ Committee reports to WC



## WORKS COUNCILS (WC) – SPECIAL TASKS –

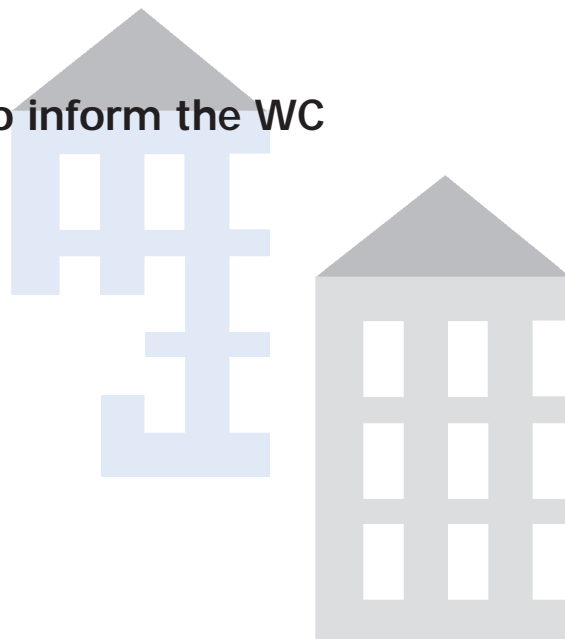
### FINANCE COMMITTEE (2)

- ▶ **Employer informs FC about economic and financial matters.**

**Examples (§ 106 (3) WCA):**

- ▶ Company's economic and financial situation
- ▶ Production techniques and working methods
- ▶ Any reduction of operations or closures
- ▶ Amalgamations or the division of companies
- ▶ Any change in company objectives

- ▶ **FC has to inform the WC**



# WORKS COUNCILS (WC) – SPECIAL TASKS –

## HEALTH AND SAFETY AT WORK (1)

### - WC RIGHTS -

#### ▶ **Statutory Protection**

- ▶ Right to Information (§ 80 (1) WCA)
- ▶ Right of Co-determination (§ 87 (1) No7 WCA)
- ▶ Additional Regulations (§ 88 No1 WCA)
- ▶ Right of Supervision (§ 89 WCA)

#### ▶ **Autonomous Protection**

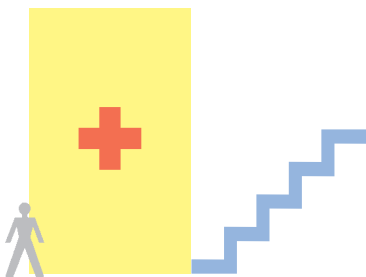
- ▶ Right to Initiate Measures (§ 80 (1) No2 WCA)
- ▶ Right of Co-determination (§ 91 WCA)

# WORKS COUNCILS (WC) – SPECIAL TASKS –

## HEALTH AND SAFETY AT WORK (2)

### – ROLE OF WC –

- ▶ Offer suggestions, advice and information (§ 89 (1) WCA)
- ▶ Right of access to whole establishment
- ▶ Right to undertake unannounced spot checks
- ▶ Participation in employer inspections and Health and Safety issues



