


## 2. Declaration of Compliance pursuant to DTR 7.2 and LR 9.8.7R

As an overseas company with a premium listing on the London Stock Exchange, TUI AG's Executive Board and Supervisory Board are obliged pursuant to No. 7.2 DTR and LR 9.8.7R to make a statement on the application of the UK Corporate Governance Code (UK CGC). At the time of the merger TUI AG had announced it would comply with the UK Code to the extent practicable.

 <https://www.frc.org.uk/getattachment/ca7e94c4-b9a9-49e2-a824-ad76a322873c/UK-Corporate-Governance-Code-April-2016.pdf>

In many respects, the requirements of the DCGK and the UK Code are similar. However, there are certain aspects which are not compatible (in some cases due to the different legal regimes in Germany and the UK). Therefore some deviations from Code requirements and best practice in the UK have been necessary.

Under the German Stock Corporation Act, the legislation applicable to TUI AG, a two-tier board system is mandatory (see below section 'Functioning of the Executive and Supervisory Board' on page 122). The two-tier board structure is different to the UK unitary board structure on which the UK Code is based. Some of the principles of composition and operation of the boards of a German stock corporation also differ from those of a UK company (for example, there is no Company Secretary). For this reason, the Executive Board and the Supervisory Board have set out below in which areas the UK Code is not complied with and explained the reasons for the deviations. In addition, the Executive Board and the Supervisory Board have also explained those instances where they consider TUI AG not to be compliant with the UK Code in the literal sense but where it lives up to the spirit and meaning of the respective regulation.


Sub-headings refer to sections of the UK Code for ease of reference for investors.

### WORDING OF THE UK CORPORATE GOVERNANCE STATEMENT 2019

'Executive Board and Supervisory Board declare pursuant to DTR 7.2 and LR 9.8.7R:

'Throughout the reporting period, TUI AG has complied with the provisions of the UK Code in the version of April 2016, including its main principles, except as set out and explained below.'

Place of publication:

 [www.tuigroup.com/en-en/investors/corporate-governance](http://www.tuigroup.com/en-en/investors/corporate-governance)

### IDENTIFICATION OF SENIOR INDEPENDENT DIRECTOR (A1.2, A4.1)

Under German law and the German Code, there is no concept of a 'Senior Independent Director'. Instead, shareholders may raise any issues at the Annual General Meeting (AGM). In this forum, the Executive Board and the Chairman of the Supervisory Board are available to address any issues and are legally obliged to provide adequate responses.

Outside the AGM, shareholders may approach the Executive Board, in particular the CEO or the CFO, or, for topics relating to Supervisory Board matters, the Chairman of the Supervisory Board or any of his Deputies. Peter Long, who was Chief Executive Officer of TUI Travel PLC before the merger, was elected as additional Deputy Chairman of the Supervisory Board of TUI AG in February 2018 alongside Frank Jakobi (First Deputy Chairman who, under the German Co-Determination Act, must be an Employee Representative).

### DIVISION OF RESPONSIBILITIES – CHAIRMAN & CHIEF EXECUTIVE (A2.1)

The separation of the roles of the Chairman of the Supervisory Board (Dr Dieter Zetsche) and the CEO (Friedrich Jousen) is clearly defined under German law as part of the two-tier board structure. Therefore, no further division of responsibilities is required or even possible and both the Executive Board and the Supervisory Board consider that TUI AG lives up to the spirit and meaning of the UK Code.

### INDEPENDENCE OF SUPERVISORY BOARD MEMBERS (B1.1)

Under the UK Code, the Board must identify in the annual report each non-executive director it considers to be 'independent' for the purposes of the UK Code. Based on the responsibilities assigned to the Supervisory Board by the German Stock Corporation Act, the members of the Supervisory Board are considered to be non-executive directors for the purposes of the UK Code. Under the UK Code, persons are 'independent' if they are independent in character and judgement and if there are no relationships or circumstances which are likely to affect, or could appear to affect, their judgement. TUI AG does not, however, extend its independence disclosures to its 10 employee representatives on the Supervisory Board (for a detailed explanation of shareholder and employee representatives and the underlying considerations, please see below).

