

## 2. Declaration of Compliance pursuant to DTR 7.2.1R and LR 9.8.7R

As a stock corporation company under German law, TUI AG's Executive Board and Supervisory Board are obliged to submit a declaration of compliance with the German Corporate Governance Code pursuant to section 161 of the German Stock Corporation Act

At the time of the merger TUI AG had announced it would comply with the UK Corporate Governance Code (the UK Code) to the extent practicable. In many respects, the requirements of the German Code and the UK Code are similar. However, there are certain aspects which are not compatible (in some cases due to the different legal regimes for German and UK companies). Therefore some deviations from 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 (as explained in the merger documentation; see below section Functioning of the Executive and Supervisory Board). 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, TUI AG has set out below circumstances where it considers not to comply with the UK Code. TUI AG has also explained those instances where it considers not to be compliant with the UK Code in the literal or legal sense but where TUI AG is convinced that it complies with the spirit and meaning of the UK Code. Sub-headings refer to sections of the UK Code for ease of reference for investors.

Pursuant to DTR 7.2.1R and LR 9.8.7R, the Executive Board and the Supervisory Board therefore declare as follows:

### WORDING OF THE UK CORPORATE GOVERNANCE STATEMENT

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

### 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, with respect to certain matters, 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, in exceptional cases, the Chairman of the Supervisory Board or any of his Deputies. Sir Michael Hodgkinson, who was the Deputy Chairman and Senior Independent Director of TUI Travel PLC before the merger, was re-elected as Second Deputy Chairman of the Supervisory Board of TUI AG in February 2016 along-

side 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 (Prof. Klaus Mangold) 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 and both the Executive Board and the Supervisory Board consider that TUI AG complies with the spirit 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. As explained above, 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 employee representatives on the Supervisory Board (for a detailed explanation of shareholder and employee representations and the underlying considerations, please see below).

The Supervisory Board has determined that six of its nine shareholder representative members (excluding the Chairman, as required by the UK Code) are independent for the purposes of the UK Code. The shareholder representatives of the Supervisory Board considered to be independent are: Prof. Edgar Ernst, Valerie Gooding, Sir Michael Hodgkinson, Janis Kong, Coline McConville and Angelika Gifford. The Chairman was independent on election in 2011 and re-election in February 2016 and is still considered independent (Prof. Mangold also was independent when he was elected to the Supervisory Board in January 2010).

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

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

### PERFORMANCE-RELATED PAY

Until the end of financial year 2014, all Supervisory Board members received a performance-related pay element in addition to their fixed pay, as approved by shareholders at the 2013 AGM and in line with a specific recommendation of the German Code at that time.

This recommendation in the German Code has meanwhile been withdrawn, and at the 2016 AGM shareholders approved the replacement of the performance-related pay element with a fixed fee with retroactive effect from the beginning of financial year 2015/16.

## SHAREHOLDER AND EMPLOYEE REPRESENTATIVES

The Supervisory Board of TUI AG consists of ten members who are elected by shareholders at AGMs (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.

In TUI AG, only Carmen Riu-Güell and Alexey Mordashov are connected to significant shareholders, namely Riu Hotels (approx. 3.4%) and Alexey Mordashov (approx. 19.3%), respectively. It should also be noted that joint ventures exist between TUI AG and both Riu Hotels S.A. and TUI Russia & CIS (in which a majority controlling interest is held by Mr Mordashov) (for further details see page 109 of the Annual Report). Until his election to the Supervisory Board in February 2016, Peter Long was Co-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 Ms Riu-Güell nor Mr Mordashov nor Mr Long are considered independent for the purposes of the UK Code.

Therefore, excluding the Chairman (as required by the UK Code), six of the nine shareholder representatives 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. In addition, the employment agreement of employee representatives may only be terminated in exceptional circumstances.

