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Doing Business and
Investing in Germany



 **WINHELLER**
ATTORNEYS AT LAW

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A Why Germany?

With about 82 million inhabitants, Germany is the top-performing economy in Europe and the fourth largest in the world. A long-time leader in exports, Germany employs a multitude of highly qualified workers known for their reliability and industriousness. In particular, engine construction and German engineering are some of the most highly developed sectors in the world. It is not without reason that for decades the “Made In Germany” label has stood for German quality.

The tax burden for German businesses generally is in line with the European average and, depending on the particular location in Germany, can in fact be quite attractive. Communications, transportation and energy infrastructure are all better developed than in most other countries in the world.

The political system is stable, and legal certainty and public safety are permanently guaranteed by the separation of powers (legislative, judicial and executive) set out in the 1949 Constitution and the division of government between the federal and individual state level. The excellent health care system, the diversity of cultural institutions and a comprehensive offering in the services sector all contribute greatly to the quality of life.

As a Member State of the European Union, Germany is an ideal business location for a market of over 450 million EU citizens, thanks to its central geographical location. The strong Franco-German economic axis has also traditionally driven the development of the European Economic Area. In particular, the introduction of the Euro in 2002 as the common currency has further improved solidarity within the EU. The Euro has been a significant boon to Germany’s international trade - if nothing else, to the detriment of Great Britain, which has yet to join the Eurozone and is additionally disadvantaged by its peripheral geographical location - and has attracted investment by numerous multinationals which have made Germany the base for their European business.

The highly-developed economy, the diversified economic sectors and the national and European political frameworks all work to offer promising development opportunities for businesses of all sizes and industries. Foreign investors have found excellent conditions in Germany for successful business establishment. The approximately 220,000 foreign businesses established in Germany, which currently employ over 2.7 million people, are a solid testament to this fact.

Why Frankfurt?

The seat of the European Central Bank, Frankfurt am Main is the most important financial center in Europe next to London. It is also home to the headquarters of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), making it a significant insurance center. As an international, and the third largest, trade fair location in the world, Frankfurt also plays a leading role in sales presentations. Frankfurt has also made a name for itself in the chemical industry.

Frankfurt is the central European transportation hub: Frankfurt International Airport is one of the most significant aviation hubs in the world for both passenger and freight traffic. In addition to giving it a leading position in road, rail and inland water traffic, Frankfurt's central location in the heart of Germany and Europe makes the city an ideal location for the European activities of international businesses in terms of its infrastructure. Because of Frankfurt's importance to the European economy, there are a diverse number of people living and working in Frankfurt who possess a broad range of qualifications and skills, which are at the disposal of companies located there.

Frankfurt also has something to offer in terms of taxation: certain municipalities within commuting distance of the city offer highly attractive tax frameworks for business establishment.

Why Berlin?

As the country's capital, Berlin is Germany's political center and thus an ideal location if proximity to political institutions and decision makers is important to your business. It is not without reason that a multitude of professional and trade associations, social service organizations and foundations are based in Berlin. At the same time, Berlin is also the gateway to Eastern Europe and Russia on account of its geographic location.

Berlin offers a highly qualified workforce that is also cost-effective in comparison to other German cities. In terms of taxation, establishing a business in low-tax municipalities within commuting distance of Berlin can also be attractive.



Why Hamburg?

Hamburg is home to one of the largest ports in the world and is a central hub for the overseas trade of Northern European countries. Hamburg has also historically had a strong position with respect to the significant trade conducted with the People's Republic of China. Not least, Hamburg is also one of the most important German insurance centers and a significant location for shipyards and aircraft construction. In addition, the most effective media products in Europe are produced in Hamburg.



Why Munich?

Munich is a significant European insurance center and is also renowned for biotechnology and mechanical engineering, as well as being the headquarters of car manufacturer BMW®. In addition to Karlsruhe, Munich is a key IT center. There are numerous innovative software and IT groups in Munich and its environs, as well as the German Patent and Trademark Office. The highest German financial court, the Federal Financial Court, is also located in Munich.

Due to its geographic location and its excellent transportation infrastructure, Munich is particularly suitable for businesses looking to establish business relations with Southern European countries.

Why Karlsruhe?

The most important European research centers for information technology are located in Karlsruhe, in addition to a high concentration of up-and-coming Internet and telecommunications companies. For this reason, Karlsruhe is often referred to as the Silicon Valley of Germany. The city is also known throughout Europe for electrical engineering and mechanical engineering. From a tax perspective, establishing a business in one of the neighboring municipalities can also be advantageous, as these localities lure investors with favorable local business taxes.

Finally, Karlsruhe, home of the highest German civil court, the Federal Court of Justice, and the Federal Constitutional Court, is known as the seat of German law.



B Why WINHELLER Attorneys at Law?

We are an international commercial law boutique whose expansion has been exclusively organic. Our headquarters are located in Frankfurt's banking district, and we also have branches and offices in Berlin, Hamburg, Munich and Karlsruhe, in addition to a partner office in Shanghai.

Premium Advice On An International Scale

Advising international mid-sized business on commercial law is our specialty. In particular, we advise companies from Russia, China, all Anglo-American common law jurisdictions (USA, UK, Canada, Australia, etc), as well as neighboring European countries,

which are looking to enter the German market or are already successfully doing business here. In order to be able to provide our international clients with premium legal and tax solutions, our employees are especially well versed in Russian, Chinese and Anglo-Saxon language and culture.

Our many clients come from the industries of finance and insurance, IT, software and Internet-based services, entertainment and media, in addition to mechanical engineering, architecture and engineering. We also represent a number of large non-profit organizations, both domestic and foreign. You can be assured of our comprehensive industry knowledge.

Practice Areas

We specialize in representing companies and organizations that enter the German market and expect guidance and support in all legal and taxation issues. Our practice areas focus in particular on the following:

- Corporate law, incorporations, M&A
- Trade agreements and distribution rights
- Product liability
- Tax law and advice, including ongoing financial and payroll accounting
- Succession planning
- International tax law and international tax structures
- Employment law and commercial agency law
- Capital markets and banking law
- Insurance law
- IP law
- Media and entertainment law
- Internet law
- Arbitration
- German and US immigration and visa law
- Advising and representing non-profit organizations
- Litigation

A Preeminent Worldwide Network

Our legal and tax advisory services are not limited by borders. Our worldwide partnerships, together with our membership in the International Society of Primerus Law Firms (www.primerus.com), connect us with over 200 top mid-sized firms worldwide. This network of over 2,500 attorneys, tax advisors, certified accountants and M&A experts allows us to offer first-class legal and tax solutions in every country in the world.

When representing institutional investors, we can also draw on the expertise of our long-time US partner Barroway Topaz Kessler Meltzer Check LLP (BTKMC), one of the leading securities and class action law firms in the United States.

Common Values and Commitment

As member of the International Society of Primerus Law Firms we are committed to the following six common values:

- Integrity
- Excellent Work Product
- Reasonable Fees
- Continuing Education
- Civility towards clients and opposing parties
- Community Service.

We live these values daily, because we are convinced they are indispensable to the successful practice of law. The positive feedback and long-time loyalty of our clients are clear evidence that businesses and organizations seeking legal and tax advisory services share our values.



C Successfully Entering the German Market

1 Legal Form

Depending on your business goals and capitalization, as well as legal and tax considerations, there are a number of options for setting up your new business location:

- Representative branch office with external partners
- Non-independent branch office (permanent establishment)
- Independent branch office
- Subsidiary with its own legal personality.

