



Meeting of States Parties

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Report of the External Auditors for the financial year 1999, with financial statements of the International Tribunal for the Law of the Sea as of 31 December 1999

Introductory note

1. The Ninth Meeting of States Parties, as recorded in the report of the Ninth Meeting (SPLOS/48, para. 28), requested the Registrar, pending the entry into force of the Financial Regulations of the Tribunal, to present to the Meeting of States Parties every year a preliminary performance report on the use of the budget appropriations for the preceding year and a final performance report on the use of the budget appropriations for the year prior to the preceding year.
2. Consistent with that decision, the report of the External Auditor for 1998, the year prior to the preceding financial year, is presented in document SPLOS/51.
3. The preliminary performance report of the preceding year (1999) is annexed to the draft budget proposals of the Tribunal for 2001 in SPLOS/WP.12, annex.
4. In order that the Meeting of States Parties may be apprised, at the earliest opportunity of the report of the External Auditors for the financial year 1999 containing the financial statements of the International Tribunal for the Law of the Sea as of 31 December 1999, the Tribunal decided that the report should be presented to the Meeting of States Parties as soon as it is available. The report has been transmitted to the President and Members of the Tribunal, but owing to the scheduling of the next session, it will only be taken up for consideration and review by the Tribunal at its tenth session, commencing on 18 September 2000.
5. It may be noted that the report also deals with the matters specifically requested by the Ninth Meeting of States Parties, as communicated to the Auditors by the President of the Tribunal.

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The International Tribunal for the Law of the Sea

Hamburg

Report on the examination of the financial statements as of 31 December 1999

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General Conditions of Assignment for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften

1 January 1999

1. Scope and application

(1) These terms are applicable to agreements between Wirtschaftsprüfer or Wirtschaftsprüfungsgesellschaften (hereafter uniformly referred to as “Wirtschaftsprüfer”) and their clients concerning audits, advisory work and any other services, as far as these are not otherwise expressly agreed in writing or provided for by non-discretionary legal regulations.

(2) If, in exceptional cases, contractual relations also exist between the Wirtschaftsprüfer and parties other than the client, the provisions of Section 9 below also apply to the relations with such parties.

2. Scope and execution of assignment

(1) The object of the Wirtschaftsprüfer’s assignment is the performance of agreed services and not the achievement of a particular economic result. The assignment is executed in accordance with generally accepted professional standards. The Wirtschaftsprüfer is entitled to use qualified persons to carry out his assignment.

(2) The application of foreign law requires special written agreement, except in cases of special investigations.

(3) The assignment does not extend — unless expressly stated otherwise — to an examination of due adherence to tax laws or special regulations, e.g. to the law of price control, laws of limitation of competition and other controls; the same applies to determination as to whether grants, allowances or benefits of any other type may be claimed. The execution of an assignment includes only the application of auditing procedures aimed at the disclosure of bookkeeping frauds and other irregularities if during the performance of the audit such requirement becomes apparent, or if this has been expressly agreed in writing.

(4) If the legal position changes after the final professional pronouncement by the Wirtschaftsprüfer, he is not obliged to inform the client of the changes or

any resulting consequences. This provision also applies to parts of the assignment which are already completed.

3. Information to be given by the client

(1) The client has to see that the Wirtschaftsprüfer even without his specific request is supplied in good time with all the documentary evidence necessary for the execution of the assignment and informed of all events and circumstances which may have a bearing on the execution of the assignment. This also applies to any evidence, events and circumstances which come to light during the course of the Wirtschaftsprüfer’s work.

(2) Upon request of the Wirtschaftsprüfer, the client must confirm in a written statement formulated by the Wirtschaftsprüfer that the evidence, information and explanations supplied are complete.

4. Safeguard of independence

The client undertakes to ensure that no action is committed which might endanger the independence of the Wirtschaftsprüfer’s staff. This applies especially to offers of employment and offers to perform professional work on the staff member’s own account.

5. Reporting and oral information

If the Wirtschaftsprüfer is obligated to present the results of his work in writing, only that written presentation is authoritative and binding. In the case of audit assignments the report is, unless otherwise agreed, submitted in writing. Oral explanations and information given by the staff of the Wirtschaftsprüfer outside the scope of the assignment are never binding.

6. Protection of the Wirtschaftsprüfer’s intellectual property

The client warrants that special opinions, organization plans, drafts, sketches, tabulations and calculations, particularly quantity and cost computations, prepared by the Wirtschaftsprüfer within the scope of the assignment, are only used for his own purposes.

