butable to the company. They will be held liable for carefully selecting and supervising the respective supervisory staff, for which, pursuant to Sec. 831 German Civil Code (BGB), they may provide exonerating evidence. The "Law in business" management system provides for functions for reviewing and re-inspecting all checks, and for documenting them by means of the findings of the check. The executive directors, works superintendents and officers are informed on the results of the check by e-mail. The financial consequences of legal infringements and losses incurred as a result are to be borne by the governing bodies of the company within the scope of their organisational fault, along with the liability consequences for the company. The superintendence is an exclusive obligation of executive directors, and may not be delegated. The superintendence obligation can be fulfilled by executive directors using the superintendence interface that can be accessed in the system at any time and which provides information on whether all the obligations of the company office have been ascertained, delegated, fulfilled, updated and checked. Instructions given to the supervisory staff responsible within the scope of the superintendence effected by executive directors are to be checked on an ongoing basis to see whether they are suitable for supervising, whether they work in actual practice, whether they are being enforced by the supervisory staff and whether any improvements can be made to them. Once they have been informed via the superintendence interface, executive directors are, through the superintendence interface, put in a position to respond immediately and instruct organisational measures to ensure that obligations are complied with.

### The documentation

Pursuant to Sec. 93(2)(2) Act on German Joint Stock Companies (AktG), the executive directors bear the burden of proof in regard to whether they have applied the due diligence of a prudent and conscientious director. Pursuant to Sec. 6(2) Environmental Liability Act (UmweltHG), the evidence that the company is operating regularly needs to be provided. According to established case law on the topic of organisational fault, the reversal of the burden of proof applies. In the event of a loss occurring, the company has to prove that all legal obligations have been complied with. In order to avoid lack of evidence, companies are compelled to keep at hand any evidence available, so that they can prove, at any time, that they have done everything necessary to avoid infringing a legal obligation. The "law in business" management system includes functions with which all the organisational measures are Should you be interested in being provided with further documented and can be evidenced at any time.

The use of the management system needs to be instructed and applied by the executive directors, i.e. the top management. In order to avoid the accusation of organisational fault, both the instructing and application need to be evidenced. By making use of the management system, the top management adheres to all the organisational obligations. The Environmental Protection, Occupational Safety and Compliance Of- www.rack-rechtsanwaelte.de

errors in regard to the supervisory directives that are attri- ficers shall fulfil their obligation to advise, supervise and inform the employees on their obligations. The system enables works superintendents and other senior executives to comply with their obligation to obtain information on any obligations falling within their sphere of responsibility.

## The content is what matters

13,045	The full text of legal regulations of the EU, the Govern- ment and the individual Federal States, updated monthly
51,610	Sections of German Acts and other high-level legislation along with the obligations
15,693	obligations backed up by a contractual penalty
34,428	pre-defined company obligations
38	Sample industries with standardised lists of standards and obligations
25,446	high-risk corporate scenarios along with the associated obligations
2,400	Annotations explaining legal concepts
3,500	The full text of judicial decisions
48,000	contributions since 1992 with analysis on:
17,422	Changes in applicable law
2,400	Legislative procedures
7,386	Court decisions
13,408	Scientific papers
7,574	New books published
2,575	Law gazettes and ministerial gazettes evaluated in 2013
1.094	Specialist journals evaluated in 2013

# **Obligation management for governing bodies**

For executive directors we offer a separate database that has all the obligations facing the governing bodies of a company. All cases of asserted liability where a claim for compensation for damage has been made against partnerships' and corporate governing bodies concerning their own breaches of duty are stored. Every set of circumstances (corporate scenario) can be checked in regard to whether it contains a liability risk for the governing body of the company. Anyone making use of the corporate governance database can avoid all the mistakes made by other executive directors who have already become liable before. 18,980 corporate scenarios are presently linked to 6,173 legal obligations, making for a total link count of 167.917.

information, just fill in our contact form on our website.

or get in touch with us by telephone at 0049 (6) 9578310.



**Recht im Betrieb Rechtssicherheit durch Betriebsorganisation** 

Rechtssie ver 20 years Advantage through expierience expierience manies

Latent risks, too many legal obligations, constant changes to the legal basis, over-burdened agents, hard sanctions, impending assertions of liability, anxious managers. In spite of these facts, all legal requirements are to be complied with without exception. Every legal obligation serves to defend a risk which may turn into a loss. Compliance with legal obligations to defend against risks becomes an organisational problem in companies. The larger the businesses, the more risks need to be averted, so that correspondingly the number of legal obligations increases that need to be adhered to in order to defend the risks.