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

Union representatives are nominated, and employed by, the trade union but are still classified as employee representatives. The trade union representatives are nominated, and may 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, more than half of its members are considered independent with six independent members (excluding the Chairman of the Supervisory Board).

## 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 in the UK) the Nomination Committee considers and proposes suitable candidates for election as shareholder representatives on the Supervisory Board by the shareholders at 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 customary in the UK. This approach was also used at the AGM in February 2016. TUI AG intends to continue this practice. Accordingly, the Supervisory Board considers that TUI AG complies with the spirit of the UK Code to the extent practicable.

There is no requirement under German law or the German Code for the majority of the Nomination Committee members to be independent. Of the four members of the Nomination Committee, two are representatives of significant shareholders (Carmen Riu Güell and Alexey Mordashov) and therefore not independent for the purposes of the UK Code. The remaining two members are Sir Michael Hodgkinson and Prof. Klaus Mangold (Chairman) who are both independent. 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.

The Rules of Procedure for the Supervisory Board and its Committees (including the Audit Committee) are not made available for the public. Therefore TUI AG is not compliant with this provision of the UK Code.

## LENGTH OF TENURE FOR NON-EXECUTIVE DIRECTORS (B2.3)

In accordance with German law and common practice, shareholder representatives are generally elected for five-year terms. Employee representatives are also generally appointed for five years. Therefore, neither Executive nor Supervisory Board members are re-elected or re-appointed annually by shareholders. TUI AG therefore does not comply with this provision of the UK Code.

Under the UK Code, any term beyond six years should be subject to rigorous review and no term should extend beyond nine years (as it could affect the independence of the Non-Executive Director). However, in the German Corporate Governance context, a longer length of service

is quite normal as Supervisory Board members are usually elected for five years and re-election is common.

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

For the activities of the Nomination Committee, see page 15 which is part of the Chairman's letter to shareholders.

During the year, neither a personnel consultancy nor external advertisements were used to search any potential Supervisory Board members. Succession planning for management members below Executive Board level is carried out by the Executive Board. The Presiding Committee is only 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).

#### **EXTERNAL NON-EXECUTIVE/CHAIRMAN ROLES (B3.3)**

Peter Long was Joint-CEO of TUI AG since the merger from 1 October 2015 until the close of the AGM 2016 on 9 February 2016. From 1 September 2015, Peter Long was also Chairman of Royal Mail PLC. This appointment led to a short period of overlap during which TUI AG was not compliant with the UK Code.

#### **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 Legal Director and 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 complies with the spirit 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 is limited to Supervisory Board members and is performed by means of individual interviews and anonymous reviews. 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 during 2015 by Board Consultants International (Hamburg/Germany). The results were presented during the meeting of the Supervisory Board in December 2015. Board Consultants International has no other connection with TUI AG.

The appraisal of the Chairman of the Supervisory Board is covered during the external evaluation process and Executive Board members are invited to contribute to the process.

#### **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, and TUI AG intends to continue this practice.

The end of appointment periods for Supervisory Board members are disclosed in the table following the Chairman's letter on page 114. In respect of the shareholder representatives, the Supervisory Board – based on the recommendations of its Nomination Committee – proposed the re-election of Prof. Klaus Mangold, Sir Michael Hodgkinson, Carmen Riu Güell and Prof. Edgar Ernst to the AGM 2016. Peter Long, Angelika Gifford and Alexey Mordashov were also proposed for election by the shareholders. Biographical details were included in the invitation to the AGM to enable a well-informed decision by the shareholders. Additionally, the 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).

Wolfgang Flintermann was appointed as member of the Supervisory Board of TUI AG by the court of registration with effect from 13 June 2016 to replace Wilfried Rau, who had passed away on 30 March 2016.

#### **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 would be unusual (and probably unenforceable) in Germany. 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, 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 for full details on Executive and Supervisory Board member's remuneration.

