

errors in regard to the supervisory directives that are attributable 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 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-

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

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

Should you be interested in being provided with further information, just fill in our contact form on our website, or get in touch with us by telephone at 0049 (6) 9578310.



www.rack-rechtsanwaelte.de

# Recht im Betrieb

## Rechtssicherheit durch Betriebsorganisation

**RACK**  
RECHTSANWÄLTE

Over 20 years' experience

## Advantage through experience

### Over-regulated companies

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 how the issue can be handled for 20 years. Executive Directors are obliged to conduct a legality check. Through proper management system standards, they need to ensure that all legal obligations facing the company are fulfilled. To comply with legal obligations means taking risk management seriously.

### Preventive legal advice in order to ensure legality

Since 1992 we have been advising companies on developing proper management system standards. We specialise in preventive legal advice. Even before a loss occurs, we advise on how legal infringements and detriment can be avoided. A major proportion of the regulations arise from the concerns 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.

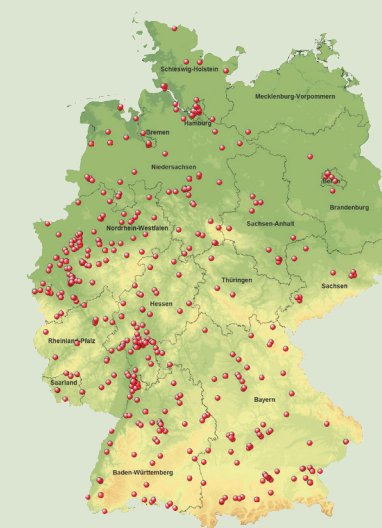
### The database as a management aid

We use our database, with which we link risk scenarios with legal obligations that we have stored with officers in individual operating units of companies, which makes it possible to find out at any time which employee, in which operating unit, has to fulfil which obligation, within which period of time, and in what way. The database works like a digital memory, stores everything, never forgets anything, and nothing has been omitted from it.

### The digital library

We ultimately utilise the contents of our digital library to record all legal obligations, if possible without any omissions.

A truly convincing argument:  
our users throughout Germany



## Law firm and system vendor rolled into one

## Ascertaining all legal obligations governing the company

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

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

### Monthly updating

A large, tall stack of papers and documents, with a pair of glasses resting on top, symbolizing a heavy workload or information overload.

In order to update the obligations, we evaluate over 120 specialist journals and gazettes for our users every month.

On a monthly cycle, we supply proposals for formulating the respective documentation for every new and amended legal obligation, which the corporate officers may adapt to the circumstances of their company. Around 400 new or amended legal obligations are to be complied with each month on average within the average company. Out of the total number of new and amended obligations, the software automatically lists the obligations to be checked at the respective location. Every month we create a compliance test listing all new and amended legal obligations. You can check for yourself whether you have recorded and understood all the changes.

# Recht im Betrieb

Rechtssicherheit durch Betriebsorganisation

RAK  
RECHTSANWÄLTE

derungen Juni 2014 • • Rechtsänderungen Juni 2014 • • Rechtsänderungen Juni 2014 • • Rechtsänderungen Juni 2014 • •

## Compliance-Test!

153

Änderungen bei Rechtsnormen

396

Änderungen bei Rechtspflichten

in nur einem Monat:

66

neue Rechtsnormen

351

neue Rechtspflichten

78

geänderte Rechtsnormen

45

geänderte Rechtspflichten

9

außer Kraft getretene  
Rechtsnormen

0

außer Kraft getretene  
Rechtspflichten

„Recht im Betrieb“ auf der Rechts-  
anwaltschutze Arbeitschutz  
neue in Frankfurt am Main

Juli 2014

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Arbeitschutz • Arbeitschutz • Arbeitschutz

Vorstand, Geschäftsführer und Aufsichtsrat • Umwelt

## Delegating the legal obligations

Legal obligations need to be delegated to employees. Companies are organised in the form of legal persons. Legal persons are abstract figures, and are as such not able

## Fulfilling the delegated obligations

## Verifying adherence to legal 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. 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 have been enforced, or whether they can be improved upon. The executive directors will be held personally liable for any