The Supervisory Board has determined that five of its nine shareholder representatives (the Chairman is not taken into account according to the UK Code) are independent for the purposes of the UK Code. The shareholder representatives considered to be independent are: Prof. Edgar Ernst, Angelika Gifford, Valerie Gooding, Janis Kong and Coline McConville. Additionally, the Chairman, Dr Dieter Zetsche, was independent on election in 2019 and is still considered independent (Dr Dieter Zetsche also was independent when he was elected to the Supervisory Board in January 2018).

The members of the Supervisory Board not considered to be independent for the purposes of the UK Code are Alexey Mordashov, Peter Long, Vladimir Lukin and Joan Trían Riu.

In reaching its determination, the Supervisory Board has considered, in particular, the factors set out below.

#### SHAREHOLDER AND EMPLOYEE REPRESENTATIVES

The Supervisory Board of TUI AG consists of ten members who are elected by shareholders at AGM (the 'Shareholder Representatives') and ten members who represent the employees of TUI AG (the 'Employee Representatives'). This differs from UK practice where only those board members representing major shareholders are typically referred to as 'Shareholder Representatives' and are not considered independent under the UK Code because of their link to a significant shareholder.

At TUI AG, only the shareholder representatives Joan Trían Riu (Riu-Hotels, approx. 3.6 % of the voting rights) and Alexey Mordashov (indirectly linked to major shareholders or shareholders at the same time via his share in Unifirm Ltd, which is controlled by TUI AG and K+N Holding Ltd. for the rest by approx. 24.998 % of the voting rights) are linked to major shareholders or shareholders. In addition, TUI AG has joint ventures with Riu Hotels S.A. and TUI Russia & CIS (the latter being indirectly associated with Mr Mordashov via his stake in Unifirm Ltd.) (for further details, see page 105 of the Annual Report). Until his election to the Supervisory Board in February 2016, Peter Long was Joint-CEO of TUI AG from December 2014 to February 2016. Prior to that, he was a member of the Executive Board of TUI AG from 2007 and CEO of TUI Travel PLC. Therefore, neither Mr Mordashov nor Mr Long, Mr Lukin and Mr Trían Riu are considered independent for the purposes of the UK Code.

Seven of the ten employee representatives of the Supervisory Board are elected by the employees of TUI Group entitled to vote. Three employee representatives are nominated by a German trade union (ver.di).

Under the UK Code, directors who are or have been employees of the Group in the last five years or who participate in the Group's pension arrangements would generally not be considered independent. In the UK, directors with an employment relationship are normally current or former executives. By contrast, under German law, employee representatives of the Supervisory Board must be employees of the Group, and must be elected by the employees

without any involvement of the Executive or Supervisory Boards. Furthermore, the employment contract of employee representatives may only be terminated in exceptional cases.

The employee representatives may also participate in Group pension schemes as is normal for employees and in their capacity as employees.

Trade union representatives are nominated, and employed by, the trade union but are still classified as employee representatives. They can only be removed from the Supervisory Board by their respective union and neither the Executive nor the Supervisory Board has any role in their appointment or removal.

#### HALF THE BOARD SHOULD BE INDEPENDENT NON-EXECUTIVE DIRECTORS (B1.2)

Since, for the purpose of the UK Code, only the shareholder representatives on the Supervisory Board are taken into account, with five independent members (excluding the Chairman of the Supervisory Board) more than half of its members are considered independent.

#### NOMINATION COMMITTEE – COMPOSITION AND RESPONSIBILITIES (B2.1)

The role of the Nomination Committee in a typical UK company is fulfilled in TUI AG by two Committees of the Supervisory Board:

Under the Rules of Procedure for the Supervisory Board and its Committees (which are equivalent to the Terms of Reference of a British corporation) the Nomination Committee considers and proposes suitable candidates as shareholder representatives to the Supervisory Board for its election proposals to the AGM. The Presiding Committee determines the requirements and remuneration for any new appointments to the Executive Board and recommends suitable candidates to the Supervisory Board. On that basis, the Supervisory Board appoints Executive Board members. This approach is different from the UK where all director appointments are approved by shareholders at the AGM.

However, as is common practice in Germany, at each AGM shareholders are asked to decide whether they approve the actions of the Executive Board and Supervisory Board members during the past financial year. Since the AGM 2015, in the light of UK practice, TUI AG has changed its procedure to allow a separate vote on each individual Executive Board and Supervisory Board member, as it is customary in the UK.