We have been gathering experience and suggestions about We use our database, with which we link risk scenarios with how the issue can be handled for 20 years. Executive Direclegal obligations that we have stored with officers in indivitors are obliged to conduct a legality check. Through proper dual operating units of companies, which makes it possible management system standards, they need to ensure that all to find out at any time which employee, in which operating legal obligations facing the company are fulfilled. To comply unit, has to fulfil which obligation, within which period of with legal obligations means taking risk management seritime, and in what way. The database works like a digital memory, stores everything, never forgets anything, and nothing ously. has been omitted from it.

## **Preventive legal advice** in order to ensure legality

Since 1992 we have been advising companies on developing proper management system standards. We specialise in pre-We ultimately utilise the contents of our digital library to reventive legal advice. Even before a loss occurs, we advise on cord all legal obligations, if possible without any omissions. how legal infringements and detriment can be avoided. A ma-A truly convincing argument: jor proportion of the regulations arise from the concerns our users throughout Germany raised by environmental protection, occupational safety and plant safety. Our operations have come to a point where we systematically help our clients avoid legal infringements arising in another 74 legal fields. Our management system is, firstly, built upon the expertise of our lawyers, secondly, on our database, and, thirdly, on the largest digital library that we have been maintaining for 20 years and update monthly.

# Legal advice by lawyers

A team of 12 attorneys-at-law with experience in giving the special advice needed to have proper management system standards in place. Five female lawyers are certified envi-





ronmental management agents and internal environmental auditors. They advise on developing management standards in the company on site, ascertain risks and legal obligations to be adhered to in order to avert risk, and provide support through training and a constant readiness to discuss matters with their clients. In collaboration with employees of the company, they ascertain the specific list of requirements of a given local office of client companies. Only lawyers are trained to defend clients against accusations of legal infringements, and - better still - avoid them from the outset. Companies need to be organised in such a way that the accusation of organisational fault cannot at all even be made. The accusation would affect the executive directors and their consultants as well as the environmental protection, occupational safety, plant safety and compliance agents. If a loss has been incurred through a legal infringement, it should not be the fault of the company's management system.

## The database as a management aid

# The digital library



For this purpose, 11,700 regulations and subordinate legislation from the EU, the government and the German Federal States, 43,000 pre-designated obligations, 26,700 proposals for legal obligations formulated in advance and 41,000 annotations on all new laws, court judgments and scientific papers published since 1992 are drawn upon.

# Law firm and system vendor rolled into one

Twelve lawyers collaborate with our three IT specialists on a daily basis, and - with the aid of information technology and data processing technology - solve problems relating to the application of law in large organisations. We are constantly developing new functions geared towards alleviating the application of law in the company. We digitalise the application of law. Using the 115 database functions with which we are meanwhile equipped, we successfully resolve one organisational problem each per function relating to the rules and regulations governing the operations. Our detailed specification of services lists the functions, as well as solutions to the problems. We will be pleased to provide you with a copy. In order to develop and maintain a corporate organisation and avoid organisational faults, six tasks need to be accomplished. First of all, all legal obligations that are to be applied in a

## Ascertaining all legal obligations governing the company

business need to be ascertained. Legal obligations serve the purpose of averting risk. Risks comprise methods of proceeding and circumstances in the company which may result in a loss and can be averted by adhering to legal obligations. Therefore, before even ascertaining legal obligations, risks that may be caused within the company and mastered in there are to be identified. Managers again and again claim that they do not know anything about risks and legal obligations. However, not knowing about them is no protection against facing penalties and being held liable. Risk factors need to be ascertained within the company, and passed on to the management. Managers need to inform themselves about risks. Case law has been demanding such a reporting sysgathers all risk factors needed for managing risk. Legislators, courts and executive directors decide on whether a corporate scenario is to be classified as an inadmissible risk and is to be averted. We store all decisions of legislators and courts on risks in companies in our database.

It is possible to research corporate scenarios in the database, to find out whether legislators or courts have previously taken a decision in regard to risk on a given set of circumstances, and in particular whether such risk needs to be assessed as being foreseeable and avoidable. Research can be conducted within 11,700 laws and other sets of regulations of the EU, the government and the Federal States. In 1,750 court judgments and in 38,500 annotations on laws, judgments and scientific papers, as well as in 26,700 predefined obligations. On site at the client company, our lawyers compile the

list of legal obligations. In the process, they make use of the 26,700 predefined obligations available to them for research in the database. Based on hundreds of companies that we have already helped organise their operations in this respect. we always store the typified obligations, broken down into 38 industries, 240 types of plant and equipment, or in accordance with role profiles or topic profiles and grouped into 30 different categories of obligations. Whether it is the legal obligations pertaining to an electroplating facility, a coating plant, a crane operator, the obligations concerning ladders and sets of steps or training and reporting obligations, they can all be accessed.

