

# Excerpts from the Administrative Offences Act (OwiG) of the Federal Republic of Germany

*(Unofficial translation)*

## Section 29a: Forfeiture

- (1) If the offender has gained anything for or from an act which is punishable by a fine, and if a fine has not been assessed against him/her in respect of the act, forfeiture of a sum of money up to the amount of what has been gained may be ordered.
- (2) If the offender has acted for a third party in committing an act punishable by a fine, and if the latter has gained anything thereby, forfeiture of a sum of money up to the amount designated in subsection 1 may be ordered against him/her.
- (3) The extent of what has been gained may be estimated. Section 18 shall apply *mutatis mutandis*.
- (4) If no administrative fine proceedings are initiated in respect of the offender, or if they are discontinued, forfeiture may be ordered independently.

## Section 30: Fine imposed on legal entities and associations

- (1) If a person
  1. acting in the capacity of an agency authorised to represent a legal entity, or as a member of such an agency,
  2. as the board of an association not having legal capacity, or as a member of such a board,
  3. as a partner of a commercial partnership authorised to representation, or
  4. as the fully authorised representative or in a leading position as a procura holder, or as general agent of a legal entity or of an association as specified in Nos. 2 or 3has committed a criminal or administrative offence by means of which duties incumbent upon the legal entity or the association have been violated, or the legal entity or the association has gained or was supposed to gain a profit, a fine may be imposed on the latter.
- (2) The fine shall be
  1. up to one million Deutsche Mark in cases of a wilfully committed offence;
  2. up to five hundred thousand Deutsche Mark in cases of a negligently committed offence.

In cases of an administrative offence the maximum amount of the fine shall be assessed in accordance with the maximum fine provided for the administrative offence in question. The second sentence shall also apply in cases of an offence which at the same time is both a criminal and an administrative offence if the maximum fine imposable for the administrative offence is in excess of the maximum fine in accordance with the first sentence.
- (3) Section 17 subsection 4 and section 18 shall apply *mutatis mutandis*.
- (4) If criminal proceedings or administrative fine proceedings in respect of the criminal or administrative offence are not initiated, or if they are discontinued, or if no punishment is deemed appropriate, the fine may be assessed separately. It may be specified by means of a statute that the fine may also be assessed separately in further cases. Separate assessment of a fine on the legal entity or association shall however be ruled out if the criminal or administrative offence cannot be prosecuted for legal reasons; section 33 subsection 1 second sentence shall remain unaffected.

- (5) The assessment of a fine against the legal entity or association shall preclude forfeiture pursuant to sections 73 and 73a of the Criminal Code or Section 29a being ordered against it for the same act.

**Section 130: Violation of obligatory supervision in firms and enterprises**

- (1) Whoever, as the owner of a firm or an enterprise, wilfully or negligently fails to take the supervisory measures required to prevent contravention of duties in the firm or the enterprise which concern the owner in this capacity, and the violation of which is punishable by a penalty or a fine, shall be deemed to have committed an administrative offence if such a contravention is committed which could have been prevented or made much more difficult by proper supervision. The required supervisory measures shall also comprise appointment, careful selection and surveillance of supervisory personnel.
- (2) A firm or an enterprise in accordance with subsections 1 and 2 shall include a public enterprise.
- (3) If the administrative offence is subject to punishment, it may be punished by a fine not exceeding one million Deutsche Mark. If the violation of duty is punishable by a fine, the maximum amount of the fine for a violation of obligatory supervision shall be dependent on the maximum amount of the fine provided for the violation of duty. The second sentence shall also apply in the event of a breach of duty which at the same time is punishable by a penalty and a fine if the maximum amount of the fine is in excess of the maximum amount in accordance with the first sentence.