TUI AG intends to continue this practice. Accordingly, the Supervisory Board considers that TUI AG lives up to the spirit and meaning of the UK Code to the extent practicable.

There is no requirement under German law or the German Corporate Governance Code for the majority of the Nomination Committee members to be independent. One of the now three members of the Nomination Committee is a major shareholder or affiliated with it (Alexey Mordashov) and therefore not independent in the

sense of the UK CGC. Until his election to the Supervisory Board in February 2016, Peter Long was Co-Chairman of the Executive Board of TUI AG from December 2014 to February 2016. On 12 February 2019, Ms Carmen Riu Güell retired as a member of the Nomination Committee, so that only Dr Dieter Zetsche is independent within the meaning of the UK CGC. Therefore TUI AG is not compliant with the UK Code which requires a majority of the Nomination Committee to be independent. However, TUI AG considers that the current membership of the Nomination Committee provides a strong and experienced pre-selection of Supervisory Board shareholder representation members, while keeping the Committee to a manageable size.

A publication of the Rules of Procedure for the Supervisory Board, its committees (including the Audit Committee) and for the Executive Board is not provided for under German law and the German Corporate Governance Code. Therefore TUI AG is not compliant with this provision of the UK Code.

#### **NOMINATION COMMITTEE SECTION IN THE ANNUAL REPORT & ACCOUNTS (B2.4)**

For the activities of the Nomination Committee, see page 19 which is part of the Chairman's letter to shareholders.

Succession planning for management levels below Executive Board is carried out by the Executive Board. The Presiding Committee is responsible for succession planning for the Executive Board.

#### **TERMS & CONDITIONS OF APPOINTMENTS OF NON-EXECUTIVE DIRECTORS (B3.2)**

The terms and conditions of Supervisory Board members' appointments follow the provisions of the German Stock Corporation Act and the Articles of Association of TUI AG. The Articles of Association are available on the website at [www.tuigroup.com/en-en/investors/corporate-governance](http://www.tuigroup.com/en-en/investors/corporate-governance).

#### **ADVICE AND SERVICES OF THE COMPANY SECRETARY (B5.2)**

There is no specific role of Company Secretary in German companies. However, Executive and Supervisory Board members have access to the Board Office of TUI AG if they need any advice or services. The Board Office acts as an interface in corporate matters for the Executive and Supervisory Board members and is responsible for ensuring that the requisite processes and procedures are in place governing all Executive and Supervisory Board meetings (i.e. preparation of agendas, minuting of meetings and ensuring compliance with German and UK law, as appropriate, and with recommendations for corporate governance). The Board Office also supports the Chairman, the CEO, the CFO and the Chairmen of the Audit Committee and the Strategy Committee. Executive and Supervisory Board members also have access to legal advice via the Group Director Legal, Compliance & Board Office and via the Board Office. The Supervisory Board can also approach the Executive Board directly for specific advice on any matters. Accordingly, the Executive Board and the Supervisory Board consider that TUI AG lives up to the spirit and meaning of the UK Code.

#### **BOARD PERFORMANCE EVALUATION (B6)**

The performance of each individual Executive Board member is evaluated annually by the Supervisory Board for the annual performance-based remuneration. In this context, the Supervisory Board also reviews the individual member's overall performance as part of the Executive Board. However, no external performance evaluation is done for the Executive Board.

It is not customary to conduct annual reviews of the Supervisory Board's efficiency. Each Supervisory Board member can give feedback to the Chairman, the Deputy Chairmen or the Supervisory Board as a whole as and when appropriate or required.

External evaluation, which includes the work of the Chairman of the Supervisory Board, is performed by means of individual interviews and anonymous reviews. Executive Board members are invited to contribute to the process. Consolidated results are shared with the entire Supervisory Board and appropriate actions are suggested and discussed as appropriate. The last external review of the Supervisory Board was undertaken in 2015 by Board Consultants International. Board Consultants International has no other connection with TUI AG. Due to the forthcoming change in the chairmanship of the Supervisory Board, an internal efficiency audit was conducted at the end of 2018, which was accompanied by a notary of GÖHMANN Rechtsanwälte und Notare to ensure anonymity. At its last meeting on 12 September 2019, the Supervisory Board, now chaired by Dr Dieter Zetsche, dealt with the measures derived from the results of the efficiency audit. Due to the change in the chairmanship of the Supervisory Board, no efficiency review was planned for 2019. Rather, the Supervisory Board concentrated on implementing the measures derived from the efficiency review. The Supervisory Board discussed this issue and decided to return to the subject of external efficiency audits in spring 2020, after an appropriate number of meetings had been held under the chairmanship of Dr Dieter Zetsche.