7. Release of a Wirtschaftsprüfer's professional statement to third parties

(1) The release to third parties of professional statements made by the Wirtschaftsprüfer (reports, special opinions, etc.) requires the Wirtschaftsprüfer's written consent, unless the terms of the assignment allow release thereof to a designated person.

As to third parties, the Wirtschaftsprüfer is liable (within the limits of Section 9) only if the prerequisites of sentence 1 are satisfied.

(2) The use for advertising purposes of professional statements made by the Wirtschaftsprüfer is not permitted; any infringement entitles the Wirtschaftsprüfer to instant termination of all assignments not yet completed for the client.

8. Correction of deficiencies

(1) The client is entitled to have deficiencies in the Wirtschaftsprüfer's work corrected. Only if the correction fails may the client also claim a reduction of fees or cancellation of the contract. If the assignment has been awarded by a merchant within the scope of his commercial activities, by a public-law legal entity or by a public-law fund, the client can only claim cancellation of the contract if the Wirtschaftsprüfer's work, because of the failure in correcting the deficiency, is of no interest to the client.

Claims for additional compensation are dealt with under Section 9.

(2) The client must submit his claim for correction of deficiencies in writing without delay. Claims under paragraph (1) sentence 1 expire six months after completion of the Wirtschaftsprüfer's professional work.

(3) Obvious errors, such as typing and arithmetical errors and deficiencies of form contained in a Wirtschaftsprüfer's professional statements (report, special opinion, etc.) may be corrected by the Wirtschaftsprüfer at any time also with effect against third parties. Errors which are apt to question the results contained in the Wirtschaftsprüfer's professional statements, entitle the Wirtschaftsprüfer to withdraw such statements also with effect against any third party. In such cases the Wirtschaftsprüfer should, if practicable, first hear the client.

9. Liability

(1) *With regard to audits required by law, the liability limitations set out in § 323 par. (2) Commercial Code apply.*

(2) *Liability in cases of negligence: Single cases of damages*

Pursuant to § 54a par. (1) No. 2 Law regulating the Profession of Wirtschaftsprüfer (WPO) the liability of the Wirtschaftsprüfer for damages of any kind, whether it is joint or several liability, is limited in a single case of damages due to negligence to DM 8 million; this limitation also applies to liability to a person other than the client. A single case of damage is defined as the total sum of the damage claims of all persons entitled to claim, which arise from one and the same professional error (offence); a single case of damage is also defined as the total of all offences committed in performing an audit or other coherent service (a specifiable professional service which technically represents an indivisible performance) by one or more persons. However, in the case of damage suffered from several audits of the same kind or several coherent services of similar nature a Wirtschaftsprüfer can be held liable only up to an amount of DM 10 million irrespective of whether the damage were caused by offences within one year or within several consecutive years. The limitation of DM 10 million does not apply in cases of audits required by law.

(3) *Limitation periods*

A damages claim may only be lodged within twelve months of the claimant becoming aware of the damage and of the event constituting the claim, at the very latest, however, within 5 years following the event constituting the claim. The claim expires unless legal action is taken within six months following the written refusal of acceptance of the correction and the client was informed of this consequence. The right to apply the statute of limitations is not prejudiced. This paragraph (3) applies equally to audits required by law with legally imposed liability limitations.

10. Supplementary provisions relating to audits

(1) A subsequent amendment or abridgement of the audited and certified financial statements or management report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. In cases where the Wirtschaftsprüfer has not

issued an audit opinion, reference to the Wirtschaftsprüfer's examination may only be made in the management report or other publications with his written consent and then only with a wording authorized by him.

(2) If the Wirtschaftsprüfer revokes his opinion, it must no longer be used. If the client has already made use of the opinion, he must announce its revocation upon the request of the Wirtschaftsprüfer.

(3) The client is entitled to 5 copies of the report. Additional copies are charged for separately.

11. Supplementary provisions relating to tax advisory services

(1) When advising the client on a particular tax problem or when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts, especially figures, provided by the client are complete and correct; this also applies to bookkeeping assignments. He is, however, obliged to inform the client of any errors discovered by him.

(2) The assignment for tax advisory services does not comprise those services required for meeting deadlines, except in cases where the Wirtschaftsprüfer has specifically accepted such assignment. In such cases the client must supply the Wirtschaftsprüfer with all documents essential for meeting deadlines, especially with tax assessment, with sufficient time for the Wirtschaftsprüfer to give them adequate attention.

(3) In the absence of other written agreements, a continuous tax advice assignment covers the following work arising during the period of the agreement:

- a) preparation of the annual income, corporation and trade tax returns as well as property tax returns on the basis of financial statements and other records and evidence required for tax purposes, to be submitted by the client
- b) review of assessments concerning the taxes mentioned in (a)
- c) negotiations with the tax authorities with regard to the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits concerning the taxes mentioned in (a)

e) participation in appeals and complaints filed with the Fiscal Authorities ("Einspruchsverfahren" and "Beschwerdefahren"), concerning the taxes mentioned in (a).

