

# **Corporate governance declaration and corporate governance report of Hawesko Holding AG by the Board of Management and Supervisory Board**

## **Corporate governance**

Hawesko Holding AG is committed to responsible corporate management and supervision directed towards increasing the value of the company. The transparency of the company's principles as well as the presentation of its ongoing development are to be assured in order to create, maintain and strengthen confidence in the company among customers, business partners and shareholders.

In this declaration, the Board of Management and Supervisory Board report on the principles of corporate management and on the modus operandi of the Board of Management and Supervisory Board pursuant to Article 3.10 of German Corporate Governance Code and Section 289a Para. 1 of German Commercial Code. A compliance officer ensures the observance of the principles resolved and set down by the Board of Management and the Supervisory Board in the company's compliance regulations.

## **Declaration of Compliance pursuant to Section 161 of German Stock Corporation Law (AktG)**

The Board of Management and Supervisory Board monitor compliance with the German Corporate Governance Code and each year submit a Declaration of Compliance, both current and former versions of which can be called up on the Internet.

Pursuant to Section 161 of German Stock Corporation Law, the Board of Management and Supervisory Board of publicly quoted stock corporations shall declare each year that the recommendations of the Government Commission on the German Corporate Governance Code, published in the official section of the electronic Federal Official Gazette by the Federal Ministry of Justice, have been and are complied with, as well as declare which of these recommendations have not been or will not be complied with.

The Supervisory Board and Board of Management of Hawesko Holding AG, Hamburg, considered aspects of corporate governance on several occasions in the 2011 financial year and jointly declare that the recommendations of the Government Commission on the German

Corporate Governance Code in the version dated 26 May 2010 have been and are complied with by the company. In particular, the Supervisory Board will take account of the specialist and personal qualifications of candidates being proposed to the Shareholders' Meeting for election and, as in the past, heed the aspect of diversity in accordance with Article 5.4.1. of the Code.

The company nevertheless departs from the recommendations of the Code in the following respects:

- **Article 2.2.2 of the Code:** the Board of Management is authorised to exclude the shareholders' statutory subscription, with the permission of the Supervisory Board, in the following instances:
  1. insofar as the exclusion of the subscription right is necessary in order to grant the bearers of convertible bonds or loans or warrants issued by the company a subscription right to new shares to the extent that they would be entitled following exercising of the option or conversion right or following fulfilment of the conversion obligation. Financing by means of bonds with option and conversion rights secures the company flexible access to financing. In the event of utilisation of the authorisation, the exclusion of the subscription right of shareholders means that the option or conversion price does not need to be reduced in order to maintain dilution protection for bearers of option or conversion rights.
  2. insofar as the capital increase for contribution in kind is made particularly for the purpose of acquiring companies, parts of companies or participations in companies. The scope for excluding subscription rights in the case of capital increases for contribution in kind enables the Board of Management, with the approval of the Supervisory Board, to acquire companies or parts of companies or participations in companies in exchange for the transfer of shares in Hawesko Holding AG.
  3. to eliminate residual amounts. The exclusion of the subscription right for residual amounts permits the utilisation of the requested authorisation in the form of rounded amounts, while retaining a practicable subscription ratio.
  4. if the shares in the company are issued for cash and the issuing price per share does not significantly undercut the market price for shares already quoted, essentially with the same features, at the time of issuance of the shares. In this instance the exclusion of subscription rights may, however, only be exercised if the number of the shares issued in this way together with the number of treasury shares that are sold during the

term of this authorisation, excluding the right to subscribe pursuant to Section 186 Para. 3 Sentence 4 of German Stock Corporation Law, and the number of shares that may arise through the exercising of options and/or conversion rights or the fulfilment of conversion obligations from convertible bonds or loans or warrants issued during the term of this authorisation, excluding the right to subscribe pursuant to Section 186 Para. 4 Sentence 4 of German Stock Corporation Law, does not exceed 10 % of the capital stock either at the time of this authorisation taking effect or at the time of issuance of the shares. The Board of Management and Supervisory Board consider the authorisation on the exclusion of subscription rights pursuant to Section 186 Para. 3 Sentence 4 of German Stock Corporation Law to be necessary in order to exploit future opportunities on the capital market swiftly and flexibly, without needing to comply with the formal steps and statutory periods involved in a capital increase with subscription right.