# WORKS COUNCILS (WC) – SPECIAL TASKS –

## HEALTH AND SAFETY AT WORK (3)

– E.G. CREATION OF COMPUTER

SCREEN WORKPLACES –

**Manpower  
Planning  
Implications**



**Info** § 92 (1) WCA  
**Consultation**  
§§ 96, 97 WCA

**Hazards for Life  
and Health**



**Co-determination**  
§ 87 (1) No 7 WCA

**Conduct and  
Performance  
Monitoring**



**Co-determination**  
§ 87 (1) No 6 WCA

**Retraining and  
Further Training**

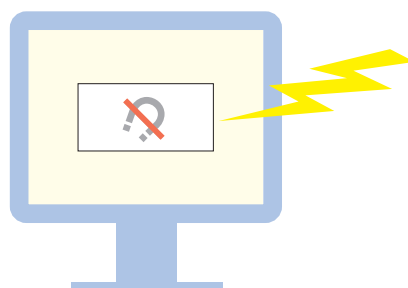


**Co-determination**  
§ 98 WCA

**Transfer of  
Employment**



**Veto**  
§ 99 WCA



## WORKS COUNCILS (WC) – SPECIAL TASKS –

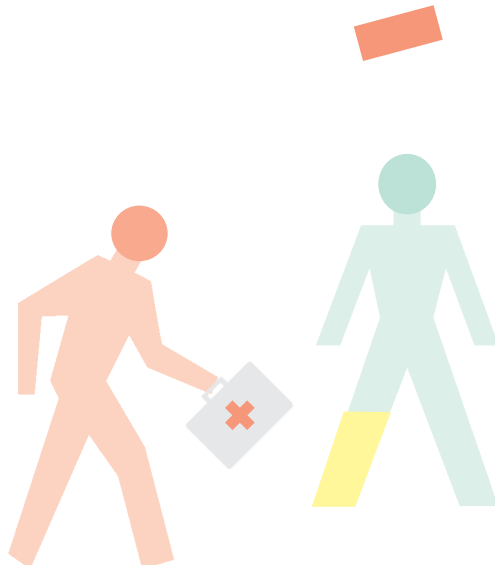
### HEALTH AND SAFETY AT WORK (4)

#### – HEALTH AND SAFETY COMMITTEE –

- ▶ Established in companies with 20 plus employees

- ▶ **Members:**

- ▶ Employer
- ▶ Two WC Members
- ▶ Works' Doctor
- ▶ Health and Safety Experts
- ▶ Safety Representative(s)





## WORKS COUNCILS (WC) – SPECIAL TASKS –

### CONCILIATION COMMITTEE (1)

(EINIGUNGSSTELLE)


- ▶ Purpose to settle WC/employer differences (§ 76 (1) WCA)
- ▶ WC and employer appoint assessors (§ 76 (2) WCA)
- ▶ Equal number
- ▶ Agreed independent chairperson or Labour Court decision for that person

## WORKS COUNCILS (WC) – SPECIAL TASKS –

### CONCILIATION COMMITTEE (2)

#### – THE HEARING –

- ▶ **Objective: Voluntary agreement through discussion**
- ▶ Simple majority vote (without Chairperson)
- ▶ Written decision binding for both parties
- ▶ **No agreement:**
- ▶ Discussion resumed
- ▶ Chairperson participates in subsequent vote



# Representing the workers' interest in the German industry

**Co-determination  
at board level**

## LEGAL FOUNDATIONS

### **Corporate Co-determination is based on three laws:**

- ▶ The Coal and Steel Industry Co-determination Law of 1951;
- ▶ the Industrial Constitution Law of 1952 and
- ▶ the Co-determination Law of 1976.

In the last analysis, the legislation applicable to public limited companies is relevant. The respective legislation is illustrated in the following overview: ▶ ▶ ▶

# CORPORATE LEGAL STRUCTURES

ACCORDING TO THE GERMAN STOCK CORPORATION  
LAW (AKTG)

## THE BOARD OF MANAGEMENT

Manages the company, plans, coordinates and supervises the company's activities.