The legal form through which you do business in Germany should be carefully chosen at the outset. Initial errors are generally very costly to rectify.

1.1 Representative Office run by External Partners

The easiest way to start doing business in Germany is to assign an external independent commercial agent or authorized dealer, or to set up some other form of cooperation with a third party. A foreign enterprise, cooperating with such an external agent or dealer, insofar does not require a business registration.

1.2 Non-independent Branch Office (Permanent Establishment)

As an alternative, a foreign business can also establish a German branch that is dependent on the head office in every respect. Such a German “permanent establishment” is geographically separate, but still part of the consolidated foreign company. Invoices are issued in the name of the head office. Business registration is required, and this legal form is also generally the starting point for taxation in Germany.



1.3 Independent Branch Office

A branch does not have any legal personality, but can independently participate in business transactions. It establishes jurisdiction of the German courts and the taxation authority of the German Revenue Service.

Branches must be entered in the Commercial Register. The organizational documents of the foreign business must also be submitted and the articles of association of the foreign company need to be notarized and authenticated.

A branch can be useful when business activity in Germany will be relatively short. Apart from certain considerations arising under tax and capital markets law, however, it is generally preferable to incorporate a subsidiary with its own legal personality for medium or long-term activity in Germany.

1.4. Subsidiaries

If you plan to do business in Germany over the medium or long term and envision setting up a subsidiary, the right legal form is key to business success.

German law makes available a number of legal forms, each of which differs in important aspects. For example, a significant consideration is the personal liability of the business owner. A corporation is usually liable only to the extent of its business assets, while its shareholders are not personally liable for its obligations. Creditors may, however, freely pursue the personal assets of a member of a partnership.

1.4.1 Private Limited Company [GmbH]

The GmbH [Gesellschaft mit beschränkter Haftung (GmbH)] is a German private corporation and is by far the most popular legal form in the country. It is particularly valued by both domestic and foreign investors because it can be set up relatively quickly and its bylaws can to a large extent be tailored to shareholder needs. Moreover, shareholders can direct the actions of business management with binding instructions.

A GmbH can be established by a single shareholder, regardless of nationality. Minimum share capital of Euro 25,000 in cash or tangible assets is required, though an initial deposit of Euro 12,500 is sufficient in the case of cash contributions. The incorporation of a “mini-GmbH” requires share capital of only Euro 1. Once the share capital of the mini-GmbH reaches Euro 25,000, it can be converted into a traditional GmbH.

Individuals, partnerships and other legal entities can all be shareholders of a GmbH. Bylaws must be executed by the shareholders and specify the amount of share capital, the name of the firm, registered seat, business purpose and the amount of the shareholders’ ownership interests. An application for entry in the Commercial Register, signed by the managing director, is also required.

Both the executed bylaws and the Commercial Register application must be notarized, i.e. a notary, whose education in most of the German federal states is equivalent to that of a judge or an attorney at law, will authenticate the signature after having discussed the contract’s relevant legal issues with the parties. However, neither the shareholder nor managing director need be physically present for notarization, allowing a GmbH to be incorporated from abroad.

After the incorporation process is complete, the company is liable only to extent of its business assets; German courts allow veil piercing only under exceptional circumstances.

The subsequent transfer of a GmbH ownership interest must be notarized.

As a corporation and independent legal entity, the GmbH is a separate tax entity and is subject to, inter alia, corporate tax, local business tax and, as a general rule, VAT.

The GmbH has had a long and successful history, which spans back to 1892, the year the first GmbH laws were enacted. Since then, the limited liability concept has spread throughout the world, making it one of German law’s most successful exports.



1.4.2 Joint Stock Company [AG]

The joint stock company [Aktien-gesellschaft (AG)] is a public corporation that can be listed on an exchange. Like the GmbH, it is an internationally significant business form, without which it would be impossible to do business in the modern world. It is often used by larger companies, and the minimum share capital is Euro 50,000. Individuals may also use this legal form (i.e. a single-member AG). The advantages of the AG over the GmbH lie principally in the simple transferability of shares, making equity and debt capital easier to obtain and thus leading to less dependency on credit. It is for this reason that the AG is often the first choice for fast-growing mid-sized businesses.

The AG is, however, subject to much stricter legal requirements than the GmbH, which results in some regulatory burdens: Shareholder resolutions of a listed company must be routinely authenticated by a notary. There are a number of disclosure and notification obligations, as well as comprehensive accounting regulations. The establishment of

a supervisory board with at least three members is mandatory, and the management board, unlike the management of a GmbH, can act independently of the instructions of shareholders.

As a legal entity, the joint stock company is also a separate taxpayer and is subject to corporate tax, local business tax and, as a general rule, VAT.

1.4.3 Association Limited By Shares [KGaA]

The association limited by shares combines the advantages of several legal forms. Liability can be limited for a KGaA [Kommandit-gesellschaft auf Aktien], as in the case of a GmbH & Co KGaA, and it can attract investors by listing on an exchange. On the other hand, the tax advantages of a partnership are also present. Caution is nevertheless advised because the KGaA is used relatively seldom, which in practice means that substantial legal uncertainty may exist in certain questions because the jurisprudence rarely has an opportunity to address disputed legal issues.

1.4.4 European Legal Forms

The European joint stock company, the Societas Europaea (SE), is suitable for larger concerns whose business includes interstate commerce within the EU. The incorporation requirements of the SE are higher than those of the AG, and the minimum share capital is Euro 120,000.

The SE's uniform organization and structure, as well as an incorporation process based on largely uniform legal principles in all EU member states, greatly simplify economic transactions. Despite the unification of incorporation requirements, however, national laws may still influence the actual organization of an SE.

The Societas Cooperativa Europaea (SCE), on the other hand, is suitable for cooperative businesses and for cooperation at the interstate level.

As yet, there is no "European GmbH" (Societas Privata Europaea, SPE), though this legal form has been long discussed. It is expected to be introduced in the next few years.

1.4.5 Partnerships

The most important types of partnerships are the offene Handelsgesellschaft [OHG, "ordinary partnership"] and the Kommandit-gesellschaft [KG, "limited commercial partnership"]. Partnerships have limited legal capacity, and shareholder liability is unlimited. An exception is made only for the limited partners of a KG, whose liability is restricted to the guaranteed amount set out in the Commercial Register.

1.4.6 GmbH & Co. KG/ Ltd. & Co. KG

The popular GmbH & Co. KG is a legal form often seen among German mid-sized businesses. It is a special form of the "limited commercial partnership", whose personally liable partners are not natural persons but rather a GmbH or even a British private limited company by shares, for example. The purpose of this corporate form is to limit or avoid liability for the persons behind the company without having to forgo the tax advantages of a partnership.

2 M&A and Reorganizations

The need to reorganize often arises in two circumstances: first, as a means of optimizing the structure of a business, which is often based on tax considerations; and second, as the result of business consolidations or divestitures. In both cases, the goal is to materially enhance the value of the business.

In Germany, reorganizations are subject to the Reorganization Act, which recognizes four forms of reorganization: merger, demerger (split, spin-off), change in form and asset transfer. The defining characteristic of each type of reorganization is what is known as “universal succession”. All assets, rights and obligations of the business pass as a whole and need not to be transferred individually. Reorganizations can usually be implemented in a tax-neutral manner, and unrealized gains are not uncovered. From a tax perspective, also structures other than those in the Reorganization Law may offer certain advantages. German

reorganization tax law thus permits tax-neutral contributions of businesses or business shares by way of singular succession under certain conditions.