- **Article 2.3.2 of the Code:** the company does not send notification of the convening of the Shareholders' Meeting together with the convening documents to all domestic and international financial services providers, shareholders and shareholders' associations by electronic means. Due to the peculiarity of bearer shares, the identity of these domestic and foreign financial services providers, shareholders and shareholder associations is not known to Hawesko Holding AG and it is currently not yet assured that the majority of them can be contacted by electronic means.
- **Article 4.2.3 of the Code:** the provisions envisaged in the contract of employment of the Chairman of the Board of Management in the event of a change of control may result in the recommended cap of 150 % on compensation payments being exceeded. A unilateral contractual change during the term of the contract of employment is legally not possible. As announced in the previous year the Supervisory Board will without restriction implement the statutory requirements that focus on sustained long-term corporate results for new contracts, as soon as the existing contracts of the members of the Board of Management permit.
- **Article 7.1.2 of the Code:** the consolidated financial statements of the company will be published not within 90 days of the end of the financial year, but within approximately 120 days. This longer period is advisable to facilitate the publication of the consolidated financial statements and annual report together with a report on the first quarter of the current financial year.

## **Relevant disclosures on the principles of corporate management, the modus operandi of the Board of Management and Supervisory Board, and the composition and modus operandi of the Supervisory Board committees**

### Organisation and management

The Hawesko Group is organised non-centrally: Decisions regarding the operating business are taken and performed, as far as possible, at the level of the respective subsidiary. This organisational structure is useful because the wine trade depends to a great extent on exploiting personal contacts with both producers and customers. The parent company Hawesko Holding AG normally holds 100 % or a majority of the shares in the subsidiaries, which are active predominantly in the wine trade. The significant operating incorporated firms within the consolidated companies – above all *Hanseatisches Wein- und Sekt-Kontor HAWESKO GmbH* and *Jacques' Wein-Depot Wein-Einzelhandel GmbH* – are integrated into the group by means of profit transfer agreements with the holding company. Where the holding in a subsidiary is not 100 %, the managing director holds a minority interest. The parent company Hawesko Holding AG and the majority of the subsidiaries (18) are domiciled in the Federal Republic of Germany. The subsidiaries not based in Germany are all domiciled in other European Union countries or in Switzerland.

The Hawesko Group is essentially divided into three largely independent business segments (cf. “Strategy” section in the Management Report for the group and parent company).

The Board of Management uses EBIT and ROCE as the basis for its steering approach.<sup>1</sup> The target minimum rates of return are presented in the “Strategy” section of the Management Report for the group and parent company. The targets and the development of the individual segments on the basis of these benchmarks form part of the regular strategy and reporting discussions with the managing directors of the individual group companies. By incorporating EBIT margins and the return on capital employed into the objectives and target attainment checks, responsibility is clearly apportioned to the managing directors below Board of Management level.

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<sup>1</sup> EBIT: EBIT = earnings before interest and taxes. It is an indicator of the company's operating profitability.

ROCE: The ROCE (return on capital employed) is the ratio of EBIT to the average amount of capital employed and provides an indication of the return on the capital employed in the period under review.

### Shareholders and Shareholders' Meeting

The shareholders of Hawesko Holding AG exercise their right to have a say in the running and supervision of the company through the Shareholders' Meeting. All shares are no par value bearer shares equipped with identical rights and obligations. Every share in Hawesko Holding AG carries one vote. The principle of "one share, one vote" is taken to its logical conclusion, as there are no caps on the number of voting rights which may be held by one shareholder, nor any special voting rights. Every shareholder is entitled to take part in the Shareholders' Meeting, to comment there on the individual agenda items and to demand information on matters concerning the company, to the extent that this is needed for the correct assessment of a matter being brought before the Shareholders' Meeting. The Annual Shareholders' Meeting is held during the first six months of each financial year. Chairing of the Shareholders' Meeting is the responsibility of the Supervisory Board Chairman. The Shareholders' Meeting fulfils all the tasks assigned to it by law. A resolution shall normally be carried by a simple majority or, in certain cases (e.g. for resolutions on capital measures and amendments to the articles of incorporation) by a majority of at least three-quarters of the capital stock represented.

The Board of Management Chairman, Alexander Margaritoff, is the biggest shareholder of Hawesko Holding AG, with 30.0 % of the shares via Alexander Margaritoff Holding GmbH. He is followed by Detlev Meyer with a shareholding of 29.5 % via Tocos Beteiligung GmbH, and Michael Schiemann, with a 5.0 % shareholding via Augendum Vermögensverwaltung GmbH. The remaining approx. 35 % are held by institutional and private investors. There are no employee shares as defined in Sections 289 Para. 4 No. 5 and 315 Para. 4 No. 5 of German Commercial Code.