## THE SUPERVISORY BOARD

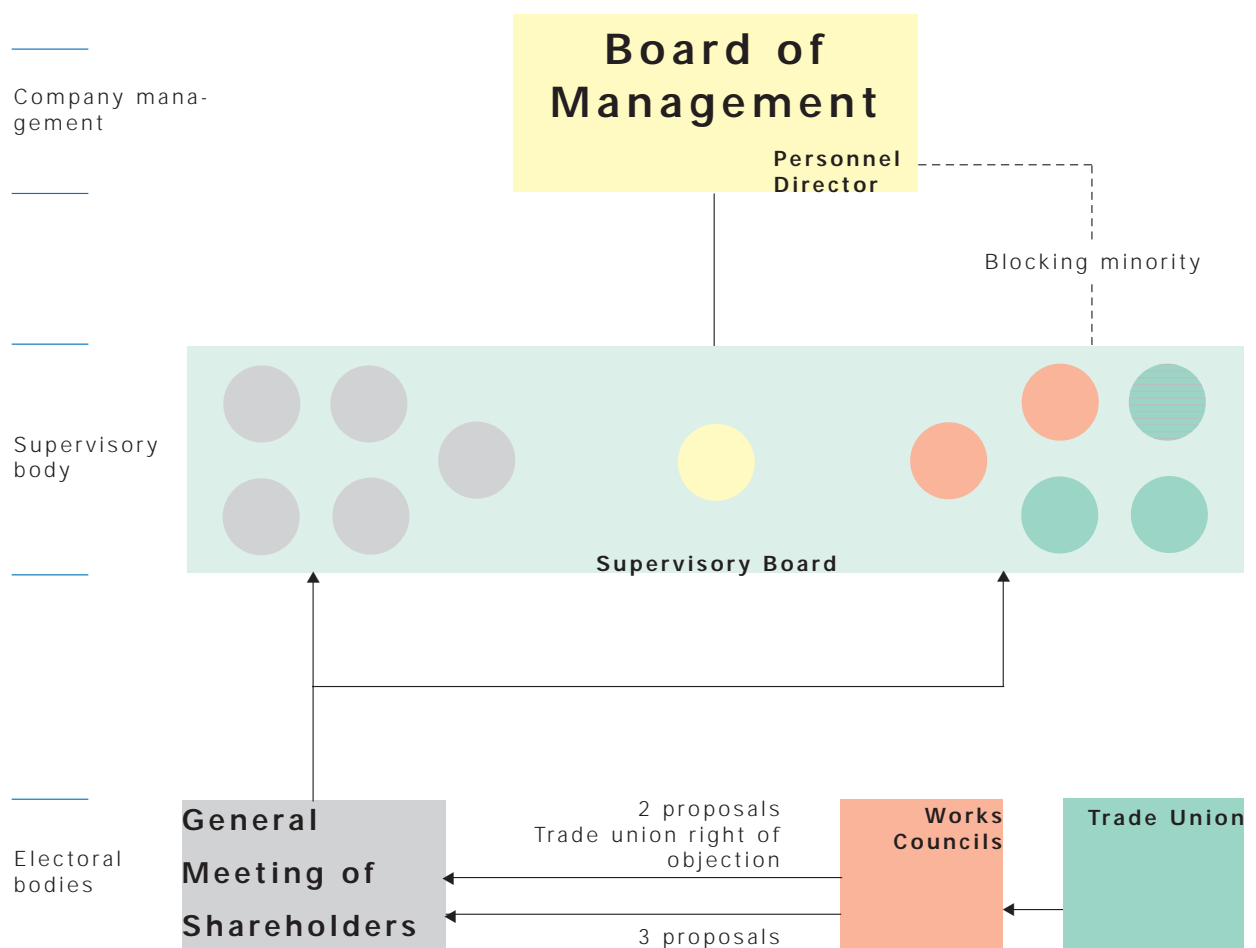
- ▶ Appoints and monitors the Board of Management
- ▶ Possesses rights of information and audit
- ▶ Can also have the right to approve business decisions

## THE GENERAL MEETING OF SHAREHOLDERS

- ▶ Elects representatives of the shareholder side to sit on the Supervisory Board
- ▶ Formally approves the actions of the Board of Management and the Supervisory Board
- ▶ Makes decisions on the articles of incorporation and disposal of profits