The involvement of individual employees of the business or any existing works council may also be required in the case of reorganizations and M&A transactions. In addition, antitrust requirements at the German or European level must be observed. Moreover, a number of additional legal and tax issues can arise during the requisite due diligence process. The type of issues and legal and tax problems will vary on a case-by-case basis, also taking into consideration the relevant industry and affected business segments.

As a firm with close ties to M&A experts of the AMAA (Alliance of Merger & Acquisition Advisors) and IMAP networks, we are able to provide multidisciplinary and expert advice for mid-sized transactions on a worldwide scale, as well as for cross-border transactions on both the buyer and seller side.

3 German Taxation System

Under Germany’s federal system, taxes are levied either at the federal, state or municipal level. The German constitution guarantees that each citizen can be taxed only in accordance with his or her productivity. The same applies to the requirement that each equally productive citizen or business be taxed at the same level.

German tax law has become increasingly specialized over the years and has reached a correspondingly high degree of complexity, just as in other developed industrial countries. Generalizations or oversimplifications regarding tax rates are therefore of little use for making international comparisons, unless deductions potentially available to the individual taxpayer are also taken into consideration. In each case, the particular circumstances of the individual taxpayer must be assessed.

3.1 Tax Framework

If a foreign business establishes a subsidiary or maintains a permanent establishment or independent branch office in Germany, revenue earned in Germany or attributable to the German branch office is generally subject to taxation. The amount and type of tax are gene-

rally dependent on the legal form of the German business.

3.2 Tax Categories

The following categories of taxes are of primary relevance to entrepreneurs and businesses in Germany.

3.2.1 Income Tax

The tax payable on the income of individual persons is based on rates ranging between 0% and a maximum of 45% (2010). With the addition of the “solidarity surcharge”, the highest rate can reach a total of 47.475% (2010). The actual average tax rate is generally significantly lower than the maximum rate, given the availability of numerous deductions and exemptions. For private income from capital investments, such as dividends or interest, there is also an alternative tax rate (the flat withholding tax) of a lump-sum of 25%, i.e. 26.375% (2010) including the solidarity surcharge.

Partnerships are treated as transparent entities, and are not themselves subject to income tax. Rather, the partners are subject to income tax on their respective share of profits. The revenue of a corporation is not subject to income tax but to corporate tax.

The following seven types of revenue are encompassed by and subject to income tax:

1. revenue from agriculture and forestry
2. revenue from commercial operations
3. revenue from freelance work
4. revenue from salaried work
5. revenue from capital assets
6. revenue from rentals and leases
7. other revenue.

For employees, income tax is levied via employer withholdings from regular wages (“wage tax”).

3.2.2 Corporate Tax

The income of corporations whose management or registered seat is located in Germany is subject to corporate tax. The rate is currently 15% (2010), and the total tax burden including the solidarity surcharge is 15.825% (2010). Whether profits remain in the business or are distributed to shareholders is irrelevant for taxation purposes. Other than for partnerships, taxation on two levels results: first, at the corporate level (corporate tax), and in the case of profit distributions again at the shareholder level (individuals: income tax; corporations: corporate tax). However, if corporations receive profit distributions, there is an exception in that only 5% of the income is subject to corporate tax (2010).

3.2.3 Local Business Tax

All tradespeople, regardless of the legal form used, as well as all corporations, are subject to local business tax at the municipal level. Individuals and partnerships are given a tax-free amount of Euro 24,500 annually (2010). In addition to that, the local business tax is credited against income tax as a lump sum. For taxpayers subject to corporate tax, however, the local business tax is effectively an additional burden. Non-commercial entrepreneurial or freelance work (e.g., physicians, attorneys, tax advisors, architects, journalists, translators, etc.) is not subject to local business tax.

The amount of the local business tax varies from municipality to municipality, with the rates ranging between 7% and approximately 17% (2010). A top priority when entering the German market will therefore be selecting the most suitable location for your business from both a commercial and tax perspective. There are often municipalities within direct commuting distance from a large city that allow a business to benefit from all the advantages of the city while enjoying more favorable local business tax rates.

3.2.4 VAT

As is customary in Europe, the German VAT is a classic “all phase

net tax with input tax deduction“. It taxes both services and the exchange of goods regardless of the legal form of a business. The standard rate is 19% (2010), and the reduced rate for numerous services as well as wares and goods, such as food, newspapers, books and artwork, is 7% (2010). In addition to that, the law provides a generous tax-exemption for various transactions like services of financial institutions, lease of real estate, and medical care.

Business owners must regularly submit to the Revenue Service (monthly or quarterly) VAT estimates in which they have themselves calculated their VAT liability over the course of the year. They may deduct VAT already paid (for example, to a supplier) as an input tax deduction. If a business owner has paid more VAT to its suppliers than it collected from its customers, it can request a refund of the difference from the Revenue Service. Unlike many other countries, in which legal proceedings have to be commenced against the Revenue Service in order to receive the pre-tax input, German financial authorities generally refund the excess amount in a timely manner, without the taxpayer having to take any additional measures. The right of businesses to deduct pre-tax input results in the end user, who cannot deduct pre-tax input, bearing the economic burden of the VAT. The VAT is

thus an indirect consumption tax that is levied on the consumer via businesses.

An important exception to German VAT obligations exists for internal European trade in goods and services, provided that the buyer of the goods or services is subject to local VAT in the recipient country. Of particular importance is a VAT identification number, which is issued by every European country and identifies the business owner as a participant in internal European trade in goods and services of a particular country. If a VAT identification number is presented to the seller, it can issue its invoices free of VAT, with certain exceptions.

3.2.5 Other Taxes

German tax law comprises a number of additional taxes, including, for example, property tax, estate and gift tax and real estate transfer tax. The latter two types are commonly of significance in restructurings and M&A transactions, as well as succession planning.

3.3 Tax Collection

The opening of a commercial operation must be reported to the relevant administrative authority (business registration), which then automatically contacts the relevant Revenue Service. Within a short period of time, the Revenue

Service will send the new business a “Tax Collection Form“ which serves as the registration of the business for tax purposes. An individual tax identification number is then issued. If needed for trade in goods and services within the EU, a VAT identification number can be requested.

3.4 Determination of Taxable Income

There are two different methods for determining taxable income.

3.4.1 Accrual Basis Accounting

Due to their size, or simply on account of their legal form (e.g., GmbH, AG, OHG or KG), many businesses are required by commercial or tax laws to apply the accrual basis method of accounting. If taxable earnings are assessed based on this method, it is irrelevant when income is actually received and expenses are actually paid out. Rather, the decisive factor is which fiscal year the transactions are attributed to. Taxable income is thus derived from the difference between business assets according to the financial statements at the end of the fiscal year and business assets at the end of the preceding fiscal year.

3.4.2 Cash Basis Accounting

Tax law provides small commercial enterprises and freelancers

with an alternative to the accrual method. They may determine the amount of their taxable earnings more simply by using a “statement on excess of receipts over expenses“. This statement is based on simple cash accounting. Income is earned when actually received by the taxpayer and expenses deducted when actually made. Taxable income is then derived from the comparison of income with expenses.

3.5 Tax Returns

Annual tax returns must be received by the Revenue Service no later than May 31 following the end of the relevant fiscal year. If you entrust the preparation of the returns to tax advisors, the deadline is automatically extended until December 31 of the following year.