### Supervisory Board

The Supervisory Board advises and oversees the Board of Management. In certain cases the Board of Management requires the prior approval of the Supervisory Board, in particular for carrying out individual investments of a value of more than € 2.5 million and for the acquisition of other companies or the disposal of investments in companies of a value of more than € 0.5 million. A reporting system informs the Supervisory Board members monthly of key financial data compared with the target and prior-year figures, and explains them. At least four ordinary meetings of the Supervisory Board as well as meetings of its committees take place each year.

According to the articles of incorporation the Supervisory Board comprises six members, elected by the Shareholders' Meeting. For as long as he holds at least 10 % of the total capital stock, Alexander Margaritoff has the right to nominate two Supervisory Board members. The Supervisory Board elects a Chairman and a Deputy from among its members. Declarations of intent by the Supervisory Board are issued by the Chairman or, if the Chairman is prevented from attending, by his Deputy. The Supervisory Board has a quorum if all members have been invited and at least half of the members take part in the vote. Resolutions of the Supervisory Board are carried by a simple voting majority, unless otherwise specified by law or in the articles of incorporation; in the event of a tied vote, a majority may resolve to conduct a fresh debate; otherwise a new vote must be held without delay. When voting anew on the same matter, the Chairman has two votes if the result is once again a tie.

The Supervisory Board has formed two committees that perform the functions assigned to them on behalf of the whole Supervisory Board. The committees are convened by their respective chairs and meet as often as is deemed necessary. There is currently a Personnel and Nominating Committee, and also an Audit and Investment Committee, each comprising three members.

### Board of Management

The Board of Management is independently responsible for the running of the company and represents it in transactions with third parties. It coordinates the strategic direction of the group with the Supervisory Board and, in accordance with the legal requirements, informs the Supervisory Board regularly, promptly and comprehensively of all plans, business developments and risks that are of relevance to the company.

The Board of Management comprises four members and reaches its decisions by majority vote. Each member is in charge of individual areas of responsibility, irrespective of their collective responsibility for the management of the group. The Board of Management members work together collegially and continually inform each other of important measures and events in their divisions. There are no sub-committees within the Board of Management.

Each business segment of Hawesko Holding AG is headed by a member of the Board of Management, who is responsible for the attainment of the segment targets and possesses authority to issue instructions within the segment.

When filling management functions in the company, the Board of Management strives for diversity, in particular through the suitable involvement of women.

### Financial reporting and auditing of financial statements

The Consolidated Financial Statements have been prepared under IFRS since the 2000 financial year. Following their compilation by the Board of Management, the Consolidated Financial Statements are examined by the independent auditors, and examined and approved by the Supervisory Board. The Consolidated Financial Statements are made available to the public within 120 days of the end of the financial year.

The following was agreed with the independent auditors:

1. The Chairman of the Audit and Investment Committee shall be informed without delay if potential reasons for exclusion or conflicts of interest that cannot be rectified without delay come to light during the audit.
2. The independent auditor shall report on all findings and occurrences identified while conducting the audit of the financial statements that are of material significance for the work of the Supervisory Board.
3. If the independent auditor should, while conducting the audit of the financial statements, identify facts that have led to a misstatement in the Declaration of Compliance issued by the Board of Management and Supervisory Board in respect of the Corporate Governance Code (Section 161 of German Stock Corporation Law), it shall note this in the audit report and inform the Chairman of the Supervisory Board of this.

### Transparency

Hawesko Holding AG attaches high priority to the policy of providing uniform, comprehensive and timely information. The trading position and the results of the company are reported on through the Annual Report, the Annual Press Conference, in the First-Quarter and Third-Quarter Reports and in the Interim Financial Report.

Further information is published in the form of press releases and ad hoc announcements in accordance with Section 15 of German Securities Trading Law (WpHG). All such notices are available on the Internet.

Hawesko Holding AG has set up an insider register in accordance with Section 15b of German Securities Trading Law. The individuals concerned have been informed of the statutory obligations and sanctions.

## **Remuneration report**

Particulars of the remuneration of the Board of Management and Supervisory Board are to be found in a separate section of the combined management report for the group and the parent company for 2011, as well as in the Notes to the consolidated financial statements and Notes to the individual financial statements. No stock option schemes or similar securities-based incentive systems exist.

## **Shares of Hawesko Holding AG in the ownership of members of the Supervisory Board and Management Board**

At 31 December 2011, the Supervisory Board held 2,650,495 (unchanged against the previous year) and the Board of Management 2,876,901 (previous year: 2,874,093) shares – directly and indirectly – in Hawesko Holding AG, of which the Chairman of the Board of Management held 2,698,000 (previous year: 2,695,192) directly and indirectly.

Hamburg, 23 March 2012

**The Supervisory Board**

**The Board of Management**