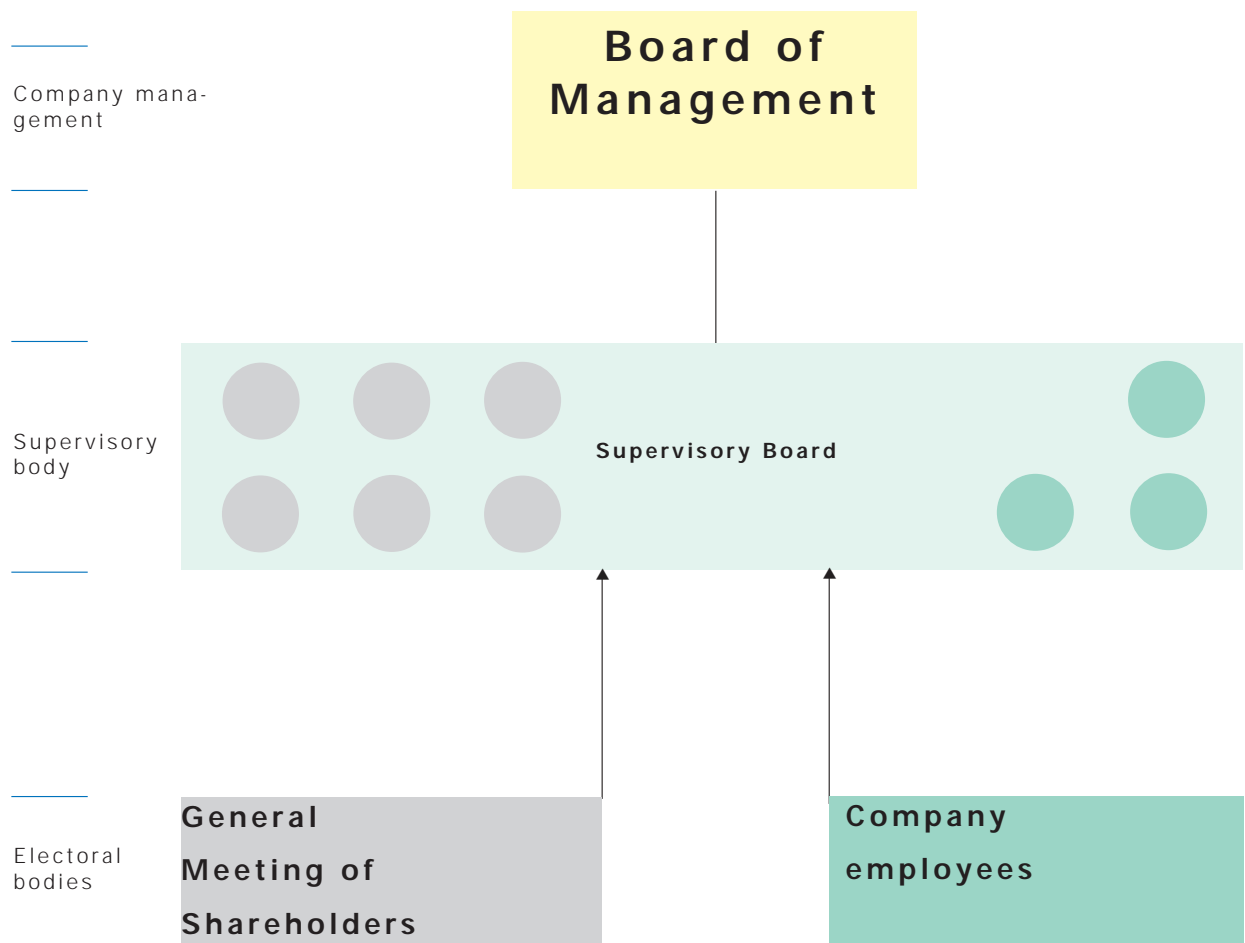
# THE SUPERVISORY BOARD

COMPOSITION ACCORDING TO COAL AND STEEL  
CO-DETERMINATION LAW OF 1951  
(MONTANMITBESTIMMUNGSGESETZ)  
(1985 VERSION)