During the course of the year, generally monthly but sometimes only quarterly, VAT estimates must be submitted in electronic form. Depending on the amount of wage taxes, businesses must also submit wage tax estimates on a monthly, quarterly or yearly basis for their salaried workers. Social security reports for employees must be submitted monthly.

As a general rule, businesses outsource these tasks, including monitoring of deadlines and ongoing bookkeeping, to tax advisors such as us.

3.6 Overview of General Tax Obligations

	Sole Proprietor	Partnership	Corporation
Assessment of earnings	If operator of business establishment or if entered in Commercial Register: generally, accrual method of accounting Small businesses: cash method or accrual method	Generally, accrual method of accounting; cash method also possible	Accrual method of accounting
Sole proprietor's salary or salary for active shareholders	Not deductible as a business expense	Not deductible as a business expense	Shareholder- managing director salary deductible as business expense
Local Business Tax	Exemption of Euro 24,500 (2010); taxes credited as lump sum against income tax	Economically active company subject to local business tax; exemption as in the case of sole proprietors; local business taxes proportionally credited as lump sum against members' income tax	Corporation subject to tax; generally, no exemption; full exposure
Income/ Corporate Tax	Owner subject to income tax; preferable treatment for retained earnings determined under accrual method of accounting	Each member subject to income tax with respect to his/her share in business revenue; preferable treatment for retained earnings determined under accrual method of accounting is possible	Company earnings subject to corporate tax; profits distributed to private shareholders subject to income tax (flat withholding tax); if distributed to corporate shareholders, only 5% subject to corporate tax
VAT	Owner subject to VAT	Partnership subject to VAT	Corporation subject to VAT

3.7 Public Disclosure Duties

Pursuant to applicable commercial law, the legal representative of corporations and certain other businesses is obligated to publish the legally required financial statements (balance sheet, profit and loss statement), appendices thereto and a management report. The precise scope of this disclosure obligation depends on the size of the business. The publication must be made in the electronic Federal Gazette, usually within four or twelve months following the end of the respective fiscal year.

There are a number of special preparation, notification and disclosure duties for financial services providers.

3.8 Double Taxation in Transnational Cases

If you use your international business to invest in Germany, you will inevitably come into contact with German tax laws. The goal of international tax consulting is to avoid the potential for double taxation of the same income in Germany and your country of residence. In addition, consideration should be given at an early stage as to how the flow of interest payments, dividends and royalty payments between participating businesses can be optimized from a tax perspective. The use of relevant specialized databases and over 100 double

taxation treaties concluded by Germany, which predominantly follow the OECD model, are indispensable in this respect.

3.8.1 Taxation of Permanent Establishments

If you maintain a taxable permanent establishment within the country, Germany has the right to tax the profits attributable to this permanent establishment. A taxable permanent establishment is generally deemed to be any permanent place of business, through which the business of the larger concern is conducted in whole or in part (e.g., location of management, branch office, agency). The German permanent establishment will be credited with those earnings and expenditures which it would have made if it had been a stand-alone and independent legal entity and not a dependent part of the consolidated business. This theoretically simple division of income is relatively complex in practice. Leaving aside certain exceptions such as the financial services sector, this reality often leads to the recommendation that a business enter the German market with a separate subsidiary rather than a simple permanent establishment.

The non-resident foreign company is thus subject to tax liability for revenue earned in Germany. Double taxation may be an issue when the

business's home country taxes all worldwide revenues, including the already taxable revenue of the permanent establishment in Germany. In such cases, double taxation treaties provide relief, whereby the business's country of residence:

- exempts the profits of the permanent establishment (if necessary, under reservation of progressive taxation) from taxation;
- credits the taxes paid on earnings in Germany against corresponding foreign taxes.

3.8.2 Tax Risks for Subsidiaries

In certain circumstances, tax problems can also arise when a subsidiary is set up in Germany. If, for example, a company established in Germany is managed by a German pro forma director and in reality the essential business and strategy decisions are made from abroad, this may then lead to the assumption of a permanent establishment or even unlimited tax liability under the national law of the home country. Depending on the consequences of national law and any relevant treaties, double taxation may threaten such failed enterprises.

3.8.3 Withholding Taxes: Dividends, Interest & Royalty Payments, etc.

Multinational businesses are often faced with the problem of withholding taxes being levied on dividend distributions, interest payments, royalty payments or payments for services and management activities. This can result in a significant tax burden for the consolidated enterprise. The numerous double taxation treaties signed by Germany generally allow such withholding taxes to be reduced or avoided entirely by using the appropriate international structures.

Two European directives, the Interest and Royalty Directive and the Parent-Subsidiary Directive, are also of particular significance to international tax planning.

The Interest and Royalty Directive regulates the taxation of interest and royalty payments between affiliated corporations within the EU and Switzerland. Under the directive and implementing regulations in national law interest and royalty payments are not subject to the otherwise applicable withholding tax if the paying business's registered seat is in Germany and provided certain conditions are met (minimum investment, economic reasons for establishing the recipient company in another EU member state, principal motive not

being tax avoidance). Taxes are then levied exclusively in the home country of the receiving business, and not every country taxes such payments.

The Parent-Subsidiary Directive and the national German laws implementing the directive similarly exempt dividend payments from the withholding tax otherwise levied at the source.

4 Employment Relations in Germany

German employment law is worker protection law. It ensures a high degree of social stability and peace. Traditionally, there are few strikes in Germany, and conflicts between employers and employees are usually goal-oriented and settled relatively quickly, in the interest of both the workers and the employers.

German employment law is based on a number of different individual laws and, for this reason, has been shaped much more by the jurisprudence than other areas of law. The primary task of an employment law advisor is to use these various precedents for the benefit of your company. Employment relations in your business should be structured so that employee motivation is optimally fostered and, at the same time, you retain full control over your costs and can calculate po-

tential known risks from the outset.

4.1 Employment Contracts

Every employee is entitled to a written employment contract. The employer is thus significantly limited in its contractual freedom, as worker protection regulations cannot be varied to the detriment of the employee. Contractual agreements that do not comply with this rule are void.

4.1.1 Contract Duration and Part Time Work

Employment contracts are usually concluded for an indefinite period of time. Under certain conditions, however, contracts limited to a period of up to two years are permitted. If there is a special circumstance (such as project work), fixed periods of more than two years are allowed. Part-time contracts are also naturally permissible.

4.1.2 Working Hours

Regular working hours in Germany may not exceed a weekly average of 48 hours; there are also exceptions which allow up to 60 hours per week. Many collective labor agreements, however, contemplate much shorter working hours. Working hour regulations apply to executives only to a limited extent.

Sundays and holidays are gene-

rally non-working days in Germany. In addition to federal holidays, there are also holidays observed in the individual states.

4.1.3 Wages

There is no statutory minimum wage in Germany. However, in many industries, there are collective labor agreements specifying a minimum wage. Depending on the region and the industry, these standard rates at present range from Euro 5.34 to Euro 12.95 (2010) per hour.

4.1.4 Vacation and Illness

German workers have the right to a minimum vacation of four weeks per year, or 20 days per year in the case of a five-day workweek.

If a worker becomes disabled and cannot work, the employer must continue to pay his or her wages for six weeks. Thereafter, the relevant medical insurance company assumes the obligation. Under certain conditions, the employer may be reimbursed for disability expenditures by participating in a pay-as-you-go system.

4.1.5 Discrimination Laws

With respect to eligibility, hiring and working conditions, workers are comprehensively protected against discrimination on account of race, ethnic origin, gender,

religion, disability, age or sexual orientation. An employee that has been discriminated against is entitled to compensation and damages, among other things.