When undertaking the aforementioned work the Wirtschaftsprüfer takes into account major published legal decisions and the administration's opinion.

(4) In cases where the Wirtschaftsprüfer receives a retainer fee for continuous advice, the work mentioned in paragraph 3 (d) and (e) is chargeable separately unless otherwise agreed in writing.

(5) A special agreement is required to engage the Wirtschaftsprüfer's services on particular individual problems with regard to income, corporation and trade tax, the valuation procedures for property taxation, property tax, as well as all problems concerning turnover tax, wages tax and any other taxes and dues. This also applies to:

- a) the treatment of non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings concerning taxes, and
- c) granting of advice and expert opinions in connection with conversions, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of businesses, liquidations and similar matters.

(6) If, in addition to the above, the Wirtschaftsprüfer is requested to prepare the annual turnover tax return, he is not obliged to examine adherence to special accounting requirements, if any, or to determine whether the client has taken full advantage of all benefits offered under the turnover tax law. No guarantee is assumed for the completeness of the evidence compiled in substantiation of the credit against the client's turnover tax liability for his suppliers' turnover tax charge.

12. Professional discretion towards third parties and data protection

(1) The Wirtschaftsprüfer is, as provided by law, obliged to treat all matters which come to his knowledge in connection with his engagement as

confidential, irrespective of whether these matters concern the client himself or his business connections, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer is not allowed to release reports, special opinions and other written statements on the results of his work to third parties without the consent of his client.

(3) The Wirtschaftsprüfer is entitled — within the framework of his assignment — to process personal data made available to him or to authorize third parties to process them.

13. Default of acceptance and lack of cooperation on the part of the client

If the client is in default of accepting the services offered by the Wirtschaftsprüfer or if the client refrains from the cooperation incumbent on him in accordance with Section 3 or otherwise, the Wirtschaftsprüfer is entitled to terminate the agreement without notice. The right of the Wirtschaftsprüfer to compensation of additional expenses as well as damages caused by default or by the client's failure to cooperate is not prejudiced, even if the Wirtschaftsprüfer does not exercise his right to terminate the agreement.

14. Remuneration

(1) In addition to his fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his expenses; the value added tax is billed separately. He may request appropriate advances on account of remuneration and expenses and may withhold the results of his services until full payment of his claims has been made. If there is more than one client, they are jointly and severally liable.

(2) Any set-off against claims of the Wirtschaftsprüfer for remuneration and reimbursement of expenses is only permitted in the case of undisputed or legally settled claims.

15. Storage and return of documentation

(1) The Wirtschaftsprüfer shall retain, for a period of seven years, the documents handed over to him or prepared by himself in connection with the performance of the assignment as well as the correspondence concerning the assignment.

(2) After settlement of his claims arising from the assignment, the Wirtschaftsprüfer, on request of the

client, has to return all documents obtained from the client or from a third party on his behalf by reason of his assignment. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer is entitled to prepare and retain copies or photocopies of any documents which he returns to the client.

16. Applicable law

The assignment of the Wirtschaftsprüfer, the execution of the assignment and the resulting claims are solely governed by German law.

Special conditions

Special conditions for the increase of the maximum liability limits under the “General Conditions of Assignment” as of 1 January 1999.

The limitations of DM 8 million as provided for in No. 9 para. 2 of the “General Conditions of Assignment” of the Institute of Accountants (Institut der Wirtschaftsprüfer e.V.) as of 1 January 1999 are substituted by the amount of DM 10 million.

Further, the following shall apply with respect to the increased liability sum:

If, in the engaging party’s opinion, the foreseeable engagement risk will be considerably greater than DM 10 million, ARTHUR ANDERSEN Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft mbH (ARTHUR ANDERSEN) is obligated, as engaged party, at the request of the engaging party to offer to that party the option of an increased liability limit if and to the extent that liability insurance for the increased amount can be obtained from a German professional liability insurer. Upon the agreement of an increased liability limit ARTHUR ANDERSEN is entitled to charge for the insurance premium as part of its fees or as expense.

The above-mentioned provisions are not applicable when either a greater or lesser liability limit has been defined by law for the respective professional service, namely in connection with statutory audits.

If various causes of a sustained damage concur, ARTHUR ANDERSEN is liable within the scope of the increased liability limit only to the extent that causation can be attributed to ARTHUR ANDERSEN or its employees in relation to causation by others: This especially applies in the case of a joint engagement with other auditors.
