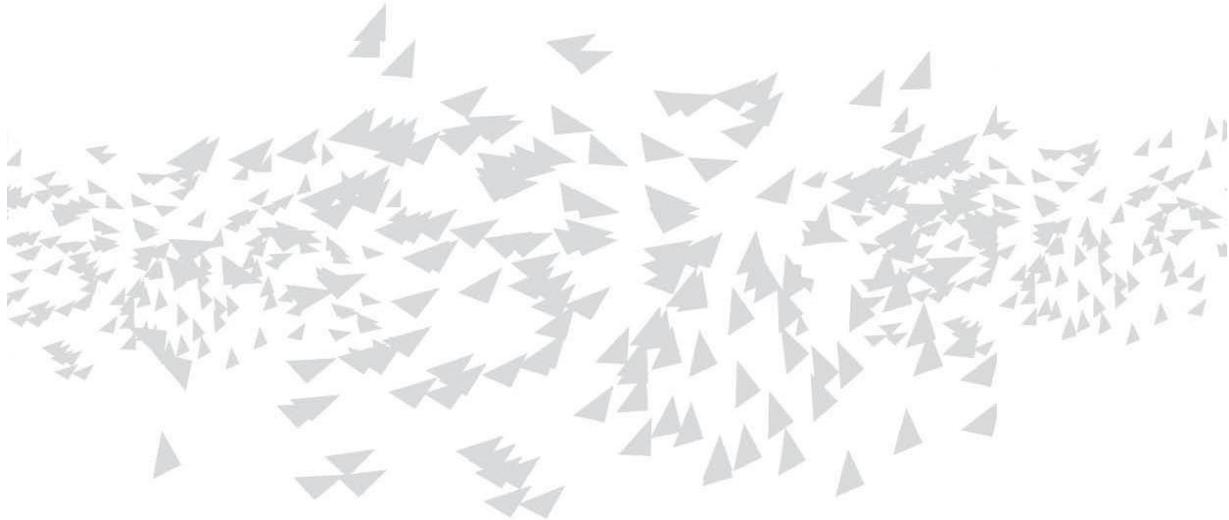


# Messer Group Guidelines<sup>1</sup>



## Introduction

The Messer Group has created an organisational concept with the Messer Compliance Management System (Messer CMS), which describes the value system of the Messer Group and defines its practical implementation as well as responsibilities relating to it.

The set of rules required for it is formed by the Messer Codex.

This consists of:

- (a) the Messer Code of Conduct (CoC), which summarizes the basic principles of the value system of the Messer Group,
- (b) these Group Guidelines, which refer to
- (c) other binding guidelines, manuals and other internal regulations (“Internal Guidelines”) from which one can refer to individual central areas, explain and concretise how the general principles described in the Code of Conduct are to be implemented and actively followed.

In order that the Messer Codex can be legally valid and binding for the companies within the Messer Group, it is to be adapted to comply with the compulsory legal provisions of the concerned country, where necessary.

The basic responsibility for the implementation and supervision for compliance with the Messer Codex and thus the Group Guidelines is with the Management and the Supervisory Body of the Companies.

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<sup>1</sup> Note: For easier reading, the differentiation between the feminine and the masculine forms is committed in the following concept. Therefore, any selected expression is considered a neutral term and includes male and female persons in an equal manner.

Each Management Body and the Senior Vice President Region (SVP Region) bear the responsibility for the communication, implementation and compliance of the present "Group Guidelines" in their respective Companies. The heads of central departments and the responsible persons of the respective local departments bear the same responsibility for binding instructions from their department (e.g. Internal Guidelines) within the framework of these Group Guidelines.

The acceptance and observance of the Messer Codex is the object of internal audit.

The local Management Body has to make the Messer Codex, consisting of the CoC, the Group Guidelines as well as the Internal Guidelines, accessible to all employees - including translation into the local language where necessary for better understanding. All employees of the first and second management level must confirm in writing (a) having read and understood the Messer Codex and (b) following it. For the members of the Management Body, this also covers all Internal Guidelines, while this obligation for other employees of the first and second management level is limited to the Internal Guidelines, which contain the regulations for the proper exercise of their activity and areas of supervision. For all other employees, the obligation for confirmation extends to the CoC, the Internal Guidelines for their department and other Internal Guidelines, if their superior regards the knowledge of them as required for the proper exercise of the respective activity. The confirmation letters are stored by Group HR in the personnel files. The first and second management level of a Company must continuously implement appropriate and required organisational steps to guarantee the action of all other employees according to the Messer Codex, wherever it is relevant in their respective area.