4.1.6 Dismissal

Special dismissal protection regulations apply to businesses with more than ten employees, and in some cases, to those with more than five employees. After the end of a six-month probationary period, a regular dismissal is only effective if there is valid personal, behavioral or business reason. Unless otherwise specified in the employment contract, the required notice period following the end of the probationary period is four weeks from the fifteenth or end of the month and is extended where longer periods of employment are involved.

By way of exception, employees can be immediately terminated when there are serious grounds that make the continuation of the employment relationship infeasible. Serious grounds include workplace theft, unjustified refusal to work, aggravated insult and sexual harassment. The dismissal must be communicated within two weeks after the serious grounds become known.

Dismissals must always be made in writing and be signed by the employer or its representative, with

the original going to the employee. Notice of a dismissal made via e-mail or fax is insufficient. Moreover, there are additional requirements in certain circumstances, such as a hearing by the works council. Additional special regulations apply to pregnant or severely disabled employees, trainees, members of the works council and employees on parental leave or compassionate leave.

Dismissal disputes before German employment courts often end in settlement. As a rough guideline, the employer should expect to pay employees severance equal to 50% of gross monthly salary per each year of employment.

4.2 Employment Law Restructurings

Employment law restructurings can contribute a great deal to the competitiveness of a business. In addition to the transfer of a business in whole or in part, changes in the operational or business organization can be made. Common practical solutions are the spin-off or demerger of personnel and services, or the consolidation of various sub-departments. Cost savings can also be realized by making working conditions more flexible.

Such personnel adjustments are, however, subject to strict statutory

and judicial requirements. In certain cases, collective labor arrangements must also be taken into consideration.

4.3 Worker Participation and Collective Labor Agreements

Germany has a balanced system to ensure that employee rights are protected. Unlike in other countries, employment relationships are fairly free of conflict. As opposed to many European countries, strikes or other serious interruptions to business operations are rare.

4.3.1 Workers' Council

Generally, workers' councils can be established at the employees' initiative in businesses with five or more voting age employees. The workers' council has its own rights vis-à-vis the employer and must be heard, consent or otherwise participate before certain measures can be implemented. Company agreements between the workers' council and the employer can also be used to create binding regulations regarding certain working conditions.

4.3.2 Collective Labor Agreements

Collective labor agreements, which govern the substance and termination of employment relationships as well as operational and labor

management relations issues, can be concluded between labor unions and individual employers or employer associations. The provisions of these agreements are binding on the parties. Of particular significance to an employer is that such arrangements may deviate from statutory regulations to the detriment of the employees.

4.3.3 Participation in Supervisory Board

In an AG, GmbH, KGaA or registered cooperative with more than 500 employees, the employees have the right to elect one third of the members of the supervisory board. If there are more than 2,000 employees, additional participation rights exist.

4.4 Social Security Insurance

German employees are required to have pension insurance, unemployment insurance, long-term care insurance and health insurance. Contributions are borne by both the employer (approximately 24 % (2010) of gross wages) and the employee (approximately 20.5 % (2010)). Beginning in 2012, the retirement age will be raised from the current age of 65 to 67 until 2031.

4.5. Data Protection

The gathering, processing and

use of personal data in an employment relationship is permitted only with the express consent of the employee or where required by law. Significant obstacles arise in cases where data is transmitted to non-EU countries. Prior to commencing business, any automated data processes must be reported to the relevant regulator. Violations of these regulations can subject the persons responsible to fines of up to Euro 250,000 and imprisonment of up to two years.

4.6 Foreign Employees

The employment of foreign workers principally entails issues relating to employment law, social security law, tax law and immigration law.

Employment law sets out mandatory statutory minimum conditions under which foreign employees may be engaged in certain industries, which should be accounted for when preparing an employment contract. With respect to social security law, existing international treaties should be taken into consideration.

As for tax issues, it should be clarified whether the employee will remain subject to tax in his home country and possibly face double taxation, or if taxes will be credited or income completely exempted in the other country under a double taxation treaty.

5 Visa and Residency Permit

In order to be able to live and work in Germany, citizens of non-EU countries must have a residency/work permit. A visa should be requested from the relevant consulate prior to traveling to Germany.

5.1 Visa

The visa application must state the precise reasons for traveling to and residing in Germany. In particular, the intention to take up gainful employment must be disclosed. The consulate will contact the responsible aliens registration authorities as part of the visa proceedings. If necessary, the aliens registration office will then contact the employment agency.

If the visa is issued, the recipient may enter Germany. Within three months of his or her arrival, the employee must request the issuance of a residency permit from the local aliens registration authority. This is usually a mere formality, as the requirements will have already been confirmed during the visa proceedings.

5.2 Residency Permit

For a residency permit to be issued, the livelihood of the applicant and his/her family, if accompanying the employee, must be secured. In this respect, proof of health insurance must be shown.

Depending on the nature of the applicant's work, the aliens registration authority must obtain the consent of the Federal Employment Agency before issuing a residency permit. Generally, the permit will only be issued if it can be demonstrated that there are no German workers available for the intended work.

This priority check is, however, not always required. Some preferred professional groups include, among others, managing employees and authorized representatives of a German company (such as managing directors), as well as journalists or employees seconded for a short period of time.

There are different types of residency permits for employees, entrepreneurs and freelancers, each of which have their own particular requirements.

5.2.1 Entrepreneurs

Entrepreneurs will generally be issued residency permits if they invest Euro 250,000 and create five jobs. This approach can be used by business founders and sole proprietors, as well as managing directors and statutory representatives of partnerships and corporations. With respect to being deemed an "entrepreneur", decisive factors are that the foreigner has a controlling influence over the business. This is usually the case for a majority shareholder/managing director. Other employees of a newly founded business need to obtain a work visa for employees (see below).

As a general rule, a sole shareholder/general director of a small GmbH seeking to qualify as an entrepreneur will not be issued a residency permit if he/she does not meet the above requirements. In such a case, a visa for salaried employment will also not be granted because the requisite conditions will not have been met.

However, in certain cases, a visa for entrepreneurs may be issued even with a modest investment and the creation of less than five

jobs if the planned business is expected to have a positive effect on the German economy and financing has been secured. This is particularly the case for highly innovative businesses or those that will be expanding in the near future.

Individuals who have successfully done business for three years with a residency permit have the option of applying for permanent residency if certain other conditions are met.

5.2.2 Freelancers

Freelancers may be granted residency permits without having to make any investment or create jobs. Freelancers primarily include physicians, dentists, veterinarians, alternative health professionals, physical therapists, certified psychologists, attorneys, patent attorneys, auditors, tax advisors, consulting economists and management experts, engineers, architects, trade chemists, journalists, press photographers, interpreters, artists and writers.

If the requisite conditions are met, permanent residency may be granted after five years.



5.2.3 Employees

In applying for a residency permit to take a salaried position, the applicant must demonstrate that he/she has been offered a position. As a rule, the permit will only be issued if there are no German or preferred EU citizens available for the job. However, numerous exceptions are made to this requirement, such as in the case of highly-qualified workers, managing employees with a general power of attorney, authorized representatives of a legal entity, as well as for short-term (up to three months) employment for the performance of certain business activities.

6 Distribution Rights

6.1 Sales Representatives

A sales representative can be an individual or a legal entity, such as a GmbH or AG. A sales representative brokers transactions for or in the name of other businesses. In return, the business is required to pay the representative a commission. In order to determine the amount of the commission, the sales representative is entitled to request an extract from the business's books or even gain access to accounting records. Upon termination of the contractual relationship, the sales representative

has the right to indemnity from the business.

