

**Non-binding convenience translation of the**

**Report**

**on the audit of the  
merger agreement**

**between**

**Aareal Estate AG,**

**Wiesbaden,**

**and**

**Aareal Bank AG,**

**Wiesbaden,**

**pursuant to sections 9 (1), 12  
in conjunction with 60 et seq. UmwG**

NON-BINDING CONVENIENCE TRANSLATION

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## APPENDICES

- 1 Court order of the Regional Court of Frankfurt am Main, 5th Chamber for Commercial Matters, dated March 4, 2024 on the appointment of IVA VALUATION & ADVISORY AG Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, as joint merger auditor for the audit of the planned merger agreement (available in German language only) (*not attached to translation*)
- 2 Final draft of the merger agreement dated March 12, 2024 (*not attached to translation*)
- 3 General Engagement Terms for German Public Auditors and Public Audit Firms as of January 1, 2024

## LIST OF ABBREVIATIONS

Aareal Bank AG	Aareal Bank AG, Wiesbaden (Germany)
Aareal Estate AG	Aareal Estate AG, Wiesbaden (Germany)
AG	stock corporation
cf.	compare
€	Euro
HGB	German Commercial Code
IVA	IVA VALUATION & ADVISORY AG Wirtschaftsprüfungsgesellschaft, Frankfurt am Main (Germany)
para	paragraph
UmwG	Transformation Act
WIS AG	Westdeutsche Immobilien Servicing AG, Mainz (Germany)

## A. ENGAGEMENT AND EXECUTION OF THE ENGAGEMENT

1. Aareal Bank AG, Wiesbaden ("Aareal Bank AG"), and Aareal Estate AG, Wiesbaden ("Aareal Estate AG"), intend to effect a merger of Aareal Estate AG as the transferring legal entity and Aareal Bank AG as the acquiring legal entity. To this end, and based on the resolution of the Management Board of Bank AG in the circulation procedure of March 12/13/14, 2024 and the Management Board resolution of Aareal Estate AG of March 13, 2024, the Management Boards of Aareal Bank AG and Aareal Estate AG on March 15, 2024 prepared the final draft of a merger agreement to be notarized (see Annex 2) and submitted it to the appropriate commercial registers for the purpose of a notification pursuant to section 61 of the UmwG. The merger agreement is to be concluded and notarized following the approval of the Annual General Meetings of Aareal Bank AG and Aareal Estate AG. It is intended that the Annual General Meeting of Aareal Bank AG on May 3, 2024 and the Annual General Meeting of Aareal Estate AG on May 7, 2024 will each resolve on the approval of the final draft agreement.
2. The sole shareholder of Aareal Estate AG is Westdeutsche Immobilien Servicing AG, Mainz ("WIS AG"). The sole shareholder of WIS AG is Aareal Bank AG as the acquiring legal entity.
3. The merger of Aareal Estate AG into Aareal Bank AG shall take place in the internal relationship between the participating legal entities with effect from the end of December 31, 2023. From the beginning of January 1, 2024 (merger date), all actions and transactions of Aareal Estate AG shall be deemed to be for the account of Aareal Bank AG.
4. By court order dated March 4, 2024, the Regional Court of Frankfurt am Main, 5th Chamber for Commercial Matters, selected and appointed IVA VALUATION & ADVISORY AG Wirtschaftsprüfungsgesellschaft, Frankfurt am Main ("IVA"), as joint merger auditor for the audit of the merger agreement to be concluded in the context of the intended merger pursuant to sections 60, 10 UmwG (see Annex 1). Aareal Bank AG and Aareal Estate AG subsequently engaged us to audit the merger agreement.
5. WIS AG directly holds 2,500,100 of the no-par value bearer shares of Aareal Estate AG. This corresponds to a 100.00 % interest of WIS AG in the share capital of Aareal Estate AG, which totals € 2,500,100.00 and is divided into 2,500,100 bearer shares. There are no different classes of shares. Aareal Estate AG does not hold any treasury shares.
6. On March 11/12, 2024, we were engaged by Aareal Bank AG and Aareal Estate AG to audit the merger agreement, which we completed by March 21, 2024 in our offices in Frankfurt am Main, Hamburg and Landau in der Pfalz.
7. The following documents in particular were available to us for the performance of the audit
  - Extract from the commercial register of Aareal Estate AG dated March 11, 2024
  - Extract from the commercial register of Aareal Bank AG dated March 11, 2024
  - Statutes of Aareal Estate AG in the version dated June 2, 2021
  - Statutes of Aareal Bank AG in the version dated August 10, 2023
  - Final draft of the merger agreement dated March 12, 2024 and previous drafts (see Annex 2)