The regulations of the Messer Codex apply accordingly to Managing Directors, managers and employees in a non-consolidated group company, provided they have been engaged by Messer in the context of an employment relationship or work for Messer on deputation or assignment.

The Messer Codex is subject to regular revisions. To become effective, changes to the CoC, the Group Guidelines as well as the Internal Guidelines need to be formally approved by the Management Body of the Messer Group GmbH. The approval is to be recorded in writing. The Management Body of the Messer Group GmbH ensures through Corporate Communication that the CoC, the Group Guidelines as well as the Internal Guidelines are posted in the current and translated form in the Messer Intranet. Corporate Communication ensures through the local Managing Directors and Communication Managers, that the Messer Code is also presented on the respective local Messer Intranet site in the language of the country or in a language comprehensible to all employees. Beyond that, the respective current version is available with the Group Legal Department.

## Integrity Test

## Integrity Test

Employees are regularly faced with decisions of which some fall in a grey zone. The question, whether a behaviour is correct and complies with the Messer Codex, is often emotional and personal, so that it is sometimes difficult to keep the necessary objectivity. In addition, laws and regulations are often complex and can be interpreted differently. Therefore, it is the more important to address problems.

Everyone should ask themselves in such a situation whether the behaviour

- is legal and consistent with the values and rules of the Messer Group.
- is in the best interest of the Messer Group and can be free from competing self-interests.
- is based on the personal conviction to have made the correct decision and to have followed the own ethical compass.
- can be shared with a clean conscience with a superior, colleagues, family or friends. How would they react if they knew of this behaviour?
- would bear a review by a third party? How would it be represented on TV, radio, Internet or in the papers?
- ensures the good reputation of the Messer Group?

If each of these questions can be answered as Yes, the behaviour is presumably acceptable. If doubts remain in view of these questions, the direct superior is generally in the best position to judge the situation and to solve the problem. The respective Compliance Officer can give qualified advice according to the Compliance Officer Guideline ("CO Guideline"). An open door policy is expected from Messer managers and Compliance Officers in respect to the questions and concerns of the employees and it is expected that they will make an honest effort to find solutions for the addressed problems.

For questions and further information on the Messer CMS and the Messer Code, the Compliance Officers identified in the CO Guideline are readily available.

Bad Soden, October 1, 2018

Messer Group GmbH

Stefan Messer  
Chief Executive Officer

Dr. Uwe Bechtolf  
Chief Financial Officer

Ernst Bode  
Chief Operating Officer

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Fixed Assets: Tangible and intangible assets that are applied in the company operations and not intended for resale.

EGM or Extraordinary General Meeting: Extraordinary meeting of shareholders that is held in addition to the ordinary or Regular General Meeting (OGM) (see clause A 3.4.1)

Supervisory Body: Competent local body with decision making authority in which the shareholders exercise their authority and/or their voting rights directly (e.g. a shareholder meeting, a general meeting) and/or indirectly (e.g. an optional or compulsory supervisory board) as defined in more detail in section A 3. A Company can have a supervisory body in form of an advisory board (e.g. an advisory committee) as defined in section A 4 in addition or alternatively to such a supervisory body with decision making authority.

Supervisory Board: Supervisory Board of the Messer Group GmbH as main shareholder of all Messer Group subsidiaries

CapEx: Payments booked as additions of fixed assets and financial investments in the balance sheet

CCO: Corporate Compliance Officer of Messer Group GmbH

CEO: Chief Executive Officer of Messer Group GmbH

CFO: Chief Financial Officer of Messer Group GmbH

COO: Chief Operating Officer of Messer Group GmbH

CIT: Corporate IT

CSF: Central Sales Functions

EVP: Executive Vice President

Financial investment: Investment in shares of another company as well as the purchase of operations by way of asset deals

Managing Director: Member of a Management Body

Management Body: Represents the first management level of a company. By virtue of law the Management Body leads the business and represents the company vis-à-vis third parties. Members of a Management Body can be the managing director, the Board or another governing body authorised by the local law for managing the company.