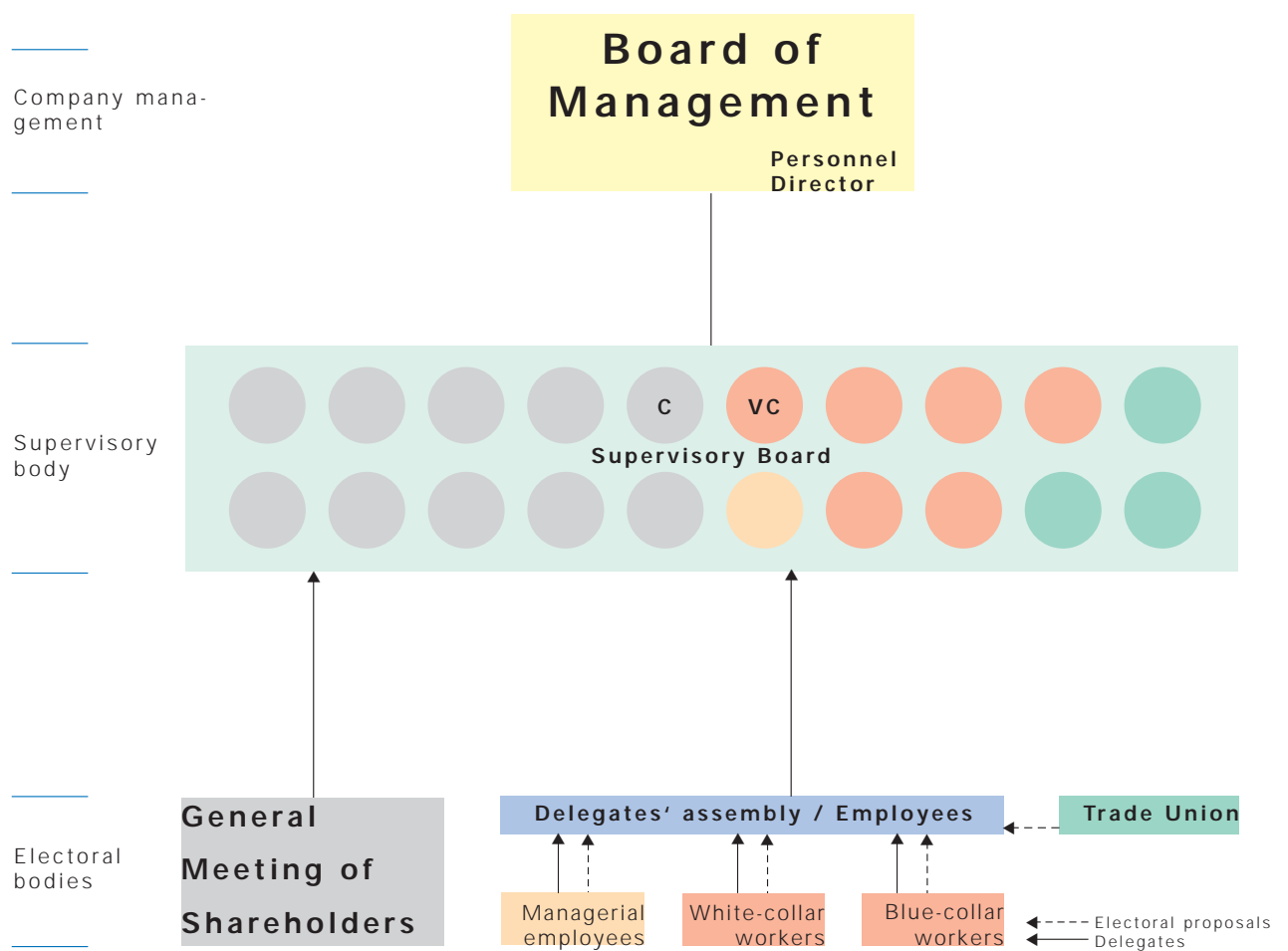
# THE SUPERVISORY BOARD

## COMPOSITION ACCORDING TO 1952 INDUSTRIAL CONSTITUTION LAW



# THE SUPERVISORY BOARD

## COMPOSITION ACCORDING TO 1976 LAW ON CO-DETERMINATION





# THE SUPERVISORY BOARD

## OVERVIEW OF RIGHTS AND DUTIES

### 1. APPOINTMENT OF MEMBERS OF BOARD OF MANAGEMENT

The Supervisory Board appoints the members of the Board of Management. Every Board member (including the Personnel Director – but see special procedural provisions for coal and steel industries) is appointed on the basis of a majority decision.

### 2. MONITORING OF BOARD'S MANAGEMENT OF THE COMPANY'S BUSINESS OPERATIONS

The Supervisory Board has the task of monitoring the Board of Management. The latter is obliged to inform the Supervisory Board on business policy and operations.

### 3. CO-DETERMINATION OF BUSINESS OPERATIONS REQUIRING SUPERVISORY BOARD APPROVAL

The Supervisory Board can decide that certain important business operations require its approval. If the Supervisory Board withholds approval, the Shareholders' Meeting can if requested by the board of management reverse this decision, but only with a 75% majority vote.

#### **4. SCRUTINY OF ANNUAL ACCOUNTS**

The Supervisory Board scrutinises the annual accounts, the annual report and the proposals for disposal of profits. It commissions an auditor who draws up a final report on its behalf.

#### **5. DUTY OF CARE AND CONFIDENTIALITY**

The Supervisory Board and every member thereof is bound by the duty of care of any properly authorised supervisor. Confidentiality has to be maintained on matters related to company secrets.

#### **6. WORKFORCE REPRESENTATIVES ON THE SUPERVISORY BOARD**

These should not be perceived as isolated representatives – they work in close collaboration with the members of the Works Councils and the trade unions represented within the company / group. They can also elucidate the problems related to their work to the workforce in general.