- Joint merger report pursuant to Section 8 UmwG dated March 15, 2024 of the Management Boards of Aareal Estate AG and Aareal Bank AG on the merger of Aareal Estate AG into Aareal Bank AG ("Merger Report") as well as previous drafts
  - Audited annual financial statements of Aareal Bank AG for the financial year 2023, with an unqualified audit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin,
  - Audited annual financial statements of Aareal Estate AG for the financial year 2023, with an unqualified audit opinion by KPMG AG Wirtschaftsprüfungsgesellschaft, Berlin
  - List of shareholders of WIS AG
  - Resolution of the executive bodies of WIS AG to waive the granting of shares in Aareal Bank AG dated March 13, 2024
8. We have received all requested documents, information, explanations and information from the Management Boards of Aareal Bank AG and Aareal Estate AG and the persons named by them to provide information.
  9. The Management Boards of Aareal Bank AG and Aareal Estate AG have each assured us in writing on March 21, 2024 that the explanations and information relevant to our audit of the merger agreement were provided completely and correctly. The responsibility for the proper content of the merger agreement lies with the contracting companies.
  10. We have recorded the nature and scope of our audit procedures in our working papers.
  11. We have complied with the provisions on independence in our merger audit (§§ 11 (1) in conjunction with 60 UmwG).
  12. We expressly point out that we have not audited the accounting, annual financial statements or the management of the companies involved. These audits are not part of a merger audit.
  13. The audit report serves to document our audit of the merger agreement. The use of our audit report outside the written and oral reports to the shareholders or the Annual General Meeting of Aareal Estate AG, including publication on the Company's website, information to the executive bodies, submission to the register court and in the context of any legal proceedings, requires our prior written consent. Our audit report may not be disclosed to third parties without this written consent. Consent will not be withheld for unreasonable reasons.
  14. The General Engagement Terms for German Public Auditors and Public Audit Firms as of January 1, 2024, attached as Annex 3, shall govern the performance of the engagement and our responsibility – also in relation to third parties. These General Engagement Terms govern – in addition to the statutory limitation of liability pursuant to Section 11 (2) UmwG in conjunction with § Section 323 HGB – our responsibility also towards third parties. If our report is used for purposes other than those on which the engagement is based, it must be ensured that the aforementioned General Engagement Terms also apply in these cases.