General Management of the Messer Group GmbH: Managing Directors of the Messer Group GmbH are the CEO, the CFO and the COO.

Management Board: Board of the Messer Group GmbH consisting of the Managing Directors and the EVP of the Messer Group GmbH.

Rules of Procedure: Formalised procedural rules that regulate the obligations and responsibilities of a Management or Supervisory Body and that are implemented according to the templates of the Group Legal Department (GLD).

Company: Means, according to the context, the Messer Group GmbH and/or its subsidiary(ies) in question (the latter in the following also "local subsidiaries" or "local companies")

Group HR: Group Human Resources Department (central personnel department) of the Messer Group.

GLD: Group Legal Department (central legal department) of Messer Group GmbH

Group Taxes: Corporate Tax Department of Messer Group GmbH

HR: Human Resources

Investment Forum: Governing body for all strategic investments above 2.5 mil. € within the Messer Group; defines the approval standards, guarantees the strategic suitability of an investment, proposes investment projects to the Management Board of the Messer Group GmbH for approval.

LCO: Local Compliance Officer of the local company (cf. Compliance Officer Guideline).  
Management: each employee of a Company on the first or second management level

Messer Group GmbH: Messer Group GmbH, parent company and group central office in Bad Soden, Germany

Messer Group or Messer Group of Companies: All consolidated Group companies including their Managing Directors, managers and employees

MSP: Messer Strategic Process

OGM or Regular General Meeting: Annual shareholder / general meeting of the shareholders

On-site contracts: Contracts on supply of customers  $\geq 250 \text{ Nm}^3/\text{h}$  through air separation units (ASU), generator or VPSA plants; no On-site contracts in this sense are contracts on the renting of tanks, sale of ASUs, generators or VPSA plants or other sale of hardware

Operative CapEx: Payments in connection with the day-to-day business, mainly sales equipment such as tanks, steel bottles, trucks and trailers or computer systems as well as replacement for used capital goods

Project CapEx: Payments relating to assets that are used in the production on expansion or acquisition of a company

SAB: Senior Advisory Board

Articles of Incorporation: The agreement among the shareholders of a company or the relevant document under local law (e.g. charter, articles of association (AoA), by-laws, statutes) SCM: Supply Chain Management

SHEQ: Safety, Health, Environment, Quality

SVP: Senior Vice President

VP: Vice President

## PART A: Conduct Principles

### 1. Corporate Governance

The Corporate Governance of Messer Group stands for processes and structures that include the following points:

- Protection of shareholder interests
- Transparency of the management actions and actions of the Company  Circumspect risk management:
- Preserving Company assets

## Messer Group Guidelines

For this purpose reporting structures and obligations are defined and a Compliance Management System has been set up.



The Messer Corporate Governance means more than the obligations and powers of the Management Bodies of the Company. It follows goals that go beyond following laws and ordinances by the Company and its executives. Corporate Governance contributes towards safeguarding the existence of the Company and ensure sustainable added value. It wants to promote the trust of the finance partners, customers, employees and public in the management and monitoring of the Messer Group. It represents important legal provisions for management and monitoring of the Companies of the Messer Group and includes international and nationally recognised standards of good corporate governance.

Corporate Governance of Messer Group shall ensure that values such as honesty and trust and belief spread, beyond the competent Management Body, to all other executives and employees of the Companies of the Messer Group.

The Group Guidelines are a guidance for:

- Permissions and obligations of the members of a Management Body or a Supervisory Body
- an internal code that supports the Management Bodies in the fulfilment of their obligations
- the setting up of appropriate signature and representation rules
- all employees, to behave in conformance with the value system of the Messer Group.

## 2. Management Bodies

The Management Body of a Company consists of one or more persons, who are authorised and obligated to manage the Company, in accordance with the local law, regulations in the Articles of Association and the specifications in Rules of Procedure for the Management Body, either alone or otherwise together as collegial body.

The Managing Directors are authorised and obligated for the management of the business of a Company and representation of the Company towards third parties and are – insofar as legally permitted – bound to the decisions of the shareholders and, as the case may be, the Supervisory Body.