## **ANNUAL RE-ELECTION BY SHAREHOLDERS AT THE AGM (B7.1)**

None of the Executive or Supervisory Board members is re-elected annually. However, as noted above, in light of the UK Code and UK best practice, TUI AG voluntarily puts individual resolutions approving the actions of each Executive and Supervisory Board member to the AGM resolving on the annual financial statements for the previous year. TUI AG intends to continue this practice.

The end of appointment periods for Supervisory Board members are disclosed in the table from page 114. Current curricula vitae of all Executive and Supervisory Board members are published at [www.tuigroup.com/en-en/investors/corporate-governance](http://www.tuigroup.com/en-en/investors/corporate-governance).

## **FAIR, BALANCED AND UNDERSTANDABLE ANNUAL REPORT AND ACCOUNTS (C1.1)**

In a German stock corporation the Executive Board is responsible for drafting the Annual Report & Accounts (ARA). According to section 243 (2) of the German Commercial Act (HGB) the ARA must be clearly arranged and should present a realistic picture of the Company's economic situation. This is equivalent to the UK Code requirement for the ARA to be fair, balanced and understandable. Although this assessment has not been delegated to the Audit Committee (C3.4), the Executive Board is convinced that this ARA satisfies both requirements.

## **ESTABLISHMENT AND OPERATION OF REMUNERATION COMMITTEE (D2) , REMUNERATION (D1)**

In the German governance structure there is no separate Remuneration Committee. The remuneration of the Executive Board is under involvement of the employee representatives monitored and agreed by the Supervisory Board based on recommendations from the Presiding Committee, which is governed by the Supervisory Board Rules of Procedure, as referred to above.

Supervisory Board remuneration and the remuneration of Board Committee members is governed by the Articles of Association as resolved on by the shareholders at the AGM.

There are no clawback or malus provisions in the service contracts of Executive Board members. Such provisions are not yet widespread in Germany and, depending on their design, are difficult to enforce. However, there are different contractual and statutory provisions that may allow for a reduction or forfeiture of remuneration components or allow TUI AG to claim damages from Executive Board members. First, the service contracts of Executive Board members provide for forfeiture of the annual bonus and the LTIP if TUI AG terminates the service contract for cause without notice before the end of the one year performance period in the case of the annual bonus or before the end of the respective performance period of the LTIP. Second, according to section 87 (2) German Stock Corporation Act (AktG) the Supervisory Board may, under certain exceptional circumstances, reduce Executive Board compensation in case of a deterioration of the economic situation of TUI AG. Third, Executive Board members may be liable for damages

under the German Stock Corporation Act in case of a breach of their duties of care or fiduciary duties.

See the Directors' Remuneration Report from page 130 for full details on Executive and Supervisory Board member's remuneration.

## **NOTICE PERIODS FOR EXECUTIVE DIRECTORS (D1.5)**

In accordance with the customary practice in Germany members of the Executive Board are generally appointed for a term of three to five years. The contract extension of one member of the Executive Board was extended by two years in FY 2019. This is not yet fully in line with the UK CGC recommendation that notice periods or contract terms should be set at one year or less. However, the contracts include maximum limits on the amounts payable on termination.

→ See Remuneration Report from page 130.

## **DIALOGUE WITH SHAREHOLDERS (E1)**

It was not common practice in German companies for Supervisory Board members to make themselves available for meetings with major shareholders. However, the German Corporate Governance Code in the version dated 7 February 2017 now stipulates in section 5.2 that the Chairman of the Supervisory Board should be willing to meet with investors in an appropriate manner to discuss Supervisory Board matters. Shareholders made no use of this option in FY 2019.

The table below provides an overview of all appointments of the Executive Board with shareholders, in some of which also employees of Investor Relations participated.