## B. SUBJECT MATTER, NATURE AND SCOPE OF THE AUDIT

15. Pursuant to § 60 in conjunction with § 9 para. 1 UmwG extends to the audit of the completeness and accuracy of the information contained in the merger agreement or its draft.
16. The subject of our audit is the draft merger agreement between Aareal Estate AG as the transferring company and Aareal Bank AG as the acquiring company dated March 12, 2024 (see Annex 2).
17. The joint merger report of the Management Boards of Aareal Estate AG and Aareal Bank AG pursuant to section 8 of the UmwG, in which the merger as a whole and the merger agreement are explained and justified in legal and economic detail, is not the subject of the statutory merger audit. It is also not part of the duties of the merger auditor to assess the expediency or economic efficiency of the merger.
18. The examination of the completeness of the merger agreement extends to whether the general and legal form-specific minimum information of the UmwG is included. Pursuant to § 5 para. 1 UmwG, the merger agreement in the present case must contain at least the following information:
  - the name or company name and registered office of the legal entities involved in the merger;
  - the agreement on the transfer of the assets of each transferring legal entity as a whole in return for the granting of shares or memberships in the acquiring legal entity;
  - the date from which the acts of the transferring legal entities shall be deemed to have been carried out for the account of the acquiring legal entity (merger effective date);
  - the rights granted by the acquiring legal entity to individual shareholders and holders of special rights or the measures provided for these persons;
  - any special advantage granted to a member of a representative body or a supervisory body of the legal entities involved in the merger, an auditor or a merger auditor;
  - the consequences of the merger for the employees and their representative bodies and the measures envisaged in this respect.
19. The examination of the accuracy of the information in the merger agreement extends to whether it is factually correct and free of contradictions. The decisive factor is that the underlying facts correspond to the actual circumstances and that forecasts and estimates are plausible.
20. All shares in the transferring company are held by WIS AG, whose sole shareholder is the acquiring company. According to the information provided to us, WIS AG will waive the granting of shares in the acquiring company and submit a corresponding notarized waiver declaration pursuant to Section 68 para. 1 sentence 3 UmwG. A corresponding resolution of the executive bodies of WIS AG to waive the granting of shares in Aareal Bank AG has been passed. A capital increase at the acquiring company to implement the merger will therefore not take place. The information in the merger agreement on the exchange of shares (section 5 (1) no. 3 to no. 5 UmwG) is therefore omitted.

## C. EXAMINATION OF THE MERGER AGREEMENT

### I. Completeness and correctness of the relevant statutory minimum information

21. We have examined the merger agreement with regard to the completeness and accuracy of the information required by § 5 (1) UmwG and have come to the following conclusions:

#### 1. The names of the legal entities involved (§ 5 para. 1 no. 1 UmwG)

22. the names and registered offices of the companies involved in the merger are stated in the merger agreement and correspond to the articles of association and the entries in the respective commercial registers kept at Wiesbaden Local Court.

#### 2. Agreement on the transfer of assets (section 5 (1) no. 2 UmwG)

23. Pursuant to section 1 (1) of the merger agreement, Aareal Estate AG transfers its assets in their entirety, including all rights and obligations, to Aareal Bank AG as the acquiring company, subject to dissolution without liquidation pursuant to sections 2 no. 1, 4 et seq. and 60 et seq. of the UmwG (merger by absorption). UmwG to Aareal Bank AG as the acquiring company (merger by absorption). The agreement correctly names the companies involved in the merger and specifies the transfer of assets by merger to Aareal Bank AG.

24. Pursuant to section 2 of the merger agreement, no consideration is granted for the transfer of assets. WIS AG, as the sole shareholder of Aareal Estate, will waive the granting of shares in the acquiring company and submit a corresponding notarized waiver. This corresponds to the provision pursuant to section 68 (1) sentence 3 of the UmwG, according to which the acquiring company may refrain from granting shares if all shareholders of a transferring legal entity waive this right and the corresponding waivers are notarized.

25. A capital increase at the acquiring company to implement the merger therefore does not take place. The information in the merger agreement on the exchange of shares (§ 5 para. 1 no. 3 to no. 5 UmwG) is therefore omitted.

#### 3. Merger effective date (section 5 (1) no. 6 UmwG)

26. Pursuant to section 1 (3) of the merger agreement, all acts and transactions of Aareal Estate AG shall be deemed to have been performed for the account of Aareal Bank AG from the beginning of January 1, 2024 (merger date).

27. Pursuant to section 1 (2) of the Merger Agreement, the merger shall be based on the balance sheet of Aareal Estate AG as at December 31, 2023, which has been issued with an unqualified audit opinion by the auditor, as the closing balance sheet within the meaning of section 17 (2) of the UmwG. The merger date therefore correctly follows directly after the closing balance sheet date of the transferring Aareal Estate AG.

#### **4. Granting of special rights (section 5 (1) no. 7 UmwG)**

28. According to section 3 (1) of the merger agreement, no special rights within the meaning of section 5 (1) no. 7 UmwG are granted to individual shareholders or holders of special rights, nor are any special measures within the meaning of section 5 (1) no. 7 UmwG envisaged for these persons. According to the documents and information provided to us, these statements are correct.

