

Functions of Legal Departments in German Listed Companies - M&A as an Example

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Nutzfahrzeuge



SKODA



SEAT



CUPRA



Audi



BENTLEY



Scout



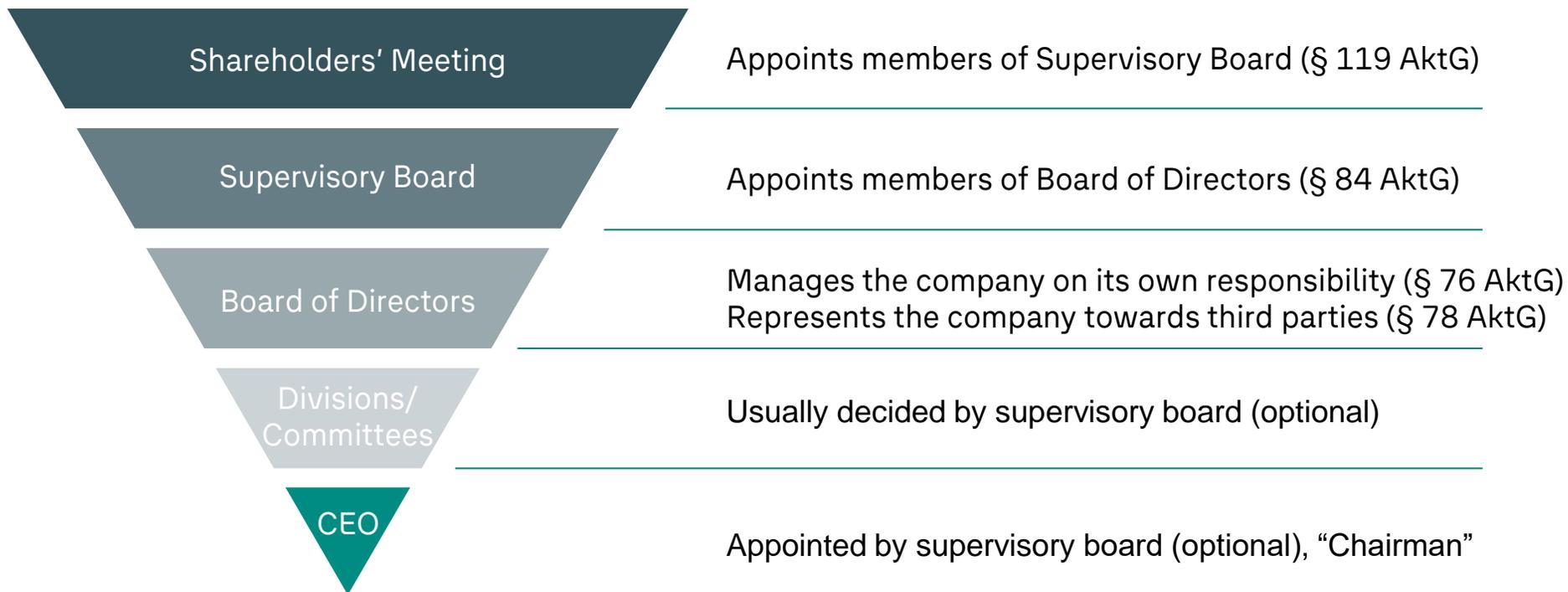
C A R I A D

M O I A

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1. Governance of a German Stock Corporation



2. Legal Framework for Legal Departments in Listed Companies

German Stock Corporation Act (AktG)

§ 93 AktG

- (1) In managing the affairs of the company, the members of the board are to exercise the due care of a prudent manager faithfully complying with the relevant duties. [...]
- (2) Members of the board acting in dereliction of their duties are liable as joint and several debtors to compensate the company for any damage resulting from their actions. [...]

§ 91 AktG

- (2) The board is to take suitable measures, and in particular is to institute a monitoring system, in order to allow developments jeopardising the company's continued existence to be identified at an early point in time. [...]
- (3) Moreover, the board of a listed company is to put in place an internal control system and risk management system that is suitable and effective in light of the scope of the business activities pursued by the enterprise and in light of its risk situation.. [...]

German Corporate Governance Codex (for listed companies: "comply or explain")

Principle 5

The Management Board ensures that all provisions of law and internal policies are complied with, and endeavours to achieve their compliance by the enterprise. The internal control system and risk management system comprise a compliance management system aligned to the enterprise's risk situation.

3. Functions of Legal Departments

1. **Compliance** – Ensure that company is managed in accordance with applicable law and regulations (e.g. antitrust)
2. **Risk Management** – Identification, minimization and reporting of legal risks
3. **Corporate Governance** – Support of Board in establishing governance systems and conducting shareholders' meetings
4. **Legal Advice** – Support of other departments and Board in general legal matters
5. **Contract Management** – Draft, review, negotiation and management of agreements in the interest of the company
6. **Management of IP Rights** – Registration, Maintenance and Defence of intellectual property rights
7. **Dispute Resolution** – Assertion and defence of company's rights in and out of courts, legal representation
8. **Mergers & Acquisitions** – Preparing, structuring and carrying out M&A transactions

4. M&A as an Example

Typical Phases of an M&A Transaction (Buy-Side)

1

Target Identification + First Contact

- Compliance Review
- Non-Disclosure Agreement
- Letter of Intent / Offer Letter

2

Due Diligence

- Definition of scope
- Engaging and instructing external legal counsel
- Clean Team Agreement
- Evaluation of DD results

3

Transaction Execution

- Draft transaction documents
- Assess merger control filing
- Negotiate contracts
- Signing (based on PoAs)
- Merger Control Filings
- Closing

4

Post-Merger Integration

- Prepare integration (no gun jumping!)
- Assist integration process

Thank you

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