A sales representative is an independent tradesperson. However, unlike an independent retailer or wholesaler, it is integrated into the distribution structure of another business even though it can freely organize its business activities within this distribution structure.

Whether someone is an independent trader, or a sales representative, authorized dealer, commission agent or agent middleman, depends less on the designation than on the contractual relationship and actual activities performed. This should be taken into account when preparing a contract, as the consequences can be considerable, such as the imposition of taxes as a result of inadvertently establishing a German permanent establishment.

The law of sales representatives is an area of law that is harmonized within the EU. Many regulations are binding law and cannot be varied to the detriment of the sales representative. This applies to activities in Germany as well as when the parties have agreed to apply the law of a third country. Thus, for example, the sales representative's indemnity claim at the end of the contractual relationship is internationally binding.

6.2 Other Distribution Methods

Aside from using a sales representative, there are a number of additional distribution systems that may be suitable for a foreign business. To some extent the legal regulations protecting the sales representative are also applicable to other distribution methods.

For example, an authorized dealer, often a franchisee, is under permanent contract with a business, whose goods it distributes for its own account and under its own name. A party who concludes commercial transactions in its own name but for a third party's account is a commission agent. An agent middleman, on the other hand, also concludes transactions in the name of the third party. However, unlike a sales representative or authorized dealer, it does not always act for the business and does not have any obligation to do so.

6.3 Special Case: Internet Distribution

In Germany, as in the rest of the world, the Internet plays a significant role in economic transactions and provision of goods and services. Revenues from online business are growing steadily. Distribution over the Internet also means, however, that the same laws

applicable to ordinary business transactions must be observed. In addition, there are a number of special legal regulations specific to the Internet.

Foreign companies that target German customers on their websites are often surprised at the large number of regulations to be followed when doing online business within Germany. Aside from the detailed legal notice obligations, which are often unheard of abroad, German regulations on data protection, cancellation policies and the Professional Services-Disclosures Obligations Regulation must be followed. Mistakes made when commencing Internet business can lead to irritation on the part of potential customers, who expect a large degree of transparency from online businesses, and there can also be immediate costly consequences, as competitors often use non-compliant websites as the basis for cease-and-desist orders pursuant to competition law.

Nevertheless, setting up a legally compliant Internet presence is more than just a burden: it is also a simple means of communicating trustworthiness to customers. With a legally compliant Internet presence, foreign companies can easily gain a foothold in the German market and attract German customers.

7 Contract Formation

In order to tailor your corporate, employment, distribution and other contracts to your future activities, we need to understand your business. We are incorporated as a GmbH and ourselves are businessmen, so it is easy for us to understand your internal business procedures and concerns.

We have particularly comprehensive industry knowledge in the areas of finance and insurance, IT and software, media, entertainment and the Internet, engine construction, architecture and engineering, as well as in the broad field of activities carried out by nonprofit and charitable organizations.

Freedom of contract is highly prized in German law. It is only partially circumscribed, for example, by European norms on consumer protection and extensive jurisprudence aimed at avoiding undue unfairness.

7.1 Applicable Law and Jurisdiction

Contractual parties are not only free to alter negotiable terms in their contract, they may also specify which law will apply to their contractual relationship in certain circumstances. The right to select the applicable law also exists on a European scale (Rome I Regulation).

Dispute resolution through litigation or arbitration can also be contractually stipulated provided the relevant requirements are met.

7.2 General Terms and Conditions

If a contractual relationship is subject to German law, special

attention should be given to the drafting of the General Terms and Conditions for your business. This is even more important because General Terms and Conditions are comprehensively regulated by law and are highly influenced by the jurisprudence. Applicable laws include protection not only of consumers, but as well regulations regarding trade between businesses. Even individual contracts must comply with the law on General Terms and Conditions in certain circumstances even if they are not expressly designated as General Terms and Conditions. If this law applies, well-intended contract provisions may be often ineffective. Because the strength of your legal position can rise and fall with the effectiveness or ineffectiveness of certain provisions, careful drafting of the General Terms and Conditions is a must.

7.3 Notaries

Various types of contracts require the involvement of a notary, such as contracts for establishing a GmbH, agreements related to M&A transactions or restructurings, and for real estate transactions. If a party intends to execute such a contract through a representative, such as an attorney, the representative must have a written power of attorney, which may also require an apostille or legalization.

8 Intellectual Property Laws

Intellectual property is the umbrella term for intangible rights that are commercially valuable. Particularly significant are the areas of copyright, trademarks, registered designs, patents, utility patents and competition law.

8.1 Trademark Law

Under German law, trademarks are issued via an application to and registration with the German Patent and Trademark Office [DPMA] in Munich. In the case of multinational and global product marketing, registration of the trademark as a European Community Trademark in Alicante (Spain) and as an

international trademark in Geneva (Switzerland) is recommended.

The owner of the trademark acquires an exclusive right in two respects. Its right to use the trademark to designate its products or services is protected. *Vis-à-vis* others, the owner is also entitled to make infringement claims against third parties, principally in the form of cease-and-desist orders and damages. Once validly registered, a German trademark is protected for 10 years and can be extended after this period.

Carefully building a trademark portfolio and protecting it is of great commercial significance. The goal is to maintain the distinctiveness that regularly influences the purchasing decisions of consumers conscious of trademarked products. Trademark piracy must be quickly and decisively addressed. Cease-and-desist orders and bringing suits for cancellation, injunctive relief, damages and the like are often the only effective means to fully prevent a third party's illegal use of a trademark.

8.2 Copyright Law

Copyrights and ancillary rights play a particularly significant role

in the fields of media, entertainment, software and publishing. Copyright issues also frequently arise in architecture, engineering, graphic arts and building design. The key factor here is to always carefully structure the relevant licensing conditions and other requisite agreements regarding third-party licensing.

8.3 Patent Law

Germany is the home of the inventor. Being granted a patent, the inventor obtains a twenty-year exclusive right, also allowing it to license the use of its patent for profit. Depending on the significance of the invention, the exclusive right granted by patent law can create a million-dollar business.

We can help protect your patent against infringers by seeking injunctions and damages, as well as against other patents on the market. As for the actual patent application, we can refer you to our partner firms specializing in patent law.

8.4 Competition and Antitrust Law

Competition aimed at perceptibly influencing the interests of competitors, consumers or other market participants is not permitted under

German law. In addition, certain competitive acts and business decisions can also violate international competition laws as well as national and international antitrust regulations.

Because it is often difficult for a business to recognize permissible limits under competition and antitrust law, careful planning of your business activities is of utmost importance. If a competitor violates competition rules or antitrust regulations, German law also provides a number of means to put up a rapid and effective defense.



9 Capital Markets Law

Germany has long been an important financial center. Many international banks and financial services providers are headquartered in Germany. The financial services sector is growing rapidly, not least because of the extensive German market and the many foreign players who each year identify Germany as an important market. The growth of complex financial instruments has greatly increased both private and institutional investors' need for advice in this area.

German financial markets are highly regulated and are monitored by the relevant supervisory authorities. In order to offer financial services in Germany, a license from the Federal Financial Supervisory Authority [BaFin] is required.

9.1 Financial Services

The fundamental law governing the German financial services industry is the Banking Act. The

Act differentiates between credit institutions, which offer commercial banking transactions, such as deposits, credit, giro transfers, brokerage and investment banking, and financial services institutions, which provide professional financial services. Important financial service transactions include investment and contract brokering, placements and investment advisory services.