## COMPENSATION COMMITMENTS IN EXECUTIVE DIRECTORS' SERVICE CONTRACTS (D1.4)

The principles that apply for departing Executive Directors are detailed in the Directors' Remuneration Report (see page 136). The terms are set out in the Executive Directors' contracts of employment as approved by the Supervisory Board and take into account the various circumstances in which a director may leave. These include maximum limits on the amounts payable on termination. Given that in Germany contracts are issued for a fixed term, termination payments may be greater than the one year recommended in the UK Code. In no case is the amount payable on early termination higher than the amount that would be payable for the outstanding term of the service contract at the time of termination.

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

Executive Board appointments are normally for a fixed term of three to five years and therefore do not comply with the UK Code which stipulates that notice or contract periods should be set at one year or less. However, the contracts include maximum limits on the amounts payable on termination.

## DIALOGUE WITH SHAREHOLDERS (E1)

It is not common practice in German companies for Supervisory Board members to make themselves available for meetings with major shareholders. This preserves the separation of duties between the Supervisory and Executive Boards. The AGM is considered the appropriate forum for shareholders to raise any topics for discussion. Nevertheless, there is a move in Germany to allow under the German Code for an appropriate exchange on Supervisory Board matters between the Chairman of the Supervisory Board and shareholders. There have meetings between the Chairman and the Deputy Chairman (shareholder representative) of the Supervisory Board and shareholders and investors in the past (most recently in September 2015).

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 and the Supervisory Board. They contain updates on the share price development, analyses by sellers and feedback and assessments from investors.

The following meetings between management and investors (attended by the Chief Executive Officer and/or the Chief Financial Officer and members of the Investor Relations team, where appropriate) took place during the year ended 30 September 2016:

## DIALOGUE WITH SHAREHOLDERS

Date	Event	Attendees
November 2015	Global Income Corporate Day London	HB
December 2015	Roadshow Edinburgh	FJ, HB
	Roadshow London	FJ, HB
January 2016	German Investment Seminar	HB
	German Corporate Conference	HB
March 2016	Roadshow Amsterdam	HB
April 2016	Barclays Leisure and Transport Conference	HB
	Investor Dinner London	FJ, HB
	MS Roundtable	FJ
May 2016	Roadshow UK	FJ, HB
	Roadshow Copenhagen	HB
	Barclays Select Corporate Day Stockholm	HB
	Roadshow Zurich	HB
June 2016	Roadshow Frankfurt	HB
	Roadshow Paris	HB
	Roadshow US	FJ, HB
	dbAccess German, Swiss and Austrian Conference	HB
July 2016	Investor Meeting – Invesco	FJ, HB
August 2016	Coba Sector Conference 2016	HB
September 2016	Berenberg & Goldman Sachs GCC Conference	HB

Key: Friedrich Jousen (FJ), Horst Baier (HB)

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

- Development of business operations in Tourism
- Exogenous impacts on the business model
- Growth strategy of the integrated tourism group

Accordingly, TUI AG considers that it complies with the spirit of the UK Code.

#### **AGM RESOLUTION ON FINANCIAL STATEMENTS AND CONSOLIDATED FINANCIAL STATEMENTS (E.2.1)**

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 2016 and it is not intended to do so at the AGM in 2017. 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 suffi-

cient 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 complies with the spirit of the UK Code to the extent practicable.

#### **CIRCULATION OF AGM DOCUMENTATION TO SHAREHOLDERS (E.2.4)**

The 2016 AGM of TUI AG was held on 9 February 2016. As required by German law, the notice convening TUI AG's 2016 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 30 December 2015. 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 14 January 2016, 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 30 December 2015. 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. Further, TUI AG's Annual Report and Accounts for the financial year to 30 September 2015 was published on 10 December 2015, significantly more than 20 working days before the 2016 AGM. Accordingly, TUI AG considers that it complied with the spirit of the UK Code requirements. A similar timetable will be followed in relation to the 2017 AGM."