# ANNEX

## FURTHER DETAILS

### COMPANY CO-DETERMINATION

#### 1. APPOINTMENT OF MANAGEMENT

The Supervisory Board appoints the members of the Board of Management for a fixed period of time and is also responsible for the employment contracts (salary) and the size of top management.

Every Board member is appointed on the basis of a majority decision. In the spheres covered by the Coal and Steel Industry Co-determination Act and the 1976 Act, a so-called Personnel Director has to be appointed. In the Coal and Steel Industry this cannot occur against the votes of a majority of the workforce representatives on the Supervisory Board, so in effect the trade union representatives on the Supervisory Board have a right of nomination in this respect. In the case of the Co-determination Act 1976, the first vote has to produce a two-thirds majority in the case of all managerial appointments. If this is not forthcoming, the matter goes to arbitration by a committee based on equal representation. In practice, therefore, decisions on such matters are again made on a consensual basis.

#### 2. MONITORING OF THE BOARD'S MANAGEMENT OF THE COMPANY'S BUSINESS OPERATIONS

The task of the Supervisory Board is to monitor the management. The latter is obliged to inform the Supervisory Board on business policy and other basic aspects of corporate planning at least once a year and to provide information on business operations on a regular – at least quarterly – basis. This should not only occur within the framework of meetings (minimum number of meetings varies from 2 to 4 – with a minority right to special meetings) but also in other contexts. The Supervisory Board and individual members (with the support of one other), can request further information required for the purposes of monitoring and discussion.

The Supervisory Board as a whole can also decide to launch investigations either by individual members or by experts.

# ANNEX

## FURTHER DETAILS

### 3. BUSINESS OPERATIONS REQUIRING SUPERVISORY BOARD APPROVAL

The Supervisory Board can draw up a list of business operations that are important for the company and which it has therefore decided will require its approval. It is, however, not permitted for management activities to be transferred to the Supervisory Board. The Board of Management may not then undertake such activities without the approval of the Supervisory Board. It is thus possible, via discussion, to exert an influence on company policy. This is one of the reasons why, in practice, disagreements can occur over such lists and the latter sometimes display inadequacies. If the Supervisory Board withholds approval, the meeting of shareholders can reverse this decision but only by a 75% majority vote.

### 4. SCRUTINY OF ANNUAL ACCOUNTS

The Supervisory Board scrutinises the annual accounts, the annual report and the proposals for disposal of profits and has to provide a written report on these to the shareholders' meeting. To help it in this task it also commissions an auditor, who draws up a report for the members of the Supervisory Board and reports during the Supervisory Board meeting on the main results of his audit. The profitability of the company also has to be discussed at this meeting.

In its report, the Supervisory Board also has to inform the General Meeting of Shareholders about the manner and extent to which it has scrutinised the management of the company's business operations during the business year.

In public limited companies, the Board of Management and the Supervisory Board can jointly approve the annual accounts. This means that the accounts have then been certified and the Meeting of Shareholders can only make decisions regarding disposal of the net profit for the year.

# ANNEX

## FURTHER DETAILS

### 5. DUTY OF CARE AND CONFIDENTIALITY

The Supervisory Board and every member thereof is bound by the duty of care of any properly authorised scrutineer. By the nature of things, the different origins of the members of the Supervisory Board mean that in practice there can be disagreement on this. The same goes for the corporate goals pursued by management and their implementation within the company (especially with regard to human resources measures.)

Confidentiality has to be maintained on matters related to company secrets. Properly interpreted, this is provision intended to protect the company from its competitors and not to isolate the employee representatives on the Supervisory Board.

### 6. WORKFORCE REPRESENTATIVES ON THE SUPERVISORY BOARD

The individuals elected to represent the workforce on a body within an incorporated firm clearly have a special role allocated to them. But there is no such thing as „company interests“ which have priority above all else – and that is why the interests of the employees are brought in here. In practice, the two principles of co-operation and the representation of diverse interests can be compatible, provided there is a proper and timely flow of information. This includes the workforce representatives on the Supervisory Board regarding themselves as part of the system of employee participation. Work on the Supervisory Board should be linked to the activities of the Works Council members and carried out in collaboration with the trade unions represented within the company / group.

The employee representatives can and should elucidate the problems related to their work to the workforce in general. This can be done in such a way that it does not conflict with their duty of confidentiality.