9.2 Licensing Requirements

In order to obtain a license from the Financial Services Authority, a written application must be submitted together with numerous documents regarding the institution, its directors and the intended business. The granting of a license essentially depends on the following requirements:

- sufficient equity capital,
- managing directors of good moral character and requisite professional qualifications,
- a sustainable business plan.

The equity capital requirements for the most common financial services are as follows:

Investment advisors, investment brokers, investment administrators and portfolio managers; operators of multilateral trading systems and companies performing placements which are not authorized to take ownership or possession of customer money or securities during financial transactions and that do not trade in financial instruments for their own account	Euro 50,000
Other financial services institutions that do not trade in financial instruments for their own account	Euro 125,000
Financial services institutions that trade in financial instruments for their own account and securities trading banks	Euro 730,000
Deposit institutions and central counterparties	Euro 5,000,000

A managing director will be deemed to lack the requisite integrity if he or she has been previously convicted of a property or insolvency crime, or has previously been fined for an administrative regulatory offense in connection with his or her business activities. Prior insolvency proceedings may also pose a problem. Professional qualifications include the relevant education and practical experience that allow a managing director to properly appraise the transactions made by the credit or financial services institution and make any necessary changes in the running of the business.

As part of the licensing proceeding, the following information must be made available to the authority: business plan, internal compliance guidelines, corporate foundation documents and model

customer contracts. The managing directors must submit affidavits attesting to their integrity, professional qualifications and their pecuniary circumstances, in addition to the goals and purposes for which the business is to be conducted. Standard forms are available for some of these requirements, but some affidavits must be prepared on a case-by-case basis.

The Banking Act sets out less stringent requirements for financial services providers already licensed as such in other countries of the European Economic Area. If the goal is to establish a branch office in Germany or to supply cross-border services to Germany, notice to the relevant German authorities will suffice, and the financial services provider is not required to obtain a financial services license in Germany. The same applies to

simple representations of foreign financial services providers, including those from non-EU countries.

9.3 Compliance

German law imposes strict compliance requirements on financial institutions. The entity must have a duly established business organization which guarantees compliance with mandatory legal requirements and financial needs.

In particular, the Securities Act sets out the following requirements for companies dealing in securities transactions and providing investment advice:

- An investment services provider is obligated to execute securities related services with due expertise, care and diligence and in the interest of its clients. In particular, conflicts of interest are to be avoided, and customers must be informed of the general type and source of such conflicts.

- All information provided to clients, including promotional material, must be objective and clear and contain no misleading statements.

- Investment services providers are obligated to disclose to customers, in a timely and understandable manner, all information necessary for the clients to understand the financial and investment services they have requested and

to make well-founded investment decisions.

- An investment services provider that offers investment advice or portfolio management must undertake to learn the client's prior knowledge and experiences, its investment goals and financial circumstances in order to be able to recommend suitable financial instruments or investment services.

- Client orders must be executed in the best interest of the client.

- Employee transactions must be monitored in order to avoid conflicts of interest and to prevent the misuse of insider information.

German lawmakers and supervisory authorities also impose a plethora of regulations with respect to credit institutions' risk management, such as the Minimum Requirements for Risk Management (MARisk) regulations.

9.4 Ongoing Oversight

In Germany, credit institutions and financial services providers are subject to ongoing oversight by the Financial Supervisory Authority in close cooperation with the Federal Bank.

This oversight includes a number of mandatory disclosure obligations. Significant regular disclosure obligations include:

- A "monthly statement" consisting of a statement of assets and liabilities as of the end of the reporting period and a profit and loss statement covering the period since the end of the last fiscal year (Banking Act, Section 25 in conjunction with the Monthly Returns Regulation);

- Filing of annual financial statements and the management and auditor's report (Banking Act, Section 26); credit institutions must also report liquidity ratios monthly or quarterly;

- With respect to financial services providers, transactions in financial instruments admitted for trading on an organized market, on a regulated market or OTC trading on a domestic exchange (Securities Act, Section 9);

- Current reports on material events ("ad hoc disclosures") (Securities Act, Section 15).

In general, any matter that is relevant to the authorities' oversight must be disclosed without any special request being made.

Moreover, the German Federal Bank has the right at any time to thoroughly audit all of an entity's business affairs, request all relevant corporate documents and even participate in meetings of the supervisory board and management.

9.5 Due Diligence Key in Preparing Application

Given our experience in preparing contract and compliance documents, and our strong contacts with supervisory authorities and auditing firms specializing in financial services providers, we can offer foreign firms the security of a seamless entrance into the German market.

An application to become a licensed credit institution or financial services firm will be successful when it is carefully prepared. For this reason, the business plan should be developed by a specialized auditor who can bring the firm's business plan into compliance with oversight requirements. The application itself should be prepared by experienced attorneys, who can also draft model contracts and also help with a firm's ongoing compliance requirements.

With respect to our compliance advisory services, we notify you of any changes in the law and present proposals as to how they can be implemented. This avoids potential regulatory issues, as well as civil liability. Should legal problems arise, however, we can represent you both in and out of court and help achieve a favorable resolution.

10 Insurance Law

While many large insurers are based in Germany, the German market is also open to innovative products from abroad. For example, British life insurance products have long been highly popular with German customers.

In order to be able to conduct business, insurance companies must obtain written permission from the Financial Supervisory Authority. As part of the application, a sustainable business plan must be presented, showing how the company will assess premiums, risks, reserves and administrative costs and maintain solvency. Articles of incorporation, and in the case of groups, inter-company agreements must also be submitted. The specific lines of business that will be conducted must also be specified. Insurance business may be conducted only through a European joint stock company (SE), an AG or a mutual insurance association (known as a “VVaG”), a legal form unknown outside the insurance market.

Insurance companies are subject to higher capital equity requirements in accordance with the Capital Resources Regulation. In addition, reinsurance must be procured. Members of the governing bodies of an insurance firm must

possess the requisite professional qualifications and good moral character.

Insurance companies are subject to legal and financial oversight. The supervisory authority has broad enforcement powers it can use to audit a company with respect to compliance requirements.

Insurance brokers that wish to conclude contracts between customers and insurers must be authorized by the relevant local Chamber of Industry and Commerce. They must also be of good moral character and have suitable professional qualifications, in addition to professional liability insurance. In the alternative, the broker may take part in a so-called “liability shelter”, whereby liability insurance is procured by another party.

11 Warranties and Damages

11.1 Warranties

Sellers are obligated to provide customers with warranties for defects. If an item is defective, the purchaser, depending on the particular circumstances, may have the right to substitute performance, a reduction in sales price, rescission of the transaction and compensation for damages or reimbursement of expenses. Notice of defects ari-

sing in connection with business transactions between two companies must be provided without delay.

11.2 Products Liability

Damages sustained by an end consumer on account of a defective product are generally regulated by the Products Liability Act, which allows for damages to be assessed against manufacturers and suppliers. In certain circumstances, however, liability may be imposed on an importer, seller or other entity/person in the distribution chain.

The standard applicable here is absolute liability, meaning that the foregoing persons/entities may be held liable without fault. Nor is a contractual relationship with the injured end consumer necessary in order for liability to be imposed.

Product liability regulations protect the life and physical health of the end consumer as well as other personal property of the consumer designed for personal use or consumption. A number of other products, such as food and medicinal products, are subject to special regulations.