## Dialogue with shareholders

Date	Meeting	Participants
December 2018	FY 2018 Results Presentation	FJ, BC
	Roadshow UK	FJ, BC
January 2019	UniCredit/Kepler Cheuvreux German Corporate Conference	BC
	FY 2019 Q1 Results Presentation	FJ, BC
February 2019	AGM 2019	FJ, BC
	Investor Day London	BC
April 2019	FY 2019 H1 Results Presentation	FJ, BC
	Roadshow UK	FJ, BC
May 2019	Roadshow Frankfurt	FJ, BC
	Roadshow Paris	BC
June 2019	FY 2019 Q3 Results Presentation	FJ, BC
	MainFirst Transportation Conference	BC
August 2019	Commerzbank Sector Conference	BC
	Morgan Stanley Investor Call	FJ, BC
September 2019	Citi Growth Conference	BC
	Berenberg & Goldman Sachs German Corporate Conference	BC
	Bernstein Strategic Decision Conference	FJ, BC

Key: Friedrich Jousen (FJ), Birgit Conix (BC)

Key topics discussed at appointments between shareholders and Executive Board members included:

- Exogenous impacts on the business model
- Growth strategy of the integrated tourism group
- Business development in the individual company sectors

The Supervisory Board receives feedback from the Chairman and Deputy Chairman (shareholder representative) and Executive Board members following meetings with major shareholders or investors. Additionally, a monthly Investor Relations Report and event-driven assessments of brokers are forwarded to the Executive Board and the Supervisory Board. They contain updates on the share price development, analyses of the shareholder structure as well as purchases and sales of shares and feedback and assessments from investors. The Executive Board and the Supervisory Board consider that TUI AG lives up to the spirit and meaning of the UK Code.

## AGM RESOLUTION ON FINANCIAL STATEMENTS AND CONSOLIDATED FINANCIAL STATEMENTS (E2.1)

It is not common practice in Germany to pass a resolution at the AGM to approve the financial statements and consolidated financial statements. Therefore, this was not done at the AGM in 2019 and it is not intended to do so at the AGM in 2020. However, as required by German law, the first item on the agenda of TUI AG's AGM is the presentation of the financial statements and consolidated financial statements to the AGM. Under this item, the Executive Board will explain the financial statements and consolidated financial statements and the Chairman will explain, in particular, the report of the Supervisory Board (including this UK Corporate Governance

Statement). Shareholders will have the opportunity to raise questions. Questions are typically raised, as is normal in the AGMs of German companies, and, as a general rule, answers must be provided under German law.

This is the standard practice for a German company and is in full compliance with the German Code. While the lack of a resolution to approve the Annual Report & Accounts is not in compliance with the UK Code, TUI AG considers that the arrangements afford shareholders with sufficient opportunity to raise any questions or concerns that they may have in relation to the Annual Report & Accounts, and to receive answers, in the AGM. Accordingly, the Executive Board and the Supervisory Board consider that TUI AG lives up to the spirit and meaning of the UK Code to the extent practicable.

## CIRCULATION OF AGM DOCUMENTATION TO SHAREHOLDERS (E2.4)

The 2019 AGM of TUI AG was held on 12 February 2019. As required by German law, the notice convening TUI AG's 2019 AGM (including the agenda and the voting proposals of the Executive Board and the Supervisory Board) was published in the Federal Gazette in Germany on 3 January 2019. Shareholders then had the right under German law to request additional agenda items at any time up to 30 days before the AGM. In accordance with German practice, once this deadline had expired, the combined invitation and explanatory notes relating to the AGM were sent to shareholders on 17 January 2019, which was less than the 20 working days before the AGM recommended in the UK Code (but more than the 21 days' notice required by German law). However, in addition to the original publication of the Invitation in the Federal Gazette in Germany, the combined invitation and explanatory notes relating to the AGM was published on TUI AG's website on 3 January 2019.

As no additional agenda items were requested by shareholders, this was in the same form as the final combined invitation and explanatory notes relating to the AGM later sent to shareholders. Furthermore, TUI AG's Annual Report and Accounts for the financial year ending 30 September 2018 was published on 13 December 2018, significantly more than 20 working days before the 2019 AGM. Accordingly, the Executive Board and the Supervisory Board consider that TUI AG lives up to the spirit and meaning of the UK Code requirements. A similar timetable will be followed in relation to the 2020 AGM."