#### **5. Granting of special benefits (§ 5 para. 1 no. 8 UmwG)**

29. Pursuant to section 3 (2) of the merger agreement, no special benefits within the meaning of section 5 (1) no. 8 of the UmwG are granted to a member of the Management Board or Supervisory Board or to an auditor of one of the companies involved or to the merger auditor.
30. Section 4 (9) of the merger agreement regulates the termination of the position of the Supervisory Board of Aareal Estate AG. Accordingly, the mandates of all members of the Supervisory Board of Aareal Estate AG end when the merger takes effect, as the company as the transferring legal entity ceases to exist as a result of the merger.
31. During our audit, we did not find any indications that would contradict the correctness and completeness of the statements regarding the granting of special benefits.

#### **6. Consequences for the employees and their representatives (section 5 (1) no. 9 UmwG)**

32. The consequences of the merger for the employees and their representatives are described in § 4 of the merger agreement.
33. Pursuant to section 4 (1) of the merger agreement, Aareal Estate AG currently has five employees. When the merger takes effect, the employment relationships existing with the transferring company are transferred to Aareal Bank AG with all rights and obligations by way of universal succession. The length of service of the employees shall not be interrupted by the transfer of the employment relationships. There are no plans for the employer to terminate the employment relationships transferred to the acquiring company. The right to terminate employment for other reasons remains unaffected (cf. section 4 (1) of the merger agreement).
34. Insofar as Aareal Estate AG has granted pension commitments, the acquiring company shall enter into the pension commitments by operation of law when the merger takes effect. To the extent that vested rights or claims arising from direct pension commitments of the transferring company are secured against insolvency by a trust agreement with Aareal Pensionsverein e.V., Aareal Bank AG shall enter into this trust agreement by operation of law upon the merger taking effect (cf. section 4 (2) of the merger agreement).
35. The employees affected by the merger shall be informed of the transfer of employment relationships in good time before the merger takes effect (cf. section 4 para. 3 of the merger agreement). The draft of the Merger Agreement was forwarded to the works council of the Transferor Company on March 21, 2024 and its receipt was confirmed by the works council (cf. section 4 para. 4 of the Merger Agreement).
36. Pursuant to section 4 para. 5 of the Merger Agreement, Aareal Bank AG has a total of 1,045 employees at eleven locations as of December 31, 2023, for whom the merger has no direct consequences (cf. section 4 para. 5 of the Merger Agreement).



37. The draft of the merger agreement was forwarded to the responsible works council members of the acquiring legal entity for the Wiesbaden site, the general works council and the group works council on March 21, 2024 and its receipt was confirmed by the respective works councils (cf. section 4 para. 6 of the merger agreement). Upon integration, the works council of the absorbing legal entity shall be responsible for the transferred employees.
38. The works agreements in force at the transferring legal entity shall not continue to apply; rather, the provisions of the works agreements of the acquiring legal entity shall also apply to the employees transferred by way of universal succession (cf. section 4 (7) of the Merger Agreement).
39. Aareal Bank AG is a full member of the Arbeitgeberverband des privaten Bankgewerbes e.V. and is therefore bound by the relevant collective bargaining agreements. As of the transition date, the collective bargaining agreements applicable to the acquiring company shall therefore apply by virtue of collective bargaining commitment, insofar as the employees concerned are members of the ver.di trade union (cf. section 4 (8) of the merger agreement).
40. No measures detrimental to the employees are planned on the occasion of the merger. Only in individual cases, in consultation with the employees concerned, are there to be changes to employment contracts which, from an objective point of view, are to be regarded as positive for the employees. Local relocations are not planned (see Section 4 (11) of the merger agreement).
41. During the merger audit, we have not become aware of any indications that would contradict the correctness and completeness of the statements contained in § 4 of the merger agreement.