The Managing Directors have the following duties towards the Company:

### 2.1 Fiduciary duties

The Managing Directors are representatives of a Company and trustees in relation to its property. As trustee they must exercise the power with which they are equipped for the welfare of the Company. Every misuse of these powers or of Company property represents a breach of trust. Certain fiduciary duties, i.e. the obligation to loyalty and a behaviour in accordance with good faith, are thus imposed on the Managing Directors.

This means that the Managing Directors must act in an ethical manner and according to good faith for the welfare of the Company. In particular:

- A Managing Director must act in a manner which is in his view in the best interests of the Company; this generally corresponds to the interest of the entirety of the Shareholders. In doing so, he has to bear in mind aspects of safety and health of his employees, customers and other third parties, protection of the environment as well as the valid law and internal regulations.
- In every potential conflict between his personal interests and the Company interests, a Managing Director must disclose the type, character and scope of the conflict to the Supervisory Body as well as to the Group Legal Department. Every incidence is dealt with on a case to case basis. The same applies if he has the chance of making a profit by virtue of his position as Managing Director.

A Managing Director may only use his power within his area of responsibility and not for other purposes.

## **2.2 Duties in respect of professional knowledge, delegation**

A Managing Director need not have any other specific professional knowledge. The legal system of a state generally demands of him the use of appropriate care when exercising his duties. In particular, a Managing Director does not need to show any higher professional knowledge than can be reasonably expected from a person with his knowledge and his experience. If he is, on the other hand, appointed or nominated, because he has a certain professional knowledge e.g. as certified accountant, he has to use the skill that can be expected from a person with such training. Managing Directors must always be aware that their actions should serve as a good example for the employees of the Company.

The Managing Director may delegate certain duties to suitable employees. Such a delegation of duties is to be defined and documented in writing for both sides, particularly if the content and scope cannot be adequately determined from the respective position and/or job specification alone.

## **2.3 Legal obligations**

In addition to the obligation for an honest action and the use of due care, various other duties are generally imposed on the Managing Directors of a Company by the laws of the respective state. These other duties are supposed to guarantee the proper execution of the company matters. In every case, the Managing Director must show a good understanding for the business opportunities in his actions, while he has to simultaneously act with the requisite care of a prudent businessman.

## **2.4 Disclosure of potential conflict of interest**

In case the Managing Director occupies an office and/or has a stake, which could mean a conflict of interests with regard to his powers in the Company or if he has a personal interest in the transactions of the Company, he must disclose the type, character and scope of the conflict to the representatives of the Company members (Supervisory Body and/or the shareholders) as well as to the Group Legal Department and the Group HR Department. Every incidence is dealt with on a case to case basis.

## **2.5 Legal relation with Managing Directors and members of a Supervisory Body**

Without prior consent from the Supervisory Board of Messer Group GmbH, the Messer subsidiaries must not enter into any legal relations with its Managing Directors and the members of their Supervisory Body; excepted from this are the legal relations resulting directly from the work relationships or from the job description as Managing Director. This rule also covers the granting of a loan or a guarantee or security in connection with a loan and also extends to relations (ref. clause 9 of the Code of Conduct) of the Managing Director and the members of the Supervisory Body.

## **2.6 Permissions and obligations of external board members (Non-Executive Directors)**

External board members are members of the Supervisory Body or of the Management Body who are not employees of the Company. They can be employees of other Companies of the Messer Group or even third parties not belonging to the Group.

The external board members bear the same legal responsibility as the other members of the Management Body or the Supervisory Body.

## **3. Supervisory Bodies with decision making authority**

The ultimate Supervisory Body of a Company is the shareholder meeting. The shareholders can empower one or more representative to exercise their voting rights within the shareholder meeting, provided that a representative is not member of the Management Body of the concerned Company. The local law applicable to the Company in question and the regulation in the Articles of Association define whether another Supervisory Body (e.g. an optional or compulsory supervisory board, Board of Directors, Administrative Council etc.) is present and how it is to be practically designed.

### **3.1 Duties and powers**

The duties and powers of a Supervisory Body are given within the framework of the valid mandatory local law, from the Articles of Association, from the Rules of Procedure for Management Body and the Messer Codex. In the course of regular meetings the Management Body reports about its business activities to the Supervisory Body.