The time to set up the technical framework is reduced to a few days by this gathered experience and the previous work benefited from. Around 21,100 corporate scenarios are meanwhile digitally linked to 25,300 legal obligations. When you access a scenario the database displays the legal obligations that are triggered by the respective scenario occurring. Since not being aware of the issues is no protection against facing penalties and being held liable, this also means that everyone needs to examine his or her conduct within his or her respective sphere of responsibility, to check whether it is legal or illegal.



Legality check - easier than ever

It can be checked whether, and on what conditions, it is legitimate, for instance, to supervise employees or accept invitations, or whether it is necessary to keep an eye on the company's level of capacity utilisation. With the browserbased solution that we provide, the obligations of executive directors can be accessed from any smartphone. Fulfilling the tem for managers for a hundred years. Our reporting interface obligation incumbent upon the executive directors to run legality checks has meanwhile become easier than ever.

# Monthly updating

We update our database twice per month. Should the legislator change the content of an obligation, or should it decree new obligations, we supply a proposal about how to phrase the respective documentation for each obligation. The database automatically removes those obligations that are not relevant for a given company office, in line with the obligation profile ascertained. Legal fields that are not applicable to a particular location can be excluded from the view. The officers no longer need to read everything new that comes out, and nonetheless do not overlook anything.



to either act, be at fault or be penalised. They are, however, bearers of legal obligations. They rely upon delegating any obligations to their employees. There are no volunteers. The Executive Board therefore needs to order obligations to be delegated. They are to be delegated to employees in line with the type of obligations involved. Where obligations are not delegated, executive directors - as governing body officers of the company - need to fulfil the obligations facing the company personally. On average, a single corporate office needs to comply with approx. 2000 obligations. It is out of the question for one governing body officer of the company to manage the large number of obligations personally. Governing bodies need to delegate obligations in order to ensure that they are fulfilled. Executive directors can delegate their selection and supervisory obligations to carefully chosen supervisory staff. They must, however, indicate, by way of directives, how such supervision is to be conducted in practical terms. The gover-In order to update the obligations, we evaluate over ning bodies of the company and the company itself can be 120 specialist journals and gazettes for our users held liable for any errors occurring in organising the superevery month. vision. They need to personally embody the superintendence. On a monthly cycle, we supply proposals for formulating the Superintendence cannot be delegated. The database can at respective documentation for every new and amended legal any time provide information on which employees, in which obligation, which the corporate officers may adapt to the cirdepartment, are required to fulfil which obligation. No-one cumstances of their company. Around 400 new or amended can any longer appeal to having been unaware of the situlegal obligations are to be complied with each month on aveation or a lack of information as a reason for legal infrinrage within the average company. Out of the total number gements. All the information on obligations and delegating of new and amended obligations, the software automatically them can be accessed in the Intranet at any time. In addition, lists the obligations to be checked at the respective location. the officers are informed on their updated obligations by way Every month we create a compliance test listing all new and of automatically sent e-mails. amended legal obligations. You can check for yourself whether you have recorded and understood all the changes. Fulfilling the delegated obligations



The legislator requires adherence to legal obligations to be checked, especially in Sec. 130 German Act on Administrative Offences (OWiG), Sec. 831 Civil Code (BGB) and Sec. 6 Environmental Liability Act (UmweltHG). In established case law on organisational fault, organising the supervision is stipulated as an obligation on the part of the governing bodies of a company. Any obligations in the company that have been delegated need to be checked by the person who delegated them to see whether they have been complied with. In the case of large companies, the executive directors need to engage supervisory staff, and simultaneously instruct the latter on how they are to conduct the supervision within their sphere of responsibility if they delegate obligations on to other staff. **Delegating the legal obligations** According to said case law, the supervisory directives are constantly to be checked to see whether they are appropriate, whether they work in actual practice and whether they Legal obligations need to be delegated to employees. Companies are organised in the form of legal persons. have been enforced, or whether they can be improved upon. Legal persons are abstract figures, and are as such not able The executive directors will be held personally liable for any

The corporate obligations need to exist in a form where they are formulated so specifically that, without any further assistance of the officers, they can easily be fulfilled.

# Verifying adherence to legal obligations