## **II. Correctness of the optional provisions in the merger agreement**

42. In the absence of a statutory obligation, optional components of the merger agreement cannot naturally be checked for completeness, but are subject to accuracy checks as contractual components.
43. The facts set out in § 5 of the merger agreement with regard to the effectiveness of the merger agreement accurately reflect the underlying statutory provisions.
44. Section 6 of the Merger Agreement states that the existing control and profit and loss transfer agreement dated February 18, 2020 between WIS AG as the controlling company and Aareal Estate AG as the controlled company will expire when the merger takes effect.
45. The assumption of costs agreed in section 7 is a voluntary agreement and permissible in terms of content.
46. The severability clause contained in § 8 is consistent in itself and in this respect a typical contractual clause.
47. The optional provisions of the merger agreement are internally consistent and coherent. According to our findings, the facts presented in the optional provisions correspond to the actual circumstances and the forecasts and estimates contained therein are plausible. In the course of our audit, we have not become aware of any information that would contradict the accuracy and/or effectiveness of these provisions.

## D. RESULT AND CONCLUDING STATEMENT

48. By court order dated March 4, 2024, the Regional Court of Frankfurt am Main, 5th Chamber for Commercial Matters, selected and appointed us as joint merger auditor for the audit of the merger agreement to be concluded in the context of the intended merger.
49. Based on our examination, we have come to the conclusion that the draft merger agreement dated March 12, 2024 contains the information required by § 5 para. 1 UmwG completely and correctly and thus complies with the statutory provisions.
50. In the course of the merger audit, we have not become aware of any indications that would contradict the accuracy of the optional additional information in the draft merger agreement.
51. Pursuant to Section 2 of the merger agreement, no consideration is granted for the transfer of assets. This corresponds to the provision pursuant to section 68 (1) sentence 3 UmwG, according to which the acquiring company may refrain from granting shares if all shareholders of a transferring legal entity waive this right and the corresponding waivers are notarized. In the present case, WIS AG, as the sole shareholder of Aareal Estate AG, will waive the granting of shares in the acquiring company and submit a corresponding notarized waiver.
52. A capital increase at the acquiring company to implement the merger will therefore not take place. The information in the merger agreement on the exchange of shares (section 5 (1) no. 3 to no. 5 UmwG) is therefore omitted.
53. Accordingly, the declaration to be made by the auditor of a merger pursuant to section 12 para. 2 sentence 1 UmwG as to whether the proposed exchange ratio of the shares, the amount of the additional cash payment, if applicable, or the membership in the acquiring legal entity as consideration is appropriate is not required.
54. Likewise, the information generally required in the audit report of a merger regarding the methods used to determine an exchange ratio (§ 12 para. 2 sentence 2 no. 1 UmwG), their appropriateness (§ 12 para. 2 sentence 2 no. 2 UmwG), which exchange ratio would result from the application of alternative methods (§ 12 para. 2 sentence 2 no. 3 UmwG) and which particular difficulties arose in the valuation (§ 12 para. 2 sentence 2 no. 4 UmwG) is not required.
55. Against this background, this audit report does not conclude with a statement within the meaning of § 5 (1) in conjunction with § 12 (2) UmwG. § 12 para. 2 UmwG on the appropriateness of the exchange ratio and on the methods used to determine the exchange ratio and its appropriateness.
56. Rather, the concluding statement relates exclusively to the completeness and accuracy of the information contained in the merger agreement pursuant to § 5 UmwG.
57. Based on the results of our audit, we therefore issue the following concluding statement on the basis of the explanations and evidence provided to us and the information, explanations and information provided to us.

"The draft merger agreement between Aareal Bank AG, Wiesbaden, and Aareal Estate AG, Wiesbaden, dated March 12, 2024 contains the minimum statutory information required pursuant to section 5 UmwG completely and correctly. The optional disclosures contained in the merger agreement are correct."

58. We issue this report on the basis of the documents submitted to us and the information provided to the best of our knowledge and belief in accordance with the professional principles set out in Sections 2 and 43 of the German Auditors' Code (Wirtschaftsprüferordnung).