Besides a regular obligation of reporting and approval to the competent Supervisory Body, also matters are defined, which are subject to or require a regular obligation of reporting and approval by further persons (e.g. SVP Region or GLD).

The general duties and powers of the shareholders and/or possibly other Supervisory Body are defined as follows:

- a) Consulting, Instruction (if legally permissible) and monitoring of the Management Body;
- b) Assigning approval of execution of measures and business transactions, which require approval according to the rules of procedure for the Management Body;
- c) On request by a Managing Director, decision on differences of opinions within the Management Body;
- d) Nomination and dismissal of managing directors, defining their compensation;
- e) Representation of the company to the Management Body;
- f) Examination and approval of the annual financial statements, decision on whether it is complete and matches the information known to the board members; deciding on dividends (if applicable);
- g) Examination of other sections of the annual report, particularly comments from the management and the decision on them whether the information is adequate and matches the knowledge of the board members on the company and its business activity;
- h) Election and nomination of the auditors for the annual report;
- i) Examination of the results of external and internal audits;

- j) Examination of material questions from the areas of accounting and reporting, including current statements of professional and supervisory authorities and recognition of their effects on the annual report;
- k) Decision about required additions to the rules of procedure for the Management Body and/or the Supervisory Body, if demanded by law or in the Articles of Association;
- l) Examination of the idea management of the company, particularly in respect of the number, quality and cost saving potential of the ideas put forth by personnel as well as regarding implementation of individual ideas within the Company.

### 3.2 Reserved Matters

Business activities that need approval from the Supervisory Board for implementation are defined in an approval catalogue for the Supervisory Body. Local Articles of Association and/or Rules of Procedure of the local subsidiaries can contain more or stricter consent reservations, if they are in agreement with the valid law and the regulations of the Messer Codex.

The Supervisory Body can (a) define other decisions that need written approval for implementation and (b) defining thresholds in the Rules of Procedure requiring approval. Such threshold values should be oriented to the size of the Company.

The Companies should be classified into small, medium and large companies according to defined criteria. The respective threshold values should always be as uniform as possible within this classification. The SVP Region defines common criteria for a classification and reports them to SVP Legal.

The SVP Region has to be involved early in business cases which require approval from the Supervisory Body.

Other activities not listed above can also be subject to other formal requirements and the duty for advance approval due to other regulations e.g. the Articles of Association, a joint venture contract, a signature regulation or internal policies, guideline etc.

### 3.3 Nomination and dismissal of members of a Supervisory Body and the Management Body

The nomination and recall of members of a Supervisory Body and the Management Body of a subsidiary of the Messer Group GmbH within the Messer Group of Companies needs prior approval from the Management Body of Messer Group GmbH. The intended nomination or dismissal has to be communicated to the Group Legal Department in advance. The legally competent body or the person empowered by law for dismissal must ensure the power to represent linked to the membership in the Supervisory Board or Management Body is immediately withdrawn from the member with the dismissal of this member.

### 3.4 Meetings of the Supervisory Body

Meetings of the Supervisory Body are to be held in accordance with the provisions in the Articles of Association and the rules of procedure of the respective boards. The provisions are oriented uniformly to the standardised templates made available through GLD, taking into account the mandatory local law. Also included is that to the legally possible extent (a) meetings can also be conducted as attendance-, telephone- or video conferences, (b) agenda are distributed in advance to the members, (c) the agenda of the meeting, together with all relevant documents and presentations are distributed to the members of the Supervisory Body no later than 7 days before the planned meeting, (d) the course of the meetings is noted in the minutes and as far as possible distributed by the secretary to the members of the Supervisory Body within the next four weeks and it should be permanently preserved. Within six weeks after the meeting, the company must send a copy of the minutes in the English or German language to GLD.

### 3.4.1 Ordinary Shareholder Meeting

Every Company must hold an annual shareholder meeting (regular general meeting or “OGM”), which usually takes place in the first 6 months of every year. All other company meetings are designated as extraordinary general meeting (“EGM”).