11.3 Damages

In general, there is a right to damages in cases of injury to

health or property, or where similar rights have been culpably violated. The so-called “principle of parity control of facts and means of evidence” applies to German civil proceedings, such that the result of a damages suit often depends on which party has the burden of proof on certain issues, such as causation.

12 Litigation/Enforcement of Claims

12.1 Enforcement of Foreign Claims

The first issue in enforcing foreign claims in Germany is whether governing law and jurisdiction have been properly stipulated under contract. If this is not the case, the existence of other potential legal grounds for invoking the jurisdiction of the German courts should be assessed.

12.1.1 Simplified Collection Proceedings

The first step usually recommended for enforcing claims is to have a collection notice sent by an attorney. In some cases, also a simplified judicial collection action may be advisable. Thus, a judgment can often be obtained quickly and at relatively little cost, and can then be used to execute against the debtor’s assets.

12.1.2 Civil Proceedings

In civil action, the jurisdiction of the court is based on the registered seat of the defendant, or the place of performance in contract actions. The respective Regional Court will have jurisdiction over disputes where the amount in controversy is more than Euro 5,000. The respective appellate courts are then the Higher Regional Courts and finally, the Federal Court of Justice, which is the highest civil court in Germany.

12.1.3 Costs and Duration

The usual costs incurred in enforcing claims are attorney's fees and court costs, which are borne by the losing party, at least in part. Upon filing its complaint, the plaintiff must make a deposit on court costs. The plaintiff must also usually pay at least part of its attorney's fees upfront.

The length of judicial proceedings varies from court to court, although a judgment can on average be expected somewhere from four to eight months after the filing of the complaint. In emergency situations, provisional remedies can also be requested from the German courts.

12.2 Enforcement of Foreign Judgments

When seeking to enforce a foreign judgment, the first issue is whether a multilateral treaty on the enforcement of judgments has been signed with Germany or whether an intra-European matter is involved.

12.2.1 European Union

Judgments obtained in EU countries can be enforced relatively quickly pursuant to Council Directive (EC) 44/2001 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, provided that the necessary documents are submitted. With respect to Iceland, Norway and Switzerland, the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters applies in place of the Council Directive.

12.2.2 Bilateral and Multilateral Treaties on the Enforcement of Foreign Judgments

If any other international treaties exist, they provide the relevant rules that apply to further proceedings. In general, a special declaratory proceeding before the

relevant local German court will be required.

12.2.3 Proceedings in Absence of Treaty

In cases where there is no applicable enforcement treaty, such as in relation to the United States, Russia or China, a foreign judgment must be recognized and enforced in an independent enforcement proceeding before the relevant local German court. As a rule, the German court will not review the merits of the foreign judgment, but determine only whether the requirements for enforcement have been met.

In certain circumstances, whether enforcement will be successful can vary greatly from case to case. For a number of reasons, it is usually easier to have a US judgment enforced than one from Russia or China, for example.

12.3 Execution

German law allows money judgments to be executed against personal or real property. However, the simplest and quickest method is attachment, either of the debtor's receivables from a business partner, employer and bank accounts. Costs incurred in execution can also be exacted from the debtor if it has the means to pay.

13 Arbitration

Contracts between two parties from different countries often contain arbitration clauses whereby the parties mutually agree to settle legal disputes before an arbitral panel. These are private tribunals which issue final awards concerning legal disputes. The advantages of arbitration are usually faster results, specialized knowledge of the arbitrators and lower costs as compared to judicial proceedings, as well as the strict confidentiality of the proceedings and their flexible nature (for example, with respect to location and language of the proceeding).

We regularly represent our clients in both domestic and international arbitrations, including before the ICC (International Court of Arbitration).





D Non-Profits in Germany

In addition to our expertise in traditional commercial law, we are also one of the leading firms in the areas of foundation law and the law of non-profits and charitable organizations. We offer large non-profit organizations a comprehensive array of legal and tax advisory services. We represent a number of renowned German non-profits, as well as various foreign charities which have offices, sponsoring associations or subsidiaries in Germany and require one-time or ongoing advice. The majority of our foreign clients are generally religious organizations of various faiths, as well as private foundations.

Supported by favorable public interest and charity laws – which offer numerous tax incentives – a large number of new foundations and other non-profit organizations are established each year. This boom in the German non-profit sector continues unabated.

There are, however, many different aspects to take into consideration when planning to establish a non-profit organization in Germany. During the planning phase, the most important consideration is the proper legal form, which

is usually a registered society/ association, a private foundation or a GmbH. Another consideration is whether the organization will be organized as a charitable institution. In Germany, just as in many other countries, charitable organizations enjoy many tax privileges so that charitable status is usually an advantage.

Other legal considerations that arise in connection with both the establishment and, later on the running of the non-profit, are an optimal tax and contractual structure for sponsoring, fundraising and business cooperation, a legally compliant website, appropriate employment contracts for directors and other employees and the spin-off of taxable service subsidiaries, to name just a few significant examples. Of particular significance is also proper book-keeping and tax accounting, in addition to the preparation of the necessary tax declarations and annual statements. If tax regulations are carefully followed, disputes with the Revenue Service entailing official proceedings will be rare. Should such proceedings become necessary, however, we can of course offer you excellent representation.

References

Please find below our reference list containing some of our valued clients. Further references will gladly be made available upon request.

All Service Unternehmensgruppe

(Facility management company, market leader in the Rhine-Main region, Germany)

Ärzte für die Dritte Welt e.V.

(Charitable organization, providing medical aid in developing countries, Germany)

BARTEC GmbH (Global provider of industrial safety technology, Germany, Switzerland, Slovenia, P.R. China)

DITIB ZSU e.V. (Charitable welfare organization, Germany, Turkey)

Dracco Scandinavia A/S (Candies and toys producer, Denmark, Hong Kong, USA)

DRIAM Anlagenbau GmbH (Coaters designing company, Germany, USA, Japan)

Forex Capital Markets, Ltd (Financial services provider, USA, worldwide)

Freunde von Meir Panim e.V.

("Friends of" association supporting the Israeli welfare organization Meir Panim, Germany, Israel)

GD Convey S.A. (Manufacturer of integrated handling systems, Spain, France, Italy)

Gehtsoft Group (Financial software company, Russia, USA)

Klimek Advisors (Asset management consulting group, Germany, Ireland, UAE)

Landesverband der Gehörlosen

Hessen e.V. (Charitable organization, supporting deaf persons, Germany)

Lytzen A/S (Manufacturer of high quality industry ovens, Denmark)

MapIT (Pty) Ltd (Supplier of quality digital maps, South Africa)

Private Residences - Luxury Real Estate

Group (International real estate broker company, Spain, Austria, Switzerland)

RMV Rhein-Main-Verkehrsverbund

GmbH (Integrated public transport systems provider, Germany)

SARIO Marketing GmbH (Online media and marketing company, Germany)

S & N Bau- und Objektgesellschaft mbH

(Comprehensive architectural engineering services, Germany)

Sozialdienst katholischer Frauen -

Zentrale e.V. (Federal catholic association providing youth, women, and family welfare services, Germany)

Stage Entertainment GmbH (International live entertainment company, Germany)

Textbroker International, LLC (Online broker of texts and articles, USA)

The Russian Debt Corporation

Collection Agency, Ltd. (Leading debt collection agency, Russia)

Vereinigung der Haus-, Grund- und Wohnungseigentümer

Frankfurt am Main e.V. (Lobbying association of real estate owners, Germany)

Vereinigung Technischer Analysten

Deutschlands e.V. (German chapter of the International Federation of Technical Analysts (IFTA, USA), Germany)

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