Frankfurt am Main, March 21, 2024

IVA VALUATION & ADVISORY AG  
Wirtschaftsprüfungsgesellschaft

Creutzmann<sup>1</sup>  
Wirtschaftsprüfer

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NON-BINDING CONVENIENCE TRANSLATION

# General Engagement Terms

for

## Wirtschaftsprüferinnen, Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms]

as of January 1, 2024

### 1. Scope of application

(1) These engagement terms apply to contracts between German Public Auditors (Wirtschaftsprüferinnen/Wirtschaftsprüfer) or German Public Audit Firms (Wirtschaftsprüfungsgesellschaften) – hereinafter collectively referred to as "German Public Auditors" – and their engaging parties for assurance services, tax advisory services, advice on business matters and other engagements except as otherwise agreed in writing (Textform) or prescribed by a mandatory rule.

(2) Third parties may derive claims from contracts between German Public Auditors and engaging parties only when this is agreed or results from mandatory rules prescribed by law. In relation to such claims, these engagement terms also apply to these third parties. A German Public Auditor is also entitled to invoke objections (Einwendungen) and defences (Einreden) arising from the contractual relationship with the engaging party to third parties.

### 2. Scope and execution of the engagement

(1) Object of the engagement is the agreed service – not a particular economic result. The engagement will be performed in accordance with the German Principles of Proper Professional Conduct (Grundsätze ordnungsmäßiger Berufsausübung). The German Public Auditor does not assume any management functions in connection with his services. The German Public Auditor is not responsible for the use or implementation of the results of his services. The German Public Auditor is entitled to make use of competent persons to conduct the engagement.

(2) Except for assurance engagements (betriebswirtschaftliche Prüfungen), the consideration of foreign law requires an express agreement in writing (Textform).

(3) If circumstances or the legal situation change subsequent to the release of the final professional statement, the German Public Auditor is not obligated to refer the engaging party to changes or any consequences resulting therefrom.

### 3. The obligations of the engaging party to cooperate

(1) The engaging party shall ensure that all documents and further information necessary for the performance of the engagement are provided to the German Public Auditor on a timely basis, and that he is informed of all events and circumstances that may be of significance to the performance of the engagement. This also applies to those documents and further information, events and circumstances that first become known during the German Public Auditor's work. The engaging party will also designate suitable persons to provide information.

(2) Upon the request of the German Public Auditor, the engaging party shall confirm the completeness of the documents and further information submitted as well as the explanations and statements provided in statement as drafted by the German Public Auditor or in a legally accepted written form (gesetzliche Schriftform) or any other form determined by the German Public Auditor.

### 4. Ensuring independence

(1) The engaging party shall refrain from anything that endangers the independence of the German Public Auditor's staff. This applies throughout the term of the engagement, and in particular to offers of employment or to assume an executive or non-executive role, and to offers to accept engagements on their own behalf.

(2) Where the performance of the engagement to impair the independence of the German Public Auditor, of related firms, firms within his network, or such firms associated with him, to which the independence requirements apply in the same way as to the German Public Auditor in other engagement relationships, the German Public Auditor is entitled to terminate the engagement for good cause.

### 5. Reporting and oral information

To the extent that the German Public Auditor is required to present results in a legally accepted written form (gesetzliche Schriftform) or in writing (Textform) as part of the work in executing the engagement, only that

presentation is authoritative. Draft of such presentations are non-binding. Except as otherwise provided for by law or contractually agreed, oral statements and explanations by the German Public Auditor are binding only when they are confirmed in writing (Textform). Statements and information of the German Public Auditor outside of the engagement are always non-binding.

### 6. Distribution of, a German Public Auditor's professional statement

(1) The distribution to a third party of professional statements of the German Public Auditor (results of work or extracts of the results of work whether in draft or in a final version) or information about the German Public Auditor acting for the engaging party requires the German Public Auditor's consent be issued in writing (Textform), unless the engaging party is obligated to distribute or inform due to law or a regulatory requirement.

(2) The use by the engaging party for promotional purposes of the German Public Auditor's professional statements and of information about the German Public Auditor acting for the engaging party is prohibited.