Depending on the Articles of Association of the Company in question, the agenda of the EGM generally contains the following points:

- Examination and acceptance of the audited financial statements for the financial year and of the report of the external financial auditors for this financial statements.
- Examination and acceptance of the Management Letter created by the external financial auditors
- Notification of the dividend (if applicable)
- Release of the members of the Management Body
- Nomination of the financial auditors (after approval by the EVP Strategy) and empowerment to the Managing Director to fixing the compensation to be paid to the auditors (if applicable).

If the Company has no additional Supervisory Body, the shareholders also take up the tasks of the additional Supervisory Body (see below). In this case, the shareholder meetings are to be held at least twice a year.

### 3.4.2 Additional meetings of the Supervisory Body

In addition to the OGM, every company should call at least one additional meeting of the Supervisory board (e.g. shareholder meeting, general meeting, Supervisory Body) in the last four months of the year.

The agenda for this meeting should take into consideration the following points:

- Profit and Loss account
- Balance sheet
- Cash Flow Statement
- Working Capital Report
- Capital Expenditure Report
- MSP
- SAT applications
- Market analysis and competitive situation
- IT security
- Risk Management Report
- Report on Unused Assets Report
- Project status (current and future projects)
- Borrowings
- Report on Quality, Safety, Health and Environment
- Personnel matters
- Legal disputes and processes
- Idea Management
- Follow-up plan and fluctuation report

If the business circumstances require it, additional matters can be taken up by the meeting.

A comparison should be made between the approved financial plan (budget) and the results forecast for the end of the financial year. The Supervisory Body checks the annual financial statements and the Management Letter and judges whether these documents are complete and are in line with the information known to the members of the Supervisory Body.

The Supervisory Body can demand a meeting with the Management Body and the external financial auditors for auditing the annual accounts, additional results for the year as well as the results of the audit; the Board itself can participate in this meeting or through an independent representative. The type of audit varies depending on the complexity of the company structure and the business activity. It however covers the choice and application of accounting principles and calculations, the preparation of publications, Going Concern publications (if applicable), internal audit and other matters that are important for the financial reporting of the company.

### 3.5 Internal supervision

The Supervisory Body is responsible for the internal supervision, which is exercised through reports on the part of the Management Body, Corporate Audit, central departments and the external financial auditors as well as through discussion with these bodies. The Supervisory Body should develop an understanding for the magnitude of the internal and external supervision. Moreover, it must understand the risks to which the Company is exposed and the processes introduced for risk management.

In some cases, Supervisory Body and/or Management Body can demand creation of a special report on aspects of the operational control and the risk management system through an independent financial auditor. This demand should be coordinated with the Corporate Audit department. In such a case, the Supervisory Body must be briefed about the special nature of the task and should clarify the basis of its report with the independent financial auditor. It is the responsibility of the Supervisory Body.

- to rate whether the Management Body communicates the importance of operative control and risk management and its implementation with the right focus and
- reach an understanding whether Management Body implements the recommendations on operational control issued by internal and external audits in a timely manner.

### 3.6 Voting ban

A member of a Management Body or of a Supervisory Body may not participate in voting if the resolution may result in a direct advantage or disadvantage to himself, his spouse or a relative (as understood under clause 9 of Code of Conduct), or a natural or legal person representing him under law or power of attorney. Such an advantage or disadvantage does not apply in case of participation of members of the Management Body, who themselves, or their spouse or relatives are at the same time, directly or indirectly, company members of an affiliate of Messer Industrie GmbH or MEC Holding GmbH.

Participation in consultations is allowed.

## 4. Advisory Boards

Besides a Supervisory Body in accordance with section 3 above, an additional advising board can be implemented according to the local law or based on the Articles of Association or by shareholder resolution (e.g. advisory board). It exercises its advisory function by providing decision recommendations to the Management Body and the advising board. The resolution is then made by the competent body taking into consideration the recommendation of the advisory board.

If a Company has an Advisory Board (e.g. Advisory Board), its composition, rights and duties are according to the specifications in the Articles of Association and rules of procedure of the company. The advisory board should issue a decision recommendation regarding the listed resolution objects 3.1 and 3.2, if possible and advisable, even on other resolution matters of the Supervisory Body. Sections 3.5 and 3.6 above apply accordingly to the Advisory Board for its advisory function.