### 7. Deficiency rectification

(1) In case there are any deficiencies, the engaging party is entitled to specific subsequent performance by the German Public Auditor. The engaging party may reduce the fees or cancel the contract for failure of such subsequent performance, for subsequent non-performance or unjustified refusal to perform subsequently, or for unconscionability or impossibility of subsequent performance. If the engagement was not commissioned by a consumer, the engaging party may only cancel the contract due to a deficiency if the service rendered is not relevant to him due to failure of subsequent performance, to subsequent non-performance, to unconscionability or impossibility of subsequent performance. No. 9 applies to the extent that further claims for damages exist.

(2) The engaging party must assert a claim for subsequent performance (Nacherfüllung) in writing (Textform) without delay. Claims for subsequent performance pursuant to paragraph 1 not arising from an intentional act expire after one year subsequent to the commencement of the time limit under the statute of limitations.

(3) Apparent deficiencies, such as clerical errors, arithmetical errors and deficiencies associated with technicalities contained in a German Public Auditor's professional statement (long-form reports, expert opinions etc.) may be corrected – also versus third parties – by the German Public Auditor at any time. Misstatements which may call into question the results contained in a German Public Auditor's professional statement entitle the German Public Auditor to withdraw such statement – also versus third parties. In such cases the German Public Auditor should first hear the engaging party, if practicable.

### 8. Confidentiality towards third parties, and data protection

(1) Pursuant to the law (§ [Article] 323 Abs 1 [paragraph 1] HGB [German Commercial Code: Handelsgesetzbuch], § 43 WPO [German Law regulating the Profession of Wirtschaftsprüfer: Wirtschaftsprüferordnung], § 203 StGB [German Criminal Code: Strafgesetzbuch]) the German Public Auditor is obligated to maintain confidentiality regarding facts and circumstances confided to him or of which he becomes aware in the course of his professional work, unless the engaging party releases him from this confidentiality obligation.

(2) When processing personal data, the German Public Auditor will observe national and European legal provisions on data protection.

### 9. Liability

(1) For legally required services by German Public Auditors, in particular audits, the respective legal limitations of liability, in particular the limitation of liability pursuant to § 323 Abs. 2 HGB, apply.

(2) Insofar neither a statutory limitation of liability is applicable, nor an individual contractual limitation of liability exists, claims for damages due to negligence arising out of the contractual relationship between the

engaging party and the German Public Auditor, except for damages resulting from injury to life, body or health as well as for damages that constitute a duty of replacement by a producer pursuant to § 1 ProdHaftG [German Product Liability Act: Produkthaftungsgesetz], are limited to € 4 million pursuant to § 54 a Abs. 1 Number 2 WPO. This applies equally to claims against the German Public Auditor made by third parties arising from, or in connection with, the contractual relationship.

(3) When multiple claimants assert a claim for damages arising from an existing contractual relationship with the German Public Auditor due to the German Public Auditor's negligent breach of duty, the maximum amount stipulated in paragraph 2 applies to the respective claims of all claimants collectively.

(4) The maximum amount under paragraph 2 relates to an individual case of damages. 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 regardless of whether the damages occurred in one year or in a number of successive years. In this case, multiple acts or omissions based on the same source of error or on a source of error of an equivalent nature are deemed to be a single breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the German Public Auditor is limited to € 5 million.

(5) A claim for damages expires if a suit is not filed within six months subsequent to the written statement (Textform) of refusal of acceptance of the indemnity and the engaging party has been informed of this consequence. This does not apply to claims for damages resulting from scienter, a culpable injury to life, body or health as well as for damages that constitute a liability for replacement by a producer pursuant to § 1 ProdHaftG. The right to invoke a plea of the statute of limitations remains unaffected.

(6) § 323 HGB remains unaffected by the rules in paragraphs 2 to 5.

#### 10. Supplementary provisions for audit engagements

(1) If the engaging party subsequently amends the financial statements or management report audited by a German Public Auditor and accompanied by an auditor's report (Bestätigungsvermerk), he may no longer use this auditor's report.

If the German Public Auditor has not issued an auditor's report, a reference to the audit conducted by the German Public Auditor in the management report or any other public reference is permitted only with the German Public Auditor's consent, issued in a legally accepted written form (gesetzliche Schriftform), and with a wording authorized by him.

(2) If the German Public Auditor revokes the auditor's report, it may no longer be used. If the engaging party has already made use of the auditor's report, then upon the request of the German Public Auditor he must give notification of the revocation.

(3) The engaging party has a right to five official copies of the report. Additional official copies will be charged separately.

#### 11. Supplementary provisions for assistance in tax matters

(1) When advising on an individual tax issue as well as when providing ongoing tax advice, the German Public Auditor is entitled to use as a correct and complete basis the facts provided by the engaging party – especially numerical disclosures; this also applies to bookkeeping engagements. Nevertheless, he is obligated to indicate to the engaging party any material errors he has identified.

(2) The tax advisory engagement does not encompass procedures required to observe deadlines, unless the German Public Auditor has explicitly accepted a corresponding engagement. In this case the engaging party must provide the German Public Auditor with all documents required to observe deadlines – in particular tax assessments – on such a timely basis that the German Public Auditor has an appropriate lead time.

(3) Except as agreed otherwise in writing (Textform), ongoing tax advice encompasses the following work during the contract period:

- a) preparation and electronic transmission of annual tax returns, including financial statements for tax purposes in electronic format, for income tax, corporate tax and business tax, namely on the basis of the annual financial statements, and on other schedules and evidence documents required for the taxation, to be provided by the engaging party
- b) examination of tax assessments in relation to the taxes referred to in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) support in tax audits and evaluation of the results of tax audits with respect to the taxes referred to in (a)
- e) participation in petition or protest and appeal procedures with respect to the taxes mentioned in (a).

In the aforementioned tasks the German Public Auditor takes into account material published legal decisions and administrative interpretations.

(4) If the German Public auditor receives a fixed fee for ongoing tax advice, the work mentioned under paragraph 3 (d) and (e) is to be remunerated separately, except as agreed otherwise in writing (Textform).

(5) Insofar the German Public Auditor is also a German Tax Advisor and the German Tax Advice Remuneration Regulation (Steuerberatungvergütungsverordnung) is to be applied to calculate the remuneration, a greater or lesser remuneration than the legal default remuneration can be agreed in writing (Textform).

(6) Work relating to special individual issues for income tax, corporate tax, business tax and valuation assessments for property units as well as all issues in relation to sales tax, payroll tax, other taxes and dues requires a separate engagement. This also applies to:

- a) work on non-recurring tax matters, e.g. in the field of estate tax and real estate sales tax;
- b) support and representation in proceedings before tax and administrative courts and in criminal tax matters;
- c) advisory work and work related to expert opinions in connection with changes in legal form and other re-organizations, capital increases and reductions, insolvency related business reorganizations, admission and retirement of owners, sale of a business, liquidations and the like, and
- d) support in complying with disclosure and documentation obligations.

(7) To the extent that the preparation of the annual sales tax return is undertaken as additional work, this includes neither the review of any special accounting prerequisites nor the issue as to whether all potential sales tax allowances have been identified. No guarantee is given for the complete compilation of documents to claim the input tax credit.

#### 12. Electronic communication

Communication between the German Public Auditor and the engaging party may be via e-mail. In the event that the engaging party does not wish to communicate via e-mail or sets special security requirements, such as the encryption of e-mails, the engaging party will inform the German Public Auditor in writing (Textform) accordingly.

#### 13. Remuneration

(1) In addition to his claims for fees, the German Public Auditor is entitled to claim reimbursement of his expenses; sales tax will be billed additionally. He may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of his services dependent upon the complete satisfaction of his claims. Multiple engaging parties are jointly and severally liable.

(2) If the engaging party is not a consumer, then a set-off against the German Public Auditor's claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.

#### 14. Dispute Settlement

The German Public Auditor is not prepared to participate in dispute settlement procedures before a consumer arbitration board (Verbraucherschlichtungsstelle) within the meaning of § 2 of the German Act on Consumer Dispute Settlements (Verbraucherstreitbeilegungsgesetz).

#### 15. Applicable law

The contract, the performance of the services and all claims resulting therefrom are exclusively governed by German law.